

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

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Abstract:

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

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Until recently, the enforcement situation in Chinese courts was regarded as notoriously poor. Xiao Yang (肖扬), the former Chief Justice of the Supreme People's Court (SPC) admitted that it was a "chronic ailment" and that there were few solutions to the problem.¹ Ge Xingjun (葛行军), the Director of the Office of Enforcement at the SPC, contended that the enforcement rates in civil and commercial cases were only 40, 50, and 60 per cent at the basic-level, intermediate, and high courts, respectively.² The *People's Daily* stated: "Half of China's civil court rulings stay on paper."³ According to a report provided by the SPC, of 2,343,868 civil and economic cases completed in the country in 2003, 34.97 per cent did not find enforceable assets.⁴ The view that the Chinese courts have been weak in enforcement has also been widely accepted among students of China's legal system. They generally find enforcement to be plagued by problems such as local protectionism, extra-legal interference, incompetent court staff, and rampant corruption.⁵

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

² *Ibid.*

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

⁴ See Tong Ji, "2003 nian zhongguo fayue de shenpan he zhixing zhuangkuang," ("The Basic Situations with Regard to Adjudication and Enforcement of Chinese Courts in 2003"), *People's Judiciary (Renmin Sifa)*, Vol. 3 (2004), pp. 77-78

⁵ See Donald Clarke, "The Execution of Civil Judgments in China," *China Quarterly*, No. 141 (1995), pp. 65-81; "Economic Development and the Rights Hypothesis: The China Problem," *American Journal Comparative Law* Vol. 51 (2003), pp. 89-111; Jerome Cohen, "Reforming China's Civil Procedure: Judging the Courts," *American Journal Comparative Law*, Vol. 45 (1997), pp. 793-805; Stanley Lubman, *Bird in a Cage* (Stanford: Stanford University Press, 1999); Minxin Pei, "Does Legal Reform Protect Economic Transactions? Commercial Disputes in China," in Peter Murrell (ed.), *Assessing the Value of Law in Transition Economics* (Ann Arbor: The University of Michigan Press, 2001), pp. 180-210; Michael Trebilcock and Jing Leng, "The Role of Formal Contract Law and Enforcement in

This view has, however, been challenged by recent research from various perspectives. One study, for example, drawing on the national statistics for three types of formal contract transactions, argues that commercial parties are able to utilize formal legal enforcement mechanisms to provide contract protection.⁶ Some other studies suggest that Chinese people largely trust the courts in the resolution of disputes, especially in civil and economic cases. According to a national survey, the courts were rated the third highest in terms of public trust among 12 public and legal institutions,⁷ and “90% of the citizens who have settled an economic dispute in court would do that again.”⁸ Chinese people also hold a more positive view of their courts than, for example, Americans do.⁹ While the caseloads have not increased as dramatically as in the initial stage of the reform period, the fact that Chinese courts receive more than five million first instance civil and economic cases per year itself suggests that the courts are by no means dysfunctional.¹⁰

More importantly, systematic empirical studies based on randomly selected cases in more developed regions of China suggest many positive developments of enforcement: the enforcement outcomes are reasonable, the adjudication and enforcement processes are quite

Economic Development,” *Virginia Law Review* Vol. 92, No. 7 (2006), pp. 1517–80;

Michael Moser (ed.), *Managing Business Disputes in Today's China: Dueling with Dragons* (Kluwer Law International, 2007); Benjamin Liebman, “China’s Courts: Restricted Reforms,” *The China Quarterly*, No. 191 (2007), pp. 620–38.

⁶ Guanghua Yu and Hao Zhang, “Adaptive Efficiency and Financial Development in China: The Role of Contracts and Contractual Enforcement,” *Journal of International Economic Law*, Vol. 11 (2008), pp. 459–94.

⁷ Pierre Landry, “The Institutional Diffusion of Courts in China,” in Tom Ginsburg and Tamir Moustafa (eds.), *Rule by Law: The Politics of Courts in Authoritarian Regimes* (Cambridge: Cambridge University Press, 2008), pp. 207–234.

⁸ *Ibid.*

⁹ Ethan Michelson, *Popular Attitudes towards Dispute Processing in Urban and Rural China* (Oxford: Foundation for Law, Justice and Society, 2008).

¹⁰ For an analysis of the caseload change in reform China, see Xin He, “Recent Decline of Economic Caseloads in China: Exploration of a Surprising Phenomenon,” *The China Quarterly*, No. 190 (2007), pp. 352–74.

efficient, the problem of local protectionism is not serious.¹¹ These studies also suggest many reasons behind such developments. The courts in the Pearl River Delta, for example, have launched many reform measures to improve their performance since the late 1990s including the establishment of a relatively independent enforcement bureau, the separation of adjudication and enforcement processes, and a higher threshold for the qualifications of entry-level judges.¹² Moreover, the economy in the Pearl River Delta has been largely privatized and diversified. With the privatization of many state-owned enterprises (SOEs) and the separation of government and enterprises, local governments are less inclined to protect particular types of companies involved in contractual disputes, and local protectionism thus decreases.¹³

But data from the more developed regions can hardly be relevant to the situation in other regions of China. Given the huge geographical, demographic, and socio-economic differences across the country, and the systematic variations from court to court,¹⁴ it would be unsafe to assume that the improvements of the more developed regions are also occurring in other areas. There are three aspects of improvement in the more developed regions: the diversification of the local economy, strengthened institution-building, and the growth of staff professionalism, all supported by the abundant financial resources derived from booming local economies. Arguably, all these features seem to be lacking in the less developed regions. For example, the type of funding available to courts in the more developed regions, which is crucial for institution-building and the development of staff professionalism, is often not available in the courts of the less developed regions.¹⁵ Moreover, without systematic empirical research in the regions, all the following questions, which are crucial to understanding China's judicial system and the relationship

