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Judging Revolution:
Beijing and the Birth of the PRC Judicial System (1906-1958)

By

Glenn Douglas Tiffert

A dissertation submitted in partial satisfaction of the

requirements for the degree of

Doctor of Philosophy

in

History

in the

Graduate Division

of the

University of California, Berkeley

Committee in charge:

Professor Wen-Hsin Yeh, Chair

Professor Michael Nylan

Professor David Lieberman

Summer 2015

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by Glenn Douglas Tiffert

Abstract

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The impact of the PRC legal system on the world is swelling, yet our grasp of its history and path dependencies rests on weak empirical foundations, a thin source base, and outmoded claims that distort our understandings of its past, present, and future.

This dissertation tackles those deficiencies on two levels: first, by filling major knowledge gaps and dispelling chronic misperceptions about the birth of the PRC judicial system and, second, by reframing in time and space the 1949 revolution and China's twentieth-century engagements with modernity.

Specifically, the dissertation reinterprets the 1949 revolution by theorizing it not as an *a priori* rupture, but rather as an engine for recursively producing and negotiating difference. The dissertation unearths forgotten elements from China's legal past and configures them in provocative ways to blast holes in the layered compartmentalizations that have structured the historiography of modern China, namely its temporal segmentation into Republican, Mao, and post-Mao periods, and the spatial and ideological cleavages that have sundered the Nationalist regime from the CCP's coeval revolutionary base areas. In short, the dissertation aims to redefine the Republican-PRC transition, and firmly restore the PRC to Chinese historical time.

Section One establishes an empirical baseline for assessing the revolution by mapping the condition of the Nationalist judicial system as it approached 1949. Section Two conducts a similar inquiry into the CCP's Shaanganning border region and North China liberated area. It dispels the myth of an autochthonous CCP legal tradition by showing that the legal systems of these iconic base areas developed in deep dialogue with Nationalist China, and that this contact actually drove much of the dynamism in pre-1949 CCP legal policy and practice. The PRC judicial system therefore bore a congenital Republican imprint, not just from the institutions and personnel inherited from

the *ancien régime*, but also more profoundly from the accumulated network effects of more than a decade of prior CCP engagement with Nationalist law. Reconceptualizing the PRC as an heir to Republican judicial modernization rather than as its antithesis empowers the dissertation to break new ground in the histories of signature practices such as people's mediation, and on topics such as the rule of law and judicial independence.

Section Three carries this framework into 1949 and beyond. Through a micro-history of the Beijing Municipal People's Court, it not only supplies the first scholarly account of the CCP takeover and reconstruction of a major Nationalist state organ, but also shows the tortuous emergence of a new judicial system in unprecedented empirical detail. This tears the mask off of the monolithic CCP, and reveals the politics, tensions, and inconstancy that roiled inside. It exposes how, in the domain of law, the CCP bore multiple, competing visions of the revolution simultaneously, and as the balance of forces in the surrounding environment shifted, different equilibriums among these visions emerged, tracing a convoluted, sometimes violent course that reaches the present day. Time and again, the CCP has tapped this reservoir of legal diversity for adaptive solutions to political imperatives, which have then fed back into their surroundings iteratively. Reading that history as a dynamical system lends coherence to a series of otherwise serpentine fluctuations, most notably the stunning speed with which suppressed policies, and the persecuted people who once promoted them, resurfaced to jumpstart legal reconstruction after Mao's death and the end of the Cultural Revolution.

In this way, the dissertation decisively reframes our understanding of the present. Today, observers of Chinese legal reform often speak as if the PRC's engagement with ideas such as constitutionalism, judicial independence, and human rights stretches back no more than a generation and takes its cues predominantly from the West. This impact-response paradigm has a long record in Chinese Studies and, insofar as it infantilizes the PRC, it distorts our grasp of a much more complex and protracted series of exchanges. To refute it, the dissertation historicizes post-Mao legal modernity by tying it directly to the founding decade of the PRC, and indeed still further back into the Republican era. This establishes a more balanced, alternate genealogy for current legal reform that better accounts for its distinctive trajectory and significations, and its vexing aberrations from international "best practices."

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Abbreviations

BMA	Beijing Municipal Archive
BMPC	Beijing Municipal People's Court
CCP	Chinese Communist Party
GAC	Government Administration Council
GMD	Guomindang
MoJ	Ministry of Justice
NCPC	North China People's Court
NCPG	North China People's Government
NPC	National People's Congress
PLC	Political-Legal Committee
PRC	People's Republic of China
PSB	Public Security Bureau
RUCA	Renmin University of China Archive
SHAC	Second Historical Archive of China
SPC	Supreme People's Court

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Introduction

Beijing buzzes with the resonances between history, space, and power, and few points in the city echo them more urgently than what was once 72 Ministry of Justice Street, just west of today's Tiananmen Square.¹ For more than a century, this parcel of land has served as a bellwether of social, ideological and political change, and as a register of China's volatile engagements with modernity. It pioneered the introduction to China of modern courts, legal education and the bar, and was a nexus for the emerging subjectivities, social practices, modes of governmentality, and forms of knowledge and organization that attended them. Even today, it remains a focal point in the struggles to define, proclaim, and enact China's future.

Through wrenching dislocations, 72 Ministry of Justice Street stood as a testament to the elemental kinship of the late Imperial, Republican and Communist legal systems. For most of the Qing dynasty, the Court of Imperial Sacrifices 太常寺 and the Censorate 都察院 occupied the site on what was then called Board of Punishment Street 刑部街, after the adjacent institution that administered the empire's traditional courts and prisons.² But following a 1906 edict that reorganized the Chinese judicial system along Western lines, the Qing government razed the site to erect a home for its new Supreme Court 大理院, successor to the imperial Court of Revision 大理寺. Designed by the firm of Atkinson & Dallas and constructed by A.H. Jaques, the building stood three stories tall and 450 feet in length with Edwardian Baroque stylings worthy of Whitehall, including Ionic columns, copper-clad parapets and a clock tower that soared 110 feet above the street below. In addition to an extensive complement of judicial chambers, courtrooms, reception rooms, administrative offices, and a law library, the building boasted radiant steam heating, electric lighting, telephone service, and its own septic system, kitchens and power plant. When it opened in 1911, it dominated the inner city skyline, like a beacon of the future.³

The Supreme Court occupied the building until 1929, when it decamped to Nanjing, and the Beijing Local Court and Hebei Provincial High Court moved in. Next door, the Ministry of Justice also relocated south to the Nationalist capital. The

¹ The city now known as Beijing has had many names throughout history. During the twentieth century it oscillated several times between Beijing (Peking) and Beiping (Peiping), depending on the regime in power. Most recently, it was designated the capital of the PRC and renamed Beijing on September 27, 1949 by a resolution (关于中华人民共和国国都, 纪年, 国歌, 国旗的决议) adopted unanimously by the First Session of the Chinese People's Political Consultative Congress. To avoid confusion, this study will refer to it consistently in English as Beijing, and will adjust all institutional names and quotations to conform to this rule. But where Chinese characters appear, no alterations will be made.

² During the Ming and for part of the Qing dynasties, the Board of Punishment and the street of the same name were located about two miles to the west. When the Board moved, it took its street name with it. The former site became known as Old Board of Punishment Street 旧刑部街.

³ Zhang Fuhe 张复合, *Beijing jindai jianzhushi* 北京近代建筑史 (Beijing: Qinghua daxue chubanshe, 2004), 118. "Supreme Court of Justice," *The Far Eastern Review* 9, no. 6 (November, 1912): 286-287.

provincial apparatus of the Guomindang took possession of those offices, formerly the site of the imperial Board of Punishment. Tellingly, Ministry of Justice Street (formerly Board of Punishment Street) became Party Provincial Headquarters Street 省党部街. In 1937, when the Japanese ejected the Guomindang from the city, the name reverted to Ministry of Justice Street, but the ruling party's precedence over the law endured.

