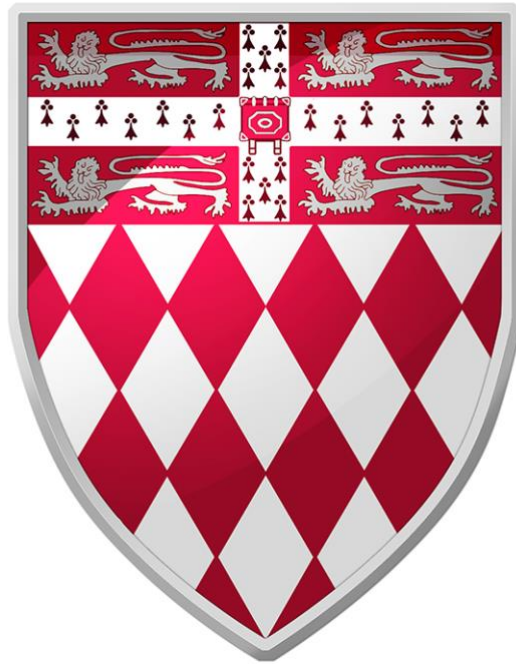


Judges' Gender and Judging in China



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November 2020

This thesis is submitted for the degree of Doctor of Philosophy

Declaration

This thesis is the result of my own work and includes nothing which is the outcome of work done in collaboration except as declared in the Preface and specified in the text. I further state that no substantial part of my thesis has already been submitted, or, is being concurrently submitted for any such degree, diploma or other qualification at the University of Cambridge or any other University or similar institution except as declared in the Preface and specified in the text. It does not exceed the prescribed word limit for the relevant Degree Committee

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Abstract

After women began entering the judiciary in appreciable numbers, scholars worldwide started asking whether their gender would influence their decision-making processes. Although empirical findings are mixed, the research literature reveals that judges' gender is a predictive factor in gender-related cases—especially those involving employment discrimination, sexual harassment, and reproductive rights. These findings not only advance feminists' aspirations that female judges can translate symbolic representation into substantive representation of women, but contribute to the long-standing observations about how judges of different backgrounds actually decide cases. This PhD dissertation follows this research tradition and examines the effect of gender in the process of judging within the context of Chinese criminal justice system.

Chapters two and three, which used quantitative research methods, examine whether female judges decide cases differently from their male colleagues, and whether the presence of a female judge on a three-member panel causes male judges to vote in favour of plaintiffs in rape cases. In chapter two, I discuss my analysis of 11,006 court judgments from 2016 to 2018 across 11 crime types in Shanghai, Beijing, and Guangzhou. The results revealed negligible differences between the sorts of decisions made by male and female district court judges. Nevertheless, the similarities in the decision to incarcerate can be explained by a harmonious 'Iron Triangle' relationship among the police, the procuratorate, and the court. The Sentencing Guidelines and the Adjudication Committees of the courts are mechanisms that align judicial behaviours in the same direction. The initial findings in chapter three, based on 6,100 judgements of rape cases from 2010 to 2018 in Shanghai, Beijing, and Guangzhou, also suggested that there is no 'panel effect'. However, when certain stimuli, such as the social network relationship between victims and offenders, are introduced, panels with different combinations of male and female judges exhibit different sentencing preferences: When a female judge decided the outcome of a case together with two male judges, the panel often issued a shorter sentence length, compared to the sentence length issued by an all-female panel.

Chapters four and five, which used qualitative research methods, uncover the behavioural differences at work between male and female judges. In chapter four, it is shown that female judges are accustomed to employ mediation as a preferred dispute resolution method when facilitating reconciliation between two parties and are more likely to seek civil compensation for victims. This study reveals that in the Chinese criminal justice system, behavioural differences between male and female judges exist in the process, as well as in the outcomes of judgments. Chapter five explores male and female judges' attitudes in criminal cases related to domestic violence. I found that senior male judges tended to minimise or excuse male offenders' assaults on their female partners in domestic violence cases, arguably because those male offenders were brought up in a masculine culture at an early age, or because they often experience work and family pressures at the same time, and those are feelings that some junior male judges can relate to. Female judges, on the other hand, tended to blame female victims for the improper behaviours that they engaged in with their husbands, or for failing to cut ties with their husbands quickly and resolutely. These negative attitudes from female judges towards female victims demonstrate the impossibility that the latter could fit the image of 'ideal victims'. This study demonstrates that both male and female judges, regardless of age differences, possess unconscious biases and prejudices during criminal trials for domestic violence cases. The findings in this PhD dissertation compel us to reflect on the benefits and drawbacks of pursuing 'gender differences in judging' put forward by feminist legal scholars.

Preface

When I embarked on this PhD journey in October 2016, my friends were bewildered by my choice and could not understand why, after completing my JSD (Doctor of Juridical Science, a research doctorate in law) in Hong Kong, I was choosing to put myself through another four years of ‘suffering’ at Cambridge, United Kingdom. I explained to them that I was motivated by a desire to study a subject about which I am truly passionate. Also, I was hopeful that in doing this PhD I could produce a piece of high-quality scholarly work, in celebration of my mother’s almost 40-year career as a judge in rural China.

My mother started working at a district court in my hometown immediately after graduating from her upper secondary school in 1983. One of the reasons that she applied for this position was because of the close proximity of the court premises to my grandfather’s home. This enabled her to cut down on commuting time and meant that she was able to cook for her brothers and sisters before they arrived home after school. She also received a lot of support in her application from my grandfather, who was a colonel during the second Sino-Japanese war. Like all parents’ expectations of their children, my grandfather was entirely confident that his daughter possessed the requisite intelligence to become a judge, even though she had only just left upper secondary school. Fortunately, my mother passed the admission examination and accepted a job offer as a judicial assistant. On her first day at work, however, she was reassigned to another office as a junior administrator, simply because the criminal division chief was not convinced that she was ready to work in his ‘gentlemen’s club’. This was a highly demanding job that required my mother to type up judges’ handwritten judgments using a vintage typewriter and then print out several copies for use by lawyers and litigants on a daily basis. Sometimes, the handwritten documents were difficult to read, meaning that she had to constantly call the judges to double-check what they had written or otherwise wait outside their offices until such time as the presiding judges had finished their trials and had time to speak with her. Because she was diligent in her work, she often spotted inconsistencies in these judgments and was praised for her enthusiasm for the job.

After three years of hard work, she was finally given an opportunity by her line manager to work in the civil division as an assistant judge, the position she should have been given when she first started. Upon commencing her judicial career in this position, my mother gradually came to realise that her working style differed significantly from that of her male colleagues.

For instance, the male judges, most of whom had been transferred from the military or government bureaus, always wore suits and ties in their offices, and they often directed their clerks and assistants to communicate with litigants about any issues that arose during cases. In contrast, my mother often dressed casually and preferred to engage in one-to-one conversations with litigants directly. On one occasion, she visited the mother of a defendant in a divorce lawsuit several times after work, in order to convince her that it was in her son's best interest to appear before the court. The defendant's mother eventually came to realise that my mother had her son's best interest at heart, and she was deeply touched; so much so that she admitted that her son had taken her grandson and hidden him in her hometown, far away from the county. This case caused a sensation in the city: Following several months of delay, the divorce defendant willingly appeared before the court, accompanied by his son. Several newspapers reported on this case, which attracted attention from higher up in the judicial system. My mother was subsequently promoted to the position of division chief and considered a 'role model' for other judges.

However, only a few months after this promotion several male colleagues requested transfers to other divisions: They were not entirely comfortable working alongside a female division chief, and one who also happened to be younger than most of them. Fortunately, around this time the court received a significant increase in funding from the government, and my mother was thus able to oversee the recruitment of several additional assistant judges. Almost all of the newcomers were women, most of whom were very happy to work with my mother, so that, for the first time in history, the civil division of the district court became an all-women division. I still remember that one of the first things my mother did as division chief was to vacate a room of her office, so that it could be used exclusively as a place for litigants to sit down, drink some tea, and relax before their trials started. This was because my mother understood the emotional pressures faced by litigants who were in court for the first time or were extremely concerned about the outcomes of their cases. My mother always told her colleagues to treat the litigants like their 'relatives' because, as she stressed, no one intentionally invites 'troubles'. This helped litigants to feel that their cases were adjudicated fairly and ensured that they were all treated with dignity and respect. Her working style started to draw attention not only from the media, but also, once again, from the senior management team in the court. As a result, she was promoted to the position of deputy president, following six years' hard work as a division chief. It turned out, however, that managing the court was not an easy task for a woman with a family to look after. Once, during a staff meeting, my mother was in the process of stressing a

requirement of the court that staff members not bring their children into the court offices, when I (aged six) came running through the conference room, from the front door to the back door, just for fun. This immediately led to an awkward atmosphere in the room, and my mother had to apologise openly to her colleagues and explain to them that my father was away on business in another province this week, so she could not leave me alone at home.

After a few years, my mother was promoted to president of another court. The new court was in a poverty-stricken county, and the staff only received 70 per cent of their monthly salary, although the local government promised that the rest would be paid in full before their retirement. Some judges came to the office late in the morning or finished their work early in the afternoon, claiming that they were only able to work for the hours they were paid. This led to a public backlash from litigants because judges' 'flexible' working schedules caused huge inconvenience for them. My mother tried to persuade her colleagues to work regular working hours, but most refused. Hoping to encourage judges to come to work on time, my mother chose to arrive at her office, along with one of her deputy presidents, at least half an hour before 8 a.m. every day. They chatted about the court's business in front of the court premises or answered any concerns that judges might have sincerely and face-to-face, until 8:30 a.m. Clearly, the fact that both the president and the deputy president came to work on time, whereas other judges arrived late for work, left many of them in an awkward position. Initially, because it is not easy to get up so early during the winter, some were not convinced that my mother would be able to stick to this schedule. However, they gradually came to accept that if my mother could indeed manage this at her age, then they too ought to come to the office on time. This 'non-confrontational' approach, which served litigants with full and rapid justice, received a lot of positive feedback. Throughout her years in office, my mother's work was inspirational to many young women. She encouraged them to work, at least temporarily, in a variety of different offices not traditionally seen as suitable for women, such as the criminal division and the enforcement office. At her retirement last year, there were more women working as division chiefs or deputy presidents than men. That number had been zero prior to her appointment ten years previously. I am proud of her beyond words.

It seems this is going to be a long preface. I would still like to take this opportunity to express my gratitude to Professor Loraine Gelsthorpe. She has been a source of both inspiration and encouragement, not only because she convinced me of the potential of exploring the relationship between judges' gender and their judgments when I was still hesitant about

submitting my PhD application, but also because she supported me financially when I met with difficulties in my fieldwork. In November 2017, when I was conducting fieldwork in a district court in the coastal area of China, I contacted the division chief through a friend who worked in the local judges' college. Initially, she was not very enthusiastic about facilitating interviews with her colleagues. At some point, however, she discovered that my PhD was fully funded and that I was receiving financial support for the fieldtrip from my college. One day, she asked me if I would be available that weekend for an interview with her in a tea house, and she told me that she might have to pick up her son and daughter before the interview. I was surprised that she had finally accepted my request for an interview, a month after my initial request. However, I was very happy to proceed, and we agreed on the time and venue of the interview. On the agreed-upon day, I arrived at the tea house 15 minutes early and waited for around 50 minutes. She eventually contacted me to tell me that she was running late and advised that we should go for dinner instead; I could then conduct the interview over dinner. She also reminded me that her son and daughter, together with her husband, were in the car, because she did not want to leave her husband alone at home over the weekend. This was all fine with me, until I saw that she was also bringing her parents to the dinner as well, because she 'happened' to know that her parents were free that night. Altogether, there were seven of us at the table, and the division chief spent barely seven minutes in offering answers to my questions. She did, however, make sure to keep urging her son and daughter to eat more seafood. This 'fancy' meal ended up costing me around £600, a sum equivalent to the entirety of my two-month fieldtrip budget. I was very distressed about what had happened, and I planned to return to Cambridge and do something else for my PhD project.

It was at this point that Professor Gelsthorpe sent me an email, asking for an update on my trip. I sent her an honest reply, telling her what had happened and how I was unsure whether I should return to Cambridge. The second email from Professor Gelsthorpe was very encouraging. She reminded me that actually I had learnt a valuable lesson from my experience, and I should use this as an opportunity for reflection. She was also ready to allocate £800 from her own research fund to support me in continuing my fieldwork. Although the remainder of my fieldwork in China was a bit of a bumpy road, I nevertheless succeeded in collecting all the essential information that I needed for this dissertation. Under the guidance of Professor Gelsthorpe, some of the chapters of this dissertation have already been published in the *Feminist Criminology* and the *International Journal of Offender Therapy and Comparative Criminology*, in both cases following a rigorous process of peer-review. In addition, I received the 2019

Graduate Student Paper Award from the Division on Women and Crime of the American Society of Criminology, as well as the 2019 Jiang-Land-Wang Outstanding Student Paper Award from the Association of Chinese Criminology and Criminal Justice. The articles I submitted for those awards are based on chapters of this dissertation, the writing of which would not have been possible without such full and generous support from Professor Gelsthorpe.

Finally, I would like to take this opportunity to express my gratitude to the Cambridge Commonwealth, European and International Trust, the China Scholarship Council, and the *Feminist Criminology* Graduate Research Scholarship for sponsoring my research. I will always be grateful to those who offered me the academic assistance that I needed to get me through this PhD journey. They are Professor Nicola Padfield, Professor Jude Browne, Dr Lauren Wilcox, Dr Holly Porter, Dr Caroline Lanskey, Dr Ashton Brown (University of Cambridge), Professor Catharine MacKinnon (University of Michigan and Harvard University), Professor Bin Liang (Oklahoma State University), Professor Xin He (University of Hong Kong), Professor Yang Su (University of California, Irvine), Professor Iven Sun (University of Delaware), Dr Jianhua Xu (University of Macau), Professor Anqi Shen (Northumbria University), Professor Clare McGlynn (Durham University), Professor Bill Heberton (University of Manchester), Professor Yu Xiao, Professor Huijuan Ye, Miss Guowei Sun (East China University of Political Science and Law), Professor Xiying Wang (Beijing Normal University), and Professor Moulin Xiong (Southwestern University of Finance and Economics). I would also like to show my appreciation for the women who offered me spiritual inspiration in pursuing the topic of judges' gender and judging. They are Beverly Blair Cook (the first scholar to pursue research on female judges), Carole Gilligan, Brenda Hale, Sandra Day O'Connor, and Ruth Bader Ginsburg—particularly to the Notorious RBG, may her memory be a revolution.

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List of Abbreviations

All China Women's Federation	ACWF
Chinese Communist Party	CCP
Criminal Law of China	CLC
Criminal Procedure Law	CPL
Domestic Violence	DV
Global Gender Gap Report	GGGR
Political-Legal Committee	PLC
Supreme Court of China	SPC
Thematic Analysis	TA
Variance Inflation Factor	VIF
World Justice Project	WJP

Chapter One: Introduction

1.1 CONTEXT FOR RESEARCH

This PhD dissertation examines the effect of gender in the process of judging within the context of Chinese criminal justice system. A judge is a public official whose duty is to administer the law, especially by presiding over trials and rendering judgments (Barak, 2009). The powers, functions, method of appointment, discipline, and training of judges vary widely across different jurisdictions (Rachlinski & Wistrich, 2017). In China, Article 12 of the 2019 Judge Law stipulates that judges must possess the following qualifications: (1) They must uphold the Constitution, the leadership of the Chinese Communist Party (hereinafter CCP), and the socialist system. (2) They must have an undergraduate degree in law or have an undergraduate degree in a subject other than law and have received a master's degree in law. (3) They must obtain legal professional credentials and have engaged in legal work for five years. Considering the differences in judges' professional status across the world, a combination of contextual factors should be considered when evaluating the Chinese women's roles in the judiciary. On a different note, the earliest method of studying gender identity was to define masculinity and femininity in terms of the behaviours and traits that most clearly distinguish men from women (Weisstein, 1968). Later theorists made a concerted effort to relabel these dimensions and separate them from biological sex (Bem, 1974). It is now generally agreed that gender typically refers to behavioural, social, and psychological characteristics of men and women (Pryzgodna & Chrisler, 2000). In discussion of women's representation in the judiciary and their behaviours, it is the term gender that is frequently adopted by legal scholars. I therefore follow this practice in the dissertation. It should be pointed out that traditional masculine traits, such as aggression and dominance, are highly valued in China (Louie, 2002). In the private sphere, those norms enable men to take the upper hand in controlling their wives and boost men's sense of superiority in the marital relationship.

This PhD dissertation focuses on the relationship between Chinese judges' gender and judging. This topic is explored from different angles in chapters two to five. Chapters two and three, which used quantitative research methods, examine whether female judges decide cases differently from their male colleagues, and whether the presence of a female judge on a three-member panel causes male judges to vote in favour of plaintiffs in rape cases. These two topics were previously examined in the United States, so I am able to discuss the results through a

comparative lens (Boyd et al., 2010; Van Slyke & Bales, 2013). Chapters four and five, which used qualitative research methods, uncover the behavioural differences at work between male and female judges. In chapter four, it is shown that female judges are accustomed to employing mediation as a preferred dispute resolution method when facilitating reconciliation between two parties. Chapter five explores male and female judges' attitudes in criminal cases related to domestic violence (hereinafter DV). These two themes were explored by conducting fieldwork in Chinese district courts between July 2017 and February 2018. Overall, the contributions in this dissertation compel us to reflect on the benefits and drawbacks of pursuing 'gender differences in judging' put forward by feminist legal scholars (Kenney, 2013).

Chapter one offers the context for research. The first section of chapter one introduces the Global Gender Gap Report (hereinafter GGGR) and the Global Gender Gap Index, published in 2019, with emphasis on findings from the Political Empowerment Sub-index and the situation in the East Asia and Pacific regions, including China. It also provides an overview of the World Justice Project Rule of Law Index, stressing the rule of law situation in China in the areas of Order and Security, and Criminal Justice. Research literature on Chinese women in politics is also reviewed. The second section offers a theoretical framework for the relationship between judges' gender and judging, empirical evidence and debates about it, and reflections on the future directions of this line of research. The third section supplies background information on the Chinese legal culture, courts, and judges. The final section of the chapter discusses the quantitative and qualitative methods used in the literature and addresses the limitations of those methods; it also briefly explains the research methods employed throughout this dissertation and how the aforementioned limitations are avoided.

1.1.1 Global Gender Gap Report

1.1.1.1 Introduction

The Global Gender Gap Index was developed by the Centre for the New Economy and Society at the World Economic Forum, a Geneva-based policy institute. It was first introduced in 2006 as a framework for capturing the magnitude of gender-based disparities in countries worldwide and tracking their progress over time. The benchmark of the Index ranges from 0 (absolute disparity) to 1 (absolute parity) across four thematic sub-indexes: Economic Participation and Opportunity, Educational Attainment, Health and Survival, and Political Empowerment. The Index also offers rankings, which allow effective comparisons to be made across and within regions and income groups. The rankings are designed to create global awareness of the

challenges posed by gender gaps and the opportunities created by reducing them. Each year, the publication of the Index attracts attention from the media; this is particularly true for countries in which the gender gap keeps widening (Rowe, 2019). For example, Japan ranked 121st out of 153 countries in 2019, the largest gender gap among advanced economies. The then-Prime Minister Abe pledged to create ‘a Japan in which women can shine’, outlining a ‘womenomics strategy’ through which 30 per cent of leadership positions in society would be filled by women in 2020 (Prime Minister of Japan & His Cabinet, 2013). Progress has not kept pace with this promise, however, hence the media’s demand for ‘Japan to adopt forward-thinking inclusive policies and practices that empower and enable women to thrive in the new economy’ (Zahidi & Eda, 2020). The discussion in this section focuses on the method of designing the Global Gender Gap Index, findings regarding global gender parity in 2019, the findings of the Political Empowerment Sub-index, and gender parity in the East Asia and Pacific regions, including China.

Since 2006, the GGGR has tracked the progress made in closing gender gaps. Each year, the rate of change can allow an estimate of the time required to close the divide between women and men in terms of employment, education, health, and politics. In 2019, the Global Gender Gap score (based on a population-weighted average) stands at 68.6 per cent. This means that, on average, the gap had narrowed compared with 68 per cent in 2018, so the remaining gap to close was 31.4 per cent. This year, the progress made so far has not only been larger than in the previous year, but also more widespread: Out of the 149 countries and economies covered in 2019, 101 have improved their scores; however, 48 have seen their performance remain the same or worsen. The top four (Nordic) countries have closed at least 80 per cent of their gaps and Iceland, the best performer in 2019, has closed 82 per cent of its gap so far. The lowest-ranking countries are Yemen (0.494), Iraq (0.53), Syria (0.567), and Pakistan (0.564).

Projecting current trends into the future, the overall global gender gap will be closed in 99.5 years, on average, across the 107 countries covered continuously since the first edition of the GGGR in 2006. Lack of progress in closing the Economic Participation and Opportunity gap leads to an extension of the time needed to close this gap. At the slow rate of change seen over the period 2006–2020, it will take 257 years to close this gap. The second area where the gender gap will take the longest time to close is Political Empowerment. This year’s score speeds up the pace of progress towards parity, yet it will still take 94.5 years, even at this faster rate, to close the gender gap in this area. Third, the Educational Attainment gender gap is on track to

close in the next 12 years, mainly because of the advances made in certain developing countries. The Health and Survival gender gap remains unchanged since last year.

Global gender gaps varied significantly across the four sub-indexes in 2019. In two sub-indexes – Educational Attainment, and Health and Survival – the gap is 96.1 per cent and 95.7 per cent closed. By contrast, differences between women and men remain significantly larger in Political Empowerment, where only 24.7 per cent of the gap has been closed to date, and in Economic Participation and Opportunity, where 58.8 per cent of the gap has been closed. On average, the Political Empowerment Sub-index has improved by 0.75 points every year since records began. The fact that only a handful of countries have closed 50 per cent of their Political Empowerment gaps demonstrates that, globally, women’s presence and participation in politics is still extremely constrained. Consider the number of seats of all the parliaments of the 153 countries covered by the Index. Only 25 per cent of these 35,127 seats are occupied by women. In 45 of these countries, women hold less than 20 per cent of the seats available and, in two countries (Vanuatu and Papua New Guinea) there are no female legislators. The presence of female leaders is even rarer in higher-level institutional roles. Only 21 per cent of 3,343 ministers are women, and there are 32 countries where women represented less than 10 per cent of ministers in office in 2019. Further, considering heads of state over the past 50 years, in 85 of the 153 countries covered by this Index, there has never been a woman in chief. These countries include both emerging and advanced economies, such as Italy, Japan, Mexico, the Netherlands, the Russian Federation, South Africa, Spain, Sweden, and the United States.

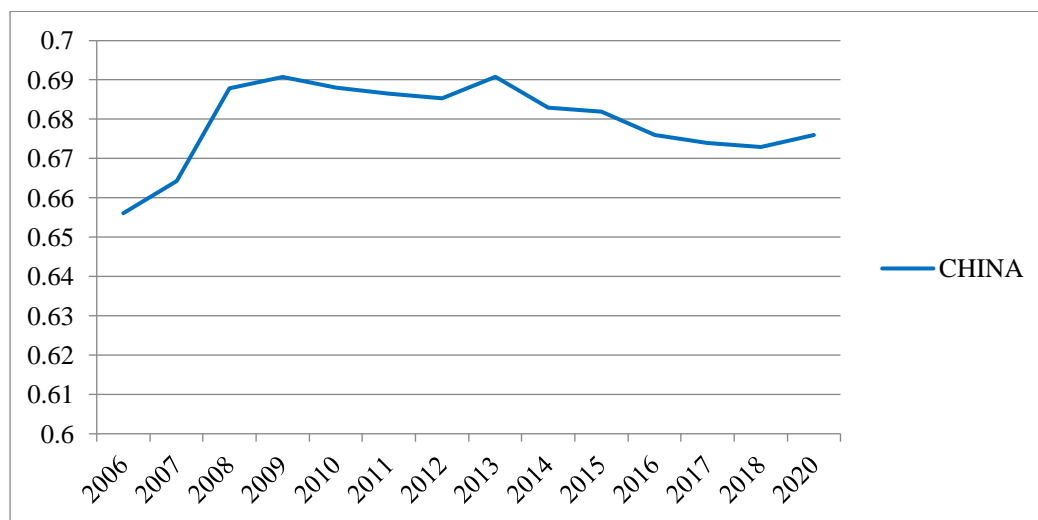
1.1.1.2 The Situation in the East Asia and Pacific Regions, Including China

The East Asia and Pacific regions had closed 68.5 per cent of their overall gender gap by 2019. Since 2006, progress towards gender parity has been very slow, with a mere 2.5 per cent gain. If the regions maintain the same rate of improvement as in the 2006–2019 period, it will take another 163 years to close the current gender gap, the most time of any region in the world. Although this is already eight years less than what was predicted in the 2018 Index, thanks to a small gain of 0.3 per cent in 2019, the duration is still three times longer than the prediction for Western Europe (54 years).

China ranks 106th, down three places, on the 2019 Index, just ahead of South Korea in 108th place, India in 112th place, and Japan in 121st place. China’s scores initially soared between 2006 and 2009, but steadily dropped again from 2013 to 2018 (see Figure 1.1 below). In 2019,

China had closed two-thirds of its gender gap (a score of 67.6 per cent), registering a very small gain of 0.3 per cent from the 2018 Index. However, since 2006, China has narrowed the gap only marginally with a gain of just two points. Meanwhile, many countries have moved closer to parity, causing China to slip from 63rd position in 2006 to its current ranking. According to the Political Empowerment Sub-index, the Chinese political landscape remains dominated by men. The country ranks 95th in this domain, with a score of 15.4 per cent. Women held only two ministerial positions and made up only one-quarter of the National People’s Congress membership as of 2018. In 2019, there was only one woman, serving as deputy prime minister, among ten senior officials in the prime minister’s cabinet. In addition, the skewed sex ratio at birth (885 girls per 1,000 boys) weighs heavily on China’s performance in the Health and Survival Sub-index, where it ranks 153rd, with a score of 92.6 per cent. This skewed ratio is partly due to the traditional preference for boys that can, in extreme cases, manifest as infanticide or sex-selective abortions (Xue, 2019).

Figure 1.1 Scores China Received from 2006 to 2020 in the Global Gender Gap Reports



Source: Global Gender Gap Reports, World, Economic Forum, 2006 to 2020

1.1.2 World Justice Project Rule of Law Index

1.1.2.1 Introduction

The World Justice Project (hereinafter WJP) is an independent, multidisciplinary organisation in the United States working to advance the rule of law worldwide. As stated on its official website, the WJP defines the rule of law as a durable system of laws, institutions, norms, and community commitment that delivers: accountability, just laws, open government, and accessible and impartial dispute resolution. The four universal principles are further broken

down into eight factors for the assessment of scores in the annual WJP Rule of Law Index: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice. In the category of order and security, editors of the Index examine three essential criteria: (1) whether or not crime is effectively controlled; (2) whether or not civil conflict is effectively limited; and (3) whether or not people have to resort to violence to redress personal grievances. In the category of criminal justice, editors of the Index include seven crucial benchmarks: (1) whether or not the criminal investigation system is effective; (2) whether or not the criminal adjudication system is timely and effective; (3) whether or not the correctional system is effective in reducing criminal behaviour; (4) whether or not the criminal justice system is impartial; (5) whether or not the criminal justice system is free of corruption; (6) whether or not the criminal justice system is free of improper government influence; and (7) whether or not there is a due process of the law and rights for the accused. Overall, the WJP has three primary goals. The first one is to increase people's understanding of the rule of law and its foundational importance. The second one is to facilitate greater adherence to the rule of law by governments worldwide. The third one is to foster multidisciplinary, home-grown cultures of the rule of law.

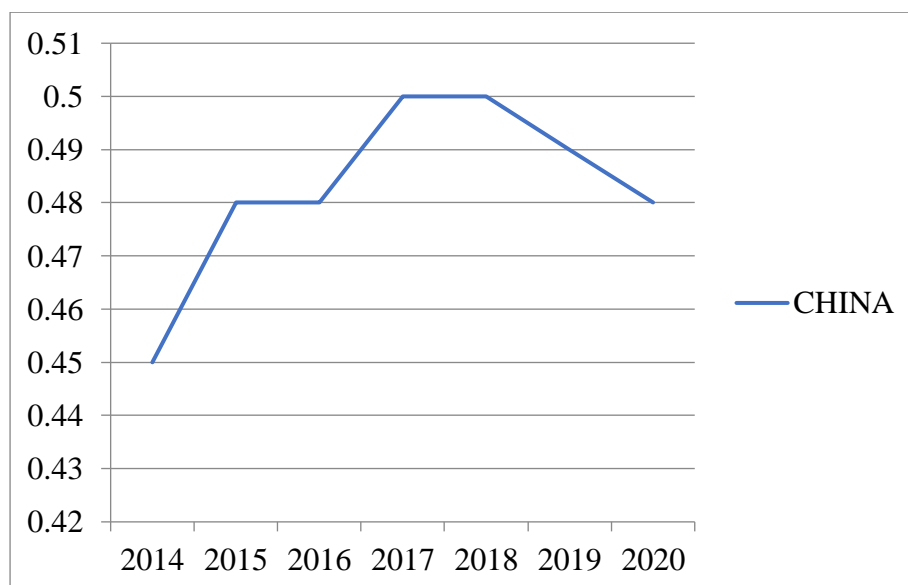
The WJP works through three programmes: Engagement, Research and Scholarship, and the WJP Rule of Law Index. The WJP Rule of Law Index is a quantitative assessment tool designed to offer a comprehensive picture of the extent to which countries worldwide adhere to the rule of law in practice. Scores on the Index range from 0 to 1, with 1 indicating the strongest adherence to the rule of law. The theoretical framework of the Index, as stated on the WJP's website, draws upon two main principles pertaining to the relationship between the government and the governed: The first principle measures whether or not the law imposes limits on the exercise of power by the government and its agents, as well as individuals and private entities; The second measures whether or not the government limits the actions of members of society and fulfils its basic duties towards its population so that public interests are served, the people are protected from violence, and all members of society have access to dispute settlement and grievance mechanisms. Editors of the Index recognise that a system that fails to respect basic human rights guaranteed under international law is at best a 'rule by law' instead of a rule of law system. On the WJP Rule of Law Index for 2020, Denmark has the best score (0.9), followed by Norway (0.89) and Finland (0.87). Venezuela (0.27), Cambodia (0.33), and the Democratic Republic of the Congo (0.34) have the lowest scores, the same as in 2019. Globally,

the Index shows a decline in the rule of law. Over the last five years, the country with the largest average annual percentage drop in the rule of law is Egypt, followed by Venezuela and Cambodia. The publication of the WJP Rule of Law Index always draws the attention of the media (Vijayan, 2020). A case in point is Singapore, which is ranked globally as first (0.93) in the category of Order and Security; however, it also has a low score (0.47) on freedom of association, and scores only 0.48 on limits regarding legislature, non-governmental checks, and freedom of expression.

1.1.2.2 The Situation in China

The overall score of China on the WJP Rule of Law Index is 0.48, as of 2020, and the country ranks 88th out of the 128 countries included. It has dropped four places (-0.01 score change) from its global ranking in 2019. Out of the 15 countries in the East Asia and Pacific regions, China ranks 12th in 2020. In the category of Order and Security, China has a score of 0.78. Its global ranking is 40 out of 128, and its ranking within the East Asia and Pacific regions is nine out of 42. China presented an upward trend from 2014 (0.48), when the WJP Rule of Law Index started to observe the rule of law situation in the country, to 2018 (0.5) (see Figure 1.2 below). After reaching a peak, China has dropped continuously since 2018 (0.5), back to 0.48 in 2020.

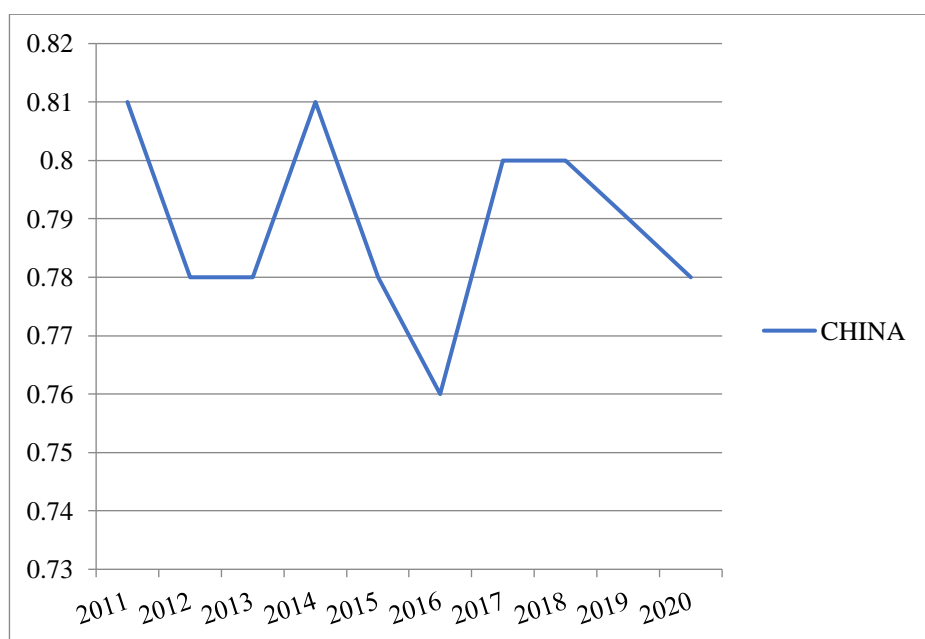
Figure 1.2 Overall Scores China Received from 2014 to 2020 in the WJP Rule of Law Index



Source: WJP Rule of Law Index, 2014 to 2020.

As for the three benchmarks evaluating Order and Security in China, the absence of civil conflict has a score of 0.92 in 2020, the highest in this category. Absence of crime comes second with a score of 0.8 and absence of violent redress has a score of 0.62. The scores China obtained in this category between 2011 and 2020 vary significantly year on year, with a highest score of 0.81, in 2011, and a lowest score of 0.76, in 2016 (see Figure 1.3 below).

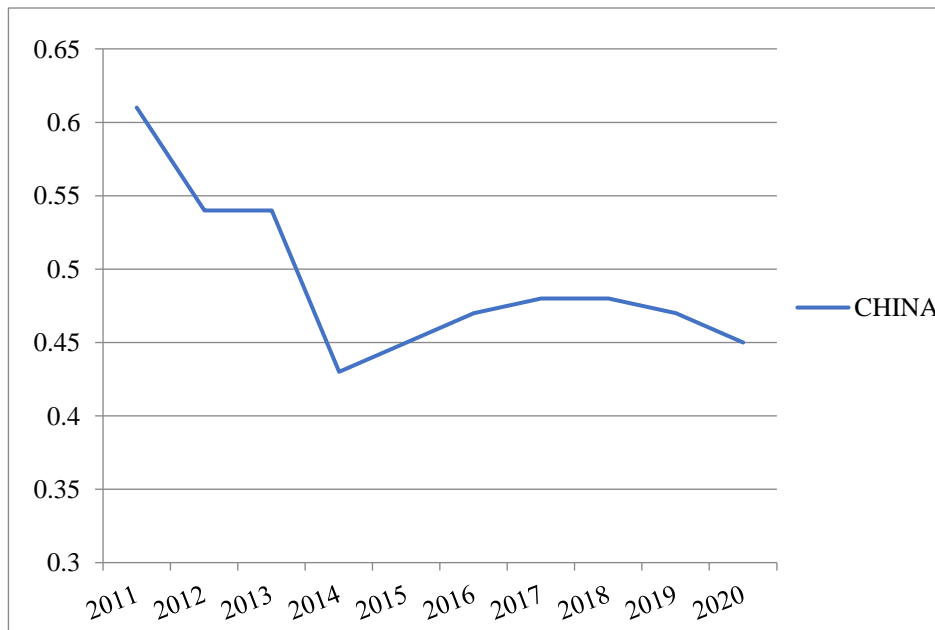
Figure 1.3 Scores China Received from 2011 to 2020 in the Category of Order and Security, the WJP Rule of Law Index



Source: WJP Rule of Law Index, 2006 to 2020.

In the category of criminal justice, China has a score of 0.45, as of 2020. Its global rank is 62nd out of 128, and its ranking within the East Asia and Pacific regions is 21 out of 42. As for the seven benchmarks assessing criminal justice in China in 2020, timely and effective adjudication has a score of 0.52, the highest in this category, and absence of improper government influence is the lowest score, 0.21. Among all the sub-categories of the Index's eight factors, the lowest score China received is 0.14, in non-governmental checks and freedom of expression. The highest score is 0.92, in absence of civil conflict. Overall, China fell constantly in terms of criminal justice from 2011 to 2014; however, there was a steady increasing trend from 2014 to 2019 (see Figure 1.4 below). The highest score China obtained was 0.61 in 2011 and the lowest was 0.43 in 2014.

Figure 1.4 Scores China Received from 2011 to 2020 in the Category of Criminal Justice, the WJP Rule of Law Index



Source: WJP Rule of Law Index, 2006 to 2020

1.1.3 Chinese Women in Politics

1.1.3.1 Introduction

This section offers essential information regarding Chinese women’s political participation, and those findings may have similar implications for career advancement and work behaviour of female Chinese judges. This is because Chinese judges are essentially civil servants with expertise in law (Shen, 2017). Women’s participation in the political arena has been recognised internationally as an important measure of women’s status in any country, but the relationship between gender and politics needs to be understood within specific historical, cultural, and economic contexts. The conceptualisation of woman as an independent entity came in tandem with China’s pursuit of modernity more than a century ago. Before then, the Confucian signifier of woman—*funv*, which means both ‘wife’ and ‘daughter’ in Chinese—limited women to kinship roles (Barlow, 1994). The Mao regime (1949–1976) built its legitimacy partly on the liberation of women from such feudal remnants, and women’s value came to lie in their participation in productive labour and their capacity to contribute to socialist construction. Such an assumption is based on the understanding that there is a positive link between labour participation and the advance of women (Andors, 1983). It is based on the traditional Marxist theory, which argued that (1) women are a revolutionary force, (2) women’s liberation is a condition of proletarian revolution, and that (3) productive labour is a basic condition of

women's liberation and is progressive (Barlow, 1994). Nonetheless, this theory and its application in China were accepted largely without critical examination. One of the major criticisms of the Mao regime is that it caused gender differences to cease to be a social category in defining individual identity (Yang, 1999). Public policies also held women to male standards and left intact the low degree of self-awareness of Chinese women (Min, 1997). For instance, work arrangements in factories were criticised for taking insufficient account of women's menstrual cycles and physical strength (Honig, 2002). Although there was wage equity between men and women doing the same job, a gendered labour market tracked men into higher-paying sectors and more skilled jobs across sectors (Davin, 1976; Bauer et al., 1992).

Departing from the Maoist version of socialism, which saw social changes more in terms of class struggle than industrial expansion and technological innovation, Deng Xiaoping's leadership focused on the four modernisations—the modernisation of agriculture, industry, science, and national defence. Thanks to these modernisations, China has achieved dramatic double-digit GDP growth since the early 1980s, and it could be assumed that women's status would be broadly improved with each increase in GDP—including in the sphere of political participation. Yet this has not been the case. The post-1978 economic reforms have had two basic effects. First, they brought about a socio-economic transformation, with China shifting from state socialism to market socialism. Some women have been disadvantaged by these reforms simply because of stereotypical impressions of women. For example, female workers in state-owned and operated enterprises have been the first to lose their jobs as a result of the economic restructuring and downsizing of companies, on the grounds that a woman should not be regarded as the principal income-earner in a family (Goodman, 1996). Second, the reforms occurred in a way that dismantled some of the policy arrangements for ensuring equality for women, and consequently women became more vulnerable in the newly emerging labour market. For instance, unlike in the era of the Mao regime, when one's political virtue and awareness were highly regarded, the new system demands more warlike qualities, favouring those with an entrepreneurial and courageous spirit. Being deemed as lacking such qualities, a large number of female cadres were swept away from leadership positions (Rosen, 1995).

In 1995, the Fourth United Nation's Conference on Women in Beijing was presented as a milestone for reinvigorating the development of Chinese feminism. The politics of gender mainstreaming with the aim of integrating women's issues into all government activities was brought in and avowed by the state (Zhu, 2015). The All China Women's Federation

(hereinafter ACWF), which increasingly serves as an advocate for women's interests and as a conduit communicating women's concerns to the Party-state, played an important role in this process. First, some local branches of the ACWF sought a return to some form of quota protection for female cadres. For instance, the Hunan provincial branch suggested a five-year plan to nurture female cadres from August 2001, and it managed to have the provincial administration implement a guideline that more than one woman should be appointed at every level of local government (Edwards, 2007). However, this initiative received some criticism because of some stereotypical impressions that women are less effective in leadership positions than men. Such rhetoric simply reinforces the long-standing hierarchies of cadres' performance and gender in China, despite never being supported by hard evidence. Scholars have argued that, within all of these discussions, the poor quality of individual men's performance is never generalised to be a characteristic of their sex (Edwards, 2007). Women are hence often critiqued as a group and men as individuals. Second, legislation is one of the few areas where the ACWF has successfully represented women's rights and interests, and in the last decade it has had several noteworthy achievements. For instance, the Anti-Domestic Violence Law in 2015 and the amendments of the Marriage Law in 2001 and 2017 were both launched thanks to the intense commitment and efforts of provincial branches of the ACWF. Despite these efforts, the ACWF has been criticised for giving way to the CCP's new ideological formulations about leading female citizens needing to 'listen to the Party's words and follow the lead of the Party' (Zhou, 2019: 19). Scholars maintain that although in the short term the ACWF might be able to find a way to circumvent these political campaigns, in the long run, the politicisation of the ACWF will isolate its women's work from both domestic and global feminist theorisations and activism (Zhou, 2019). This can be seen in women's political participation in every level of government, particularly after the market reform in rural China, and in the participatory activism of young feminists in the digital age. The following two subsections elaborate on these two points in detail.

1.1.3.2 Chinese Women's Political Participation

A long-held key tenet of the CCP's conception of the relationship between women's status and society's economic base is that women's equality with men will be achieved through socialist economic development (Wang, 2006). As a result, no gender-specific programmes are required to facilitate its emergence. However, scholars have observed that the market-oriented reform since the 1980s has led to a serious decline in women's political position (Howell, 2006). Based on questionnaire surveys conducted in Shanxi province between 1996 and 1998 and interviews

with 279 female cadres and entrepreneurs, Goodman (2002) found that there were very few leading cadres—only two of the 54 women interviewed; there was only one woman in the provincial committee of the CCP, and she had responsibilities for education, healthcare, and social services. The observation of the decrease in women’s political participation is largely based on the fact that there was a high percentage of female representation in top and township-level leadership positions between the 1960s and 1970s. The key reason for the decline since the 1980s is that the market economy has dismantled some of the key policy arrangements that ensured women’s equality during Mao’s time. Consequently, women have become vulnerable in the newly emergent labour market (Min, 2005).

Scholars have explored whether economic development can lead to women’s advancement in village autonomy and elections. Drawing on data collected from three rounds of questionnaire surveys in Zhejiang province conducted between 1999 and 2006, Guo and colleagues (2009) found no signs of a positive linkage between women’s advancement in the political arena and economic development: Women are not only an absolute minority in grassroots leadership but have played an insignificant role in rural power structures. There are two reasons for this situation. First, in highly developed areas of Zhejiang province, such as Wenzhou and Taizhou, local governments are more concerned with the growth of wealth, and men are regarded as more capable than women in creating wealth. This is in line with past observations that male cadres, who often engage in industry or agriculture, can produce tangible results that are visible to all (Rosen, 1995). It is more difficult to quantify the achievements of female cadres, who often engage in ‘softer’ jobs, such as culture and education. Voters hence doubt women’s strong decision- and policymaking abilities. This can also be seen from the role the ACWF has played in politics. Zhou (2019) observed that since the ACWF does not directly contribute to local economic growth, which is undoubtedly the most crucial political mission of government, its cadres have no opportunity to enter the inner circle of political power. Second, women in the least developed areas, such as Lishui and Qiuzhou, are less concerned with male domination, and local governments are less effective at promoting women’s participation in local power structures. Guo and colleagues (2009) concluded that without actions taken by the government, women’s political participation in rural China will continue to be constrained, despite their increasing contribution to economic development.

Scholars seem to agree that there are at least two factors influencing rural women’s political participation. First, educational shortcomings can prevent a stronger presence of women in

rural governance. A unique situation in rural China is that girls in the countryside face serious disadvantages against boys in obtaining education and opportunities for waged employment. This is because social beliefs often dictate that parents consider education to be less important for girls, making them more reluctant to invest in girls' schooling (Davis et al., 2007). What is more problematic is that such social beliefs are commonly held by villagers of both genders, making the challenge of effecting change more formidable. With the aim of identifying the relationship between education level and women's political participation, Wang and Dai (2013) conducted fieldwork in Rudong county of Jiangsu province between June and August 2009. The data obtained in Rudong revealed that 64.61 per cent of the county's rural women had received only primary school education, and less than one per cent of rural women were able to go to community college or vocational school. By contrast, 21.51 per cent of all rural men had received upper secondary education, more than five times the proportion of women. The proportion of men receiving a college education was six times that of rural women (0.42 per cent vs. 0.07 per cent). Nevertheless, of 183 female village committee members in Rudong county, five had received only a primary school education; 21 had received a college education, 54 had a lower secondary education; and 103 had attended an upper secondary school. Evidently, the local cadre selection process rewards education obtainment: The small number of female villagers who have a relatively high education level are much higher likely to be involved in local governance.

Second, female cadres are stereotyped as only capable of working in marginal roles and highly gendered areas, such as family planning positions. Because of the nature of the job, they were often disdained by villagers as being there only to ensure that no woman fell pregnant a second time without obtaining permission from the government (Howell, 2006). It is thus relatively easy to mobilise opposition against female candidates who have been effective in carrying out unpopular Party policies. However, this situation has gradually been improved since 2015, because two-child policy was implemented nationwide in that year. The questionnaire surveys from Wang and Dai's (2013) research project show that 73 per cent of respondents agreed that 'participating in politics is men's business', and no respondent chose the option that 'participating in politics is women's business'. They found that 52.3 per cent of female county-level cadres considered themselves to be playing a 'significant' role in village affairs, compared to 94.2 per cent of male cadres who believed so about themselves. Wang and Dai argued that with such norms and beliefs, aspirations for participating in local governance remain difficult to realise for women, while men also find it inappropriate for women to play an active role in

village affairs. Overall, although the self-governance system of rural China has greatly promoted male and female villagers' opportunities to participate in politics, a wide range of institutional, socio-economic, structural, and cultural factors still prevent an equal representation of women in rural governance.

To identify barriers to the career advancement of women in politics beyond those typical of rural China, Hsiung (2001) conducted 30 in-depth interviews in two provinces, one coastal and one inland, between February and July 1998. The interviewees were individuals who worked at various levels in the CCP, local governments, or the ACWF. Hsiung (2001) found out that a female cadre can easily be cast as a seductive, sexual object, which makes her interaction with male colleagues problematic. To avoid gossip among colleagues, a female cadre must refrain from cultivating mentoring relationships with the men in power. When it comes to promotion and nomination, a female cadre is highly unlikely to receive unconditional support from her superior, a man in most circumstances. This is because a professional endorsement from a male superior can easily be interpreted as an act of infatuated favouritism. The experiences of female cadres show that they must constantly seek a professional identity in opposition to the culture and practices that define them as a sexual object.

In another study focusing on provincial-level cadres, Su (2006) tested some conventional beliefs about women's political participation through a data set of 1,098 cadres. Su found that women are four times more likely to occupy a deputy position than their male counterparts, and this pattern holds largely across different regions of China. The odds of female leaders reaching chief positions are four times smaller than for their male counterparts. This could relate to the perception that women are token supporters of men rather than leaders in their own right. Competent women are thus held back at the second-tier status within every level of government because it avoids upsetting this gendered narrative of good governance. Su also found that, for all provincial-level leaders, female leaders are 2.44 times more likely not to be a CCP member than male leaders. This finding is in line with Dai's (1993: 80) observation that 'when people choose a woman to be a leader at the upper levels of leadership, they often demand, or at least expect, that the candidate may combine in herself all the following qualifications: that she is not a member of the CCP, that she is an intellectual, that she is a member of a minority nationality or of some democratic party'. Since female leaders are

disproportionately selected from outside the CCP membership and may possess other qualifications, their chances of reaching a chief leadership position are extremely slim.

Rosen (1995) found that women entered the Central Committee of the CCP, the highest political structure in China, for the first time only in the mid-1960s, and each of the three women honoured by this membership since then owed their political status to their far more powerful husbands. In addition, the majority of the female members of the Central Committee in 1992 were restricted to doing women's work. No recent literature can be found regarding Chinese women's participation in the Central Committee of the CCP. This is probably because the number of women who have reached that level is small, so it is non-representative. Nevertheless, despite these gender gaps in political culture and participation, the CCP's desire to appear progressive internationally can be fulfilled by the practice of placing a few key women in central positions of power (Edwards, 2007). Although high-profile women can serve as models inspiring others to strive for high administrative offices, they can also be seen as tokens and interpreted as exceptions that confirm the patriarchal norms in China.

1.1.3.3 Feminism in China

Before the emergence of social media sites in China, feminists saw that the ideological propaganda and discourse of the state had rendered women invisible in politics and denied them differences from men (Min, 2005). As a result, the crucial task at hand was to awaken an awareness of gender identity among women, through claiming their bodily differences and psychological experiences that are unique to women. Feminists hence mostly focused their attention on knowledge production, exchange, and distribution, such as translating classical books on gender studies into Chinese and mainstreaming gender issues into state policy (Yu, 2015). Starting in the mid-2000s, there was a gradual process of realisation among feminists that they needed to move beyond advocating women's rights within state institutions, such as the mainstream media or the ACWF (Han, 2018). It was at this critical moment that Weibo, the Chinese version of Twitter, became available to intellectuals to generate content and reach out to broader audiences. Because Weibo was a new platform of communication, it was not tightly regulated by the Chinese government at that time. As a result, young feminists started to proactively use Weibo to facilitate mobilisation. They drew attention to their experiences and messages with sensational words and outlandish costumes, thus creating conspicuous online spectacles.

The ‘Naked Chest for Anti-Domestic Violence Law’ action in November 2012 was a critical turning point at which young feminists effectively introduced the topic of women’s rights into a public debate through social media. This was a campaign to assist the work of women’s NGOs seeking to reform Chinese family law and to push for legislation against domestic violence. In order to make the petition more attractive of public attention, feminists had to come up with innovative strategies, such as using red ink, which symbolises blood, for the three slogans, namely ‘all for anti-domestic violence law’, ‘fast-track legislation’, and ‘calling for 10,000 signatures’, used in these topless photos. Sometimes, feminists also accompanied their posts with personal statements, such as ‘love my body, and do not hurt it’, ‘how much blood is needed to wake people up?’, and ‘menstrual blood is not shameful, but domestic violence is’. The circulation of these photos and statements on the internet also attracted the attention of the traditional media, whose reports were transmitted back to the internet to further stir netizens’ interest in the topic (Han & Lee, 2019). In the end, feminist activists collected more than 12,000 signatures, which they delivered to the National People’s Congress. The nation was thought to be beginning to realise the gravity of DV, and this became one of the first large-scale petitions signed by ordinary Chinese citizens in recent decades (Wang & Liu, 2020).

