

THE SUPREME COURT AND THE MAKING OF PUBLIC POLICY IN CONTEMPORARY CHINA

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Post-Mao China saw profound social, economic and legal changes. This paper analyzes an often neglected aspect of these transformations: the evolution of the Supreme People's Court (SPC) into an increasingly influential political actor in national law and policy-making. The SPC has self-consciously redefined its mandate to manage state-sponsored legal reforms by performing an expansive range of new functions such as issuing abstract rules, tightening control over lower courts and crafting out a constitutional jurisprudence of its own at the expense of other powerful state actors. It is more assertive than ever its own vision of how law should develop in the contemporary People's Republic of China (PRC). SPC action can be broadly consistent with the Chinese Communist Party (CCP) interests, autonomous and expansive at the same time. However, the SPC's reform initiatives are inevitably constrained by the vested interests of major bureaucratic players as well as the Party's insistence on maintaining the Court as an integral administrative agency of its public security system.

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INTRODUCTION

The People's Republic of China (PRC) witnessed significant social, economic and legal transformations under Deng Xiaoping's massive market-oriented reforms. One remarkable, but oft-neglected, development in the post-Mao era is the Supreme People's Court's (SPC) increasingly influential role in law and policy-making (Tanner, 1996, 39). The Court's recent expansion stands in sharp contrast to its previous nearly exclusive function as an oppressive and ineffective agency persecuting the state's political opponents (Teiwes, 2000, 125). This paper focuses on the SPC's assumption of legislative and administrative powers in setting new norms and principled courses of action to deal with problems of governance and policy in the reform period (Chen, 2004, 133). In 1997, the Court formalised its powers to make extensive laws under the rather misleading label of "Judicial Interpretations," and has since then legislated in a diverse fields of public policy, including environmental governance, judicial review of administrative action, corporate governance, alternative dispute resolution, housing and property, private international law, and international trade, to. (Chua and Wong, 2007, 443; Lin, 2000, 221-224; Ji, 2006, 30). Moreover, the Court's opinions have become dominant sources of law in dispute settlement. Ignorance of judicial interpretations on the part of lawyers may lead to an "inevitable failure in the Bar Examination" (Ji, 2006, 1). In 2008, the SPC even monopolized the power to review every case in which the death penalty was imposed (Balme and Dowdle, 2009, 8).

Unlike judges in many other jurisdictions who readily reject the notion that they are practically involved in lawmaking, SPC justices are recognized as legitimate participants in formal and open legislative processes. A notable example of such participation is the production of the 1995 *Law of Judges*, a statute drafted and proposed by the SPC to the National People's Congress (NPC) with a view to strengthen the independence of the judiciary from the bureaucratic apparatus. The management of courts was traditionally part of the work of the powerful Ministry of Justice. Moreover, between 1999 and 2009, the SPC released three Five-Year Plans of judicial reform which symbolized an ambition to concentrate in its own hands the power of judicial administration through extensive judicial training, campaigns against judicial corruption and significant reductions of administrative personnel in courts to free judges from bureaucratic intervention (Zhang, 2006, 139, 155).

This paper analyzes the various structural and functional changes associated with the post-Mao SPC and evaluates the Court's problems and prospects in the Chinese legal and political order. It is not concerned with the doctrinal, technical and normative aspects of law and courts. Instead, this paper argues that the Court has cleverly acquired express policy-making powers at the expense of other important legislative and bureaucratic actors without jeopardizing the authority of the power center of the Chinese Communist Party (CCP). This paper posits that the Court has actually employed two main strategies to facilitate this process. The first is to strengthen control over the lower courts and turn them into its own agents. This takes the shape of extensive adjudication supervision and the enforcement of ambitious judicial reform plans. The second is to maximize the SPC's own jurisdiction and progressively elaborate its views on the content of statutory laws across diverse policy areas. Despite the Chinese state expressly prohibiting any form of judicial review of

legislative and administrative action, the SPC has managed to issue Judicial Interpretations and maximize the power of lower courts over local bureaucracies. The SPC has injected elements of creativity in the process of translating central policy into judicial terms (Findlay, 1999, 291-293).

