



*The Power of the Supreme People's Court. Reconceptualizing Judicial Power in Contemporary China*

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## SUMMARY

### **Power of the Supreme People's Court**

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IN THE CONTEXT of reform-era China, which is characterized by tremendous legal development and social advancement, the Chinese judiciary has been entrusted with more functions and greater autonomy in political governance than ever before. Despite Western scholars' general skepticism regarding the possibility of the rule of law taking root in China, judicial power in China has actually experienced a significant expansion of capacity, professionalization, transparency, and accountability while faced with an ambiguous but generally evolving legal environment. What remains unclear, however, is in what ways the Supreme People's Court (the Court) at the top of the judicial hierarchy has contributed to this positive trend, and to what extent the Court's experience and practice are distinctive compared to the power of the highest courts in other legal settings. Recognizing that the Court's exercise of power has to a great extent challenged the Western understanding of judicial power in both liberal democracies and nondemocratic systems, this book aims to provide insight into the world's largest highest court, which has demonstrated unique wisdom but so far remained largely obscure, offering an up-to-date understanding of the power of the Supreme People's Court and its evolving meanings in a context viewed as lacking separation of powers.

To achieve this aim, the recent development of the Court is examined to explore two main research questions:

1. How does the Supreme People's Court exercise its power in theory and in practice in China's present political and constitutional context?
2. How does the power of the Supreme People's Court contribute to the understanding of the highest court's power in a nondemocratic form of separation of powers?

This explorative sociolegal study has been carried out through a combination of theoretical and qualitative empirical research. The relevant laws and regulations, academic work, and case studies are analyzed to present a comprehensive picture

of the Court concerning its power arrangements within the nation's political and legal structure. Furthermore, through two fieldwork studies conducted at the Court in 2012 and 2014, this book offers empirical insight and a reflection on the everyday operation of the Court, uniquely benefitting from the perceptions and experiences of supreme court judges. Ultimately, the arguments in this book have been formed and developed through the integration of both theoretical and empirical findings, which together shed light on the subject under discussion in a comparative context to achieving a rich understanding of the exercise of judicial power in a nondemocratic form of separation of powers.

The book is structured into five main chapters. **Chapter 1** summarizes the comparative scholarship on the power of the highest courts among various jurisdictions, highlighting the research gap between well-established democracies and nondemocratic legal settings and especially the misreading of the highest courts' power in the context of the latter. Departing from the Western analytical lens of judicial power, this chapter then describes the analytical framework adopted to assess the power of the highest court, distinguishing the input and output factors that contribute to the legitimacy of the highest courts and that shape their primary roles and functions in theory and in practice. Input factors refer to the institutional choices embedded in the specific political and constitutional environment that initially shape the power of the highest courts, while output factors highlight the practical functions of the highest courts and their everyday operation that eventually determine the capacity of the specific highest court and how it fulfills its roles in practice. Based on the analytical framework and the research methodology applied in this research, the chapters that follow make further inquiries into the power of the Court, mainly from these two respects, seeking to answer the main research questions and to achieve an up-to-date understanding of how the Court has been organized and empowered in a nondemocratic legal setting beyond the core Western jurisdictions.

**Chapter 2** investigates the power arrangements of the Court from an institutional perspective, introducing three layers of power allocation that help to explain how the Court has been organized: (1) the organizational framework concerning the Court structure and personnel; (2) the profile and management of individual judges from a micro-level perspective, particularly their recruitment and training, means of making decisions, and career identity; and, finally, (3) the political determinants of the Court's exercise of power from a macro-level perspective, which in many respects reflects its relationship to the Chinese Communist Party (the Party). The theoretical and empirical evidence presented in this chapter suggest that the Court has made significant progress in the direction of a more effective, efficient, and predictable legal institution in the era of transformation. A noticeable trend to this end is the professionalization of the Court and the increased competence of supreme court judges over the past decades, which have been largely supported by

Party authorities through their increased tolerance of the empowerment of the Court.

Despite the Court's strenuous efforts to promote its institutional capacities and judicial professionalization, the deep-seated institutional and political constraints facing the Court are nothing but extraordinary. In fact, the bureaucratic style of managing the judicial institution and its personnel carries a high risk for the Court in the exercise of power and inevitably makes it vulnerable to wide-ranging external interference. Because judges are subject to both the leadership of the professional adjudicative body and to strict bureaucratic control within the court hierarchy, the long-term damage resulting from the limitation of self-realization in adjudication work and individual judges' frustration with their career identity should not be underestimated. Worse still, the investigation into the relationship between the Court and the Party in terms of judicial ideology and policymaking, court personnel management, and judicial decision-making further highlights the fact that as long as the Party's supremacy over the judicial power remains the defining feature of the Chinese legal system, the Court is likely to render results characterized by its institutional weakness and to enjoy limited autonomy within the current party-state structure.