¹¹ See Randall Peerenboom, "Seek Truth from Facts: An Empirical Study of the Enforcement of Arbitral Judgments in the People's Republic of China," *American Journal Comparative Law*, Vol. 49, No. 2 (2001), pp. 249–327; See Minxin Pei et al., "A Survey with Corporate Litigants in Shanghai," on file with the author (2007); Xin He, "Enforcing Commercial Judgments in the Pearl River Delta of China," *American Journal of Comparative Law* Vol. 57 No. 2 (2009), pp. 419–456.

¹² For an evaluation on the impact of judicial reforms on the courts in Shanghai, see Mei Ying Gechlik, "Judicial Reform in China: Lessons from Shanghai," *Columbia Journal of Asian Law*, Vol. 19, No. 1 (2005) pp. 97–137.

¹³ He, "Enforcing Commercial Judgments."

¹⁴ Zhu Jing-wen (ed.), *Zhongguo falü fazhan paogao (1979–2004) (China Legal Development Report (1979–2004))* (Beijing: People's University Press, 2007).

¹⁵ Xin He, "Court Finance and Court Responses to Judicial Reforms: A Tale of Two Chinese Courts," *Law & Policy*, 31, No. 3(2009).

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

This article reports empirical research in cases involving the enforcement of debt collection cases at a basic-level court in Shaanxi province, located in western China. Debt collection cases were chosen because they have been both a simple and major category of cases handled by the courts, and the courts' ability to enforce this kind of case has long been regarded as crucial in securing business transactions, a precondition for sustained economic development.¹⁶ A basic-level court was chosen because most cases are handled at this level.

Context and Methodology

The court which is the subject of this investigation lies in the heart of the Wei River (渭河) plain in Shaanxi (陕西) province. Serving as the capital city for several dynasties in ancient China, the city where the court is located was one of the cradles of Chinese civilization. Despite its shining history, the region has been left behind in economic terms since the reforms. The economy of the region grew during the initial stage of the reform period, but has become stagnant since the 1990s: by 2002, the GDP per capita had reached only 5,226 yuan (CNY).¹⁷ Agriculture has been the pillar industry, thanks to the fertile valleys formed by the Wei (渭) and Jin (泾) rivers and a climate congenial to crops such as wheat. While many SOEs have been restructured and privatized, they remain a major player in the local economy. Of the 22 billion yuan GDP generated by large-scale enterprises, SOEs still contributed one third in 2002.¹⁸

The policy separating income and expenses (收支两条线), one of the most important policies affecting the financial relationship between the courts and local government, has never been

¹⁶ Douglass C. North, *Institutions, Institutional Change, and Economic Performance* (Cambridge: Cambridge University Press, 1990); Oliver Williamson, *The Economic Institutions of Capitalism* (New York: Free Press, 1985); *The Mechanisms of Governance* (Oxford: Oxford University Press, 1996).

¹⁷ In the Pearl River Delta study conducted by He, the GDP in 2002 reached USD 5700. See He, *Enforcing Commercial Judgments*, at 424.

¹⁸ All socio-economic information comes from local annals.

implemented in this court.¹⁹ This is because the fees that the court collects are not adequate to cover its own costs, so the financial bureau of the local government has never bothered to implement the requirement. As a result, the operating expenses of the court come largely and directly from the litigation fees and fines that it imposes on criminal defendants. These were around three million yuan a year before 2007 when the new litigation fee guideline was enforced.²⁰ Its litigation fees then were 100 per cent higher than the original levels stipulated by the SPC guidelines. It therefore had a great incentive to increase the sums it took in litigation fees, especially because it had a 7.8 million yuan bill arising from the construction of its new office building. Court staff was thus assigned a quota of litigation fees to achieve, and to meet this quota some judges scouted around for potential cases, a phenomenon widely recorded in other less developed regions.²¹

Since it was directly related to the court's finances, the income of court staff was quite low compared with that of their counterparts in the more developed regions. The staff income consisted of three parts: the basic salary, a local allowance, and a case allowance. The first two were borne by local government, while the third part came directly from the court. The local allowance, which was supposed to be 1200 yuan per month, rarely materialized until 2007, when the central government subsidized those courts facing financial shortages. The case allowance, also called fuel and repair fees, came from what was left over from a 150 yuan per case subsidy for court vehicles for fuel and repair costs. Every member of the staff, by and large, received 130 yuan per month. Overall, the total income of a middle-ranking judge reached little more than 1,000 yuan per month in 2004.

This low level of income certainly had some impact on the structure and the quality of the court staff. As of 2004, the courts had 111 members of staff, including those in two dispatched

¹⁹ For an evolution of this policy, which has had huge impact on judicial behavior, see Zhu Jing-wen (ed.), *Zhongguo falü*.

²⁰ "Susongfei jaonan banfa" (The Measures for Taking Litigation Fees), issued on 19 December 2006 by the State Council and implemented on 1 April 2007, available online at http://news.xinhuanet.com/legal/2006-12/30/content_5549692.htm, last accessed 29 December 2009.