This paper is organized as follows. Sections 1 and 2 explain why the SPC is unique among courts in authoritarian states, and thus requires additional scholarly attention. Additionally, these sections discuss the distinctive institutional properties of the SPC and its complex relationship with the CCP and other branches of the state. Section 3 provides an overview of the Court's judicial reform policies. Sections 4 and 5 concern the SPC's special law-making and implicit judicial review capacities. The concluding analysis at the end of the paper summarizes the key arguments and predicts the future of the SPC in the PRC's political environment.

SECTION 1: CHINESE JUDICIAL EXCEPTIONALISM?

The SPC is a highly unusual political institution that deserves individual inquiry and defies some of the main strands of the literature on the "global expansion" of judicial policy-making powers (Tate and Vallinder, 1995). A number of recent studies have shown that judiciaries in democratizing regimes around the world are exerting greater political influence at the expense of other governmental actors (Hirschl, 2008, 138). Although the greater involvement of the judiciary in public affairs has been regarded as "a phenomenon of modern democratic rule" (Domingo, 2005, 23), it is inaccurate to assume that judges and courts are irrelevant in non-democratic settings (Ginsburg and Moustafa, 2008, 12). A visible orientation in the rational choice-dominated literature of authoritarian judicial empowerment is an emphasis on the correlation between new judicial review powers and incumbent governmental interests. Another important strand of the literature suggests that supreme courts in authoritarian or nascent democracies tend to attain greater policy-making powers in fragmented or uncertain political environments.

The political insurance theory claims that judicial empowerment in new democracies reflects the interests of dominant ruling groups (Ginsburg, 2003). Secured governments that do not face uncertain futures are unlikely to be motivated to empower courts because there is no immediate need to preserve their existing interests (Maveety, 2009, 300). Hirschl (2004) offers a similar theory of hegemonic preservation, claiming that enlarged constitutional review systems in Canada, New Zealand, Israel and South Africa were actually created by self-interested and endangered elites who hoped to preserve their hegemony and impose constraints on their successors. He suggests that powerful courts are in fact created by self-interested incumbent officials who seek to set limits on their successors from the opposition camp.

Moustafa's 2008 study of the Egyptian Supreme Constitutional Court reveals that both state and society contributed to the enhanced status of the Court: while the authoritarian regime wishes to use a more powerful judiciary to secure property rights and attract global investment, social activists and judicial supporters enable judges to expand their powers and decide on a wider variety of political issues. Chavez (2004) observes that the fragmentation of partisan interests is beneficial to the transformation of Argentine courts into autonomous checks on the excesses of power. Couso (2005)

offers the hypothesis that the autonomy of Chilean judicial institutions from executive dominance is positively linked to that of the independence of the legislature. Uprimny's 2004 analysis of the Constitutional Court in Colombia considers the legislature's lack of commitment to advance constitutional goals as a main source of judicial legitimacy.

Enhanced judicial capacities usually take the form of the court's adoption of explicit constitutional judicial review powers to strike down legislative acts and administrative action in the process of adjudicating cases. Although the SPC's transformation can be classified as a kind of authoritarian judicial empowerment, it is in many ways fundamentally different from the paths mentioned above. To a large extent, the Chinese Communist Party (CCP) leadership does not face immediate electoral defeats, viable political oppositions or civic activism. It has succeeded so far in discouraging any attempt on the part of the Court to extend its constitutional jurisdiction. Instead, the SPC has made use of alternative channels to push forward its influences on law and policy making. These non-typical features put the SPC on the far end of judicial politics.

