

Preface

Judicial reform has been launched in China since the late 1970s and made many achievements. The government has announced that a socialist system of laws with Chinese characteristics has taken shape. Judges are better educated with the promotion of professionalism within the system. Trials, both criminal and civil, have been remodeled in accordance with an adversarial system in which judges passively sit in the courts and disputes are resolved by presenting conflicting views of fact and law. Adjudicative powers of the collegiate benches and single judge trials have been expanded and highlighted. A set of measures have been promulgated in relation to the flow and quality of cases. As part of the reform, efforts have also been carried out to improve the functions of the adjudicative committee (AC) that are established in each Chinese court.

The AC is a statutory committee established in each Chinese court based on the doctrine of democratic centralism. An AC comprises the court president, vice presidents, and chief judges appointed upon the recommendation of the court president by the standing committee of the relevant people's congress. The AC has three functions: sum up adjudicative experiences, discuss and decide on important or difficult cases, and discuss other issues that are related to the adjudicative work. The AC decision-making process involves the exercise of discretion.

Discretion is a concept that Chinese scholars have not discussed as much as their Western peers. This concept has received a substantial amount of attention from law and the social sciences. Legal scholars consider discretion to be rule-oriented. Discretion provides a means for the translation of rules into action. Basic to the notion of discretion of legal theorists is an overriding concern with the relation between rule and discretion. In contrast, social scientists analyze discretion in terms of decision-making, the freedom to make decisions. In their definition, discretion is not only created by rules but also shaped by a wider range of factors, such as organizational, political, economic, and cultural factors.

This book is the first monograph in English on the Chinese AC proceedings. This may not seem surprising given the application of deliberative secrecy to the AC decision-making process. The AC discusses and decides on cases behind closed

doors and is not subject to open court principles. Not many research materials are made public. On the other hand, the scarcity of English studies on the AC may seem surprising given the paramount authority that the AC represents within each Chinese court. The AC decides on behalf of the whole court and has final say in cases and administrative matters that are passed onto it for decisions. The important position held by the AC should not be neglected.

To be more precise, this book studies the organizational influences on judicial discretion within AC proceedings in China. Previous studies offer little insight into the impacts of institutional reforms on the AC decision-making process. This study uses the bounded rationality theory developed in economics and related disciplines to formulate an analytic framework for a systematic and comprehensive examination of the impacts of organizational factors on discretion within the AC decision-making process. The theory of bounded rationality agrees that people have rationality in decision-making, but this rationality is not perfect and bounded by various aspects. The central statement of this thesis is that institutional reforms and practices have mainly reduced judicial discretion within AC proceedings through the rationalization of organizational processes. Rationalization in short means aligning behaviors with goals.

This book is a methodological breakthrough in the study of the Chinese legal system. The Chinese judiciary has been discussed against the contexts of independence, accountability, rule of law, and judicial democracy. A few scholars have indicated that the Chinese court system has been rationalized, but they have not elaborated on what the concept of rationalization means. This book has carefully examined the bounded rationality theory and its various dimensions. Four bounded aspects are identified in the AC decision-making process, which give rise to discretion. They are (1) the goals, (2) information processing, (3) composition, and (4) procedures of the committee. Several theoretical bases are laid: ambiguity in organizational goals creates discretion, inaccurate information causes uncertainty and results in discretion, and flexible procedures increase discretion. The AC reforms have reduced discretion by diminishing ambiguity, uncertainty, and flexibility in the four organizational aspects. The committee goal of justice involves less ambiguity. Improved committee communication and composition conduce to information processing, which decreases the chances of inaccurate information and uncertainty. Case screening discretion is lessened by prevailing policies and reformed procedures in capital, innocent, mitigated, and group action cases, which indicate a decrease in the flexibility of procedures.

This book has raised normative challenges. This book uses rationalization as a paradigm to analyze the practices and judicial reforms in the AC system. On the other hand, the influences of the four organizational aspects on judicial decision-making are assessed by reference to judicial independence and accountability. It finds that the AC goal of harmony involves more discretion and increases the possibility of political influences in the judicial decision-making process, encroaching on the independence of the judiciary. Reforms to improve the communication abilities of the AC promote its accountability to integrity. The reforms in committee composition promote its accountability to organizational and professional competency as well as

its capability to take a strong stand against political pressures. At the case screening stage of the AC, judges have the least discretion to maintain jurisdiction over group action cases, which indicates the lowest degree of procedure independence. These analyses show that efforts to rationalize the AC decision-making process are not necessarily compatible with the ideals of independence and accountability, which suggest the necessity for further consideration of standards for the AC and Chinese judicial reforms.

This book has been completed with a vast amount of empirical evidence. In recent years, there has been an increased emphasis on a more empirical and less ideological approach in the study of the Chinese judiciary. This approach is developed on the assumption that a thick description of the actual functioning of the Chinese judiciary helps to capture the complexity of the reality and highlights significant issues in the Chinese court system. Empirical data collected to support the central argument of this book were obtained throughout my five-year doctoral research. I visited courts and interviewed judges in four adjacent cities of the Guangdong Province in China. Four interview outlines that recorded the questions that I had asked in interviews are appended to this book. These first-hand data obtained in the interviews provide insider views of the workings of the Chinese judiciary and yield a clear picture of the system.

This book has been largely built on the research conducted during my doctoral studies at the University of Hong Kong Faculty of Law from 2006 to 2011. The completion of this research was a long and arduous journey. It would not have been possible without the encouragement and support of my supervisors, families, and friends. I am heartily thankful to my primary supervisor, Prof. Fu Hualing, for his unwavering guidance and encouragement throughout my thesis-writing process. His insights in Chinese law and his diligent scholarship will benefit me in my future academic career. I owe my deepest gratitude to him. Second, I am greatly thankful to Prof. Simon NM Young, my co-supervisor, for his continuous support and encouragement over the entire period of my study. His serious attitude towards teaching and writing is very impressive. Third, I would like to express my sincere gratitude to my thesis examiners: Profs. Tony Carty, Zhu Guobin, and Zhang Xianchu. Their insightful comments and thought-provoking criticisms have helped to refine and strengthen my arguments. I especially could not adequately express my gratitude to Prof. Tony Carty for his strong support in the final stage of the Ph.D. study. Also, my special thanks go to Prof. Larry Catá Backer and Dr. iur. Guido Mühlemann. They involved me in writing projects and provided me with valuable comments. I also want to thank Prof. Tang Li of the Southwest University of Political Science and Law and colleagues from the Sun Yat-sen University for their invaluable support in my career development. Fourth, I am grateful, also, to friends from the courts who were patient with my questions. Without their kind help, the interviews could not have been conducted and some court regulations would have been unavailable. I would also like to express my gratitude to Dr. Gilbert Y.Y. Wong in the Faculty of Business and Economics for his precise explanations of the concepts and theories in management science. Moreover, I give thanks to my fellow colleagues and other friends, especially Dr. Lee Manyee, Dr. Firew Tiba, Dr. Xia Chunli, Ms. Lin Lin,

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Li Li

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Li, L.

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