In addition to efforts to raise awareness of DV in cyberspace, the ‘Naked Chest for Anti-Domestic Violence Law’ campaign also had offline connections. For instance, feminists extended their activism before the court buildings to support DV victims. For instance, Li Yan received enormous support from feminists countrywide. Li Yan, from Sichuan province in South-West China, was sentenced to death by the Ziyang Intermediate People’s Court in August 2011 for the murder of her husband, Tan Yong, in late 2010. The prolonged violence Li had suffered at her husband’s hands began soon after the couple married in early 2009. Tan frequently beat his wife and once locked her, almost naked, on the balcony of their apartment for hours during the freezing winter. She sought protection from the police several times, and on one occasion they even photographed her injuries. She also sought help from the local branch of the ACWF, who, according to her lawyers, advised her to just ‘bear it’ (Tatlow, 2013). None of the authorities, whose duty was to protect her, followed up on her complaints, launched an investigation into her husband’s actions, or offered her any substantial support. Unsurprisingly, the violence continued, and Li beat her husband to death with the butt of an air rifle, allegedly after he threatened to shoot her with it. After her death penalty was affirmed by the Sichuan Provincial High People’s Court, feminists and lawyers petitioned

before the court buildings and called for a suspension of Li's execution. In February 2013, feminists wrapped themselves in white cloth and lay down in front of court buildings across China, with a sign saying, 'please do not make me the next Li Yan'. These theatrical performances not only drew people's attention to Li's case, but pointed out the possibility that every Chinese woman who suffers DV may end up in Li's situation and be punished for fighting back against their abusers. In April 2015, Li's case drew the attention of the SPC, and her death penalty was suspended thereafter. Eventually, she was granted a two-year reprieve. This meant that, unless she committed a crime within that period, her sentence would be commuted to life with the possibility of parole.

Scholars have maintained that the 'Naked Chest for Anti-Domestic Violence Law' action marked the beginning of digital feminism in China, because an increasing number of young women subsequently engaged in the politics of hypervisibility and confrontation, both online and offline, in stirring up debates on gender inequality and DV in the mainstream media and among the public (Hou, 2020). Feminists have shown incredible resilience in continuing their activism, but the Chinese government has recognised this action-oriented form of feminism as a social movement that can potentially disrupt its rulings. This is because close links between intellectuals and the proletariat can potentially make for an empowered opposition in China (Fu, 2018). Consequently, the Chinese state has heightened its restrictions on social media platforms: The 2016 Cyber Security Law makes it a legal requirement to use one's real name and identity to access social media accounts. Feminist Voices, the most influential feminist account on Weibo, was thus deactivated on International Women's Day in 2018. Such deactivation implies that the censors recognised the mobilising ability of Feminist Voices to effect escalating interactions with powerful online and offline allies at a critical juncture (Han & Lee, 2019).

1.2 JUDGES' GENDER AND JUDGING

1.2.1 Theoretical Framework

Pioneering scholars working on the relationship between judges' gender and judging, such as Cook (1973), Martin (1981), and Davis (1986), were similarly inspired by the work of educational psychologist Carol Gilligan (Kenney, 2008). In her book *In a Different Voice*, Gilligan (1982) identified two distinct 'voices' or reasoning processes corresponding (in her research subjects) to men and women. She argued that the woman's voice is not deficient (as was assumed by dominant psychological theories of the time), but is merely different from the

mainstream (masculine) voice. She hence asserted that women use an 'ethic of care', whereas men use an 'ethic of justice', when solving problems, as a result of the unique socialisation experiences of men and women. The 'ethic of care' shows concern for communication, conflict diffusion, and the preservation of relationships, reflecting women's 'outsider' status, which brings with it greater empathy and a greater understanding of the plight of others (Larrabee, 1993). In contrast, the 'ethic of justice' places greater value on hierarchy, abstract rules, and individual autonomy (Alfieri, 1999). Gilligan (1982: 22) therefore suggested that 'the psychology of women that has consistently been described as distinctive in its greater orientation towards relationships and interdependence implies a more contextual mode of judgment'.

Soon after the publication of her book, Gilligan's work was heavily criticised on methodological grounds because of her extremely small, selective sample (Auerbach et al., 1985). Given the complexity of social reality, other critics also argued that one should be careful not to attribute too much influence to gender alone in the decision-making process, but rather explore a combination of variables, such as professional training and the prevailing political regime, along with personal attributes, such as age and marital status (Sonneveld & Lindbekk, 2017). Nevertheless, scholars have found that gendered socialising experiences at an early age contribute to the differences in cognitive structures, or schema, used by men and women to categorise people, objects, and knowledge of the social world (Kahneman, 2011). Even after growing up, such gendered experiences may persist and have an impact on the decision-making process. For example, using 1,655 questionnaires completed by Florida lawyers and judges in 1988, Martin and colleagues (2002) found that female lawyers and judges who reported more gender bias in the legal profession had higher levels of feminist consciousness, especially in terms of rape myths (female lawyers: 0.18, $p < 0.05$; female judges: 0.37, $p < 0.05$). In contrast, the general pattern for male lawyers and judges involved no association between consciousness of either gender bias or gender inequality. In another article testing whether or not personal experiences with inequality are related to empathetic responses to the claims of female plaintiffs, Moyer and Haire (2015) found that the first wave of female judges, who attended law school during a time of severe gender inequality, were more likely than their male colleagues to support plaintiffs in sex discrimination cases adjudicated between 1995 and 2008. However, this difference is seen only in judges who graduated from law school between 1954 and 1975, and disappears when more recent law school cohorts of male and

female judges are compared. These results suggest that ‘the effect of gender as a trait is tied to the role of formative experiences with discrimination’ (Moyer & Haire, 2015: 665).

Gilligan’s conclusions have been significant for political scientists and legal scholars who examine the extent to which female political elites, such as judges, legislators, and government officials, may speak in ‘a different voice’ from their male counterparts (Costantini, 1990). For instance, Sherry (1986) examined the decision-making of Sandra Day O’Connor, the first female US Supreme Court justice. Sherry concluded that Justice O’Connor’s opinions reflected her concerns regarding the rights of individuals as members of communities, rather than as autonomous independent beings. Inspired by Gilligan’s work, feminist legal scholars have argued that women may seek different outcomes from legal processes than their male colleagues (Epstein, 1988; Goldstein, 1992). The difference theory thus argues that women can make a difference, both by changing male judges’ behaviour and by acting differently from their male counterparts (Kenney, 2013). Nonetheless, MacKinnon (1987) emerged as a strong critic of both the ‘sameness’ and ‘difference’ approaches, arguing that both made men the reference point and obscured the dominance regarding the true dynamics contributing to women’s disadvantage. Malleson (2003) also argued that the difference theory arguments for gender equality in the judiciary are theoretically weak. This is because, if a judge were to take a more favourable view of a woman’s evidence, arguments, or interests than a man’s, this would not be compatible with the principle of impartiality. The different decision-making processes expressed by male and female judges may undermine consistency and result in unfairness for the litigants before them. In addition, Malleson pointed out that the difference theory could be a recognition that gender is merely one axis of difference that shapes women’s lives, and that it is a typical form of essentialism (Fraser, 2014). In this way, female judges will often have no more in common (other than gender) with the female litigants who appear before them than their male colleagues. Overall, these valid concerns challenge the argument that female judges will inevitably improve the quality of justice simply because of the gender differences they bring to the judiciary (Kenney, 2008).

1.2.2 Empirical Findings from the Decision Making of Male and Female Judges

Early scholarship on the relationship between judges’ gender and judging does not seem to support the difference theory. For example, examining 23,560 cases adjudicated between 1 July 1968 and 30 June 1974 in a metropolitan court of the United States, Kritzer and Uhlman (1977) found that female judges behaved no differently from male judges. This conclusion

applies to ‘their treatment of criminal defendants in general, and to female defendants and male rapists in particular’ (Kritzer & Uhlman, 1977: 86). Following this research, Gruhl and colleagues (1981) examined the judgments of the same court but over an extended period, from 1971 through to 1979. Similarly, they concluded that no judicial differences existed between male and female judges across all crime types. While male and female judges did rule ‘somewhat differently’ in determining guilt and assigning punishments, the differences were found to be ‘idiosyncratic and could not be solely attributed to gender’ (Gruhl et al., 1981: 317). Nevertheless, this pioneering work should be understood with caution because of the paucity of female judges in the data set used (seven women and 175 men). Before President Carter took office in 1977, the United States had seen only six women appointed to federal district court judgeships and two appointed as circuit judges. During the 1976 presidential campaign, Carter promised that, if he were elected, he would select judges strictly on the basis of professional merit and potential for quality performance, and appoint larger numbers of women and minorities to the federal judiciary (Davis, 1986). Throughout Carter’s presidential term, he appointed 56 federal judges, who were either female or African American. Recent studies on the relationship between judges’ gender and judging tend to focus on judges appointed by presidents since Carter because female judges may reach a critical mass in their courts (Collions et al., 2010; Scheurer, 2014). These projects may thus provide more convincing evidence.

The strongest empirical support for claims of gender difference has been documented in studies of state supreme court judges’ decision making in criminal cases. For instance, Songer and Crews-Meyer (2000) examined the voting behaviours of state supreme court judges from 1982 to 1993 regarding obscenity (810 cases) and the death penalty (1,688 cases). Controlling for political party and region, they found that female judges tended to vote more liberally (supporting freedom of speech claims and opposing the death penalty) than their male counterparts in obscenity (0.629, $p < 0.01$) and death penalty (0.581, $p < 0.01$) cases. Songer and Crews-Meyer (2000) argued that the broad-based tendency of women to support a liberal position in cases before them suggested that either differences in the socialisation of female judges or differences in the dynamics of the selection of male and female judges produces a more liberal ideological orientation on criminal issues. In another study, McCall (2005) examined police brutality cases (170 votes) decided in 47 state supreme courts between 1990 and 2000, and found that gender was a significant factor in structuring judicial behaviour. This is because female judges in the data set exhibited a greater tendency (0.96, $p < 0.05$) than men

towards rendering liberal votes (voting for brutality victims). McCall argued that the finding that judges' gender matters in gender-neutral criminal cases suggests that the influence of gender is perhaps more generalised than previously thought. Lastly, McCall and McCall (2007) examined the voting behaviours of male and female judges in 718 search and seizure voting cases decided in state supreme courts between 1980 and 2000. Controlling for institutional, political, and legal constraints, they found that female judges were more likely to rule in favour of criminal defendants (1.31, $p < 0.05$) than their male colleagues in cases decided after 1991. They argued that their results suggest that gender differences became apparent after a critical mass of women obtained seats in state high courts.

Empirical research on the Supreme Court of Canada also supports the finding that judges' gender is related to their voting behaviours. For example, Songer and Johnson (2007) analysed a data set consisting of all non-unanimous decisions published by the Supreme Court of Canada for the period 1949–2000. They found that female judges had significantly more liberal records on civil liberties cases (voting against minority and gender discrimination) than their male colleagues, and the differences (0.13, $p < 0.05$) were statistically significant. Songer and Johnson (2007: 931) noted that the impact of gender appears to mirror findings from American appellate courts, and that pioneering female Canadian judges, such as Bertha Wilson and Claire L'Heureux-Dubé, did indeed 'bring a unique element to the Court that may not have existed prior to their appointments'. In another study, Johnson and Songer (2009) examined cases decided by judges in the Supreme Court of Canada from 1987 through to 2005 in regard to four selective issues (civil liberties, criminal cases, equality, and private economic cases). They found a statistically significant relationship between judges' gender and votes in every one of the four issue categories examined. Specifically, female judges were more likely than their male colleagues to support liberal outcomes in equality cases (1.385, $p < 0.001$), civil-liberties cases (0.68, $p < 0.01$), and private economic cases (0.563, $p < 0.05$), even after one has accounted for the influence of political parties. For criminal cases, the relationship between gender and votes is equally strong, but in the opposite direction: Female judges have a greater tendency (-0.776, $p < 0.001$) to support conservative outcomes (pro-government) than their male colleagues. To explain the gender effect in the decision-making of male and female judges, Johnson and Songer (2009) concluded that feminist values have already taken hold among female judges in the Supreme Court of Canada.

It is worth pointing out that some empirical studies on the outcomes of cases brought before trial judges do not support the difference theory. For instance, Ashenfelter and colleagues (1995) assessed the effect of judicial background on the outcomes of 2,258 cases from the dockets of three federal trial courts (the Central District of California, the Eastern District of Pennsylvania, and the Northern District of Georgia) in 1980 and 1981. They found that judges' gender was not significant to the outcomes of cases, so they argued that it is the law, not the judge, that determines the outcomes, even in civil rights and prisoner cases covered by their data set. In another study based on 143 sexual harassment cases adjudicated by federal courts from 1981 to 1996, Kulik and colleagues (2003) uncovered that male and female judges were equally likely to rule in favour of the plaintiff. They noted that their failure to find differences based on gender may be a function of low statistical power with respect to that variable. The lack of a gender effect may also reflect selection and socialisation processes associated with the legal profession and the judicial role, because female judges in their data set heard only 10 per cent of the cases.

1.2.3 Female Judges' Behavioural Influences in Court

In the US courts of appeals, the random assignment of judges to a three-member panel has led to a substantial body of research that investigates how the composition of these small groups leads to a 'panel effect'. For appellate courts, unanimity may be perceived as more legitimate for the judiciary (Brace & Hall, 2005). Dissent, on the other hand, demonstrates factionalism and may draw attention from outside (Epstein et al., 2011). Dissent thus can be problematic for the court or for individual judges, depending on the extent to which it occurs and in which cases. So, one might not expect female judges to be risk-averse in producing conflicted opinions (Choi et al., 2011). Nevertheless, research consistently finds support for the gender-based panel effect in decisions that involve claims of sex discrimination: Male judges are more likely to support the plaintiff when seated with female (rather than male) colleagues. For example, Farhang and Wawro (2004) assessed whether and how female judges influence legal policy on issues thought to be of particular concern to women when serving on appellate panels, which decide cases by majority rule. They found that the norm of unanimity on panels grants female judges influence over outcomes, even when they are outnumbered on a panel, based on a random sample of 400 employment discrimination cases decided from 1998 to 2000. These findings suggest that the simple majoritarian voting model does not capture crucial aspects of panel decision-making processes in federal courts. In another study based on decisions made in regard to sexual harassment (1,091) and sex discrimination (773) cases in US federal courts

of appeals between 1999 and 2001, Peresie (2004) found that, regardless of the ideology of a male judge, sitting on a panel with a female judge increased the likelihood that he would support the plaintiff. She also discovered that adding a female judge to a panel more than doubled the probability that a male judge would rule for the plaintiff in sexual harassment cases (increasing the probability from 16 per cent to 35 per cent) and nearly tripled this probability in sex discrimination cases (from 11 per cent to 30 per cent). Peresie (2004: 1783) suggested that a deference mechanism may explain these findings because, ‘once a male judge deems a female judge particularly credible in a gender-coded case, he will be much less willing to side against her—whichever direction she rules’. Lastly, based on cases adjudicated by appellate court judges from 1976 to 2002, Boyd and colleagues (2010) found consistent and statistically significant individual and panel effects in sex discrimination disputes: Not only do male and female judges bring distinct approaches to these cases, but the presence of a female judge on a panel actually causes male judges to vote in a way they otherwise would not – in favour of plaintiffs. This study not only reinforces previous research that identifies the gender effect in employment, but provides empirical evidence for a class of normative claims supportive of diversity in the judiciary.

Studies also suggest that female judges are more likely to be consensus builders and work towards a compromise in case decision-making processes. For instance, relying on data from 17,689 civil rights and tort cases terminated in four federal district courts (the District of Massachusetts, the Eastern District of Missouri, the Western District of Washington, and the Northern District of Texas) between 1996 and 2004, Boyd (2013) found that judges’ gender mattered to the way cases were decided, with female judges successfully fostering settlement in their cases more often (civil rights: 0.169, $p < 0.05$; tort: 0.331, $p < 0.05$) and more quickly (civil rights: 1.142, $p < 0.05$; tort: 1.217, $p < 0.05$) than their male colleagues. Boyd (2013) argued that these findings provide evidence that judges’ gender can affect the litigation process and, particularly, the likelihood and timing of settlement, regardless of whether cases deal with traditional ‘women’s issues’. In another study, Haire and Moyer (2015) found that female judges facilitate compromises in US courts of appeals. In their analysis, female judges who wrote opinions for the court were more likely (0.307, $p < 0.05$) to advocate an outcome that represented the ‘middle ground’ than male judges.

1.2.4 Reflections on Studies of the Relationship between Judges' Gender and Judging

As scholars build on the studies discussed above, attention has been given to how theories developed for the common law system in regard to the relationship between judges' gender and judging may or may not be relevant to understanding the role of gender in other nations with the civil law system, such as China (Schultz & Shaw, 2013). Comparative research on women in the judiciary in different countries will also shed light on issues surrounding critical mass and whether a majority of women in courts results in shifts in norms and practices in the legal system (Sonneveld & Lindbekk, 2017). For instance, Brazilian women accounted for 42.8 per cent of all judges in 2014, according to a report released by the Brazilian National Council of Justice (Venturini & Júnior, 2015). The reason Brazilian women prefer working in the judiciary is because the judiciary offers greater opportunities to combine domestic and professional activities, a feature that attracts women far more than men (Junqueira, 2003). Further, by analysing a sample of court judgments and conducting interviews with Brazilian judges, Junqueira (2003) found that female judges were particularly concerned with details in their judgments and therefore produced more substantial justifications for their decisions than male judges. She argued that the underlying reason for female judges' concern with details may not merely be the different temperaments of men and women, but a strategy employed by women to safeguard their position in the judiciary by proving that they are as capable as men. In fact, in their attempt to be equal, female judges end up becoming different through using methods not used by their male colleagues. In another study, Bogoch (1999) observed that female judges in Israel often neglected requests from female lawyers in the courtroom. This is because female judges may be wary of seeming to identify too strongly with female lawyers, and seek to avoid compromising their claims to professional neutrality. They thus refuse to acknowledge any common bond with other female legal professionals (Bogoch, 1999). While research on the relationship between judges' gender and judging in China is in the early stages, it will be reviewed below after a brief introduction to the Chinese legal culture, courts, and judges.

1.3 THE CHINESE LEGAL CULTURE, COURTS, AND JUDGES

1.3.1 The Chinese Legal Culture

The philosophical influence of Confucianism has been pervasive among the Chinese people for two and a half millennia. Confucianism inculcates and reinforces familial and group objectives (Goh, 2016). It stresses five cardinal relationships, which are conceived in a hierarchical order: emperor and ministers, father and son, husband and wife, elder brother and

younger brother, and between friends. Confucian philosophy, as such, is compatible with the ideals of collectivism. This is because collectivism emphasises group or communal goals (Goh, 1996). These goals are founded upon the collective welfare of all, with the submergence of individual interests. This is the reason why, in China, 'it has always been [a question of] how to make the individual live according to accepted customs and rules of conduct, not how to enable him to rise above them' (Hsu, 1981:135). As a result, the group is seen as the protector and regulator of individual behaviour, and individuals must submit to the objectives of the group as a means of preserving or advancing their own interests.

Confucianism and collectivism do not seem to be compatible with the principle of the rule of law, which is commonly perceived by scholars as the foundation of a normative social order (Auerbach, 1983). As such, in the event of a dispute, litigation is seen as the natural way to reach a resolution. Hence, the rights of the individual override group goals, and this feature remains a predominant phenomenon in individualism. In contrast, Confucianism has left traditional Chinese individuals with a non-litigious outlook, so, in this light, the Chinese are seen to downplay legal rules, particularly in civil matters. Chinese methods of dealing with disputes are therefore based in mediation, which often requires parties to compromise and live with mutually agreed solutions (Cohen, 1966). Another reason why litigation has been discouraged is that in traditional Chinese society the law was seen by the populace as both penal and authoritarian. Chen (1973: 10) argued that the law was not meant to be a private remedy, but rather it was 'designed to protect the State from the people, not the people from the State'. Since the law was punitive in nature and people were treated in a humiliating manner before the court, the Chinese tended to avoid litigation. Disputes were thus commonly settled within the family by elders or senior members of the gentry (Ch'ü, 1961). Such social institutions 'helped to smooth the inevitable frictions in Chinese society by inculcating moral precepts upon their members, mediating disputes, or if need arose, imposing disciplinary sanctions and penalties' (Bodde & Morris, 1967: 5). Consequently, the role of elders and senior gentry outweighed the role of courts in ordinary people's lives. In the process of mediation, the two parties involved in a dispute should understand that communal peace and harmony are only possible through their willingness to compromise. As a result, a party's predisposition to yield earns them a great deal of respect in the eyes of the community. Such behaviour exhibits a good moral upbringing and is highly regarded from the perspective of Confucian virtue (Goh, 2016).

1.3.2 Chinese Courts and Judges

Chinese courts have long played a minor role in the political system. This is because the judiciary lacks significant power over other government branches and has no formal power to conduct judicial reviews. Under Articles 62 and 67 of the Constitution, only the National People's Congress has the power to amend the Constitution, and the Standing Committee has the power to interpret the laws, although the Supreme Court of China (hereinafter SPC) issues judicial interpretations of laws for the ease of lower courts adjudicating problematic cases. This is why van der Sprenkel (1962: 129) aptly commented that 'for the Chinese, the courts were not a vehicle for the expression of aspirations, nor an engine of social change'. The Chinese judicial system is centralised and unitary, with four levels of courts. Most first-instance cases are brought to the basic courts in districts (*qu* in Chinese) or counties (*xian*), and appeals in these cases go to intermediate courts in cities (*shi*). Intermediate courts also hear certain categories of first-instance cases, not only those involving large amounts of money or serious local crimes, but also cases that are politically sensitive (Liebman & Wu, 2007). High courts in provinces (*sheng*) or municipalities (*zhixiashi*), such as Shanghai, Beijing, and Guangzhou, administratively oversee district and intermediate courts in their provinces, and hear appeals from intermediate courts in their jurisdictions. The SPC, with hundreds of judges working together, centrally manages courts across the nation, hears appeals in cases decided by high courts, and issues a large volume of interpretive documents guiding lower courts in the application of laws. These documents range from formal interpretations of laws to responses to lower courts regarding the handling of individual cases. Although courts remain the government branch with responsibility for hearing grievances and resolving disputes, they often lack the power to enforce their decisions (Clarke, 1995). Additionally, external interventions in pending cases are widespread, and such interventions often come from a range of sources. For instance, local CCP officials frequently pressure the courts in cases involving key local interests (Trevaskes, 2011). Courts find it hard to resist such pressure, because court appointments and removals from office are generally made by the local CCP branch. This is exactly why McConville (2011: 440) argued that 'Chinese judges are able to assert and exude authority over other courtroom actors and the defendant notwithstanding that key decisions may lie in the hands of others'.

In traditional Chinese society, judges were not legally trained personnel, and they were frequently preoccupied with other administrative functions (Lubman, 1967). Even before the

2000s, it was routine for Chinese judges to be selected from among retired military officials and government cadres. This is because judges in China are career civil servants and typical salaries are on a par with mid-level government officials. However, since the first amendment of the Judge Law in 2001, new judges have been required to be university graduates and to pass the national judicial examination. Judges who lack formal legal training are required to attend continuing education programmes offered by the National Judges College, an educational institute affiliated to the SPC; some are being pushed into early retirement. Nevertheless, as Clarke (2003) pointed out, caution must be exercised in drawing inferences from a high proportion of judges possessing law degrees. This is because such diplomas are often obtained from non-accredited institutions, such as vocational schools (*dazhuan*), or through part-time study, which might be undemanding.

Although Chinese judges have a role limited to the straightforward and mechanical application of the law, their discretionary power in sentencing has been curtailed by three mechanisms: the ‘Iron Triangle’ relationship, the Sentencing Guidelines stipulated by the SPC, and the Adjudication Committee of a court (Chow, 2003). The ‘Iron Triangle’ relationship is a constraint on judges’ decision to incarcerate. In the Chinese criminal justice system, the police and the procuratorate enjoy a wide range of powers to make decisions about arresting and bailing suspects (Ma, 2003; Lin & Shen, 2016). The ‘Iron Triangle’ relationship is a term used to describe the harmonious collaboration of the police, the procuratorate, and the court. Pfeffer (1968: 155) observes that ‘China’s criminal justice process is a community of organizations’. This situation predates the reform period. McConville (2011) gave an example of the cooperation between prosecutors and judges: When prosecution material is found to be flawed under close scrutiny, judges often come to rescue (less than competent) prosecutors. Similarly, they make enquiries after the trial in order to cement a necessary outcome: conviction. Since these principal state actors see themselves as government officials working cooperatively, the process followed in the course of criminal cases has frequently been regarded as ‘three workshops in the same factory’ (McConville, 2011: 379). Second, the Sentencing Guidelines represent an important effort by the SPC to achieve uniformity in sentencing by reducing discretion and eliminating inconsistency (Ye, 2011; Roberts & Pei, 2016). The Sentencing Guidelines not only provide a systematic method with which to guide sentencing decisions, but also offer detailed and prescriptive guidance regarding the consideration of important sentencing factors in 15 common offences stipulated in the Criminal Law of China (hereinafter CLC). Third, an Adjudication Committee has been established at each of the four levels of the

court system, from basic-level county courts up to the SPC, to review judges' decisions for consistency. In each court, the Adjudication Committee is the highest decision-making body and is normally composed of the court president, vice president, division chiefs, and other important administrative staff invited by the president (Chng & Dowdle, 2014; Schultz, 2016). Because the Adjudication Committee holds a supervisory role in the court, it acts as an internal court institution to guide judges' handling of difficult cases, and it can reject judges' decisions if it deems necessary (He, 2012). Judges thus may not freely decide the legal merit of cases without risking sanctions from the Adjudication Committee.

There is one aspect of the current reforms of Chinese courts in particular that deserves mention: the 'intelligent court'. The phrase 'intelligent court' was officially introduced by Chief Justice Zhou Qiang in March 2016 at the annual meeting of the National People's Congress. The intelligent court aims to make full use of cutting-edge technologies, such as cloud computing, big data, and artificial intelligence, to promote the modernisation of the trial system and the decision making of judges, so as to achieve the highly intellectualised operation and management of the court (Xu, 2017). According to Chief Justice Zhou, the word 'intelligent' refers to three key areas: (1) intelligent case resolution; (2) intelligent office administration; and (3) the intelligent evaluation of judges. These advances in the court system may improve litigants' satisfaction by ensuring consistent, fair, and transparent dispute resolution. In contrast to concerns about catching up with the advances of judicial systems in other countries, there is a possibility that the Chinese courts could leapfrog the rest of the world into an era of computerised judging. Although China's forays into computer-assisted judging have been small-scale, and some Chinese judges express doubts about infrastructure in the district courts where computerised adjudication is used, these early experiments place importance on the formation of computerised judgments by software (Liebman et al., 2019).

1.3.3 Review of the Research Literature on Chinese Judges' Gender and Judging

Table 1.5 presents information regarding the gender composition of female Chinese judges as presidents and deputy presidents in high courts and in the SPC. Only four (Chongqing, Jiangxi, Tianjin, Xinjiang) out of 31 Chinese provincial regions have a female president in their high court, and the chief judge of the SPC is a man who took office in March 2013. There are also no female presidents or vice presidents sitting in ten of the 31 provincial high courts. In the SPC, there are only two women, compared with five men, working as deputy presidents. In two provincial regions (Tianjin and Hainan), women constitute more than 50 per cent of judges

in senior leadership positions, and Tianjin is the only province (municipality) that has more women (four) than men (one) in court management roles. This indicates that there is a clear gender disparity that needs to be addressed in the Chinese judiciary.

Table 1.5 Gender Composition of Female Chinese Judges as Presidents and Deputy Presidents in High Courts and the Supreme Court of China

Province	President	Deputy Presidents	Ratio
Anhui	Dong Kaijun	Wang Limin Wang Zhanglai Xu Zhiping (F)	20
Beijing	Kou Fang	Zhang Bing Cai Huiyong Jin Xuejun	0
Chongqing	Yang Linping (F)	Lan Xiangdong Huang Mingyao Sun Hailong	25
Fujian	Wu Xielin	Wang Zhongwei Lin Meigui (F) Luo Zhisha Ou Yanfeng Wu Zhongxia Xie Kaihong	16.7
Gansu	Zhang Haibo	Chen Tianxiong Ren Jianguo Tang Bin Xi Xiaohong	0
Guangdong	Gong Jiali	Yang Xianfeng Hong Shiquan Hu Ying Lin Biyan (F) Yang Zhenggen	16.7
Guangxi	Huang Hailong	Zhong Jianping Dai Hongbing Liang Mei (F) Lin Yutang	20
Guizhou	Han Deyang	Lu Shangxu Deng Delu Liu Li (F) Tang Lin Wang Xia (F) Yu Hongmei (F)	42.9
Hainan	Chen Fengchao	Zhao Chuanling Chen Wenping Xia Junli (F)	50
Hebei	Wei Yanming	Zhang Yuping (F) Gao Shuyong Wu Jingli (F) Xu Maoming Yang Baosen Zhao Zengguo	14.3
Heilongjiang	Shi Shitai	Zhen Shuqing Chen Xiping Jin Yan (F) Li Huaju (F) Luo Zhenyu Wang Zhongming	28.6
Henan	Hu Daocai	Yao Xuqing Guo Baozhen Shi Xiaohong (F)	33.3

Hubei	You Quanrong	Song Haiping (F) Wang Shaohua Wang Shumao Li Qunxing	16.7
Hunan	Tian Liwen	Qin Wenping (F) Tian Changbing Zhang Zhongbin Zhou Jianian Cai Junwei Chen Xuechu Wu Wensheng Xiong Chunming	14.3
Inner Mongolia	Yang Zongren	Yang Xiang Zhang Lan (F) Bu He	0
Jiangsu	Xia Daohu	Pu Weigang Zhang Fengxi Chu Hongjun	33.3
Jiangxi	Ge Xiaoyan (F)	Jiang Huiqin (F) Li Yusheng Liu Aizhen (F) Mao Zhonghua Hu Shuzhu (F) Ju Guoping Ke Jun	33.3
Jilin	Xu Jiaxin	Xia Keqin Zhao Jiuchong Lu Yanfeng Yang Weilin Yu Bing (F) Zhang Qiwen	16.7
Liaoning	Zhang Xuequn	Zhang Junhong Jiang Fengwu Wu Tingfei Xu Ming Yan Zhenxi	0
Ningxia	Sha Wenlin	Zheng Guomei He Yao	33.3
Qinghai	Chen Mingguo	Li Fan (F) Fan Mingzhi Man Zhifang Qiao Jian Qiu Feng	0
Shandong	Zhang Jiatian	Xu Yongda Duan Dawei Fu Guoqing Wu Jinbiao	0
Shanghai	Liu Xiaoyun	Zhang Chengwu Zhang Kaixing Chen Chang Chen Meng (F) Lin Li	16.7
Shanxi	Sun Hongshan	Mao Ronghua Zhang Bin Fang Jianfeng Guan Yingshi Yang Hong	0
Shaanxi	Li Zhi	Zhai Ruiqing Fan Sihong Gong Fuwen Tan Aihua (F) Wang Lin	16.7
Sichuan	Wang Shujiang	Zeng Hongwei Bai Zongzhao Liu Nan Shi Hongping Xiong Yan	0

Tianjin	Li Jing (F)	Zhang Neng Cai Zhiping (F) Gao Zhen Li Ying (F)	80
Tibet	Suo Da	Qian Hailing (F) Han Wei Mi Ma Ci Ren She Keping	0
Xinjiang	Sai Mai Ti (F)	Ai Ke La Mu Chen Haiguang Jiang Xinhua (F) Ma Guowei Pang Jinwen Wang Langtao Xie Mei (F)	33.3
Yunnan	Hou Jianjun	Zhang Yongjiang Ji Jun Li Xuesong Liu Zonggen Lu Zhao Teng Pengchu Xiang Kai	0
Zhejiang	Li Zhanguo	Chen Zhijun (F) He Jianwei Xu Jianxin Zhu Shenyuan Zhu Xinli	16.7
Supreme Court	Zhou Qiang	Gao Jinghong He Rong (F) Jiang Wei Li Shaoping Tao Kaiyuan (F) Yang Wanming Zhang Shuyuan	25

Source: All of the information in this table was collected from courts' official websites and is accurate as of 31st August 2020. '(F)' following a name indicates that the person listed in the column is female. The ratio illustrates the percentage of female senior officials in courts.

There are three key pieces of academic work regarding female Chinese judges. Wei and Xin's article (2013) focuses on the contrast between the images of female judges in divorce mediation as reported in newspapers and observed in practice. Analysing 18 newspaper reports regarding female judges' behaviours in divorce mediation from the *People's Court Daily*, the propaganda mouthpiece for the SPC, Wei and Xin (2013) uncovered that patience, empathy, and a motherly disposition are three characteristics that female judges frequently employ to settle divorce disputes. These 'gendered' recognitions in the *People's Court Daily* led to the assertion that it is these female characteristics that assure the excellent performance of female judges in divorce mediations. With this research question in mind, Wei and Xin (2013) interviewed Chinese judges who were in training programmes in Hong Kong and judges of two district courts in mainland China between January and June 2012. They also sat in on 21 divorce mediations presided over by female judges in those district courts. They found that female judges, intentionally or unintentionally, followed mediator settlement strategies, which have been

summarised by Silbey and Merry (1986), to build their authority, control the tone and speed of mediations, and select and concretise issues. Wei and Xin (2013) concluded that there was an inherent contradiction in the image presented by the SPC in newspaper reports and what female judges actually did. In practice, female judges stressed their role as judges without using feminine characteristics, and they deterred the disputants by presenting them with possible and unpredictable outcomes. They communicated their own authority and managed the divorce mediations. In this way, these judges accomplished the objective of reaching a compromise between plaintiff and defendant via divorce mediation. Female judges do not believe that the so-called feminine characteristics viewed by the SPC as favourable for divorce mediation necessarily accomplish the expected results: 'The resistance of female judges proved they had a clear vision of what would and would not work in practice' (Wei & Xin, 2013: 165).

Shen's (2017) book not only provides up-to-date empirical knowledge of female Chinese judges, but uses them as a case study to gain a deeper understanding of women's social status in contemporary China. In the project, she interviewed 48 judges (25 women and 23 men) in 13 courts at three levels in one province of South-East China between July and September 2015. She also carried out unobtrusive virtual observations by following several renowned public accounts run by judges on WeChat and several online forums where judges actively participated in chatroom discussions. Shen's book makes several unique contributions to filling the knowledge gap about female judges in China. First, she found that what female judges do in court differs little from what men do. Female judges' position as 'half the sky' (men's equals) in the judicial system and their 'irreplaceable role' in judicial practices are officially recognised and widely propagated. It is hard to argue that they are in 'lower-status corners', like their counterparts in the common law system (Kenney, 2013: 465). Second, while the inclusion of women in the mid-level leadership of the court does not appear to be unsettling, the glass ceiling prevents women from reaching the upper echelons of judgeship. This is because, as stated in the previous section, the social expectations of men and women are different: Women are expected to perform a primary role in domestic tasks, while, professionally, female judges are expected to be men's equals, holding the same position of power. Shen found that, as a result, the demands placed on women are high and disadvantage women. Third, although these participants in Shen's research overwhelmingly acknowledged individual, rather than gender, differences among judges, they stated that certain feminine characteristics, such as empathy, mercifulness, tolerance, patience, and a motherly disposition, influenced their approach to handling cases; some of these qualities are recognised as judicial qualities shared among female

judges in other countries (Schultz & Shaw, 2013). With their gendered experience of, for example, prejudice and bias against them in performing their professional duties, female judges may have a better understanding of women's problems, such as the problems that lead women to break the law. Fourth, performing professional functions in court, which involves decision making on a daily basis, seems to have also influenced female judges' attitudes and behaviours in their private lives. As Shen's book describes, they are often equal decision makers in their families. It is possible that working in public offices has changed how women's feminine characteristics manifest in the private sphere. These findings suggest that China's policy and practice in regard to gender equality have not only resulted in the overall empowerment of women, but have also affected the power relations between men and women in both public offices, such as the judiciary, and in private settings.

Zheng and colleagues (2017) observed that, since the 1990s, many female judges have risen to mid-level leadership positions in court, such as division chiefs and vice chiefs. Nonetheless, obstacles remain for women's promotion to high-level leadership positions, such as vice presidents and presidents. What explains the stratified patterns of career mobility for women in Chinese courts? In order to offer an answer to this question, Zheng and colleagues (2017) conducted interviews in the provincial regions of Zhejiang, Anhui, Jiangsu, Sichuan, and Tianjin in 2012 and 2013. They intentionally selected more women as informants but interviewed several men, to hear their opinions on the issues of gender and professional careers. Forty-six of the 55 judges in their sample were women and nine were men. Their fieldwork and data from the courts revealed a comparable pattern of gendered career mobility, which they termed the 'elastic ceiling' (Zheng et al., 2017: 169). While female judges have made notable progress in weakening the glass ceiling in the judicial hierarchy, their upward mobility often stops at the mid-level leadership, in the position of division chief or vice chief. High-level leadership positions are still dominated by men. Zheng and colleagues (2017) explained their findings using theories of dual-track promotion and reverse attrition. First, the professional track of mid-level promotions benefits female judges who have solid legal expertise and excellent work performance, whereas the political track of high-level promotions, which emphasises social capital and political connections, presents significant barriers to the progress of female judges' careers. Second, the institutionalised corruption in the Chinese judiciary further undermines women's chances of high-level leadership promotion. Meanwhile, the reverse attrition of men from the judicial system opens up many vacant mid-level positions, often filled by women, but only a limited number of high-level positions. In this empirical case,

the two dynamic processes of promotion and attrition are the causes of gender inequality in the Chinese judiciary.

There are some knowledge gaps in the literature about female Chinese judges. First, none of the research has involved statistical analyses of the relationship between judges' gender and their decision making in the Chinese context, and thus tested the difference theory in a socialist legal system (Songer & Crews-Meyer, 2000; McCall, 2005; McCall & McCall, 2007). Second, the panel effect, which has been uncovered in the deliberation process of sexual discrimination cases among male and female judges in the appellate courts of the United States, has not been examined in China (Farhang & Wawro, 2004; Peresie, 2004). Third, the judicial behaviours of female judges who work in criminal divisions have not been looked into by scholars. Previous research suggests that judges' gender matters to non-criminal cases, with female judges successfully fostering settlements in their cases more often (civil rights: 0.169, $p < 0.05$; tort: 0.331, $p < 0.05$) and more quickly (civil rights: 1.142, $p < 0.05$; tort: 1.217, $p < 0.05$) than their male colleagues (Boyd, 2013). Whether the same holds for female Chinese judges conducting victim-offender mediation remains unknown. Finally, since it is well-known that there is status disparity in contemporary Chinese families, one might ask whether male and female judges respond similarly or differently to criminal cases related to DV, in which most women are victims. I explore these intriguing and theoretically important questions in the following chapters.

1.4 OVERVIEW OF METHODOLOGICAL APPROACHES

1.4.1 Quantitative Research Methods

Quantitative research is used by social scientists to record phenomena or occurrences affecting individuals. It provides answers to questions about the frequency of a phenomenon, or the magnitude to which the phenomenon affects the sample population. Furthermore, when conducted proficiently, quantitative research allows information about a sample population to be generalised to a larger population. Generally speaking, judges are supposed to be guided by the law only and to make decisions in an unbiased way. For decades, however, there has been a constant trickle of scholarly research in several disciplines, including law, political science, and psychology, suggesting that judicial decision making departs from the rational ideal depicted by the scales of justice (Doerner & Demuth, 2010; Wooldredge et al., 2013). Research literature on the relationship between judges' gender and judging reveals that gender matters to judges' decision-making processes; these studies have been carried out using both

quantitative and qualitative approaches. Regarding quantitative methods, researchers have used a variety of data analysis techniques beyond descriptive statistics, such as tests of mean differences, correlation and regression analysis, and matching (Boyd et al., 2010). When analysing data, they often treat these statistical models as an isomorphic representation of the judicial decision-making process, as if they faithfully represent what goes on in a judge's mind. Critics of these articles using quantitative methods argue that the statistical models lack the psychological plausibility needed to describe judges' cognitive processes (Dhami & Belton, 2017). Computationally complex statistical models are deemed to present 'an unrealistic description of how people make decisions' (Marewski et al., 2010: 105). This criticism highlights that judicial decision-making research is ultimately a psychological undertaking, so the psychological applicability and plausibility of the models used to capture such decisions are important. Dhami and colleagues (2004) suggested that, when studying psychological processes, researchers ought to use stimuli that are representative of the environments of participants who have learned to respond. The stimuli presented to participants should be representative of a decision-making environment in terms of the nature and number of cues, such as the ages and education backgrounds of offenders, and the aggravating and mitigating circumstances of the offence, and other co-variations, such as victims' relationships with offenders in rape cases. If judges' decisions can be measured over a series of relevant factors, other than only using judges' gender as a variable, the representative design of the statistical analysis is able to embrace the idiographic tradition. Only when we can paint a valid and generalisable picture of judicial decision making can we then attempt to understand why judicial behaviour departs from the normative ideal.

In this dissertation, a quantitative method based on thousands of court judgments has been used to explore whether Chinese judges' gender is a factor influencing their decision-making processes. Traditionally, Chinese court decisions have been made accessible to researchers and the general public on a selective basis, so judicial transparency has only become a prioritised issue in Chinese judicial reform in the last few years (Hou & Keith, 2012). In December 2009, the SPC issued a document on the Six Requirements of Open Justice, and mandated courts nationwide to compile their decisions and publish them online. The new requirements came with the standard caveat that cases involving national secrets, juveniles, personal privacy, and mediated cases must not be published. A second round of SPC rules in 2016 expanded the public records of courts in important ways: Courts must post a range of documents, including outcomes in state compensation proceedings, changes in criminal sentences, mediated

administrative cases, and enforcement decisions and withdrawals. In addition to the publication of court decisions online, the SPC requires all court hearings to be videotaped and stored in a centrally managed database in the SPC. Since 2016, some of these video recordings have been made available to the public through an online platform called the China Open Trial Network, which also includes live streaming from court hearings at all levels. Apparently, if an image of a just and fair legal system needs to be constructed, one way to do so is to emphasise the procedural fairness and orderliness of court trials (Fan & Lee, 2019). The judgments forming the data set of this dissertation were collected from China Judgments Online, a platform maintained by the SPC. I also verified missing information in some judgments by searching databases held by high courts. Nevertheless, it should be noted that the number of judgments uploaded to the databases keeps changing, because first-instance decisions may only be released after a case decision is finalised, meaning either that no appeal is filed within a stipulated period, or a higher court decides the appeal. This creates a time lag between first-instance decisions and cases being published online (Liebman et al., 2019).

1.4.2 Qualitative Research Methods

Interviewing legal professionals, such as judges and prosecutors, is a subset of research of what social scientists call ‘studying up’. This is because legal professionals frame issues, set agendas, and determine the rules for others. As Nader (1972) observed, anthropologists tend to focus on the poor and marginalised, but the same techniques could be applied to the powerful. She noted that anthropologists value studying what they like and prefer the underdog and non-Western cultures. Yet understanding legal professionals could serve the have-nots by, for example, explaining whether or not legal outcomes are determined by resource disparities between haves and have-nots (Galanter, 1974). Although I was fully aware of the importance of sample design and selection, in the fieldwork only a convenience sample was possible. I connected with some judges as interviewees of this study directly through a judicial training programme I participated in from 2015 to 2016 in Hong Kong, while others were introduced to me by friends who work in local judges’ colleges. In total, I interviewed 42 judges for their attitudes in victim-offender mediation and 47 judges for their opinions in DV cases. It is worth noting that this is a total sample of 47 judges—42 contributed to the study of victim-offender mediation and all were involved in the study of judges’ attitudes towards DV offences. All the interviews were conducted between July 2017 and February 2018. Judges were from District Court A in Beijing, District Court B in Shanghai, District Court C in Shenyang, Liaoning province, District Court D in Shenzhen, Guangdong province, District Court E in Shijiazhuang, Hebei province, and

District Court F in Tianjin. Each interviewee was given a guarantee of confidentiality and anonymity, and the interviews were conducted on a one-to-one basis. I intentionally avoided group interviews, on the basis that individual respondents might be influenced by the views of others. All interviews were undertaken following semi-structured interview schedules. These sought to tease out various strands relating to the general work, perspectives, aspirations, and values of the target respondents, rather than trying to persuade them to talk about specific cases. Nevertheless, I found that some interviewees did refer to specific cases they had adjudicated, but they omitted not only certain details of these cases, but the names of victims and offenders. Occasionally, some judges either politely refused to answer questions, such as on areas like ‘the major obstacle in exercising the power of sentencing in your division’, or provided diplomatic answers, such as ‘I have never thought about this before’.

An increasingly accepted view in academia is that scholarly work becomes scientific by adopting methods of study appropriate to its subject matter (Silverman, 1993). Thematic analysis (hereinafter TA) is an empirically driven approach for detecting the most salient patterns of interviews, media, and imagery contents (Daly et al., 1997). In chapter four and chapter five, I used TA for identifying and analysing patterns of meaning in conversations with Chinese judges. There are several reasons why I chose TA as a preferred research method for the qualitative study. Firstly, TA is best suited to elucidating the specific nature of a given group’s conceptualisation of the phenomenon under study (Braun & Clarke, 2006). This PhD study focuses on judges, influential group of legal professionals. They normally make decisions impartially and unhindered by financial concerns and political pressure. Because of the similar nature of their jobs, TA is an appropriate research method to analyse the contents and structures of judges’ narratives. Secondly, unlike content analysis, which involves establishing categories and then counting the number of instances in a text, TA goes beyond observable material to more implicit, tacit themes and thematic structures (Merton, 1975). Because of this unique strength, TA can be used to examine implicit assumptions embedded in dialogues with judges, who may not eloquently reflect on their unconscious biases and prejudices. Lastly, TA is useful for summarising key features of a large data set, as it forces the researcher to take a well-structured approach to handling data, helping to produce a clear and organised final report (King, 2004). For this research project, I found TA a functional tool to conduct transcript analysis of the interviews conducted with 42 judges reported in chapter four and with 47 judges reported in chapter five.

Interview data are usually collected via semi-structured interviews: that is, interviews with several questions prompting the respondent to talk. This approach imposes topic areas on interviewees, where it may be preferable to gain naturalistic access to people's understanding of the issues under study. However, besides using topics introduced by me (see Appendix IV) as the basis for the interviews with judges, I developed a more naturalistic method to elicit material. It produces data that follow the pathways of judges' thoughts and feelings rather than imposing questions and topics. To obtain such data, the meeting with each respondent begins with a task that elicits spontaneous thoughts: Respondents are presented with real cases collected from China Judgements Online (see Appendix V). These cases universally involve some elements relating to 'gender': It could be the complicated relationships between offenders and victims, or crimes mostly committed by women. Judges were therefore aware of the topic areas I was concerned about and may have been more motivated to share similar cases they had adjudicated.

Stakeholder checks were used for assessing the trustworthiness of the data analysis. Scholars found that stakeholder checks enhance the credibility of findings by allowing research participants and other people who may have a specific interest in the research to comment on or assess the research findings, interpretations, and conclusions (Erlandson et al., 1993). To avoid misinterpretation of the data, I invited judges to read my fieldnotes and correct errors of facts at the completion of the interviewing. I also provided a preliminary version of chapters two to five to judges by email and asked them for oral or written comments on the drafts. The data set was created in July 2017, and it was completed in September 2018. Duplicate records were identified and cleaned by searching through raw data. For the TA, the ratio of tape time to transcription time (hours) was 1:5 on average. I then used the ATLAS.ti 9 to examine the patterning of themes across the interviews. More specifically, the filtering functions of ATLAS.ti 9 allowed me to retrieve the patterns of codes prevalent in particular groups, such as in different demographics of judges. The patterns can also be observed through frequency charts, lists of textual excerpts, or visual networks. Hard copies also existed. These files were chronologically ordered to match the order of the interviews in each district court. Each file contained a list of participants' codes (real names were held separately), consent forms, demographic data, and participants' interview transcripts. These files will be retained for six months after the submission of the dissertation and destroyed after that period. Although TA is a linear, six-phase method (familiarisation; coding; generating initial themes; reviewing and developing themes; refining, defining, and naming themes; and writing up), it is actually an

iterative and reflective process that develops over time and involves a constant moving back and forward between different phases (Braun & Clarke, 2021). After I had completed the ‘first run’ at coding the data, all coded data were reconsidered looking for more salient patterns (Rice & Ezzy, 2000: 196). In the review process, the data were reread with the intention of determining what relationships existed both between other data and within the coded data. Consequently, coded data were linked and gradually unified, thus progressing from particular to more general themes. All these efforts are made to take the data from description to abstraction.

Because a researcher’s subjectivity is conceptualised as a resource for knowledge production, it inevitably sculpts the knowledge produced, rather than being a threat to its credibility. Although TA is a research method with a descriptive purpose, it is an interpretative activity undertaken by a researcher who reads data through the lenses of his or her particular social, cultural, historical, disciplinary, and ideological positions (Braun & Clarke, 2021). As a TA user, I am conscious that I am not a neutral evaluator: I am a junior scholar who is interested, in both a personal and academic sense, in the impacts of increased participation of women in the judicial system. I am also someone who believes this change is fundamentally positive: Having female and ethnic minority leaders in judicial institutions is representative of the diverse and changing population of China. These interests and my upbringing, as stated in the preface, motivated me to engage in this research, and therefore had impacts on the outcomes of my research.

Overall, this dissertation adopts mixed method approaches. This has involved a procedure for collecting, analysing, and mixing quantitative and qualitative data at some stage of the research process in order to understand a research problem more completely (Creswell, 2008). Mixed method research can result in well-validated and substantiated findings because it offsets the weaknesses of one method with the strengths of another method (Patton, 2002). There are, however, two significant challenges: First, the approach requires a significant amount of effort, as well as expertise, to collect and analyse two separate sets of data simultaneously. Second, the approach is sometimes technically difficult to compare different quantitative and qualitative data sets, especially if the two sets of results do not converge. Mixing quantitative and qualitative data can occur at different stages in the study: during the data collection, the data analysis, or the interpretation of results (Johnson & Onwuegbuzie, 2004). In this dissertation, the mixing of quantitative and qualitative data takes place during the interpretation of results.

