

Judicial Transparency as Judicial Centralization: Mass Publicity of Court Decisions in China

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Abstract: The recent mass publicity of court decisions in China, this article argues, is part of the larger trend of the Chinese judiciary becoming increasingly centralized. The transparency reform enables the Supreme People's Court to directly control the information reporting process within the judicial hierarchy and rein in local courts through public scrutiny, thereby functioning as a solution to the agency problem between the central and the local governments. Interestingly, evidence shows that local courts responded strategically, rendering disclosure of decisions far from the level that the central government requires. In the meantime, the central government has dispatched increasing amounts of judicial cadres to local courts, and such provincial judicial cadres are associated with more than a 10% higher disclosure rate of judicial decisions, suggesting that centralization of personnel is used as a tool to effectively implement the SPC's centralized policy. The transparency reform, coinciding with reforms in many other domains, embodies an important shift toward a more centralized judicial sector in China.

Introduction

Since January 1, 2014, courts in China have been required by the Supreme People's Court (SPC) to disclose judicial opinions online.¹ This transparency reform has resulted in the availability of vast numbers of cases for public consultation. As of October 2019, the volume of legal documents published on this online venue exceeded 60 million. In a news report in February 2018, Xinhua News Agency, the official state-run agency, acclaimed the SPC website as the largest judicial decision publicity venue in the world.²

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¹ Susan Finder, 'China's Master Plan for Remaking Its Courts: Analyzing the Supreme People's Court's Outline for Reforming China's Courts', *The Diplomat*, 26 March, 2015, accessed 31 August, 2020, <http://thediplomat.com/2015/03/chinas-master-plan-for-remaking-its-courts/>.

² Xinhua News, 'Over 42.6 Million Judicial Opinions Are Online', *Xinhua*, 27 February, 2018, accessed 31 August, 2020, http://www.xinhuanet.com/legal/2018-02/27/c_129818217.htm.

The publicity of mass court decisions in China seems puzzling. Disclosure of government information is intuitively linked to an aspiration for political participation, which in turn contributes to accountability and therefore creates an obligation for responsive government.³ As a style of governance, transparency is usually associated with democracies, and few authoritarian states show much interest in government transparency.⁴

In this article, we explain the transparency reform of the Chinese judiciary in a principle-agent theoretical framework, and show the strategic moves of both the central and the local governments in this setting. Previous studies of the political system in China have documented a deeply rooted agency problem between the central government (the principle) and local courts (provincial courts and courts at the lower levels – the agents), where the center intends to promote the judiciary as an institution that implements central policies and laws across the country, while in practice courts mostly function as a local apparatus that protects local interests, owing to the specific structure of the Chinese political system (for example, local courts' finance and personnel being controlled by local governments), and, more importantly, information asymmetry embedded in the multiple-layered government structure and thereby the inability for the center to monitor the local. The recent mass publicity of court decisions, this article contends, is a top-down effort to address this agency problem. The reform, by building up a centralized judicial data collection system, enables the Supreme People's Court (namely, the central government) to directly control the information reporting process within the judicial hierarchy and reduce information asymmetry; by making mass local court decisions publicly available on a centralized venue, it attempts to curb wrongdoing and improve decision consistency and quality in local courts through public oversight.⁵ Together, the transparency reform helps the center (i.e., the SPC) rein in local courts.

Yet the principle-agent theory also predicts that local courts will hardly comply with the SPC without reservation, and the SPC may exert further efforts to improve compliance. In a typical agency problem setting, agents usually respond strategically to the principle's requirement to avoid scrutiny, crippling monitoring measures taken by the latter. What we observe in the Chinese judiciary is consistent with this prediction. In specific, this article uses data to reveal a range of nuanced patterns regarding the judicial transparency reform. It is founded that, even after the SPC required courts at

³ Mitchel de S.-O.-l'E. Lasser, 'Judicial Deliberations: A Comparative Analysis of Transparency and Legitimacy', *Oxford: Oxford University Press* (2009), pp.306-7.

⁴ James R. Hollyer, B. Peter Rosendorff, and James R. Vreeland, 'Democracy and Transparency', *Journal of Politics* 73(4), (2011), pp. 1191-205.

⁵ Benjamin L. Liebman et al., 'Mass Digitization of Chinese Court Decisions: How to Use Text as Data in the Field of Chinese Law', *21st Century China Center Research Paper*, 15 June, 2017, accessed 31 August, 2020, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2985861.

all levels to disclose all decisions, the average disclosure rate of local courts was less than 50% in our study period (2014 to 2016), suggesting that disclosure is largely incomplete and local courts respond to the SPC's mandate strategically. On the other hand, coinciding with the transparency reform, since 2013, more cadres with work experience in central government (including the SPC) have been appointed as presidents of provincial courts. Our empirical evidence further shows that, in provinces where the high court president was dispatched by the central government, the disclosure rate of judicial decisions was significantly higher than in other provinces – in both statistical analysis and regressions controlling for a wide range of potentially confounding province features. The evidence suggests that the central government was using centralization of personnel and cadre management as tools to effectively implement its centralized transparency policy, that is, the central government has undertaken further response to local courts' strategic movement.

When we look at the bigger picture, the recent judicial transparency reform can be seen as part of the trend whereby the judiciary becomes increasingly centralized, and the entire centralization process is aimed at addressing the long-lasting agency problem that haunts the Chinese legal system. In recent years, not only have court decisions become accessible by the public through a centralized database operated by the SPC, but also detached tribunals in remote regions live-broadcast trials from their high-tech courtrooms financed by treasury bonds of the central government.⁶ In fact, daily operations of grassroots courts, including adjudication management and even infrastructure building, now depend on transferred payments from the central government.⁷ Circuit courts affiliated with the SPC are established at six different cities to hear cases and better monitor local judiciary. Regarding judicial cadre management, centralization is evidenced by the fact that an increasing number of leaders of provincial high courts have experience working in central government. Local cadre management is also concentrated though not yet centralized. Chief Judges of grassroots courts have been appointed by provincial governments under the SPC reform of “unified administration by provinces” (省级统管) since 2013. The transparency initiative is another reform that embodies this top-down process of the Chinese judiciary.

It is hard to predict the consequences of this trend of centralization in the judiciary, and to discuss its normative implications, due to the dearth of solid evidence; preliminary findings drawn from the reform suggests that centralization (by creating a centralized venue and appointing more central cadres) improves disclosure and transparency, which is a desirable outcome in its own right. However, centralization always has its limits. For example, judicial cadres dispatched from the central

⁶Humei Tang, ‘加快人民法院经费保障和财务管理长效机制建设’ [‘Accelerating the Establishment of A Long-term Effective Working Mechanism for Funding Security and Finance Management of People’s Courts’], *Renmin Sifa* [People’s Judicature] 13, (2013), p. 54.

