

Introduction

Randall Peerenboom

This is the first book in English on judicial independence in China.¹ This may not seem surprising given China remains an effectively single-party socialist authoritarian state, the widely reported prosecutions of political dissidents and the conventional wisdom that China has never had independent courts. On the other hand, this may seem surprising given that China has become a possible model for other developing countries – a model that challenges key assumptions of the multibillion-dollar rule of law promotion industry, including the central importance of judicial independence for all we hold near and dear. Although China's success in achieving economic growth and reducing poverty is well known, less well known is that China outscores the average country in its income class, including many democracies, on many rule of law and good governance indicators, as well as most major indicators of human rights and well-being, with the notable exception of civil and political rights.² How has China managed all this without independent courts?

WHY STUDY JUDICIAL INDEPENDENCE IN CHINA?

There are few ideas more cherished, and less critically scrutinized, than judicial independence. Judicial independence is regularly portrayed as essential to rule of law, good governance, economic growth, democracy, human rights, and geopolitical stability. Notwithstanding nearly universal support for the notion of judicial

¹ Other works provide an overview of the legal system and legal reforms, including the overall development of the judiciary. Randall Peerenboom, *China's Long March toward Rule of Law* (Cambridge: Cambridge University Press, 2002), Stanley Lubman, *Bird in a Cage* (Palo Alto: Stanford University Press, 1999), Albert Chen, *Introduction to the PRC Legal System* (Hong Kong: Butterworths, 2nd ed., 2004), Chen Jianfu, *Chinese Law: Context and Transformation* (Leiden and Boston: Nijhoff, 2008); Stéphanie Balme and Michael Dowdle eds., *Building Constitutionalism in China* (New York: Palgrave MacMillan, 2009).

² Randall Peerenboom, *China Modernizes: Threat to the West or Model for the Rest?* (London and New York: Oxford University Press, 2008).

independence, the concept remains disturbingly contested and unclear even in economically advanced liberal democracies known for the rule of law, as pointed out by two leading U.S. constitutional scholars:

Consensus on broad values combined with discord over their application in particular cases is hardly uncommon, in law or anything else. But the range of disagreement when it comes to judicial independence seems unusually wide. We expect controversy over how to draw the line between proper and improper judicial behavior in particular cases, but there is as much uncertainty in locating the line between proper and improper external influences. Indeed, we do not have anything approaching consensus even with respect to the normative conditions necessary to have a properly independent bench. There is disagreement about whether or how to criticize judges and their decisions, and about whether or how to discipline judges. There is disagreement about how to explain or justify our institutional arrangements . . . And, of course, there is pervasive disagreement about whether our judges exhibit too much or too little independence.³

The problems are magnified when we move beyond economically advanced liberal democracies to developing countries and nonliberal authoritarian regimes. As Tom Ginsburg observes in this volume: “Judicial independence has become like freedom: everyone wants it but no one knows quite what it looks like, and it is easiest to observe in its absence. We know when judges are dependent on politicians or outside pressures, but have more difficulty saying definitively when judges are independent.”

One goal of this volume is to subject judicial independence and the claims made on its behalf to critical scrutiny. China is useful for testing general theories in that it represents a challenge to so much of the common wisdom about what judicial independence means, its importance, its relation to other social objectives, and how to achieve it. Most fundamentally, what *is* socialist rule of law? How does it differ from rule of law in a liberal democracy? And what are the implications for judicial independence?

China’s rapid growth also challenges the prevailing wisdom. For many, China is an exception to the rule in that it has grown allegedly without “the rule of law” and an independent judiciary. But what role has the legal system played in economic growth in China? Have the courts been able to handle commercial cases independently? Are property rights protected in other ways? To the extent that there are external influences on judges in commercial cases, including party and government policy directives, do they promote or hinder economic development?

A second goal is to contribute to, and draw on, the emerging literature on the development of legal systems in authoritarian regimes. Judicial independence is often assumed to be impossible in authoritarian regimes, where law plays a limited

³ John A. Ferejohn and Larry D. Kramer, “Independent Judges, Dependent Judiciary: Institutionalizing Judicial Restraints,” *New York University Law Review*, vol. 77 (2002).

role in governance and takes a back seat to government policies and ruling party diktats, legal institutions are unable to restrain political power, and judges are faithful servants of the ruling regime. Yet even a cursory glance at authoritarian regimes – whether historical or contemporary, whether in Europe or in East Asia, Latin America, Africa, or the Middle East – reveals that law plays a much larger role in authoritarian states than commonly believed.⁴ Nor is that particularly surprising. Authoritarian regimes turn to courts for many reasons, including to facilitate economic growth, maintain social order, supervise and discipline local officials, define and enforce relationships between central and local governments, monitor boundaries between competing state organs, distance the ruling regime from unpopular decisions, and enhance regime legitimacy at home and abroad.⁵

Conversely, it is commonly assumed that democratic regimes favor judicial independence. Yet even the most cursory glance at democratic regimes – whether historical or contemporary, whether in Europe or in East Asia, Latin America, Africa, or the Middle East – demonstrates that democracy does not guarantee judicial independence.⁶ Many legal systems in developing democracies are plagued by judicial corruption, incompetence, and inefficiency. The judiciary is often controlled by the executive, beholden to the political and economic elite, threatened by organized crime, and subject to social pressure from the public and media. Clearly, much depends on the particular regime, whether authoritarian or democratic. There is therefore a need to move beyond simplistic black and white portrayals based on regime type.

This is not to say that political structures are irrelevant. Courts in authoritarian states may enjoy considerable independence, although usually over a limited scope of issues. They often enjoy more autonomy in commercial law than with respect to protecting civil and political rights. One question is whether there will be spillover to other areas. More generally, what are the limits of law and judicial independence in authoritarian regimes? What mechanisms do authoritarian regimes use to limit judicial independence? Has China employed similar mechanisms? Has it developed alternative ways of controlling the judiciary?

A third related goal is to sort out sense from nonsense about judicial independence and the legal system in China. As with other authoritarian regimes, blanket

⁴ See Tamir Moustafa and Tom Ginsburg, eds., *Rule by Law: The Politics of Courts in Authoritarian Regimes* (New York: Cambridge University Press, 2008); Lisa Hilbink, *Judges Beyond Politics in Democracy and Dictatorship* (Cambridge: Cambridge University Press, 2007); see also Chapters 12 and 13 in this volume and the cites therein.