SECTION 2: AN INSTITUTIONAL ANALYSIS OF THE SPC

The SPC is an unusual if not exceptional institution. Founded as a committee of veteran politicians, revolutionaries and military commanders in October 1949, the work of the SPC generally concentrated on assaulting "anti-revolutionaries" (*daji*), or dissidents who opposed the socialist economic program, and criminals throughout the Mao era (Yu, 2006, 35-45). Though the Court has since abandoned many of its original characteristics, viewing it as analogous to supreme courts in other states remains problematic. The SPC operates within a web of specialized public security bureaucracies coordinated by the CCP's Central Political-Legal Commission (*zhongyang zhengfa weiyuanhui*, or CPLC). The CPLC is the top Party organ which exercises the powers of legal control and supervision on behalf of the paramount leadership. It has been considered by various observers as a "secret supreme judiciary organ," (Huang, 2006, 17-18) and the "backstage of dramaturgical politics" (Fu, 1993, 250), which commands courts to fulfill their duties in accordance with the current policy of the CCP (Xin, 2004, 109). The CPLC is headed by one of the nine members of the CCP Politburo Standing Committee – the organ at the apex of state power in contemporary China – and consists of a number of high-ranking officials. CPLC leaders are usually allocated important state posts like the Chief Justice of the SPC, the Minister of Public Security, the Director of the Supreme People's Procuratorate and the Minister of Justice.

However, largely due to shortage of legal expertise, much of the CPLC's work in relation to the judiciary is restricted to ideological education and not adjudicative decision-making. So far, the SPC remained supportive to official ideological positions. Most instances of SPC-CPLC collaborations are limited to procedural administration and not substantive decision-making. Further, direct Party control of the Court has substantially reduced. Like most other social, economic, or political organisations in the PRC, a Party Group is attached the SPC to offer political supervision and ensure conformity to the Party's latest policies. Nevertheless, contemporary Chief Justices are always chiefs of the SPC Party Group. Deputy chiefs

are always chosen from the Grand Justices or the Vice Presidents. This arrangement indicates that external CCP checks imposed on the Court exist all but in name.

Further, the SPC enjoys the privilege of being able to recruit its own judges and thus reproduces communities of judges largely according to its preferences. The Court consistently appoints the talented from prestigious law schools and provincial high courts. The selection process is relatively biased towards senior professional lawyers, professors of law, and associate professors of law. Undoubtedly, the soviet-imported system of *Nomenklatura* exists in judicial appointments. In practice, the list of judicial nominees drafted by the Chief Justice requires the approval of the CCP Central Organisational Department before formal congressional confirmation. Presumably, basic commitment to Leninist constitutional principles is taken for granted in every appointment to Chinese state bodies. What differentiates the SPC's recruitment record from other member institutions of the PLX, the NPC, or the State Council is that the Court consistently recruits appointees who possess exceptional credentials, either being highly academically qualified or deeply experienced in law and adjudication. Importantly, the SPC can appoint and dismiss, on its own without CPLC involvement, associate judges (*zhuli shenpanyuan*), who upon its permission can exercise the powers of regular judges in full.

Judicial identity affects the way judges behave in their term of office. Distinctive judicial education, outlook, and practices help set courts apart from officials in other branches of government and thus indirectly enhance their claim to autonomy. Apart from redefining its recruitment targets, the SPC has dedicated substantial efforts to develop a new judicial outlook. Previously, Chinese judges, including the Court's members, wore uniforms that closely resembled that of army and police officers. In 2000, the SPC announced that judges would wear western-style, black judicial robes. In their public appearances, judges would nail on their suit jackets lapel pins that depict the SPC's unique logo, a red circular shield with a pair of golden scales in the middle. Another visible change rests in the title of judges. Formerly SPC judges were solely ranked according to their administrative position and unimpressively referred to as "adjudicative officers" (*shen pan yuan*). In 2002, the Court unprecedentedly endowed its members with much more prestigious judicial titles. The SPCP would thereafter be known as "Chief Justice" (*shouxi dafaguan*) and other senior members of the Court as "Grand Justices" (*yiji dafaguan*) or "Associate Grand Justices" (*erji dafaguan*).

