

RESEARCH ARTICLE

# The Limits of Judicial Reforms: How and Why China Failed to Centralize Its Court System

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## Abstract

This article investigates the implementation effects of China's recent reforms to centralize its court system and offers an explanation of why such centralization efforts largely failed. Drawing upon in-depth interviews with judicial personnel from four localities, the study shows that local courts' structural dependence upon same-level party-states is perpetuated or, in some cases, is even exacerbated, despite the unprecedented reform plans to centralize the budgetary and personnel management of the judicial system. Further investigation finds that, contrary to what existing assessments suggest, implementation failure is less a result of regional disparities in resources than of the party-state's own reliance on its horizontal line of power concentration and hierarchy, which is a core feature of the Chinese Communist Party's (CCP) one-party rule and hinders the party-state's own attempts to strengthen both judicial autonomy and centralization. The article thus challenges two extant notions on recent political-legal developments in China – that the CCP regime has substantially centralized its judiciary along the vertical line, and that judicial autonomy can continue to increase and manifest both under the conditions of, and serving the purpose of, deepening one-party authoritarianism.

## 摘要

本文探讨中国 2013 年以来一系列旨在加强法院系统垂直管理的改革措施的实施效果，并给出这些改革措施为何大体上没能达成效果的解释。通过对四个地方县市司法工作人员的深度访谈，本研究表明，尽管此次人财物省级统管和员额制的改革力度前所未有的，地方法院对同级党政的制度性依赖仍旧大体存留，甚至在有些特定条件下比改革前更为深重。进一步分析发现，与一些已有的改革评估所持意见相反的是，改革实施的失败与其说是地方资源差异的体现，不如说是源于党国对自身同级权力集中模式的依赖；这种模式既是中共执政的核心特点，也阻碍了党国所定下的对于加强法院垂直管理和司法独立性的改革措施的有效实施。本文以此挑战两个近年来普遍存在于学界的有关中国政法发展的观点：一为中国司法系统过去十年经历了显著的垂直向的集中化改革，二为司法独立性可以在一党威权的制度下并且在为其服务的同时持续增强并得到巩固。

**Keywords:** judicial reforms; centralization; judicial autonomy; local protectionism; *tiao-kuai*

**关键词:** 司法改革; 垂直管理; 司法独立性; 地方保护主义; 条块。

The development of China's judicial system since the beginning of “reform and opening up” has been subject to two core parameters: the tension between political control and legality, and the degree to which the judicial system reflects the party-state's overall central–local set-up. Regarding the first parameter, it has been widely argued that the Chinese Communist Party (CCP) regime has tightened its grip over the legal system in recent years and, simultaneously, has increasingly embraced a legalistic approach to its state-building project and governance. The CCP itself has set a clear tone, insisting on political control over legal institutions as a baseline

for “comprehensively deepening ruling the country according to law.”<sup>1</sup> Yet scholars contend that China has experienced, particularly under Xi Jinping’s 习近平 reign, not a weakening but rather a further strengthening of the role of law and legal institutions in serving the agenda of the Party leadership. This perception is most prominently expressed by Taisu Zhang and Tom Ginsburg, who demonstrate China’s continuous “turn toward law” since the mid-2000s.<sup>2</sup> According to them, the party-state increasingly endorses a legalistic approach to governance for two main reasons: to solve principal-agent and resource allocation problems by effectively and reliably controlling its local agents through law enforcement, and to uphold the regime’s diversifying legitimacy claim in accordance with the population’s growing demand for socio-legal accountability.<sup>3</sup> In a similar vein, Sida Liu revisits Stanley Lubman’s seminal metaphor of a “bird in a cage” and reveals how the Chinese legal system has transformed from being a trapped bird to being the “large and complex cage” itself.<sup>4</sup>

Meanwhile, the Xi Jinping era is characterized as a series of vertical-centralization efforts across party-state agencies and policy fields.<sup>5</sup> This extensive recentralization project is often seen as a recification of China’s formerly fragmented mode of governance that gave rise to overly powerful local actors and clientelist interests, eroding the party-state’s overall legitimacy and ruling capacity through corruption and policy circumvention.<sup>6</sup> Amid these developments, vertical centralization has also been a clear goal of the reforms of China’s judicial system since 2013. In particular, the local party-states’ intervention in judicial decisions has long been identified as the source of judicial corruption and local circumvention of central policies.<sup>7</sup> “Local protectionism” as a by-product of reform-era decentralization has thus become a major target in the CCP’s latest reform project.<sup>8</sup> Reform measures, including the centralization of budgetary and personnel management, the judicial quota system and the judicial accountability system, have been implemented to cut down the channels through which local party-state institutions and actors can exercise influence over the judiciary.

Existing literature suggests that these reforms have had considerable success, increasing local courts’ autonomy from political actors and vertically centralizing the judicial system while at the same time preserving and perhaps even strengthening the CCP’s ruling position. Informal channels through which local actors can illegitimately intervene in judicial decisions have been reduced, while formal channels through which party-state institutions can exercise legitimate political control over the judiciary have been strengthened.<sup>9</sup> The centralization of personnel and budgetary management has supposedly achieved considerable success, although implementation remains less complete and more controversial.<sup>10</sup> Some Chinese scholars have even started to fear that an overemphasis of the vertical line might lead to just a different form of judicial dependence and potential for corruption in which upper-level courts become overly powerful and can effectively influence lower-level courts’

1 “Zhonggong zhongyang guanyu quanmian tuijin yifa zhiguo ruogan zhongda wenti de jue ding, 2014” (2014 Decision of the CCP Central Committee on major issues pertaining to comprehensively promoting the rule of law) lists “insisting on Party leadership” as the first principle which judicial reform measures and implementation shall follow. CCP Central Committee 2014.