Chapter six reveals the overall picture about the relationship between judges' gender and judging from the combined findings of the studies. In the next chapter, I use quantitative research methods to examine whether female Chinese judges decide cases differently from their male colleagues. I discuss my analysis of 11,006 court judgments from 2016 to 2018 across 11 crime types in Shanghai, Beijing, and Guangzhou. The results revealed negligible differences between the sorts of decisions made by male and female district court judges. Nevertheless, the similarities in the decision to incarcerate can be explained by a harmonious 'Iron Triangle' relationship among the police, the procuratorate, and the court. The Sentencing Guidelines and the Adjudication Committees of the courts are mechanisms that align judicial behaviours in the same direction.

Chapter Two: Judges' Gender and Sentencing in China: An Empirical Enquiry

2.1 INTRODUCTION

For some, it is not difficult to imagine a time when bringing a dispute before a court would certainly mean a majority-ethnic male judge sitting in the court and determining the outcome of the litigation. Although sweeping changes have been made to the judiciary over the past few decades, whereby more women have taken the judicial oath, feminist legal scholars are not satisfied with the reality that the judiciary is still perceived as 'pale and male' (Rackley, 2013: 7). Menkel-Meadow (1985: 49) posed the question: 'What would our legal system look like if women had not been excluded from participating in its creation?'. Inspired by Gilligan's theory regarding women's conceptions of self and morality, feminist legal scholars have posited that the legal system would be 'different', since women are 'different' from men, biologically (in terms of pregnancy, giving birth, and breastfeeding) and socially (regarding their greater domestic responsibilities and experience of discrimination) (Ruddick, 1980; Gilligan, 1982). These differences could construct an 'alternative professional culture' in law and impact the foundation and power structure of the legal system (Menkel-Meadow, 1989: 313). While Gilligan likely did not intend to provide a conceptual framework for advocating the inclusion of women in the judiciary, this is precisely what has happened following others' interpretation of her work (Minow, 1987).

A great deal of quantitative research on the relationship between judges' gender and judging has emanated from interdisciplinary work in law, criminology, and political science. This usually involves large-scale databases of decisions made by U.S. state or federal courts, to test the statistical significance of judges' gender as an independent variable in regard to the outcomes of disputes in various fields. However, these attempts to uncover a 'different voice' have achieved mixed results. On the one hand, empirical research has highlighted differences between male and female judges' decisions to convict and sentence offenders on 'women's issues', such as DV and sexual assault (Martin & Pyle, 2004). Several studies have also found that the presence of a female judge on a three-judge appellate panel causes male judges to vote in a way they would not otherwise—in favour of plaintiffs in sex discrimination and sexual harassment litigations (Farhang & Wawro, 2004; Peresie, 2004). These findings seem to support the hypothesis that 'women perceive the world through women's eyes rather than holding a mirror up to men' (Haste, 1994: 189). On the other hand, scholars have found that female judges in district and appellate courts tend to reach the same conclusions as male judges

across a wide range of issues affecting women, such as abortion and affirmative action (Walker & Barrow, 1985; Boyd et al., 2010). These inconsistent findings not only weaken essentialist stances on the fundamental differences between men and women, but also pose a threat to female judges' substantive representation of the community to which they belong (Fineman, 1992).

The impact of women's participation in the administration of justice has also been researched worldwide by comparatists. In contrast to the varied results found in the United States, a proliferation of findings in the international arena reveals the existence of a 'different voice' in judging (Hedderman & Gelsthorpe, 1997; Berger & Neugart, 2011; Songer et al., 2016). Nevertheless, China has not yet been subject to comparison in this context. It is worth investigating a country the judiciary of which has experienced an approximately one per cent increase in female presence every year since the mid-1990s (Considine, 2016). Furthermore, there has already been a small portion of newspaper reports and scholarly articles on female Chinese judges. The *People's Court Daily*, a propaganda mouthpiece of the SPC, constantly reports that female judges approach criminal cases 'differently' from their male colleagues. For example, Zhou Xin, a female judge from the criminal division of the Shanghai Intermediate People's Court, is accustomed to speaking with victims' relatives after the closing arguments and taking their opinions into consideration before reaching a decision (Yang, 2016). However, it is important to note that, although the *People's Court Daily* propagates the ideologies of the SPC for the benefit of Chinese judges, some stories reported by it may not accurately reflect the judges' actual approaches. For instance, Wei and Xin (2013) found that the *People's Court Daily* portrays female Chinese judges as excelling in divorce mediations because of three feminine characteristics: patience, empathy, and a motherly disposition. In practice, however, they rejected these stereotypical female characteristics as factors contributing to the settlement of divorce mediations. Shen (2015) reflected on the limitations of journalists' sources and argued that, although journalists' accounts offer rich anecdotal information, they do not seek to engage in critical academic enquiries. Therefore, these open-source data should be used with caution.

Based on the available academic work, I hypothesise that sentencing might not be a gendered process for judges in the Chinese criminal justice system. Hence, male and female judges could give the same sentence to criminal offenders of their own and the opposite gender, after controlling for case characteristics and court contextual variables. By testing this hypothesis, I

advance the existing knowledge regarding whether or not judicial characteristics play a role in generating (or maintaining) disparities, as well as disparities that exist in the sentencing outcomes of male and female offenders. I also aim to make a contribution to the field of judges' gender and their sentencing by providing some Chinese figures, long awaited by international comparatists, for further examination and follow-up studies (Schultz & Shaw, 2013; Szto, 2016).

2.2 SENTENCING IN CHINA

Before moving on to the theoretical framework of this chapter, I briefly introduce the formality of decision-making processes in criminal cases in district courts, along with mechanisms that limit the discretionary power of judges in regard to sentencing. According to Articles 178 and 179 of the Criminal Procedure Law (hereinafter CPL), the collegial panel is vested with the power of reaching a decision. If opinions differ when a collegial panel conducts its deliberations, a decision shall be made in accordance with the opinions of the majority. However, decision-making approaches in practice are different in many places in China. For instance, a number of articles written by Chinese judges have revealed that the actual decision of a criminal case has frequently been made by the presiding judge of the collegial panel (Liu, 2008; Jiang, 2014). In this way, the discussion of cases among members of collegial panels becomes a mere formality; the presiding judge is the sole decision-maker (He, 2016). This is the starting point from which to examine whether or not the gender of the presiding judge in a collegial panel is a significant factor in the process of decision-making. I also briefly introduce three mechanisms in the Chinese criminal justice system that restrict judges' discretion in regard to cases: the 'Iron Triangle' relationship, the Sentencing Guidelines, and the Adjudication Committee. As Wonders (1996: 638) indicated, 'sentencing must be understood as part of a larger process'. This information will not only help us understand the structure of sentencing in China, but also can be used to explain the similar decisions made by male and female judges.

First, the 'Iron Triangle' relationship is a constraint on judges in regard to making decisions to incarcerate. In the Chinese criminal justice system, the police and the procuratorate enjoy a wide range of powers in making decisions about arresting and bailing suspects, and these powers are given by the CPL (Ma, 2003; Lin, 2016). The 'Iron Triangle' relationship is a term used to describe the harmonious collaboration of the police, the procuratorate, and the court. Due to this relationship, judges normally make the same decisions in regard to arresting and

bailing suspects as prosecutors did during pretrial detention (Lu & Miethe, 2002; Fu, 2016). In addition, the Political-Legal Committee (hereinafter PLC) exercises a leadership role in the political-legal system of China and coordinates the work of the police, the procuratorate, and the court in regard to social order and stability (Wang & Minzner, 2015). Normally, the chair of the PLC is the local police chief, who can exert a significant influence on judicial decision-making (Fu, 2014).

Second, rules and regulations on sentencing suggest that there may be little room for discretion. CLC and Sentencing Guidelines are legal documents that judges must follow, and there have already been some restrictions on discretion regarding sentence length. For instance, according to Article 74 of the CLC, recidivists should not be granted probation (or a suspension of their sentence), and pregnant women and minors under the age of 18 years can be probated if judges' decisions involve criminal detention and fixed imprisonment of less than three years. The Sentencing Guidelines also limit judges' discretion by detailing various aggravating and mitigating factors; this has quantified their index to sentence in regard to the 15 most common crimes (Ye, 2011; Roberts & Pei, 2016). Thus, it is essential to take the effects of the Sentencing Guidelines into consideration when examining sentencing disparities between male and female judges.

Third, the Adjudication Committee has been set up at each of the four levels of the Chinese court system, from basic-level county courts up to the SPC, to review judges' decisions for consistency. In each court, the Adjudication Committee is the highest decision-making body and is normally composed of the court president, vice president, division chiefs, and other important administrative staff invited by the president (Chng & Dowdle, 2014; Schultz, 2016). Because the Adjudication Committee holds a supervisory role in the court, it acts as an internal court institution to guide judges' handling of difficult cases; it can reject judges' decisions if it deems necessary (He, 2012). Clearly, the importance of the Adjudication Committee in producing decisions regarding criminal cases cannot be overlooked.

Although there has been a rich body of literature on sentencing in China, few studies have examined the role that judges' gender plays in sentencing. Given the significance of this topic and the implications of the findings regarding the discretionary power of judges, I will explain the theoretical framework of this chapter in the following section and carry out statistical analyses to test the hypothesis thereafter.

2.3 THEORETICAL FRAMEWORK

Feminist scholarship has addressed the fact that differences in determinate sentencing arising from judges' gender disparity depend on judges' consciousness, attitudes, characteristics, and experience; external constraints, such as courtroom workgroups, may not nullify these pre-existing differences (Malleon, 2003; Johnson, 2006, 2014). Nevertheless, other studies maintain that organisational constraints, such as sentencing guidelines and courtroom workgroups, do reduce the sentencing differences between male and female judges (Gruhl et al., 1981; Steffensmeier & Herbert, 1999; Zatz, 2000; Haynes et al., 2010). In explaining these contentious findings, Johnson (2014: 159) argued that the minimal influence of the sentencing judges' gender in previous studies stems from: (a) the combined influence of judicial recruitment, indoctrination, and socialisation into judgeship; and (b) methodological and conceptual flaws limiting the ability to identify the effects of judges in criminal sentencing. For example, Zatz (2000: 509) concluded that sentencing guidelines provide little room for judicial discretion, and that legal training and judicial socialisation result in relatively similar perspectives on cases. However, Johnson (2014) believed that such conclusions may be premature in view of recent evidence and the fact that discretion varies by case type, given the relative paucity of studies examining judges' characteristics in sentencing.

Considering the mixed findings and explanations produced by previous studies, tracking the theoretical developments of the difference theory could help us to gain a better understanding of whether or not judges' gender impacts judicial decisions. The difference theory argues that women can make a difference, both by changing male judges' behaviour and by acting differently from their male counterparts (Kenney, 2013). Pioneering scholars in the relationship between judges' gender and judging, such as Cook (1984) and Martin (1993), were all inspired by the work of educational psychologist Carol Gilligan. Gilligan (1982) found that women use an 'ethic of care', whereas men use an 'ethic of justice' when solving problems, as a result of their unique socialisation experiences as men or women. However, Gilligan by no means claimed to make generalisations about men and women. Rather, she argued that, since the traditional theory of human psychological development was based on studies of male subjects only, that theory invariably found that women failed to develop according to existing measurement scales. Following this line of thought, feminist legal scholars have continuously challenged the 'rationality' of laws and legal systems (Fineman & Thomadsen, 2013). They understand 'maleness' as a social and political concept: It is men who define objectivity and neutrality, pushing women to see reality in those terms (MacKinnon, 1989). In this way, the

Western legal system, language, and style of reasoning used to support the law are rooted in the life experiences and values of privileged, educated, white men (Levit et al., 2016). Stemming from a ‘feminine perspective’ in law, feminine jurisprudence emphasises connection, context, responsibility, and community (Sunstein, 1988), whereas a ‘masculine perspective’ on the law emphasises competition, autonomy, rules, and individual rights (Smart, 2002). These different perspectives may, at times, be reflected in the behaviours of male and female judges, and influence judicial policies and priorities. However, it is important to note that the application of the difference theory in the relationship between judges’ gender and judging is not without substantive critiques. A major problem is the tendency to construct male and female judges as two dichotomous and non-intersecting groups of adjudicators; such misguided attempts to measure the gender effect in judging will likely fall into the trap of essentialism (Kenney, 2012a). Nonetheless, although the difference theory raises some theoretical and empirical concerns, it has been put forward as a justification for equality and diversity in the judiciary, where judgeship appointments have long been denied to women (Rackley, 2013).

The Chinese judiciary, after the formal establishment of China in 1949, was never a historically male-dominated institution, but female judges are not ‘entirely free from discrimination and inequality in their professional lives in court’ (Shen, 2017: 127). Assumptions based on traditional norms about women and the internalised patriarchy of the judicial system still persist in China (Zheng et al., 2017). Some structural challenges particularly affect young and newly appointed female judges (Shen, 2017). Since women’s problems in judiciaries are shared across the globe, the difference theory has been widely employed by feminist legal scholars for the purpose of changing the gender imbalance in the judiciary in their countries (Schultz & Shaw, 2013). Therefore, it is necessary to unravel whether or not a study of judges’ gender and judging in China will lead us to different findings from the existing literature.

2.4 METHODOLOGICAL REVIEW

I categorised prior findings into ‘two distinct but related outcomes’ of one criminal decision: the decision to incarcerate and the decision regarding sentence length (Johnson, 2006: 273). The reason for classifying one decision into two stages comes from the finding that factors predicting incarceration may not be the same as those predicting sentence length (Spohn, 1991). In the first stage, the decision to incarcerate, scholars have found conflicting results. Some have drawn the conclusion that female judges are more likely to incarcerate offenders than their male counterparts. For example, based on a data set of 17,276 cases adjudicated between 1968

and 1974 in a 'metro city' court, Kritzer and Uhlman (1977) found that female judges were harsher in terms of incarceration in drug cases. Looking at the same court, but this time based on 38,396 cases adjudicated from 1971 to 1979, Gruhl and colleagues (1981) found that, in four categories of crime (assault, burglary, forgery, and drug possession), female judges were more likely to sentence convicted defendants to prison. In regard to the interaction effect of judges and offenders, they found that male judges gave prison terms to only 12 per cent of convicted female offenders, while female judges gave prison terms to 20 per cent. Additionally, a data set of 47,008 cases adjudicated between 1991 and 1993 in 18 counties of Pennsylvania showed that the odds of incarceration by a female judge were on average about 1.4 times higher than that for male judges, and that female judges were 11 per cent more likely to incarcerate than their male counterparts (Steffensmeier & Herbert, 1999). While some scholars have reached the conclusion that female judges are harsher on offenders, others have not found any disparity. For instance, although Kritzer and Uhlman (1977) identified an overall significant, but not strong, difference in the percentage of convicted offenders sentenced to jail, the actual difference disappeared in specific offences, with the exception of drug cases. Based on 89,269 cases adjudicated from 2000 to 2002 in 89 federal judicial districts, Farrell and colleagues (2010) found that the gender representation of the court authorities appeared to have no significant influence on the likelihood of offenders receiving a prison sentence.

In the second stage, the decision regarding sentence length, scholars have not reached a consensus. Some have ascertained the role of gender in sentence length, but they diverge on whether female judges are more or less lenient towards offenders. In their 'metro city' court, Kritzer and Uhlman (1977) found that female judges imposed harsher sentences in terms of average sentence length in drug cases. By examining the raw (not controlled for crime type) data of the same court, Gruhl and colleagues (1981) found that female judges tended to impose slightly stiffer sentences than their male colleagues. Steffensmeier and Herbert (1999) also revealed that female judges were more likely to give offenders slightly longer sentences (1.5 months longer on average) than male judges. However, Farrell and colleagues (2010) concluded that increased representation of female judges and prosecutors led to less severe prison sentences overall. In contrast, having analysed 148,590 cases adjudicated between 1999 and 2000 by 303 judges from 60 judicial districts of Pennsylvania, Johnson (2006) pointed out that the influence of judges' gender on sentence length was minimal. The interaction between the gender of judges and offenders also produced small and statistically insignificant effects in his data set. Similarly, neither in the total sample of economic crime offenders nor in separate

examinations of white-collar and street crime offenders were the coefficients statistically significant when comparing the severity of sentences administered by male and female judges (Van Slyke & Bales, 2013).

The literature on gender and sentencing in criminal trials diverges in terms of findings and methods. For a better understanding of data modelling and data analysis, I selected six articles most relevant to this study, and these six articles uniformly examined the relationship between judges' gender and sentencing in the US criminal justice system. As shown in Table 2.1, I recalculated the odds ratios of articles written by Kritzer and Uhlman (1977), and Gruhl and colleagues (1981) because their studies only reported row percentages. I also listed sentence length from descriptive mean to coefficient in the regression model. The findings on sentence length are difficult to unify because the analytical dependent variables were computed in either month or log (month) form. I managed to transfer the grouped differences described in logged sentences into arithmetic months using an inverse logarithmic function. Accordingly, the grouped differences of sentence length in Johnson's finding (2006), and Farrell and colleagues' findings (2010) were recalculated outcomes, rather than the original Ln sentence length.

I divided the data from the six key articles into three categories: judge effect, offender effect, and interaction effect. In terms of the first category, Gruhl and colleagues (odds ratio = 1.24, $p < 0.05$) and Steffensmeier and Herbert (odds ratio = 1.58, $p < 0.001$) found that female judges were more lenient in their decisions to incarcerate and significantly harsher in terms of sentence length than their male colleagues (differing by 1.08 units and 1.50 months, respectively). In the second category, regarding the decision to incarcerate, Steffensmeier and Herbert (odds ratio = 0.53) and Johnson (odds ratio = 0.61) found that female offenders were less likely to be incarcerated. In terms of the decision regarding sentence length, three studies found that female offenders received significantly shorter sentences, by -10.13 (Steffensmeier & Herbert, 1999), -1.45 (Johnson, 2006), and -27.93 months on average (Farrell et al., 2010). In the third category, two articles present an interaction effect: In Gruhl and colleagues' (1981) study, the incarceration rate of female offenders was 3.55 times higher when facing female judges. For male offenders, the incarceration rate by female judges was 1.24 times higher than that for male judges. In Steffensmeier and Herbert (1999), male and female judges sentenced female offenders respectively 9.95 and 9.83 months less than male offenders. As the results summarised in Table 2.1 show, although sentencing disparities exist in criminal trials, the

differences were not consistent in any category. I believe that this is largely due to two issues in the design of the research methods used.

Table 2.1 Judge Effect, Offender Effect, and the Interaction Effect in Two Stages of Sentencing from Six Key Articles

Literature	Author	Kritzer et al.	Gruhl et al.	Steffen. et al.	Johnson ^a	Farrell et al. ^a	Van S. & Bales
	Data	Metro City	Metro City	Pa.	Pa.	Federal Court	Fla.
	Case	General	Felony	General	General	Felony	Felony Economic
	Duration	1968–74	1971–79	1991–93	1999–2000	2000–02	1994–2004
	No. of Courts	1	1	18	60	89	21
	No. of Cases	17,276	48,828	47,008	148,590	89,269	12,810
In/Out Prison (Odds Ratio)							
General	% In	38.0	23.8	62.0	55.0	85.7	34.0
Judge Effect	Δ J female-male	NA	1.24**	1.58***	0.94	1.06	1.15 ^c
Offender Effect	Δ O female-male	NA	NA	0.53***	0.61***	0.27	0.60***
Interaction Effect	Female Judge (Δ O)	NA	0.95	0.29***	NA	NA	0.55
	Male Judge (Δ O)	NA	0.33	0.56	NA	NA	0.62***
	Female Offender (Δ J)	NA	3.55**	NA	1.08	0.90	1.07
	Male Offender (Δ J)	NA	1.24**	NA	NA	1.09	1.19
		Interaction ^b		Δ Judge		Interaction ^b	
		Female	Male			Female	Male
Specific Crime	Judge/Offender						
Manslaughter	Δ J female-male	0.56	0.60	1.05			
Rape	Δ J female-male	1.16	NA	0.67*			
Robbery	Δ J female-male	1.89	1.15	1.08			
Assault	Δ J female-male	1.16	1.12	1.31*			
Minor Assault	Δ J female-male	3.17	1.12	2.81**			
Burglary	Δ J female-male	0.99	1.29	1.54**			
Forgery	Δ J female-male	3.68	1.19	4.42**			
Drugs	Δ J female-male	1.08	1.23	1.38*			
White Collar	Δ J female-male						0.91
Street	Δ J female-male						1.20
							1.05
							1.26
Sentence Length (Difference)							
General	Mean (months)	36.93	31.80	17.35	2.20	47.27	NA
Judge Effect	Δ J female-male	NA	1.08**	1.50***	-1.02	-1.03	NA
Offender Effect	Δ J female-male	NA	-3.09	-10.13***	-1.45***	-27.93	NA
Interaction Effect	Female Judge (Δ O)	NA	-2.13	-9.83**	NA	NA	NA
	Male Judge (Δ O)	NA	-4.04	-9.95**	NA	NA	NA
	Female Offender (Δ J)	NA	3.00	NA	-1.02	-1.03	NA
	Male Offender (Δ J)	NA	1.09	NA	NA	1.02	NA
		Interaction ^b		Δ Judge			
		Female	Male				
Specific Crime	Judge/Offender						
Manslaughter	Δ J female-male	1.4	-4.2	-3.54*			
Rape	Δ J female-male	NA	NA	-4.22			
Robbery	Δ J female-male	6.6	3.30	2.24**			
Assault	Δ J female-male	-2.4	2.20	0.40			
Minor Assault	Δ J female-male	5.6	1.70	1.62			
Burglary	Δ J female-male	-1.4	4.50	2.24**			
Forgery	Δ J female-male	5.6	3.10	3.93**			
Drugs	Δ J female-male	0.6	3.50	-0.25			

Note: Δ J (judge) and Δ O (offender) refer to men.

^a Difference in sentence length was recalculated by months.

^b All interaction effect on judges and offenders were not significant.

^c All odds ratios indicate the differences between probation and prison.

*** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$

First, simple analytical strategies were adopted by scholars when analysing judicial disparities in sentencing, and these caused biases. Kritzer and Uhlman (1977) only used chi-square and Cramér's V tests, and Gruhl and colleagues (1981) applied regressions when controlling for crime type. Recent studies employed regressions with more controlled variables, such as prior criminal record, as important legal factors in terms of sentencing (Johnson, 2006; Van Slyke & Bales, 2013). In addition, convergence may emerge from statistical measures if grouped effects are nested in different levels. For example, by using ordinary least squares or logistic regressions, some researchers revealed that there were disparities either in the decision to incarcerate or the decision regarding sentence length (Gruhl et al., 1981; Steffensmeier & Herbert, 1999; Van Slyke & Bales, 2013). Nevertheless, research carried out by Johnson (2006), and Farrell and colleagues (2010) has demonstrated more similarities in the two stages of sentencing by adopting hierarchical linear modelling. The utility of multilevel models is their ability to 'aggregate cases by group membership and to test simultaneously for individual and group effects on the dependent variable' (Britt, 2000: 716). Hence, as indicated in Table 2.1, in the process of analysing a large sample of data, if judges, districts, and cities in the upper levels have not been properly controlled in the primary regression, this could produce relationships that do not exist among the grouped people.

Second, the existence of disparities in sentencing should be examined for specific offences, instead of mining all the data together. Kritzer and Uhlman (1977) identified a significant, though not strong, overall difference between male and female judges in terms of the percentage of convictions with a jail sentence. However, this significant gap disappeared in a model for specific crimes, with the exception of drug cases. Similarly, Gruhl and colleagues (1981) pointed out that the differences in mean sentence given by male and female judges almost disappeared (from 1.08 units to .46 units) after controlling for crime type. Accordingly, disparities found by analysing all samples together may not exist within a specific offence. Meanwhile, the interaction effect within a specific offence should also be considered. Farrell and colleagues (2010) found that the increased representation of female judges and prosecutors led to less severe prison sentences, but this leniency disappeared after an analysis of the interaction effect. As Table 2.1 indicates, only three studies considered four types of interaction (male judge-male offender, female judge-female offender, male judge-female offender, and female judge-male offender) in their analyses (Kritzer & Uhlman, 1977; Gruhl et al., 1981; Van Slyke & Bales, 2013). In this chapter, I seek to overcome the shortcomings outlined above and consider more controlled variables in the Chinese context through statistical analysis.

2.5 RESEARCH DESIGN

2.5.1 Data Source and Samples

In this study, I collected court judgments involving 11,006 offenders from the courts of three metropolitan cities: 4,171 judgments from Shanghai, 3,977 from Beijing, and 2,858 from Guangzhou. Although these are metropolitan cities, they differ in various aspects, such as residential population and leading industries. Shanghai, which sits on the coast of Eastern China, is the most populous urban area in China; it is home to 24.2 million residents. It is famous as a global financial centre and as a transport hub, with the world's busiest container port. Beijing, located in Northern China, is the capital city of China and home to 18.5 million residents. It is the second largest Chinese city by urban population after Shanghai and is the nation's political, cultural, and educational centre. Guangzhou, in Southern China, is the most populous city of Guangdong province, with a population of 14.9 million. Guangzhou is well known for its leading automobile assembly industry.

Since this study analyses decisions made by judges from three metropolitan cities, I relied on information from the courts themselves before I was fully confident about the judges' gender. Some courts post the names and photos of judges on their websites. Courts that have not done so often write the gender of the judges after their names. When looking at the photos of judges and coding their gender for the data set, none of the photos appeared androgynous. Second, I relied on information from videos uploaded to China Open Trial Network, a streaming platform operated by the SPC, to recognise the names and gender of judges. Normally, at the beginning of a trial, the presiding judge will briefly introduce himself or herself and other people on the same panel to the attendees. This information quickly helped me to ascertain the names and gender of the judges in my data set. I also made phone calls to the administrative offices of some district courts to request information regarding judges' gender. As for the application trial procedure in each case, I could identify whether a case was processed through a summary procedure or a general one, and whether the trial structure consisted of an independent judge or a collegial panel by looking at the number of judges recorded at the end of the judgments. Simple cases, such as reckless driving (Article 133b of the CLC), are normally heard by one judge in a summary procedure. If cases are complex in nature, adjudications are presided over by a panel of three judges or one judge and two lay assessors. Because the discussion of cases among collegial panels usually becomes a mere formality, I identified the presiding judge of the panel as the primary target in complicated cases (Liu, 2008; Jiang, 2014; He, 2016).

Despite the vast number of crimes specified in the CLC, I recognise that judgments collected in the three cities only reflect a limited number of these crimes, and none of the crimes in the data set is punishable either by life imprisonment or the death penalty. I therefore used the 11 most common crimes in China, and crimes involving similar convictions were excluded from my data set (see Table 2.2). For instance, the standards of conviction and sentence length in assault cases are stipulated in Article 234 of the CLC, and I only incorporated cases that fell within the scope of Article 234. Given this criterion, I excluded assault that occurred in the circumstances of buying abducted women and insulting them (Article 241) or illegally compelling another person to sell blood by violence (Article 333). Nevertheless, the smuggling, selling, transporting, and manufacturing of drugs are different offences related to drug crimes and are all stipulated in Article 347 of the CLC. Although each is a discrete crime, they have the same standard conviction and sentence length. I thus coded them into the same category as ‘Drug SSTM’. All the judgments were adjudicated from 2016 to 2018, and the criteria for decisions on incarceration and sentence length in the 11 chosen crimes remain unchanged.

In my data set, theft, reckless driving, and assault are the three most common crimes, constituting 36.6 per cent ($n = 4,026$), 14.8 per cent ($n = 1,948$), and 13.95 per cent ($n = 1,632$) of all offences, respectively. Specifically, male judges heard 2,123 theft cases, and female judges heard 1,903 theft cases, as shown in Table 2.3; among all the 4,026 offenders who were convicted of theft, there are 191 women, constituting 4.74 per cent of the total offenders. In regard to reckless driving, female judges decided more lawsuits (1,054) than male judges do (897). In regard to this crime, there are 25 female offenders and 1,923 male offenders, and women only stand for 1.28 per cent of all offenders (1,948). In regard to assault, male judges adjudicated 854 cases, and their female colleagues adjudicated 778 cases. There are 49 female offenders, representing 3.01 per cent of all offenders (1,623) convicted of assault.

Table 2.2 Descriptive Statistics by Location

	Shanghai n = 4,171		Beijing n = 3,977		Guangzhou n = 2,858		Total n = 11,006	
	n	%	n	%	n	%	n	%
Judge and Offender Sex								
Male Judge, Male Offender	2,032	48.7	2,134	53.7	1,155	40.4	5,321	48.3
Male Judge, Female Offender	51	1.2	112	2.8	79	2.8	242	2.2
Female Judge, Male Offender	2,035	48.8	1,652	41.5	1,551	54.3	5,238	47.6
Female Judge, Female Offender	53	1.3	79	2.0	73	2.6	205	1.9
Incarceration								
No	1,107	26.5	748	18.8	695	24.3	2,550	23.2
Yes	3,064	73.5	3,229	81.2	2,163	75.7	8,456	76.8
Crime Type								
Traffic Accident	178	4.3	237	6.0	91	3.2	506	4.6
Reckless Driving	622	14.9	754	19.0	572	20.0	1,948	17.7
Assault	507	12.2	869	21.9	256	9.0	1,632	14.8
Rape	44	1.1	60	1.5	3	0.1	107	1.0
Robbery	81	1.9	92	2.3	64	2.2	237	2.2
Theft	1,718	41.2	1,294	32.5	1,014	35.5	4,026	36.6
Fraud	465	11.1	369	9.3	123	4.3	957	8.7
Seizing Property	16	0.4	16	0.4	50	1.7	82	0.7
Drug SSTM	393	9.4	218	5.5	547	19.1	1,158	10.5
Drug Possession	66	1.6	41	1.0	67	2.3	174	1.6
Sheltering Addict	81	1.9	27	0.7	71	2.5	179	1.6
Offender Education Level								
Illiterate	281	6.7	120	3.0	115	4.0	516	4.7
Primary School	1,463	35.1	1,047	26.3	949	33.2	3,459	31.4
Secondary School	1,365	32.7	1,383	34.8	1,047	36.6	3,795	34.5
Upper Secondary School	862	20.7	945	23.8	597	20.9	2,404	21.8
Bachelor's or above	200	4.8	482	12.1	150	5.2	832	7.6
Offender Occupation								
Unemployed	795	19.1	714	18.0	596	20.9	2,105	19.1
Farmer	737	17.7	662	16.6	674	23.6	2,073	18.8
Businessman	2,563	61.4	2,494	62.7	1,557	54.5	6,614	60.1
White-collar	63	1.5	102	2.6	27	0.9	192	1.7
Government official	5	0.1	2	0.1	2	0.1	9	0.1
Student	8	0.2	3	0.1	2	0.1	13	0.1
Recidivists								
No	3,426	82.1	3,364	84.6	2,222	77.7	9,012	81.9
Yes	745	17.9	613	15.4	636	22.3	1,994	18.1
Mitigation								
No	332	8.0	514	12.9	272	9.5	1,118	10.2
Attempted	120	2.9	114	2.9	68	2.4	302	2.7
Compensation	124	3.0	404	10.2	179	6.3	707	6.4
Confession	2,582	61.9	1,836	46.2	1,998	69.9	6,416	58.3
Surrender	944	22.6	1,046	26.3	300	10.5	2,290	20.8
Meritorious conduct	69	1.7	63	1.6	41	1.4	173	1.6
Aggravation								
No	4,052	97.1	3,789	95.3	2,806	98.2	10,647	96.7
Serious circumstances	117	2.8	163	4.1	51	1.8	331	3.0
Multiple victims	1	0.0	18	0.5	0	0.0	19	0.2
Public	0	0.0	1	0.0	0	0.0	1	0.0
Multiple offenders	0	0.0	2	0.1	1	0.0	3	0.0
Juvenile	1	0.0	4	0.1	0	0.0	5	0.0
Year								
2016	1,168	28.0	1,398	35.2	502	17.6	3,068	27.9
2017	859	20.6	1,335	33.6	761	26.6	2,955	26.8
2018	2,144	51.4	1,244	31.3	1,595	55.8	4,983	45.3

Note: Crimes listed above in Chinese are *jiaotong zhaoshi*, *weixian jishi*, *guyi shanghai*, *qiangjian*, *qiangjie*, *daoqie*, *zhapian*, *qiangduo*, *zousi fanmai yunshu zhizao dupin*, *feitu chiyou dupin*, and *rongliu xidu*.

Table 2.3 Number of Cases by Crime Type, Judges' Gender, and Offenders' Gender

	Offender Sex		Total n
	Male n	Female n	
Traffic Accident			
Male Judge	252	4	256
Female Judge	245	5	250
Reckless Driving			
Male Judge	881	13	894
Female Judge	1,042	12	1,054
Assault			
Male Judge	825	29	854
Female Judge	758	20	778
Rape			
Male Judge	53		53
Female Judge	54		54
Robbery			
Male Judge	118	3	121
Female Judge	111	5	116
Theft			
Male Judge	2,022	101	2,123
Female Judge	1,813	90	1,903
Fraud			
Male Judge	489	43	532
Female Judge	388	37	425
Seizing Property			
Male Judge	41	2	43
Female Judge	39		39
Drug SSTM			
Male Judge	494	39	533
Female Judge	599	26	625
Drug Possession			
Male Judge	79	6	85
Female Judge	82	7	89
Sheltering Addict			
Male Judge	67	2	69
Female Judge	107	3	110

2.5.2 Dependent and Independent Variables

I found no acquittals in the data set, so I focused on incarceration and sentence length as dependent variables. As for the criteria of defining ‘in’ and ‘out’ of prison (incarceration), I followed relevant stipulations from the CLC and categorised non-incarceration (code = 1) as public surveillance, guilty but granted exemption, probation, and violations punishable by fine only. I also coded incarcerations, covering circumstances such as criminal detention and fixed imprisonment without probation, as 0. In the judgments, judges normally specify a period during which offenders are sent to prison, and I treated this time span as sentence length. The maximum length of incarceration in my data set is 240 months and the minimum sentence is one month. The independent variables are judges’ gender, offenders’ gender, and the interaction between judges’ and offenders’ gender. I coded male as 0 and female as 1. I further created a 2*2 categorical gender interaction variable, consisting of male judge-male offender, female judge-female offender, male judge-female offender, and female judge-male offender pairs, to explore the gender interaction effect between judge and offender. As shown in Table 2.2, male judges heard 5,321 cases committed by male offenders, and female judges heard 5,238 cases committed by male offenders. Only 1.9 per cent of the cases (205 out of 11,006) were committed by female offenders and decided by female judges. In the analytical process, I treated male judge-male offender as the reference group (= 0) for the other categories. Furthermore, the control variables in this study included region, circumstantial factors, and crime category. I treated the circumstantial variables including accessory, recidivism, confession, self-surrender, and compensation as dummy variables, coded 0 for ‘no’ and 1 for ‘yes’. I also controlled the categories of crimes to test disparities in decisions.

2.5.3 Analytical Strategies

Various statistical methods used for data analysis make assumptions about normality, including correlation, regression, *t*-tests, and analysis of variance. The Shapiro–Wilk test and the Kolmogorov–Smirnov test are the most widely used methods to test the normality of the data. The Shapiro–Wilk test is an appropriate method for small sample sizes (<50 samples), while Kolmogorov–Smirnov test is used for $n \geq 50$. For both of the above tests, null hypothesis states that data are taken from normal distributed population. When $p > 0.05$, null hypothesis accepted, and data are called as normally distributed. The Kolmogorov–Smirnov test for sentence length ($p = 0.000$) is statistically significant, that is, data are not normally distributed. Location ($p = 0.000$), year ($p = 0.000$), crime type ($p = 0.000$), judges’ gender ($p = 0.000$), offenders’ gender ($p = 0.000$), offenders’ education level ($p = 0.000$), offenders’

occupation ($p = 0.000$), recidivists ($p = 0.000$), mitigation ($p = 0.000$), aggravation ($p = 0.000$), and incarceration ($p = 0.000$) are also not normally distributed. However, according to the central limit theorem, the mean of a sample of data will be closer to the mean of the overall population in question, as the sample size increases, regardless of the actual distribution of the data (Ghasemi & Zahediasl, 2012). In other words, the data is accurate whether the distribution is normal or aberrant. In this chapter, the data set contains 11,006 judgments from the courts of three metropolitan cities. As a result, the data set is useful in accurately predicting the characteristics of populations.

Statistical hypothesis testing implies that no test is ever 100 per cent certain. This is because researchers rely on probabilities to experiment. A type I error is a mistake that occurs during the hypothesis testing process when a null hypothesis is rejected, even though it is accurate and should not be rejected. Type I error has a probability of alpha correlated to the level of confidence that researchers set. A test with a 95 per cent confidence level means that there is a five per cent chance of getting a type I error. To reduce the risk of committing a type I error, researchers commonly use a lower value for p . For example, a p -value of 0.01 would mean there is a one per cent chance of committing a Type I error. This is the approach adopted in the multivariate analysis of the interaction effect in tables 2.4 and 2.5, as well as the multivariate regression in table 2.6 and 2.7. In addition, Reid (1983) maintained that the multivariate analysis of variance is designed to take into account the possible correlation of the dependant variables and also to control the alpha rate. Therefore, in this situation, multivariate analysis of variance is the appropriate test to avoid type I error.

Multicollinearity is the occurrence of high intercorrelations among two or more independent variables in a multiple regression model. The degree of correlation between variables affects the interpretability of a regression model because it compromises the statistical significance of independent variables. The Variance Inflation Factor (VIF) identifies correlation between independent variables and the strength of that correlation. VIFs start at 1 and have no upper limit. A value of 1 indicates that there is no correlation between this independent variable and any others. VIFs between 1 and 5 suggest that there is a moderate correlation, but it is not severe enough to warrant corrective measures. VIFs greater than 5 represent critical levels of multicollinearity where the coefficients are poorly estimated, and the p -values are questionable. For the sentence length and incarceration, tests to see if the data set met the assumption of collinearity indicated that multicollinearity was not a concern (location, $VIF = 1.023$; year, VIF

= 1.007; crime type, $VIF = 1.276$; judges' gender, $VIF = 1.003$; offenders' gender, $VIF = 1.022$; offenders' education level, $VIF = 1.447$; offenders' occupation, $VIF = 1.457$; recidivists, $VIF = 1.171$; mitigation, $VIF = 1.078$; aggravation, $VIF = 1.034$).

In a regression model, R-squared indicates how much variation of a dependent variable can be explained by the independent variable(s). R-squared values range from 0 to 1. If the R-squared of a model is 0.5, then approximately half of the observed variation can be explained by the model's inputs. In some fields, such as social sciences, even a relatively low R-Squared such as 0.5 could be considered relatively strong. The reason behind this is that predicting people's behaviour is a more difficult task than predicting a physical process. Scholars therefore need to take context into account, in order to make a decision about a good R-squared value. For example, when there are more observations, the R-squared gets lower. In another situation, models based on aggregate data (e.g., state-level data) have much higher R-Squared statistics than those based on case-level data. For the R-Squared to have any meaning in the vast majority of applications, it is important that the model shows something useful about causality. Therefore, the causal relationship between two variables should be meaningful in the context of Chinese criminal justice system, when the R-squared of a model is taken into consideration. R-squared results have been included in the tables of this chapter.

2.6 MAJOR FINDINGS

As shown in Table 2.4, looking at all crime types, male judges are 7.24 percentage points less likely ($p < 0.01$) to incarcerate female offenders than male offenders in the full sample. There is no statistically significant difference in the likelihood of incarceration of male and female offenders by female judges. Male judges also have similar sympathetic attitudes when incarcerating female offenders who had committed assault ($-0.256, p < 0.01$) and theft ($-0.0635, p < 0.05$). Compared to female offenders whose cases are handled by male judges, female offenders are 47.5 percentage points more likely ($p < 0.05$) to be incarcerated when their traffic accident cases are handled by female judges. Both male ($-0.0488, p < 0.1$) and female ($-0.127, p < 0.1$) offenders in fraud cases receive a lower incarceration rate when their cases are heard by female judges, although this is marginally significant. After controlling for other variables, recidivists are 12.9 percentage points more likely ($p < 0.01$) to be incarcerated than non-recidivists. This is especially true in assault ($p < 0.01$), theft ($p < 0.01$), fraud ($p < 0.01$), and drug SSTM ($p < 0.01$) cases, where recidivists are respectively 39.7, 13.5, 14.6, and 3.17 percentage points more likely to be incarcerated. Across most crime types, offenders' education

background, as an extra-legal factor, does not have an impact on judges' decision to incarcerate, except for the crime of theft, where offenders who possess upper secondary school diplomas are 5.13 percentage points less likely to be incarcerated ($p < 0.05$). It seems offenders' occupation, as another extra-legal factor, has an impact on judges' decision-making processes in some offences. When examining the full set of crimes, farmers are 2.75 percentage points less likely to be incarcerated by judges ($p < 0.05$). This has manifested in a lower likelihood of farmers being incarcerated for reckless driving (-0.226, $p < 0.05$) and theft (-0.0242, $p < 0.05$). Businessmen also receive lenient treatment (-0.0355, $p < 0.01$) in terms of incarceration for the full set of crimes. This effect is seen in more specific offences than for farmers, with significant coefficients observed for reckless driving (-0.236, $p < 0.05$), theft (-0.0490, $p < 0.01$), and robbery (-0.0792, $p < 0.05$). White-collar workers have a lower incarceration rate (-0.258, $p < 0.05$) in terms of reckless driving, and students also have a lower incarceration rate for theft (-0.501, $p < 0.01$). Mitigating factors, as the legal factors stipulated in the CLC, all brought about lower incarceration rates for offenders, with compensating victims as the factor leading to the lowest possibility of being incarcerated. For traffic accidents, compensating victims corresponded with a 54.2 percentage points decrease in incarceration ($p < 0.01$); this is much larger than the effect that compensation had on the incarceration rate for other offences. Attempted action (-0.291, $p < 0.05$) only corresponds to a lower incarceration rate in seizing property. For aggravating factors, a serious circumstance is the only factor that corresponds to a higher rate of incarceration (0.0901, $p < 0.01$). When examining the data set by crime type, assault and fraud cases with serious circumstances are respectively 42.3 and 19.5 percentage points more likely ($p < 0.01$) to result in incarceration. When multiple victims are involved in fraud, offenders are 23.9 percentage points more likely ($p < 0.05$) to be incarcerated.

Table 2.4 Multivariate Analysis of the Interaction Effect between Judges' and Offenders' Gender on Incarceration across Different Crimes

VARIABLES	(1) Total	(2) Traffic Accident	(3) Reckless Driving	(4) Assault	(5) Rape	(6) Robbery	(7) Theft	(8) Fraud	(9) Seizing Property	(10) Drug SSTM	(11) Drug Possession	(12) Sheltering Addict
Judge and Offender Sex (base=male judge, male offender)												
Male Judge, Female Offender	-0.0724*** (0.0247)	-0.0464 (0.260)	-0.0778 (0.104)	-0.256*** (0.0919)		0.0698 (0.104)	-0.0635** (0.0314)	-0.0215 (0.0600)	0.0671 (0.175)	0.0222 (0.0277)	0.0281 (0.0605)	0.145 (0.203)
Female Judge, Male Offender	-0.0114 (0.00730)	-0.00495 (0.0433)	-0.000389 (0.0172)	-0.0364 (0.0238)	-0.0487 (0.0508)	-0.0102 (0.0239)	-0.00356 (0.00995)	-0.0488* (0.0259)	0.0938 (0.0596)	0.0123 (0.00997)	0.0230 (0.0216)	0.0465 (0.0453)
Female Judge, Female Offender	-0.0206 (0.0267)	0.475** (0.220)	0.138 (0.108)	-0.0136 (0.108)		0.0152 (0.0797)	-0.0447 (0.0331)	-0.127* (0.0648)		0.0333 (0.0333)	0.0287 (0.0541)	0.165 (0.170)
Crime Type (base=Traffic Accident)												
Reckless Driving	0.0900*** (0.0199)											
Assault	0.0610*** (0.0194)											
Rape	0.373*** (0.0421)											
Robbery	0.363*** (0.0316)											
Theft	0.288*** (0.0204)											
Fraud	0.251*** (0.0224)											
Seizing Property	0.351*** (0.0458)											
Drug SSTM	0.393*** (0.0225)											
Drug Possession	0.379*** (0.0344)											
Sheltering Addict	0.397*** (0.0334)											
Recidivists	0.129*** (0.0101)			0.397*** (0.0563)	0.108 (0.0854)	0.0384 (0.0304)	0.135*** (0.0108)	0.146*** (0.0429)	0.0607 (0.0613)	0.0317*** (0.0105)	0.0150 (0.0212)	0.0962* (0.0553)
Location (base=Shanghai)												
Beijing	0.128*** (0.00869)	0.235*** (0.0497)	0.530*** (0.0214)	0.0695** (0.0272)	0.0492 (0.0505)	0.0413 (0.0276)	-0.000365 (0.0117)	0.0612** (0.0285)	0.164 (0.101)	0.0389*** (0.0147)	0.0450 (0.0285)	-0.0702 (0.0692)
Guangzhou	-0.00302 (0.00942)	0.0869 (0.0637)	-0.215*** (0.0229)	0.00199 (0.0369)	0.0572 (0.148)	0.0114 (0.0298)	0.0697*** (0.0123)	0.145*** (0.0404)	0.192** (0.0727)	0.0582*** (0.0116)	0.0404 (0.0260)	0.0857* (0.0511)
Offender Education Level (base = illiterate)												
Primary School	-0.00359 (0.0180)	0.448 (0.319)	-0.0685 (0.188)	-0.0278 (0.183)	-0.00280 (0.252)	0.0432 (0.0499)	0.0157 (0.0165)	-0.0954 (0.223)	0.0592 (0.123)	-0.0390 (0.0278)	-0.101 (0.0801)	0.0417 (0.221)
Secondary School	-0.0313* (0.0186)	0.396 (0.319)	-0.121 (0.187)	-0.0655 (0.182)	-0.0174 (0.255)	0.0155 (0.0509)	-0.0161 (0.0177)	-0.0758 (0.221)	0.00205 (0.121)	-0.0386 (0.0283)	-0.0808 (0.0806)	-0.00177 (0.224)
Upper Secondary School	-0.0526** (0.0204)	0.306 (0.322)	-0.100 (0.187)	-0.128 (0.183)	0.0795 (0.258)	0.0259 (0.0723)	-0.0513** (0.0258)	-0.128 (0.222)	0.164 (0.192)	-0.0355 (0.0325)	-0.0692 (0.0834)	0.0936 (0.225)

Bachelor's or above	0.00320 (0.0248)	0.191 (0.330)	-0.136 (0.188)	-0.0791 (0.189)	0.0353 (0.267)		0.0667 (0.0656)	-0.111 (0.225)		0.0388 (0.165)	-0.0810 (0.106)	0.0450 (0.239)
Offender Occupation (base = unemployed)												
Farmer	-0.0275** (0.0116)	-0.363 (0.406)	-0.226** (0.107)	-0.0545 (0.0893)	0.0487 (0.153)	-0.0116 (0.0265)	-0.0242** (0.0118)	-0.0250 (0.0463)	-0.0603 (0.0644)	0.0129 (0.0145)	-0.0825** (0.0358)	0.0424 (0.150)
Businessman	-0.0355*** (0.0113)	-0.103 (0.406)	-0.236** (0.0963)	-0.0114 (0.0823)	-0.0831 (0.139)	0.0363 (0.0316)	-0.0490*** (0.0131)	-0.0792** (0.0361)	-0.0833 (0.0823)	0.0174 (0.0124)	-0.000653 (0.0283)	-0.0694 (0.119)
White-collar	-0.0447 (0.0330)	-0.0797 (0.427)	-0.258** (0.104)	-0.144 (0.176)	-0.0134 (0.284)		0.105 (0.226)	-0.0350 (0.107)				0.0112 (0.218)
Government official	0.178 (0.125)		-0.458 (0.280)	0.533 (0.342)			0.0849 (0.312)	0.162 (0.194)				
Student	-0.105 (0.105)			0.258 (0.229)			-0.501*** (0.136)	0.281 (0.270)				
Mitigation (base = no mitigation)												
Attempted	-0.0497** (0.0247)			-0.0794 (0.341)	-0.0225 (0.0650)	0.0139 (0.0377)	-0.0294 (0.0273)	-0.0770 (0.0851)	-0.291** (0.139)	0.0267 (0.0390)		-0.163 (0.303)
Compensation	-0.247*** (0.0186)	-0.542** (0.268)	0.141** (0.0582)	-0.467*** (0.0547)	-0.0421 (0.0950)	-0.247*** (0.0484)	-0.249*** (0.0283)	-0.279*** (0.0464)	0.00477 (0.166)			
Confession	-0.0698*** (0.0125)	-0.276 (0.258)	0.0369 (0.0463)	-0.162*** (0.0523)	-0.232*** (0.0661)	0.0207 (0.0324)	-0.0560*** (0.0154)	-0.115*** (0.0345)	-0.101 (0.0870)	-0.0168 (0.0150)	-0.0176 (0.0291)	-0.115 (0.0744)
Surrender	-0.168*** (0.0151)	-0.495** (0.249)	0.0150 (0.0482)	-0.359*** (0.0494)	-0.0458 (0.0828)	0.0165 (0.0552)	-0.173*** (0.0229)	-0.245*** (0.0435)	0.117 (0.163)	-0.185*** (0.0378)	-0.000115 (0.0679)	-0.0894 (0.0879)
Meritorious Conduct	-0.0823*** (0.0309)			-0.355 (0.216)	-0.0551 (0.237)	0.0380 (0.0763)	-0.0794 (0.0511)	-0.0880 (0.112)	-0.0598 (0.154)	-0.0257 (0.0224)	0.0263 (0.0615)	-0.0168 (0.0974)
Aggravation (base = none)												
Serious Circumstances	0.0901*** (0.0221)	0.480 (0.337)	-0.347 (0.373)	0.423*** (0.133)	0.114 (0.168)	0.00749 (0.0370)	0.105 (0.0657)	0.195*** (0.0342)		0.0232 (0.0205)	0.0110 (0.0340)	
Multiple Victims	0.0624 (0.0862)				0.159 (0.291)	-0.0429 (0.0899)	0.126 (0.217)	0.239** (0.111)				
Public	-0.147 (0.374)				0.175 (0.246)							
Multiple Offenders	0.0345 (0.218)				-0.0470 (0.149)							
Juvenile	-0.182 (0.169)				-0.125 (0.122)				0.0170 (0.163)			
Year												
2017	0.0250*** (0.00970)	0.212*** (0.0544)	-0.0483* (0.0252)	0.0925*** (0.0298)	-0.139 (0.107)	-0.0204 (0.0270)	0.0227* (0.0131)	0.0291 (0.0338)	0.0282 (0.0689)	-0.0219 (0.0147)	-0.00813 (0.0254)	0.0414 (0.0580)
2018	-0.0146* (0.00880)	0.103* (0.0533)	-0.0692*** (0.0211)	0.0463 (0.0282)	-0.0805 (0.100)	-0.0352 (0.0295)	-0.00451 (0.0117)	0.0384 (0.0315)	0.0794 (0.0802)	-0.0300** (0.0131)	0.0351 (0.0269)	-0.0274 (0.0526)
Constant	0.629*** (0.0302)	0.462 (0.467)	0.811*** (0.215)	0.870*** (0.203)	1.139*** (0.301)	0.932*** (0.0611)	0.909*** (0.0239)	0.995*** (0.227)	0.787*** (0.154)	0.983*** (0.0322)	1.035*** (0.0864)	0.949*** (0.266)
Observations	11,006	506	1,948	1,632	107	237	4,026	957	82	1,158	174	179
R-squared	0.225	0.138	0.441	0.134	0.248	0.183	0.121	0.165	0.255	0.067	0.110	0.124

Standard errors in parentheses. *** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$

As shown in Table 2.5, female judges give male offenders sentences that are 0.598 months shorter on average than those given by male judges ($p < 0.05$), but give female offenders sentences that are 2.761 months longer on average ($p < 0.05$) in the full sample. When looking at specific crimes, female judges' lenient treatment to male offenders is only marginally significant (-6.619, $p < 0.1$) for the crime of drug possession, with no significant effects observed for other crimes. However, female judges' harsh treatment to female offenders in drug possession cases is large and highly significant (27.38, $p < 0.01$). Such harsh attitudes can also be found in drug SSTM, where female offenders received sentences that are 11.08 months longer on average ($p < 0.05$) than those of their male counterparts. Female judges are observed as giving more lenient sentences to female offenders who committed the crime of assault (-5.068, $p < 0.1$), although the effect is marginal. In the same offence, male judges give shorter sentence lengths (-6.482, $p < 0.05$) to female offenders. Recidivists are given sentences that are 4.524 months longer on average ($p < 0.01$). This is especially true in terms of assault (10.02, $p < 0.01$), robbery (12.00, $p < 0.01$), theft (4.378, $p < 0.01$), and seizing property (13.49, $p < 0.01$). Offenders' education level is largely an insignificant factor, except for when offenders hold bachelor's degree or above (2.242, $p < 0.05$) in the full sample. For those offenders, the impact of education on sentence length is particularly large for the crimes of theft (29.50, $p < 0.01$) and drug SSTM (160.9, $p < 0.01$). Farmers are likely to receive sentences that are 0.902 months shorter on average ($p < 0.1$) across all crime types. Nevertheless, this effect is not only marginal in the full sample, but also in traffic accident (-20.61, $p < 0.1$) and reckless driving (-0.707, $p < 0.1$) cases. Both farmers (-4.199, $p < 0.05$) and businessmen (-4.431, $p < 0.05$) received shorter sentences on average for drug SSTM. Businessmen were given sentences that were 0.595 months shorter for the crime of reckless driving, although the effect is marginal ($p < 0.1$). White-collar workers received shorter sentence lengths (-3.157, $p < 0.05$), both in the full sample and in terms reckless driving (-0.741, $p < 0.05$). Students received sentences for theft that are 31.28 months shorter on average (-31.28, $p < 0.01$). Compensating victims is the mitigating factor leading to a significant sentence reduction (-13.75, $p < 0.01$), and a serious circumstance is the aggravating factor leading to a significant sentence increase (103.9, $p < 0.01$).

