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# Judicial Reforms Under Xi Jinping

## Fewer Illegitimate Influences, More Communist Party Control

By [Xin He](#)

Since Xi Jinping came to power in 2012, the judicial system has undergone far-reaching and controversial reforms in the name of enhancing judicial independence and prestige. Now that the reforms have been completed, we can see what they have actually achieved: more effective regime control over the judiciary and judges. Judges are still subject to influences outside the courtroom. What has changed is the nature of those influences and where they come from.

I will focus on three of the most important reforms.

### *Elevating Court Budgets to the Provincial Level*

The financial dependence of the two bottom tiers of courts on local governments was long regarded as one of the primary causes of local protectionism and other inappropriate local influences. The natural response was to elevate control over court finances to a higher administrative level. Since 2013, all judicial budgetary decisions have been made at the provincial level.

### *Limiting the Number of Judges*

Creating a quota for the number of judges (员额制) in each court was an effort to build an elite profession of judges. In the past, many court administrators also held the title of judge. But under the reform, only those capable of handling cases efficiently and effectively are supposed to be admitted to the judges' track. In each province, the number of judges was capped at 39 percent of the courts' overall headcount set by the central government. Those who were not selected to be judges could handle other, mostly administrative tasks within the courts. Upon its completion in 2017, the judge quota reform reduced the number of Chinese judges from 210,000 to 120,000.

### *Holding Judges Accountable for Life*

The "lifetime responsibility system" for judges aims to "let the adjudicator judge, but hold those who adjudicate responsible." In the past, senior court officials had to approve many case decisions, making courts into top-heavy bureaucracies. Now, judges can make most decisions on their own. But they are held responsible for their decisions for life.

What have been the effects of these reforms? I interviewed 17 judges, as well as three former judges who are now practicing lawyers. I found that while the reforms have ameliorated some illegitimate influences over the judges—such as those based on personal connections or *guanxi* with the parties or others interested in the case outcome—overall the party's legitimate influences (meaning legally or politically legitimate in the official rhetoric) have actually been beefed up and become more effective.

There has been a drop in administrative influence within individual courts. As noted above, the responsible judge and her/his collegial panelists

now have the final say in most cases. Judges must sign off on their own decisions, and the court leaders cannot look into them (过问) or interfere (干预). The statement that was typical of leaders' instructions prior to the reforms—"Please take this seriously, in accordance with the law"—has almost vanished. After the reforms, such a statement, leaving a written record in the file, would be labeled as interference and might wreck its author's political future. Relatedly, fewer cases are submitted to the court adjudication committee.

At the same time, the "legitimate" influence emanating from upper-level courts or government and Communist Party organs has only strengthened. Higher-level courts have more say in both appointing senior court officials and recruiting judges from lower-level courts. All told, there are greater vertical controls over the lower-level courts.

Meanwhile, the party's control over the courts through the Supervisory Commission (监察委) has become formidable. Since its establishment in 2018, aggressive controls over government employees, including judges, have been expanded through the mechanism of the commission, which is empowered to investigate professional and legal wrongdoing.

## From Fragmented to Comprehensive Control

Before the judicial reforms, the focus was on controlling individual judges by approving individual case decisions and signing off on adjudicatory documents. This control mechanism involved layers of approvals within the judiciary system and was bureaucratic, cumbersome, and fragmented. The reforms, by

contrast, are institutional instead of ad hoc. Many of them have been implemented promptly. By imposing severe and comprehensive responsibilities on the judges but allowing more room for them to make decisions, they have become more responsive and effective. Through classified documents including keywords, guidelines, and political indoctrination, the laws and policies prioritized by the national leadership have better penetrated the administrative layers in the courts. One Supreme People's Court official summarized this process as "releasing power but not control" (放权不放任).

This is why judicial transparency has been stressed throughout the reforms. It kills two birds with one stone: it opens up court cases to the general public so as to enhance the regime's legitimacy; it also allows the regime to control rank-and-file judges via the users of the judicial process—the litigants and the general public. Together with the lifelong responsibility system, these reform measures have tightened the party-state's grip over the judges.

	Before the Reforms	After the Reforms
Judges' Decision-Making Power	Constrained	Expanded
Responsibilities	Moderate	Broadened and Life-long
Internal Control	Approval by Supervisors	Key words, Guidelines, Adjudication Supervision, Political Indoctrination
External Control	Appeals and Petitions	Appeals and Petitions, the General Public via Judicial Transparency, the Supervision Commission
Loyalty	Personal Loyalty to Supervisors	Institutional Loyalty to the Party
Overall	Fragmented, Multi-layered	Direct, Comprehensive

## Conclusion

It is possible that the status of the judiciary vis-à-vis local government actors has been slightly elevated due to the reforms. But the biggest effect has been to strengthen the party's control over the judiciary, which in turn helps it to better

control the government and other political actors. From the regime's perspective, illegitimate influences have waned, but what it deems to be legitimate influences have persisted. Control over judges will only become more intense or individualized as technology advances. The judiciary may become more professionalized, but no way will it become independent.

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