2 Zhang, Taisu, and Ginsburg 2019. The seeming paradox between “against” (Minzner 2011) and “towards” law becomes resolved when one considers the differences in the accounts of “law.” Minzner defends a notion of “law” that inherently incorporates liberal-democratic norms, while Zhang and Ginsburg refer to “law” from the CCP’s perspective as instrumentalist legality.

3 Zhang, Taisu, and Ginsburg 2019, 366–385.

4 Liu 2021, 66; Lubman 1999.

5 Lee 2017, 326; Schubert and Alpermann 2019, 200; Wang, Zhengxu, and Zeng 2016, 470.

6 This was in part owing to the country’s alternating rounds of centralization-localization fiscal policies. See Zheng, Yongnian 2007; Ong 2011. See also Schubert and Alpermann 2019, 215.

7 Gong 2004; Li, Ling 2016.

8 CCP Central Committee 2014, 2(2); Guo 2019, 49–50; Liao and Wang 2018, 59; Zhang, Hongsong 2019, 150.

9 He 2021a. The notion of “legitimate/illegitimate” here is derived from the party-state’s own perspective on whether interventions serve politically justified goals.

10 Wang, Yueduan 2021.

decisions.<sup>11</sup> In his comparison of China and Russia, Yueduan Wang argues that China's judicial centralization reforms were at least "partially successful" and "still represent a significant step towards the judiciary's formal independence from local executive branches."<sup>12</sup>

Following these preliminary assessments, China in the Xi era has arguably not only centralized the judicial system along the vertical line but also presents a paramount case in which the institutional autonomy of the judiciary as a core aspect of modern legality can continuously increase and institutionally manifest both under the condition – and serving the purpose – of one-party authoritarianism.<sup>13</sup>

This article dissents from these existing assessments. First, it analyses the party-state's reform conceptualization, incentives and domestic scholarly interpretations to show that recent judicial reforms serve as a testing ground for just how far judicial autonomy and centralization can reach under China's current political system. Second, it presents in-depth empirical findings suggesting that the vertical centralization of the judicial system has largely failed. The institutional dependence of local courts upon same-level Party committees and governments has been perpetuated or even exacerbated. Furthermore, it finds that the formally independent judicial personnel management system effectively results in less upward career mobility for local judges and prosecutors, further marginalizing the judicial profession within the party-state system.

Finally, this article offers a holistic explanation for the failure of the party-state in implementing these reforms. Resource shortages and regional disparities alone do not explain reform failures.<sup>14</sup> Rather, as argued here, these failures are rooted in the party-state's structural dependence on the horizontal relations that are indispensable for the maintenance of CCP supremacy but which in turn create systemic blockages for any reform attempt that seeks to break through the judiciary's horizontal embeddedness in the local party-state. During reform implementation, this translates into judicial institutions' constant reliance on ad-hoc negotiations with party-state institutions to bargain for necessary resources and support. Furthermore, judicial institutions remain an integral part of the local governance structure, often in pursuit of policy goals deviating from stringent law enforcement.

This analysis challenges the notions that the CCP regime under Xi Jinping has achieved substantial success in vertically centralizing the judiciary, and that China presents a paramount case for how judicial autonomy can continuously increase and institutionally manifest under deepening one-party authoritarianism. Despite strong central guidelines and far-reaching reform endeavours on an unprecedented scale, the party-state has not achieved its own goal to make substantial progress in enhancing judicial centralization and autonomy. This contradicts the notion that "the one-party state cannot be the difference."<sup>15</sup> At least in this case, it explains how and why the basic set-up of the party-state seems to prevent itself from solving problems in central–local relations and creating a more accountable judiciary.

The article also contributes to up-to-date evaluations of recent dynamics within China's *tiao/kuai* 条/块 system and its "fragmented authoritarianism." Similar provincial-level centralization reforms were introduced to the country's commercial and regulatory agencies and financial services in the late 1990s to early 2000s where Andrew Mertha identified the exact same parameters also present in recent judicial reforms: personnel and budgetary allocation (*bianzhi* 编制) and cadre recruitment and allocation (*nomenklatura*).<sup>16</sup> This suggests that the shifting focus between *tiao* and *kuai*, between "fragmentation" and "authoritarianism," as well as between central authority

11 Bai and Wang 2017, 107; Zhang, Hongsong 2019, 150–51.

12 Wang, Yueduan 2020, 550–51. Wang does stress that the success is relative in comparison to Russia's recent reforms with similar objectives, which proved to be even less effective.

13 Zhang, Taisu, and Ginsburg refer to the empowerment of courts at the expense of other governmental entities (2019, 331–36).

