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Enforcing Commercial Judgments in the Pearl River Delta of China

Based on intensive interviews and in-depth investigations in the Pearl River Delta, this Article explores the extent to which Chinese courts of the region are effective and efficient in enforcing commercial judgments, a matter critically important to the functioning of the judicial system and the understanding of the relationship between law and economic development. Many positive results were found: the enforcement outcomes are reasonable, the enforcement process is relatively efficient, the problem of local protectionism is not serious, and the plaintiffs' impressions of the courts are also quite positive. The reasons for such encouraging results include the diversification of the local economy, institution-building within the courts, increasing staff professionalism, and specific measures to strengthen enforcement. These changes provide empirical evidence to evaluate the relationship between the enforcement of commercial judgments and China's rapid economic growth.

INTRODUCTION

While the enforcement of contract judgments in China has long been regarded as notoriously difficult, few systematic empirical studies have ever been conducted in this field.¹ Due to the lack of

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1. In contrast with the abundance of media reports and official statements, there exists little systematic empirical research on this topic. In the English-speaking world, Donald Clarke's article published more than a decade ago remains the most comprehensive treatment of judgment enforcement in China. See *Power and Politics in the Chinese Court System: The Execution of Civil Judgments*, 10 COLUM. J. OF ASIAN L. 1, 1-125 (1996). Clarke's research, however, was largely based on

such studies, many basic questions remain unanswered: Which types of commercial dispute reach the courts? How many cases are performed voluntarily while how many require the compulsory action of court, and what are the final outcomes? Although some official statistics are available at the national level, the statistical criteria of the enforcement results are inconsistent.² Moreover, the

secondhand materials with some sporadic interviews. Other published studies include Minxin Pei's work in 2001, which was based on cases selectively published by the Chinese government. See Minxin Pei, *Does Legal Reform Protect Economic Transactions? Commercial Disputes in China*, in *ASSESSING THE VALUE OF LAW IN TRANSITION ECONOMICS* 180-210 (Peter Murrell ed., 2001). Though his research method is understandable given the difficulty of direct access to the courts at the moment, the researcher's selection bias is obvious. In addition, Margaret Woo and Yaxin Wang conducted research on the adjudication process of three intermediate courts. See Margaret Woo & Yaxin Wang, *Civil Justice in China: An Empirical Study of Courts in Three Provinces*, 53 *AM. J. COMP. L.* 911-40 (2005). While their research has provided useful data on who turns to the courts, the types of disputes and court procedures, they do not look beyond the case files or ask the litigants questions on such matters as enforcement results. Overall, few studies have conducted systematic interviews with litigation participants. An exception is Randall Peerenboom's research on the enforcement of arbitration decisions, in which the author conducted questionnaire surveys. See Randall Peerenboom, *Seek Truth from Facts: An Empirical Study of the Enforcement of Arbitral Judgments in the People's Republic of China*, 49 *AM. J. COMP. L.* 277-78 (2001). However, since the enforcement of arbitration decisions is a very special area, and only represents a small portion of judgments rendered in intermediate and higher courts, it differs significantly from the enforcement of ordinary contract judgments.

In Chinese literature, numerous studies have focused on the enforcement of court judgments. But in these studies, the difficulty of enforcement itself is usually taken for granted. See, for example, Jing Hanchao & Lu Zijuan, *The Difficulty of Enforcing the Court Judgments and Counter Strategies [zhixing nan jiqi duiche]*, *THE JOURNAL OF LEGAL SCIENCE [FAXUE YANJIU]* no. 5, 124-31 (2000). As in English literature, these studies are basically not empirical; even fewer are conducted systematically. Some studies do provide investigation results but how the investigations are conducted and what the ultimate conclusions are, remains unclear. See, for example, *THE INVESTIGATION AND ANALYSIS OF CIVIL ENFORCEMENT [MINSHI ZHIXING DIAOCHA YU FENGXI]*, 33, 38, 48, 63, 76 (Tong Zhaohong ed., 2005).

2. "Half of China's civil court rulings remain on paper," *PEOPLE'S DAILY*, Mar. 13, 2004, English version. The title of the essay indicates that half of the civil court rulings remain on paper only, that is, they are not enforced. The article specifically mentions that according to official estimates, the enforcement rate for bank loans by SOEs is only 12%, http://english.people.com.cn/200403/13/eng20040313_137390.shtml (last visited Apr. 20, 2007).

Ge Xingjun, the director of the office of enforcement at the Supreme People's Court (SPC), contended that the enforcement rate in civil and commercial cases is 40, 50, and 60% at the basic-level, intermediate and high courts, respectively. See *CHINA L. AND GOVERNANCE REV.* 2004 <http://www.chinareview.info/issue2/pages/legal.htm> (last visited Apr. 19, 2007). From the context, one does not know if the enforcement rate refers to full performance, nor whether the rest is only partially enforced or not at all. According to the Supreme People's Court, 2,289,566 enforcement cases were received, and 2,343,868 cases were completed, among which 45.26% were performed voluntarily or the litigants reached an accommodation during the enforcement process, and 34.97% lacked enforceable assets. See Tong Ji, *The Basic Situations with Regard to Adjudication and Enforcement of Chinese Courts in 2003*, *RENMIN SIFA [PEOPLE'S JUDICIARY]* 3, 78 (2004). But these figures still do not explain exactly what "completed" means; it could refer to the termination of enforcement, and this term itself may or may not include the suspension of

statistics provided by individual courts are generally believed to be unreliable because these courts have the incentive to exaggerate their performance but to underreport their problems. Furthermore, the national statistics do not address important regional differences. Because of the paucity of systematic empirical research, most conventional wisdom on judgment enforcement in China is based on anecdotal or attitudinal evidence. For example, local protectionism is often depicted as overwhelming, and the misuse of police power by Chinese State-Owned Enterprises (SOEs) in solving normal commercial disputes is perceived to be a frequent factor.³

The lack of systematic research makes it very difficult to answer further empirical questions: How many creditors seek alternative remedies outside the courts? What are the measures and strategies employed by the creditors, before and after they choose to go to court? How serious is local protectionism? What is the litigants' impression of the courts? If, as is widely alleged, the enforcement of court judgments is very poor, why are there still so many litigants? Or, is the dysfunction or incompetence of the Chinese courts the very reason why China's economic caseloads have recently declined?⁴ Now that the courts have carried out many reform measures to strengthen their own performance since the late 1990s, have these reforms really addressed the problems?⁵

On the theoretical level, the lack of systematic empirical research makes it difficult to address the puzzle of China's recent growth in the law and economic development literature, especially on the part of contract enforcement.⁶ For a long time, a credible, low-cost formal contract enforcement mechanism provided by the state has been widely regarded as essential for economic development, especially when it went beyond the circle of certain ethnic and

enforcement.

3. Joseph Kahn, *Dispute Leaves U.S. Executive in Chinese Legal Netherworld*, N.Y. TIMES (Nov. 1, 2005), available at <http://www.nytimes.com/2005/11/01/international/asia/01kidnap.ready.html> (last visited Jan. 26, 2009).

4. Relevant data and related research demonstrate that the commercial cases received by the courts have been declining since the late 1990s and stabilized at 1.5 million. One of the reasons might be the dysfunction of the courts. See Xin He, *Recent Decline in Chinese Economic Caseloads: Exploration of a Surprising Phenomenon*, 190 THE CHINA Q. 352-70 (2007).

5. For example, *The Outline of Five Years Reform* and *The Outline of the Second Five Years Reform* promulgated by the Supreme People's Court. Reforms related to judgment enforcements include the setting up of an enforcement bureau and the separation between the adjudication and enforcement processes.

6. The other component of the puzzle of China's growth involves property rights. James Kung & Shouying Liu, *Farmers' Preferences Regarding Ownership and Land Tenure in Post-Mao China: Unexpected Evidence from Eight Counties*, THE CHINA J. 33-63 (1997); PROPERTY RIGHTS AND ECONOMIC REFORM IN CHINA (Jean Oi & Andrew Wader eds., 1999); Donald Clarke, *Economic Development and the Rights Hypothesis: The China Problem*, 51 AM. J. COMP. L. 89-111 (2003).

community groups that share common norms and values.⁷ This assertion became the most fundamental basis for the law and development movement revived in the 1990s.⁸ But China's economy has developed at a rapid pace for the past three decades and yet few scholars would believe that China has a neutral and effective formal adjudication system in place.

To explain this puzzle, some scholars have tried to find answers in the work of the cited above economists. According to these scholars, the answer is simply that despite its growth, China's economy remains at a very low level. At this stage, alternative mechanisms such as cultural, religious, and ethnic norms as well as the state's commitment to economic reforms may accomplish the task of contract enforcement; the importance of the legal system has not yet been clearly demonstrated.⁹

Some scholars contend that China's reforms have substantially challenged the assertion mentioned above. According to these challenges, although China's legal system has made great strides, there is no proof that the formal legal system has been essential to China's economic development; if anything, it is the success of economic development that has led to the development of the legal system, not the reverse.¹⁰ When the economy achieves a higher level, they argue, it creates more demand for a formal legal system.

This debate has generated many detailed hypotheses,¹¹ but without solid empirical data, none of these arguments can be verified. Even distinguished scholars admit that, due to the lack of empirical evidence, their views cannot be proven on an empirical level.¹² This also makes it difficult to compare China's courts with

7. MAX WEBER, MAX WEBER ON LAW IN ECONOMY AND SOCIETY (Max Rheinstein, ed., 1954); DOUGLASS NORTH, INSTITUTIONS, INSTITUTIONAL CHANGE, AND ECONOMIC PERFORMANCE 54 (1990); OLIVER WILLIAMSON, THE ECONOMIC INSTITUTIONS OF CAPITALISM, at 2 (1985); OLIVER WILLIAMSON, THE MECHANISMS OF GOVERNANCE 332 (1996); Kevin E. Davis & Michael J. Trebilcock, *Legal Reforms and Development*, 22 *THIRD WORLD Q.* 1, 21-37 (2001); THE ROLE OF LAW AND LEGAL INSTITUTIONS IN ASIAN ECONOMIC DEVELOPMENT 1960-1995 (K. Pistor et al. eds., 1999).