Table 2.5 Multivariate Analysis of the Interaction Effect between Judges' and Offenders' Gender on Sentence Length across Crime Types

VARIABLES	(1) Total	(2) Traffic Accident	(3) Reckless Driving	(4) Assault	(5) Rape	(6) Robbery	(7) Theft	(8) Fraud	(9) Seizing Property	(10) Drug SSTM	(11) Drug Possession	(12) Sheltering Addict
Judge and Offender Sex (base=male judge, male offender)												
Male Judge, Female Offender	0.599 (1.030)	-2.279 (6.928)	-0.202 (0.356)	-6.482** (2.561)		17.16 (12.06)	-0.267 (1.143)	7.799* (4.252)	7.374 (7.655)	0.742 (3.960)	-4.468 (11.05)	0.0769 (5.611)
Female Judge, Male Offender	-0.598** (0.305)	-0.0355 (1.153)	-0.0526 (0.0590)	-1.009 (0.663)	-6.050 (4.554)	-0.483 (2.768)	0.389 (0.362)	-2.825 (1.837)	3.640 (2.608)	-1.873 (1.427)	-6.619* (3.947)	-0.781 (1.253)
Female Judge, Female Offender	2.761** (1.112)	2.121 (5.868)	0.388 (0.371)	-5.068* (3.014)		-2.024 (9.228)	1.480 (1.204)	2.799 (4.592)		11.08** (4.770)	27.38*** (9.880)	-0.131 (4.705)
Crime Type (base=Traffic Accident)												
Reckless Driving	-8.782*** (0.830)											
Assault	-1.113 (0.807)											
Rape	20.51*** (1.757)											
Robbery	29.23*** (1.318)											
Theft	-2.839*** (0.851)											
Fraud	13.07*** (0.934)											
Seizing Property	1.533 (1.909)											
Drug SSTM	4.769*** (0.939)											
Drug Possession	7.513*** (1.434)											
Sheltering Addict	-4.578*** (1.393)											
Recidivists	4.524*** (0.422)			10.02*** (1.570)	11.92 (7.646)	12.00*** (3.517)	4.378*** (0.391)	6.777** (3.042)	13.49*** (2.681)	3.422** (1.508)	6.403* (3.869)	3.090** (1.528)
Location (base=Shanghai)												
Beijing	-0.694* (0.363)	3.850*** (1.325)	1.300*** (0.0736)	0.857 (0.757)	-2.854 (4.522)	-7.547** (3.189)	-0.796* (0.424)	0.0453 (2.023)	9.120** (4.432)	-3.811* (2.101)	-7.589 (5.199)	-2.947 (1.912)
Guangzhou	-3.102*** (0.393)	1.160 (1.696)	-0.544*** (0.0789)	0.694 (1.028)	9.374 (13.26)	-15.12*** (3.449)	-1.129** (0.448)	-9.399*** (2.863)	-2.789 (3.180)	-7.779*** (1.660)	-17.16*** (4.746)	-0.989 (1.412)
Offender Education Level (base = illiterate)												
Primary School	0.120 (0.751)	17.36** (8.505)	-0.0432 (0.645)	4.340 (5.104)	14.34 (22.53)	0.592 (5.771)	-0.462 (0.601)	-9.834 (15.80)	-0.507 (5.369)	3.008 (3.982)	-5.283 (14.62)	0.0772 (6.098)
Secondary School	0.336 (0.775)	15.74* (8.497)	-0.205 (0.643)	3.398 (5.077)	7.780 (22.87)	-3.766 (5.885)	-0.402 (0.645)	0.00301 (15.68)	-1.613 (5.276)	2.368 (4.047)	-2.519 (14.70)	0.267 (6.197)
Upper Secondary School	0.308 (0.852)	16.01* (8.580)	-0.231 (0.644)	1.924 (5.113)	15.74 (23.10)	-9.988 (8.370)	1.161 (0.938)	-1.033 (15.72)	3.481 (8.418)	4.375 (4.649)	-7.977 (15.23)	2.122 (6.219)
Bachelor's or above	2.242**	12.18	-0.315	3.207	21.85		29.50***	0.0742		160.9***	-11.22	1.346

	(1.033)	(8.781)	(0.647)	(5.267)	(23.90)		(2.386)	(15.96)		(23.61)	(19.33)	(6.602)
Offender Occupation (base = unemployed)												
Farmer	-0.902*	-20.61*	-0.707*	-0.220	17.06	-2.760	-0.269	2.117	0.264	-4.199**	-6.376	1.669
	(0.485)	(10.83)	(0.369)	(2.489)	(13.70)	(3.072)	(0.429)	(3.285)	(2.820)	(2.073)	(6.531)	(4.154)
Businessman	-0.669	-16.48	-0.595*	0.275	4.834	2.926	-0.450	-0.277	5.528	-4.431**	5.393	-1.355
	(0.472)	(10.82)	(0.331)	(2.296)	(12.42)	(3.655)	(0.475)	(2.562)	(3.600)	(1.778)	(5.159)	(3.295)
White-collar	-3.157**	-12.31	-0.741**	-5.110	-17.43		3.037	7.085				-2.246
	(1.375)	(11.38)	(0.356)	(4.911)	(25.44)		(8.206)	(7.613)				(6.020)
Government official	-2.521		-0.964	-0.843			-19.30*	5.329				
	(5.227)		(0.963)	(9.544)			(11.36)	(13.77)				
Student	2.803			9.299			-31.28***	22.40				
	(4.370)			(6.376)			(4.956)	(19.16)				
Mitigation (base = no mitigation)												
Attempted	-13.17***			-8.189	-26.50***	-25.18***	-6.115***	-18.16***	-12.93**	-17.26***		1.510
	(1.030)			(9.504)	(5.820)	(4.363)	(0.992)	(6.035)	(6.068)	(5.575)		(8.383)
Compensation	-13.75***	-26.71***	0.447**	-13.33***	-18.31**	-24.60***	-7.690***	-25.48***	0.436			
	(0.777)	(7.136)	(0.200)	(1.526)	(8.508)	(5.602)	(1.027)	(3.293)	(7.259)			
Confession	-9.763***	-11.08	0.113	-8.088***	-14.62**	0.206	-5.856***	-17.19***	-2.428	-19.71***	-16.86***	0.701
	(0.521)	(6.866)	(0.159)	(1.459)	(5.919)	(3.744)	(0.561)	(2.449)	(3.805)	(2.142)	(5.312)	(2.058)
Surrender	-12.28***	-26.80***	0.300*	-11.45***	-14.83**	-14.82**	-6.742***	-23.11***	-0.379	-26.19***	-39.20***	-3.154
	(0.632)	(6.629)	(0.166)	(1.377)	(7.416)	(6.389)	(0.833)	(3.083)	(7.138)	(5.412)	(12.39)	(2.431)
Meritorious Conduct	-6.718***			4.161	-18.71	-6.617	-1.578	-15.99**	-2.688	-15.71***	-22.76**	-0.178
	(1.289)			(6.036)	(21.26)	(8.834)	(1.858)	(7.940)	(6.757)	(3.212)	(11.22)	(2.693)
Aggravation (base = none)												
Serious Circumstances	103.9***	47.75***	-0.534	121.3***	17.08	79.33***	107.2***	99.38***		115.6***	89.58***	
	(0.924)	(8.986)	(1.283)	(3.716)	(15.01)	(4.284)	(2.387)	(2.428)		(2.931)	(6.209)	
Multiple Victims	95.34***				126.4***	69.85***	78.79***	101.2***				
	(3.597)				(26.08)	(10.40)	(7.876)	(7.890)				
Public	87.86***				81.95***							
	(15.61)				(22.08)							
Multiple Offenders	78.46***				67.00***							
	(9.104)				(13.36)							
Juvenile	31.79***				35.80***					23.70		
	(7.058)				(10.94)					(23.36)		
Year												
2017	2.763***	5.644***	-0.0851	1.686**	6.552	2.670	2.188***	6.062**	1.182	5.965***	6.572	-1.781
	(0.405)	(1.449)	(0.0868)	(0.830)	(9.622)	(3.127)	(0.478)	(2.395)	(3.015)	(2.100)	(4.635)	(1.604)
2018	0.0751	2.403*	-0.00856	-0.225	0.601	-1.619	-0.393	2.633	3.143	-1.381	16.56***	-2.833*
	(0.367)	(1.420)	(0.0725)	(0.787)	(8.977)	(3.413)	(0.425)	(2.233)	(3.508)	(1.874)	(4.916)	(1.454)
Constant												
	21.14***	30.23**	1.599**	14.72***	30.44	59.15***	14.05***	41.65***	8.108	37.25***	40.59**	10.11
	(1.262)	(12.45)	(0.741)	(5.650)	(26.98)	(7.075)	(0.870)	(16.07)	(6.754)	(4.608)	(15.76)	(7.352)
Observations	11,006	506	1,948	1,632	107	237	4,026	957	82	1,158	174	179
R-squared	0.685	0.235	0.285	0.451	0.634	0.741	0.406	0.722	0.452	0.670	0.714	0.084

Standard errors in parentheses. *** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$

Broken down by location in Table 2.6. Judges' gender only has an effect on incarceration in Beijing, in terms of male judges' leniency ($-0.107, p < 0.01$) in regard to female offenders and female judges' leniency ($-0.0817, p < 0.05$) in regard to female offenders. In Guangzhou, female offenders are 6.662 percentage points more likely ($p < 0.1$) to be incarcerated by female judges, although this effect is marginal. Recidivists received a higher possibility of being incarcerated in all three metropolitan cities. Possessing an upper secondary school diploma can bring about lower chances of being incarcerated; this is especially the case in Shanghai ($-0.0762, p < 0.05$) and Guangzhou ($-0.0599, p < 0.1$). Farmers ($-0.0603, p < 0.01$), businessmen ($-0.0686, p < 0.01$), and white-collar workers ($-0.129, p < 0.05$) can expect to be incarcerated less in Guangzhou. Serious circumstances are the aggravating factor for a higher incarceration rate in Shanghai ($0.185, p < 0.01$) and Beijing ($0.0922, p < 0.01$). Compensating victims and surrender, both as mitigating factors, brought about lower incarceration rates for offenders in all three cities.

Table 2.6 Multivariate Regression of Judges' and Offenders' Gender on Incarceration by Location

VARIABLES	(1) Shanghai	(2) Beijing	(3) Guangzhou	(4) Full Sample
Gender Interaction Judges and Offenders <i>(base case: male judge and male offender)</i>				
Male Judge – Female Offender	-0.0788 (0.0555)	-0.107*** (0.0333)	-0.000932 (0.0353)	-0.0724*** (0.0247)
Female Judge – Male Offender	-0.00601 (0.0122)	-0.0205* (0.0112)	0.00559 (0.0117)	-0.0114 (0.00730)
Female Judge – Female Offender	-0.0488 (0.0543)	-0.0817** (0.0393)	0.0662* (0.0364)	-0.0206 (0.0267)
Crime Type <i>(base case: traffic accident)</i>				
Reckless Driving	0.0619* (0.0347)	0.360*** (0.0273)	-0.271*** (0.0374)	0.0900*** (0.0199)
Assault	0.145*** (0.0345)	-0.0167 (0.0255)	0.0760** (0.0375)	0.0610*** (0.0194)
Rape	0.448*** (0.0686)	0.273*** (0.0534)	0.440** (0.215)	0.373*** (0.0421)
Robbery	0.395*** (0.0558)	0.265*** (0.0455)	0.373*** (0.0529)	0.363*** (0.0316)
Theft	0.327*** (0.0346)	0.133*** (0.0289)	0.362*** (0.0381)	0.288*** (0.0204)
Fraud	0.281*** (0.0370)	0.155*** (0.0317)	0.366*** (0.0446)	0.251*** (0.0224)
Seizing Property	0.297*** (0.103)	0.120 (0.0907)	0.416*** (0.0563)	0.351*** (0.0458)
Drug SSTM	0.391*** (0.0388)	0.210*** (0.0361)	0.411*** (0.0391)	0.393*** (0.0225)
Drug Possession	0.423*** (0.0581)	0.226*** (0.0599)	0.410*** (0.0529)	0.379*** (0.0344)
Sheltering Addict	0.432*** (0.0529)	0.146** (0.0708)	0.442*** (0.0507)	0.397*** (0.0334)
Recidivists	0.149*** (0.0171)	0.163*** (0.0166)	0.0484*** (0.0148)	0.129*** (0.0101)
Offender Education Level <i>(base case: illiterate)</i>				
Primary School	-0.00899 (0.0264)	0.0234 (0.0333)	0.0148 (0.0300)	-0.00359 (0.0180)
Secondary School	-0.0309 (0.0277)	-0.0110 (0.0339)	-0.0173 (0.0307)	-0.0313* (0.0186)
Upper Secondary School	-0.0762** (0.0313)	-0.0266 (0.0363)	-0.0599* (0.0337)	-0.0526** (0.0204)
Bachelor's or above	-0.101** (0.0452)	-0.0243 (0.0395)	-0.0498 (0.0425)	0.00320 (0.0248)
Offender Occupation <i>(base case: unemployed)</i>				
Farmer	-0.0603*** (0.0202)	-0.0233 (0.0186)	-0.00414 (0.0169)	-0.0275** (0.0116)
Businessman	-0.0686*** (0.0192)	-0.00612 (0.0181)	-0.0209 (0.0171)	-0.0355*** (0.0113)
White-collar	-0.129** (0.0633)	-0.0191 (0.0425)	0.00481 (0.0662)	-0.0447 (0.0330)
Government official	0.165 (0.177)	0.119 (0.242)	0.203 (0.215)	0.178 (0.125)
Student (=1)	0.0856 (0.142)	-0.342* (0.198)	-0.177 (0.212)	-0.105 (0.105)
Mitigation <i>(base case: no mitigation)</i>				
Attempted	-0.0226 (0.0422)	-0.0872** (0.0369)	-0.0160 (0.0411)	-0.0497** (0.0247)
Compensation	-0.242*** (0.0418)	-0.247*** (0.0239)	-0.233*** (0.0305)	-0.247*** (0.0186)
Confession	-0.0922*** (0.0233)	-0.0628*** (0.0177)	-0.0407** (0.0199)	-0.0698*** (0.0125)
Surrender	-0.190*** (0.0269)	-0.193*** (0.0209)	-0.157*** (0.0286)	-0.168*** (0.0151)
Meritorious Conduct	-0.0979* (0.0523)	-0.0234 (0.0465)	-0.0417 (0.0509)	-0.0823*** (0.0309)
Aggravation <i>(base case: no aggravating circumstances)</i>				
Serious Circumstances	0.185*** (0.0382)	0.0922*** (0.0303)	0.0637 (0.0450)	0.0901*** (0.0221)
Multiple Victims	0.00500 (0.394)	0.152* (0.0819)		0.0624 (0.0862)
Public		-0.152		-0.147

Multiple Offenders		(0.343)		(0.374)
		-0.0365	0.160	0.0345
		(0.245)	(0.366)	(0.218)
Juvenile Victims	0.188	-0.231		-0.182
	(0.394)	(0.174)		(0.169)
Year				
(Base case: 2016)				
2017	-0.0169	0.0601***	0.0363**	0.0250***
	(0.0179)	(0.0132)	(0.0175)	(0.00970)
2018	-0.0499***	0.0471***	0.0223	-0.0146*
	(0.0144)	(0.0135)	(0.0158)	(0.00880)
Location				
(Base case: Shanghai)				
Beijing				0.128***
				(0.00869)
Guangzhou				-0.00302
				(0.00942)
Constant	0.676***	0.736***	0.595***	0.629***
	(0.0501)	(0.0463)	(0.0525)	(0.0302)
Observations	4,171	3,977	2,858	11,006
R-squared	0.233	0.252	0.524	0.225

Standard errors in parentheses. *** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$

As for the effects of judges' and offenders' gender on sentence length in three cities, male judges give sentences that are 3.575 months longer ($p < 0.01$) to female offenders in Guangzhou (see Table 2.7). In Beijing, female judges give sentences that are 1.454 months shorter ($p < 0.01$) to male offenders. In Shanghai, female offenders received sentences that are 5.471 longer ($p < 0.05$) from female judges. Compared with those without prior records, recidivists received a longer sentence length in all three cities; the longest is in Shanghai (5.026, $p < 0.01$) and the shortest is in Guangzhou (3.261, $p < 0.01$). Offenders with a bachelor's degree or above are more likely to be given a longer sentence length (4.828, $p < 0.05$). In Guangzhou, farmers (-2.180, $p < 0.05$), businessmen (-1.940, $p < 0.05$), and white-collar workers (-5.872, $p < 0.05$) can expect to receive a shorter sentence length. Almost all aggravating and mitigating factors have effects on sentence length in all three cities.

Table 2.7 Multivariate Regression of Judges' and Offenders' Gender on Sentence Length by Location

VARIABLES	(1) Shanghai	(2) Beijing	(3) Guangzhou	(4) Full Sample
Gender Interaction Judges and Offenders <i>(base case: male judge and male offender)</i>				
Male Judge – Female Offender	3.437 (2.597)	-1.862 (1.462)	3.575*** (1.251)	0.599 (1.030)
Female Judge – Male Offender	-0.848 (0.573)	-1.454*** (0.492)	0.305 (0.415)	-0.598** (0.305)
Female Judge – Female Offender	5.471** (2.541)	1.506 (1.727)	3.150** (1.292)	2.761** (1.112)
Crime Type <i>(base case: traffic accident)</i>				
Reckless Driving	-6.676*** (1.622)	-10.36*** (1.201)	-9.221*** (1.325)	-8.782*** (0.830)
Assault	0.169 (1.612)	-2.398** (1.122)	0.122 (1.330)	-1.113 (0.807)
Rape	23.27*** (3.211)	17.74*** (2.347)	36.13*** (7.615)	20.51*** (1.757)
Robbery	37.86*** (2.608)	26.00*** (1.999)	23.75*** (1.876)	29.23*** (1.318)
Theft	-1.416 (1.620)	-3.730*** (1.272)	-2.993** (1.351)	-2.839*** (0.851)
Fraud	14.39*** (1.730)	14.43*** (1.392)	6.842*** (1.582)	13.07*** (0.934)
Seizing Property	0.495 (4.804)	5.632 (3.988)	-0.0540 (1.995)	1.533 (1.909)
Drug SSTM	8.574*** (1.816)	7.855*** (1.587)	0.984 (1.386)	4.769*** (0.939)
Drug Possession	18.80*** (2.716)	4.710* (2.632)	-0.727 (1.877)	7.513*** (1.434)
Sheltering Addict	-2.296 (2.476)	-9.590*** (3.111)	-3.712** (1.797)	-4.578*** (1.393)
Recidivists	a (0.799)	4.461*** (0.731)	3.261*** (0.524)	4.524*** (0.422)
Offender Education Level <i>(base case: illiterate)</i>				
Primary School	0.801 (1.233)	-1.376 (1.463)	-0.708 (1.065)	0.120 (0.751)
Secondary School	1.238 (1.295)	-0.699 (1.489)	-0.768 (1.090)	0.336 (0.775)
Upper Secondary School	0.448 (1.463)	-0.373 (1.597)	0.127 (1.193)	0.308 (0.852)
Bachelor's or above	4.828** (2.116)	1.157 (1.738)	-0.622 (1.506)	2.242** (1.033)
Offender Occupation <i>(base case: unemployed)</i>				
Peasant	-2.180** (0.946)	0.159 (0.817)	-0.216 (0.601)	-0.902* (0.485)
Businessman	-1.940** (0.896)	0.889 (0.797)	-1.132* (0.605)	-0.669 (0.472)
White-collar	-5.872** (2.962)	-0.464 (1.869)	-2.175 (2.349)	-3.157** (1.375)
Government official	1.706 (8.275)	-3.644 (10.63)	-8.634 (7.619)	-2.521 (5.227)
Student (=1)	4.441 (6.646)	-5.324 (8.697)	-1.472 (7.522)	2.803 (4.370)
Mitigation <i>(base case: no mitigation)</i>				
Attempted	-19.28*** (1.973)	-10.98*** (1.620)	-8.838*** (1.459)	-13.17*** (1.030)
Compensation	-20.30*** (1.954)	-11.21*** (1.049)	-11.72*** (1.084)	-13.75*** (0.777)
Confession	-14.65*** (1.088)	-7.938*** (0.779)	-6.068*** (0.706)	-9.763*** (0.521)
Surrender	-16.74*** (1.256)	-10.67*** (0.921)	-8.834*** (1.016)	-12.28*** (0.632)
Meritorious Conduct	-11.99*** (2.445)	-2.998 (2.046)	-7.895*** (1.805)	-6.718*** (1.289)
Aggravation <i>(base case: no aggravating circumstances)</i>				
Serious Circumstances	105.1*** (1.787)	102.1*** (1.330)	104.9*** (1.595)	103.9*** (0.924)
Multiple Victims	111.0*** (18.42)	94.87*** (3.599)		95.34*** (3.597)

Public		89.77*** (15.09)		87.86*** (15.61)
Multiple Offenders		85.96*** (10.77)	52.31*** (13.00)	78.46*** (9.104)
Juvenile Victims	97.81*** (18.41)	15.36** (7.634)		31.79*** (7.058)
Year (Base case: 2016)				
2017	5.239*** (0.838)	2.174*** (0.580)	-0.431 (0.621)	2.763*** (0.405)
2018	-1.030 (0.673)	1.686*** (0.593)	-0.983* (0.562)	0.0751 (0.367)
Location (Base case: Shanghai)				
Beijing				-0.694* (0.363)
Guangzhou				-3.102*** (0.393)
Constant	23.97*** (2.341)	19.61*** (2.037)	18.29*** (1.863)	21.14*** (1.262)
Observations	4,171	3,977	2,858	11,006
R-squared	0.613	0.764	0.711	0.685

Standard errors in parentheses. *** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$

2.7 DISCUSSION

Overall speaking, female Chinese judges behave similarly to their male colleagues in sentencing, especially when the location of courts is taken into consideration. The most frequent explanation for this similarity is the mechanisms that constrain judicial discretion in sentencing (Steffensmeier & Herbert, 1999; Farrel et al., 2010). It is commonly understood that judges are vested with an enormous amount of power in directing courtroom activities and delivering final judgments. However, their day-to-day decision-making is not only affected by the law and precedents, but also by other institutional factors (Wahlbeck, 1998). For instance, as previously indicated, the courtroom workgroup, consisting of judges, prosecutors, and defence attorneys, circumscribes the power of judges in sentencing as a constraint norm and reduces the uncertainty of sentencing outcomes (Eisenstein & Jacob, 1977; Gebo et al., 2006; Kim et al., 2015). Although the Western literature indicates that sentencing decisions are shaped by group dynamics, this observation has yet to be fully examined in the Chinese context. In this section, I mainly focus on the mechanisms that limit Chinese judges' discretionary power in sentencing, although there may be many other explanations for judicial decisions, such as the influence of workgroups (Haynes et al., 2010; Johnson, 2014).

2.7.1 The 'Iron Triangle' Relationship

In theory, the CLC guarantees judges the authority to rule on whether or not a suspect should be incarcerated. However, in practice, the literature shows that judges' decisions to incarcerate differ very little from the judgments made by the police and the procuratorate in pretrials (Xiong & Wei, 2017). This is largely due to the coalition of the police, the procuratorate, and

the court: the ‘Iron Triangle’ (Liang et al., 2014). The ‘Iron Triangle’ represents the best interests of the Party-state, despite China’s transition from an inquisitorial criminal justice system to an adversarial model (Ma, 2003; Fu, 2014; Li, 2016a). The 1979 CPL defined the relationships among the police, the procuratorate, and the court as consisting of ‘mutual coordination and mutual constraint’ (*huxiang xietiao, huxiang zhiyue*) in Article 5. This has been maintained as a general principle to this date, despite three amendments of the CPL in 1996, 2012, and 2018. In practice, however, mutual coordination, rather than mutual constraint, has often been observed among the three institutions: Within the ‘Iron Triangle’, the police rely on the procuratorate to bring evidence to the court, while the procuratorate depends on the police for evidence of guilt in order to secure convictions in trials; the procuratorate relies on the court to support their prosecution against the accused, while the court depends on the procuratorate to provide a chain of evidence to seal convictions; the police depend on the court to admit all evidence of guilt, so as to convict the suspect. The trial process thus resembles an assembly line in which three organs of criminal justice system cooperate to solve cases. In practice, the police chief, who often assumes the concurrent position of the PLC secretary, coordinates the ‘Iron Triangle’ at provincial and local levels. This institutional arrangement puts the police in a dominant position over the court and the procuratorate. In places with powerful PLCs, the secretaries in charge set the tone and principles in ‘Iron Triangle’ meetings, and the court and procuratorate have to follow instructions from these meetings (Wang & Liu, 2019). Ideally, the ‘Iron Triangle’ should be composed of the defence counsel, the procuratorate, and the court. Nevertheless, the defence counsel falls outside of the ‘Iron Triangle’ in China because their defence arguments in trials are ironically regarded as an ‘obstruction of justice’ by the court (Jiang, 2014: 417). Since defence counsels are perceived by criminal justice organs as a major obstacle to China’s criminal justice policies, they often have difficulties meeting their clients and accessing case files prepared by the procuratorate before trials (Trevaskes, 2007). They are therefore marginalised by state apparatus in the adversarial process.

In past decades, there have been few changes in the working practices of the police, the procuratorate, and the court. Scholars have found that, because the police and the procuratorate have their own sets of rules with which to decide whether or not a suspect must be detained before trial, judges ordinarily defer to the police and the procuratorate’s judgments and make the same decisions in trials (Yi, 2008; Su, 2013). In addition, to accelerate the procedure, judges are required to get involved in the stages of investigation and prosecution, and to follow the

principle of the ‘two basics’ (the basic acts are clear, and the basic evidence is conclusive) in their daily trial work (Trevaskes, 2007: 37). Suspects are therefore incarcerated if they have been detained in a pretrial, which is called ‘arrest as punishment’ in China. Xiong and Wei (2017) have offered some evidence to support this observation. They revealed that the rate of pretrial detention for different crimes correlates perfectly with probation decisions, based on a Pearson correlation coefficient -0.96 ($p < 0.001$). For example, 15 per cent of their sample of property crimes was not detained in pretrial, and 14 per cent of the same sample received a probation order in trial. In other words, judges only made a different decision regarding one per cent of suspects in property crimes. Male and female judges thus present the same practice of adhering to the decisions made by other state organs in pretrial, which is why there is very little difference in decisions to incarcerate. Nevertheless, the amendments of the CPL in 1996, 2012, and 2018 incorporated some adversarial elements into criminal trials and encouraged the participation of private parties in these processes. In practice, however, the criminal procedure is still coloured by excessive inquisitorial proceedings, in which the police, the procuratorate, and the court work in a streamlined process as a monolithic coalition, while private participants play a relatively weak role in the proceedings.

The role played by the ‘Iron-Triangle’ in the criminal justice system can also be observed in the anti-crime campaigns. In authoritarian regimes such as China, crime, especially organised crime and gang violence, is seen as the enemy of the people and socialist modernisation (Trevaskes, 2007). Therefore, the Party-state continuously employs campaign-style law enforcement and harsh punishments to deal with crime-related problems (Wang, 2017). Anti-crime campaigns typically involve the ‘extraordinary mobilization of legislative, judicial, administrative, propaganda and fiscal resources under political sponsorship’ to combat certain types of crime in the country or a particular geographical area over a period of time (Liu et al., 2015: 87). The central government has launched four rounds of nationwide ‘strike hard’ anti-crime campaigns, in 1983, 1996, 2001, and 2010. These anti-crime campaigns not only promoted social stability across the country but also brought about economic success. Significant efforts exerted by the ‘Iron Triangle’ during these four campaigns could not be overlooked. The latest campaign is a nationwide three-year ‘sweep away black societies and eradicate evil forces’ campaign, which began in January 2018. Different from the ‘strike hard’ campaigns, the ‘sweep away black societies and eradicate evil forces’ campaign addressed social instability and fiscal challenges triggered by the economic slowdown (Wang, 2020). In fact, such a campaign is a statement of political power and legitimacy, rather than a response

to the rising crime rate. Maintaining legitimacy is a top priority for both democratic and non-democratic regimes. Unlike Western countries, such as the United Kingdom and United States, which derive their legitimacy from constitutional democracy, the separation of power, and judicial independence, the Chinese government retains its legitimacy by ‘accomplishing concrete goals such as economic growth, social stability and national unity’ (Zhu, 2011: 124). Hence, the legitimacy crisis caused by the economic slowdown required the Party-state to launch a high-profile campaign to sustain its governance. In the ‘sweep away black societies and eradicate evil forces’ campaign, members of the ‘Iron Triangle’ are not satisfied with merely punishing senior managers who conduct illegal acts, such as bribing government officials in order to receive privileged access to state-controlled resources, to benefit their enterprises (Yu, 2018). They prefer to treat these private enterprises as ‘black societies and evil forces’, so the owners of these enterprises are seen as gang leaders. As a result, the private assets of these enterprises can be confiscated. Although the confiscation of property owned by these private enterprises alleviates the financial burdens of local governments to some extent, it delivers a heavy blow to the confidence of the private sector in the market economy.

2.7.2 Sentencing Guidelines

In most jurisdictions, a criminal adjudication primarily consists of two related but separate processes: a trial process for determining whether or not the accused is guilty of the charged offence, and a sentencing process for determining an appropriate sentence length for the convicted offender (Manson, 2001). Evidently, these two processes are equally important for a fair trial of the suspect. However, the Chinese criminal adjudication overemphasises its function of ‘securing criminal conviction over sentencing’ (*zhong dingzui, qing liangxing*) for the purposes of social stability and economic development (Keith & Lin, 2001). As a result, there are hardly any rules for the sentencing process in the 1979 CPL and its subsequent amendments in 1996, 2012, and 2018. The absence of guiding principles for judges on the use of their discretionary power in sentencing, together with an opaque sentencing process, has led to inconsistencies in sentence length. Normally, in a first instance trial, the collegial panel adjourns after the oral arguments. The panel then convenes in a private place to decide whether or not the accused is guilty. If the defendant is found guilty, the panel immediately proceeds to determine an appropriate sentence length. For some complicated cases, the presiding judge of the panel may submit a sentencing decision to the divisional chief for a review (Lin, 2016). If the cases are important and controversial, the sentencing decision would have to be submitted to the Adjudication Committee of the court for discussion and a final decision. Upon the

approval of the sentencing decision from the division chief or the Adjudication Committee in some circumstances, the collegial panel announces the guilty verdict and the sentencing decision at the same time, but does not normally provide any explanation of the sentence length imposed. This opaque sentencing process has been heavily criticised by scholars because there are no sentencing hearings, and no participation from defendants, prosecutors, and victims (Lubman, 1999). In fact, the only opportunity for defendants to make their opinions on sentencing heard is during the trial process for convictions. This places defendants in a compromising position because they are compelled to make arguments on a proper sentencing length while in the process of arguing for a not-guilty plea. Such a situation clearly contradicts the principle of the presumption of innocence in criminal trials.

In 2010, the Sentencing Guidelines were issued by the SPC for courts at lower levels to follow. However, as early as 2004, the conception of the Sentencing Guidelines was conceived of as part of the SPC's second 'Five-Year Reform Plan'. In addition to the criticisms of the opaque sentencing process, the reform was also triggered by the SPC's concerns about corruption among judges and the deviation of sentencing from the statutory range. In China, as anywhere else, judges are not allowed to have private contact with the parties involved in a case, let alone accept gifts from them. However, during the period of China's rapid economic transformation, many judges went far beyond these legal boundaries (Wang, 2013). These miscarriages of justice prompted public resentment in regard to judicial corruption and demonstrated the courts' inability to function impartially. The Sentencing Guidelines were produced in response to the resultant social unrest and understanding that Chinese laws and regulations were replete with vague passages that hindered predictability and transparency. Chinese laws therefore give judges 'significant leeway in applying the law to individual cases' (Gong, 2004: 45). The Sentencing Guidelines therefore serve as a template for structuring judicial discretion and ensuring that all aspects of a case have been fairly assessed.

The Sentencing Guidelines consist of four sections: the guiding principles of sentencing; basic sentencing methods; applications of aggravating and mitigating circumstances; and sentences for 15 common offences. There are two basic principles that judges should follow in sentencing offenders. The first one is 'effecting positive social and legal outcomes' (*falv xiaogu yu shehui xiaoguo xiang jiehe*), which indicates that a sentence length should be suitable, with all legal factors taken into consideration, and receive public support, particularly from victims and their families (Chen, 2010). This is consistent with the Chinese criminal justice tendency to prioritise

substantive results over procedural justice (Keith & Lin, 2001). This principle also explains why the Chinese judiciary routinely takes public opinion into consideration when dealing with high-profile cases. The second principle is ‘balancing leniency and severity’ (*kuanyan xiangji*). It directs judges to punish offenders who commit serious crimes heavily, while lenient treatment should be applied only to those who commit minor offences. Nonetheless, there is no clear definition in the CLC regarding which crimes are serious and which are minor. In fact, it is the changing political context in China that often plays a decisive role in determining the seriousness of a criminal offence (Lin, 2016). These two principles create flexibility in determining sentence length, so judges may adjust the scale of punishment in certain cases to maintain social stability.

Young (2008: 183) once argued that ‘sentencing is an inherently imprecise undertaking that requires a significant number of variables to be weighed up and assessed. Some variation from judge to judge and from court to court is therefore to be expected’. Nevertheless, the Sentencing Guidelines represent an important effort by the SPC to achieve uniformity in sentencing, by reducing discretion and eliminating inconsistency (Ye, 2011). The Sentencing Guidelines not only provide a systematic method with which to guide sentencing decisions, but also offer detailed and prescriptive guidance regarding the consideration of important sentencing factors in 15 common offences. Specifically, the Sentencing Guidelines identify three principal steps to reaching a decision: Firstly, judges must identify the starting point sentence based on essential elements of the offence. According to the Sentencing Guidelines, the starting point of a sentence needs to be within the range of penalties stipulated in the CLC and decided based on the primary constituent facts of a crime. Most starting points of sentences for the 15 common offences are close to the minimum penalties enumerated in the CLC. Second, judges set a base sentence by considering a range of factors that affect the act of committing a crime. According to the Sentencing Guidelines, a base sentence should be established by considering the secondary or derived constituent facts of a crime. Take traffic offences as an example. Factors such as the extent of culpability of an offender, the number of people injured or killed by the offender, and whether or not the offender fled from the scene of an accident should all be taken into consideration for a base sentence. Finally, judges adjust the sentence by enhancing or reducing the base after considering factors unrelated to the criminal act but relevant to the offender’s level of culpability (Roberts & Pei, 2016). According to the Sentencing Guidelines, the presence of aggravating or mitigating factors would result in the base sentence being increased or reduced. Nevertheless, the SPC indicates that the presence of mitigating factors

does not automatically lead to a sentence reduction for serious offences that are punishable by life imprisonment or the death penalty. This suggests that less serious offenders may benefit more from the presence of the mitigating factors than serious offenders would. In each step, the Sentencing Guidelines provide clear numerical guidance regarding the degree to which specific factors should affect the sentencing outcome. Given that the Sentencing Guidelines were designed to create consistency in sentencing and to reflect a common understanding of crimes, extra-judicial factors, such as judges' gender, are deemed to be irrelevant to reaching an appropriate sentence length.

2.7.3 Adjudication Committee

The rationale for establishing Adjudication Committees across all levels of courts in the beginning of China's reform and opening-up period is because many judges are former military personnel with barely any legal training. Since the level of professionalisation among judges at that time was low, Adjudication Committees were set up primarily as a means for ensuring that judicial decisions were consistent with the law when more complex cases were involved (Lubman, 1999). However, the appointment of judges to the Adjudication Committees is based on judges' administrative status, rather than on their legal expertise. From Zuo's data (2016) on the composition of 209 Adjudication Committees across A province in 2014, 93 per cent of participants were judges with senior administrative status; judges without administrative duties only constituted 7 per cent of participants. As a result, most of the judges in the Adjudication Committees cannot be presumed to have greater adjudication experience than the trial judges. According to Article 11 of the 1979 Organic Law on the People's Courts, the responsibilities of Adjudication Committees are 'to sum up judicial experience and to discuss important or difficult cases and other issues relating to judicial work', as well as to discuss 'significant, difficult or complex' cases. In practice, there are four steps in the working procedure of the Adjudication Committee. Firstly, the presiding judge gives a brief introduction of the basic facts of a case and states his or her opinion on the application of the law. Secondly, the presiding judge's line manager adds anything that might have been missed from the opening speech by the presiding judge. Thirdly, participants of the Adjudication Committee share their understandings of the case, based on seniority, with the most junior judge as the first speaker. Lastly, the Adjudication Committee makes the final decision by following the principle of democratic centralism. Nevertheless, scholars observed that the president of a court has the unique power to nominate a particular judge to the Adjudication Committee and to set the Committee's agenda (Xiao & Xiao, 2002). The president also wields considerable influence

over other judges in the Adjudication Committee through his or her power to influence judges' promotions in court. This treatment to the judiciary as a bureaucracy is not only consistent with China's socialist dictates but also with its historical tradition of developing a centralised bureaucracy to govern its population (Woo, 2017). In the process of reaching a decision, the Adjudication Committee may seek advice from higher levels of courts. The Adjudication Committee may also seek advice from the PLC of the corresponding level, particularly when questions arise regarding whether or not a particular decision might conflict with local Party policy (Chng & Dowdle, 2014). This is the reason why Upham (2004: 1703) found that the Adjudication Committee is 'nothing more than an ideological enforcer, routinely disciplining judges who put legal craft above Party loyalty'. In this way, the court's institutional independence from other political branches could be violated. Once the decision has been made by the Adjudication Committee, after seeking all sources of inputs, the presiding judges must abide by it. However, it is the presiding judge, not the Adjudication Committee, who signs the judgment.

Judicial independence is commonly understood as the judiciary acting as 'an autonomous institution in relation to other institutions and in relation to any powerful individuals' (Gong, 2004: 36). However, according to the Chinese constitution, this independence is vested in the bureaucratic courts, not in individual judges (Peerenboom, 2006; Li, 2016b). In Article 180, the 2018 CPL specifies that, in each court, 'complicated, controversial and significant cases should be submitted to the Adjudication Committee for discussion and decision-making ... the decision made by the Adjudication Committee is final and the decision should be duly enforced'. Although the CPL offers no further explanation of what constitutes 'complicated, controversial and significant', most cases can be submitted to the Adjudication Committee by division chiefs if they suspect that the 'adjudication process has revealed a potentially erroneous judgment' (Cohen, 1997: 798). As He (2012: 689) indicated, among all the cases reviewed by the Adjudication Committee, '84.4 percent were criminal and the Committee modified almost 41 percent of the suggested opinions of the adjudicating judges'. Although the division chief does not have the authority to reverse decisions reached by the presiding judge, he or she can rely on the Adjudication Committee to prevent decisions from taking effect. Once a case is with the Adjudication Committee, the presiding judge loses control of it. Hence, in practice, the Adjudication Committee works as a pair of 'scissors' to trim 'uneven' sentences reached by presiding judges, regardless of whether they have consciously or unconsciously circumvented the Sentencing Guidelines. Despite calls for reforms, the Adjudication

Committee remains centre stage in most courts' decision-making processes (He, 2017). Some reform measures have been launched, such as the introduction of subcommittees, in which civil, criminal, and commercial committees are separate. Several rules for discussion have also been put into practice (Li, 2014). Nevertheless, these superficial reforms hardly get to the heart of the Adjudication Committee. I therefore believe that the Sentencing Guidelines and the Adjudication Committee work simultaneously as external constraints on judges, restricting the influence of personal factors on case outcomes.

2.7.4 Implications of China's Practice

To explain the uniformity in decision-making, I have specifically discussed effective mechanisms in the Chinese criminal justice system that may limit the use of discretion or even prohibit the use of discretion: Judges are bound by the 'Iron Triangle' relationship in making a decision to incarcerate; judgments issued since the creation of the Sentencing Guidelines more often than not present a 'detailed calculus of the factors affecting the nature and quantum of punishment imposed' (Roberts & Pei, 2016: 24); the Adjudication Committee, as a central decision-making body in the court, is given unchecked power to override presiding judges' opinions. Since all these mechanisms are designed to standardise judicial decisions, judges must apply the law strictly and without variation. I acknowledge that other factors, such as courtroom workgroups and judicial experience, might be influential, but I am not able to determine whether or not such organisational pressure is the critical reason for the conformity of sentencing in this study. I cautiously believe that these indicators do not necessarily nullify the aforementioned judicial mechanisms in China, but rather help to strengthen the similarity between male and female judges in sentencing, because the administrative judicial system and the detailed Sentencing Guidelines offer little discretion to judges (Ye, 2011; Chng & Dowdle, 2014; Schultz, 2016). Despite China presenting tremendous differences from other countries, this study has considerable implications for future research.

Under the mechanisms of criminal justice in China, female judges are not isolated from judicial management, such as the Adjudication Committee, but rather work in the same professional environment within the 'Iron Triangle'. They are also closely guided to make judicial decisions in line with the Sentencing Guidelines, and they experience the same legal training and judicial socialisation as their male counterparts (Zatz, 2000). This may be the key problem with the application of Gilligan's theory to the relationship between judges' gender and judging: Questionable evidence is overwhelmingly concentrated on the biological differences of female

judges and thus leads to proposals based on differences that are taken for granted in many ways (Davis, 1992; 1993; Miller & Maier, 2008). However, the idea of a ‘different voice’ ignores the possibility of the ‘same voice’ developing out of social supervision, institutional role, and professional training, which may compensate for innate differences between male and female judges, and help the latter to establish the same adaptive rationality as their male counterparts in the legal system (Fineman & Thomadsen, 2013). In general, the negligible differences revealed by standardised judicial decisions among male and female judges is not surprising. In this chapter, I have mainly found that innate difference can be nullified and compensated for by the adaptive environment and judicial mechanisms, finally paving the way for female judges to make the same sentencing decisions as male judges (Zatz, 2000; Haynes et al., 2010; Johnson, 2014).

2.8 CONCLUSION

Gilligan’s theory, proposed in *In a Different Voice*, has been cited thousands of times worldwide. Its most important contribution to feminist legal theory might be its challenge to the male-dominated justice system and the legal-thought processes that female judges have to follow. Although the gap between men and women remains, the entrance of women into the legal profession would have transformative effects on the practice of law (Thornton, 1996). I cannot deny that the judicial environment for female judges may have already changed in numerous ways, in comparison to decades ago, when the legal system was rife with discrimination and disadvantages for women. All the changes that have taken place in the last 30 years reflect the way in which the centre of judicial behaviour and the law is not interpreted through an ‘ethic of care’ or an ‘ethic of justice’; female judges are equally capable in judicial adjudication when modern judicial management and legal training become more professional and with the support of organisational similarity (Haynes et al., 2010). This explorative study represents a rare effort to study the relationship between judges’ gender and sentencing in China. My contributions lie in two aspects: this study’s findings and my explanations of the findings. Firstly, I found more similarities than differences in the decisions of male and female judges at two stages of criminal decision-making. Secondly, I cannot afford to ignore certain constraints upon judicial behaviours, such as the ‘Iron Triangle’ relationship, the Sentencing Guidelines, and the Adjudication Committee. These nationwide mechanisms shape judges’ mindsets in a similar direction and possibly offset the innate differences between male and female judges. However, these contributions should be understood within the context of the following limitations.

Firstly, I did not control the gender of other courtroom actors, such as defence attorneys and prosecutors, with whom judges must interact in criminal trials. I note that courtroom composition may mediate sentencing outcomes because workgroup members must rely on each other to achieve collaborative goals (Farrell et al., 2010; Haynes et al., 2010). I regret that information on the gender of attorneys and prosecutors is not immediately available from judgments and that, consequently, I could not explore this issue further. Secondly, the small number of female judges and offenders in the data set might undermine the accuracy of the interactional findings. Nevertheless, this point corroborates the common understanding of the paucity of female offenders in the criminal justice system (Vandiver, 2006). I also agree with Coontz (2000: 70) that the small number of female judges may not be a methodological problem, but rather ‘a professional problem that must be addressed within the profession itself’. When researchers are constrained to a small sample size for economic or logistical reasons, they may have to settle for less conclusive results, and readers should be cautious about the findings. Thirdly, I recognise that the limited number of judgments collected for this study is an issue that evidently prevents me from generalising the results to a larger picture across China. In one aspect, the judgments are not uniformly described in a standard template indicating the basic characteristics and facts of crimes, preventing the use of a mass digital python with the published judgments. In another aspect, the demographic characteristics of judges are not published online across the country, which prevents the incorporation of judges’ characteristics into very large sampling judgments.

I humbly believe that this explorative study is helpful in terms of reassessing how criminal mechanisms manage sentencing disparity between male and female judges in China. I expect more evidence to echo my findings, whether by demonstrating sentencing similarities or disparities. I suggest two angles for follow-up studies. First, scholars could consider comparing the current data set to another from before the Sentencing Guidelines were implemented. Under the hypothesis that judges previously had more discretionary power, it would be intriguing to see whether or not differences could be revealed. Second, scholars may consider introducing a qualitative methodology through which to explore the role of judges’ perceptions in the reasoning behind their rulings. In-depth interviews with judges could offer a unique approach to uncovering male and female judges’ understandings of disputes and legal principles (Miller & Maier, 2008). Finally, I invite feminist legal scholars to reassess the benefits and drawbacks of exploring a ‘different voice’ in judicial decision-making. As this chapter has revealed, male and female judges in China tend to adjudicate criminal lawsuits similarly. This conclusion

could potentially be used as evidence to argue against equal participation in the judiciary (Hunter, 2006). This is why Malleon (2003) noted that difference-based arguments for women in law are attractive but insufficient, asserting that arguments based on equity and legitimacy provide a sounder foundation. In this vein, I agree with the notion that researchers in the field of gender and judging should think more strategically about judges' gender differences in ways that are 'theoretically sophisticated, empirically true, and do not lead to women's disadvantage' (Kenney, 2008: 87). In the next chapter, I use quantitative research methods to examine whether the presence of a female Chinese judge on a three-member panel causes male judges to vote in favour of plaintiffs in rape cases. The initial findings in chapter three, based on 6,100 judgements of rape cases from 2010 to 2018 in Shanghai, Beijing, and Guangzhou, suggest that there is no 'panel effect'. However, when certain stimuli, such as the social network relationship between victims and offenders, are introduced, panels with different combinations of male and female judges exhibit different sentencing preferences: When a female judge decided the outcome of a case together with two male judges, the panel often issued a shorter sentence length, compared to the sentence length issued by an all-female panel.

Chapter Three: The Effects of Judges' Gender and Collegial Decision Making on Rape Cases in China

3.1 INTRODUCTION

More than a hundred years ago, Justice Oliver Wendell Holmes Jr. (1882: 1) wrote extensively about the role of judges' characteristics in decision making, and he eloquently argued that 'The life of the law has not been logic: It has been experience'. It is generally accepted that personal experience has never been universal because it is a complex intersection of ethnicity, class, and gender, among other factors (Menkel-Meadow, 1988; Harris, 1990). Each judge may therefore bring individual experiences and a unique totality of training to a tribunal and decide the outcome of a dispute accordingly. However, this viewpoint seems at odds with the goal of equality before the law, which aims to eliminate individual variations arising from judges' personal characteristics and expects them to impartially apply predictable and replicable rules to lawsuits. Nevertheless, a plethora of empirical studies on how judges actually decide cases seems to support the observation that judges draw on beliefs and convictions lying so far below the surface of their characters that they are often unacknowledged (Rachlinski & Wistrich, 2017; Harris & Sen, 2019). Among those characteristics, ideology seems to have a strong link with judicial decision making at the highest level of courts, where politics often lie at the heart of a case (Tate, 1981; Ruger et al., 2004). Research has also revealed that ideological influences on judges' decisions are much weaker at lower levels of judicial hierarchy (Zorn & Bowie, 2010). Considering that an overwhelming majority of litigations are ultimately decided by district and appellate courts alone, what else may influence judges' decision making?