14 As proposed by Wang, Yueduan 2021, 558–59.

15 Adam Przeworski, as cited in Heberer 2016, 612.

16 Mertha 2005, 797–800.

and local protectionism, remains a cornerstone of China's political system. In particular, recent reforms to centralize judicial budgets are set against the background – and reflect the limits – of the country's central-local fiscal revenue and responsibility-sharing system under which the burden of public expenditure is heavily weighted further down the vertical line of administrative levels.<sup>17</sup>

The primary empirical evidence for this study was gathered during fieldwork conducted in 2017, 2018 and 2019 in four municipal localities in two provinces. I conducted individual and group interviews with some 50 judges, prosecutors and Party cadres who were directly involved in or influenced by reform implementation since 2013. These include actors in the provincial, municipal and county/district levels of China's political-legal system. The focus of this study is the court system, although many issues are consistent across both the court and the procuratorate systems.

The fieldwork sites are divided into two tiers: economically developed and mediocre localities.<sup>18</sup> This division is based on the premise that the availability of local revenues had an impact on both the starting point of court funding prior to the recent reforms as well as on reform implementation when centrally allocated resources fall short of demand. As will be elaborated below, whether local resources are abundant, as in the economically developed tier, or are available but still subject to competition, as in the mediocre tier, plays a determining role in local courts' persisting dependence on local party-states, particularly when combined with the local party-state's discretion over resource allocation.

The first-tier localities comprise two south-eastern coastal cities (referred to as L1 and L2 hereafter), which have been at the forefront of China's reform and opening policy. They were among the first localities to attract foreign investment and to prosper economically, respectively ranking among the top 10 and top 20 of all municipal cities in China in terms of annual GDP per capita. The two localities in the second tier are also located in the south-east of China (L3 and L4). Their economic performance is less prominent, with annual GDPs per capita ranking somewhere between the top 30 and 50. Local revenues here are less abundant than in the two first-tier localities and are often subject to competition among different agencies.

### Judicial Reform as Political Reform

Until 2014, decision-making power over the local judiciary's budgetary and personnel management lay with the local Party committee and government at the same administrative level. For example, the standing committee of the Party committee of a municipal city, comprising the general secretary, the mayor and other members, would meet to discuss and decide the budgetary report and applications for further funding from the court, which would have been submitted to the finance department of the city government beforehand. Personnel decisions were entangled in a more complex structure of human resource management as part of the nomenklatura system; however, generally speaking, appointments and promotions were also largely decided by local Party committees and governments at the same administrative level.

In 2014, the central state launched a reform aimed at centralizing the regulation of personnel and budgets for all local courts and procuratorates up to the provincial level.<sup>19</sup> Local Party committees and governments at the municipal and district/county levels should no longer have personnel and budgetary control over judicial institutions in their locality. The recruitment of judges and

17 This phenomenon is referred to as “vertical imbalance” and “fiscal disparities” in the literature. See Tsui 2005, 175; Shen, Jin and Zou 2012, 17; Wang, Enru 2010, 753.

18 I visited two additional localities in north China, which would technically constitute a third category of economically least developed regions. However, as of 2018 and 2019, budgetary and personnel centralization reforms had not been substantiated in either of the two provinces. In early 2017, there were instructions from upper levels demanding that basic courts compile data on their existing personnel and funding structures, supposedly in preparation for the implementation of centralization reform. However, no subsequent implementation initiative was announced, nor was there any official declaration or explanation of why the reform was halted.

19 Yu 2017.

prosecutors now has to pass through a professional committee at the provincial level. Annual budgets for all basic and intermediate courts and procuratorates are now approved and allocated by the provincial-level finance department, which in turn reports to the provincial government. This is undoubtedly a major attempt by the central state to cut off opportunities for “local protectionism,” as it touches upon the channels through which local party-states can influence judicial institutions and decisions.

As the most ambitious and comprehensive judicial reforms of the post-Tiananmen era, these latest rounds of reform involve far-reaching re-adjustments of relationships among various agencies within the country’s vast political-legal system.<sup>20</sup> In fact, the centralization of personnel and budgetary management had already been initiated as early as in 2002, but was not implemented before these reforms.<sup>21</sup> Even when directly steered by the central party-state, implementing these measures has been exceptionally difficult and has often been left incomplete, precisely because implementation requires the considerable re-adjustment of the basic set-up of China’s political-legal institutions, which would result in a weakening of local party-states’ effective control over local judiciaries. This shows that current judicial reforms are part of the party-state’s latest attempt to circumvent the so-called “rule of law dilemma for autocrats”: on the one hand, the regime relies on a judiciary sufficiently autonomous and professional to provide regime legitimacy by adjudicating social disputes fairly; on the other hand, such a mechanism should not come at the cost of risking the regime’s control over the judiciary.

The Supreme People’s Court (SPC) characterizes previous rounds of judicial reforms as merely concerning “working mechanisms,” while those since 2013 are seen as systemic reforms.<sup>22</sup> The previously implemented reforms were largely of a technical, doctrinal, procedural or issue-based nature and generally restricted to individual institutions or agencies; they did not address the structural set-up that keeps the judiciary dependent upon party-state actors. This structural set-up is considered to be the reason why multiple rounds of reforms could not curtail systemic corruption.<sup>23</sup> Some of the more progressive reform measures in the previous rounds were perceived as indicators of a tendency towards “judicialization” in an authoritarian setting, such as the once-visible trend of judiciability of constitutional rights, the SPC’s judicial interpretation and guiding case mechanism, and the growth in administrative litigation cases against local governments.<sup>24</sup> Nevertheless, these developments proved to be either periodic or led by an individual agency, rendering them incapable of effectively empowering the judiciary vis-à-vis other political institutions owing to an uneven power hierarchy, institutional bickering<sup>25</sup> and lack of coordination.