²¹ Yong'an Liao and Shenggang Li, "Woguo minshi susong feiyong zhidu zi yunxing xianzhuang" ("The Current Operational Status of the System of Civil Litigation Fees in China"), *Zhongwai faxu (Peking University Law Journal)*, Vol. 3 (2005), pp. 304–327; see also He, "Enforcing Commercial judgments." But some judges noted in court that this practice has already been abandoned since the financial pressure was lightened after the central government started subsidizing courts in the hinterland regions in 2007.

tribunals. Approximately 60 per cent of the members of staff had a bachelor's degree; around 30 per cent of the staff was discharged army officials. The number two division of the court, which dealt with debt collection cases, had eight employees, all of whom held a bachelor's degree. The enforcement bureau had 16 employees, of whom eight held a bachelor's degree.

It is against this background that our research was conducted. We randomly selected 100 commercial cases among the approximately 800 that closed during the calendar years 2004 and 2005, primarily one out of eight according to the sequence of the filing numbers.²² When a selected case was not about non-payment, it was replaced with the one following it in the docket. As we wanted to investigate the enforcement capacity of the courts, we did not simply focus on the cases in which compulsory court enforcement was requested, because some defendants would, for various reasons, have paid their debts before the courts took action to make payment compulsory. Instead, we began with the petition-filing and adjudication processes and tracked the “life cycle” of the cases in the courts.

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

Our investigator asked the litigants about their experience when solving their disputes, including the previous transactions with their trading partner, disputes that were settled, those that were lumped or repressed, those that went to court, those that were settled during the court proceedings, those that went to final judgment, those that were then settled or lumped, those that were the subject of compulsory enforcement, those that were enforced (and to what extent) and those that were not—and the reasons for all these decisions and outcomes. Our investigator also asked the respondents about their litigation costs and their motivations for litigation. Following our research design, she stated at the beginning of the telephone interviews that the investigation was part of a research project in which she collaborated with the court in question with the aim of improving the performance of the courts in general. She also informed the interviewees that this research was purely academic; its results would not in any way affect the cases with which they were involved. With only a few interviewees either refusing to answer the questions or trying to verify

²² A sample containing 60–80 cases would very likely present a picture of the normal distribution.

her status by asking for the names of the directors of the court and the enforcement division, most of them answered her questions and exchanged views with her frankly. Nonetheless, out of the 100 cases, she only had meaningful conversations with 60 plaintiffs. In many cases, this was because the file did not record the phone number of the litigants; also, some numbers were out of date. In some other cases, the person answering the phone did not know much about the litigation, and in one rare case, the litigant had died during the course of the case. After we had collected the information for the first round, I myself telephoned some of the respondents again to obtain explanations of some unexpected details.

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

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

Positive Enforcement Results

The data indicate that, as in the more developed regions, in Shaanxi most plaintiffs prevailed.²³ Of the 18 cases that ended with adjudication, only two plaintiffs were ruled against on the grounds of inadequate evidence (one of these decisions was reversed on appeal). The awarded amounts basically reflected the amounts demanded, except for some miscalculations or forgone interests in interim settlements.

Twenty-one cases were withdrawn or were settled by judicial mediation; these two outcomes combined constituted 70 per cent of the cases in the data, a much higher figure than that of the Pearl River Delta. This suggests that the courts in the less developed regions might place greater

²³ Weiyang Zhang and Yongzhu Ke, “Susong guocheng zhong de nixiang xuanze jiqi jieshi” (“Reverse Choice in the Litigation Process and Its Explanation”), *Zhongguo shehui kexue (Social Sciences in China)*, Vol. 2 (2002), pp.31-43; He, “Enforcing Commercial Judgments.”

emphasis on more traditional methods of dispute settlement than adjudication. With the relatively low caseloads (around three cases per month per judge, only one-third of the workload in the Pearl River Delta), judges in this court could afford more time to reconcile the disputants, a process that is always time consuming. It is worth noting that in 2004-2005 when these cases were processed, mediation and withdrawal rates had once again encouraged in the judicial system.²⁴

Voluntary withdrawal and judicial mediation often occurred when the debtor agreed to pay the amount at issue after receiving the notice of litigation: the debtors had simply intended to delay payment. Usually the judges in charge took an aggressive stance in this type of situation: they either genuinely provided an accommodation acceptable to both parties, or coercively persuaded the parties to accept the judicial solutions for their own benefit.²⁵ Some judges required that if the defendant inclined towards mediation, he or she should show some gesture of sincerity and should pay at least part of the debt in question immediately. As a compromise, mediated amounts were usually slightly lower than demanded amounts—either the interest was forgone or more time was offered for payment.²⁶

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

²⁴ In September 2002, a judicial policy on mediation was promulgated, reemphasizing higher mediation and withdrawal rates. See “Guanyu shenli sheji minshi anjian de youguan guiding” (“Several stipulations on adjudicating mediation-related cases”), promulgated by the SPC.

²⁵ Usually the benefits include a lower appeal rate and a simpler court decision.

²⁶ Interview with Judge A, 14 November 2008.

While the result was not as good as that in the Pearl River Delta, in general, the enforcement situation was not unsatisfactory. As shown in Table 2, 27 of the 60 surveyed cases (45 per cent) were completely performed. This included seven withdrawn and 11 mediated cases. In 47 cases, or 78 per cent of the total, the plaintiffs recovered something. These results once again suggest that the conventional view that the Chinese courts have been incompetent might be rather exaggerated. On the other hand, the plaintiffs did not recover a cent in the remaining 13 cases. This indicates that there still is much room for improvement in enforcement. Of the 60 surveyed cases, 18 or 30 per cent entered the enforcement stage. In the cases that entered the enforcement procedure, nine creditors (50%) recovered something.