Earlier Presidents of the Court (1949 – 1997), including Shen Junru, Dong Biewu, Xie Juezai, Jiang Hua, Zheng Tianxiang, Ren Jianxin were politicians, bureaucrats, or military leaders. Among them, only the first two had formal legal training. Chief Justice Xiao Yang, in office between 1998 and 2008, was different. He received his legal education from the Chinese University of Political Science and Law in Beijing and spent ten years (1983-1993) in Guangdong Province's procuratorate and the SPP. Afterwards, he was appointed Minister of Justice, an adjunct professor of law at the Renmin University, a graduate student supervisor at the CUPL, and Deputy Director of the National Procurators' Training Centre. As Minister of Justice, he contributed to the establishment of the PRC's new legal aid system. One of his first Vice Presidents, Justice Cao Jianming, appointed in 1999, earned an LL.M. in International Law in addition to his LL.B. at the prestigious East China University of Political Science and Law in Shanghai. Cao spent a year in the Faculty of Law of

Ghent University, Belgium as a visiting student. Subsequently, he served as professor and head of the School of International Law, and finally Chancellor at the ECUP.

After the millennium the Court saw the extensive recruitment of highly legally qualified and judicially experienced persons as senior justices. The notion that it is the *only* criterion became growingly challengeable. All of the sitting senior justices of the SPC are prominent academic lawyers and leading provincial judges who had reputable careers. Duan Wuzheng, Shen Deyong, Qu Xiaoming, Su Zelin, and Luo Haocai were notable legal academics before their appointments to the bench. Liu Jiashen, Tang Dehua, Zhang Jun, Jiang Biexin, Jiang Xingchang, and Huang Songyou held former posts as presiding judges of the various SPC Chambers and leaders of provincial superior courts. Xi Xiaoming, appointed in 2004, is a Peking University economic law Ph.D. and former Head of the SPC Research Department. According to Justice Wan Exiang (2002), a LL.M. alumnus of Yale Law School in the United States and an international law Ph.D. graduate of Wuhan University, as many as fifty SPC judges hold doctoral degrees and a further one hundred and sixty holding masters degrees in law by 2002. Besides, the implications of the 2008 appointment of CPLC career bureaucrat Wang Shengjun as Chief Justice on the Court's recruitment policy should not be over-stated. The accession of Justices Jing Hanchao and Nan Ying, Vice Presidents appointed in 2009, rebutted any significant change in appointment policy. Both held law degrees from Peking University and the Southwestern University of Political Science and Law and both were senior judges in provincial high courts.

SECTION 3: REFORMING JUDICIAL ADMINISTRATION

The SPC sees itself as the exclusive leader of the 200,000 hierarchically assembled career judges, who hear some six million cases every year (Bergstein et. al., 2006, 69). Indeed, the SPC's Annual Work Report to the NPC is more like an overview of the entire national judicial system's work in the past year than a document dedicated exclusively to the Court's own activities. However, in reality, the over 3,000 courts in the PRC are under the control of multiple principals, including but not limited to local administrative agencies, local congresses, local Party committees and sometimes large businesses. The judiciary's institutional dependence on the local bureaucracy constitutes the main obstacle to the development of the rule of law (Zhang, 2006, 134). Provincial and county courts are dependent on local bureaucracies for financial and political support (Pei, 2008, 70). Corruption further undermines the efficiency of the courts. Local governments, being less responsive to Beijing since the economic reforms, not only play a frontline role in commercial and foreign investments, but also serve as collaborators in criminal activities (Lieberthal, 2004, 321). The first Five-Year Plan was handed down to all levels of the judiciary in October 1999. It required lower court judicial leaders to enhance the professional quality and accountability of adjudicators, systemize the institutional architecture of courts with a view of increasing efficiency, strengthen oversight mechanisms to ensure procedural fairness and combat corruption, and to pioneer reforms over court finance (Zou, 2001, 338-340). Judicial oversight initiatives included several Measures and Opinions about imposing disciplinary punishment and the installation of inspectors on courts which violate the law in its own work.