⁷ Humei Tang and Feng Guo, ‘2009 年度全国法院经费分析报告’ [‘An Analysis Report of Expenses of China’s Courts in 2009’], *Renmin Sifa* [People’s Judicature] 17, (2010), pp. 71-72.

government may have less tacit knowledge about local political atmosphere and social environment, and fewer political connections with local governments, leading to problems such as mismanaging the local judiciary and being less capable of obtaining political and financial resources at the local levels.

The findings and discussions of this article contribute to the extant literature on the judicial system in China. As already pointed out by scholars and commentators, a trend of centralization has emerged in the Chinese judiciary over the last decade.⁸ Yet few have noted that the recent mass publicity of court decisions, together with many other reforms brought by technological advancements (e.g., trial live-broadcasting, judicial process publicity), is part of this centralization process. In contrast to previous understanding that the implementation of the transparency measure is an internal court matter under the control of the SPC which does not depend on actors outside of the court system,⁹ our empirical evidence suggests a more complicated pattern: even technical reforms (e.g., developing a centralized website and requiring disclosure) are embedded in and consequently can reveal the underlying political context in which the judiciary is situated.

Scholars have been interested in examining the institutional motivations underlying major developments in the Chinese judiciary for the last few decades. A strand of literature attributes judicial reforms and developments to the SPC's attempt to preserve its long-term institutional interest in a professional judiciary. Rather than being a mere subordinate of the Chinese Communist Party, the SPC has transformed into a "relatively autonomous policymaking organization,"¹⁰ and the expansion of the SPC's powers and reforms by the SPC was motivated more by institutional self-interest than by any ideology of legal reform.¹¹ The findings of this study echo this understanding and provide additional evidence. In particular, this article depicts the tension between the SPC and local courts in disclosing judicial decisions. The SPC is admittedly motivated by self-interest to promote transparency, but local courts are also strategic and do not always comply with the SPC. Against this backdrop, centralization of judicial cadres is

⁸ For example, Eric C. Ip, 'The Supreme People's Court and the Political Economy of Judicial Empowerment in Contemporary China', *Columbia Journal of Asian Law* 24(2), (2011), pp.367, 415 ('In recent years, the SPC has been tightening its control over the personnel and management of provincial high courts.'). Ronald C. Keith, Zhiqiu Lin and Shumei Hou, 'China's Supreme Court' (London: Routledge, 2013), p.147 ('SPC's intention to centralize judicial power and eliminate local protectionism in judicial processes ...'). Eric C Ip and Kelvin Hiu Fai Kwok, 'Judicial Control of Local Protectionism in China: Antitrust Enforcement Against Administrative Monopoly on the Supreme People's Court', *Journal of Competition Law & Economics* 13(3), (2017), pp.549, 560 ("The Supreme People's Court as a Centrifugal Force.").

⁹ For example, Björn Ahl and Daniel Sprick, 'Towards Judicial Transparency in China: The New Public Access Database for Court Decisions', *China Information* 32(1), (2018), pp.3-22.

¹⁰ Eric C. Ip, 'The Supreme People's Court and the political economy of judicial empowerment in contemporary China', *Columbia Journal of Asian Law* 24(2), (2011), pp. 374-5.

¹¹ Taisu Zhang, 'The pragmatic court: Reinterpreting the Supreme People's Court of China', *Columbia Journal of Asian Law* 25(1), 2012.

a further response by the SPC – and an effective one – to consolidate control and enhance its authority.

The centralization feature also makes the transparency reform in 2014 different from measures of the SPC to promote judicial transparency in the past. For example, back in the early 2000s, the SPC issued a number of rules to promote judicial transparency. Yet their goals were to promote paper-based publicity of court decisions, or encourage courts to publicize decisions on their own websites on a voluntary basis.¹² Few, if not none of the transparency reform in the past has featured centralization.

This study also contributes to the literature on authoritarian transparency. Although it goes against expectations, authoritarian regimes often adopt a wide range of democratic institutions in their governance: many permit public protests, encourage online complaints, and allow a certain level of media freedom and free speech. A growing body of research in political science has studied this phenomenon, and argues that these institutions are designed to overcome the principal–agent problem that arises between autocrats and their agents, that is, these initiatives are meant to strengthen a regime’s ability to monitor and control the actions of its lower-tier officials by bringing public scrutiny to bear on them.¹³ Our study joins this literature, supporting the interpretation of earlier work that government transparency can be used by autocrats to motivate lower-tier government officials. Extending this line of research, our study provides evidence that transparency in autocracy is unlikely to be complete, and the central and local governments seem to be situated in an endless game of “catch me if you can” – they respond strategically to each other, and the agency problem in autocracy could be reduced, but hardly eliminated.

The rest of the article is organized as follow. Section II explains the motivation underlying the judicial transparency reform in a principle-agent theoretical framework.

¹² In 2007, the SPC issued a rule to require, among others, high courts of provinces to formulate rules for publishing on websites decisions of courts in their jurisdictions (The SPC, 2007). See ‘关于加强人民法院审判公开工作的若干意见’ [‘Several Opinions of the SPC on Strengthening Open Adjudication Work of Courts’], issued by the SPC on June 15, 2007, Article 22. In 2010, the SPC issued another rule requiring all courts in China to publicize their decisions on their websites but not on the centralized SPC Website. See ‘关于人民法院在互联网公布裁判文书的规定’ [‘Rules on the Publicity of Decisions of People’s Courts on Internet’], issued by the SPC on October 21, 2010.

¹³ Georgy Egorov, Sergei M. Guriev, and Konstantin Sonin, ‘Why Resource-Poor Dictators Allow Freer Media: A Theory and Evidence from Panel Data’, *American Political Science Review* 103(4), (2009), pp. 645-68; Gary King, Jennifer Pan, and Margaret E. Roberts, ‘How Censorship in China Allows Government Criticism but Silences Collective Expression’, *American Political Science Review* 107(2), (2013), pp. 326-43; Peter Lorentzen, Pierre Landry, and John Yasuda, ‘Undermining Authoritarian Innovation: The Power of China’s Industrial Giants’, *Journal of Politics* 76(1), (2013), pp. 182–94; Peter Lorentzen, ‘China’s Strategic Censorship’, *American Journal of Political Science* 58(2), (2014), pp. 402-14; Jidong Chen, and Yiqing Xu, ‘Why Do Authoritarian Regimes Allow Citizens to Voice Opinions Publicly?’, *Journal of Politics* 79(3), (2017), pp. 792-803; Sarah E. Anderson, Mark T. Buntaine, Mengdi Liu, and Bing Zhang, ‘Non-Governmental Monitoring of Local Governments Increases Compliance with Central Mandates: A National-Scale Field Experiment in China’, *American Journal of Political Science* 63(3), (2019), pp. 626-43.

