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Jonathan Josef Kinkel

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The Dissertation Committee for Jonathan Josef Kinkel Certifies that this is the approved version of the following dissertation:

**High-End Demand: Markets for Legal Services and Pressure for
Judicial Autonomy in Urban China**

Committee:

Daniel Brinks, Supervisor

William Hurst, Co-Supervisor

Zachary Elkins

Patricia Maclachlan

H.W. Perry

**High-End Demand: Markets for Legal Services and Pressure for
Judicial Autonomy in Urban China**

by

Jonathan Josef Kinkel, B.A., J.D.

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Dedication

For Nichole

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High-End Demand: Markets for Legal Services and Pressure for Judicial Autonomy in Urban China

Jonathan Josef Kinkel, Ph.D.

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Supervisor: Daniel Brinks

Co-Supervisor: William Hurst

Most scholars of comparative judicial politics suggest that judicial autonomy emerges from various forms of democratic competition or from a need to assuage the concerns of those investing capital in countries controlled by authoritarian regimes. In an authoritarian political system where the Party-State has historically sought to monopolize control over judicial selection and promotion, how can we explain reforms that increase the degree of merit-based competition, the statutory basis of written judicial opinions, the level of court transparency, and overall judicial autonomy in courts? Challenging prevailing theories regarding the relationship between economic development and rule of law, I argue that the particular patterns of local variation in judicial autonomy across urban China can be traced in part to differences in local markets for professional legal services: if qualified, mid-ranking judges can easily quit their jobs and find lucrative local employment as lawyers, court leaders are more likely to strategically reform promotion mechanisms in an attempt to retain these young—yet nonetheless, experienced—judges. These findings are based on nearly 15 months of in-country fieldwork, conducted

between 2012-2014, that included 49 interviews with judges across 3 different case study cities: Shanghai, Shenzhen, and Chengdu. Employing the subnational comparative method, this article not only builds theory regarding the emergence of rule of law in authoritarian states, it also offers new empirical detail regarding the promotion, performance evaluation, and behavior of judges in urban China.

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Introduction: A Role For Courts in China's Enterprise Society

We have not observed lawyers and judges moving to overthrow the ruling authoritarian regime, as we saw recently in Pakistan, nor has the nation's highest court overturned regime-supported legislation on constitutional grounds, as seen in Egypt's recent history. Nonetheless, the legal system in contemporary China has come a long way since the autumn of 1976, when "Mao's power was such that even during his final months...when he lay almost immobile on his bed, virtually unable to communicate and largely unaware of his surroundings, every intelligible word he uttered still had the force of law" (Lieberthal 2004, 209). Since liberalizing reforms following Mao's death, central authorities have unambiguously indicated the importance of "ruling the country according to law" (*yifa zhiguo*), passing hundreds of pieces of national legislation and tens of thousands of regulatory codes and rules. In the context of this decades-long commitment to formal rule-making, Communist China provides a unique opportunity to examine whether judges in an authoritarian state have managed to carve out an autonomous institutional space to decide legal disputes. Examining differences within China, a country of vast size and local variation, is essential to capitalizing on this opportunity. An outlier in many fronts, including affluence and clean government, the urban metropolis of Shanghai is a logical starting point, as existing scholarly accounts based on extensive fieldwork have found that political interference in Shanghai courts is less common than in other areas in China (Gechlik 2005, 108). If so, why might officials in large cities in authoritarian China choose to (or be pressured into) delegating more political authority to courts? If Shanghai's economic development is linked with the performance of its judges, what is it about wealth that leads to change in its courts?

Though it is widely accepted that even an authoritarian regime must eventually obtain the people's voluntary consent for its rule (Moustafa 2007, 37–38, *citing* Levi 1988; Parrillo 2013; Solomon 2007, 128), there are competing strategies for producing such legitimacy. At least one of these strategies is to sincerely train, motivate, and empower judges, as courts and a professional judiciary can come in handy for building popular support. If framed as an organ of power that can challenge the state, a regime can seek to win the consent of the people by limiting its powers *via* legal institutions operated by impartial judges. But does the state determine when and whether it empowers its judiciary, or do “the people” successfully demand it through bottom-up pressure?

Zhu Suli, former Dean of the Law School at Beijing University, takes the top-down view, accentuating the role of the Communist Party of China (CPC or CPC) as the primary force underlying better judicial behavior in today's China:

[T]he CPC is still the most important political and developmental force for contemporary China. No comparable alternative institutions or political forces exist. The CPC constitutes the most important component of the constitutional and governmental structure of modern China. It is still the major force mobilizing, promoting, and implementing reform within the judiciary, even though some of the reform measures promoted by the party have been clear mistakes, and even though party leaders and policies have hindered the development of an independent judiciary. Nevertheless, on balance, the CPC's oversight has discouraged at least to some extent judicial corruption and judicial arrogance, two common by-products of the judiciary's ongoing transformation and the global trend toward judicialization of all disputes (Zhu 2010, 52–53).

By contrast, others find the actions of the CPC to be the main obstacle to justice in China. Exercising its all-encompassing discretion, the Party can reverse previous judicial policy decisions and obstruct expansions in judicial autonomy, with the “turn against law” ultimately undermining access to justice and creating long-term domestic unrest:

Procedurally, Chinese authorities are...turning away from the law. They are relying on political, rather than legal, levers in their effort to remake the Chinese judiciary...Chinese leaders' shift against law is a distinct domestic political reaction to building pressures within the Chinese system...the Chinese leadership's concern with maintaining social stability in the short term may be having severe long-term effects—undermining Chinese legal institutions and destabilizing the country (C. Minzner 2011a, 935–936).

Despite the differences among these accounts regarding whether the Party helps or hinders litigants' chances of obtaining a fair hearing in a Chinese court, both assume that the Party has a leading, top-down role in the overall policymaking process. But if we take Minzner's account at face value, why would we see more autonomous judges and political officials in Shanghai, as described above? Scholarly accounts that explore factors leading to greater rule of law emphasize links between democratic accountability and robust checks on power, finding that “competitive elections in democratic regimes keep politicians accountable to voters and prevent them from engaging in predatory behavior” (Wang 2014, 16, *citing* North 1990). Of course, this explanation does not square with the PRC's staunch refusal to conduct democratic elections. Looking elsewhere, Foucault shines light on a different issue—the increasing importance of the company as an institution—that can emerge in authoritarian and democratic regimes alike. Generally speaking, a rise in the number of companies itself, with the accompanying emergence of an “enterprise society,” might be linked to a need for better court institutions:

The more you multiply enterprises...and the more you force governmental action to let these enterprises operate, then of course the more you multiply the surfaces of friction between each of these enterprises, the more you multiply opportunities for disputes, and the more you multiply the need for legal arbitration. An enterprise society and a judicial society, a society orientated towards the enterprise and a society framed by a multiplicity of judicial institutions, are two faces of a single phenomenon (Foucault 2008).

Enterprises, which focus on turning investment into revenue and profit, no doubt pressure state institutions to protect property accumulations. The real question is how to

accomplish this feat in an authoritarian system where the economy can be subordinated to larger political goals. Companies might lobby for such institutional reform or engage in other activities that indirectly affect judicial institutions, but in the lectures from which the quote above was taken, Foucault does not specify an example or a means by which the multiplication of enterprises produces the two faces of society: “enterprise” and “judicial”. Recent work by Wang Yuhua, however, puts forth a “demand-side theory” that begins examining the effects of China’s commercial liberalization on the court system, arguing that “authoritarian rulers will respect the rule of law when they need the cooperation of organized interest groups that control valuable and mobile assets but are not politically connected” (Y. Wang 2014). In Wang’s account, these interest groups are foreign-owned enterprises who are not owned by ethnic Chinese (i.e., enterprises that, among other characteristics, do not have many political connections in China), and can influence judicial politics either by lobbying the government (“voice”) or moving, hiding, or destroying their assets (“exit”)(Y. Wang 2014, 7, 40).

In so doing, Wang ascribes substantial authority to foreign enterprises, even though he also suggests that these foreign enterprises have limited political clout in China. Importantly, he does not explain what happens when enterprises have limited abilities to move their assets or lobby the local government or the court system. The primary example Wang provides of foreign investors lobbying for judicial reforms includes the investors’ outreach to courts themselves (Y. Wang 2014, 48) in addition to government officials—an implicit acknowledgement of the authority of courts to make changes to their own personnel and adjudicatory structures.

Despite their importance, Wang’s argument does not focus on changes within courts themselves, instead measuring political commitments to the authoritarian rule of law primarily through funding allocations from local governments to courts and to public attitudes towards local courts. In the chapters that follow, I eschew both a top-down and a bottom-up “demand side” approach to explaining court changes in China, instead

placing primary importance on the ability of select local courts to usher in reforms that expand judicial autonomy. Such reforms include changes to judicial selection, court transparency, and decisional autonomy, including the authority of high courts in Shanghai and Shenzhen to expand competitive judicial promotion reforms throughout their jurisdictions and to issue work plans (*fang'an*) and rules (*banfa*) for implementing central party initiatives to enhance the transparency and competitiveness of judicial cadre promotion (Wei 2010; Deng 2001, 17). Especially in what I call “high-end” legal service markets in urban China, courts feel heavy reform pressure from both the quantitative performance systems of the state bureaucracy (further detailed in Chapter 2) as well as the rapidly expanding market for legal professionals in urban China (which are examined in Chapter 3). The story that emerges is a middle path between an explanatory framework that finds that the top-down effects of the CPC or the bottom-up effects of “the people” or companies exercising political leverage end up affecting outcomes in judicial policy like those observed in Shanghai. To explain increases in judicial autonomy, my study focuses on the interaction between the state and a class of professions—in China’s case, a rapidly expanding corps of lawyers—that develops alongside the economy but does not necessitate a democratic political framework to take shape. The interaction of these state and societal factors becomes politically influential as a crucial component of the legal complex operating on the boundary of state and society (Halliday, Karpik, and Feeley 2007; S. Liu 2011a). The particular features of the state-led reform projects designed to monitor bureaucratic performance present judges with their basic institutional incentives, and acting under these incentives, judges assess whether changes brought by the expansion of the legal profession and the legal complex render a judicial career more or less desirable. When local law firm markets expand such that they can offer judges lucrative salaries, such expansions place pressure on court leaders, who are incentivized to retain the most efficient judges in their respective courts. As I argue in the following chapters, the way to retain judges is to offer competitive,

transparent, bureaucratic careers that provide a clear path to a secure, long-term existence in exchange for judges' fulfillment their professional obligations to the state.

Chapter 1: Economic Development, Politics, and the Court System in Urban China

This study builds on cross-national empirical evidence finding that rule of law and economic development are closely related and tend to be mutually reinforcing (Rigobon and Rodrik 2005; Peerenboom 2009). For example, Michelson and Read find that positive public attitudes toward local courts are associated with higher levels of economic development; similarly, Wang finds that fairer judges are found in localities exhibiting higher per capita GDP (Michelson and Read 2011, 195; Y. Wang 2014, 4). As a strategy to generate hypotheses regarding the specific mechanisms linking economic development and the judiciary, I conducted a fine-grained subnational comparison and posed the following research question: why would levels of judicial autonomy vary between relatively similar, economically developed cities (Shanghai, Shenzhen, and Chengdu) within authoritarian China's top-down, unitary political system?

Emphasizing judicial careers, work environments, and court transparency, this dissertation highlights factors which affect judges' ability to decide cases impartially, contribute to judicial autonomy and, ultimately, produce an authoritarian version of the rule of law (Peerenboom 2002; Wang 2014). I find that judicial autonomy in urban China emerges from the interaction between court leaders' institutional incentives governing promotion within courts and local demand for high-end legal services. Court leaders are promoted based on their ability to efficiently manage courts, as measured by their courts' scores on quantitative performance indices. High scores on these performance indices depend on retaining and motivating a staff of qualified, productive, and hardworking judges, who bear responsibility for deciding cases. High-end legal services markets threaten court leaders' ability to retain highly-qualified judges to staff courts because local law firms can offer judges lucrative alternative careers, whereas court leaders cannot unilaterally grant meaningful pay raises to the best judges in their courts. Hence, if talented judges can easily quit their jobs and find high-paying local

employment as lawyers, court leaders are more likely to attempt to retain these judges by resorting to one of the only methods at their disposal for retaining high-quality judges: strategically reforming promotion mechanisms and increasing overall court transparency. More competitive and transparent promotion clarifies the path to career success for ordinary, mid-ranking judges, providing ordinary judges with greater assurance of upward career mobility. Ultimately, court leaders' decisions to reform promotion mechanisms produce the variation in judicial autonomy that I observed in my fieldwork (Kinkel 2015).

This argument underscores a subtle point made by scholars of the “legal complex,” i.e., that “the emergence of a substantial market for legal services often stimulates the expansion of a private bar, which in turn multiplies centres of power outside the state” (Halliday, Karpik, and Feeley 2007, 28; Foucault 2008). The development of local pockets of judicial autonomy shows that the impetus for greater legal and judicial autonomy, in a rapidly developing authoritarian context, can stem not from the leadership's conscious realization that autonomous law is needed for development, or from some kind of social awakening, but rather from the more immediate life choices of legal operators who find themselves in an expanding market for their services.

CONCEPTUALIZING THE OUTCOME VARIABLE: JUDICIAL AUTONOMY

Throughout this dissertation, I explain patterns in judicial autonomy, as opposed to a broader conceptual phenomenon like “rule of law” or “judicial independence.” By “judicial autonomy,” I refer to the extent to which judicial career trajectories are merit-based, transparently administered, and carried out according to pre-established rules, all of which can affect judicial decision-making. Judicial autonomy as used in this study borrows from Peerenboom's concept, “personal independence,” which requires that judicial appointments and promotions are relatively depoliticized, fair, and carried out

according to pre-established rules (Peerenboom 2010, 71). From another perspective, judicial autonomy refers to *ex ante* autonomy, or de-politicization of the potential institutional points of entry (e.g., selection and appointment of regime-friendly judges) for political pressure to influence judicial decisions before they are made (D. Brinks and Blass 2011, 3). Accordingly, because judges selected *via* merit-based methods should be more autonomous than judges selected through non-transparent, political criteria, I examine judicial selection and promotion at Intermediate Level Courts across my three case study cities to identify local variations in courts' use of competitive, public methods to promote judges.

Personnel decisions regarding judges—including appointment, promotion, removal, and “court packing,” are crucial to understanding whether courts possess the *a priori* autonomy necessary to render fair decisions in the legal disputes before them (Dahl 1957; Chavez 2004; Peerenboom 2010). The structural governmental arrangements governing judicial selection can capture much of what is meant by judicial autonomy: merit-based promotion cultivates the conditions necessary for impartial decisions by minimizing judges' misgivings that in politically sensitive cases, their professional livelihoods might hang in the balance (Solomon 2007b; Hilbink and Woods 2009). For example, in Chavez's study of authoritarian judicial politics in Argentina, most dimensions of judicial autonomy measured using personnel-related factors such as whether the executive used opaque processes to appoint pliant judges, pack the courts, or violate judicial tenure (Chavez 2004, 465). Even models of U.S. Supreme Court Justices' case decisions are firmly rooted in judges' freedom from politicized retribution that flows from their life tenure (Segal and Spaeth 2002, 92-93, 114; Landes and Posner 1975).

I also examine the degree to which local courts implement Supreme People's Court (SPC) transparency mandates because courts that actively implement such directives and disclose extensive online information (e.g., current judicial decisions, court statistics, and information regarding the litigation process) are also likely to provide

judges greater autonomy. The Chinese Academy of Social Sciences (CASS) Transparency Index that I use to measure this aspect of judicial autonomy also appears consistent with internal measures of judicial “fairness” in dispute adjudication, as assessed by the SPC (Xinhua News Agency 2013a).

Focusing on a partial conception of autonomy is designed to fit the unique demands of conducting an empirical examination of court systems in authoritarian regimes. First, broader concepts are difficult to employ in empirical studies due to their ambiguity, as indeed, depending on the context, “rule of law” can refer to libertarian or socialist principles (Peerenboom 2003). Likewise, the concept of “judicial independence” is difficult to apply to a regime as authoritarian as the PRC, given that even the ostensibly “independent” courts of the British common law system were hardly *politically* independent: “The theory of the British constitution has always been one of complete, absolute, and unified sovereignty” (Shapiro 1981, 66–67). The institutional roots of PRC courts, steeped in Leninist politics, render the concept of judicial independence even less applicable to the Chinese case.

Empirically speaking, focusing on these more specific dynamics of judicial design will illuminate under-explored mechanisms that are crucial to producing judicial autonomy, as “the criteria for becoming a judge and for being promoted are not publicly available, nor is the selection and promotion process transparent or subject to public monitoring” (Peerenboom 2010, 77). Using judicial autonomy as an outcome variable will also complement the survey methods that underpin much of the extant systematic research on judicial autonomy in China rely on imperfect measures to measure judicial autonomy—such the perceptions of citizens who have not had contact with courts (e.g., Michelson and Read 2011; Wang 2014). Given the limits to obtaining reliable data on China’s judicial institutions, measures like these are best used in tandem with each other to sketch modest conclusions regarding the dynamics of court politics in China.

RESEARCH DESIGN AND CASE SELECTION

To more systematically illuminate the relationship between economic development and judicial autonomy, I employ a focused, comparative case study approach based on in-depth interviews, multiple documentary sources, and official statistics to identify and explain particular patterns in the evolution of the institutional design and functioning of China's urban court system during the past two decades, an approach resembling previous studies on institutional change in China (e.g., Whiting 2000). As such, my study is situated squarely in the realm of theory generation, like much of the scholarship in the emerging comparative judicial politics research program (Kapiszewski 2012, 5; Ginsburg 2003; Hilbink 2007; Trochev 2008), while also building on previous scholarship documenting the growth of China's legal profession and the association between economic development and court autonomy. Hence, in recognizing the explanatory limitations of the case study method, my framework is more modest than Van Evera's theory-testing, "crucial case study" approach (King, Keohane, and Verba 1994; Van Evera 1997). Instead, this study focuses on a small sample of courts that is not intended to be representative of Chinese courts as a whole, but rather formulates hypotheses about the evolution of judicial institutions in the specific context of urban courts in China (Whiting 2001, 30).

I narrowed the selection of cases to the specific urban court systems of Shanghai, Shenzhen, and Chengdu to focus directly on differences in judicial autonomy associated with levels of economic development identified in previous research (Michelson and Read 2011; Y. Wang 2013). Accordingly, I selected cases based on variation in judicial promotion mechanisms, transparency scores, and local models of reform-era economic development, and all three of my cases exhibit above-average levels of development but differ regarding the economic model that produced that development, narrowing the range of variation regarding social, economic, and cultural factors that could also serve as

explanatory variables for the emergence of differing levels of judicial autonomy (Tsai 2007, 152–166).

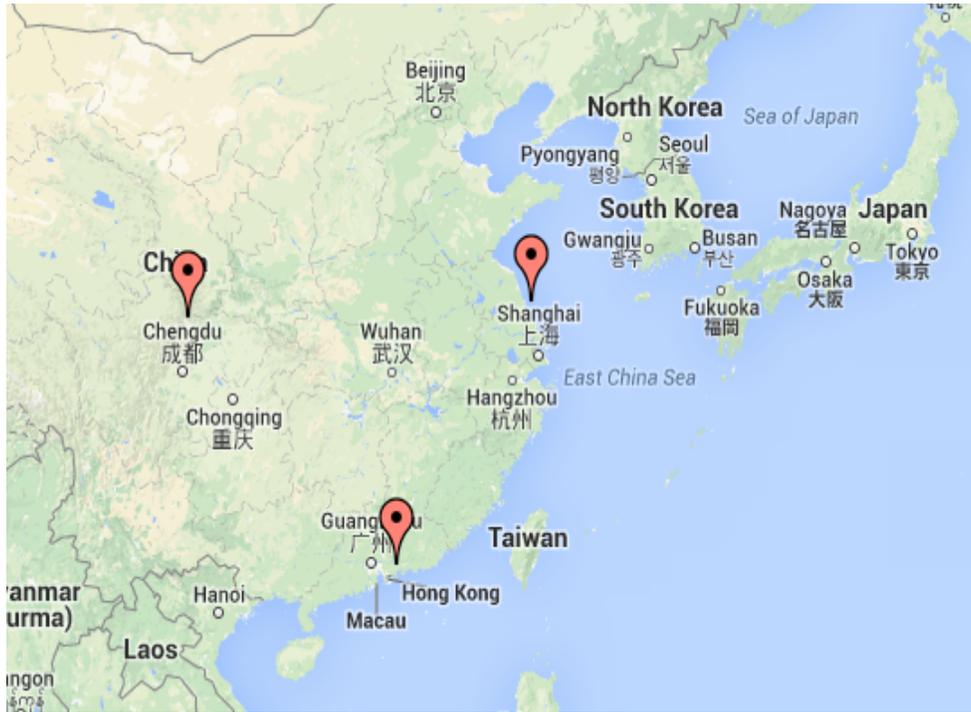
Consistent with a “similar systems” research design, all three of the case study cities in this dissertation are court systems located in large, populous urban centers within China. According to official statistics, these three case study cities had resident populations (*changzhu renkou*) over 10,000,000, with Shanghai’s population exceeding 23,000,000 (Shanghai Bureau of Statistics 2011; Shenzhen Bureau of Statistics 2011; Chengdu Bureau of Statistics 2011). Each case study locality’s economy is also characterized by well developed secondary and tertiary sectors: in Shanghai and Shenzhen, the primary sector comprises less than 1% local GDP, and in Chengdu, it comprises only 10% of the local GDP (Shanghai Bureau of Statistics 2011; Shenzhen Bureau of Statistics 2011; Chengdu Bureau of Statistics 2011). All three case study cities have similar “imprints” of the state sector on the local economy, as measured by the percentage of fixed capital investment (*guding ziben touzi*) undertaken by the state-owned sector: in Shanghai and Shenzhen, the state sector accounts for 37% of fixed investment, and in Chengdu, the figure is 30% (Shanghai Bureau of Statistics 2011; Shenzhen Bureau of Statistics 2011; Chengdu Bureau of Statistics 2011).

However, these three large urban centers also differ on several factors related to economic development and judicial politics, including the development of private markets for legal services, geographical location, and the economic model responsible for each city’s development. In the reform era, variation regarding the developmental models found in each of my three case study localities has led to different patterns of local legal services markets across urban China, by which Shanghai and Shenzhen have become characteristic of “High End” legal services markets, whereas Chengdu has become a “Battleground” urban legal services market (S. Liu 2011b; S. Liu 2011a). For instance, Shanghai law firms boasted legal services revenue per capita in 2009 that was

approximately 3 times that of Guangdong province (home to Shenzhen) and approximately 30 times that of Sichuan province (home to Chengdu).

This variation in local legal service markets is not surprising given the variation in each city's model of economic development. Shanghai, a provincial-level municipality, is located on China's prosperous east coast, was one of the major industrial centers of the Mao era, and was thus more urbanized and industrialized on the cusp of reform in 1978 (Tsai 2007, 162). Further, because of Shanghai's historical links to international capital, Maoist central planners tightly controlled Shanghai's state-owned sector and relied upon the locality as a major revenue source, which heavily discouraged national leaders from turning Shanghai into an experimental location for liberalizing reform during the early post-Mao era (Tsai 2007, 163). In this sense, Shanghai's "state dominated model" of economic development contrasts with Shenzhen's "Pearl River Delta Model" (i.e., *Zhujiang* or "South China" model), which is defined by the establishment of the first Special Economic Zone in Shenzhen City (Guangdong Province), directly across the border from Hong Kong, as well as an early orientation toward external trade and foreign capital (Tsai 2007, 159). Although Chengdu's commercial history stretches back millennia, it had not experienced the level of development and foreign investment seen in Shanghai or Shenzhen in the reform era, and consequently received a substantial developmental boost, along with other provinces in China's western interior, by the "Go West" (*xibu da kaifa*) campaign of central infrastructure and energy spending that was launched in 2000 (Tsai 2007, 165). The following map also shows that Shanghai, Shenzhen, and Chengdu span eastern, southern, and mid-western regions of mainland China.

Figure 1.1: Map of Primary Case Study Cities



Although the three case study localities that I have selected are largely similar urban localities relative to the whole of China, they differ regarding some very specific socio-economic factors linked to the emergence of more professionalized judicial designs in China's urban court systems. In this way, studying differences between courts in China's larger urban centers avoids documenting empirical differences between urban and rural localities established by other scholars (Balme 2009; Hurst 2011), while also illuminating factors that are associated with local judicial autonomy in China's understudied urban courts. The subsequent chapters will explore these specific variations between my three similar case studies and link them to outcomes in greater detail, employing a middle-range level of analysis useful for identifying causal mechanisms linking development and courts (Bennett and Elman 2006, 459).

This research is based on 15 months of in-China fieldwork, primarily conducted from June 2012 to July 2013, during which I was affiliated with East China University

for Political Science and Law (*Huadong Zhengfa Daxue*, or ECUPL) in Shanghai and traveled primarily to Shenzhen and Chengdu to conduct interviews, library research, and court hearing observation. I also made supplementary research trips to Beijing, Foshan, Wenzhou, and Wuxi to obtain more detailed information concerning judicial performance evaluation across localities (discussed further in Chapter 2). I returned to China during June and July 2014 for additional fieldwork and maintained contact with several interview subjects after returning to the U.S. In all of these localities, I conducted a total of 130 interviews, including 61 total interviews with judges and 52 total interviews with lawyers. I selected judicial interviewees from as broad a cross-section of courts in my cases as possible. Despite the difficulty of obtaining access to courts and judges, I conducted 49 interviews with judges across my three cases, and 12 interviews with judges in other Chinese cities. The majority of my judicial interviewees worked at the Intermediate Court level, including 9 interviews with Shanghai Intermediate Court judges, 8 interviews with judges in the Shenzhen Intermediate Court, and 8 interviews with judges from the Chengdu Intermediate Court. Regarding judges at the District Court level, I conducted 7 interviews in Shanghai, 11 in Shenzhen, and 6 in Chengdu. I also interviewed 1 SPC judge in Beijing and several lawyers who explained aspects of their practice and their experiences handling litigation in each local court system. Although most attorney interviewees were reluctant to discuss their personal income with me, I conducted 8 interviews with attorneys from separate law firms regarding average incomes for entry-level associates, experienced associates, and partners.

I generally obtained introductions to judges *via* mutual contacts, fostered through my affiliation with ECUPL, then used snowball sampling to gain introductions to more interview subjects (Solinger 2006). With the help of mutual social contacts, I would arrange a meeting with each interviewee for tea, coffee, or dinner in an informal setting away from the courthouse, with interviews ranging from 20 minutes to 4 hours long. On rare occasions, judges brought me to their offices for discussions over tea and even gave

me a tour of courthouses and courtrooms. I did not employ a pre-determined interview questionnaire, but instead conducted “focused interviews” that allowed me to pursue particularly useful lines of thought and interviewees to take opportunities to teach me how courts are managed in China (Merton, Fiske & Kendall 1990; Hurst 2009).

Given that my interviewees represent but a small sample of all PRC judges, I rely on interviews in conjunction with various written and online sources to support my research findings. These other documentary sources include primary source documents, Chinese media publications, internally circulating (*neibu*) publications, Chinese and English secondary literature, and official statistics. Triangulating interviews with written sources is crucial for research findings drawn from interviews with a small number of subjects who might not always be entirely forthcoming, especially given political and social sensitivities. Although not capable of theory testing in the strict sense, using such methods in conjunction with each other can produce both testable claims that advance our understanding of Chinese judicial politics and modest generalizations regarding legal and political phenomena across time and space.

JUDICIAL AUTONOMY ACROSS URBAN LOCALITIES IN CHINA: SIMILAR CONTEXTS, DIFFERENT OUTCOMES

Cross-national empirical research has found that judicial autonomy and economic development are closely related (Rigobon and Rodrik 2005; Peerenboom 2009, 84), and China scholars have also found that legal reforms are much more likely to be consolidated in the economically advanced coastal regions than in the more “backward” hinterland regions” (Wang & Shen 2009). I do not claim, though, that economic development *writ large* influences judicial autonomy—development, rapidly emerging markets, and globalization have occurred in many localities, including many parts of China, but not all have seen expansions in judicial autonomy.

What, then, are the specific factors and mechanisms linking development and autonomous judging? This highlights the features of economic development most salient

to the material and professional motives of lawyers and judges—revenues, remuneration, and labor markets for legal professionals in developing areas, which in turn affect the material and professional incentives of lawyers and judges. Regarding the important institutions of judicial selection and promotion, I have found significant qualitative variation in the implementation of promotion mechanisms between the cases of Shanghai, Shenzhen, and Chengdu. During fieldwork, I learned that each city’s courts have been required to implement “competitive promotion” systems for its mid-ranking judges, but surprisingly, the degree of competition and the level of routinization of these judicial promotion procedures vary distinctly between localities. Shanghai’s court institutions are the most competitive and routinized, with mid-ranking judicial vacancies throughout the court hierarchy open to competition from any judicial applicant within the city. For instance, when Shanghai Courts host “all-city” competitions, local CPC authorities’ ability to directly influence promotion outcomes is fragmented and diminished by the results of exams, interviews, and performance evaluations used to select promotion candidates; furthermore, a streamlined process has in recent years allowed larger candidate pools in judicial promotion competitions. By contrast, judicial promotion competitions in my other two case study sites, Shenzhen and Chengdu, only included applicants within each individual court, and in Chengdu, competitive promotion procedures were sometimes ignored. Keeping promotion competitions internal to each specific court allows court leaders and local political elites to exert more direct, personal influence on promotion decisions. Likewise, when the courts simply do not use competitive procedures on a routine basis, local political elites, such as CPC Committees, have greater leeway to pack the courts as they see fit.¹

¹*PC2013-1, judge, Shenzhen, January 2013; PC2013-3, judge, Shenzhen January 2013.* Throughout this dissertation, interviews are cited by a code, preceded by the term “PC” to represent “personal communication” and then the year of the interview. Interview citations are also italicized, and information regarding the interviewee’s professional status, the date of the interview, and the location of the interviewee are provided.

In addition to data on courts' judicial promotion institutions and transparency indices, I have obtained the complete set of written court opinions related to intellectual property (IP) law from each of my three case study sites—a total of over 1,000 published judicial opinions.² The number of publicly issued opinions is relatively high in IP-related matters, and IP law has also become a primary component of an impartial and commercialized zone of judicial practice in reform-era China (Y. Wang 2014; Dimitrov 2009), rendering published judicial opinions and mediation statistics a sound empirical base for assessing autonomy of China's local courts. In Chapter 4, I first analyze the content of a sample of judicial opinions across my three cases. In recent years, Chinese courts have generally taken more seriously the observation that decision-makers who are required to give reasons will make fewer arbitrary judgments and will be more transparent in their actions (Shapiro and Stone Sweet 2002, 229). However, there are no unified standards regarding judicial opinion content, resulting in local variation in opinion writing that can be discerned through analysis of a larger sample of judicial opinions. In examining IP-related judicial opinions published by PRC courts, I have focused on several metrics including opinion length and the frequency and character of statutory citation.

Additionally, because lower mediation rates suggest that judges are confident in their ability to apply law to facts and issue a reviewable decision in specific cases, the willingness of judges in Shanghai courts to adjudicate cases rather than allowing the parties to produce a mediated settlement suggests confidence in their political leeway to issue a potentially sensitive judgment and to withstand appeal to a higher court. Whereas judicial decisions can be reversed on appeal, mediated settlements cannot be appealed.³ Chapter 4 provides data regarding the frequency of judicial mediation in trademark

²The opinions were obtained from the Rouse Corporation, and more information regarding their analysis and collection of judicial opinions is available at <http://www.ciela.cn/> (last accessed February 15, 2015).

³*PC2013-53, judge, Shanghai, May 2013.*

disputes, which vary across Intermediate Courts in my three case study cities. Shanghai exhibits the lowest rate of mediation in these three cases (Shanghai (20% of trademark cases mediated) relative to Shenzhen (nearly 40%) and Chengdu (over 40%), supporting the finding that Shanghai judges are the most autonomous in the sample.

Another recent example of local variation in judicial autonomy across my three urban case studies is courts' compliance with transparency mandates. Why is Shanghai's court transparency index, which tracks consistently with the SPC's internal "national court fairness rankings," higher than those in Shenzhen and Chengdu (Lin Li and Tian 2013; Xinhua News Agency 2013a)? The CASS transparency index assesses courts for the extent to which they provide timely information to the public via online websites—as ordered by the SPC (CASS 2012). Internal CASS documents reveal that the SPC requires local courts throughout China to establish official websites and publish online information related to court work and the litigation process, including written judgments of current judicial cases (CASS 2012). According to SPC rules, courts should, "according to regulations, put judicial opinions of all types online" (CASS: China Academy of Social Sciences Legal Studies Department Rule of Law National Status Research Group 2012, 33).⁴ The ambiguity of these court mandates is instructive because it identifies which specific courts not only comply, but also exceed the suggestions of non-binding regulations aimed at educating the public, thereby enhancing transparency and access to an official rationale for judicial decisions.⁵ The Transparency Indices include five issue areas: online transparency regarding courts' general information (20 points), guidance regarding court procedure for litigants (15), judgment information (25),

⁴On this point, the CASS report cites Several Opinions of the SPC Regarding the Work of Strengthening Adjudicatory Transparency (*Zuigao renmin fayuan guanyu jiaqiang renmin fayuan shenpan gongkai gongzuo ruogan yijian*) and Decision of the SPC Regarding Confirming the Scope of Court Transparency (*Guanyu queding sifa gongkai shifan fayuan de jue'ding*).

⁵For an ongoing explanation of the hierarchy, function, and utility of the various types of documents issued by the SPC, see Susan Finder's blog: <http://supremepeoplescourtmonitor.com/2013/06/04/the-supreme-peoples-court-interpretations-of-law-as-a-form-of-official-document> (copy of blog post on file with author).

enforcement information (15), and judicial/court (*sifa*) statistics (25)—measures which cumulatively yield a 100-point, composite transparency scale (Lin Li and Tian 2013, 216).

Viewed holistically, these data suggest that the urban court system with the most autonomous judges, judging by measures of court transparency, judicial promotion, and judicial decision-making is Shanghai, followed in descending order by Shenzhen and Chengdu:

Table 1.1: Review of Variation in Judicial Autonomy Across Urban Court Case Studies

	<i>Merit-based Judicial Promotion and Court Transparency</i>	<i>Compliance with “Giving Reasons” Requirement and Frequency of Mediation</i>
<i>Shanghai</i>	High competition; high routinization of competitive promotion: used for every opening and streamlining reforms implemented; high transparency levels	High frequency of citation to statute; low rate of mediation
<i>Shenzhen</i>	Medium competition; high levels of routinization, used for every opening and streamlining implemented; medium transparency	Medium frequency of citation to statute; medium rate of mediation
<i>Chengdu</i>	Low competition; Low routinization, sporadic use; no streamlining implemented; low transparency	Low frequency of citation to statute; low rate of mediation

The extant literatures on comparative court politics and Chinese judicial politics do not explain this local variation in judicial autonomy between similarly developed localities in an authoritarian setting. Additionally, even the most systematic research on the emergence of judicial autonomy in China still relies on “perceived judicial corruption to measure the actual level of corruption” (Y. Wang 2013, 60). In this dissertation,

conversely, I use information taken directly from courts and judges themselves to identify the factors responsible for local variation in Chinese judicial autonomy, cast light on the broader dynamics of judicial autonomy in China, and contribute empirically and theoretically emerging literatures in comparative and Chinese politics.

COMPETING THEORETICAL FRAMEWORKS

The thesis that local legal service markets affect judicial autonomy challenges theories regarding the association between economic development and several aspects of legal reform, including constitutional authority, the degree of official corruption, and judicial autonomy (see, e.g., Trubek and Galanter 1974; Moustafa 2007). First, as noted in the introduction chapter, my argument challenges the fundamental assumption that democracy is a pre-requisite for the political empowerment of judges (Tate and Vallinder 1995; Landes and Posner 1975) and examines the various functional roles played by courts in authoritarian regimes, which can range from establishing social control and bolstering regime legitimacy to facilitating trade and investment (Moustafa 2007; Ginsburg and Moustafa 2008). Despite these recent insights into authoritarian courts, various types of democratic decentralization are still generally seen as the necessary conditions for supplying the fragmentation necessary to convince rulers that delegating more authority to the judicial sphere of government is in their self-interest (Chavez 2004, 466-467; Ginsburg 2003, 18). The lack of emphasis in the literature on courts in authoritarian contexts is peculiar, considering the sheer volume of courts functioning in non-democratic regimes, tendencies for national high courts even in liberal democracies to march in step with the dominant political regime (Dahl 1957), and the importance of law and legal institutions to the political stability of authoritarian and democratic rulers alike (North and Weingast 1989; Lijphart 1977; Toharia 1975; Ulc 1972). However, even the new scholarly work on authoritarian courts does not explain the local variation in China regarding judicial autonomy that I identify in this dissertation.

The broad, state-centered perspective that often focuses on top-down judicial reforms does not explain subnational variation in China's judicial designs. For instance, higher "independence, competence, and fairness" in China's court system has been linked to state efforts to improve the quality of legal education in China and the consequently greater supply of qualified and competent judicial personnel (Fu 2003). In similar "Party-State centric" fashion, Li finds that judicial behavior is brought about by "the particular decision-making mechanism guided by the Chinese Communist Party's instrumental rule-by-law ideal" (Ling Li 2012). However, state-centric theories do not account for the decidedly local variation in judicial autonomy across China, and they also neglect changes in the depth and extent of state intervention in the law, the dynamic development of the legal system, and the legal system's own response to the state (X. Li and Cheng 2013, 59; C. F. Minzner 2009, 110). To remedy some of these concerns, other recent research integrates varying levels of analysis and diverse types of data to draw more reliable conclusions related to state-centered court politics.

