Special Section on Law and Enforcement in China

Debt Collection in the Less Developed Regions of China: An Empirical Study from a Basic-Level Court in Shaanxi Province*

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ABSTRACT Contrary to the prevailing view in the literature that Chinese courts have been notoriously incompetent in enforcement, this article contends that the situation may not be so bad. Based on in-depth fieldwork investigations of 60 debt collection cases at a basic-level court in the less developed hinterland region of China, this study finds that the majority of plaintiffs recover most of their debts through the court. Local protectionism persists, but seems to be contained within legal rules. Nevertheless, the underdeveloped economy of the region has limited the effectiveness of several core judicial reform measures. Unlike the situation in more developed regions, the forces of economic development outside the court have not been significant enough to reshape the power structure inside the court. The overall situation suggests, however, that China's efforts in the field of legal reform, including the promulgation of substantive laws as well as strengthened institution-building have, in general, been conducive to the effective processing of routine debt collection cases.

Until recently, the enforcement situation in Chinese courts was regarded as notoriously poor. Xiao Yang 肖扬, the former Chief Justice of the Supreme People's Court (SPC) admitted that it was a "chronic ailment" and that there were few solutions to the problem.[1] Ge Xingjun 葛行军, the Director of the Office of Enforcement at the SPC, contended that the enforcement rates in civil and commercial cases were only 40, 50 and 60 per cent at the basic-level, intermediate and high courts, respectively.[2] The *People's Daily* stated: "Half of

* The author acknowledges the Financial support of a GRF grant from the Hong Kong government (no. 9041402 (CityU142708)). Professor Wei Ding, School of Law, Xi'an University of Communications, provided indispensable support for the fieldwork.

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1 *China Law and Governance Review 2004*, available online at http://www.chinareview.info/issue2/pages/legal.htm, accessed 19 April 2007.

2 *Ibid.*

 doi:10.1017/S0305741011000257

China's civil court rulings stay on paper."[3] According to a report provided by the SPC, of 2,343,868 civil and economic cases completed in the country in 2003, 34.97 per cent did not find enforceable assets.[4] The view that the Chinese courts have been weak in enforcement has also been widely accepted among students of China's legal system. A notable article on this topic begins with the perception "the judgments of Chinese courts in civil and economic cases are plagued by a worryingly low execution rate."[5] "A lack of professional competence, and independence from political inference," "local and departmental protectionism in adjudication and enforcement of judgments," and "judicial corruption" are often mentioned by works in the field.[6]

This view has, however, been challenged by recent research from various perspectives. One study, for example, drawing on the national statistics for three types of formal contract transactions, argues that commercial parties are able to utilize formal legal enforcement mechanisms to provide contract protection.[7] Other studies suggest that Chinese people largely trust the courts in the resolution of disputes, especially in civil and economic cases. According to a national survey, the courts were rated the third highest in terms of public trust among 12 public and legal institutions,[8] and "90 per cent of the citizens who have settled an economic dispute in court would do that again."[9] Chinese people also hold a more positive view of their courts than, for example, Americans do.[10] While the caseloads have not increased as dramatically as in the initial stage of the reform period, the fact that Chinese courts receive more than five million first

3 "Half of China's civil court rulings remain on paper," *People's Daily*, 13 March 2004, available online at http://english.people.com.cn/200403/13/eng20040313_137390.shtml, accessed 20 April 2007. The title of the article indicates that half of the civil court rulings are not enforced. The article specifically mentions that according to some official estimates, the enforcement rate on loans borrowed by SOEs from banks is only 12%.

4 See Tong Ji, "2003 nian Zhongguo fayue de shenpan he zhixing zhuangkuang" ("The basic situations with regard to adjudication and enforcement of Chinese courts in 2003"), *Renmin sifa* (*People's Judiciary*), Vol. 3 (2004), pp. 77–78.

5 See Donald Clarke, "The execution of civil judgments in China," *The China Quarterly*, No. 141 (1995), pp. 65–81 at p. 65.

6 See Michael Trebilcock and Jing Leng, "The role of formal contract law and enforcement in economic development," *Virginia Law Review*, Vol. 92, No. 7 (2006), pp. 1517–80, especially p. 1554; for similar comments, see generally Donald Clarke, "Economic development and the rights hypothesis: the China problem," *American Journal Comparative Law*, Vol. 51 (2003), pp. 89–111; Jerome Cohen, "Reforming China's civil procedure: judging the courts," *American Journal Comparative Law*, Vol. 45 (1997), pp. 793–805; Stanley Lubman, *Bird in a Cage* (Stanford, CA: Stanford University Press, 1999); Minxin Pei, "Does legal reform protect economic transactions? Commercial disputes in China," in Peter Murrell (ed.), *Assessing the Value of Law in Transition Economics* (Ann Arbor: The University of Michigan Press, 2001), pp. 180–210; Michael Moser (ed.), *Managing Business Disputes in Today's China: Dueling with Dragons* (Leiden: Kluwer Law International, 2007).

7 Guanghua Yu and Hao Zhang, "Adaptive efficiency and financial development in China: the role of contracts and contractual enforcement," *Journal of International Economic Law*, Vol. 11 (2008), pp. 459–94.

8 Pierre Landry, "The institutional diffusion of courts in China," in Tom Ginsburg and Tamir Moustafa (eds.), *Rule by Law: The Politics of Courts in Authoritarian Regimes* (Cambridge: Cambridge University Press, 2008), pp. 207–234.

9 *Ibid*.

10 Ethan Michelson, *Popular Attitudes towards Dispute Processing in Urban and Rural China* (Oxford: Foundation for Law, Justice and Society, 2008).

instance civil and economic cases per year itself suggests that the courts are by no means dysfunctional.[11]

More importantly, systematic empirical studies based on randomly selected cases in more developed regions of China suggest many positive developments of enforcement: the enforcement outcomes are reasonable, the adjudication and enforcement processes are quite efficient, the problem of local protectionism is not serious.[12] These studies also suggest many reasons behind such developments. The courts in the Pearl River Delta, for example, have launched many reform measures to improve their performance since the late 1990s including the establishment of a relatively independent enforcement bureau, the separation of adjudication and enforcement processes, and a higher threshold for the qualifications of entry-level judges.[13] Moreover, the economy in the Pearl River Delta has been largely privatized and diversified. With the privatization of many state-owned enterprises (SOEs) and the separation of government and enterprises, local governments are less inclined to protect particular types of companies involved in contractual disputes, and local protectionism thus decreases.[14]

But data from the more developed regions can hardly be relevant to the situation in other regions of China. Given the huge geographical, demographic and socio-economic differences across the country, and the systematic variations from court to court,[15] it would be unsafe to assume that the improvements of the more developed regions are also occurring in other areas. There are three aspects of improvement in the more developed regions: diversification of the local economy, strengthened institution-building and growth of staff professionalism, all supported by the abundant financial resources derived from booming local economies. Arguably, all these features are lacking in the less developed regions. For example, the type of funding available to courts in the more developed regions, which is crucial for institution-building and the development of staff professionalism, is often not available in the less developed regions.[16] Without systematic empirical research in the regions, all the following questions, which are crucial

11 For an analysis of the caseload change in reform China, see Xin He, "Recent decline of economic caseloads in China: exploration of a surprising phenomenon," *The China Quarterly*, No. 190 (2007), pp. 352–74.

