

“Detaching” Courts from Local Politics? Assessing the Judicial Centralization Reforms in China

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Abstract

The local party-state has always been a major source of extrajudicial influence in China. Drawing on interviews with judges, this article examines the impact of Xi Jinping’s ambitious judicial centralization reforms, which are aimed at enhancing judicial autonomy by transferring authority over local court personnel and finances from local to provincial level. It finds that the reforms have achieved limited results. Although many appointment and budgetary powers were formally transferred to the provincial level, the local party-state retains considerable influence in both areas owing to its superior manpower, local knowledge and, in the case of developed regions, financial resources. Moreover, the local party-state maintains significant informal influence over the courts, which require many forms of discretionary assistance from various state organs – ranging from appropriating land for new courthouses to providing police protection for remote tribunals – in order to function. This setback highlights the depth and complexity of the courts’ political and economic embeddedness and serves as a reminder of the inherent difficulty of institutionalizing judicial autonomy, however limited, in a large and diverse party-state.

Keywords: judicial reform; judicial independence; central–local relations; China; centralization; embeddedness

Over the past two decades, scholars have paid increasing attention to how some authoritarian and hybrid regimes have leveraged institutional reforms to increase their courts’ independence. Such attempts have had varying degrees of success. For example, the Turkish military, in a bid to consolidate the secularist political order, changed the Constitution multiple times to strengthen the judicial branch, making the courts much more independent from the government in the following decades.¹ In contrast, after many years of ambitious judicial reforms by Gorbachev, Yeltsin and Putin, the Soviet practice of extrajudicial interference

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1 Shambayati 2008, 290–98.

remains widespread in Russian courts.² Such disparities raise the question of why some seemingly genuine reforms fail while others succeed.

China's recent ambitious judicial reforms provide a good opportunity to study this issue. Historically, China's local courts have been perceived as highly dependent upon the local party-state. Ting Gong identifies three institutional arrangements that have made China's local courts subordinate to powerful local officials in the past several decades. First, courts are "required to report to the Political-Legal Secretary of the local Party Committee." Second, the local Party committee has the power to nominate court leaders, including presidents and vice-presidents. Third, local court budgets are determined by the local government.³ Such institutional dependence has resulted in serious distortions of national laws in many cases. Kwai Hang Ng and Xin He observe that the tightly intertwined interests of local government and businesses have sometimes meant that the courts "openly refused to accept politically sensitive or socially controversial cases ... such as land disputes, housing relocation and enterprise reform" because these cases "touch on topics that are so intimately related to the material interests and political authority of the local party-state that, in most cases, courts cannot decide them on their own."⁴

The Xi Jinping 习近平 administration vows to tackle this decades-old problem with judicial reforms. Several recent works point out the legalist nature of the announced measures, but some also caution that these initiatives face many potential obstacles. For example, Carl Minzner notes that the recent judicial reforms aim to professionalize the judiciary and to shield the courts from external influences.⁵ However, Minzner also warns that the reforms may be obstructed by internal limits, such as "bureaucratic infighting with other organs resentful of the greater attention being lavished on judges."⁶ Similarly, Jacques deLisle recognizes that Xi's reforms seem to be "giving law a larger role"⁷ and he cautions that they face many obstacles including regional disparities, obstruction by local elites and the legal-intellectual elites' demands for more expansive and liberal legal reforms.⁸ Taisu Zhang and Tom Ginsburg's recent article strikes a more optimistic tone, claiming that the Xi administration "has strategically expanded the courts' institutional capacity and political independence" and that it would "be accurate to say that [the Chinese judiciary] has never been as professional, independent, and politically powerful in PRC history as it currently is."⁹ Although these studies offer a valuable theoretical basis for discussing the judicial

2 Hendley 2009, 241.

3 Gong 2004, 42; Li 2012.

4 Ng and He 2017, 133.

5 Minzner 2018, 104–05.

6 *Ibid.*

7 deLisle 2017, 80.

8 *Ibid.*, 80–82.

9 Zhang and Ginsburg 2019, 323–24.

reforms under Xi, their contrasting claims are largely unsupported by empirical evidence beyond official reports and sporadic anecdotal accounts.

Through one-on-one, in-depth interviews with 34 judges from three provinces, this study offers the first comprehensive examination of the implementation of the judicial centralization reforms (*ren caiwu shang shou gaige* 人财物上收改革), which were designed to eliminate local influence over court personnel and budgets. The study finds that despite the strong will of an almost unprecedentedly powerful central government, the judicial centralization reforms have achieved only modest and mixed results owing to regional disparities, logistical difficulties and enduring informal practices. Although the reforms successfully centralized the authority to appoint frontline judges, many local Party officials retain considerable influence over the appointment of court presidents and vice-presidents. Similarly, while the reforms centralized control over judges’ salaries, they left local governments the authority to grant most performance-based bonuses, which are an important source of income for judges in developed regions. In addition, the study acknowledges the enduring existence of a range of informal ways in which local authorities exert influence over the judiciary – ways which are often overlooked by observers who focus on more institutionalized and explicit means of political control. These findings cast serious doubt on any overly rosy view of China’s recent judicial reforms and call for a more nuanced understanding of law and politics in the large and diverse party-state.

Judicial Reforms: Different Embeddedness, Different Results?