Of the five adjudicated cases where the debt was not paid at all, three debtors refused to pay because it there was a “triangle debt” situation: one would not pay until others in the triangle paid first. In another case, the defendant did not have enforceable assets. Another was a SOE at the provincial level, which claimed that the problem was due to the transactions of the planned economy and could not be sorted out by the court or by reference to law—both the defendant and the plaintiff used to belong to the same organization. In the words of the defendant, if money was due to the plaintiff in this case, then money was due to the defendant from the central government. It seems that the court could not do much in this case. This suggests that the legacy of the period of the planned economy still has implications for business transactions and contract enforcement (Tables 2 and 3).

The Changed Content of Local Protectionism

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

Conventional wisdom would suggest that when more SOEs are involved in litigation, local protectionism is more intense.²⁷ This should be especially true when a particular local government mainly depends on the revenues from its local SOEs to cover its operating costs. Would the conventional wisdom hold in this case?

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

As far as local protectionism is concerned, there are two types of litigants represented in the data. The first type is not directly involved in a local versus non-local lawsuit. While their views might not emerge from the cases in the data, we cannot ignore them because they speak of their general impressions based on previous experience. Usually they regard the phenomenon of local protectionism as ubiquitous. The statement of an in-house legal counsel of a large SOE may be regarded as typical: “Legal protectionism is everywhere, and everywhere across the country it is the same. We tend to litigate more in this local court so that we can be in an advantageous position as we are very familiar with the staff in the court.”²⁸

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

²⁷ Pei, “Does Legal Reform Protect Economic Transactions?” pp. 180–210.

²⁸ Interviews.

Locals who had lost a case against a non-local opponent tended to explain the result in terms of the existence of extra-legal factors. A local defendant whose property assets had been frozen by the court and who was consequently forced to make payments also referred to the existence of local protectionism. “Everyone said there was local protectionism, but in this case the court tried its utmost to protect the other party’s interests, not ours. It is said that if one files a lawsuit in non-local courts, it is difficult to get money back. But in this case, our local court immediately froze our money right after a non-local company sued. This was so unusual.” He added sarcastically: “I think our court is so observant of the law.” The “unusual” situation was then regarded as improper behavior or collusion between the judge and the other party. This defendant said: “Later we heard that the other party had bribed a member of the court staff. Otherwise how could our bank account have been immediately frozen right after the money was transferred to it?”

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

How can the above contradictory results be reconciled? Our interviews with the judges suggest that the key lies in the exact meaning of local protectionism. When this word was used, it could be understood—and in the literature is usually so understood—as the extra-legal interference or pressure from the particular local government because of the financial link between the local government and the local enterprises. But it could also mean some “convenience” or even benefit to a litigant because of connections between the court staff and the litigant. The judges interviewed generally regarded the former as rare but the latter as common.

Judge C said: “Of course there are some conveniences for those who have connections, especially when there is room for different interpretations. That’s why there are many fights over whether the court has jurisdiction. Let me give you an example. Today you guys are here conducting

investigations. We have to set aside this afternoon for you because we are friends. The routine work then has to be deferred.” A female judge (Judge A), who has been working in the court for 19 years, said: “*Renqing* (人情, or a personal bond) is not something you can escape. When I was working in a dispatched tribunal, some litigants would bring me vegetables they had grown in their fields. One brought me five eggs, wrapped in a handkerchief. While the gift was not worth much, we can hardly reject such gifts. Otherwise, we would hurt their feelings. They really wanted us to have them.”

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

But the judges generally discounted the direct extra-legal influences because of the financial link between the local government and the court. Instead, they all emphasized that the above conveniences were somehow contained within the laws or the rules. Judge C, who used the example of our visit to illustrate the point of a convenience as a result of *renqing*, said, “It is true that we have deferred our routine work because of your visit. But some delays in the handling of cases do not mean that we are violating the law. Similarly, the fight over jurisdiction does not necessarily mean that unlawful favors are granted, because the rules are usually vague and open to different interpretations.” Judge A said: “When our directors are briefed, they always focus on what the laws and regulations are, what the admitted evidence is, and what room we have. This is also true when the leaders from the supervising bodies such as the People’s Congress and the Procuratory are investigating some complaints. Often they say: ‘If allowed by the rules, give us some remedies. If not, explain the regulations courteously to the complainants.’ There is a clear line over which those higher-ranking officials will not easily step.” While she herself had received no formal training in law, Judge A often invoked a comparison between the work of a judge and that of a doctor: “This is a very technical area, just like treating a disease. No matter how high ranking an official is, the surgeon’s words count, especially in serious medical

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

While discounting the seriousness of the issue of local protectionism in routine cases, the judges never denied, however, the existence of almost unavoidable undue influence in cases directly involving the local government. A junior judge (Judge D), who had worked for the court for six years, said: “Can we freeze the account of the local government? Of course not. There has just been a case in which only a local street neighborhood committee [the lowest level of government in urban China] was involved. I went to their office, escorted by the director of the enforcement bureau, patiently and politely explained the case to them, with an emphasis on the difficulty of our work. In that case the street neighborhood committee eventually paid. But if it had refused to pay, there was little that we could or would have done.”