12 See Randall Peerenboom, "Seek truth from facts: an empirical study of the enforcement of arbitral judgments in the People's Republic of China," *American Journal Comparative Law*, Vol. 49, No. 2 (2001), pp. 249–327; Minxin Pei *et al.*, "A survey with corporate litigants in Shanghai," on file with the author (2007); Xin He, "Enforcing commercial judgments in the Pearl River Delta of China," *American Journal of Comparative Law*, Vol. 57 No. 2 (2009), pp. 419–56.

13 For an evaluation on the impact of judicial reforms on the courts in Shanghai, see Mei Ying Gechlik, "Judicial reform in China: lessons from Shanghai," *Columbia Journal of Asian Law*, Vol. 19, No. 1 (2005) pp. 97–137.

14 Xin He, "Enforcing commercial judgments."

15 Zhu Jing-wen (ed.), *Zhongguo falü fazhan baogao (1979–2004)* (*China Legal Development Report (1979–2004)*) (Beijing: People's University Press, 2007).

16 Xin He, "Court finance and court responses to judicial reforms: a tale of two Chinese courts," *Law & Policy*, Vol. 31, No. 4 (2009), pp. 463–86.

to understanding China's judicial system and the relationship between law and development, cannot be answered definitively. What is the situation of adjudication and enforcement in these regions? What are the problems affecting the court performance on the ground? How and why can wealth or other variations affect the performance of enforcement in the courts? Will the less developed regions grow their way out of their problems, which seems to be happening in the more developed regions?

This article reports empirical research in cases involving the enforcement of debt collection cases at a basic-level court in Shaanxi province, western China. Debt collection cases were chosen because they are both a simple and a major category of cases handled by the courts, and the courts' ability to enforce them has long been regarded as crucial in securing business transactions, a precondition for sustained economic development.[17] A basic-level court was chosen because most cases are handled at this level.

Context and Methodology

The court which is the subject of this investigation lies in the heart of the Wei 渭 River plain in Shaanxi province. The city where the court is located was one of the cradles of Chinese civilization and served as the capital city for several dynasties in ancient China. Despite its shining history, the region has been left behind in economic terms since the reforms. Its economy grew during the initial stage of the reform period but has become stagnant since the 1990s: by 2002, GDP per capita had reached only 5,226 yuan.[18] Agriculture is the pillar industry, thanks to the fertile valleys formed by the Wei and Jin 泾 rivers and a climate congenial to crops such as wheat. While many SOEs have been restructured and privatized, they remain a major player in the local economy. Of the 22 billion yuan GDP generated by large-scale enterprises, SOEs still contributed one-third in 2002.[19]

The policy separating income and expenses (*shouzhi liang tiaoxian* 收支两条线), one of the most important policies affecting the financial relationship between the courts and local government, has never been implemented in this court.[20] This is because the fees that the court collects are not adequate to cover its own costs, so the financial bureau of the local government has never bothered to implement the requirement. As a result, the operating expenses of the court come largely and directly from the litigation fees and fines that it imposes on criminal defendants. These were around three million yuan a year

17 Douglass C. North, *Institutions, Institutional Change, and Economic Performance* (Cambridge: Cambridge University Press, 1990); Oliver Williamson, *The Economic Institutions of Capitalism* (New York: Free Press, 1985); *The Mechanisms of Governance* (Oxford: Oxford University Press, 1996).

18 In the Pearl River Delta study conducted by He, the GDP in 2002 reached US$5,700. See Xin He, "Enforcing commercial judgments," p. 424.

19 All socio-economic information comes from local annals.

20 For an evolution of this policy, which has had huge impact on judicial behaviour, see Zhu Jing-wen, *China Legal Development Report*.

https://doi.org/10.1017/S0305741011000257 Published online by Cambridge University Press

before 2007 when the new litigation fee guideline was enforced.[21] This was 100 per cent higher than the original levels stipulated by the SPC guidelines. The court therefore had a great incentive to increase the sums it took in litigation fees, especially because it had a 7.8 million yuan bill arising from the construction of its new office building. Court staff were thus assigned a quota of litigation fees to achieve, and to meet this quota some judges scouted around for potential cases, a phenomenon widely recorded in other less developed regions.[22]

Since it was directly related to the court's finances, the income of court staff was quite low compared with that of their counterparts in the more developed regions. Staff income consisted of three parts: basic salary, a local allowance and a case allowance. The first two were borne by local government, while the third came directly from the court. The local allowance, which was supposed to be 1,200 yuan per month, rarely materialized until 2007, when the central government subsidized those courts facing financial shortages. The case allowance, also called fuel and repair fees, came from what was left over from a 150 yuan per case subsidy for court vehicles for fuel and repair costs. Every member of staff, by and large, received 130 yuan per month. Overall, the total income of a middle-ranking judge reached little more than 1,000 yuan per month in 2004.

This low level of income certainly had some impact on the structure and quality of the court staff. As of 2004, the courts had 111 members of staff, including those in two dispatched tribunals. Approximately 60 per cent had a bachelor's degree; around 30 per cent were discharged army officials. The number two division of the court, which dealt with debt collection cases, had eight employees, all of whom held a bachelor's degree. The enforcement bureau had 16 employees, of whom eight held a bachelor's degree.

It is against this background that our research was conducted. We randomly selected 100 commercial cases among the approximately 800 that closed during the calendar years 2004 and 2005, essentially one out of eight according to the sequence of filing numbers.[23] When a selected case was not about non-payment, it was replaced with the one following it in the docket. As we wanted to investigate the enforcement capacity of the courts, we did not simply focus on the cases in which compulsory court enforcement was requested, because some defendants would, for various reasons, have paid their debts before the courts took action

21 "Susongfei jiaona banfa" ("Measures for taking litigation fees"), issued on 19 December 2006 by the State Council and implemented on 1 April 2007, available online at http://news.xinhuanet.com/legal/2006-12/30/content_5549692.htm, accessed 29 December 2009.

22 Yong'an Liao and Shenggang Li, "Woguo minshi susong feiyong zhidu zhi yunxing xianzhuang" ("The current operational status of the system of civil litigation fees in China"), *Zhongwai faxue* (*Peking University Law Journal*), Vol. 3 (2005), pp. 304–27; see also Xin He, "Enforcing commercial judgments." But some judges noted in court that this practice has already been abandoned since the financial pressure was lightened after the central government started subsidizing courts in the hinterland regions in 2007.