⁵ See Moustafa and Ginsburg, “Introduction: The Functions of Courts in Authoritarian Politics,” in Moustafa and Ginsburg, *Rule by Law*.

⁶ For problems in judicial independence, corruption, and incompetence in Bangladesh, Cambodia, Nepal, Indonesia, Pakistan, the Philippines, and Thailand, see Asian Development Bank, “Judicial Independence Overview and Country-level Summaries,” (2003), p. 2, http://www.adb.org/Documents/Events/2003/RETA5987/Final_Overview_Report.pdf. See also Chapter 5 in this volume and the cites therein.

denunciations of the lack of meaningful independence in China fail to capture the more complex reality. The courts handle more than 8 million cases a year. Judicial independence is not an issue in many cases, nor is the source, likelihood, or impact of interference the same across cases.

There is therefore a pressing need to get beyond outdated stereotypes and broad generalizations, to examine a wider range of cases than just high-profile conflicts involving political dissidents so prominently featured in the reports of human rights groups and the Western media, and to overcome the knee-jerk reaction to blame all judicial shortcomings on the party and lack of U.S.-style separation of powers. In short, there is a need for more nuanced studies, new analytic frameworks, and thicker descriptions of the actual issues judges face in their daily lives, the reasons for existing policies, and the responses of the judiciary to such policies. The development of the legal system in China must also be situated within a broader comparative framework of other developing countries, many of which are experiencing similar issues.

Even assuming the conventional wisdom is correct and judicial independence is necessary or useful for many of the goals mentioned previously, there is still the all-important question of how to achieve it. Thus a fourth goal is to scrutinize the dominant approach of the rule of law industry to prescribing “international best practices.” It is now clear in light of the historical development of legal systems in Euro-America, Asia, and some countries in Eastern Europe, Latin America, and the Middle East that there is no single path toward the rule of law and that rule of law principles are consistent with a wide variety of institutional arrangements, although implications for policy makers are far from clear. Moreover, the less than spectacular results of rule of law promotion efforts call into question the role and influence of foreign actors, as well as the assumption that the best way for developing states to achieve rule of law is to mimic or transplant Euro-American institutions, values, and practices.

China is an interesting test case in that it has pursued its own approach to reforms. China did not adopt the big bang approach to economic reforms or follow the neoliberal aspects of the Washington Consensus, including rapid privatization, deregulation, and opening of the domestic economy to international competition. Like other successful East Asian states, it has postponed democratization until it attains a higher level of economic and institutional development. Also, like other successful East Asian states, it has adopted a two-track approach to legal development that emphasizes commercial law while imposing limits on the exercise of civil and political rights. But what are the costs of this gradualist approach? Will China be able to maintain and deepen the reform agenda, or will the reform process stall, leaving China another example of a dysfunctional middle-income state that once showed great promise?

In addressing these issues, the authors in this volume adopt a variety of perspectives and approaches reflecting the interdisciplinary, holistic, and comparative nature of the development process. There are contributions from legal scholars, political scientists, and sociologists. Some authors take an institutional approach, whereas

others opt for a historical–cultural approach. Several chapters address the debate over globalization and the need to adapt universal norms and practices to local contexts. Some chapters are comparative, with authors drawing on the experiences of countries in Europe, the Middle East, and East Asia. The authors also consider different levels of wealth and the diverse challenges faced by low-, middle-, and high-income countries, as well as differences in the nature of the political regime.

Theoretically, several chapters challenge conventional assumptions about judicial independence. Others develop new analytical frameworks that differentiate among types of cases, sources of interference, and levels of courts. Whereas some chapters focus on urban courts, others focus on rural courts. There are discussions of civil, criminal, and administrative cases. Several chapters present data from recent empirical studies, complementing and enriching new and existing theoretical perspectives.

CHAPTER SYNOPSES

The volume begins by situating the debate over judicial independence in China within the larger debate over the rule of law industry approach of promoting international best practices. In Chapter 2, Keith Henderson draws on his extensive experience in the industry to summarize international best practices, captured in 18 JIP (Judicial Integrity Principles). The JIP are modeled largely on the current institutions, values, and practices in economically advanced Western liberal democracies and reflect the experience of USAID, International Foundation for Electoral Systems (IFES), and others in promoting rule of law in developing countries. Henderson also summarizes the main principles of a pragmatic, context-specific methodology for judicial reforms developed more fully elsewhere.

Henderson draws on his personal experience in advising on judicial reforms in China to shed light on the applicability of international best practices to China. As he and others in this volume note, there is widespread support for more independent courts from the central government, from judges and other legal complex actors, from investors and business people, and from the broad public. However, notwithstanding general support for the JIP, he also found that some of the JIP were opposed by one group or another for a variety of political, institutional, historical, practical, and interest-based reasons. Many participants questioned the feasibility of some of the reforms, particularly those beyond the authority of the judiciary to implement on its own. As in other countries, including other successful East Asian countries during their phase of rapid growth under authoritarian regimes, the main emphasis was on politically safer reforms aimed at promoting judicial efficiency, legal predictability, and legal consistency in the economic sector.

In Chapter 3, although not disputing the normative desirability of the JIP, Antoine Garapon, a former judge and current director of the Institut des Hautes Etudes sur la Justice, raises serious doubts about the dominant approach of prescribing international best practices. Drawing on his own extensive comparative experiences,

Garapon argues that this approach ignores culture and politics and is inconsistent with the way legal systems actually develop. Legal reforms do not occur within a political vacuum. Powerful interests are at stake. For reforms to be successful, they must take into account opposing interests and existing conditions. In some cases, compromises are necessary, as in the “unholy alliance” between the Judges Club and Islamists in Egypt.

Garapon recommends more attention be paid to the process of reform and, in particular, to the historical process by which judicial independence has been achieved in developed countries, as well as the political battles being fought in countries now trying to establish independent judiciaries. Rather than beginning with a predetermined set of abstract principles for judicial independence, he suggests that we begin with a detailed study of the forms of interference and their impact in particular contexts. In that sense, the differences between Garapon and Henderson may not be as great as it first appears because Henderson advocates a similar methodology for judicial reforms in his chapter.

The debate between Henderson and Garapon reflects the different emphases of an institutional versus a cultural–historical approach,⁷ which in turn reflects long-standing debates over the possibility and desirability of legal transplants.⁸ In general, advocates of a cultural–historical approach place more emphasis on path dependencies and the often unpredictable nature of legal reforms. As such, they see legal development as nonlinear and the process as less teleological and more open-ended than one that focuses on achieving prescribed substantive standards or best practices.