In contrast, judicial reforms since 2013, both in how the Party centre conceptualized them and in scholarly perceptions, are seen as a serious attempt to move beyond previous reforms as well as their thresholds and their failures. These new reforms not only require substantial changes within the court and the procuratorial systems but also in the relationships between those systems and Party committees and governments at local levels. As such, current judicial reforms are considered as part of the country’s ongoing political reform and the most likely, if not the only, part of it that could expect to see real success.<sup>26</sup> As one of the interviewees put it, “judicial reform is the closest to

20 A synoptic manifestation of these reform policies can be found in the “Decision on major issues concerning the comprehensive deepening of the reforms” (CCP Central Committee 2013) and the “Decision of the CCP Central Committee on major issues pertaining to comprehensively promoting the rule of law” (CCP Central Committee 2014). Many of the mentioned reform measures were elaborated in various internal documents, which are not publicly available. Hence, I rely on information derived from interviewees.

21 Li, Min 2013, 72–73.

22 Ibid.

23 Xu, Huang and Lu 2013, 87.

24 Ahl 2015, 34–68.

25 “*Bumen laoyin*” (Xu, Huang and Lu 2013, 89).

26 Ibid., 100–01.

political reform that China might see in the foreseeable future.<sup>27</sup> At the very least, domestic scholars speak of “political-legal reform,” instead of “judicial reform,” to capture the fundamental nature of the current reform period as being led directly by the Party centre to facilitate cross-institutional coordination.<sup>28</sup> This indicates that recent reforms, particularly the centralization of personnel and budgetary management, serve as a testing ground for just how far judicial autonomy and centralization can reach under China’s current political system, as their success and failures reveal potential limits.

### Perpetuated and Exacerbated Dependence

Deviating from existing assessments, this study finds that the local judiciary’s structural dependence upon the local party-state has not been curtailed. In the following, I present an overall picture of my fieldwork sites to showcase that while the level of economic development determines the degree to which local revenues are available, uneven resource distribution and regional disparities alone do not sufficiently explain the failure of centralizing reforms in the country’s judicial system.

#### *Economically developed localities*

In the two economically developed localities of my fieldwork sites, L1 and L2, local courts appear to be as financially dependent upon same-level party-states as they were previously, despite the formal centralization of their budgets at the provincial level. For one, only the official part of the local judiciary’s annual expenditure, including basic salaries for personnel and routine operational costs, has been centralized at provincial-level management.<sup>29</sup> Prior to the reform, though, remuneration for judicial personnel was regulated under the same system used for government officials, which meant that the total actual income of a judge comprised not only a basic salary but also several bonuses calculated according to the city’s annual local tax income. This income was, in turn, generated according to local economic performance and then staggered according to the judge’s ranking, as was the case for employees in all government departments. This was and still is common practice in local states wanting to provide tangible incentives for local Party cadres and government officials to actively engage in promoting economic growth. In fact, the bonuses can make up a considerable proportion of income – around one-third to one-half of the total income for a state employee in the economically better-off sites examined in this article.<sup>30</sup>

However, this is often a “grey zone” practice, which is neither officially endorsed nor banned by the central state. In any case, provincial-level budgets after centralization do not include or cannot afford to pay for bonuses. The result of multiple rounds of negotiation is that local governments in both L1 and L2 continue to pay bonuses to judicial personnel to avoid mass discontent – cutting off bonuses would put judges and prosecutors at an enormous disadvantage compared to government officials, even though the reform policy dictates that their incomes should be higher than those of government officials at comparable ranks.<sup>31</sup> A cadre responsible for coordinating judicial reforms in the municipal political and legal affairs committee in L1 mentioned that the current bonus system is a temporary, non-binding arrangement, subject to changes depending on the financial resources available and the willingness of local authorities to further sustain it; this is different to the previous model where judicial personnel were explicitly entitled to these annual bonuses.<sup>32</sup>

27 Interview with former central official, Beijing, March 2017.

28 Chen, Weidong 2018, 1415–16.

29 In line with Wang, Yueduan 2021.

30 In certain well-off districts with particularly prosperous local economies, government officials even receive an extra bonus from the district on top of the city-level bonus.

31 Supreme People’s Court 2017a.

32 Interview in L1, March 2017.

Apart from bonuses, local courts also heavily depend upon same-level funding for the hiring of judicial clerks. Since the implementation of the quota reform, the number of judges with actual adjudicating power has been effectively cut by more than 40 per cent.<sup>33</sup> Although judicial personnel spending has been officially centralized at provincial level, provincial budgets do not provide sufficient funding for the hiring of judicial clerks. Local courts thus turn to same-level governments for the hiring of clerks on short-term contracts, usually at the same pay scale as contracted employees in other government agencies. In all of my fieldwork sites, judicial clerks were generally in short supply, on unstable employment terms and burdened with excessive workloads. L1, with its abundant local revenues, suffered fewer shortages than the other sites. What made the difference, though, according to a judge at the municipal-level intermediate court, was how exceptionally “supportive” the municipal government and Party committee were in matters of judicial reform implementation, to the extent that fellow judges from other localities were surprised at it. In L1, 80–90 per cent of judicial clerks are hired on short-term contracts by the municipal and district governments. Contracts are renewed annually, depending on budgets and annual turnover.<sup>34</sup>

### *Economically mediocre localities*

In the two economically mediocre localities, L3 and L4, the situation is even more complex. Here, local economic revenue is considerably higher than it is in hinterland regions, but budgetary resources are still subject to competitive distribution. Initially, local governments were keen to use the reform as an excuse to stop paying annual bonuses to judicial personnel. Unsurprisingly, judges and prosecutors were outraged by the implementation of such a policy, which clearly ran contrary to the proclaimed reform goals, as their actual income ended up being even less than that of a government official of the same rank.