In the years that followed, 72 Ministry of Justice Street weathered Japanese occupation, wartime destruction and Nationalist decline only to rebound as the nucleus of the emerging PRC judicial system. In 1949, the building housed the Beijing Municipal People's Court, as well as the North China People's Court and the Ministry of Internal Affairs. The following year the Supreme People's Court, the Supreme People's Procuratorate, and the central government's Legal Affairs Committee 中央人民政府法制委员会 displaced them. The PRC Ministry of Justice took up residence next door, where the imperial Board of Punishment, the Beiyang Ministry of Justice and the Guomindang Party Provincial Headquarters had successively stood. One could literally visit key judicial organs at nearly every level of the PRC government simply by crossing a few well-chosen courtyards and lanes. To complement this cluster, the Beijing Municipal Public Security Bureau and the national Ministry of Public Security moved in several blocks to the east. Then, in 1958, at the height of the Anti-Rightist Campaign, the revolution again convulsed through architecture. In an act replete with the symbolism of purification and power, the government demolished the whole neighborhood, scattering Beijing's wounded judicature to make way for the Great Hall of the People, a monument to Chinese socialist realism that houses the National People's Congress, still the highest state organ and source of legal authority in the PRC.⁴

Inspired by the chronicle of 72 Ministry of Justice Street, this study takes a deep empirical dive into the birth of the PRC judicial system, and then springboards into a spirited reinterpretation of the 1949 revolution. It excavates buried elements of the legal past from both sides of the 1949 divide, and configures them in provocative ways to blast holes in the layered temporal, spatial, and ideological compartmentalizations that have structured the historiography of modern China. It brings to light uncharted path dependencies and inflection points that draw out suppressed entanglements with a century of state building and social, ideological and political change. It also furnishes the first case study of the CCP takeover and transformation of a major Nationalist state organ, the Beijing Municipal People's Court (BMPC). As one leading scholar has put it, "attempts to rebuild a legal system during Mao's rule have not been studied carefully in the West."⁵ This study begins to remedy that.

⁴ Zhou Hainan 周海南, "Tiananmen guangchang xice de bianqian," 天安门广场西侧的变迁 *Jingdou jiu ying* 京都旧影 3, (2002): 38-39; Li Ping 李平, "Jiyi zhong de sifa bujie 72hao," 记忆中的司法部街 72 号 *Renmin fayuan bao* 人民法院报, September 26 2009.

⁵ Jianfu Chen, "Modernisation, Westernisation, and Globalisation: Legal Transplant in China," in *One Country, Two Systems, Three Legal Orders-Perspectives of Evolution: Essays on Macau's Sovereignty After the Resumption of Sovereignty By China*, (Berlin: Springer-Verlag, 2009), 100.

“Revolution” lies at the conceptual heart of the enterprise, and that merits some reflection. Revolution is, of course, the dominant paradigm that structures our thinking about twentieth-century China; it punctuates the flow of time, frames relationships, orients our gazes, and molds our questions and expectations.⁶ But it is also a notoriously elastic word that frequently confounds. It can signify discrete political spasms, such as the February or October Revolutions of 1917, a broader field of events and processes, such as the Industrial Revolution, or a still more expansive, often fervently self-identifying, mode of historical interpretation, as in François Furet’s famous admonition that in France the Revolution “has a birth but no end.”⁷

Revolution is also riddled with paradoxes. The term implies a coherent occurrence, but in practice the content and boundaries of revolutions are often ambiguous, fiercely contested and shifting. Has post-Imperial China passed through a single extended revolution or a sequence of distinct ones?⁸ Notwithstanding signature moments -- the capture of the Bastille or of St. Petersburg’s Winter Palace -- revolutions transpire unevenly, reaching some people more palpably, swiftly and deeply than others, and in ways that belie consistency. More to the point, they are emergent phenomena generated by a cacophony of individual thoughts and actions reacting in a field of structural constraints and possibilities. To the chagrin of theorists and revolutionaries alike, revolutions are concurrently deterministic, fortuitous and voluntarist. As Frederic Wakeman suggested, they crystallize the contradictions between objective history and subjective will, and despite Manichean efforts to prune their genealogies and sacralize, purify and police what remains, the past survives in them as a generative, unruly and immanent force.⁹

China’s twentieth-century revolution(s) hit all of these notes. Joseph Esherick has described the overthrow of the Qing dynasty in 1911, and the founding of the PRC in 1949 as instances of “two fundamentally different types of revolution,” the former sudden, the latter protracted, each requiring “a different explanatory framework.”¹⁰ One finds this difference expressed most plainly in periodization. Particularly in the PRC, 1911 sits securely in the continuum of recent Chinese history 近现代史 (1840-1949), while 1949, by contrast, stands apart, the tripwire for a period all its own, contemporary history 当代史. Naturally, encoded in these choices are rubrics about how to construct

⁶ Joseph W. Esherick, “Ten Theses on the Chinese Revolution,” *Modern China* 21, no. 1 (1995): 45-76; Timothy Cheek, “The Importance of Revolution as an Historical Topic,” *Journal of Modern Chinese History* 7, no. 2 (2013): 1-4.

⁷ François Furet, *Interpreting the French Revolution* (New York: Cambridge University Press, 1981), 3.

⁸ Jeffrey N. Wasserstrom, *Twentieth-Century China: New Approaches* (New York: Routledge, 2003); Peter Zarrow, “One, Two, Many Revolutions,” *Journal of Modern Chinese History* 7, no. 2 (2013): 1-4. Werner Draguhn and David S.G. Goodman, eds., *China’s Communist Revolutions: Fifty Years of the People’s Republic of China*, (New York: RoutledgeCurzon, 2002).

⁹ Frederic Wakeman Jr., *History and Will: Philosophical Perspectives on Mao Tse-Tung’s Thought* (Berkeley: University of California Press, 1973).

¹⁰ Joseph W. Esherick, “Reconsidering 1911: Lessons of a Sudden Revolution,” *Journal of Modern Chinese History* 6, no. 1 (2012): 3-4.

the past, attribute causation, and deal with discrepancies between origins and creation myths, and intents and outcomes. But their full significance flowers only in their persistent anchoring effects, shading one revolution as a sublation (*aufhebung*) of the past, and the other as an annihilation of it, a subtle distinction that manifests with great consequence in the apprehension of Chinese history nearly everywhere.

This study joins a surge of historical research on the nascent PRC that is breaking down those conventions and elevating the disarrangement of revolution to a core concern. Like much of that work, it attends to the diversity of local experience, and unpacks the constructedness of events once portrayed as homogenous or self-evident.¹¹ It redirects our gaze away from the pinnacle of power, discovering agency and vitality among those once invisible or regarded as passive.¹² It is also mindful of the calamities and intense violence that punctuated the period,¹³ but situates them in new temporal and spatial frameworks that contemplate connections beyond just the CCP.¹⁴ The study shares, in short, the goals of reshaping our master narratives about the 1949 revolution, and aims to reformulate their relationships to the Republican past, and to China's present and future.¹⁵

More specifically, it invites us to incorporate into our understanding of revolution the original, primary denotation of the word, one apparently forgotten in historical and political writing but that survives in other contexts, namely in descriptions of the motion of celestial bodies: rotation around an axis. This equips us to re-imagine and juxtapose the successive paths China has taken as discrete orbits around a space constituted in part, but not exclusively, by shared problematics, which are themselves embedded in a

¹¹ Jeremy Brown and Paul G. Pickowicz, eds., *Dilemmas of Victory: The Early Years of the People's Republic of China*, (Cambridge: Harvard University Press, 2007); Thomas Mullaney, *Coming to Terms With the Nation: Ethnic Classification in Modern China* (Berkeley: University of California Press, 2011).