Embeddedness is a concept developed in economic sociology to highlight the impact of social context on individuals’ economic actions.¹⁰ In his seminal work on this subject, Mark Granovetter explains that “Actors do not behave or decide as atoms outside a social context, nor do they adhere slavishly to a script written for them by the particular intersection of social categories that they happen to occupy. Their attempts at purposive action are instead embedded in concrete, ongoing systems of social relations.”¹¹ Owing to its versatility, the term “embeddedness” is sometimes borrowed by legal scholars to describe the connectedness between judicial actors and other spheres of local power.¹²

Ng and He identify four interconnected categories of embeddedness: administrative, political, social and economic, each representing a type of force to which judicial actors must adapt.¹³ Three of these – administrative, political and economic embeddedness – are of particular relevance to China’s ongoing judicial reforms.¹⁴ Administrative embeddedness refers primarily to the vertical hierarchy

10 Granovetter 1985; Polanyi 2001.

11 Granovetter 1985, 487.

12 Liu 2006, 91–94, 101–02.

13 Ng and He 2017.

14 Ng and He define social embeddedness as the effect of personal and particularistic social ties on a judge’s decision-making process. Such embeddedness is not directly related to Xi’s judicial reforms,

within a court through which senior judges can use mechanisms such as adjudication committees and the case-approval system to alter the legal decisions of frontline judges. This hierarchical structure is what the judicial accountability reforms (*sifa zeren zhi gaige* 司法责任制改革), which were launched in parallel with the judicial centralization reforms, are aimed at tackling. The other two types of embeddedness (political and economic) identify the ways through which the local party-state asserts control over the courts, such as the local Party committee's supervisory power and the local government's budgetary power.¹⁵ By centralizing these powers, the judicial centralization reforms aim to reduce the local party-state's political and economic influence over the courts. In other words, disentangling the judiciary from these different types of embeddedness is a key goal of the recent wave of judicial reforms.

Based on the conviction that “the environment of judging [is] most consequential in shaping the behaviors of a court,” Ng and He are “skeptical of the extent of the effects of the latest round of judicial reform.”¹⁶ More specifically, they doubt whether the accountability reforms “will have any immediate tangible effects” and predict that the reform measures “will be observed nominally, but whether they will be followed in substance remains an open question.”¹⁷ Similarly, in regard to the centralization reforms, they caution that “the greater the effort made by the central government to control the behavior of the local government, the greater will be the efforts made by the locals to evade such control.”¹⁸

Although such scepticism is well grounded, evidence suggests that the reforms have caused major cracks in the once seemingly impenetrable embeddedness of judicial actors – at least in the “administrative” sphere. In an empirical study of the courts in the Shenzhen municipality, Xiong Yuemin, Meng Jun and Zhang Run together find that the judicial accountability reforms reduced the discretionary use of adjudication committees in the city's courts by 44.1 per cent.¹⁹ They also find that the old case-approval system, under which frontline judges must submit their case decisions to a court leader for approval before issuance was not used in more than 95 per cent of court cases.²⁰ Similarly, the author's own fieldwork finds that the judicial accountability reforms have effectively reduced the use of adjudication committees and completely eliminated the case-

footnote continued

which mainly concern institutional aspects of the courts and not judges' personal connections. However, superior ties (i.e. ties through a court leader's network) might be indirectly weakened by the accountability reforms discussed below, which aim to make judges more independent of their court superiors. (Ng and He 2017, 142–43; Wang 2020a).

15 Ng and He 2017, 123, 183–88.

16 *Ibid.*, 195.

17 *Ibid.*, 197.

18 *Ibid.*, 189.

19 Xiong, Meng and Zhang 2017, 28.

20 *Ibid.*, 29.

approval system.²¹ Most of the judges and lawyers I interviewed agreed that these changes have significantly reduced court leaders’ influence over frontline judges’ decision making, especially in the vast majority of “regular” cases that do not involve extraordinarily high monetary or political interests.²²

However, the regime’s ability to overcome judges’ administrative embeddedness does not necessarily mean it will be equally successful in overcoming the courts’ political and economic embeddedness. It matters how much the judiciary relies on such embeddedness to properly perform its adjudicatory functions. After decades of professionalization, Chinese judges have become capable of handling most cases on their own, making the case-approval system and the adjudication committees increasingly redundant as quality-control mechanisms. Such functional dispensability is evident from the lack of major disruption following the reforms. For example, although the wholesale removal of the case-approval system caused some unease among less experienced judges and, in some places, a slight drop in the quality of lower court decisions, day-to-day court operations were otherwise unaffected – a sign that administrative embeddedness was not essential to a judge’s daily duties.²³

In contrast, the judiciary has demonstrated greater dependence upon local authorities’ political and economic powers. Decades of “fragmented authoritarianism,” under which political and economic powers were spread across different levels of governments, have given the local party-state enormous influence over local actors through a slew of formal and informal channels.²⁴ This decentralized structure means that court officials have been subject to many types of institutionalized controls such as the local Party committee’s nomination power and the local people’s congress’s supervision.²⁵ The same is true in the economic realm. According to Yingyi Qian and Chenggang Xu, the Chinese economy has been organized into “a multi-layer-multi-regional form mainly according to territorial principle, in which each region at each layer can be regarded as an operating unit ... [that is] relatively self-contained.”²⁶ This means that local governments have held sway over the allocation of various local resources, such as money, land and other benefits, to different local actors, including the courts.