Section III uses data and empirical evidence to show the incompleteness in disclosure and the strategic response to the central mandate by local courts. Section IV provides evidence that dispatched central cadres (provincial high court presidents who have work experience in the central government) are associated with a better implementation of the central mandate, suggesting centralization of personnel is used as an effective tool to carry out central policies. Section V discusses the larger trend of judicial centralization in China, of which the judicial transparency reform is a part. Section VI concludes.

The Principal–Agent Problem and the Judicial Transparency Reform

Unitary states are often administered through multiple layers of government, with central administrations delegating their governance responsibilities to multiple subnational levels. The primary goal of the center is to manage governance quality over the entire system to ensure political stability and regime legitimacy. In many cases, however, the poor performance of local governments is a key impediment to providing public goods and services and achieving the goals set by the center.¹⁴ Such conflicts of interests between different layers of government constitutes a typical principal–agent problem. Local officials may be disloyal to the center: they may accrue rents by colluding with parties with an interest in skirting central rules. Local bureaucrats may also act less diligently than the center requires or shirk the task of providing the public goods mandated by the center.

It is hard to address the principal-agent problem owing to information asymmetry embedded in the multiple-layered structure and thereby the principal's inability to perfectly monitor the agent. In a central-local government setting, the center must have sufficient information on the performance of local governments to oversee and motivate local cadres. However, information gathering in a bureaucratic hierarchy is costly and even improbable – reporting and collecting local information requires human and financial resources. Monitors assigned to the task also have an incentive to collude with local officials who can contribute rents to them to suppress adverse information, handicapping most mechanisms of monitoring lower-tier officials—secret police, oversight, or disciplinary committees. To overcome this information problem, authoritarian regimes sometimes borrow some democratic institutions: they allow noncompetitive elections,¹⁵ limited freedom of the press, investigative reporting,¹⁶ and

¹⁴ Bo Zhang and Cong Cao, 'Four Gaps in China's New Environmental Law', *Nature* 517(7535), (2015), pp. 433–35.

¹⁵ Jennifer Gandhi and Ellen Lust-Okar, 'Elections under Authoritarianism', *Annual Review of Political Science* 12, (2009), pp. 403–22.

¹⁶ Peter Lorentzen, 'China's Strategic Censorship', *American Journal of Political Science* 58(2), (2014), pp. 402–14.

limited protests,¹⁷ so long as these institutions do not undermine political stability.¹⁸

A major issue facing the Chinese judiciary is exactly this type of agency problem. Previous studies have extensively documented the conflict between the center and the local in the Chinese judicial system, which is generally labeled as the “local protectionism” problem. At the very essence of this problem is the misalignment of goals between the SPC and local governments. The primary goal of the SPC is to apply the laws crafted by the central government in a unified way for the entire country and therefore maintain a unified nation. However, laws stipulated by the centralized government can be in conflict with local interests and social stability. In many circumstances, local governments have a strong incentive to interfere with the application of centrally promulgated law. Take contract law for example: a unified contract law and the impartial enforcement of contracts are crucial for a unified market economy for the whole country. However, local governments may be averse to enforcing contracts when this could undermine local interests, such as when the enforcement of debt paid to a firm outside the province drags an important local firm into bankruptcy and destabilizes local society and economy.

The conflict and the agency problem in the Chinese judiciary is made possible by China’s political design and thereby deeply embedded in the government structure. In this system, local political officials have effective power over local courts. Local court presidents are appointed by higher-level party committees, but the appointment and promotion of vice presidents, other cadres, and judges are all controlled by local party committees. Local courts also rely on the support of local governments for funding, employee welfare, and law enforcement.¹⁹ The result is that the interests of local courts and local administrations are highly entangled. Or more germane to China’s political reality, local courts are simply part of local governments and have a natural tendency to protect local interests. This is most evidenced by the complaint once publicly shared by a high-level official at the SPC, who explicitly stated that, because the personnel and the budget of local courts were controlled by local governments, it was difficult to ensure that courts would decide cases impartially, especially when local interests and national interests misalign.²⁰ Notably, it is also difficult for private parties to circumvent local protectionism. Forum shopping is rare in China because the Civil Procedure Law

¹⁷ Peter L. Lorentzen, ‘Regularizing Rioting: Permitting Public Protest in an Authoritarian Regime’, *Quarterly Journal of Political Science* 8(2), (2013), pp. 127–58.

¹⁸ Jidong Chen, and Yiqing Xu, ‘Why Do Authoritarian Regimes Allow Citizens to Voice Opinions Publicly?’, *Journal of Politics* 79(3), (2017), pp. 792–803.

¹⁹ Yuhua Wang, ‘Court Funding and Judicial Corruption in China’, *The China Journal* 69, (2013), pp. 43–63.

²⁰ Bin Zhou and Hao Jiang, ‘To Reduce Local and Administrative Influence and Guard Independent Judicial Decision Making’, *Legal Daily*, 18 November, 2013, accessed 31 August, 2020, <https://www.chinacourt.org/article/detail/2013/11/id/1145826.shtml>.

of China stipulates that a case must be heard in the court where the defendant is domiciled, subject to only a few statutory exceptions.²¹

Against this backdrop, the primary motivation of the judicial transparency reform appears to be a desire to curb wrongdoing in the local courts through public oversight. In 2013, Zhou Qiang, the then newly appointed president of the SPC, launched judicial reforms in multiple domains, including the transparency initiative, which aimed to publicize judicial decisions. The SPC issued a rule requiring all courts in China to upload their decisions to a centralized SPC website, “China Court Judgments” (<http://wenshu.court.gov.cn/>), starting from January 1, 2014. Exemptions were confined to cases involving state secrets and personal privacy, juvenile crime, and cases concluded by court-administered mediation.²² The number of court decisions available at the SPC website rose dramatically after the 2013 SPC rule. As of October 2019, more than 60 million judicial decisions had been made public on the SPC website.²³ The number of judicial decisions is still rapidly rising by more than 15 million each year. The SPC claims that the website is the largest collection of cases globally with 12.5 billion visitors from all over the world as of the end of 2017.²⁴

In a 2015 white paper, the SPC clearly stated the goal of the transparency reform – improving transparency would “facilitate judicial fairness, prevent corruption in the judicial system, and improve judicial credibility.” Posting legal decisions online was “the SPC’s response to President Xi Jinping’s calls for judicial openness and increased public supervision”.²⁵ Public scrutiny and relatively free media allow the center to supervise and provide incentives to local courts. In this vein, the SPC attempted to rein in local courts by introducing transparency regulations to improve decision quality and reduce misconduct. The judicial transparency reform may remind readers a previous government reform which has very similar aim: In 2008, China passed the Open Government Information Regulations, the primary goal of which is believed to functioning as a tool for policing the misuse of public expenditures in far-flung localities.²⁶ Commentator expressed a great deal of optimism surrounding the benefits

²¹ Haitian Lu, Hongbo Pan, and Chenying Zhang. ‘Political Connectedness and Court Outcomes: Evidence from Chinese Corporate Lawsuits’, *Journal of Law and Economics* 58(4), (2015), pp. 829-61.