23 A sample containing 60–80 cases would probably present a picture of the normal distribution.

https://doi.org/10.1017/S0305741011000257 Published online by Cambridge University Press

to make payment compulsory. Instead, we began with the petition-filing and adjudication processes and tracked the "life cycle" of the cases in the courts.

After some of the key information about the cases had been collected from the record of court decisions (such as the nature of the litigants and the amounts at issue), one of our investigators, a professor teaching in Xi'an, phoned the litigants. While our focus was on the plaintiffs, she also interviewed some defendants when their contact information was available. Some interviewees were the heads of the relevant economic institutions or individual business operators, but lawyers and legal aid providers were also questioned.

Our investigator asked the litigants about their experience when solving their disputes – including previous transactions with their trading partner, disputes that were settled, those that were lumped or repressed, those that went to court, those that were settled during the court proceedings, those that went to final judgment, those that were then settled or lumped, those that were the subject of compulsory enforcement, those that were enforced (and to what extent) and those that were not – and the reasons for all these decisions and outcomes. She also asked the respondents about their litigation costs and their motivations for litigation. Following our research design, she stated at the beginning of the telephone interviews that the investigation was part of a research project in which she collaborated with the court in question with the aim of improving the performance of the courts in general. She also informed the interviewees that this research was purely academic and its results would not in any way affect the cases with which they were involved. Only a few interviewees either refused to answer the questions or tried to verify her status by asking for the names of the directors of the court and the enforcement division; most answered her questions and exchanged views with her frankly. Nevertheless, out of the 100 cases she only had meaningful conversations with 60 plaintiffs. In many cases this was because the file did not record the phone number of the litigants or the phone numbers were out of date. In others, the person answering the phone did not know much about the litigation, and in one, the litigant had died during the course of the case. After we had collected the information for the first round, I telephoned some of the respondents myself to obtain explanations of unexpected details.

The first and second rounds of the investigation were conducted in May and November 2008, respectively, about three years after the decisions in the cases had been reached. The three years allowed the creditors and the court sufficient time to make some effort at collection, while not being long enough for the creditors to have forgotten detailed information.

To capture a more comprehensive picture, five judges who had been adjudicating and enforcing the judgments were also interviewed (see Table 1). We asked them what factors inside and outside the courts had prevented the judgments from being successfully enforced, what their experiences were in facilitating voluntary withdrawal and judicial mediation, and what effects the judicial reforms had had on the enforcement.

Table 1: **Information on the Five Judges Interviewed**

Judges	Division	Age	Legal Education	Gender	Working experience in court (years)
A	Commercial Division; or No. 2	Late 30s	Master's degree (distance learning)	Female	19
B	Sheriff	Mid-40s	None (discharged army official)	Male	10
C	Enforcement Bureau	Mid-40s	None (discharged army official)	Male	10
D	Commercial Division; or No. 2	Late 20s	Bachelor's degree	Male	6
E	Administrative and Labour Division	Mid-40s	Bachelor's degree	Male	18

Positive Enforcement Results

The data indicate that, as in the more developed regions, in Shaanxi most plaintiffs prevailed.[24] Of the 18 cases that ended with adjudication, only two plaintiffs were ruled against on the grounds of inadequate evidence (and one of these decisions was reversed on appeal). The awarded amounts basically reflected the amounts demanded, except for some miscalculations or forgone interests in interim settlements.

Twenty-one cases were withdrawn or were settled by judicial mediation; these two outcomes combined constituted 70 per cent of the cases in the data, a much higher figure than that of the Pearl River Delta. This suggests that the courts in the less developed regions might place greater emphasis on more traditional methods of dispute settlement than adjudication. With the relatively low caseloads (around three cases per month per judge, only one-third of the workload in the Pearl River Delta), judges in this court could afford more time to reconcile the disputants, a process that is always time consuming. It is worth noting that in 2004–05 when these cases were processed, mediation and withdrawal were encouraged in the judicial system.[25]

Voluntary withdrawal and judicial mediation often occurred when debtors agreed to pay the amount at issue after receiving the notice of litigation: they had simply intended to delay payment. Usually judges took an aggressive stance in this type of situation. They either genuinely provided an accommodation acceptable to both parties, or coerced the parties to accept the judicial solutions

24 Weiying Zhang and Yongzhu Ke, "Susong guocheng zhong de nixiang xuanze jiqi jieshi" ("Reverse choice in the litigation process and its explanation"), *Zhongguo shehui kexue* (*Social Sciences in China*), Vol. 2 (2002), pp. 31–43; Xin He, "Enforcing commercial judgments."

25 In September 2002 a judicial policy on mediation was promulgated, re-emphasizing higher mediation and withdrawal rates. See "Guanyu shenli sheji minshi anjian de youguan guiding" ("Several stipulations on adjudicating mediation-related cases"), promulgated by the SPC.

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for their own benefit.[26] Some judges required that if defendants inclined towards mediation, they should show some gesture of sincerity and pay at least part of the debt immediately. As a compromise, mediated amounts were usually slightly lower than demanded amounts: either the interest was forgone or more time was offered for payment.[27]

But not all the mediated or voluntarily withdrawn cases had a happy ending. In the data, four mediation cases ended up with no enforcement at all. In three of these, after the court took measures to compel payment it was found that the defendants did not have enforceable assets. In the remaining case the plaintiff himself was the cause of the unhappy ending: he never found the time to collect the goods from the defendant as agreed in the mediation settlement. Of the 21 withdrawn cases, four were not enforced at all. This was either because the evidence provided was not adequate, or because the whereabouts of the plaintiff could not be determined. Ten judgments were only partially enforced, as the plaintiffs made compromises. Some withdrew because if they did so the defendants were willing to pay the major part of the debt. Others withdrew because the court would refund half the litigation fees for withdrawn cases while there was no refund for mediated or adjudicated cases. Nevertheless, this suggests that the involvement of the court itself had a significant impact on the debtors. Indeed, many plaintiffs stated that once the court stepped in, defendants immediately became willing to settle.

While the result was not as good as that in the Pearl River Delta, in general, the enforcement situation was quite reasonable. As shown in Table 2, 27 of the 60 surveyed cases (45 per cent) were completely enforced. This included seven withdrawn and 11 mediated cases. In 47 cases, 78 per cent of the total, the plaintiffs recovered something. These results once again suggest that the conventional view that the Chinese courts have been incompetent might be exaggerated. On the other hand, the plaintiffs did not recover anything in the remaining 13 cases (see Table 3). Of the 60 surveyed cases, 18 creditors (30 per cent) entered the enforcement stage, and nine of these (50 per cent) recovered something.

Of the five adjudicated cases where the debt was not paid at all, three debtors refused to pay because it there was a "triangle debt" situation: one would not pay until others in the triangle paid first. In another case, the defendant did not have enforceable assets. The fifth was a SOE at the provincial level, which claimed that the problem was due to the transactions of the planned economy and could not be sorted out by the court or by reference to law; both the defendant and the plaintiff used to belong to the same organization. In the words of the defendant, if money was due to the plaintiff, then money was due to the defendant from the central government. It seems that the court could not do much in this case. This suggests that the legacy of the period of the planned economy still has implications for business transactions and contract enforcement.

