

Court Finance and Court Responses to Judicial Reforms: A Tale of Two Chinese Courts

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This research studies the responses of two lower-level courts, one in rural and the other in urban China, to recent judicial reforms focusing on strengthening institutional building and professionalism. It finds that the court-funding structure under which the courts heavily rely on the local government for expenses, together with the unbalanced development of local economy, remarkably affects the two courts' behavioral pattern in different ways. The rural court, for the sake of litigation fees, tries to attract potential litigants to file certain lawsuits, even though it cannot effectively handle them. The efforts toward institutional building and professionalism only aggravate the already difficult situation. The urban court's institutional quality seems to have increased in the reform process, thanks to sufficient resources from the developed and diversified local economy. But it has also become more formalized and bureaucratic, as it tries to exclude difficult and problematic disputes from getting into the court. In illustrating the complexity of transitional China's judicial reform process generated by both the unbalanced economic development and the bureaucratization of the judiciary, this article suggests that the enhancement of institutional quality, which many argue is key to economic development, may itself be contingent upon the success of economic development.

I. INTRODUCTION

One of the findings of the revived law and economic development movement is a correlation between wealth and the operation of legal institutions. Many argue that the enhancement of the quality of legal institutions can have positive and significant effects on economic development (Barro 1997; Brunetti, Kisunko, and Weder 1998; Clague et al. 1997; North 1995; Pistor and Wellons 1999; Shihata 1997; The World Bank 1997; Kaufmann, Kraay, and Zoido-Lobaton 1990, 2003; Davis and Trebilcock 2001). Some even assert that the causal relationship between legal institutions and economic

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growth runs in both directions (Chong and Calderón 2000; Rigobon and Rodrik 2005). While theoretical debates on the role of law in economic development remain (Upham 2002; Clarke 1996; Davis 2004; Carothers 2006; Dam 2006; Trubek and Santos 2006; Davis and Trebilcock 2008), existing empirical evidence generally suggests that these two are closely related and that they tend to be mutually reinforcing (Peerenboom 2007).

Rarely addressed in the literature, however, are the detailed processes and mechanisms by which the laws and economic development interact. These processes and mechanisms are critically important because they are directly related to what reform measures are appropriate in a given context, and they are especially related to how the quality of legal institutions can be enhanced. Against this backdrop, China's recent judicial reforms constitute an invaluable case to study. In the process of rapid economic development, China has also made concerted efforts to reform its court system in the last decade.¹ Central to these efforts are the strengthening of institutions and increased staff professionalism, which are intended to enhance the quality of the judiciary.²

But what impact have these reform measures had on the behavioral patterns of individual courts at the grassroots level? Have these changes actually enhanced the quality of the courts? What are the reasons behind their stories of success or failure?

Based on the author's fieldwork investigations, this article examines the responses of two lower-level courts (basic, or trial courts), one in rural and the other in urban China, to recent judicial reform measures. These courts were chosen because the lower courts are the courts with the most contact with the man in the street and because the lower courts, by far, handle the larger volume of work. The two courts selected for study are in different locations so that regional variations may be revealed. This report will show that the funding structure (whereby Chinese courts rely heavily on the local government for operating expenses) and the funding levels determined by the development of local economies, has had marked impacts on the reactions of the courts to reforms. The rural court can barely support itself with government funding while the urban court has more than it can spend. Therefore, the funding levels and sources have remarkable effects on the two courts' behavioral and operational patterns. The rural court, for the sake of litigation fees, tries to attract potential court users to file certain lawsuits, while it cannot effectively handle them. Local favoritism or protectionism remains quite serious, as local enterprises are still the main source of revenue for the local government and the court. The efforts toward institutional building and professionalism only aggravate the already difficult situation. On the other hand, the urban court's institutional quality seems to have increased in the reform process, thanks to sufficient resources from the developed and diversified local economy. But it has also become more formalized and bureaucratic, as it tries to exclude difficult and problematic disputes from getting into the court.

By describing the complexity of the Chinese courts' reactions to judicial reform measures in their different contexts, this article demonstrates the following: given a certain court funding structure, the strengthening of legal institutions (which many argue is key to economic development) will itself depend on the success of economic development. In addition to all the prescriptions targeting the internal aspects of the courts, external factors also have a determinative role to play. On the other hand, when sufficient resources are available, the bureaucratization of the courts may divert reforms. This study suggests that the current wave of legal reforms must be situated in a broader context that incorporates factors from both inside and outside the courts.

Part II and Part III of this article will set the stage for the study. Part II will introduce the funding structure of Chinese courts and show that the courts must rely on extrabudgetary funds when the budget from the local government is not sufficient. It will also demonstrate that the recently introduced finance policy "separating income and expenditure" does not really alter this situation. Part III presents detailed information describing both the inside and the outside of the two investigated courts. Part IV and Part V will illustrate and analyze the different responses of the two courts. Part VI concludes with some more general implications of the research for enhancing the quality of legal institutions.

II. COURT FINANCE IN CHINA

While the history of court funding in China over the past three decades is complicated, a general theme is that the courts have basically been financed by local governments (Zhu 2007). This has been the case ever since the implementation of the fiscal policy called "eating in different kitchens" pertaining to the central and local governments in the early 1980s (Young 1989; Oi 1999). Under this policy, the local governments are required to cover their own costs with their own revenues. All courts, except for the Supreme People's Court (SPC), have been regarded as a part of their local government. With the increased caseloads in many areas, local governments soon found that it was difficult to afford all the expenses of the courts. A natural solution, then, was to allow the courts to allocate the litigation fees they receive to fill in the budget deficit. As clearly stated in the Interim Measures on the People's Courts' Finances (2001), court funding derives mainly from the budget of the government at the same administrative hierarchical level.³ The budget is basically composed of two parts: the budgetary funds provided by the government at the same administrative level, and the extrabudgetary funds derived mainly from the administrative income of the courts, which basically consists of litigation fees and judicial fines charged or imposed on relevant plaintiffs and defendants.⁴ According to the same directive, the budgetary funds were declared to be the main source of the courts' income, with the

extrabudgetary funds being merely complementary. But nationally and in many areas, as will be shown, the situation is exactly the opposite.