²² In November 2018, the SPC issued its latest transparency policy requiring all the courts expand the scope of judicial information being publicly available while maintaining state secret and trial secret. (‘Supreme People’s Court Opinion Concerning the Further Deepening of Judicial Transparency’ [‘最高人民法院关于进一步深化司法公开的意见’]).

²³ The SPC website provides a real-time calculation of the total number of documents. Accessed 30 April, 2019, <http://wenshu.court.gov.cn/>.

²⁴ Shuzhen Luo, ‘中国裁判文书网访问总量近 125 亿次’ [‘The Visits to the Website China Judgement Online Amount to 12.5 Billion’], *人民法院报* [People’s Court Daily], 3 January, 2018.

²⁵ The Supreme People’s Court of China. ‘White Paper: Judicial Transparency of Chinese Courts’. Last modified July 20, 2015, http://english.court.gov.cn/2015-07/20/content_21332354_2.htm.

²⁶ Jonathan R. Stromseth, Edmund J. Malesky, and Dimitar D. Gueorguiev, *China’s Governance Puzzle:*

of government transparency in China, in nurturing an informed citizenship, promoting public participation, and facilitating government accountability.²⁷

Local Courts' Strategic Response: Incomplete Transparency Under Mandatory Disclosure Requirement

The SPC attempts to use the transparency reform to solve the deeply-rooted agency problem in the judicial system. Yet the principle-agent theory also predicts that local courts will hardly comply with the SPC without reservation. In a typical agency problem setting, agents usually respond strategically to the principle's requirement to avoid scrutiny, crippling monitoring measures taken by the latter. In the case of the Chinese judiciary, there are reasons to suspect the quality of disclosure in the transparency reform is unsatisfactory.

Study of political communications has found that information manipulation within a bureaucratic system is prevalent in authoritarian regimes, and the direction and magnitude of such manipulation is driven by government officials' political and career incentives. In the specific context of China, studies find that village cadres are more likely to inflate village income per capita when higher-level officials exert more pressure on them to meet economic growth targets,²⁸ and that the economic statistics that central leaders use to evaluate local officials are more likely to be manipulated during political turnover, suggesting that local officials are massaging the numbers for promotion reasons.²⁹ Using internal communications between a monitoring agency and upper-level officials, Pan and Chen show that publicly posted citizen grievances online that contain corruption complaints are systematically concealed from upper-level authorities when they implicate lower-tier officials or their associates through patronage ties.³⁰ While these studies focus on information transfer within the government, transparency is a tool for the government to transmit information to outsiders, namely, the public. If information manipulation occurs within the bureaucracy and is driven by

Enabling Transparency and Participation in a Single-Party State (Cambridge: Cambridge University Press, 2017).

²⁷ Wenjing Liu, 'Approaching democracy through transparency: a comparative law study on Chinese open government information', *American University International Law Review* 26, (2010), pp. 983-1008; Wei Wu, Liang Ma, and Wenxuan Yu, 'Government Transparency and Perceived Social Equity: Assessing the Moderating Effect of Citizen Trust in China', *Administration & Society* 49(6), (2017), pp. 882-906.

²⁸ Lily Tsai, 'Understanding the Falsification of Village Income Statistics', *The China Quarterly* 196, (2008), pp. 805-26.

²⁹ Jeremy L. Wallace, 'Juking the Stats? Authoritarian Information Problems in China', *British Journal of Political Science* 46 (01), (2016), pp. 11-29.

³⁰ Jennifer Pan and Kaiping Chen. 2018. Concealing Corruption: How Chinese Officials Distort Upward Reporting of Online Grievances. *American Political Science Review* 112(3): 1-19.

political incentives, it is likely that the quality of government transparency is also subject to the influence of government officials' incentives. In the case of judicial transparency, that is, local courts may suppress information that would increase public scrutiny and jeopardize local interests, even as the center is mandating a completely transparent judiciary.

This study attempts to document the incompleteness in disclosure and local courts' strategic response using empirical data, and thereby illustrate more nuanced patterns of the judicial transparency reform and the central-local relationship in the judiciary. To measure the level of transparency, we use "disclosure rate," which is defined as the number of decisions disclosed by courts on the SPC website divided by the total number of cases decided by courts.³¹ Data on the total number of cases in each province is retrieved from working reports of the provincial high court. These reports were prepared and submitted by high court presidents of different provinces to the annual conferences of the corresponding provincial peoples' congresses. We confine the study period to 2008 to 2016. This method enables us to observe the disclosure rate and also calculate the aggregated disclosure rate for the whole judiciary over this period.

Figure 1 shows the aggregated disclosure rates in China between 2008 and 2016, as measured by the number of court decisions available at the SPC website divided by the total number of decisions made by courts in that period. Cases decided between 2008 and 2013 appear on the SPC website because courts uploaded these cases retrospectively, or transferred cases from their own websites to the centralized venue. Note that the disclosure of cases before 2014 is not required by the SPC. The disclosure of information in this period can be seen as voluntary by local courts. The voluntary disclosure rate was undoubtedly low. For 2008 cases, only 0.8% were disclosed. This number rose significantly to 7.5% in 2013. Yet even in the mandatory disclosure regime – that is, after 2014 – disclosure was still far from complete. The disclosure rates were 39.4%, 44.5%, and 47.9% in 2014, 2015, and 2016, respectively, suggesting that less than half of judicial decisions were disclosed.

³¹ See <http://www.court.gov.cn/wenshu.html>.