Since the mid-twentieth century, the legal profession worldwide has seen a dramatic transformation in the representation of women (Schultz & Shaw, 2013). Particularly in the United States, the representation of women in the judiciary has increased dramatically since the 1980s; in 2018, women made up more than one-third of sitting judges on federal courts and around one-third of all state courts (Haire & Moyer, 2019). This has been regarded as one of the most remarkable (some even claim 'revolutionary') changes to the legal profession over the past 150 years (Abel, 1988: 203). It has prompted speculation among academics about the changes in the nature of substantive law women bring about and how law could be practiced differently by male and female judges. These assumptions are based on the observation that women's perception is constituted by a variety of physical, psychological, social, and cultural experiences. As a result, if women collectively have different experiences from men, they are

likely to have different perspectives—a distinct set of values, beliefs, and concerns as a group (Gilligan, 1982; Fineman, 1994). These differences may, at times, be reflected in the behaviours of male and female judges.

Much of the research literature on gender and judging has found that judges' gender is a predictive factor in cases relating to 'women's issues'. This is especially true of those involving divorce disputes, sexual harassment, and employment discrimination, even after controlling for judges' ideologies. For instance, over a 13-year period in the Michigan Supreme Court, Martin and Pyle (1999) found that white female judges were likely to transcend party lines and vote with other female judges to uphold the position of female litigants in divorce lawsuits about 60 per cent of the time. In sexual harassment disputes heard by U.S. state supreme courts from 1980 to 1992, female judges supported the plaintiffs in 73.7 per cent of sexual harassment cases, while male judges supported them in 63.7 per cent of cases (McCall, 2003). Furthermore, Moyer and Tankersley (2012) examined decisions made by the U.S. courts of appeals interpreting Title VII to prohibit hostile work environment in the absence of a Supreme Court precedent; they found that, in addition to siding with female plaintiffs, female judges helped to shape legal rules that promoted gender equality in the workplace. Research on gender and judging also supports evidence of the panel effect, in which the presence of at least one female judge changes the voting behaviour of her male colleagues in the same panel. For example, Farhang and Wawro (2004) and Peresie (2004) found that having at least one woman on a three-judge federal appeals panel moves the entire panel in the direction of the plaintiff in employment discrimination cases.

Similar to many other countries, China is not only experiencing a rapid feminisation process in the legal profession, but is simultaneously embracing openness and transparency in its adjudication process; this includes the publication of an unprecedented number of judgments online (Considine, 2016). Specifically, in 2010, there were approximately 45,000 female judges, accounting for about a quarter of all judges in the country (National Bureau of Statistics of China, 2015). In 2017, female judges constituted 32.7 per cent of all judges nationwide, which was 21.7 per cent higher than in 1982 (State Council Information Office, 2019). In addition, to enhance people's trust in the judiciary, the SPC mandated that, in principle, all judgments must be published online from January 2014. By the end of December 2019, more than 87 million judgments had been published; the SPC once claimed that its database is the largest in the world (Li, 2018). With the steady rise in female presence in the judiciary and

abundant judgments readily available, a rare opportunity for scholars is created to test, through a cross-cultural and comparative lens, the effects of judges' gender and collegial decision making in regard to the Chinese criminal justice system.

This research is based on a data set of 6,100 rape cases adjudicated by judges from 42 district courts in Shanghai, Beijing, and Guangzhou, from January 2010 to December 2018. All cases were collected from high courts' official websites and China Judgments Online, a centralised platform operated by the SPC. Aside from examining variations in the sentence length issued by four panels of judges, I also explored, for the first time in relevant extant research, the panel effect in rape cases when four types of prior relationships (a dating relationship, family-relative relationship, workplace relationship, and social-network relationship) existed. Two major findings can be listed here. First, with regional variations in mind, negligible differences in the sentence length are evident among four types of panels in three metropolitan cities. Second, taking some case-level factors into consideration, when a female judge decided the outcome of a case with two male judges, this panel often issued a shorter sentence, compared with the sentence issued by an all-female panel. These results contribute to the field of gender and judging by providing some unique Chinese figures on rape for follow-up studies. They also deepen our understanding of the way in which extra-legal factors impact judges' decision-making processes.

The remainder of this chapter proceed as follows: Section two offers an overview of rape as a criminal offence in China. Section three reviews the findings and explanations regarding the panel effect in the research literature and highlights research gaps. Section four builds two hypotheses based on those gaps. Section five details the research design. Section six presents the major findings from the statistical analysis. Section seven discusses the theoretical and practical implications of those findings. The final Section identifies the limitations of this research and suggests two directions for further study.

3.2 RAPE AS A CRIMINAL OFFENCE IN CHINA

According to Article 236 of the 2017 CLC, anyone who rapes a woman through violence, coercion, or any other means shall be sentenced to a fixed term of imprisonment of three to 10 years. Besides, anyone who has sexual intercourse with a girl under the age of 14 years shall be deemed to have committed rape and shall be given a severe punishment. Several other factors may also lawfully be taken into account by judges in determining an appropriate

sentence for rapists. Article 236 lists five serious circumstances under which the offender shall be sentenced to either a fixed term of imprisonment of no less than 10 years, life imprisonment, or even the death penalty: (1) flagrant circumstances; (2) raping a number of women or girls under the age of 14; (3) raping a woman before members of the public in a public place; (4) raping a woman with one or more people in succession; or (5) causing serious injury or death to the victim or any other serious consequences. Attempted rape, compensating the victim, surrendering to the police, and meritorious conduct during the investigation are mitigating circumstances stipulated in Articles 23, 67, and 68. In judicial practice, recorded in the 2014 Sentencing Guidelines on Common Crimes from the SPC, if an offender has raped one woman, the starting sentence should be a fixed term of imprisonment of three to five years. If an offender has raped a girl under the age of 14, the starting sentence should be a fixed term of imprisonment of four to seven years. Except in circumstances that may justify life imprisonment or the death penalty, if one of the five serious circumstances in Article 236 applies, the starting sentence should be a fixed term of imprisonment of 10 to 13 years. Nevertheless, in some circumstances, if an offender surrendered to the police, made compensations in full, and obtained forgiveness from the victim, he may receive a non-custodial sentence. The information above enables a better understanding of the legal criteria for the conviction of rapists in China, as well as the impact of aggravating and mitigating circumstances in sentencing. Below, I discuss two exclusions to the conviction of rape in judicial practice, for the sake of establishing a clear understanding of the cases in the data set.

First, the legislation of rape excludes the possibility of men being the potential targets, despite reports suggesting that some men suffer sexual victimisation and some women are sexual perpetrators (Doroszewicz & Forbes, 2008). While research on this topic is still in its infancy, it is known that male sexual victimization correlates with both traditional gender stereotypes and more pronounced victim blaming (Sleath & Bull, 2010; Davies et al., 2012). These findings can similarly be observed in the Chinese society due to the way in which the philosophical influence and masculine ideals of Confucianism have been pervasive since ancient times (MacCormack, 1996). Although scholars have claimed that the time-tested masculine ideals of Confucianism gave rise to family solidarity and social harmony, such teachings also heavily influenced Chinese people's understanding of the critical role played by men in society, even in the process of mediation, adjudication, and legislation (Goh, 2016). Before 2011, sexual offences involving the rape of men were usually quashed by the police; perpetrators either walked free, having paid compensation to the victims, or served a few days in jail for

intentional assault before being released (He, 2012; Wei, 2014). Since then, male rape has increasingly drawn public attention. In November 2015, the ninth amendment of the CLC stipulated that this crime should be treated as indecency, a more serious and high-profile offence than intentional assault. Offenders could therefore be sentenced either to less than five years' imprisonment or criminal detention, lasting from one to six months if the criminal act in question was an attempt. However, the legal definition of rape remains unchanged, so it still cannot be applied to cases in which men are the victims.

Second, marital rape is an obstacle that prevents women from seeking justice in China. Marital rape is commonly understood as the act of sexual intercourse without the consent of one's spouse; it is widely considered a form of domestic violence and sexual abuse (Martin et al., 2007). In China, marital rape is prevalent. For instance, based on 194 pairs of questionnaires sent to married couples in Beijing from November 2006 to January 2007, Hou and colleagues (2011) found that the occurrence of sexual violence was frequent, and husbands were the main perpetrators of such violence. According to Article 236 of the 2017 CLC, husbands are not automatically excluded from being convicted as rapists. In practice, however, the marital relationship shields them from this. This is because the criminal division of the SPC built a principle on adjudicating this type of cases through the publication of two marital rape cases in its third volume of 1999 (*the Bai Junfeng case*) and the second volume of 2000 (*the Wang Weiming case*) in *Reference to Criminal Trial*. As a general rule, husbands cannot be convicted of raping their wives as long as they have not divorced. After the publication of these two cases, district courts across China universally began to follow this guiding principle to adjudicate similar litigations.

Based on a data set concerning three metropolitan cities in China, this study examines the impact of rape offenders' characteristics, such as education level, occupation, and offending history, on sentence length. In regard to the similarities and differences in offenders' characteristics between this data set and the national picture, I briefly list some essential information about rape offenders collected by the SPC from 1998 to 2016 in Table 3.1. Broken down by gender, the number of women who were convicted as accomplices, which is the only way women can be charged with rape, is significantly lower than the number of men convicted as rapists. The number of offenders aged 18 to 25 years is consistently higher than the number of offenders aged 14 to 17 years and offenders over 60 years of age. If an offender has committed rape within five years after his first conviction of any crime type, he is a recidivist.

Recidivists account for more than 50 per cent of repeat offenders; the highest ratio was 64.7 per cent in 2005 and the lowest was 51.1 per cent in 2015. Although the SPC ceased to calculate the location of offence sites (urban or rural) after 2002, the data from 1998 to 2001 indicates that rape happened more frequently in rural areas, rather than in urban cities. My data set does not cover offences that took place in rural China.

Table 3.1 Information regarding Rape Cases and Characteristics of Offenders from Chinese District Court Judgments, 1998 to 2016

Year	Total	Gender		Age			Repeat Offenders		Sites of Offence	
		Male	Female	14-17	18-25	60+	Total	Recidivists	Urban	Rural
1998	18,277	18,210	67	1,491	5,744	341	2,409		7,585	12,554
1999	18,488	18,430	58	1,473	5,108	343	2,491		7,590	12,684
2000	17,861	17,788	73	1,494	4,722	332	2,186		7,187	11,350
2001	19,886	19,792	94	1,726	5,127	403	2,297		7,838	11,870
2002	22,321	22,225	96	2,580	4,787	659	976	618 (63.3%)		
2003	23,567	23,466	101	2,950	5,046	826	918	596 (64.9%)		
2004	20,512	20,403	109	2,784	4,312	737	859	549 (63.9%)		
2005	20,524	20,416	108	2,835	4,524	699	877	567 (64.7%)		
2006	19,822	19,732	90	2,537	4,356	740	885	527 (59.5%)		
2007	19,918	19,807	111	2,645	4,546	710	834	533 (63.9%)		
2008	21,002	20,862	140	2,634	5,083	604	907	555 (61.2%)		
2009	21,746	21,593	153	2,592	5,192	621	1,011	651 (64.4%)		
2010	22,520	22,362	158	2,564	5,621	679	1,088	652 (59.9%)		
2011	23,070	22,929	141	2,550	5,436	624	1,165	677 (58.1%)		
2012	24,205	24,093	112	2,583	5,788	617	1,266	699 (55.2%)		
2013	21,620	21,512	108	2,290	5,315	670	1,146	610 (53.2%)		
2014	21,488	21,378	110	2,224	5,088	700	1,259	683 (54.2%)		
2015	19,655	19,564	91	1,940	4,265	811	1,185	606 (51.1%)		
2016	16,973	16,902	71	1,491	3,411	811	1,237	643 (52.0%)		

Source: *Records of the People's Courts Historical Judicial Statistics (1949-2016)*, the Supreme People's Court, China Democracy and Legal System Publishing House, 2018.

^a The total number of rape offenders is calculated from the combination of offenders listed in the category of profession in the original data set;

^b The percentage of recidivists indicates the ratio with respect to the total number of repeat offenders; no information is provided for the number of recidivists from 1998 to 2001;

^c No information is provided for the sites of offence after 2001.

3.3 LITERATURE REVIEW

Scholars examining the effects of judges' gender and collegial decision making often focus on decisions made by appellate court judges. This is because cases appealed to higher-level courts

have often been decided by a panel of judges. Due to the benefit of multiple different perspectives, the decision-making process of judges working in a group is of higher quality than that of judges working in isolation (Gruenfeld & Hollingshead, 1993). Nevertheless, appellate court judges in a panel might often be predisposed to a dilemma composed of conformity pressure to concur and dissent for the benefit of diverse thinking. On the one hand, empirical research has suggested that judges care about how their peers evaluate them, and they appreciate recognition from their colleagues (Sunstein et al., 2007). This is the reason why some token female judges, when they are the minority, are forced to adapt to ‘masculine’ approaches to decision making and frequently concur with their male colleagues (Malleson, 2003). On the other hand, diverse panels can prevent individuals from acting on implicit bias and may prevent the exclusion of minority judges’ viewpoints (Kastellec, 2013). Normally, individual differences do not necessarily lead to any difference in case outcome, due to the fact that a minority judge is likely to be outnumbered on any given panel. However, recent studies have pointed out that the presence of women on a panel would influence the votes of male judges and, ultimately, the outcome of a lawsuit. The literature on judges’ gender and collegial decision making diverge in terms of data sources, analytical methods, and explanations of the findings. For a better understanding of those differences, I gathered six articles most relevant to this research for a thorough review.¹ In the following paragraphs, I present their major findings, explain the panel effect, and discuss research gaps.

The panel effect has been found in three types of cases. Specifically, three articles examined the panel effect on cases regarding sexual harassment and employment discrimination decided by 11 U.S. courts of appeals and District of Columbia circuit (Farhang & Wawro, 2004; Peresie, 2004; Boyd et al., 2010). The timespan of cases in these data sets can be traced to as early as 1998, with the last ending in 2002. Scholars have agreed that male judges were more likely to rule in favour of the plaintiffs when at least one female judge was on the panel. Peresie (2004) also found that adding a female judge to the panel more than doubled the probability of a male judge ruling in favour of the plaintiffs in sexual harassment cases. In search and seizure cases decided by the U.S. courts of appeals from 1978 to 2008, Reid and colleagues (2020) found

¹ I acknowledge one Ph.D. dissertation and two papers presented at conferences on a similar topic. However, since they are unpublished manuscripts, I have focused instead on six articles that have gone through the peer-review process. The three unpublished manuscripts are: Crowe, Nancy. 1999. ‘The Effects of Judges’ Sex and Race on Judicial Decision Making on the U.S. Courts of Appeals, 1981-1996’. Ph.D. dissertation, University of Chicago; Massie, Tajuana, Susan W. Johnson, and Sara M. Gubala. 2002. ‘The Influence of Gender and Race on Judicial Decisions in the United States Courts of Appeals’. Paper presented at the Midwest Political Science Association Meeting in Chicago, Illinois; Cameron, Charles, and Craig Cummings. 2003. ‘Diversity and Judicial Decision Making: Evidence from Affirmative Action Cases in the Federal Courts of Appeals, 1971-1999’. Paper presented at the Crafting and Operating Institutions, conference, Yale University in New Haven, Connecticut.

that, in times of war, masculine tendencies towards security and protection were self-reinforcing in an all-male panel, but a female presence on the panel moderated these tendencies. A unique contribution of this article is that previous studies have often focused on lawsuits in which gender is a salient issue, but Reid and colleagues avoided this possible confounding factor. The lack of the gender aspect in search and seizure cases further led readers to posit that there is a moderating effect of female judges on male panel groupthink in other areas of legal disputes. Nevertheless, applying this observation in a different context, Johnson and colleagues (2011) came across a different scenario in regard to cases heard by the Supreme Court of Canada from 1982 to 2007. They found that there is virtually no relationship between the number of women on a panel and the probability that a given female judge will support a pro-rights claimant outcome.

Although we cannot directly observe the arguments appellate court judges made to each other during deliberations, scholars have used the informational account (Boyd et al., 2010), different experience account (Reid et al., 2020), and deference account (Peresie, 2004) to speculate as to why male judges vote more liberally when one woman serves on a panel with them than they do when they are part of an all-male panel. The informational account refers to a situation in which female judges possess knowledge of sex discrimination that their male colleagues perceive ‘as more credible and persuasive’ than their own (Boyd et al., 2010: 392). Female judges can thus directly or even indirectly alter the choices made by their male colleagues. The different experience account argues that women collectively ‘have experience with devaluation, exclusion, violence, and discrimination in wartime’ that is distinct from men’s (Reid et al., 2020: 7). The presence of a woman on a panel may therefore instigate a ‘counter judge’ effect that can minimise the groupthink effect (Kastellec, 2013: 169). Looking at the same issue from a different angle, Peresie (2004) posited that male judges’ deference to female judges’ past experiences or gender alone does not presume that female judges are actually more knowledgeable about gender-related issues, only that male judges view them as such. When a male judge deems a female judge to be particularly credible, he will be much less willing to side against her, whichever direction she rules. It is worth pointing out that one should not presume a universal form of collegial decision making among various panels because these mechanisms could operate separately or in tandem.

Although there is a rich body of literature on the panel effect in North American courts, few studies have looked at the role that Chinese judges’ gender plays in sentencing and group

decision making. What is unique about the Chinese criminal justice system is that criminal trials at the district level are presided over by a panel of three judges, or one judge and two lay assessors, if the crimes committed are serious. According to Article 183 of the 2018 CPL in China, the collegial panel is vested with the power of reaching a decision. Examining cases heard in the courts of first instance, instead of the ones adjudicated by appellate courts, offers us an opportunity to observe the panel effect taking place in a legal procedure for the first time. In 2019, Xia and colleagues attempted to look into the panel effect in the Chinese context, and they collected 3,902 cases adjudicated by numerous district courts across China from 2012 to 2015. They found that, when women constitute the majority of a collegial panel, offenders could expect to receive shorter sentences. However, readers should be cautious when interpreting this conclusion because Xia and colleagues mixed two types of cases in their data set: those decided by a panel of three judges and those decided by judges with one or two lay assessors. If they had not done so, Xia and colleagues (2019: 125) would have found that the conclusion they drew is not in line with their hypothesis, which centres on ‘the effect of judges’ gender on rape sentencing’. This is the primary reason why Xia and colleagues (2019: 132) declared that their results were based on the votes of ‘a female majority on the collegial bench’, instead of the votes of female judges as a majority. This is the first research gap in the literature.

The classification of decisions made by a panel of judges and decisions made by judges with lay assessors has theoretical and practical implications for conducting research on the panel effect in countries in which the two mechanisms co-exist. In a common law system, a trial by jury ‘keep[s] the administration of the law in accord with the wishes and feelings of the community’; this design is widely regarded as a bulwark against judicial tyranny and elite domination (Holmes, 1899: 120; Abramson, 2000). In line with many other common law countries, the Chinese people’s assessors need to be at least 28 years old and have received a high school (upper secondary school) education. Nonetheless, the Chinese people’s assessor system stands in significant contrast to common law practices. Professional judges and laypeople form a three-person panel and collectively deliberate on issues relating to the determination of both conviction and sentencing. A majority vote system is used for reaching a final decision. Ivković (2007) observed that, in a mixed tribunal with lay participation, the role of lay assessors in the decision-making process is minimal because the legal knowledge and experience of professional judges gives them an advantage. This curtails the role of lay assessors. The Chinese people’s assessor system has the same window-dressing function; there is no longer any distinction between a mixed three-person panel and a trial conducted by a

single judge (Miao, 2019). He (2016) offered an example based on a month of fieldwork in a district court in city W, Shaanxi province. He found that assessors are submissive and judges unchallengeable during deliberations. It is hence risky to infer that there is a ‘majority’ opinion that is equally voiced by judges and people’s assessors in the same panel.

The second research gap, which has long been neglected by scholars working on the effects of judges’ gender and collegial decision making, is the impact of case-level factors to judges’ decision-making process. Legal studies worldwide have often documented that sentences of sexual assault and rape are influenced by victims’ relationships to offenders. For example, by tracking the movement of 467 sexual assault cases through the court system of Sacramento County, California, from 1992 to 1994, Kingsnorth and colleagues (1999) found that the existence of any kind of prior relationship appeared to reduce sentence length by 35 months. In a Canadian study, McCormick and associates (1998) analysed data from 204 incarcerated rapists in Ontario and discovered that the sentence length and victim-offender relationship were significantly related. Rapists who did not know their victims received significantly longer sentences (66.1 months) than acquaintances (52.8 months) or partner rapists (49.3 months). In a Norwegian study, Bitsch and Klemetsen (2017) examined 176 rape cases processed by Norwegian appellate courts in 2011 and 2012. They found that, if the victim had a prior relationship with the perpetrator, the average sentence was reduced by 18 per cent ($p < 0.01$). Based on these findings, I examine the causal relationship between extra-legal factors and sentence length delivered by four types of panels.

3.4 HYPOTHESES

The first quantitative analysis of the relationship between Chinese judges’ gender and sentencing is Wei and Xiong’s (2020) work, which is based on 2,897 district-court judgments in 11 common crimes. Their multilevel-multivariate analysis revealed negligible differences between male and female judges. They concluded that the similarities in the decision to incarcerate can be explained by the harmonious ‘iron triangle’ relationship among the police, the procuratorate, and the court. They also indicated that the Sentencing Guidelines and the Adjudication Committee are mechanisms that shape judicial behaviours in the same direction. Since judicial decision making in any district court of China will inevitably be governed by the same aforementioned mechanisms, I assume that the statistical analysis of the panel effect from my data set will reveal a similar result.

Hypothesis One: There is a negligible difference in the sentence length for rape cases among different panels of judges.

At the same time, I cannot overlook the emphasis placed by the research literature on certain triggering factors at a personal level in judicial decision making. For instance, one study found that in gender-related cases, such as sexual harassment disputes, a federal judge with one or more daughters is seven per cent more likely to vote in favour of the female plaintiff, compared with a judge with no daughters (Glynn & Sen, 2015). In cases not involving gender-related issues, however, judges with daughters do not differ from their counterparts who have either no children or only male children. Apparently, their daughters' interests are a triggering element for judges who come to identify with the female plaintiffs. In this research, the triggering factors of rape cases could be the extra-legal ones, such as the relationships between victims and offenders, as demonstrated previously in the second research gap. Male and female judges may therefore react differently.

Hypothesis Two: There are differences in the sentence length for rape cases among different panels of judges when some case-level factors become salient.

3.5 RESEARCH DESIGN

3.5.1 Data Source and Samples

Before 1985 in China, judgments were typically only made available to litigants directly involved in the dispute. The decision making in courts had thus long been seen as a black box by the public (Lubman, 1999). The publication of judgments can be traced to 1985, and the SPC published a small number of lower courts' judgments in the form of the Gazette in that year. However, the Gazette is not a reliable resource for scholars to understand the development of the Chinese legal system in the post-Mao era because the content of reported cases has been heavily edited or rewritten both in substance and style (Liu, 1991). The 2013 Regulations on Online Publications by the SPC put an end to this traditional selective approach, stipulating that, in principle, all judgments must be published online, starting from January 2014. Pursuant to the 2013 Regulations, judgments in cases on state secrets, juvenile defendants, divorce or child custody, and some that are settled through mediation, are excluded from online publication. The SPC updated the 2013 Regulations in 2016, and now matters of individual privacy do not trigger automatic exclusion from publication; such decisions are made available with redactions. Since then, a large number of judgments have been uploaded to China

Judgment Online, and it seems that these judgments could be referenced as an accurate reflection of reality in China.

Assessing the performance of courts in adjudicating cases between ‘haves’ and ‘have-nots’ in China has become a trend since He and Su’s (2013) pioneering work using published judgments from Shanghai courts. In chapter three, this research is based on a collection of 6,100 judgments on rape cases, adjudicated by 42 district courts in Shanghai, Beijing, and Guangzhou between 2010 and 2018. Although these are metropolitan cities, they differ in various aspects, such as residential population and leading industries. Shanghai, which sits on the coast of Eastern China, is the most populous urban area in China; it is home to 24.2 million residents. It is famous as a global financial centre and as a transport hub, with the world’s busiest container port. Beijing, located in Northern China, is the capital city of China and home to 18.5 million residents. It is the second largest Chinese city by urban population after Shanghai and is the nation’s political, cultural, and educational centre. Guangzhou, in Southern China, is the most populous city of Guangdong province with a population of 14.9 million. Guangzhou is well known for its leading automobile assembly industry. A key reason for these cities’ selection for this data set is that they regularly publish judgments on their high courts’ websites, in addition to those uploaded to China Judgments Online. Unlike China Judgments Online, which is technically designed to repel web crawlers and automated large-scale downloads, these high courts’ websites offer user-friendly web designs, low latency access to data, and comprehensive database search criteria. Because of the abundant technical support from local high-tech companies, it is no wonder that intellectual property courts were first created by the SPC in these three cities in 2014. To avoid the duplication of cases from the high courts’ databases and China Judgments Online, I used a case identification number at the beginning of each judgment to distinguish one from another. The case ID is a shorthand combination of numbers and characters, which indicates the name of the court, the year the case was filed, the type of case, the procedural posture of the case (first instance, appeal, or enforcement), and the case number assigned. It is easy to locate this number for cases adjudicated after 2016 because the SPC standardized court practice for case identifiers and numbering in that year. For each case decided before 2016, I created a unique case ID following the same format. When collecting judgments from different databases, I excluded some made by judges with people’s assessors. This is to ensure that the findings of the statistical analysis would be comparable with those in the research literature.

In my data set, there are 3,024 cases adjudicated in Shanghai, 1,580 cases from Beijing, and 1,496 cases from Guangzhou, constituting 49.5 per cent, 25.9 per cent, and 24.6 per cent of total local cases, respectively. Among the 6,100 judgments heard by four types of panels, there are 748 all-male panels (12.3 per cent), 2,338 panels (38.3 per cent) with one female judge, 2,324 panels (38.1 per cent) panels with two female judges, and 690 (11.3 per cent) all-female panels. As can be seen in Table 3.2, regarding offenders' education levels, only 6.5 per cent fell into the category of 'illiterate' and 7.4 per cent had received a 'bachelor's degree or above'. It is also observable that nearly 70 per cent of the offenders in the samples had not started upper secondary school education. Additionally, only 9.8 per cent of the offenders are recidivists; this could be a trait of rape offenders in metropolitan cities. While 62.8 per cent of the offenders had no relationship with their victims, 37.2 per cent had established prior relationships with their victims by some means. Among these relationships, social network relationship was the most common (19 per cent) whilst family-relative relationship (3.8 per cent) was the least frequent. Only 9.1 per cent of offenders willingly surrendered after their crimes; however, 37.7 per cent confessed their criminal conduct once they had been caught by the police. Compensation of victims was rare, occurring in only 4 per cent of cases on average, and cases without aggravating circumstances represented 76.5 per cent. Nevertheless, 18.1 per cent of offenders had raped victims under 14 years of age and 3.6 per cent of offenders had committed rape in concert with other offenders. These differences in circumstances should be taken into consideration when interpreting the results.

Table 3.2: Descriptive Statistics of Rape Cases by Location

	Shanghai (N = 3,024)		Beijing (N = 1,580)		Guangzhou (N = 1,496)		Total (N = 6,100)	
	n	%	n	%	n	%	n	%
Panel Composition								
No female judges	339	11.2	120	7.6	289	19.3	748	12.3
One female judge	1,229	40.6	633	40.1	476	31.8	2,338	38.3
Two female judges	1,159	38.3	620	39.2	545	36.4	2,324	38.1
Three female judges	297	9.8	207	13.1	186	12.4	690	11.3
Offenders' Education Level								
Illiterate	129	4.3	155	9.8	110	7.4	394	6.5
Primary School	580	19.2	462	29.2	386	25.8	1,428	23.4
Secondary School	1,083	35.8	588	37.2	605	40.4	2,276	37.3
Upper Secondary School	924	30.6	302	19.1	327	21.9	1,553	25.5
Bachelor's degree or above	308	10.2	73	4.6	68	4.5	449	7.4
Offenders' Occupation								
Unemployed	732	24.2	401	25.4	237	15.8	1,370	22.5
Farmer	528	17.5	445	28.2	440	29.4	1,413	23.2
Businessman	1,553	51.4	659	41.7	798	53.3	3,010	49.3
White-collar worker	128	4.2	33	2.1	4	0.3	165	2.7
Government official	6	0.2	5	0.3	5	0.3	16	0.3
Student	44	1.5	17	1.1	10	0.7	71	1.2
Recidivists								
No	2,724	90.1	1,403	88.8	1,374	91.8	5,501	90.2
Yes	300	9.9	177	11.2	122	8.2	599	9.8
Relationship between Victim and Offender								
None	1,913	63.3	985	62.3	935	62.5	3,833	62.8
Dating	131	4.3	73	4.6	61	4.1	265	4.3
Family-relative	90	3	78	4.9	64	4.3	232	3.8
Workplace	351	11.6	119	7.5	144	9.6	614	10.1
Social network	539	17.8	325	20.6	292	19.5	1,156	19
Mitigation								
None	578	19.1	406	25.7	338	22.6	1,322	21.7
Attempted	827	27.3	430	27.2	404	27	1,661	27.2
Compensation	128	4.2	71	4.5	44	2.9	243	4
Confession	1,205	39.8	545	34.5	552	36.9	2,302	37.7
Surrender	278	9.2	123	7.8	154	10.3	555	9.1
Meritorious conduct	8	0.3	5	0.3	4	0.3	17	0.3
Aggravation								
None	2,349	77.7	1,269	80.3	1,048	70.1	4,666	76.5
Serious circumstances	33	1.1	11	0.7	3	0.2	47	0.8
Multiple victims	28	0.9	15	0.9	6	0.4	49	0.8
Public	7	0.2	1	0.1	0	0	8	0.1
Multiple offenders	109	3.6	35	2.2	78	5.2	222	3.6
Serious injury	1	0	4	0.3	1	0.1	6	0.1
Juvenile	497	16.4	245	15.5	360	24.1	1,102	18.1
Incarceration								
No	192	6.3	63	4	102	6.8	357	5.9
Yes	2,832	93.7	1,517	96	1,394	93.2	5,743	94.1
Year								
2010	92	3	1	0.1	14	0.9	107	1.8
2011	122	4	2	0.1	15	1	139	2.3
2012	193	6.4	5	0.3	34	2.3	232	3.8
2013	399	13.2	17	1.1	42	2.8	458	7.5
2014	242	8	159	10.1	158	10.6	559	9.2
2015	374	12.4	214	13.5	157	10.5	745	12.2
2016	472	15.6	337	21.3	267	17.8	1,076	17.6
2017	597	19.7	437	27.7	392	26.2	1,426	23.4
2018	533	17.6	408	25.8	417	27.9	1,358	22.3

3.5.2 Dependent and Independent Variables

The key independent variable in the analysis of the panel effect is the presence of a female judge in a panel, so the reference group is an all-male panel. The comparison of sentence length decided by four types of panels gives us an opportunity to observe whether the presence of one or more female judges on a panel leads to more lenient or more severe sentences. Regarding the method of identifying Chinese judges' gender, Xia and colleagues (2019) had to apply machine-learning technology to judges' names because their cases were collected from district courts across the country. Since this research analyses decisions made by judges from three metropolitan cities, I relied on information from the courts themselves before I was fully confident about this essential characteristic. First, some courts post the names and photos of judges on their websites. Courts that have not done so often write the gender of judges after their names. When looking at the photos of judges and coding their gender for the data set, none of the photos appeared androgynous to me. Second, I relied on information from videos uploaded to China Open Trial Network, a streaming platform operated by the SPC, to recognise the names and gender of judges. Normally, at the beginning of a trial, the presiding judge will briefly introduce himself or herself and other people on the same panel to attendees. This information quickly helped me ascertain the names and gender of the judges in my data set. In the end, I dropped two judges from Shanghai and four judges from Guangzhou from my data set because the necessary information could not be obtained by any reliable means.

Following the stipulations of the 2017 CLC as case-specific factors, I set several aggravating and mitigating circumstances as dependent variables. I further included the identities of offenders and their relationships with victims. For education level, I set illiterate as the reference group and primary, secondary school, upper secondary school, and bachelor's degree level or above as comparison groups. Regarding offenders' occupations, I set unemployment as the reference group, and farmers, businessmen, white-collar workers, government officials, and students as comparison groups. Whether or not the offender is a recidivist is crucial for sentencing, so I included this information in my data set as well. I dropped some variables that have been fully examined in the research literature but do not seem to fit the Chinese context, such as judges' ideologies and offenders' ethnicities. Admittedly, the CCP is the ruling party, but some judges could possess distinct party affiliations. Nevertheless, this information cannot be obtained from open sources. Also, because 96 per cent of the offenders in my data set are

Han Chinese, the dominant ethnic group in China, I had to drop offenders' ethnicity as a variable.

3.5.3 Analytical Strategies

In order to examine a large sample while controlling for a variety of confounding factors, I use multivariate regression for this research. By adopting this approach, I was able to control for these variables at the case level in order to allow for a comparison of cases heard by four types of panels. For hypothesis one, taking the possibility of regional variations into consideration, I explored the effect of panel composition on the sentence length handed down to offenders in Shanghai, Beijing, and Guangzhou separately. I cautiously remind readers that such a simple comparison neglects some case-level factors that may trigger judges' reactions, either to victims or offenders. For hypothesis two, the first step is to examine which variables had a significant influence on the sentence length, for which it is helpful to group similar cases with the same impact factor. By estimating separate regressions for each panel composition, I am able to use a pairwise comparison of regression coefficients, as the second step, to compare the sentence length delivered by four types of panels. This strategy will lead me to arrive at more reliable findings and shed new light on the panel effect in the Chinese criminal justice system.

3.6 MAJOR FINDINGS

For hypothesis one, the first step in the analysis is to examine the differences in sentence length decided by four panels by location. Analysis of variance has hence been used for this comparison. As can be seen in Table 3.3, Beijing is the only city that exhibited sentencing differences and reached a satisfactory statistical significance among the panels. If the analysis of variance yielded a significant result in this case, a pairwise comparison of means will be conducted to discover the effect of having one or more female judges on the panels. It appeared that there were weak sentencing differences between a panel with one female judge and a panel with two female judges. Specifically, a panel with two female judges gave longer sentences to offenders (1.418 months more on average), compared with those delivered by a panel with one female judge. In addition, an all-female panel seems to be more lenient towards offenders than a panel with two female judges, giving sentences 2.199 months shorter. Nevertheless, it should be borne in mind that these sentencing differences were based on a large *p*-value, which indicates weak evidence against the null hypothesis. As a result, it is safe to conclude that there is a negligible difference among four types of panels by region, despite some minor and inconsistent differences in Beijing.

Table 3.3: Sentencing Differences Among Four Types of Panels by Location

Panel A: Analysis of Variance by Region												
	Shanghai (<i>N</i> = 3,024)			Beijing (<i>N</i> = 1,580)			Guangzhou (<i>N</i> = 1,496)			Total (<i>N</i> = 6,100)		
Sentence Length by Panel Composition												
	Mean	Std. Dev.	Freq.	Mean	Std. Dev.	Freq.	Mean	Std. Dev.	Freq.	Mean	Std. Dev.	Freq.
No female judges	42.201	24.183	339	45.483	27.714	120	45.263	34.373	289	43.910	29.067	748
One female judge	43.279	27.376	1,229	44.000	26.567	633	43.922	29.850	476	43.605	27.675	2338
Two female judges	43.235	27.018	1,159	48.105	28.834	620	45.323	31.368	545	45.024	28.636	2324
All female judges	42.337	27.229	297	42.019	24.290	207	44.500	31.791	186	42.825	27.701	690
Entire region	43.049	26.874	3,024	45.464	27.357	1,580	44.763	31.531	1,496	44.095	28.224	6100
Comparing Sentence Length: Analysis of Variance												
	<i>F</i> Prob > <i>F</i>		<i>F</i> Prob > <i>F</i>		<i>F</i> Prob > <i>F</i>		<i>F</i> Prob > <i>F</i>		<i>F</i> Prob > <i>F</i>		<i>F</i> Prob > <i>F</i>	
	0.23	0.8752	3.64	0.0123	0.20	0.8976	1.55	0.1993				
Panel B: Pairwise Comparisons of Means												
Number of Female Judges	Beijing (<i>N</i> = 1,580)											
	Contrast	Std. Err.	<i>P</i> -Value									
1 vs. 0	-0.305	1.185	0.797									
2 vs. 0	1.113	1.186	0.348									
3 vs. 0	-1.086	1.490	0.466									
2 vs. 1	1.418	0.827	0.086									
3 vs. 1	-0.781	1.223	0.523									
3 vs. 2	-2.199	1.223	0.072									

Note: A pairwise comparison of means was only conducted if the ANOVA yielded significant results.

For hypothesis two, the first step of analysis involves identifying which variable has a significant correlation with the sentence length. As shown in Table 3.4, education level, being students, being recidivists, having relationships with victims, and being incarcerated after the trial all have a significant correlation with the sentence length in the full sample (Model 4). It appears that offenders with a higher education level received less prison time. Offenders who were still students at the time of sentencing also received lenient treatment in all three regions. If offenders were recidivists, they received a longer sentence length in all three regions. This is in line with Article 65 of the 2017 CLC, which mandates a harsher sentence for recidivists. With the exception of being family members and relatives of victims, every type of relationship yielded lenient sentences for offenders in the full sample. Furthermore, all the aggravating and mitigating circumstances showed statistically significant for the sentence length. Serious injury or death to the victims is the aggravating factor that led to the longest sentence in the full sample. The rape of a juvenile is the aggravating factor that resulted in the shortest sentence. Among five mitigating factors examined in this study, attempted rape contributed the most to the reduction of sentence length, and compensation to the victims led to the smallest reduction.

Table 3.4: Regression Analysis of Sentence Length

Variables	MODEL 1 Shanghai	MODEL 2 Beijing	MODEL 3 Guangzhou	MODEL 4 Full Sample
Number of Female Judges on Panel (base = no women)				
One woman	0.184 (0.893)	0.430 (1.567)	0.0212 (1.247)	-0.263 (0.655)
Two women	0.299 (0.905)	2.953* (1.575)	-0.478 (1.213)	0.409 (0.656)
All women	1.372 (1.159)	0.0522 (1.815)	1.333 (1.546)	0.413 (0.818)
Offenders' Education Level (base = illiterate)				
Primary school	-1.383 (1.419)	-2.898** (1.473)	-3.488** (1.760)	-2.546*** (0.880)
Secondary School	-2.353* (1.403)	-4.841*** (1.527)	-1.782 (1.766)	-3.064*** (0.881)
Upper Secondary School	-2.990** (1.507)	-5.182*** (1.830)	-1.568 (2.086)	-3.508*** (0.993)
Bachelor's degree or above	-4.143** (1.786)	-4.762* (2.776)	-0.705 (2.859)	-3.835*** (1.287)
Offenders' Occupation (base = unemployed)				
Farmer	1.031 (0.849)	-0.949 (1.105)	-2.046 (1.334)	-0.229 (0.600)
Businessman	0.294 (0.812)	0.140 (1.219)	-2.629* (1.379)	-0.386 (0.612)
White-collar worker	1.984 (1.762)	0.347 (3.447)	-3.010 (8.445)	0.599 (1.536)
Government official	3.895 (6.037)	4.113 (7.221)	14.24* (7.587)	8.990** (3.952)
Student	-4.713** (2.372)	-13.77*** (4.176)	-11.85** (5.319)	-8.087*** (1.956)
Recidivists	8.261*** (0.905)	8.970*** (1.302)	12.88*** (1.538)	9.546*** (0.680)
Relationship between Victim and Offender (base = no relationship)				
Dating	-3.036** (1.334)	-5.332*** (1.975)	-6.966*** (2.188)	-4.547*** (1.000)
Family-Relative	6.212*** (1.592)	12.58*** (1.896)	12.19*** (2.110)	10.43*** (1.060)
Workplace	-2.299** (0.914)	0.0531 (1.650)	-2.973* (1.552)	-1.871*** (0.723)
Social Network	-1.436* (0.742)	-1.089 (1.082)	-2.716** (1.131)	-1.746*** (0.543)
Incarceration (base = none)	32.69*** (1.195)	34.18*** (2.136)	29.85*** (1.816)	31.72*** (0.912)
Mitigation (base = none)				
Attempted	-19.49*** (0.816)	-20.86*** (1.138)	-24.90*** (1.256)	-21.44*** (0.592)
Compensation	-4.551*** (1.508)	-3.604 (2.240)	-1.816 (2.862)	-4.437*** (1.164)
Confession	-5.017*** (0.745)	-4.498*** (1.046)	-5.705*** (1.134)	-5.114*** (0.539)
Surrender	-12.82*** (1.072)	-11.87*** (1.652)	-15.45*** (1.610)	-13.47*** (0.791)
Meritorious conduct	-19.69*** (5.165)	-5.410 (7.141)	-6.339 (8.057)	-13.09*** (3.750)
Aggravation (base = none)				
Serious circumstances	38.14*** (2.556)	65.60*** (4.746)	75.01*** (9.244)	46.81*** (2.261)
Multiple victims	43.30*** (2.833)	69.21*** (4.210)	66.60*** (6.584)	54.14*** (2.259)
Public	28.03*** (5.459)	23.58 (15.62)		28.38*** (5.424)
Multiple offenders	52.97*** (1.572)	66.65*** (3.034)	61.36*** (2.478)	58.93*** (1.209)
Serious injury	44.01*** (14.39)	74.64*** (7.915)	111.8*** (15.99)	73.54*** (6.266)
Juvenile	14.88*** (0.759)	14.77*** (1.158)	16.81*** (1.072)	15.44*** (0.548)
Location (base = Shanghai)				
Beijing				2.582*** (0.517)
Guangzhou				0.923* (0.526)
Constant	13.99*** (2.489)	8.557 (16.45)	23.83*** (5.087)	16.38*** (2.057)
Observations	3,024	1,580	1,496	6,100
R ²	0.715	0.664	0.747	0.701

Notes:

Standard errors in parentheses. *** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$.

All regressions control for year of judgment. These results are omitted from the table for brevity.

Having identified variables that have a significant correlation with sentence length, the second step in testing hypothesis two is a regression analysis of sentence length by panel composition and a pairwise comparison of regression coefficients among different panels. In Table 3.5, compared with illiterate offenders' sentence length, offenders with a better educational background received more lenient treatment when two female judges sat on a panel. It also appeared that, when one or two female judges sat on a panel, sentencing decisions had strong correlations with the victim-offender relationship, compared with offenders who had no prior relationship with victims. Several variables, such as offending records, incarceration, some mitigating factors (attempted rape, confession, and surrender), and all aggravating circumstances except for rape in public, are statistically significant in regard to the sentence length. Therefore, it is safe to conclude that when the offender was a student, they received a shorter sentence from an all-male panel (-18.65 months) and a panel with one female judge (-10.25 months). When judged by an all-male panel, recidivists received a sentence 12.02 months longer than non-recidivists. Offenders who had family-relative relationship with victims received longer sentences from panels with two (14.06 months) and three (18.02 months) female judges. An all-female panel (0.795 month) appeared to be harsher on offenders who came to know victims through social network. In the categories of mitigating and aggravating circumstances, an all-male panel (16.79 months) and a panel with one female judge (16.81 months) issued a longer sentence to offenders who had sexual intercourse with a girl under the age of 14 years. A panel with an all-male panel (-24.10) appeared to be more lenient towards offenders in regard to attempted rape. When categorising the findings above, two patterns started to emerge. First, an all-female panel delivered more lenient sentences when all judges were required by law to take a serious circumstance (raping juveniles) and offending history (recidivists) into consideration. However, when extra-legal factors became salient (being students, family-relative relationship, and social network relationship), an all-female panel typically issued harsher sentences. This situation began to change when a female judge decided the outcome of a case with two male judges. This is because this type of panel often issued a shorter sentence when those situations were involved. Second, an all-male panel delivered a longer sentence when they were ordered by the CLC to be harsh against recidivists and in the case of juvenile rape. They were also soft on offenders when they were required to be lenient in regard to attempted rape.

Table 3.5: Regression Analysis of Sentence Length by Panel Composition

	MODEL 1 No Female Judges	MODEL 2 One Female Judge	MODEL 3 Two Female Judges	MODEL 4 Three Female Judges	MODEL 5 Full Sample
Offenders' Education Level (base = illiterate)					
Primary school	2.994 (2.755)	-2.707* (1.473)	-4.112*** (1.355)	-0.194 (2.543)	-2.587*** (0.879)
Secondary School	3.811 (2.773)	-2.809* (1.472)	-5.030*** (1.359)	-2.079 (2.532)	-3.103*** (0.880)
Upper Secondary School	2.218 (3.006)	-2.556 (1.662)	-5.382*** (1.539)	-3.836 (2.880)	-3.545*** (0.992)
Bachelor's degree or above	1.007 (3.632)	-2.467 (2.158)	-6.225*** (2.036)	-3.361 (3.734)	-3.865*** (1.287)
Offenders' Occupation (base = unemployed)					
Farmer	0.491 (1.698)	-1.521 (0.971)	-0.318 (0.973)	1.316 (1.756)	-0.271 (0.599)
Businessman	0.472 (1.686)	-2.039** (1.014)	0.453 (0.979)	0.00767 (1.788)	-0.392 (0.611)
White-collar worker	4.089 (4.494)	-3.158 (2.598)	2.109 (2.426)	3.857 (4.198)	0.608 (1.536)
Government official	5.971 (8.746)	4.250 (5.398)	15.05* (7.838)		8.815** (3.950)
Student	-18.65*** (6.899)	-10.52*** (3.233)	-6.984** (3.075)	1.206 (5.110)	-8.075*** (1.956)
Recidivists	12.02*** (1.829)	8.257*** (1.111)	10.72*** (1.084)	5.800*** (2.142)	-1.121 (2.142)
Relationship between Victim and Offender (base = no relationship)					
Dating	-4.004 (3.551)	-5.990*** (1.574)	-3.552** (1.617)	-2.125 (2.777)	-4.560*** (0.999)
Family-relative	10.06*** (2.813)	5.235*** (1.755)	14.06*** (1.744)	18.22*** (2.993)	10.42*** (1.060)
Workplace	-3.147 (1.958)	-2.016* (1.189)	-1.771 (1.173)	1.097 (2.068)	-1.877*** (0.723)
Social network	-1.411 (1.550)	-2.506*** (0.892)	-2.025** (0.881)	0.795 (1.533)	-1.750*** (0.543)
Incarceration (base = none)	29.61*** (2.368)	31.21*** (1.553)	33.50*** (1.466)	29.46*** (2.560)	31.70*** (0.912)
Mitigation (base = no mitigation)					
Attempted	-24.10*** (1.651)	-20.52*** (0.969)	-22.31*** (0.968)	-22.25*** (1.667)	-21.48*** (0.592)
Compensation	-4.792 (3.458)	-4.653** (1.912)	-4.222** (1.818)	-4.260 (3.629)	-4.458*** (1.163)
Confession	-7.338*** (1.491)	-4.045*** (0.903)	-6.272*** (0.860)	-5.118*** (1.548)	-5.134*** (0.538)
Surrender	-16.53*** (2.141)	-12.47*** (1.317)	-13.65*** (1.298)	-15.98*** (2.177)	-13.49*** (0.791)
Meritorious conduct	-12.72 (10.41)	-16.38** (7.041)	-12.54** (5.175)	-1.254 (15.01)	-13.04*** (3.749)
Aggravation (base = none)					
Serious circumstances	29.84*** (5.996)	47.51*** (3.824)	45.74*** (3.470)	69.81*** (7.620)	46.80*** (2.261)
Multiple victims	62.53*** (7.307)	50.44*** (3.146)	54.28*** (3.914)	49.78*** (10.71)	54.04*** (2.257)
Public		18.29** (8.958)	8.432 (8.858)	70.59*** (10.54)	28.45*** (5.423)
Multiple offenders	59.27*** (3.245)	50.49*** (1.989)	65.29*** (1.922)	62.61*** (3.995)	58.92*** (1.209)
Serious injury	109.1*** (14.44)	65.84*** (8.938)	90.43*** (15.39)	29.23* (15.82)	73.44*** (6.265)
Juvenile	16.79*** (1.505)	16.81*** (0.912)	15.03*** (0.885)	11.09*** (1.574)	15.44*** (0.548)
Location (base = Shanghai)					
Beijing	2.187 (1.699)	2.680*** (0.815)	3.959*** (0.817)	-0.209 (1.487)	2.748*** (0.511)
Guangzhou	1.542 (1.371)	1.007 (0.883)	-0.246 (0.843)	0.943 (1.513)	0.752 (0.516)
Constant	21.80*** (5.067)	20.99*** (3.254)	16.19*** (3.312)	16.25*** (6.084)	19.57*** (1.975)
Observations	748	2,338	2,324	690	6,100
R ²	0.772	0.695	0.721	0.736	0.709

Notes:
Standard errors in parentheses. *** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$.
All regressions control for year of judgment. These results are omitted from the table for brevity.

3.7 DISCUSSION

The major findings of this study support both hypothesis one and hypothesis two. In regard to hypothesis one, with the possibility of regional variations in mind, a negligible difference can be observed among four types of panels in Shanghai, Beijing, and Guangzhou. This result exemplified the effectiveness of the ‘iron triangle’ relationship, the Sentencing Guidelines, and the Adjudication Committee, as mechanisms limiting Chinese judges’ discretionary power in regard to conviction and sentencing (Wei & Xiong, 2020). However, discretion is no doubt unavoidable in practice, as the code of law cannot foresee every eventuality. Chinese judges can be seen to use it by siding with victims and issuing harsher punishments to offenders (McConville, 2011). This is due to judges’ grave concern about their complaints and petitions to higher levels of administrative and judicial systems (Liebman, 2011). This observation left room for an investigation into the differences in sentence length when some extra-legal factors of rape cases became prominent and may have thus triggered judges’ distinct reactions.

In regard to hypothesis two, an all-male panel and an all-female panel exhibited distinct sentencing styles when judges were mandatorily asked to be harsh towards offenders who had raped juveniles. The panel effect was also uncovered in the Chinese context if the cases involved offenders’ student status, family-relative relationship, and social network relationship. These results seem to be in line with the different experience account, which emphasises the importance of men and women’s distinct experiences in deliberation and sentencing (Reid et al., 2020). Two qualitative studies on Chinese judges’ gender and judging support this assumption. When surveying and interviewing 136 judges in two regions of China, Li (2007) found that the interviewees all recognised that their own experiences and factors external to cases had an impact on their decision-making process in criminal lawsuits. Li reported that female judges took the harm inflicted upon victims as the most important factor in sentencing, while male judges did not consider victims’ experiences as critical in their decision making. Rather, they preferred to take a holistic view of sex crimes when determining the sentence length. In another study, based on eight months of fieldwork in four district courts of China, Wei (2020) found that female judges uniformly refused to mediate rape lawsuits. This was largely because female judges took the suffering of rape victims and their own sexual assault experiences into consideration. This is probably why an all-female panel would issue longer sentences when some extra-legal factors (being students, family-relative relationship, and social network relationship) were involved. It is also likely to explain why a panel with one

female judge and two male judges would mediate such a situation and render a more lenient treatment for offenders.