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

Indeed, when the content of local protectionism is unpacked, there is really no big difference between the position of the judges and that of the litigants. In the account of the legal counsel who regarded local protectionism as ubiquitous: “We can be in an advantageous position as we are very familiar with the people in the court.”²⁹ As a legal counsel responsible for chasing the debt of the enterprise in this case, she also said: “The court has been the only option, as all the administrative measures have failed.” Her advantage seemed limited only to familiarity with the court staff. In the account of a local who lost a case against a non-local enterprise, there was nothing wrong with the court freezing his bank account, even though his allegation that one judge had been bribed by the non-local party was true.

²⁹ *Ibid.*

The key, then, is how often cases directly involving the local government occur. While there were many SOEs among the 100 selected cases, and some of them were SOEs at the provincial level, not a single case directly involving the provincial government existed. The surveyed judges also admitted that such cases were rare. Most cases are similar to those shown in the data: straightforward, minor, and simple (Table 6). In such routine cases, the diffusion of the legal system has been matter of fact and the behavioral pattern of the court staff and other government officials has also become more rule-based.

All the foregoing suggests a change in the content of local protectionism. Conveniences obtained through social connections are hardly a direct result of the financial link between the local government revenue and the contributions of local enterprises. They exist simply because it is easier for a local to find connections to the local court. While the fact of financial shortages in rural courts remains true, the link between the revenue of local SOEs and their operating expenses has become weaker. For example, the budget reforms were implemented in the late 1990s,³⁰ which suggests a more formal relationship between the financial bureau and the local court. Lately, the state council has set aside a specific budget for less developed regions.³¹ It is true that in the less developed regions there may be more institutional corruption and more inappropriate behavior generated by the need to raise funds.³² It may also be true that more corruption occurs as a result of the close connections between the local people and court staff. But most of these connections are not directly linked to local protectionism. After three decades of legal reforms, including the promulgation of numerous laws and regulations and institution-building, the establishment of a rule-based society seems to have taken shape. The close relationship between government agencies and their SOEs found in the early stage of the reform seems to have been gradually replaced by more rule-based behavioral patterns.³³

The Limited Effect of Judicial Reforms

³⁰ Jun Ma and Meili Niu, "Modernizing Public Budgeting and Financial Management in China," in Howard A. Frank (ed.), *Public Financial Management* (Boca Raton, FL: Taylor & Francis, 2006), pp. 691–736.

³¹ This happened when the new measures with regard to litigation fees (effective in 2007) led to serious financial shortage for the courts in less developed regions.

³² Randall Peerenboom and Xin He, "Dispute Resolution in China," *East Asia Law Review*, Vol. 4 pp. 1-61 (2009),.

³³ For an analysis on the relationship between the local state and enterprises in the early stage of the reform, see Jean Oi, *Rural China Takes Off* (Berkeley: University of California Press, 1999).

In contrast to the situation in the more developed regions where the positive impact of judicial reforms is obvious, the situation in this Shaanxi court seems more complicated. The nationwide efforts in the construction of legal institutions have left clear marks in the court: all the divisions were set up, basically according to the requirements of the SPC. Petition filing is now completely separate from adjudication and from enforcement. More specifically, with regard to the enforcement of commercial cases, several measures have strengthened the court's enforcement powers. The measures have included the establishment of a relatively independent enforcement bureau, allocating more resources to enforcement. In addition, the court now has the power to freeze the bank accounts of debtors and the penalty for obstructing enforcement has been increased. According to the interviewed judges, banks and other government institutions have generally become more cooperative, after a coordination mechanism was established to oversee banks, real estate, vehicles, and other sectors where immovable and important movable properties were registered.³⁴ Several judges shared with us stories about bank officials being detained for leaking information to debtors. Judge C referred to the role of advanced technology: no sooner had the court enforcement team reached the bank counter than the time was recorded by the computer system, and this effectively prevented collusion between the bank staff and the debtors.

But some core reform measures affecting power redistribution have not yet been implemented. A telling example is the establishment of a Chief Adjudicator (审判长制度). This is an initiative by the SPC to promote greater judicial independence.³⁵ According to the initiative, the power to decide cases is to be vested in a chief adjudicator, rather than divisional heads or court presidents. But in this Shaanxi court, no adjudication decisions can be made without the signature of the charging court director; no mediated or withdrawn decision can be issued without the signature of the division head. This is in stark contrast to the more developed regions. A major reason for the discrepancy is the very low caseloads in this court—only a third of the caseloads of developed coastal areas. The divisional directors and court presidents are therefore still able to review all the cases and thus keep the final decision-making power tightly in their own hands. Similarly, the original power structure in the distribution of cases also remains intact. When the cases are

³⁴ “Zhongyang Zhengfawei: dongyuan shehui liliang, qieshi jieque zhixingnan wenti” (“Central Political-Legal Committee: Mobilize the resources of society, conscientiously solve the problem of court enforcement”), *Xinhua*, available online at http://news.xinhuanet.com/legal/2006-01/23/content_4090238.htm, last accessed 29 December 2008.