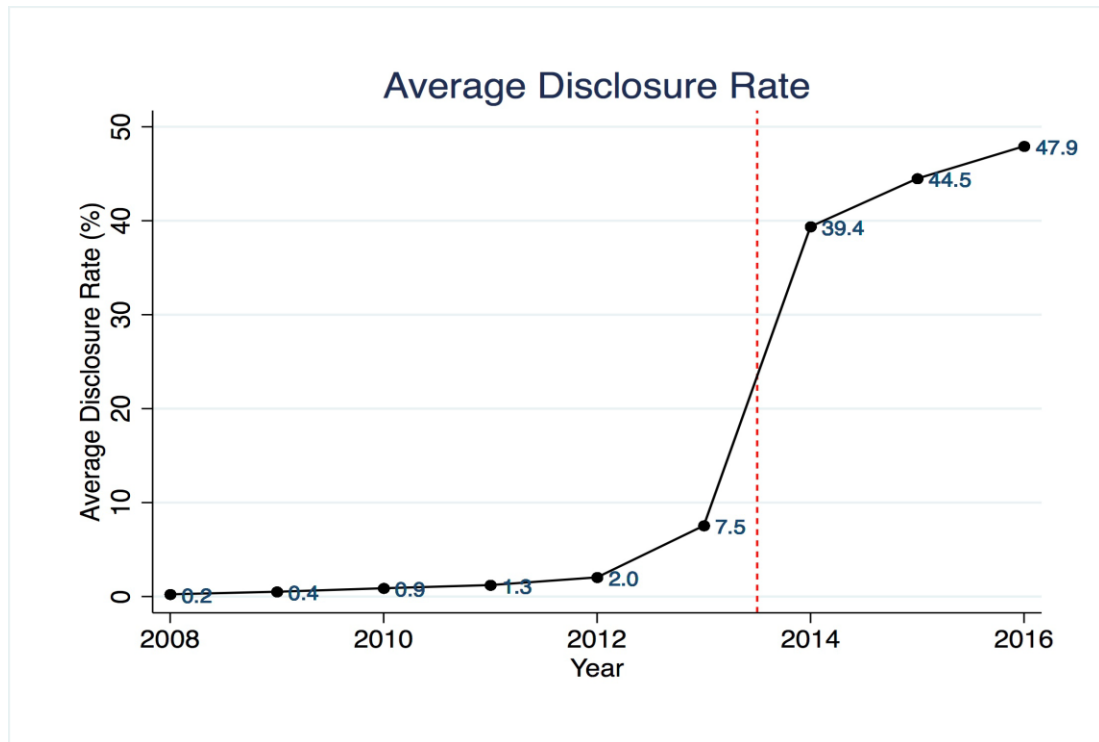


Figure 1: Disclosure Rates of Chinese Court Decisions from 2008 to 2016

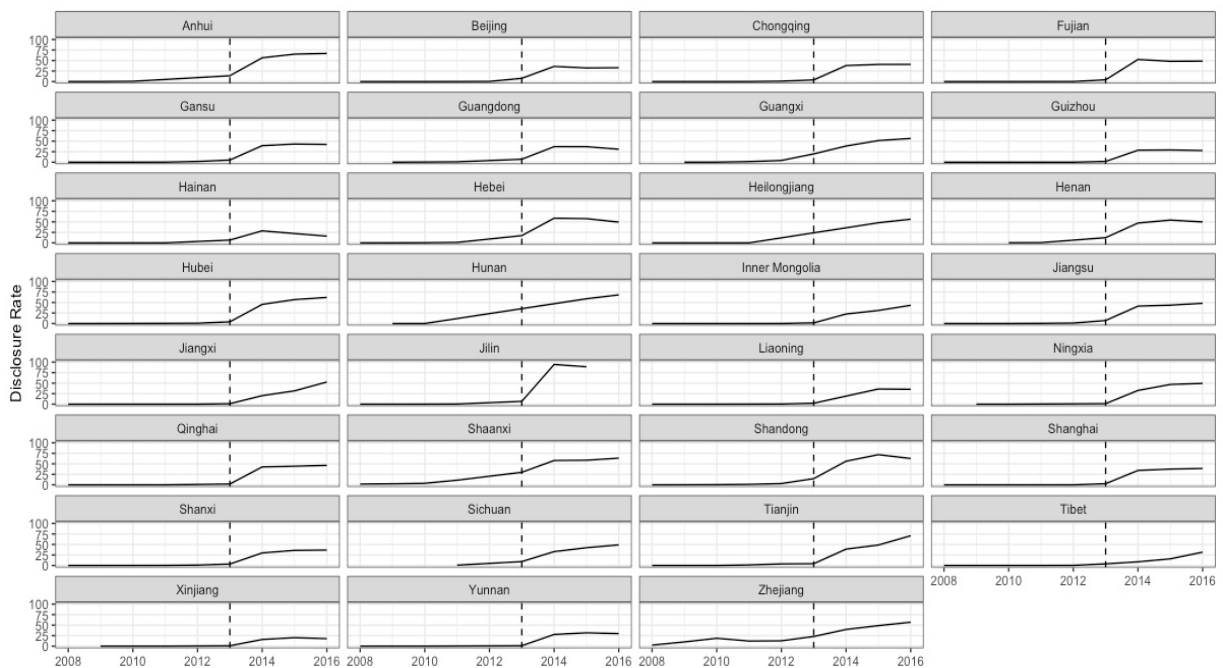


Figure 2: Disclosure Rate of Each Province from 2008 to 2016

Disclosure rate varies quite markedly from region to region. Figure 2 shows the disclosure rate of judicial decisions in each province from 2008 to 2016. Difference

across provinces can easily be observed. For example, the disclosure rate of Tianjin in 2016 was about 71%, while that of Hainan was only 16%. A natural next question is why disclosure rates differ so greatly among provinces.

To explain regional variations, we further collected a range of data that account for provincial features. We first collected data on personal characteristics of the presidents of provincial high courts in different provinces, i.e., educational background and work experience in the central government. A leader who has a law degree may be more liberal and acceptive of open and transparent government. This suggests greater willingness to implement online transparency policy of the SPC. We use whether a leader received his/her bachelor's degree from a "985 university" as a proxy for his/her academic performance.³² We suspect that stronger academic background may also be associated with a more liberal political attitude. Finally, we collected other data on personal characteristics of these leaders, including age and gender, which are often examined by political scientists and economists.

At the institutional level, we collected data on the total number of cases decided by courts in each province from 2008 to 2016. This data was retrieved from the annual working reports of the provincial high courts. We further divided the total number of cases in each province by the total population of that province to measure court caseloads per 10,000 residents. We used this metric to roughly approximate the caseload of judges in different provinces. The heavier the caseload, we suspect, the less capable a court will be able to handle extra online publicity tasks (i.e., uploading its decisions to the SPC website), other things being equal. Admittedly, a better metric for caseload would be the average number of cases decided by each judge. But we lack data on the number of judges in each province. We used the above measurement to proxy for the actual caseload per judge.

We also collected data on the number of visits (i.e., clicks) received by each court decision on the SPC website from 2008 to 2016 in each province. We used the visit per court decision to roughly measure the complexity of cases in a given province within a given year. The assumption is that the higher the number of visits per court decision, the more complex the cases handled by that court.