In Chapter 4, Zhu Suli, Dean of Peking Law School and one of China’s leading legal theorists, employs the cultural–historical approach in challenging the notion that judicial independence is the appropriate lens through which to view judicial reforms in China. Zhu provides a broad historical overview of the Kuomintang and Chinese Communist Party (CCP) regimes to situate the judiciary within the political context of an effectively single-party state. Echoing Garapon, he argues that “rather than searching for, or aspiring to, some decontextualized abstraction or ideal type of judicial independence, we should pay more attention to the actual role of the Party and its influence on the judiciary, the legal system, and China’s efforts at modernization more generally.” Although disagreeing with some party decisions, he concludes that, on balance, the CCP has played a positive role. Moreover, while some judicial problems may be attributable to party policies, he suggests

⁷ For the historical–cultural approach, see generally Paul Kahn, *The Cultural Study of Law* (Chicago: University of Chicago Press, 1999). In addition to the chapters by Garapon and Zhu in this volume, see also Jonathan Ocko and David Gilmartin, “State, Sovereignty, and the People: A Comparison of the ‘Rule of Law’ in China and India,” *The Journal of Asian Studies*, vol. 68(1).

⁸ R.L. Abel, “Law as a Lag: Inertia as a Social Theory of Law,” *Michigan L. Rev.* vol. 80, pp. 775–809 (1982); Alan Watson, *Legal Transplants* (Athens: University of Georgia Press, 1983); William Twining, “Generalizing about Law: The Case of Legal Transplants” (2002), http://www.ucl.ac.uk/laws/jurisprudence/docs/twi_til_4.pdf.

that the more fundamental cause of shortcomings in the judiciary is the recent unprecedented social transformation of Chinese society.

In Chapter 5, Peerenboom also challenges many assumptions underlying common views about judicial independence in China, including that there is a single agreed upon model or generally accepted set of institutions and best practices articulated with sufficient specificity to guide reformers; that the main source of external interference is the party; and that if China were to suddenly democratize, judicial independence would no longer be a problem. He then breaks the concept of judicial independence down into different subcomponents and analyzes China's progress on each. Although progress has undoubtedly been made on each dimension, it has been uneven. He ends with policy recommendations for enhancing judicial independence and limiting judicial corruption.

Whereas Chapter 5 adopts an institutional approach, Fu Yulin and Peerenboom develop a new case-based analytical framework in Chapter 6. They distinguish between pure political cases, politically sensitive cases, and ordinary cases and highlight three types of politically sensitive cases: socio-economic, new crimes, and class actions. They then discuss the sources, nature, and impact of interference for each type of case and provide recommendations tailored to particular problems that arise. They emphasize, as do others, that judicial independence is not an end in itself but a means to other goals, and that there is substantive disagreement in China about how independent the courts should be and whether the courts are the appropriate forum for resolving certain types of disputes, notwithstanding the global trend toward judicialization. They also show that reforms to enhance judicial independence entail a wide range of changes that affect not just the judiciary as an institution but substantive and procedural law, the balance of power among state organs, party-state relations, and social attitudes and practices. An approach focused primarily on the judiciary, or even on state institutions, is therefore not sufficient.

In Chapter 7, Nicholas Howson illustrates the benefits of a case-based approach in his detailed study of more than 1000 corporate law cases in Shanghai courts. He notes that amendments to the Company Law in 2006 represent a radical shift from self-enforcement to a litigation-centered model for resolving corporate disputes. He finds that Shanghai courts are now more competent, autonomous, and independent, and have ruled against government entities, state-owned enterprises, and other politically and economically powerful, well-connected commercial actors and investors. The courts have also indirectly showed signs of autonomy in acting as guardians of the commercial order, seeking to protect a sphere for privately ordered economic activity from intrusion by mandatory business regulations.

On the other hand, the limits of judicial independence were evident in the courts' deference to national economic and social policies in contravention of the Company Law and in the courts' reluctance to hear cases involving companies limited by shares. In each case, the courts are animated by both explicit instruction from superior bureaucratic organs and voluntary self-restraint.

There are a number of reasons for these externally and internally imposed limitations. Some reflect the limited experience of the courts with new types of claims; others reflect plaintiff and judicial deference to the China Securities Regulatory Commission and public prosecutor; still others reflect concerns for market and social stability. Scholars and commentators may disagree about the wisdom of moving slowly or refusing to hear certain cases for these reasons, at least for the moment. More worrisome from the standpoint of judicial independence and justice is the refusal to hear cases because of the superior political power of one of the parties. This concern should not be overstated. As Howson points out, Shanghai courts decided against politically powerful parties in all of the more than 200 opinions reviewed in full where there was a discernable political interest.

Whatever the reasons for the court's reluctance to hear certain types of corporate cases, Howson argues that the failure to apply the new provisions to public companies is "tragic" because the Company Law was amended in part to address corporate governance in such firms. He concludes by suggesting that the current approach of Shanghai courts may not be sustainable in the long run given the rapid rise of group plaintiff cases and popular anger against politically and economically privileged insiders.

In Chapter 8, Stéphanie Balme provides the kind of thick description of the lived reality of judges in rural courts advocated by others in this volume as the proper basis for a successful reform agenda. Various studies cited in this volume have demonstrated significant differences between rural and urban courts in terms of the level of professionalism of judges, judicial salaries and benefits, judicial corruption, the nature of cases, enforcement of court judgments, and citizens' willingness to litigate and satisfaction levels when they do. On the whole, the quality of judges and justice is much higher in urban courts than in rural courts. Drawing on years of fieldwork in basic level courts in remote Shaanxi and Gansu provinces, two of the poorest provinces in China, Balme finds that local judges are better trained and more professional than in the past, although technical competence remains an issue, with only half of the judges in lower courts in these two provinces having obtained college degrees in law. She also finds that despite assurances of *de jure* independence, judges lack *de facto* independence. Until recently, local courts have been funded by the local government, although the State Council announced in 2008 that funding was to be centralized. Although centralized funding may lead to significantly less local protectionism and more independence *vis-à-vis* local governments, it remains to be seen whether the funding will be adequate and make its way to basic courts. Moreover, local people's congresses and party organs still play a role in the appointment and promotion of judges.