8. Thomas Carothers, *The Rule of Law Revival*, *FOREIGN AFFAIRS* 95 (Mar-Apr. 1998).

9. IN SEARCH OF PROSPERITY: ANALYTIC NARRATIVES ON ECONOMIC GROWTH 8-15, Introduction (Dani Rodrik ed., 2002). See also Kenneth Dam, *China as a Test Case: Is the Rule of Law Essential to Economic Growth* (University of Chicago Law School Working Paper Series No. 275, 40-42) <http://www.law.uchicago.edu/Lawecon/wp251-300.html> (last visited Apr. 12, 2007); Michael Trebilcock & Jing Leng, *The Role of Formal Contract Law and Enforcement in Economic Development*, 92 *VIR. L. REV.* 1519 (2006).

10. Donald Clarke et al., *The Role of Law in China's Economic Development*, 51, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=878672 (2006).

11. RANDALL PEERENBOOM, CHINA'S LONG MARCH TOWARD RULE OF LAW, ch. 10 (2002). See also Frank K. Upham, *The Mythmaking of Orthodox Rule of Law*, (Carnegie Working Paper Series, No 30, 2002).

12. Clarke, *supra* note 1, at 91. Esp. Clarke et al., *supra* note 10, at 44.

their counterparts in other countries. Is the performance of Chinese courts really particularly bad, or is the difficulty in enforcing civil and commercial judgments a universal problem?¹³

This Article will detail how sixty-six economic/commercial cases were handled at a basic-level court in the Pearl River Delta in Guangdong province, southern China. It will first describe the investigation methodology and then analyze the empirical data collected from the litigants, judges, and lawyers regarding the ownership structure, the amounts at issue, and the enforcement process. It will demonstrate that the enforcement capability of the courts is much better than has been generally described. Reasons for the improvement are the changes in the nature of the economy: with a diversified local economy, local governments have less incentive to help specific enterprises and thus local protectionism decreases; general judicial reforms aimed at building institutions and increasing the professionalism of the judiciary have been implemented; and specific measures to strengthen enforcement have been put into place. This Article will then briefly compare its findings for the Pearl River Delta region with those for comparable institutions in the United States and Russia. Finally, providing, as they do, a window to the workings inside Chinese courts, the data, analyses, and comparisons will be used to address the puzzle of China's growth and the broader theoretical questions just mentioned.

I. METHOD OF INVESTIGATION

It is often difficult to research the enforcement of court judgments and China is no exception.¹⁴ Debt collection through the Chinese courts usually consists of two parts: adjudication and enforcement; the creditor may apply for enforcement when the debtor refuses to comply with the court's decision. One difficulty in conducting such investigations stems from the fact that the adjudication and enforcement of cases are handled separately by different divisions of the court. While the files of enforcement cases are theoretically kept together with the documents of the

13. For a brief comparison between the situation in the United States and Russia, see Kathryn Hendley, *Enforcing Judgments in Russian Economic Courts*, 20 POST-SOVIET AFFAIRS 1, 48 (2004).

14. See Kathryn Hendley's studies on the Russian courts, *id.* See also John Baldwin's research on the small claims courts in England and Wales quoted by her, SMALL CLAIMS IN THE COUNTY COURTS IN ENGLAND AND WALES: THE BARGAIN BASEMENT OF CIVIL JUSTICE? 129 (1997); the small claims courts of the United States might be an exception, but their enforcement records also depend on notification by the creditors or plaintiffs who often neglect to fulfill this requirement. See Steven Weller et al., *American Small Claims Courts*, in SMALL CLAIMS COURTS: A COMPARATIVE STUDY 16 (C.J. Whelan ed., 1990).

adjudication, in reality this requirement has rarely been followed. In the court under survey, many case files did not include the enforcement documents; some enforcement cases did not have any files at all. The court did have some statistics, for example, the enforcement termination rate (*zhixing zhongjie lu*), but that is not very useful for the purpose of this article. The denominator of the enforcement termination rate might only refer to those cases that have applied for compulsory court enforcement and thus will not reflect the entire enforcement capability of the court.¹⁵ Also, the enforcement termination rate also includes the enforcement suspension rate (*zhixing zhongzhi lu*), which does not indicate at all the real reason for suspension.¹⁶ Moreover, the enforcement termination rate only includes cases in which the court has completed the civil procedures required for judgment enforcement; it does not show to what extent the awarded amounts were actually collected. The statistics available from the court do not even indicate the proportion of cases that actually reach the compulsory enforcement stage. The poor handling of document files and statistics may be one of the reasons why there has been little systematic research. Court directors could only give us an estimate of judgment enforcement based on their experience and impressions.

To investigate the enforcement capacity of the courts, one cannot simply focus on the cases that need compulsory court enforcement, because some defendants will, for various reasons, have paid their debts before the courts take action to compel them to do so. Consequently, to investigate the enforcement of court decisions, one must begin with the petition filing and adjudication, and determine whether the debts were settled voluntarily, whether the creditors applied for court enforcement, whether the enforcement was successful, and one must look at the reasons for the success or failure of these measures.

The court which is the subject of our research lies in the heart of the Pearl River Delta in Guangdong province. The economy of this region has been booming during the whole reform period: the per capita GNP reached USD \$5,700 as of 2003. The examination of the court performance in this region presumably would mirror the

15. Clarke's research has already pointed out this problem: *see* Clarke, *supra* note 1, at 28-30. In the court where I conducted my investigation, his point was largely confirmed. Since 2006, all the enforcement cases have been filed separately, but the case series numbers at this stage are not linked to the numbers at the adjudication stage. Interview with three judges of the court where this research is conducted, Apr. 20, 2007.

16. According to some experienced senior judges, it is common practice to report the enforcing suspension as enforcement termination. Enforcement suspension occurs when the debtors really do not have enforceable assets, as stated in the SPC's "Stipulations on Problems of Enforcements, article 102." When there are new clues as to the debtors' assets, the courts may reactivate the enforcement process. It is therefore dangerous to draw conclusions simply based on official statistics.

changes as the local economy developed. A trial court was chosen because most contract transactions occur at this level.

As is widely known, access to Chinese courts and especially case files is not easy to secure and can only be achieved by using connections. I am fortunate to have access to the court docket. Needless to say, a certain selection bias exists in this research and the primary sources for the research do not meet high standards of objectivity. But given the access difficulty, these connections and resources are usually indispensable. In fact, some argue, that the investigators can effectively reduce the impact of selection bias only when they have the requisite connections.¹⁷

Of about 1,500 economic/commercial cases handled by this court of the first instance in 2002,¹⁸ sixty-six were selected based on the sequence of petition filing numbers—one from every twenty.¹⁹ But not all the cases selected in this way were non-payment cases; they could be other types of dispute as well. In addition, several hundred cases in a sequence belonged to a class action: other than the names of the plaintiffs and the amounts at issue, all these cases were exactly the same. Such cases we then replaced with non-payment cases located next to them in the file.

After some key information on the cases, such as the type of litigants and the amounts at issue had been collected from the court judgments, my assistants phoned the litigants and asked them about their litigation experience, including the previous transactions between the litigants, the reason for the litigation, and especially what happened during the enforcement process. We stated that the investigation was part of a research project in which we worked with the court to find ways in which to improve its performance. We also informed the interviewees that this research was purely academic; the results would not in any way affect the cases involved. Even though the interviewees understood that we had connections with the court, they did not seem to harbor too much concern or suspicion. Most of them exchanged views with us frankly and none of them rejected our request for a telephone interview. After we had collected the information from the first round, we called some of them again to ask for explanations of some unexpected details. Some of the interviewees were themselves litigants, that is, they were the heads of the relevant economic institutions or individual business

17. Su Li, *The Power Resources in the Sociological Investigation*, in SONGFA XIA XIANG [BRING THE LAW TO THE COUNTRYSIDE] (2000).

18. The total number of cases handled by the court reached about 15,000 in 2002. But civil cases, that is, the cases between individuals rather than institutions, numbered far more than economic/commercial cases.

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

operators, but some were lawyers representing clients.

The investigation was conducted in 2005, three years after the legal decisions in the cases had been rendered. The three years had allowed the creditors and the court sufficient time to make an effort to collect. On the other hand, three years was not long enough for the creditors to forget detailed information.

II. DATA AND ANALYSIS

A. *The Litigants and the Amounts at Issue*

In the current literature, some researchers contend that State-Owned Enterprises (SOEs) and government agencies are the major users of the courts, because these enterprises and agencies can effectively mobilize political power to influence court decisions to their own benefit through their close connections with the courts and the governments. Private enterprises, in contrast, rarely have the resources to do so, and have often been discriminated against for ideological reasons, so that they do not use the courts very much.²⁰ Moreover, because the amounts at issue among private enterprises tend to be small, and because they usually do business within their own circles, they are more likely to employ informal mechanisms to resolve disputes. Other scholars, however, suggest that private enterprises may use the courts more, precisely because they lack the resources to manipulate political power: they have to resort to the courts to protect themselves.²¹ In the light of this debate, which side do the data support?

As shown in Table 1, the main category of debt collectors in court was composed of private enterprises and individual business operators. Twenty-five of the sixty-six litigants surveyed (38%) fell into this category. The next major category represented fourteen limited liability companies (*youxian zeren gongsi*.) Most of these companies were privately owned, as indicated by their relatively small registered capital. Ten out of the fourteen companies had a registered capital of less than a million yuan. Only one of them had the state as the principal owner, but was restructured as were most of the SOEs in the regions. These two categories comprised 59% of the total number of litigants surveyed. The remainder comprised nine state-owned and three collectively owned enterprises. Among the nine SOEs, there were seven state-owned banks, and among the three collectively owned enterprises, there was one credit union. If

20. Pei, *supra* note 1, at 201-02. Similarly, some assert that party members are more likely to use the courts because they are more familiar with the law and local political elites but this reasoning seems dubious in economic cases which are mainly concerned with institutions than with individuals.