The major findings also showed that extra-legal factors indeed impacted Chinese judges' decision making in rape cases, albeit in different directions and to different degrees. For instance, in the full sample, dating relationship, workplace relationship, and social network relationship all yielded more lenient sentences for offenders, compared with the sentence length in rape cases involving strangers. Known as the 'rape myth', there is a common perception that, in contrast to the terrifying prospect of sexual assault by a stranger, violation by someone the victim knew is somehow of lesser significance (Burt, 1980; Deming et al., 2013: 466). As anticipated in this research, the rare public rape by a stranger is considered more worthy of punishment than any other kind of rape. The logic behind this sentencing process is perhaps more than a matter of applying law to facts; it expresses a common attitude in China that when defendant and victim are known to each other rape is less traumatic than when they are not known to each other. Nevertheless, one could equally argue that the consequences of rape in such circumstances are greater than in relationships of a shorter duration. To be raped by a man with whom a woman has shared trust over a long period could be particularly shocking and psychologically devastating (Rumney, 1999). In fact, there should be no surprise at such discrepancies in sentencing because this study is not an isolated one supporting judges' stereotypical impressions of rape victims in trials. For example, a group of judges analysed a hypothetical criminal case in which a female college student accused a male student of sexual assault during a fraternity party in Arizona (Wistrich et al., 2005). The materials indicated that the victim contacted the police immediately after the incident and had bruising on her upper thighs consistent with the assault. In the control group, 49.1 per cent of the judges (27 out of 55) found the male student guilty. Judges in the experimental group read that the male student attempted to introduce a testimony in which the victim's roommate stated that she 'liked to loosen her inhibitions with a few beers too many and have rough sex with the first guy she saw'. Although this testimony is explicitly inadmissible under Arizona's rape-shield statute, which is designed to forbid the introduction of evidence concerning victims' reputation for chastity, a mere 20 per cent (seven out of 35) of judges convicted the male student. The results suggest that ignoring a victim's sexual history can be challenging for judges, especially if they consider it to be 'relevant' to the victim and the case litigated. These two studies, which were conducted under distinct legal settings, similarly reveal a disturbing scenario: Judges have

difficulty disregarding inadmissible information in rape cases, which could potentially jeopardise the interests of victims in a legal battle against their offenders.

These results also prompt an intriguing question about judging and bias. It is generally understood that judges are different from laypeople in decision making because they are professionals who have received legal education and have experience practising law. They also work in an environment that is designed to improve the quality of decisions made within it. However, studies in a laboratory or quasi-laboratory setting with incumbent judges in the United States and China have identified a causal relationship between extra-legal factors and biased decisions (Spamann & Klöhn, 2016; Liu & Li, 2019). This research, which is an archival study of court judgments by nature, exhibits the same pattern. To understand the root cause of this prejudice, it is essential to grasp the environment in which Chinese judges' decisions were made. A striking similarity among 42 district courts in three metropolitan cities is the overmounting docket. Take Chaoyang district court in Beijing as an example. Judges in Chaoyang district court finished 155,980 cases in 2019 (Tu et al., 2020). This number indicates that each judge heard 679 cases, or 1.86 cases per day without a break, in 2019. The research literature suggests that the taxing workloads faced by judges could have a variety of negative consequences, including adverse effects on the quality of their work (Burbank et al., 2012). Facing a litigation explosion in the 1980s, federal court judges in the U.S. had 'not enough time to consider substantive issues before ruling' and some even found themselves 'more superficial' (Robel, 1990: 9). It seems that stressful conditions could induce judges, who would otherwise adopt complex approaches, to rely on simple strategies or intuitive mental shortcuts (Levy, 2013). This may explain why extra-legal factors played a role in judges' decision-making process in this research; China has had the same caseload problem since the 1980s (Fu, 2003). Without sufficient time to hear disputes, it is difficult for judges, especially those working in metropolitan cities, to reduce the adverse influence of impulses and prevent cognitive biases in the course of their deliberation (Posner, 1995).

Overall, this chapter found that judges' gender matters in cases in which gender itself is an issue. Judges' behaviour can also change as the composition of their group of colleagues changes. These findings are consistent with an informational account of gendered judging, which argues that women possess unique and valuable information emanating from their shared experiences (Boyd et al., 2010). Female judges were hence able to understand the thoughts and feelings of plaintiffs as a result of their shared experience with violence and discrimination.

The panel effect may be magnified, if a female judge can recount personal experiences with sexual harassment or sex discrimination in deliberation (Peresie, 2005). This research thus provides support for the difference theory, which argues that women can make a difference by changing male judges' behaviour (Kenney, 2013). As a result, the greater inclusion of women will indeed add a 'new dimension of justice' (Goldman, 1979: 494).

3.8 CONCLUSION

In terms of research on the relationship between judges' gender and judging, this study is ground-breaking in two aspects. First, it proves that, after separating cases adjudicated by a panel of judges with or without people's assessors, the panel effect exists in China. This method may have implications for follow-up studies in jurisdictions with mix tribunals. Second, it shows that some extra-legal factors in rape cases can have substantial impacts on judges' decision making. This observation has long been neglected in previous studies. However, similar to many quantitative projects examining the Chinese criminal justice system, this study is constrained by the lack of control of other courtroom actors, such as defence attorneys and prosecutors, with whom judges must interact in criminal trials. These contributions therefore should be understood within the context of the following limitations.

First, the gender disparities in sentencing could be tied to the gender of the courtroom workforce. The research literature indicates that increased female representation in the courtroom workforce can result in the decreased likelihood of imprisonment and reduced sentence length overall (Farrell et al., 2010). Agreeing with Gilligan (1982), Farrell and colleagues (2010: 122) explained that women may contribute an ethic of care to the courtroom that 'pays heed to a different examination of defendant characteristics, leading to increased leniency overall'. Since information on the gender of lawyers and prosecutors is not immediately available from judgments published online, I could not explore this issue further. Second, the courtroom workforce could circumscribe the power of judges in sentencing and mediate the outcomes (Haynes et al., 2010; Kim et al., 2015). For instance, a study of 411 criminal cases tried in a district court in K City of East China in 2015 revealed that the sentencing recommendations of the public procuratorate have a marked influence upon the court's sentencing judgments (Lin & Ma, 2018). The panel effect found in this research may hence be linked to what has been recommended by prosecutors. To test prosecutors' influence in judges' decisions, sentencing recommendations and statements of charges are essential. Regrettably, I could not obtain these documents and address this point.

China is a country of such immense size and contrasts that one project cannot provide a fully representative sample of all cases. As a result, a natural extension of this research would be to look into cases district courts heard in remote areas in order to bring more geographic differences into focus. Further research could also explore judges' perceptions and experiences in reasoning out their rulings. As Coontz (2000: 62) reflected, in regard to studies of gender and judging, 'none of the systematic research to date has sampled judges directly about decision-making processes'. As a result, interpretations of research findings from public record data are 'clearly speculative' (Songer & Crews-Meyer, 2000: 761). By interviewing judges directly about the group dynamics involved in decision making, we will be more confident when interpreting results from statistical analyses and discussing their wider implications.

Justice Holmes may still be right. With different panel compositions and differences in case-level factors, male and female Chinese judges in this study indeed exhibited differences in sentencing rape cases. Although they are expected to put their personal feelings towards rape victims aside, whether those feelings arise from enmity or empathy, this research shows otherwise. We might argue that this may not be a serious problem because the attitudes of the judiciary only represent the elite few, rather than accurately representing the views of a diverse society. Nevertheless, they remain in a position of power, making life-changing decisions that impact the lives of vulnerable women. Hence, how to reduce judicial bias, particularly in rape cases, should always be a focal concern of our scholarship. In the next chapter, I use qualitative research methods to uncover the behavioural differences at work between male and female judges. Specifically in chapter four, it is shown that female judges are accustomed to employ mediation as a preferred dispute resolution method when facilitating reconciliation between two parties and are more likely to seek civil compensation for victims. This study reveals that in the Chinese criminal justice system, behavioural differences between male and female judges exist in the process, as well as in the outcomes of judgments.

Chapter Four: Gendered Justice in China: Victim-Offender Mediation as the ‘Different Voice’ of Female Judges

4.1 INTRODUCTION

In Shakespeare’s *The Merchant of Venice*, Portia, disguised as a man (which is the only way she can argue the law), assumes the role of a lawyer’s apprentice and eloquently pleads for the life of Antonio before a judge. Portia is perhaps one of the first female ‘lawyers’ to be named in Western culture, but her story indicates that the early legal society was built as a mostly male field, macho and hierarchical. It is true that the legal profession historically has been homogeneous in gender and ethnic make-up, greatly impacting the resulting power structure (Kronman, 1995; Brockman, 2001). Nearly three decades ago, the 1995 Beijing Declaration and Platform for Action (Article 142, page 58) specified that government should ‘ensure that women have the same right as men to be judges, advocates or other officers of courts, as well as police officers and prison and detention officers, among other things’. Even in the twenty-first century, it is still easy to imagine a time when bringing a dispute before a court would certainly mean a white male judge sitting in the court and determining the outcome of the litigation. Over the years, feminist legal scholars have campaigned for gender equality and diversity in a judiciary which has long been perceived as ‘pale and male’ (Rackley, 2013: 7). Research has revealed that women may be able to engage in agenda-setting for women’s equality and rights when they constitute a critical mass in political bodies (Bratton, 2005). As a result, a rich body of international literature arguing for a strong role for women in the administration of justice has been produced (Schultz & Shaw, 2013). The scope of these research outputs not only covers the methods of selecting judges in many parts of the world, but also touches on the advancement of judicial careers for female judges. One line of this enquiry examines the role of gender in the application of the law, and scholars have wondered whether women can bring something different to the adjudication process based on their life and work experience. The suggestion that female judges rule ‘differently’ from their male colleagues is typically tied to the work of Carol Gilligan (1982). In her book *In a Different Voice*, Gilligan identified two distinct ‘voices’, or reasoning processes, corresponding (in her research subjects) to men and women. She argued that the ‘woman’s voice’ is not deficient (as was assumed by dominant psychological theories of the time), but is merely different from the mainstream (masculine) voice. While Gilligan had likely not intended to provide a conceptual

framework for advocating the inclusion of female judges in the judiciary, this is precisely what happened following others' interpretation of her work (Kenney, 2008; Minow, 1987).

The literature reveals that in divorce disputes, sex discrimination and sexual harassment lawsuits, same-sex rights cases and asylum-seeking applications, many female judges in the United States have different jurisprudential philosophies from their male colleagues (Spohn, 1991; Davis et al., 1993; Songer et al., 1994; Martin & Pyle, 1999, 2004; Coontz, 2000; Songer & Crews-Meyer, 2000; McCall, 2003; Smith Jr., 2004; Ramji-Nogales et al., 2007; Boyd et al., 2010). However, some scholars have also revealed a more homogenous picture (Kritzer & Uhlman, 1977; Gruhl et al., 1981; Gottschall, 1983; Walker & Barrow, 1985; Johnson, 2006). Accordingly, there is very little consistent statistical evidence for an essential difference between male and female judges in decision-making. Qualitative studies on the gender effect in judging are scarce but have uncovered a 'different voice' (Miller & Maier, 2008). For instance, Artis (2004) conducted in-depth, face-to-face interviews with 25 trial court judges in Indiana and investigated their accounts of whether they continued to use the tender years doctrine in custody disputes, even though the custody statute is explicitly gender-neutral. She found that female judges are less likely to support the tender years doctrine than male judges.

Since women began entering the legal profession in significant numbers, mediation has been gaining recognition as a viable process for resolving legal disputes. As Galanter (1985: 257) puts it, settlement is now 'a respectable, even esteemed, feature of judicial work'. Applying Gilligan's (1982) 'ethic of justice' and 'ethic of care' to the dispute resolution process, proponents of a care-based approach regard mediation as a process that fulfils many of the characteristics of the 'ethic of care' (Klein, 2005). First, a court battle tends to breed hostility and reinforce anger between disputants because they are increasingly polarised in the adversarial process. In contrast, mediation defuses anxiety by promoting cooperation between the parties in a structured and supportive process. Second, mediation could help the parties to identify important issues between themselves and produce an agreement for the future that both sides can accept. Third, in the criminal justice system, mediation offers the opportunity for offenders to apologise to their victims, expressing remorse. Oftentimes, victims' need for a simple apology from offenders is greater than their need for retribution through litigation (Goolsby, 1990). Because of these merits, mediation 'promised to be a feminist alternative to the patriarchally inspired adversary system', which is arguably the most trenchant critic of alternative dispute resolution (Nader, 1993: 10).

Exploring a ‘different voice’ in mediation, Boyd (2013) identified that female judges successfully fostered settlement in their cases more often and more quickly than their male colleagues, using a data set of 18,000 civil rights and tort cases in four federal district courts across nine years. She pointed out that the prerequisite for such differences in settlement is the discretion that lies with individual district judges to determine how hands-on they wish to be in supervising their cases and how informal in mediating disputes assigned to them. It is here that gender is perhaps most likely to play a role in determining whether judges take the initiative to actively promote settlement. It should be highlighted that female judges’ preference for mediation is not unique to Americans. Based on interviews and surveys with 31 Swiss judges and 80 other members of the legal profession, Ludewig and LaLlave (2013) found that female judges in Switzerland ranked mediation significantly higher than male judges did, and this difference was statistically significant. These findings seem to suggest that women do not leave gender ‘at the door’ on entering the legal profession. Rather, it is an essential factor in their practice of law. It is one of the reasons why female judges are ‘more willing to try facilitation and are often better at it’ (Klein, 2005: 785).

Gilligan’s theory and the gender effect on mediation have also helped to shape the debate on how Chinese women’s involvement in the legal profession might impact on the justice system. Scholars have found that the Chinese national role models for female judges, such as Chen Yanping, Jin Guilan, and Shang Xiuyun, are experts in mediation without exception (Song & Xie, 2014; Song & Liu, 2016). The fieldwork in two district courts of China carried out by Wei and Xin (2013) also illustrates how female judges understand the nature of their work in divorce mediations by following mediator settlement strategies, similar to those observed by Silbey and Merry (1986), to defuse domestic conflicts. Nevertheless, victim-offender mediation², an essential component of criminal trials, is an area that has never been touched on by researchers. According to Article 101 of the 2018 CPL, a victim has the right to file an incidental civil claim during the course of a criminal proceeding if he or she has suffered material losses as a result of the offender’s criminal act. A key assumption for such ‘voice’ to emerge in victim-offender mediation is that, depending on the complexity of the case and their schedules, judges in criminal divisions have the authority to decide whether a case should go directly to trial or go through mediation for civil claims first. There is also no limit on the number of times such

² The difference between victim-offender mediation and criminal reconciliation is that the former emphasises the participation of a third, neutral party who presides over such meetings while the latter refers to a situation where offender and victim meet in a non-adversarial environment to search for solutions that promote reparation.

mediation can be attempted. However, according to Article 122 of the 2017 Civil Procedure Law, judges do not possess such discretionary power in all civil claims because mediation should be used first unless it is refused by the parties. Echoing the findings on female judges' discretionary power regarding case management and preference for settlement, this study aims to uncover such 'voice' in the Chinese criminal justice system and thus to fill this research gap (Boyd, 2013; Ludewig & LaLlave, 2013). The remains of this chapter proceed as follows: Section two offers an overview of the Chinese judiciary and argues for its gendered construction since its establishment. Section three explains the philosophical influence of Confucianism on Chinese people's preference for mediation and reviews the literature on victim-offender mediation. Section four details the research design of my eight-months' fieldwork in four district courts of China, and section five presents major findings. The last Section identifies the limitations of this study and suggests two directions for further study.

4.2 THE CHINESE JUDICIARY AND ITS GENDERED CONSTRUCTION

In recent years, female law school graduates effected a large-scale entry into the Chinese legal profession, and a significant number of those with graduate degrees in law passed the national judicial examination and civil service examination for vacancies in courts (Zuo, 2018). Female graduates who chose to work in criminal divisions might be assigned to work in the juvenile section, a subdivision of the criminal division, and they have frequently been portrayed by the media as 'mother judges' (*faguan mama*) because they are women dealing with offenders aged 14 to 18 (Zhu, 2012). Normally, trials in the juvenile section are less formal, and allow more participation by the children and their family. With rare exceptions, the role model female judges in the juvenile section are reported to devote themselves passionately to preventing youth offending and reoffending (Song & Liu, 2016). Even though some female judges choose to stay in the juvenile section after a few years, most choose to change post to hear normal criminal cases.

In addition, the *People's Court Daily*, a propaganda mouthpiece of the SPC, often describes female judges who work in criminal divisions as 'different' in many ways from their male colleagues. For example, Yu Huafen, a criminal division chief in the Xuanwei district court and a role model for female judges, is said to 'perfectly handle her femininity in a masculine court environment' (Tong & Tang, 2015: 5). The *People's Court Daily* has asserted that Yu's achievements, as the judge who settled the highest number of criminal lawsuits in her division over 27 years, can be attributed to her combination of 'feminine' characteristics, such as

attention to detail, and her ‘masculine’ workaholic lifestyle. The *People’s Court Daily* has also reported on the extent to which female judges’ working style in criminal divisions is ‘different’ from male judges’ approaches. Zhou Xin, a model female judge from the criminal division of the Shanghai Intermediate People’s Court, was accustomed to speaking with victims’ relatives after trials and taking their opinions into consideration before reaching a decision (Yang, 2016: 5). Judge Zhou believed that, in addition to the adversarial court hearing, this was the only way to reveal and understand the full story. She also asserted that this ‘unconventional’ approach reflects the humane dimension of the Chinese criminal justice system. Although stories reported by the *People’s Court Daily* may not accurately and critically reflect female Chinese judges’ actual working style in criminal divisions, they could be referenced as a starting point for comparative research on the relationship between judges’ gender and judicial behaviours in the Chinese criminal justice system.

4.3 VICTIM-OFFENDER MEDIATION IN CHINA

The philosophical influence of Confucianism has been pervasive among the Chinese people from ancient to contemporary times. It is perhaps unsurprising that the pervasive teaching of Confucius has left the traditional Chinese culture and discourse with a non-litigious outlook (Cohen, 1966). Hence, the traditional Chinese method of dealing with disputes inevitably lies in mediation. In fact, one may go so far as to observe that it is ‘dispute dissolution rather than dispute resolution which [the Chinese] hold dear’ (Goh, 2016: 9). Another relevant social value is the notion of yielding (*rang*). The notion of yielding is positive: A party in a dispute forsaking something might, in another way, acquire something else. Yielding also suggests that one has the ability to look within oneself and acknowledge that one may not be completely faultless. The Chinese cultural desire for yielding is the prime motivating factor behind the need for compromises, which, in turn, shapes the process of any mediation (Bodde & Morris, 1967).

In the three decades since China’s implementation of the reform and opening-up policy in 1978, the country’s economy has developed rapidly, and income inequality has increased significantly (Yao, 1999). With rising income inequality has come political corruption and official misconduct, including within the justice system (Lewis & Xue, 2003; Xiong & Wei, 2017). As a result, increasing tension and strong resentment of ‘the rich’ and ‘the privileged’ has translated into waves of social unrest and street protests against local governments, which represent the CCP (Su & He, 2010). To ease the conflict between citizens and the state, in October 2006 the CCP introduced the political objective of building a ‘harmonious society’.

Scholars have understood this as a process through which social stability may be achieved (Li, 2016b). This political agenda has also ‘reframed the approaches to law and justice to fit the contours of the stability imperative’ (Trevaskes et al., 2014: 2). In the judiciary, the SPC issued a judicial opinion in 2010 encouraging lower courts and judges to employ the Ma Xiwu adjudication method, which focuses on mediation, as a preferred method for resolving disputes. In practice, this opinion was translated into concrete moves for judges to avoid issuing decisions that might result in mass protest and petitions to higher authorities (Minzner, 2011). The adoption of mediation has commonly been viewed by scholars as a move towards ‘restoring the age-old Confucian ethics of societal balance and harmony’ in the legal system (Weatherley & Pittam, 2015: 279).

Although mediation has been typically used in non-criminal proceedings, it is also appropriate for criminal cases in which a civil claim for compensation is brought to court by a victim. Victim-offender mediation was originally designed for cases where offenders have committed minor criminal acts but demonstrated remorse during the investigation and prosecution process. It seems to have been first used by a Beijing district court in 2002 in cases of assault with minor injury (Xiang, 2013). After a few years of testing this method, such mediation became a widely accepted practice within the police, the procuratorate, and the court. In 2012, it was formally stipulated in the CPL that criminal acts such as common assault, theft, deception, and illegal trafficking can be handled through victim-offender mediation. In 2016, the scope has been expanded by the SPC to cases involving assault (including assault with serious injury), serious traffic offences, intentional destruction of property, robbery, theft, fraud, rape, extortion, and negligent homicide, with malfeasance as an exception. Some serious crimes, for which offenders face a sentence of imprisonment of three to seven years, can also be handled through victim-offender mediation. Assault, theft, and reckless driving are normally the top three crimes subject to victim-offender mediation across the country (Lu et al., 2017; Yuan, 2017).

Liebman’s (2011) interviews with dozens of Chinese judges in seven provinces and provincial-level cities showed that general sentences (and death sentences in particular) in criminal cases frequently result in complaints from both the families of offenders and from victims and their families. Reports note the importance of courts ‘acting proactively so as to prevent complaints from escalating and disrupting social stability’ (Liebman, 2011: 281). One merit of introducing victim-offender mediation to the criminal justice system is that mediated cases are less likely than adjudicated cases to result in petitioning to a higher level of the administrative and judicial

system. This is because the purpose of such mediation is to heal the harm done by offenders, work out a plan to compensate victims, and restore the community in full. In mediation, offenders' financial compensation of victims is considered a sign of sincere apology and repentance, an act of good will to mend the broken relationship, and a form of restitution (Lu et al., 2018). According to Article 9 of the 2017 Sentencing Guidelines, offenders will receive a 30 per cent deduction of their sentence if they actively compensate the victim but fail to obtain the latter's forgiveness; a 40 per cent deduction will be applied if the offender has actively compensated the victim and received forgiveness. Judges are able to grant a 20 per cent deduction if the victim has forgiven the offender without compensation. Evidently, the offender's attitude and compensation in mediation has frequently impacted judicial decisions.

There have been some criticisms of victim-offender mediation as it is short on formal procedure and lacks oversight (Jiang, 2017). It has also been criticised for undermining the integrity of criminal justice system because in practice the offender is allowed to avoid criminal responsibility through financial settlement, although this could be an unintended consequence (Yuan, 2018). Take Henan province as an example: High compensation is not only common, in some cases it is ten times the statutory standard (Xiang, 2013). Therefore, offenders without financial resources must choose between paying to reduce prison time and saving money but serving the sentence. Mediation may also considerably increase judges' workload. Song and colleagues (2009) revealed that the average time spent on each mediation was around two hours, excluding the time spent on preparing the mediation and writing the final agreement. Because of the workload pressure, judges must be efficient in reaching a settlement for both parties. In her five-month period of fieldwork in an eastern Chinese city, Yuan (2017) even found that some judges had no time to listen to the basic facts from the opposing sides in mediation.

4.4 RESEARCH DESIGN

Contemporary China provides a strategic setting for criminological research because the country has experienced profound social change and rising levels of crime since it implemented the reform and opening-up policy in the late 1970s. The purpose of the current enquiry is to gain knowledge of the perspectives and attitudes of judges involved in victim-offender mediations in their natural settings, and it demonstrates the feasibility of conducting such research in China despite the significant political, social, and cultural barriers. In order to complete this project, from June 2017 to April 2018, I spent two months each in District Court A in Shanghai, District Court B in Shenzhen, District Court C in Baoding, and District Court

D in Shenyang. These four cities are located in different regions of China and differ in various aspects, such as population and leading industries. For example, Shanghai is a coastal metropolitan city in eastern China with a population of 24.18 million. It is also a global financial centre and transport hub with the world's busiest container port. Baoding, however, is a medium-sized inland city in northern China with a population of 10 million. Baoding has one of China's biggest plants manufacturing the blades used in wind turbine generators, and also has good connections to other cities, being located on one of the main routes in and out of Beijing. Over eight months of fieldwork in four district courts, 68 mediation cases were observed, mostly involving traffic accidents and reckless driving (23 in total), assault (18), theft (13), robbery (9), and fraud (5). Since I guaranteed my interviewees anonymity and confidentiality, I took rigorous measures to protect all information that could identify the judges and specific places where interviews were undertaken. Table 4.1 providing the aggregated information of the 42 participants of this study has been provided below. It is expected that this study fully represents the perspectives of these judges.

Table 4.1 Demographics of Judges^a (N = 42)

Characteristics	Number	Ratio
Gender		
Male	27	64
Female	15	36
Age		
23-30	7	17
31-40	19	45
41-50	12	28
51-60	4	10
Education		
Bachelor's Degree	19	45
Master's Degree	17	40
Doctoral Degree	6	15
Bar Admission		
Yes	31	74
No	11	26
Years in Office		
10 Years or Less	10	24
11-20 Years	21	50
21-30 Years	9	21
31 Years or above	2	5

Source: The information gathered in this table was voluntarily disclosed by interviewees.

^a The information gathered in this table was voluntarily disclosed by interviewees.

The difficulties of conducting empirical research into criminal matters in China have long been acknowledged and gaining access to respondents is particularly challenging (Curran, 2010). Although the conditions are improving, the obstacles encountered by researchers have changed little in 50 years (Heimer & Thøgersen, 2006). The first difficulty of conducting criminological research in China is political sensitivity. Traditionally, criminological research and data have been considered highly sensitive because the CCP believes that crime has no place in a socialist society (Johnson, 1986; Troyer, 1989). In addition, the CCP fears that publicising and revealing crime-related information, which is guarded as a state secret, would tarnish the image of the nation and be 'a source of international embarrassment' (Bennett, 2004: 12). Undoubtedly, familiarity with the political and social structures of Chinese society is essential to overcoming this obstacle. Yuan (2017) noted that the use of a less sensitive topic that could be tied to current

state-promoted practices increases the likelihood of the researcher being accepted. I found that judges were pleasant when I shared my research objective on gender, law, and judging with them. The saying ‘women can hold up half the sky’ (*funv nengding banbiantian*), a proclamation made by Chairman Mao in 1955 and a popular element of the CCP’s propaganda ever since, was frequently uttered by my hosts in first meetings. In District Court A, the deputy president even claimed that the era of ‘whatever male comrades can accomplish, women comrades can too’ in his court is already a thing of the past. He observed that female judges in the criminal division consistently outperformed male judges, and he was proud of this. As a result, neither of my local hosts ever challenged me on the sensitivity of this research project.

The second hurdle regarding the collection of original data in China is access to criminal justice institutions. *Guanxi*, the Chinese personal connection, is a form of social capital consisting of an individual’s instrumental and affective bonds in a complex social network governed by trust and reputation (Zhang et al., 2009; Wang, 2014). Given that Chinese people pay more attention to *guanxi* in exchanging favours and sharing resources reciprocally, gaining access to the field will depend, among other things, on whether the researcher has a strong, special relationship with the institutions to be researched. District Court A was my first destination, and I was introduced to the deputy president by a law school professor in Shanghai: The deputy president was a second-year Ph.D. candidate of the professor. Therefore, my entry into the field depended entirely upon my connection to this professor and her connection to this deputy president. However, I was fully aware that good relationships established with one key respondent do not always extend beyond the individual contact and into the institution itself. Efforts must be made to build the relationships in order to gain the trust and confidence needed to be granted interviews and observations. During my two-month stay in Court A, I provided assistance to the criminal division chief while collecting data for my own research. The workload exceeded my expectations and took up much of my time in the first weeks. The chief understood this and did me favours, such as facilitating contact with other judges for interviews or asking his assistant to find me materials held by the division. My connection to District Court C was built on a long-term friendship with the division chief, who went to law school with me. This ‘strong tie’ helped me to gain access to the criminal division, and I had opportunities to build mutual trust with his colleagues. As a gesture of good will, I provided help and assistance in writing notes and reports for them. My assistance in their work reinforced our personal relationships and facilitated the data collection process. Access to District Courts B and D was obtained from friends who work in the local judges’ colleges.

The third obstacle to conducting criminological research in China is the resistance from judges, legal professionals whose counterparts in the West are known to be hard to reach (Jaremba & Mak, 2014). In the UK, for instance, ‘members of the senior judiciary in particular have never been in the least enthusiastic about research, frequently viewing such endeavors as an unwarranted intrusion into matters that should be their business and no one else’s’ (Baldwin, 2000: 237). This is also the case of Chinese judges, although they do not enjoy the same status as their counterparts in the West. Shen’s fieldwork (2017) conducted in 13 courts in one province found that it is not only hard to obtain gatekeepers’ approval, it is challenging to persuade individual judges to take part in research activities when access has been authorized at the top. Shen correctly pointed out that, fundamentally, Chinese judges fear losing their job as a consequence of participating in academic activities because of the lack of judicial independence. Since judges are concerned that their career could be jeopardised by the outcomes of research projects, they are expected to turn down requests for interview—especially requests from scholars with institutional affiliations to foreign universities. In this project, I found that having Chinese nationality and student status significantly reduced judges’ resistance. In Court A, the deputy president introduced me to judges in the criminal division as ‘a student who is eager to learn’. In Court C, the division chief told his colleagues in his introduction that ‘students only know the law from books, so we should teach him what the law in action is’. Both the deputy president and the division chief were correct about my motivation on the field trip: I was driven to observe victim-offender mediations and speak with judges about their thoughts on such behaviours. Their introduction of me as a ‘student’, instead of as a researcher from a university overseas, alleviated judges’ concerns about my ‘intrusion’ into their workplace. I also understand that their positive responses and support for my fieldwork were the outcome of *guanxi*.

The basic assumption of this research is that judicial attitudes are related to judicial behaviour, and such attitudes are the key factor in explaining judges’ motivations in using victim-offender mediation. Thus, I used interview and observation as major research methods. All interviews were undertaken following a semi-structured schedule; they were not recorded since recording devices are explicitly prohibited on court premises. As a result, all data are based on brief notes taken during interviews and filtered through my memory. The transcriptions were authenticated by judges, and in some cases a follow-up interview clarified or expanded themes which had arisen in the first interview. In addition, I chose to incorporate information gathered from direct observation of victim-offender mediation as evidence for analysis, because direct observation

is ‘one of the primary data collection methods for naturalistic or fieldwork settings’ (Gray, 2013: 185). Nevertheless, observation of this kind runs the well-documented risk that the presence of the observer will affect the behaviour of those who are being observed (Bottoms, 2000). To overcome this problem, I spent four weeks in an ‘immersion period’ in each division before starting to observe. During this period, I found opportunities during lunchtimes to speak with judges on common topics and shared experiences. I also managed to explain my research project in detail during the division’s business trips. These interactions positively sped up the immersion process and meant that I was more likely to obtain research data rather than presentational data through interviewing and observing judges. Judges who were being observed were comfortable with my presence and behaved naturally after the assimilation.

4.5 MAJOR FINDINGS

During my time in the four district courts, I sensed that the criminal division is a masculine setting for female judges, and pretrial mediation is frequently used by them to settle conflicts between offender and victim, compensate the victim properly, and reach mitigating conditions for offender. Regarding the masculine atmosphere, my interviews suggested that when recruiting judges for certain positions, a male preference has been stronger in certain divisions. The top three on the list are enforcement, security, and criminal division. Enforcing judicial decisions requires frequent travel and is sometimes confrontational, so it is generally considered a job for men. Court security officers often need to protect criminal suspects in trials and secure the safety of any person in the building. This is also deemed a job for men. The reasons why women are not suitable for jobs in criminal divisions shared by interviewees include frequent encounters with ‘horrifying’ criminal suspects and ‘bloody photos’ of murder cases. Court officials also expressed concern for female judges’ personal safety—judges in criminal divisions sometimes face threats or even physical attacks from resentful litigants, especially after making ‘unfavourable’ sentencing decisions. A deputy division chief (A-F-1)³ who has worked in District Court A for over two decades shared some reflections on her early experience in the criminal division:

On my first day in this division in 1997, I felt like I was married to eight husbands—they never treated me as their colleague, but as their secretary. They relied heavily on me to handle the administrative business in our division, so I

³ A refers to District Court A in Shanghai; M and F are used to identify judges’ gender; and Arabic numerals differentiate judges interviewed in the same court.

barely had time to hear trials. Also, a ‘paternalistic’ atmosphere pervaded in this division, as if they had to help me a little bit more in everything because I am a woman.⁴

In China, delivering legal education and crime prevention lectures to schools, communities, and institutions is generally viewed as a responsibility of judges, and these lectures are viewed as evidence of how the court serves the local community. Usually these activities conducted by judges are recorded in internal memos, and those lectures which are well-received by the audience are written up by administrators of the court for publication in local newspapers and on social media. However, these efforts are rarely counted in judges’ annual reviews of performance because they are extra-courtroom activities (Kinkel & Hurst, 2015). In the four district courts, female judges are often selected to deliver these lectures, and they must spend a significant amount of time on these activities. When asked why female judges are encouraged to participate in such activities, the division chief (C-M-1) responded:

They work with children and their parents every day, so they know how to talk to them. That is why female judges in my division can speak publicly. As for me, I just cannot speak in the same way because I am only familiar with the legal language used every day in trials. Also, they have a good understanding of laws and can handle difficult questions from audiences. If you knew the high scores they got in the national judicial examination and civil service examination, you would surely have confidence in their ability to deal with these tough questions.

It seems that female judges are penalised because of the way they are perceived to handle their cases and their solid knowledge of the law. This is one of the reasons why female judges are assigned to such tasks which occupy a significant amount of their time. I also observed how female judges mediate civil claims. When they have an opportunity to handle victim-offender mediation, female judges often propose a compensation sum that is twice (in extreme cases, three times) the statutory standard for offenders to pay, because they expect compensation beyond victims’ expectations to encourage them to quickly agree to a deal. Female judges also request that offenders pay the medical expenses of victims first, frequently observed in traffic

⁴ Quotations from participants were verbatim transcriptions.

accident mediations in which the victims' family members are particularly concerned about medical costs. Once medical expenses have been paid, judges expect offenders to cover additional costs, such as the living expenses and psychological treatment of victims. These two expenses were found to attract particular attention from judges since they make decisions on offenders' sincerity based on their approach to such payments. In cases in which offenders are sincerely remorseful but too poor to compensate victims, judges ask the victims' family to accept monthly letters from offenders about their progress in prison. If this strategy is ineffective, judges ask the offenders' relatives to provide help to the victims' family. This approach may not always work in mediation, but judges observed used it frequently when offenders' financial capacity was limited, and judges still attempted to reach a consensus between the two parties. Oftentimes, the notion of yielding plays an important role in the process of settlement. Not surprisingly, the restoration of relationships in victim-offender mediation is translated into apology, forgiveness, and compensation in practice.

It is also essential to note that a special feature of Chinese judicial mediation is that such mediation is part of judges' formal role, thereby giving them greater authority and more power to intervene. Because of judges' unilateral powers in mediation, a failed mediation is almost always followed by adjudication by the same judge, a feature that gives much more weight to judges' suggestions and puts greater pressure on disputants (Huang, 2006; Ng & He, 2014). Hence, the highest success rate of mediations I observed was 95 per cent in District Court C, the lowest being 85 per cent in District Court B. These figures are similar to those found by scholars in other parts of China. In one study of victim-offender mediation in ten district courts in C City, Lu and colleagues (2017) found that the average success rate was around 91 per cent. I found that almost all traffic accident cases can be settled within a half-day meeting, while fraud cases are the toughest type for judges to handle.

Through my fieldwork in four district courts, I also uncovered that: (1) The SPC's propaganda on national role models for female judges serves as an external force which has an impact on female judges' preference for mediation over trials; (2) Female judges' recognition of the importance of resolving conflicts, gained from life and work experience, serves as an internal force which leads them to choose mediation as a preferred method of dispute resolution; (3) Male judges neglect mediation; (4) Rape lawsuits are an exception, and are not mediated by female judges.

4.5.1 The Impact of Propaganda

Chen Yanping, a female district court judge and national role model endorsed by the SPC, is a faithful follower of the Confucian ideal of ‘a world without litigation’ (*tianxia wusong*). Official reports from the *People’s Court Daily* document that Judge Chen has handled over 3,100 cases in 14 years ‘without a single complaint or appeal; without a single petition by a disgruntled party; without even one wrongly decided case; her decisions are uniformly accepted by all parties’ (He, 2010, as cited in Minzner 2011: 950). In an interview, this national role model explained that her success stemmed from an avoidance of trials and her unflagging effort to mediate cases that came before her. Chen asserted that ‘judges should not be legal craftsmen who pay excessive attention to wording, believe the laws of statutes to be the only scripture, and pay no attention to social harmony and the popular interest’ (Wang, 2010: 2, as cited in Minzner 2011: 951). Although Chen worked in the civil division and her cases were predominantly civil disputes, her working style and spirit of benevolence also influenced district court judges in criminal divisions. According to my interviewees, Chen’s working style suited the SPC policy on ‘balancing leniency and severity’ (*kuanyan xiangji*) in sentencing for serious crimes, whereas crimes with minimal social impact or mitigating circumstances are handled with relative leniency (Trevaskes, 2010: 332).

Under many authoritarian regimes, such as China and Russia, the media have played a critical role in the process of power consolidation (Stockmann & Gallagher, 2011). Although the propaganda work of the CCP in recent decades has been strengthened by introducing of a host of innovative new approaches, such as using the internet as a tool to fashion the CCP’s image, promoting politically constructed role models and moral exemplars remains a central tradition of propaganda. In fact, it would be surprising if the Chinese leadership did not continue to employ role models as a tool for political socialisation and moral education. This is because, as Reed (1995: 99) has pointed out, culture heroes are ‘one means through which the continuity of Chinese culture has been expressed over the centuries’. Judge Chen is similar to Lei Feng, a soldier in the People’s Liberation Army and a communist legend in many aspects: loyalty, benevolence, and modesty, which are essential virtues of Confucianism. Admittedly, even though the image of Judge Chen and her predecessors could eventually fade from popular memory, it seems reasonable to speculate that the highest virtue of the Confucian role models will remain central to the process of socialising the Chinese people.

There are two key aspects of educational work in courts: One relates to propaganda work addressed in coordination with the mass media and the other relates to the court's own propaganda work, which is undertaken independent of other state organs (Trevaskes, 2004). The *People's Court Daily* is clearly the court's own propaganda mouthpiece, and its stories are satisfying and attractive to judges who read them every day (Wei & Xin, 2013). It should be noted that the implicit message of these reports is that every judge is a potential model. If one imitates the publicised behaviours in accordance with the norms set by the SPC, one will be on the road to success. In my interviews, all the female judges claimed to have been influenced by Judge Chen and the exemplary work in mediation done by other female role models. They shared with me that when their divisions organised reading and sharing sessions on role models' work, they were inspired by their devotion to the work. They held them up as women who have faced up to the challenges of the labour market and enjoyed success. In this way, they understood that under some circumstances court rulings may not fully settle disputes, and victims may not be properly compensated by offenders. Therefore, they should pursue a win-win solution for all parties, accomplished through mediation.

Mere exposure to the media alone may not change people's attitudes. Instead, the extent to which a person is influenced by the mass media depends on their level of awareness of a particular issue (Zaller, 1992). In the following section, I argue that female judges' awareness and preference for victim-offender mediation have also been shaped by their life and work experience. Although I do not imply that all women have the same understanding of the law and the world, women do share a common cultural position in a society that is devalued relative to men and the masculine (Chafetz, 1990; Lorber, 1994). This experience might make them more sensitive to the plaintiff's position and influence their behaviours (Martin, 1989).

4.5.2 Reflection of Life and Work Experience

During my field work, some female judges reported that their life experience had taught them the benefits of fully settling disputes both at home and work. One junior judge (B-F-6) stated:

I had some fundamental disagreements with my husband on how to educate our children and allocate domestic responsibilities. It is true that family life can continue without addressing these significant differences. However, these disagreements were 'ticking-time bombs' in my relationship. To restore the well-being of my family, I learned to deactivate these 'bombs' as soon as I

realised they existed. It is the same when I realise that my ruling may create a bigger conflict between the two parties of a lawsuit: I will do my best to settle such conflict even before the trial starts.

Another judge (D-F-2) shared her understanding of the function of mediation from her experiences of settling disputes with colleagues:

As a deputy division chief, I am not only expected to assist the chief in managing the division, I also need to handle workplace conflict, conflicts among my colleagues. I understand that such conflict rarely resolves itself. In fact, it normally escalates if not dealt with proactively and properly. In order to repair a broken relationship, I always serve a cup of tea to my colleagues before they sit down as a good gesture of attentiveness and building trust. I do exactly the same thing in mediation between litigants.

A common theme in these conversations is that judges believed life and work experience could help their judicial work and saw mediation as the best approach to settling disputes in the interests of litigants. Their behaviours indicate that they are more like problem-solvers than impartial arbitrators, and they focus on whether the broken relationship in a criminal lawsuit can be fixed. A study based on a unique data set of 860 case records from a German trial court seems to support the finding that female judges might be more able to moderate and also be more empathetic regarding existing malfunctioning relationships between the two parties than their male counterparts. Specifically, Berlemann and Christmann (2019) found that female judges seem to exhibit higher settlement rates in long-term contractual relationships, whereas male judges perform better when the parties concur 'by chance': Tenancy cases typically originate from friction in the long-term relationship between the litigants, and female judges more often arrange settlements between the parties in such cases, whereas the relationships in tort law cases are typically somewhat coincidental. These gender-related differences in settlement probability and interpretation of the results merit our attention.

4.5.3 Male Judges' Neglect of Mediation

Female judges' actions are not always mirrored by their male colleagues. Notably, all of the male judges interviewed agreed that Judge Chen's work was impressive, claiming to see that her judicial style effectively settles disputes; however, most could not imagine employing her

style in their own work, and only a few practiced mediations, and infrequently. A number of male judges spoke of abandoning mediation because of a belief that it is feminine. However, according to the *People's Court Daily*, Judge Chen's success was mostly a function of her 'true heart, true sentiment and true love' (Wang, 2010, as cited in Minzner 2011: 981). Male judges interpreted these qualities as 'feministic conducts' which were not suitable for their work. Hence, they viewed female judges who presided over mediation as a matter of routine as women who actively performed their gender (Butler, 1990). This is perhaps why male judges sensed that conducting mediations would undermine their masculinity, 'grouping' them with feminine work. One male judge (A-M-3) specifically mentioned the clothes which female judges wear in mediations:

I noticed that my female colleagues often wore casual outfits in mediations. I understand that these clothes made them more relatable, as sisters or aunts, and may make litigants feel comfortable in this process. However, judges are professionals, and that is why we have our robes. As a way to show my respect for this profession and the dignity of judicial office, I always wear my robe before the public. So I do not think the robe fits the setting of mediation.

When 'casual outfits' were brought up by this male judge in interview, he undermined his female colleagues' professional role as judges in the workplace and stressed their roles in everyday life. In linguistics, this is called 'indexicality', and it is a key component of the performance and manufacturing of identity (Hanks, 1999). Sunderland (2004) provided the example of a woman reminding her colleagues to wear a coat on a rainy day. Her colleagues respond, 'Thanks, mom'! Without a common social understanding of the role of mothers, this comment would not make sense. However, against the backdrop of mothers as homemakers and caretakers, this response teases a female colleague for her adherence to traditional gender roles. Similarly, female judges' referencing of 'sister or aunts' connects those terms to a broader social reference point and helps people to 'index' these phrases through humor or insult. Six male judges repeatedly mentioned that they were surprised to find that after Judge Chen was described as a national role model by the SPC, that each high court selected its own mediation role models and they 'all happened to be women'. Since almost all the male judges interviewed, consciously or unconsciously, labeled victim-offender mediation as feminine, they argued that a performance of mediation would inevitably result in them being ridiculed by male colleagues. This is why they opt out of such an approach.

Another reason for male judges' depreciation of mediation is that it is time-consuming and leaves judges less time to finish other cases on their dockets. According to my observations, a simple case takes on average two and half hours to complete, excluding time spent on preparation for the mediation and on producing the written agreement after mediation. This observation is similar to the findings of research conducted by Song and colleagues (2009: 9) in eight district courts, where mediations lasted 'an average of two hours, but this calculation excludes time spent with individual parties and prosecutors, and time spent writing outcome confirmation letters'. However, for complex cases with multiple offenders and victims involved, judges need to carry out several rounds of mediations for reaching consensus between the parties, and each session may take up to three hours to complete. Since mediations require a large investment of time, five male judges similarly stated that they could not 'find any reasons to play a role in mediation because their work was already stressful'.

4.5.4 Rape Lawsuits as an Exception

Among the several types of crime which can be mediated according to 2018 CPL, rape is an exception in practice. Female judges in four district courts uniformly refuse to mediate rape lawsuits, and two gave distinct reasons for their choice:

I have worked in this division for 15 years, and it is extremely difficult for me to invite rape victims to speak with the offenders face to face. I know they have gone through this before with police in investigation and prosecutors in prosecution, and I can see the suffering they experienced in telling their stories again and again. Because their shame is so deep, some even choose not to come forward to us. That is why I hope rape cases can always be closed efficiently through trials, instead of going through the lengthy process of mediation.

I am a woman and was sexually assaulted when I was at boarding school. I still remember that nights were difficult for me, and I had to double-check the door and windows of my room before I went to bed. When I heard footsteps outside my room, I had to turn on the light to show I was not asleep. You see, I understand how hard it is for a girl who has experienced this, and it must be a tremendous setback to her life. That is why I have never mediated a single rape case in my career—one case is too many.

It is well documented that members of the criminal justice system share society's bias against rape victims (Du Mont et al., 2003; Maier, 2008). As a result, a victim may have to endure repetitive questioning about the rape itself as well as about her relationship with the rapist. This insensitive treatment by police and prosecutors may magnify feelings of powerlessness and shame in victims, produce feelings of guilt and lower self-esteem (Patterson & Campbell, 2010). The reason members of the criminal justice system frequently overlook the rights and needs of the victims is that they view complainants as 'just another piece of evidence'—the victim's role is to establish a legal case against the offender (Bohmer, 1973: 303). This is why victims regularly lack control of their situations and report that their encounters with police and prosecutors were more traumatic than the rape incident itself.

It seems that these female judges take the suffering of rape victims and their own experiences into consideration in refusing to mediate rape lawsuits. This is possible because women are most frequently the victims of sexual harassment, and their personal experience of harassment may make it easier for them to identify with victims of harassment than for men (Pryor & Day, 1988; Rotundo et al., 2001). This is also in line with what Li (2007) found through surveying and interviewing 136 judges in two regions of China: They all recognised that judges' own experiences and external factors had an impact on their decision-making process in criminal lawsuits. The judges' own experiences in Li's research were of assault and maltreatment in their own lives, which is particularly significant in sex crimes. Li also reported that female judges took the harm inflicted upon victims as the most important factor in sentencing, while male judges did not consider victims' experiences as a critical factor. Rather, they preferred to take a holistic view of sex crimes when determining the sentence length. Regrettably, since there is a very limited number of male judges conducting mediation in four district courts, male judges' thoughts on mediating rape lawsuits could not be addressed here.

4.6 DISCUSSION

Legal realists commonly assert that judges' attitudes sit at the heart of judicial decision making (Segal and Spaeth, 2002). This is largely because not every legal dispute is without legal ambiguity, and it is particularly true for cases on the dockets of high courts (Baum, 1997). As a result, either overtly or through the workings of implicit bias, judges seek to arrive at decisions that align with their personal cognitive schema (Wistrich et al., 2015). Nevertheless, Gibson (1983: 7) noted that 'judges' decisions are a function of what they prefer to do,

tempered by what they think they ought to do, but constrained by what they perceive is feasible to do'. In different countries and legal systems, the types of limitations to which Gibson alludes vary considerably. It should also be noted that most behaviouralists assumed that any hypothetical relationship between a judge's personal characteristics and a case stimulus would be direct and readily observable in the judge's response. However, it was subtler than they initially hypothesized (Schubert, 1968). When a relationship was found, prior studies showed that the relationship between the personal attribute and judge's ruling was stronger when the background factor was salient to a contested issue (Nagel, 1969). As a result, judges' attitudes matter, but their effect is conditional. To state the matter concretely, what has been said by judges in this chapter may not always directly translated into their actions.

Since the SPC began promoting mediation in courts in 2005, judges have questioned to what degree it can be used to resolve disputes. I observed judges in the four district courts to be divided along gender lines on this issue, with more female judges mediating cases and male judges refusing to use mediation. Female judges pursued mediation in large part due to the influence of Judge Chen, the national role model. At the same time, in interviews they expressed the view that their life and work experience taught them the benefits of fully settling disputes. Conversely, male judges believed that using mediation would significantly undermine their 'masculinity'. They also had concerns about the efficiency of mediation, believing that similar outcomes could be reached by trial. The male judges' attitudes towards mediation can be partially explained by 'sex role spillover' theory, which relates to the carryover of gender-based expectations of behaviour in the workplace (Gutek & Morash, 1982). According to this theory, numerically dominant men are likely to see non-traditionally employed women as women first and bearers of a work role second (Gutek & Cohen, 1987). Therefore, women's contributions and work behaviours may be viewed and valued differently from those of their male colleagues. 'Sex role spillover' theory has been used widely to examine the harmful effects of discrimination and the increasing participation rates of women in the workforce. For instance, Luksyte and colleagues (2018) found that innovative work behaviour is stereotypically ascribed more to men than to women. Building on this finding, their study shows that when men and women similarly engaged in innovative work, men experienced greater returns than women in terms of performance appraisal. To apply this theory to this study, it can be observed that all the male judges noted that it was Judge Chen and her followers, who were predominantly female, who actively used mediation as their preferred dispute settlement method. Because of this, male judges connected mediation to feminine

characteristics rather than work role requirements. Since ‘the traits associated with the stereotype of women are not particularly valued in some workplaces’, almost all male judges declined to adopt mediation as a method of dispute resolution (Gutek & Morash, 1982: 99).

My fieldwork indicates that because of female judges’ active facilitation of victim-offender mediation, most victims received apologies and compensation from offenders as a result of female judges’ time and effort. This contribution has unique significance if examined through a historical lens. Peerenboom (1993) surveyed the role of the victim in premodern Chinese legal practice and found that the formal legal system is concerned primarily with the interests of the state and society as a whole. Accordingly, the system is much more concerned with punishing the offender than catering to the psychological and emotional needs of the victim. Even the socialist criminal system has its primary task as the prevention and punishment of crimes that seriously disrupt the public order, instead of focusing on the needs and concerns of the victim. In the last decade, China has witnessed growth in the protection of the offender’s rights and a recurring lack of attention to the victim. Research suggests that when an incidental civil action is heard together with a criminal case, the procedures relating to the criminal aspects of the case predominate, and the procedures designed to adjudicate upon the civil component of the case are simplified or even ignored (McConville, 2011). However, the design of victim-offender mediation in 2012 offered for the first time an opportunity for the victim to play an active role in shaping the outcome of a lawsuit. To a certain extent, it alleviates victims’ suffering by empowering them to influence or even determine the offender’s destiny. My fieldwork revealed that it is female judges who constantly manage to promote the offender’s accountability and responsibility, repair the harm caused by their criminal behaviours, and meet the interests of victims. This ‘gendered justice’ will be a new venue for the academic discussion of restorative justice in China (Wong, 2016).