In addition, courts continue to depend on the local party-state in less formal ways, often owing to the latter’s discretionary assistance. Such assistance can be trivial, as illustrated by Suli Zhu’s vivid depiction of a village cadre helping

21 Wang 2020a.

22 According to the study, the interviewed judges “characterized their post-reform role as ‘independent judging,’ ‘complete independent handling of cases,’ ‘personal judging,’ or ‘the last gate,’” when compared with their pre-reform role. In addition, among the 30 lawyers who were asked to comment on the effect of the accountability reforms, 24 answered that the reforms had resulted in greater judge independence and less influence on their cases by court leaders, and five answered that there had been little or no difference. However, most interviewees recognized that a court leader could still informally influence a case if the stakes were exceptionally large. *Ibid.*

23 *Ibid.*

24 See Fu 2017, 446; Lieberthal and Oksenberg 1988.

25 Gong 2004, 42; Li 2012.

26 Qian and Xu 1993, 144.

a judge to find a defendant who took his sheep to pasture.²⁷ It can also be rather substantial. For example, Xin He documents how a local Party Committee helped the court to force officials from housing demolition agencies to take the stand in administrative litigations, resulting in the considerable elevation of the court's stature.²⁸ Although these types of interactions are not as institutionalized as other means of local influence, they have nevertheless been instrumental in the daily functioning of the judiciary. Indeed, their informal nature likely makes them harder to eliminate using institutional reforms.

As the empirical evidence presented in the following sections demonstrates, the judicial centralization reforms seem to have achieved only modest and mixed results owing in large part to the depth and complexity of the judiciary's political and economic embeddedness. This is in stark contrast to the general success of the accountability reforms, especially given that both sets of reforms enjoyed the same strong political endorsements from a powerful central administration. Such an outcome urges researchers to consider the differences among various types of judicial embeddedness and, correspondingly, different types of judicial independence when studying similar issues. It also serves as a reminder of the inherently challenging nature of institutionalizing judicial autonomy in a large and diverse party-state.

Methodology

This study is based on semi-structured interviews conducted by the author during the summer of 2018.²⁹ To produce a relatively comprehensive review of China's judicial reforms, this fieldwork included interviews with judges in three province-level units: Zhejiang, an affluent unit in the coastal region; Chongqing, a moderately prosperous inland unit; and Yunnan, a relatively underdeveloped inland unit. Interviewees in Zhejiang included 14 judges from three courts (two basic and one intermediary).³⁰ Altogether, the author conducted 34 interviews including with ten judges from two basic courts in Chongqing and ten judges from two basic and one intermediary court in Yunnan. Notably, four of the courts studied are located outside developed areas. One of the Chongqing basic courts and one of the basic courts and the intermediary court in Yunnan are located in relatively underdeveloped small cities, and the other Chongqing basic court is located in an impoverished rural county a five-hour drive from Chongqing city. However, there remains a possible urban bias in the sample.

27 See Zhu 2016, 4–5.

28 See He, Xin 2014, 863–66.

29 The choice to use in-depth interviews rather than surveys is primarily owing to two factors. First, under current circumstances, it is not feasible to arrange surveys with sufficiently high response rates in Chinese courts without an affiliation to high-level state institutions. Second, interviews can often produce more comprehensive and nuanced descriptions about extrajudicial interventions.

30 China has a four-level court system: the Supreme Court, high courts, intermediary courts and basic courts.

The interview questions focused on the implementation of the recent wave of judicial reforms. Typical questions related to the centralization reforms included:

1. What is your position in the court? What is your practice area?
2. When did you start working here? Did you have legal experience before joining?
3. Do you know anything about the judicial centralization reforms (*rencai wu shang shou kaige*)?
4. What do you think the effects of the centralization reforms have been?
5. How did the centralization reforms affect the relationship between the court and the local party-state? For example, how have they affected courts' handling of cases involving local agencies?

Although these example questions formed the basis of an interview, if an interviewee appeared particularly knowledgeable about or interested in a specific topic, the author would encourage deeper conversation. The author also asked follow-up questions not included in the list above. Most interviews lasted between 30 and 75 minutes.

Two challenges to using field research to study the judicial centralization reforms immediately became apparent. First, because the central government considers the judicial reforms to be an important part of its domestic policy, court officials are wary of creating negative publicity for the reforms that can be tracked to a specific court. Second, answers to some of the research questions, such as those addressing external influences and judicial corruption, could expose wrongdoing by the interviewed judges and/or their superiors and colleagues. Under the circumstances, it is unreasonable to expect interviewees to be completely forthcoming about such issues.

Several steps were taken to address these challenges. To protect the identities of not only the interviewed judges but also the court officials who helped to facilitate the interviews, interviewees and contacts were promised that the names of their cities and counties would not be included in any publications. In addition, all interviews were arranged through scholars from universities in the respective provinces who had long-term connections with the courts where the interviews were conducted. These scholars helped to arrange interviews based on the author's profiles of sought participants, which included specific positions (the author asked for a mix of frontline judges and court leaders) and seniority (the author asked for judges who joined prior to 2012 to evaluate the effect of the reforms). The long-term connections and trust between the scholars and the hosting institutions helped to ease the latter's fear of negative publicity.