**Chapter 3** explores the most significant judicial practices of the Court from a functionalist standpoint. The Court not only performs as the highest-level adjudicative organ and hears cases as the court of last resort but is also devoted to developing two judicial functions as vital functional supplements to the adjudicative authority: promulgating abstract judicial interpretations and regularly releasing a selection of guiding cases in response to either incomplete or imperfect law in practice. In light of the observations and arguments in this chapter, the Court has become an increasingly important adjudicator based on its own pragmatic initiatives and institutional interests in the era of transformation, and this is especially true as reflected in a series of substantive and procedural reforms the Court has promoted to safeguard the uniform application of the law and shape the development of the law.

However, the continuing emphasis on the Court's normative interpretative power has aroused concerns as to whether this quasi-legislative power is exercised at the expense of the legislative power or poses a real threat to the traditional understanding of the judicial power. In an authoritarian regime, where the Court's limited power in judicial review and inability to develop significant constitutional jurisprudence are notable, it is important for the Court to explore innovative and meaningful approaches to fulfill its judicial functions and push for a more active judicial role in accordance with its own pragmatic needs. In this respect, the practices of the Court to enrich and develop its jurisdiction through judicial policymaking and adopting a case-based approach to unify the application of the

law has already become a necessary, indeed crucial, part of the Court's pragmatic choice for providing sound and detailed instructions to bridge gaps in existing law while awaiting further legislative development.

**Chapter 4** lifts the veil from a different angle and reveals some of the most distinctive nonjudicial practices of the Court in its everyday practice. It should come as no surprise to learn that the Court has been linked with broader roles than merely being the top judicial organ and that supreme court judges serve more functions in practice than simply being adjudicators. In fact, evidence presented in this chapter suggests that the Court in many respects operates in a manner consistent with how the rest of the bureaucracy is run, which is reflected in its approaches to strengthening administrative management within the judicial hierarchy and its active engagement in complying with the political agenda of the ruling authorities. From what has been discussed in this chapter, shouldering the heavy responsibility of a vast number of extralegal functions reveals the bureaucratic nature of the Court within China's current political and institutional structures, and more importantly, highlights its struggles and compromises with legal rationality when confronted with severe political challenges and conflicts among different interest groups.

Most administrative and political functions the Court carries out in practice show that a political-centered rather than a legal-centered mode of bureaucratic operation prevails in the Chinese legal system, which has greatly undermined the judicial authority and the finality of court outcomes. Yet the discussion in this chapter also underscores the fact that there are always limitations to what can and cannot be addressed by courts on their own, and thus the Court must be carefully responsive to political concerns and increasingly cautious about the policy preferences of other state actors in the exercise of judicial power. In a sense, the Court's inability and reluctance to challenge bureaucratism and politicization suggests that the call for an impartial and authoritative judicial power would continue to be placed in jeopardy as long as the Court remains operating in the shadow of the Party authority and lacking meaningful checks and balances at the institutional front.

Drawing on the case of China and especially the rich experience of the Court, **chapter 5** reflects on the decades-old debates and several deep-rooted misunderstandings regarding legal development in China, as mentioned at the beginning of this research, reconceptualizing judicial power in a nondemocratic separation of powers context with Chinese characteristics. More importantly, an up-to-date understanding of the power of the Court provides a source of inspiration for rethinking the internal logic of a distinct category of judicial power beyond core Western democracies.

Through the lens of the separation of powers doctrine that originated in the West and its diverse implementation in and beyond the core Western democracies, three sets of elements have emerged as the key to understanding the role of the highest court in the specific context of separation of powers: (1) normative versus functional analysis of the doctrine, (2) judicial independence versus judicial interdependence as manifested in the power distribution and power dynamics, and (3) political-centered versus legal-centered modes of operation for the highest court in the specific political and legal context.

Drawing on existing comparative scholarship and especially on the basis of three core sets of elements identified in this chapter, it is evident that the scope and impact of judicial power in China are largely determined by the political and institutional designs within the Chinese governance structure, while in many respects being shaped and restructured by the Court's initiatives in developing the law and expanding power boundaries. Although the exercise of judicial power is rather limited and restrained in accordance with the Chinese political and constitutional arrangements, one should never overlook or underestimate the Court's solid efforts and continuous striving toward greater competence, authority, and independence. Therefore, it should come as no surprise to learn that like judicial bodies in and beyond the West, the Court is likely to function as an inseparable part of political governance in China. Thus, its exercise of power is the result of, and in turn an operating condition that contributes and brings changes to, the broad political and legal context within which it operates.