Under this structure, it is not surprising that the income of Chinese courts varies significantly from region to region, given the huge discrepancy in levels of economic development in different regions. The courts in coastal and urban areas, where the local government's financial revenue is adequate, can fully count on the budgetary funds, and they have little incentive to generate additional extrabudgetary income. But the courts in less developed hinterland areas do not necessarily find the budgetary funds alone to be sufficient, as the overall financial revenues in those regions are not adequate for the local governments to operate.⁵ While systematically collected statistics are not available, some anecdotal reports indicate that the problem could be rather serious. In 1997, for example, the budgetary funds for all the courts in the country reached 0.79 billion Yuan while extrabudgetary funds, or litigation fees, reached 3.91 billion, some five times the amount of the former. In the courts of Jiangxi province, in central China, deficits were recorded in each consecutive year from 1997 to 2000 (Xue and Zhang 2001). As shown in Table 1, although the budgetary funds increased by 28.6 percent each year during this period, they still fell far short of covering all that the courts required to meet the expenses of normal operation. The major income of the courts was, indeed, from extrabudgetary funds. The same report also shows that of the 112 lower-level courts in the province, only 9 percent had 25,000 Yuan, the minimum required for normal operation, and this was after both their budgetary and extrabudgetary funds were combined. Another 30 percent of the courts had less than 20,000 Yuan, and 61 percent had less than 16,000 Yuan.⁶ In another hinterland Shanxi province, the budgetary funds of the courts could only cover the fees for staffing and a small portion of the administrative expenses. In more than half of the counties in the province, the courts had to delay salary payments to their staff (Guan 2004).⁷ A national survey indicates that 1,423 Chinese courts (about 40 percent of the courts) delayed salary payments. The number of months when the salary payments were delayed reached 5,536, and the delayed amounts involved 0.23 billion Yuan, affecting 122,430 court staff members, 40 percent of the total workforce in Chinese courts (People's Court Daily 2002).

When budgetary funds are less than adequate, the courts have a natural tendency to generate income through the channel of extrabudgetary funds. To prevent this, the central government launched a policy separating state agency revenues from expenditures (or *shou zhi liang-tiao xian*, literally "two lines in income and expenditure") in the late 1990s. The policy requires that fees received by the courts be directly turned in to the local government in the first place, and it requires the local government to then allocate funds through a separate budget to the courts after taking into account the needs of the courts and the overall availability of the funds.

This policy cannot, however, change the reality of a region's relying on extrabudgetary funds when that region's overall financial revenues are

Table 1. Revenue of Courts in Jiangxi Province, China (1997–2000) (RMB10,000)

Year	Income			Expense					Total	Balance
	Budgetary Fund	Extra-Budgetary Fund	Total	Staffing	Administrative Cost	Investigation Cost	Office Construction and Maintenance	Total		
1997	6,451.2	12,300	18,751.2	5,717.7	4,072.1	7,459.3	3,576.9	20,826	-2,074.8	
1998	7,909	14,218.8	22,127.8	6,937.6	4,958	7,753.9	3,870	23,519.5	-1,319.7	
1999	9,785.4	16,304.3	26,089.7	8,616.8	5,420	8,608.4	3,755.5	26,400.7	-311	
2000	13,671.8	13,184.9	26,856.7	11,313.3	5,405.6	10,218.3	1,016.5	27,953.7	-1,097	

Source: Xue and Zhang (2001).

insufficient: the policy only changes how the limited revenues are distributed between the courts and the local government. In fact, it only gives more leverage to the local government. After the introduction of this policy, the local government could, of course, require the courts to turn in all the fees and fines they collect; in some regions, the government may even require the plaintiffs and defendants to pay relevant fees and fines through a bank, a more convenient way for the government to control the funds. However, after the government has collected the funds, it may not allocate adequate funds to the courts in the separate budget, especially when the overall revenues of the region are insufficient. Some local governments intercept the fees collected by some courts despite the fact that the funds for the courts are inadequate. According to a report conducted by the High Court of Jiangxi province, in 52 percent of the lower-level courts in the province, 10–25 percent of the litigation fees were intercepted by the revenue agencies at the same administrative level, and 30 percent of the litigation fees collected by the High Court were also intercepted (Xue and Zhang 2001).

Thus, when the policy separating income and expenses was initially introduced, the requirement of handing in fees was well implemented, but the requirement of allocating funds was not: the courts were only placed in a more disadvantageous position. This situation could not sustain itself because many courts, in turn, changed their strategies. Some courts could hide the fees, while others might just refuse to turn them in. After all, the normal operation of the courts must be maintained, and this genuine need is always an effective bargaining chip in the court's negotiation with the local government, and it is a powerful defense in the face of audit inspections. Moreover, when the allocated budgetary funds of the courts are not correlated to the fees, the courts soon lose their incentive to collect fees, and the overall revenues of the local governments decrease accordingly.

Eventually, the local government has to allocate a certain amount of fees collected by the courts back to the courts. Usually, the more the courts turn in, the more will be returned. The ultimate result of this game is that allocated funds are determined by the fees collected, and the policy of separating expenditures from income thus results in a return to the original situation in which expenses and income are linked. The two budgetary lines, income and expenditures, eventually evolve back to one line, or one curved line at best.⁸

III. THE TWO COURTS

Of the two courts surveyed, the urban one is located in the booming Pearl River Delta, the heart of coastal Guangdong province (Court G), while the rural one is in the southwest of the hinterland Hunan province (Court H), in central China. Cities G and H where the two courts are situated contrast starkly with each other in terms of geographical location, population, and the level and nature of the economy. City H lies between the Southern

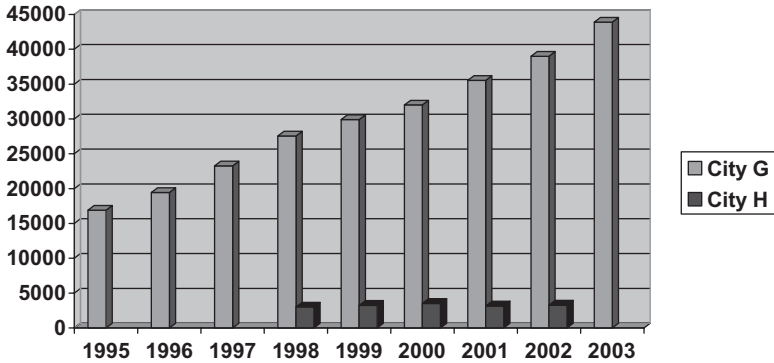


Figure 1. the Economic Development of Counties G and H (Unit: Yuan).