For example, Moustafa's research on the Egyptian Constitutional Court addresses a common political-economic goal shared by many authoritarian and democratic regimes: facilitating trade and investment. The creation of an autonomous Supreme Constitutional Court in Egypt with powers of judicial review "was designed to assuage investor concerns and guarantee institutional constraints on executive actions..." (Moustafa 2007, 5). In similar fashion, Wang's "demand-side" theory of expanded rule of law in China argues that in localities where foreign-invested enterprises from outside the "China Circle" of Taiwan, Hong Kong, and Macao are significant players in the local economy, "local governments must tie their hands and build a strong court system" (Y. Wang 2014, 43). As noted in the Introduction, Wang's theory implicitly downplays changes within the court system itself, instead focusing on variations in funding allocations from local governments to courts and to public attitudes towards local courts. Measuring official funding for courts glosses over the important dynamics of courts' *extrabudgetary*

finances (He 2009a, 465–466), and the share of funding that a given court receives from a local government also presents at best a broad-gauge snapshot of the general importance of courts within the local administrative bureaucracy. Even then, funding levels do not specify whether the allocations covered the purchase of computers, the hiring of new judges, or the building of a new courthouse. Local government funding for courts also does not adequately explain disparities in judicial autonomy between the many localities in China that exhibit much closer levels of economic development and court funding, such as the case studies in this dissertation (Shanghai, Shenzhen, and Chengdu). Wang directly acknowledges that measuring judicial corruption using the perceptions of citizens who have never used the court is a disadvantage of his model (Y. Wang 2014, 121). Because funding shares and the attitudes of non-users do not illuminate the factors that influence judges' case decisions, Wang's study is problematic for measuring rule of law, under either Peerenboom's "thin" or Wang's "authoritarian" conceptualization.

Nonetheless, Wang's study remains the most sophisticated extant model of judicial politics in contemporary China, and some aspects of his model are certainly useful and consistent with the argument put forward in this study. More specifically, it appears that Wang is correct to argue that FDI from outside the China circle is linked to improved court functioning, but incorrect to argue that the specific mechanism supporting this link is enterprises' using "exit" and "voice" to goad local political authorities into court reform. Alternatively, I find that foreign law firms compete fiercely with domestic firms for professional, local legal staff, especially for qualified mid-ranking legal workers in High End localities like Shanghai, despite the restriction against foreign lawyers "officially" practicing law in China (Wang 2014; S. Liu 2011a, 133–138; S. Liu 2011b). Because the dynamics of law firm practice are essential to foreign enterprises' legal strategies in China, and because foreign firm have many other options besides courts to protect their assets in China (Mertha 2005; Dimitrov 2009), my "high-end demand"

mechanism is more plausible for explaining expansions in judicial autonomy than is Wang's "exit and voice".

Thus, the explanatory strategies that I use to address the shortcomings of both the investor-centered, "demand-side" models and the top-down, Party-State-centered theoretical approaches include fine-grained, qualitative interviews and examination of written source materials that more clearly specify the factors mediating the relationship between economic development and judicial autonomy in China's urban courts. According to Weber, the entrance into modern officialdom "is considered an acceptance of a specific obligation of faithful management in return for a secure existence" (Weber 1946, 199). However, as judges explained to me, their livelihoods in urban localities with rapidly rising costs of living are increasingly less secure. Moreover, judges and other public officials do not enjoy the social esteem commensurate with modern officialdom, increasingly seeing themselves as having lower social status relative to the less regulated lawyer profession and employees in growing private companies. Judicial promotion, if available and tied closely to performance, might confer both this social prestige and a higher salary, bringing judges closer to the pure type of modern officialdom in which they seemingly wish to participate. At the same time, the ability of court leaders to alter these promotion mechanisms ultimately serves as possible means to motivate judges to remain in their careers in the court system. Eventually, as Chinese judges who rule on disputes have opportunities for more merit-based promotion and work in courts that increasingly value transparency, they will be more autonomous from the myriad social and political pressures influencing their decisions in the disputes before them.

EXPLAINING LOCAL VARIATION IN JUDICIAL DESIGNS: JUDICIAL INCENTIVES AND A PUBLIC-PRIVATE WAGE GAP

The institutional incentives of court leaders, and how these incentives relate to attracting and retaining qualified, mid-ranking judges who decide cases, is at the

foundation of my argument that local demand for private legal services pressures court leaders to reform judicial designs. Crucial to this argument is an understanding of the basic institutional incentives facing judges in China. In brief, the quantitative performance assessment system evaluates court leaders (e.g., Court Presidents and Vice Presidents) based on the quantitative scores of their courts as collectives. High scores—and court leaders’ chances for promotion—depend on retaining highly productive, qualified subordinate judges who decide cases. During interviews, judges consistently told me that the institutional pressures exerted within the court hierarchy *via* judicial performance evaluations most affected their daily work lives and also provided their primary motivation for their work habits in deciding cases.⁶ Court leaders’ incentives are institutionally structured by the “Case Quality Assessment System” (CQAS, *anjian zhiliang pinggu tixi*), which has developed during the past decade and was unified nationally by the SPC in 2011. The complex features of the CQAS are authorized by the straightforward and simple description of judicial performance evaluation in the Judges’ Law of China, which states, “Appraisal of judges shall be conducted by the Peoples’ Courts the judges belong to...The result of appraisal shall be taken as the basis for award, punishment, training, dismissal of a judge, and for readjustment of his or her grade and salary.”⁷ Putting this legislation into practice, a wide range of statistics, formulas, and measurements structure judicial performance appraisals: the 2011 SPC Guiding Opinion Regarding Launching Case Quality Assessment Work (hereinafter, “Guiding Opinion”) instructs local courts to use at least 31 indices to quantitatively assess judges’ and courts’ performance in three separate categories: “fairness” (*gongzheng*), “efficiency” (*xiaoli*), and “social impact” (*xiaoguo*).⁸

⁶PC2013-43, judge, Shenzhen, April 2013; PC2013-56, judge, Shanghai, June 2013; PC2013-49, judge, Shanghai, May 2013; PC2013-51, judge, Chengdu, May 2013.

⁷Judge’s Law of the PRC, Articles 19, 22.

⁸2011 SPC Guiding Opinion Regarding Launching Case Quality Assessment Work (*Zuigao renmin fayuan guanyu kaizhan anjian zhiliang pinggu gongzuo de zhidao yijian*), Articles 8-10 (“2011 Guiding Opinion”).

According to Article 1 of the Guiding Opinion on the CQAS, court leaders are evaluated by aggregated (*zonghe*) indices regarding the performance of their courts and the subordinate judges and units within each court’s jurisdiction.⁹ Aggregating the performance scores of individual judges under the CQAS allows political elites to assess the performances of individual court divisions and courts as collectives by viewing aggregated CQAS results in comparison with similar units in other jurisdictions and locations throughout the country.¹⁰ Aggregated court rankings allow comparison and classification of court presidents and vice presidents’ court management performance, as explicitly mandated by the Guiding Opinion: “For every half-year and year-long period, the SPC will engage in analysis of assessment statistics and indices, and publish an ‘All-Country Case Quality Analysis Report’; summarize the case quality situations of Higher-Level Courts, Intermediate-Level Courts, and Basic-Level [i.e., first-instance] People’s Courts, and at regular intervals provide feedback (*fankui*) regarding every level court’s case quality assessment situation.”¹¹ Using software and spreadsheets mandated for use under the Guiding Opinion, the SPC and High Courts throughout China distribute cumulative court and divisional index results, upon which lower levels of the court system should rely in an attempt to guarantee the objectivity of the assessments (J. Zhang 2011).¹² In response to cross-provincial analysis and “feedback” provided in the SPC reports on CQAS performance, municipal courts discuss their cumulative CQAS scores in comparison with other court systems throughout the country.¹³

Hence, the performance of court leaders is assessed based on the collective performance of their entire courts—these “judges” do not decide cases on a regular basis;

⁹2011 Guiding Opinion, Article 1.

¹⁰Examples of similar, comparable courts would be all first-instance District Courts in a municipality or all Intermediate Courts in a given province or region.

¹¹2011 Guiding Opinion, Article 24.

¹²2011 Guiding Opinion, Articles 17, 27.

¹³*PC2014-3, judge, Shanghai, July 2014; PC2012-23, judge, Shenzhen, September 2012; PC2012-30, judge, Wenzhou, October 2012.*

instead, they are responsible for “managing” the court in the way that a CEO would run a company (for an overview of the status and functions of different court personnel, see Table 1.2 below). On the other hand, ordinary judges are assessed for promotion individually, based on how quickly and accurately they decide cases. Interacting with these institutional incentives, the relative local demand for legal services increases the value of mid-level legal professional workers, thereby increasing pressure on court leaders to retain efficient, qualified judges and raising the opportunity costs for young legal professionals to serve as judges rather than pursue lucrative careers as lawyers.

Table 1.2: Overview of Judicial Rankings in an Intermediate-Level Court in Urban China

POSITION	FUNCTION	CADRE STATUS	PROMOTION STYLE
Assistant Judge (<i>zhuli shenpanyuan</i>)	provide research and logistical assistance to Associate Judge	cadre	watered-down competitive promotion
Associate Judge (<i>shenpanyuan</i>)	Adjudicate cases; possesses soft veto power on case decisions as member of three-judge panel	cadre	watered-down competitive promotion
Chief of Judicial Panel (<i>heyiting shenpanzhang</i>)	Final, tie-breaking decision-maker in case disputes handled by 3-judge panels	cadre	
Division Vice Chief (<i>futingzhang</i>)	management and assignment of case disputes; serve on 3-judge panels	mid-level cadre	competitive promotion
Division Chief (<i>tingzhang</i>)	management of cases and assignment of Judicial Panel Chief assignments	mid-level cadre	competitive promotion
Vice President (<i>fuyuanzhang</i>)	management of whole court operations	leading cadre	direct selection (Z. Liu 2012)
President (<i>yuanzhang</i>)	management of whole court operations	leading cadre	direct selection (Z. Liu 2012)

Sources: PC2013-4, judge, Shenzhen, January 2013; PC2013-3, Shenzhen, January 2013; (Z. Liu 2012; Z. Liu 2014).

Although these judicial performance mechanisms incentivize court leaders to retain the most efficient and productive judicial workers (as measured by several indices, including cases cleared per year or per month), court leaders possess limited means to

achieve this objective. Because salaries are controlled by the State Council at the national level, local court leaders cannot offer their subordinates meaningful income raises to account for the rapidly rising cost of living in urban China. One of the few means at their disposal for retaining highly qualified judges is to render judicial promotion mechanisms more transparent to clarify subordinate judges' potential and possibilities of upward mobility.¹⁴ From the perspective of ordinary judges, a merit-based promotion creates a sense of honor and accomplishment that one judge characterized as a motivational substitute for high salaries.¹⁵ From the perspective of court leaders, Shanghai Court President Cui Yadong has stated that to prevent large numbers of experienced judges from resigning their posts, courts must “advance judicial personnel construction regularization, specialization, and professionalization, and at the same time, establish a judicial personnel system that adapts to the special features of professionalism” (X. Liu 2014).

Under the CQAS, court leaders will face greater pressure to introduce judicial reforms designed to retain qualified judges when law firms in High End legal services localities threaten to lure their top judges into careers as lawyers. At the 4th Meeting of the Shanghai delegation to the 2014 National People's Conference, Cui Yadong also summed up the burden placed on courts by the loss of highly productive case-deciding judges, noting that in the previous year, Shanghai lost a total of 74 judges, and that judicial labor turnover must be confronted and resolved in any systemic judicial reform: “The judges who leave constitute our backbone (*gugan*), and they are familiar with their professional duties—usually around 40 or 50 years old. This situation, in which the professional backbone of the legal system resigns in high numbers, severely undermines

¹⁴PC2013-57, judge, Shanghai, June 2013; PC2013-53, judge, Shanghai, May 2013; PC2012-2, judge, Shenzhen, June 2012; PC2012-6, judge, Shenzhen, June 2012; PC2013-51, judge, Chengdu, May 2013.

¹⁵PC2013-51, judge, Chengdu, May 2013.

our personnel stability and creates a self-perpetuating cycle where ‘brain drain’ (*liushi renyuan*) gradually becomes larger problem every year” (X. Liu 2014).

The result of the interaction between court leaders’ professional incentives and local demand for legal professionals is variation in the competitiveness, transparency, and routinized use of competitive judicial promotion mechanisms. Interviews with mid-ranking judges support a finding that reforming judicial designs to professionalize career trajectories is a viable strategy for retaining productive judges, who desire greater clarity and more reliable information regarding their futures as judges, and feel heavy pressure from constant, within-court quantitative rankings and high caseloads.¹⁶ According to several interviews with case-deciding judges, a realistic chance at a merit-based promotion (and the administrative salary raise that such promotions provide) is a plausible strategy for stemming the tide of judges resigning from courts to pursue a higher paying job in a local law firm.¹⁷

To clarify, though, court leaders in contemporary China focus on *retaining* judges who have already earned promotions and the authority to decide cases, rather than *attracting* candidates for judgeships. Generally, a recent Chinese law school graduate can obtain an entry-level court position as an Assistant Judge (*zhuli shenpanyuan*) or even a position as a Clerk (*faguan zhuli*)(see Z. Liu 2014, 148). Only after obtaining at least 5 years of experience, and sometimes much longer, can a judge obtain authority to sit on a collegial panel (*heyiting*) of up to 3 judges, and decide cases.¹⁸ One interviewee noted that courts are often flooded with applications for entry-level positions, but these high applicant volumes do not necessarily help the court because it takes several years to develop the experience needed to decide case, by which time, judges-in-training could leave the court and start the recruitment all over again.¹⁹ Ultimately, courts have a much

¹⁶PC2013-65, judge, Foshan, July 2013; PC2013-56, judge, Shanghai, June 2013.

¹⁷PC2014-2, judge, Shenzhen, June 2014; PC2014-3, judge, Shanghai, June 2014.

¹⁸PC2014-2, judge, Shenzhen, June 2014.

¹⁹PC2014-3, judge, Shanghai, June 2014.

more difficult time finding judges willing work for promotions and decide cases, and much easier time finding entry-level job applicants, leaving court leaders with an institutional interest in retaining judges who have proven efficient at deciding cases and contributing to higher court CQAS scores.

Judicial Retention and High-End Demand for Local Legal Services

Patterns of local variation regarding judicial autonomy exhibited across courts in Shanghai, Shenzhen, and Chengdu can be traced to differences in local demand for private legal services, which reflects the extent to which law firms in a given municipality or province can earn revenue and employ greater numbers of lawyers. This argument takes seriously the rapid re-constitution and privatization of the legal profession during the post-Mao reform era, a professional class whose influence reverberates through the legal complex, which includes both the legal profession and local court systems in a given polity (Halliday, Karpik & Feeley 2007). Indeed, even several years after Mao's death in 1976, the PRC lacked an organized legal profession (J. Cohen 1979, 359). In the following three decades, legal services in the PRC became a multi-billion dollar industry, with total annual legal service revenues reaching RMB 32.45 billion *yuan* in 2009 (approximately \$4.77 billion USD at RMB 6.8 *yuan*/USD in 2009)(Li and Cheng 2013, 67-68). To achieve this rapid re-emergence of the Chinese law industry in the early reform era, the legal services industry was privatized quickly and unevenly, especially by the policy to “unhook” (*tuogou gaizhi*) lawyers from the state in 2000 and the policy to “cleanse” the public sector of law firms and to “consolidate” the private the legal services market (*qingli zhengdun*) (Michelson 2003; S. Liu 2011b).

This historical development of the legal profession provides evidence that local demand for private legal services increases local competition for professional legal workers, pressuring local court systems to find qualified judicial personnel. With court leaders lacking any parallel, unilateral authority to raise salaries for judges—much less

for particularly successful or talented judges—providing more professionalized career trajectories is a viable strategy for retaining the core judicial personnel vital to raising courts' CQAS scores.²⁰

As a result of national control over judicial salaries, an income gap has emerged between some lawyers and public sector officials like judges. Pay scales organized by bureaucratic civil service hierarchies govern income levels for judges, which fall below the median average for the top professions in China because these income levels have not been raised since 2008, likely owing to public distaste for raising the pay of possibly corrupt government officials (Xinhua News Agency 2013b). During interviews, various mid-ranking judges provided figures for their annual income, which ranged from ¥70,000-80,000 RMB for an entry-level judicial position at the SPC, to ¥100,000 RMB at the Shenzhen Intermediate Court, and ¥120,000 RMB at the Shanghai Intermediate People's Court.²¹

By contrast, lawyer income in China has increased dramatically, particularly in local markets where serving corporate clients is the norm. Knowledge that average income for experienced associates in domestic law firms far outstrip judicial salaries in China's High End legal service localities was widespread among the judges that I interviewed. One interviewee described that she had previously served as a judge, but had left her judicial career because she had many other higher paying job opportunities in the Shanghai law firm market.²² As discussed in further detail in Chapters 3 and 4, the competition for mid-level lawyers in High End localities corresponds with efforts in

²⁰Although court leaders lack meaningful authority to grant raises to individual judges, promotions result in a raise in salary according to the pay structure set by the larger civil service personnel system. *PC2013-56, judge, Shanghai, June 2013*. Further, the national government fears that raising the salaries of government officials would create significant public backlash. *PC2013-52, Beijing, May 2013*.

²¹*PC2013-52, judge, Beijing, May 2013; PC2012-49, judge, Shanghai, December 2013; PC2012-6, judge, Shenzhen, June 2012*.

²²*PC2012-33, lawyer, Shanghai, October 2012*.

courts to professionalize career trajectories for judges—and specifically those judges at the mid-ranking level—in cities like Shanghai.

CHAPTER SUMMARIES

This introductory chapter has summarized the empirical puzzle of local variation in judicial autonomy that this dissertation primarily addresses, and it also presents the theory and supporting information that explains this local variation. Chapter 2 lays out the relevant background context of China’s judicial system, including specific details on the new CQAS system under the 2011 Guiding Opinion of the SPC and how formal and informal rules under the CQAS interact to incentivize judges in the PRC.

Chapter 3 details my main argument that local markets for legal services are the key difference that places pressure on courts to reform their promotion mechanisms in an attempt to retain talented judges from leaving for careers in the private sector. This chapter takes a macro-level approach to identify the labor market conditions that interact with the incentives produced by the judicial evaluation system described in Chapter 2, which provides substantial pressure for the emergence of court institutions that provide judges with more professional careers. To address more specifically how judicial institutional outcomes vary across my case studies, Chapter 4 focuses on variations in my dependent variable: judicial autonomy. My findings show that the particular patterns of local variation in judicial appointment and promotion in urban China vary distinctly by case study locality, with promotion mechanisms in Shanghai much more open, competitive, and transparent than those in Chengdu. Transparency scores issued to local courts by a recent CASS survey are also higher in Shanghai and Shenzhen than in Chengdu, and judges in Shanghai tend to provide relatively more reasons for their decisions in selected IP-related judicial opinions. This chapter provides robust empirical detail regarding judicial promotion and systems of judicial performance evaluation in China, especially in the wake of the SPC’s formalization and unification of the CQAS

during 2008-2011. Chapter 5 discusses bureaucratic specialization, which refers to how these changes to judicial promotion mechanisms occur also reflect court leaders' efforts to retain more judicial talent by expanding the bureaucratic structure of courts. To continue providing judges more varied and numerous opportunities for promotion, court leaders have sought greater bureaucratic resources by establishing within-court bureaucratic divisions to tackle locally specific social issues, thereby enhancing the collective status of courts *vis a vis* other bureaucratic units of the Party State.

The concluding chapter explains that the local-level court changes documented in this study anticipate much broader, highly publicized national-level judicial reforms launched in 2014. The conclusion chapter also re-states the main findings of the dissertation and looks farther afield to debates regarding the autonomy and decision-making of judges in political settings outside of China—authoritarian or otherwise. In a context of an increasingly stratified society and uneven economic development, these findings suggest that economic inequality in China is also tied to unequal access to justice across the country.

CONCLUSION

This dissertation fills theoretical gaps in research on authoritarian and Chinese legal politics by specifying the intervening variables and the underlying causal mechanism supporting an empirical association between development and “rule of law” in China. I find that it is primarily the local demand for private legal services that influences the political calculus in local jurisdictions that determine judicial autonomy. I use a case study approach to closely examine the emergence of judicial autonomy in three jurisdictions in China: Shanghai, Shenzhen, and Chengdu. To gauge the degree of judicial autonomy in a local court system, I examine judicial promotion mechanisms, compliance with judicial transparency mandates, the extent to which judges justify their case decisions with written reasons, levels of mediation, and degree of bureaucratic

specialization, and I find that Shanghai's local courts possess the highest degree of judicial autonomy, followed by Shenzhen and Chengdu.

When a market for private legal services emerges such that it provides judges and other highly trained legal professionals a viable alternative to a careers in courts, court leaders will feel pressure to reform internal judicial institutions to retain judges who are adept at processing cases and dealing with disgruntled litigants. Because court leaders' own promotion chances turn on the efficiency, fairness, and social impact of cases resolved by their subordinates, court leaders are incentivized to craft court institutions that provide more professional career opportunities when private local law firms threaten to lure judges to jobs in firms. By contrast, court officials are less likely to professionalize career trajectories for their subordinate judges when their judicial employees have no credible career alternative to working as a civil servant, judge, or other law-related worker in the Party or government bureaucracy. In this way, the interaction between judges' professional incentives under the CQAS and local markets for private legal services pressures judges to alter institutional designs such that they provide judicial employees more professional career trajectories, acts as a mechanism influencing the emergence of more autonomous judges in China.

This study indicates that the relationship between economic development and law outside the Chinese context is that authoritarian rulers do not always seek to reform their *court* institutions—or even other components of their legal bureaucracy—simply to provide credible commitments to investors. Rather, when a regime finds that the benefits of lowering transaction costs through legalization outweigh the costs, legal reforms will likely not produce significant judicial autonomy until a crucial nexus of institutions emerges to enhance the authority of judges and other legal professionals. Viewed from a different perspective, these findings suggest that even when a state proceeds with plans for wide-ranging judicial professionalization, any reform that does not account for the interests and incentives of judicial elites is likely to stall. By contrast, reforms that

motivate judicial elites by affecting their material and professional interests, as structured by their particular socio-economic contexts, are more likely to produce real change throughout the judiciary.

Chapter 2: The Judicial Cadre Evaluation System: Foundational Institutional Incentives Undergirded by “Intra-state Legibility”

If high-end demand for private legal services contributes to higher degrees of local judicial autonomy, then court institutions must be structured in such a way that court leaders in China depend on highly productive and qualified subordinate judges to quickly and accurately decide cases, and that reforms to professionalize the judiciary might appeal to ordinary judges who decide cases. This chapter provides the background needed to support this assumption, focusing on the Case Quality Assessment System (CQAS, *anjian zhiliang pinggu tixi*)—a judicial performance evaluation system that unifies and formalizes the criteria and rules for evaluating work performance throughout China’s courts. As a critical factor in evaluating judges’ chances for promotion, the CQAS also affects judges’ opportunities for salary increases within the government career track.

Judges, like other cadres and officials in China’s political system, are regularly assessed according to rigid, quantitative performance metrics, and scholars have recently addressed several similar topics (Kinkel and Hurst 2015). Some have focused on judicial supervision and independence, arguing that Chinese Communist Party (CPC) intervention into individual judges’ decision-making can help promote the autonomy of China’s judicial system (Peerenboom 2010; Zhu 2010), whereas others have maintained that increasing extra-judicial influence in the legal system is a sign of the state’s downgrading of – or “turn against” – law and judicialized dispute resolution (C. Minzner 2011a). Finally, others have maintained a longer-term focus on policy targets and the

quantification of assessment and political oversight in China (O'Brien and Li 1999; Edin 2003; Whiting 2004).

In this first attempt to systematically unpack China's judicial cadre evaluation system and its effects, I maintain that court leaders' responsibility for the collective performance of their courts and concerns over their reputations *within and among* the judiciary are of primary importance in shaping judges' behavior. The emergence of these patterns has been facilitated by increasingly sophisticated reporting of performance scores regarding formal, quantitative evaluation indices, creating an overlapping interaction between written rules and practical implementation that exerts much stronger effects on judicial decision-making and behavior than either formal or informal factors alone. The result of this quantitative, highly visible supervision by central state principals of their local judicial agents constitutes what I call "intra-state legibility" (c.f. Scott 1999). In light of scholarship on judicial behavior in other countries, it should not be surprising that judges' decision-making is influenced by social concerns, such as their professional reputations, the esteem of their peers, or the lawyers who practice in their courts (L. Baum 2006; Miceli and Cosgel 1994; D. M. Brinks 2008). However, such a perspective is largely new in the study of Chinese law.

Scholars have, however, previously addressed judicial evaluation and decision-making in China more broadly, resonating in several respects with recent accounts of the post-Soviet judiciary (Hendley 2013; Hendley 2012). Stanley Lubman was among the first to note that burgeoning caseloads, bureaucratic incentives, and quotas have pressured judges, since at least 1984, to emphasize mediation instead of adversarial adjudication in the resolution of private disputes (Lubman 1999). Randall Peerenboom sees formal bureaucratic supervision and evaluation promoting higher standards of professionalism through manipulation of judicial salaries, alongside other rewards and punishments (Peerenboom 2006; Peerenboom 2002). Though not directly incorporating the effects of judicial cadre evaluations, Rachel Stern suggests a model of civil judicial

decision-making in one-party states based on her research on environmental litigation in the PRC, in which tensions between judges and non-judicial elites (as well as between formal and informal norms) threaten the integrity of the judicial process (Stern 2010). Carl Minzner also examines courts' evaluation of judicial cadres against the backdrop of China's overall cadre evaluation system, finding that bureaucratic control of the judiciary undermines the integrity of the PRC legal system even more clearly than in Stern's analysis (C. F. Minzner 2009; C. Minzner 2011a; C. Minzner 2011b). No authors in this growing literature, however, draw on in-country fieldwork and documentary analysis to explain just how contemporary judicial cadre evaluation (known as the Case Quality Assessment System, or CQAS) is implemented at the level of individual judges and courts, nor does previous scholarship incorporate changes made to the system since 2008.

This chapter is based on fieldwork, conducted primarily from June 2012 to July 2013, which included interviews with judges and the compilation of both internal and public documents in Shanghai, Shenzhen, Foshan, Wenzhou, Beijing, and Chengdu. I examine how court leaders (e.g., Court Presidents and Vice Presidents) are motivated to boost their courts' collective CQAS performance scores, not only through institutional incentives, but even more so through informal discipline and shame-based motivational mechanisms.²³ Rather than judicial evaluations seamlessly constraining judges to mediate more cases or to avoid appellate reversal (C. Minzner 2011b; C. Minzner 2011a), informal practices emerge as responses to such quotas and ultimately exert a greater influence on judges' professional activity.

In addition to illuminating judicial behavior, the CQAS helps us better understand where Chinese judges stand in relation to their colleagues in other areas of the political

²³By "ordinary judges," I refer to "Judges" (*shenpanyuan*) and "Assistant Judges" (*zhuli shenpanyuan*) under the Judges Law. Although higher-ranking judges at the Associate Division Chief (*futingzhang*) level and above can hear and decide cases, their duties are usually focused on the administrative work of running the court and assessing judicial performance. For a similar typology of the within-court hierarchy of Chinese judges, see Ling Li's typology of "Party Leaders," "Leader Judges," and "Frontline Judges" (Ling Li 2012).

system and bureaucracy. Unfortunately, prior work by legal scholars on Chinese courts' assessment of judicial performance has mostly refrained from engaging directly with broader social science research on cadre evaluation in China. Chinese judges are still considered "cadres" (*ganbu*) in the PRC political system—a term that has historically referred to revolutionary credentials of cadres as the leaders of the revolution and the masses the followers (Brødsgaard 2012, 71–72). Although "cadre" has developed a less ideological and more bureaucratic meaning in contemporary China (Brødsgaard 2012, 72), an implicit understanding persists that cadres like judges must be committed to the CPC and subject to the bureaucratic discipline of performance evaluation systems like the CQAS. The evaluation, reward, and discipline of judges, therefore, must be viewed against this backdrop.

Still, Chinese judicial work and judges' understandings of their professional roles differ from those of other cadres with more characteristically political identities and general responsibilities, e.g., county-level mayors or CPC Secretaries (Landry 2008). In their study on village cadres, O'Brien and Li found that, "particularly important tasks such as birth control may...be granted 'veto power,'" where failure on that task means a failed cadre evaluation, "no matter how well the other targets have been met" (O'Brien and Li 1999, 172; Whiting 2004, 102). Although judges are also incentivized to do their jobs efficiently and without mistakes, my interviewees did not report the implementation of draconian performance metrics like "priority targets with veto power" (*yipiao foujue*), described in the literature on political cadres at the village, township, and county levels (O'Brien and Li 1999; Edin 2003; Whiting 2000).

Rather, judicial and court evaluations primarily emphasize the analysis of pre-determined targets on quantified indices (*zhishu*) (Edin 2003, 39; Whiting 2000, 207; Whiting 2004). Court Presidents generally do not face individual "veto targets" that can lead to failure of ordinary judges' or court leaders' performance evaluations. Rather, court leaders and their subordinates are assessed using a litany of crucial indices and

target performance rates that vary in importance based on trends within each particular locality. Hence, Chinese judges face a significantly different set of standards and challenges than their counterparts in local governments and CPC committees, whose evaluations have recently focused upon increasing industrial profits, industrial output, livestock revenue, and the rate of family planning compliance (Whiting 2004, 107; Su et al. 2012).

To address these issues and explain the implementation of the CQAS, this chapter is organized into four sections: (1) a brief history of the emergence of the CQAS; (2) a detailed accounting of the within-court conflict between judges who manage courts (i.e., Court Presidents, Vice Presidents, and other court leaders) and ordinary judges who decide cases; (3) an explanation of how quantified performance assessment has supplanted judicial rewards and punishments; and (4) a section recognizing that the CQAS goes beyond traditional concepts applied to principle-agent problems²⁴ and constitutes a new phenomenon that I call “intra-state legibility”.

BRIEF HISTORY OF THE EMERGENCE OF UNIFIED JUDICIAL PERFORMANCE EVALUATION

Similar to judicial bureaucracies in other countries that fit the traditional model of a civil law system (e.g., pre-WWII Italy, pre-1978 Spain, Chile between 1964-2000)(Hilbink 2007, 224–234), employment as a judge in the PRC is intended to be a career position, with judges starting on the bottom rung and gradually moving up the hierarchical ladder. The newly reformed CQAS, which mediates the movement of judges within this hierarchy, is a systematic, multiple-index performance evaluation system that uses quantitative indices to evaluate the efficiency and accuracy of judges’ and courts’ work performance over time.

²⁴See e.g., the discussion of principle-agent dilemmas, “police patrols,” and “fire alarms” in (McCubbins and Schwartz 1984; Gauri and Brinks 2008).

The cumbersome implementation of judicial evaluation has historically been masked by its straightforward description in the PRC Judge's Law: "Appraisal of judges shall be conducted by the People's Courts the judges belong to...The result of appraisal shall be taken as the basis for award, punishment, training, [or] dismissal of a judge, and for readjustment of his or her grade and salary."²⁵ These formal norms of judicial evaluation reflect the post-Cultural Revolution re-instatement of performance evaluations for use in resolving principal-agent discontinuities in China's political system (Manion 1985, 204–205). In a speech to the Politburo in 1980, Deng Xiaoping called for drastic changes to systems of organizational and personnel management within the Party-State bureaucracy (Manion 1985, 206). A national work conference in 1983 pushed for greater emphasis on assessment of concrete achievements rather than political attitudes or style in the cadre management system, and the CPC Organization Department issued official guidelines for the annual evaluation of party secretaries and government executives in 1988 (Whiting 2004, 104; Zhuang 2010).²⁶

In 1993, the National People's Congress (NPC) formulated general performance criteria for employees in all departments, levels and areas in the country: political integrity, competence, diligence, and achievement (*de, neng, qin, and ji*). Local courts had already begun implementing cadre responsibility systems based on work targets before the State Council issued an "Outline on Deepening the Reform of the Cadre Personnel System" June 2000 (C. F. Minzner 2009, 66; Whiting 2004, 105).²⁷ Soon thereafter, national policymakers began discussing the unification of the judicial cadre evaluation system.

²⁵Judges Law of the PRC (*Zhonghua renmin gongheguo faguanfa*) of July, 1 1995, Articles 19, 22.

²⁶Whiting cites Organization Department Document No. 7 (1988), Central Organization Department Circular Regarding Trial Local Party-State Leading Cadres' Year-End Work Performance System (*Zhonggong zhongyang zuzhibu guanyu shixing difang dangzheng lingdao ganbu niandu gongzuo kaohe zhidu de tongzhi*).

²⁷Whiting cites the Outline on Deepening the Reform of the Cadre Personnel System (*Shenhua ganbu renshi zhidu gaige gangyao*).

The Supreme People's Court's (SPC's) 2nd Five Year Plan ("the Plan"), published in 2005, calls for reforming and "perfecting" (*wanshan*) the organizational structure of courts, judicial adjudication management, and judicial personnel management.²⁸ In Section 7, the Plan supports "establishing a scientific, unified system of assessing adjudication quality and efficiency" that "institutes scientific standards of assessment."²⁹ Other sections of the Plan demand "reforming the evaluation systems for judges and other court personnel," "scientifically designing evaluation items," "perfecting evaluation methods," "unifying judges' achievement evaluation standards and processes," and establishing a robust system of judicial punishment (*chengjie*).³⁰ Clause 32 of the Plan specifically seeks to reform judicial statistics so that courts can establish a system of indices capable of reflecting the work situation in every court level consistently and objectively.

Implementation of these aspects of the Plan was neither launched nor unified nationally until 2008, when the SPC launched a pilot project to formalize a national system of judicial performance assessment and to standardize the various sub-national judicial performance evaluation institutions.³¹ In March 2011, the SPC gave final approval to this pilot, publishing a decisive Guiding Opinion to launch a national system of "case quality" assessment of China's courts and judges.³² According to this Guiding Opinion, courts should emphasize "establishing a scientific and unified system of court evaluation" in accordance with the SPC's 2nd Five Year Plan.³³ Additionally, the

²⁸The Second Five-Year Reform Plan of the Supreme People's Court of China (*Renmin fayuan erwu gaige gangyao*), SPC Document No. 18 [2005].

²⁹Second Five Year Reform Plan of the SPC, Clause 41.

³⁰Second Five Year Reform Plan of the SPC, Clauses 42-43.

³¹In the SPC's 2008 Provisional Opinion on this issue, this pilot project was referred to for the first time as "case quality assessment work." See Circular on SPC Publication of the "SPC Provisional Guiding Opinion Regarding Launching Case Quality Assessment Work," SPC Document No. 6 [2008]; (J. Zhang 2011).

³²"SPC Guiding Opinion Regarding the Launching of Case Quality Assessment Work," (*Guanyu kaizhan anjian zhiliang pinggu gongzuo de zhidao yijian*); (Ying 2011); SPC Doc. No. 109 [2012], "Circular Regarding the 2011 National Courts Case Quality Assessment Situation."

³³2011 Guiding Opinion, Article 1.

Guiding Opinion states that judicial evaluation systems should be based on assessment indices (*pinggu zhibiao*) that establish a “quantified model of assessing judicial quality.”³⁴

The specific details of each locality’s implementation of the system can vary, but a persistent pattern surfaced in interviews: judges’ primary motivation is to obtain promotion, which requires high scores on the CQAS evaluations; to obtain high CQAS marks, judges must not only demonstrate efficiency by resolving cases quickly, they must also demonstrate accuracy by posting low levels of reversal on appeal.³⁵ Not surprisingly, this dual emphasis on both speedy and accurate dispute resolution can put judges in a bind such that one desideratum must be sacrificed to attain the other. The pressures inherent in the CQAS affect both court leaders, whose primary task is managing and organizing courts, and ordinary judges, whose primary responsibility is to resolve legal disputes through the litigation process.

In the words of one judge writing for an internally circulating court journal in Shanghai, the CQAS can be thought of as a “health check form” (*tijian biao*) for courts, and the cumulative (*zonghe*) indices that evaluate courts and court divisions as collectives can be thought of as a “conductor’s baton” (*zhahui bang*) (J. Zhang 2011). Although “every level court can, according to the major points emphasized, adjust the weight given to their specific assessment indices,” the SPC consolidates its duty to unify judicial evaluations by maintaining broad authority to adjust the content and relative importance of each index “when appropriate” (*shishi*).³⁶ Additionally, the Guiding Opinion stipulates that judicial evaluations under the CQAS are administered *via* “one-level down” principles: “the court at one level above is responsible for organizing and leading

³⁴2011 Guiding Opinion, Article 1.

³⁵PR2013-53, *judge, Shanghai, May 2013*; PR2013-5, *judge, Shenzhen, January 2013*; PR2013-51, *judge, Chengdu, May 2013*.

³⁶2011 Guiding Opinion, Articles 13-14.

the court one level below in assessment work, and can, regarding their own court and the courts in their jurisdiction, advance case quality assessment work.”³⁷

THE BOUNDARY BETWEEN BOSS AND WORKER: THE COLLECTIVE NATURE OF COURT LEADER PERFORMANCE EVALUATION IN CHINA

Within-court tension between Court Presidents and the judges who decide the vast majority of legal disputes in China shapes the institutional incentives affecting judicial decisions in the overwhelming majority of legal disputes heard in Chinese courts. Court leaders such as Court Presidents (*yuanzhang*) and Vice Presidents (*fu yuanzhang*) are responsible for court management, and their chances for promotion are calibrated by the CQAS scores collectively produced by the judges and court divisions under their direction. The CQAS incentivizes court leaders to obtain the highest production and efficiency from each judicial worker within their courts.

The formal source for these incentives is the Guiding Opinion, which states in Article 1 that court leaders are evaluated by aggregated indices regarding the performance of their court and the subordinate judges and units within that court’s jurisdiction.³⁸ Aggregating the performance scores of individual judges under the CQAS allows political elites to assess the performances of individual court divisions and courts as collectives by comparing the similar units across jurisdictions and broader localities.³⁹ Indeed, the comparative rankings are explicitly mandated by the SPC Guiding Opinion: “For every half-year and year-long period, the SPC will engage in analysis of assessment statistics and indices and publish an ‘All-Country Case Quality Analysis Report’; engage in summarization (*zongjie*) of Higher-Level Courts, Intermediate-Level Courts, and Basic-Level [i.e., first-instance] People’s Courts’ case quality situations, and at regular

³⁷2011 Guiding Opinion, Article 16. Several scholars have discussed the operation of “one-level down” principles in greater depth (e.g., O’Brien & Li 1999, 171-176; Landry 2008, 48-53).

³⁸2011 Guiding Opinion, Article 1.