21. PEERENBOOM, *supra* note 11, at 478.

these state-owned financial institutions were excluded, then there were only two SOEs, including one that had been restructured. There were no military, party, or government agencies in the data. A similar distribution also existed among the defendants: the disputes occurred mainly between private enterprises and limited liability companies.²²

Why do big companies and SOEs, which can influence government policy and court decisions, only infrequently use the courts to settle their disputes? ²³ There are two plausible explanations gleaned from the interviews. One is that big companies already occupy an advantageous position in market competition; they can employ a variety of means to protect their interests. Local party and government officials are likely to work in favor of the tycoons. When there are major and significant disputes affecting the interests of large companies, local officials may not even allow a court to take on the dispute: they will straighten everything out using political channels. Small enterprises and companies, however, do not have much cash flow and they do not enjoy the flexibility of large corporations. Therefore they have the incentive and a greater practical need to recover their debts through legal action. The other and more immediate reason is the diversified local economy. As the SOEs and collectively owned enterprises were privatized in the restructuring and transformation process,²⁴ private enterprises, individual business operators, and limited liability companies have become the major driving force of the local economy. This kind of economic operator has multiplied and consequently become more involved in economic disputes. It is true that the ability to influence a court will definitely affect whether potential litigants will eventually sue. But with the professional development and availability of legal representation, influence on the courts has also become possible in the marketplace through economic resources. Whether or not they choose to sue mainly depends on the nature of

22. Some have found similar situations in the developed areas of China. For example, Whiting's research on 76 sales contract cases in Nanjing found that 34% of the plaintiffs were private enterprises, 15% were private-public mixes. The two categories comprised 49% of the total number of cases. Quoted in Clarke, et al., *supra* note 10, at 34. Another research project based on the commercial cases in a basic-level court during the first part of the year 1999-2000 in Beijing found that 66% of the cases were brought against private enterprises. See Weiyang Zhang & 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] 2, 36 (2002).

23. J. WILLARD HURST, *LAW AND ECONOMIC GROWTH: THE LEGAL HISTORY OF THE LUMBER INDUSTRY IN WISCONSIN, 1836-1915*, 327 (1964).

24. *THE ANNALS OF THE REGION* (The Editorial Committee of the Annals ed., 1995-2005 Beijing: Fazhi Press).

the dispute and the amounts involved.²⁵ The link between the ownership structure of the litigants' enterprises and their ability to influence the courts has become less conspicuous. Moreover, the alleged discrimination against private enterprises on the basis of ideology has rarely been seen in the region as the private sector has become dominant in local economic activities; private enterprises have had no problem in protecting themselves through the court system.

In litigation between private enterprises with very modest registered capital, the amounts at issue were not very large. In more than 50% of the data (Table 2), the amounts at issue were between 10,000 and 50,000 yuan.²⁶ Seventy-five percent of the cases had amounts at issue between 10,000 and 100,000 yuan. The majority of big-ticket disputes were bank loans and usually they were under mortgaged.

There is no evidence of a correlation between the rather small amounts at issue and the alleged litigants' distrust of the courts.²⁷ Many litigants' attitude towards the courts became more positive after experiencing the litigation process. The main reason why these small disputes went to court, according to many interviewees, was that the potential litigants could implement preventive measures. Most potential litigants had previous transactions with their trading partners and understood each other's credit situation very well. In this constant process of business transactions, they usually required their business partners to fulfill their contractual obligations within certain time limits. Whenever a trading partner defaulted, they would simply halt further transactions. In this way, they prevented the amounts at issue before the court from becoming larger.

25. For example, in litigation in which a collective enterprise brought a case against an SOE, the defendant refused to pay. There was no result after the plaintiff applied for enforcement, but the plaintiff knew that the debtor was not insolvent, because the debtor received a monthly rent of 3,000 yuan. The plaintiff then reached an agreement with a lawyer who had a close relationship with the court that they would share the amounts recovered through enforcement. The problem was solved without delay. The plaintiff even maintained that the so-called difficulty with judgment enforcement would vanish if the court paid the staff of the enforcement bureau in proportion with the owed amount recovered through enforcement.

26. As of 2003, one U.S. dollar was approximately 8.3 yuan.

27. See Zhang & Ke, *supra* note 22, at 31-43. The authors suggest that the fact that only simple cases enter the courts is an indication for the distrust of society toward the courts. This conclusion seems oversimplified because in many countries only simple and straightforward cases reach the courts, especially at trial-level. See, e.g., Lawrence M. Friedman & Robert Percival, *A Tale of Two Courts*, 10 L. & SOC'Y REV. 2, 267-301 (1976); Robert Kagan, *The Routinization of Debt Collection: An Essay on Social Change and Conflict*, 18 L. & SOC'Y REV. 323-71 (1984). For a further discussion, see Xin He, *Is There Really a Reverse Choice in Chinese Civil Litigation?*, in Faxue [JURISPRUDENCE], No. 7, 49-56 (2005).

B. Local Protectionism

Since China has two tiers of appeal, litigants from the jurisdiction outside the trial court, but within that of the appellate court, were regarded as local in this research because, theoretically, these litigants would become local if they appealed.²⁸ According to this standard, there were fifteen non-local plaintiffs in the data (23%). This rather high percentage indicates that economic activities in the region are no longer confined to local communities. But most of the litigants were from the Pearl River Delta, pointing to the flourishing and more integrated economy of the region.

The data indicate that local protectionism seems not particularly serious in the region. First of all, there was no difference in the court decisions between cases initiated by local plaintiffs and those begun by non-local plaintiffs: almost all the plaintiffs prevailed, whether they were local or not, regardless of the amounts at issue.²⁹ Secondly, virtually no creditors interviewed mentioned local protectionism as a concern. Indeed, several non-local creditors emphasized that the procedures of the court were much better than what they had encountered in hinterland areas. Some interviewees specifically mentioned that the court left a very good impression on them because they faced no discrimination, despite the fact that they were non-local.³⁰ Indeed, this is not the first study that has detected such developments: similar results have been found by previous empirical studies, especially those based on big cities such as Beijing and Shanghai.³¹

To explain such developments, we will first locate the underlying cause of local protectionism. Local protectionism exists mainly because local governments have to rely on local enterprises, especially local SOEs, for financial resources. Moreover, the salaries, bonuses, benefits, and even the jobs of court staff also depend on the income of local governments. Furthermore, appointments of directors of some courts are controlled by local government and party

28. But since, in fact, most civil and commercial litigation is very straightforward and the appeals rate is very low, litigants outside the trial court jurisdiction but within the appeals court jurisdiction are unlikely to be considered local.

29. Indeed, the rate of success for non-local plaintiffs was almost the same as that for local plaintiffs. This result also emerges in other studies. See, for example, my analysis of the data collected in a Beijing-based research study. He, *supra* note 27.

30. One might, of course, raise the problem of selection bias, that is, the possibility that interviewees might only say what they think we want to hear. But as shown *infra*, the same group of interviewees also voiced a lot of complaints.

31. Peerenboom, *supra* note 1, at 277-78. But Peerenboom attributes the phenomenon to local governments and courts concerned about their image. See also Mei Ying Gechlik, *Judicial Reform in China: Lessons from Shanghai*, 19 COLUM. J. ASIAN L. 100 (2006).

officials.³² But in the environment of the investigated court, this situation had significantly changed.

First, the economy in this region has become more diversified: the SOEs have lost their traditional dominant role. Local government income derives more from taxing the broader private sector than from SOEs and collective enterprises.³³ For similar reasons, there is little danger of social instability if SOEs are pushed into bankruptcy. Local governments thus become less dependent on SOEs and have less incentive to assist them with their disputes in court.

Second, the financial reforms of the judiciary have decreased the incentive for courts to engage in local protectionism.³⁴ Under the reformed financial policy, the courts submit all their administrative income, including litigation fees, to local governments but get their expenses paid from a separate government budget. In this prosperous region, local government usually provides the court with adequate funding.³⁵ Thus, the court is not directly financially dependent on local enterprises, and it does not need to provide special protection for these enterprises in return, as was the case before.

Third, under the influence of the new ideas with respect to judicial professionalism, higher courts in the region, rather than local government or party officials, have played a more determining role in court appointments and promotions. Indeed, the trial court directors rotated through various trial courts in the area and many of them were division heads of the intermediate court of the region. Although, formally, the candidates recommended by higher courts had to obtain the final approval of local party committees and people's congresses, the candidates are directly controlled by the higher courts. They thus have to be concerned more with the requirements of the judiciary, which means that they do not always bow to the pressure of local government or party officials to offer protection to local enterprises.

Fourth, many courts in urban areas have been inundated by a huge number of cases, and as a consequence, court procedures have been streamlined; the courts have little time or energy to pay extra attention to some not-so-significant disputes of small or medium-

32. Pei, *supra* note 1, at 194; Clarke, *supra* note 1, at 41.

33. A local government work report shows that the industry and commerce tax reached 2.63 billion yuan in 2006, while the business profit of the local SOEs was only 0.65 billion yuan. The local annals (*nianjian*) also indicate that the output of large private enterprises amounted to 24% of the overall industrial production, 14, see THE ANNALS OF THE REGION (The Editorial Committee of the Annals ed., 2006 Beijing: Fazhi Press).

34. This policy was launched in the late 1990s, partly to diminish judicial corruption and other undue influence over judicial behavior.

35. The financial income of the local courts in this region is perhaps fifty-five times higher than that of courts in hinterland areas. See He, *supra* note 4.

sized enterprises.

Finally, the types of litigants and cases the court receive also demonstrate that local protectionism is not a big problem. Since most litigants are not large SOEs, they do not have specific resources or connections that might enable them to influence court decisions. Even enterprises with such resources or connections may not find it worthwhile to resort to using them in some minor dispute.

Certainly, local protectionism remains a problem in some cases, especially when considerable sums are at stake and when large SOEs are involved. Several interviewed judges frankly confessed that there was influence from governments or other political powers.³⁶ This also explains why local protectionism is more of a problem in rural areas, where the economy is less developed and the private sector is smaller.