However, potential for bias still exists in the sample. Although the interviews were arranged through legal scholars, the selection of judges was based on these scholars' close court connections, who were either high-ranking judges or court leaders. To the author's knowledge, no judge declined to be interviewed. That being said, the risk remains that these interviewees were chosen, at least partly, because of their politically safe views. To mitigate such bias, the author

specifically asked for a roughly even mix of young (40 or below) and senior interviewees as younger judges are generally considered to be more reform-minded about court–government relationships.³¹ During the interviews, the judges did demonstrate divergent views about the nominal value of judicial independence roughly along age lines (with younger judges generally being more in favour of greater independence). Such views, however, had no significant bearing on their evaluation of the centralization reforms (for example, whether the reforms affected how they handled government-related cases), which is the subject of this study. Given that random sampling was not a feasible option for selecting judges, the above-mentioned measures were the best available for obtaining information from as many interviewees as possible.³²

The Judicial Centralization Reforms

On a macro level, the recent judicial reforms and especially the centralization reforms can be viewed as part of Xi Jinping’s attempt to institutionalize his centralization of political power. Since taking office, Xi has successfully consolidated his control over the local party-state, mainly through a sweeping anti-corruption campaign. However, China’s long history of centralization–decentralization cycles suggests that such mobilization-based centralization is extremely costly and highly unstable as it often gives way to decentralizing forces soon after the centre’s political mobilization loses steam.³³ It was within this context that the current administration sought institutional means to cement its control over the vast local party-state.³⁴ Several organizations were selected for this task, including the disciplinary inspection system, the environmental protection agencies and the procuratorates. The Chinese judiciary, theoretically a unitary system with the power to systematically apply national laws against local actors, naturally became an important part of this ambitious plan.

Indeed, Xi Jinping has made reforming and empowering the judiciary one of his key priorities. During the Third Plenum of the 18th Central Committee, Xi proposed to “build a China under the rule of law” and set out rough plans to centralize, professionalize and empower the judiciary.³⁵ In February 2015, the Supreme People’s Court promulgated the “Opinions on comprehensively deepening the reform of people’s courts,” which laid out specific reform measures for the entire Chinese judiciary.³⁶ The Supreme People’s Court declared that “[a]s of the end of 2016 ... most reform tasks had been basically accomplished or carried out

31 Ng and He 2017, 69–71.

32 To preserve anonymity, all interviewees have been coded. “J” denotes the interviewee’s occupation as judge; a province-level unit code (Zhejiang: A, Chongqing: B, Yunnan: C) represents the location of the interview, and a number indicates the interview number. For example, JA01 is a judge from Zhejiang, interview one.

33 Zhou 2017.

34 Li 2019; Zhang and Ginsburg 2019.

35 Central Committee of the Chinese Communist Party 2013.

36 Supreme People’s Court of China 2015.

in an all-round way.”³⁷ However, as the interviews will show, at least some parts of the reform plan were still very much underway as of summer 2018.

The centralization reforms are a key component of Xi Jinping’s plan for the courts. They were designed to transfer authority over local court personnel and finances from local to provincial governments, thereby “ensuring the independent and fair exercise of adjudicative power” without interference from powerful local interests.³⁸ The theoretical basis for these reforms illustrates the extent of the administration’s ambitions:

The judicial power is a power of the Central Government. A local court in a place is not subject to the jurisdiction of the local government in that place, but is a judicial organ set up by the State in that place to exercise the adjudicative power on behalf of the State.³⁹

This statement goes against decades of practice in which judicial power was subject to the jurisdiction of the local party-state. According to one judge interviewee, “Prior [to the reform], the locality treated the judiciary as its own subordinate entity.”⁴⁰ Most personnel and budgetary affairs of the local courts were administered by the local Party apparatus and executive agencies. The Party apparatus itself also linked local governments and local courts through local political and legal committees. Sometimes, new mechanisms such as “grand mediations” were created to further facilitate collaboration between various local actors and courts on important cases. These ensured the courts’ political and economic dependence on the local party-state and opened various formal and informal channels through which local officials could intervene in individual cases.⁴¹

However, if judicial power “is a power of the Central Government,” as the Supreme Court boldly announced, it makes more sense to give control over local court personnel and finances to the central government rather than to provincial governments. Indeed, the reformers explicitly conceded that they had this more ambitious goal in mind and that the current plan was a compromise. As one of the chief designers of the judicial reforms noted in a 2013 article, China “has 3,500 plus courts and nearly 200,000 judges, [thus] there are still some practical difficulties for the centre to manage the personnel, financial and material resources of all the courts. Pushing for the unified management ... of local courts below provincial level is a relatively practical move.”⁴² Therefore, it is possible that the Chinese judiciary will move towards complete central management in the future, provided that the central government can overcome the logistical challenges.

Currently, however, such ambitions appear to be unachievable. Even the relatively modest goal of transferring the management of the courts to the provincial level has encountered some major obstacles. The Supreme Court itself implicitly

37 Supreme People’s Court of China 2017, 4.

38 *Ibid.*, 9.

39 *Ibid.*

40 Interview with JB01, judge and director of the research office, basic people’s court, Chongqing, 22 June 2018.

41 See Li 2012.

42 He, Fan 2013, 63.

acknowledged that the judicial centralization reforms were the most difficult to implement.⁴³ This section discusses the centralization of control over personnel and finances separately, as these reforms have encountered different obstacles and thus are in different stages of implementation.