³⁹Examples of similar, comparable courts would be all first-instance District Courts in a municipality or all Intermediate Courts in a given province or region.

intervals provide feedback (*fankui*) regarding every level court's case quality assessment situation."⁴⁰

Further, Section 4 of the Guiding Opinion informs courts that "Case Assessment Computer Management Software is issued in unified fashion by the SPC," and every level court should use this software to publish documents, reports, and statistical reporting sheets" at regular intervals and according to SPC requirements.⁴¹ Using the CQAS software, the SPC and High Courts throughout China distribute cumulative court and divisional index results, upon which lower levels of the court system should rely to "guarantee the objectivity of the assessments." CQAS assessment results thus become "the cumulative reflection of People's Courts' adjudication work situation."⁴²

CQAS reports, internal newsletters, and computer software reveal how the CQAS is interpreted and implemented for several local research sites, pressuring court leaders and ordinary judges in those localities. For example, spreadsheets in Zhejiang province and in Shanghai list the CQAS performance ranking for each court - from the Basic Level to the High Court - on specific indices.⁴³ In Shenzhen City (Guangdong Province), the Guangdong Provincial Court's Analysis of the 2011 CQAS Primary Index Situation was drafted in response to cross-provincial analysis and "feedback" provided in the SPC's 2011 Report Regarding the 2011 Case Quality Assessment Situation for Courts Throughout the Country. The Analysis in Guangdong High Court's Report, as approved by Guangdong High Court President Zheng E and Vice President Chen Huajie, explicitly discusses Guangdong Province's cumulative CQAS in comparison with other court systems throughout the country.⁴⁴

⁴⁰2011 Guiding Opinion, Article 24.

⁴¹2011 Guiding Opinion, Articles 20, 23. In the wake of the Guiding Opinion, local courts have issued their own local Guiding Opinions implementing the SPC Opinion (e.g., Zhejiang High Court 2013).

⁴²2011 Guiding Opinion Article 17, 27.

⁴³PC2013-67, judge, Shanghai, July 2013 and PC2012-30, judge, Wenzhou, October 2012.

⁴⁴PC2012-23, judge, Shenzhen, September 2012.

Consistent with the spreadsheets from Zhejiang and Shanghai, court leaders in Guangdong are specifically cognizant of their own court's relative CQAS ranking relative to other similar courts. In Shanghai, court-specific publications note the importance of comparing indices that have met targets, that nearly met targets, and those which displayed a clear disparity with targets to understand an overall court's combined quality and efficiency (*zhixiao*) (Zhou 2011). With the CQAS providing greater variety and comparability of statistical feedback, higher-level principals possess more detailed information regarding lower-level agents' performance, increasing overall bureaucratic capacity of the court system (Scott 1999; *see also* McCubbins and Schwartz 1984; He 2009).

Although "priority targets with veto power" that are used in other government units (c.f., O'Brien and Li 1999) are not a prominent feature of judicial performance evaluations, other aspects of the CQAS reflect patterns of bureaucratic management in other PRC bureaucratic units. Instead of an isolated focus on limiting reversals of judgments on appeal (See e.g., Minzner 2011a), local court performance evaluation systems under the CQAS have instead informally emphasized a specific set of indices, similar to the practice of "hard targets" (*ying zhibiao*) observed by other scholars of China's bureaucracy. As Whiting describes the term, "hard targets" are a byproduct of the excessive number and variety of tasks evaluated through performance-based measures, which force higher-level officials to identify primary sets of targets that leaders actually consider critical to success during appraisal (Whiting 2004, 116; Y. Wang 2014). In Chinese courts, the term for "hard target" seems to vary by locality, as Guangdong judges use the term "core targets" (*hexin zhibiao*), whereas a judge interviewee referred to "first class targets" (*yilei zhibiao*) when discussing similarly important indices.⁴⁵ Generally speaking, however, mediation is not emphasized as strongly as it was during

⁴⁵PC2013-70, judge, Shanghai, October 2013; PC2012-23, judge, Shenzhen, September 2012.

the 2008-2013 tenure of former SPC President Wang Shengjun⁴⁶; rather, general imperatives to resolve cases quickly and correctly operate in complementary and combined fashion, without one or the other establishing fundamental priority (*cf.* Minzner 2009; Minzner 2011a).⁴⁷

Table 2.1 summarizes the important indices that were most frequently identified by interviewees as equivalent to “hard targets” under the CQAS:

⁴⁶*PC2013-56, judge, Shanghai, June 2013; PC2013-51, judge, Chengdu, May 2013.*

⁴⁷*PC2013-22, judge, Shanghai, March 2013; PC2013-56, judge, Shanghai, June 2013; PC2013-1, judge, Shenzhen, January 2013; PC2013-38, judge, Chengdu, April 2013.*

Table 2.1. Selection of Indices Deemed Important in Chinese Lower Courts' Case Quality Assessment System, 2008-2013

Case Quality Index Type	Case Quality System Index Name	Effect of Higher Scores on Index
"Fairness"	"Rate of First-instance Cases in which Judgment Corrected on Appeal (mistake)" (<i>yishen panjue anjian bei gaipan fahui chongshenlü</i>)	negative
	"Rate of First-instance Cases Reversed and Remanded" (<i>shengxiao anjian beigaipan fahui chongshenlü</i>)	negative
	"Rate of Judgments Corrected on Cases in Effect at First-instance level" (<i>shengxiao anjian gaipanlü</i>)	negative
"Efficiency"	"Average Cases Cleared Per Judge Per Year" (<i>fayuan nianrenjun jie'an shu</i>)	positive
	"Rate of Cases Resolved Within Statutory (Normal) Time Limits" (<i>fading (zhengchang) shenxiaonei jie'an lü</i>)	positive
	"Rate of first-instance cases in which the simplified procedure is used" (<i>yishen jianyichengxu shiyong lü</i>)	positive
	"Index of resolving cases in balanced time throughout a year-long work cycle" (<i>jie'an junhengdu</i>)	positive
"Impact"	"Rate of first-instance cases in which neither re-trial nor appeal are sought" (<i>yishen fupan xisulü</i>)	positive
	"Rate of Mediation" (<i>tiaojielü</i>)	positive
	"Rate of Case Withdrawal" (<i>tousulü</i>)	positive
	"Rate of Citizen Petitioning Against Court" (<i>xinfang tousulü</i>)	negative

Sources: PC2013-57, judge, Shanghai, June 2013; PC2013-67, judge, Shanghai, July 2013; PC2013-51, judge, Chengdu, May 2013; PC2013-66, judge, Shenzhen, July 2013; PC2012-23, judge, Shenzhen, September 2012; 2011 SPC Guiding Opinion.⁴⁸

Consistent with a finding that a limited number of CQAS indices serve as hard targets in Chinese courts, judges stated during interviews that although some CQAS

⁴⁸Interviewees indicated that the "impact" category evaluates whether judicial decisions have resulted in social or mass instability. Additionally, this table refers to "hard targets" or quotas related to rendering judgments in legal disputes and does not include targets for other functions assessed in Chinese courts, e.g., enforcement of judgments.

indices listed in the 2011 Guiding Opinion appear to have equivalent weight *on paper* with indices listed in Table 2.1, they are unimportant in the overall scheme of the CQAS. For example, an index labeled “Degree of Public Satisfaction” is listed in the Guiding Opinion alongside the other “Impact” indices in Table 2.1. The Guiding Opinion notes that “Assessment of the degree of public satisfaction can be collected according to needs from survey questionnaires given to people’s congress representatives, members of consultative committees, clean government supervision personnel, parties to litigation and their legal representatives, which are administered by court organizations at every level and entrusted private civil research organs.”⁴⁹ However, judges indicated that court leaders did not consider this “public satisfaction” index critical in judicial evaluations because it has proven impossible to measure “public satisfaction” reliably using the methods spelled out in the Guiding Opinion.⁵⁰ Similarly, the index for “rate of immediate enforcement of judgments” is listed in the 2011 Guiding Opinion as an Impact index, but judicial interviewees stated that the “rate of immediate enforcement of judgments” has little value and is never relied upon by court leaders under the CQAS because judgments are so rarely “immediately enforced.”⁵¹ Thus, even in a recently unified system like the CQAS, informal norms have emerged to distinguish between the indices suggested by the SPC and those that “really matter” at the local level.

More informally, the spreadsheets and reports that comprise the formal system’s ranking of courts, judges, and court leaders make explicit which courts are performing well in the eyes of the system. These practices of discipline and shaming can be even

⁴⁹2011 Guiding Opinion, Article 18(2).

⁵⁰PC2013-49, judge, Shanghai, May 2013; PC2013-56, judge, Shanghai, June 2013.

⁵¹PC2013-53, judge, Shanghai, May 2013; PC2013-56, judge, Shanghai, June 2013; 2011 SPC Guiding Opinion, Article 10.

more powerful influences over judges' lives than formal factors alone.⁵² Because the court system publishes unvarnished quantitative rankings of the performance of each court in a jurisdiction and each judge in a court, unsuccessful court leaders can be shamed by poor showings on the rankings and become motivated to improve their courts' and their own individual performance. Court leaders are constantly interacting with each other through judicial conferences and various other social networking events; as one of my interviewees mentioned, travel to administrative meetings can keep court leaders away from their "home" courts for more than 200 days per year, leading to the oft-repeated criticism within courts that court leaders "should hold fewer meetings and instead handle more cases" (*shao kai hui, duo ban'an*). Under these professional circumstances, CQAS rankings become important status markers in the social lives of court leaders.⁵³ Further, when SPC rankings are particularly favorable for a given local court system, the results often find their way to the public press. For example, an article entitled "Shanghai Courts' Judicial Fairness Index and Transparency Level Are Highest in the Country" was published in the Liberation Daily (*Jie'fang Ribao*) and then reprinted in People's Court News (*Renmin Fayuanbao*), stating, "According to SPC statistics, Shanghai Courts' Judicial Fairness Indices have for five consecutive years ranked first among all the country's courts" (Guo 2013). In this way, courts—and court leaders—at the high, intermediate, and basic levels are continuously and visibly compared using the CQAS, affecting their professional and personal status.

⁵²PC2013-65, judge, Foshan, July 2013.

⁵³PC2013-62, judge, Wenzhou, July 2013.

QUANTIFIED ASSESSMENT OF ORDINARY JUDGES AND THE SALIENCE OF INTRA-STATE LEGIBILITY

Ordinary Judges' Perspectives in Urban China

Individual Chinese judges exhibit reservation regarding the trend towards quantification, perceiving a discrepancy between measuring company bottom lines and acts of governance. Still, the true power of quantitative assessment lies in its influence on subjectivity itself, as judges tend to accept CQAS performance scores as legitimate assessments of their own professional merit, resonating with the expansion of quantitative assessments in various professional contexts around the world (Merry 2011, S88). Individual judges suggested in interviews that it is not merely the CQAS evaluation itself that creates professional pressure; rather, individual judges' self-evaluations against peers motivate them to obtain better scores. Every judge's annual evaluation score (*niandi kaohe chengji*) relies on broad aggregations of CQAS measures, referenced during within-court competitions between colleagues for promotion to vacancies within courts.⁵⁴

It was telling, then, that an interviewee emphasized the importance of “pretty” (*piaoliang*) quantitative scores in their work and for judicial promotion prospects.⁵⁵ A different judge, when asked whether the court leaders post rankings to encourage everyone to work harder, replied, “No, you can't call it encouragement (*guli*), it's actually pressure (*yali*), and we feel the pressure because it's embarrassing to be ranked lower. Of course we know it doesn't really have much of a material impact, but lower performance is just embarrassing and makes us want to do better.”⁵⁶

Conversely, ordinary, case-deciding judges frequently complain that the system assumes all aspects of judicial performance can be quantified and measured. As one

⁵⁴PC2013-3, judge, Shenzhen, January 2013.

⁵⁵PC2013-62, judge, Wenzhou, July 2013.

⁵⁶PC2013-65, judge, Foshan, July 2013.

judge from Wenzhou put it: “We are not workers in a factory, nor are we workers in a company, so a judge’s performance cannot simply be measured by production metrics. There are many aspects of judicial performance that cannot be measured.”⁵⁷ Courts’ limited abilities to make sense of a morass of quantitative indices has also led to a noticeable shift towards adjudicating cases quickly, rather than avoiding reversal on appeal (*see* Minzner 2011). A judge from Shanghai explained that by focusing primarily on the speed of adjudication, the CQAS distorts the reality of judging, in which many factors including the technical or legal complexity of a case, or scheduling difficulties, can influence the time needed to resolve a dispute.⁵⁸ As observed elsewhere, Chinese judges perceive the tensions inherent in applying numerical measures to complex phenomena, glossing over context in pursuit of comparability, classification, objectivity, and scientific assessment (Merry 2011, S85).

Not surprisingly, judges are fond of discussing the pressure of the system on their daily lives. One judge was eager to share a parody song, circulating on Chinese social media (e.g., *Weibo* and *Weixin*). Sung by an “Entire Corps of Judicial Cadres,” the song is set to the melody of the popular Chinese song “Because of Love,” and the song opens with the lyrics, “I give you the whole court report/Look at last month’s rankings/My dreams are interrupted/By the need to resolve more cases...” Continuing with the judge-singer pledging “to go crazy working hard” and bemoaning work that makes “young judges age beyond their years,” the parody concludes with hyperbole: “When the deadline comes, some will die on the battlefield/Not dead—only injured *^_^*.”⁵⁹

⁵⁷PC2013-62, judge, Wenzhou, July 2013.

⁵⁸PC2013-22, judge, Shanghai, March 2013.

⁵⁹2013-63, judge, Wenzhou, July 2013.

This song parody, complete with concluding emoticon signifying stress or tension, captures the pressures Chinese judges face: heavy caseloads, under increasingly strict surveillance, with one's CQAS scores laid bare on the "whole court report." By contrast, the parody does not mention any desire to obtain performance bonuses or avoid fines. Indeed, even some court leaders have recognized problems in focusing too heavily on statistical indices. Some local court leaders in Shanghai have urged courts to avoid problems created by "too easily fluctuating numbers" (*fuzao shu*) or relying only on numbers (Zhou 2011, 14–15).

Beyond Police Patrols and Fire Alarms: "Intra-State Legibility" and the Principal-Agent Dynamic

Even as lower-ranking judges bristle at its stripping away of the complexities of judicial work, the CQAS remains a powerful disciplinary tool because, as noted above, judges fold their own self-reflexive assessments of their professional worth into its highly visible results. As these lived experiences of Chinese judges are distinct from state principals' use of "police patrols" or "fire alarms" to monitor the performance of local agents, the CQAS thus exceeds grand projects to quantify, rank, and compare governance and civil society programs (McCubbins & Schwartz 1984; Gauri and Brinks 2008; Merry 2011). Many modernizing states have used similar tactics to render "legible" and exert greater political authority over subject populations (Scott 1999). Notably, however, the PRC central government and the Supreme People's Court are employing this system to govern the behavior of actors working *within and for* the state, rather than among a subject population. Indeed, more than anything else, the CQAS showcases the center's desire to command and control its unruly bureaucracy through quantitative and visible mechanisms of supervision.

Whereas in the past, courts simply reported aggregate numbers from lower levels (and individual indicators could easily be ignored), there has been an abrupt and extensive clarification and quantification of the system since the SPC Provisional Guiding Opinion on the CQAS was issued in 2008.⁶⁰ A Chengdu judge stated that before 2008, there were hardly any quantitative indices, and the system mainly used a single metric—whether cases were reversed on appeal—to assess the quality of courts and judges (*cf.* Minzner 2011).⁶¹ Another judge in Guangdong noted that in his court, as opposed to the near-constant surveillance under the unified CQAS, quantitative reports on courts’ and individual judges’ performance used to come only once per year, much like the work reports given by local courts to NPC branches at corresponding levels throughout the country. Court leaders have also become more focused on the CQAS because it gives them specific numbers that can be referenced in pressuring subordinate judges.⁶²

Judges in the Basic and Intermediate Courts receive monthly internal newsletters assessing the relative performance of individual judges, court divisions, and courts as a whole.⁶³ Individual judges’ and court divisions’ scores are also readily available to all court personnel via computer software on each court’s intranet (*neibuwang*). In a Shenzhen court, for example, a grid on the court intranet displays the “Half-Year Court ‘Frontline Soldier Report’ for Every Internal Court Unit Reaching Target Situation,” which shows performance statistics across several courts and within-court divisions and allows all court personnel to have constant, almost real-time information regarding each

⁶⁰PC2013-63, judge, Wenzhou, July 2013; PC2013-57, judge, Shanghai, June 2013.

⁶¹PC2013-60, judge, Chengdu, July 2013.

⁶²PC2013-62, judge, Wenzhou, July 2013.

⁶³PC2012-14, judge, Wenzhou, August 2012; PC2013-53, judge, Shanghai, May 2013; PC2012-23, judge, Shenzhen, September 2012.

judge's work.⁶⁴ These reports detail whether judges and internal court units meet pre-determined values on CQAS index targets, with scores calculated under a parallel system, the Target Management Responsibility System (TMRS). A specific target score is assigned for each CQAS index, with indices on which the court fell short highlighted in red. Each division in the Shenzhen court was assessed over a six-month period regarding the rate of cases that were reversed and remanded on appeal. The goal was to avoid exceeding 12% of cases reversed and remanded on appeal. In one particular period, 23.64% of cases resolved by this division had been reversed by the intermediate court. Given that the division's performance on this index was worth 9 points, the division's failure to meet the target resulted in their receiving only 7.81 out of a possible 9 points on the cumulative performance assessment system for their court.⁶⁵

The TMRS rules constitute the mechanism by which hard target indices are enforced upon individual, ordinary judges. A Wenzhou judge explained that in his court, points as calculated under the TMRS rules (*banfa*) determine judges and court leaders' promotion opportunities,⁶⁶ but consistent with the lack of "priority targets with veto power" reported by interviewees, none of the hard targets indices is so important that a low score on that one measure results in automatic failure or termination of employment—especially if the mistake only occurred in a small proportion of cases handled.⁶⁷ As several interviewees indicated, judges only lose their jobs if they are

⁶⁴PC2012-22, judge, Shenzhen, September 2012.

⁶⁵PC2012-23, judge, Shenzhen, September 2012.

⁶⁶PC2013-62, judge, Wenzhou, July 2013.

⁶⁷PC2013-64, judge, Shenzhen, July 2013; PC2013-51, judge, Chengdu, May 2013; PC2013-53, judge, Shanghai, May 2013; PC2013-4, judge, Shenzhen, January 2013. Interviewees in Wenzhou and Shanghai both stated that "party style and clean government" (*dangfeng lianzheng*) evaluations are mere ritual, and the only evaluations that practically influence promotion opportunities are the "professional" (*yewu*) evaluations. PC2013-62, judge, Wenzhou, July 2013; PC2013-69, judge, Shanghai, July 2013.

investigated for a serious crime like bribery.⁶⁸ Instead, if a given judge's performance on a particularly important index is substantially lower than that of the other judges in the same court, it is possible that he or she may face a fine, a demotion, a loss of nominal bonus pay, or a transfer to a different position within the court.⁶⁹ Similar to courts in Russia, rising caseloads and increased deadline pressure raise the probability of judicial error when deciding complex civil and economic cases (Hendley 2013, 1), prompting the PRC courts to continue including "reversal on appeal" among the many performance indices. Hard targets increase the pressure on Chinese judges, enhancing the self-evaluating character and intra-state legibility of the CQAS.

INTRA-STATE LEGIBILITY SUPPLANTS FORMAL REWARDS AND PUNISHMENTS

With quantified, highly visible performance measures and their embedded mechanisms of self-discipline taking center stage under the CQAS, the other nominal, performance-related bonus payments and fines designed to motivate judges have been rendered obsolete. Nonetheless, the SPC has continued to issue detailed rules designed to discipline, motivate, and reward judicial cadres:⁷⁰

Bonus standards shall be implemented, according to rank, for personnel-awarded judicial bonuses; for every level of judge, the following bonuses shall be awarded: for every Chief Major Judge (*shouxi dafaguan*), award ¥340 (approximately \$54 at ¥6.3/US\$); for every First-level Major Judge (*yiji dafaguan*), award ¥318; for every Second-level Major Judge (*erji dafaguan*), award ¥298; for every First-level High-level Judge (*yiji gaojifaguan*), award ¥278; for every Second-level

⁶⁸PC2013-56, judge, Shanghai, June 2013; PC2013-67, judge, Shanghai, July 2013; PC2013-67, judge, Shenzhen, July 2013; PC2013-51, judge, Chengdu, May 2013.

⁶⁹PC2013-56, judge, Shanghai, June 2013; PC2013-70, judge, October 2013.

⁷⁰Supreme People's Court Circular Sent to Personnel Department and Finance Department 'Regarding the Circular Regarding the Trial Implementation of Judicial Adjudication Supplemental Pay' (*Zuigao renmin fayuan zhuan'fa renshibu, caizhengbu 'guanyu shixing faguan shenpan jintie de tongzhi'*) of August 7, 2007 (SPC Doc. No. 26 [2007]); Personnel Department and Finance Department Circular Regarding Implementation of Judicial Adjudication Bonuses (*Renshibu, caizhengbu guanyu shixing faguan shenpan jintie de tongzhi*) of July 31, 2007 (Personnel Department Doc. No. 105 [2007]).

High-Level Judge (*erji gaoji faguan*), award ¥262; for every Third-Level High-Level Judge (*sanji gaojifaguan*), award ¥246; for every Fourth-level High-level Judge (*siji gaoji faguan*), award ¥233; for every First-level Judge (*yiji faguan*) award ¥220; for every Second-level Judge (*erji faguan*), award ¥210; for every Third-level Judge (*sanji faguan*), award ¥200; for every Fourth-level Judge (*siji faguan*), award ¥190; for every Fifth-level Judge (*wuji faguan*), award ¥180 元 [approximately \$28 at ¥6.3/US\$].⁷¹

The Judges' Law of China states, "result of appraisal shall be taken as the basis for award, punishment, training, dismissal of a judge, and for readjustment of his or her grade and salary."⁷² Interviewees indicated, however, that performance-based awards, fines, and categorization carry little weight outside of the quantified CQAS evaluation itself and take a backseat to within-group shame or pride arising from the visibility of scores. The bonuses—often seen as arbitrary and unrelated to performance—are paltry to begin with, like those referenced above, and others can go as low as ¥10 (approximately US \$1.58). A judge in Shenzhen explained that even judges in his court who achieve high performance scores receive a modest year-end bonus that usually only adds up to ¥1,000 (approximately US \$158) – so little that, "if you treat your friends to one dinner, then your bonus is gone, so the bonus is basically nothing."⁷³ Another judge was even more direct: "The reason we want good CQAS scores isn't because of money (bonuses). It's because of face" (*mianzi*).⁷⁴ Similarly, a Shanghai interviewee, who did not take fines for "mistake" cases seriously, was surprisingly concerned with the loss of face that came with a "mistake case". For him, one or two "mistake" cases bore no real consequences—except for the shame in interactions with colleagues.⁷⁵ Another judge

⁷¹Personnel Department Doc. No. 105 [2007].

⁷²Judges' Law, Articles 19, 22.

⁷³PC2013-66, *judge, Shenzhen, July 2013*.

⁷⁴PC2013-65, *judge, Foshan, July 2013*. Many scholarly works that describe the phenomenon of "face," which used here refers loosely to within-group or social status (see e.g., Ho 1976).

⁷⁵PC2013-22, *judge, Shanghai, March 2013*.

concluded that reversals on appeal do not substantially affect judicial decision-making, as their pay usually will not get docked (or docked only a negligible amount). Rather, there are three difficulties when a case gets reversed: loss of face, “bothersome trouble” (*mafan*)—which means a scolding or shaming by one’s boss—and finally, getting reversed many times could ultimately affect future promotion opportunities.⁷⁶

Judges consider the bonus system especially patronizing because their salaries are relatively low in comparison to lawyers in the burgeoning private sector. Civil servants’ salaries have not increased since 2008 (Xinhua News Agency 2013b).⁷⁷ Even at High or Intermediate Courts, court leaders cannot unilaterally increase base salary for good performance⁷⁸ as, “no locality...can adjust bonuses on their own.”⁷⁹ As a recent Xinhua article noted, one of the benefits of working for the state, despite the higher wages available in some private-sector companies (*qiye*), is that “government workers’ salaries are stable and not as though they have nothing to eat” (Xinhua News Agency 2013b). Still, as an SPC judge pointed out: “in some small countryside towns, yes, ¥70-80,000 is a comfortable salary, but it’s extremely difficult in a place like Beijing with the rising cost of living. The fluctuation of housing, food, and child rearing is so rapid that it is hard to say whether this salary is enough today, let alone tomorrow.”⁸⁰ As one Shanghai judge summed up his valuation of bonuses: “For example, in July and August, the

⁷⁶PC2013-57, judge, Shanghai, June 2013.

⁷⁷PC2013-56, judge, Shanghai, June 2013; PC2012-31, judge, Wenzhou, October 2012. Judges have traditionally been considered equivalent to general civil servants in China, although reforms introduced in 2014 explore the possibility of creating a separate, parallel personnel management system for judges. In the Conclusion chapter, I address these reforms in more detail.

⁷⁸PC2013-54, judge, Shanghai, June 2013.

⁷⁹Personnel Department Doc. No. 105 [2007].

⁸⁰PC2013-52, judge, Beijing, May 2013.

Shanghai municipal government might give us some supplemental money to help civil servants deal with the summer heat, maybe to buy something like ice cream.”⁸¹

Judges also did not particularly fear fines or the withholding of salary, as a judge’s base pay (*jiben gongzi*) flows from a judge’s status as a civil servant, and is not affected by the evaluation system. As one Shanghai judge explained (highlighting the tension between enforcing standards of judicial “accuracy” and, at the same time, piling on judicial caseloads):

Nobody can meet the caseload deadlines required under the CQAS. You could ask Xi Jinping to come and be a judge, he couldn’t do it either...So, if the higher court reverses one of the cases I decided, it won’t really affect my chances for promotion. Also, there is not that much pressure from the fines given for reversal on appeal—I will get fined ¥200RMB (approximately \$30 USD) for a reversed case or a ‘mistake’ case, and it’s a fixed-amount fine. But in my view, one mistake case is no problem. There are a lot of these cases.⁸²

Quantified assessment has also rendered several older categories of judicial performance superfluous. Although Article 22 of the Judges Law calls for courts to classify judges as excellent (*youxiu*), competent (*chenzhi*) or incompetent (*bu chenzhi*) based on professional performance, many interviewees indicated that the overwhelming majority of judges receive a “competent” classification, such that when opportunities for promotion arise, their chances can be determined by slight variations in CQAS scores. For example, according to interviewees in Foshan and Shenzhen (both in Guangdong Province), approximately 10% of judges are rated “excellent” during annual evaluations and 90% are rated “competent”; unless someone is investigated for judicial corruption, usually no one is rated “incompetent.”⁸³ In Wenzhou, Zhejiang Province, a judge stated

⁸¹PC2013-54, judge, Shanghai, June 2013.

⁸²PC2013-22, judge, Shanghai, March 2013.

⁸³PC2013-64, judge, Shenzhen, July 2013; PC2013-66, judge, Shenzhen, July 2013.

that he had “never heard of” an “incompetent” judge; instead, their court has a modified system by which another category is added to the “competent” status, which is called “relatively good,” denoting an upper echelon of competence.⁸⁴ Some jurisdictions also create a further distinction between “competent” and “basically competent” (*jiben chenzhi*), a distinction that is designed to affect judicial promotion opportunities. Shanghai interviewees also indicated that judges generally tend to be categorized similarly (*mei yi ge ren chabuduo*).⁸⁵ Across the board, the quantified and visible CQAS, combined with informal discipline and shaming, provides a new and extremely powerful set of tools to pressure judges socially and institutionally to succeed professionally. They are made legible actors within the state, and thus subject to far more intrusive and effective top-down control—in a way they never were before—through the application of this new system. Crucially, this happens because of the internalized and *subjective* appropriation of the CQAS as a measure of judges’ self-worth, rather than through the state’s use of it as an *objective* assessment measure.

CONCLUSION

In other legal systems drawing heavy influence from the civil law tradition, judges are secretly supervised not only for their official performance, but also for their private conduct, fostering “anxious dependence on the higher echelons of the judicial hierarchy” among subordinate judges (Hilbink 2007, 229; DiFederico and Guarnieri 1988). In China, by contrast, ubiquitous *and highly visible* CQAS rankings, statistics, and scores create public and transparent markers of status within urban China’s court system, largely desensitizing judges to the system’s formal carrots and sticks. This does not indicate that judges ignore the CQAS or the performance evaluations lack influence

⁸⁴PC2013-62, judge, Wenzhou, July 2013.

⁸⁵PC2013-67, judge, Shanghai, July 2013.

in judges' behavior. But instead of judges steadfastly following formal rules, horizontal peer group shaming motivates judges to improve their CQAS scores and obtain within-group success. While other states have used similar tools to achieve hierarchical control over subject populations, the quantification, hard targets, and rankings of the CQAS in China have instead been used to produce increased supervisory capacity *within the Chinese state* over the PRC's local court system (Scott 1999). Because Chinese judges—like many of their counterparts in civil law system—have historically remained in the judicial system for their entire careers, they are especially susceptible to both mechanisms of control and motivation, as specifically facilitated by an increasingly quantified and visible reporting system that is manifested in practice via informal discipline and shaming (see Garoupa and Ginsburg 2009).

These findings highlight court leaders' vested interests in their subordinates' performance, as well as the competing demands of bureaucratic evaluations at different levels of the judicial hierarchy within courts. This account moves beyond previous studies of cadre evaluation in China, which have focused on tensions between territorial leaders and citizens, and engages these studies by examining which features of cadre evaluation in courts and other bureaucratic units are similar or dissimilar (O'Brien and Li 1999; Whiting 2004; Edin 2003). More broadly, these findings are consistent Hilbink's and others' that bureaucratic reforms can shape judicial behavior in authoritarian regimes (Shapiro 1981; Hazard 1969; Hilbink 2007). Thus, greater intra-state legibility accruing from the bureaucratization of the CQAS goes hand-in-hand with broader reforms that seek to professionalize and de-politicize courts in China. Accordingly, under the unified CQAS, court leaders and ordinary judges in urban areas face professional pressures not from a single source, but from a variety of bureaucratic sources, including rising caseloads, informal shaming and praising, and stagnant rates of judicial pay. Because the

performance evaluation system established under the CQAS sets up different, opposing incentives for court leaders and ordinary judges, the strategies of court leaders are susceptible to change if societal forces influence the availability of productive, qualified judicial workers who are critical to the promotion chances of court leaders.

Chapter 3: High-End Demand for Legal Services and Local Pressure to Professionalize the Judiciary

In a court system exhibiting formal and informal features that render judicial performance legible, allowing political principals to systematically monitor judicial behavior, one might expect judicial career choices and decision-making to flow directly from these top-down bureaucratic mandates like the Case Quality Assessment System (CQAS). However, because the CQAS is designed to be a nationally unified system, it does not provide a sufficient explanation for the local variation in judicial autonomy that I describe in Chapters 1, 4, and 5. This variation emerges from interaction between the constraints of the CQAS and the potential opportunities for alternatives to judicial employment provided by elevated, “high-end” demand for private legal services. With retention of top judges a priority for court leaders aiming to improve their courts’ collective CQAS scores, court presidents and vice presidents reform promotion mechanisms so that they are more competitive, transparent, and routinized. Demand for legal services reaches high-end levels when civil lawyers have greater success in attracting companies as clients and handling financial disputes as the primary type of service provision, rather than representing individual clients. High-end lawyer salaries can far outstrip—by three-fold or more—local judicial salaries, placing meaningful pressure on court leaders to reduce judicial “brain drain” to local law firms. This influence of local legal services markets is a crucial link between local economic development and judicial autonomy that supports my explanation for the emergence of judicial autonomy in specific Chinese urban localities—despite the authoritarian political dominance of the CPC.

THEORETICAL BACKGROUND REGARDING JUDICIAL AUTONOMY AND DEMAND FOR LEGAL PROFESSIONALS

The thesis that the career incentives of strategic judges can influence judicial behavior is not entirely new, as interdisciplinary research on legal professionals in other contexts has also examined this relationship from a variety of angles. Unites States Attorneys' rates of resignation are influenced in part by salary levels (Black, Moffitt, & Warner 1990; Borjas 1982; Boylan 2004), with U.S. public sector employment more attractive in districts with low private-practice salaries (Boylan 2004). In research that has been cited in the Chinese context with respect to government officials' strategic pursuit of promotion opportunities, remunerative adjustments have been used within performance evaluation systems to influence cadre behavior (Whiting 2004, 110). Drawing from theories of behavior within firms (Baker, Jensen, and Murphy 1988), this research analogizes the importance of internal organizational incentives in companies to the behavior of governmental officials within bureaucratic units. Applying some of these insights to better understand the behavior of Chinese judges, I find that ordinary judges who are motivated by material incentives are likely to defect to a law firm career if the public-private salary gap substantially widens and erodes the career stability and potential social service benefits that public sector employment can bring. Absent transparent, merit-based opportunities to advance professionally, judges are likely to act on their material incentives and pursue more lucrative law firm careers.

The interaction between local labor markets for legal professionals and the court system also engages with scholarship on the "legal complex" (Halliday, Karpik, & Feeley 2007). The legal complex has not yet been widely used as a framework to understand legal politics in China, perhaps because this concept usually refers to instances of activist lawyer mobilization. Indeed, comparative judicial politics research that examines

authoritarian regimes focuses on the advocacy of rights lawyers to explain increases in judicial autonomy and activism, and lawyers acting as part of a “support structure” has also been found to be an important factor in producing expansions of rights in liberal democracies (Moustafa 2007; Epp 1998; Vanberg 2001; Carrubba 2009; Staton 2004; Brinks and Gauri 2010).

But the state apparatus has recently cracked down on lawyer activism, especially since 2003, when the State Council’s abolition of the extra-legal “custody and repatriation” system first became the most successful case of activist lawyer mobilization for individual rights in post-Mao China, only to see advocates like Xu Zhiyong subsequently arrested and jailed (Pils 2007; Hand 2007; BBC News 2014). Because lawyers’ political advocacy is thus substantially limited in China, research on the legal profession should focus as much attention on the political effects of rapid re-establishment and privatization of the legal services industry as it does on activist lawyer mobilization. In this way, this dissertation identifies more subtle influences of the legal profession on court politics in authoritarian regimes. As scholars of the legal complex have noted, growth of the private bar can expand power centers outside the state (Halliday, Karpik, and Feeley 2007, 28). Following this general line of thought, I build upon an element of the legal complex that has been under-theorized and under-researched in the extant judicial politics research on authoritarian regimes: the mechanisms by which the privatization and professionalization of lawyers and judges can bring about a more moderate local state.

With court leaders lacking any parallel, unilateral authority to raise salaries for judges—much less for particularly successful or talented judges—providing more professionalized career trajectories is a viable strategy for retaining the core judicial

personnel vital to a court's bureaucratic success as a whole (Jiang 2013).⁸⁶ Eventually, with high-end demand for lawyers' services pushing court leaders' interests toward judicial institutions that are more professionalized and merit-based, the degree of judicial autonomy should rise accordingly. In essence, local court leaders fear "brain drain" most in robust legal service markets like Shanghai, where the legal services market for private legal services essential to commercial activity has boomed.

The claims made in this chapter are supported by interviews with Chinese judges and lawyers conducted during in-country fieldwork from 2012-2014, with official statistics published in the China Lawyer's Yearbook from 2000-2009 providing supplemental evidence designed to verify the claims of my interviewees. I also rely on various other documentary sources and refer to secondary literature on sociology of the professional classes to sketch the historical development and regional variation of China's legal system in the PRC era.

THE FIRST TWO DECADES OF THE POST-MAO LEGAL PROFESSION IN CHINA: RAPID PRIVATIZATION (1979-2000)

Given both the dramatic changes that the legal profession has undergone in the past three decades and lawyers' extensive interaction with courts⁸⁷, it should not be surprising that the legal services market has influenced the courts and the broader legal system in China. The market for legal services has been rapidly expanded and privatized, generating increasingly lucrative opportunities to work as a lawyer in China that would

⁸⁶Although court leaders lack meaningful authority to grant raises to individual judges, promotions raise judicial income according to the pay structure set by the larger civil service personnel system. *PC2013-55, judge, Shanghai, June 2013*. Further, the national government fears that raising the salaries of government officials like judges would create significant public backlash. *PC2013-52, judge, Beijing, May 2013*.

⁸⁷As other scholars and I have observed, a wide variety of legal services firms are located within a few blocks of the courthouse in any large or medium-sized Chinese city, including "law firms" (*lüshi shiwusuo*), "legal firms" (*faliü shiwusuo*) or "legal service firms" (*faliü fuwusuo*), "legal consulting companies" (*faliü zixun gongsi*), and "investigating companies" (*diaocho gongsi*) (S. Liu 2011b, 70).

have been impossible during the Mao era. Only three years after Mao's death in 1976, Jerome Cohen noted, "For two decades China, a country of almost 1 billion people, has had no organized legal profession...The return of the lawyers would be an important signal that Party leaders were preparing to take another step in the direction of legality" (J. Cohen 1979, 359). By 2009, thirty years after Cohen's statement, total national legal service revenues had reached ¥32.45 billion (approximately \$5 billion)(X. Li and Cheng 2013, 64).

Along with the commercial development of the legal profession, the formal status of China's lawyers was re-established after 1978. First, lawyers were not directly revived as a professional class of private practitioners; rather, lawyers were first established as public sector employees before they could be "unhooked" from the state later in the reform era (Lubman 1999, 154).⁸⁸ In 1980, the Standing Committee of the National People's Congress promulgated the Provisional Regulations on Lawyers, which reestablished the organized profession of lawyers after a 23-year period of atrophy and practical disappearance; according to these Provisional Regulations, lawyers were described as "state legal workers," (*guojia falü gongzuo zhe*) and served immediately afterwards as administrative cadres with status comparable to officialdom, with access to classified state materials among their privileges (Alford 1995, 28; Cohen, 1980). During this period, lawyers as state legal workers were employed in "legal advisory divisions" (*falü guwen chu*), which were affiliated with different levels of state agencies or work units (Alford 1995, 28). By the time that the Lawyers Law was promulgated in 1996, lawyers would formally transform from public sector employees into "professionals providing legal services to society."

⁸⁸1980 Provisional Regulations on Lawyers, Article 1.