Sources: County G's Annals, various years; County H's Statistical Annals, various years.

Mountains and the Yungui Plateau. The city borders Guangxi Zhuang Autonomous Region to the south and Guizhou province to the west. With a population of roughly 720,000, it is 1,540 square kilometers in area. City H has no railway or highway yet. From Changsha, the province's capital city, a five-hour bus ride is needed to get to City H. In a large measure, its poor transportation system determines its low economic development level. Agriculture, which constituted 49 percent of its gross domestic product (GDP) in 2000, remains the pillar of its economy. Its industry has been developing very slowly over the last few years, largely due to severe competition from enterprises in the more developed coastal areas. Some of its state-owned enterprises were even under reorganization and bankruptcy processes at the time this research was conducted, and many of its town and village enterprises had also lost much of their sap. As shown in Figure 1, the economic activity in City H has been stagnant for quite a few years. Nonetheless, according to local official statistics, its GDP maintained a stable curve during the late 1990s and reached 3,507 Yuan per capita in 2000. For a long time, though, it recorded deficits in its financial balance sheets. In 2004, for example, its revenues were 162 million Yuan, but its expenditures were double that, at 327 million.⁹ Due to the abolishment of the agricultural tax, in 2006, and the loss of some subsidies from the central and provincial government, the local government has to rely heavily on taxes from its slowly developing industry.

By contrast, City G has a very developed and diversified economy. It is not one of the four Special Economic Zones designated to develop economy under flexible governmental measures, but it is, historically, a near neighbor of Hong Kong and Macau and, subsequently, it is viewed as China's frontier for the Reform and Opening-Up Policy introduced in the late 1970. It has thus long enjoyed preferential treatment and policies. Of the 1,314 kilometers of its jurisdiction, most have been urbanized and industrialized. The popu-

lation was 960,000 in 2002, and in addition to that number, there were 670,000 registered internal migrants who mostly came from hinterland provinces such as Hunan and Sichuan. These migrants have certainly supplied a cheap workforce for all kinds of labor-intensive enterprises in City G. The economy in this region has become very diversified: Many state-owned enterprises (SOEs) were privatized and restructured in the 1990s, and the SOEs have lost their traditional dominant role. Foreign invested enterprises, including those from Hong Kong and Macau, are distributed throughout the city. Local government revenues have come more from taxing the private sector than from SOEs and collective enterprises.¹⁰ With a GDP of 43,889 Yuan per capita in 2003, City G is one of the most affluent regions in the country (see Figure 1).¹¹

Court G receives around 20,000 cases (of all kinds) each year, most of which are civil, commercial, or related to judgment enforcement. With more than two hundred staff members, the workload is quite high. In contrast, Court H has more than one hundred staff members, and it receives only about one thousand cases per year. Most of the cases in Court G are civil disputes, suggesting quite a low amount of controversy. Nevertheless, the case numbers from Court G indicate that starting from the late 1990s, its caseloads have not grown as drastically as they had earlier. There were even some signs of slowing down and stabilization.¹² Court H's figures indicate that its caseloads have clearly been on the decline.¹³

IV. RESPONSES OF COURT H

Court H, located in the economically backward hinterland, had a budgetary fund of approximately 1.3 million Yuan in 2003, not even half of the 2.7 million Yuan necessary for normal operation.¹⁴ In order to make up the gap, the court has had to explore other financial resources, which have been limited to litigation fees, enforcement fees, and minor criminal penalties. Therefore, every division of the court (excluding the petition filing division) has had to share the burden. This task has become so pressing that even each adjudicating staff person has been assigned a quota to fulfill. If they do not meet the target, they do not get their salary and bonus.¹⁵ Each court division has maintained a progress report on this matter (see Table 2). Whenever some divisions are behind schedule, the directors of the court and the division heads meet to find solutions. Under such pressure, some adjudicating staff has found it necessary to persuade or even cajole potential litigants to file lawsuits. They have been, in their own words, "looking for rice to cook (*zhaomi xiaguo*)" (Liao and Li 2005: 327). It is not surprising that some categories of commercial litigation fees taken in this court were five times higher than the standard stipulated by the SPC.¹⁶ In addition, according to the law, enforcement fees (*zhixing fei*) should be paid by the petitioner, but, in practice, the fees usually were advanced by the enforcement petitioner. If

Table 2. Income Progress of Court H (October 2004)

Division	Task Set at the Beginning of the Year	Litigation Fees Taken of the Month	Accumulative Litigation Fees	Returned Litigation Fees of the Month	Accumulative Returned Litigation Fees	Accumulative Income of Fines and Penalties	Total	Progress
Criminal Division	400,000	0	1,800	0	0	306,100	307,900	77.0%
No1.Civil Division	290,000	15,757	192,070	-1,000	-11,650	0	180,420	62.2%
No2.Civil Division	300,000	22,500	221,240	-600	-4,000	0	217,240	72.2%
Ad. Division	276,000	29,050	101,198	0	-1,200	2,000	101,998	37.0%
Enforcement Bureau	500,000	35,890	173,226	-1,200	-1,500	10,800	182,526	36.5%
Dispatched Tribunal 1	100,000	10,000	64,350	0	-800	0	63,550	63.6%
Dispatched Tribunal 2	60,000	7,400	50,450	0	0	0	50,450	84.1%
Dispatched Tribunal 3	50,000	3,600	27,900	0	0	0	27,900	55.8%
Dispatched Tribunal 4	50,000	5,400	53,500	0	0	2,000	55,500	111.0%
Dispatched Tribunal 5	50,000	2,700	49,450	0	-1,450	1,000	49,000	98.0%
Total	2,076,000	132,340	943,874	-2,800	-20,600	321,900	1,245,174	60.0%