Lack of adequate funding is not the only issue, however. Judges in basic level courts, particularly in rural areas, lack prestige and social status. They are often treated like other civil servants and assigned nonjudicial or quasi-judicial tasks such as political mobilization and legal education for the public. Under Hu Jintao's

leadership, the judiciary has been given the new roles of contributing to “social harmony” and, in light of the global economic crisis, of maintaining economic growth and social stability.

As Carlo Guarnieri points out in his chapter, judges are heavily influenced by their reference group. Yet rural judges in local courts are often isolated from professional networks and in some cases slighted by better trained and higher-paid judges in higher courts and urban areas. Thus, they may look to similarly situated judges or to local government and business elites. As Balme notes, like party and government officials, judges are somewhat more educated and better informed than the average villager. On the other hand, many judges are also similar in social background and economic status to the parties that appear before them in court. This close social proximity between judges and citizens may lead judges to be more sympathetic to the plight of weaker parties and thus to turn to alternative dispute resolution methods such as mediation, where judges enjoy greater discretion and exert greater control. Either way, the close relation to local elites or average citizens that characterizes the dense social network of local village life facilitates *ex parte* meetings and increases the likelihood of corruption. Nevertheless, Balme sees hope for the judiciary’s future in the combination of top-down and bottom-up reform efforts aimed at enhancing the professionalism, financial security, and authority of judges in basic level courts, although fundamental changes that rely on forces beyond the judiciary’s control will be necessary if China is to meet international standards for judicial independence.

In Chapter 9, Xin He focuses on a particular type of administrative case in rural areas involving “married out women” (MOW) – that is, women who leave their home village after they are married and are then denied economic benefits from their home village. He shows that lower courts in Guangdong province have effectively resisted pressure from party and government organs to solve these disputes, raising questions about the extent to which they are controlled by superior political powers. Citing legal barriers and enforcement difficulties, the courts resisted the global trend to judicialize these disputes, pushing them back to political and administrative channels. However, the courts then demonstrated their strategic sophistication by claiming the right to review the government’s decisions in administrative litigation. In so doing, the courts retain an advantageous position in the power relationship with the governments. Moreover, as these cases inevitably leave some groups dissatisfied, the court can avoid public displeasure by forcing the government to make the decision. He concludes that Chinese courts are capable of deliberating about and transforming their situation by strategically interpreting the law and negotiating with superior powers. Consistent with findings in other chapters, he suggests that judicial independence in China is far more complicated than is often recognized and that judicial behavior cannot be adequately explained without thick descriptions of legal arguments, resource constraints, and strategic interpretations open to the courts in a particular context.

As Henderson points out, and empirical studies confirm, most judiciaries in developing countries, whether democratic or authoritarian, suffer from judicial corruption. Judicial corruption undermines judicial independence directly in particular cases and indirectly in support for long-term reforms that grant judges more independence. Simply put, giving more independence and authority to corrupt or incompetent judges will not lead to more just outcomes.⁹ Thus, another lesson learned is the need to sequence reforms in a way that balances judicial independence and judicial accountability.

In Chapter 10, Ling Li draws on an extensive data set of confirmed cases of judges sanctioned for corruption over a ten-year period to develop a new analytical framework for judicial corruption. She distinguishes between corruption at different stages (case acceptance, adjudication phase, and enforcement); forms of corruption (physical abuse, theft and embezzlement, bribery or influence-peddling); levels of, and divisions within, courts; and rank of judges. Among her key findings are that corruption is most likely in civil (especially commercial) cases, followed by criminal cases, and rare in administrative cases. Corruption is most common during the adjudication phase, followed by enforcement, and relatively rare during the case acceptance phase. By far the most common type of corruption is bribery and influence-peddling. Physical abuse of parties is rare and largely confined to lower level courts. Although higher court judges did engage in corruption, there were few cases where the corruption resulted in a gross miscarriage of justice reflected in a judgment clearly at odds with the law. Rather, corrupt court presidents were most likely to be guilty of taking kickbacks on construction projects to build new courthouses or of accepting bribes from subordinates seeking promotions.

The next chapter, by Minxin Pei, Guoyan Zhang, Fei Pei, and Lixin Chen, fills in the picture presented by Ling Li by providing a detailed survey of commercial and property cases in Shanghai courts involving both private and corporate parties. The survey sheds light on when parties choose to litigate, the pretrial and trial processes, the extent and sources of outside influence on the courts, and people's attitudes and satisfaction levels, including their perceptions of corruption and the role of lawyers in resolving disputes. The study demonstrates that the judiciary has become more professional, at least in major urban areas, and that parties generally view the litigation process favorably. This confirms results found in several other surveys.¹⁰

Nevertheless, the courts are subject to considerable outside influence in civil cases, most notably from the parties themselves. Corporate parties are more likely than private parties to seek to influence judges, usually through gift-giving and dinners. This is not because private parties are loath to engage in such behavior, but because they do not know how to go about it. Corporate parties are more likely to hire lawyers

⁹ Transparency International, "Global Corruption Report: Corruption and Judicial System," (2007) http://www.transparency.org/publications/gcr/download_gcr#download.

¹⁰ See Chapter 6 and the cites therein.

or to be part of a social network that includes people on friendly terms with judges. In contrast, private parties rarely hire lawyers and, in urban areas, are generally not part of the same social and professional circles as judges. The importance of banquets and gift-giving in Chinese culture presents many opportunities for direct or indirect contact between company managers, lawyers, and judges. Much of the dining and gift-giving is part of longstanding social practices that occur among friends even when they have no cases pending rather than the explicit *quid pro quo* type where parties meet with a judge hearing a pending case to influence the outcome by offering gifts or other incentives.

Although the impact of such behavior is difficult to measure, the winning parties, whether corporate or private, generally believe that they won based on the merits of their case – the law and the facts – rather than because of corruption. On the other hand, a significant number of losing parties believe they lost because of outside influence. Interestingly, a much higher percentage of private parties thought they lost because of influence from the other side, even though in fact private parties were much less likely to engage in corrupt practices. Private parties may not have a good understanding of the law, and generally they do not hire lawyers. Accordingly, they may overestimate their chances of succeeding in court. Conversely, corporate clients are more likely to be repeat players and to have lawyers. Therefore, they are more likely to have a more accurate idea of their chances. In any event, the perception that judges are influenced by the other party, even if inaccurate, undermines public trust in the judiciary, particularly among private parties.