¹² Neil J. Diamant, *Revolutionizing the Family* (Berkeley: University of California Press, 2000); Neil J. Diamant, *Embattled Glory: Veterans, Military Families, and the Politics of Patriotism in China, 1949-2007* (Lanham: Rowman & Littlefield, 2009); Jeremy Brown, *City Versus Countryside in Mao's China: Negotiating the Divide* (New York: Cambridge University Press, 2012); Aminda M. Smith, *Thought Reform and China's Dangerous Classes: Reeducation, Resistance, and the People* (New York: Rowman & Littlefield, 2013).

¹³ Yang Kuisong 杨奎松, *Zhonghua renmin gongheguo jianguo shi yanjiu* 中华人民共和国建国史研究, 2 vols., vol. 1 (Nanchang: Jiangxi renmin chubanshe, 2009); Frank Dikötter, *The Tragedy of Liberation: A History of the Chinese Revolution, 1945-1957* (New York: Bloomsbury Press, 2013).

¹⁴ Michael Dutton, *Policing Chinese Politics: A History* (Durham: Duke University Press, 2005). Klaus Mühlhahn, *Criminal Justice in China: A History* (Cambridge: Harvard University Press, 2009). Michael Dutton, *Policing and Punishment in China: From Patriarchy to the People* (New York: Cambridge University Press, 1992). Shen Zhihua 沈志华, *Chuzai shizilukou de xuanze: 1956-1957 nian de zhongguo* 处在十字路口的选择: 1956-1957年的中国 (Guangzhou: Guangdong renmin chubanshe, 2013).

¹⁵ Elizabeth J. Perry, "Reclaiming the Chinese Revolution," *The Journal of Asian Studies* 67, no. 4 (2008): 1147-1164. William Kirby, "Continuity and Change in Modern China: Economic Planning on the Mainland and Taiwan, 1943-1958," *The Australian Journal of Chinese Affairs* no. 24 (1990): 121-141; Joseph W. Esherick, "Collapse of the Old Order, Germination of the New: Chinese Society During the Civil War, 1945-1949," in *China's Communist Revolutions: Fifty Years of the People's Republic of China*, ed. Werner Draguhn and David S.G. Goodman, (New York: RoutledgeCurzon, 2002).

deeper, complex universe. In principle, such orbits may collapse, drift or decay, and the injection of extrinsic energy by way of wars, ideologies, regime change and other phenomena excites or perturbs them. With each orbit influencing the next, information flows through time, not only forward, but also recursively, through reflexive reinterpretation and memory. Furthermore, these dynamics extend to the small scale, unfolding differentially among communities within China, and in ways that resist linear modeling.

Instability, nonlinearity and cyclicity are key facets of the metaphor. Since the demise of the imperial system and the cultural, political and social orders it validated, China has struggled to forge a new equilibrium, veering from one path to another, at times buffeted by external insults, as it has circled the question of how to reconcile itself with an intrusive modernity benchmarked largely outside of its traditions. Until recently, the stakes in this contest have been fairly localized, but with China's growing wealth and power have come stronger gravity, a more extensive sphere of influence and increasingly reciprocal feedback. That is changing the kinetics of the broader universe, and may yet redefine modernity and the terms by which others engage with it and one another, forcing all by degrees to taste of the cardinal dilemma that has confronted China for over a century.

China's judicial system has figured prominently in this odyssey, serving as a reliable sentinel of its major inflection points. Originally tasked with redeeming the nation from the stain of extraterritoriality, courts lit a path out of the crumbling universe of imperial rule toward the secular Western sciences of government and administration. As the country passed from one government and ideology to another, they blazed new principles for ordering behavior, new forms of status and authority, and the disciplines, institutions, social roles, vocabularies and outlets through which to express them. However, the aggregate yields fell far short of the investments because, like the country at large, the judicial system dissipated its energies oscillating between creation and dissolution, never able to reach an escape velocity, and thus trapped orbiting cognate problems at varying inclinations and eccentricities, circling familiar space with each cycle, not in repetition but rather (to paraphrase Twain) closer to rhyme.

The pattern began with the New Policies 新政 introduced after the Boxer Rebellion (1899-1901), when reformers, searching for a roadmap to legal modernization and for the practical jurisprudential implements of national survival and renewal, looked abroad for guidance, especially to Japanese renderings of positivist German *Staatsrechtslehre*. This might have been an inspired choice, and not just because the stunning rises of Germany and Japan appeared to recommend it. In theory, *Staatsrechtslehre*'s intrinsic constructivism took no position on the merits of existing Chinese norms; it expressed an interest only in positing the formal attributes of valid law. That left China the attractive option of devising a modern legal system from prevailing indigenous conventions. But, disenchanting with the possibilities offered by their own traditions, Chinese legal reformers hastily passed on this opportunity and ironically conflated legal essence with function. They wanted more than *Staatsrechtslehre*'s

ontological insights and methods, and skipped ahead to emulate the concrete legal system those described, brushing aside the positivist dictum to source law in local social facts.¹⁶ An early instance of the habit to transplant first and sort out later 先搬后采, this shortcut prefigured a similar gambit in the 1950s with Soviet law, and saddled China with a double burden: a legal system that not only began life remote from the society around it, but also was aloof on principle from the normative implications of that alienation. The downstream consequences of this have vexed Chinese reformers ever since.¹⁷

In the abstract, legal theoreticians were alert to the danger of radical estrangement, but where laws and norms evolved side by side, within the same community, as in Germany, the risk seemed low. And there were workarounds; in Meiji Japan, for instance, Hōzumi Yatsuka bridged the gap by grafting German-style positive law to the home-grown ideology of *kokutai* 国体. In China, however, the climate was more challenging. Not only did modern law confront norms grounded in profoundly different indigenous traditions, but those norms were also simultaneously undergoing a cataclysmic upheaval, conferring upon the emerging legal system something of the quality of a construction site in the sky. Looking back on a China beset by existential crisis and normatively uncertain of what ought to be (*Sollen*), the preoccupation of Chinese legal reformers with perfect principles derived from the facticity (*Sein*) of foreign law seems like folly. Law pitched as a technology or scientific practice was woefully inadequate to the enormity of their predicament. As in Japan, it demanded a corresponding ethical or social philosophy to anchor, signify, complete and direct it, and where Confucianism had once supplied this, variants of legal realism, and the emerging ideologies of the modernizing Chinese state, namely the Three People's Principles and Maoism, soon vied to follow.

The Beijing Municipal People's Court succeeded to this inheritance and to the struggles to transcend it. Established at 72 Ministry of Justice Street on March 18, 1949, a month before the People's Liberation Army crossed the Yangzi river into the heartland of the collapsing Nationalist regime, and more than six months before Mao proclaimed the founding of the PRC, the BMPC uniquely blended the grass roots responsibilities of a basic level court with the national profile conferred by its address in the capital. Central government and Party elites took a keen interest in its affairs, and senior legal cadres from the Party's core revolutionary base areas played seminal roles in its early history before moving on to high national office. Shifts in national politics and policy therefore tended to reach the BMPC quickly, making it a test bed for, or leading indicator of, the judicial system at large.

¹⁶ Zhang Sheng 张生, "Qingmo minshi xiguan tiaocha yu daqing minlü caoan de bianzuan," 清末民事习惯调查与'大清民律草案'的编纂 *Faxue yanjiu* 法学研究 no. 1 (2007): 125-134.

¹⁷ Alan Watson, *The Evolution of Law* (Baltimore: Johns Hopkins University Press, 1985). William Ewald, "Comparative Jurisprudence (II): The Logic of Legal Transplants," *The American Journal of Comparative Law* 43, no. 4 (1995): 489-510.

The BMPC laid bare the provisionality, indeterminacy, and liminality that suffused the young PRC, revealing a fractious judicial system as filled with ambition and idealism as it was underdeveloped and overtaxed. Short of resources and experience, BMPC leaders hastily assimilated, repurposed or created nearly everything they needed on the fly, including personnel, procedures and training regimes. They endeavored to triangulate deftly amid the broad strokes of Party policy and an endless, shifting stream of *ad hoc* demands and directives from superiors consumed with the urgent requirements of regime consolidation, internal security, and economic stabilization. This compelled a certain frenzied flexibility and openness to local initiative as they experimented with adapting rural practices to the complexities of metropolitan life and triaged their Republican inheritance, asking and often returning to the questions of what to keep, discard or revise.