Source: The author's fieldwork investigation, 2004.

the case ultimately could not be executed, the court would not refund the fees spent during the process of enforcement. But even in cases of successful enforcement, the court still would not refund the advanced fees, even though the fees had been recovered from the petitionee. Usually under such a circumstance, the court was easily let off since the enforcement petitioner had already achieved his major goal—the enforcement itself.¹⁷ While this practice has been widespread across the country, the enforcement fees mean a lot more for rural plaintiffs, whose average income is relatively low.

This financial situation has also taken its toll on the court's personnel composition, despite or regardless of relevant reform measures directed toward professionalism. The court has not wanted to take on new employees, since the funding has been more or less constant every year. The existing staff could cope with the relatively low caseloads, and new employees would only add more to the financial burden. As a result, professionally trained law school graduates are usually not recruited. A recent study indicated that law school graduates in certain places do not want to work for the courts (Suli 2000), but Court H's situation is clearly different. Since law schools have been widely set up across the country, the number of law graduates has surged in recent years. As the employment situation in urban areas worsens, many law graduates from local law schools have tried to enter this court. The truth is that the court has not taken in any of them for years. Nevertheless, time and time again some "blue blood" with good connections but without professional law training has squeezed into the court in one way or another, despite the reluctance of the court. In 2002, for example, two graduates with associate nonlaw degrees joined the court. One of them has been working as a judge assistant at the case filing division. At the same time, as a natural result of the court's remuneration being much lower than that of its coastal counterparts, or of the average income of practicing attorneys, many seasoned staffers have left the court. For some years, the overall professional quality and morale of the court's personnel has been going downhill. Even though many junior adjudicating staff members lack basic knowledge of law, the learning environment in the court has been bad, in spite of the repeated emphasis placed by higher-level courts on judges' training and self-learning. A majority of Court H's staff simply have not had the opportunity or motivation for self-learning, and they have been just hanging around or sharpening their skills at, as a popular saying goes, "making money out of both the plaintiff and the defendant."

More importantly, under such financial pressures, the institution building reforms have further aggravated the situation of Court H. First, these requirements translate into further financial pressure. For instance, due to the disassociation of adjudication from petition filing and enforcement, one case has to be examined two or three times by different divisions of the court. This inevitably increases the cost of handing cases. The institution-building in this regard also complicates the adjudication procedures, which used to be conducted in an informal, but convenient and economical way. Unfortu-

nately, the increased complexity makes the already difficult judgment enforcement more difficult. Originally, when both the adjudication and enforcement were conducted by one judge, that judge would make efforts to award a judgment that would be relatively easy to execute. After all, the same judge had to take care of the enforcement. Since the separation of adjudication and enforcement, however, the judge who awards the judgment will not be responsible for its enforcement. Therefore, that judge will not consider the extent to which the judgment can be executed. Rather, the judge will focus more on whether the judgments strictly conform to the formal requirements of the law, which has become an important criterion for the judge's performance. To a certain extent, the separation of adjudication from enforcement is designed to prevent the corruption that has the potential to appear in the context of overly concentrated power. But anecdotal evidence suggests that corrupt activities have continued, even after the separation. Thanks to this disassociation, the enforcement bureau's power and resources have rapidly expanded, and it has become an independent entity with few constraining mechanisms. Because the judges in the separated adjudication divisions wish to avoid committing mistakes, the judgments they award are now strictly lawful, though the enforcement of these judgments might not be practical. With this kind of judgment, enforcement staff members have more opportunities to blackmail the enforcement petitioners. According to one of my judge informants, the lawful but impractical judgments give judges a greater ability to sell their "alternative but unlawful" methods of enforcement. From the perspective of the plaintiffs, they now have three masters to serve instead of only one. Furthermore, while the litigation parties' rights might be better protected after the court procedures have become more formalized and standardized, the court's hands are to a certain extent tied by this reform. As a result, the court can no longer exercise its power as it did in the past; its actual ability to achieve enforcement has weakened. On the other hand, however, the financial pressures force the court to proactively scout for potential cases. In this circumstance, while the court and its staff are trying to find more cases, fewer can be resolved or executed.

It shall be noted that the reform measures directed at institution-building and professionalism have not changed the original power structure between the court and other political authorities. The limited, circumscribed, and ultimately subordinate role assigned to the court, persists. Whenever there are significant and complicated cases, the court receives or seeks instruction from the local party committee and the government. For example, the court was instructed not to take any disputes related to the reorganization of state-owned enterprises in the region.¹⁸ The government made it clear that relevant decisions, especially those related to the compensation or the reemployment of laid-off workers, would be mediated by the government and the party committee directly. Although such incidents or disputes may not occur frequently, they do make the court look bad because the court cannot tackle any difficult problems but only tries to make money out of ordinary disputes.

It is reasonable to believe that the aforesaid problems have driven potential litigants away from the court, which in turn has an impact on the fees that the court might be able to collect. First of all, in an area with a low living standard and a GDP around 3,500 Yuan, the overcharged litigation fees significantly affect whether or not a potential litigant will use the court. In another court in central Hunan province with an economic development situation very similar to that of Court H, both civil and commercial caseloads in 2003 dropped to the level of the year 1990, but the litigation fees that the court collected for handling the same number of cases was 24.7 times the 1990 amount.¹⁹ Second, litigants' costs for using the court have gone up because of the standardization and formalization movement. For instance, the reformed adjudication procedure holds the litigation parties responsible for collecting evidence, and it adds a series of complicated rules on evidence admission. These reforms force litigants to rely more on attorneys for help; hence litigation expenses have been greatly increased (Suli 1996). In addition, the degraded quality of court staff, intensified corruption, and problems plaguing enforcement further scare off some potential litigants.