A district-level basic court in L3 reported that judges later did receive their annual bonus from the district government, as in previous years. This was owing to the “strong negotiating ability” of the court president and his close relationship with district leaders on the Party committee. Here, the secretary of the political and legal affairs committee took it as his responsibility to negotiate with the county Party committee and government on behalf of the court and procuratorate for annual bonuses. This negotiation was in the end somewhat successful, but the process was arduous and did not result in any guaranteed future commitment.<sup>35</sup>

At a county-level procuratorate in L3, the chief procurator also emphasized the uncertainty of local bonus payments. Apart from the annual bonuses that are sourced from the annual fiscal budget, local governments sometimes distribute additional bonus payments to staff from extra-budgetary revenues. This had occurred in the aforementioned county in the previous fiscal year: the county government announced an extra bonus payment for public servants, which did not include judicial personnel. The procuratorate had to file a report and the county mayor finally agreed to extend the payments to include the judicial staff; however, there was no guarantee of future bonuses:

What we used to take for granted has now become something that we have to beg for. This runs counter to the reform goal of “de-localization,” as our connection with the same-level party-state has been strengthened, otherwise we do not get paid what we deserve. For this year it has been settled, but we have no knowledge about how things will pan out next year ... now the local party-state has us by the throat. If we do not fight for it, we do not get our bonus.<sup>36</sup>

33 The SPC reported that of more than 210,000 judges with adjudicating power prior to the reform, only just over 120,000 made it “into the quota.” Supreme People’s Court 2017b.

34 Interview in L1, September 2018.

35 Interview in L3, March 2018.

36 Ibid.

Often, expenditures will emerge that require extra-budgetary funding allocation, especially when central authorities demand that local courts and procuratorates implement new projects, such as digitalization projects, but then only provide partial funding with the expectation that local institutions will provide the rest of the funding themselves. When such a case happened to a district procuratorate in L3, the Party secretary for political and legal affairs mobilized the district mayor and the financial department and went through the “seven steps of procedural approval” through various Party and state agencies to finally secure the money. In the past, local governments would take potential expenditures of the local judiciary into account when calculating their annual budget. This would then be approved in advance, thus eliminating the need for complex negotiations to secure funding.<sup>37</sup> The district procuratorate also had to ask for the payment of annual bonuses every year; it was never certain whether or not they would continue to be paid the following year:

I have witnessed our chief procurator having to file a report for every piece of funding, and at the end of the year, coordinate with the district Party committee and government about every item of expenditure. There are also many other issues like construction and land usage that we have to ask the district for.<sup>38</sup>

In a county in L4, the basic court reported experiences consistent with those in L3:

When we need to implement a larger project, it is not as easy to ask for money from the same-level funding as it used to be. We hear the same stories from other courts. The same-level party-state thinks that “financially you are no longer our business. You cannot keep on asking for money with all sorts of excuses.” The situation differs a lot from what it used to be.<sup>39</sup>

The basic procuratorate in the same county in L4 provided another example of how the local judiciary remains financially dependent upon the same-level party-state. The procuratorate began construction of a new office building a few years before centralization reform started. By the time budgetary management was moved up to the provincial level, the construction had already been largely finalized, with only the last payment pending. All the previous payments had been paid from same-level funding, and when the procuratorate turned to the county government for the last payment, the latter argued that it was no longer responsible for judicial expenditures. The provincial authorities, on the other hand, stated that real estate management should remain the responsibility of local party-states. Similar dilemmas also occur when old equipment or property needs to be formally disposed of – nobody will take responsibility for the disposal of such items and, without a formal disposal procedure, new equipment cannot be procured or used. In the end, the procuratorate had to enter into arduous negotiations with the same-level party-state for a solution.<sup>40</sup>

Essentially, in both affluent and mediocre regions, the institutional dependence of local courts upon same-level Party committees and governments is far from reduced. In fact, depending on the specific scenario, this dependence has been perpetuated or even increased. Where resources are abundant, temporary solutions can be worked out relatively easily, avoiding spreading discontent among judicial personnel but also leading to prolonged financial dependence on Party and government actors at the same administrative level. Where resources are moderately available, the payment of bonuses, which judicial personnel used to consider was their entitlement, has now become an issue of unequal negotiation. Local courts, as well as procuratorates, also still largely rely on same-level government budgets for a wide range of other issues, including the hiring of

37 Interview in L3, September 2018.

38 Ibid.

39 Interview in L4, September 2018.

40 Ibid.



fixed-term clerks and project funding. Provincial-level budgets also often do not account for (the renewal of) office space or equipment, leaving local courts, regardless of the economic level of the respective locality, with no choice but to turn to the same-level party-state for requests such as land usage. In any case, local party-states now have greater flexibility and discretion in the allocation of financial and personnel resources, leaving the local judiciary having to constantly enter into ad-hoc negotiations with party-state agencies and in a more vulnerable position than before.