C. *Litigation Costs*

Litigation costs are an important factor in whether a dispute will eventually go to court. Litigation costs should be broadly interpreted to include not only the fees paid to the court, but also the time and energy necessary to pursue a case.³⁷ Under China's civil litigation system, upon filing the case, the plaintiff is required to prepay the litigation fees calculated according to a certain percentage of the amount at issue. The word "prepay" is used here because at the moment of filing the petition, it is not clear whether the plaintiff or the defendant will bear the litigation fees, this will only be determined when the case is finally decided. If the defendant is held responsible for the fees, however, the court will not return the prepaid fees to the plaintiff. Instead, the court will require the defendant to pay the fees, together with the awarded amount owed, to the plaintiff. Similarly, at the moment when the creditor initiates the compulsory enforcement procedure, it remains unclear whether or not the enforcement will be successful. So the court requires the creditor to prepay the enforcement fees. Consequently, if the claim is

36. In my interview with a high-ranking judge in charge of judgment enforcements, he mentioned that the director of a major SOE in the region asked him to take action to prevent the property of the SOE from being frozen by a non-local court. After some discussion, and the judge was sympathetic as to the SOE's predicament, he said, "I'm working for the CCP, and you (the director) are also working for the CCP, but there are some regulations that I cannot circumvent." This indicates that local SOEs and other litigants still can exert some pressure, but on the other hand, it also shows that the courts are by no means a passive instrument in the hands of political powers. For a detailed discussion, see Xin He, *Why Do They Not Take the Disputes? Law, Power, and Politics in the Decision-Making Process of Chinese Courts*, 3 INTERNATIONAL J. L. IN CONTEXT 3 (2007).

37. Erhard Blankenburg, *The Infrastructure for Avoiding Civil Litigation: Comparing Cultures of Legal Behavior in The Netherlands and West Germany*, 28 L. & SOC'Y REV. 789-808 (1994).

not enforceable for whatever reason, the plaintiff will not get the prepaid litigation and enforcement fees back, even though, nominally, he or she has won the case.

While national guidelines have been promulgated by the Supreme People's Court (SPC) regarding the scales of litigation fees, it has been a common practice for many courts to impose extra fees to increase their income. But since the financial income of the court under study was adequate, it strictly followed the guidelines of the SPC. Because the guidelines of the SPC take into account the developmental level of the whole country, the litigation fees calculated according to these guidelines are definitely not expensive for litigants in the Pearl River Delta, which is perhaps the richest region in the country.

In addition to the fees paid to the court, however, some hidden costs exist. To reduce its heavy caseload, the court has set up higher thresholds for litigation, which clearly lead to extra costs. For example, to prevent frivolous lawsuits and to deliver relevant legal documents in a convenient and timely manner, the court requires that potential plaintiffs provide an accurate address for the defendant when filing petitions. The plaintiff must also provide a copy of the debtor's identity card when applicable. This requirement is certainly time and money consuming. Most of the time, the identity information can only be obtained through lawyers (non-lawyers are not granted access).³⁸

According to most interviewees, both litigation fees and costs were still tolerable. In their opinion, as long as the debt could be collected, the litigation fees and costs were not an important issue. After all, when a judgment was successfully enforced, it was the defendant who paid the fees. But when debt collection was not successful, the litigation looked very costly because the creditors could not even recover their prepaid litigation fees. They felt that it was unfair that they should bear the expense of these fees.

The data indicate that few litigants bothered to hire outside lawyers; most of them preferred in-house counsel or staff with some legal knowledge. As the amounts at issue were quite small and the cases were not very complicated, there was no need to hire lawyers: the contingent fees of the lawyers could reach as much as 30% of the amount at stake. In addition, under the policy of a "judiciary for the people," many judges were glad to help the incompetent litigants through the process, providing them with practical legal pointers and information about the inherent risk.

The duration of the litigation process apparently contributes

38. Interview with the in-house counsel of a litigant (Apr. 2, 2007). The reason behind this distinction is that non-lawyers do not have the privilege to access the protected files.

greatly to the litigation costs but it did not seem to be a big issue in the court under study. Since China's Civil Procedure Law explicitly stipulates that the adjudication process shall not exceed six months for the Regular (*putong*) Procedure, or three months for the Summary (*jianyi*) Procedure, most judgments were handed down within these time limits. In our data, 95% of the cases were closed within three months, with some taking only half a month, and the fastest taking only one day (Table 3). Many of them were adjudicated using the Summary Procedure. That is perhaps why most interviewees regarded the court as very efficient. This has much to do with the court's heavy caseload and highly streamlined procedures: most cases are handled in an assembly line style. Furthermore, there is the strict rule that the court will reduce the bonus of the judges in charge if their cases exceed the stipulated time limits.³⁹ But this high efficiency has also much to do with the improved quality of the staff. The court has recruited more than 100 law school graduates in recent years, constituting now almost half of its staff. With better training, these law graduates not only handle the cases more efficiently, but they also explain properly and clearly the court's requirements to the litigants.

D. Transaction History

The data indicate (Table 4) that the interviewees usually had engaged in business transactions with their trading partners for relatively a short period of time; in most cases between one and five years, with the mean at two years. This suggests that disputes between long-term partners, and those do certainly exist, are handled more informally.⁴⁰ A few interviewees (eight) sued their trading partners the first time they did business with them, but such cases were quite exceptional. For example, five out of the eight of these exceptional cases involved bank loans, and all of the loans were under mortgaged.

The data also indicate that the government's role in facilitating transactions between trading partners was rather limited.⁴¹ Some trading partners got to know each other through mutual friends, but

39. But this stipulation may not always achieve its intended goal. According to several judges, when some cases could not be handled within the three months limit, the judges in charge would find ways to change the original Summary procedure into Regular procedure, so they could have a three months extension.

40. This result also appears in a study on Russian economic courts, but in my sample, not many disputes occurred during the first time litigants conducted a transaction. See Kathryn Hendley, *Business Litigation in the Transition: A Portrait of Debt Collection in Russia*, 38 L. & SOC'Y REV. 2, 320 (2004).

41. For an empirical study on the issue, see Xueguang Zhou et al., *Embeddedness and Contractual Relationships in China's Transitional Economy*, 68 AM. SOC. REV. 75-102 (2003).

most of the time a particular business opportunity was decisive in initiating a business relationship. Many litigants found the other party simply by sending out business leaflets or faxes. When both parties were satisfied with their initial cooperation, they gradually established a more stable relationship. According to many interviewees, “the business [was] built up gradually.” Doing business this way, of course, carries a certain risk, but many business operators do not have other options. For example, it had been the norm for certain businesses to deliver goods first and then collect payment. A business could not survive if it refused to follow this norm, especially if its products did not offer any particular advantages.

Some interviewees would check new clients’ basic information, such as their business license, registered capital, or address. A few interviewees checked this kind of information at the company registration office, but most interviewees said the information provided by the Industry and Commerce Management Bureaus was very limited and not useful. For example, for many companies, registered capital was placed in bank accounts only for the purpose of registration and the money could be withdrawn immediately after the enterprise was successfully registered. Ultimately, what business operators really wanted to know was the track record of potential clients, but that the Bureau could not provide. At the end of the day, most of them had to rely on informal channels to gather information relevant to the credit history of their potential trading partners: production sites, land holdings, vehicles, the scale of factories and stock of raw materials, and so on. Some of them photocopied the checks of trading partners in order to locate the bank accounts in case of dispute. The information gathered through these informal channels, seasoned by long experience, seemed more useful.

E. Self-Remedies

Few of the interviewees initiated litigation immediately after their debtor had defaulted; instead, they usually tried to reach some kind of accommodation. No one wanted to destroy a business and trust in a relationship that had not been established overnight. Only after many efforts had been made to chase the debt, and only after the defaulting party still refused to pay, or kept finding excuses to avoid liability, would legal action be taken (Table 3).

Most interviewees shared more or less the same litigation experience: at the beginning, everything was fine, but things went wrong later. Some debtors’ businesses were not doing well, some debtors became obsessive gamblers, for example, and others started hoarding or transferring property. Initially creditors tried to collect their debts themselves by sending demand letters, making telephone

calls, requesting meetings, and so on. The typical practice was to use threatening language in the letters, claiming that debtors would have to face more serious consequences and that litigation would be initiated.

When these measures bore no fruit, many creditors started taking more direct action. Some withheld the debtors' raw materials. Some collected other outstanding debts of the delinquent debtors as payment. Some even asked other creditors to stop delivering goods to the debtor. Some creditors sent their staff to occupy the offices of the debtor around the clock, which seemed very useful, because the presence of debt collectors conveyed the message that the debtor's goodwill was in question. It was difficult for the debtors to have the debt collectors removed by the police or by the office security guards, because after all, they were there for a justifiable reason: it was the debtors who were at fault.

If there was still no result, creditors would find themselves at a crossroads: they could either directly file a lawsuit, or hire a private enforcer (*Shoushulao*) which, strictly speaking, is not lawful. These two measures are different in terms of the damaging effect on the existing relationship. To hire a *Shoushulao*, given its illegal and coercive connotations, is generally regarded as highly drastic and implies that the creditor has made up his or her mind to completely sever the previous relationship, while filing a lawsuit will only moderately damage the relationship. After all, it simply means that the issue will be handled through official channels. As long as the debtor's financial situation turns out to be in order, business can still be carried on in the future. In addition, China's non-adversarial style of litigation will help to prevent the parties from becoming too confrontational. The relatively mild effect of a lawsuit explains why the litigants may agree to further accommodation in court. That is also why many creditors were still hesitant to hire *Shoushulaos* even after exhausting all the possible private measures.

As to the motive for litigation, almost all the plaintiffs sued only to recover the debts. According to them, there was no need to use litigation to punish others in what was a rather small business circle, because profit was the ultimate goal in business. One interviewee said:

In all kinds of business, the manufacturers and the suppliers are simply different units in the food chain. Each business operates in a rather stable circle. Generally speaking, if one wants to stay in business for long, it is imperative that one pay one's debts. With regard to unfamiliar clients, we will not let them take away our goods until payment has been made. If one has funds but simply refuses to pay, one's reputation will be damaged by one's

own behavior. There is no need to do anything special.

F. Enforcement Results

The data indicate that most plaintiffs prevailed (Table 5). Twelve cases settled through mediation, ten were withdrawn, one was rejected for exceeding a statutory limitation (later rectified by the appellate court), and one was rejected on the grounds of insufficient evidence; the plaintiffs in the remaining cases all prevailed. The awarded amounts reflected exactly the amounts demanded, except for three cases in which only 80% was awarded, because the plaintiffs had miscalculated the damages. This clearly indicates that when judges determined the amounts to be awarded, they rarely considered the defendants' financial capability, which had been the practice shown in Clarke's previous research.⁴² The change may have much to do with the current separation between adjudication and enforcement: judges have become more concerned with the legality of decisions; whether the judgment is enforceable has become the task of the enforcement bureau.⁴³

For cases resolved through adjudication, the judgments usually were limited to two to three pages. For cases settled through judicial mediation or voluntarily withdrawal, the judgments were even shorter. Only when litigants had a long history of business transactions would the judgments be longer, simply because this history became part of the record. In more than 25% of the surveyed cases, the defendants did not attend the hearing, i.e., defaulted. This indicates that the cases were indeed very straightforward.