Between 1979-1984, the names of legal services offices were changed from legal advisory divisions to “law firms” (*faliu shiwusuo*), and by 1986, the majority of law firms had detached themselves from the state (Michelson 2003). The accounting and management of lawyers and legal services organization also underwent substantial institutional innovation during this period, especially with “cooperative law firms” (*hezuosuo*) emerging in 1988. “The main difference between cooperative and state-owned firms was that the former were self-accounting and could hire and fire lawyers freely—they were not part of the state personnel allocation system (*guojia bianzhi*)”; however, all profits had to be returned to the state, and like “collective enterprises,” they operated rather autonomously but retained a socialist view of property rights (Michelson 2003, 64).

Although the privatization momentum in the legal profession was curtailed by the mass departure of foreign investors from China following the 1989 Tiananmen tragedy, Deng Xiaoping revitalized economic liberalization in 1992, calling for both “deepening” of legal reforms and privatization of enterprises during his now-famous “Southern Tour.” Consistent with Deng’s re-distancing China from economic planning, the “partnership firm” was unveiled as part of the post-Southern Tour liberalizing reforms. In contrast to cooperative firms, which ultimately remained state property and whose liabilities were limited to its assets, the lawyers who form partnership firms bear unlimited liability jointly and severally (Michelson 2007, 372). These developments in law firm type during the 1980’s and 1990’s demonstrate that the legal profession in China was first re-constituted as a public sector industry, and was then gradually privatized via the new institutional configurations of the cooperative and partnership law firm types. Standards for lawyer professionalization were also established during this period, as bi-annual national bar examinations began in 1986, annual exams started in 1993, and lawyer and

judge exams were merged into the unified judicial examination in 2001 (S. Liu 2011b, 27).

On this foundation, privatization of the legal profession would continue to accelerate dramatically. During the 1980's and 1990's, the total number of legal service firms in China rose from 3,653 to 9,541, and the number of lawyers rose from 43,530 to 117,260 (Cai and Yang 2005, 117). The official state goal was to license 150,000 lawyers by the turn of the 21st century, but because it was infeasible to expand the state payroll so drastically, privatization of the legal profession emerged as an appealing option (Alford 1995, 30–31). It was in this context that the “unhook” campaign (*tuogou gai zhi*) was launched in 2000, a policy of privatizing the legal profession mandated by the State Council and carried out by the Ministry of Justice (MOJ) and its local units, converting all remaining state-owned law firms to partnerships—the culmination of over ten years of privatization of the legal profession (Michelson 2003, 59, 66). This campaign to privatize the legal service industry was largely successful: whereas in 1991, the state possessed ownership over 98% of law firms, only 22% of firms were state owned by 2002 (Michelson 2003, 66). State-led privatization of Chinese lawyers also rapidly increased the aggregate number of lawyer personnel (*lüshi gongzuo ren yuan*) in China to 122,585 by the year 2000, although this number fell short of the central government's initial goal to license 150,000 lawyers by the turn of the century (Chinese Lawyers Yearbook Editing Committee 2005, 107). Hence, in the first two decades after Mao's death, the Chinese Party-State not only re-constructed its previous public sector legal services industry, but also largely privatized the profession *via* incremental policymaking and swift policy implementation.

THE EMERGENCE OF LOCALIZED MARKETS FOR PRIVATE LEGAL SERVICES (2000-PRESENT)

The first thirty years of China's legal reform has generated a locally differentiated market for legal services, regulated by fragmented state regulatory regimes. The overall institutionalization and privatization of the legal profession has progressed more swiftly in economically developed areas, consistent with associations between economic liberalization, socio-economic development, and judicial autonomy (X. Li and Cheng 2013, 61; Peerenboom 2011). Additionally, since 2000, Chinese lawyers have concentrated in wealthier provinces and large urban centers with robust markets for legal services, e.g., Shanghai and Shenzhen (Peerenboom 2011). This localized development has stemmed largely from policies designed to detach the legal services industry from the public sector, implemented in the late 1990s and early 2000s.

In 1999, the State Council addressed the disordered market for the various "intermediary organizations" (*zhongjie jigou*) for legal services that had emerged by that time, whose legal status, specialized functions, and professional levels differed greatly. When the State Council issued its opinion in 2000 on the Unhooking and Restructuring of Social Organizations Engaged in Economic and Appraisal Activities from Government Agencies, it formally "unhooked" (*tuogou*) intermediary organizations from their affiliated state agencies and "restructured" (*gaizhi*) them in terms of personnel, finance, work scope, and title (S. Liu 2011b, 26). Several measures were also promulgated in 2001 to "cleanse and consolidate" (*qingli zhengdun*) the legal services market, further accelerating lawyers' privatization (S. Liu 2011b, 26). By 2002, 64.46% of Chinese law firms, or 6,880 total firms, had become partnerships, another 1,887 (17.68%) were organized as cooperative law firms, and the number of state-owned law firms had declined to 1,780 (16.68%)(S. Liu 2011b, 26).

Importantly, at the local level, the implementation of the “unhook” and the “cleanse and consolidate” policies varied with local levels of economic development: “Unhooking law firms from the state has been more difficult in the less developed parts of China where demand for lawyer services is lower and law firms are more reliant on support from the local government” (Michelson 2003, 67). For example, in the Western provinces located in China’s geographical interior, law firm privatization policies had a much more diminished effect than those implemented in Beijing: in Jiangxi Province, 124 of 268 legal service firms (46.2%) remained state-owned; in Yunnan Province, 161 of 346 of legal service firms (46.5%) remained state-owned; and in Gansu Province, 95 of 191 legal service firms (49.7%) remained state-owned (Chinese Lawyers Yearbook Editing Committee 2005, 333). Law firms in Shanghai implemented the “unhook” and “cleanse and consolidate” privatization reforms most thoroughly, effectively eliminating all state owned law firms by 2001, when only 2 of 460 law firms were state-owned. Firm ownership patterns in Guangdong (the provincial location of Shenzhen) and Sichuan (the provincial location of Chengdu) continued to reflect public ownership of legal service firms (see Appendix A). Although both Guangdong and Sichuan gradually privatized law firms, Guangdong did so more quickly between 2001 and 2006 and was also home to the highest aggregate number of private partnership firms among the case study sites, with the number of partnership firms in Guangdong province rising from 584 in 2001 to 900 in 2006 (Chinese Lawyers Yearbook Editing Committee 2005; China Lawyers Yearbook Editing Committee 2009).

In the wake of this recent history, few scholars have documented the degree to which the legal services industry in China has become stratified.⁸⁹ To remedy this gap in

⁸⁹There are some exceptions to this general pattern (see e.g., Peerenboom 2011, 132).

the literature, I find that among at least five distinct sub-patterns of the contemporary Chinese legal profession identified by Sida Liu, two types are highly relevant to developed, urban localities: a “High End” market, which serves company and global clients, and a “Battleground” market in which legal services provided to individuals comprise a substantial part of the legal services market (S. Liu 2011a).

As a result, an income gap has emerged between lawyers and the public judicial and governmental sector. Pay scales organized by bureaucratic civil service hierarchies govern income levels for judges, which fall below the median average for the top professions in China, mainly because these salary levels have not been raised since 2008 (Xinhua News Agency 2013b). During interviews, various mid-ranking judges provided figures for their annual income, ranging from ¥70,000-80,000 for an entry-level judicial position at the SPC, to ¥100,000 at the Shenzhen Intermediate Court, and ¥120,000 at the Shanghai Intermediate Court.⁹⁰ These judicial salary figures are consistent with other reported ranges of judicial salary; for example, a recent article written by a county court judge from Guangxi province cited judges in Beijing’s wealthy Chaoyang District as receiving one of the highest salaries in the country, possibly reaching ¥8,000 per month (approximately \$15,483 at ¥6.2/USD in 2013)(Jiang 2013). Additionally, a survey of civil servants salaries in Fujian Province, located on China’s East Coast, found that average judicial salaries were approximately ¥15,000 in 2003, which could have plausibly increased to their current 2013 levels (Fujian CPC Committee Working Group 2003, 75).

An SPC judge told me that judicial salary levels fail to adequately keep up with the spiking costs of living in urban China:

⁹⁰PC2013-52, judge, Beijing, May 2013; PC2013-70, judge, Shanghai, October 2013; PC2012-6, judge, Shenzhen, June 2012.

If you are a young judge and have a child, the cost of living is so high! For example, you know you can't trust the quality of Chinese infant formula, right? So, one should really buy imported formula, which is expensive...One child goes through about 3-4 cans of formula per month and each can costs at least ¥200, so if you're already paying maybe ¥700 per month just on infant formula, and your entry-level judicial salary maybe is only ¥6,000 per month, it's really difficult to get by."⁹¹

By contrast, lawyer income in China has increased dramatically, particularly in local markets where serving corporate clients is the norm. Knowledge that average income for experienced associates in domestic law firms far outstrip judicial salaries in China's High End legal service localities was widespread among the judges that I interviewed. One interviewee described that she had previously served as a judge, but had left her judicial career because she had many other higher paying job opportunities in the Shanghai law firm market.⁹² A different District Court judge from Shenzhen was more effusive:

Even for higher-ranking positions, judicial salary is approximately ¥100,000 (approximately \$16,130) per year, and has not recently been raised, despite the rapid rise in cost of living. I have a classmate from law school who works locally in commercial litigation and IP law. She makes twice my salary, and doesn't have to deal with the pressure of case completion quotas and appellate reversal limits [under the CQAS]."⁹³

According to a 2006 survey of 183 Chinese lawyers conducted by LawInn HR Consulting Co., average income for a mid-level associate (3-5 years experience) working in a domestic firm and holding a PRC degree was ¥248,000; for a high-level associate (6-10 years experience) working in a domestic firm and holding a PRC degree, average income was ¥305,000 (S. Liu 2011b, 136).⁹⁴ A mid-level associate working as a "Legal

⁹¹PC2013-52, judge, Beijing, May 2013.

⁹²PC2012-34, lawyer, Shanghai, October 2012.

⁹³PC2013-3, judge, Shenzhen, January 2013.

⁹⁴The currency exchange rate between the Chinese yuan and the US dollar was approximately 8:1 in 2006.

Consultant” in a foreign firm made an average of ¥350,000, and attorneys with foreign law degrees could earn more than 5 times that figure (S. Liu 2011b, 136). My own interviews with lawyers in firms across Shanghai, Shenzhen, and Chengdu suggest that these income levels are more consistent with what I call a “High End” locality, like Shanghai, where a small sample of experienced associate attorneys told me that their average annual income was ¥350,000. These data from lawyer interviews are summarized in Figure 3.1, as interviewees across localities reported that income is much higher at the experienced associate level in Shanghai and Shenzhen, but comparable to those of judges in Chengdu:

Figure 3.1. Variation in Average Annual Lawyer Income Across Local Legal Services Case Study Cities⁹⁵

	“Battleground”		“High End”
	-----		-----
	<i>Chengdu</i>	<i>Shenzhen</i>	<i>Shanghai</i>
Partners:	¥1,375,000	¥1,900,000	¥1,600,000
Experienced Associate:	¥150,000	¥247,500	¥350,000
Entry-Level Associate:	¥45,000	¥65,000	¥120,500

Among at least five distinct sub-patterns of the contemporary Chinese legal profession identified by Sida Liu, I find two types are highly relevant to developed, urban localities: a “High End” market, which serves company and global clients, and a “Battleground” market in which legal services provided to individuals comprise a substantial part of the legal services market (S. Liu 2011a). The high income levels described by my lawyer interviewees and in the LawInn survey are more likely found in a successful High End corporate practice, whereas lawyers, basic-level legal workers, and other law practitioners face fierce competition for business in “Battleground” legal services markets (see S. Liu 2008; S. Liu 2011b, 70-75, 106-116). Commercial lawyers in a Battleground market must scrape together a client base, as one lawyer practicing in a small Chengdu firm described, “In other places like Shanghai and Guangzhou, lawyers can do bankruptcy and commercial consulting kinds of cases, but here, the cases

⁹⁵Sources for lawyer incomes presented in this table come from interviews with 3 lawyers in Shanghai, 2 lawyers in Shenzhen, and 2 lawyers in Chengdu, all of whom were employed at different law firms within each city. See Appendix B for more detailed information regarding these lawyers’ statements regarding income.

are...‘run-into-problem’ (*pengdao wenti*) cases, where something happened and so you have to say, hey lawyer, come help me.”⁹⁶ These conditions render demand for mid-level lawyers in Battleground legal services markets much less robust.

Liu does not explicitly classify varieties of local law firm development, but I take Liu’s typology and apply it to my three case study cities based on information regarding the local income and revenue of associate attorneys and law firm partners (see Figure 3.1). I classify a “High End” locality as that in which the corporate legal services sector has expanded such that a mid-ranking judge has an opportunity to double or triple her annual income by switching to a law firm career. A mid-ranking judge in China possesses professional experience commensurate with an experienced associate attorney in a domestic Chinese firm (over 5 years of experience) or a China legal consultant in a foreign firm. At this level of experience, there is significant difference between the lawyers I interviewed in Shanghai, Shenzhen, and Chengdu. The average incomes reported to me by attorneys in each locality indicate that incomes at the experienced and entry levels are higher in Shanghai than in Shenzhen, and lowest in Chengdu. Figure 3.1 suggests that incomes for experienced, non-partner level attorneys in Shanghai is greatest among my three case studies, followed by Shenzhen, then Chengdu.⁹⁷ At the experienced associate level, judges possessing 5-10 years of experience could compete for a high-end law firm position above the entry level that is usually reserved for new law school graduates, but would not be considered for partner until establishing a revenue stream.⁹⁸ Instead, interviewees told me that it was more likely that a former judge could enter a law firm, working for a senior partner, but eventually take enough of her own cases and

⁹⁶PC2013-32, lawyer, Chengdu, April 2013.

⁹⁷These figures represent averages of incomes reported to me by attorneys working in Chinese law firms (more detailed information on each interviewee’s quoted income is found in Appendix B).

⁹⁸PC2014-10, lawyer, Shanghai, October 2014.

clients to be considered for partner within 5 years working at the experienced associate level.⁹⁹ This situation threatens the promotion chances of court leaders, who have been quoted in the press as lamenting the large number of judges who resign and accelerate the turnover of productive judges and the judicial “brain drain” problem, despite these judges’ constituting the professional backbone of the legal system (X. Liu 2014).

At the same time, low civil servant salaries might suggest a role for corruption in retaining personnel in local courts. Although the Chinese political system is far from corruption-free (Ling Li 2012), it remains difficult and risky to engage in systematic and long-term corruption, as mid-ranking judges usually cannot expect to receive bribes habitually as a form of “income” because judicial corruption is usually not the unilateral act of a single judge, as bribery usually requires a “middle man” (*zhongjian ren*), a panel of three judges is still required for awarding a lucrative civil damages award, and the CPC’s anti-corruption judicial penalties are highly visible and severe—historically including the death penalty (Sapio 2010).¹⁰⁰

Second, the pursuit of professional career paths and not opportunities for corruption are the main drivers of the majority of cadres’ behavior (see also Burns and Wang 2010, 74, 76). Judges with some experience handling cases are competitive candidates for law firm jobs, and can usually select an alternative career path in a law firm if they are unsatisfied with the pressures of judicial work. My sources indicate that opportunities for more professionalized judicial careers (e.g., competitive mechanisms of judicial promotion) are expanding and that careers within the courts are becoming more

⁹⁹PC2014-10, lawyer, Shanghai, October 2014; PC2014-11, lawyer, Shanghai, October 2014; PC2014-8, lawyer, Shenzhen, October 2014; PC2014-5, lawyer, Chengdu, October 2014.

¹⁰⁰PC2013-56, judge, Shanghai, June 2013. The use of the death penalty for non-violent crimes has, however, declined in recent years.

merit-based.¹⁰¹ Reforming court institutions to produce more autonomous judges makes sense, as judges often choose their careers not based on pure desire for material gain. As one judge in Shenzhen put it, “Although lawyers and judges have similar training, judges are different. A lawyer usually works to make money; judges deal with directly with citizens to make society more just, giving you a sense of duty that you can’t get as a lawyer.”¹⁰² Under these circumstances, career-minded judges face two potentially fruitful and stable law-related career trajectories: remaining in their judge positions with a realistic chance at a merit-based promotion (and the administrative salary raise that such promotions provide), or leaving their judge positions to join a local law firm with a chance at a higher salary handling commercial litigation. Because there are significant costs to court leaders if highly capable judges leave the courts for jobs as lawyers, there is more pressure on court leaders to create a more professional career trajectory as a strategy to retain the best judges in the locality.

LOCAL LAW MARKET REVENUES AND CHARACTERISTICS

To verify my interviewees’ claims and to support the finding of local variation in the “brain drain” potential across different urban localities in China, this section presents local statistics on markets for legal services across my three case studies. Recall from the previous section the judge who believed that she could obtain a salary double that of her judicial salary by switching to a career as a lawyer. Is the national level average data consistent with the local variation in judicial design that I observe in my specific cases? Based on official statistics corresponding to the size of legal markets and the amount of revenue from legal services earned in recent years, I find that leaders in the Shanghai

¹⁰¹PC2013-57, judge, Shanghai, June 2013; PC2014-2, judge, Shenzhen, June 2014; PC2013-38, judge, Chengdu, April 2013.

¹⁰²PC2013-64, judge, Shenzhen, July 2013.

court system face disproportionately more pressure to entice judges to stay in their court positions than those in Shenzhen or Chengdu. Shanghai earns more revenue in its local legal services market than does either Guangdong province (home to Shenzhen city) or Sichuan province (home to Chengdu city), and more revenue is derived from representation of enterprises than individuals in Shanghai as well.

Table 3.1. Variation in Revenue from Legal Services Across Selected Chinese Provinces, 2009

	Total Revenue Earned by Lawyers from Representing Clients in Civil Litigation (¥)	Total Revenue Earned via Consultation with Companies (¥)	Total Population, 2010	Legal Services Revenue per capita, (¥)	Revenue from Company Consulting, per capita (¥)
Shanghai	1,416,750,000	571,040,000	23,019,148	61.5	24.8
Guangdong	2,344,550,000	663,290,000	104,303,132	22.4	6.4
Sichuan	186,370,000	124,230,000	80,418,200	2.3	1.5

Sources: (China Lawyers Yearbook Editing Committee 2011, 200–201); to calculate per capita figures, I used population data from 2010 (National Bureau of Statistics of the PRC 2011).

From Table 3.1 above, it is apparent from two perspectives that the legal services environment in Shanghai is the closest to the High End model of high revenues and robust demand for legal professionals, Shenzhen is likely similar to a High End market but less so than Shanghai, and Chengdu is much less a High End market than either Shanghai or Shenzhen. First, when financial data is normalized for population, Shanghai lawyers earn far more revenue from civil litigation than those in Guangdong or Sichuan; importantly, civil litigation is both the least politically sensitive and the most financially lucrative type of lawyer work, making it a highly desirable form of legal practice (Cai & Yang 2005). Second, Shanghai lawyers made far more revenue per capita from

consulting work for companies than those in either Guangdong or Sichuan, and data regarding revenue earned by lawyers also show that Shanghai has been among the most lucrative places for lawyers to do business in China since at least the mid-2000s.

The following two tables present statistics from 2004 and 2006 regarding raw income from lawyers' professional practice across my case study sites:

Table 3.2: Summary of Revenue from Lawyer Practice, 2004 and 2006

	Lawyer Practice Revenue, 2004 (¥)	Lawyer Practice Revenue, 2004, per capita (¥)	Lawyer Practice Revenue, 2006 (¥)	Lawyer Practice Revenue, 2006, per capita (¥)
Shanghai	2,242,220,000	97.4	3,129,320,000	135.9
Guangdong	885,930,000	8.5	3,515,940,000	33.7
Sichuan	266,360,000	3.3	359,690,000	4.5

Sources: (China Lawyers Yearbook Editing Committee 2005; China Lawyers Yearbook Editing Committee 2009).

Table 3.2 also indicates that Shanghai is among the most lucrative places for lawyers to do business in China, as measured by aggregate revenue earned by lawyers in each jurisdiction. Thus, not only aggregate revenues, but also data specific to civil litigation supports the finding that Shanghai is the most lucrative locality in which to practice law among my three cases.

The robust earning capacity of the Shanghai legal profession is not surprising when considering trends in the clientele of most firms in that municipality. As Sida Liu notes, High End markets are characterized by the representation of companies and financial disputes more so than the representation of individual clients and relatively low damage compensation from litigation. Table 3.3 indicates that the proportion of cases in Shanghai skews towards the representation of companies much more than it does in Guangdong or Sichuan provinces:

Table 3.3. Distribution of Case Type Across Localities, 2004

	Consults for Large Companies Among all Company Consults	Cases Representing Criminal Defendants	Cases Involving Administrative Litigation
Shanghai	3631	10928	1919
Guangdong	2505	16703	2437
Sichuan	2059	18907	1936

Source: (China Lawyers Yearbook Editing Committee 2005).

Whether measured by aggregate revenue, civil litigation, or cases handled for company clients, Shanghai is the most commercially oriented professional legal market, which also renders it the most lucrative locality on average in which to practice law among my three cases. These variations in local legal markets translate into much higher income for lawyers in High End versus Battleground localities (see e.g., Liu, Liang & Michelson 2014, 12). These findings lend further support to the thesis that courts in High End localities will feel greater pressure to attract and retain high-quality mid-ranking judges than will courts in Battleground localities.

THE SUITABILITY OF JUDGES FOR LAW FIRM CAREERS IN URBAN CHINA

Higher levels of economic development in High End legal services markets such as Shanghai have produced higher demand for qualified legal professionals in those localities. Accordingly, these circumstances have placed greater pressure on court leaders in High End legal services localities to attract and retain qualified legal professionals to staff judicial positions in their courts. One assumption that this argument relies upon is that judges, especially those who have acquired several years' experience in the courtroom making decisions on commercial legal disputes, would be desirable candidates for law firm job openings. For several reasons, mid-ranking, ordinary judges in China would make very competitive job candidates for law firm jobs in their localities.

First, mid-ranking judges are desirable candidates for experienced associate-level positions in law firms because the coursework for judges and lawyers in Chinese law schools is largely identical, the bar exam for judges and lawyers was unified in 2001, and judges must pass an additional civil service examination (launched in 1994, regularized in 2002), giving judges a supplemental professional qualification that is key selling point for legal professionals the job market (Minzner 2013, 362; S. Liu 2011a, 27; Peerenboom 2002, 291).¹⁰³

Second, judges who work in the same court for several years obtain a variety of distinctly local advantages, including familiarity with applicable laws, deep knowledge of the litigation process, and social connections. Court workers in judicial clerk-like positions (*faguan zhuli*) must apprentice for at least five years before they can ascend to decision-making authority, and another promotion to mid-level cadre status takes at least another five years.¹⁰⁴ Hence, case-deciding judges are even better trained for a careers in litigation than recent graduates holding a foreign JD or LLM degree. Judges' experience as state employees also gives them deep knowledge of applicable laws, local processes of litigation, and first-hand knowledge of the "Chinese way" to handle tricky legal disputes (S. Liu 2008, 785–786; S. Liu, Liang, and Michelson 2014; S. Liu 2011b). Aside from finding informal solutions when the formal law is ambiguous, lawyers in high-end domestic law firms must frequently interact with government agencies in their work, suggesting that judges' "inside knowledge" of government and legal system operations is vital to successful corporate legal practice in urban China. Even the highly formal issue area of securities law, successfully resolving a case for a client does not imply composing a well-reasoned legal brief, but instead requires improvisational legal

¹⁰³PC2013-57, judge, Shanghai, June 2013; PC2012-3, judge, Shenzhen, June 2012.

¹⁰⁴PC2014-1, judge Shenzhen, June 2014.

work when applicable rules are ambiguous. In this context, Sida Liu provides an example of a lawyer who arranged a symposium with legal experts at the Ministry of Finance to produce a provisional memo that the lawyer could subsequently rely upon to produce a favorable interpretation of the law for a client (S. Liu 2011b, 125). Other than using improvisational tactics when the formal law is ambiguous, associates in high-end domestic law firms also generally have more responsibility than their foreign peers for performing non-research tasks, such as conference calls, meeting clients, and dealing with government agencies (S. Liu 2011b, 127–130). In short, the on-site training and “inside knowledge” that judges receive in their courtroom workplace environments regarding the inner-workings of state institutions is much more likely to suit the Chinese legal environment than is the more formalistic legal training more commonly seen on the resumes of associates in China’s foreign law firms. At the same time, mid-ranking judges also obtain experience handling a wide variety of legal disputes, giving judge both the formal background and the “inside knowledge” that is vital to a successful lawyer practice in contemporary China.

Moreover, recent research on the stratification and local diversity of the legal profession in China emphasizes specifically that *local*, rather than geographically diffuse, social connections are important influences on “brain drain” from local courts. Migrating from a frontier region to establish a legal practice in a High End locality is a difficult, sink-or-swim proposition—lawyers who leave their local communities to start a legal practice in a new city “face the harsh reality of assimilation or attrition after struggling a few years in the receiving place”; further, even after several years of hardship, migrant lawyers can be pushed out of their new locality entirely (S. Liu, Liang, and Michelson 2014, 22, 24). Further, the influence of lawyer migration on high-end areas of law practice remains small, with the vast majority of new migrant lawyers specializing in

low-end, riskier, and less profitable legal areas, “chasing the ambulance” to make ends meet (Liu, Liang & Michelson 2014, 22, 24). Facing a multi-year period of assimilation into a new locality would create a barrier to leaving judicial post in a frontier region, which at least provides a measure of job security (Xinhua News Agency 2013b).

By contrast, because local connections are the key to establishing a new client practice (Liu, Liang, and Michelson 2014, 16), career change from a local judicial post to a local law firm position handling corporate litigation would be much smoother. The judges who told me that they were considering becoming lawyers indicated that they would only consider lawyer openings in the same city or province rather than migrating to a different locality to start careers, as their law firm opportunities came from within their friend networks.¹⁰⁵ The local nature of judge-lawyer mobility is also consistent with similar research documenting symbiotic exchange between lawyers and state officials, with judges and lawyers acting as important brokers between market and state (S. Liu 2011a).

Foreign law firms, relegated to a legal consultant role in China because of the restriction against foreign lawyers practicing in China, also compete with domestic firms for professional staff, especially for qualified *mid-level* legal workers in High End localities like Shanghai. Foreign firms concentrate on recruiting mid-level Chinese associates (i.e., lawyers with 3-5 years of professional experience) because these candidates are more willing to accept the non-partnership track positions that foreign firms have generally offered in recent years. As foreign firms do not offer a partnership track, it is very difficult for them to recruit top senior associates or junior partners, setting up fierce competition for mid-level associates among foreign and domestic corporate law

¹⁰⁵PC2013-43, judge, Shenzhen, April 2013; PC2013-48, Shenzhen judge, Shanghai, May 2013; PC2013-49, judge, Shanghai, May 2013; PC2013-56, judge, Shanghai, June 2013.

firms in High End local legal services markets (S. Liu 2011b, 133–138). Also, foreign firms have not been allowed to practice law in China or to employ licensed Chinese lawyers, relegating the status of Chinese legal professionals hired by foreign firms to legal “consultants” (S. Liu 2011b, 114). Article 15 of the State Council’s 2001 Administrative Regulation on the Representative Offices of Foreign Law Firms forbids foreign law offices from engaging in “Chinese legal affairs” but, at the same time, permits foreign firms to “provide information regarding the influence of China’s legal environment” (S. Liu 2011b, 116). Thus, a foreign law firm operating in China seeking to provide services like formal legal opinions or court representation must collaborate with local law firms, and in the past decade, local firms have even taken control over substantive aspects of corporate legal projects, with their foreign firm collaborators increasingly outsourcing their work to local Chinese firms (S. Liu 2011b, 117–119). As noted in Chapter 1, these foreign firm practices in High-End localities might provide a plausible alternative to Wang’s enterprise “exit and voice” lobbying theory for explaining local variation in the authoritarian rule of law in China (Y. Wang 2014).

News media also provide statistics regarding the number of judges who have left courts since the mid-2000s, and these data are also consistent with variations in law practice revenue across urban China. When local demand for legal services is higher, we should expect more judges to leave courts searching for alternative professional opportunities. When normalized for population, the number of judges leaving Shanghai’s courts is approximately 20 percent greater than that in Shenzhen (Lü and Wang 2014a; X. Liu 2014).¹⁰⁶ Comparable data at the city level is not available for Chengdu, but provincial-level data for Sichuan show that the number of judges leaving basic courts in

¹⁰⁶When normalized as the number of judges leaving the city’s courts per 10 million residents, 29.6 judges per year resign their posts in Shanghai, whereas 23.4 judges resign annually in Shenzhen.

Sichuan is 74 percent less than the number of judges leaving Shanghai courts (Min 2006). A judge from Shenzhen provided context to these news reports: “These stories [of lawyers leaving their judicial posts for law firm jobs in Shenzhen] include us judges right now—many are thinking of going out and becoming lawyers. To tell you the truth, right now regarding salary, in Shenzhen, regarding consumer expenses, our incomes are actually not sufficient”; the judge then stated that because she already passed the unified judicial exam, she also could have many possible opportunities to forge a career as a lawyer.¹⁰⁷ As another judge in Shenzhen described the problem, judges’ material conditions have potentially wide-ranging effects:

You probably already know, even among civil servants, judges’ salary (*daiyu*) is not particularly high; in Hong Kong, have you heard of the policy of ‘higher pay for clean government’ (*gaoxin yanglian*)? It is where government salaries are such that officials do not have to worry about being able to afford basic living necessities (*yishiwuyou*)...for example, the problem is that if wages are too low, a judge cannot ensure the most basic standard of living, and in this situation, it will also be difficult to guarantee a clean (*lianjie*) government or to decide cases fairly [because of the possibility of bribery]. For judges in China, salary for judges is not particularly high, and even social status is not that high anymore, but for judge’s basic living, to avoid corruption problems, the judicial salaries should be raised...currently, an overworked judge can easily leave the court, resign, and change occupations, so currently this is a very big problem, this “brain drain” (*rencai liushi*)...Many people are not willing to serve as judges, because one, deciding cases is hard work, two, there’s a lot of caseload pressure, three, the amount you get from the work is not proportional to the time and work that you put in.¹⁰⁸

CONCLUSION

The influence of local economic development on the practice of law has led to a wide income gap between High End lawyers and judges in China, which threatens the “brain drain” of highly qualified mid-ranking judges from local courts to local law firms,

¹⁰⁷PC2013-1, judge, Shenzhen, January 2013.

¹⁰⁸PC2013-3, judge, Shenzhen, January 2013.

where conditions have produced high demand for mid-level associates in local law firms—positions highly suitable for mid-ranking local judges. Because China’s judicial performance evaluation system quantitatively measures court leaders’ management performance based on the productivity of their subordinates, court leaders are personally and professionally invested in retaining hard-working, mid-ranking judges who can efficiently adjudicate cases and raise courts’ and within-court units’ collective performance scores. When law firms in High End legal services localities threaten to lure judges into careers as lawyers, court leaders will face greater pressure to introduce judicial reforms designed to retain qualified judges. Evidence from interviews with lawyers and judges, macro-level statistics on law firm revenues across localities, and accounts of lawyer incomes across cases indicate that lawyer remuneration at the experienced and entry levels are higher in Shanghai than in Shenzhen, and lowest in Chengdu. In localities exhibiting high-end demand for legal services, greater judicial autonomy should also be present because of the pronounced “brain drain” effect noted by many Shanghai and Shenzhen judges.

This chapter has also presented evidence that local legal services markets in China have developed in a highly uneven manner across the history of the post-Mao reform era and across geographic localities in China. First, at the outset of the reform era, lawyers were state employees working in state-owned legal service units or directly within government agencies. During the past two decades, the legal profession has been rapidly “unhooked” from the state, and in today’s China, a multi-billion dollar private legal services industry has emerged, with private lawyers conducting business with individuals and corporate clients, under an increasingly hands-off regulatory environment in which foreign and domestic legal service firms compete for market share and qualified legal professionals. Second, this rapid privatization of the legal services market has produced

substantial variation and stratification across localities in China. In urban China, legal services markets differ primarily regarding whether they have developed into high-end local markets, where lawyers primarily conduct increasingly lucrative legal service work for corporate clients, or battleground legal markets, where lawyers struggle to piece together business from individual clients and some company clients. In this context, it is surprising that the extant literature on judicial politics in authoritarian regimes has not extensively explored the relationship between political decisions to reform judicial institutions, and economic conditions, such as the development of local legal services markets. Although the Chinese legal profession is not the capable, activist force for political liberalism seen elsewhere, this chapter suggests that structural changes to classes of legal professionals can create pressure for judicial reforms in particular circumstances.

The rest of this dissertation will trace differences in local legal services markets to the politics of local court reforms in urban China. The next chapter addresses recent changes to the mechanisms of judicial promotion, court transparency, the writing of judicial opinions, and styles of dispute resolution. I have found significant qualitative variation in promotion mechanisms between the cases of Shanghai, Shenzhen, and Chengdu—cities that have relatively similar levels of economic development. During fieldwork, I learned that each city’s courts have been required to implement “competitive promotion” systems for mid-ranking judges, but the implementation of these judicial promotion procedures varies substantially between Shanghai, Shenzhen, and Chengdu. Similarly, Shanghai courts exhibit higher scores on judicial transparency rankings, greater propensity to justify their written decisions with statutory citations, and a lower percentage of disputes resolved by mediation.

Why would judicial promotion mechanisms differ across these cities in China? I find that the pressure from rapidly privatizing legal markets, and the potential careers in

law firms that are more available in High End local markets like Shanghai, is contributing to the openness and competitiveness seen in Shanghai's judicial promotion mechanisms. In China, there is negligible multi-party fragmentation or civil society autonomy to empower the judiciary. Nonetheless, if greater numbers of expert judges can easily quit their jobs and find lucrative local employment as lawyers, court leaders are more likely to strategically reform court institutions towards providing judicial cadres more professionalized work environments and career trajectories. In high-end markets like Shanghai and Shenzhen, judicial promotion mechanisms for mid-ranking judges are more competitive, less susceptible to the influence of the local CPC, and transparency mandates are more thoroughly implemented, demonstrating how local legal services markets, even in an authoritarian context, can combine with statist factors to bring about the conditions for greater judicial autonomy.

Chapter 4: Expansions in Competitive Promotion, Transparency, and Decisional Autonomy

From several scholarly perspectives, the process of selecting and promoting judges has long been identified as a critical nexus through which political influence can seep into the judiciary. Even when arguing that judicial independence is a hallmark of American politics, seminal law and economics research finds that “It is of course unrealistic to suppose the judiciary wholly independent of the current desires of the political branches,” which can influence the judiciary through manipulation of the procedures for personnel selection and promotion (Landes and Posner 1975, 885). Scholars who specialize in Chinese law and politics also note that for judges to be able to make impartial decisions in the cases before them, they must enjoy “personal independence”, requiring that “their terms of office be reasonably secure; appointments and promotions should be relatively depoliticized; judges should be provided an adequate salary and should not be dismissed or have their salaries reduced as long as they are performing adequately; transfers and promotions should be fair and according to pre-established rules...” (Peerenboom 2010, 71). Further, Chinese voices in the legal academy such as He Weifang have long identified the judicial selection and promotion process as potential point of politicization of court cases (see Lubman 1999, 264).

Taking inspiration from these scholars, this chapter takes changes to the procedures for judicial selection and promotion in China as a touchstone for judicial autonomy. I first analyze changes to judicial selection and promotion procedures in urban China, as well as variation in court transparency. To understand whether these changes affect judicial decision-making, I then examine the extent to which judges mediate cases and provide legally grounded reasons for their decisions in adversarial opinions. In general, I find significant qualitative variation in promotion mechanisms for

mid-ranking judges and court transparency, which coincide with changes to judicial opinion writing and patterns of dispute resolution in Shanghai, Shenzhen, and Chengdu—cities that exhibit similar levels of economic development. Why would judicial promotion mechanisms differ across these cities in China? I find that the fear of judicial “brain drain” (*rencai liushi* or *faguan liushi*) produced by the greater potential for careers in high-end law firms is contributing to the openness and competitiveness of judicial promotion mechanisms.

Emphasizing the specific dynamics of judicial selection and promotion is an empirical contribution in itself, as little is publicly known about such procedures (Peerenboom 2010, 77). This study also improves upon the survey-based methods that underpin much of the extant systematic research on Chinese courts, which assess courts using indirect measures that rely on the perceptions of citizens who have not had contact with the legal system (see e.g., Michelson and Read 2011). Because judges selected *via* merit-based methods should be more impartial than judges selected through non-transparent, political criteria, I examine judicial selection and promotion at Intermediate Level Courts across my three case study cities, identifying local variations in courts’ use of competitive, public methods to promote judges. I also examine the extent to which local courts implement central mandates for court transparency, assuming that courts in which SPC directives for enhanced transparency are most actively implemented and that are the most forthcoming with online information like current judicial decisions, court statistics, and information regarding the litigation process are also likely to decide cases more fairly (see Xinhua News Agency 2013a). Examining a sample of judicial opinions taken from a larger, comprehensive set of written opinions in IP disputes, as well as statistics on the prevalence of mediation in IP-disputes, I also find that Shanghai judges

are most forthcoming among my cases regarding the reasons for decisions reached in lawsuits and are also least likely to use mediation to resolve disputes.