The volume ends by stepping back and situating China's progress within a broader comparative perspective. In Chapter 12, Carlo Guarnieri considers and applies the experiences of legal systems in authoritarian Europe to China. He emphasizes that judicial behavior depends on a judge's education and reference group(s). In democracies with a hierarchical civil law system, the reference group tends to lie within the judiciary, with judges looking to more senior judges, whereas in common law systems, judges tend to look outside the judiciary to the legal profession. In totalitarian regimes, judges mirror the views of the ruling regime. The situation is more complex in authoritarian regimes such as China where courts enjoy some independence and political power is less concentrated. Authoritarian regimes in Europe and elsewhere established separate military or national security courts or relied on police and security forces rather than the judiciary to deal with political challenges while permitting the regular courts to act autonomously in other areas, such as commercial law. As a result, judges could develop a professional identity, and the judiciary was poised to assume a larger role, including impartial resolution of politically sensitive cases, when political restraints were removed. This usually occurred after democratization.

Despite the different historical context, Guarnieri suggests that some lessons of legal system development in Europe also apply to China. He notes that political influence in the appointment process, together with external and internal restraints

on judges, provide the necessary political assurance to the ruling regime that the courts may be trusted to handle certain cases and areas of law independently. He also notes a centralized judiciary that promotes judges largely based on merit would serve the central government's interest in controlling local officials. In the end, he believes it is possible for China to develop a professional judiciary with a reasonable degree of independence in some areas. The result would be a "thin" version of the rule of law and a situation similar to what prevailed in most European states before the middle of the twentieth century. He cites Singapore to show that the political–legal system need not evolve into a thick liberal democratic rule of law, although the experiences of Taiwan, South Korea, and Japan indicate that something similar is possible.

In the final chapter, Tom Ginsburg picks up where Guarnieri left off, locating China's legal development within the context of other Northeast Asian states. As he notes, Japan, Taiwan, and South Korea also featured a form of legal system that, by conventional measures, was fairly independent but not politicized. As in other authoritarian regimes, courts were able to act independently but within a limited range. In particular, the courts handled commercial cases in a fair and independent way but played a limited role in deciding politically sensitive issues. Based on the trajectory of these countries, Ginsburg suggests that Chinese courts could achieve a reasonable degree of independence if the judiciary were structured roughly along Japanese lines: the judiciary is reasonably independent but not politicized; judges do not regularly challenge political authorities; and the judiciary is hierarchically organized, with strong internal controls and a sense of corporate identity among the judges. Even this level of independence would require significant changes, including a higher status for judges; a rigorous meritocratic selection process and higher pay so that the best and brightest become judges rather than lawyers; and more independence from local government, including centralization of funding (as recently announced by the State Council).

KEY ISSUES AND FINDINGS

From Substance to Process

The lackluster results of efforts to promote rule of law based on the prescription of international best practices suggests that it is time to adopt a new approach that focuses less on substantive content and more on methodological issues and the processes of legal reform and development, including the historical and sociopolitical context. As several authors noted, there is a need for a more empirical, less ideological approach to assessing legal reforms in general and issues such as judicial independence or the role of the party in the judiciary in particular.

The many attempts to create independent judiciaries around the globe have demonstrated that the process is holistic, involving interrelated changes in the

social, economic, political, and legal spheres and crossing academic disciplines and administrative jurisdictions. Given the lack of resources to solve all problems at once, legal reforms must be prioritized and sequenced. This is one of the most difficult challenges for developing countries.¹¹

An IFES/USAID report highlights the many problems confronting judiciaries in developing countries: the citizenry has rising expectations; courts are often asked to handle controversial cases involving social and economic rights; there is generally a rise in crime, including complicated white collar and cross-border crime, as a country moves to a market economy and urbanizes; corruption is often a problem; and the relationship of the courts to other organs of state power is in flux. The report concludes: “It would be unrealistic to think that the judiciaries can carry the full burden for resolving these complex problems.”¹²

China is confronting many of these issues. Yet China is relatively fortunate. Given its huge population and the strength of its tertiary schools, there are many extremely intelligent and qualified people in key institutions responsible for identifying problems and devising solutions. Moreover, China is a major economic force despite its low per capita income, and, as a member of the Security Council with nuclear weapons, a major geopolitical player. Accordingly, foreign governments and international development agencies have been eager to advise China. To its credit, China has followed the methodology recommended by IFES. Before undertaking any significant reform, the government conducts extensive comparative research, carries out empirical research, consults with a wide variety of stakeholders including academics and representatives from the main interest groups affected by reforms, increasingly invites public comment on major laws and pieces of public regulation, and establishes pilot programs to test results before scaling them up nationally.

To be sure, China’s size also makes it difficult to implement reforms. Implementation requires qualified people at every level, in every position. In contrast, a small city-state such as Singapore will have a smaller talent pool to draw on to devise policies and reforms but will need fewer people to carry out state policies. In the end, each country must find its own way to success.

Judicial Independence and Its Limits

As Ginsburg notes, politicians have many tools with which they can send signals to the judiciary: they can influence the appointment and promotion processes to

¹¹ Sequencing, in particular prioritizing legal reforms aimed at strengthening rule of law before democratization, has recently come under attack. See, e.g., Thomas Carothers, “How Democracies Emerge: The ‘Sequencing’ Fallacy,” (Jan. 2007). For a contrary view on that issue as well as a discussion of other sequencing issues, see Randall Peerenboom, “The East Asian Model and the Sequencing Debate: Lessons from China and Vietnam,” in John Gillespie and Albert Chen eds., *Authoritarian Development: China and Vietnam Compared* (forthcoming Routledge).

¹² IFES/USAID, “Guidance for Promoting Judicial Independence and Impartiality,” (2002), p. 6, http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnacm007.pdf.

ensure loyalty; punish, terminate, or transfer to remote locations judges who do not decide cases as desired; overrule unfavorable decisions via subsequent legislation; and bypass regular courts by establishing military or security courts.

In China, the party retains veto power in the appointment and promotion process, although it rarely appears to use it. Judges are also not often sanctioned and dismissed, and when they are it is generally for legitimate reasons such as negligence or corruption. There are few reports of judges dismissed for political reasons. Interestingly, China has not followed other authoritarian regimes in establishing separate courts to handle politically charged cases. The ordinary courts hear all cases, although there is a separate system of administrative detention intended for “minor” offenses that do not rise to the level of a crime, which has been used against Falun Gong adherents among others, as well as some use and seeming abuse of psychiatric centers and “black prisons” to detain “troublemakers” such as people who repeatedly petition higher authorities for relief.