The BMPC shows how actors pulled China's courts in conflicting directions in a contest to define and dominate the wider legal system at a time when patterns of authority and power in it had not yet settled. Fierce bureaucratic and jurisdictional rivalries, as well as social, ideological and experiential cleavages expressed themselves in competing notions about what judges, courts and the law should be and do. While Party cadres, activists and the police often chafed at the hindrances courts, by their nature, imposed on the exercise of power, the courts faced the corresponding problems of asserting and defending their nominal authority without casting doubt on their loyalty and revolutionary zeal.

Their dilemma was made more delicate by the fact that senior judicial personnel generally differed from their counterparts in the other principal instruments of state power -- the military and public security forces. They had higher levels of education, more complex entanglements with metropolitan Republican culture and politics, and tended to have served in civilian roles in the rear during the civil war. These distinctions saddled them with unique burdens. The Party expected them to fulfill the captive role of the revolutionary intellectual and to purge themselves and the institutions they supervised of every Republican residue. But with only rudimentary alternatives specified, the forbidden past kept seeping back in, eased by habits of mind, the rhetoric of New Democracy and the shelter provided by Soviet models. To complicate matters, Party supervision of the courts was far from monolithic. In style, content and intensity, it differed among organs and levels of administration, enacting multiple, concurrent variations on the theme of revolution.

To grasp these points is to begin to look at the early PRC through fresh eyes. It is to penetrate the veil of Party omniscience, exposing the unpreparedness, insubordination, and roiling atomism that lurked beneath. It is to discover that senior CCP policymakers spoke internally of ruling China by law before 1949, and then to ponder what they may have meant in the face of debilitating institutional weakness, personal and bureaucratic competition, ideological hostility, incompatible mandates, and the demands of complete subservience to the Party and its revolutionary exigencies. It is to approach the institutional and normative pursuits of socialist legality in China

primarily through their simmering local dynamics, including the unfinished business and acutely felt disappointments of Republican legal reform, rather than simply the Stalinist models that complemented them and helped to give particular form to their expression. It is also to demand today a nuanced view of CCP neo-traditionalism in the law, alert to the acrobatics of remembrance and forgetting.

Admittedly, the birth of the PRC judicial system is not usually framed this way, but the reasons arguably have more to do with the substantive, temporal and disciplinary impediments to our study of it than with the integrity of the narrative. One key stumbling block is surely that we know far too little about PRC legal history to disentangle it from the purposeful shadow of Party historiography. Alternative voices, lineages and possibilities therefore remain hidden or suppressed. This dearth of data has in turn impaired historical consciousness. Even as the periodizations that once parceled the Chinese past into cognitively dissociated tranches have grown more permeable, and the PRC is being knit back into historical time, comparatively few studies of the judicial system reflect those trends.¹⁸ Sandwiched between the upheavals of the communist victory in 1949 and the Cultural Revolution (1966-1976), and distanced still further by the reforms begun in 1978, the nascent PRC judicial system languishes in a historiographical no man's land, cut-off from meaningful relation to its Imperial, Republican and post-Mao counterparts. If it registers at all, it is usually as an indistinct source of venerated practices or vestigial pathologies, rather than as the donor of a living, constitutive process. This denatures the Chinese judicial system and leaves a deeply distorted image of the dynamics of its reproduction and change. It also discourages interdisciplinary exchanges between historians on the one hand, and social scientists and lawyers on the other, playing to their methodological and conceptual differences, and inhibiting these communities from tapping the synergies between them, though the building blocks with which to fashion mutually productive insights lie all around, waiting to be assembled.

Evidence of these impediments abounds. A recent major *History of China's Adjudication System* surveys more than two thousand years of Imperial and Republican practice, but hews to convention by not daring to traverse the 1949 divide.¹⁹ Coming from the other direction, Chinese and foreign genealogies of the PRC judicial system generally acknowledge little to no exchange with the preceding Nationalist legal system.²⁰ They tell us that the CCP swiftly abrogated it by fiat, purged its ranks, labeled

¹⁸ Dutton, *Policing and Punishment in China: From Patriarchy to the People*; Philip C.C. Huang, *Chinese Civil Justice, Past and Present* (New York: Rowman & Littlefield, 2010). Susan Trevaskes, *Courts and Criminal Justice in Contemporary China* (New York: Lexington Books, 2007). Diamant, *Revolutionizing the Family*.

¹⁹ Na Silu 那思陆, *Zhongguo shenpan zhidu shi* 中国审判制度史 (Shanghai: Shanghai sanlian shudian, 2009).

²⁰ In this respect, the scholarship on the PRC differs from base area legal studies, which has documented how the CCP for a time used Nationalist law selectively in legislative and judicial practice. In contrast to the post-1949 environment, where the authenticity of the revolution is at stake, the compartmentalized use of Nationalist law in the base areas is for the most part uncontested by Party historiography. Hu

its lingering vestiges reactionary and scrubbed or suppressed them with efficiency. The Party then filled the resulting void by extending the legal traditions it had developed autochthonously in its revolutionary base areas to the nation, scaling them up as appropriate, and systematizing them with reference to Soviet models. Immensely productive scholarship has in recent years flourished within the confines of this narrative to be sure, but it is unquestionably a walled garden that circumscribes research agendas and the places they may lead.²¹ And because of those constraints, the implication of this work remains as ineluctable as it is dubious: while certain older attitudes towards law, society and state power may have survived as cultural relics, as a

Yongheng 胡永恒, “1943 nian Shaanganning bianqu tingzhi yuanyong liufa quanshu zhi kaocha: zhengfeng, shengan yundong dui bianqu sifa de yingxiang,” 1943 年陕甘宁边区停止援用六法全书之考察: 整风, 审干运动对边区司法的影响 *Kangri zhanzheng yanjiu* 抗日战争研究 no. 4 (2010): 90-102. Ouyang Xiang 欧阳湘, “Kangri minzhu zhengquan yuanyong guomin zhengfu faling wenti jianlun,” 抗日民主政权援用国民政府法令问题简论 *Anhui daxue falü pinglun* 安徽大学法律评论 no. 1 (2007): 220-233; Ouyang Xiang 欧阳湘, “Zhongguo gongchandang lingdao de kangri genjudi yuanyong guomin zhengfu falü wenti lunxi,” 中国共产党领导的抗日根据地援用国民政府法律问题论析 *Kangri zhanzheng yanjiu* 抗日战争研究 no. 3 (2009): 31-42. Yang Yonghua, and Duan Qiuguan 杨永华 and 段秋关, “Tongyi zhanxian zhong de falü wenti: bianqu fazhi shiliao de xin faxian,” 统一战线中的法律问题: 边区法制史料的新发现 *Zhongguo faxue* 中国法学 no. 5 (1989): 120-126.