JUDGES IN THE CONTEXT OF THE CHINESE CIVIL SERVICE BUREAUCRACY

Taking a cue from other studies that use judicial personnel decisions (e.g., procedures governing appointment, promotion, removal, and the use of “court packing”) to gauge whether courts possess sufficient autonomy to serve impartially in the legal disputes before them (Dahl 1957; Chavez 2004), this section details changes to judicial promotion mechanisms and the bureaucratic context of the judicial hierarchy for mid-ranking judges in China. Each city’s courts are required to implement “competitive promotion” (*jingzheng shanggang*) procedures for mid-ranking judges, but the degree of competition and the level of routinization of these judicial promotion procedures vary distinctly between localities. Shanghai’s competitive promotion court institutions are particularly competitive and routinized, with mid-ranking judicial vacancies throughout the court hierarchy open to competition from any judicial applicant within the city. When Shanghai Courts host “all-city” competitions, local CPC authorities’ ability to directly influence promotion outcomes is fragmented and diminished by the results of exams, interviews, and performance evaluations used to select promotion candidates. A streamlined process has also arisen in recent years to allow larger candidate pools in judicial promotion competitions. By contrast, judicial promotion competitions in my other two case study sites, Shenzhen and Chengdu, were limited primarily to applicants within each individual court, and in Chengdu, competitive promotion procedures were

sometimes ignored. Keeping promotion competitions internal to a single court allows each court's leaders or local political elites to exert more direct, personal influence on promotion decisions.¹⁰⁹

Judges and the court system in the PRC have a complex relationship with the “executive branch” government ministries, CPC units, and larger civil service system. In general, broader court personnel decisions and the competitive promotion of judges in China are managed within the nationwide Party-State civil service management system, but some characteristics differentiate judges from other types of civil servants.¹¹⁰ The overall number of hierarchical levels, which affects salary and promotion levels, is structured differently in courts, as there are only 12 judicial ranking levels whereas there are 15 corresponding State Council levels (Shen 1998). Additionally, Chinese judges wear several “hats”: they are concomitantly judges (*faguan*), civil servants (*gongwuyuan*), and cadres (*ganbu*). As one judge noted, the term “civil servant” refers to a judge’s personnel identity (*shenfen*), which emphasizes a civil servant’s individual position within the system, whereas the term “judge” (*faguan*) refers to one’s professional position (*zhiwei*), which emphasizes an employee’s specific professional specialty, e.g., a judge’s expertise in handling and making decisions regarding legal disputes (Z. Liu 2014, 3–5).¹¹¹ A key element of recent reforms, however, is recognizing that a judge (*faguan*) is not just another “official” (*guan*), as a *People’s Daily* article recently pointed out (Lü and Wang 2014b).

¹⁰⁹PC2013-1, judge, Shenzhen, January 2013; PC2013-3, judge, Shenzhen, January 2013.

¹¹⁰This section describes the judicial and civil service systems as they stood in 2012-2013. A host of new regulations and policies introduced in 2014, discussed in more detail in the Conclusion chapter, are poised to change the relationship between judges and the civil service hierarchy.

¹¹¹PC2013-4, judge, Shenzhen, January 2013.

Despite these differences, the PRC Civil Servant's Law remains the basic legislation governing the duties, authority, and management of judges, procurators, and other civil servants in China.¹¹² Hence, overall policymaking authority regarding promotion standards pertaining to both judges and other civil servant personnel is controlled by the CPC Organization Department (OD), under the supervision of the CPC Central Committee and Politburo. The OD handles civil service management, and these policies are implemented by the Civil Service Bureau of the Ministry of Human Resources and Social Security (formerly the Ministry of Personnel) (Burns and Wang 2010, 60–61). Competitive judicial promotion refers not only to rankings and cadre status within the court bureaucracy, but also to rankings within the administrative bureaucracy. Depending on the court, judicial promotions to mid-ranking cadre status refer to promotions to levels as high as “department-level” (*chuji*) (Pieke 2009, 31).

The complex and overlapping nature of the court and civil service system reflect that the meanings of seemingly simple terms like “civil servant,” “cadre,” and “judge” have proven notoriously elusive, especially in the post-Mao reform era (Pieke 2009, 28; Brødsgaard 2012). Historically, in communist one-Party systems, the concept of “cadre” (*ganbu*) has denoted a person's role in the workers' revolution—the core components of a Leninist vanguard Party (Brødsgaard 2012, 71–72). In contemporary China, “cadre” has developed a less ideological and more bureaucratic meaning, although there continues to be an implicit understanding that cadres must be both “red” and “expert”: i.e., they must be committed to foundational CPC principles and be professionally capable (Pieke 2009, 29). Leading cadres (*lingdao ganbu*) in particular must exhibit ideological commitment to the CPC, as approximately 95% of such cadres are CPC

¹¹²Civil Servant Law of the PRC, Article I, Clause 3.

members compared to 38% of the general cadre population (Brødsgaard 2012, 74). In this context, the competitive promotion of China's judicial cadres is particularly significant because it is the process by which entry-level government employees advance to "official" cadre status¹¹³ and become an integrated part of "the backbone of the political system" in the PRC (Brødsgaard 2012, 73–74).

PROMOTING MID-RANKING JUDGES IN THE INTERNAL COURT HIERARCHY

Before a series of reforms in the late 1990's, PRC civil service was characterized by central planning, allocation of jobs to new graduates through government-determined manpower plans, subjective performance appraisal, and position-based pay (Barnett and Vogel 1967; Harding 1981; Yung 1991). As noted, this chapter focuses on the practices and institutions of "competitive promotion" of mid-ranking judicial cadres ("*zhongceng ganbu*", e.g., Division Chief or Division Vice Chief in an Intermediate People's Court) across my three case studies. Competitive promotion procedures in courts are designed to replace the "nominated appointment" system for selecting mid-level judicial cadres used through the 1990's, when local court CPC Core Groups directly selected all judges, including mid-ranking judges. Under the previous promotion system, the relevant court's CPC Core Group, along with the local Organization Department (OD), would (in the ambiguous phrasing of Party jargon) "mull over" (*yunniang*) candidates, directly and unilaterally selecting personnel for promotion (Wei 2010).¹¹⁴ By contrast, candidates for judicial promotion under the current competitive promotion system have the authority to nominate themselves for competitive promotion and undergo a more merit-based procedure of professional competition and interviewing (Wei 2010).

¹¹³PC2012-14, judge, Wenzhou, August 2012.

¹¹⁴PC2013-1, judge, Shenzhen, January 2013.

Implementation of competitive promotion procedures for mid-level judicial cadres has followed this general trend of injecting more competition into civil servant personnel selection mechanisms ongoing throughout other branches of the state bureaucracy. In 1993, new regulations extended the civil service system to government units including the courts and procuracy, and this change was followed by a stronger focus on using organized, transparent competitions for the professional promotions of public service employees (Burns and Wang 2010, 61–62). In 1998, the Central Organization Department and the Central Personnel Department of the CPC jointly issued an opinion on competitive promotion that called on CPC Committees, government departments, legislatures, discipline and inspection committees, procurators and courts to use “transparent and competitive promotion” (*gongkai jingzheng shanggang*) for both leading and non-leading positions.¹¹⁵ Importantly, these central-level regulations did not order lower levels to implement competitive promotion, stating that instead, government departments and organs are “*allowed* to use transparent competition to confirm the selection of cadres,” leaving open the possibility that at the local level, some courts are free to use or decline to use competitive promotion for judges.¹¹⁶ Nonetheless, the 1998 opinion called on courts and other state bureaucratic units to use competitive procedures when vacancies occur, when institutions are adjusted, when institutions are re-organized, when personnel exceeds the limit, and when there is a need for personnel adjustment.¹¹⁷ Additionally, although the opinion states that in principle, the use of competitive

¹¹⁵CPC Organization Department and the CPC Personnel Department Notice on Issuing the Opinion Regarding Party State Organs Implementing Competitive Promotion (*Zhongzhubu, Renshibu guanyu yinfa “guanyu dangzheng jiguan tuixing jingzheng shanggang de yijian” de tongzhi*) of July 23, 1998, Central Organization Document Number 33 [1998](copy on file with author).

¹¹⁶Notice on Issuing the Opinion Regarding Party State Organs Implementing Competitive Promotion, Central Organization Document Number 33 [1998].

¹¹⁷Notice on Issuing the Opinion Regarding Party State Organs Implementing Competitive Promotion, Central Organization Document Number 33 [1998].

procedures is confined to the promotion of cadres within units, state units are allowed to host transparent promotion competitions open to candidates within a system, department, or the general public.¹¹⁸

Several pieces of legislation that formally call for infusing competition into government work were handed down within a few years of this opinion. The Law on Civil Servants (*gongwuyuan fa*) became effective in 2006 and introduced more competition, monitoring, and performance-based rewards to government employment. Specific standards for judicial promotion are found in the Judges Law (*faguan fa*), promulgated in 1995. According to the Judges Law, local people's congresses and local courts have formal authority to appoint and promote judges; however, the letter of the law masks the fact that the local Party, *via* CPC Core Groups (*dangzu*) and the Party Organization Department (OD), control judicial selection and promotion, with local legislatures generally serving as rubber stamps (Peerenboom 2002, 305).¹¹⁹ As in other government units, the CPC core group in a Chinese court includes the top few party members—*e.g.*, the Court President, Vice President, and a select few Division Chiefs—who first caucus as CPC officials, then “don their government hats” as governmental court officials to implement directions from above (Lieberthal 2004, 240).

Despite the similarities between the competitive promotion of Chinese judges and other civil servants, there are important differences between cadres working in State Council Ministries and in the Political-Legal bureaucracy (*zhengfa xitong*) that includes the courts, procuracy, and police. For example, previous studies have found that competitive promotion procedures exist primarily in central government bureaucratic

¹¹⁸Notice on Issuing the Opinion Regarding Party State Organs Implementing Competitive Promotion, Central Organization Document Number 33 [1998].

¹¹⁹PC2012-14, *judge, Wenzhou, August 2012*; PC2013-48, *Shenzhen judge, Shanghai, May 2013*.

units, but in my fieldwork, I find that some variety of competitive promotion procedures are used throughout municipal, provincial, and district levels (Burns and Wang 2010, 66–67). Moreover, few other studies discuss “mid-ranking” cadres, focusing instead on other cadre strata like “basic cadres” (*jiceng ganbu*), “regular cadres” (*yiban ganbu*), “non-leading cadres” (*feilingdao ganbu*), “leading cadres” (*lingdao ganbu*), and “high level cadres” (*gaoji ganbu*) (Pieke 2009, 28–29; Barnett and Vogel 1967).

As it relates to the hierarchy within each court, promotion procedures vary between levels of the within-court judicial hierarchy (which I have simplified and listed in ascending order in Table 1.2 in Chapter 1). The promotion of judges to “mid-ranking” cadre status generally refers to the promotion of an Associate Judge to a Division Vice Chief or a Division Chief position, which reflects a significant promotion from case handling to managerial duties, and corresponds directly with the competition in High End legal labor markets for mid-level professionals with 3-5 years of experience mentioned in Chapter 4. Mid-ranking judicial cadres possess greater authority relative to ordinary judges; for instance, Division Chiefs possess authority with Court Presidents to select the Chief Judge for judicial panels (*heyiting*) that hear individual cases under the Law on Organization of Courts, Article 10. The significance of this mid-level promotion is also reflected in the Judges’ Law, which states that mid-level cadres should possess practical judicial experience (Article 12), and Division Chiefs and Associate Division Chiefs are situated in the mid-stratum of the court hierarchy, above “Judges” and “Assistant Judges” (Articles 3, 11).

Mid-ranking competitive promotion procedures are unique, as the process for advancing up the judicial hierarchy differs for judges who are not mid-level cadres. First, when promoting candidates from clerk (*shuji yuan*) to Assistant Judge (*zhuli shenpan yuan*) and from Assistant Judge to Associate Judge (*shenpan yuan*), the votes of

promotion candidates' colleagues are not considered in the overall candidate evaluation process.¹²⁰ However, candidates for these lower level positions still participate in the nomination, exam, assessment, and inspection processes, after which the CPC Core Group will directly select candidates.¹²¹ Competitive procedures are not used, however, for promotions to court leadership positions such as Court President and Vice President. After bureaucratic reforms in the 1990's, high-level appointments like these are principally determined via *kuai*-level authority, *i.e.*, by *the CPC Committee* one level above the court to which the President or Vice President will be installed (Z. Liu 2012). *The court unit* one level above that which the President will be installed (*i.e.*, via *tiao*-level, vertical lines of bureaucratic authority)¹²² provides administrative assistance to the judicial appointment process, and the CPC Committee at the same level of the new President's court provides suggestions on potential candidates (Z. Liu 2012). The separate classifications for mid-level and high-level cadres reflect that the promotion of Intermediate Level Court Presidents is subject to *nomenklatura* procedures (Peerenboom 2002, 284–285), which govern the highest stratum of China's Party-State hierarchy. Like other members of this higher stratum, Intermediate Court Presidents generally must be CPC members (Burns and Wang 2010, 61; Manion 1985); conversely, CPC membership is not generally required for promotion to mid-level judicial cadre status, similar to treatment of other non-leading cadres (Brødsgaard 2012, 74).

¹²⁰PC2013-4, judge, Shenzhen, January 2013. For example, this interviewee could not remember casting a vote during a competition for promotion to an ordinary judge position, but clearly remembers casting votes on competitions for promotions from ordinary judge to cadre-level judge.

¹²¹PC2013-4, judge, Shenzhen, January 2013.

¹²²Both Chinese and American scholars have discussed the importance of *tiao* (vertical) and *kuai* (horizontal) bureaucratic relationships (Z. Liu 2012; Lieberthal and Oksenberg 1988), and this scholarship is discussed in more detail in Chapter 5.

THE PROCESS OF COMPETITIVE JUDICIAL PROMOTION

The stated objective of competitive promotion of judicial cadres is to “encourage leadership” and produce a pool of talented cadres while making “expanding democracy” the reform direction (Wei 2010; Deng 2001, 17). At the local level, the highest court in an urban municipality guides the basic structure of the competitive promotion system through one-step down oversight, with Intermediate and Basic-level Court core groups possessing leeway to tweak their competitive promotion plans subject to the approval of the Party OD at the corresponding local level.¹²³

According to the 1998 Opinion regarding the implementation of competitive promotion procedures, there are a total of 8 steps that “generally should be” used during promotion competitions: (1) distribution of information regarding the vacancy and requirements for the open post; (2) promotion candidates personally signing up or receiving a nomination for participating in the promotion competition; (3) the inspection of the qualifications of each candidate; (4) an exam by which each candidate is tested regarding the basic knowledge necessary to handle the duties of the new position; (5) those who pass the exam provide a speech introducing themselves and explaining their qualifications for promotion; (6) a “democratic vote” is administered regarding the candidates who pass the exam; (7) an “organizational inspection” occurs, whereby the remaining candidates are inspected for their “ethics, ability, industriousness, and achievements” (*de, neng, qin, ji*); and (8) confirmation, whereby the Party Group makes promotion decisions regarding the final candidates.

¹²³PC2013- 53, judge, Shanghai, May 2013; PC2012-49, judge, Shanghai, December 2012; PC2013-50, political-legal cadre, Chengdu, May 2013; PC2013-51, judge, Chengdu, May 2013. See also Shenzhen Intermediate Court Mid-Ranking Deputy, Vice Deputy Leading Cadre Competitive Promotion Implementation Rules (*Shenzhen Shi Zhongji Renmin Fayuan Zhongceng Zheng Fuzhi Lingdao Ganbu Jingzheng Shanggang Shishi Banfa*).

Interviews revealed more specific information regarding each step of the process as practiced at the local level, including additional procedural steps (e.g., formulation of a specific plan to begin the competition), steps gradually phased out in some localities (e.g., candidate speeches), the methods by which the list of candidates is narrowed, and the content of organizational inspections and democratic votes. Before nomination, the relevant court formulates a specific plan (*fang'an*) each time it seeks to conduct a promotion competition.¹²⁴ The relevant court's CPC Core Group in conjunction with the court's Political Department (*zhengzhi bu*)¹²⁵ will draft a plan for competitive promotion, which must be eventually approved by the Party OD at the corresponding local level before the advertisement of vacancies and the beginning of the competition.¹²⁶

After the court has obtained approval to implement a particular competitive promotion plan, candidates for the vacancies nominate themselves (*baoming*) for the promotion competition, then the court's internal Political Department (*zhengzhibu*) screens them for the satisfaction of eligibility pre-requisites (*fuhe tiaojian*). There are three types of pre-requisites: (1) experience, which usually refers to completing at least 2-3 years of work at one rank lower than that for which promotion is sought; (2) age, which prohibit those older than 50-55 years old from competing for mid-ranking cadre promotion; and (3) work performance and discipline, designed to screen candidates based on superlative work performance (*chengji*) and history of CPC or government

¹²⁴PC2013-3, judge, Shenzhen, January 2013; PC2013-17, judge, Shanghai, March 2013.

¹²⁵ This observation is based on interviews of judges and the descriptions of various intermediate level courts including those in Shenzhen and Chengdu. Depending on the court, the Political Department might have a subdivision called the Cadre Office (*ganbu renshi chu* or *ganbu chu*) that specifically handles competitive promotion matters. PC2013-17, judge, Shanghai, March 2013.

¹²⁶PC2013-4, judge, Shenzhen, January 2013; Shenzhen Intermediate Court Division and Vice Division Leading Cadre Competitive Promotion Implementation Rules (Deng 2001).

disciplinary proceedings (Wei 2010).¹²⁷ Thus, the “fulfilling pre-requisites” stage of self-nomination acts less as political filter and more as a perfunctory check to see whether the candidates have worked long enough (usually 3 years for mid-level cadres) to apply for promotion.¹²⁸

Candidates who satisfy the pre-requisites compete for promotion in three major ways: written exam (*kaoshi* or *bishi*); “assessment” (*kaoping*); and “inspection” (*kaocha*).¹²⁹ The written test requires composition of a written judgment and case analysis, and primarily tests legal application and basic writing skills. Candidates are given either a passing or failing grade.¹³⁰ The “assessment” includes a mock hearing (*tingshen*) and panel interview (*dabian*) with the court’s CPC Core Group (Wei 2010). The panel interview directly examines mid-level candidates regarding both adjudication (e.g., “What are some of the problems with this court’s adjudication procedure and do you have any suggestions for resolving these problems”), and administrative management (e.g., “If a member of your division has a family problem that begins affecting the division’s work, how would you handle such a situation?”)(Deng 2001).

The “inspection” follows, in which candidates face a vote by all of their court colleagues based on several factors, which can include candidates’ personal disposition, a ten-minute candidate speech to the court recommending oneself for promotion, or candidates’ work histories (Wei 2010). More specifically regarding the within-court casting of votes, the pool of “eligible voters” generally is all civil servants (*gongwu yuan*)

¹²⁷PC2012-49, judge, Shanghai, December 2012; PC2013-18, judge, Shanghai, March 2013; Opinion Regarding Party State Organs Implementing Competitive Promotion, Organization Department Issuing Number 33 [1998]).

¹²⁸PC2013-1, judge, Shenzhen, January 2013; PC2013-4, judge, Shenzhen, January 2013.

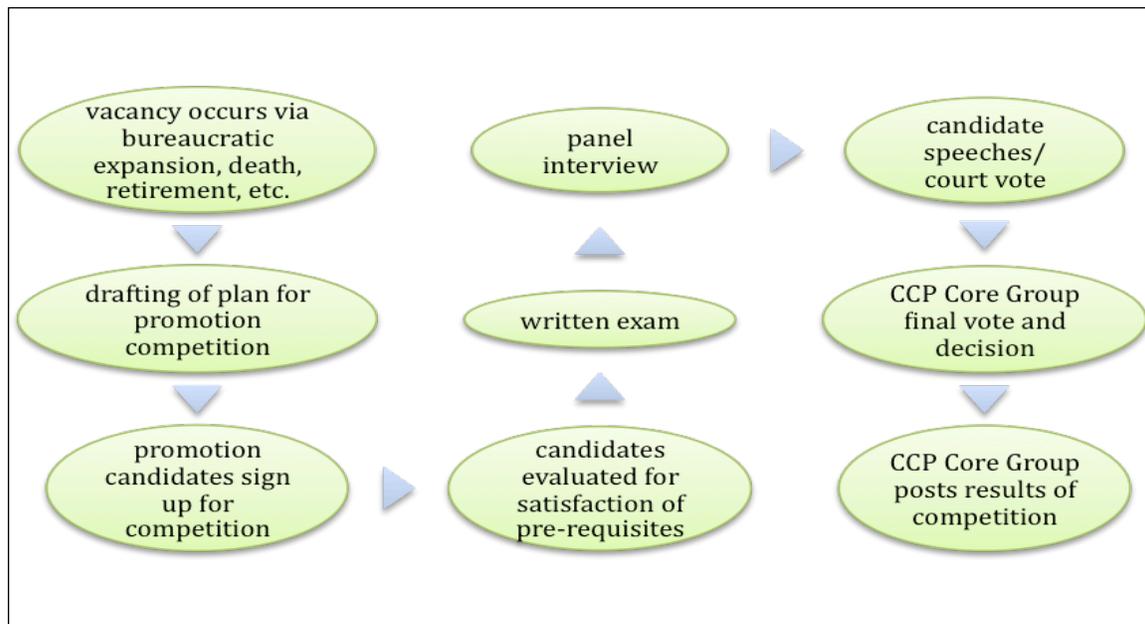
¹²⁹In other government units, competitive promotion procedures differ slightly, with “peer evaluations” (*minzhu pingyi*) and audits of previous performance acting to shorten candidate lists (Edin 2003).

¹³⁰PC2013-1, judge, Shenzhen, January 2013; PC2013-18, judge, Shanghai, March 2013.

in a particular court.¹³¹ After the CPC Core Group wraps up the promotion process, the Court posts the results of the competition within the court (Wei 2010). The following figure summarizes the general process of competitive promotion in China's courts:

¹³¹*PC2013-3, judge, Shenzhen, January 2013; PC2013-4, judge, Shenzhen, January 2013; PC2012-49, judge, Shanghai, December 2012.*

Figure 4.1: Summary of General Procedure for Promoting Mid-Level Judicial Cadres



The final stage of the promotion competition generally involves a selection from approximately 1½ - 2 candidates remaining in competition for a single cadre position (*i.e.*, “1½” means that if there are 2 vacancies, then there are 3 final candidates)(Ma 2011).¹³² The fundamental significance of the competitive procedures is that the competition, which includes the “democratic vote” (*minzhu ceping*) of one’s judicial colleagues and a written examination, narrows the pool of promotion candidates, thus eroding the CPC Core Group and the local CPC’s ability to directly appoint political favorites. Thus, the newer competitive promotion system increasingly employs merit-based selection methods, the pool of judges is evaluated using more formal and transparent means, and the local court CPC Core Group can only select the promotion winner after the candidate pool has already been winnowed to 1.5 or 2 finalists. By

¹³²PC2013-3, judge, Shenzhen, January 2013; PC2012-48, judge, Chengdu, December 2012; PC2012-49, judge, Shanghai, December 2012; PC2013-17, judge, Shanghai, March 2013.

reducing the court CPC Core Group's ability to use overtly political criteria to appoint judges, competitive promotion procedures have diminished the overall influence of Party institutions and political leaders in the process of selecting mid-ranking judicial cadres. However, because gaps remain between formal authority and local implementation of competitive judicial promotion systems even in urban areas exhibiting relatively similar levels of development, the important research questions at the local level involve whether and to the extent to which local leaders implement central directives to reform civil service promotion mechanisms.

THE EFFECTS OF HIGH-END DEMAND ON JUDICIAL SELECTION AND PROMOTION: LOCAL CASE STUDIES

If qualified, mid-level judges can easily quit their jobs and find lucrative local employment as mid-level law firm associates, court leaders are more likely to strategically reform promotion mechanisms in an attempt to retain these capable judges who can help improve courts' overall CQAS scores—and court leaders' chances for further promotion. This argument hinges on linking the competition for mid-level legal professionals in high-end law firm markets to phenomena in Chinese court system reflecting such competition, at the same level of the professional legal hierarchy. Examining specific patterns of competitive promotion procedures of mid-level judges¹³³ between the cases of Shanghai, Shenzhen, and Chengdu, I learned during fieldwork that the degrees of merit-based competition, transparency, and rule-based routinization of these judicial promotion procedures varies distinctly between localities. Shanghai's court

¹³³Promotion procedures differ for judges who are not mid-level cadres. Competitive procedures are not used for promotions to courts' top leadership positions such as Court President and Vice President, nor are they used for lower level appointments from Assistant Judge (*zhuli shenpanyuan*) to Associate Judge (*shenpanyuan*). High-level judicial appointments are primarily determined by the CPC Committee one level above the court to which the President or Vice President will be installed with the court at one level above providing administrative oversight (Z. Liu 2012).

institutions are the most competitive and routinized, with mid-ranking judicial vacancies throughout the court hierarchy open to competition from any judicial applicant within the city and competitive procedures used for every judicial vacancy.

When Shanghai Courts host “all-city” competitions, local CPC authorities’ ability to directly influence promotion outcomes is fragmented and diminished by the results of exams, interviews, and performance evaluations used to select promotion candidates; furthermore, a streamlined process has in recent years allowed larger candidate pools in judicial promotion competitions. By contrast, judicial promotion competitions in my other two case study sites, Shenzhen and Chengdu, were limited primarily to applicants within each individual court, and in Chengdu, competitive promotion procedures were sometimes ignored. The promotion of judges to mid-ranking cadre status generally refers to the promotion of an Associate Judge (*shenpan’yuan*) to a Division Vice Chief (*futingzhang*) or a Division Chief (*tingzhang*) position, which reflects a significant promotion from case handling to managerial duties. Reaching this level usually requires between 5-10 years of judicial experience—similar to experience of higher-paid associates or consultants in foreign firms located in high-end law firm markets (S. Liu 2011b, 136). Mid-ranking judicial cadres possess greater authority relative to ordinary judges, as mid-level cadres should possess practical judicial experience¹³⁴, Division Chiefs and Division Vice Chiefs are situated in the mid-stratum of the court hierarchy, above “Judges” and “Assistant Judges,”¹³⁵ with Division Chiefs possessing authority with Court Presidents to select the Chief Judge for judicial panels (*heyiting*) that hear individual cases.¹³⁶

¹³⁴Judges’ Law of the PRC (*Zhonghua renmin gongheguo faguan fa*), Article 12.

¹³⁵Judges Law, Articles 3, 11.

¹³⁶Law on Organization of Courts of the PRC (*Zhonghua renmin gongheguo fayuan zuzhi fa*), Article 10.

Local court implementation of competitive promotion can vary on several dimensions, of which the following are the most significant: (1) degree of competition and transparency, i.e., in each locality, do lower court judges have the ability to compete for promotion to higher courts? How widely are promotion opportunities posed? (2) degree of routinization of rule-based procedures, i.e., is competitive promotion used for every mid-level judicial cadre vacancy? Have courts streamlined their promotion competitions to accommodate the participation of more candidates?¹³⁷ Promotion procedures are less meritocratic and more subject to the influence of political leaders when the promotion procedures are contained within an individual court (e.g., Shenzhen and Chengdu), which allows CPC organs within courts to act more directly as a conduit for local political leaders such as local Party secretaries, local mayors, or local governors (who often serve these posts simultaneously). By contrast, when Provincial High Courts and Intermediate Courts host “all-city” competitions, (e.g., in Shanghai) each Court’s Party organs and local political leaders possess fragmented and diminished authority to influence promotion outcomes. Additionally, political leaders possess more authority over promotions when the courts simply do not use the competitive procedures on a routine basis.

Shanghai: Unique Opportunities for Promotion to Higher Courts

The competitive promotion system used in Shanghai is distinguished by its expansive “all-city” promotion recruitment competitions, which were first implemented in 2008. Like other courts, candidates for promotion to mid-level judicial cadre posts in Shanghai’s Intermediate Courts must participate in the competitive promotion process; however, unlike my other case study sites, vacancies at the intermediate court level and

¹³⁷PC2013-3, judge, Shenzhen, January 2013; PC2013-4, judge, Shenzhen, January 2013.

above can be filled by any qualifying judge in the jurisdiction, i.e., basic court judges are authorized to compete for promotions to intermediate and high courts. In other intermediate courts like those in Shenzhen and Chengdu, competitions for promotion of mid-level cadres is confined within each individual court, with division chief and vice division chief positions filled from the ranks of qualified assistant and associate judges. From 2010 through 2012, the Shanghai Intermediate and High Courts conducted several promotion competitions in which judges across the city competed (Wei 2010)¹³⁸. Participation levels in promotion competitions have been robust: for five advertised positions at the Intermediate and High Court levels in 2010, there were 106 applicants from courts across Shanghai—an average of 21 candidates for each position (Wei 2010). Competition for promotions has been particularly popular among younger, District-level judges.¹³⁹

Further, according to Shanghai High Court Party Core Group Member and Political Department Chief Wu Xielin, basic court judges can compete for open positions in the Shanghai Intermediate Court, and positions as senior as the High Court Department Vice Chief are also open to all-city competition (Wei 2010). These “all city” competitions were initiated by the Shanghai High Court, which pressured Shanghai’s court party core groups to “broaden the horizons” of cadre selection, add competitiveness to judicial promotion, and invigorate the cadre selection system (Wei 2010).¹⁴⁰

Additionally, judges in Shanghai told me that competitive promotion procedures are used every time they have a vacancy for a mid-level judicial cadre position,

¹³⁸PC2012-49, judge, Shanghai, December 2012.

¹³⁹PC2012-49, judge, Shanghai, December 2012.

¹⁴⁰PC2012-49, judge, Shanghai, December 2012; PC2013-49, judge, Shanghai, May 2013; PC2013-67, judge, Shanghai, July 2013.

suggesting that the use of competitive promotion has become routine in Shanghai.¹⁴¹ Competitive promotion systems in Shanghai have also been streamlined, with candidates for promotion no longer required to present a speech in front of the whole court describing why they fulfill the conditions for promotion to mid-level cadre status.¹⁴² Candidate speeches have been frequently cited by my interview subjects as repetitive exercises that provide little new information and waste valuable work time; accordingly, candidate speeches in other intermediate courts have also been eliminated in recent years, and several judges in those jurisdictions have suggested to me that the number of promotion candidates became so large that it was not feasible to hear a speech from each candidate.¹⁴³ Although this might limit the candidates' campaigning capacities, it also indicates that some courts have reformed their competitive promotion procedures to allow for the participation of a broader group of candidates than otherwise possible.

Shenzhen: Reform With Limits

Unlike Shanghai, Shenzhen's Basic Court judges cannot compete for mid-level cadre position vacancies at the intermediate or high court level; instead, the Shenzhen Intermediate Court fills such vacancies using a within-court promotion competition by which lower ranking assistant and associate judges compete for open division vice chief or division chief positions. Although Shenzhen's competitive promotion system has been used since the early 2000s and has undergone several reforms, several judges in the Shenzhen Basic Courts told me that they would welcome an opportunity to compete for promotion opportunities at the intermediate and high court levels; additionally, these

¹⁴¹PC2012-49, judge, Shanghai, December 2012; PC2013-21, Shanghai judge, Shanghai, March 2013; PC2013-22, judge, Shanghai, March 2013.

¹⁴²PC2013-21, judge, Shanghai, March 2013; PC2012-49, judge, Shanghai, December 2012.

¹⁴³PC2012-49, judge, Shanghai, December 2012; PC2013-21, judge, Shanghai, March 2013; PC2013-22, judge, Shanghai, March 2013.

judges also indicate that they have considered leaving their positions as judges to work in local law firms because they could probably earn a higher income as a lawyer than as a judge.¹⁴⁴

Regarding routinization and streamlining, use of competitive promotion in Shenzhen began in approximately 2001, and since then, the Shenzhen Intermediate Court has used a similar competitive promotion system every time mid-level judicial cadre vacancies occur.¹⁴⁵ Although multiple-year intervals between mid-level cadre vacancies are possible, one judge guessed that on average there are about 4 vacancies per year.¹⁴⁶ Further, candidate speeches were eliminated in the early 2000s, as judges suggested that candidate speeches took too much time, provided colleagues with no information that they did not already know, and that eliminating speeches would allow competitions to accommodate larger applicant pools (Deng 2001, 17).¹⁴⁷ This explanation is consistent with transcripts of candidate speeches from Shenzhen competitions in the early 2000's: out of 27 candidates for mid-level judicial promotion, all candidates spent a significant portion of their speech providing a personal and educational background, information which is already generally available to their colleagues during the whole-court vote; further, several candidates indicated in their speeches that they were unwilling to discuss their positive personal traits despite such discussion being a primary objective of the speeches (Deng 2001, 81-82).

¹⁴⁴PC2013-1, judge, Shenzhen, January 2013; PC2013-3, judge, Shenzhen, January 2013; PC2013-4, judge, January 2013.

¹⁴⁵PC2013-1, judge, Shenzhen, January 2013; PC2013-3, judge, Shenzhen, January 2013; PC2013-4, judge, January 2013.

¹⁴⁶PC2013-1, judge, Shenzhen, January 2013; PC2013-3, judge, Shenzhen, January 2013; PC2013-4, judge, January 2013.

¹⁴⁷PC2013-1, judge, Shenzhen, January 2013; PC2013-3, judge, Shenzhen, January 2013; PC2013-4, judge, January 2013; PC2013-45, judge, Shenzhen, April 2013.

Chengdu: Sporadic, Outmoded Reform

The distinct model of the Chengdu court system's promotion competitions is sporadic, non-routinized use of competitive promotion mechanisms, without the expansive, all-city competitions found in Shanghai. Chengdu's lack of an all-city promotion system by which basic court cadres have opportunities to compete for promotions to higher-level courts reinforces Shanghai's uniqueness in this regard. In both the Shenzhen and Chengdu Intermediate Courts, judicial promotion of mid-ranking cadres is confined to within-court opportunities, constituting an effective promotion ceiling for the great majority of basic court judges in these localities. At least one judge in Chengdu commented to me that for a variety of reasons, she no longer seeks promotion opportunities within her own court.¹⁴⁸ At the same time, judges in Chengdu's Intermediate Court personally feel that even the sporadic use of competitive promotion is preferable to the promotion system used prior to 2002.¹⁴⁹ Before then, the Political Department would unilaterally recommend the relevant promotion candidates to the court's Party Core group for a final decision on promotion, without conducting written exams, panel interviews, voting, or candidate speeches.¹⁵⁰

With respect to routinization, Chengdu's Basic and Intermediate Courts do not use competitive procedures for every mid-level cadre vacancy that occurs. Instead, a court's leaders in the Political Department and CPC Core Group will make a case-by-case determination whether to use competitive procedures to fill a mid-level cadre vacancy.¹⁵¹ Particularly if sudden vacancies in the Chengdu Intermediate Court occur, personnel of equal rank can be installed as "acting" (*daili*) Division Chiefs or Vice

¹⁴⁸PC2013-12, judge, Chengdu, January 2013.

¹⁴⁹PC2013-8, judge, Chengdu, January 2013; PC2013-38, judge, Chengdu, April 2013.

¹⁵⁰PC2013-7, judge, Chengdu, January 2013; PC2013-38, judge, Chengdu, April 2013.

¹⁵¹PC2013-12, judge, Chengdu, January 2013; PC2013-38, judge, Chengdu, April 2013.

Division Chiefs for multiyear periods, in lieu of competitive promotion.¹⁵² Other interviews suggested that in general, competitive promotion for mid-ranking cadres has not become a routine method of promotion in the Chengdu Intermediate Court.¹⁵³ By contrast, when I asked Shanghai and Shenzhen judges whether competitive promotion procedures were used for each mid-level vacancy, I received an unequivocal affirmative response.¹⁵⁴

When the Chengdu Intermediate Court conducts promotion competitions, all candidates for mid-level cadre positions must present a speech, which as indicated above does not accommodate a large number of candidates for promotion competition.¹⁵⁵ Speeches in Chengdu's Intermediate Court are designed to address candidates' judicial abilities and why they personally possess the skills of a mid-level cadre; at both the Chengdu Basic and Intermediate Court levels, candidate speeches were used as part of competitive promotion procedures, and judges noted that these speeches made it difficult to accommodate increasing numbers of promotion candidates.¹⁵⁶ Table 4.2 reviews the variation in competitive promotion procedures across my three case studies, describing how the practice of judicial promotion is most competitive and routinized in Shanghai and least so in Chengdu.

¹⁵²PC2013-7, judge, Chengdu, January 2013.

¹⁵³PC2012-48, judge, Chengdu, December 2012; PC2013-7, judge, Chengdu, January 2013.

¹⁵⁴PC2013-3, judge, Shenzhen, January 2013; PC2012-49, judge, Shanghai, December 2012; PC2013-17, judge, Shanghai, March 2013.

¹⁵⁵PC2013-7, judge, Chengdu, January 2013; PC2013-38, judge, Chengdu, April 2013.

¹⁵⁶PC2013-7, judge, Chengdu, January 2013; PC2013-38, judge, Chengdu, April 2013.

Table 4.2: Review of Variation in Competitive Promotion Across Urban Court Case Studies

	<i>Merit-based Competition and Transparency</i>	<i>Routinization of Rule-based Use</i>
<i>Shanghai</i>	High competition and transparency	High routinization, used for every opening and streamlining reforms implemented
<i>Shenzhen</i>	Medium competition and transparency	High routinization, used for every opening and streamlining implemented
<i>Chengdu</i>	Low competition and transparency	Low routinization, sporadic use; no streamlining implemented

TRANSPARENCY RANKINGS ACROSS LOCALITIES

In addition to creating more merit-based promotion procedures, court leaders across China are also attempting to render judges' career trajectories and work environments more professionalized by implementing transparency mandates, which ordinary judges consider when contemplating their career options.¹⁵⁷ Rankings of the transparency levels of courts across my three case study cities are consistent with variations in the practice of competitive promotion in these cities. The CASS Transparency Index ranks courts' compliance with transparency mandates across three evaluation issue areas: online transparency regarding courts' general information (20 points), guidance regarding court procedure for litigants (15), judgment information (25), enforcement information (15), judicial/court (*sifa*) statistics (25), measures which cumulatively yield a 100-point, composite transparency index (Lin Li and Tian 2013, 216). These rankings serve as a useful proxy for an overall court's judicial autonomy and are consistent with my findings regarding the competitiveness of mid-ranking promotion

¹⁵⁷PC2013-64, judge, Shenzhen, July 2013; PC2013-53, judge, Shanghai, May 2013.

competitions. The degree to which a court prioritizes transparency in the administration of various court functions indicates the willingness of a court to act in accordance with pre-established rules and guidelines encouraging transparency handed down by the SPC. As the CASS researchers note in the report on the transparency rankings and indexes, judicial transparency “raises the level of judicial decision-making, protects judicial authority, protects public trust, prevents judicial corruption, and ultimately realizes the important meaning of realizing judicial justice” (Lin Li and Tian 2013, 215).