Centralization of control over personnel

Prior to the centralization reforms, local Party officials held significant power over the management of personnel in local courts. The reforms attempted to make several changes to the old system. First, *bianzhi* 编制 (the establishment of the size and composition of local court leaders, judges and other employees), which was originally managed locally, became the responsibility of provincial governments, assisted by provincial high courts. Second, the authority to “nominate, manage, appoint and remove” the presidents, vice-presidents and frontline judges in local courts⁴⁴ was transferred from local Party systems to their provincial counterparts.⁴⁵

In practice, these reforms were only partially implemented. According to the interviewees, the *bianzhi* system has been successfully and completely centralized at the provincial level in all three provinces, as has the authority to appoint and manage frontline judges.⁴⁶ Personnel management of presidents and vice-presidents, however, has only been formally transferred to the provincial governments, with much of the actual management either remaining with local Party systems or transferred to the higher courts. In Zhejiang, the provincial high court has actual authority over the presidents and vice-presidents of the intermediary courts, while authority over the basic courts rests with the intermediary courts.⁴⁷ Local Party officials also have a say in the process.⁴⁸ In Chongqing, presidents and vice-presidents of the basic courts are jointly managed by three entities: the provincial government, the provincial high court and local Party officials. When making a nomination, all three entities send officials to the basic court to jointly evaluate the candidate.⁴⁹ In Yunnan, provincial and local officials share authority to nominate presidents and vice-presidents of basic courts, although local officials have the primary role.⁵⁰

Why is the management of *bianzhi* and frontline judges easier to centralize than the authority to appoint and remove court presidents and vice-presidents?

43 Ibid.

44 The power to nominate division chiefs of departments in a local court was exercised primarily by the leadership of that local court, both before and after the centralization reforms. Interview with JA10, judge and division chief of first civil division, basic people’s court, Zhejiang, 7 June 2018.

45 Supreme People’s Court of China 2017, 9.

46 Interview with JB01; interview with JC01, judge and president, basic people’s court, Yunnan, 10 July 2018.

47 Interview with JA10.

48 Interview with JA05, staff of the political department, basic people’s court, Zhejiang, 6 June 2018.

49 Interview with JB01.

50 Interview with JC01; interview with JC06, judge and member of the adjudication committee, basic people’s court, Yunnan, 11 July 2018.

A key reason is that the posts of court president and vice-president are administratively more important and politically more sensitive than those of frontline judges. Thus, vetting for these top jobs demands more manpower and localized knowledge about the candidates. Managing *bianzhi* requires minimal paperwork, and the appointment of frontline judges is based primarily on standard tests and interviews. Managing presidents and vice-presidents, on the other hand, is laborious. As when choosing government agency heads, the appointment or removal of a president and vice-president requires in-depth knowledge and detailed assessments of the candidates' leadership potential and political reliability. In addition, unlike judgeships, these positions are not semi-permanent; office holders must be periodically re-evaluated for promotion, demotion or transfer, creating a continual demand for attention and local knowledge.

The number of positions also matter. One scholar presents an interesting calculation. In Jiangxi province (which is mid-sized), there are approximately 110 courts.⁵¹ Each court has one president and around four vice-presidents, which means there are approximately 550 positions in the province.⁵² Managing so many senior positions alone would put provincial governments under immense pressure while ordinarily they would have little to do with the selection of candidates. Many provinces are equal in size and population to a large European country; provincial governments would have to allocate resources and much effort to appraising those candidates located miles away from the provincial capital. As one judge pointed out, it was largely out of necessity that the provincial governments sought help and recommendations from local Party officials when filling these positions, especially in the short term.⁵³

Centralization of fiscal power

The implementation of reforms to centralize financial authority over the courts has been challenged by a more uneven landscape than that facing the personnel reforms. In Zhejiang, local courts are still financed by local governments.⁵⁴ In Chongqing and Yunnan, however, the provincial government is responsible for paying the salaries of judges and other court employees.⁵⁵ Some of this money is transferred from local government budgets and is based on the local government's previous salary payments to the local courts.⁵⁶ In addition, the litigation fees collected by local courts are submitted to the provincial rather than the local government.⁵⁷ However, the local governments of large cities in Chongqing and Yunnan still pay judges and other court employees significant monetary benefits,

51 The procuratorates are the agencies responsible for prosecution in China, similar to the US attorney's offices.

52 Xie 2015, 156.

53 Interview with JC10, judge, intermediary people's court, Yunnan, 13 July 2018.

54 Interview with JA01, judge, basic people's court, Zhejiang, 6 June 2018; interview with JA10.

55 Interview with JB01; interview with JC02, judge, basic people's court, Yunnan, 10 July 2018.

56 Interview with JB01.

57 Interview with JC06.

mostly in the form of performance bonuses based on workload.⁵⁸ These bonuses can constitute a significant portion of a judge's pay cheque, sometimes more than 50 per cent.⁵⁹

The difficulties associated with the centralization of fiscal power lie mostly in the huge economic disparities within each province. A judge from a large city in Zhejiang neatly summed up why the centralization effort has failed in that province:

Not a single court [in the city] likes centralization ... If there are no local bonuses, who can still work here? Does the [provincial] high court have the money? Moreover, each place has different workloads and different housing prices; how can compensation be unified?⁶⁰

This judge echoed the opinions of judges in other large cities. Local governments in large cities are wealthier than their rural and small-city counterparts and can therefore afford to pay more generous benefits to their employees. Prior to the reforms, judges and other employees in the local courts were on the local government's payroll and received additional benefits, as was the case for other local public servants.⁶¹ These extra payments were often necessary for judges in large cities to survive, as the cost of living is much higher in these areas.⁶² Strict adherence to the original centralization plan would mean that the provincial governments must either (1) disburse much more money to the large-city courts, which many cannot afford, or (2) significantly lower compensation in large-city courts, which would likely cause many judges to quit. Obviously, neither option is desirable, which is why the provincial governments and the Supreme Court settled for a significantly diluted version of the reform.