Knowledge of the law was previously relatively unimportant in the selection of judges. As such, most judicial personnel, who were "borrowed" from the

bureaucracy and the military, were not legally educated and had virtually no judicial experience before their appointments (Zhang, 2006, 145). In 2002 the SPC required all new candidates to pass the more competitive and transparent State Judges' Examination before being appointed, and it demanded existing judges to attain relevant training within a stipulated time frame. In the same year, the Court established a system for the punishment of judges for violations of the judicial code of ethics. Official figures suggest that approximately 995 court personnel were penalized and removed from the trial process (Yang, 2002, 21-23). Likewise, the second Five-Year Plan focused on the improvement of adjudicative fairness and the implementation of court decisions against the background of international trade and the proliferation of courtroom litigation (Wan, 2007).

The impact of the SPC's reform programs was mixed. Indeed, the SPC has failed to resolve the contradictory lines of command within the executive-dominated national judiciary (Qiao, 2005, 40). But there are also reports that initial responses to the Plans were generally positive. For instance, the courts in Sichuan province eradicated corrupted personnel in two years, and a quarter of judges in the city of Tianjin were removed because they failed to pass judicial examinations (Zhang, 2006). Some courts have also begun to pronounce their final judicial decisions without requesting guidance from the administrative authorities on a case-by-case basis. These achievements would not have been successful without the SPC's participation in national judicial reform.

Through reforming the PRC judiciary into a more viable institution of dispute resolution and public order maintenance, the SPC has both partially satisfied the demands of the CCP paramount leadership to facilitate the efficient resolution of economic disputes and social conflicts as well as strengthened its own administrative control over the 3,568 courts nationwide (Yang, 2002, 21). Although the SPC cannot directly determine lower court appointments, it can, with the assistance of more rigorous selection examinations and procedures, eliminate some of the unfit candidates proposed by corrupted local bureaucracies which want to further their own economic and political interests by controlling the judiciary.

Under post-Mao China's fragmented political arrangements, the CCP Politburo Standing Committee is no longer omnipotent and cannot command uncritical compliance throughout the country. The reform initiatives of the SPC have reduced, to varying degrees, the local bureaucratic control of the judiciary, which in effect strengthened the central government's capacity to rein in disobedient and corrupt local administrative organs. These organs are frequently the source of social discontent. At the same time, the Court has turned numerous lower courts, which were previously tilted towards the authority of local governments, into agents and building blocks of a more coherent and aggressive national judiciary.

SECTION 4: THE LAWMAKING JUDGE

In most polities, judges and legislators handle disputes differently and separately. Lawmakers create new legal norms to prevent the rise of conflicts, and judges make use of these norms to assist them in conflict resolution (Shapiro and Stone Sweet, 2002, 69). However, in the special case of the SPC, these two functions merge into one. Peerenboom (2009) agrees that the SPC is now behaving like a legislative body.

Moreover, Wang (2006, 545) contends that the Court has become an “activist” lawmaker who creates new norms of general applicability and has effectively altered the legal landscape. The SPC actually hears very few cases (Dreyer, 2008, 174), making its conflict resolution role indirect. The Court manages conflicts by replying to questions put forward by lower courts, reviewing death sentence decisions, examining petitions from citizens and peasants and producing new rules to prevent disputes through its Judicial Interpretations (Finder, 1993, 223).

The “interpretations” and “replies” enacted by the SPC substantially differ from comparable documents issued by other supreme courts in cross-national comparisons. While typical statutory interpretations take the form of paragraphs within individual case judgments or judicial opinions, the SPC’s interpretations resemble legislatively created statutes: there is a preamble, a list of articles and supplementary provisions, and they often deviate significantly from the original wordings contained in the statutes (Liu, 1997, 93). To consolidate the legal standing of the Court’s normative power, Article 4 of the 1997 Rules of Judicial Interpretation Operations openly states that Judicial Interpretations are legally binding.