26 Usually the benefits include a lower appeal rate and a simpler court decision.
27 Interview with Judge A, 14 November 2008.

Table 2: **Enforcement Results**

	Adjudication	Mediation	Withdrawal	Total
Numbers	18	21	21	60
Numbers entering the enforcement procedure	14	4		
100% paid (voluntarily)	5 (4)	4 (7)	7	16 (11)
80–99% paid	4	2	8	
50–79% paid			2	
1–50% paid				
Nothing paid	5	4	4	13 (see Table 3)

Table 3: **Cases Not Enforced at All**

Reason	Insolvency of debtors	Triangle debts	Complications left from the planned period	Debtors transferred or hoarded property	Other (creditors' reasons)	Total
Numbers	4	3	3	1	2	13

The Changed Content of Local Protectionism

As shown in Table 4, most of the court users in the data were private enterprises or individual operators of small businesses (53 per cent of plaintiffs and 50 per cent of defendants). But SOEs still played a role, with ten plaintiffs and 16 defendants. Indeed, many of the private enterprises were privatized and restructured former SOEs. This suggests that in the Shaanxi region, the private sector has also developed as a result of the nationwide economic reform and its economy has been privatized and diversified. But the SOEs still used the courts to a greater extent in the province compared with SOEs in the more developed regions where the private sector was more dominant.

Conventional wisdom would suggest that when more SOEs are involved in litigation, local protectionism is more intense.[28] This should be especially true when a particular local government mainly depends mainly on the revenues from its local SOEs to cover its operating costs. Would the conventional wisdom hold in this case?

The rest of this section addresses this question from three perspectives: the perception of the litigants, the results derived from the data and interviews with relevant judges. According to the litigants, as will be shown, evidence for the existence of local protectionism is overwhelming. But when the data results and interviews with the judges are all considered and analysed, this perception is true only if local protectionism means personal connections rather than a financial link between the local enterprises and local government.

28 Minxin Pei, "Does legal reform protect economic transactions?" pp. 180–210.

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Table 4: **Ownership Structure and Localities of the Litigants**

Ownership structure of the plaintiffs	Local	Non-local	Total	Ownership structure of the defendants	Local	Non-local	Total
SOEs	10	2		SOEs	16	2	
Collectively owned enterprises	8	4		Collectively owned enterprises	2	4	
Private enterprises (including individual business operators)	32	4		Private enterprises (including individual business operators)	30	6	
Total			60	Total			60

As far as local protectionism is concerned, two types of litigant are represented in the data. The first type is not directly involved in a local versus non-local lawsuit. While their views might not emerge from the cases in the data, we cannot ignore them because they speak of their general impressions based on previous experience. Usually they regard the phenomenon of local protectionism as ubiquitous. The statement of an in-house legal counsel of a large SOE may be regarded as typical: "Legal protectionism is everywhere, and everywhere across the country it is the same. We tend to litigate more in this local court so that we can be in an advantageous position as we are very familiar with the staff in the court."[29]

The second type of litigant is directly involved in a local versus non-local confrontation. These litigants' accounts are based on concrete facts in the cases and thus should be more reliable. Our interviews indicated that their perceptions were largely in accord with the case results. Those who won and successfully enforced their cases rarely mentioned local protectionism. But those who lost readily perceived local protectionism to be the underlying, if not the only, cause. A non-local defendant who lost a case to a local plaintiff regarded the performance of the court in a very negative light and said: "In our opinion, that case was clearly badly handled. For one thing, the statute of limitations had expired. For another, all the evidence was rigged. Obviously all these things happened because of local protectionism, which was understandable."

Locals who had lost a case against a non-local opponent tended to explain the result in terms of the existence of extra-legal factors. A local defendant whose property assets had been frozen by the court and who was consequently forced to make payments also referred to the existence of local protectionism.

> Everyone said there was local protectionism, but in this case the court tried its utmost to protect the other party's interests, not ours. It is said that if one files a lawsuit in non-local courts, it is

29 Interviews.

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Table 5: **Local versus Non-Local Cases and Non-Local versus Local Cases Compared**

	Total number	Court decisions	Enforcement results	Plaintiffs' impression of the court
Local v. non-local cases	12	6 mediations, 4 adjudications, 2 withdrawals	8 were 100% enforced, 4 were completely unenforced	6 positive, 6 negative
Non-local v. local cases	10	2 mediations, 4 adjudications, 2 withdrawals	6 were 100% enforced, 2 were 80% or more enforced, 2 were completely unenforced	6 positive, 4 negative.

difficult to get money back. But in this case, our local court immediately froze our money right after a non-local company sued. This was so unusual.

He added sarcastically: "I think our court is so observant of the law." The "unusual" situation was thought to be improper behaviour or collusion between the judge and the other party. This defendant said: "Later we heard that the other party had bribed a member of the court staff. Otherwise how could our bank account have been immediately frozen right after the money was transferred to it?"

To what extent were these perceptions true? Our data do not offer support for them. In the dataset there were only ten cases with a non-local defendant and 12 cases in which the plaintiff was non-local. As these numbers were so small, it was difficult to pinpoint how serious an issue local protectionism was. Nevertheless, when the two sets of cases were compared, as shown in Table 5, both the enforcement results and the impressions of the court were found to be not significantly different between the two categories. Of the 12 cases with a local defendant, four were not enforced at all. Of the ten cases with a local plaintiff, only two were completely unenforced, while the other eight were basically enforced. This shows that local defendants may fare better than local plaintiffs. Similar results were found in the litigants' impressions of the court: the non-local plaintiffs did not seem to judge the court's performance solely from the vantage point of their location. These data indicate that locality was far from an overwhelmingly decisive factor in dictating either the enforcement results or the litigants' impression of the court.

How can the above contradictory results be reconciled? Our interviews with the judges suggest that the key lies in the exact meaning of local protectionism. It can be understood – and in the literature is usually so understood – as extra-legal interference or pressure from the local government because of a financial link between the local government and local enterprises.[30] But it can also mean some "convenience" or even benefit to a litigant because of connections between

30 See generally, Lubman, *Bird in a Cage*.

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the court staff and the litigant. The judges interviewed generally regarded the former as rare but the latter as common.

Judge C said:

> Of course there are some conveniences for those who have connections, especially when there is room for different interpretations. That's why there are many fights over whether the court has jurisdiction. Let me give you an example. Today you guys are here conducting investigations. We have to set aside this afternoon for you because we are friends. The routine work then has to be deferred.

Judge A, who has been working in the court for 19 years, said:

> *Renqing* (人情, a personal bond) is not something you can escape. When I was working in a dispatched tribunal, some litigants would bring me vegetables they had grown in their fields. One brought me five eggs, wrapped in a handkerchief. While the gift was not worth much, we can hardly reject such gifts. Otherwise, we would hurt their feelings. They really wanted us to have them.