Based on this study's insights and implications, the researcher concludes that, first, the Court has made more remarkable progress in reconceptualizing judicial power in the era of transformation than Western scholars have generally recognized. Notwithstanding the political and institutional restraints facing legal development in China, the Court has demonstrated self-initiated and highly pragmatic interest in pushing forward its authority and impact on and beyond the legal fields through various judicial and nonjudicial means. The Court's initiatives and actions have increasingly reflected its preferences, strategies, and professional ideologies in driving core functions of the courts while at the same time integrating considerable diversity and flexibility into the legal system. In this respect, the Court should no longer be deemed a mere governance tool for the ruling authorities but should rather be viewed as a pragmatic actor in pursuit of greater autonomy and self-interest in the era of transformation.

Second, the deep-seated institutional and political constraints noted in this study imply that there is limited space for the judiciary to act independently in the authoritarian legal setting, within which courts continue their commitment to intensive political functions instead of posing a direct threat to the ruling authorities. The absence of an active and effective form of judicial review power

further suggests that it is difficult for Chinese courts, especially the Court, to make meaningful breakthroughs in expanding the power spectrum in the absence of institutional changes and serious political reforms. As long as the exercise of judicial power in China can only occur and be refined under the umbrella of the Party's leadership, the call for an impartial and authoritative judiciary will continue to be placed in jeopardy in the face of inadequate institutional guarantees for justice and judicial independence. Therefore, it is conceivable that legal development in most nondemocratic systems is primarily an issue in which political considerations play a decisive role. The path to legal development in nondemocratic settings in many respects reflects a strong commitment to a political-centered rather than a law-centered approach, which ultimately is the product of the concrete choices, institutional interests, and strategic considerations of political actors rather than the endeavors and wisdom of courts and judges.

Third, because there is no single or simple form of separation of powers that can be universally applicable in the West and East, the Chinese approach to separation of powers presented in this study is more likely to make a meaningful contribution to broadening the empirical and theoretical base of the separation of powers doctrine, especially by serving as a convincing reference for other nondemocratic regimes. Rather than viewing the cases discussed as problematic, the arguments made in this study suggest that a comprehensive understanding of the roles and power of the highest court from a nondemocratic perspective requires a thorough mapping of normative and functional analyses, judicial independence and interdependence, and reforms and restraints as reflected in the exercise of judicial power in theory and in practice. As it can be argued that judicial power lies in the power interplay and counterbalance on these fronts, the doctrine is more likely to provide a remarkable analytical framework and allow us to capture the essence of judicial power in a broader analytical context.

Finally, the observations and discussions in this book highlight the possibility for the highest courts to strive for greater competence and authority even in the nondemocratic context of separation of powers, and the underlying circumstances of doing so. In fact, one should not dismiss the highest court's power and far-reaching influence in bringing about significant legal changes in a nondemocratic form of separation of powers. In recognizing the ruling authorities' supremacy over the judicial power in authoritarian regimes, the central and the most urgent issue is not to justify the legitimacy of the dictatorship but rather to make a serious inquiry into whether and under what circumstances there is considerable scope for legal development. Thus, the analysis can then move on to examine the available approaches and strategies the courts, especially the highest courts, adopted within the realm of their levels of capabilities in nondemocratic legal settings. With a clear understanding of their inherent limitations and institutional constraints, courts are more likely to avoid unnecessarily frustrating

attempts and to focus instead on making solid progress on advancing legal development on their own initiative, seeking to operate with greater autonomy while at the same time strategically responding to political concerns and social needs. To make meaningful breakthroughs in strengthening judicial authority and separating the role of the courts from that of other powerful state actors, it is important for the highest courts to continually create innovative solutions to balance legal requirements with their responsiveness to political assignments, creating meaningful escapes from the typical bureaucratic mode of rationalization and steadily increasing the level of judicialization, and eventually, achieving solid progress in driving judicial empowerment in the specific context of separation of powers.

Overall, the key to this study is to place the highest court in its environment and to explore and expose how the highest court exercises its most important powers in a nondemocratic form of separation of powers. China presents us with a distinctive example in this regard, and the in-depth discussion of the Court's exercise of power in this book offers an up-to-date understanding of the judicial power in China and its evolving meanings in an authoritarian legal setting. More significantly, on the basis of the Court's practice and experience, this book eventually reflects on the twists and turns facing legal development in nondemocratic separation of powers contexts and highlights the possibility for the highest courts to strive for greater competence and authority in such contexts, and on the underlying circumstances of these endeavors, which deserves to be comprehensively studied, thoroughly understood, and properly respected.