²¹ Hou Xinyi 侯欣一, *Cong sifa wei min dao renmin sifa: Shaanganning bianqu dazhonghua sifa zhidu yanjiu* 从司法为民到人民司法: 陕甘宁边区大众化司法制度研究 (Beijing: Zhongguo zhengfa daxue chubanshe, 2007); Wang Shirong, Liu Quan'e, Wang Jide, and Li Juan 汪世荣 and others, *Xin zhongguo sifa zhidu de jishi: Shaanganning bianqu gaodeng fayuan (1937-1949)* 新中国司法制度的基石: 陕甘宁边区高等法院 (1937-1949) (Beijing: Shangwu yinshuguan, 2011); Hu Yongheng 胡永恒, “Shaanganning bianqu minshi shenpan zhong dui liufa quanshu de yuanyong: jiyu bianqu gaodeng fayuan dang'an de kaocha,” 陕甘宁边区民事审判中对六法全书的援用: 基于边区高等法院档案的考察 *Jindaishi yanjiu* 近代史研究 no. 1 (2012): 63-78. Li Long, and Liu Liantai 李龙 and 刘连泰, “Feichu ‘liufa quanshu’ de huigu yu fansi,” 废除‘六法全书’的回顾与反思 *Henan sheng zhengfa guanli ganbu xueyuan xuebao* 河南省政法管理干部学院学报 no. 5 (2003): 39-50; Zhang Xipo 张希坡, “Feichu weifa tongjiu shi feichu yi guomindang liufa quanshu wei daibiao de de yiqie fandong falü-- jianping dui ‘zhonggong zhongyang feichu guomindang liufa quanshu zhishi’ de mouxie bu shizhici,” 废除伪法统旧时废除以国民党六法全书为代表的的一切反动法律--兼评对‘中共中央废除国民党六法全书指示’的某些不实之词 *Faxue zazhi* 法学杂志 1, (2005): 123-126; Xiong Xianjue 熊先觉, “Feichu ‘liufa quanshu’ de yuanyou ji yingxiang,” 废除‘六法全书’的缘由及影响 *Yanhuang chunqiu* 炎黄春秋 no. 3 (2007): 10-13; He Qinhuo 何勤华, “Lun xin zhongguo fa he faxue de qibu-- yi ‘feichu guomindang liufa quanshu’ yu ‘sifa gaige yundong’ wei xiansuo,” 论新中国法和法学的起步--以‘废除国民党六法全书’与‘司法改革运动’为线索 *Zhongguo faxue* 中国法学 4, (2009): 131-145. Cai Dingjian 蔡定剑, “Guanyu qian sulianfa dui zhongguo fazhi jianshe de yingxiang: jianguo yilai faxuejie zhongda shijian yanjiu (22),” 关于前苏联法对中国法制建设的影响: 建国以来法学界重大事件研究 (22) *Faxue* 法学 no. 3 (1999): 2-6; He Qinhuo, and Li Xiuqing 何勤华 and 李秀清, “Guanyu 50 niandai zhongguo yizhi sulian sifa zhidu de fansi,” 关于 50 年代中国移植苏联司法制度的反思 in *Waiguofa yu zhongguo fa: 20 shiji zhongguo yizhi waiguofa fansi* 外国法与中国法: 20 世纪中国移植外国法反思, (Beijing: Zheng fa daxue chubanshe, 2003); Wang Zhihua 王志华, “Sulianfa yingxiang zhongguofa de jidian sikao,” 苏联法影响中国法的几点思考 *Huadong zhengfa daxue xuebao* 华东政法大学学报 no. 1 (2008): 95-100.

practical matter the PRC judicial system has no history outside of the CCP – its pedigree is pure or, perhaps more accurately, purified.²²

This reductionism has made confronting the calamities of the Mao era all the more awkward, and thus Deng Xiaoping respectfully distanced the Maoist past from his present by designating the reforms begun in 1978 as a “revolution” unto themselves, a position reaffirmed by the CCP in 2013.²³ Following those leads, most Chinese observers of the contemporary judicial system acknowledge a foundational debt to the early PRC but leave it schematic.²⁴ Owing to political sensitivities and methodological conventions, their work tends to stay within narrow channels and steer clear of probing actual judicial practice at any level.²⁵ Instead, collections of primary documents and mostly anodyne accounts of changes to organizational structure, jurisprudence and national policy predominate, against which the occasional volume of frank essays on past controversies sparkles.²⁶ Biographies, memoirs and reminiscences offer some

²² Shao-chuan Leng, *Justice in Communist China: A Survey of the Judicial System of the Chinese People's Republic* (Dobbs Ferry: Oceana Publications, 1967). Jerome A. Cohen, *The Criminal Process in the People's Republic of China, 1949-1963: An Introduction* (Cambridge: Harvard University Press, 1968), 7; Shao-chuan Leng and Hungdah Chiu, *Criminal Justice in Post-Mao China: Analysis and Documents* (Albany: SUNY Press, 1985), 7-10; Jianfu Chen, *Chinese Law: Context and Transformation* (Leiden: Koninklijke Brill, 2008), 39. William C. Jones, “Trying to Understand the Current Chinese Legal System,” in *Understanding China's Legal System: Essays in Honor of Jerome A. Cohen*, ed. Stephen C. Hsu, (New York: New York University Press, 2003). Stanley Lubman, “Studying Contemporary Chinese Law: Limits, Possibilities and Strategy,” *American Journal of Comparative Law* 39, (1991): 299-302. Yang Yifan, Chen Hanfeng, and Zhang Qun 杨一凡, 陈寒枫, and 张群, *Zhonghua renmin gongheguo fazhishi* 中华人民共和国法制史 (Beijing: Shehui kexue wenxian chubanshe, 2010), 4. He Qinhu, and Li Xiuqing, “Guanyu 50 niandai zhongguo yizhi sulian sifa zhidu de fansi,” 517. Jianfu Chen, “Coming Full-Circle: Law-Making in the PRC From a Historical Perspective,” in *Law-Making in the People's Republic of China*, ed. Jan Michiel Otto, Maurice V. Polak, Jianfu Chen, and Yuwen Li, The London-Leiden Series on Law, Administration and Development (The Hague: Kluwer Law International, 2000), 30.

²³ Deng Xiaoping 邓小平, “Gaige shi zhongguo de dier ci geming (March 28, 1985),” 改革是中国的第二次革命 in *Deng Xiaoping wenxuan* 邓小平文选, (Beijing: Renmin chubanshe, 1993). “Zhonggong zhongyang guanyu quanmian shenhua gaige ruogan zhongda wenti de jue ding,” 中共中央关于全面深化改革若干重大问题的决定 *Renmin ribao* 人民日报, November 16, 2013. Gong Pixiang, Xia Jinwen, and Liu Wanghong 公丕祥, 夏锦文, and 刘旺洪, *Dangdai zhongguo de falü geming* 当代中国的法律革命 (Beijing: Falü chubanshe, 1999); Xia Jinwen 夏锦文, “Dangdai zhongguo falü geming de dongli,” 当代中国法律革命的动力 *Faxue pinglun* 法学评论 2, (2001): 25-35; Gong Pixiang 公丕祥, *Dangdai de fazhi xiandaihua* 当代的法制现代化 (Beijing: Zhongguo zhengfa daxue chubanshe, 2004). Gong Pixiang is distinguished from most law professors in the PRC by the fact that he is one of the few legal academics to have served as a high-level judge, including as president of the Jiangsu Provincial High People's Court.

²⁴ *Zhongguo fazhi jianshe 60 nian* 中国法治建设 60 年, ed. Li Lin 李林 (Beijing: Zhongguo shehui kexueyuan, 2010).

²⁵ Prominent exceptions include: Cai Dingjian 蔡定剑, *Lishi yu biange: xin zhongguo fazhi jianshe de licheng* 历史与变革: 新中国法制建设的历程 (Beijing: Zhongguo zhengfa daxue chubanshe, 1999). He Qinhu 何勤华, “Zhongguo jindai falixue de dansheng yu chengchang,” 中国近代法理学的诞生与成长 *Zhongguo faxue* 中国法学 no. 3 (2005): 3-13.