Judge B, a former army lieutenant, regarded by his peers as very capable in enforcement matters, said: "When the parties contact you through some connections, we naturally make a greater effort. And sometimes it really depends on the circumstances of individual cases." He then spent ten minutes telling a story about how he successfully enforced a case in Hunan, a province far away from Shaanxi. The key to the case was that the defendant had registered under different business names and under the law, strictly speaking, the court could not take any action. But the plaintiff believed that he had found the right person. He then took an extra step to explain the situation to the local court and sought assistance. Instead of protecting the citizen in its jurisdiction, the local court was willing to lend the enforcement team a hand. Under the pressure of the local court, the defendant gave in and paid up. "And the first thing we did," the judge said with a grin, "was to fuel their vehicles. As we all know, courts generally face a shortage of funds for operating costs."

But the judges generally discounted direct extra-legal influences because of a financial link between the local government and the court. Instead, they all emphasized that the above conveniences were somehow contained within the laws or the rules. Judge C, who used the example of our visit to illustrate the point of a convenience as a result of *renqing*, said:

> It is true that we have deferred our routine work because of your visit. But some delays in the handling of cases do not mean that we are violating the law. Similarly, the fight over jurisdiction does not necessarily mean that unlawful favours are granted, because the rules are usually vague and open to different interpretations.

Judge A said:

> When our directors are briefed, they always focus on what the laws and regulations are, what the admitted evidence is, and what room we have. This is also true when the leaders from the supervising bodies such as the People's Congress and the Procuratory are investigating some complaints. Often they say: "If allowed by the rules, give us some remedies. If not, explain the regulations courteously to the complainants." There is a clear line over which those higher-ranking officials will not easily step.

While she herself had received no formal training in law, Judge A often invoked a comparison between the work of a judge and that of a doctor: "This is a very

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technical area, just like treating a disease. No matter how high ranking an official is, the surgeon's words count, especially in serious medical operations." Judge E said:

> The bottom line is that this must be within the line. The reputation of the courts in society has been so bad in the past. Any deviant behaviour could be targeted by the media or the higher-level courts and used as a stick to beat them with. This job does not pay very well, but it is decent and stable. Not many staff members can afford to risk losing their job.

While discounting the seriousness of the issue of local protectionism in routine cases, the judges never denied the existence of almost unavoidable undue influence in cases directly involving the local government. A junior judge (Judge D), who had worked for the court for six years, said:

> Can we freeze the account of the local government? Of course not. There has just been a case in which only a local street neighbourhood committee [the lowest level of government in urban China] was involved. I went to their office, escorted by the director of the enforcement bureau, patiently and politely explained the case to them, with an emphasis on the difficulty of our work. In that case the street neighbourhood committee eventually paid. But if it had refused to pay, there was little that we could or would have done.

But even this account suggests that the rules are important. The fact that the court staff went to the office of the street neighbourhood committee to enforce the judgment and that the committee eventually chose to pay as required suggests that the laws are far from useless. The court staff obviously understood that they could not take compulsory action against the government. But they certainly could not, or at least did not want to, decide the case in the government's favour or just give up the enforcement. They had to walk a fine line in this case. That was why they were extremely careful about the measures to be taken and the manner of the enforcement. The director of the enforcement bureau participated in the explanation in person.

Indeed, when the content of local protectionism is unpacked, there is no real difference between the position of the judges and that of the litigants. According to a legal counsel who regarded local protectionism as ubiquitous, "we can be in an advantageous position as we are very familiar with the people in the court."[31] She was the counsel responsible for chasing the debt of the enterprise in the above case, and also said: "The court has been the only option, as all the administrative measures have failed." Her advantage seemed limited only to familiarity with the court staff. In the account of a local who lost a case against a non-local enterprise, there was nothing wrong with the court freezing his bank account, even though his allegation that one judge had been bribed by the non-local party was true.

The key, then, is how often cases directly involving local government occur. While there were many SOEs among the 100 selected cases, some at the provincial level, no case directly involved the provincial government. The surveyed judges also admitted that such cases were rare. Most cases are similar to those

31 *Ibid.*

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Table 6: **The Distribution of Amounts at Issue (10,000 yuan)**

Amounts	<1	1–4.99	5–9.99	10–49.99	50 +	Total
Numbers	22	20	6	8	4	60

shown in the data: straightforward, minor and simple (Table 6). In such routine matters, the diffusion of the legal system has been matter-of-fact and the behavioural pattern of the court staff and other government officials has become more rule-based.

All the foregoing suggests a change in the content of local protectionism. Conveniences obtained through social connections are hardly a direct result of the financial link between local government revenue and the contributions of local enterprises. They exist simply because it is easier for a local to find connections to the local court. While it is true that there are still financial shortages in rural courts, the link between the revenue of local SOEs and their operating expenses has become weaker. For example, the budget reforms implemented in the late 1990s[32] suggest a more formal relationship between the financial bureau and the local court. In addition, the state council has recently set aside a specific budget for less developed regions.[33] It is true that in the less developed regions there may be more institutional corruption and more inappropriate behaviour generated by the need to raise funds.[34] It may also be true that more corruption occurs as a result of the close connections between the local people and court staff. But most of these connections are not directly linked to local protectionism. After three decades of legal reforms, the establishment of a rule-based society seems to have taken shape. The close relationship between government agencies and their SOEs found in the early stage of the reform seems to have been gradually replaced by more rule-based behavioural patterns.[35]

The Limited Effect of Judicial Reforms

In contrast to the position in more developed regions where the positive impact of judicial reforms is obvious, the situation in this Shaanxi court seems complicated. The nationwide efforts to construct legal institutions have left clear marks in the court: for example, all the divisions were set up, basically according to the requirements of the SPC. Petition filing is now completely separate from adjudication and from enforcement. More specifically, with regard to the enforcement

32 Jun Ma and Meili Niu, "Modernizing public budgeting and financial management in China," in Howard A. Frank (ed.), *Public Financial Management* (Boca Raton, FL: Taylor & Francis, 2006), pp. 691–736.

33 This happened when the new measures with regard to litigation fees (effective in 2007) led to serious financial shortage for the courts in less developed regions.

34 Randall Peerenboom and Xin He, "Dispute resolution in China," *East Asia Law Review*, Vol. 4 (2009), pp. 1–61.

35 For an analysis on the relationship between the local state and enterprises in the early stage of the reform, see Jean Oi, *Rural China Takes Off* (Berkeley: University of California Press, 1999).

of commercial cases, several measures have strengthened the court's enforcement powers. These include the establishment of a relatively independent enforcement bureau, allocating more resources to enforcement. In addition, the court now has the power to freeze the bank accounts of debtors, and the penalty for obstructing enforcement has been increased. According to the interviewed judges, banks and other government institutions have generally become more co-operative, after a co-ordination mechanism was established to oversee banks, real estate, vehicles and other sectors where immovable and important movable properties were registered.[36] Several judges shared with us stories about bank officials being detained for leaking information to debtors. Judge C referred to the role of advanced technology: the time that the court enforcement team reached the bank counter was recorded by the computer system, and this effectively prevented collusion between the bank staff and the debtors.