³⁵ Article 18 of Renmin fayuan wunian gaige de gangyao (The Five Year Reform Outlines) states: “The court decisions shall be rendered by the chief adjudicator or the sole adjudicator according to the law by 2000.” Promulgated by the SPC on 20 October 1999.

transferred from the petition-filing division to the second division, which is responsible for processing commercial cases, the divisional head will pick up whatever he or she likes in the first place, usually the simplest cases or those where he or she has connections. The remaining cases are distributed to unexceptional judges.³⁶ The rationale is straightforward: the allocation of adjudications is based on the number of cases. The divisional director will of course choose the easiest and those where he or she somehow had a connection. This contrasts with some developed regions, where, as the caseloads have become heavy, the cases have usually been randomly assigned by a computerized system where little room exists for outright manipulation.³⁷

The effect of reforms in staff professionalism is also limited. After the promulgation of the new Judge Law, all new judges must pass the Uniform National Judicial Examination. Since the pass rate of the Uniform National Judicial Examination has been less than ten per cent, it has been extremely difficult for discharged army officials, who have received little education, to pass the exam. As a result, they generally lack the incentive to get into the courts and the proportion of legally trained graduates has increased. Judge A stated that the great difference between formally trained law graduates and others was that the former learned much more quickly. But she also noted that education had little to do with a person's overall moral quality, *renping*, (人品), which was what mattered most. Due to the limited financial resources and limited personnel quotas, which were based on the population size and controlled by the local government, this Shaanxi court has only taken between one and two law graduates each year for the past five years. To balance the economic benefits among employees, members of staff without the judgeship qualification are also allowed to handle cases independently. Overall, discharged army officials still constitute a crucial component of the judiciary, not just in numbers, but also in the way they affect the functioning of the courts. It will not be possible to phase them out for one or even two decades. Similarly, in response to the outcry that a court requires specialized knowledge in order to operate effectively, the Party's local staffing bureau has given more weight to the recommendations of the higher-level courts when appointing local court presidents. But a more centralized system of court appointments trying to break the link with the local authorities, suggested by the SPC in its 1999 reform outlines, has not been implemented at all. Nonetheless, the current president and his predecessor both received formal legal training. Such presidents tend to fill key posts with those who have acquired legal knowledge and skills. Staff professionalism and their corresponding performance in court might have increased as a result of the trickle-down effect, but only at a very incremental pace.

³⁶ Interviews with Judges A and D.

³⁷ Interviews.

Relatively Poor Impressions of the Court

As shown in Table 7, the interviewed plaintiffs were more positive about the adjudication phase than the enforcement phase of the court process. Forty-eight per cent of those who expressed an opinion about the adjudication phase had a positive impression of the functioning of the court; only 22 per cent were negative. Regarding the enforcement phase, 50 per cent of the 18 plaintiffs who responded to this question had a negative impression of the court's performance.³⁸ These results were significantly lower than in the more developed regions.³⁹ In our interviews, a high proportion of litigants complained about the quality of the judges, including their manner in dealing with the litigants, while in the more developed regions, a majority of litigants noted, to their surprise, that the working style and professionalism of the staff were impressive. These results are also consistent with the results of a broader survey which suggests that the situation in rural areas is worse than in urban China.⁴⁰

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

³⁸ Not all the plaintiffs were in a position to respond to this question, because some of them withdrew their cases almost immediately after they had filed the lawsuits. Overall, only 18 cases, or 30 per cent in the data, entered into the compulsory enforcement stage. Only this group of plaintiffs experienced the court's enforcement abilities.

³⁹ In the Pearl River Delta study, 71 per cent held positive views on the adjudication phase, and only 32 per cent were negative about the enforcement phase. See He, "Enforcing Commercial Judgments," at 455.

⁴⁰ Michelson, *Popular Attitudes towards Dispute Processing*.

Thus, the pragmatic user of the courts seems to value substantive justice much more than the procedural justice.⁴¹

The other major cause of the relatively poor impression of the courts was the extra fees charged by them. As noted earlier, the fee scales of the courts were formerly much higher than the guidelines promulgated by the SPC. While the original scale for the years 2004-2005 in the fieldwork investigation was not available,⁴² the cases under investigation revealed how cases with various amounts at issue were charged at this time. In one case with 677,000 yuan at issue, a very large amount for the court in question (see Table 6), the court adjudication decision stated: “Thirteen thousand two hundred and seventy yuan in litigation fees and 13,270 yuan in other litigation fees are payable by the plaintiff.” The so-called “other litigation fee” was 100 per cent of the normal litigation fee, and these two fees together represented four per cent of the amount at issue. In another settled case with only 865 yuan at issue, it was stated: “Fifty yuan is payable in litigation fees and 300 yuan in other litigation fees; the plaintiff shall be responsible for 150, the defendant for 200.” The “other litigation fee” in this case was six times the normal litigation fee and the two together represented 40 per cent of the amount at issue. In many medium-sized cases, the interviewees informed us that the rate was eight per cent of the amount at issue. Should the plaintiffs initiate the compulsory enforcement process, they had to pre-pay the enforcement fees. It was declared that pre-paid fees would be returned after the cases had been successfully enforced, but according to the interviewed judges, the courts had never made any effort to fulfill their promises until the 2007 guideline of the State Council put a stop to such declarations.

Many interviewed plaintiffs complained about these extra fees, as they were not charged in just a neighborhood basic-level court. Some litigants directly referred to this obvious discrepancy. They were extremely unsatisfied in two respects. The first was that after they had paid all the required litigation fees and even pre-paid the enforcement fees, nothing was recovered, including none of these fees paid to the court. The second unsatisfactory situation was when the cases were withdrawn immediately after they had been filed. The plaintiff then believed that the court had done nothing that was worth the amount of fees charged. One plaintiff said, for example: “The other party (the debtor) agreed to pay after we filed the lawsuit. This case had nothing to do with the court. Another two cases were also solved by us before the court delivered the relevant

⁴¹ For a study on the situation in the U.S. context, see Tom Tyler, *Why People Obey the Law* (New Haven: Yale University Press, 1990).

⁴² The standard has been replaced with the new one and the court now is completely observant to the new standard issued by the State Council in April 2007.

documents to the other side. But the court still charged us eight per cent of the amount at issue.” To be fair to the courts, the law has never permitted exemptions from fees in this circumstance. But the overcharging of fees has certainly exacerbated an already negative impression on the part of litigants.