However, this diluted arrangement is directly at odds with the primary goal of the reforms, which is to promote the independence of the judiciary from the local party-state. In one sense, the reforms have increased the leverage of local governments over local courts because they have given local governments a good reason to withhold court bonus payments.⁶³ Several judges complained that the court leaders had to "beg" the local governments for money after the reforms, because the latter believed that the courts were no longer entitled to local funding. One judge, who holds a leadership position in a large-city court in Yunnan, voiced her frustration with the situation:

The district's bonuses constitute 50 per cent of our total compensation. Last year, the district still distributed the bonuses; this year, [we] still don't know whether [the district] will distribute [the bonuses]. Last year's distribution was the result of really hard fighting and coordination with the district by the court leadership ... Now the district feels that "your court is ... now 'independent,' so we won't care for you anymore."⁶⁴

In contrast, judges in rural and small-city courts have benefited financially from the centralization of fiscal powers, or at least have not been negatively impacted.

58 Interview with JB01; interview with JC06.

59 Interview with JC06.

60 Interview with JA10.

61 Interview with JC04, judicial assistant, basic people's court, Yunnan, 10 July 2018.

62 Interview with JB01.

63 Interview with JC06; interview with JC10.

64 Interview with JC06.

One judge in a rural court in a remote region of Chongqing expressed his satisfaction with this reform:

[Our county’s] financial situation has not been very good, so in the past, we could not get our salaries before the middle of the month. Now, they are always distributed in the beginning of the month ... There is no bonus anyway, so centralization has no downside for us.⁶⁵

Other judges from the same court were similarly satisfied that their compensation was guaranteed by the reform.⁶⁶ Judges from other rural regions and small cities generally reported that their salaries had not been affected by the centralization reforms because their local governments were neither poor nor rich.⁶⁷

The centralization of fiscal power, however, has also removed the flexibility of provincial governments to fund special projects in local courts. Two leaders from two different courts complained that it had become much harder to get funding for various court projects since the centralization reforms.⁶⁸ One said:

For example, the internet connection in our courthouse was not good, and outages were frequent. It needed an upgrade. If we were still managed by the county like in the old times, all we needed to do was say the word – it would be easy. However, because the court’s finances were managed by the provincial government, it was a lot of trouble. We pleaded for a long time, but they would not approve the funding.⁶⁹

Did the centralization reforms result in more judicial independence?

Judges from different courts differ in their opinions about the extent to which the judicial centralization reforms have increased the judiciary’s independence from the local party-state – or, in other words, to what degree they have removed the political and economic embeddedness of the the courts. Such divergence is likely a reflection of the disparities between developed and less developed regions. Judges from courts located in less developed regions – small cities and rural areas – tend to believe that the centralization efforts have made the courts more independent from the localities. A judge from a small-city court in Chongqing commented that prior to the reform, “the locality treated the judiciary as its own subordinate entity, so the executive interference was relatively serious. The current reforms have generally played a positive role in reducing executive interference.”⁷⁰ The lead judge in charge of the enforcement division in the same court reported:⁷¹

65 Interview with JB08, judge and director of the trial administration office, basic people’s court, Chongqing, 27 June 2018.

66 Interview with JB07, judge and division chief of the first civil division, basic people’s court, Chongqing, 27 June 2018; interview with JB09, judge and division chief of small-subject division, basic people’s court, Chongqing, 27 June 2018; interview with JB10, judge, basic people’s court, Chongqing, 27 June 2018.

67 Interview with JB01; interview with JC02.

68 Interview with JB08; interview with JC01.

69 Interview with JB08.

70 Interview with JB01.

71 The enforcement division within a Chinese court is the office responsible for enforcing the court’s decisions on civil disputes and the property-related part of its criminal law decisions.

After financially detaching ourselves from the locality and thus being no longer subject to ... the locality, we have indeed been more neutral. We are subject to less pressure during our enforcement work. For example, a while ago, we wanted to close a coal mine. Without the centralization of control over personnel, financial and material resources, the district government could have made us hold off from enforcing the court decision. Nowadays, although the government did ask us for help, we no longer need to so drastically change how vigorously we enforce [the decision], and we enforce more vigorously than we did before [the reforms].⁷²

On the other hand, judges from large cities tend to believe that the centralization reforms have not made much difference. For example, a vice-division chief in the administrative law department of a large-city basic court in Zhejiang said that he does not feel the centralization reforms have made a big difference because he had never encountered a situation in which the government required him to decide a case in a certain way.⁷³ Similarly, the division chief of the administrative department of a large city basic court in Yunnan made the following comments about the centralization reforms:

The losing rate of the executive agencies has been constantly rising. Moreover, after losing, normally they will completely accept the result both in words and in actions and will ask us to instruct them on how to improve their work. So, now the effect of the centralized management of personnel, financial and material resources is not very significant because [the relationship between the court and the government] has already been quite formal.⁷⁴

Why do perceptions of the reforms' impact differ between developed and less developed regions? Two non-competing hypotheses might explain this disparity. First, as discussed earlier, courts in less developed regions have achieved nearly complete financial independence from local governments since the reforms because their budgets come almost entirely from provincial governments. In contrast, many local governments in large cities still pay their courts significant bonuses because the provincial governments cannot afford to pay bonuses in addition to salaries. Therefore, courts in less developed regions have achieved a more complete centralization than their big city counterparts, which likely increases the reforms' impact.⁷⁵ The second hypothesis is that compared with less developed regions, developed regions had more law-based government–court relationships prior to the centralization reforms. As this section illustrates, judges from large cities generally reported that the local officials rarely interfered with individual cases even before the reforms. Judges from small cities and rural regions, however, recognized that local officials previously interfered in their cases with some frequency. Therefore, it is understandable that courts in less developed regions sense larger differences following the centralization reforms compared to their counterparts in wealthier regions.