But some core reform measures affecting power redistribution have not yet been implemented. A telling example is the establishment of a Chief Adjudicator (*shenpanzhang zhidu* 审判长制度). This is an initiative by the SPC to promote greater judicial independence, whereby the power to decide cases is vested in a chief adjudicator rather than divisional heads or court presidents.[37] But in this Shaanxi court, in contrast to the more developed regions, no adjudication decisions can be made without the signature of the charging court director, and no mediated or withdrawn decision can be issued without the signature of the division head. A major reason for the discrepancy is the very low caseload in this court, only a third of that in developed coastal areas. The divisional directors and court presidents are therefore still able to review all the cases and keep the final decision-making power tightly in their own hands. Similarly, the original power structure in the distribution of cases also remains intact. When the cases are transferred from the petition-filing division to the second division, which is responsible for processing commercial cases, the divisional head will take first pick of the cases, usually the simplest or those where the head has connections. The remaining cases are distributed to unexceptional judges.[38] The rationale is straightforward: the allocation of adjudications is based on the number of cases, so the divisional director will of course choose the easiest. This contrasts with some developed regions, where, as caseloads have become heavy, cases are usually randomly assigned by a computerized system with little room for outright manipulation.[39]

36 "Zhongyang zhengfawei: dongyuan shehui liliang, qieshi jiejue zhixing nan" ("Central Political-Legal Committee: mobilize the resources of society, conscientiously solve the problem of court enforcement"), Xinhua, available online at http://news.xinhuanet.com/legal/2006-01/23/content_4090238.htm, accessed 29 December 2008.

37 Article 18 of "Renmin fayuan wu nian gaige de gangyao" ("The five-year reform outlines") states: "The court decisions shall be rendered by the chief adjudicator or the sole adjudicator according to the law by 2000." Promulgated by the SPC on 20 October 1999.

38 Interviews with Judges A and D.

39 Interviews.

https://doi.org/10.1017/S0305741011000257 Published online by Cambridge University Press

The effect of reforms in staff professionalism is also limited. After the promulgation of the new Judge Law, all new judges must pass the Uniform National Judicial Examination. The pass rate of this examination has been less than 10 per cent and it is extremely difficult for discharged army officials, who have received little education, to pass it. As a result, there are now fewer of them in the judiciary and the proportion of legally trained graduates has increased. Judge A stated that the great difference between formally trained law graduates and others was that the former learned much more quickly. But she also noted that education had little to do with a person's overall moral quality, *renpin* 人品, which was what mattered most. However, because of limits on both financial resources and personnel quotas, based on the population size and controlled by the local government, this Shaanxi court has only taken between one and two law graduates each year for the past five years. To balance the economic benefits among employees, members of staff without the judgeship qualification are allowed to handle cases independently. Hence, overall, discharged army officials still constitute a crucial component of the judiciary, not just in numbers but also in the way they affect the functioning of the courts. It will not be possible to phase them out for one or even two decades.

Similarly, in response to the outcry that a court requires specialized knowledge in order to operate effectively, the Party's local staffing bureau has given more weight to the recommendations of the higher-level courts when appointing local court presidents. But a more centralized system of court appointments, trying to break the link with local authorities as suggested by the SPC in its 1999 reform outlines, has not been implemented at all. Nevertheless, the current president and his predecessor both received formal legal training. Such presidents tend to fill key posts with those who have acquired legal knowledge and skills. Staff professionalism and their corresponding performance in court might have increased as a result of the trickle-down effect, but only at a very incremental pace.

Relatively Poor Impressions of the Court

How would the users of the court view its performance, including enforcement? As shown in Table 7, the interviewed plaintiffs were more positive about the adjudication phase than the enforcement phase of the court process. Of those who expressed an opinion about the former, 48 per cent had a positive impression of the functioning of the court and only 22 per cent were negative. Regarding the enforcement phase, 50 per cent of the 18 plaintiffs who responded to this question had a negative impression of the court's performance.[40] These results

40 Not all the plaintiffs were in a position to respond to this question, because some of them withdrew their cases almost immediately after they had filed the lawsuits. Overall, only 18 cases, or 30%, entered into the compulsory enforcement stage. Only this group of plaintiffs experienced the court's enforcement abilities.

https://doi.org/10.1017/S0305741011000257 Published online by Cambridge University Press

Table 7: **Plaintiffs' Impressions of the Court**

	Positive	Negative	Neutral, unclear or no comment	Total
Adjudication	26 (48%)	12 (22%)	16 (30%)	54 (100%)
Enforcement	5 (28%)	9 (50%)	4 (22%)	18 (100%)

were significantly lower than in the more developed regions.[41] In our interviews, a high proportion of litigants complained about the quality of the judges, including their manner in dealing with the litigants, while in more developed regions, a majority of litigants noted, to their surprise, that the working style and professionalism of the staff were impressive. These results are also consistent with the results of a broader survey which suggests that the situation in rural areas is worse than in urban China.[42]

Our data and especially the interviews with the litigants indicate two major reasons for these relatively poor impressions. One is the enforcement result. Interviews with the litigants found a strong correlation between the enforcement result and the impression of the court: the impression would be positive when the court helped to recover the debt, especially so when it was fully recovered. Otherwise, the impression was negative. This was also consistent with the data on the motivation of litigation. Most interviewed plaintiffs (apart from two) said that the only purpose of litigation was to get their money back, and most used the court only as their last-ditch resort in a usually very long process of debt collection. As a result, when the court helped them to recover some debts, they were generally grateful. But when the court was ineffective, they were less generous in their evaluation of its performance. One plaintiff said: "We could not recover our debt by ourselves, that's why we resorted to the court. But if the court could not even get its own judgment enforced, how could we have a good impression? We did not have issues with the adjudicating judge, but were sceptical about the court's efforts in enforcement." Thus, the pragmatic user of the courts seems to value substantive justice much more than procedural justice.[43]

The other major cause of the relatively poor impression was the extra fees charged by the courts. As noted earlier, the fee scales of the courts were formerly much higher than the guidelines promulgated by the SPC. While the original scale for 2004–05 in the fieldwork investigation was not available,[44] the cases under investigation revealed how cases with different amounts at issue were charged at this time. In one case with 677,000 yuan at issue, a very large amount for the court in question (see Table 6), the court adjudication decision stated: "13,270 yuan in litigation

41 In the Pearl River Delta study, 71% held positive views on the adjudication phase, and only 32% were negative about the enforcement phase. See Xin He, "Enforcing commercial judgments," p. 455.

42 Michelson, *Popular Attitudes towards Dispute Processing*.

43 For a study on the situation in the US context, see Tom Tyler, *Why People Obey the Law* (New Haven: Yale University Press, 1990).