²⁶ He Lanjie, and Lu Mingjian 何兰阶 and 鲁明健, *Dangdai zhongguo de shenpan gongzuo* 当代中国的审判工作, 2 vols. (Beijing: Dangdai zhongguo chubanshe, 1993); Cai Cheng 蔡诚, *Dangdai zhongguo de*

compensation, but these typically address other concerns or have appeared at points increasingly distant in time from the patchwork memories they record.²⁷

Lamentably, this orthodoxy has propagated outside of China, where detailed inquiry into the early PRC judicial system has languished since the 1970s in the disciplinary interstices between the humanities, law, and social sciences. For the most part, historians have had little to say about PRC courts, and few students of the contemporary Chinese judiciary have explored its historical dimensions in any depth.²⁸ The disciplines that pioneered the study of the courts in the early PRC seem mostly to have lost interest and moved on. Hence when foreign scholars address the history of the present judicial system, they are apt to privilege the better-documented Imperial and Republican past over decades closer at hand. Randall Peerenboom's exploration of China's "long march" towards the rule of law, for example, devotes just four out of 673 pages to the Mao era, with no apparent irony.²⁹ Why bother in light of Chen Jianfu's

sifa xingzheng gongzuo 当代中国的司法行政工作 (Beijing: Dangdai zhongguo chubanshe, 1995); Guo Daohui, Li Buyun, and Hao Tiechuan 郭道晖, 李步云, and 郝铁川, *Zhongguo dangdai faxue zhengming shilu* 中国当代法学争鸣实录 (Changsha: Hunan renmin chubanshe, 1998). *Xingshi susong faxue cankao ziliao huibian* 刑事诉讼法学参考资料汇编, ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, 3 vols. (Beijing: Beijing daxue chubanshe, 2005). Guo Daohui, Li Buyun, and Hao Tiechuan, *Zhongguo dangdai faxue zhengming shilu*; Han Yanlong 韩延龙, *Zhonghua renmin gongheguo fazhi tongshi 1949-1995* 中华人民共和国法制通史 1949-1995, 2 vols. (Beijing: Zhonggong zhongyang dangxiao chubanshe, 1998); Yang Yifan, Chen Hanfeng, and Zhang Qun, *Zhonghua renmin gongheguo fazhishi*. Yang Kuisong 杨奎松, "Xin zhongguo 'zhenya fangeming' yundong yanjiu," 新中国'镇压反革命'运动研究 *Shixue yuekan* 史学月刊 1, (2006): 45-61. He Qinhuo 何勤华, "Guanyu xin zhongguo yizhi sulian sifa zhidu de fansi," 关于新中国移植苏联司法制度的反思 *Zhongwai faxue* 中外法学 no. 3 (2002): 257-280.

²⁷ Jiang Ping, and Chen Xiahong 江平 and 陈夏红, *Chenfu yu kurong: bashi zishu* 沉浮与枯荣: 八十自述 (Beijing: Falü chubanshe, 2010). *Zhongguo faxuejia fangtanlu* 中国法学家访谈录, ed. He Qinhuo 何勤华, 2 vols. (Beijing: Beijing daxue chubanshe, 2010). *Beijing de liming* 北京的黎明 (Beijing: Beijing chubanshe, 1988). He Jixiang 何济翔, *Hu shang fazhi meng* 沪上法治梦, ed. Hu Xiaozhou 胡晓舟 (Beijing: Beijing shiyue wenyi chubanshe, 2001); *Dong Biwu zhuan* 董必武传, ed. Dong Biwu zhuanxie zu 董必武撰写组, 2 vols. (Beijing: Zhongyang wenxian chubanshe, 2006); Chen Xiahong 陈夏红, *Bainian zhongguo falü ren jianying* 百年中国法律人剪影 (Beijing: Zhongguo fazhi chubanshe, 2006); Li Lingling 李伶俐, *Ni Zhengyu zhuan* 倪征燠传 (Nanjing: Jiangsu renmin chubanshe, 2009); Zhang Sizhi 张思之, "Guaidan moming faguan lu," 怪诞莫名法官路 *Wangshi* 往事 no. 60 (July 31, 2007): np. Ni Zhengyu 倪征燠, *Danbo cong rongli haiya* 淡泊从容莅海牙 (Beijing: Falü chubanshe, 1999).

²⁸ There are a few noteworthy exceptions. Diamant, *Revolutionizing the Family*. Huang, *Chinese Civil Justice, Past and Present*. Shōji Tōriyama 通山昭治, *Gendai Chugoku Shihou 'Seido' Shi Kenkyuu: Ichikyūgo Nananen-Ichikyūgo Kyunen* 现代中国司法'制度'史研究: 一九五七年-一九五九年 (Tokyo: Akashi Shoten, 2000). Carl Minzner, "Judicial Disciplinary Systems for Incorrectly Decided Cases: The Imperial Chinese Heritage Lives on," *New Mexico Law Review* 39, (2009): 1-25; Benjamin L. Liebman, "A Return to Populist Legality? Historical Legacies and Legal Reform," in *Mao's Invisible Hand: The Political Foundations of Adaptive Governance*, ed. Sebastian Heilmann and Elizabeth Perry, (Cambridge: Harvard University Asia Center, 2011).

²⁹ Randall Peerenboom, *China's Long March Toward the Rule of Law* (Cambridge: Cambridge University Press, 2002), 43-46

judgment that “[i]n the early part of the PRC’s history (1949-1976), under Mao, China was a country virtually without law or a functioning legal system?”³⁰

Held back by such pronouncements, our image of the early PRC judicial system has failed to keep pace with findings that might otherwise complicate, re-texture and destabilize it, or challenge the tidiness of its periodizations. Echoing Deng Xiaoping, one leading American introduction to the Chinese court system declared that “[t]he starting point for ‘modern’ Chinese legal goals is 1979, 30 years after ‘Liberation’. This was a ‘new revolution’...”³¹ Never mind that, unlike the revolutions of 1911 and 1949, 1979 did not overthrow, indeed could not have overthrown an *ancien régime*, and in some ways it more closely resembled a restoration.³²

William Jones candidly flagged the depth of our ignorance when he said of the courts in the early PRC: “[i]t is not clear how much they were used. Doubtless there were some civil suits and some use of the courts for ordinary criminal matters.”³³ Stanley Lubman described them as “only mouthpieces of policy,”³⁴ and declared that “[f]or the first thirty years of the People’s Republic, Chinese courts essentially existed in form but not in substance, and they all but disappeared during the Cultural Revolution.”³⁵ To be fair, this last assessment turns on a host of assumptions about what courts are and do, as well as judgments about why the PRC institutions that are conventionally translated as such do not deserve the name. Still, it collides with much that this study reveals, and, more pointedly, against statistics indicating that between 1950 and 1965 PRC courts heard nearly 25 million cases, and formal adjudication continued, albeit at a much reduced rate, throughout the Cultural Revolution via ordinary courts, revolutionary committees 革委会 and military control committees 军管会.³⁶

³⁰ Chen, “Coming Full-Circle: Law-Making in the PRC From a Historical Perspective,” 31.

³¹ Ronald C. Brown, *Understanding Chinese Courts and Legal Process: Law With Chinese Characteristics* (Boston: Kluwer Law International, 1997), 121.

³² Gungwu Wang, “Juxtaposing Past and Present in China Today,” *The China Quarterly* no. 61 (1975): 1-24. Ronald C. Keith, “Transcript of Discussions With Wu Daying and Zhang Zonglin Concerning Legal Change and Civil Rights,” *The China Quarterly* no. 81 (1980): 111-121; Susanne Weigelin-Schwiedrzik, “The Campaign to Criticize Lin Biao and Confucius (批林批孔) and the Problem of ‘Restoration’ in Chinese Marxist Historiography,” in *The Challenge of Linear Time: Nationhood and the Politics of History in East Asia*, ed. Viren Murthy and Axel Schneider, (Boston: Brill, 2014).

³³ Jones, “Trying to Understand the Current Chinese Legal System,” 35.

³⁴ Lubman notes one reservation to this conclusion, “a brief period of experimentation in 1956-1957 with a somewhat less politicized judicial system...” This obviously raises the questions of how to account for that brief anomaly, and whether describing it as less, rather than differently, politicized captures its dynamics best. Stanley Lubman, “The Study of Chinese Law in the United States: Reflections on the Past and Concerns About the Future,” *Washington University Global Studies Law Review* 2, no. 1 (2003): 8.

³⁵ Stanley Lubman, *Bird in a Cage: Legal Reform in China After Mao* (Stanford: Stanford University Press, 1999), 251; Randall Peerenboom, “The X-Files: Past and Present Portrayals of China’s Alien ‘Legal System’,” *Washington University Global Studies Law Review* 2, (2003): 37-95.