The behavioral pattern of potential litigants suggests that they have reduced their use of the court. Some enterprises and individual entrepreneurs interviewed were trying hard to take self-protection measures in business transactions. Some, for instance, only conducted business with familiar clients who had a good credit history or who were of a considerable size. Others, to avoid potential debt default, have even reverted to goods bartering. Losing confidence in the courts, some creditors have hired underground debt collectors to recover their money, even though any open or private collection agency is illegal within the current Chinese legal system (Xu 2005). Believing that the court is incompetent, the public have become more tolerant of the use of these illegal agencies. This further affects the authority of the court in adjudication and enforcement. Some enforcement petitionees openly resist the court's enforcement, claiming that the court just wants money without providing justice. This situation became more serious after the state's power had further retreated itself from rural areas. In the eyes of rural people, a court is just another branch of the state. The enforcement of the court, therefore, is no different from the tax collection implemented by township governments.²⁰

This in turn drives the court to rely more on institutional or repeated players, such as local banks, for litigation fees. Although the banks clearly know the court's limited capability, fortunately for the court, these institutional litigants have to go to the court for other reasons. Needless to say, Court H has to maintain a good relationship with these institutional or repeated litigants for the purpose of collecting litigation fees.²¹ As a natural consequence, in relevant cases, these institutional or repeated players are somehow favored (Galanter 1974). This sort of special favor in fact constitutes unfairness to noninstitutional litigants and further deters them from using the court. A vicious cycle has thus resulted.

All these problems, such as weak enforcement, undue political influence, connections, corruption, low morale, and low quality of court staff, are not new; they had been well documented before the reforms directed at institution building and professionalism (Cohen 1997; Lubman 1999) were implemented. The analysis here only demonstrates that all of these problems are related in one way or another to the current funding structure of the courts and to insufficient resources. Indeed, many of the problems mentioned above fit well with the definition of political corruption (Volcansek et al. 1996: 124), in that they are systematic, institutionalized, and even legitimized. As a result, the problems plaguing the court persist, and worsen.

V. RESPONSES OF COURT G

In contrast, Court G does not have a funding problem because City G has a high degree of economic development and the local budget is abundant. Court G therefore had a budget of about 70 million Yuan in 2003, with all of the official funding from different sources included. With 219 staff members (104 adjudicating, 115 nonadjudicating), about twice the number in Court H, Court G had a budget some 55 times greater. The policy of “two lines in income and spending” has been well implemented in Court G. Every year the court spends millions on office equipment, including computers, digital recorders, cameras, cars, and enforcement weaponry, which contrasts starkly with the situation of Court H, which had only two old-style desktop computers in 2004. In the words of a division head, Court G has all it wants, “from manpower to gun power.” In fact, to exhaust the allocated budget—which is what any institution would do, Court G provides very good benefits for its formal staff, including very decent tour policies. It actually extends its financial help to a sister court in western China. In these outreach activities, Court G also provides the court’s staff with paid trips.

Against this backdrop, Court G has no need to work cases based on the litigation fees. “The People’s Court Litigation Fees Standards” posted on the information board in the petition filing lobby are completely consistent with the standards set by the SPC. It shall be noted that the standards were set many years ago by the SPC, taking into account the average state of the national economy. With the GDP being as high as 40,000 Yuan in the Court G area, these standards are entirely acceptable to local potential litigants.

With sufficient funding, Court G has been able to hire new blood. It is also willing to do so in order to reduce the average workload of existing employees. As a matter of fact, Court G is a magnet for self-motivated young men and women.²² Through strict tests, Court G recruited about sixty people during 2001 to 2003, most of whom are graduates and postgraduates of the leading law schools in the country. These new recruits often pass the Uniform Judicial Examination in two to three years and then rapidly become pillars in various court divisions. Of course, some blue bloods can still make their way

into the court, but the well-implemented requirement for professionalism has deterred many such candidates because they would not have a bright future, as most of them cannot pass the Uniform Judicial Exam.²³ It is beyond dispute that the morale, performance, and professionalism of the court staff have noticeably improved.

At the same time, with sufficient funding sources and caseloads as heavy as 20,000, annually, there is no need for Court G to scout potential cases. As far as the court and its staff are concerned, bringing in more cases would only increase their workload without adding any reward. Politically and economically, the marginal utility of bringing in more cases is almost zero.

To systematically handle the existing cases, the courts have also streamlined procedures. Indeed, the enforcement of commercial judgments by the court has significantly improved. In additional independent research conducted by the author, 70–80 percent of surveyed plaintiffs who seek compulsory enforcement are able to recover all or part of the judgment amounts (He 2009). This result is indeed better than what has been found in American, British, and Russian courts (Best et al. 1994: 365; New Jersey Report 1993: 2). Though it is dangerous to jump to conclusions solely based on these results, it is fairly safe to say that Court G's situation is not bad. Many reasons are behind this improvement, and institution-building and staff professionalism are certainly among them. The same investigation also found decreased local protectionism. This happens because the local economy has been diversified, and the revenues of the local government have come largely from taxing various types of business, rather than from a few SOEs. Neither the government nor the court has reason to favor some enterprises simply because they are local.