44 The standard has been replaced with the new one and the court now is completely observant of the new standard issued by the State Council in April 2007.

https://doi.org/10.1017/S0305741011000257 Published online by Cambridge University Press

fees and 13,270 yuan in other litigation fees are payable by the plaintiff." The so-called "other litigation fee" was 100 per cent of the normal fee, and the two together represented 4 per cent of the amount at issue. In another settled case with only 865 yuan at issue, it was stated: "50 yuan is payable in litigation fees and 300 yuan in other litigation fees; the plaintiff shall be responsible for 150, the defendant for 200." The "other litigation fee" in this case was six times the normal litigation fee and the two together represented 40 per cent of the amount at issue. In many medium-sized cases, interviewees informed us that the rate was 8 per cent of the amount at issue. Should the plaintiffs initiate the compulsory enforcement process, they had to pre-pay the enforcement fees. It was declared that pre-paid fees would be returned after the cases had been successfully enforced, but according to the interviewed judges, the courts had never made any effort to fulfil their promises until the 2007 guideline of the State Council put a stop to such declarations.

Many interviewed plaintiffs complained about these extra fees, as they were not charged in a neighbourhood basic-level court. Some litigants directly referred to this obvious discrepancy. They were extremely unsatisfied in two respects. The first was when, after they had paid all the required litigation fees and even pre-paid the enforcement fees, nothing was recovered, including none of these fees paid to the court. The second was when the cases were withdrawn immediately after they had been filed. The plaintiff then believed that the court had done nothing that was worth the amount of fees charged. One plaintiff said, for example: "The other party [the debtor] agreed to pay after we filed the lawsuit. This case had nothing to do with the court. Another two cases were also solved by us before the court delivered the relevant documents to the other side. But the court still charged us 8 per cent of the amount at issue." To be fair to the courts, the law has never permitted exemptions from fees in this circumstance. But the overcharging of fees has certainly exacerbated an already negative impression on the part of litigants.

An Effective but Infrequently Used Court

While the enforcement situation in this Shaanxi court is not as good as that in the more developed regions, its effectiveness in enforcing debt collection should not be underestimated. In general, the enforcement results in the province are not unsatisfactory if compared to those obtained in similar studies on other developed and developing countries. According to Hendley's research on 100 non-payment cases in three courts in Russia, 64 per cent of the creditors recovered something and 33 per cent were paid in full. On average, each creditor recovered 46.7 per cent of the awarded amounts.[45] The situation in the United States and the United Kingdom, according to some empirical studies, is even worse.[46]

45 See Kathryn Hendley's study on the Russian courts, "Enforcing judgments in Russian economic courts," *Post-Soviet Affairs*, Vol. 20, No. 1 (2004), pp. 46–82.

46 For a study on the small claims courts in England and Wales, see John Baldwin, *Small Claims in the County Courts in England and Wales: The Bargain Basement of Civil Justice?* (Oxford: Clarendon

The data show that the reasons for unenforceability are insolvency, triangle debts and complexities inherited from the period of the planned economy. For these cases, there were few effective legal measures. Nor would better equipped court sheriffs solve the problem. In a context in which the catchwords have been "social stability" and "building a harmonious society," it is a plain fact that enforcement must not affect the livelihood or the daily operation of the enterprises. Otherwise, more problems than solutions would be generated. Indeed, the interviewed judges did not regard debt collection cases as a major problem; rather, they believed that the enforcement of minor tort and administrative cases was far more difficult.[47] On the other hand, many plaintiffs also stated that the court was very useful: several reported that the debtors immediately responded after being notified by the court; some even expressed the opinion that, had they known that the court was so effective, they would have used it more.

This is not to deny that the court is less effective when handling politically sensitive cases or cases involving large SOEs or government agencies. But as suggested by the data, the proportion of these cases was as low as 3 per cent. For the rest, often mundane matters with very small amounts at issue, it is clear that officials and governments had no interest in interfering and the court was very effective. With only a few exceptions, the interviewed plaintiffs still had an open mind on the question of whether they would use the courts in the future for similar disputes.[48]

While the courts are relatively effective, this has not led to a dramatic increase in caseloads. After all, going to court was not an easy decision for most of the plaintiffs. The histories of business transactions between the litigating parties before they initiated a lawsuit can be divided into two main categories: 14 had had less than one year of transactional history, including the first timers, while 40 had had more than two years, including 24 with more than five years of previous business transactions (Table 8). This suggests that if a long-term relationship had not been established, they felt less constrained to use the courts. But those trading partners with long-term transactional histories were far more cautious. Only when no hope lay in further waiting would they initiate the lawsuit. One plaintiff said: "We had been doing business for many years, and things had gone well, but then came a point when they did not pay a balance. And it was

footnote continued

Press, 1997), p. 129; for the small claims courts of the US, see Steven Weller *et al.*, "American small claims courts," in C.J. Whelan (ed.), *Small Claims Courts: A Comparative Study* (Oxford: Clarendon Press, 1990), p. 16; see also Arthur Best *et al.*, "Peace, wealth, happiness, and small claims courts: a case study," *Fordham Urban Law Journal*, Vol. 28, No. 2 (1994), pp. 343–79; Committee on Post-Judgment Collection Procedures in the Special Civil Part, "Report to the Supreme Court of New Jersey," *New Jersey Law Journal*, No. 2 (1993), quoted in Clarke, "The execution of civil judgments in China," p. 34.

47 Interview with Judge E.

48 Landry, "The institutional diffusion of courts in China," pp. 207–34.

https://doi.org/10.1017/S0305741011000257 Published online by Cambridge University Press

Table 8: **Previous History of Transactions between the Debtors and the Creditors**

	First time	<1 year	1–2 years	2–5 years	5+ years	Summary
Case numbers	14	4	2	16	24	60

delayed for a long time. Their bosses also changed several times and the performance of the enterprise was getting only worse. We had no choice but to file the lawsuit." An in-house counsel of a large SOE said: "[Our enterprise has] almost 100 million unpaid debts and we use the courts frequently, almost 30 cases a year. But this only covers 15 million unpaid debts. Others we have to leave, hoping they are paid some day."

To take a matter to court, or to resort to law generally, has long been established as inconsistent with business norms and this case study from Shaanxi was no exception.[49] In the data, none of the interviewed litigants had further businesses transactions with the other party after the lawsuit. The legal action amounted virtually to a divorce between business partners. One defendant, involved in a triangle debt, when asked why he did not file a lawsuit against the other debtors, responded with a rhetorical question: "Then how can we stay in the business circle?" This was also why the lawyer mentioned in the above paragraph only went to the law in respect of 15 million debts, 15 per cent of the total debts of the company.