72 Interview with JB03, judge and director of the trial administration office, basic people's court, Chongqing, 22 June 2018.

73 Interview with JA04, judge and vice-division chief of the administrative division, basic people's court, Zhejiang, 6 June 2018.

74 Interview with JC09, judge and division chief of the administrative division, basic people's court, Yunnan, 11 July 2018.

75 That being said, as illustrated by the above quote, interviewed judges from big cities generally did not find that local governments' discretionary fiscal assistance made them less independent in their daily work. However, the long-term impact of such "indebtedness" remains to be seen.

The regional divergence in the centralization reforms’ effects underlines the complexity of dealing with local embeddedness in a country with huge regional disparities. It is generally agreed that large-city courts are not as deeply embedded in their local contexts as their counterparts in underdeveloped regions.⁷⁶ Intuitively, this should make it easier to implement reforms promoting judicial autonomy in the former. Following the centralization reforms, however, the embeddedness of the “rich” courts was revealed to be even firmer than that of their impoverished cousins. This seemingly paradoxical phenomenon is caused by China’s decentralized fiscal structure, which gives localities strong control over the economic resources in their own jurisdictions. As a result, local governments in wealthier regions can afford to spend more generously on the local judiciary, making attempts to centralize financial control over these courts extremely costly. Therefore, an effective reform design must be not only bold enough to uproot a judiciary’s deep local connections but also sufficiently flexible to account for the vast regional variations of such embeddedness – an exceedingly high bar for central reformers.

It is worth noting that the author observed limited differences in the effectiveness of the centralization reforms across provinces. The reforms’ effects differed significantly in large cities and small cities/rural regions but not along provincial lines. This counterintuitive phenomenon is most likely owing to the top-down nature of the recent reforms: compared to reforms implemented by his predecessors, one distinguishing feature of Xi Jinping’s judicial reforms is that they have allowed little inter-provincial variation during both the design and implementation stages.⁷⁷ This echoes other Xi-era reforms in that the centre has demonstrated zero-tolerance for anything less than uniform compliance across the country.⁷⁸ Such uniformity has meant that provinces are far more likely to share common issues during the reforms than had they exercised more discretion and control over the process.⁷⁹

Will the local party-state retain power over the courts if the centralization reforms are complete?

As discussed above, although the centralization reforms transferred some of the local party-state’s personnel and budgetary powers to the provincial level, these shifts remain incomplete in many ways. So, when (if ever) these transfers are complete, will the courts still be politically and economically embedded in the local party-state network? One might point to the local political and legal committees and the Party committees (PLCs), whose supervision powers over the courts are not directly addressed by the centralization reforms.⁸⁰ However, the party-state

76 See, e.g., Ng and He 2017, 193.

77 Wang 2019.

78 Kostka and Nahm 2017, 568.

79 Wang 2019.

80 Gong 2004, 42; see also Li 2012.

addressed the issue of extrajudicial interference by PLCs in earlier reforms. In 2013, the Central Political and Legal Commission adopted a series of measures to limit interference in judicial operations by local PLCs. In particular, these demand that local PLCs refrain from “send[ing] instructions [to judges] regarding decisions on individual cases.”⁸¹ Assuming both the judicial and the PLC reforms eventually achieve their stated objectives, the local courts will be free from local party-state interferences in all but the most politically sensitive cases.

In practice, however, this is unlikely to be the case. During the interviews, judges across regions generally agreed that the local party-state retained significant informal power over how courts function – beyond personnel, budgets and PLCs. An administrative law judge from a large city in Zhejiang put it bluntly: “[The centralization reforms] are nonsense (*chedan* 扯淡) ... There are still many issues that we need to collaborate on with the locality.”⁸² Even in less developed regions, where the effects of the centralization reforms seem more salient, the courts still rely heavily on the local party-state for various resources. For example, the president of a rural basic court in Yunnan informed me:

All courts want to have a good relationship with local governments and Party committees ... [When] a court president in the adjacent county ... heard that the newly appointed Party secretary [of the county] was one of his good friends, he was so happy, because that meant it would be much easier to get many things done ... For example, there is a piece of farmland near [our courthouse], and we hope we can have a piece of it for construction, we will need help from the county zoning agency.⁸³

Similarly, a judge from the civil law division said:

The court wants to be detached [from the localities] ... But, in fact, even the construction of the court’s offices still needs to rely on the locality, and the locality also has a lot of say over the hiring of contract-based court clerks ... Moreover, if the local government is not supportive, then it will severely increase the difficulty in the handling of cases. Take the “difficulty of notice,” for example. Sometimes, we go to the villages to find a defendant ... we often cannot find the person using the address provided by the plaintiffs. In such circumstances, if the villagers’ committees are willing to collaborate, then they can get [the defendant] to pick up [the notice] with a phone call.⁸⁴

Another judge voiced a similar opinion:

Enforcement work, in particular, needs the collaboration of the local government. Recently, we have been running the Enforcement Connection campaign, which enabled us to share information and collaborate with the political and legal committee, the banks, the industry and commerce bureau, the real estate bureau, the public security bureau ... So, it would be impossible for the court to be completely detached from the local government.