An Effective but Infrequently Used Court

While the enforcement situation in this Shaanxi court is not as good as that in the more developed regions, the effectiveness in enforcing debt collection should not be underestimated. In general, the enforcement results in the province are not unsatisfactory if compared to those obtained in similar studies on other developed and developing countries. According to Hendley’s research on 100 non-payment cases in three courts in Russia, 64 per cent of the creditors recovered something and 33 per cent were paid in full. On average, each creditor recovered 46.7 per cent of the awarded amounts.⁴³ The situation in the United States and the United Kingdom, according to some empirical studies, is even worse.⁴⁴ As the data show, the reasons for unenforceability are insolvency, triangle debts, and complexities inherited from the period of the planned economy. For these cases, there were few effective legal measures. Nor would better equipped court sheriffs solve the problem. In a context in which the catchwords have been “social stability” and “building a harmonious society,” it is a plain fact that enforcement must not affect the livelihood or the daily operation of the enterprises. Otherwise, more problems than solutions would be generated. Indeed, the interviewed judges did not regard debt collection cases as a major problem; rather, they believed that the enforcement of minor tort cases and administrative cases was far

⁴³ See Kathryn Hendley’s study on the Russian courts, “Enforcing Judgments in Russian Economic Courts,” *Post-Soviet Affairs*, Vol. 20, No. 1 (2004), pp. 46–82.

⁴⁴ For a study on the small claims courts in England and Wales, see John Baldwin, *Small Claims in the County Courts in England and Wales: The Bargain Basement of Civil Justice?* (Oxford: Clarendon Press, 1997), p. 129; for a study on the small claims courts of the U.S., see Steven Weller et al., “American Small Claims Courts”, in C J. Whelan (ed.), *Small Claims Courts: A Comparative Study*, (Oxford: Clarendon Press, 1990), p. 16; see also Arthur Best et al., “Peace, Wealth, Happiness, and Small Claims Courts: A Case Study,” *Fordham Urban Law Journal*, Vol. 28, No. 2 (1994), pp. 343-79; Committee on Post-Judgment Collection Procedures in the Special Civil Part, “Report to the Supreme Court of New Jersey,” *New Jersey Law Journal*, No. 2 (1993), Quoted from Clarke, Clarke, “The Execution of Civil Judgments in China,” at 34.

more difficult.⁴⁵ On the other hand, many plaintiffs also stated that the court was very useful: several reported that the debtors immediately responded after being notified by the court; some even expressed the opinion that, had they known that the court was so effective, they would have used it more.

One may wonder why the poor view of the enforcement capability of Chinese courts has persisted for so long. One plausible explanation is methodological. Due to the difficulty of obtaining data, few systematic studies have been conducted in this field. Some rare exceptions rely on published cases, which is methodologically problematic.⁴⁶ Negative instances involving local protectionism and judicial corruption are, however, usually repeatedly reported and widely disseminated.⁴⁷ Legal scholars also tend to rely heavily on anecdotal, attitudinal evidence, or on the use of doctrinal analysis in a few cases, to highlight the negative aspects of the judicial system.⁴⁸ On the other hand, official statistics, such as those cited at the beginning of this article, often suffer from a lack of consistent standards.⁴⁹ Moreover, such statistics only measure the enforcement results of those cases entering into the compulsory phase; those enforced at the adjudication phase, including those settled and withdrawn, are not counted.⁵⁰ This is of course inaccurate if one wants to assess the effectiveness of the courts in the enforcement field. Furthermore, while these aggregate results may give a picture of the overall situation, they do not differentiate between the sub-categories of economic and commercial cases. But as suggested by some interviewed judges, the enforcement situation in commercial cases was generally better than those in minor tort cases, because it is far more difficult to chase property for tort victims.

This is not to deny that the court is less effective when handling politically sensitive cases or cases involving large SOEs or government agencies. But as suggested by the data, the proportion

⁴⁵ Interview with Judge E.

⁴⁶ Pei, “Does Legal Reform Protect Economic Transactions?” pp. 180–210.

⁴⁷ Peerenboom, “Seek Truth from Facts,” pp. 249–327

⁴⁸ For a recent example, see Friven Yeoh, “Enforcement and Dispute Outcomes,” discussing the enforcement of foreign-related arbitration awards in China, in Michael Moser (ed.), *Managing Business Disputes in Today’s China: Dueling with Dragons* (Kluwer Law International, 2007), pp. 289–90.

⁴⁹ From the context of the China Law and Governance Review 2004 and Tong Ji, “The Basic Situations with Regard to Adjudication and Enforcement of Chinese Courts,” at 78, one does not know if the enforcement rate refers to full performance, nor do we know if the remainder was only partially enforced or not enforced at all.