What makes China's situation rather different, perhaps, is that, during this transitional period in the development of the economy, there are no credit ratings or other means to evaluate the reputation of a business. People have to rely on their experience to assess potential business risks. None of the litigants referred to in the data had ever consulted the Business Administrative Bureau for details of the registered assets or other information about a business partner. They generally said that they did not understand it, or that they had never heard of it or thought of it. Many of their business partners were introduced by acquaintances and some were facilitated by direct encounters and negotiations. As in more developed regions, an effective way of protecting themselves was to deliver goods in instalments. The partner relationship then had to be developed over time and thus became extremely valuable. Business people would naturally treasure such relationships. That is why they tended to use the courts more when a great deal of effort had already been put into debt collection, or when a long-term relationship had not been fully established.

49 For the classic literature on this point, see Stewart Macaulay, "Non-contractual relations in business: a preliminary study," *American Sociological Review*, Vol. 28, No. 1 (1963), pp. 55–67; for a recent discussion on the situation in transitional Russia, see Kathryn Hendley, Peter Murrell and Randi Ryterman, "Law, relationships, and private enforcement: transactional strategies of Russian enterprises," *Europe-Asia Studies*, Vol. 52, No. 4 (2000), pp. 627–56; Kathryn Hendley, "Business litigation in the transition: a portrait of debt collection in Russia," *Law & Society Review*, Vol. 38, No. 2 (2004), pp. 305–48.

Conclusions

Primarily relying on a relatively small sample of cases and interviews with relevant litigants and judges, this study does not aspire to meet the high standards of objectivity. Generally, the judges were prone to exaggerate the extent of their own knowledge, while the litigants tended to over-generalize on the basis of their own particular cases and problems. Accounts from these varying sources are sometimes inconsistent or even contradictory. Yet in the essential details, they complement more than contradict each other. Despite the varying approaches, some fundamental agreements emerge: the enforcement situation in this less-developed region seems fairly good; and local protectionism, often depicted in the literature as rampant, seems to be contained within legal rules. This encouraging situation seems to come as one of the benefits of the nationwide economic reforms in marketization and privatization: as private parties have become the dominant court users, the courts and the government have less incentive to interfere. It also seems that China's decades-long efforts in legal reforms, including the promulgation of numerous substantive laws and regulations as well as the construction of legal institutions, have been conducive to the establishment of a rule-based society.

One may wonder why the poor view of the enforcement capability of Chinese courts has persisted for so long. One plausible explanation is methodological. Because of the difficulty of obtaining data, few systematic studies have been conducted in this field. Some rare exceptions rely on published cases, which is methodologically problematic.[50] Negative instances involving local protectionism and judicial corruption are usually repeatedly reported and widely disseminated.[51] Legal scholars also tend to rely heavily on anecdotal, attitudinal evidence, or on the use of doctrinal analysis in a few cases, to highlight the negative aspects of the judicial system.[52] On the other hand, official statistics, such as those cited at the beginning of this article, often suffer from a lack of consistent standards.[53] Moreover, such statistics only measure the enforcement results of cases entering into the compulsory phase; those enforced at the adjudication phase, including those settled and withdrawn, are not counted.[54] This is of course inaccurate if one wants to assess the overall effectiveness of the courts in enforcement. Furthermore, while these aggregate results may give a picture of the whole situation, they do not differentiate between the sub-categories of economic and commercial cases. As suggested by some interviewed judges, the enforcement

50 Minxin Pei, "Does legal reform protect economic transactions?" pp. 180–210.

51 Peerenboom, "Seek truth from facts," pp. 249–327

52 For a recent example, see Friven Yeoh, "Enforcement and dispute outcomes," discussing the enforcement of foreign-related arbitration awards in China, in Moser, *Managing Business Disputes in Today's China*, pp. 289–90.

53 From the context of the China Law and Governance Review 2004 and Tong Ji, "The basic situations with regard to adjudication and enforcement," at p. 78, one does not know if the enforcement rate refers to full performance, nor if the remainder was only partially enforced or not enforced at all.

54 Tong Ji, "The basic situations with regard to adjudication and enforcement," at p. 78.

situation in commercial cases was generally better than those in minor tort cases, because it is far more difficult to chase property for tort victims.

The generally acceptable results of enforcement in this less-developed region of China raise questions about the accuracy of the conventional wisdom that Chinese courts are ineffective. Indeed, the situation of the courts clearly tells a story of dualism: politically sensitive cases and mundane cases are processed differently and with different results.[55] A further question is to what extent China's court system is ineffective at enforcing contract judgments. While this research brings up all these questions, they cannot be verified or answered definitively until more systematic empirical studies are available for other regions and other court levels. Longitudinal studies on the capability of the courts to enforce during the reform period are also badly needed. Only then can explorations of China's exceptionalism – the notion that China's economy has grown without an effective formal institution on contract enforcement – be based on a more solid foundation.[56]

This study nevertheless provides further evidence for the crucial role that economic development plays in the enforcement performance of the courts. Several hypotheses developed from previous studies on the more developed regions have been verified: the overall enforcement situation in less developed regions is less sanguine than in more developed regions, the effect of institution building and staff professionalism is limited, and litigants' impressions of the courts are less than satisfactory. The relatively negative impression of the courts is directly related to the overcharging of fees, which is in turn closely related to the level of economic development in the region: the limited financial resources of the local government, because of a lower level of economic development, force the courts to rely on litigation fees to cover operating costs. Moreover, when economic development remains at a low level, reform measures promoting the building of institutions and encouraging staff professionalism encounter more resistance.

In addition, some judicial reform measures have only been selectively implemented. The unimplemented introduction of the institution of an adjudicating judge and the unchanged system of case distribution provide only the most noticeable illustrations of this selectivity. The relatively low caseloads, directly linked to a stagnant local economy, provide not only a "warm bed" for the existing power structure to persist but also a channel for extra-legal influence. The low caseloads generate little incentive for the courts to recruit new blood, which is

55 Robert Sharlet, "Stalinism and Soviet legal culture," in Robert C. Tucker (ed.), *Stalinism: Essays in Historical Interpretation* (New York: Norton, 1977), pp. 155–79; for a recent analysis, see Yulin Fu and Randall Peerenboom, "A new analytic framework for understanding and promoting judicial independence in China," in Randall Peerenboom (ed.), *Judicial Independence in China* (Cambridge: Cambridge University Press, 2010), pp. 95–133.

56 Clarke, "The execution of civil judgments in China," pp. 65–81; Randall Peerenboom, *China's Long March toward Rule of Law* (Cambridge: Cambridge University Press, 2002), pp. 450–512; Kenneth Dam, *The Law-Growth Nexus* (Washington, DC: Brookings Institution, 2006); Trebilcock and Leng, "The role of formal contract law and enforcement in economic development," pp. 1517–80; Xin He, "Enforcing commercial judgments," pp. 419–57.

related to the limited development of staff professionalism. Furthermore, cases are unenforced because of complications arising from the socialist period. If the process of marketization and privatization had been pushed further, these cases could have been duly enforced. Supporting the notion that the level of economic development will directly affect the performance of a court, these findings also suggest that courts in less developed regions are likely to be able to grow out of their problems if the local economy is further developed.

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