Unfortunately, SPC justices (literally adjudicative officers, shanpan yuan) do not publish their names and indicate their individual stance in any document they deliver. This makes the quantitative assessment of voting patterns impossible. Therefore, it is difficult to identify the relationship between personal motivators and collective decision-making within the Court. Nevertheless, it is widely known that the SPC is a law- and policy-making body. Judicial Interpretation is a major form of the Court’s policy output. Hou’s (2005) findings that the SPC is now lobbied by powerful interest groups in the market economy may reflect the Court’s increasingly important role in economic regulation. Through its interpretative activities, the Court redefines the ordering of state and society by reflecting at least some social values (Yu, 2006, 35).

Unlike most judiciaries, which tend to make decisions only in courtrooms, the SPC frequently enacts Judicial Interpretations in a high profile manner. For instance, during the drafting of an Interpretation regarding personal injury compensation law, the SPC openly collected opinions from the Internet, policy paper submissions and a public seminar. The final draft was amended as many as twenty-eight times (Ji, 2006, 30). The Court even conducted press conferences and media receptions to explain new interpretations in important policy areas such as corporate governance, stock exchange, commercial contracts and marriage (Ji, 2006, 30). For example, the Court’s Regulations on the Adjudication of Civil Compensation Cases which arise out of Stock Market Misrepresentations not only requires the obedience of lower courts but also of stock market participants and citizens (Ji, 2006, 31). This differs from the traditional purpose of Judicial Interpretations in that SPC guidances no longer only “assist” lower courts in interpreting the law but also claim general normative power over the citizenry. Clearly, the SPC’s extended law-making competency has usurped the NPC’s supposed monopoly over the making of laws that are generally applicable to everyone in the PRC. The SPC documents its own “especially important and typical” decisions in the seasonal Gazette of the Supreme People’s Court (Zhang, 2006, 153). Even though the Chinese judicial system knows no doctrine of judicial precedent, judges are “under increasing pressure” to give weight to SPC approved legal principles in the judicial process (Keith and Lin, 2009, 241).

Technically, the SPC's power to issue Judicial Interpretations is based on the supremacy of the NPC. But given that the NPC "falls short of the role stipulated by the Constitution" (Wang, 2006, 536), the Court is really filling in an important lawmaking lacuna. In 2006, the NPC enacted The Law of Supervision by the National People's Congress Standing Committee of the People's Republic of China stipulating that Judicial Interpretations of the SPC have to be reported to the NPC for potential scrutiny. This implies both the Congress's official recognition of the significance of the SPC's abstract power to interpret laws and the legislature's increased suspicion of the judicial branch (Ji, 2006, 74). Undoubtedly, the SPC has effectively become the principal norm-maker at the expense of the national legislature, which enacts far less statutes. The Court supplies most of the rules that guide the practical decision-making of judges on a daily basis. These rules, reflecting the will of the SPC and packaged in a way that is generally consistent with the vague political directions set out by the CCP Politburo Standing Committee, may easily conflict with the diverse goals of the NPC, the State Council and the local administration.