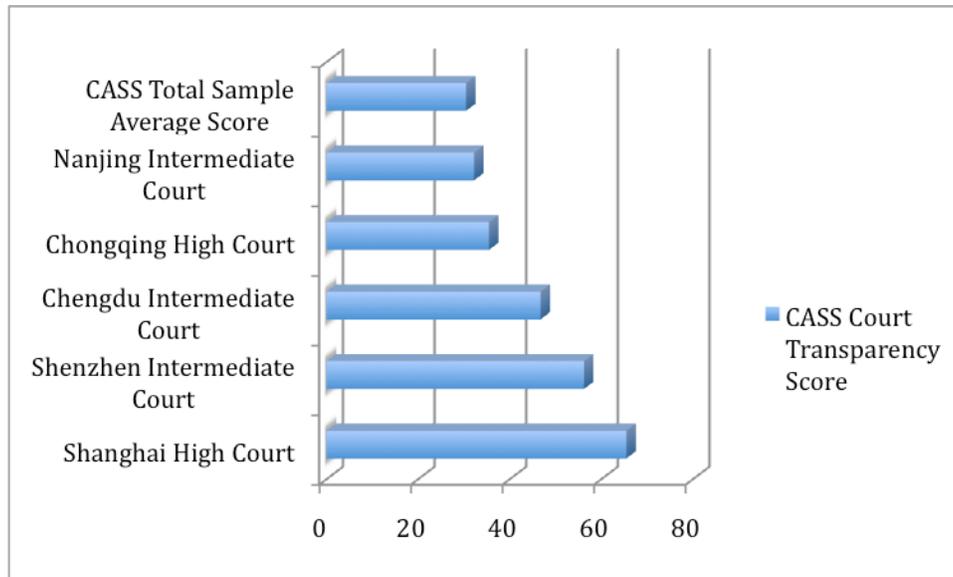
The CASS rankings also assess courts regarding the extent to which they provide timely information to the public via online websites, as ordered by the SPC (CASS: China Academy of Social Sciences Legal Studies Department Rule of Law National Status Research Group 2012). The CASS Legal Studies Research Department’s Rule by Law Research Group conducted the data collection and analysis used to produce the transparency rankings, which use publicly available court website information as their benchmark (Lin Li and Tian 2013, 215). The Research Group is comprised of scholars from CASS as well as from the Chinese University of Politics and Law (*Renmin Zhengfa Daxue*) and received input from judges as lawyers in assembling the rankings (Lin Li and Tian 2013, 215). According to the report, “judicial transparency” refers to every aspect of adjudication and information related to adjudication that is released to litigants and to the public, but also excludes information regarding state secrets, trade secrets, private personal information, and other information that might influence the normal judging of disputes in courts (Lin Li and Tian 2013, 215).

During 2012, the CASS Research Group conducted a quantitative assessment of the judicial transparency situation of the high courts in 26 provinces and centrally administered cities, and in the intermediate courts of 43 relatively large cities (Li and Tian 2013, 215-217). Internal CASS documents reveal that their analysis of local courts’

judicial transparency reflects the extent to which local courts are complying with central mandates from the State Council and the SPC to release public information and raise government transparency (Tian 2012). For example, the Notice of the General Office of the State Council Regarding Improving and Strengthening Government Website Management Work and the SPC Rules Regarding Several Issues of Public Adjudication Government Information for Administrative Cases are both designed to push forward the efforts of courts and other government units to strengthen the meaning of transparency in government management (Tian 2012). Thus, to the extent that the SPC has pushed courts to be more transparent, the CASS Transparency Indices can illuminate the extent to which local court systems prioritize compliance with central mandates, with local variation between localities reflecting the differences of the degree to which transparency is emphasized in each locality (Tian 2012).

Shanghai's court transparency index, which tracks consistently with the SPC's internal "national judicial fairness rankings," is higher than those in Shenzhen and Chengdu. Below, Figure 4.2 summarizes these 2012 CASS Transparency Index scores for the highest court in each of my case study localities, providing a measure of local court compliance with the SPC's policies regarding transparency in court politics.

Figure 4.2. Local Courts' Scores on the 2012 CASS Transparency Index (max score = 100)



Source: (Lin Li and Tian 2013, 215–244).

All three highest courts in the cases I studied were considered relatively transparent, judging by the results of the CASS study; however, Shanghai High Court's transparency score (65.5) was higher than that of Shenzhen Intermediate Court (56.25), and Chengdu Intermediate Court (46.75)(Lin Li and Tian 2013, 216). For context, the CASS average score, as well as Nanjing and Chongqing's transparency scores are included in Figure 4.2, as they are similar in size and national importance to my case study cities.

To synthesize the information regarding judicial transparency presented thus far, Table 4.3 reviews the variation in competitive promotion procedures and court transparency across my three case studies and indicates that the practice of judicial promotion is most competitive and routinized in Shanghai and least so in Chengdu. The competitiveness of Shenzhen's procedures falls between the two other cases. Consistent

relative scores are reflected in the CASS Court Transparency Index, whose results are summarized in the right-hand column:

Table 4.3: Review of Variation in Competition and Transparency Across Cases

	Competitive Promotion	CASS Transparency Assessment
Shanghai	<ul style="list-style-type: none"> • high levels of promotion competition, with mid-ranking positions open to citywide competitions • competitive promotion used for every mid-ranking vacancy; mechanisms in place for larger candidate pools 	<ul style="list-style-type: none"> • Overall Transparency Score for Shanghai High Court: 65.5 (out of 100) • all-country top score for transparency of online litigation guide • medium-high score for transparency of online information regarding enforcement of damages • high score for transparency of statistical information related to court
Shenzhen	<ul style="list-style-type: none"> • lower levels of competition; no ability for lower court judges to compete for promotion to mid-ranking positions at the intermediate court level • as in Shanghai, competitive promotion used for every mid-ranking judicial cadre vacancy; candidate speeches eliminated so as to enlarge pool for competition 	<ul style="list-style-type: none"> • Overall Transparency Score for Shenzhen High Court: 56.25 (out of 100) • high score for transparency of online litigation guide • high score for transparency of online information regarding enforcement of damages • medium-high score for transparency of statistical information related to court
Chengdu	<ul style="list-style-type: none"> • as in Shenzhen, relatively lower levels of competition; no ability for lower court judges to compete for promotion to mid-ranking positions at intermediate court level • lower levels of routinization and streamlining; competitive promotion procedures sporadically used for mid-ranking judicial cadre vacancies 	<ul style="list-style-type: none"> • Overall Transparency Score for Shanghai High Court: 46.75 (out of 100) • high score for transparency of online litigation guide • medium-low score for transparency of online information regarding enforcement of damages • low score for transparency of statistical information related to court

AUTONOMY REFLECTED IN PUBLISHED JUDICIAL OPINIONS ACROSS CASES

The extent to which judges justify their decisions regarding particular legal disputes constitutes another aspect of Chinese court politics indicative of “judicial autonomy,” i.e., autonomy *vis a vis* the two conflicting parties before a court in a given case (Shapiro 1981). In a statement that can be applied to bureaucrats, administrators, and judges alike, Shapiro notes the importance of the basic requirement to “give reasons” for state actions: “A decision-maker required to give reasons will be more likely to weigh pros and cons carefully before reaching a decision than will a decision-maker able to proceed by simple fiat. In another aspect, giving reasons is a device for enhancing democratic influences on administration by making government more transparent” (Shapiro and Stone Sweet 2002, 229). In this section, I discuss the process of civil litigation to provide necessary background before analyzing a sample of judicial opinions selected from the complete set of IP-related civil law judicial opinions (*panjueshu*) issued between 2006-2011 in each of the three case studies analyzed in this dissertation.

Historically, political and socio-legal research on Chinese courts has assigned little empirical value to official judicial opinions, owing to their tendency to repeat facts and provide little legal analysis (Q. Zhang 2003). Judicial opinions have also been criticized for their lack of authority in a system where the pronouncements of courts in discrete cases provide little precedential value or determinative interpretation of “what the law is” (Howson 2010). However, things have changed in recent years. The SPC issued a notice in 2005 instructing lower level courts to include legal reasoning in judicial opinions—even those deciding cases in potentially sensitive legal issue areas like environmental pollution—reflecting that “Even courts in single-party states are often compelled to offer public justification, however glancing, for their actions” (Stern 2010, 80). Further, the Second Five-Year Plan of the SPC issued in 2005 called for establishing

a “guiding cases system,” whereby such cases would be selected and edited by the SPC to serve as a unifying standard for applying laws to specific factual scenarios. The Guiding Cases Provisions state that SPC guiding cases must be taken into account by lower courts when deciding similar cases (Ahl 2014, 1, 5). The 2011 SPC notice accompanying the first set of guiding cases indicates further that other higher-level courts within the PRC system can provide guidance on the trial work of courts within their respective jurisdictions by issuing “reference cases” (Ahl 2014, 7).

Additionally, internal CASS documents reveal that the SPC requires local courts throughout China to establish official websites that publish extensive information related to court work and the litigation process, including written judgments across a variety of legal issue areas (CASS: China Academy of Social Sciences Legal Studies Department Rule of Law National Status Research Group 2012, 33). The ambiguity of these court requirements helps identify courts that exceed the suggestions of non-binding regulations aimed at enhancing transparency and providing the reasons and rationale for judicial decisions. In light of these developments, the analysis of judicial opinions issued by local courts can provide a window onto how the PRC judiciary is changing over time, increasing its transparency, professionalism, and overall autonomy, especially in the realm of commercial litigation.

PRC Civil Procedure Laws Relevant to the Analysis of IP-Related Judicial Opinions Across Localities

To contextualize the analysis of judicial opinions across my three case studies, it is also necessary to understand the procedural aspects of filing a civil lawsuit in China. First, if a dispute that does not directly involve a PRC administrative organ arises between parties, a plaintiff can bring a first-instance lawsuit in the civil court system. The plaintiff must be a citizen, legal person, or an organization. In the context of civil IP

disputes, an individual citizen or a company with a claim to a specific IP right usually begins the lawsuit by suing the allegedly infringing individual citizen(s) or company(ies).¹⁵⁸ The plaintiff must file a complaint with the court to commence a lawsuit, and the complaint must state claim of legal right to judicially ordered relief that can be resolved under the jurisdiction of the relevant court.¹⁵⁹ Jurisdiction in civil lawsuits attaches to the local court where the defendant has established “domicile” or “habitual residence”; in some IP cases, intermediate courts can possess first-instance jurisdiction instead of trial-level courts in situations where the case involves a foreign party, has a major local impact, or has been ordered to be first-instance intermediate court jurisdiction by the SPC.¹⁶⁰ If the complaint is procedurally and jurisdictionally sufficient, the court has 7 days to place the case on the docket, and the defendant has 15 days to file a defense to the plaintiff’s complaint.¹⁶¹

First-instance civil cases in the PRC are tried either by a collegial panel comprised of an odd number of judges or judicial assessors, or by a summary procedure administered by a single judge.¹⁶² In all of the IP cases analyzed in my sample, disputes were handled by a collegial panel composed of 3 members, which included at least 1 presiding judge (*shenpanzhang*) and an assortment of other types of judicial personnel, including associate judges (*shenpanyuan*), “assistant judges acting in their capacity as judges of disputes” (*daili shanpanyuan*)¹⁶³, or people’s assessors (*peishenyuan*).

¹⁵⁸Civil Procedure Law of the PRC, Article 108.

¹⁵⁹Civil Procedure Law of the PRC, Articles 108-110.

¹⁶⁰Civil Procedure Law of the PRC, Articles, 19, 22.

¹⁶¹Civil Procedure Law of the PRC, Article 112, 113.

¹⁶²Civil Procedure Law of the PRC, Article 40.

¹⁶³For a more detailed explanation of the term “*daili shenpanyuan*”, see the following blog post: http://blog.sina.com.cn/s/blog_4d9415d801000avo.html, accessed June 4, 2014.

Consistent with the practice in an inquisitorial system of adjudication, the judicial officers on the collegial panel must “carry out investigations and collection of necessary evidence.”¹⁶⁴ After evidence is collected or provided to the court, the case is tried in public, as long as the case does not “involve state secrets or personal privacy [and is] to be tried otherwise as provided by the law.”¹⁶⁵ In such trials, the court holds a hearing in which the parties can make statements and the court can question the parties, witnesses can provide testimony, and the court can hear and discuss evidence.¹⁶⁶ In my sample of IP cases across Shanghai, Shenzhen, and Chengdu, all cases appear to have been “publicly tried” in this sense of the term. Finally, the court “shall publicly pronounce its judgment in all cases, whether publicly tried or not.”¹⁶⁷ Ordinarily, courts must conclude cases within six months of docketing, unless an extension is granted by the court president the court one level above.¹⁶⁸

Regarding the substantive legal provisions related to the sample of IP-related manufacturing decisions analyzed here, basic guidelines are contained in the Patent Law (*zhuanli fa*) and the Trademark Law (*shangbiao fa*) of the PRC. Under the Patent Law, a person can apply for three different types of patent: (1) invention patent, which refers to “any new technical solution relating to a product, a process or an improvement thereof”; (2) utility model, which refers to “any new technical solution relating to a product’s shape, structure, or a combination thereof, which is fit for practical use”; and (3) design patent, which refers to “any new design of a product’s shape, pattern, or a combination thereof, as well as the combination of the color and the shape or pattern of a product,

¹⁶⁴Civil Procedure Law of the PRC, Article 116.

¹⁶⁵Civil Procedure Law of the PRC, Article 120.

¹⁶⁶Civil Procedure Law of the PRC, Articles 124-127.

¹⁶⁷Civil Procedure Law of the PRC, Article 134.

¹⁶⁸Civil Procedure Law of the PRC, Article 135.

which creates an aesthetic feeling and is fit for industrial application.”¹⁶⁹ Under Article 11 of the Patent Law, no entity or individual can benefit from the patent, for manufacturing or other business purposes, except for the patentee or licensees of the patentee. The Patent Administrative Department of the State Council has authority to examine and approve patent applications, and approved patents are valid for a period of ten or twenty years from the date of application, depending on the type of patent at issue.¹⁷⁰ If a dispute arises out of any exploitation of a patent without permission of the patent holder, the patentee can bring a lawsuit in the court system or request settlement from the patent administrative department.¹⁷¹

Regarding trademarks, the Trademark Office of the State Administration for Industry and Commerce (SAIC) possesses authority over trademark registration and administration throughout the country.¹⁷² Any natural person, legal person, or other organization can apply to the SAIC to register a trademark, and holders of trademark registrations have exclusive usage rights over a mark.¹⁷³ If any dispute arises regarding infringement of the right to exclusively use a registered trademark, the relevant party can bring a lawsuit in the PRC court system or it can request that the SAIC handle the dispute.¹⁷⁴ If an entity uses a registered trademark or an unregistered, well-known trademark as a trade name, with the purpose of misleading the public, the case can be handled as a claim under the Anti-Unfair Competition Law of the PRC.¹⁷⁵

¹⁶⁹Patent Law of the PRC, Article 2.

¹⁷⁰Patent Law of the PRC, Article 34-35, 42.

¹⁷¹Patent Law of the PRC, Article 60.

¹⁷²Trademark Law of the PRC, Article 2.

¹⁷³Trademark Law of the PRC, Articles 3-4.

¹⁷⁴Trademark Law of the PRC, Articles 57, 60.

¹⁷⁵Trademark Law of the PRC, Article 58.

Selection and Analysis of Judicial Opinions

I obtained a comprehensive sample of civil IP-related judicial opinions from the Rouse Corporation, an IP consultancy firm in China.¹⁷⁶ Dating back to 2006, Rouse has collected judicial opinions published by courts throughout China, as the SPC encourages publication of as many IP judgments as possible by courts with IP jurisdiction in China; however, not all IP judgments are published, and whether to publish a judgment remains in the discretion of the issuing court.¹⁷⁷ The Rouse database of judicial opinions is the most comprehensive available for legal opinions across localities in China, making this sample a rich source for better understanding the operation of civil law courts in urban China.

In an interview with a researcher at the Rouse Corporation covering the methods used to collect this sample of judicial opinions, I learned that their database of IP opinions and information is an attempt to centralize the collection of every publicly released IP-related court decision issued by local Chinese courts. Rouse uses various print and online sources to collect judicial opinions, analyzes the content of the opinions, and provides statistical information regarding trends in IP-related adjudication, with some portions of these data available on their website without charge and other portions available for a fee.¹⁷⁸ Specific online sources that Rouse uses to collect the opinions include the Chinalawinfo Company (chinalawinfo.com or lawinfochina.com, an online legal information service established by Beijing University and its Legal Information Center), the LegalStudio, a division of Lexis-Nexis that specializes in Chinese law

¹⁷⁶Rouse provides data on IP-related disputes in the PRC via its website, <http://www.ciela.cn/>, last accessed February 11, 2015.

¹⁷⁷Much of this information is available on the CIELA website, <http://www.ciela.cn/Content2.aspx?pageId=10&ppId=10&language=en>, last accessed February 11, 2015.

¹⁷⁸PC2013-52A, *law firm researcher, Beijing, May 2013.*

(legalstudio.com), and Westlaw.¹⁷⁹ According to my interviewee, Rouse’s database is updated every day.¹⁸⁰

Across my three case study jurisdictions of Shanghai, Chengdu, and Shenzhen, I obtained a total of 1,452 first-instance IP-related judicial opinions, from which I culled a much smaller sample of 50 comparable cases.¹⁸¹ To facilitate comparison and to limit the influence of extraneous factors that could influence the length, number of statutory citations, and writing style of the opinions, I focused only on cases dealing with IP disputes in the “Basic Manufacturing” industry, in which I included patent and trademark disputes in industries such as machinery for vegetable oil extraction, bathroom installations, stereo equipment, fabric looms, sewing machines, electric motorbikes, kitchen appliances, personal computer printers, and industrial electronics. Focusing on this type of manufacturing helps eliminate the influences that differences in technology might have on the ways in which judges might write opinions—for instance, judicial opinions on disputes in high-tech industrial sectors would likely require much more detailed explanations of technologies involved in disputes, greater potential for relying on expert witnesses, and greater variation in the need to cite specific legal provisions. Additionally, analyzing disputes arising from business at a specific industrial level such as basic level manufacturing allows me to analyze at least two of the major types of IP cases—patent and trademark infringement—providing coverage across at least part of the variation in different types of civil law commercial disputes.

Based on my reading of the IP opinions across cases, there is a common structure and uniform set of information contained in Chinese judicial opinions. The written

¹⁷⁹PC2013-52A, *law firm researcher, Beijing, May 2013*. More information on Law Info China is available at www.lawinfochina.com/ProductsServices/index.shtml, last accessed February 11, 2015.

¹⁸⁰PC2013-52A, *law firm researcher, Beijing, May 2013*.

¹⁸¹PC2013-52A, *law firm researcher, Beijing, May 2013*.

opinions are generally organized into the following sections: case title and case number, indicating the division of the court handling the case; identification of the plaintiff and defendant and their legal representatives, if any; the procedural history of the dispute, which begins the text of the opinion; a section outlining the plaintiff's claims and requests for damages; a section summarizing the defendant's response to the plaintiff's claims and any other claims the defendant might have; two sections summarizing the evidence, one each for the plaintiff's and the defendant's evidence; a section on the court's discussion of the evidence presented; a section summarizing the court's decision, in which the facts that support the court's decision are recited (in the cases that I reviewed, statutory citations are usually found in this section); and at the end of the opinion, the court lists its holdings.

Variation Across Cases Regarding the Extent to Which the “Giving Reasons Requirement” is Satisfied

Table 4.4 below presents data regarding the sample of first-instance judicial opinions regarding trademark and patent disputes in basic manufacturing sectors, divided across the three case study jurisdictions of Shanghai, Shenzhen, and Chengdu. Three different metrics indicate that Shanghai's judges provide the highest degree of “giving reasons” in their judicial opinions.

Table 4.4: Measures of “Giving Reasons Requirement” Across Case Study Localities: Opinion Length and Citation Counts

Case Study Locality	Opinion Length, in Average Number of Chinese Characters	Average Number of Citations to Formal Legal Provisions Contained in Each Judicial Opinion	Average Number of Citations to Formal Legal Provisions Other than CPL Article 134, per Judicial Opinion
Shanghai	4972	6.12	5.65
Shenzhen	4735	5.4	5.24
Chengdu	4785	4.88	3.94

Perhaps the most direct measurement of the extent to which a court gives reasons for its decision in a case is the length of its opinion. Although this metric can fail to capture the quality of a judicial justification for a given decision, wide variation between courts and judges regarding opinion length suggests a lack of reasoning for a judgment for those cases with shorter opinions. In my sample, first-instance cases in Shanghai exhibit the longest written opinions, but the variation between Shanghai and the other two case study jurisdictions is not large—on average only two hundred characters separate an opinion written in Shanghai from an opinion written in the other two localities.

Shanghai courts also exhibit a higher degree of citation to formal legal authority, suggesting greater effort to “give reasons” for the decisions made in the legal disputes at bar. As Table 4.4 indicates, first-instance IP-related opinions in Shanghai produce an average of 1.24 more citations per opinion than those in Chengdu, a difference of 20 percent; Shanghai court opinions in my sample cite an average of 0.72 more formal laws per opinion than opinions issued by first-instance courts in Shenzhen, a 12 percent difference. This difference is even more striking when removing the relatively meaningless citations to Article 134 of the Civil Procedure Law, which states simply that cases should be heard publicly, subject only to a small number of exceptions inapplicable to the case opinions collected here (“A people’s court shall try civil cases openly, except

those involving any state secret or individual privacy or as otherwise provided by law. Divorce cases and cases involving any trade secret may be tried in camera upon application of the parties”). Setting aside these citations, which were less frequently found in the Shanghai opinions in the sample, judicial opinions cited 1.71 formal legal provisions more per opinion than did written opinions in similar cases issued in Chengdu’s first-instance courts, a slightly more than 30 percent higher degree of formal citation than Chengdu’s courts. The gap in the rate of citation was less prominent between Shanghai and Shenzhen, but first instance IP opinions from Shanghai courts that dealt with first instance disputes in the manufacturing sector nonetheless cited 0.41 more formal legal provisions per opinion than did first-instance Shenzhen courts, a 7 percent gap in citation frequency. Hence, according to data on judicial opinions that I used to measure the “giving reasons” aspect of judicial autonomy, Shanghai courts provide the most lengthy and statutorily grounded opinions, followed by Shenzhen courts and Chengdu courts, which is consistent with the theory that high-end legal markets create pressure for judicial autonomy in local Chinese courts.

Variation in Mediation Rates Across Localities

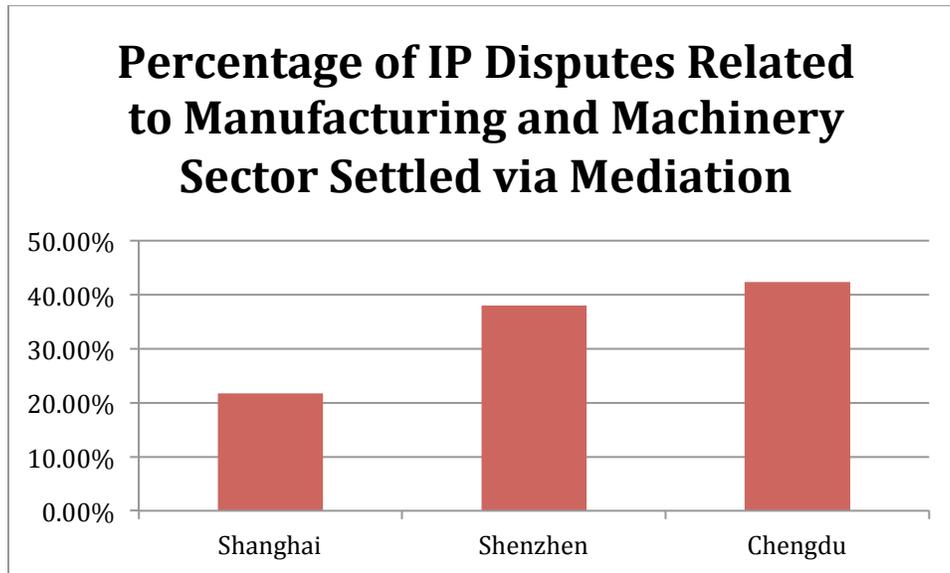
Because lower mediation rates suggest that judges are confident in their ability to apply the law to facts in a particular case, Shanghai’s relatively low mediation rate also suggests that judges in Shanghai’s Second Intermediate Court tend to have more confidence on average to issue a judgment despite the evaluation system’s preference towards mediation and away from appeal.¹⁸² Although I note in Chapter 2 that judicial evaluations do not seamlessly constrain judges to mediate more cases or to avoid appellate reversal (C. Minzner 2011b; C. Minzner 2011a), emerging informal practices

¹⁸²One of the major reasons that judges tend to mediate more cases is that such settlements cannot be reversed on appeal. *PC2013-17, judge, Shanghai, March 2013.*

ultimately exert a greater influence on judges' professional activity, CQAS performance evaluation indices nonetheless still emphasize and encourage mediated settlement. Historically, rising caseloads and bureaucratic pressures have compelled judges, since at least the early reform era, to emphasize mediation instead of adversarial adjudication in the resolution of private disputes (Lubman 1999). Further, mediation was emphasized more strongly during the 2008-2013 tenure of former SPC President Wang Shengjun¹⁸³ (a period that overlaps significantly with that in which the cases in this dataset were decided), and was highlighted by a link between judicial mediation and policies designed to limit political dissent and produce social stability (Trevaskas 2011). For these reasons, the use of mediation serves as a useful proxy for judicial autonomy, because higher mediation rates reflect a judicial tendency to avoid making decisions, to pressure litigants to resolve disputes for themselves, and to comply with top-down political mandates aimed at preserving social stability.

¹⁸³*PC2013-57, judge, Shanghai, June 2013; PC2013-51, judge, Chengdu, May 2013.*

Figure 4.3. The Prevalence of Mediation in Selected IP Disputes Across Cases



Source: Rouse Corporation Statistical Analysis, available at ciela.cn, last visited July 1, 2014.

The percentage of mediated cases presented in Figure 4.3 reflects the extent to which mediation is emphasized in selected first-instance cases handled in the Intermediate Courts in each of the three case study cities of Shanghai, Shenzhen, and Chengdu. The publicly available data on the CIELA website provided by the Rouse Corporation provides both the number of judgments and the number of mediated settlements, from which calculations regarding the ratio of mediated to adversarial dispute resolution can be made. I restricted the sample of cases to IP disputes related to the manufacturing and machinery industry across cases to normalize the effect that differences across sector might exert on how courts handle disputes, i.e., all three cases have comparable machine manufacturing capabilities, but dissimilar levels of development in the high technology sector. In general, the data indicate that Shanghai has the lowest mediation rate among my three cases, followed by Shenzhen and

Chengdu, which is consistent with the thesis that high-end law firm markets tend to lead to greater judicial autonomy in local courts.

CONCLUSION

The evidence presented in Chapters 3 and 4 supports the finding that public-private differences in professional conditions (e.g., wage gap, personal autonomy, and career trajectory) are linked in part to design changes in China's authoritarian court system. Interview data, documentary evidence, and government statistics support the finding that the most competitive and routinized judicial career trajectories, the most transparent court information, the most active judges regarding the "giving reasons" requirement, and judges least likely to resolve cases with mediation are found in Shanghai, followed by Shenzhen and Chengdu. These findings suggest that when authoritarian regimes with rapidly expanding and liberalized economies grow alongside a downward pressure on formal compensation for public officials, imbalances between public and private salary fluctuations can interact with factors shaping the designs of courts. These findings should draw attention to the entire class of legal professionals (i.e., not simply activist lawyers or judges) when discussing judicial reform, and to an analysis of how the choices of different actors within this class contributes to the development of judicial autonomy in a given polity.¹⁸⁴ This approach is an alternative to other research that tends to examine judicial politics, even in more ambiguous political settings such as new democracies or transitional political systems, as affected mainly by lawyers-as-civil-society-activists (Pils 2007; Epp 1998) and competition between multiple parties (Ginsburg 2003; Chavez 2004).

¹⁸⁴Other recent studies analyze processes by which the legal profession, using the framework of "fields" conceptualized by Bourdieu, influence authoritarian judges (Kisilowski 2014).

The limited capacity of lawyer activists in China and the one-party dominance of the CPC preclude a finding that pluralism or party competition produces the changes in judicial promotion described in this chapter. The horizontal political power of the central government and Party is not credibly challenged by inter-party or inter-branch competition. Nonetheless, in some localities in China, court leaders offer their judges better working conditions, including more professionalized selection and promotion mechanisms, which create conditions that are at least partially responsible for greater judicial willingness to give reasons for their decisions and decide cases without resorting to mediation. This chapter provides empirical support for the thesis that institutional incentives and local legal services markets can act in tandem to influence courts, given that public and private sector labor markets for legal professionals are engaged in symbiotic development. In this way, this dissertation clears a path for researching the political and legal impact of a growing market for legal services that can apply to market-based national economies—authoritarian or otherwise.

Chapter 5: Bureaucratic Specialization and Court Institutionalization in the Reform Era

In addition to more competitive, transparent, and routinized judicial promotion mechanisms, court leaders seek to establish issue-specific bureaucratic court units that embody legal modernization, weaken the capacity of local political leaders (e.g., local Party and local government elites) to exert direct political control over judicial designs and decision-making, and provide their subordinate judges a wider array of opportunities for promotion. In so doing, court leaders also enhance the collective status of courts *vis a vis* other bureaucratic units of the Party State. From a historical perspective, it is apparent that local court leaders in PRC strive to retain more judicial talent *via* expansions in the bureaucratic structure of courts—a political issue that has become increasingly localized in the last two decades. During the same period, the private legal profession has rapidly expanded (discussed in Chapter 3) and local judicial reforms have been implemented (discussed in Chapter 4). These increasingly localized bureaucratic dynamics have shifted priorities regarding court reform in China toward technocratic priorities in certain localities—particularly in Shanghai and Shenzhen.

“Bureaucratic specialization” refers to the process of establishing issue-specific and bureaucratic management court divisions in China’s court system. Because courts must lobby local governments and local CPC Committees for increases in personnel and resource expansions to establish new bureaucratic units, bureaucratic specialization can re-shape relations with local State and Party units.¹⁸⁵ In analyzing the dynamics of bureaucratic specialization in each of my cases, I emphasize local court leaders’ relative autonomy to specialize their own courts, as opposed to local courts merely possessing

¹⁸⁵Establishing specialized bureaucratic units that require “independent” *bianzhi* has been included among the ways that court leaders can earn higher performance evaluation scores. *PC2012-27, judge, Wenzhou, October 2012.*

authority to expand when a nationwide “rising tide lifts all boats” (*shui zhang chuan gao*)—including court bureaucratic structures in far-flung local regions. After examining local variation in bureaucratic specialization, this chapter argues that greater analytical clarity is possible if courts are viewed as bureaucratic units within the larger Chinese Party-State. Viewed through the dominant frameworks of the Chinese bureaucratic politics literature (Lieberthal and Oksenberg 1988; Lieberthal 2004), local politics regarding court reform proceeds with an underlying tension, based on professional priorities, between court leaders seeking to establish vertical (*tiao*-level) command over legal politics and local political leaders poised to retain as much horizontal (*kuai*-level) authority within a given geographic area. Resonating with the classic CPC maxim that cadres ought to be both “expert” and “red” (Pieke 2009, 29, 141; R. D. Baum 1964), important elements of court politics can become struggles between expert court leaders, who seek vertical, *tiao*-level authority over their own bureaucratic funding and specialization policies, and red local political officials, who seek to maintain horizontal, *kuai*-level political control that subsumes court politics within territorial economic development and political goals.

With a morass of courts and other state organs looking for funding at the local level, bureaucratic specialization is a fiercely competitive process—the more personnel (*bianzhi*) employed by a particular court, the greater its authority; in short, “[p]ersonnel policy is the heart of power in a Leninist system” (Brødsgaard 2012, 76). Accordingly, when competition emerges between local government units for authority, the winner is usually the unit with more personnel (Z. Liu 2009; Mertha 2006), and under the often circular logic that can govern bureaucracies, previous *bianzhi* expansions can provide grounds for further expansions (Z. Liu 2009, 128–129). Loosely translated as “establishment of posts,” *bianzhi* does not simply establish the *number* of persons

employed in a bureaucratic unit, it also includes authority for the funding outlay to support the hiring of officials to fill the positions (Brødsgaard 2002, 361). The concept of *bianzhi* differs from the *nomenklatura* institutions that apply to leading cadres in the Chinese bureaucracy: the *bianzhi* system encompasses millions of state-salaried employees, whereas *nomenklatura* only includes cadres in leadership positions from the central Party and government leaders to the local township leader (Brødsgaard 2002, 362).¹⁸⁶ Despite the fact that *bianzhi* refers more to public sector personnel in general, rather than the key leadership posts, the issue of *bianzhi* remains critical to a deep understanding of how relevant Party leaders maintain political control over bureaucratic authority—after all, *bianzhi* is ultimately managed by the Central Commission for Institutional Bianzhi (*Zhongyang jigou bianzhi weiyuanhui*), “which is placed directly under the Party’s Central Committee and is thus managed and controlled by the Party” (Brødsgaard 2012, 76). Bureaucratic specialization can thus offer a window onto court leaders’ abilities to “coordinate” (*xietiao*) politically with local Party and government officials to open up new divisions and secure more funding (Z. Liu 2009, 129). As recent research points out, a court’s ability to secure funding can reflect judicial efficiency and judicial fairness (Y. Wang 2013, 49).

HISTORICAL DEVELOPMENT OF BUREAUCRATIC SPECIALIZATION IN PRC COURTS

Despite the CPC’s assumption of supreme political power in China in 1949 and the initial establishment of the People’s Courts shortly thereafter, local bureaucratic specialization in the court system has developed only recently. Especially during the past two decades, bureaucratic specialization has led to greater benefits for courts in localities

¹⁸⁶“For example, Peking University has several thousand people on the *bianzhi* of the educational system, but only the president and Party secretary of the university will be listed in the Central Committee’s *nomenklatura*” (Brødsgaard 2002, 365).

processing highly diversified commercial disputes and holding great strategic importance in national economic development. This shift in priorities has opened the door for some court leaders to advocate for greater *tiao*-level court specialization and local institutional autonomy. The following two sections describe the differences between the early period of PRC court bureaucratic politics (which focused on nationally uniform expansion of court institutions in which rural and urban differences, rather than *tiao* and *kuai* dynamics, played a crucial role) and the current period of court politics that began to produce local variations in bureaucratic specialization starting in the mid-1990's.

A Clean Slate: the Maoist Judicial Bureaucracy (1949-1978)

From their inception, Communist courts and judicial work have been political bureaucracies. After the CPC defeated the KMT during the Chinese Civil War (1946-1949) and came to power in 1949, the Party had a choice between incorporating parts of the Republican-era KMT legal and court system into the new Communist government. On January 14, 1949, the new leadership of the People's Republic of China (PRC) announced that one of the eight fundamental conditions for the end of the Civil War between the Communists and the Republican *Kuomintang* (KMT) government led by Chiang Kai-shek (*Jiang Jieshi*) would be to abolish the Constitution of the KMT Government as well as "all reactionary laws and decrees" (Chen 2008, 44). The court system would start from a clean slate under a new constitution drafted by Mao Zedong and other CPC leaders, and would become the new fundamental law of the Chinese people (Chen 2008, 44; see also Shapiro 1981, 60–62). The rationale behind the abolition of KMT law is found in the "Instruction of the Central Committee of the CPC to Abolish the Kuomintang Six Codes and to Define the Judicial Principles for the Liberated Areas," issued in February 1949:

The Six Codes of the Kuomintang, like bourgeois law in general, were framed in such a way as to conceal their class character...the Six Codes give the appearance the people are all equal before the law. But in reality, there can be no real common interests between...the exploiting classes and the exploited...Therefore, the Six Codes cannot be the applicable law in both the areas controlled by the Chiang Kai-shek and the liberated areas.¹⁸⁷

Regarding judicial principles, these instructions explained to PRC judges how to operate in the legal vacuum created by the 1949 CPC edicts:

Before the new laws of the people have been systematically promulgated, people's judicial work shall be based on policies of the Communist Party and various fundamental principles, laws, decrees, resolutions issued by the People's Government and the People's Liberation Army...In the meantime, the judicial organs should educate and reform their judicial cadres through scolding and criticizing the Six Codes and all laws and decrees of the Kuomintang, all bourgeois anti-people's statutes and laws of Europe, America and Japan, through the learning of attitudes towards state and law of Marxism-Leninism and Mao Zedong Thought.¹⁸⁸

The order implementing these instructions followed in March 1949, establishing and implementing the roots of a post-1949 Chinese judiciary that de-emphasized formal legality, and in which the institutional control of bureaucratic politics defined the role of courts (Chen 2008, 45). Additionally, the Instructions make clear that at the outset of institution building in post-1949 China, the courts would largely start from a clean, Communist slate as politicized units under a new political-legal regime consisting of the CPC, the People's Government, and the People's Liberation Army.¹⁸⁹

From these post-1949 roots, the PRC courts' struggle for institutional autonomy has centered upon becoming more autonomous from the revolutionary political

¹⁸⁷Instruction of the Central Committee of the CPC to Abolish the Kuomintang Six Codes and to Define the Judicial Principles for the Liberated Areas, Item 2, issued February 1949 (cited in Chen 2008, 44).

¹⁸⁸Instruction of the Central Committee of the CPC to Abolish the Kuomintang Six Codes and to Define the Judicial Principles for the Liberated Areas, Item 5, issued February 1949 (cited in Chen 2008, 45).

¹⁸⁹Although the CPC's ascension to power brought dramatic changes in the judicial sphere, the Party was not able to eliminate all vestiges of the Republican-era justice system (see e.g., Tiffert 2011).

bureaucracies to which “judicial work” was subordinated by the 1949 Instructions. As scholarship on the criminal courts has found, “...almost from their inception, criminal courts laboured to carve out a space for themselves independent of the public security apparatus – a labour that has shown much progress, but is certainly still ongoing” (Hurst 2011, 86-87). During the 1950’s, there remained many geographic areas of China, particularly in the countryside, that had never been served by courts before, let alone newly established CPC courts. Instead, military commanders in many of these regions had set up adjudication divisions within local public security bureaus rather than independent criminal courts to serve the social control function expected of modern states. After the revolution, grassroots courts began groping for institutional autonomy within the CPC bureaucratic apparatus by claiming this modest institutional role legitimizing criminal prosecutions and other actions of the state’s social control apparatus. Criminal law, along with enforcing new rules against forced marriages stemming from the Marriage Law of 1950, became courts’ trademark institutional function during the Mao era; indeed, the 1979 Law on the Organization of the People’s Courts stipulates that criminal case and civil case divisions could be set up at first-instance courts throughout the country, mainly for the processing of criminal and marriage-related legal disputes (Z. Liu 2009, 125). From these beginnings, a substantial component of Chinese courts’ struggles for institutional autonomy has been to establish a clearly delineated functionary profile distinct from police, procuracy, and military bureaucracies.