³⁶ Zuigao renmin fayuan yanjiushi 最高人民法院研究室, *Quanguo renmin fayuan sifa tongji lishi ziliao huibian (xingshi bufen)* 全国人民法院司法统计历史资料汇编 (刑事部分) (Beijing: Renmin fayuan chubanshe, 2000).

Fortunately, some scholars have begun to probe the historical record; Diamant and Huang, for example, have recently plumbed marriage and divorce cases from the 1950s for insights into social change and continuities in legal epistemology.³⁷ Similarly, Biddulph and Smith have explored administrative detention and the shifting boundaries of “the People” through extra-judicial efforts to reform vagrants, beggars, prostitutes, and drug addicts.³⁸ This work has begun to rebalance a Western understanding of the early PRC legal system that has until now derived mainly from extra-judicial terror and criminal law.³⁹ But it does not directly address the formation or internal dynamics of the judiciary and the courts, and that poses problems for more than just historians.

In a recent volume on Mao’s invisible hand in contemporary China, Liebman proposes that “China’s courts appear to be on their way to assuming roles that are quite different from those with which we are familiar – both in Western states and in more traditional authoritarian regimes.”⁴⁰ Trevaskes suggests one explanation, “1950s court work is used to provide a legal tradition to legitimize reformist procedures and practices of the 1980s.”⁴¹ Meanwhile, Minzner cautions that traditions from the 1950s may today be contributing to a “turn against law.”⁴² All three scholars evidently concur that “recognizing historical legal continuities helps illuminate fundamental questions about adaptive authoritarianism” in China, particularly the forms Chinese legal institutions will take in the future.⁴³ Reaping the gains implicit in that statement naturally hinges on how well we redress our impoverished apprehension of China’s legal past. It compels us to move history front and center.

To fill the gaps, we plainly need thicker description, locally grounded theory and more integrative perspectives on the Chinese revolution, the process of state building, and the social, normative and institutional dimensions of Chinese modernization and modernity. This is important not just because history and law tend to approach the past with different disciplinary objectives and methodologies,⁴⁴ but also because, in an authoritarian polity such as China, where history is aggressively policed by the state, distortions or omissions generated by ordinary human fallibility, the sculpting of memory by censorship, and the forensic appropriation of the past for present purposes, what

³⁷ Diamant, *Revolutionizing the Family*; Huang, *Chinese Civil Justice, Past and Present*.

³⁸ Smith, *Thought Reform and China’s Dangerous Classes: Reeducation, Resistance, and the People*. Sarah Biddulph, *Legal Reform and Administrative Detention Powers in China* (New York: Cambridge University Press, 2007).

³⁹ Dutton, *Policing and Punishment in China: From Patriarchy to the People*; Dutton, *Policing Chinese Politics: A History*. Cohen, *The Criminal Process in the People’s Republic of China, 1949-1963: An Introduction*; Mühlhahn, *Criminal Justice in China: A History*. André Bonnichon and André Villiers, *Law in Communist China* (The Hague: International Commission of Jurists, 1956).

⁴⁰ Liebman, “A Return to Populist Legality? Historical Legacies and Legal Reform,” 188.

⁴¹ Trevaskes, *Courts and Criminal Justice in Contemporary China*, 47.

⁴² Carl Minzner, “China’s Turn Against Law,” *American Journal of Comparative Law* 59, (2011): 935-984.

⁴³ Liebman, “A Return to Populist Legality? Historical Legacies and Legal Reform,” 187.

⁴⁴ Robert W. Gordon, “Historicism in Legal Scholarship,” *Yale Law Journal* 90, no. 5 (1981): 1017-1056. John Philip Reid, “Law and History,” *Loyola Los Angeles Law Review* 27, (1993): 193-224. Stuart Banner, “Legal History and Legal Scholarship,” *Washington University Law Quarterly* 76, no. 1 (1998): 37-44.

Horwitz famously called “roaming through history looking for friends,” are, in the absence of historiographical pluralism, prone to swell and proliferate.⁴⁵ Solzhenitsyn described the result as well as anyone when he declared that: “We forget everything. What we remember is not what actually happened, not history, but merely that hackneyed dotted line they have chosen to drive into our memories by incessant hammering.”⁴⁶

Confronting the unexpected can sometimes arouse us from that din. In mid-1948, mere months before the CCP seized the Republican judiciary and thrust it into the crucible of revolution, the epigraph to the *Yearbook of the Third Judges Training Course at National Chengchi University* declared: “Rule the country by law – (signed) Chiang Kaishek.”⁴⁷ Chiang’s appeal conjured broad cynicism, to be sure, and like a dying gasp, the sentiment it expressed seemed moribund in China for decades thereafter. Nonetheless, in 1979, when the tumult of the Cultural Revolution had barely settled and the Gang of Four was awaiting trial, “ruling the country by law” resurfaced as a catchphrase in China, seemingly out of nowhere and, along with the correlative principle of judicial independence, began a winding ascent to constitutional validation and the pinnacle of the legal reform agenda, where it resides uneasily once more.⁴⁸

⁴⁵ Susanne Weigelin-Schwiedrzik, “In Search of a Master Narrative for 20th-Century Chinese History,” *The China Quarterly* no. 188 (2006): 1070-1091; Morton J. Horwitz, “Republican Origins of Constitutionalism,” in *Toward a Usable Past: The Use of History in Law*, ed. Paul Finkelman and Stephan E. Gottlieb, (2009: University of Georgia Press, Athens), 148-149.

⁴⁶ Aleksandr I. Solzhenitsyn, *The Gulag Archipelago, 1918-1956: An Experiment in Literary Investigation*, trans. Thomas P. Whitney, 7 vols., vol. 1 (New York: Harper & Row, 1974), 299.

⁴⁷ In Chinese, the full inscription reads: “國立政治大學法官訓練班第三期同學畢業紀念，以法治國，蔣中正。” *Guoli zhengzhi daxue faguan xunlianban disan qi biye tongxue lu* 國立政治大學法官訓練班第三期畢業同學錄 (Nanjing: Guoli zhengzhi daxue, 1948), 12.

⁴⁸ Li Buyun, and Li Qing 李步云 and 黎青, “Cong ‘fazhi’ dao ‘fazhi’, ershi nian gai yizi-- jianguo yilai faxuejie zhongda shijian yanjiu (26),” 从‘法制’到‘法治’，二十年改一字 -- 建国以来法学界重大事件研究 (26) *Faxue* 法学 no. 7 (1999): 2-5. The authors submitted an article to *Guangming Daily* entitled “On Ruling the Country by Law 论以法治国” but the editors, out of an abundance of political caution, published it on December 2, 1979 as “We Must Implement Socialist Rule by Law 要实行社会主义法治.” This revised title borrowed a landmark phrase from Document 64, issued in September of that year, which for the first time ever in the PRC contained a public endorsement by the Central Committee of “socialist rule by law.” “Zhonggong zhongyang guanyu jianjue baozheng xingfa, xingshi susongfa qieshi shishi de zhishi (September 9, 1979),” 中共中央关于坚决保证刑法，刑事诉讼法切实实施的指示 in *Xingshi susong faxue cankao ziliao huibian (zhongce)* 刑事诉讼法学参考资料汇编 (中册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005). Significantly, at Hu Yaobang’s direction, Li Buyun also produced the original draft of Document 64. Shortly after initial publication, Li’s article re-appeared under its original title, a sign of support at the highest political levels. Li Buyun, Wang Dexiang, and Chen Chunlong 李步云, 王德祥, and 陈春龙, “Lun yi fazhiguo,” 论以法治国 in *Fazhi yu renzhi wenti taolun ji* 法治与人治问题讨论集, (Beijing: Qunzhong chubanshe, 1980). After twenty years of discussions, “ruling by law” evolved into “ruling according to law 依法治国” and, in 1999, Article 5 of the 1982 PRC Constitution was amended to read “The People’s Republic of China implements ruling the country according to law, and constructing a socialist rule by law state 中华人民共和国实行依法治国，建设社会主义法治国家.” For a discussion of this process, see: Albert H.Y. Chen, “Toward a Legal Enlightenment: Discussions in Contemporary China on the Rule of Law,” *Pacific Basin Law Journal* 17, (1999-2000): 125-