### Depoliticized or Demoralized? Local Elite (In)Coherence

Following the implementation of the personnel quota system, the average workload for local judges has increased dramatically. Across my fieldwork sites, frontline judges were expected to close over 300 cases on average a year. The extra workload burden was felt most in moderately prosperous localities. A county court in L4 reported that from July 2017 to April 2018, the average number of cases each quota judge had tried amounted to 607, more than twice the provincial average, which was already exceedingly high. The same court also reported that four judicial clerks had resigned during the same period owing to excessive stress at work.<sup>41</sup> In 2017, eight out of 42 quota judges in one district-level basic court in L3 resigned within a year; there were a further five pending resignation applications that the court leadership was trying to juggle to avoid further escalation of chronic understaffing.<sup>42</sup> Both the courts in L3 and L4, as well as a judge from the intermediate court of L1, described Tuesday and Thursday evenings and Saturday as “default overtime.”<sup>43</sup>

The wave of young to middle-aged judges and prosecutors quitting their jobs attracted considerable media attention at the time. There was a general concern that China’s judiciary was losing many of its most talented and capable young personnel, who felt that they were being underpaid and treated unfairly considering their qualifications and levels of sacrifice. In fact, the situation was considered to be so dire that the SPC and the Supreme People’s Procuratorate issued a joint decision in 2021 forbidding former court and procuratorate employees to practise as attorneys within two years of their resignation.<sup>44</sup> Allegedly, this ban was already in effect within the court system a few years before the joint decision was issued, following a wave of resignations by judges at the SPC itself. For judges already unhappy with the employment conditions of their profession, such a ban was outrageous:

After two years, the resources you gathered from your experience at the court will be gone. It’s pointless. And how are you supposed to make a living during those two years? (The ban) makes it a dead end for you. This is essentially the state bullying us – they won’t let you enter the quota, won’t let you resign, and now won’t even let you make a living.<sup>45</sup>

Previous studies have found that the level of development of the local legal services market and individuals’ gender both play a significant role in Chinese judges’ decisions to leave courts and go into practice.<sup>46</sup> My fieldwork suggests that in the midst of budgetary and personnel reforms, additional factors might be at play. While I did not obtain gender-specific information, among my fieldwork sites, L1 and L2, which had the most developed legal services markets, did not experience the greatest surge of personnel leaving the profession.<sup>47</sup> Rather, it was L3 and L4, with moderately developed

41 Interview with county-level court in L4, September 2018.

42 Interview with district-level court in L3, September 2018.

43 Interviews with county- and district-level courts in L3 and L4, March and September 2018.

44 Supreme People’s Court 2021.

45 Interview in L3, March 2018.

46 Kinkel 2015; Zheng et al. 2017.

47 Interviewees from both L1 and L2 spoke of the high turnover of judicial clerks, which was consistent across all of the localities I visited. Comparatively, the corps of judges remained relatively stable in L1 and L2. Interviews in L1 and L2 in March 2017 and 2018.

legal services markets, which reported worrying numbers of judicial resignations as well as an overall alarming level of career dissatisfaction.

Yet the impact of the new judicial personnel management system reaches further still. Prior to the recent reforms, judges and prosecutors were part of the larger system for the promotion and evaluation of government officials, which also meant that there was a relatively high degree of career mobility between the judiciary and other political agencies. With the implementation of the personnel quota system and the independent management of judicial personnel, the appointment, evaluation and promotion of local judges and prosecutors are now officially separated from those of local government officials. Ranks of individual judges and prosecutors within their professional hierarchy can now no longer be “converted” into an equivalent for government officials.

One would assume that this is a feature which institutionally enhances judicial autonomy, at least at the local level on the horizontal axis, and therefore would be welcomed by judicial personnel. The critical issue, though, is that the inferior status and weak power of judicial institutions vis-à-vis the core party-state remains a systematic reality. For judges and prosecutors, being in an “independent” professional management system separate from the management of government officials also means that the prospect of upward career mobility – which is what “really” counts in China’s political reality – is drastically limited, since it has become much more difficult and rare for them to be transferred or promoted from a judicial institution to a political one closer to the core of the party-state. Their promotion within the judicial professional track is not transferrable to the public servant track and thus does not entitle them to corresponding benefits such as retirement and medical packages, let alone political status. Being detached from the regular civil servant management system – and thus from the core of the party-state’s cadre system – leaves many local judges deeply insecure. In certain constellations, this can even mean a career dead-end for senior judges at basic courts who have been in leading administrative functions for many years.

Several middle-aged officers who head up the political division (*zhengzhichu* 政治处) at local courts and procuratorates expressed particular resentment about this issue. Even though they were initially trained to be judges and prosecutors and have many years of experience, they are now practically banned from entering the quota because they left the judicial frontline too long ago. Yet there is no future for them as a leading cadre (*lingdao* 领导) either, as the leaders of a court or a procuratorate now have to be selected from among personnel within the quota. Being transferred to Party or governments departments outside the judiciary is an even worse option now that the judiciary is separate from the regular ranking system for civil servants.