Aside from claiming a legitimizing niche within the state during this era, bureaucratic specialization in courts also mandated divisions of labor among judges and other court workers. The first legal regulation related to courts, the Temporary Regulations Regarding the Organization of People’s Courts (passed September 3, 1951),

granted authority to divide cases according to legal specialty: “County-level courts that process many cases can establish separate criminal and civil law adjudication divisions” (Z. Liu 2009, 125). This straightforward bureaucratic structure was replicated generally throughout the country, with national legislation (the 1954 Law on Organization of the People’s Courts) formalizing local court authority at the Basic and Intermediate level to establish criminal and civil adjudication divisions (Z. Liu 2009, 125). During the 1950’s and 1960’s, the Party-State also established police, procuracy, and court institutions separate from the military apparatus.

Bureaucratic specialization, among many other activities, was substantially disrupted during the Great Leap Forward (1958-1961) and the Cultural Revolution (1966-1976), and as a result, the PRC lacked a nationally coherent, stable legal system at the time of Mao’s death.¹⁹⁰ The courts’ gradual development of an institutional space dedicated to legitimizing criminal legal orders and performing simple civil dispute resolution was especially hampered during the Cultural Revolution Decade, during which courts “all but disappeared” throughout vast parts of China (Lubman 1999, 251). At the outset of the post-Mao reform era beginning in 1978, courts were re-constituted on the foundations of their criminal and basic civil law dispute resolution bureaucracies. In Shanghai, Shenzhen, and Chengdu, caseload around the time that the reform era began was split between criminal and civil cases: from 1979-1981, criminal cases comprised 64% of the Shenzhen City Court’s caseload (and 36% were civil cases); between 1977-1981, criminal cases comprised 40% of the total percentage of first instance cases in the Chengdu City Court; and between 1966-1976, the total percentage of criminal cases among all cases concluded throughout the multi-leveled Shanghai court system was 47%

¹⁹⁰Most scholars suggest that the court system was essentially destroyed during the Cultural Revolution, but others also note that campaign mobilization actually enhanced legal institutions in some areas during this period (Hurst 2011).

(Shenzhen City Local Gazette Editing Committee 2006; Shanghai Judicial Gazette Editing Committee 2003; Chengdu Intermediate People's Court 1997).

The “Nationalized” Period of the Expansion of China’s Reform-era Court System: Criminal, Civil, and Administrative Courts, 1978-1993

In the turmoil following Mao’s death and the end of the Cultural Revolution, reforms to re-build Party legitimacy had to be constructed on some other basis than Maoist campaign politics. Deng Xiaoping featured law prominently to help establish stability and order for economic development (Chen 2008, 52). After the leadership transition in 1978, the state rapidly enacted myriad laws and regulations, most of which were designed to regulate economic and commercial relations, based on the Party’s perceived need for national economic development (Chen 2008, 51). At a famous speech closing the Third Plenum of the 11th Party Congress in 1978, Deng stated, “relations between the country and its enterprises, between enterprises, between enterprises and people should be confirmed via legal forms; contradictions between the same should also not infrequently be resolved through law” (Liu 2009, 125; *c.f.* Foucault 2008). Thus in the Deng era, the Chinese legal system has been constructed around the premise that a market economy demands a legal system that embodies Weberian rationality, which has led to a renewed focus on the issues of personnel management, bureaucratic expansion, and role specialization that has been the hallmark of Chinese court institutionalization since the beginning of the PRC (Chen 2008, 61).

Court bureaucratization in the early Deng era was a generally a national phenomenon by which local courts followed the central government’s announcements regarding new policies and legislative developments. Between 1978-1993, legal reforms resulted in the creation of four discrete issue areas, which mirrored the internal structures of PRC courts throughout the country: criminal law, civil law, economic law, and

administrative law. For example, the proliferation of within-court Administrative Litigation Divisions to specialize in handling administrative lawsuits against the state was handled as a national issue. Although the handling of administrative cases during the 1980's began in some courts' economic divisions and civil divisions, national-level rules and regulations soon exerted authority over the establishment of administrative divisions. In 1982, the Provisional Civil Litigation Law recognized the legitimacy of administrative lawsuits, leading some local courts to accept administrative cases in their Civil Divisions or Economic Divisions. In 1987, the SPC issued a rule on the establishment of Administrative Litigation Divisions effective across the country, and on January 14, 1987, it instructed courts to establish standalone Administrative Litigation Divisions in local courts. This Circular was followed by national legislation (the Administrative Litigation Law) comprehensively formalizing administrative lawsuits in April 1989 (Z. Liu 2009).

In similar fashion, cases of an “economic nature” (*i.e.*, disputes among persons or companies arising from contract breaches) were handled simply as “civil” cases before 1978 (Chengdu Intermediate People's Court 1997, 166, 169); although such cases were heard in Chinese courts during the Mao period, there existed no specialized bureaucratic court units specifically authorized to handle cases involving contract breaches. On February 1, 1979, however, courts at the High and Intermediate Levels in large- and medium-sized cities throughout the country were instructed to establish Economic Divisions within courts to accept “economic” disputes that would be filed under the Economic Contract Law of 1980 (Z. Liu 2009, 125). On September 2, 1983, the Law on the Organization of Courts was amended so that basic-level, first-instance courts could establish Economic Divisions, and that intermediate-level courts could establish other specialized divisions in addition to Economic Divisions “according to needs” (Z. Liu

2009). Court leaders finally had a national legislative mandate to lobby for expansions of the bureaucratic units under their control.

Court leaders in Chengdu acted quickly to expand. Any first-instance or appeals cases that involved economic matters in Chengdu before 1980 were handled within the scope of general “civil” adjudication (Chengdu Intermediate People’s Court 1997, 166).¹⁹¹ After the announcement of economic reforms at the Third Plenum of the 11th Party Congress in 1978, the Chengdu Intermediate Court, according to relevant laws and regulations, and in accordance with the needs of development, formally established a standalone “Economic Division” in September 1980 specifically designed to handle legal disputes of an economic nature (Chengdu Intermediate People’s Court 1997, 166). By 1982, all of Chengdu’s courts had established economic case adjudication divisions, pushing the *bianzhi* in Chengdu’s Intermediate Court to more than 140 personnel, whereas just four years earlier, there were only 68 personnel in the Intermediate Court. Between 1980-1989, Chengdu courts handled 11,905 cases that involved contracts or administrative cases of an economic nature (Chengdu Intermediate People’s Court 1997, 167).

Thus, from the beginning of the reform era up through the end of the 1980’s, the institutional expansion of the Chinese court system generally exhibited a nationally uniform character, with national-level pronouncements authorizing and strongly encouraging courts at all levels throughout the country to establish specialized divisions. By the end of the 1980’s, administrative litigation and economic contract disputes had given courts an institutional authority to handle these types of cases in addition to the civil and criminal law types of legal disputes that they inherited from Mao-era court

¹⁹¹After two decades of hearing “economic” cases separately from “civil” cases, Chinese courts eliminated the distinction around 2000 (Peerenboom 2002).

institutions. As a result, courts' budgets, bureaucratic status, and personnel allocations, including allocations of leadership personnel, grew accordingly.

The “Localized” Period of the Expansion of China’s Reform-era Court System: Issue-Specific Bureaucratic Specialization (1993-present)

In the early 1990’s, court bureaucratic specialization increasingly became a local rather than national issue marked by differing degrees of institutional autonomy for courts depending on a given locality’s orientation to the Chinese economy. Accordingly, the SPC’s First Five-Year Plan (issued in 1998), then-SPC President Xiao Yang called on local courts to specialize their internal court adjudication divisions, and other higher courts have urged (*ducu*) subnational local courts that are not the explicit recipients of *bianzhi* expansions to lobby local government units for expansions of their own personnel (Z. Liu 2009).¹⁹² I find that successful procurement of bureaucratic court resources from local governments is indicative of what Peerenboom calls “collective independence” (Peerenboom 2010), *i.e.*, authority to determine the court’s own budget according to systemic financial realities.

Localized court bureaucratization began with the rising prominence of IP law around 1993 (Dimitrov 2009; Shanghai High People’s Court 2011). Following the Mao era, Deng focused on local experimentation to facilitate economic development and trade liberalization. By the early 1990’s, in the wake of the success of many of these local economic experiments, Deng re-invigorated the construction of the legal system to mirror the intended gradualist character of economic policymaking: “...legal provisions will inevitably be rough to start with, then be gradually improved upon. Some laws and

¹⁹²The First Five Year Plan of the Supreme People’s Court (*Renmin fayuan “yi wu” gaige gangyao*), 1999-2004; PC2012-27, judge, Wenzhou, October 2012.

statues can be tried out in particular localities and later enacted nationally after experience has been evaluated and improvements have been made” (Chen 2008, 54).

The central government rolled out initiatives in several localities aimed at enhancing courts’ ability to handle intellectual property disputes ahead of China’s accession to the World Trade Organization (WTO) and integration into the Trade Related Aspects of Intellectual Property Rights (TRIPs) framework. On August 5, 1993, Beijing High People’s Court and the Beijing Intermediate People’s Court became the first two specialized IP divisions in China, with the NPC approval of the SPC’s establishment of an independent IP adjudication division (*shenpanting*)¹⁹³ following soon after (Z. Liu 2009; Yan 2007; Dimitrov 2009, 101). These IP-related reforms were followed by SPC’s five-year plan in 1998 calling for the separation of divisions within the court (Z. Liu 2009). The emergence of specialized IP divisions then accelerated after 2000 but has generally proceeded gradually and locally over the past two decades, diffusing into several other legal issue areas. In the wake of IP-related reforms to China’s court system, an increasing number of local Chinese courts have established specialized divisions in various other areas of law, including finance, loan default, juvenile, company liquidation, bankruptcy, labor, and environmental protection (Dimitrov 2009; Stern 2010; Peerenboom 2002, 13, 284, 293; M. Zhang and Zhang 2012; Shenzhen Intermediate People’s Court 2011).

The IP Divisions established in Chinese courts in the 1990’s were concentrated mainly in the types of localities under analysis in this dissertation—developed urban

¹⁹³For clarity, I translate *shenpanting* as “divisions” located within China’s general court system. In his work on IP Divisions in China, Dimitrov variously refers to these divisions as “courts,” “divisions,” or “tribunals” (Dimitrov 2009, 100-101). Referring to issue-specific “divisions” in China’s courts prevents confusion with other independent, issue-specific “courts” such as military courts, railway courts, and maritime courts, which are not discussed here. Not until August 26, 2014 did the National People’s Congress begin considering establishing standalone IP *Courts* in Beijing, Shanghai, and Guangzhou (X. Zhang 2014).

areas in China (Dimitrov 2009, 101). Although IP Divisions emerged in many urban localities in China, Shanghai and Beijing stand out. The first specialized IP tribunals were set up in the Beijing High People's Court and in the Beijing Intermediate People's Court, and during the first seven years of specialized IP Divisions and up through 2000, standalone IP Divisions were only established in Beijing and Shanghai throughout the Basic (first-instance), Intermediate, and High Court levels (Dimitrov 2009, 101-102). At that time, Chengdu City in Sichuan province and Shenzhen City in Guangdong province also established IP Divisions in their Intermediate Courts. However, by 2000, several cities across Guangdong province had established specialized IP Divisions, whereas Chengdu was the only city to successfully establish a standalone intermediate court IP Division among cities in Sichuan province. Shanghai's investment in court authority over IP issues outstripped that of Guangdong and Sichuan provinces, indicating officials' resolve "to invest scarce resources in an area of the law whose importance is on the rise, and to do so by adjusting the court system in ways that allow for the institutionalization of rationalized enforcement" (Dimitrov 2009, 101). Table 5.1 summarizes these local variations in bureaucratic specialization across my cases study cites:

Table 5.1: Local Variation Across Case Studies Regarding Bureaucratization of Courts.

<i>Locality</i>	<i>Status of judicial specialization</i>	<i>Experience with pilot projects in court bureaucratic specialization</i>	<i>Rulemaking and training designed to increase technical expertise</i>
Shanghai	<ul style="list-style-type: none"> ■ judicial labor in Intermediate Courts highly specialized ■ High number of specialized divisions in addition to IP divisions, e.g., finance, real estate, labor 	<ul style="list-style-type: none"> ■ Early establishment as testing ground for the specialized handling of IP and finance legal disputes, e.g., Shanghai's Pudong New District 	<ul style="list-style-type: none"> ■ Increased rules and proliferation of training programs ■ More cases and training activities on international stage
Shenzhen	<ul style="list-style-type: none"> ■ judicial labor in Intermediate Courts highly specialized ■ High number of specialized divisions in addition to IP divisions, e.g., bankruptcy, real estate, labor 	<ul style="list-style-type: none"> ■ Later establishment as a testing ground for new policies in the specialized handling of IP and finance legal disputes, e.g., Nanshan District 	<ul style="list-style-type: none"> ■ Increased rules and some limited proliferation of training programs
Chengdu	<ul style="list-style-type: none"> ■ judicial labor in Intermediate Courts only moderately specialized ■ Low number of specialized divisions in addition to IP Divisions, e.g., juvenile 	<ul style="list-style-type: none"> ■ Lack of foundation as testing ground for new policies in the specialized handling of disputes 	<ul style="list-style-type: none"> ■ Limited proliferation of training programs

CASE STUDIES ON BUREAUCRATIC SPECIALIZATION IN LOCAL COURTS

Bureaucratic specialization enhances courts' ability to handle more complex legal cases, eventually expanding courts' abilities to lobby (i.e., exercise *tiao*-level authority) for *bianzhi* allocations and weakening local Party Committees' capacity to exert direct (*kuai*-level) control over legal issue areas (Z. Liu 2012, 110). In short, local demand for private legal services has not only pressured courts to reform judicial promotion mechanisms, increase transparency, and give reasons for their decisions, it has also brought about local variation regarding local courts' abilities to bargain for bureaucratic

resources from local Party-State elites (e.g., the locally relevant CPC personnel institutions and branches of the Ministry of Finance (*caizhengbu*)) that wield authority over funding allocations and bureaucratization approvals. Whereas the Shanghai court system's relatively high level of bureaucratic specialization indicates that court leaders are continuously winning the approval of local political leaders to open new internal court divisions (Z. Liu 2009), the scope of bureaucratic expansion and specialization in Chengdu's courts has been much narrower. Further entrenching Shanghai's capacity for building court institutions in support of market activity, the Pudong New District recently opened of a "Free Trade Zone" featuring liberal trade policies and more specialized and professional court services to lure foreign investors (Wei and Yan 2014).

Surprisingly, at the beginning of the reform era, both Chengdu and Shanghai were highly institutionalized court systems, both possessing established, well-defined duties resolving criminal prosecutions and simple civil disputes among private citizens (Shenzhen City Local Gazette Editing Committee 2006; Chengdu Intermediate People's Court 1997). Shenzhen, conversely, was hardly established as a city at the time of Mao's death, and as a result of its status as a local experiment for economic liberalization during Deng Xiaoping's reform era, its court system has grown substantially (Shenzhen City Local Gazette Editing Committee 2006). The politics that determine changes to court authority and judicial autonomy in China are in large part determined by these long-term struggles for control over specialized legal issue areas.

Highly Specialized Case: Shanghai

Shanghai court leaders have exhibited a stronger ability to obtain bureaucratic resources and personnel allocations *via* the opening of new courts and court divisions, particularly since IP Divisions began proliferating in the lead up to China's accession to

the WTO in 2002. As of 2013, the current bureaucratic units that are designed to handle cases at the Second Shanghai Intermediate Court include the following adjudication divisions/units¹⁹⁴, exhibiting a clearer focus on specialization by issue area than the internal structures of my other case study sites:

- Criminal Division 1, non-economic criminal cases
- Criminal Division 2, economic and financial criminal cases
- Juvenile Division, all cases to which a juvenile is a party
- Civil Division 1, traditional civil cases, e.g., marriage and family law disputes
- Civil Division 2, real estate cases
- Civil Division 3, labor disputes
- Civil Division 4, bankruptcy cases
- Civil Division 5, IP cases and cases involving foreigners
- Civil Division 6, financial disputes
- Administrative Division, administrative and state compensation cases

The highly specialized division of labor in Shanghai's courts reflects that, relative to other localities in China, it has been able to obtain greater personnel allocations to handle different types of civil cases. For most of the different specialized areas of law currently practiced in China, including real estate, labor, bankruptcy, IP, and finance, Shanghai's Intermediate Courts have established specialized divisions for handling each case. The only other notable exception is environmental pollution divisions, which have been established in other cities such as Wuxi and Kunming (Stern 2010, 93). The

¹⁹⁴The internal structure of the Shanghai Second Intermediate People's Court is displayed on the court's website, <http://www.shefy.com/page/ljfy/?lm=0a>, last accessed February 21, 2015 (a copy of the court structure as of 2012 is on file with author).

proliferation of specialized divisions in Shanghai suggests strong bureaucratic bargaining position that Shanghai's court leaders possess *vis a vis* local CPC and governmental leaders. When a court within the Shanghai administrative locality seeks to establish a new bureaucratic division, it must obtain approval from the local Shanghai branch of the Party Commission for Institutional *Bianzhi*, which is in charge of appropriating personnel allocations. For example, on January 2, 1994, this branch of the *bianzhi* commission would have been responsible for approving the Shanghai High Court and the Intermediate Court's establishment of IP Divisions (Shanghai Judicial Gazette Editing Committee 2003, 46).

These new bureaucratic divisions have expanded *bianzhi* personnel allocations in Shanghai's court system. In Shanghai's Second Intermediate Court, for example, the Labor Division employs approximately 20 personnel with 1 Division Chief and 1 Vice Division Chief; the Finance Division has 12 personnel with 1 Vice Division Chief; the Real Estate Division employs approximately 40 personnel; the Commercial Division that handles non-finance cases employs approximately 40 personnel; the First Civil Division employs approximately 40 personnel; the Juvenile Division has 6 personnel; Civil Division 4, employs between 30-40 personnel; Civil Division 1 has approximately 40 personnel; and the IP Division has approximately 15 personnel. In total, the court employs over 400 personnel, of which approximately 200 are judges.¹⁹⁵ To establish a new division, local personnel institutions might provide several more Division Vice Chief position allocations, usually at 1 Vice Division Chief personnel allocation per every 10 ordinary, case-deciding judges.¹⁹⁶

¹⁹⁵PC2012-49, judge, Shanghai, December 2012.

¹⁹⁶PC2012-49, judge, Shanghai, December 2012.

The close relationship between Shanghai court leaders and the Shanghai Commission for Institutional *Bianzhi* enhances local courts' abilities to craft bureaucratic policy in local courts. For example, as Shanghai's Pudong New District has topographically, socially, and financially transformed in only two decades from farmland to a global financial hub, the city's court system has also become a testing ground for new policies in the specialized handling of IP and Finance legal disputes. In 1996, only three years after it was opened, Pudong District Court was chosen as a "3 in 1" pilot project for handling civil, criminal, and administrative IP adjudication exclusively within a single court's IP Division, symbolizing the high priority assigned to IP law (Shanghai Judicial Gazette Editing Committee 2003; Shanghai High People's Court 2011). By contrast, IP Divisions in Chengdu have historically handled many other types of non-IP related disputes (Shanghai High People's Court 2011; Nie 2010).¹⁹⁷ Eventually dubbed the "Pudong Model," courts throughout the country have promoted "3 in 1" style court reforms similar to those in the Pudong District. This model has also served as a catalyst for bureaucratic specialization throughout other courts within Shanghai itself, as Huangpu District Court has also established a specialized IP division and the Shanghai High Court in 2008 further expanded the implementation of the "3 in 1" specialization strategy (Shanghai High People's Court 2011). Two High Courts and 9 Intermediate Courts throughout the country also started pilot projects (*shidian*) for Pudong-style IP court specialization, which later became goals listed in the national-level IP Strategy (*guojia zhishichanquan zhanlüe zhaiyao*) and the SPC's Third Five-Year Plan (Shanghai High People's Court 2011). Assignment as a policy "model" earmarks worthwhile

¹⁹⁷PC2012-36, judge, Chengdu, October 2012.

destinations for court bureaucratic resources, indicating the tacit approval of local CPC institutions for expansions in court personnel, funding, and bureaucratic status.

In addition to reflecting a local court's relations with local political elites, the establishment of specialized court divisions within the court bureaucracy also creates more opportunities for the court to enhance its technical expertise. First, Shanghai Pudong District Court's experience with the "3-in-1" Model of specialized IP Divisions serves to consolidate the specialized function of IP Divisions in that court system, allowing judicial labor specialization of IP-specific judicial panels and IP as a substantive legal issue area to take precedence over previous distinctions between criminal, civil, and administrative law (Shanghai High People's Court 2011). Before the establishment of the IP Division, there are few instances in Shanghai's local court history of expert conferences, jurisdictional specifications, or case decisions of international importance. After the establishment of the IP Division in Shanghai, the court history shows an increase in such activities: on April 30, 1996, the Shanghai High Court convened a conference on IP, including specialized training for judges; on August 25, 1998, the Shanghai High Court promulgated a rule requiring that all cities' first instance courts (other than those in the model districts of Pudong and Huangpu) that deal with cases requiring highly trained judges should send such cases to the Intermediate Court for adjudication; on September 19, 1996, Shanghai High Court conducted a specialized search for IP experts and jurors; on June 25, 1998, the Shanghai 1st Intermediate Court issued an order in a copyright case that had international importance; and finally, on December 25, 2000, the Shanghai court system received an international visit from an IP expert consultant (Shanghai Judicial Gazette Editing Committee 2003, 48–56).

Taken together, all of the factors mentioned above—close relations with powerful local government officials and CPC Committees, the creation of policymaking initiatives,

and the enhancement of technical expertise—stem from the establishment of internal court IP Divisions and ensuing localized bureaucratic specialization, which has since 1993 allowed Shanghai courts to align local political-legal dynamics along vertical, *tiao*-level lines of authority.

Moderate Specialization: Shenzhen

Shenzhen has also had success expanding its court system since the early 1990's, although courts there have not specialized as much as those in Shanghai. At the beginning of the reform era in 1978, Shenzhen was not formally incorporated as an urban locality, but was organized instead within the Bao'an County jurisdiction. It only became a municipal-level jurisdiction in January 1979 while serving as the first Special Economic Zone (SEZ) of the post-Mao reform era. At that point, the Bao'an County court was eliminated and Shenzhen City Court was established (Shenzhen City Local Gazette Editing Committee 2006, 213). In just three decades of liberalizing reforms, Shenzhen proper has developed from an agricultural and fishing economy into a largely post-industrial urban center, concomitantly institutionalizing an extensive and specialized court bureaucracy (Shenzhen City Local Gazette Editing Committee 2006). When the Shenzhen City Court was established in March 1979, its primary function was to take jurisdiction over criminal and civil cases (Shenzhen City Local Gazette Editing Committee 2006). The Shenzhen City Court's Administrative Division was established following national court reforms in 1987, and in 1989, the Real Estate Division was established. In 1993, Criminal Division 3 and the Bankruptcy Division were established, followed by establishment of the IP Division in 1994. Since 2000, the Shenzhen Intermediate Court has added to these specialized internal bureaucratic units a Labor Disputes Division and a division that specifically handles company liquidation cases

(Shenzhen City Local Gazette Editing Committee 2006, 216–217). The current institutional structure of Shenzhen Intermediate Court thus reflects specialized division of judicial labor, and as of 2013, Shenzhen had established the following internal structures responsible for adjudicating cases¹⁹⁸:

- Criminal Division 1
- Criminal Division 2
- Civil Division: marital and family cases, unfair benefit, “traditional” civil cases; agricultural contract cases (*nongcun chengbao hetong*); contracts between natural persons, torts; guidance over lower courts
- Commercial Division: domestic disputes between legal persons, contracts; domestic securities, futures (*qihuo*), banknotes (*piaoju*), stock equity (*guquan*) cases; responses to lower courts’ requests for extensions of time in adjudicating cases
- IP Division, copyright cases that do not involve computer software; trademark cases; patent cases; technology contract; unfair practices; new plant material cases; responses to applications for time extension from lower courts
- Foreign Commercial Cases Division
- Real Estate Division
- Labor Disputes Division
- Company Liquidation and Bankruptcy Division

Shenzhen’s success in bureaucratic specialization is surprising given the complex process of opening a new, specialized court division. A Shenzhen Intermediate Court judge told me that personnel allocations in the Shenzhen courts are controlled by the

¹⁹⁸The internal structure of the Shenzhen Intermediate People’s Court is displayed on the court’s website, <http://www.szcourt.gov.cn/sfgk/kgjs/jgzn/2014/11/21145118509.html>, last accessed February 21, 2015 (a copy of the court structure as of 2012 is on file with author).

court at each administrative level; thus, the Guangdong High Court wields authority over personnel allocations for the whole province, and the Shenzhen Intermediate Court possesses control over personnel allocations for the city. As a result, each court must obtain the approval of the court one level above to open a new division, and the higher level courts can informally suggest to specific lower level courts to apply for *bianzhi* expansions as opposed to allowing each court to apply directly to local Party or government institutions.¹⁹⁹

Under these circumstances, Shenzhen's court system has become substantially specialized, and Shenzhen's courts have established themselves as capable court policymakers in the reform era. As noted in the previous section, Shenzhen's basic-level (primarily first-instance) courts had not established standalone IP Divisions by 2000. Recently thereafter, however, Shenzhen's basic court level has become an arena for IP-related bureaucratic specialization owing to its position as an important center for the internet services and social media industries and home to Tencent (*Tengxun*), Inc., whose headquarters are located in Shenzhen's Nanshan District. In 2006, Shenzhen's Nanshan District Court launched a "3 in 1" specialization plan modeled after the successful experience of Pudong a decade earlier (Shenzhen Intermediate People's Court 2010, 6–7). By 2010, in a span of just under four years, courts throughout Shenzhen's Intermediate and Basic Levels had established specialized IP adjudication divisions (Sun 2010; Shenzhen Intermediate People's Court 2010).²⁰⁰ As noted, a major means through which the establishment of new specialized court divisions affects a court's bureaucratic strength is through the expansion of *bianzhi*. I asked a judge in the Shenzhen Intermediate Court how many new judges are employed in each new division in

¹⁹⁹PC2013-1, judge, Shenzhen, January 2013.

²⁰⁰PC2013-1, judge, Shenzhen, January 2013; PC2013-3, judge, Shenzhen, January 2013.

Shenzhen: usually each division must have 1 Division Chief and 2 Division Vice Chiefs, and in the Shenzhen Intermediate Court, one of the Civil Divisions has over 40 personnel, whereas the Bankruptcy and Foreign Disputes Divisions employ 10-20 personnel, including clerks.²⁰¹ A judge who had worked in the Shenzhen Intermediate Court since 2005 told me that the court's *bianzhi* has increased by over one hundred total personnel since he started and that these increases have been generally allocated evenly to each division.²⁰²

Shenzhen judges also told me that establishing standalone IP Divisions in their jurisdictions helps develop technical legal expertise, which leads to more correctly decided cases and judicial competence.²⁰³ Independently established IP Divisions with specifically allocated personnel are perceived among judges in Shenzhen as a positive development that would likely yield greater professional opportunities for judges in their locality.²⁰⁴ Specialized bureaucratic units such as IP Divisions in courts allow judges to focus on handling IP cases, especially when a “3 in 1” Division has been set up so that IP judges can hear criminal, civil, and administrative IP cases.²⁰⁵ Bureaucratic specialization has also spurred courts to develop specific training seminars for IP judges, which include annual conferences bringing together judges, university professors, and experts in IP law, which are organized by the IP Bureau (*zhishichanquan ju*) of the Ministry of Justice (*sifa bu*).²⁰⁶ Additionally, since the opening of specialized IP Divisions, prestigious international training opportunities in Hong Kong, Europe, and the

²⁰¹PC2013-1, judge, Shenzhen, January 2013.

²⁰²PC2013-1, judge, Shenzhen, January 2013.

²⁰³PC2013-1, judge, Shenzhen, January 2013.

²⁰⁴PC2012-7, judge, Shenzhen, June 2012.

²⁰⁵PC2012-6, judge, Shenzhen, June 2012.

²⁰⁶PC2013-48, Shenzhen judge, Shanghai, May 2013.

United States have been established, but gaining admittance to these programs is highly competitive.²⁰⁷

Thus, Shenzhen's high level of bureaucratic specialization indicates close relations with important Party organizations that possess authority over personnel allocations, and Shenzhen's courts have also exhibited capacity to make court policy and enhance their technical expertise—although not to the same degree seen in Shanghai. Nonetheless, Shenzhen's court leaders have experienced moderately high levels of success, especially in the past decade, regarding the alignment of local political-legal dynamics along vertical, *tiao*-level lines of authority such that courts have greater ability to initiate reforms that consolidate control over their own institutional affairs.

Limited Local Specialization: Chengdu

Chengdu, as a historically important trade center in Western China, experienced greater institutionalization of its court system during the Mao era than did many other localities, including Shenzhen. Chengdu remains a highly urbanized and developed locality, perhaps the most important thoroughfare from central China to the Western frontier regions, but court bureaucratic specialization has not expanded to the degree seen in Shanghai and Shenzhen's courts. The bureaucratic structure of the Chengdu Intermediate Court as of 2013 indicates that internal court adjudication organs have not been separated, funded, and specialized to the extent seen in similar institutions in Shenzhen or Shanghai²⁰⁸:

- Criminal Division 1, criminal cases that are not economic, relevant to corruption, or drug crimes; guidance of basic courts' adjudication work

²⁰⁷PC2013-48, *Shenzhen judge, Shanghai, May 2013*.

²⁰⁸The internal structure of the Chengdu Intermediate People's Court is available on the court's website, see <http://cdfy.chinacourt.org/article/detail/2014/07/id/1355292.shtml>, last accessed February 21, 2015 (a copy of the court structure as of 2012 is on file with author).

- Criminal Division 2: economic, corruption, and drug cases; supervision of basic courts
- Juvenile Division: 3-in-1 division for cases related to juveniles
- Civil Division 1: marital cases, inheritance cases, labor cases, personnel disputes
- Civil Division 2: mortgage disputes; guidance of lower courts
- Civil Division 3 (IP Division): unfair competition and monopoly cases, credit cases, cases involving foreigners
- Civil Division 4: real estate disputes, development project contracts, contracts for sale; supervision of lower courts
- Administrative Division and State Compensation Division

The internal bureaucratic units responsible for case adjudication in the Chengdu Intermediate court do not reflect substantial division of labor, relative to Shanghai and Shenzhen. Whereas Shenzhen and Shanghai have both established a specialized court unit responsible for handling labor disputes, Chengdu treats labor disputes as ordinary “civil” cases, in much the same way that IP and Administrative cases were handled before specialization in the 1990’s and 1980’s.

Chengdu’s lack of bureaucratic specialization relative to Shanghai and Shenzhen is peculiar given that it was highly institutionalized—especially relative to Shenzhen—at the beginning of the reform era. At the outset of reforms led by Deng Xiaoping, the Chengdu Intermediate Court experienced expansions in its court bureaucracy that reflected national trends: “In 1978, after the Third Plenum of the 11th Party Congress, Chengdu’s two levels of court construction experienced democratic and legal institution strengthening, and internal units were perfected, with personnel allocation numbers rising each year” (Chengdu Intermediate People’s Court 1997, 67). In January 1980, Chengdu

added an Economic Division and split the Criminal Division into Criminal Divisions 1 and 2. Further, in 1983, the large Wenjiang District merged with Chengdu City, unifying the two jurisdictions' Intermediate Courts and creating the Chengdu Intermediate Court and the local Chengdu court districts that have remained in use through 2013. Additionally, in January 1987, Chengdu established its standalone Administrative Division (Chengdu Intermediate People's Court 1997, 29–36).

During the “localized” period of court institutionalization beginning in the 1990's, however, bureaucratic specialization in Chengdu and other cities in Sichuan province have lagged behind the experiences of Shanghai and Shenzhen. Judges working in Chengdu's courts have told me that IP Divisions in their court system are so named more to maintain consistency with the structure of the SPC rather than to bring about specialization of judicial labor.²⁰⁹ The IP Division of the Chengdu Intermediate Court handles many other types of cases other than IP cases, and in the Sichuan High Court (located in Chengdu City), there are only 5 judges who serve in the IP Division, who adjudicate other types of cases in addition to IP cases. Despite a lighter IP caseload over the past two decades, the Chengdu Intermediate Court has established an IP Division in correspondence with the structure of the Sichuan High Court, but this re-shuffling does not necessarily imply further personnel allocations for the court because the division was only re-named—not newly established.²¹⁰

In Chengdu, as opposed to Shanghai and Shenzhen, the authority for establishing a new specialized division comes from outside the city: the local court did not expand the court's bureaucratic structures through bargaining or the exertion of authority over other local leaders when it recently established a new Juvenile Division to handle cases

²⁰⁹PC2012-36, judge, Chengdu, October 2012; PC2012-48, judge, Chengdu, December 2012.

²¹⁰PC2012-36, judge, Chengdu, October 2012.

involving minors.²¹¹ Thus, the establishment of the specialized court divisions in Chengdu courts does not reflect local court leaders' abilities to bargain for bureaucratic resources. Instead, bureaucratic specialization in Chengdu's courts reflects a top-down instruction to implement court reforms. According to interviews, the SPC—instead of a local government unit or Party committee—chose the Chengdu Intermediate Court as the site for the city's first juvenile division.²¹² By contrast, judges in Shanghai indicated that juvenile divisions in their jurisdiction reflected local conditions and was not the result of compliance with national policies on juvenile court reforms.²¹³ Despite the national flavor of bureaucratic specialization in Chengdu's courts, the Juvenile Division has helped Chengdu Intermediate Court increase its personnel allocations; after an initial apportionment of 10 personnel in 2006, the Chengdu Intermediate Court's Juvenile Division successfully lobbied for 4 more personnel; as of December 2012, the Juvenile Division employed 19 personnel, including 1 Division Chief, 2 Division Vice Chiefs, with several ordinary judges (*shenpanyuan*) and clerks.²¹⁴

In halting fashion, the Chengdu Intermediate Court has increased its personnel and resources with substantial initiative from extra-local authorities, indicating that the court has not substantially enhanced its relationship with local CPC units or become an important designer of local court-related policy. Nor has bureaucratic specialization in Chengdu resulted in substantial gains to technical expertise in the same way it has in Shanghai and Shenzhen. A judge who worked in Chengdu Intermediate Court's Juvenile Division indicated that he did not require any specialized training to become a juvenile judge, and although he attends training seminars, they are general training seminars

²¹¹PC2012-47, judge, Chengdu, December 2012; PC2012-48, judge, Chengdu, December 2012.

²¹²PC2012-48, judge, Chengdu, December 2012.

²¹³PC2012-49, judge, Shanghai, December 2012; PC2013-3, judge, Shenzhen, January 2013.

²¹⁴PC2012-48, judge, Chengdu, December 2012.

without a specific focus on juvenile law. The general process of examination, selection, and hiring was sufficient for finding good juvenile judges in Chengdu.²¹⁵ There were no specialized training programs specifically mentioned during the process of establishing the new division.²¹⁶

Hence, bureaucratic specialization in Chengdu's courts has primarily been a result of a non-local process that exhibits limited engagement with local dynamics between the local CPC authorities and the local courts, suggesting that Chengdu courts have more limited capability of crafting court policy and enhancing their technical expertise relative to localities like Shanghai and Shenzhen. Accordingly, Chengdu's court leaders have had lower levels of success in shifting priorities over legal system reforms towards *tiao*-level lines of authority since bureaucratic specialization became localized two decades ago.

INTEGRATING STUDIES OF BUREAUCRACY AND COURTS IN THE PRC

The argument of this chapter helps integrate court politics and Chinese bureaucratic politics scholarship, which broadly find that dynamics between horizontal (*kuai*) and vertical (*tiao*) lines of political authority can yield important insights across the myriad constellations of state and party power (Lieberthal and Oksenberg 1988). However, few scholars have explicitly applied this framework to PRC courts, where greater ability to exercise control over their own resources would suggest that authority would flow from courts higher in the hierarchy to courts lower in the hierarchy (vertical authority), and not from local CPC units (horizontal authority). This study suggests that when authority over judicial politics flows more through vertical, *tiao* lines of authority from higher courts to lower courts, and less through horizontal, *kuai* clusters of authority between local CPC units that are likely to have an interest in case outcomes to local

²¹⁵PC2012-47, judge, Chengdu, December 2012.

²¹⁶PC2012-48, judge, Chengdu, December 2012.

courts, then there will be greater judicial autonomy in the form of de-politicized judicial promotion mechanisms, case decisions, and personnel expansions.

If a court wants to establish an entirely new bureaucratic structure like a within-court division, it must obtain approval from the local division of the Human Resources and Social Security Office (*Zhonghua renmin gongheguo renli ziyuan he shehui baozhangbu*), a State Council Ministry, as well as the local branch of the Commission for Institutional *Bianzhi*. Then, this CPC unit must approve (*pizhun*) the court's request to establish a new structure. For instance, in Shanghai, the new Finance Division was established at the Intermediate Court level via application from the Shanghai High Court.²¹⁷ Personnel allocations are apportioned to certain government institutions within a locality, and from the Shanghai High Court to the Basic Courts, based upon factors ranging from economic development, population size, and degree of technical development. High Courts oversee personnel allocations for all levels below it, but strive to establish “one-step down” supervision of Intermediate Courts that usually govern municipal-level jurisdictions, instead of receiving ongoing supervision from *kuai*-level CPC Committees and branches of the Commission for Institutional *Bianzhi*. Intermediate courts also seek to enhance their formal authority to supervise the basic courts within their jurisdictions. Once provincial-level high courts decide personnel allocations for municipalities, it usually assigns the personnel allocation to the intermediate court for its own use along vertical, *tiao* lines of authority.²¹⁸ Conversely, if the Shanghai Party Committee exerts unilateral authority over the timing and location of new court divisions, then political control over bureaucratic specialization primarily runs along *kuai* lines of horizontal authority.

²¹⁷PC2012-49, judge, Shanghai, December 2012.

²¹⁸PC2012-37, lawyer, Shanghai, November 2012; PC2012-49, judge, Shanghai, December 2012.