We used GDP per capita to capture the development level of each province. We also used the marketization index created by Gang Fan and others to measure market development in each province.³³ This index is widely used by economists for this purpose.³⁴ We suspect economic and market development may cultivate responsive

³² In May 1998, former President Zemin Jiang announced the goal of the Chinese government to build world leading universities in China. This program was referred to as the "985 Program." Universities that were included under the 985 Program by the Ministry of Education are referred to as 985 Universities.

³³ Xiaolu Wang, Gang Fan, and Jingwen Yu, *中国市场化指数 2016 年报告 [Marketization Index for China's Provinces: NERI Report 2016]*, (Beijing: Shehui Kexue Wenxian Chubanshe, 2017).

³⁴ Previous researches include, e.g., Kai Li, Heng Yue, and Longkai Zhao, 'Ownership, institutions, and

government and promote government transparency.³⁵

We used a panel data regression model (OLS) to test the correlation between disclosure rate (as the dependent variable) and the factors discussed above (as independent variables). To summarize, these factors include provincial high court leaders' personal characteristics, indicators for caseload and case complexity of a province, and the level of economic and market development in a province. The model includes province fixed effects and year fixed effects. Robust standard errors are clustered by the province. Table A1 reports the results (settings [1][3][5]). None of the personal characteristics of judicial cadres shows any statistically significant correlation with disclosure rate, except head judges' work experience in the central government or the SPC, which will be discussed in more detail in the next section. Legal education has no impact on disclosure rates. Neither does a stronger academic background, proxied by receiving a bachelor's degree from a 985 university, have any influence on disclosure. Similarly, neither the number of cases closed by courts on a per population basis nor the average number of visits per court decision – indicators for caseload and case complexity – shows any statistically significant correlation with disclosure rate. In other words, caseload and case complexity as measured by these two indicators have no effect on online judicial transparency.

The levels of economic and market development are associated with judicial transparency. Both GDP per capita and marketization index show a positive and statistically significant correlation with disclosure rate. In other words, external factors such as market development level appear to have an effect on judicial transparency. The more developed a province is, the higher is its disclosure rates, all else being equal. The results are consistent with the theory that courts are more responsive and transparent in more developed markets.

Dispatched Central Cadres and the Improved Disclosure Rate

We now turn to provincial high court presidents' work experience in the central government and their implementation of the transparency policy required by the SPC. To do this, we first empirically identify a trend in personnel appointment in the judicial system: the central government was dispatching increasing amounts of judicial cadres to provincial high courts to become their presidents. We then test whether these

capital structure: Evidence from China', *Journal of Comparative Economics* 37, (2009), pp. 471–490; Michael Firth, Chen Lin, Ping Liu, and Sonia M. L. Wong, 'Inside the Black Box: Bank Credit Allocation in China's Private Sector', *Journal of Banking and Finance* 33(6), (2009), pp. 1144–1155; Julian Du, Yi Lu, and Zhigang Tao, 'Economic Institutions and FDI Location Choice: Evidence from U.S. Multinationals in China', *Journal of Comparative Economics* 36 (3), (2008), pp. 412–429.

³⁵ Lipset Seymour Martin, *Political Man: The Social Bases of Politics*, 1st ed. (New York: Doubleday, 1960).

dispatched cadres are associated with higher disclosure rate in their provinces. Notably, we do not claim that the central cadres were dispatched for the mere purpose of implementing the transparency reform. Rather, our argument in this study is that the centralization of personnel helps promote a wide range of central policies, and transparency is one of them. And this evidence further showcases the nuance in the central-local relationship in the Chinese judiciary: the center appears to use personnel control to better address the principle-agent problem in the judiciary.

Table 1 shows the personal characteristics of provincial high court leaders between 2008 and 2018. The statistics suggest that the central government was dispatching increasing amounts of judicial cadres to provincial high courts to become their presidents. For example, in 2008, only 5 of the 31 provincial high court presidents had work experience in the central government (including the SPC and other central departments), but this number increased to 8 in 2013, when Zhou Qiang took office, and rose further to 11 in 2018.

Naturally, one may ask whether this increase of central cadres is a result of centralization, or simply driven by professionalization of the judiciary, because judges who have work experience in the central government may also have better academic backgrounds, or be more professional as lawyers. But this seems not to be the case. Table 1 shows the educational background, average age, and gender composition of high court presidents from 2008 to 2018. In 2008, more than 80% of these court leaders (25 out of 31) had received a law degree, which suggests that legal education has been a prerequisite for court leaders back to 2008. Ten of these court leaders received their bachelor's from a 985 university. These patterns stayed rather constant throughout the subsequent decade. The age and gender composition seem to be different across years – the average age was around 55 in 2008 and 2009, but around 58 from 2012 to 2017, and female leaders increased.

Table 1. Personal Characteristics of Provincial High Court Leaders

Year	Central Experience	Law Degree	985 Univ.	Age	Gender (M/F)
2008	5/31	25/31	10/31	54.7	30/1
2009	6/31	25/31	9/31	55.5	30/1
2010	6/31	25/31	9/31	56.5	30/1
2011	6/31	25/31	9/31	57.3	30/1
2012	6/31	25/31	8/31	57.9	29/2
2013	8/31	25/31	4/31	57.2	28/3
2014	8/31	25/31	5/31	58.1	28/3
2015	8/31	25/31	5/31	58.9	28/3
2016	8/31	25/31	8/31	58.5	27/4
2017	8/31	25/31	9/31	58.8	26/5
2018	11/31	30/31	12/31	56.1	27/4

Source: Authors' calculation.

The number of dispatched central cadres was increasing, but does this affect the operation of local courts? To shed light on this issue, we examined whether provincial courts led by presidents with work experience in central government were associated with higher disclosure rates of judicial decisions in their provinces. To do this, we sorted provinces into two groups: the first contained those provinces whose high court president had work experience in central government; the second contained those provinces whose high court president lacked such experience. If our hypothesis is correct – that is, if the centralized judicial cadres helped implement the central policy and improve local courts’ transparency –two things should be observed: i) there should be a difference in disclosure rate between the two groups of provinces after 2014, when the SPC carried out the transparency reform, and ii) (an easily neglected one) there should be no difference in disclosure rate between the two groups of provinces before 2014, when the transparency reform had not yet been carried out. (Otherwise, the disparity in disclosure rate would not be solely attributable to central cadres.)

Empirical evidence is consistent with both of these predictions. Figure 3 shows the results. We compare the disclosure rates of these two groups. From 2008 to 2013, little difference is found between disclosure rates in the two groups. This is consistent with the fact that disclosure of the cases decided between 2008 and 2013 was made retroactively after 2014, and thus was not affected by the experience of high court presidents that were in office before 2014. A sharp difference in disclosure rate appears after 2014, when the SPC carried out the disclosure policy and started dispatching more central cadres to provincial courts. The difference in disclosure rates between the two groups is about 15-20% from 2014 to 2016. In other words, central cadres are associated with much higher disclosure rates. The dispatched judicial cadres were quite successful in implementing the central policy and promoting transparency of the courts in their jurisdictions.