More important are various laws and regulations that constrain access to justice and incapacitate judicial support networks. For instance, parties are required to exhaust administrative remedies in certain cases, although the general rule allows parties to pursue their claims either administratively or in court. However, the Administrative Litigation Law does not allow citizens to challenge abstract acts (i.e., generally applicable rules). Rather, they may only challenge specific acts or government decisions, and even then not those that involve civil and political rights. Standing rules are also relatively stringent: parties need to be directly affected by the government decision, thus precluding the possibility of citizens or NGOs to act as private attorneys general. NGOs and civil society are also subject to various registration requirements and generally applicable time, place, and manner restrictions on public protests that give the authorities wide discretion to veto requests to demonstrate. Despite the recent passage of regulations to increase access to government information, the prevailing mindset of some government entities still appears to be to make information public on a need-to-know-only basis rather than the more common assumption in Western liberal democracies that all information should be readily available subject to specific limits. Although Chinese laws permit collective suits, and the number of such suits has increased dramatically in recent years, authorities have also noted with concern the tendency of some of these cases to lead to public demonstrations. Accordingly, local governments and the judiciary have taken steps to ensure that such cases do not undermine social stability. Perhaps most significantly, there is still no dedicated constitutional court or review body. Thus citizens’ ability to raise constitutional challenges remains limited.

In light of these and other measures described in the chapters that follow, the ruling party has felt secure enough to turn to the courts for disposition of an increasingly wide range of controversial cases, in keeping with other studies that have found that entrenched regimes with long time horizons are more likely to turn over core

governance functions to courts. For various reasons, the range of cases has waxed and waned over time. The years immediately following the Tiananmen incident in 1989 represented the nadir. However, as China grew economically and the ruling party gained in confidence, the courts enjoyed greater independence and authority over a wider range of issues. More recently, the rapid rise in mass demonstrations, coupled with severe social disruptions resulting from the global economic crisis, have led to greater political influence over cases deemed threatening to economic and social stability.

To be sure, judges have not been passive actors in the unfolding drama. The judiciary, like any other political actor, has responded strategically to pursue its institutional interests, gain a greater share of scarce resources, and increase the status, authority, and independence of judges.

In so doing, they have adopted strategies employed by courts in other countries. Courts in authoritarian states in particular must take care not to challenge the regime on key issues that threaten the regime's authority to rule. Thus one strategy is to exercise self-restraint, as evident in certain types of corporate cases and even more clearly in high-profile cases involving political dissidents.

Courts in China have also adopted the time-tested strategy of deferring to other branches on the substantive issue while enhancing their authority by claiming jurisdiction to decide such cases. Similarly courts have deferred on the substantive issue while imposing procedural restrictions. For instance, courts have quashed government decisions where the agency has failed to provide an adequate record for the decision. This is a far cry from the allegedly "hard look" review of U.S. courts, as government agencies can readily rectify the error by providing the grounds on which their decision was based. Nevertheless, it shows a more aggressive judiciary willing to push administrative agencies.

Still another strategy is to seek public support. Again, the Married Out Women (MOW) cases are illustrative in that the courts shifted many of the hardest decisions to others. More generally, the courts have resisted the pressure to judicialize what are at bottom socioeconomic disputes arising out of the lack of an adequate welfare system, including unemployment insurance for employees laid off in the wake of company closings resulting from the global recession. The move to mediate disputes is also in part an attempt of the judiciary to enhance its legitimacy by responding to the needs of citizens, many of whom, particularly in rural areas, want decisions that reflect local customs and norms rather than the formal central laws promulgated by national legislators in far off Beijing. The increasingly popular practice of senior judges meeting with parties in potentially incendiary large collective suits to explain legal issues is another example.

It is true that courts may go too far in courting public opinion. In the Philippines, for instance, the desire of the courts to please the public has led to an outcome-oriented jurisprudence, "as if the courts were in a perpetual popularity contest

refereed by polling groups and single-interest lobbies, all of them oblivious to the professional demands of the legal craftsman.”¹³ Although Guarnieri’s chapter suggests that judges in China are more likely to look to the party and government as their main referent group, some studies have suggested that courts are increasingly influenced by public opinion.¹⁴

As the experiences of other authoritarian regimes in Europe and particularly East Asia show, there is considerable scope for a further expansion and deepening of judicial independence and authority in China within the current political structure. However, as those countries also demonstrate, there are likely to be limits to what the ruling party will tolerate. Ultimately, judicial independence in its most robust form seems possible only within democracies, and even then it is difficult to achieve and maintain.

The poor performance of third-wave democracies combined with the success of China has led to hyperbolic portrayals of a new Cold War between democratic and authoritarian regimes.¹⁵ China leaders have been abundantly clear that they want to develop their own variant of rule of law. More fundamentally, China’s experience of markets without democracy merits attention. But portraying differences over the best path for development as a geopolitical struggle over ideology is fundamentally inaccurate. The end goal of the development process for most people in China, as in Russia, Vietnam, and around the world, remains democracy, albeit not necessarily the particular forms of liberal democracy found in Euro-America.

Economic Growth

China is often considered an exception to the general rule that economic growth requires rule of law and an independent judiciary capable of enforcing property rights. However, the general rule appears to be more dogma than fact. First, judicial independence is hard to measure, and the correlations with economic growth, human rights protection, and other social goods are weaker than assumed (see Chapter 5). Second, investors face many risks; legal risk is only one of them and not always high on the list. Some studies show that foreign investors either ignore or place little weight on legal risks.¹⁶ Third, the emphasis on judicial enforcement of property rights

¹³ Raul Pangalangan, *The Philippine “People Power” Constitution, Rule of Law, and the Limits of Liberal Constitutionalism*, in Randall Peerenboom ed., *Asian Discourses of Rule of Law* (London: Routledge, 2006), p. 379.

¹⁴ Benjamin Liebman, “A Populist Threat to Chinese Courts,” in Mary Gallagher et al. eds. *Chinese Justice: Civil Dispute Resolution in Contemporary China* (forthcoming Harvard University Press).

¹⁵ See Robert Kagan, *The Return of History and the End of Dreams* (New York: Alfred A. Knopf, 2008). On the problems of third-wave democracies, see Thomas Carothers, *Critical Mission: Essays on Democracy Promotion* (Washington D.C.: Carnegie Endowment for International Peace, 2004); Larry Diamond, *The Spirit of Democracy* (New York: Henry Hold and Company, 2008).