Tiao as Expert, Kuai as Red

At the local level, politics regarding court reform proceeds with the underlying tension, based on professional priorities, between court leaders seeking to establish vertical, *tiao*-style command over legal politics and local political leaders poised to retain as much authority within a given geographic area. Again, because court leaders are motivated by the prospect of promotion to recruit and retain highly qualified mid-ranking judges to improve courts' collective CQAS scores,²¹⁹ a binary tension arises regarding political control over courts—i.e., between vertical *tiao* lines of authority and horizontal *kuai* lines of authority. Viewed from another angle, the struggle over courts and the law is between “expert” court leaders, who seek vertical, *tiao* authority over their own bureaucratic funding and specialization for the court system, and “red” local political officials, who seek to maintain horizontal, *kuai* political control to subsume court politics within broader economic development and political goals.

In some ways, this dynamic emerges as a separation of “red” and “expert” elements of the model Maoist official: “Cadres ought to be, in Maoist terms...as fully committed to socialist ideology and practice (their ‘party spirit’) as to possess the professional skills and knowledge needed for their job” (Pieke 2009, 29). During the reform era, the contradiction between “red” and “expert” cadres has intensified, as increasing prioritization of professional qualifications and knowledge has highlighted “the tension between expert cadres and the more traditional kinds of cadres who in many places are still the backbone of the party’s rule” (Pieke 2009, 141).²²⁰ This inherent

²¹⁹ These distinctions between political leaders, court leaders, and mid-ranking judges overlap in many respects with Ling Li’s typology of “Party Leaders,” “Leader Judges,” and “Frontline Judges” (Ling Li 2012).

²²⁰ The current campaign to create a cadre corps that exhibits both political loyalty to the Chinese Communist Party and the technocratic skills to advance socialist development is not new; in fact, it traces its origins to the massive campaign to create “red-experts” during the Great Leap Forward in 1957 (R. D. Baum 1964).

tension in Chinese politics between the “red” need to maintain ideological commitment to the Party, and the “expert” need to continuously update the Party’s technical capacity, skills, and scientific development is distinctly reflected in court politics. Far from asserting that this tension results in a zero-sum political battle lacking any mutual objectives, I suggest generally that the concepts red and expert frame differences between the conflicting political *priorities* of political versus court leaders that arise from differences in how these leaders are evaluated.

The red versus expert dichotomy described here is premised upon the differing performance evaluation criteria that provide contrasting incentives for territorial political leaders versus local court leaders in China, an issue discussed more extensively in Chapter 2. In brief, “red” political leaders refer to local mayors, governors, and Party secretaries, whose performance evaluations focus directly upon increasing industrial profits, industrial output, livestock revenue, and the rate of family planning compliance (Whiting 2004, 107; Su et al. 2012). When state-society relations change such that other political issues become contentious, performance criteria can change, as was the case with the increased focus on reducing environmental pollution (A. L. Wang 2013). By contrast, the performance of court leaders and ordinary judges is not directly tied to local economic growth. As noted in Chapter 2, judicial performance depends much more on court-specific hard targets that reward judges for resolving cases quickly, without being reversed frequently on appeal, and without provoking social disturbances like mass petitioning against the court. Thus, Chinese political elites and judges face a wholly different set of political incentives, with political leaders incentivized to emphasize red priorities of economic and social expedience over accurate, expert judging. Political leaders also have little concern for the actual pressures that courts leaders face when dealing with an outpouring of disputes in their courtrooms. Finding mid-ranking judges

who can resolve cases quickly, avoid thorny political disputes, and successfully lobby for expansions court authority, resources, and personnel comprise court leaders' more immediate professional concerns.

Using this red-versus-expert heuristic to summarize both the priorities and mutual objectives of the relevant political and court leaders, I assume that the Party State leadership in any given locality assigns priority to raw economic growth, crime reduction, and overall social stability, comprising the bedrock red political agenda, whereas I assume that the court leadership in any given locality assigns highest priority to becoming expert, professional, legal technocrats who seek to receive greater resource allocations than other civil service ministries. The tensions between these red and expert leaders relevant to court politics are summarized in Table 5.2 below:

Table 5.2. The “Red” Versus “Expert” Dichotomy in Political and Court Leaders’ Priorities

RED PRIORITIES IN COURT POLITICS		EXPERT PRIORITIES IN COURT POLITICS	
Priority “Red” Incentives Relevant to Court Politics	Which leaders have Red tendencies in Court Politics?	Priority “Expert” Incentives Relevant to Court Politics	Which leaders have Expert tendencies in Court Politics?
<ul style="list-style-type: none"> ■ posting high cadre evaluation scores by producing economic development and social stability ■ satisfying family planning, industrial output, environmental pollution reduction quotas 	<ul style="list-style-type: none"> ■ Local Party Secretaries ■ Provincial Governors ■ Municipal Mayors 	<ul style="list-style-type: none"> ■ posting high judicial evaluation scores by quickly and accurately resolving cases ■ posting high rates of cases cleared per judge; posting low rates of appellate reversal, citizen grievances, and violating statutory deadlines 	<ul style="list-style-type: none"> ■ Local Court Presidents and Vice Presidents

As opposed to appointing political cronies, finding mid-ranking judges who possess the capacity to resolve cases quickly without angering litigants are court leaders’ more immediate concerns. Interviews with mid-ranking judges support a finding that reforming judicial designs to provide mid-ranking judges more professional career opportunities is a viable strategy for court leaders interested in attracting and retaining high quality judges: opportunities for more professionalized judicial careers (e.g., competitive mechanisms of judicial promotion) are expanding and careers within urban courts are becoming more merit-based.²²¹ In these terms, Shanghai’s courts have been most successful at orienting bureaucratic specialization within the Expert-oriented and vertical (*tiao*-level) authority of courts at higher levels. By contrast, courts in Chengdu are relatively more beholden to Red, local Party priorities, which operate along horizontal (*kuai*) lines of authority. Further clarifying the dynamics of court politics in China, this framework goes beyond previous by summarizing the interaction between Chinese court

²²¹PC2013-56, judge, Shanghai, June 2013.

politics and bureaucratic politics, thereby illuminating the underlying political motivations for PRC judicial reform.

CONCLUSION

Bureaucratic specialization has become increasingly localized since the beginning of the 1990's, shifting priorities regarding court reform in China toward technocratic priorities along *tiao* lines of authority in certain localities—particularly in Shanghai and Shenzhen. In other localities like Chengdu, a strong institutional foundation in the court system has not necessarily translated into more local court authority over bureaucratic resources and judicial designs. Court leaders are not only incentivized to offer more competitive, transparent, and routinized judicial promotion mechanisms, they are also motivated to make career trajectories for judges in their courts exhibit greater professionalism and specialization, and a major strategy that they use to achieve this goal is expansions of issue-specific bureaucratic court divisions. Eventually, this process of bureaucratic specialization weakens the capacity of local political leaders to exert direct political control over judicial designs and decision-making.

Through an historical analysis of bureaucratic specialization in courts from the Mao era to the present, this chapter offers further support for the overall theory of this dissertation by providing another example of high-end demand pushing court leaders to retain judicial talent *via* expansions in the bureaucratic structure of courts. To continue to offer judges more varied and numerous opportunities for promotion, court leaders have sought greater bureaucratic resources by establishing within-court bureaucratic divisions to tackle locally specific social issues, thereby enhancing the collective status of courts *vis a vis* other bureaucratic units of the Party-State.

Conclusion: Local Experience Anticipates National-level Legal Change

In 1996, national leader Jiang Zemin endorsed “ruling the country in accordance with the law and establishing a socialist rule-of-law state” (*yifa zhiguo, jianshe shehui zhuyi fazhiguo*), concepts which were subsequently incorporated into China’s Constitution. Jiang described these as major policies of the CPC and integral parts of Deng Xiaoping’s theory of socialism with Chinese characteristics. This decision followed a long debate among policymakers and government elites. In February 1996, Wang Jiafu, former head of the Law Institute of CASS, smoothed over the conceptual conflicts between legal constraints on regime activity, the centralization of power, and the leading role of the CPC, going so far as to find that *yifa zhiguo* could provide the legal basis for centralized power and continued leadership of the Party (Peerenboom 2002, 6, 59–60).

Despite the prominence of the “ruling according to law” precept in upholding regime legitimacy, proposals to professionalize and grant bureaucratic autonomy to the Chinese judiciary have historically been rejected, even well into the “reform and opening up” (*gaige kaifang*) era following the Cultural Revolution. As recently as 2000, the SPC requested that the Personnel Department and the Ministry of Finance separate the judiciary from the bureaucratic hierarchy governing other civil servants, a move designed to enhance the ability of courts to retain career judges by offering better benefits and higher salaries. Such reforms would have increased bonus pay for case-deciding judges to a level 20-25% higher than that of other civil servants, and they would have established a system of remuneration that would be controlled by “judicial levels” (*faguan dengji*)—a hierarchical ranking system separate from the civil service system (Z.

Liu 2014).²²² Alluding to a pre-existing PRC policy designed to raise the professional level of cadres, then-SPC President Xiao Yang supported his request, which would have required an amendment the Judges' Law to provide preferential (*congyou*) welfare benefits to judges, with an argument that judicial salaries in most countries throughout the world are higher than those of ordinary civil servants (Z. Liu 2014).²²³ The National Peoples' Congress (NPC) Standing Committee completely rejected these SPC proposals in 2001 (Z. Liu 2014).

Fast forward to summer 2014, when the launching of experimental reforms at the national level re-ignited Xiao Yang's previous calls for separating the judiciary from the ordinary civil service system. During interviews, judges claimed that pilot projects for courts in localities such as Shanghai and Guangdong province were designed to address the problem of judicial "brain drain", suggesting that personnel issues in the judiciary severely affect state capacity, especially when the state boldly declares its intention to "rule the country according to law."²²⁴ Interviewees suggested that reforms would remove judges' identities and hierarchical rankings as civil servants, setting up an entirely independent hierarchical structure specifically designed for case-deciding judges.²²⁵ Among my interviewees, hopes were that salaries for case-deciding judges would be raised above those of other civil servants, and that judges who decide cases would also be automatically promoted after serving a certain number of years as a judge with case-deciding authority.²²⁶

²²²This citation also refers to the SPC Report Regarding Implementation of Judicial Adjudication Bonuses (*Zuigao renmin fayuan guanyu luoshi shenpan jintie de baogao*), of April 18, 2000, Supreme People's Court Document Number 46 [2000].

²²³This citation also refers the SPC President's Explanation to the Draft Amendments to the Judges' Law (*Faguanfa xiuzheng an [caoan] de shuoming*).

²²⁴PC2014-3, judge, Shanghai, July 2014.

²²⁵PC2014-3, judge, Shanghai, July 2014.

²²⁶PC2014-2, judge, Shenzhen, June 2014.

What explains this renewed emphasis in 2014 on reforming judicial promotion, remuneration, and decision-making, especially after rejecting largely identical claims in 2001? Why would an authoritarian regime that is steadfastly committed to preventing judicial challenges to its policymaking authority reverse itself over the course of a decade and infuse courts with greater professional autonomy? The findings of this study suggest that the answer, in large part, lies at the local level. The previous chapters have documented the views of several ordinary, case-deciding judges in China's urban courts that I met during fieldwork in 2012 and 2013 who expressed their frustrations with heavy workloads, low pay, and overbearing performance evaluation systems that resonated with Xiao Yang's proposal to professionalize the judiciary over a decade earlier. Interviewees discussed with me the substantial income gap between lawyers and judges in localities with high-end legal markets, where the income ceiling for law firm partners can reach into the millions of Chinese *yuan* but judicial salaries are locked to a hierarchical pay structure that leaves judges barely keeping up with rapidly increasing costs of living in urban China.²²⁷ Other judges claimed that it is impossible to meet the deadlines for case resolution imposed by the judicial performance evaluation system in China.²²⁸

The local pilot projects designed to experiment with judicial personnel reforms of 2014 did not come out of nowhere—in fact, this dissertation shows that *these local experiments have already happened*. The local undercurrents pushing local reforms to judicial promotion, transparency, decision-making, and bureaucratic specialization documented in Chapters 3, 4 and 5 cast light on the pressures that today's Chinese judges and lawyers face, which have more than likely informed the regime's approach to

²²⁷PC2012-49, judge, Shanghai, December 2013; PC2012-6, judge, Shenzhen, June 2012; PC2014-11, lawyer, Shanghai, November 2014; PC2013-52, judge, Beijing, May 2013.

²²⁸PC2013-22, judge, Shanghai, March 2013.

introducing and implementing policies aimed at rendering the judicial branch more professionally autonomous from the broader civil service system. Understanding the reforms that were launched in 2014 requires a sustained look at local level court reforms in major urban areas that have taken place since at least the early 2000's.

Using this perspective, media accounts of national-level judicial reforms launched in 2014 corroborate my interviewees' statements from 2012 and 2013, supporting my overall thesis that court reforms in urban China emerged from the need to retain judges unsatisfied with their vocational status quo. Ahead of the 4th Plenum held in October 2014, representatives to the 18th Party Congress addressed national legal system reform and stressed that the issue of judges "quitting in droves" was a significant problem in today's Chinese courts (Chin 2014). Experimental reforms to grant judges "special bureaucratic status distinct from other civil servants, raise their salaries, and give them more power over trials and decisions" are responses to judges who are "fed up by heavy caseloads, low professional standards, bad pay and government interference" (Chin 2014). Infusing professionalism into the higher levels of the judiciary is a primary aim of reforms: "The overall quality of judges has risen dramatically in recent decades, but there are still plenty of older, senior judges with next to no formal legal training," and these judges can block well-trained, younger judges from advancing their careers (The Economist 2014). This development has challenged state capacity, as "the number of judges in China has remained virtually flat since 2007, while the number of cases handled by the courts rose almost 50% over the period to 12.9 million in 2013," with judges often leaving their posts for careers as lawyers (Chin 2014). The Economist even provides its own example of a former judge in Shanghai who earned her law degree from the prestigious Peking University leaving her judicial post for a law firm career because she

could earn an income several times her judge's annual salary of about ¥120,000 (approximately \$19,000)(The Economist 2014).

The judicial reforms announced in 2014 embody the Party-State's legal modernization goals, its concern with regime legitimacy, and its need to staff itself, reflecting the Weberian notion that a state's employment of modern bureaucratic officials is an exchange of specific state and professional obligations in return for a secure existence (Weber 1946, 199). When an authoritarian regime empowers its legal system as part of a broad strategy to obtain the people's voluntary consent for its rule (Moustafa 2007, 37-38; Parrillo 2013, 8; Solomon 2007, 128), providing this secure existence to the officials responsible for administering the legal system and courts becomes a priority. At bottom, then, it is a state interest, rather than a regime interest, that is driving the professionalization of the judiciary in China.

THE LOCAL UNDERCURRENTS OF INSTITUTION BUILDING, LEGAL MODERNITY, AND ADEQUATE JUDICIAL STAFFING

The findings of the previous chapters reflect that, owing to a sincere drive to modernize its court system, Communist China remains a living laboratory on the origins of judicial power. Despite a Chinese legal tradition stretching back to the days of Confucius, the role of courts and judges was severely limited from 1949 to 1976 under the campaign-style leadership of Mao Zedong. Legislative and code-based rule-making were essentially abandoned during the Cultural Revolution that closed Mao's political reign, whereas a wave of unprecedented legalization has accompanied liberalizing reforms that began in 1978. In the first two decades of reforms, for instance, China's legislature enacted over 300 new laws, a pace of approximately 15 new major pieces of national legislation per year. Instead of empowering judges to challenge regime policies or allowing citizens to advance claims of individual right, rapid institution building in the

court system reveals the sincerity of a Chinese legalization project geared towards establishing an economic infrastructure for a largely market-based economy (Moustafa 2007, 21–41; Ginsburg and Moustafa 2008; Y. Wang 2014).

In light of the anti-corruption campaign executed since Xi Jinping consolidated power in 2012, the “ruling the country according to law” precept has ascended to the status of the “5th Modernization.” At the beginning of the reform era, Deng revived the long-term goal of modernizing the four critical sectors of industry, agriculture, science and technology, and national defense (Lieberthal and Oksenberg 1988, 332–333). During his time in Southern China in 1992, Deng stated that a regulatory system would be mature within 30 years, and thus Xi Jinping’s announcement of the “5th Modernization” could plausibly be interpreted as fulfillment of this promise (ChinaNews.com 2014). At the 3rd Plenum of the 18th Party Congress in 2013, Xi Jinping emphasized the importance of “driving forward modernization of national regulation systems and abilities,” at the same time warning against any challenges to policy decisions emerging from the process of democratic centralism: “Liberals want to turn the 5th modernization into Western liberal democracy, but this is a mistaken view of ‘national administrative capacity’ and ‘administrative system,’; in the eyes of Xi Jinping, system reform is a ‘process under the leadership of the central party and policymaking system’” (ChinaNews.com 2014). Importantly for judicial reforms launched in 2014, the modernization of the legal system is primarily concerned with personnel and human resources reform:

What is worth emphasizing is that the national administrative structure replicates bureaucratic structures and divides labor. In the past national structure of bureaucratic units in China, party and state were not separate, and division of labor was not clear, structures were overlapping, and personnel overstaffing (*renyuan yongzhong*) could be found everywhere (*bibijie’shi*). The direct consequence of this previous state of affairs was ambiguity between upper and lower policies, as well as large quantities of redundant personnel (*renfu*

yushi)...the Central Party aims to alter these previous system practices (ChinaNews.com 2014).

Courts in China have not gained—nor do they strive to gain—the types of authority that might let judges challenge regime policies (e.g., the power to interpret the Constitution, invalidate statutes, initiate investigations of elite corruption). Rather, the major issues in legal and court reform revolve around personnel dynamics—promotion, salarization, the modernization and rationalization of a professional staff of government officials that can craft, implement, and credibly uphold state law. In this sense, the emphasis that the Party places on personnel reform directly overlaps with notions of judicial autonomy that, as discussed at the outset of Chapter 4, judicial politics scholars have found critical to expansions in judicial independence (Landes and Posner 1975; Peerenboom 2010; Lubman 1999, 264). While ushering in personnel reforms to the judiciary, the CPC is also implementing a revised version of the “Work Regulations for the Promotion and Appointment of Leading and Party Government Cadres,” which date back to 2002 (China Copyright and Media 2014). Regarding the promotion of high-ranking cadres to open vacancies, the 2002 rules merely state that open appointments should be carried out publicly and that competitive elections should be conducted within bureaucratic units, whereas the 2014 reforms provide further details on specific circumstances that warrant open, competitive appointments to help ensure that promoted cadres are not merely selected on the basis of “grades and marks” (China Copyright and Media 2014). The conditions for removing cadres from their positions were also reformed in 2014 to specify term limits for some positions and the circumstances that constitute grounds for dismissal (China Copyright and Media 2014). Hence, the Party’s personnel reforms are moving in step with reforms to enhance the professionalization of

the judiciary, recalling Zhu Suli's claim from the Introduction chapter that the Party possesses the greatest capacity to institutionalize the PRC court system.

Bearing in mind the particular sequencing of local and national court reforms, the design of this study illuminates not only local mechanisms of change but also provides the background necessary to understand ongoing court reforms at the national level. In this dissertation, measuring judicial autonomy by analyzing the competitiveness and routinization of judicial promotion mechanisms, compliance with judicial transparency mandates, the extent to which judges justify their case decisions with written reasons, levels of mediation, and degree of bureaucratic specialization, I find that local demand for legal professionals influences the material and professional incentives of lawyers and judges. Judicial autonomy in urban China emerges from the interaction between local demand for high-end legal services provided by legal professionals in urban China and the institutional incentives for the promotion of China's court leaders.

These institutional incentives are determined by the Case Quality Assessment System (CQAS, *anjian zhiliang pinggu tixi*)—a judicial performance evaluation system that unifies and formalizes the criteria and rules for evaluating work performance throughout China's courts. Chapter 2 focused the operation of the CQAS in China's courts, where incentives are structured in such a way that court leaders depend on highly productive and qualified subordinate judges to quickly and accurately decide cases. Because informal norms emerging under the CQAS system motivate judges in various ways to pursue promotion, reforms that make judicial promotion more competitive and the overall court system more transparent should appeal to ordinary judges who decide cases. In China, ubiquitous and *highly visible* CQAS rankings, statistics, and scores create public and transparent markers of status within urban China's court system, desensitizing judges to formal quotas while at the same time elevating mechanisms of

shaming and praising to motivate judges to improve their CQAS scores and obtain within-group success. While other countries have used similar tools to achieve hierarchical control over subject populations, in China the quantification, hard targets, and rankings of the CQAS have instead been used to produce “intra-state legibility,” or increased supervisory capacity *within the Chinese state* over the PRC’s local court system. Importantly, the findings of Chapter 2 highlight court leaders’ vested interests in their subordinates’ performance, as well as the competing demands of bureaucratic evaluations at different levels of the judicial hierarchy within courts. High scores on CQAS indices depend on retaining and motivating a staff of qualified, productive, and hardworking judges, who bear responsibility for deciding cases.

When a market for private legal services can provide judges a viable alternative to a career as a judge, court leaders will feel pressure to reform internal court institutions to retain judges who are adept at processing cases that the parties to litigation feel are fair. Because court leaders’ own promotion chances turn on the efficiency, fairness, and social impact of cases resolved by their subordinates, court leaders are incentivized to craft court institutions that provide more professional career opportunities when private local law firms threaten to lure judges to jobs in firms. By contrast, court officials are less likely to professionalize career trajectories for their subordinate judges when their judicial employees have no credible career alternative to working as a civil servant, judge, or other law-related worker in the Party or government bureaucracy. Thus, when high-end demand for legal services provides ordinary judges a credible alternative to a judicial career, court leaders will have an incentive to reform judicial institutions as a strategy to retain highly qualified subordinate judges. These reformed judicial institutions are then more likely to keep autonomous judges working in the Chinese court system.

High-end demand creates pressure throughout the legal complex by opening a wide income gap between high-end lawyers and judges in China, which threatens the “brain drain” of highly qualified mid-ranking judges from local courts to local law firms. As reported in Chapter 3, the average incomes of attorneys in each locality indicate that lawyer remuneration at the experienced and entry levels is higher in Shanghai than in Shenzhen, and lowest in Chengdu. Incomes for experienced, non-partner level attorneys in Shanghai are also highest among my three case studies, followed by Shenzhen, then Chengdu.

Chapter 4 presents interviews with lawyers and judges, documentary evidence, and statistical data to support the finding that the most competitive, transparent, and routinized judicial career trajectories, the greatest extent to which local courts implement central mandates for court transparency, the most widely observed adherence to the “giving reasons” requirement, and lowest levels of IP judicial mediation are found in Shanghai, followed by Shenzhen, and Chengdu. According to data on judicial opinions presented in Chapter 4, Shanghai courts provide the most lengthy and statutorily grounded opinions, followed by Shenzhen courts and Chengdu courts. Because lower mediation rates suggest that judges are confident in their ability to apply the law to facts in a particular case, Shanghai’s low mediation rate suggests that judges there tend to have more confidence on average to issue a judgment despite the evaluation system’s tendency to favor judges who mediate case more often (mediated settlements cannot be reversed on appeal).

Local demand for private legal services has not only pressured courts to reform judicial promotion mechanisms, increase transparency, and give reasons for their decisions, it has also brought about local variation regarding local courts’ abilities to bargain for bureaucratic resources from local Party-State elites wielding authority over

funding allocations and bureaucratization approvals. In Chapter 5, I find that the Shanghai court system's higher levels of bureaucratic specialization relative to other localities in China indicates that court leaders are continuously winning the approval of local CPC personnel institutions and the branches of the Ministry of Finance (*caizhengbu*) for permission to open new internal court divisions (Z. Liu 2009), whereas the scope of bureaucratic expansion and specialization in Chengdu's courts has been much narrower.

Contemporary PRC courts vie for greater authority over specialized legal issue areas that might transform them into fora recognized by the public and by the other branches of government as possessing control over specific aspects of the political-legal process. Hence, court leaders are not only incentivized to offer more competitive, transparent, and routinized judicial promotion mechanisms, they are also incentivized to make career trajectories for judges in their courts exhibit greater professionalism and specialization, and a major strategy that they use to achieve this goal is issue-specific bureaucratic court expansions. Eventually, this bureaucratic specialization weakens the capacity of local political elites to exert direct political control over judicial designs and decision-making.

Taken together, these findings suggest that even when a state proceeds with wide-ranging and ambiguous judicial "reforms," there is only so much that purely top-down or bottom-up approaches can accomplish. Without including the incentives of mid-level legal professionals, mid-level judicial actors, and court leaders—the primary designers of judicial institutions in China—into the explanatory accounts of expanding judicial autonomy, the true nature of legal reforms in the PRC and other authoritarian regimes will remain at least partially misunderstood. This study takes a middle path that incorporates not only the interests of political leaders, but also judges and non-statist

factors (i.e., the expansion of the law firm industry) to provide a robust explanation of judicial change in China.

BUILDING A RESEARCH AGENDA

As a theory-generating study, this dissertation takes a suggestive and provocative approach. While I rely on original data and explain subnational patterns in Chinese judicial politics, my primary aim is to spur further systematic research into the determinants of judicial autonomy rather than to test the internal and external validity of its causal claims. As a result of the comparative case study research design and employment of qualitative methods, the fieldwork in this dissertation took place in only a small sample of courts and thus the possibility of selection bias limits the generalizability of the current study (Geddes 1990). To remedy this and other similar shortcomings, future scholarship should both expand research on judicial autonomy in other parts of China and build comprehensive datasets using new and emerging sources of information.

For example, one potential limitation of this study that should be addressed in future research is the possibility of urban bias. As noted in Chapter 1, all of my case study localities are large, urban centers that boast relatively large and diverse law firm sectors. As many parts of China are not served by high-end corporate clients or even “battleground” law firms, it remains unclear whether and how mechanisms of demand for legal professionals would influence judicial institutions in less developed localities. Future research in peri-urban and rural localities could pinpoint whether the form or dynamics of local law firm markets that create pressure for judicial autonomy shift across spatial types, or whether the findings of this study are limited to the cases examined or a different subset of court systems in China.

Although theory testing is premature at this point in the research cycle, this study is useful for other purposes in comparative politics, including detailing causal pathways and developing insights about the evolution of judicial promotion mechanisms and transparency policy in the specific context of urban courts in China (Whiting 2000, 30; Geddes 1990, 149). Given the lack of prior research and the scant data available on the specific mechanisms of judicial promotion in China,²²⁹ further subnational comparative analysis should confirm variations in judicial promotion mechanisms within and across rural, urban, and peri-urban contexts, while broader hypothesis testing and more in-depth individual case studies could further pin down fine-grained causal mechanisms and trace the exact processes at work on the ground in specific contexts.

In exploring the mechanisms through which professional labor markets can bring about institutional change, this dissertation also identifies a space for judges to operate in authoritarian regimes with modest political autonomy. Although Chapters 4 and 5 indicate that judges tend to provide more reasons, act more autonomously, and exhibit higher levels of bureaucratic specialization when promotion mechanisms are more competitive and transparent, future studies could systematically examine whether more merit-based promotion mechanisms significantly influence judicial behavior. As PRC courts become more transparent and greater varieties of judge-authored case opinions (*panjueshu*) and interpretations of law (*sifa jieshi*) are made available, future researchers will have better opportunities to discern whether judges who are promoted under more competitive and transparent rules actually use this professional autonomy to challenge or creatively interpret laws passed by corresponding levels of the People's Congress or regulations issued by local governments. As the Chinese judiciary expands the number

²²⁹As noted, previous scholarship has not detailed the criteria for becoming a judge and for being promoted (Peerenboom 2010, 77). Stanley Lubman notes that CPC officials have historically selected judges using opaque, non-professional processes (Lubman 1999, 256).

and variety of case opinions that are publicly available, scholarship incorporating an analysis of greater numbers of these opinions is elevating our understanding of the determinants of judicial behavior (e.g., Gechlik 2007; Howson 2010; Liebman 2014). The employment of historical court gazettes and yearbooks (e.g., *fayuanzhi*, *shenpanzhi*, *fayuan nianjian*) can also further explore longitudinal analysis of changes to the court system over time or in discrete periods (e.g., Travaskes 2007; Hurst 2011). Ideally, gazettes, yearbooks, and court websites could be used to map promotion patterns of particular judges throughout the Chinese court system, with judicial opinions authored by particular judges utilized for better understanding links between judicial selection and judicial decision-making.

LESSONS FOR AUTHORITARIAN JUDICIARIES

With greater command of these increasingly available materials, the field of Chinese judicial behavior can begin deeper engagement with the broader political science literature on these topics. In finding that economic development and its contribution to markets for legal services can influence authoritarian rulers and judges to modify their approaches to judicial design at the local level, this study highlights an important political-legal factor at work in resilient authoritarian regimes. In earlier comparative law and politics research, scholars eschewed analysis of causal factors leading to changes in the judiciary, focusing instead on classifying various institutional legacies into civil, common, socialist, and religious law systems (Hazard 1969; Quigley 1989; Merryman 1969; Damaska 1986). In this endeavor, categorizing the socialist or Marxian legal tradition has proven slippery, with several communist states (e.g., Vietnam, Cuba, and the Eastern European bloc countries) reflecting the influence of civil law legal traditions inherited from Continental Europe. Even those scholars claiming that socialist legality is

a unique legal type often drew ideological and economic distinctions rather than judicial, institutional, or legislative ones (Hazard 1969, 521).

This dissertation fits squarely into the more recent literature on comparative judicial politics in which scholars have applied more positivistic social scientific approaches. Viewed in the context of previous studies on the categorization of legal systems, recent research represents a scholarly shift towards repackaging “legal system types” into discrete variables and factors that affect the rule of law and courts in specific polities. Scholars have turned their attention to the determinants of changes in judicial “empowerment”—which can refer to topics ranging from increased powers of judicial review and the authority of Constitutional Courts in authoritarian regimes (Moustafa 2007; Ginsburg 2003; Hilbink and Woods 2009; Solomon 2007; Trochev 2008; Trochev 2004). For example, the current study engages scholars of the Chilean case of judicial empowerment in democracy and dictatorship, where institutions governing the promotion, appointment, and performance of judges on judicial behavior continued to influence judicial practice despite changes to the broader political environment. Autonomous bureaucratic institutions in Chile that govern judicial salary, tenure, discipline, and punishment led judges, over time, to seek the favor of their institutional superiors rather than liberal judicial activism (Hilbink 2007, 33–36).²³⁰

The findings in Chapter 2 regarding bureaucratic evaluations and discipline in shaping the incentives of the judiciary also resonate with other research that has focused on courts in states with Communist legacies. In this stream, Trochev’s study of the Russian judiciary documents the importance of bureaucratic support from illiberal states in implementing judicial decisions (Trochev 2008), which resonates with other

²³⁰On a related topic, other researchers document the importance, especially in illiberal states, of bureaucratic support when implementing judicial decisions (see e.g., Trochev 2008).

scholarship on the Russian judiciary (Hendley 2013). Similar to courts in Russia, rising caseloads and increased deadline pressure in PRC courts raise the probability of judicial error when deciding complex civil and economic cases (see Hendley 2013, 1). But whereas other authoritarian courts value secrecy regarding judicial evaluation (Hilbink 2009, 224-234), the hallmark of the Chinese bureaucratic evaluation of judges is widespread transparency of bureaucratic scores among peers, which serves as the tool that drives some judges to higher productivity levels and the next chance at promotion. More broadly, though, my findings here are consistent with those of Hilbink and others that bureaucratic conditions can be seen as independent variables in models of, or factors contributing to changes in, judicial behavior. Paraphrasing Shapiro regarding communist regimes, when the people's courts that helped legitimize the revolution become part of a larger modernizing and bureaucratization effort, the Party often discovers that more empowered courts are no threat to a workers' state so long as judges remain subject to the career discipline of the judicial bureaucracy (Shapiro 1981, 61, 62; Hazard 1969).

This dissertation also explores new methods of conceptualizing and measuring changes in the decision-making of PRC judges in legal disputes, presenting data on judges' propensities to "give reasons," (measured by opinion length and citation to statute) and to mediate (measured by statistics in IP-related cases). In future research, however, textual and statistical analysis should evaluate the relationship between judicial selection reforms and any changes to judicial impartiality in decision-making. Such research would do well to engage Stern's model of civil judicial decision-making in one-party states, which is based on her findings concerning environmental litigation in the PRC, in which tensions between judges and non-judicial elites (as well as between formal and informal norms) threaten the integrity of the judicial process (Stern 2010).

Furthermore, my findings yield potential insights for the field of social inequality and development. An implication of this dissertation is that the development of the PRC judicial system is poised to provide impartial judicial services to areas where courts commonly hear corporate litigation, whereas reforms aimed at professionalizing the judiciary in less developed urban localities and “battleground” legal markets appear to stall more easily. Much of China has not developed to the point that corporate litigation is often heard in courts, and other research on Chinese courts suggests that citizens in rural areas do not have access to fair, well trained judges. Hence, this study could also serve as a stepping stone for understanding how social inequality also includes unequal access to justice across China. In so doing, this study also urges scholars studying the sources of judicial autonomy, especially in authoritarian regimes, to view the judiciary as part of a larger class of legal professionals whose specialized portfolio of skills, annual income, workload and social status are all in flux when a regime seeks to empower law as part of a broader effort at enhancing regime legitimacy. Whereas extant scholarship on judicial politics in new democracies or transitional political systems sees judicial autonomy as affected mainly by competition between multiple parties, the one-party dominance of the CPC precludes a finding that party competition produces the changes in judicial promotion described above. Nonetheless, in some localities in China, court leaders appear to be willing to offer their judges better conditions, including professionalized selection and promotion mechanisms, as an unintended consequence of the interaction between central government standards for case quality and local demand for qualified legal talent (i.e. professional, capable lawyers and judges).

Despite its shortcomings, this study is distinctive for challenging conventional approaches in judicial politics that largely cast in opposition civil society actors and the state officials who command the repressive apparatus, with judges as gatekeepers. An

examination of constitutional rights activism in China illustrates this point: whereas the regime has appeared to reverse itself since 2000 regarding judicial professionalization—an apparent recognition that the judiciary is, in the words of former SPC President Xiao Yang, a “special” profession (Michelson 2003, 17)—it has strengthened its authoritarian grip on activist lawyers and rights claimants. Perhaps no story captures this dramatic shift in state-society relations more than that of Xu Zhiyong, whose political advocacy played a major role in arguably the greatest single act of Chinese Party State concession to liberal activists—the 2003 abolition of “custody and repatriation of vagrants and beggars in cities” (*shourong qiansong*). However, since 2003, the Party-State has leaned heavily on activist lawyers; for example, Xu’s legal aid center was closed in 2009, resulting in Xu’s temporary detention, and on August 22, 2013, Xu was arrested for “gathering a crowd to disrupt order in a public place” (Branigan 2009),²³¹ and in January 2014, Xu was convicted and sentenced to 4 years in prison.²³² Since the 2003 abolishment of “custody and repatriation,” constitutional petitions for greater rights protections have been ignored if not outright repressed by the Beijing leadership (Pils and Rosenzweig 2014).

As developments since the turn of the century demonstrate, legal politics in the PRC has at least these two sides: the increasingly harsh approach to the mobilizing tactics of activist lawyers on one hand, and the sincerity of modernizing attempts to professionalize the judiciary on the other. In focusing heavily on the latter phenomenon, this dissertation acknowledges that in many legal systems, but especially in authoritarian states, contentious advocacy for political change can easily be severely circumscribed,

²³¹Full text of the verdict in the Xu Zhiyong case is available at <http://chinalawtranslate.com/en/xu-zhiyong-opinion/>, accessed February 24, 2015.

²³²The information in this paragraph is taken primarily from the Xu Zhiyong verdict.

but the lines between professional classes and state organs are often blurred, allowing symbiotic interaction between judges, lawyers, and state officials to bring about change in the operation of courts and the larger legal system (S. Liu 2011a; Halliday, Karpik, and Feeley 2007). This dissertation's focus on local-level reforms occurring primarily in high-end localities like Shanghai and Shenzhen reveals that this process of change can draw the attention of national level policymakers—especially when the national government publicly stakes its legitimacy on “administration according to law.” Despite the seemingly gradual nature of judicial personnel reforms, the expanding attention devoted to the judiciary's place in politics suggests even larger changes on the horizon.

Appendices

APPENDIX A: SUPPLEMENTAL DATA REGARDING LOCAL LEGAL MARKETS

Table Appendix.A.1. Province-Level Legal Service Firms by Ownership Type, 2001

	Total Number of Legal Service Firms	State Owned Firms (<i>Guozisuo</i>)	State-ownership, as Percentage of Total Number of Law Firms	Partnership Firms (<i>Hehuosuo</i>)
Shanghai	460	2	0.004%	246
Guangdong	840	201	23.9%	584
Sichuan	498	107	21.4%	321

Table Appendix.A.2. Province-Level Legal Service Firms by Ownership Type, 2004

	Total Number of Legal Service Firms	State-owned Firms	State-ownership of Law Firms, as Percentage of Total Number of Law Firms	Partnership Firms
Shanghai	608		0	400
Guangdong	1061	210	19.8%	786
Sichuan	582	106	18.2%	373

Table Appendix.A.3. Province-Level Legal Service Firms by Ownership Type, 2006

	Total Number of Legal Service Firms	State-owned Firms	State-ownership of Law Firms, as Percentage of Total Number of Law Firms	Partnership Firms
Shanghai	742	0	0	500
Guangdong	1155	157	13.6%	900
Sichuan	646	97	15.01%	459

Sources, Tables Appendix.A.1-AppendixA.3: (China Lawyers Yearbook Editing Committee 2005; Chinese Lawyers Yearbook Editing Committee 2005; China Lawyers Yearbook Editing Committee 2009).

APPENDIX B: SUMMARY OF INTERVIEWS WITH LAWYERS REGARDING LAWYERS' INCOME

Interview Number and Interviewee Location		Time of Personal Communication	Reported Partner Income (¥)	Reported Experienced Associate (non-partner) Income (¥)	Reported Entry-level Associate (non-partner) Income (¥)
Shanghai	2014-6	October 2014	N/A	300,000	100,000
	2014-10	October 2014	2,000,000	N/A	92,000
	2014-9	October 2014	840,000	720,000	150,000
	2014-11	October 2014	2,000,000	400,000	140,000
Shenzhen	2014-8	October 2014	450,000	195,000	65,000
	2014-7	October 2014	N/A	300,000	N/A
Chengdu	2014-5	October 2014	2,000,000	150,000	45,000
	2014-12	November 2014	750,000	150,000	N/A

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