Under this circumstance, Court G has another practice directly opposite to that of Court H. To a certain extent, Court G has adopted a strategy of preventing disputes from entering the court. In particular, the court tends to filter or even screen out disputes that are legally unclear, hard to execute, and likely to be appealed or to instigate complaints. These disputes, most likely, would have more negative than positive impacts on the court if filed. Indeed, as the ongoing judicial reforms come with much red tape, the court can use the new rules to excuse itself from taking certain disputes.²⁴ It is true that, across the country, all courts, both in rich and poor areas, turn away or attempt to turn away certain types of cases, including cases involving social-economic claims for which the courts cannot offer an effective remedy (Peerenboom and He 2009).²⁵ But unluckily for Court G, many new types of difficult cases are often generated in the more developed areas where social and economic transformation is more significant. One telling example is the so-called married out women cases (MOW). MOW refers to peasant women who are married outside their home villages. The issue of the disputes basically is whether these women are eligible for sharing compensation, dividends, and relevant benefits from their home villages, especially where rural lands in their home villages have been transformed into urban lands by state requisition. The cases are extremely difficult to get enforced because the

villages are reluctant to distribute anything to these women who are already married outside of their villages. The initial response of the court was to not take the cases as the court argues that the disputes between the individual women and the village collective are not civil disputes because the legal status of the two are not equal, a well-entrenched principle in Chinese law. The disputes also do not fall under administrative litigation because the village collectives are not a part of the administrative apparatus. Even when it was under pressure from the local party committee to solve the disputes, the court still argued that these cases could only be taken as administrative litigation after the township government had stepped in and made a decision. By so doing, the court filtered out a large amount of disputes that could have flooded the court (He 2007b). While the MOW cases could occur everywhere in the country, the judges interviewed in Court H have never heard of such cases. Their docket basically consists of traditional nonpayment cases and other civil disputes.

Moreover, Court G also makes efforts to emphasize the difficulty of using the court to get justice, trying to deter at least some potential litigants who might have inflated expectations. In the lobby of Court G's petition filing division, there hangs an eye-catching notice: "What You Need to Know to File." It covers the relevant preconditions for filing civil complaints, administrative complaints, minor criminal complaints, and enforcement applications. This notice, indeed, looks more like "What You Need to Know NOT to File," placing the emphasis as it does on what does NOT fall into the court's business; it clearly indicates that disputes that do not conform to certain requirements will not be accepted. At the same time, the court also hands out leaflets like "Tips on the Risks of Civil Litigation" and "Tips on Evidence Collection for Potential Litigants." These serve to remind potential litigants in advance of the risks they might be exposed to and the obligations that a plaintiff or petitioner must fulfill. For instance, a plaintiff could possibly go home empty handed because the case does not meet the filing requirements, the defendant has been liquidated, the statute of limitations has passed, the evidence cannot be admitted, or simply because the defendant's address was not provided correctly. The main goal of all these tips is to make known to potential litigants that the court is not an almighty organization. Litigants themselves have to put in a lot of personal efforts as well, and consequently, the litigation costs may be higher than expected. To put it in simple terms, the tips warn potential litigants that they should not have unrealistic expectations when bringing a case into the court. As for some cases that are legally difficult to handle and/or are hard to execute, the court will emphasize the difficulty beforehand to the potential litigants. This precaution is designed to prevent dissatisfied litigants from getting the court into trouble after their expectations are not met in the court process. All these practices can be interpreted either as being the political wisdom of "one can achieve only through foregoing," or simply as bureaucracy. But bureaucracy here appears in a relatively friendly and subtle way.

On the other hand, Court G has made every effort in massaging potential litigants, implementing policy lines like “The Judiciary for the People” and improving the attitudes of its staff. In its petition filing division, which serves as the face of the court, there is a clean and tidy lobby furnished with comfortable furniture, an umbrella stand, storage for small items, a computerized inquiry system, air-conditioning, and a water fountain with disposable paper cups. The counters and desks for registration, payment, refunds, petitions, and complaints look like a modern assembly line. Electronic screens on the counters display the specific location for petition filing and the telephone number for registering complaints. Every visitor will notice two plates carved in golden characters hung on the wall. One was awarded by the High Court of Guangdong Province, with “The Distinguished Court Which Satisfies the People” on it; the other, awarded by the SPC, has written on it “The Outstanding Petition filing and Petition Division.” The whole petition filing division looks more like a commercial bank in the service sector than a state institution. By contrast, the petition filing division of Court H does not even have a decent chair!²⁶

Only in this context can one understand why some survey evidence has suggested that plaintiffs’ comments regarding urban courts are positive (Michelson 2008). First of all, the plaintiffs’ impressions and attitudes are very subjective and relative. Before actually going there, a court in their minds could have been characterized by Chinese colloquialisms like “high entrances, unfriendly faces, endless requirements” (*men nan jin, lian nan kan, shi nan ban*) or “complainants lose, defendants lose, but the court wins.” Many of the plaintiffs with no previous court experience might have imagined the court to be just another local administrative branch or something similar to what has been reported in the media. The more liberal or commercial local media in the Pearl River Delta, such as the *Southern Weekend* and *Southern Metropolitan Daily*, may be seen as having relentlessly depicted the corruption and incompetence of the courts, to cater to their readers’ appetite. But once the plaintiffs encounter the court in reality, they might be impressed by the growing professionalism, the improved attitudes of the workers, and the spirit of “The Judiciary for the People.” At the same time, the explanations and clarifications provided by the court staff and the clearer procedures surely add more points. So even if many disputes are not really settled (for instance, the enforcement is not as complete as it should be), the plaintiffs could nonetheless understand that this has little to do with the court itself. After all, the difficulties that the court has emphasized are not just excuses. In China’s poorly regulated market environment, to execute every judgment is far beyond the capacity of the court. But not all of the plaintiffs can appreciate this point. In other words, it is important for the court staff to make it clear.

Although the court has a tendency to avoid taking difficult cases, this does not mean it is able to do so for every kind of difficult case, or all the time. Whenever there are significant and complicated cases, including those

involving politically sensitive and collective social-economic disputes, the local party and government will not, of course, let the court handle the disputes openly and independently. But these political powers do want to solve the disputes and pacify any resentment as soon as possible, in part to achieve the goal of social stability and to attract a large flow of foreign direct investment. So the common practice is that the government will satisfy the basic claims of relevant parties, especially where injustice is obvious and the disruption of social stability is imminent, using the so-called social stability maintaining budget (*weihu shehui an'ding tuanjie fei*).²⁷ The court is usually asked to participate in and streamline the process—for instance, to facilitate the arbitration process of workers' compensation cases, or to freeze the fixed property of those runaway enterprises where the investors have disappeared (Lee 2002). Of course, everyone knows that the court is acting as a rubber stamp, but the court, by providing services in the process, does not look bad in the eyes of potential litigants.