¹⁶ Amanda Perry, “An Ideal System for Attracting Foreign Direct Investment? Some Theory and Reality,” *American University International Law Review* vol. 15, p. 1627 (2000).

is much too narrow. Much more important to investors is quality of the business environment. For instance, since 1999, foreign investors in China have cited as the four biggest challenges for doing business in China lack of transparency (major challenge for 41 percent of respondents), inconsistent regulatory interpretation (37 percent), unclear regulations (34 percent), and excessive bureaucracy (31 percent), followed by human resource constraints (29 percent) and intellectual property infringements (26 percent). Notable for their absence are lack of judicial independence, inability to enforce property rights, and corruption, judicial or otherwise.¹⁷ Perhaps even more significant, for all of the complaints, 83 percent of respondents in a U.S.–China Business Council survey were profitable, with two-thirds enjoying profitability rates that meet or exceeded their company’s global rate, and over 90 percent of respondents from both surveys are bullish about their companies’ future in China.¹⁸

In fact, China has made significant progress in building institutions and improving the business environment. China ranked 34th of 131 countries in the 2007–2008 World Economic Forum’s Global Competitiveness Index, and 57th of 127 countries on the Business Competitiveness Index.¹⁹ In 2008, the World Bank ranked China 92nd of 178 countries for doing business overall.²⁰ Reflecting the considerable investment in institutions, China now outperforms the average in its income class on World Bank’s indexes for government effectiveness, regulatory quality, and rule of law.

In any event, the view that Chinese courts do not adequately protect property rights is overstated and in need of qualification. The surveys of courts reported in this volume demonstrate that judges are more competent and professional than in the past, and that parties are reasonably happy with the courts, with most parties obtaining results in line with their expectations despite problems in particular types of cases and attempts by the parties to influence the outcome in some cases.

More fundamentally, the government has adopted an approach that seeks to promote economic development while protecting social stability by issuing policy guidance to the courts, restricting some types of commercial lawsuits while encouraging others, and providing administrative and political remedies and nonjudicial

¹⁷ See American Chamber of Commerce, “The Business Climate for US Firms in China” (2007), at <http://www.amcham-china.org.cn/amcham/show/content.php?Id=2361&menuid=&submid=&PHPSESSID=11eade809492f6ado40c37af69ceec8af>.

¹⁸ U.S.–China Business Council, “US Companies’ China Outlook: Continuing Optimism Tempered by Operating Challenges, Protectionist Threats,” October 4, 2007, <http://www.uschina.org/public/documents/2007/10/uscbc-member-survey-20>.

¹⁹ The index is based on twelve pillars: institutions, infrastructure, macro economy, health and primary education, higher education and training, goods market efficiency, technological readiness, labor market efficiency, financial market sophistication, market size, business sophistication, and innovation.

²⁰ China fared better on some indicators than others, including enforcing contracts (20), registering property (28), trading across borders (31), closing a business (76), and protecting investors (86). Problem areas include the time and difficulty to start a business (128), dealing with licenses (175), and the amount and administrative burden of paying taxes (173).

relief to parties in bankruptcy cases, mass tort cases like the melamine milk scandal, and other politically sensitive cases with a major economic impact. Whether the overall impact of this approach on economic growth and GDP is positive is simply not clear. It is possible that more efficient, impartial, and independent courts might lead to higher growth rates, perhaps at a cost to social stability and equity. But at this point, the government clearly has decided that how to balance these objectives is a political decision to be made by political organs rather than judges.

Judicial Independence, Corruption, and Good Governance

If judicial corruption is difficult to measure, the impact of corruption on the outcome of cases is often even more difficult to determine. Generally, the public overestimates the amount of judicial corruption and the impact on the outcome of cases. Overall, China appears to do somewhat better than the average in its income class in restraining judicial corruption.²¹ However, reliability of the data is suspect, particularly given the discrepancies between local and national data pointed out by Ling Li in this volume.

Courts themselves are not likely to emerge as significant institutions in the battle against government corruption. Most cases are handled through party discipline committees and the nonjudicial party detention system (*shuanggui*). It is unlikely in an effectively single-party authoritarian state that courts would be able to independently handle cases against senior government officials who are ultimately appointed by and responsible to the ruling party. Within East Asia, Hong Kong and Singapore are famous for their reliance on anticorruption commissions that were granted wide powers and effectively insulated from judicial challenges. Yet a recent Organisation for Economic Co-operation and Development (OECD) study found that although the number of anticorruption institutions worldwide is growing, there is no strong evidence that they help reduce corruption, and there are more failures than successes.²²

WHITHER CHINA? RECENT DEBATES OVER THE ROLE OF THE JUDICIARY AND THE WAY FORWARD

There has been considerable debate in recent years over the proper role of the judiciary in China, especially since the appointment of Wang Shengjun to replace Xiao Yang as head of the Supreme People's Court (SPC). Taking note of the Color Revolutions in the former Soviet republics where foreign governments supported

²¹ See Dali Yang, *Remaking the Chinese Leviathan: Market Transition and the Politics of Governance in China* (Stanford: Stanford University Press, 2004), pp. 254–257.

²² Organisation for Economic Co-operation and Development, "Specialised anti-corruption institutions – review of models," (2007), <http://www.eldis.org/cf/rdr/?doc=38569&em=061108&sub=gov>.

international and domestic NGOs that used the courts to push for democratization and political reforms, party leaders have expressed concern that foreign parties may use legal institutions to undermine party power. As a result, they have insisted that Chinese courts not simply mimic courts in Western liberal democracies. These announcements have been coupled with an ongoing effort to shore up loyalty in the courts, procuracy, and public security institutions.

At the same time, the Politburo has reconfirmed its commitment to rule of law, Hu Jintao emphasized in a major speech to mark the thirtieth anniversary of opening and reforms that the only way forward is to deepen reforms, and senior leaders within and outside the judiciary have repeatedly called for changes that would increase the competence, independence, and authority of the courts.

The appointments of Wang Shengjun and Cao Jianmin as head of the Supreme People's Procuracy reflect these seemingly inconsistent trends. Critics have noted that in comparison to the more extensive legal and academically qualified background of Xiao Yang, Wang's background is much more that of a "political-legal cadre." Many commentators have interpreted this as a conservative appointment likely to lead to more party control of the judiciary and more restraints on judicial independence.