It is also crucial to understand the major findings of this research in a broader context, which will help international comparatists for follow-up studies on the relationship between judges’ gender and judging. In a study involving in-depth interviews with 16 female judges in England and Wales, Sommerlad (2013) underlined the notion that female judges adopted a harsher and masculinized performance in order to counteract gendered expectations from their colleagues. Although her respondents were conscious of gender dynamics in the judiciary based on their life and work experience, they had to strengthen their claims to authority ‘by suppressing all vestiges of the feminine’ in trials (Sommerlad, 2013: 367). As a result, Sommerlad posited that

such surveillance of female judges' conduct in the workplace could conceal women's active contestation of existing structures and opportunities to challenge the homologous relationship between masculinity and legal authority. Sommerlad's work and my own found that female judges' life and work experience influences their behaviours, but female judges in the United Kingdom and China performed their judicial functions differently. Admittedly, there are significant differences in legal, cultural, and institutional factors causing such differences. Propaganda from the SPC in particular should be highlighted as a contributing factor to female Chinese judges' preference for victim-offender mediation and the stereotypical impression of their 'feminine conducts'. As my interviewees frequently recounted that 'the power of the model is inexhaustible' (*bangyang de lilian shi wuqiong de*), the lasting impact of these socially constructed moral exemplars serve as a means to elicit female judges' drive for mediation.

4.7 CONCLUSION

In her study of American women in the legal profession from a cross-cultural and cross-national perspective, Menkel-Meadow (1989: 295) scrutinised techniques and strategies of exclusion and developed the notion of the 'glass ceiling for practicing women'. Agreeing with Gilligan's (1982) view, Menkel-Meadow and other feminist legal scholars continued to explore the essential differences between the two genders. However, the conflicting results demonstrate the difficulties of locating an essential women's difference in judging (Kenney, 2012b). Instead of focusing on statistical differences between men and women, a few scholars have taken a methodological turn and examined the judicial behaviours of male and female judges in practice. They have found that female judges consider mediation a preferred method in settling disputes (Boyd, 2013; Ludewig & LaLlave, 2013). Following this line of thought, the present study examined victim-offender mediation, which is permissive but not mandatory in 2018 CPL, in four Chinese district courts. I found that, similar to the findings in the literature, female judges in these district courts used victim-offender mediation as a means to seek apology from offenders and compensation for victims. The choice of mediation is the result of a combination of propaganda from the SPC and a reflection of female judges' life and work experience. For research on the relationship between judges' gender and judging, this study is groundbreaking in two aspects: First, it reveals that in the Chinese criminal justice system, behavioural differences between male and female judges exist in the process, as well as the outcome of judgment. The literature focuses solely on male and female Chinese judges' differences in conviction and sentencing, without probing other working styles that can also settle disputes in

criminal cases (Wei & Xiong, 2020). Second, this study reveals male and female judges' different understandings of the function of mediation. These differences can help researchers understand why male and female judges choose different methods to settle legal disputes. Undoubtedly, it is within the context of a growing body of research on the relationship between judges' gender and judging that this study gains its significance because this Chinese case study can speak to the feminist legal studies in Western society yet retains its own complexity and specificity. However, like many ethnographic projects examining the Chinese criminal justice system, this study is constrained by the duration of the fieldwork and the locations of the selected courts. Therefore, these contributions should be understood within the context of the following important limitations.

First, this study reveals that female judges are influenced by the SPC's propaganda and tend to use victim-offender mediation as a preferred dispute settlement method, as their role models do. I cautiously remind the reader that such judicial behaviours are influenced by and are a result of 'grand mediation' (*da tiaojie*). The propaganda of the CCP regarding judicial policies could shift to other focuses in years to come, and the influence of role model female judges could diminish. Hence, it is possible that the preference for victim-offender mediation might be discarded by female judges in the future. Second, this research focuses on the intersection of gender and judicial behaviours, so it is vital to recognise the impact of my own male gender on interviewees' responses. In the literature, after interviewing trial court judges in Indiana, Artis (2004: 781) reflected that because of her identity as a female researcher, male judges 'may not have felt comfortable discussing the gendered components of custody disputes' with her. I felt the same constraint when engaging in conversations with male judges on their neglect of victim-offender mediation. While Schwalbe and Wolkomir (2001) highlighted that the reciprocal enactment of masculinity within an all-male interview context can actually facilitate dialogue and a depth that may not otherwise be possible, I sensed that male judges considered their words very carefully before me in order not to be viewed as biased against their female colleagues. I understand that since the individual biography of the qualitative researcher is recognised to have a major impact on research projects and respondents, every insight into the social world drawn from interviews is inevitably partial (Gelsthorpe, 1992). Thus, it is expected that a replication of this project by a female researcher would enable those who analyse the results afterwards to compare the narrative accounts offered by participants as well as the play of gender dynamics in interviews.

China is a country of such immense size and contrasts that one project cannot provide a fully representative sample of cases. As a result, a natural extension of this research would be to visit district courts in remote areas in order to bring more geographic differences into focus. Scholars have found that mediation is frequently used by villagers to settle disputes in rural China, especially in ethnic minority areas (Zhu, 2016). In such areas, male and female judges in criminal divisions could be similarly inspired by local cultures and practices to employ mediation in their work. Since the workload of judges in such areas may be lighter, they might devote more time to fostering agreement between parties through mediation. Further research could also include interviews with victims and offenders on their feelings about mediation. It has been indicated in this study that the success rates of victim-offender mediation in the four district courts is high. However, both parties' innate reactions to the quality of mediation remains unknown because their overt compliance in mediation could simply be due to a wish to avoid extreme decisions in a trial presided by the same judge. In this criminological fieldwork, I was constrained by my research ethics to interview victims and offenders after the mediation because both were unable to give free consent until their case had been fully settled. Although I frequently saw them shake hands with the judges, I did not know whether they were truly satisfied with the outcome of their mediation.

Finally, I invite feminist legal scholars to reassess the research methods of exploring the idea of a 'different voice' in decision-making. One of the major criticisms of qualitative research is its lack of scientific rigor (Mays & Pope, 1995). However, it is through qualitative research that female Chinese judges' preference for victim-offender mediation was uncovered by this project. Moreover, their narratives and biographies offer rich insights and provide accurate information for analysis by follow-up studies. As the field of the relationship between judges' gender and judging moves forward, the qualitative approach may be able to address more difficult questions, such as a better approach for supporting victims in the criminal justice system. To conclude, although women in our time no longer need to dress like men to argue before the court, as Portia did in Shakespeare's play, the gap between men and women in the legal profession remains, and the barriers for women to overcome have become subtler (Thornton, 1996; Schultz & Shaw, 2013). We all agree that the strength of the legal profession lies in its equality and diversity. I look forward to more qualitative studies that can bring out women's experiences in this area and empower women through their unique 'different voice'. In the next chapter, I explore male and female judges' attitudes in DV cases. I found that senior male judges tended to minimise or excuse male offenders' assaults on their female partners in

domestic violence disputes, arguably because those male offenders were brought up in a masculine culture at an early age, or because they often experience work and family pressures at the same time, and those are feelings that some junior male judges can relate to. Female judges, on the other hand, tended to blame female victims for the improper behaviours that they engaged in with their husbands, or for failing to cut ties with their husbands quickly and resolutely. These negative attitudes from female judges towards female victims demonstrate the impossibility that the latter could fit the image of 'ideal victims'. This study demonstrates that both male and female judges, regardless of age differences, possess unconscious biases and prejudices during criminal trials for DV cases.

Chapter Five: Chinese Judges' Attitudes towards Offenders and Victims of Domestic Violence Cases

5.1 INTRODUCTION

Family has long been regarded by the Chinese authorities as 'the cell of society and the state', and thus the stability of the family has been deemed 'the foundation of social stability' (Woo, 2003: 133). Nevertheless, past studies have found that Chinese does not view DV as a crime and endorses patriarchal values (Sun et al., 2011; Nguyen et al., 2013). Research literature also has suggested that traditional Chinese culture and a monolithic view of social values have a lingering effect on Chinese people's attitudes to DV incidents (Jiao et al., 2016; Lin et al., 2016). It is true that the influence of Confucianism, which inculcates and reinforces masculinity and hierarchy as the foundation of a normative social order, has been pervasive in Chinese society for two and a half millennia (Goh, 2016). Confucius stressed that the preservation of family order was only possible when a single voice was heard in the family, and that this voice should be that of the senior male (MacCormack, 1996). To preserve such family order, women had to assume an inferior position in the family and were expected to obey their fathers when they were young, obey their husbands when they were married, and obey their sons when they were widowed. As Cohen (1966: 1207) rightly remarked, the emphasis of Confucian values is 'not on the rights of the individual but the functioning of the social order, the maintenance of the group'.

Even in contemporary China, Chinese women still occupy inferior positions to men in the domestic sphere (Tang & Lai, 2008; Zhang et al., 2019). According to the *Third Survey on Women's Social Status* conducted by the ACWF and the National Bureau of Statistics in October 2011, 72.7 per cent of respondents (91,586 out of 125,978) stated that women undertook more domestic responsibilities than men. In addition, 24.7 per cent of the respondents (31,167 out of 125,978) reported that they had experienced different forms of DV, such as marital rape, assault and battery, and false imprisonment by their husbands. In another questionnaire survey of 1,030 respondents who had experienced DV, 75 per cent of the respondents (772 out of 1,030) stated that they had never sought help after the incidents (Wang et al., 2015). The respondents who had received help from outside ranked help from family members, friends, and neighbours as the most effective and help from lawyers and members of the criminal justice system as the least effective.

The purpose of this study is to identify factors that influence Chinese judges' decision-making in adjudicating criminal cases related to DV. There is a dearth of research on courtroom decision-making in DV cases, especially when compared with research assessing courtroom decision-making for felonies (Epstein, 1999; Pinchevsky, 2017). This is not particularly surprising as DV is often dismissed as a misdemeanour, and there have been relatively few empirical attempts to assess judicial decision-making for misdemeanour offences (Leiber & Blowers, 2003). Although extant theoretical frameworks of decision-making within the courts are useful starting points, researchers should consider other factors unique to DV cases that may affect judges' decision-making (Harris & Sen, 2019). This is particularly important in countries like China, where extra-legal factors constantly play a critical role in judges' decision-making processes (He & Su, 2013; Wang, 2014). This study aims to fill this research gap.

Similar to their Western counterparts, the majority of DV victims in China are heterosexual women (Wang et al., 2015). Admittedly, men can be victims, and domestic abuse also exists in same-sex relationships (Hu et al., 2019). For ease of expression, this chapter uses 'she', 'the wife', or other similar expressions when referring to the DV victims. The remainder of this chapter proceed as follows: Section two offers an overview of legal responses to DV in contemporary China, and section three presents a review of the literature on judges' attitudes and decision-making process in DV cases. Section four details the research design of my fieldwork in six Chinese district courts from July 2017 to February 2018, and section five presents the major findings. Section six discusses the theoretical and practical implications of these findings, and the final section identifies the limitations of this study and suggests directions for further research.

5.2 LEGAL RESPONSES TO DOMESTIC VIOLENCE IN CONTEMPORARY CHINA

In the pre-reform period, the Communist government vigorously modernised Chinese families via the 1950 Marriage Law, a drastic departure from imperial laws and traditional practices. Underage and polygamous marriages were abolished, and women were granted the right to decide when and who they married (Davis & Harrell, 1993). However, neither the 1950 Marriage Law nor its first amendment in 1980 explicitly mentioned DV as a cause for a divorce petition. DV was first introduced into legislation in Article 3 of the 2001 Marriage Law, which was passed at a time when the Chinese government had signed a number of international treaties, such as the Convention on the Elimination of All Forms of Discrimination against

Women and the Convention on the Rights of the Child. China promulgated the Anti-Domestic Violence Law in 2015. Article 2 of the law refers to DV as the inflicting of physical, psychological, or other harm by one family member on another by beating, trussing, injury, restraint and forcible limits on personal freedom, recurring verbal abuse, threats, and other means. The 2015 Anti-Domestic Violence Law also extended legal aid and offered protection orders to victims (Articles 19 and 23), authorised courts to revoke guardianship or appoint a guardian for a child (Article 21), and included non-family members such as dating partners as potential victims (Article 37). To better protect DV victims, the SPC stipulated that protection orders would be free of charge in 2016. In addition to the enhanced measures for the protection of victims, the SPC has also made strong efforts to establish independent family courts nationwide since 2016. Family courts have a wide jurisdiction over marital cases, adoption cases, and inheritance cases. In 2018, the SPC instructed the collegial panels of the family courts to include at least one female judge or a female juror for decision-making. Scholars took such initiatives by the SPC as indicating a strong awareness of the differences between familial cases and ordinary civil cases because of the emotional conflicts and relationship strain underlying familial disputes (Liu & Li, 2019). Since the Mao era, significant legislative and judicial efforts have been made regarding the protection of DV victims; however, it remains unclear how members of the justice system, who have been entrenched in Confucian doctrines for decades, deal with DV incidents.

In China, the legal reaction to DV incidents usually begins with the involvement of police officers. When dealing with requests for intervention, a common practice is simply to enquire about the nature of the conflict, produce a written record, and conduct a mediation process instead of arresting the offender (Jiao, 2001). Scholars have characterised policing DV in China as ‘rudimentary, low in priority, and largely nonpunitive’ (Sun et al., 2011: 3293). The findings of a recent study support this observation by showing that mediation was the preferred approach in police officers’ responses to a hypothetical DV scenario (Wang et al., 2019). On the basis of the findings of an experiment conducted with 401 police cadets in Hangzhou, Hayes and colleagues (2020) warned that some police officers who hold a traditional Confucian view of women are more likely to recommend putting the victim into custody and less likely to recommend mediation. If DV continues after the police intervention, a divorce request may go through a process of settlement by legal workers, who have no legal license and less formal education than lawyers; this practice is particularly prevalent in rural areas. In southwest China, legal workers are accustomed to claiming no compensation for their female clients who

suffered partner abuse (Li, 2015). Specifically, 60 women in Li's archival sample made complaints about DV, but only in two cases did legal workers request that the abusive spouses compensate their victims.

The research literature has consistently indicated that DV victims are unable to obtain justice in the civil divisions of Chinese courts. For instance, based on observations of 20 trials and interviews with judges at a district court in southern China, He and Ng (2013a) found that judges were extremely careful in maintaining a less antagonistic atmosphere in expectation of achieving a mediated outcome. Under such a setting, judges avoid taking the side of either the husband or the wife, and a compromise between the two sides is the only realistic choice. He and Ng (2013b) also found that judges commonly believe that women exaggerate or fabricate their claims of marital violence in order to boost their chances of gaining custody of their child(ren) or to shame their husbands. It is therefore worrying that the judicial handling of DV is heading in an informal, flexible 'non-law' direction in which women's interests are grossly ignored (Jiang, 2019). This is particularly the case in rural China, where the mediatory style of courtroom discourses in divorce cases is highly preferred by judges (He et al., 2017). In a study of cases that went through civil litigation, Michelson (2019) found that victims living in Henan and Zhejiang provinces were re-victimised by judges, who denied the majority of their divorce petitions on the first attempt. As a result, these women had to endure worsening violence for the statutory six-month 'cooling-off period' in order to file a petition for the second time. The same study also revealed that judges treated men's DV claims more seriously than women's claims and more readily dismissed women's DV claims as unimportant or fabricated.

The way male offenders and female victims are treated by Chinese judges in criminal trials remains unknown. This is because police officers often choose not to fully investigate DV reports, especially those involving minor physical injury or psychological abuse (Hayes et al., 2020). In an investigation of 1,934 cases adjudicated by a district court in Chongqing from 2008 to 2010, Chen and Duan (2012) found that police records of DV were insufficient and weak because police officers often took rudimentary notes on what had been done instead of recording a detailed description of the whole incident. Another study reported that in one case, when trying to see if there was a police report that might constitute strong evidence against the defendant of a divorce case, the judge found that the police had only made a routine visit and then left without investigating the incident thoroughly (He & Ng, 2013a). Obviously, if only a

few cases are fully investigated by police officers, even fewer are processed by the courts for criminal adjudication.

There are also not enough reliable data for researchers to investigate what types of criminal offences involved in DV. In the reform and opening up period in China, judgments were typically only made available to litigants directly involved in disputes. The decision-making in courts had thus long been seen as a black box by the public (Lubman, 1999). In 2013, significant changes were made to facilitate public access to court decisions; the SPC stipulated that, in principle, all judgments must be published online. Since then, a large number have been uploaded to China Judgment Online, a centralised platform managed by the SPC. It seems that these judgments could serve as a potential source for the analysis of judicial decisions. Table 5.1 displays some essential information on 1,028 DV cases with criminal convictions covering the period 2001–2019; all of this information was collected by myself from China Judgment Online. Intentional homicide (653 cases) and assault (375 cases) are the main crimes committed by offenders. Although DV can involve violence against any member within a household by a relative or partner, husband-wife incidents make up the majority of cases for both crimes. While women are the overwhelmingly principal victims of DV in civil cases (91.43 per cent) according to the 2018 SPC report, women were the offenders in a majority of intentional homicide cases (58.8 per cent). This is probably because, in the absence of legal redress and social justice, women are forced to deal with the violence perpetrated on them (Miller, 2001). Furthermore, the data on China Judgment Online show that among those convicted of intentional homicide or assault, male offenders with an upper secondary school education or above outnumber female offenders with the same education level. Nevertheless, the majority of offenders of both genders had only received a secondary school education or below. This is consistent with Cao and colleagues' research (2006) in Hunan province, which revealed lower education level and income among DV perpetrators. Last, the sentence length handed down to male and female offenders for the same offence seems to suggest that female offenders receive more severe punishments than male offenders, although such results could be examined more rigorously. Overall, the data seem to invite more questions than answers: (1) How do Chinese judges perceive male offenders in DV cases? (2) Compared with the unfavourable treatment of female victims in civil cases, how do Chinese judges treat female victims in criminal cases? (3) Is judges' gender a factor influencing their decision-making processes? These intriguing questions have not been fully addressed, and this study attempts to fill the first gap in the research literature.

Table 5.1 Descriptive Statistics for Intentional Homicide and Assault in Domestic Violence Cases (2001–2019)

	Intentional Homicide		Assault		Total
Time	2003–2019		2001–2019		1028
	Male	Female	Male	Female	
	269	384 (58.8%)	234	141 (37.6%)	
Education Level					
Illiterate	7	33 (82.5%)	2	6 (75%)	48
Primary School	87	172 (66.4%)	71	58 (44.9%)	388
Secondary	98	132 (57.4%)	95	59 (38.3%)	384
Upper Secondary	59	41 (41%)	60	13 (17.8%)	173
Bachelor's or Above	18	6 (25%)	6	5 (45.4%)	35
Relationship					
Husband-Wife	550 (84.2%)		316 (84.3%)		866
Father-Son	66		34		100
Father-Daughter	6		7		13
Mother-Son	21		13		34
Mother-Daughter	10		5		15
Sentence Length					
Mean	99.9	103.9	52.9	56.5	
Median	96	120	24	48	

Source: China Judgments Online

5.3 JUDGES' ATTITUDES AND DECISION-MAKING PROCESSES IN DOMESTIC VIOLENCE CASES

DV poses a unique challenge to society at large and to the criminal justice system in particular (Felson & Pare, 2007). This is because people commonly have stereotypical impressions of DV victims, and such biased perceptions have had a marked influence on the decision-making processes of members of the criminal justice system (Pavlou & Knowles, 2001; Espinoza & Warner, 2016). Unlike other victims of crimes, DV victims share a special relationship with perpetrators because, by definition, they may (a) be married to each other, (b) live together, and (c) have raised children together for years. The victim may also be dependent on the perpetrator for life essentials. Due to these close connections, the public views DV as a less serious threat to the community than stranger violence (Hessick, 2007). Dawson (2006) also found that DV offenders may be perceived as less culpable for their actions because of the assumption that DV is frequently tied to the loss of emotional self-regulation or victim precipitation.

Given that the criminal justice system is assumed to reflect society's norms and values, researchers examining judicial responses have found that DV offences are treated more leniently than offences involving non-intimate partners (Archer, 1989; Sewell, 1989). This is because many judges are influenced by traditional views of DV: They typically hold the same beliefs as the general public, namely that incidents of spousal abuse are family matters rather than serious crimes, suggesting that the public order is not affected (Eaton & Hyman, 1991). Some judges have also endorsed DV myths at a subconscious level, resulting in judicial behaviours that inadvertently undermine survivors (Kafka et al., 2019). This is the reason why judges have assumed that DV victims often provoke perpetrators and then use the courts to resolve their private matters (Ptacek, 1999). Other judges have viewed DV offenders and victims as 'mutually combative couples', ignoring 'the patriarchal terrorism' involved in the vast majority of these cases (Erez & King, 2000: 207). These longstanding cultural beliefs and stereotypes of judges inevitably disadvantage women in their courtroom battles against their abusers (Czapanskiy, 1993).

Scholars have found that judges' bias and prejudice against DV victims may derive from a caseload problem and the gender stereotype that works against female litigants and their lawyers in DV cases. First, a DV incident could potentially trigger a series of civil disputes (protection order, divorce petition, child custody dispute) and criminal cases (misdemeanour, assault, protection order violation). Therefore, judges must serve families facing multiple proceedings at the same time. Although judges frequently claim that their decisions are solely based on written complaints filed by the plaintiff and testimonies from both parties, empirical studies have revealed a different picture. For example, Agnew-Brune and colleagues (2017) found that judges may have as little as five minutes to review filed complaints, and testimonies are often shortened due to the large number of cases that go before judges in a single session. Having insufficient information about an abusive relationship would hinder a judge's ability to make decisions that best protect the plaintiff from further abuse (Rachlinski & Wistrich, 2017). Second, a 'negative synergy of law and lawyering' against female DV victims and their lawyers has been found in this type of litigation, so that female litigants face the risk of unfavourable outcomes from judges (Czapanskiy, 1993: 249). This is because female lawyers represent battered women more frequently than male lawyers, and judges frequently give less credit to arguments made by female lawyers. As a result, the biased lawyering process significantly increases the risk of unfavourable outcomes for female litigants because a judge may disfavour a female litigant and also be biased against her female attorney.

The ‘negative synergy of law and lawyering’ is a fair reflection of the gender dynamics in DV cases (Czapanskiy, 1993: 249). However, that observation is based on an understanding of judges as a monolithic group of legal professionals who are predominantly male. In recent years, the legal profession worldwide has seen a drastic transformation in terms of the representation of women (Schultz & Shaw, 2013). In China, there were approximately 45,000 female Chinese judges in 2010, accounting for about a quarter of all judges in the country (National Bureau of Statistics of China, 2015). In 2017, female judges constituted 32.7 per cent of all judges nationwide, an increase of 21.7 per cent since 1982 (State Council Information Office, 2019). While pushing for greater inclusion, feminist legal scholars have argued that female judges can translate symbolic representation into substantive representation (Pitkin, 1967; Martin, 1987). Admittedly, not all female judges are feminists in orientation, regardless of jurisdictions. Nonetheless, some female judges might be inclined to rule in favour of women and advance feminist aspirations (Nagel & Weitzman, 1971; Rush, 1993). Female judges’ attitudes towards female victims in DV incidents have yet to be fully explored. This is the second research gap that this study aims to fill.

5.4 RESEARCH DESIGN

This study focuses on judges, an influential group of legal professionals. Judges are not only known to be hard to reach, but sometimes their self-reported perceptions have been viewed as questionable and inconclusive for academic research (Baldwin, 2000). This is because judges, consciously or unconsciously, may misreport how they truly behave or what they actually believe in an effort to offer ‘correct’ answers in interviews (Artis, 2004). The assessment of biased perception has long been a challenge in social science and behavioural research: Asking participants point-blank about stereotypes or implicit assumptions is likely to put them on their guard. It is also difficult for interviewees to honestly and eloquently reflect on these issues because implicit bias is, by definition, unconscious (Kang et al., 2011). However, by using secondary data to analyse extemporaneous comments, researchers can study how a participant organically retells events, analysing both the content and structure of such narratives (Lieblich et al., 1998). The way participants portray characters may also reveal the social group they represent because when an individual shares stories about another person’s experience, the storyteller imbues the event with his or her own selective memory, biases, and subjective impressions of the main characters. This analytical approach can provide important insights into judges’ perceptions and decision-making heuristics. Therefore, I invited judges to share

cases, which were repackaged and heavily laden by them, permitting me to elicit their authentic views on male perpetrators and female victims in criminal cases related to DV.

I connected with some interviewees directly through a judicial training programme I participated in Hong Kong from 2014 to 2016, while others were introduced by friends who work in local judges' colleges. In total, 47 judges from six district courts were interviewed from July 2017 to February 2018. Nine of these judges (two male and seven female) were from district court A in Beijing; six (two male and four female) were from district court B in Shanghai; eight (three male and five female) were from district court C in Shenyang, Liaoning province; nine (four male and five female) were from district court D in Shenzhen, Guangdong province; eight (three male and five female) were from district court E in Shijiazhuang, Hebei province; and seven (two male and five female) were from district court F in Tianjin. Inspired by Glaser and Strauss's (2017) influential account of grounded theory, I gathered data until empirical saturation was reached. I employed a two-stage test of the validity of data saturation: an initial sample of 32 judges from four cities, followed by a further 15 judges from two cities (Shijiazhuang and Tianjin) to determine if any new theme emerged. When certain patterns and repetitions arose in the second stage, I was able to reach sufficient depth on the full range of topics that I was investigating. All interviews were undertaken following a semi-structured schedule; they were not recorded as recording devices are explicitly prohibited in court buildings. As a result, all data were based on brief notes taken during the interviews and filtered through my memory. The transcriptions were authenticated by the judges themselves, and in some cases follow-up interviews in late 2018 clarified or expanded themes that had arisen during the first interview. After completing all the interviews, I conducted a TA of the responses. I read through interview transcripts and highlighted relevant phrases, sentences, or sections. After that, I conceptualised the data by identifying common words and phrases used by most judges and compiling the themes with the most relevant codes accordingly (Braun & Clarke, 2006). It is through these steps of TA that I arrived at four major themes that were repeated throughout the interviews with male and female judges. These four themes will be elaborated in detail in the next section.

Chinese judges are essentially civil servants with expertise in law (Shen, 2017). Within the court, judges assume ranks and positions, both of which can be further divided into judicial, administrative, and Party ones (Zheng et al., 2017). In this chapter, judges, who hold deputy or division chief positions, are regarded as those with senior status. Judges with no managerial

positions in criminal divisions are labelled as the ones with junior status. It is worth noting that both senior and junior statuses in this chapter are not formal terms. All of the judges who participated in this research were working in metropolitan cities of China, and it is thus likely that they had a higher workload than judges working in rural China. However, there are noticeable differences in judges' workload and working environment among the courts in the six metropolitan cities. The interviews revealed that judges in Beijing and Shanghai are the busiest, handling around 250 cases on average each year, while judges in Shenyang and Shijiazhuang only hear around 200. Beijing and Shanghai judges ascribed their efficiency to their courts' abundant resources, which allowed them to hire a number of clerks. It was also observed that judges in Beijing and Shanghai commonly speak in Mandarin Chinese to litigants and their colleagues, while judges in Shenyang and Shijiazhuang sometimes speak in local dialects. This happens frequently in trials when the offender cannot speak Mandarin properly. Judges thus have to choose the dialect the offender is most comfortable with. Around two thirds of the interviewed judges were female. This may indicate that the female judges who took time out from their busy schedule to speak to me on this subject have a great interest in the subject area. They may also be considered more liberal than their male colleagues who, despite repeated invitations, declined to participate in this study. Nevertheless, participating judges often mentioned that they put their trust in me and my ability to spread the knowledge produced in this research project and potentially contribute to a culture change in the Chinese judiciary. I recognise the possibility that the informants' motivation to help might have affected their narratives as well as their perceived self-representation. Table 5.2 summarises the demographics of the 47 judges interviewed. As can be seen, only four judges were single, and 29.8 per cent (14 out of 47) were divorced. The judges who most actively participated in this study were in the 41–50 age group and had been in office for 21–30 years. In terms of education level, 68.1 per cent (32 out of 47) of the judges held a master's degree or above.

Table 5.2 Demographics of Judges^a (N = 47)

Variable	Number	Ratio
Gender		
Male	18	38.3
Female	29	61.7
Marital Status		
Single	4	8.5
Married	27	57.4
Divorce	14	29.8
Widowed	2	4.3
Age		
23–30	5	10.6
31–40	14	29.8
41–50	21	44.7
51–60	7	14.9
Education		
Bachelor’s Degree	15	31.9
Master’s Degree	24	51.1
Doctoral Degree	8	17.0
Years in Office		
10 Years or Less	6	12.8
11–20 Years	12	25.5
21–30 Years	22	46.8
31 Years or More	7	14.9
Bar Admission		
Yes	37	78.7
No ^b	10	21.3

^a The information gathered in this table was voluntarily disclosed by interviewees.

^b Historically, judges were chosen from among army officials before 2000s. Thus, the courts were numerically dominated by men who did not possess legal qualifications at that time.

5.5 MAJOR FINDINGS

During the interviews, a number of judges candidly shared with me that they had been either treated violently by their parents at an early age or had experienced different forms of violence from partners in the past. Because of these personal experiences, they sometimes found themselves having particular feelings towards either the perpetrator or the victim in DV cases. This can be illustrated by the deliberation process in such cases, during which different judges’ opinions on whether offenders should receive lenient treatment (shorter sentence length) or severe treatment (longer sentence length) frequently clash. A few junior judges also reported that DV cases stopped being assigned to them when they had separated from their partner. They believed that there must have been concern among division chiefs regarding their ability to demonstrate impartiality in handling such cases. Nevertheless, judges universally claimed that

they were trained to put their personal feelings aside, whether they arose from enmity or empathy. They were thus able to impartially decide the outcome of a case solely on the basis of the facts and the law (*yi shishi wei yiju, yi falv wei zhunsheng*). However, judges were ambiguous or hesitant when asked whether such feelings could have an impact on their assessment of the aggravating or mitigating circumstances of a case. The interview transcripts showed that the male judges had more compassion and understanding for male perpetrators in a violent relationship, and the female judges held discriminatory attitudes towards female victims.

Both senior and junior male judges were seen to relate more to male offenders in DV cases, albeit from different angles. Senior male judges justified male offenders' actions by emphasising the negative side of male chauvinism and argued that such a cultural influence was inevitable among those with low education level. Junior male judges stressed the pressure that male offenders constantly endure both in the workplace and at home. The extracts below illustrate such opinions.

Senior male judge (A-M-3): I have worked in this criminal division for more than two decades. I have observed that most male offenders in DV cases are poorly educated and deeply identify themselves with male chauvinism (*da nanzi zhuyi*). An excuse they often use to defend themselves in my court is that they beat their wives simply for the purpose of 'educating' them and 'helping' them to become better. For them, wife-beating is no different from beating their children when they make mistakes and have to learn a lesson. You know the saying 'spare the rod and spoil the child' (*gunbang dixia chu xiaozi*), right? I see that they are stating what they truly believe. I understand that we were all unfortunately brought up in this culture which stresses the necessity and importance of being a true man (*nanzi han*) at an early age. For these men, wife-beating is obviously the easiest way to show their masculine and dominant side.

Junior male judge (C-M-2): It has long been no surprise to me that my female colleagues just cannot understand the pressure male offenders experience before committing DV. This is because my female colleagues always claim in panel deliberations that, unlike wives who need to balance work and family, husbands do nothing in terms of housekeeping and maintenance. This might be true for

some, but as the breadwinner of my family, I experience enormous pressure every day because I have to work hard and balance all sorts of relationships in order to get promotion opportunities and be financially capable of supporting my family. My wife, who has not worked for three years, since the birth of our second child, just cannot understand it. I have also found that for some husbands who only have meager and unstable incomes, such pressure can easily accumulate and erupt in conflicts with their wives, who often humiliate them before relatives and friends. I always take this into account as an important factor when sentencing male offenders.

Both senior and junior female judges shared with me that they rarely carry out victim-offender mediation for DV cases because male perpetrators and female victims are already locked in a confrontational relationship. Occasionally, female victims ask judges for a longer sentence for their perpetrators in return for not making a request for monetary compensation from them. In addition, the female judges frequently recalled vivid memories of witnessing female victims' emotions during trials, and their common reaction to such displays was not favourable to the female victims.

Senior female judge (B-F-2): Before I close a trial, I always invite the female victims to say something about their 'next step' in life. Quite often, some start crying even without speaking a word. At that moment, it is the female victim, not me, who becomes the 'centre' of the court. Some of my colleagues once suggested suspending the trial temporarily if this occurs. On the contrary, I tell everybody in the courtroom loud and clear that it is useless to cry before me because I cannot impose a severe sentence on the husband: There is no such aggravating circumstance stipulated in the criminal law. Strangely, I have rarely seen victims cry before my male colleagues when I am on the same panel. This is probably because my voice is soft and I look small, but my male colleagues look stern and imposing with their robes. Hopefully, female victims will not falsely believe that I would relate to them simply because I am a woman with a soft voice and small figure.

In addition, unlike male judges' focus on the male perpetrator's motivation in committing the offence, female judges stated that they centre their attention more on the female victims. Senior

female judges typically blamed female victims for being unable to play their proper roles as wives and mothers in the family. Junior female judges often had difficulties understanding why female victims chose to stay in a violent relationship. The extracts below exemplify their opinions.

Senior female judge (D-F-4): As the Chinese saying goes, ‘a harmonious family cultivates prosperity’ (*jiahe wanshixing*). Once a DV incident has become a criminal case, the female victim should also be blamed for her wrongdoings. This is simply because she just could not properly fulfil her roles as wife and mother. If we were able to go through every case I have handled, we could clearly see that many of the women had a low education level, a bad temper (*chou piqi*), and were gossips (*da zuiba*). This is why they were often not smart enough to understand why their sarcasm towards their husbands could trigger fierce reactions. Not to mention the wisdom of ‘defeating force with tenderness’ (*yirou kegang*) which I have always held dear. Because female victims do not possess the essential virtues required to be good wives and mothers, we should not just condemn male offenders for their violent actions.

Junior female judge (F-F-1): The only wisdom I can confidently share with you is to ‘get married slowly and get divorced quickly’ (*jiehun yaoman, lihun yaokuai*). In my first year of marriage, I never had a quarrel with my husband. Admittedly, we had a disagreement over whether to abort the girl I was carrying because his family values boys more than girls (*zhongan qingnv*). One night, my husband seemed to be agitated because of a phone call he had had with his parents on this issue and my insistence that this girl should be born. He suddenly slapped me in the face and pushed me hard to the floor. I almost fainted and felt that I might lose the child. However, I managed to get up, quickly lock myself in the bathroom, and call an ambulance. After I had recovered in hospital, I went home the next day, packed my belongings, and left my husband a note stating that I intended to divorce him. I understood that my marriage had come to an end; however, I had to leave him to have a better life. If I can do this, so can those who choose to stay in their toxic relationship. However, if they stay with their violent husbands, I think their tolerance has no limits, and they never put themselves first.

5.6 DISCUSSION

5.6.1 Male Judges' Narratives of Masculinity

In my conversations with the male judges, they touched upon two extenuating circumstances they would consider in sentencing male offenders. The first is the male offenders' dominant position at home. The senior male judges shared during the interviews that, because of the power disparity between men and women, wife-beating happens "simply for the purpose of 'educating' them and 'helping' them to become better". This stereotypical impression of women is closely associated with the aforementioned Confucian doctrines. As Santos and Harrell (2017) argued, even with the unprecedented social changes that have occurred in China in the past few decades, the emphasis on the division of labour defined by the Confucian patriarchal order persists as the major force (re)shaping Chinese people's understanding and practices in their intimate lives. As a result, to be a good male partner is to accept the male role and its associated duties as defined by cultural norms and moral codes—ideally to be an omnipotent figure in the family (Cao, 2020). In order to achieve this, men should be more intelligent than women and capable of making decisions for their couple and protecting their relationship (Parish & Farrer, 2000). The research scholarships also show that the prevalence of male-on-female DV is higher among couples with status disparity, typically with women being inferior to men. This status disparity includes husbands being older than wives (Parish et al., 2004), husbands having a higher education level than their wives (Xu et al., 2005), and husbands having financial control over their wives (Wu, Guo & Qu, 2005). Because of such cultural influence and status disparity, wife-beating is one form of dominance a man can employ over his female partner by virtue of the position he occupies in the family (Ho, 1976). This is the reason why wife-beating is regarded as no different from beating children in the interview. In fact, as revealed through Cao's (2020) fieldwork in Shanghai and Shenyang, the needs of the wife are often given lower priority in the family than children's needs, especially so if the child in question is a son. As a result, wife-beating is a way for husbands to fulfil their family duties and thus construct a socially appropriate gender identity, and this is widely demonstrated in the domestic lives of Chinese people.

The second extenuating circumstance refers to the pressure experienced by some male offenders before committing DV. The traditional gender roles assume that in a family, the man is the provider and the woman is the caretaker, an ideal form of role differentiation. This is the reason why Chinese men's pragmatic consideration of ideal masculinity in the domestic realm is frequently linked to the breadwinning role. Hence, it would be shameful for Chinese men to

rely on wives' financial support because it would indicate that they are ineffectual, and thus they may experience a loss of status in their families (Chan, 2006). Young urban men also have to deal with growing pressure to accumulate sufficient financial resources prior to a socially approved marriage (Zarafonetis, 2017). In general, to be able to meet masculine gender role expectations, a man must be self-sufficient and competent. However, disregarding one's personal limitations could result in undue burden and frustration. Scholars have argued that a husband's unemployment has long been recognised as a socially structured stressor, and such an acute or a chronic stressor for both himself and the family may escalate the risk of violence against the wife (Benson et al., 2003). These adverse circumstances may also facilitate the tendency of a husband to exert greater economic and personal control over his wife (Golden et al., 2013). At the individual level, researchers have reported that financial difficulties are the most consistent and significant correlates of DV against women in the United States (Rennison & Welchans, 2000). In a community survey conducted with 340 participants in Chengdu, China, Zheng and colleagues (2019) found that the wife's self-perceived financial strain was significantly and positively associated with her lifetime experience of her husband's violence. In another questionnaire survey conducted with 1,092 students from China and the United States, Wu and colleagues (2013) found that the Chinese respondents were more likely to think that DV was just a normal reaction to day-to-day stress and frustration. In conversation, junior male judges shared that they had to constantly push themselves to the limit in order to reach an exceptionally high standard and thus gain positive appraisals from their division chiefs. As a result, they had to cope with an increasingly complex entanglement of emotions, responsibilities, and capital accumulation, even in the early stage of their career (Zhang, 2011). This is the reason why junior male judges may relate to certain male offenders, who also bear the burden of supporting families alone and commit DV due to such pressure.

5.6.2 Female Judges' Constructions of Femininity

A difference between senior and junior female judges' narratives was their distinct constructions of femininity for female victims. In my interviews with senior female judges, they stressed that female victims should 'properly serve their roles as wives and mothers'. From their perspective, this is an effective approach to preventing DV. This idea of a woman's proper role as a wife and mother can be linked to the Confucian doctrine that attributes to women an inferior position in the family and the duty to obey their husbands once they are married. Accordingly, their bad temper and sarcasm towards their husbands cannot be accepted as proper behaviour towards a 'superior' member of their family. It seems that women's tempers

and protests are understood by senior female judges not as reactions to their husbands' violence but as a precipitant rationalising that violence. Therefore, women can and should 'avoid' DV by controlling their own conduct. As a result, senior female judges 'construct' an appealing, dramatic morality tale of the virtuous woman who attempts to preserve the harmony, continuity, and conformity of her marriage by sacrificing her own body and happiness. However, attributing women's suffering of DV to their own faults justifies male violence as the punishment women deserve for not conforming, and thus disguises the relationship of gender domination within households. This is how the Chinese politics of gender is played out in biological terms (Yang, 2007).

Unlike senior female judges' view of female victims' subordinate role in the family, junior female judges argued that female victims should leave their husbands when their intimate relationship breaks down and that they should always 'put themselves first'. Such an attitude rewards women for their speedy decision-making and fast action in cutting ties with their husbands. Nevertheless, a lack of sustainable housing solutions, affordable childcare facilities, and equal pay in the labour market often forces women to stay or return to their abusive partners, at least temporarily (Meyer, 2016). An early study conducted in rural China revealed that a lack of personal resources is one of the primary reasons why women stay in abusive marriages (Liu & Chan, 1999). This is largely because husbands are the main breadwinners in families. As a result, women assume that if they abandoned their marriages, they would be confronted with housing and financial problems. Through online chat groups organised by women who are victims of DV, Zheng (2015) found that escape is often a luxury beyond the reach of women who are full-time housewives and reliant on their husbands financially to survive. Without bank savings to sustain themselves, escape is impossible. If female victims are seen to stay in or return to an environment of victimisation, they can be viewed as complicit in their own victimisation. Hence, it is not surprising to find junior female judges stigmatising, and showing a lack of empathy for, female victims of DV.

It seems that in the narratives of both senior and junior female judges, female victims of DV do not fit the image of the 'ideal victim'. Christie's (1986) theory of the 'ideal victim' addresses the discrepancy between real-life crime victims and imaginary victims. In his study of the 'ideal victim', Christie proposed five attributes for victims in this category and argued that to consider a victim as innocent and worthy of social reactions that entail empathy and support, the victim has to be (a) weak or vulnerable, (b) involved in a respectable activity at the time of

victimisation, (c) blameless in the circumstances of his or her victimisation, and (d) victimised by a vicious offender (e) who is unknown to him or her. An examination of how the ‘ideal victim’ is constructed in modern Western societies further adds that the ‘ideal victim’ must ‘not behave provocatively towards the offender’ and should cooperate ‘perfectly with the police and the courts’ (Strobl, 2004: 298). According to the senior female judges’ narratives, since female victims could not ‘properly serve their roles as wives and mothers’, they were not ‘in a respectable activity at the time of victimisation’. Also, given their bad temper and sarcasm towards their husbands, female victims cannot be regarded as blameless in the circumstances of their victimisation. In the junior female judges’ narratives, female victims were not deemed to cooperate ‘perfectly with the police and the courts’ simply because they chose to stay with their abusive husbands. Therefore, for female victims to be in step with the courts, they must be passive and active, weak and strong, dependent and independent all at the same time: At home, they should always willingly obey their husbands’ orders and should be determined to leave their partners once they have been assaulted. These contradictory constructions of femininity by female judges render women as non-ideal victims in their legal battles against their abusers. Thus, they are doomed to be discriminated against in a court of law by female judges no matter how they behave in their lives. Existing literature also indicates that due to common socio-economic disparities between judges and litigants in the United States, it often becomes difficult for a judge to fully understand the hardships faced by indigent litigants (Milligan, 2006). These findings merit further investigation and direct our attention to the fairness of the courts for low-income litigants in the Chinese context and for DV victims in particular.

5.6.3 Unconscious Bias, Judges’ Workload, and Judicial Training in China

The empirical evidence of this research project indicates that gender bias against battered women finds its way into judicial decision-making processes. These biases include both male judges’ benevolent attitudes toward male assailants and female judges’ hostile attitudes toward female victims. By taking these positions, judges endorse the patriarchal culture, so that their prejudices inevitably have the effect of marginalising women in a court of law. In this research project, senior male judges’ sympathy for husbands’ violent behaviours and senior female judges’ condemnation of wives’ words and deeds in the middle of family estrangement well illustrate the socially (dis)approved behaviours of men and women in marriages. Additionally, judges’ age appears to be an important factor in their decision-making processes. Although both senior and junior male judges are, obviously, of the same gender, because of the

differences in age, they perceived different factors shaping the motivations of male DV offenders. This research project also reveals that senior and junior female judges have distinct views about the role female victims should play in the private sphere. In the context of China, generational gaps could indicate how the younger generation is influenced by patriarchal ideology differently.

Can the bias and prejudice of judges uncovered in this study be reduced through adequate training? Archer (1989) argued that many changes in the criminal justice system have begun with an educational programme to instruct police, prosecutors, and judges on the best methods for handling DV cases. Despite this, in a national survey of 103 district courts in the United States, Keilitz (2002) found that judicial training in DV issues is given little attention in courts with specialised processes for DV cases: Only 22 courts required specific DV training for judges. Judicial training on DV is also rare in China. In April 2015, the SPC issued the *Five-Year Court Training Plan Outline for 2015–2019*, which aimed to raise the competency bar for judges nationwide. As a basic principle, the SPC stressed that such training should be problem-oriented, aiming to tackle practical problems for judges in adjudicating cases. Nevertheless, specific training plans designed by the SPC seem to be irrelevant to tackling the issue of judges' bias and prejudice affecting trials. Ideological education is a mandatory part of the required training programme to ensure that judges will comply with Party discipline. In addition, ethical education on anti-bribery is another focus point in judges' training. Lastly, judges need to equip themselves with knowledge on big data, the Internet of things, and the publication of court judgments online. According to the *Five-Year Court Training Plan Outline for 2019–2023*, released in September 2019, the SPC has put greater emphasis on political issues and Party leadership, aiming to forge a high-quality judicial team that the Party can rely on and the masses are satisfied with. In addition, the SPC has also stressed the necessity of educating judges for the new challenges of the modern era. Specifically, professional education on issues emerging from the 'Belt and Road Initiative', cross-border commercial cases, and admiralty cases will be given priority. To sum up, training to raise Chinese judges' awareness of their own biases and prejudices has never been on the SPC's agenda and will not be in the foreseeable future. In the absence of training on DV issues, judges' decisions are likely to be based on their personal notions of reasonableness and common sense, which may sometimes be quite wrong in DV cases (Crites & Hepperle, 1987). This is why the lack of special training for front-line judges is of special concern.

5.7 CONCLUSION

Randall (2004) once argued that the problem of men's violence against women is too pervasive to be understood as a pathology of a few individual men. Instead, it must be analysed more broadly within the context of a larger pattern of presumed male entitlement, authority, and power constructed in a culture. The rationalisations used by the male judges who participated in this study to explain, minimise, or excuse male offenders' assaults on their female partners are most telling in this regard, because they revealed the larger constructs of traditional masculine norms in China. The negative attitudes revealed by female judges towards female victims also demonstrated the impossibility of those victims fitting the image of 'ideal victims'. Such findings are disturbing given the positive impact that a presiding judge can have on a criminal trial. This study is groundbreaking not only because it is the first of its kind to reveal Chinese judges' biases and prejudices in criminal trials for DV cases, but also because it broadly contributes to an understanding of the struggles that women are waging to prove and protest against inequality and discrimination in the criminal justice system (Fineman, 1994). Nonetheless, these contributions should be understood within the context of the following limitations.

This study focuses on the intersection of judges' gender and judging, so it is vital to recognise the impact of my own male gender on the interviewees' responses. After interviewing trial court judges in Indiana, Artis (2004: 781) reflected that because of her identity as a female researcher, male judges 'may not have felt comfortable discussing the gendered components of custody disputes' with her. I felt the same constraint when engaging in conversations with male judges, because I sensed that the male judges considered their words very carefully in conversations with me to avoid being viewed as sexist and biased against female victims. During the interviews, male judges often explicitly declined to comment or follow up on stories involving female victims that they had previously shared with me, even if they had brought them up themselves. I understand that since the individual biography of the qualitative researcher is recognised as having a major impact on research projects and respondents, every insight into the social world drawn from interviews is inevitably partial (Gelsthorpe, 1992). Since the researcher's positionality may be a crucial tool to help understand what is being said, it is expected that a replication of this project by a female researcher would enable those who analyse the results afterwards to compare the narrative accounts offered by participants as well as the potential effect of gender dynamics on interviews with judges.

Qualitative research methods, such as observation and semi-structured interviews, were used in this study. The aim in using qualitative methods was to deepen our understanding of decision-making, and to provide illustrative material rather than to produce generalisations (Maxwell, 2013). It is hence dangerous to suggest that the findings are generalisable to the whole range of judicial officers in China. In chapter five, even though the current study was conducted across six metropolitan cities, it was based on a non-representative sample with limited regional coverage. The findings reported thus may not be generalisable to other locales in China without careful comparison. A natural extension of this research would be to visit district courts in remote areas in order to bring more geographic differences into focus. Further research should also focus on the perspectives of female victims who use the criminal justice system to combat their abusers. This is because DV victims should play a more active role in policy discussions and research in order to understand how criminal justice policies and practices affect them personally –whether they feel justice is being served, whether they are satisfied with court outcomes, and whether they are actually safer as a result. This is important because what matters to victims is often not what matters to police, prosecutors, or judges (Johnson & Fraser, 2011). Findings tend to contribute to the development of the Chinese criminal justice system as more victim-centred (Wei, 2021).

What works for Chinese women who aspire to end violence and find safety in an intimate relationship? Morris and Gelsthorpe (2000: 422) have argued that restorative justice might be a viable solution in some contexts because such processes ‘increase women’s choices, provide women not only with the support of family and friends, but with a voice, and through this, may increase women’s safety’. Research literature has shown that women are most satisfied with formal services when they feel they are being heard and their experiences validated (Grasely et al., 1999; Herman, 2005). However, successful implementation of restorative justice measures in China requires effective practice and adjustment of the roles of professional personnel, such as the adoption of unbiased attitudes and impartiality (Wong, 2016). If those conditions can be met, the support systems on which women commonly rely can be brought into play. Although there could be strong cultural resistance, restorative justice could be a powerful tool in this area. In the next chapter, I reflect the difference theory and descriptive representation of the court, and introduce the feminist judgment projects written by feminist judges. I also point out future research directions and conclude this dissertation.