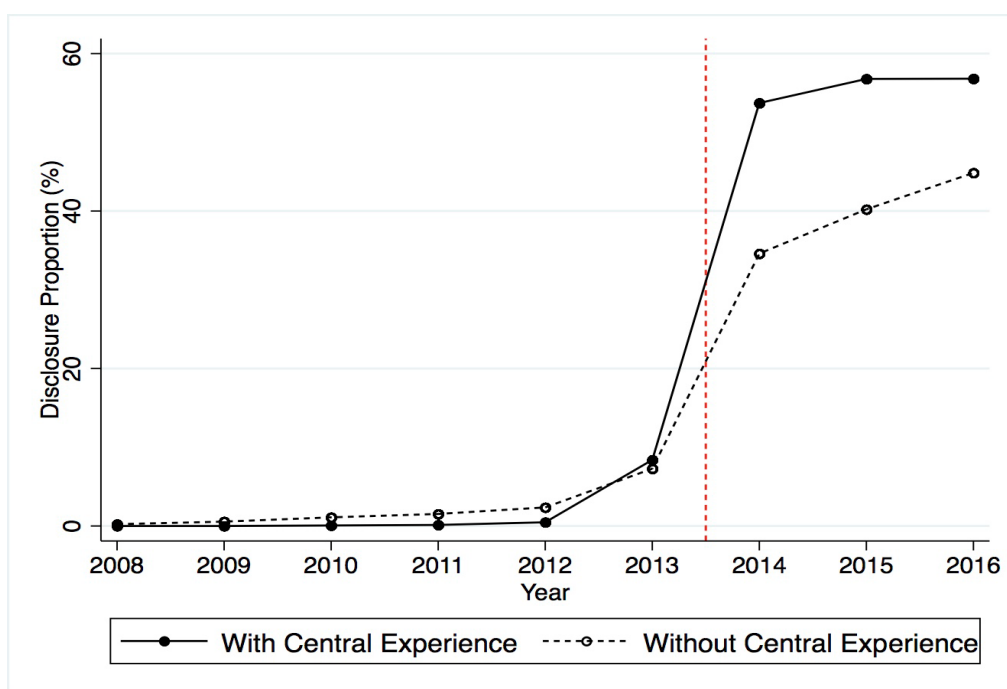


Figure 3: Disclosure Rates of Provinces Led by Court Presidents with and without Work Experience in the Central Government

To confirm the above results with a more rigorous methodology, and to rule out possible confounding factors, we used a regression model (OLS) to test the correlation between disclosure rate (as the dependent variable) and the factors discussed in the previous section (as independent variables). The setup of the regression was introduced in the previous section. Again, Table A1 in the Appendix shows the results of the regression analysis. Work experience at the central government is statistically significantly associated with disclosure rates after 2014. It is found that disclosure rates are about 10.51% higher in provinces with high court leaders who had central government experience, keeping other factors constant (setting [1]). We also divided the leaders with working experience at the central government into two groups: one with experience at the SPC and the other with experience at other agencies of the central government (e.g., the Supreme People’s Procuratorate, Department of Justice). We found similar effects with respect to both work experience at the SPC and experience in the other central departments (settings [3] and [5]). This confirms the finding of the basic analysis shown in Figure 3. Dispatched judicial cadres play an important role in promoting online judicial transparency. The connection between judicial cadres and the central government helps implement the central policy.

Judicial Transparency as Judicial Centralization

As already pointed out by scholars and commentators, a trend of centralization has emerged in the Chinese judiciary over the last decade.³⁶ Yet few have noted the recent mass publicity of court decisions in China as part of this centralization process.

Chinese courts are largely seen as a local apparatus. Local courts are largely funded by local governments. Before 2009, the funding of Chinese courts was subject to the principle of “administration by different levels (of governments) and undertaking responsibilities by different levels (of governments)” (in Chinese: 分级管理、分级负担). In other words, court operations were generally funded by the local government where the court was located. The funding system decides that courts largely depend on local governments for a wide range of supports, which in return facilitates local government’s interference with the decisions of local courts. Local protectionism of courts, that is, courts serving local interests rather than following the law, is well documented in the literature.³⁷ Another consequence under this model is that legal and judicial resources are much greater in more economically advanced provinces. Court budgets have been much more ample, and court capacity is greater in affluent coastal areas.³⁸

The localized funding system began reforms as early as 2009, and gradually evolved into a more centralized system. A 2009 principle was implemented to emphasize “undertaking responsibilities through different categories of court expenditures” and “providing guarantee with full amount” (in Chinese: 分类负担、全额保障),³⁹ which requires that the central government “guarantees” the funding to support the operations of Chinese courts at all levels. It also stresses that the sources of actual funding should come from different levels of the government, depending on the nature of court expenditures. For instance, trial expenses incurred by local courts such as traveling expenses should be funded by the central government. An SPC report indicates that the funding from the central government accounted for 47.63% of the trial expenses incurred by courts below the provincial level, which may have increased to over 80% after 2014.⁴⁰ The central government is also issuing treasury bonds to

³⁶ *Supra* note 15.

³⁷ *Supra* note 14.

³⁸ Jacques deLisle, ‘Law in the China Model 2.0: Legality, Developmentalism and Leninism under Xi Jinping’, *Journal of Contemporary China*, 26(103), (2017), pp. 68-84.

³⁹ ‘中共中央办公厅、国务院办公厅《关于加强政法经费保障工作的意见》（厅字[2009]32号）’ [‘Opinion on Strengthening Work of Political and Legal Expense Guarantee of the General Office of the Central Committee of the Communist Party of China and the General Office of State Council (Ting Zi [2009] No. 32)’]; ‘财政部《政法经费分类保障办法》（财行[2009]209号）’ [‘Political and Legal Expense Classification and Guarantee Measures of the Ministry of Finance (Cai Xing [2009] No. 29)’].

⁴⁰ Humei Tang, ‘推动省以下地方法院财物统一管理改革研究’ [‘Research on Reform Promoting Unification of Funding and Property Management of Local Courts Below Provincial Level’], 载 2014 年《中国法学会审判理论研究会暨全面深化司法改革促进司法公正理论研讨会论文集》 [Collection of Papers on 2014 Conference of Adjudication Theory Research and Comprehensive Deepening of Judicial Reform to Promote Judicial Justice], p.671.

support the construction of modernized courtrooms throughout the country. The amount of funding from the central government in this area significantly increased from RMB 0.6 billion in 2009 to RMB 31 billion in 2012, a fifteen-fold increase within 3 years.⁴¹

The appointment of provincial high court presidents in recent years also shows certain features of centralization. To be sure, presidents of local courts are formally appointed by local governments (technically, local People's Congresses) at respective levels. These presiding judges usually have working experience within the province, and are promoted internally within the high court, or from the other government departments at the same province. Through these mechanisms, local politics has effective control over the appointment and promotion of judges. Yet as discussed earlier, an increasing number of provincial high courts are now presided over by judges or officials who have work experience at the SPC or other agencies of the central government (Table 1). As of 2018, one-third of the provinces are presided over by judges with work experience in the central government.