But what is needed from the SPC president varies over time. Xiao Yang was arguably better for the previous decade because China was still a low-income country and the judiciary was weak and being rebuilt. The basic task was institution building to increase the overall capacity of judges and courts and to increase efficiency.

As countries enter the middle-income stage, political economy issues become more important. What will the role of the judiciary be in policy making? Over what types of cases will courts exercise jurisdiction? On what basis will judges decide them? What will the judiciary's relations be with other political organs? Will the procuracy and people's congress continue to review final court decisions? Will the court be able to determine its own budget? How much say will the judiciary have in promotions and appointments? What will the role of the court be vis-à-vis party organs and the Political-legal committee? These are the issues the courts are confronting now. They require someone who understands how the various organs relate and who has the trust of the various players and the stature to get something done – to negotiate an agreement, a *modus vivendi*, acceptable to all the stakeholders. In fact, many judges have called for a politically strong head of the court. Given his background, Wang understands the concerns of the party leadership and how party organs operate. He is thus well placed to suggest feasible reforms acceptable to other stakeholders and yet make the judiciary more effective in responding to rising demands and the changing circumstances.

Of course, whether Wang will prove to be an effective advocate for greater professionalism and judicial authority remains to be seen. Early into his tenure, the jury is still out. Many judges and legal scholars are concerned that he has in his public speeches given a prominent role to ideas perceived as conservative or reflecting a

more political role for the courts, including the importance of the “three supremes”: the supremacy of the party, of the people, and of the constitution and laws. But a more careful reading shows that his speeches offer something for everyone. He calls for both judicial independence and judicial accountability; more emphasis on professionalism and expertise but also a more democratic judiciary that responds to the needs of citizens; deciding cases based on law and yet promoting mediation and settlement; learning from international best practices and foreign experiences but adapting global experience to Chinese conditions.

As spokesperson for the judiciary, Wang has to represent all viewpoints, which range from liberal to moderate to conservative. In that sense, his public speeches are political speeches and thus filled with contradictions. For instance, Wang emphasizes that the courts, law, and legal system are a means to economic growth, and thus judges need to consider the consequences for development when deciding cases. And yet he also emphasizes the important role of the courts in promoting social harmony. Both of these ideas have some merit, but they are also in tension. What is a judge supposed to do if promoting social harmony requires redistributing wealth to the most vulnerable and least productive members of society, or if strictly enforcing labor rights pushes companies out of business, or if protecting the environment slows development?²³

On the other hand, the challenges facing the procuracy (and even more so the police and public security) are precisely the opposite. The procuracy needs more professionalization and less politics from its leadership. Accordingly, the appointment of Cao, a law professor with years of experience at the SPC, in theory bodes well for the procuracy and for the courts. He is likely to emphasize the kinds of internal reforms emphasized by Xiao Yang in the SPC reform agenda, which have increased the professionalism of the judiciary. Given his background in the courts, Cao is also likely to appreciate the way procuracy review undermines judicial independence and thus be more willing to work out a mutually acceptable solution that acknowledges that the transition to a market economy, criminal law reforms, and long-term global trends toward judicialization and rule of law will inevitably increase the role of the judiciary and its stature within the political structure of China. But again, it remains to be seen whether this will be the case. The SPC and National People’s Congress (NPC) both resisted recent attempts to revise the civil procedure law to limit review of individual case supervision.

There will be various ways to measure progress. Centralization of funding is an important step in the right direction, but the funding must be adequate and reach the basic level courts. A complementary step would be to centralize appointments and to take further measures to ensure that appointments and promotions are based on

²³ Wang Shengjun, Shenru guanche luoshi dang de shiqi da jingshen – zhashi zuohao renmin fayuan gexiang gongzuo [Thoroughly Implement the Spirit of the 17th Party Congress – Resolutely Carry Out Each of the Courts’ Tasks], *Qishi* vol. 485 (Aug 16, 2008), available at <http://www.qsjournal.com.cn/qs/20080816/GB/qs%5E485%5E0%5E1.htm>.

merit, with a greater role for judges, the legal profession, and perhaps civil society in the process. Other possible indicators of a more ascendant judiciary would include amendment of the Criminal Procedure Law and passage of criminal evidence rules, both currently bogged down in disputes between the public security, procuracy, and those pushing for reforms, including defense lawyers and human rights activists; revisions to, if not elimination of, a form of administrative detention known as Re-education through Labor; ratification of the International Covenant on Civil and Political Rights, which China signed in 1998; enhancement of the powers of the courts to review abstract acts; elimination of the adjudicative committee at least in higher level courts; elimination of the right of the procuracy and people's congress to review final court decisions; greater clarification of the legal role of the political-legal committee and party organs, and the incorporation of these organs and their role into the formal legal system; the creation of a dedicated constitutional review body; greater public participation in the law-making and governance processes, including more access to information, more channels to participate, and more robust or deliberative participation beyond just commenting on laws, along with a general requirement that the government respond to public comments and give reasons both for adopting laws and regulations and rejecting alternatives; and increased monitoring and supervision by civil society after laws are promulgated, including through various forms of litigation. Most if not all of these issues are currently being debated and "in play."

The Supreme People's Court's Third Five-Year Agenda for Judicial Reforms, the first under Wang, emphasized the courts must operate consistent with China's political structure, level of development, and national conditions and not mimic courts in Western liberal democracies while at the same time setting out an ambitious program of technical reforms. Unlike previous agendas, however, the new agenda acknowledges the structural nature of many problems confronting the judiciary and much more explicitly invokes the need to cooperate with other state organs. The agenda does not address some of the more fundamental institutional reforms such as expanded powers of judicial review or the creation of a constitutional court. Such changes may require legislative action or even an amendment to the constitution. But more importantly they would put the judiciary at odds with other organs at a time when the judiciary needs their support on other pressing issues.

The new agenda reflects a pragmatic political compromise. The court accepts some limits on its powers and refrains from challenging other organs in exchange for cooperation on certain issues that enhance the power and authority of the judiciary. Whether increased cooperation with state and party organs will meet citizen expectations and ultimately lead to a more authoritative and independent judiciary remains to be seen.

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objective of this program is to study the ways in which Chinese law and legal institutions encounter and interact with the social environment, including economic and political factors at local, regional, national, and international levels. Other publications in this program can be downloaded from www.fljs.org/Chinapublications.

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