These friendly attitudes and professional practices, however, have not attracted excessive disputes to the court. For reasons mentioned earlier, precisely by providing these sorts of “services,” the court filters out and turns away some troublesome disputes. While Court H, for the sake of litigation fees, has tried every way to scout more lawsuits, has accepted all kinds of cases, and has received much blame when the cases have not been satisfactorily handled, Court G is in a different game. The latter clearly advises the potential litigants that they themselves are responsible for the risks inherent in the litigation process. This way, the potential litigants will have a good idea in advance of the pros and cons, before a case is brought into the court. This kind of education is important because it could lead to having litigants with more realistic expectations about the court's power and capabilities. The litigants will give up if it seems hopeless, even though the law may be on their side.²⁸ Therefore, the cases accepted by Court G are mostly capable of being handled. For those disputes that would involve a lot of energy and time, the court will find excuses based on modern legal procedures and formal rational rules in order not to take on the case; in this sense, the modernizing legal system offers the court more opportunities to play the game (see, e.g., He 2007a). There is little doubt that with the increased quality, the direction the court is going in is more bureaucratic and formally rational (Weber 1954), despite some friendly tactics it has adopted.

VI. CONCLUSIONS

This article has shown the effects of court finance on two courts' remarkably different reactions to recent judicial reforms in China. It suggests that financial adequacy surely is one of the most needed preconditions for the enhancement of court quality. Under China's current institutional arrangement in which court funding is directly linked to the performance of local economies,

the local economies, via the funding of the courts, indirectly determine the destiny of judicial reforms. In a region where the economic development level is low and the financial resources of the court fall short, the court has to be more self-reliant. As a result, litigants are targeted and the legal system's functioning becomes unavoidably skewed. More importantly, this "self-sufficient" model of operation can result in a spiral of degeneration. How long the operation of such a court can be sustained is a big question. In addition, when financial resources are inadequate, reform measures aimed at institution-building and staff professionalism further aggravate the situation. On the policy level, the funding of hinterland and rural courts is a problem that policymakers must confront. In contrast, in an area where the economic development level is high and the financial resources of the court are sufficient, at least the reforms do not altogether flounder, despite some cases being rejected as a result of growing bureaucracy.

While the adequate funding does not change the subordinate role of the courts, it certainly affects the way they handle the so-called significant and complicated cases. In Court H, local political powers simply do not want the court to participate in the handling process of politically sensitive and social-economic cases because the court and the local government are unable to pay the bill. As a result, when such potential litigants seek help from the court, the court will surely refuse to take on their cases. In Court G, however, local political powers want the court to be part of the process of pacifying social discontents, in the name of the law. The court consequently acts as a facilitator. Ultimately, both courts largely remain the instruments of the local political power as far as these disputes are concerned. The only difference is that the local political powers in City G, supported by abundant financial resources, are able to solve some complaints that would otherwise lead to social unrest. The local economic development, once again, seems to be a decisive factor in understanding the behavioral pattern of the local government and the court.

Note that funding is only a necessary but not a sufficient condition for enhancing the court quality. When funding falls short, the courts are so hungry that they will pick up whatever possible cases they can, without differentiation, but when funding is abundant, they become reluctant to take cases that are hard to execute. If examined in the light of formal written law, these practices are not unlawful, because the court has found relevant stipulations in the law to use as justification. Of course, as much of the law and society literature suggests, lawyers and courts often serve as "gatekeepers" between the legal system and social life, thus it is difficult to argue that what Court G has done is abnormal or dysfunctional. Keeping some important social justice problems out of the court's jurisdiction is not a definite indication of degraded quality. But if the court is examined as the most important formal mechanism of dispute resolution, then it is hard to say that it is working in a positive direction. The growing bureaucracy and formal rationality might have imposed challenges as to whether the court can resolve

disputes and deliver justice in its own transition process. The problems of solving the disputes cannot be resolved simply by increasing the budget. Like an old saying goes, “money is important but there are a lot of things that money cannot do.”

The research further suggests that factors external to the courts are also crucial in studying and launching judicial reforms. The same reform measures might lead to totally different results when social and financial backgrounds are different. To understand the relationship between judicial reforms and the underlying social and economic conditions, therefore, there is a need to examine the local contexts in which the courts are situated. In China’s case, in particular, the court quality and the effectiveness of judicial reforms seem to be contingent on a developed and diversified local economy. While an effective court system might be crucial to economic development, as many economists assert (North 1990; Williamson 1985), this tale of two Chinese courts shows that it is economic development that has led to a higher quality court (Clarke, Murrell, and Whiting 2008). This further suggests that developing countries should not focus exclusively on judicial or legal reforms. Rather, it is appropriate to emphasize reforms conducive to economic development as well, if not in the first place.