The formal detachment of the judicial personnel system from the governmental one thus means in practice that judges and prosecutors are excluded from the core of local political power and therefore further marginalized within the party-state system. In the long run, this might result in a persistent loss of elite loyalty at the local level, especially considering that the local judiciary is increasingly tasked with the challenge of containing social conflicts under the party-state’s prioritization of stability maintenance. This further erodes the judiciary’s function of maintaining elite cohesion within the authoritarian state.<sup>48</sup>

### Horizontal Centralization Blocking Vertical Recentralization

The empirical findings of this study suggest that while the amount of available local revenue plays a role, it is the local party-state’s allocation of resources that ultimately shapes the implementation process and results. The mechanisms behind implementation failure go beyond uneven resource distribution and are instead rooted in structural factors that underlie “the inherent difficulty of institutionalizing judicial autonomy, however limited, in a large and diverse party-state.”<sup>49</sup> These structural factors therefore need to be clearly identified. Upon further review of the empirical evidence,

48 Ginsburg and Moustafa 2008, 7–8.

49 Wang, Yueduan 2021, 545.

this article contends that two factors have been particularly pronounced in contributing to implementation failure: provincial-level high courts lacking the authority to coordinate with provincial-level party-state institutions for necessary resources and support, and the local judiciary's persistent embeddedness in local governance structures.

Local party-states end up compensating for insufficient resources at the local level which are a result of the provincial-level court's lack of authority when negotiating with provincial-level party-state institutions. Because vertical centralization is only supposed to reach the provincial level, rather than the centre, each provincial high court is responsible for turning central-level policies into implementable measures, translating reform goals into specific instructions, and mobilizing and allocating the resources needed for implementation at lower-level courts. Interviews with seven high court officials from a south-eastern province reveal a "mediator's dilemma." On the one hand, provincial high court officials have to translate and navigate the "hard goals" set by the centre, such as allocating 39 per cent of the average personnel quota to lower-level courts, despite drastically varying local circumstances, and monitoring the budgetary management transfer. On the other hand, they simply do not possess the authority or competence to effectively negotiate with other provincial-level institutions – such as the finance department, organizational department and Party committees – which control the necessary resources for actual policy implementation. In their own words, "the policy is there, the pressure is high."<sup>50</sup> The provincial high courts, however, do not envisage being endowed with sufficient power vis-à-vis other agencies as the potential solution; instead, they suggest that even stricter and more detailed central guidelines are needed: "Certain 'designs' could have been more detailed at the top-level, so that it's more unified and there is less space for lower levels to intervene as they like."<sup>51</sup>

Essentially, the judiciary looks to central authority to sort out intra-institutional negotiation prior to policy implementation, precisely because they know that structurally empowering the judiciary to the same degree as same-level party-state institutions is not a tangible option within the current system. As soon as implementation requires cooperation from other agencies,

We have to practically beg them every day; some [agencies] might understand and help us push through implementation, some just won't understand and [instead imply] "we are exhausted too, why should you judges be paid more than us?"<sup>52</sup>

This highlights that at the provincial level, vertical centralization has been blocked by persistent horizontal resistance, as provincial high courts rely on the cooperation of party-state branches to push through policy implementation and are often unable to negotiate for it. As a result, local courts are faced with unresponsiveness, confusing instructions or simply unrealistic objectives when, as prescribed by reform documents, dealing with provincial-level institutions concerning resource allocation. Thus, they often feel compelled to turn to their same-level party-state institutions for personnel and budgetary support.

Moreover, the local judiciary's intertwinement with the local party-state goes beyond regular budgetary and personnel management. It is part of the broader local governance structure that collectively coordinates to serve policy goals in line with local party-state interests. The definition and variation of these goals still follow central guidelines,<sup>53</sup> yet local party-states' self-incentivizing rationale of policy experimentation and implementation still constitutes a core feature of the country's developmental path.<sup>54</sup> To the extent that local courts depend on local party-states for operational

50 Interview with the High Court of the province in which L2, L3 and L4 are located, March 2018.

51 Ibid.

52 Ibid.

53 Mayling Birney writes of a "rule of mandates" in which the regime defines a subset of directives that are hierarchically ranked against each other, thus allowing local officials to selectively apply laws and policies to prioritize higher-ranked mandates, making law enforcement conditional (Birney 2014, 55).

54 Knight 2014, 1338; Heberer 2016, 616.

resources, local party-states also rely on the local judiciary to help deliver policy goals and resolve conflicts in an environment of growing societal demand on the one hand and increasing top-down pressure on the other.<sup>55</sup> As long as such governance structures are intact, given the lack of central (provincial) resources, the judiciary will continue to turn to the local party-state and therefore remain dependent upon it. As a judge from a county court in L4 described it:

There has not been much change in terms of delocalization so far. We are still asked [by the county Party committee and government] to attend all the meetings and submit all sorts of reports. We are still treated as an institution directly subordinated to the county (*xianzhi jiguan* 县直机关).<sup>56</sup>

The following case, from L1, also shows local courts' routine integration with local governance. The municipal administration of customs signed a lease contract with a private company in the mid-2000s to rent a building to the company on a term of 20 years. The company has been operating a hotel in the building ever since. Just over halfway through the lease, the company defaulted on its rental payments, following which the administration of customs sued the company demanding all due payments as well as the termination of the lease. The company threatened to mobilize its hotel employees to file petitions to upper-level authorities and even stage protests. Nervous about the impact on its performance in social stability maintenance, the political and legal affairs committee convoked several meetings with the district court and the customs administration to negotiate a solution. The committee and the court managed to convince the customs administration to reach a deal with the company, allow it to remain for the original lease term and to even reduce the rent.