Another example is security ... When I was working in a detached tribunal,⁸⁵ collaboration with the local police station was a necessity. Some litigants were quite emotionally agitated and might behave in an extreme manner. All we needed to do was to tell the local police station, and they would send a police car and police to the gate of the tribunal, which would instantly solve the security problem.⁸⁶

81 Li 2016, 70–71.

82 Interview with JA04.

83 Interview with JB08; interview with JC01.

84 Interview with JC02.

85 A tribunal located in remote regions, usually as part of a basic court.

86 Interview with JC06.

These examples show that local courts still rely heavily on the assistance of the local party-state across a broad range of matters. These acts of assistance are less formal than the governments’ power to manage court personnel and finances. Indeed, with the exception of aid from the political and legal committees, such assistance comes from entities that are not “superior” to the courts and hold no formal authority over judges. Nevertheless, local courts rely heavily on these largely discretionary forms of support in their daily operations. Without such assistance, judges’ jobs would be much more difficult and court effectiveness significantly reduced in many cases. As one judge put it, “If completely detached from the local government, it will definitely be hard for the court to move even an inch.”⁸⁷ As a result, even if the judicial centralization reforms were fully realized in all aspects, the local party-state would still have many ways in which it could interfere with local court operations, if it wished to do so.

Conclusions and Implications

This article examines China’s recent judicial centralization reforms, which were designed to institutionally isolate the judiciary from local influences by transferring the management authority over local court personnel and finances from the local to the provincial level. Drawing on evidence gathered from interviews with judges, it finds that the reforms have achieved only limited results owing to regional disparities, logistical difficulties and enduring informal practices. Although the reforms have successfully centralized the authority to appoint frontline judges, some local Party officials retain considerable influence over the appointments of court presidents and vice-presidents as provincial officials generally lack sufficient manpower and information to vet candidates for these politically important posts. The transfer of financial control to provincial governments also remains incomplete as their lack of funds means that they control the salaries of judges but not most performance-based bonuses. Since such bonuses constitute a large part of judges’ incomes in developed regions, courts in these regions still rely heavily on local governments to meet their daily fiscal needs. Moreover, despite losing some formal power over the judiciary, the local party-state still exerts significant informal influence over local courts, whose daily operations require many forms of assistance from various local state organs.

These difficulties highlight the depth and complexity of the courts’ political and economic embeddedness. Unlike a judge’s embeddedness in the administrative hierarchy within a single courthouse, a court is entangled in the all-encompassing web of the local party-state’s political and economic power. Decades of decentralized governance have made each local party-state a mini Leviathan that holds great sway over every aspect of local activities through both formal and informal means. The day-to-day operation of the judiciary is

87 Ibid.

therefore dependent on the local party-state in multiple ways, oftentimes without the latter expressly projecting power over the former. This makes detaching the courts a daunting task, even if local officials refrain from deliberately undermining such efforts.

The setbacks are also a reminder of the inherent difficulty of institutionalizing judicial autonomy, however limited, in a large and diverse country such as China or Russia. To be sure, the current administration in China has been immensely effective at consolidating power within the central government and coercing local officials to implement its policy priorities. However, such centralization successes have resulted primarily from the recent anti-corruption drive, which is in the style of a campaign rather than an institutionalized process. Systematically extending the centre's control to the day-to-day governance of localities is more administratively costly than sporadically prosecuting noncompliant local cadres, especially given China's vast size and regional disparities. In other words, although local officials no longer dare to challenge the centre's key priorities for fear of disciplinary action, their control over local matters – including formal discretions and informal connections – remains largely intact. Consequently, without effecting fundamental changes in the behaviour and structure of the local party-state, it will be hard for any judicial reforms to drastically enhance the courts' institutional autonomy from local politics, at least in the short term.

Perhaps more fundamentally, the Chinese case illustrates the challenges facing authoritarian countries when attempting similar “rule-of-law” reforms. The instrumentality of law under authoritarianism has long been considered a major impediment to judicial independence, as there is an inherent tension between treating courts as pawns of the state and making them powerful enough to operate on their own.⁸⁸ Such a conflict is clearly evident in the judicial centralization reforms, the ultimate goal of which is to institutionalize central control rather than establish the supremacy of law. Under such circumstances, the “most” one can hope for is strong and continued central support – in forms such as sustained disciplinary action against local officials who interfere with the judiciary – which may gradually shift judiciary allegiance from the localities to the centre. Therefore, although the dilemma does not preclude courts from becoming more autonomous from the local party-state (some authoritarian regimes indeed do a better job at this than others⁸⁹), it does mean that such autonomy is likely to be inherently limited, difficult to achieve and costly to maintain.

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88 Tushnet 2015; Li 2016.

89 Tushnet 2015; Wang 2020b.

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None.

Biographical note

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摘要： 地方党政机关的不当干预向来被认为是困扰中国司法的一个严重问题。通过对各地法官的采访，本文试图检视当前政府所推行的司法机关人财物权上收改革是否有效减少了地方政治对司法的介入。从调研结论来看，这一改革只取得了较为有限的成果。虽然地方法院的人事权和财政权名义上都被上收到了省一级，但地方党政机关所拥有的人力、财力和地方性知识使其得以在相当程度上保留了在人事和财政上对司法机关的影响力。另外，由于地方法院在日常工作中仍然需要各个地方行政机构在土地规划、警力调度等方面的协助与配合，因此必须继续与地方政府保持一种非正式的联系。司法改革面临的这些困境体现了法院与地方政治、经济环境的紧密联系，并凸显了在中国这类超大型国家中将司法从政治中剥离的难度。

关键词： 司法改革；司法独立；中央与地方关系；中国；中央集权；嵌入性

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