SECTION 5: IMPLICIT CONSTITUTIONAL JURISPRUDENCE

The Chinese constitution is not formally judicially enforceable (Keith and Lin, 2009, 225-229). The SPC is technically a functional department subordinate to the NPC, and therefore it can neither strike down laws or executive acts, nor interpret the constitution in the process of adjudication. Executive, legislative and judicial powers are supposed to concentrate within the NPC, which is the "supreme legal expression of the will of the ruling class" (Dicks, 1996, 86). This may lead one to believe that the story of Chinese judicial review of legislation and governmental action ends here. Counter-intuitively, Liu (1988, 250) rightly observes that the SPC "can and does in practice" question the constitutionality of local laws. Seeing itself as an obedient executor of top state imperatives, the SPC has become increasingly critical towards other state organs, most notably the NPC (Liu, 1997, 119). In 1986, citing Article 100 of the Constitution, the Court requested lower judiciaries to refrain from applying local laws which contravene with the Constitution, statutes and administrative regulations. This has effectively established a "subtle" judicial review of legislation (Liu, 1988, 250). In the 2001 civil case of *Qi Yuling v Chen et al.*, the SPC for the first time applied the Constitution in its ruling without the approval of the NPC and the executive State Council. After this bold incident, the SPC was apparently unwilling to decentralize this constitutional interpretation power by "jealously guarding the power for itself" (Lee, 2005, 162). The decision, which contradicts the established limits of Chinese judicial power and is likely unwelcomed by the "political" branches of government, stood intact for seven years. On January 17, 2003, the SPC issued a controversial reply to the High People's Court of Liaoning Province. The High People's Court inquired whether a man who had consensual sexual intercourse with a girl under the age of fourteen could be considered to have committed the offence of rape if he was unaware of her actual age. The SPC ruling interpreted the law so as to fill in the gaps of Article 236 of the *Criminal Law* (1997). In this very controversial area, the law had only clarified what happens if a man has intercourse with a girl under the age of 14 and is aware of the victim's age. In its *Reply*, the SPC reflected on the importance of *mens rea* (the intention to commit an offence) and favoured the protection of the accused by rejecting the crime of rape. Furthermore, the SPC's

Judicial Interpretation of the General Principles of Civil Law has expanded the definition of rights, most notably those associated with the injury of reputation not listed in the statute. The SPC cited the protection of human rights and the attainment of substantive and procedural justice as the objectives of its plan to impose more rigorous oversight of capital punishment. With the support of the legislature, the SPC vested in itself the final approval power for every capital punishment decision in the entire nation. The Court's 2006 decision further limits the power of provincial high courts and military courts in deciding capital punishment cases. Incompetent lower courts often cause controversial increases in capital punishment. In contrast, the SPC's professionalised review work resulted in a drop of 10 percent in the number of death sentences in the first five months of 2007 compared to the same period the year before (Keith and Lin, 2009, 248). For the first time the number of immediate executions has fallen behind the mounting number of two-year suspended death penalties. The Court's action can be seen as an effort to enhance the quality of criminal justice and reduce arbitrary decision-making in local courts. Nevertheless, it should be recalled that the SPC has not completely shaken its repressive role in spite of its refocus of working direction. Responding to the Party's nation-wide order to crack down a sizeable religious sect known as the *Falun Gong*, the SPC and SPP jointly issued the *Interpretation of Several Questions in Law Concerning Criminal Cases of Organising and Using Evil Cult Organisation* (1999). The *Interpretation* redefined the notion of "cult" and expanded the categories of punishable behaviour under Article 300 of the *Criminal Law* (1997). The breakup of Party hegemony is not a situation the Court, as a component of the Leninist state, wants to see.

Since the 1980s, as the leader of the entire Chinese national judiciary, the SPC has also pushed forward the limits of local courts to exercise judicial review powers over bureaucratic action. Through empowering local judges, the SPC has also gained considerable powers to exercise a sort of indirect judicial review through supervising review cases handled by lower courts. The NPC-enacted Administrative Litigation Law (ALL), the first statute to establish a system of judicial review of local government in the PRC, facilitated the SPC's agenda. Seen as a potential threat to the bureaucracy, the State Council immediately issued the Administrative Review Rules (ARR) as a practical preventive and defensive measure against the ALL. To guard the new privilege of the judiciary, the SPC promulgated the Opinion on Several Questions related to the Implementation of the Administrative Litigation Law of the People's Republic of China, which clearly expanded the scope of judicial review from state organs to semi-administrative bodies. In the 2000 Interpretation of the Application of the Administrative Litigation Law, the SPC further expanded the lower courts' review jurisdiction by making the "administrative action" of any state organ challengeable by citizens, legal persons, and other organizations. This has further blurred the "concrete" and "abstract" administrative action distinction which originally placed heavy restrictions on judicial review power (Xiao, 2004, 346-347). Beginning in the 2000s, a significant amount of SPC judicial review interpretations involved compelling international trade issues related to China's World Trade Organization (WTO) membership (Lee, 2005, 161). The SPC's 2002 *Rules Concerning Adjudication of International Trade-Related Cases* was the first major interpretation regulating the adjudicatory methods of WTO-related administrative cases (Lin, 2003, 291-292). Li Guoguang, Deputy President of the SPC reportedly noted that "nearly all areas of administrative decision-making, such as trademark, patent, anti-dumping, customs tariff, and other international trade-related