After the company again defaulted on its payments, the customs administration sued a second time, won the case and filed to evict the company. At the time of my second round of fieldwork in March 2018 more than half a year later, the hotel was still operating and there were no concrete plans to evict it from the building.<sup>57</sup> The reluctance of the political and legal affairs committee to mobilize the local police to evict the company from the building sets this case apart from other cases where local polices, procuratorates and even courts have been involved in forceful demolition projects, often unlawfully. However, this and other cases reveal the same core features of the Chinese judiciary within the (local) party-state: that judicial institutions are routinely integrated into the local governance structure in pursuit of policy goals at the discretion of local party-states. Coherent and stringent law enforcement has certainly been an important policy goal, but it often comes into conflict with other, perhaps more dominant, policy goals such as social stability. The president of a basic court in L3, on the other hand, allegedly volunteered to take over the work of persuading residents to leave their homes so that an entire street designated for new housing development by the government could be demolished. His court personnel worked overtime in the evenings to forge resettlement agreements with residents. As compensation, the court personnel received a bonus payment worth two months' salary at the end of the year.<sup>58</sup>

Ultimately, both factors – namely the lack of provincial-level high courts' negotiation capacity and the judiciary's embeddedness in the local governance structure – boil down to the party-state's own reliance on its horizontal line of command that essentially ensures the CCP's supremacy over

55 Numerous studies have shown how local courts are systematically integrated into the local governance structure and help to deliver prioritized policy goals. Social stability concerns for the local state, for instance, have been a paramount imperative that drives courts to handle various sorts of cases with the purpose of avoiding, dividing, demobilizing, coopting and/or coercing mass protest or security threats of any sort. Studied issue areas include land-taking cases (He 2014), rural water pollution disputes (Zhang, Wanhong, and Ding 2014), divorce cases (He 2021b) and labour disputes (Chen, Feng, and Xu 2012; Zhuang and Chen 2015).

56 Interview in L4, September 2018.

57 Interview in L1, March 2018.

58 As reported by a judge at the intermediate court of L3. Interview, March 2018.

all state institutions, which is in turn what constitutes the core of China's one-party rule. Although judicial institutions, unlike the newly established supervisory commissions of the anti-corruption regime, are not party organs per se, they are nevertheless structurally embedded in a horizontal constellation in which they are hierarchically subordinate to same-level party-state institutions. The local party-state's concentration of horizontal power was the central target of the reform and yet is what the implementation of this reform relies on for resource distribution and coordination. In a sense, the vertical centralization of the judiciary has failed owing to similar structural dilemmas which have stalled the vertical centralization of the CCP's disciplinary apparatus: "party leadership has to be exercised both vertically and horizontally and at both the central and local levels to maintain coherence."<sup>59</sup>

### Conclusion: The Limits of Judicial Reform

This study shows that, as of the current moment, the effects of China's recent structural reforms on its judicial system have been considerably less impactful than official accounts claim or existing assessments observe them to be. Centralization along the vertical line has been limited at best. Structural dependence of the local judiciary upon same-level party-state institutions and actors along the horizontal line is perpetuated or has even been exacerbated in some cases. Particularly in economically mediocre localities, the local judiciary finds itself constantly having to enter into ad-hoc negotiations with the local party-state for budgetary and personnel support, leaving it in an arguably more vulnerable position than before. The formal detachment of judicial personnel management from the regular management system for government officials and cadres has not necessarily upgraded the professional status or autonomy of local judges and prosecutors; rather it has limited their upward career mobility, further marginalizing the judicial profession, and has arguably damaged local elite loyalty and eroded elite coherence.

In this sense, China's most comprehensive and far-reaching judicial reforms towards a more centralized and autonomous judiciary have seen little success. Furthermore, the mechanisms causing this implementation failure reach beyond uneven resource distribution and regional disparity. They are rooted in the very same hierarchy that these reforms sought to break and upon which the system relies to maintain Party authority along both the vertical (*tiao*) and horizontal (*kuai*) axes. The horizontal power hierarchy in which judicial institutions are subordinated to political agencies of the party-state is part of the structural edifice of the CCP's one-party rule, which needs to be entrenched at both the central and local levels to remain intact. Vertical centralization is thus blocked by horizontal centralization; for vertical centralization and judicial autonomy to substantially increase, the system would have to decrease the Party's control over same-level state institutions in general. Yet a fully centralized judiciary with its own institutional autonomy would potentially risk allowing challenges to the Party's rule at the central level, which also explains why reform endeavours in this regard had been set aside for years and have only recently been attempted via provincial-level centralization.

These findings challenge two prevailing notions on China's recent political-legal development. First, that the party-state has successfully engineered a vertical centralization of its judiciary and, second, that the Chinese case demonstrates how judicial autonomy as a core feature of modern legality can continuously increase and institutionally manifest both under the conditions and serving the purpose of one-party authoritarianism. Vertical centralization in the Xi Jinping era might have been successful in policy fields where central policies worked to achieve vertical centralization *through* the strengthening of horizontal centralization, such as the working mechanism of leading small groups and recent financing controls over the country's property developers. However, in policy fields such as judicial reforms, where vertical centralization within the judiciary must come *at*

<sup>59</sup> Meng 2021, 137.

the cost of horizontal power concentration of the party-state, reforms tend to fail. This shows how the party-state's structural constraints are getting in the way of its own reform objectives and constituting a hard limit for how far reforms towards judicial centralization and autonomy can reach under the country's current set-up of single-party rule and central–local relations.

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