Twenty-two cases (33% of the data) were either withdrawn or settled by judicial mediation, which suggests that judicial mediation remains an important part of the adjudication process. Voluntary withdrawal often occurred when the debtors agreed to pay the amount at issue after they received notice that they were being sued: the debtors had simply intended to delay payment. Of the twenty-two cases, twelve were settled through mediation. Usually the judges in charge took on a rather aggressive role in this type of situation: they either genuinely provided an accommodation acceptable to both parties or coercively persuaded the parties to accept solutions that actually benefited the judges themselves, for example, by reducing the rate of appeals.

The majority of the plaintiffs surveyed succeeded in recovering some or all of the monies awarded in the court judgments. As shown in Table 5, in thirty-five of the sixty-six cases (53%), the judgments

42. Clarke, *supra* note 1, at 32.

43. Xin He, *Court Finance and Court Reactions to Judicial Reforms: A Tale of Two Chinese Courts*, 31 L. & POLY 3 (2009 forthcoming).

were performed completely. This includes ten withdrawn and seven mediated cases, which were voluntarily paid. In fifty cases, or 76% of the sixty-six, the plaintiffs recovered fully or partially. Overall, 61% of the plaintiffs recovered more than 50% of the awarded sums. Even if the ten withdrawn cases were excluded, the court would still play a very important role. Of the remaining fifty-six cases, in sixteen the claims were paid voluntarily and thirty-nine creditors, or 70%, recovered fully or partially. These results suggest that the conventional view that Chinese courts are incompetent is rather exaggerated. Still, in the remaining sixteen cases the plaintiffs did not recover a penny, which suggests that there still is much room for improvement in the area of enforcement. Of the sixty-six cases, thirty-seven or 56%, entered the enforcement stage and in these cases, twenty-one or 57% of the creditors recovered something.⁴⁴

There were many cases of voluntary payment. One-hundred percent of the cases that were withdrawn were paid voluntarily. This suggests that the court's involvement itself had some effect. Although in China's business context, to default on a debt is not out of the ordinary, the debtors might not know what possible measures the court might or might not take, so, after receiving the court notice they promptly paid their debts. Only a few hardened defendants were not worried that the courts might, as authorized by an article of the Civil Procedure Law, impose severe measures such as judicial imprisonment.

Of the sixteen debtors that did not pay at all, nine, i.e., the majority in this category, did not have any funds against which the judgment could have been enforced (Table 5). As to the remaining seven judgments, four defendants could not be located by the court or by the creditors. Of these four, one might have successfully hoarded his property, a plausible assumption, since the defendant appealed at first but then disappeared. Of the last three, two debtors were located, but they were so cunning and elusive that the creditors did not want to pursue them any further. As to the one remaining judgment, the creditor believed that the defendant had passed the property to his relatives because the debtor's children were studying abroad, which, according to the creditor, suggested that the defendant still had money. Generally speaking, there exists an "all-or-nothing" pattern in actually complying with court judgments.

44. In the 76 Nanjing cases collected by Whiting, 29% of the plaintiffs withdrew, 21% reached a mediation agreement with the other party, and 47% were adjudicated. In the last two categories that needed enforcement, only 3.8% were performed voluntarily, while 52% of the creditors applied for compulsory enforcement. In 25 cases in which the enforcement results were recorded, 55.5% were successful and 18.5% failed. Quoted from Clarke et al., *supra* note 10, at 42. Whether the success or failure of enforcement referred to complete success or failure is unclear, but the results of my investigation seem similar to those of Whiting's research.

Between the all-or-nothing extremes were fourteen cases. Here, the typical situation was that the debtors had agreed to pay in installments but the process was not completed yet as of the time of investigation.

The cases involving banking institutions (seven involving banks and one involving an agricultural credit union) represent a unique category in the sample. As mentioned, the bank loans concerned were usually mortgaged. When the debtors could not repay the loans, the banks sold the mortgaged property to secure the loans. Thus 100% of the amounts at issue were paid through the court procedure. But the loan by the credit union was launched for policy reasons which meant that it was not mortgaged and that the credit union was not able to impose many restrictions on the use of the funds. But this kind of loan was quite small, usually less than 50,000 yuan. Interestingly, according to a credit union director, 90% of the loans had been repaid entirely. The reason was not that the borrowers were all nice people. Indeed, credit unions had to work hard to obtain their money, including securing imprisonment of the borrowers through the courts, with which the credit unions maintained a very close relationship.⁴⁵

One credit union director said:

The court here was really tough and effective. Immediately after the borrowers were thrown into prison [more accurately, he meant judicial imprisonment], their relatives would borrow money to repay our loans, and that was it. If they do not have money, they have to stay in prison. So when the borrowers would rather to stay in prison than repay our loans, we have to leave it as that.

G. Preemptive Action

According to the Civil Procedure Law and opinions delivered in the course of its implementation, if creditors provide security, they can ask the courts to freeze the assets of the other party, a procedure known as asset preservation. Usually two factors determine whether this preemptive measure will be granted: one is providing evidence that the defendants might transfer or conceal the whereabouts of such property; the other factor is the secured property put up by the creditor. The law also offers the courts complete discretion to grant such a measure as long as it is deemed necessary. Some judges even

45. According to art. 102 of the Civil Procedure Law, the courts can impose a penalty including imprisonment on those who refuse to comply with judgments. Art. 123 of the advisory opinion of the Civil Procedure Law issued by the SPC states that this refers to the situation in which the debtor has the capability to pay but refuses to do so. How to interpret "has the capability to pay but refuses to pay," falls, of course, to the discretion of the courts.

explicitly encourage the plaintiffs to take advantage of this protective procedure, especially when the latter are not aware that such protection is available.

In the year when the judgments analyzed here were rendered, this tendency was not particularly obvious: only about 30% of the creditors in the sample availed themselves of it. In 2007, the court even went so far as to persuade the creditors to invoke such a procedure, because the judiciary endeavored to strengthen enforcement and to make enforcement easier, the enforcement bureau required the petition filing and adjudication divisions to inform creditors of the availability of this procedure. The work report of the court in 2007 stated clearly: “in the adjudicating process, (our court) *made every effort* to implement asset preservation, which guarantees the enforcement of the court judgments, prevents a damaging effect from spreading, and helps to realize the function of the civil and commercial adjudication” (emphasis added). Usually it was the petition filing division that advised creditors to take the protective measure when they filed the cases, but the adjudicating judges would reemphasize the possibility if the creditors had not opted for it. From the perspective of the court, as long as the creditor provides secured property, any reasonable evidence that the property of the debtors might be transferred or hoarded suffices. If the asset is wrongfully frozen, it is the creditors who will be held responsible for the damage to the frozen property. This procedure has been very useful both during the enforcement phase and prior to actual enforcement, because litigants are more likely to resolve their disputes through mediation or they voluntarily withdraw their suits when the defendants know that they will not be able to delay or avoid enforcement should a judgment be rendered against them. That is why the data show many instances of voluntary settlement and withdrawal.

H. The Enforcement Process

When no reconciliation could be reached during the adjudication process, most debtors (except one in the data) went on and applied for the compulsory enforcement. Once creditors have obtained a certificate from the adjudicating division that the court judgment is effective, they can initiate the enforcement process by filing a formal application for enforcement at the petition filing division.

The application will then be handled by the enforcement bureau of the courts. The enforcement bureau used to be a division equal to other divisions in the administrative hierarchy. Elevation to a bureau, where the director is usually of the same rank as a vice-director of the courts, means that more resources are available for enforcement. The setting up of a relatively independent bureau

within the courts is a response to widespread complaints about the ineffectiveness of judgment enforcement.

But even with more resources available in the area of enforcement, one still cannot conclude that the situation has been significantly improved. Overall, the quality of the staff in the enforcement bureau has remained the poorest among the divisions of the courts. The staff are required to perform some very simple activities such as freezing assets or handcuffing persons, none of which requires much legal training or writing skills. The routine enforcement process may offer debtors the opportunity to evade enforcement. After the judge in charge of the enforcement has sent enquiries to major banks and relevant government agencies requesting information about a debtor's property, for example, the debtor might get wind of the court's action and immediately conceal the property. But according to some newly passed laws aimed at strengthening the court enforcement capability, leaking this sensitive information to the debtor is a serious crime and some interviewed judges mentioned that some bank employees have been criminally prosecuted for doing so.

The enforcement bureau usually freezes the assets of debtors when they have been located and the bureau may impose a custodial sentence on debtors who are not cooperative. At this point, few debtors who have money refuse to pay. In the data, nine out of thirty-seven cases that entered into the compulsory enforcement were paid in full.

Debtors who have no assets at all might face imprisonment. There was only one case of imprisonment in the data, but a veteran judge of the enforcement bureau said that the court usually handed down a few hundreds of judicial imprisonment sentences per year.⁴⁶

There was little that the court could do about debtors whose whereabouts could not be ascertained, or who had intentionally hoarded or transferred their assets in advance. It is also difficult to find out how much energy the court devoted to locating the debtors. Some small amounts of property may not be worth chasing. The increasing mobility of the population in urban China indeed has made it more difficult to find the debtors. Moreover, some debtors recorded in the data had taken advantage of legal loopholes to evade their obligations. In China, many business operators only care about short-term interests and not about the long-term reputation of their business. Some debtors do have assets, but they evade their obligations creating a limited liability company, which only takes

46. Art.102 of the Civil Procedure Law states explicitly that the courts can impose fines and judicial imprisonment on individuals and the legal representatives of institutions that refuse to follow the orders of a court. And the number provided by the interviewee here presumably covered all kinds of cases handled by the court.