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NOTES

1. See “The Five Year Reform Outlines,” and “The Second Five Year Reform Outlines” issued by the Supreme People’s Court of China in 1999 and 2004, respectively.
2. This includes the civil adjudicating procedure reform that separates adjudication from petition filing and judgment enforcement, in a way to standardize and streamline the procedure. To combat the notorious problem of enforcing court judgments, the original enforcement division of the courts has been elevated to a relatively independent enforcement bureau where the director is usually of the same rank as a vice director of the courts, allowing more resources for enforcement. To increase the quality of judges and incubate professionalism in the courts, the passage of the Uniform Judicial Exam has become a prerequisite for new recruits; the courts have also tried to recruit more judges from law graduates and experienced lawyers rather than from discharged military personnel, which used to be an entrenched practice. The courts have also introduced stricter

- disciplinary action to regulate the ethical aspect of judges. See *The Law of Judges*, promulgated in 1995, amended in 2001.
3. The directive stipulates that the income of the people's courts includes budgetary funding, extrabudgetary funding, and other income. Chapter 6 clearly stipulates that the People's Court budget belongs to the budget of the same administrative level under the current fiscal system.
 4. For a detailed description of the development of China's budgetary and extrabudgetary funds and its fiscal system, see Oi (1999: 211–18).
 5. The situation of the scant court funding is also related to the view that the function of the courts is not important. For a long time the major function of the courts—dispute resolution—was regarded as marginal by political leaders, and the law enforcement function of the courts is regarded as only complementary to that of the police and the procuratorate.
 6. The per capita GDP of the province only reached 9,439 Yuan in 2005. See China net, <http://english.china.org.cn/english/features/ProvinceView/184162.htm> (accessed 5 February 2008).
 7. In Jiangxi province, this percentage reached 78 percent (see Xue and Zhang 2001).
 8. The reforms of court funding have continued, however. After this investigation was completed in 2004, a new directive was issued in April 2007 to reduce and exempt litigation fees for certain types of cases and low-income plaintiffs, as a response to the party's policy "building the harmonious society." This has further aggravated the poor situation of rural courts. As a solution, specific funds have been allocated to these courts from higher-level courts and the central government. In the year of 2007 alone, the central government subsidized the judiciary up to 3 billion Yuan. This also shows that the central government has resolved to reverse the current situation, even though the effects remain to be seen. See *People's Daily*, 19 September 2007, at <http://politics.people.com.cn/GB/1026/6286758.html> (accessed 27 August 2008).
 9. Data obtained from the official Web site of the municipality (accessed 12 February 2008).
 10. 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. And the local annals (*nianjian*) also indicate that the production of large private enterprises amounted to 24 percent of the overall industrial production, at 14 (2006).
 11. Data from Yearbooks of City G and Annual Statistical Books of City H.
 12. According to the official statistics, the numbers generally increase by 20 percent through the early 1990s.
 13. For an analysis on the recent decline of the caseload, see the author's recent work (He 2007a).
 14. Even 2.7 million Yuan is nothing extravagant to a work unit of 120 staff (including staff in its five tribunals). Under the 2.7 million budget, the per capita budget, on average, only reaches 20,000 Yuan, which would cover salary and office expenses. But each staff member's salary alone consumes some 10,000 Yuan (Interviews with local judges, October 2004).
 15. The same situation occurred in another court in central Hunan province (see Liao and Li 2005).
 16. A similar situation occurs in another county court of hinterland Hunan province, where some litigation fees taken are 12.5 times higher than the SPC standards (Liao and Li 2005).
 17. As for minor criminal cases, more and more monetary penalties take the place of the imprisonment that, according to the law, should be imposed. Indeed, some minor criminals are more than happy to pay for their freedom. Together there is

a “perfect match.” Hence, the criminal division has come to play a very important role in narrowing the court’s financial gaps. This has nothing to do with the commercial cases, but this practice has put the court’s reputation at risk. The public comes to regard the court as an organization hungry only for money.

18. Interview with a local judge on 17 October 2004.
19. The civil-economic caseloads of that court peaked at 4,680 cases in 1977. The number had dropped by more than half to 2,048 cases in 2003 (Liao and Li 2005).
20. A division head of Court H told me that he was beaten up by villagers when he executed a judgment in a rural area. Investigations conducted in other places also find that rural people did not differentiate between administrative agencies and the courts (He 2004).
21. Sales contract lawsuits had dropped from eleven cases in 1996 to one case in 2000, but loan-related lawsuits dropped only from 229 cases to 149 cases.
22. The average annual income of a formal staff member in Court G was around 100,000 Yuan in 2003 (Interviews with local judges, 2004).
23. The passing rate of China’s Uniform Judicial Exam has been quite low, ranging from 7–10 percent (see Ahl 2006).
24. The standardization or formalization movement is very similar to bureaucracy and formal rationality as described by Max Weber (1954).
25. The courts of the Guangxi Zhuang Autonomous Region, for example, explicitly refused to take thirteen categories of dispute in 2004. These categories include capital-raising disputes, illegal “sale-network” disputes, real estate disputes as a result of governmental management, disputes of workers laid off due to company restructuring, disputes on compensation for rural land requisition and resettlement of farmers, disputes of local governments terminating agricultural contracts on a large scale, disputes on disbursement of collectively owned assets, disputes relating to “Two-Committees-One-Department” as debtors, bankruptcy application without clear employee settlement arrangements, disputes of manipulated securities trading causing infringement, disputes of fengshui, burials, and graveyards, etc. See “Guangxi Courts Refuse to Take Thirteen Categories of Cases,” 24 August 2004, *China Youth on Line*, the online version of *China Youth Daily*, last visited on the same date (http://zqb.cyol.com/content/2004-08/17/content_930206.htm, accessed on March 16, 2009). Of course this phenomenon is by no means limited to Guangxi province.
26. Two judges once told me that the petition filing division is the most important division of a court. Only in seeing the contrast between these two courts can I understand what they meant.
27. According to the author’s fieldwork investigation, this practice exists most commonly in disputes of unpaid wages when the investors disappear. It may occur in other disputes, for example, those between the disappeared developer of an abandoned real estate project and apartment buyers who may not get a habitable flat, those of unpaid wages between an insolvent supermarket and the employees, or those in which death or physical injuries occurred. In a word, the government will pay the bill for social and political stability.
28. For example, during the time of my field investigations, a foreign investor in a rather large joint venture suddenly fled the country. Thousands of workers were unpaid for many months but the factory buildings and equipment were under-mortgaged. A supplier of goods to this joint venture inquired to a court staff person about the possibility of recovering the costs of goods by litigation. The court employee clearly told the supplier that when thousands of unpaid workers were waiting, a “runaway enterprise” of which all fixed assets were mortgaged would not have any money left behind to pay suppliers. And this supplier eventually gave up on bringing the case to court.

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