Chapter Six: Conclusion

6.1 REFLECTION

This dissertation focuses on the relationship between Chinese judges' gender and judging. Chapter two, which employs a quantitative research method, analyses 11,006 court judgments collected from Shanghai, Beijing, and Guangzhou. The results reveal that there are negligible differences between the sorts of decisions made by male and female judges working in district courts. Nevertheless, the similarities in decisions to incarcerate can be explained by the harmonious 'Iron Triangle' relationship among the police, the procuratorate, and the court. The Sentencing Guidelines and the Adjudication Committee are mechanisms that shape judicial behaviours in the same direction. The initial findings in chapter three, based on 6,100 judgments from Shanghai, Beijing, and Guangzhou, also suggest that there is no 'panel effect'. However, in rape cases, when certain 'triggering' elements are introduced, such as four specific types of relationships between victims and offenders (dating, family-relative, workplace, and social-network), panels with different combinations of male and female judges exhibit different sentencing preferences: When a female judge decided the outcome of a case alongside two male judges, the panel often issued a shorter sentence than all-female panels. This study shows that certain extra-legal factors in rape cases can have substantial impacts on judges' decision-making when they decide collectively. Chapters four and five, which use qualitative research methods, reveal the behavioural differences between male and female judges at work. In chapter four, it is shown that female judges are accustomed to employing mediation as a preferred dispute resolution method when facilitating reconciliation between two parties and are more likely to seek civil compensation for victims. This study reveals that in the Chinese criminal justice system, behavioural differences between male and female judges exist in the process, as well as the outcome of judgment. To date, the literature on this subject has focused solely on differences in conviction and sentencing between male and female Chinese judges, without probing other working styles that can also settle disputes in criminal cases (Wei & Xiong, 2020). Chapter five explores how male judges tend to minimise or excuse male offenders' assaults on their female partners in DV disputes, simply because male offenders were brought up in a masculine culture from an early age, or because they often experience work and family pressures at the same time, and these are experiences that some junior male judges can relate to. Female judges, on the other hand, are found to blame female victims for their improper behaviours in handling their relationships with their husbands, and for failing to cut ties with their husbands quickly and resolutely. These negative attitudes revealed by female

judges towards female victims demonstrate the impossibility of the latter fitting the image of 'ideal victims'. This study demonstrates that both male and female judges possess biases and prejudices during criminal trials for DV cases. Overall, this dissertation sheds light on the complicated phenomenon of judges' gender and judging in the Chinese criminal justice system: There are largely no differences in decisions to incarcerate and decisions regarding sentence length between male and female judges. Nevertheless, female judges may modify the behaviours of male judges working along with them in rape cases. In practice, female judges actively carried out victim-offender mediations, however some of them held negative attitudes towards female victims in criminal cases related to DV. These findings demonstrate that female judges do not speak in a unified voice, and they share similarities and differences in judging with their male colleagues. These research outcomes compel us to reflect on the benefits and drawbacks of pursuing 'difference theory.' Difference theory, introduced in chapter one, argues that diversity matters: Women can make a difference, both by changing male judges' behaviour and by acting differently from their male counterparts (Kenney, 2013).

6.1.1 Reflection on the Difference Theory and Descriptive Representation of the Court

The gender composition of the judiciary, as one descriptive representation of the court, has gradually been recognised as a matter of justice and fairness for the judiciary (Schultz & Shaw, 2013). The International Criminal Court is the first international judicial body to take gender diversity seriously and seek to mandate it through a quota system built into its complex voting system (Chappell, 2015). The European Court of Human Rights also strongly suggests that its member states submit a list of three candidates representing both genders (Hennette Vauchez, 2015). The difference theory views female judges as representatives of women. According to the theory, the actions and mentality of female judges during decision-making processes should mirror the common interests and shared experiences of women as a group (Pitkin, 1967). The way that female judges interpret the law can therefore significantly impact women in both governmental and non-governmental positions (Saward, 2006). Evidently, the difference theory is in direct contradiction to the 'umpire ideal', which is an appealing concept and has been frequently quoted by judges in their public speeches or confirmation hearings (Blake, 2018). The 'umpire ideal' employs the metaphor of a baseball umpire calling balls and strikes in a match. The use of this metaphor is intended to highlight the apparent similarities between a baseball umpire and a judge: Both have a responsibility to treat everyone fairly and to enforce the rules in a way that is unbiased by their own individual characteristics. However, research in this area reveals that, in fact, this is not the way that baseball umpires actually behave in

practice. For instance, based on pitch-by-pitch data (2,120,166 total pitches) from ESPN.com for every Major League Baseball game from 2004 to 2006, Parsons and colleagues (2007) found that baseball umpires express racial preferences in their decisions about players' performances, despite their best intentions to be fair. Pitches are more likely to be called strikes when the umpire is of the same race as the starting pitcher. This can have a negative impact on the performance of a pitcher facing a racially unmatched umpire, leading to them striking out fewer batters or giving up more walks. In addition, there are some substantive differences between judges and umpires. For example, judges interpret rules, while umpires do not; judges do not witness events happening in real time, while umpires do (Weber, 2009). As Kirkpatrick (2020) has pointed out, the judge-as-umpire analogy, according to which fairness is defined as an absence of personal background and shared experiences, could potentially be used to obscure the descriptive representation of white, male judges, who can easily end up serving as a model of what it means to be a judge: They look the way that judges have traditionally looked in the past. Nevertheless, because the difference theory views female judges as representatives of women, those who subscribe to the umpire ideal may find the appointment of female judges to be problematic and may see their female identity as interfering with their performance as judges (Minow, 1990).

However, being fair does not necessitate an absence of descriptive representation or a lack of identity. Take judges' geographic representation in the Supreme Court of Canada as an example. According to Section 5-6 of the Supreme Court Act, at least three judges of the Supreme Court shall be appointed from among the judges of the Court of Appeal or of the Superior Court of the Province of Quebec or from among the advocates of that province. This provision makes it possible for Quebec's legal traditions (Civil Code) and social values (Charter of Values) to be represented on the Supreme Court and for Quebec's confidence in the Supreme Court to be maintained (Bodnár, 2017). In addition, according to a long-established, unwritten constitutional convention, the remaining six seats of the Supreme Court are also held on a regional basis: three seats to Ontario, two to the west (one each to the Prairie Provinces and to British Columbia), and one to the Maritime Provinces. The reason for allocating seats in this way is that, as Girard (2017: 3) explains, it is only fair and just that 'a region that formed a substantial proportion of the Canadian population (by the turn of the twentieth century) and contributed significantly to the Canadian economy should have one or more places on the Supreme Court'. Evidently, judges appointed from a particular region are expected to be familiar with the people and the conditions of life in that area. The appointment

of those judges to the Supreme Court of Canada not only has a positive influence on the diversity of the judiciary, but also represents a basis for the legitimacy of the court (Kang et al., 2020). This is why the traditional form of regional representation is important for achieving fair and robust adjudication by the Supreme Court of Canada. If regional representation, as a form of judges' identity, matters, why then should not female judges claim that their female gender identity gives them a natural connection to women and thus an understanding of women's lives? As Kenney (2019: 406) has pointed out, 'systematically excluding groups of citizens raises important questions of legitimacy irrespective of whether their presence would change outcomes'.

Increasing diversity in the judiciary ought not to focus exclusively on the issue of regional representation, gender diversity should also be considered. Nevertheless, the difference theory is problematic when employed alongside a binary classification of judges' gender as male or female, since this leads to the assumption that all female judges are equally capable of identifying with other women's experiences and speaking in a 'different voice'. It is an essentialist error to assume that a simple relationship exists between experience and consciousness (Martin et al., 2002). The discrimination experienced by women without resources and support may be not only quantitatively greater but also qualitatively different from that experienced by women who have resources and support (Crenshaw, 1989). The difference theory should therefore clearly delineate women's experience as a shared experience of being devalued, of being threatened with sexual violence and harassment, and of suffering the negative effects of subordination to men (Crawford et al., 2017). The implication of adopting such a definition is that it is not a judge's gender per se that makes a difference to the substance and form of judicial decision-making; it is a female judge's experience of being devalued and of actively seeking women's equality that makes the difference and enables them to speak with a 'different voice'. That 'different voice' should, therefore, be considered as a function of a judge's feminist consciousness and their willingness to act in the pursuit of establishing a substantive diversity (Hunter, 2015). Otherwise, the efforts for descriptive representation in the judiciary will yield only female judges who 'are able to construct a biography that somewhat approximates the male norm' (Mackinnon, 1987: 37). This is exactly why Mackinnon (1998) argued that scholars should forego discussions of difference and stressed the importance of attending to the power relations that underlie the law.

Applying such notions to the relationship between judges' gender and judging, the issue is not whether female judges act differently to male judges (although they might under certain conditions), but whether female judges reinforce hierarchical power relations. The findings in chapter five offer some evidence to illustrate this argument. Through interviews with senior male and female judges, I found that they are in fact both similarly influenced by a Confucianism that devalues women and undermines DV victims. Senior male judges justified male offenders' actions by emphasising the negative side of male chauvinism and argued that such cultural influence was inevitable among those with low education level. Senior female judges typically blamed female victims for failing to play their proper roles as wives and mothers in the family. Although the focus points of senior male and female judges are seemingly 'different', concentrating on male offenders and on female victims, respectively, their purpose is the same—to disempower women in a violent relationship. As a result, the voice of senior female judges is not the one that the difference theory is actively looking for: Judges who possess a 'different voice' are actually those who are able to identify with and offer support to those hurt most by discrimination. The female judges who form the focus of chapter four do seem to fit this description. The results of my fieldwork in four district courts from June 2017 to February 2018 show that female judges' active facilitation of victim-offender mediations resulted in most victims receiving apologies and compensation from offenders. To a certain extent, the actions of these judges alleviate victims' suffering by empowering them to influence or even determine their offender's destiny. Clearly, it is these female judges who are most successful in promoting offenders' accountability and responsibility, repairing the harm caused by their criminal behaviours, and meeting the needs of victims. In this sense, they are the judges who truly possess a 'different voice'.

Carroll (1984) once pondered whether American women who seek to win public office are feminists. This question has unique implications because 'if [a] large proportion of women candidates and officeholders are not [feminists], the argument that an increase in the number of women holding public office will lead to increased legislative attention to women's issues and more favourable action on such issues would seem to have little merit' (Carroll, 1984: 308). Following the same logic, if a large number of female judges are feminists, they are likely to pay attention to women's issues in courts and advocate for women's rights. Thus far, the empirical findings, most of which have been drawn from observations in common law countries, are mixed. So, are female Chinese judges feminists? Shen (2020) sought answers from interviews with 25 female judges working at six trial divisions in South-East China from

July to September 2015. She found that, although female judges demonstrated considerable ability, independence, and confidence, they typically accepted the roles which are traditionally defined as appropriate for women: They often regarded the family as a unit in which the 'husband's career always takes priority over wife's' (Shen, 2020: 69). In terms of female judges' perspectives on female offenders, Shen argued that female judges held a class-based perception of deviance, which does not seem to support a feminist construction of female criminality: They treated female offenders as 'bad women', and their involvement in crime as 'disgraceful' (Shen, 2020: 70). Shen also found that the female judges had little knowledge of the feminist movements in China and abroad, and concluded that due to this inadequate understanding and lack of feminist consciousness, female Chinese judges are unable to challenge the patriarchal order in the judiciary.

Shen (2017) argued that feminism can be a useful theoretical underpinning, which helps to identify and address the traditional gender norms and patriarchy in China. However, the female judges I interviewed (discussed in chapter five) seem to lack knowledge of feminism and gender consciousness: Senior female judges typically blamed female victims for failing to play their proper domestic roles as wives and mothers. Junior female judges criticised female victims for staying with their abusers once their relationship had broken down. Evidently, the argument that the elimination of gender bias in the courtroom can be achieved by having more women on the bench seems to be problematic in China. It assumes that a simple relationship exists between gender and consciousness. As the research project in chapter five has uncovered, female judges operating within the norms of a patriarchal culture may not be aware of or capable of recognising their own biases against DV victims. Interestingly, the empirical data indicates that occasionally, female judges' attitudes and behaviour coincided with that of feminists. In chapter four, some female judges were able to actively guide victim-offender mediations and seek fair compensations for women. They also refused to conduct mediations for rape victims and expected justice to be done for them. These female judges were inspired not only by their life and work experience but were influenced by the role models they had seen in *People's Court Daily*. As a result, it is difficult to suggest that female judges in this project share the same gendered approach to their work. The debate on whether female judges have feminist attitudes or not needs to be contextualised and take account of specific legal issues.

6.1.2 Feminist Judgment Projects

If judges with a ‘different voice’ are, by nature, feminist judges, what distinguishes them from the rest of their colleagues? According to Crawford and associates (2017: 181), feminist judges are more likely ‘to make decisions within context, to take into account detailed individual facts about a case, and to consider more broadly how the decision will impact women and other historically disadvantaged groups’. Evidently, feminist judges are likely to bring a particular set of sensibilities to the decision-making processes. Recent years have seen the advent of two feminist judgment-writing projects: the Women’s Court of Canada and the Feminist Judgments Project in England. These feminist judgment projects were inspired by the original critical race judgments project in the United States, which rewrote *Brown v Board of Education* (Ackerman, 2002). The purpose of rewriting judgments in this way is to demonstrate that legal reasoning can incorporate feminist knowledge and legal method to produce results that attempt to achieve justice for women. This is a radical departure from the arguments made by Smart (2002). In *Feminism and the Power of Law*, Smart (2002) argued that law is a powerful discourse which has exclusionary and damaging effects for women. As a result, women’s claims cannot simply be fitted into existing legal constructs because the legal language, methods, and procedures are fundamentally anti-feminist and take no account of the concerns of women’s lives. Feminist judgment projects view these arguments as too absolute and radical, so they attempt to revise legal categories, frameworks, and language by referencing the concerns of women’s lives (Hunter, 2012). They also aim to shed light on the underlying bias and prejudice of judges, and they challenge the myth that judges are ‘umpires’ who merely apply the rules/laws (Nuñez, 2020). By engaging in the practice of judgment-writing, feminist judgment projects question judicial hegemony over conventional judicial practice and attempt to demystify it.

Dothard v Rawlinson is a typical case exemplifying the approach of the feminist judgment projects. In 1977, there were height (5 feet 2 inches as the minimum) and weight (120 pounds minimum) restrictions for all applicants to be Alabama prison guards. Such standards excluded 41.13 per cent of the female population in Alabama but less than 1 per cent of the male population. Although the height and weight cut-offs did not even measure for strength, those requirements ruled out Dianne Rawlinson, the plaintiff who brought a class action lawsuit against them on the grounds of sex discrimination in employment. After Rawlinson filed her lawsuit, the state of Alabama passed another regulation requiring that guards be the same sex as prison’s inmates. The lower court sided with Rawlinson, claiming that the requirements created an arbitrary barrier to equal employment for women. Alabama appealed

the ruling to the Supreme Court, claiming that height, weight, and sex requirements for applicants were valid occupational qualifications given the nature of the job. On the first issue, regarding the height and weight restrictions, the Supreme Court ruled 8-1 in favour of Rawlinson because they were discriminatory, and the employer had not proven that these standards were necessary for effective job performance. On the second issue, whether women could fulfil close contact jobs in all-male maximum security prisons, the Supreme Court ruled 6-3 against Rawlinson, deciding that the occupational qualification defence was legitimate in this case. In defending this assertion, the Supreme Court cited the violent atmosphere and ‘jungle-like’ conditions of male penitentiaries, the close contact with guards necessitated by dormitory-style living arrangements and chronic understaffing, and the presence of sex offenders in the prison population. Justice Stewart (1977: 336) argued in the court judgment that ‘the employee’s very womanhood would thus directly undermine her capacity to provide the security that is the essence of a correctional counselor’s responsibilities’. As a result, the Supreme Court concluded that the presence of female guards would therefore pose a significant security problem. Nevertheless, in an opinion concurring in part and dissenting in part, Justice Marshall (1977: 345) disagreed with the majority of the Supreme Court’s reasoning for excluding women from prison guard positions, stating that the majority’s ‘rationale regrettably perpetuates one of the most insidious of the old myths about women that women, wittingly or not, are seductive sexual objects’.

The Supreme Court’s opinion in *Dothard v Rawlinson* stems from the belief that most women are physically frail or, at a minimum, that women are always weaker than their male counterparts (McGowan, 2003); men, on the other hand, are either physically dominating disciplinarians (guards) or animalistic predators (prisoners). In Schultz’s view (2000: 1816), ‘sex segregation persists not because most women bring to the work world fixed preferences for traditionally female jobs, but rather because employers structure opportunities and incentives and maintain work cultures and relations so as to disempower most women from aspiring to and succeeding in traditionally male jobs’. It is also worth pointing out that male officials and guards have always been part of female prisons (Parisi, 1984). In the rewritten feminist judgment, Ontiveros (2016) criticised this bona fide occupational qualification argument for its stereotyping of women as the cause of sexual assault. As Ontiveros (2016) explained in her dissenting opinion, the majority of the Supreme Court accepted the assertion by the state of Alabama that sexual assaults against female guards are inevitable, ignoring evidence that the state’s prison system had made a series of choices regarding the structure of

the prison that created this hazard and failed to take available steps, used in other systems, to eliminate it. As Ontiveros (2016: 224) further explained, ‘the majority’s line of reasoning reinforces the stereotypes that women are, first and foremost, sexual objects whose very presence causes sexual assault [relying] on the unstated premise that the stereotype is fixed, normal and natural, and nothing can be done to change it’. Ontiveros insightfully pointed out the stereotypical views of women at that time and criticised the conditions created by employers hostile to a particular gender. This is the type of feminist judgment that we might expect to be written by feminist judges who speak with a ‘different voice’ in their decision-making. Rather than acquiescing to these deeply entrenched and seemingly unquestionable truths about the ‘differences’ between men and women, we should demand a transformation in our cultural practices so that individuals of different genders can conduct business or provide services in a manner that does not result in feelings of violation or degradation (McGowan, 2003).

Feminist judgment projects demonstrate that the application of feminist theory and legal method can bring about different reasoning and results from what was written in an original judgment. Nonetheless, such progress comes with challenges. For instance, it is difficult to rewrite judgments that were decided in colonial times, by a colonial judge, following colonial legal transplants. This is because all rewritten opinions produced in feminist judgment projects must use the law as it existed at that time and the facts available either in the record or through legal deposit. Hence, it is challenging for a feminist judge to work ethically and critically at the same time within a colonial legal system (Munro, 2021). Although decisions made by the Supreme Court are influential, the next step for feminist judgment projects is to focus on judgments issued by lower courts, where the majority of practitioners and judges operate and where much of ‘the mundane but vital work of relevance-testing, boundary-definition, and authority-setting takes place’ (Munro, 2021: 8). With more rewritten judgments available, feminist legal scholars expect lawyers to boldly bring forward feminist arguments, so that these approaches can be put before judges as effective methods for making progressive decisions.

6.2 FUTURE RESEARCH DIRECTIONS

6.2.1 Research on the Content of Judgments

One area where male and female judges may differ is in the writing of opinions. As described by Coffin (1994: 171), opinions are a judge’s ‘most visible and enduring contribution to the legal system. They reflect the judge’s unique qualities, values, methods, tone, and approaches’.

If that is the case, how might judges' gender affect the language used in their decision? Linguistics research has found evidence for gender-linked language features, such as words, phrases, and sentence length, which are used more consistently by one gender than the other (Newman et al., 2008; Fast & Funder, 2010). For example, using a large social media data set and open-vocabulary methods from computational linguistics, Park and colleagues (2016) explored differences in language use across gender, affiliation, and assertiveness. In a sample of over 15,000 Facebook users, they found substantial gender differences in the use of affiliative language and slight differences in assertive language. Specifically, language used more by self-identified women is interpersonally warmer, more compassionate, polite, and – contrary to previous findings – slightly more assertive, whereas language used more by self-identified men is colder, more hostile, and impersonal. If judges are similar to other political elites, findings from legislative studies lay the foundation for the prediction of differences in language between male and female judges. In a study that empirically examined speeches by Members of Parliament in the United Kingdom and focused on gendered differences in parliamentary debates, Hargrave and Langengen (2020) conducted a content analysis of almost 200 speeches in three parliamentary sessions of the House of Commons. They found that women are more likely to use arguments with personal experience ($p < 0.001$), discuss policies in a concrete way ($p < 0.01$), and be less adversarial ($p < 0.001$) than men. They also noted that that women in the House of Commons refer more often to concrete groups and issues ($p < 0.01$), whereas men refer more often to abstract ones ($p < 0.01$). More closely related to research on judges' written opinions, Chew and Kelley-Chew (2007) analysed the written work of judges (all federal cases), lawyers (legal briefs), and legal scholars (law review articles) from Westlaw between 15 November 2004 and 15 November 2006. Their project revealed a strong general pattern in the legal community's dominant use of male-gendered words. It also uncovered that judges' opinions consistently demonstrate a small but positive movement towards the use of gender-neutral words, such as 'reasonable person'. Regrettably, Chew and Kelley-Chew (2007) did not note whether such change was brought about by female judges, who might be expected to avoid subtly sexist language in their judgments. Recent computational advances and the availability of automated textual analysis software should encourage scholars to evaluate premises advanced by linguistics scholars in the context of judging, and to ask the question, do male and female judges write opinions that are qualitatively different?

6.2.2 Research on the Intersection of Judges' Party Affiliation, Ethnicity, and Judging

Most studies on courts assume that judges only have one salient identity, such as being a woman or possessing African American heritage. This is why few scholars adopt an intersectional approach and examine how the combination of these identities may impact on judges' decision-making processes. Intersectionality as a framework emphasises that individual experiences and political institutions are shaped by multiple and intersecting axes of social division (Kang et al., 2020). Evidently, the overlapping sources of discrimination shape heterogeneous experiences, interests, and perspectives. If the judiciary can have marginalised groups with intersectional identities, judges can have a range of considerations in deliberations, use innovative approaches to legal issues, and exhibit democratic legitimacy to the outside (Clayton et al., 2019). In one study focusing on 6,129 votes in criminal cases decided between 1977 and 2001 in the US courts of appeals, Collins and Moyer (2008) found that female minority judges were approximately between six to ten per cent more likely ($p \leq .05$) to support a liberal (pro-defendant) outcome than males or Caucasian females. Collins and Moyer argued that female minority judges may share common opinions that are even stronger than the subgroups to which they belong. As a result, their opinions may be the result of shared socialisation or, alternatively, the result of a conscious decision to provide substantive representation for the group with whom these judges most closely identify. In another study examining dissensus in state high courts, Szmer and colleagues (2015) analysed cases decided by judges from 1995 to 1998 using the Brace-Hall State Supreme Court Data Set. They found support for the proposition that African American female judges exhibit distinct patterns of dissent from white male judges: African American female judges are more likely (0.106, $p \leq .05$) to dissent in a given case than white male justices. Szmer and colleagues (2015) argued that this suggests a much more complex psychological and sociological picture of individual voting behaviour than has previously been explored at the state supreme court level. In a study examining the intersection of US district court judges' gender and party (of the appointing president) in sentencing from 1997 to 2008, Tiede and colleagues (2010) found that female judges, who tend to vote against defendants, do so more when they are Republican appointed (-65%) than when they are appointed by a Democratic president (-29%). The study shows that the political party of the appointing president affects the probability of voting in favour of defendants in sentencing deviation cases. Clearly, all the findings discussed above indicate that the intersections among different combinations of judicial attributes is a fertile area for further research on judging. A court with no or few judges from marginalised subgroups may not present the richness of decisions that would come from a fully diverse set of judges, regardless

of the size of the decision-making body. Similar research conducted in the Chinese context might focus on female and ethnic minority judges, working in the autonomous regions, and by making use of judgments available online, might offer unique research contributions in this area.

6.2.3 Research on Male Judges' Gender and Judging

The main accounts of the relationship between judges' gender on judging are all female-othering approaches, in that they compare the behaviour of female judges to that of the 'normal' male judge. As a result, the effects of masculinity on judging remain obscure. Research has shown that chivalry theory and paternalism can be used to explain male judges' preferential (lenient) treatment of female offenders. The concept of chivalry emerged in Europe during the Middle Ages. The term describes 'an institution of service rendered by the crusading orders to the feudal lords, to the divine sovereign, and to womankind' (Moulds, 1978: 417). After the disappearance of chivalry as a formal institution, a number of chivalrous practices regarding women survived as social conventions. In 1950, Pollak argued in *The Criminality of Women* that female offenders are treated preferentially in a criminal justice system that is dominated by men and thus is characterised by male notions of chivalry. As Herzog and Oreg (2008) went into further detail, explaining that the factor underlying female offenders' milder treatment is the patriarchal culture, which identifies women as being weak, submissive, and not fully responsible for their actions. Therefore, the more lenient sentences imposed on women might reflect the fact that male judges believe women to be more likely to possess these qualities of vulnerability than men, and consequently that male judges wish to protect women from the harshness of jails and prisons (Griffin & Wooldredge, 2006; Doerner & Demuth, 2014). Male offenders, on the contrary, are ordinarily viewed by judicial officers as being independent, competitive, and mature individuals who are responsible for their actions (Eagly & Steffen, 1986). In an examination of chivalry theory as it relates to offenders convicted of felonies in Chicago, Miami, and Kansas, Spohn and Beichner (2000) found that female offenders were significantly less likely to be punished with incarceration than male offenders when taking into account prior records and offence severity. They argued that although women are now more prevalent in the public sphere than in the past, evidence of lenient treatment by the American court system remained. Chivalry is thus presented as having only positive effects for women.

The expression 'paternalism' is derived from a kinship term whose Latin root means 'a type of behaviour by a superior towards an inferior, resembling that of a male parent to his child'

(Moulds, 1978: 418). A key indicator of paternalistic behaviour in the criminal justice system is an action taken to protect women either from themselves or from some 'identifiable evil', such as jails or prisons (Gruhl et al., 1981). Although the term 'chivalry' is used interchangeably with the term 'paternalism' in some of the literature, Moulds (1978) suggested that a distinction should be drawn between these two concepts. Moulds explained that the former is confined to deferential behaviours and social courtesies, whereas the latter indicates a power imbalance reflecting women's social and legal inferiority to men (Daly, 1989). Farrell and colleagues (2010: 89) described paternalism towards women as having arisen out of 'an implied power dynamic in which male court authorities perceived female offenders as inferior to men both socially and legally'. Although both the chivalry hypothesis and the paternalism hypothesis stress the preferential judicial treatment of female offenders by predominantly male law enforcement officials, they have been criticised as misguided and overly simplistic because protecting women is construed as an ideological front for patriarchy (Jeffries, 2002).

Statistical analysis has been conducted to examine the effect of masculinity on judging. In a study examining 1,098 immigration appeals heard in federal circuit courts from 2009 to 2012, Gill and colleagues (2017) found that male litigants in front of all-male panels had a predicted grant rate of just 8.3 per cent, compared to 14.7 per cent for men in front of mixed-gender panels. This suggests that male judges do, in fact, exhibit masculinity in front of other men, treating male litigants more harshly when they sit on all-male panels. As a result, knowing that male judges treat men in positions of vulnerability more harshly may make it even more difficult for these men to come forward. In another study on male judges' family lives and decision-making, Glynn and Sen (2015) examined whether or not having daughters has an impact on their votes. Judges' family data was gathered from publicly available sources such as Who's Who in American Law, the CQ Press Judicial Staff Directory, alumni newsletters, newspaper articles, and public announcements such as obituaries. Glynn and Sen found that having at least one daughter corresponds to a seven per cent increase in gender-related civil cases in which a judge will vote in a feminist direction, such as voting in favour of the female plaintiff or in favour of the plaintiff representing women's interests. Glynn and Sen explained that having daughters leads judges to learn about issues that they would not ordinarily be exposed to – such as discrimination on the basis of pregnancy and reproductive rights issues. Evidently, research into the relationship between male judges' gender and judging is still at an early stage. With millions of judgments immediately available in the China Judgments Online, this promising research topic awaits to be explored in the Chinese context.

6.2.4 Research on Judges' Age and Judging

Chapter five of this dissertation contributes some unique findings regarding the relationship between judges' age and judging. Among senior male judges, there is a common concern that male offenders in DV cases were all unfortunately brought up in a culture that stresses the necessity and importance of being a true man at an early age. For these men, wife-beating is obviously the easiest way to show their masculine and dominant side. In my interviews with junior male judges, I found that they have to cope with an increasingly complex entanglement of expectations regarding emotions, responsibilities, and capital accumulation, even at an early stage in their career. As a result, they may relate to some male offenders, who also bear the burden of supporting families alone and commit DV as a result of such pressure. Although both senior and junior male judges are, obviously, of the same gender, because of the differences in age, they perceive different factors shaping the motivations of male offenders who commit DV. In addition, senior female judges stressed that female victims should 'properly serve their roles as wives and mothers'. From their perspective, this is an effective approach to preventing DV. Among junior female judges, the common opinion expressed is that female victims should leave their husbands when their intimate relationship breaks down and that they should always 'put themselves first'. Such an attitude rewards women for speedy decision-making and fast action in cutting ties with their husbands. Clearly, female victims of DV cannot hope simultaneously to fit both of these conflicting models of the 'ideal victim' constructed by senior and junior female judges. This reveals that senior and junior female judges also have distinct views about the role that female victims should play in the private sphere. Overall, both senior male and senior female judges are similarly influenced by Confucian cultural ideas, which undermine women's independence and agency in their domestic lives. It seems that both junior male and junior female judges, on the other hand, do not subscribe to the doctrines of Confucianism and that these doctrines thus do not play an important part in their decision-making processes. Hence, based on the contributions outlined above, the issue of judges' age and judging merits our attention.

In a study examining judicial decision-making in age discrimination cases, Manning and colleagues (2004) collected 544 age bias rulings handed down by 287 judges in the federal district courts from 1984 to 1995. They found that age appears to be a significant predictor of judicial decision-making in age discrimination cases, and the odds ratio between the youngest (under the age of 46) and oldest (above the age of 65) cohorts of judges is 2.66. This indicates that the oldest judges were more than twice as likely as their youngest colleagues to render a

pro-plaintiff verdict in age discrimination cases. This result suggests that although factors like gender and ethnicity may not change over time, judges may change their views over time. It also provides new evidence to support the social attribute model of judicial decision-making. Nevertheless, Epstein and Martin (2004) have challenged the ‘grouping data’ method used in Manning and colleagues’ article (2004), and argued that if they had raised or lowered their first cut-off point one year above or below 45, then age would not have been significantly related to outcomes in age discrimination cases. In another study, on the variability in voting by circuit judges in different career stages, Kaheny and colleagues (2008) drew their case data from cases decided between 1968 and 1996 in the US courts of appeals database and judges’ information from the Federal Judges Biographical Database. They found that the choice model better predicts the votes of judges in early and late career stages. They explained that this finding was expected due to the strong role of judges’ policy preferences in the nomination and confirmation processes, and the strong institutional effects that become salient as judicial tenure increases. As life expectancy has increased and the average age of appointees has fallen, the findings become particularly compelling now because judicial careers are likely to span several decades. In an examination of the effects of seniority and state methods of judicial retention on decisions by state supreme court judges to dissent, Boyea (2010) collected 6,375 tort cases coded in the Brace-Hall State Supreme Court Data Archive dating from 1995 to 1998. Boyea found that while the seniority of judges is positively connected to dissent, the findings also illustrate that seniority’s effect is nuanced and conditioned by a state’s method of judicial retention: The impact of a judge’s seniority relative to his or her colleagues is most powerful in appointive courts where judges hold life tenure and serve without fear of electoral retaliation. Alternatively, within elective courts, judges respond to elections by pursuing a consensual approach regardless of their seniority. The results indicate that seniority has an important effect on decisions to dissent. As judges develop seniority, however, they move in more independent directions. All these quantitative analyses of judges’ age and judging, together with my qualitative study on Chinese judges’ perceptions of male offenders and female victims in DV cases, suggest that there is potential for original research in this area in China.

6.3 CONCLUSION

Before she was nominated to the US Supreme Court, Justice Sonia Sotomayor (2002: 92) famously wrote that ‘a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who has not lived that life’. Sotomayor’s argument challenged the notion that cases are decided alike, regardless of judges’

background or life experience. Indeed, people expect judges to eliminate individual variations arising from their personal characteristics and to impartially apply predictable and replicable rules to lawsuits. Nevertheless, as stated by Frank (1973: 410) a long time ago, ‘when all is said and done, we must face the fact that judges are human’. This is the reason why the research literature on judges suggests that they sometimes fall short of the lofty ideal to which society holds them. This dissertation has found some unique factors that have an impact on Chinese judges’ decision-making processes. First, judges’ gender can be a contributing factor in the ‘performance’ of their judicial behaviours (Butler, 1990). In chapter four, female judges are shown to be accustomed to employing victim-offender mediation as a preferred dispute resolution method to facilitate reconciliation between the two parties and to seek civil compensation for victims. In contrast, male judges seem to believe that conducting mediations might undermine their masculinity, ‘grouping’ them with feminine work. This is why they opt not to follow such an approach. In chapter five, it is shown how junior female judges believe that female victims should leave their husbands when their intimate relationship breaks down and that they should always ‘put themselves first’. All these judicial behaviours manifested in their workplaces are linked to female judges’ gender and their life experiences. Second, some stimuli in the case level may lead to different reactions from judges and thus contribute to disparities in sentencing. Chapter three reveals that offenders who had a family-relative relationship with victims received longer sentences from panels with two (14.06 months) or three (18.02 months) female judges, compared with sentences delivered by panels with one female judge (5.235 months). All-female panels (0.795 month) appeared to be harsher on offenders who came to know their victims through their social network, compared with panels with one female judge (-2.506). Apparently, when some extra-legal factors of rape cases become prominent, they may trigger distinct reactions from judges. Third, judges’ working environment may contribute to their heuristic decision-making processes, and thus to differences in sentencing. Judges everywhere now face crowded dockets and enormous time pressures, and time pressure often tends to produce worse judgments in the kinds of settings in which judges operate (Gilbert, 2002). During my fieldwork in China, I saw how judges faced time pressure to close their cases quickly, and I discussed this situation in detail in chapters two to five. Specifically, in chapter three, I describe how judges in Chaoyang district court in Beijing finished 155,980 cases in 2019 (Tu et al., 2020). This indicates that in 2019, each judge heard 679 cases, or 1.86 cases per day without a break. Judges under time pressure may rely heavily on simple cognitive strategies, emotional reactions, and stereotypes when making decisions.

Mary Jeanne Coyne, a former Minnesota Supreme Court judge, said, ‘a wise old man and a wise old woman reach the same conclusion’ (Sanders & Hamilton, 2001: 311). Such an observation seems to be in plain contradiction to Justice Sotomayor’s observation. This dissertation provides support for part of Sotomayor’s contention in the Chinese context: Female judges’ experiences probably lead them to reach different—albeit not necessarily ‘better’—decisions. The findings of this dissertation provide an opportunity to think more deeply about what bias and prejudice mean in the current situation and how the research discussed in this dissertation informs different interpretations. As time goes on, female judges may come to gradually occupy more positions of leadership and may eventually constitute a majority in the courts. Such a gender make-up of the judiciary may invite more questions than answers: Would a female-majority court shift in doctrine from a male-dominated one? How might this shift affect the norms and decision-making of male judges? These intriguing questions await further exploration by researchers in the years to come.

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Appendices

APPENDIX I

CODEBOOK ONE FOR CHAPTER TWO (Judgment Data Collection, Explanation of Variables)

Last update: 1st January 2020

General

[v010] **cid** (case ID) Use a four-digit number starting with 0001

[v020] **location** 1=Shanghai, 2=Beijing, 3=Guangzhou

[v030] **year** Enter the year of judgment, 4-digit, e.g. 2018

1 Code the cases adjudicated in recent years, such as 2016, 2017, and 2018.

2 Mark the source of cases, such as high courts' websites or China Judgments Online.

Judges

[v040] **jsex** (judge) 0=male, 1=female

Offender

[v050] **osex** 0=male, 1=female

[v060] **oedu** 1=illiterate, 2=primary, 3=secondary, 4=higher secondary, 5=bachelor's or above

[v070] **occup** (occupation) 1=unemployed, 2=farmer, 3=businessman, 4=white-collar, 5=government official, 6=student, 99=no information or not enough to decide.

1 In categories 1 to 5, retirees of each category are included.

[v080] **recidi** (recidivists) 0=no, 1=yes

1 If offender committed multiple crimes, code the one with the longest sentence length.

2 Only perpetrator, no accessory.

Victim

[v090] **vsex** (sex of victim) 0=male, 1=female

Case

[v100] **ctype** (case type) 1= Traffic Accident (§133a of Criminal Law), 2=Reckless Driving (§133b), 3=Assault (§234), 4=Rape (§236), 5=Robbery (§263), 6=Theft (§264), 7=Fraud

(§266), 8=Seizing Property (§267), 9=Drug SSTM (Smuggling, Selling, Transporting, and Manufacturing of Drugs §347), 10=Drug Possession (§348), 11=Sheltering Addict (§354)

[v110] **miti** (mitigation) 0=no, 1=attempted, 2=compensation, 3=confession, 4=surrender, 5=meritorious conduct

[v120] **aggrav** (aggravation) 0=no, 1=serious circumstances, 2=multiple victims, 3=public, 4=multiple offenders, 5=serious injury or death of victim, 6=juvenile

[v130] **fine** 0=no, 1=yes

[v140] **deprivation of political rights** 0=no, 1=yes

[v150] **confiscation** 0=no, 1=yes

[v160] **incarceration** (in/out of prison) 0=no, 1=yes

[v170] **sentence length** (in month) 3-digit

1 No life sentence or death penalty in district court.

[v180] **vom** (victim-offender mediation) 0=no, 1=yes

APPENDIX II

CODEBOOK TWO FOR CHAPTER THREE (Judgment Data Collection, Explanation of Variables)

Last update: 1st January 2020

General

[v010] **cid** (case ID) Use a four-digit number starting with 0001

[v020] **location** 1=Shanghai, 2=Beijing, 3=Guangzhou

[v030] **year** Enter the year of judgment, 4-digit, e.g. 2018

1 Code the cases adjudicated in recent years, e.g. 2016, 2017, and 2018.

2 Mark the source of cases, such as high courts' websites or China Judgments Online.

Judges

[v040] **jsex1** (presiding judge) 0=male, 1=female

[v050] **jsex2** (associate judge) 0=male, 1=female

[v060] **jsex3** (associate judge) 0=male, 1=female

1 Discard cases adjudicated by judge(s) with lay assessors.

2 Mark the source of judges' gender, such as high courts' websites, *People's Court Daily*, or China Trials Online.

Offender

[v070] **osex** 0=male, 1=female

[v080] **oedu** 1=illiterate, 2=primary, 3=secondary, 4=higher secondary, 5=bachelor's or above

[v090] **occup** (occupation) 1=unemployed, 2=farmer, 3=businessman, 4=white-collar, 5=government official, 6=student, 99=no information or not enough to decide.

In categories 1 to 5, retirees of each category are included.

[v100] **recidi** (recidivists) 0=no, 1=yes

1 If offender committed multiple crimes, only code the one with the longest sentence length.

2 Only perpetrator, no accessory.

Victim

[v110] **vsex** (sex of victim) 0=male, 1=female

[v120] **relationship** (relationship with offender) 1=no, 2=dating, 3=families, 4=colleagues, 5 social networks

Case

[v130] **ctype** (case type) 1=Rape

[v140] **miti** (mitigation) 0=no, 1=attempted, 2=compensation, 3=confession, 4=surrender, 5=meritorious conduct

[v150] **aggrav** (aggravation) 0=no, 1=serious circumstances, 2=multiple victims, 3=public, 4=multiple offenders, 5=serious injury or death of victim, 6=juvenile

[v160] **fine** 0=no, 1=yes

[v170] **deprivation of political rights** 0=no, 1=yes

[v180] **confiscation** 0=no, 1=yes

[v190] **incarceration** (in/out of prison) 0=no, 1=yes

[v200] **sentence length** (in month) 3-digit

1 No life sentence or death penalty in district court.

[v210] **vom** (victim-offender mediation) 0=no, 1=yes

APPENDIX III

INFORMED CONSENT SHEET

Title: Judges' Gender and Judging in China

Please read this consent document carefully before you decide to participate in this study.

You are invited to participate in a research project on the relationship between judges' gender and judging. This research project is conducted by Shuai WEI, who is reading the PhD in Multi-Disciplinary Gender Studies in the Centre for Gender Studies, Department of Politics and International Studies, University of Cambridge, supervised by Professor Loraine Gelsthorpe and Dr Lauren Wilcox.

Interview:

You will be invited to partake in a one-hour, one-to-one interview about your experience in judging. No preparation is necessary.

Anonymity:

The transcripts of interviews will be recorded with your consent. You may opt for anonymity and review your interview transcript for accuracy or request exclusion of quotes. All transcripts will be coded so that any anonymity requested will be protected in any research papers or presentations that result from this work. When this study is completed and the data have been analysed, all transcripts will be retained for 12 months and destroyed after that period.

Voluntary Participation:

Your participation in this study is completely voluntary. You may decline to answer any questions I ask you, and you may stop or end the interview at any time. You are also entitled to withdraw any comment or observation you have made, either by asking me to delete it straight away or by emailing/ mailing me after the interview (see contact details below).

Email address: sw725@cam.ac.uk

Mailing address: Shuai WEI, Fitzwilliam College, Storey's Way, Cambridge, CB3 0DG

Recording:

Unless you object, the interview will be audio-recorded. Should you choose not to be recorded, I will take notes during the interview. You can request that the recording be stopped at any time during the interview, either temporarily or permanently.

Record of Consent:

Your signature below indicates that you have understood the information about the research and consent to your participation. The participation is completely voluntary, and you may refuse to answer any questions and withdraw from the interview at any time with no penalty. You should have received a copy of the consent form for your own record. If you have further questions related to this research, please contact me or my supervisors.

Name (Printed):

Signature:

Date:

Principal Investigator: Shuai WEI

Shuai WEI

Date: 25-May-2017

Supervisors: Professor Loraine Gelsthorpe, Institute of Criminology, lrg10@cam.ac.uk

Dr Lauren Wilcox, Centre for Gender Studies, lw487@cam.ac.uk

APPENDIX IV

INTERVIEW GUIDE

Part One

To elicit reflections on the relationship between judges' gender and judging, judges in criminal divisions will be invited to give a brief account of their professional career and the experiences that led them to pursue that job.

- 1 May I know your age, academic credentials, professional qualifications, employment prior to be a judge, and years in the office?
- 2 What were your greatest personal assets in helping you reach the position?
- 3 What was the most difficult thing for you to get accustomed to when you first became a judge?
- 4 What do you enjoy most or least about being a judge?
- 5 What are the main issues and problems facing you as a judge?
- 6 What is a typical day in court?
- 7 What is your typical case load per week?
- 8 How is the work environment?

Part Two

Next, participants will be asked about their judicial philosophy and priorities on sentencing, their role as a presiding judge in criminal trials, and how they perform this role in sentencing offenders.

- 1 What, if any, do you perceive to be the greatest obstacles to Chinese criminal justice? (Follow-up question: What improvement would you like to see?)
- 2 What do you see as the most/least important factor in reaching a decision to incarcerate?
- 3 What do you see as the most/least important factor in reaching a decision regarding the sentence length?
- 4 Do these factors have the same legal weight for offenders of a different sex?
- 5 Are there any special consideration in sentencing female offenders?
- 6 Are you interested in knowing female offenders' intent on committing a crime or the situation of their families before reaching a decision?
- 7 What is your reaction to the claim about possible leniency towards female offenders in sentencing?

- 8 What do you believe is the appropriate role for judges in addressing domestic violence crisis?
- 9 How do you prepare for a trial?

Part Three

Respondents will be asked about their opinions on constraints to their discretion in sentencing.

Iron-Triangle Relationship

- 1 How is your working relationship with police and prosecutor?

Sentencing Guidelines

- 1 What are the benefits/problems of giving judges broad discretion in sentencing?
- 2 What criteria do you use to reach a decision outside statutory ranges?
- 3 Do you think the Sentencing Guidelines are helpful for you in making decisions?
- 4 Do the Sentencing Guidelines restrict your discretion in sentencing?

Adjudication Committee

- 1 As a division chief, what are your criteria for defining ‘complicated, controversial, and significant’ cases, which need to be discussed in the Adjudication Committee?
- 2 As a presiding judge, under which circumstances will the cases you adjudicated be brought to the Adjudication Committee for discussion?
- 3 Do you think that the Adjudication Committee always provides the best decision?
- 4 Does a reversal from the Adjudication Committee have any impact on your understanding of criminal law when handling similar legal disputes?

Part Four

Closing Questions and Trustworthiness Checks

- 1 What continuing education programme or training should judges have?
- 2 Would you like to have continuing education programme or training opportunities overseas?
If so, what do you think this should include?
- 3 Do you have any questions so far?
- 4 What have I not covered yet that is important to you?
- 5 Please correct me if I am mistaken on your views on...

APPENDIX V

REAL CASES PREPARED FOR THE INTERVIEW OF JUDGES

Case One: Fraud

Miss Yang was introduced to Mr Han by a local dating agency in August 2015. Through several weeks of getting to know one another, Yang found that Han was romantically interested and decided to ask if he wanted to get engaged later that year. However, Han had intentionally kept from Yang the fact that he had been married since 2009 and was a father of two sons. During their relationship, Yang was frequently told by Han that he had a strong connection with the mayor through his father, and that he could help if Yang or her family had any difficulty. One day, Yang asked Han if he could find a civil service job for her nephew, who was newly graduated from a community college. Han replied that he could handle it on condition that Yang was willing to provide him some money to bribe the officials. Yang agreed to the proposal and deposited £9,000 into Han's account. She also allowed him to use her newly purchased BMW X3 car (worth £40,340). After Han left with the money and car, Yang found that he no longer replied to her messages or answered her phone calls. Two weeks later, her nephew suggested that Han could have run away. Yang then realised that their relationship could have been a setup, so she reported the case to the police. Han was caught in another province after a month-long investigation by tracing his mobile phone signal and credit card transactions.

Case Two: Assault

Mr Li and his wife had run a fast-food restaurant next to a manufacturing factory for several years. Mr Suo, a division manager of the factory, came to the restaurant for breakfast around 8am on weekdays. Gradually, Suo got to know Li's wife, who works the day shift. Sometimes they chatted when there were few customers in the restaurant. On one occasion, Li's neighbours alerted him that they saw Suo visit his house alone when Li was on the night shift in the restaurant. Li's wife explained to him that Suo had come to borrow a large tea set which was too heavy for her to carry. Although Li accepted her account, he suspected that there might be chemistry between Suo and his wife. One day, when Li was in the kitchen of the restaurant preparing dishes for the morning, he heard Suo and his wife giggling. He could not contain his anger and threatened Suo with a sharp knife, telling him to stay away from his wife. Suo refused to leave the restaurant and criticised Li for his unfounded accusation. Li felt humiliated before his customers, so he stabbed and seriously wounded Suo, who was sent to hospital and stayed there for two weeks. At his trial, Li insisted that he should not provide any medical compensation to Suo.

Case Three: Traffic Accident

One midnight in July 2016, Mr Shi exceeded the speed limit in the city centre after he had drunk excessively in a bar. When Mrs Wang and her daughter tried to cross the road after a green light, they were struck by Shi's car at a high speed. Wang and Shi were left unconsciously by the crash, and the legs of Wang's daughter were severely damaged. After pedestrians called the police and an ambulance for help, Shi was arrested, and Wang was told by doctors that her daughter may have fractured bones. At his trial, Shi confessed that he had been under the influence of alcohol that night because of his recent break-up with his girlfriend. He stated that he understood the seriousness of the incident and was therefore willing to cover all the medical expenses for Wang's daughter and to offer compensation for the emotional distress caused to Wang's family.

Case Four: Rape

Miss Guo was in her second year of study at a local university, and she worked for a night club as a part-time waitress on weekends. She frequently asked customers to buy her drinks, for a commission promised by the club's owner. Guo came to know Mr Cui as a regular visitor on Sunday evenings. She found that Cui never refused to purchase expensive whiskies recommended by her. Gradually, they became friends, and Guo bought her a luxury leather purse as a new year's gift. One Sunday night, Cui asked Guo if she would like a ride home. Guo accepted the invitation, but Cui touched her legs without her consent when he was driving the car. Guo was furious and rejected this unwanted sexual act. She asked Cui to stop the car immediately and said that she would walk home. Cui stopped near a highway exit, locked the doors, and raped Guo inside his car. At his trial, Cui defended himself by saying that as a loyal customer of the night club, he had spent a significant amount of money to please Guo and the club's owner. He claimed that he sincerely believed that they had begun a relationship, and that Guo was his significant other even if she had never publicly admitted it.

Case Five: Robbery

Miss Liu and Mr Zhang were in a relationship for several years and worked together in an internet café as cashier and cleaner. Recently they had become unsatisfied with their jobs because they needed to make extra savings for their wedding ceremony. However, the owner of the internet café refused to offer any pay increase after rounds of negotiation. One day, Liu told Zhang that she had noticed that there was a young girl who often booked a VIP room around 6pm and left late in the night. Liu asked the girl why she came alone every day. The girl replied that she was about to study abroad and needed to prepare mock interviews with her foreign academic counsellor by using the

computer in the VIP room. Liu then told Zhang that they could rob the girl after she left the café and ride off on his motorbike. Zhang agreed with this suggestion. One night, they quietly followed the girl into the street and Liu grabbed her bag as they passed at high speed on Zhang's motorbike. The girl was dragged down by Liu and suffered severe bruising to her arms. In the bag, there were some electronic devices, including an iPhone 7 Plus, an iPad Pro, a credit card, and some cash (worth £200 in total). The girl recognised the robbers from the colour and shape of the motorbike, which was always parked outside the internet café. She reported the case to the police and the motorbike was found to be Zhang's property. Liu and Zhang were arrested the next day.

Case Six: Buying and Selling Drugs

Mrs Fang was 47 years old and had two part-time jobs. She worked for a housekeeping company in the morning and as the moderator of a local internet forum in the evening. Because Fang was well-connected and had strong networking skills, she often organised casual meetings with her cyber acquaintances. One day, she was approached by a drug dealer on the forum via internal messages. He told Fang that she could buy drugs from him at a low price and sell them for profit. It had already come to Fang's attention that there were posts on the forum asking for information on drugs from time to time. Normally she would delete these posts and ban the users who sent them. But Fang decided to have a try because she could not resist the temptation of huge profits from trading drugs. She bought six grams of drugs from the dealer for £700 and sold them for £1,800, to three people, including two juniors. The second time Fang bought drugs; she went to a hotel to trade. The security guards found she seemed suspicious, and she was caught by police with two grams of drugs in her purse outside the hotel. Later she was taken to her house for a search, and another 12 grams of drugs were found. One week after Fang was sent to jail, she was laid off by both the housekeeping company and the local internet forum. At her trial, Mrs Fang pleaded guilty to drug charges and asked the judge to take her situation as a divorcee and an unemployed mother into consideration.

Case Seven: Theft

Ms Wang was a mother of two preschool-age children. One of her children suffered from a chronic illness, so she had to travel regularly to Shanghai to take the child to a specialist clinic. Because the medical treatment had been continuing for several years, the cost was prohibitive. Wang's only source of income was a piece of farmland she had inherited, and the profit she made from selling her grain was low and not steady. Wang's husband left the family because of the poverty they faced, and never returned. In May 2015, Wang was told by the clinic that there was a possibility that a new

surgical operation could cure her child. She was asked to pay a large deposit which would cover the cost of bringing in a well-known doctor from Beijing. Following the clinic's advice, she withdrew all her money from the bank to pay the deposit. The operation went well, and her child made a speedy recovery.

On 1st June 2015, the national holiday for Chinese children, Wang was told that her child could leave the clinic the following week. Wang was overjoyed to hear the news and decided to celebrate it with her child on that special day. However, Wang realised that she had hardly any money left to buy anything. That afternoon, she went to a jewellery shop and was caught by security guards with a pair of 24 carat gold earrings in her purse (worth £980). She was arrested and taken to the police station, where policemen searched her backpack and found that she had also stolen cooked chicken wings, whole milk, chocolate bars, three apples, and two comic books from a nearby supermarket (worth £15). She confessed that the food, fruit, and books were stolen for her child, to celebrate his quick recovery.