30,000 yuan to set up.⁴⁷ Many companies are just storefront operations with few assets. If business is good, they will follow the normal rules and behave well. Otherwise they may simply disappear to avoid liability. The law does not impose any penalty on these shell companies and the company registration authorities will not record such behavior. Investors in such companies can register a new company immediately after the closure of the old one. According to a judge whom I interviewed, many limited liability companies might as well be called “companies with no liability.” As a result, it is very difficult to solve some of the enforcement problems because the real difficulty lies in the general social, economic, and legal environment: many enterprises and individual business operators do not care about establishing long-term trust or reputation, and those who do are not sufficiently rewarded. Accordingly, there is a need to establish a credit evaluation system that encourages society to build up trust and reputation. The state should also strengthen the administration of company registration, which would allow the authorities to establish a national database to identifying those who have used shell companies to evade liability.⁴⁸

All this explains much of the “all-or-nothing” pattern in judgment enforcement. When some debtors realize that the court has taken serious measures, such as freezing their assets, they know that they had better comply with the payment order. Of course, there is also an information asymmetry: some debtors are not sure whether or not a court will impose a custodial sentence; most debtors do not want to go to jail because of unpaid debts. It is easier for both parties to reach a conciliatory arrangement: the debtors emphasize their cash flow problem and beg for more time; the creditors then consent to some compromise, for example, writing off the interest incurred on late payment. They know all too well the difficulties that can arise in the course of business, and sometimes late payment is understandable and acceptable. After all, why would creditors not prefer to have some cash in hand, rather than an unpaid judgment for more? But when debtors really do not have any assets, or have decided to hoard their assets or to disappear, then there is little chance for successful enforcement, no matter how capable the judges or the courts may be.

Apart from these “all-or-nothing” extremes, there were those cases in which only partial recovery was made. Fourteen, or 21%, of the surveyed cases fell into this category. In ten of them, less than half the awarded amounts were recovered; all the debtors in this

47. Art. 26 of the Company Law of the PRC, amended in 2005.

48. Shaoguang Wang, *The Problem of State Weakness*, 14 J. OF DEMOCRACY 1, 36-42 (2003); He, *supra* note 4.

category had paid a portion of the debts but none of them completed the payments. Some simply lost the capability to repay, even after the court had taken strict measures. Some had fixed assets, but were short on cash. It was difficult for the creditors to take further action at that point. To avoid being overly confrontational, they would usually offer the debtors more time.

To what extent did the connections between the court and the government influence the enforcement? My data does not answer that question, but provides some clues. While litigants with connections might be able to accelerate the enforcement process, no other obvious benefits were found. With amounts at issue usually below 100,000 yuan, creditors may not want to invest too heavily in "corruption."

The interview materials suggest that the court, by and large, followed the required procedure. This institutionalized and streamlined enforcement practice has indeed led to a brand-new impression of the court in the minds of many creditors and this is perhaps why in general non-local creditors have usually not complained about discriminatory treatment.

I. Private Enforcers (Shoushulao)

Despite the connotations of illegality associated with private enforcers, many interviewees still shared their thoughts and experiences with us, especially after they could fully appreciate the purpose of our research. Three of our interviewees clearly said that they had hired Shoushulaos. Five mentioned that they had thought about hiring them, but ultimately did not. Generally speaking, Shoushulaos still fill a need.

First, many creditors are cautious about going to court because of its poor reputation and procedural complexity. Some interviewees mentioned that they were not sure whether their evidence would be admitted, and that this had led to psychological stress. Interestingly, however, one had this to say:

Before I went to court, I was worried about a lot of things: the case might be delayed forever; the lawyer I hired might overcharge me; the other party might have connections within the court, and so on. I was concerned about having to pay the litigation fees without winning the case, so I often sought the help of Shoushulaos. They were able to get things done as long as the amounts at issue were below 10,000 yuan. But they had more difficulty with larger debts, especially when the debtors were really resistant. Then I finally tried the court. The experience was quite positive: the case lasted only two weeks and the litigation costs were acceptable. The fees for the lawyer, who was introduced by a friend, were reasonable. In the end, the litigation cost was lower than the fees for hiring a Shoushulao. More importantly, Shoushulaos often make empty

promises and I sometimes felt cheated.

Second, using the courts involves an outlay too, i.e., the payment litigation fees as well as other costs.

Third, the enforcement period of the court, given its procedural complexity, can be overly long. It might take two to three years, much longer than the time usually needed by Shoushulaos.

Finally and most importantly, the courts must obey the law and are constrained by many procedural requirements. By contrast, Shoushulaos, who are usually semi-gangsters, often employ unlawful threats. In cases of shell companies formed to evade liability, as discussed above, the courts may not be able to enforce the judgment, while Shoushulaos could be effective.

On the other hand, while debtors usually know what measures a court might envisage, they never know what kind of hideous actions Shoushulaos might take. When Shoushulaos are involved, the debtors immediately feel a lot of stress, even though Shoushulaos rarely *act* outrageously.⁴⁹ That is why Shoushulaos have been quite effective in certain types of debt collection.

But Shoushulaos also have an obvious limitation: it is difficult for the creditors to establish trust with the Shoushulaos or to control their behavior. Since Shoushulaos are not recognized as lawful agents, the creditors take the promises of Shoushulaos with a pinch of salt; they cannot impose meaningful penalties on the Shoushulaos if such promises are not fulfilled. What the creditors can do is to deny payment of the service fee, usually contingent on the collected debt. From the perspective of Shoushulaos, the only payment they can obtain then is a certain share of the debt they managed to collect. When the normal coercive measures to obtain payment are not working, their threats are very likely to escalate and the creditors who hire them might be concerned about becoming involved in criminal liability over such threats or actions. A small business operator who had hired a Shoushulao said:

I was very busy collecting my outstanding debts before the New Year. A lady borrowed 200,000 yuan from me but refused to repay. I knew she had money. I then contacted one of my classmate's little brothers, a high school dropout, to chase her; the commission was 10% of the collected debt. But that lady, after being confronted several times, only paid less than 80,000 yuan principal plus 20,000 yuan interest. My classmate was a director of detectives in another city, so his brother then suggested: "Why do we not

49. See Xu Xin, *On Private Remedies (lun sili jiuji)* (2005); Curtis J. Milhaupt & Mark D. West, *The Dark Side of Private Ordering: An Institutional and Empirical Analysis of Organized Crime*, 67 U. CHI. L. REV. 41 (2000).

throw the lady into prison during the Spring Festival?" I immediately said no. It is not worth doing things like that for this amount of money. I have to do business in the future, so I do not want to get into too much trouble and scare off other clients.⁵⁰

Only a few small enterprises would hire Shoushulaos. For large-scale and established companies, neither the employees nor their bosses will hire Shoushulaos in their own names, because none of them wants to be involved in this "illegal" activity. In a word, the effectiveness of Shoushulaos lies in their potential and possibly illegal threats, which might also put their potential clients at risk. That is why many interviewed creditors thought about hiring Shoushulaos, but few actually did so. Their illegal nature is both the weapon and the Achilles heel of the Shoushulaos. It is this feature that determines that they can only be used within a certain scope. As a result, the debt collection business in China is unlikely to be dominated by Shoushulaos. While the formal and informal remedies have their respective market shares, it is clear that the formal ones remain prevalent.

J. How the Court is Viewed

According to the data of this study, the plaintiffs' impression of the court have become more positive after they actually experienced the courts.⁵¹ As can be seen from Table 7, most plaintiffs (forty-two) were highly satisfied with the adjudication process. Among eleven interviewees who did not comment, some were not present during the adjudicating process (they were represented by a lawyer) and some reached an agreement with the other party immediately after filing the petition. Of course, some just did not want to comment. Many interviewees said that the judges were patient and clear in explaining the court procedure.

These improved impressions are due to, among other factors, the increased professionalism of court staff. The Judges Law, amended in 2001, requires all judges to pass the National Uniform Judicial Exam, and this has led to a more qualified judiciary in

50. Interview in Nanning, Guangxi Province, China (Feb. 20, 2007).

51. He, *supra* note 4. I have discussed many reasons why litigants' impressions of the courts have become more positive, including professionalism, standardization, explanation of the court procedures to the litigants, the increased threshold of petition filing, and contrast between the experience and the relentless accusations of the media against the courts. For a similar result based on empirical surveys, see Ethan Michelson, *Dispute Processing in Urban and Rural China: Findings from Two Surveys*, Oxford: Oxford Foundation of Law, Justice, and Society (2008). In a Shanghai-based study, over 63% of litigants believed that judges deserved high ratings ("dignified conduct and high professional quality"). See Minxin Pei et al., *A Survey with Corporate Litigants in Shanghai*, in *JUDICIAL INDEPENDENCE IN CHINA*, forthcoming (Peerenboom ed.)(2009forthcoming).

China. In addition, judges' salaries have generally been increased, in part due to sufficient financial resources supplied by local financial departments. The income level of judges has traditionally been higher than the local per capita GDP. Becoming a judge has become attractive to many law graduates who prefer to earn a stable income while dealing with a less demanding workload than they face in private practice. The court has been able to recruit law school graduates and postgraduates.

The judiciary has also imposed strict requirements on the conduct of court staff. The court has issued detailed measures according to which judges are held accountable for wrongly decided cases. There are also various internal requirements pertaining to the work procedures of court staff, some of which are determined by the complaint and appeal rates. In many courts, the judges' careers and incomes will be directly affected by these rates. The court will implement salary deductions when the time limits of handling cases specified in the Civil Procedure Law are not observed. As a result, over 98% of judgments are handed down within the set time limits.

The interviews, however, show that many parties were still unaware of the court procedures and regarded them as very complicated and often too strict. Some spoke bluntly of practices they considered unreasonable. For example, a creditor believed that the seizure of assets of a debtor's siblings should also be enforced, as long as these assets had originally been owned by the debtor. Some even thought that the adjudication procedures were too long and too troublesome—they apparently took twenty days in a particular case—required too many “unnecessary documents.” However, it would seem that few courts in other countries could render a decision in less than twenty days. Another plaintiff who appealed his case complained about the long period it took (almost two years) and the detailed requirements of evidence. But it turned out that the courts had actually been strictly following the procedural requirements of the Civil Procedure Law. Some interviewees even said that the court should provide parking lots for them, but the fact was that the court had no parking lots, not even for the staff of its appeals court. Perhaps it is only in China where the court administration has been so powerful that the adjudication can be handled so efficiently. Still, the court should increase its transparency and provide more education for the litigants. One plaintiff commented:

I contacted them (the debtors) several times. They promised to pay but nothing happened. My business was rather small and cash flow was very important. I had no choice but to go to court. I had no idea about how to file a lawsuit, so I made some enquiries with friends. I didn't have to go to the

courtroom too many times. Once I had been to court, the procedure became quite clear. In that litigation I reached a mediation agreement with the debtor, in which he promised to pay 30,000 yuan in seven installments, and he did as he promised. So there was no need for the compulsory enforcement. The experience was very pleasant. Later on I filed several other lawsuits, and all went very well. In retrospect, the only concern had been the procedural requirements, which were unclear to me.⁵²

Yet the litigants were not particularly satisfied with the enforcement phase, when they compared it with the adjudication phase. Most of the interviewed creditors believed that the court should enforce judgments more energetically. Eight creditors regarded the enforcement as inadequate and not timely. Eleven interviewees did not want to comment at all. Many believed that the court should have adopted more immediate and effective measures to locate the debtors' assets.