Against this backdrop, the transparency reform can be seen as part of the centralization process as well. The database on the centralized website for judicial decisions enables the collection of comprehensive information on the adjudication practices of basic, intermediary, and provincial high courts, which is then at the disposal of the SPC. The requirement that all judgements be uploaded to the centralized website enables the SPC to supervise local courts' behavior, especially through public oversight. Moreover, with the help of a centralized database, the SPC becomes more capable of collecting local information, steering legal development in a certain direction, and aligning local judicial decisions with its own policy goals. For example, the SPC can easily search for local judgements and check whether their decisions are consistent with judicial interpretations and guiding cases.⁴² In fact, the mere possibility of such supervision will enhance lower courts' compliance with the SPC, thereby enhancing the authority and the control of the central government as well.

Given the empirical evidence provided by the earlier analysis, centralization seems to have been successful, at least at promoting overall judicial transparency. Dispatched judicial cadres were better at implementing the transparency reform and promoting disclosure in their provinces. Yet, a natural question that follows is: how far can centralization go?

A thorough analysis is beyond the scope and purpose of this essay, but it is worth pointing out that the limits of centralization are obvious, especially in the case of judicial transparency. Even when central cadres can promote transparency, as the

⁴¹ Humei Tang, '加快人民法院经费保障和财务管理长效机制建设' ['Accelerating the Establishment of A Long-term Effective Working Mechanism for Funding Security and Finance Management of People's Courts'], *Renmin Sifa* [People's Judicature] 13, (2013), p. 54.

⁴² Björn Ahl and Daniel Sprick, 'Towards judicial transparency in China: The new public access database for court decisions', *China Information* 32(1), (2018), pp. 3-22.

empirical evidence of this study shows, the nationwide disclosure rate is still relatively low, at less than 50%. Tianjin, with a dispatched president, has the highest disclosure rate, at about 70% in 2016; yet, it is still far from achieving the goal of complete disclosure. The relatively low publication rate, on the other hand, can be seen as the impotence of the central state to induce compliance with the SPC's mandate and as an expression of resilient local interests. In other words, the implementation of the transparency reform can be regarded as an expression of both centralization and the persistence of local resistance. To be sure, this resistance cannot be easily eliminated given the current political-social context – nor is a complete centralization an undoubtedly desirable goal: although courts in China are organized as if they were a singular and unified system, local practices are diverse; and the diversity is not always driven by protectionism: in many cases, local courts may have information advantage over the central government, and may take local information and tacit knowledge into account to make better decisions.⁴³ The question has yet to be answered by the judicial sector is, similar to hard questions raised in many other domains in China: what is the optimal balance between the central and the local governments?

Conclusion

Perplexingly, China runs the largest judicial online publicity venue in the world, and this venue is expanding through the inclusion of millions of court decisions on an annual basis. The mass publicity of court decisions, as this article shows, is part of the larger trend of the Chinese judiciary becoming increasingly centralized. The SPC carries out transparency reform in order to rein in local courts through public scrutiny, while local courts responded strategically, rendering disclosure of decisions far from the level that the central government requires. On the other hand, the central government has dispatched increasing amounts of judicial cadres to local courts, and provincial judicial cadres dispatched by the central government improve the disclosure rate and implementation of central policy. The transparency reform, coinciding with reforms in many other domains, such as the centralized funding and concentrated personnel management, signals the subtle but important shift toward centralization in the judicial sector of China.

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⁴³ Kwai Hang Ng and Xin He, *Embedded Courts: Judicial Decision-Making in China* (New York: Cambridge University Press, 2017).

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Table A1: Judicial Cadres and Disclosure Rates

VARIABLES	Central (1)	All (2)	Supreme Court (3) (4)		Other Department (5) (6)	
Central	10.51** (4.48)	5.13 (3.33)				
Central × post		11.62* (5.96)				
Supreme court			8.83* (4.59)	10.29** (4.13)		
Supreme court × post				-3.18 (4.81)		
Other department					11.10* (6.40)	3.04 (3.40)
Other department × post						19.64** (7.18)
Post		51.85*** (11.20)		53.99*** (14.27)		44.96*** (10.32)
Marketization	4.78** (2.05)	5.01** (2.00)	3.68 (2.39)	3.82 (2.35)	4.72** (2.21)	6.13** (2.31)
Age	0.30 (0.45)	0.21 (0.40)	0.53 (0.47)	0.55 (0.48)	0.27 (0.47)	0.22 (0.41)
Gender	8.44 (7.49)	10.80 (7.69)	8.80 (7.67)	8.35 (7.85)	7.02 (7.14)	8.14 (6.22)
985 university	0.57 (4.60)	-1.10 (5.10)	1.87 (4.78)	2.42 (4.99)	4.28 (4.85)	4.78 (4.90)
Law degree	-0.36 (4.86)	-0.61 (4.01)	-0.14 (5.14)	-0.31 (5.21)	-2.01 (5.50)	-3.50 (4.73)
Ln case per population	-7.34 (8.74)	-7.16 (7.86)	-10.80 (10.69)	-10.89 (10.80)	-7.30 (8.57)	-7.25 (7.77)
Ln GDP	-63.23** (23.81)	-70.37*** (22.95)	-73.31** (29.23)	-71.23** (29.66)	-46.80* (23.18)	-44.96* (22.87)
Ln GDP per capita	61.89** (24.27)	67.34*** (24.42)	74.60** (28.53)	74.04** (28.38)	42.26* (23.22)	46.64* (23.68)
Ln visit per case	0.70 (1.17)	1.26 (0.96)	1.83 (1.17)	1.82 (1.18)	0.92 (1.31)	1.69 (1.14)
Constant	-31.77 (118.73)	-15.46 (121.87)	-59.91 (114.21)	-75.33 (123.40)	9.81 (139.07)	-54.92 (116.90)
Year fixed effects	Yes	Yes	Yes	Yes	Yes	Yes
Province fixed effects	Yes	Yes	Yes	Yes	Yes	Yes
Observations	236	236	236	236	236	236
R-squared	0.91	0.92	0.91	0.91	0.91	0.93

Note: Standard errors in parentheses, clustered by the provinces. * $p < .1$. ** $p < .05$. *** $p < .01$.