administrative cases, would soon become subject to judicial review” (Lin, 2003, 291-292).

SECTION 6: CONCLUDING ANALYSIS

Although the contemporary SPC, like its former self in the Mao era, remains a loyal adherent to the CCP, it is inappropriate to assume that nothing important has happened to the Court under Deng’s historic reforms. The political relevance and significance of the Court in the legal regulation of so many aspects of local agents and public administration in a country that is geographically larger, more populated and probably no less diverse than the European Union should not be underestimated. The SPC has made significant achievements in controlling powerful bureaucratic agents and rationalizing the otherwise vague state political lines with juridical means. Like other courts in authoritarian states which have attained new powers, the SPC now proactively engages with work related to controversial policies, social control, agent management, regime legitimacy, elite cohesion maintenance and economic development (Ginsburg and Moustafa, 2008, 4-14).

But the SPC’s exceptional institutional properties are significantly different from courts elsewhere. In the Court’s case, greater powers, higher autonomy and a more professionally qualified staff are not necessarily equivalent to meaningful institutional independence or extensive adjudicative powers, as conventionally assumed. Yet the Court is doubtlessly responsive to policy changes and sensitive to law-making opportunities. Besides, the SPC is highly consistent in stressing its loyalty to the Party’s bosses and extremely cautious in using non-provocative language to frame its Judicial Interpretations and other statements. The SPC, skillful in its manipulation of legal instruments and central CCP support, is designing real alterations in the country’s legal and policy-making systems.

The SPC has become increasingly organized in the post-Mao era. Undeniably, the SPC is still institutionally dependent on the CCP’s CPLC network. However, the SPC has been endowed with greater functional autonomy. Many of its actions are no longer directly dictated by CCP imperatives. The domination of the court by law professors and career judges has led to the emergence of a relatively distinctive and self-conscious judicial vision regarding the role of courts in legal development and national governance. In short, the SPC is gradually becoming a more capable actor in its own right. SPC judges derive almost all of their authority from the CCP’s top leadership and continue to operate within a Leninist constitutional paradigm. Thus it is unrealistic to expect that the Court will impose significant constraints on the highest power holders of the state. It is clear, however, that the SPC’s activism and empowerment have added confusion to the socio-economic regulatory policies developed by the State Council and local bureaucracies.

Leninist structures of power do not preclude the autonomy and expansion of the SPC. The contemporary Court’s actions have been tolerated by the central CCP and other powerful bureaucratic and legislative actors, chiefly because they are not oriented to the safeguard of political rights or the restraint of governmental action. Expectedly, the SPC’s Judicial Interpretations and judicial reform programmes have been defied, compromised, and scaled down in many of the massive country’s regions. But Chinese legal development and judicial politics without the SPC would

be very different from what we see today. While the Court is still far weaker than the State Council, it has achieved considerable success in constructing a limited version of constitutionalism in the PRC. The fact that contemporary SPC judges actively behave and discourse inconsistently with other dominating political actors is itself an accomplishment of judicial power in an authoritarian setting. It is never easy to be judge, administrator, and legislator at the very same time.

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