There were many reasons for the ongoing problems with enforcement. First, the court did not have sufficient staff. It received on average 10,000 enforcement applications per year, but only had fifty enforcement staff members, which meant that one staff member had to handle more than 200 cases each year, or one case each working day. According to the internal regulations of the court, the enforcement must be completed within six months. Since the enforcement often involves much paper work and many inquiries with other institutions, it is unrealistic to require that all the cases be closed without any delay. Second, the courts cannot supervise the staff effectively. The staff quality in the enforcement bureau is usually not as good as that in the adjudicating divisions, and there is, of course, some corruption involved.⁵³ Third, the enforcement application fees were sources of complaint as well. As previously discussed, when the enforcement is not successful, the creditors have to bear the litigation and enforcement fees. Under these circumstances their attitude towards the court cannot be expected to be positive. After all, even if the creditors do not recover a penny in a law suit they have won, they still have to shoulder all the costs! Most importantly, there is a huge contrast between the adjudication and enforcement stages: the court is very efficient in the adjudication stage and the creditors prevail, but the fact that they might fail to recover their debt only emerges in the enforcement stage.

52. Interview with a plaintiff on Oct. 10, 2005.

53. In an experiment conducted by the SPC, surveillance was installed in a court in Shandong province to supervise the staff of the enforcement bureau. This change immediately bore fruit. One result was that the enforcement rate increased noticeably; another was that the entire staff functioned like robots. Professor Xu Xin, personal comment, Apr. 8, 2007.

III. A BRIEF COMPARISON WITH SIMILAR COURTS IN RUSSIA AND THE UNITED STATES

It is obviously dangerous to compare the enforcement situation in Chinese courts with that in other countries and to jump to conclusions based solely on such comparisons. First of all, the structures of legal systems, civil procedures, and litigation cultures are inherently different.⁵⁴ Secondly, political and economic environments differ across countries. In transitional countries, such as Russia and China, economic environments are somewhat volatile and vulnerable to policy changes. In developed countries like the United States and Japan, the situation is more stable.⁵⁵ While the external environments will definitely affect whether potential litigants will use the courts, the influencing factors are so complicated that it is difficult to make direct comparisons.⁵⁶ Moreover, empirical research is scarce, not to mention the paucity of comparative studies. Still, there are many common features that do allow comparison. In the first place, almost all the studies, involving a variety of countries, indicate that going to court is a last-ditch attempt at debt collection. Second, non-payment cases in court are invariably straightforward, with simple facts and solid evidence. Instead of handling really difficult disputes, courts worldwide mostly seem to fulfill a procedural or administrative function in these cases.⁵⁷ In view of these similarities, a brief comparison may offer some general idea as to the place Chinese courts occupy in the world.

In so far as commercial judgment enforcement in China is concerned, the Russian courts are perhaps the most comparable. Under the influence of a planned economy, the courts in both countries have mainly handled contractual disputes between economic institutions. There are obvious similarities between the two systems with regard to their organizational structure, the amounts at issue, the previous transaction history, the litigation

54. For the classic discussion on whether the cultural or the structural influences are dominant in the pending disputes, see Blankenburg, *supra* note 37; John Haley, *The Myth of Reluctant Litigants*, 4 J. OF JAPANESE STUDIES 359-89 (1978).

55. In Marc Galanter & Joel Rogers, *A Transformation of American Business Disputing? Some Preliminary Observations* (Working Paper, Madison: Inst. for Legal Studies, 1991), Galanter and Rogers' examination of Stewart Macaulay's classic explanation, *Non-Contractual Relations in Business*, 28 AM. REV. OF SOC., 12-36 (1963) finds that the U.S. economic environment in the 1980s has made the formation of non-contractual relationships more difficult.

56. Lane Kenworthy et al., *The More Things Change...: Business Litigation and Governance in the American Automobile Industry*, 21 L. & SOC. INQUIRY 631-78 (1996).

57. Lawrence M. Friedman & Robert Percival, *A Tale of Two Courts*, 10 L. & SOC'Y REV. 2, 267-301 (1976); Robert Kagan, *The Routinization of Debt Collection: An Essay on Social Change and Conflict*, 18 L. & SOC'Y REV. 323-71 (1984).

results, the duration and fees, the social environments, and the role of trust.⁵⁸ According to Hendley's research of 100 non-payment cases in three Russian courts, 64% of the creditors recovered something and 33% were paid in full. On average, each creditor recovered 46.7% of the awarded amounts.⁵⁹

In the U.S. court system, the small claims courts might be the most comparable for our purpose. Similar to Chinese courts, small claims courts are flooded with non-payment cases from business transactions. The major difference between the two sets of courts is that the litigation costs and lawyer fees in the U.S. courts are much higher, which would suggest a higher bar for litigation. According to an investigation of Iowa small claims courts, 71% of the creditors obtained nothing through litigation, 24% were paid in full, and 4% recovered a partial amount.⁶⁰ Another survey based on Denver's small claims courts found that 55% of the creditors got nothing, and the rest of the creditors recovered only 31% of the awarded amounts.⁶¹ Another study involving eleven courts in New Jersey shows that in the small claims courts of that state, only 37% of the debts were fully honored and 5% received partial payment. The situation for cases other than small claims and landlord-tenant disputes was even worse: 25% of the civil judgments were fully enforced, 7% were partially paid, and 68% of the claimants went home empty-handed or the creditors dropped the lawsuits.⁶²

This brief comparison is not to suggest that the Chinese court I investigated was functioning better than the economic courts in Russia and much better than the small claims courts of the United States. But after comparing all these figures, the situation in China does not seem so unsatisfactory at all. With more than half of the non-payment petitions fully enforced, 76% of the creditors recovering some monies, and 61% of them recovering more than half the demanded amount, it is incorrect to say that court enforcement is exceedingly difficult in China.⁶³ The basis for the overly negative views on Chinese courts is open to question, especially when the holders of these views do not differentiate between the more developed and the less developed areas. My conclusion does not just rely on the above comparison, but is based on data and analysis as

58. See Hendley, *supra* note 13, 46-82; Hendley, *supra* note 40.

59. *Id.*

60. Suzanne E. Elwell & Christopher Carlson, *The Iowa Small Claims Courts: An Empirical Analysis*, 75 IOWA L. REV. 2, 521 (1990).

61. Arthur Best et al, *Peace, Wealth, Happiness, and Small Claim Courts: A Case Study*, 28 FORDHAM URBAN L. J. 2, 365 (1994).

62. See Committee on Post-Judgment Collection Procedures in the Special Civil Part, *Report to the Supreme Court of New Jersey*, NEW JERSEY L. J. 2 (1993) [hereinafter Committee on Post-Judgment Collection Procedures]. Quoted from Clarke, *supra* note 1, at 34.

63. Xingjun, *supra* note 2.

well as other similar studies done in more developed areas of China.⁶⁴ The institutionalized measures employed by the court, for example, preemptive action, highly efficient adjudication, custodial sentences, in addition to the changed economic environment, have all contributed to better results. The positive opinions about the court expressed by the interviewees only further warrant such a conclusion.

It should also be noted that difficulty in enforcing civil judgments is by no means the preserve of Chinese courts. A scholar writes about a British court: "It would in fact have been more realistic for plaintiffs to regard the hearing as merely marking the end of round one in what might well prove to be a prolonged, acrimonious, and ultimately fruitless, contest."⁶⁵ The key to understanding the causes of the difficulties of enforcement is that when non-payment cases eventually reach the court, they must by nature be difficult cases: the creditor is already prepared to destroy a relationship that was potentially valuable to its business. The courts are also clear on this point. A court that has no incentive to take on more cases distributes pamphlets to potential litigants, informing them of the risks of litigation and helping them to form a more realistic expectation.⁶⁶ This is not an invention of Chinese courts either: the courts in New Jersey have taken the same measure.⁶⁷

The real problem may be the expectations of Chinese courts. The tenet, "the law must be strictly followed and enforced," may have made people believe that court judgments in China are 100% enforced, or that court enforcement is without cost. And a legal education that focuses on the law on the books and pays little attention to the operation of the law in action does not exactly help to correct the (unrealistic) picture. Mainstream legal studies that lack an empirical tradition may also have made many researchers overlook the positive developments in the Chinese courts. In these circumstances, it is not surprising that some litigants regarded twenty days to arrive at an adjudication as excessively long, but they may not be aware that in the United States, the corresponding period could be two to three years.⁶⁸

64. Pei et al., *supra* note 51. See also Susan Whiting's Nanjing investigation. Quoted from Clarke et al., *supra* note 10.

65. JOHN BALDWIN, SMALL CLAIMS IN THE COUNTY COURTS IN ENGLAND AND WALES: THE BARGAIN BASEMENT OF CIVIL JUSTICE? 128 (1994). The situation in England and Wales is not very different either. According to Baldwin's investigation, six months after the execution of the court orders, only 31.9% of the creditors recovered the full amounts, at 134.

66. He, *supra* note 4.

67. See Committee on Post-Judgment Collection Procedures, *supra* note 62.

68. Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. OF EMPIRICAL LEGAL STUDIES 3, 459-570

It is indeed difficult to understand how Americans can tolerate such a low enforcement rate and why there are so few complaints about the enforcement of judgments in the United States. It is also difficult to understand why the Chinese are so sensitive on the issue of enforcement difficulties of Chinese courts. With little empirical research, many conclusions in the literature are simply drawn from anecdotal and biased sources that have been widely and repeatedly reported. Other researchers, without conducting solid empirical research, simply follow this line of thinking and readily attribute all the problems to China's underdeveloped legal system. There seems to be a deeply rooted belief that the moon in the United States is always brighter than in China—and that the moon in Russia is never as bright as in China. But according to many interviewees in this study, enforcing commercial judgments is by no means the most difficult task of the court; the enforcement of administrative cases or tortious cases has encountered far more resistance.⁶⁹ Although the courts have a great deal of room for improvement, it is also important to establish a value system which encourages society to build its commerce upon trust and a solid reputation.