⁵⁰ Tong Ji, “The Basic Situations with Regard to Adjudication and Enforcement of Chinese Courts,” at 78.

of these cases was as low as three per cent. For the rest, often mundane matters with very small amounts at issue, it is clear that officials and governments had no interest in interfering and the court was very effective. With only a few exceptions, the interviewed plaintiffs still had an open mind on the question of whether they would use the courts in the future for similar disputes.⁵¹

While the courts are relatively effective, this has not led to a dramatic increase in caseloads. After all, going to court was not an easy decision for most of the plaintiffs. The histories of the business transactions between the litigating parties before they initiated a lawsuit can be divided into two main categories: 14 had had less than one year of transactional history, including the first timers, while 40 had had more than two years, including 24 with more than five years of previous business transactions (Table 8). This suggests that if a long-term relationship had not been established, they felt less constrained to use the courts. But those trading partners with long-term transactional histories were far more cautious. Only when no hope lay in further waiting would they initiate the lawsuit. One plaintiff's narrative may stand for many: "We had been doing business for many years, and things had gone well, but then came a point when they did not pay a balance. And it was delayed for a long time. Their bosses also changed several times and the performance of the enterprise was getting only worse. We had no choice but to file the lawsuit." An in-house counsel of a large SOE said: "[Our enterprise has] almost 100 million unpaid debts and we use the courts frequently, almost 30 cases a year. But this only covers 15 million unpaid debts. Others we have to leave, hoping they are paid some day."

To take a matter to court or, generally, to resort to law has long been established as inconsistent with business norms and this case study from Shaanxi was no exception.⁵² In the data, none of the interviewed litigants had further businesses transactions with the other party after the lawsuit. The legal action amounted virtually to a divorce between business partners. One defendant, involved in a triangle debt, when asked why he did not file a lawsuit against the other debtors, responded with a rhetorical question: "Then how can we stay in the business circle?" This was also why the

⁵¹ Landry, "The Institutional Diffusion of Courts in China," pp. 207–234.

⁵² For the classic literature on this point, see Stewart Macaulay, "Non-Contractual Relations in Business: A Preliminary Study," *American Sociological Review*, Vol. 28, No. 1 (1963), pp. 55–67; for a recent discussion on the situation in transitional Russia, see Kathryn Hendley, Peter Murrell and Randi Ryterman, "Law, Relationships, and Private Enforcement: Transactional Strategies of Russian Enterprises," *Europe-Asia Studies*, Vol. 52, No. 4 (2000), pp. 627–56; Kathryn Hendley, "Business Litigation in the Transition: A Portrait of Debt Collection in Russia," *Law & Society Review*, Vol. 38, No. 2 (2004), pp. 305–48.

lawyer mentioned in the above paragraph only went to the law in respect of 15 million debts, 15 per cent of the total debts of the company.

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

Conclusions

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

The generally acceptable results of enforcement in the less-developed region of China raise questions about the extent to which the conventional wisdom that Chinese courts are generally ineffective is true. Indeed, the situation of the courts clearly tells a story of dualism: politically sensitive cases and mundane cases are processed differently and with different results.⁵³ A further question is: hitherto, has China not really had an effective court system to enforce contract judgments? While this research brings up all these themes or questions, they cannot be verified or answered definitively until more systematic empirical studies on Chinese courts are available for other regions and other court levels. Longitudinal studies on the capability of the courts to enforce during the reform period are also badly needed. Only then can explorations of China's exceptionalism—the notion that China's economy has grown without an effective formal institution on contract enforcement—be based on a more solid foundation.⁵⁴

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

⁵³ Robert Sharlet, "Stalinism and Soviet Legal Culture," in Robert C. Tucker (ed.), *Stalinism: Essays in Historical Interpretation*, (New York: Norton, 1977), pp. 155–79; for a recent analysis, see Yulin Fu and Randall Peerenboom, "A New Analytic Framework for Understanding and Promoting Judicial Independence in China," in Randall Peerenboom (ed.), *Judicial Independence in China*, (Cambridge: Cambridge University Press, 2009), forthcoming.

⁵⁴ Clarke, "The Execution of Civil Judgments in China," pp. 65–81; Randall Peerenboom, *China's Long March Toward Rule of Law* (Cambridge: Cambridge University Press, 2002), pp. 450–512; Kenneth Dam, *The Law-Growth Nexus*, (Washington, D.C.: Brookings Institution, 2006); Trebilcock and Leng, "The Role of Formal Contract Law and Enforcement in Economic Development," pp. 1517–80; He, "Enforcing Commercial Judgments in the Pearl River Delta of China," pp. 419–457.

of case distribution provide only the most noticeable illustrations of this selectivity. The relatively low caseloads, directly linked to a stagnant local economy, provide not only a “warm bed” for the existing power structure to persist but also a channel for extra-legal influence. The low caseloads generate little incentive for the courts to recruit new blood, which is related to the limited development of staff professionalism. Furthermore, cases are unenforced because of complications arising from the socialist period. If the process of marketization and privatization had been pushed further, these cases could have been duly enforced. Reinforcing the notion that the level of economic development will directly affect the performance of a court, these findings also suggest that the courts in the less developed regions seem likely to be able to grow out of their problems if the local economy is further developed.

Table 1: Information on the Five Judges Interviewed.

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

Table 2: Enforcement Results

	Adjudication	Mediation	Withdrawal	Total
Numbers	18	21	21	60
Numbers entering the enforcement procedure	14	4		
100% paid (voluntarily Paid)	5 (4)	4 (7)	7	16 (11)
80%-99% paid	4	2	8	
50%-79% paid			2	

1%-50% paid				
Nothing paid	5	4	4	13 (see Table 3)

Table 3: Cases Not Enforced at All

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

Table 4: Ownership Structure and Localities of the Litigants

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

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

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

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

Amounts	<=1	1-4.99	5-9.99	10-49.99	50 & above	Total

Numbers(%age)	22	20	6	8	4	60 (100%)
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Table 7: Plaintiffs' Impressions of the Court

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

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

	First Time	<1 year	1-<2 years	2-<5 years	>=5 years	Summary
Case numbers	14	4	2	16	24	60