IV. THE RELEVANCE OF JUDGMENT ENFORCEMENT FOR ECONOMIC DEVELOPMENT

The analysis has shown many positive developments within the court: decreasing local protectionism, reasonable enforcement results, and improved reputation of the courts among the litigants. These results are not unique; indeed, many recent empirical studies in urban China come to similar conclusions.⁷⁰ One of the reasons for the huge contrast between these results and the still often negative popular conception may be an inadequate understanding of the limitations the courts face when enforcing judgments: if the debtors really do not have the money, who can squeeze blood from a stone? But the more important reason for this contrast lies in the many changes that have occurred in China. They include a privatized and diversified economy, institution building, and the professionalization of court staff.

As a result of these changes, the role of the court in local economic activities has become more important: many litigants regard the court as competent and efficient, and these litigants are willing to resolve future disputes through the courts. There seems to be a correlation between economic development and the courts

(2004).

69. See He, *supra* note 36.

70. See, e.g., Susan Whiting's Nanjing investigation. Quoted from Clarke et al., *supra* note 10. See also Pei et al., *supra* note 51.

playing a more important role. The question then is, does a well-functioning court become essential to economic development or is it the other way around? Or are there other connections? Given the small amount of data, this study will not be able to answer the question definitively, but it can certainly offer some clues from a grassroots perspective.

The fact that the court has been playing a more important role in local economic activities does not mean that it is essential for economic development. Admittedly, whether contracts can be enforced is important to economic activity, but a look at the situation in the region before and after the local economy took off can hardly support the idea that the court is essential to economic development. The local economy took off in the late 1980s and the 1990s, when the court was not strong, and the court's weaknesses clearly did not prevent the local economy from flourishing. Once the local economy develops, other mechanisms, in addition to the courts, have enforced contracts. Some social norms and the informal Shoushulaos are still in effect, though their functions are limited.⁷¹ The most effective mechanism found in this study was the control over the delivery of goods before payment was made and this control can be useful even beyond small communities. The population mobility in the Pearl River Delta is very high, with lots of business operators from other regions of the country setting up in businesses there. These business people cannot be characterized as groups of the same ethnicity, religion, origin, or culture, yet they do not look to the court to solve their disputes. The control over the supply of goods have already minimized most business risks. This control is similar to, but also significantly different from, using reputation as a basis for releasing supplies. Both control and reputation help to consolidate the mutual reliance between trading partners. But when reputation is not working, business managers can always protect themselves by controlling the supply of goods in the course of business transactions.

Consequently, contracts do not necessarily have to be enforced by a court when the economy has developed beyond a certain level. Due to this control mechanism, the amounts at issue are kept small, and the risk to the business has been minimized. The court is only one of many different mechanisms available for contract

71. Numerous relevant works exist in the literature, see e.g., Xin He, *Explaining the Development of Migrant Business in Beijing*, 12 ASIA & PAC. MIGRATION J. 3, 385-406 (2003); Janet Landa, *A Theory of the Ethnically Homogeneous Middleman Group: An Institutional Alternative to Contract Law*, 10 J. OF LEGAL STUDIES 349 (1988); Linda Lim & Peter Gosling, *Strengths and Weakness of Minority Status for South Asian Chinese at a Time of Economic Growth and Liberalization*, in THE ESSENTIAL OUTSIDERS 285-95, 309-11 (Daniel Chirot & Anthony Reid eds., 1997); Lisa Bernstein, *Opting Out of the Legal System: Extralegal Contractual Relations in Diamond Industry*, 21 J. OF LEGAL STUDIES 115 (1992).

enforcement. When one mechanism becomes less effective, or becomes more expensive, other mechanisms will become more prevalent and when the court's role becomes more important, it suggests that potential litigants are less likely to use alternative means to resolve their disputes. This study shows, *inter alia*, how the formal mechanisms are squeezing out informal mechanisms: the court has left less room for private enforcers, the *Shoushulaos*. The limited impact of the courts is more apparent in the area of foreign investment: although foreign direct investment has been an important factor contributing to China's economic development, the enforcement capability of the courts is only a tiny consideration among many more important ones on which investors base their decisions.⁷² That is why the caseload of commercial disputes has not grown at the same rate as the local economy.⁷³ Thus, in contrast to what has been asserted by some economists, this study shows that a formal, neutral, and effective adjudicating organization does not seem to be essential to economic development.⁷⁴

Does the second possible explanation—the reverse causal link—between a well functioning court and economic development make sense? Will the economy make more, or different, demands on the courts as it develops? To develop the local economy, the major political forces in the region are, of course, willing to provide a better business environment. This does not mean, however, that they have tried their best to improve the courts institutionally or professionally. To be sure, major political forces may not object to well-functioning courts, and they may even support their development,⁷⁵ but this is by no means crucial. It is well known that politically important officials are rarely appointed as court directors. Indeed, major political forces still tend to intervene in the courts' decision-making process. In most circumstances, a better business environment does not mean a more institutionalized court or stricter legal enforcement. Instead, it means more circumvention of national laws and more personal promises and preferential treatment offered by major political leaders to potential investors. When significant incidents occur, the courts are often required to toe the line of major political leaders. In this sense, the institutional development of the local court has less to do with the demands of the regional economy than with the uniform judicial reform occurring across the country. One can see this point clearly if the situations in the hinterland and the coastal areas are compared: the courts in the less developed hinterland areas are experiencing similar institutional and professional improvements, such as separating petition filing from

72. PEERENBOOM, *supra* note 11, ch. 10.

73. He, *supra* note 4.

74. WEBER, North, Williamson, *supra* note 7.

75. Clarke, *supra* note 1.

adjudication. The judicial reform occurs despite the poor economic development in these areas. Thus, the market demand hypothesis seems inaccurate.

While the courts in the more developed area have indeed become more effective, this change has occurred largely because the local government, with a more developed local economy, has more income and can consequently give more financial support to the courts. In other words, the development of the local economy, or more accurately, of the local financial resources, provide a precondition for the institutional and professional development of the courts. The diversified economy, which suggests more court users with more or less the same legal status, further provides favorable conditions for the courts to handle disputes in a more neutral way. In other words, adequate financial resources in the developed region make more effective courts possible. When local governments and the region in general become richer, the institution-building and professional development of the judiciary have a chance of being realized. The courts are therefore far from indispensable at either stage of the economic development. Even if economic development has some association with the improved functioning of the judiciary, the link is, at most, indirect.

CONCLUSION

This study has illustrated significant changes in the enforcement of judgments in a developed area in China. Many improvements have occurred in urban areas, such as diminished local protectionism, increased professionalism, and better enforcement performance. Many factors have contributed to this improvement, including the privatized and diversified economy, streamlined court procedures, and adequate funding for the courts. This shows that the judicial reforms in this area have been effective and that the courts are by no means rubber stamp institutions. Indeed, the role of the courts has been strengthened and they have gained ground vis-à-vis informal disputes resolution mechanisms. As a result of these changes, the direct influence of major political forces on the courts has decreased.

With regard to the relationship between the courts and economic development, this research indicates that neither effective nor independent courts are a necessary condition for economic development, nor are improved courts necessarily the result of greater market demand brought about by economic development.

Neither the hypothesis of North⁷⁶ nor the reverse causation theory is verified by this study. The research suggests, however, the importance of economic development for the courts. It is the developed local economy and financial resources generated by the economy that provide a precondition for better contract enforcement. It also suggests the importance of investment in legal institutions and in the professionalism of their staff.

76. *See supra* note 7.

2009]

ENFORCING COMMERCIAL JUDGMENTS

Table 1: 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	9	0	9	SOEs	2	0	2
Collectively-Owned Enterprises	3	1	4	Collectively-Owned Enterprises	5	0	5
Private Enterprises (Including Individual Business Operators)	25	6	31	Private Enterprises (Including Individual Business Operators)	30	0	30
Foreign Invested Enterprises	0	0	0	Foreign Invested Enterprises	4	0	4
Limited Liability Companies	14	8	22	Limited Liability Companies	22	3	25
Total	51	15	66	Total	63	3	66

Table 2: The Distribution of Amounts at Issue (Unit: 10,000 yuan)

Amounts	<=1	1-4.99	5-9.99	10-49.99	50-	Total
Numbers(%age)	4	32 (49%)	15	11	4	66 (100%)

Table 3: Time Spent in Different Stages of Litigation

	From Debt Default to Petition Filing	From Petition Filing to the End of the First Instance (Adjudication, Mediation, or Withdrawal)	From Handing Down the Court Decisions to the End of Enforcement (Voluntary Performance, Enforcement Suspension, Enforcement Termination)
3 months	4	60	33
>3-12 months	37	6	12
>12-24 months	20		14
>24 months	5		7
Total	66	66	66

Table 4: Previous History of Transactions Between Debtors and Creditors

	First Time	<1 year	1-<2 years	2-<5 years	<5 years	Summary
Cases	8	25	18	20	5	66

Table 5: Enforcement Results

	Adjudication	Mediation	Withdrawal	Total
Numbers	43	12	10	65
Numbers Entering the Enforcement Procedure	33	4	0	37
100% Paid (Voluntarily Paid)	8 (10)	1 (6)	10	19 (26)
80%-99% Paid	0	1	0	1
50%-79% Paid	2	1	0	3
1%-50% Paid	7	3	0	10
None	16	0	0	16 (see Table 6)

2009]

ENFORCING COMMERCIAL JUDGMENTS

Table 6: Totally Unenforced Judgments

	Insolvency of the Debtors	The Courts and the Creditors Cannot Locate the Whereabouts of the Debtors	Debtors have Transferred or Hoarded Property	Total
Numbers	9	4 (with one case involving property transfer)	3	16

Table 7: The Plaintiffs' Impressions of the Court

	Positive	Negative	Unclear or No Comments
Adjudication	42	6	11
Enforcement	6	8	11