That the post-Mao reconstitution of the PRC legal system launched in part with a mantra of Republican judicial modernization seems, remarkably enough, to have escaped notice. Yet how one makes sense of these matching exhortations, separated by three decades of turbulent history, like bookends to the Mao era, goes to the heart of how one understands China and its changing legal system. They may appear hollow, cynical or precocious. They may call to mind the literature on courts in communist or other authoritarian regimes,⁴⁹ or debates in modernization theory about the interdependence of law, economics, politics and society, and the proper sequencing, content and pace of change among them.⁵⁰ At a minimum, they raise questions of philology and normativity since each of their material terms is freighted with the accretion of more than two thousand years of meanings and associations that map on to their English language counterparts approximately at best.⁵¹ Even the basic question of whether to parse them as “rule *by* law” or “rule *of* law” is by no means obvious given that

165. By contrast, judicial independence entered the Constitution far sooner, because of an earlier precedent. Article 78 of the 1954 PRC Constitution read “In the administration of justice, the people’s courts are independent, subject only to the law.” But this principle was dropped from the radical leftist 1975 and 1978 Constitutions. Judicial independence re-appeared in the 1982 Constitution (still in force) as Article 126, which reads: “The people’s courts exercise judicial power independently, in accordance with the provisions of law, and not subject to interference by any administrative organ, public organization or individual.” Li’s invocation of judicial independence anticipated this language almost verbatim three years before its codification.

⁴⁹ Tom Ginsburg and Tamir Moustafa, eds., *Rule By Law: The Politics of Courts in Authoritarian Regimes*, (New York: Cambridge University Press, 2008). José J. Toharia, “Judicial Independence in an Authoritarian Regime: The Case of Contemporary Spain,” *Law & Society Review* 9, no. 3 (1975): 475-496. Peter H. Solomon Jr., “The Bureaucratization of Criminal Justice Under Stalin,” in *Reforming Justice in Russia, 1864-1996: Power, Culture, and the Limits of Legal Order*, ed. Peter H. Solomon Jr., (Armonk: M.E. Sharpe, 1997). Ingo Müller, *Hitler’s Justice: The Courts of the Third Reich*, trans. Deborah Lucas Schneider (Cambridge: Harvard University Press, 1991). Martin Krygier, “Marxism and the Rule of Law: Reflections After the Collapse of Communism,” *Law and Social Inquiry* 15, (1990): 633-663. Inga Markovits, *Justice in Lüritz: Experiencing Socialist Law in East Germany* (Princeton: Princeton University Press, 2010). Robert Sharlet, “The Communist Party and the Administration of Justice in the USSR,” in *Soviet Law After Stalin (3): Soviet Institutions and the Administration of Law*, ed. Donald D. Barry, F.J.M. Feldbrugge, George Ginsburgs, and Peter Maggs, (Alphen aan den Rijn: Sijthoff and Noordhoff, 1979).

⁵⁰ Randall Peerenboom, *China Modernizes: Threat to the West or Model for the Rest?* (New York: Oxford University Press, 2007); Kevin E. Davis and Michael J. Trebilcock, “The Relationship Between Law and Development: Optimists Versus Skeptics,” *American Journal of Comparative Law* 56, (2008): 895-946.

⁵¹ The phrase “rule the country by law 以法治国,” appears, for example, in section six of the *Han Feizi*, written in the second century BCE, and the philosophical arguments behind it fed long-running debates about the roles of law and virtue in governing traditional China. Karen Turner, “Rule of Law Ideals in Early China?,” *Journal of Chinese Law* 6, no. 1 (1992): 1-44; Karen G. Turner, James V. Feinerman, and R. Kent Guy, eds., *The Limits of the Rule of Law in China*, Asian Law Series, vol. 14 (Seattle: University of Washington Press, 2000). Wang Liming 王礼明, “Renzhi yu fazhi,” 人治与法治 *Renmin ribao* 人民日报, January 26, 1979. , Wu Han 吴晗, “Zhiren yu zhifa (1944),” 治人与治法 (1944) in *Wu Han wenji* 吴晗文集, (Beijing: Beijing chubanshe, 1988).

the Chinese syntax admits either construction, and both lie in the shadow of the hegemonic, modern Western paradigms of the same names.⁵²

Perhaps most tantalizing of all, they suggest the possibility of a continuum of judicial discourses and practices extending across the 1949 divide with which we have lost touch. From where else could “ruling the country by law” and judicial independence have appeared, mere months after China had announced its re-opening to the world, when reconstruction of the legal system and legal education had barely begun?⁵³ And if one can demonstrate such connectedness, then our understanding of Chinese legal history must shift to accommodate it, and recent assertions that “historical path dependencies channel the options available for social and legal development in China” towards a “socialist rule by law” equal to but distinct from rule of law in the West must take on new meanings.⁵⁴

Naturally, giving substance to those assertions requires specifying the implied path dependencies in detail and testing them systematically against the historical record. But rather than presuming unmediated access to a single, external and pure reality and devising linear chains of causal logic to try to capture it, this study borrows from the autopoietic frameworks formulated by Gunther Teubner.⁵⁵ Teubner’s version of

⁵² Deborah Cao, “Fazhi Vs/and/or Rule of Law?: A Semiotic Venture Into Chinese Law,” *International Journal for the Semiotics of Law* no. 14 (2001): 223-247. Donald C. Clarke, “Alternative Approaches to Chinese Law: Beyond the ‘Rule of Law’ Paradigm,” *Waseda Proceedings of Comparative Law* 2, (1998-1999): 49-62; Michael Dowdle, “Heretical Laments: China and the Fallacies of ‘Rule of Law’,” *Cultural Dynamics* 11, (1999): 287-314; Tom Ginsburg, “Does Law Matter for Economic Development? Evidence From East Asia,” *Law and Society Review* 34, (2000): 829-856; Peerenboom, *China’s Long March Toward the Rule of Law*, 64-65, 140-174; Frank Upham, “Mythmaking in the Rule of Law Orthodoxy,” *Working Papers: Rule of Law Series* (2002): 37; Randall Peerenboom, “What’s a Liberal to Do? the Pursuit of Non-Liberal Rule of Law in China,” *Congressional-Executive Commission on China Roundtable*, <http://www.cecc.gov/pages/roundtables/040103/peerboom.pdf> (accessed March 7, 2011).

⁵³ For comparison, the Soviet Union “uniformly denounced” the concept of the law-based state *правовое государство* until the Gorbachev era. Harold J. Berman, “The Rule of Law and the Law-Based State (Rechtsstaat): With Special Reference to the Soviet Union,” in *Toward the ‘Rule of Law’ in Russia? Political and Legal Reform in the Transition Period*, ed. Donald D. Barry, (Armonk: M.E. Sharpe, 1992), 43.

⁵⁴ Zhu Suli 朱苏力, “Shehuizhuyi fazhi linian yu zibenzhuyi fazhi sixiang de bijiao,” 社会主义法治理念与资本主义法治思想的比较 http://news.xinhuanet.com/legal/2008-06/17/content_8386868.htm (accessed August 29, 2010). Suli Zhu, “The Party and the Courts,” in *Judicial Independence in China: Lessons for Global Rule of Law Promotion*, ed. Randall Peerenboom, (New York: Cambridge University Press, 2010), 66. Former president of the Supreme People’s Court Wang Shengjun made “socialist rule by law” a defining feature of his tenure and the basis for tempering some of the reforms pursued by his predecessors. Wang Shengjun 王胜俊, “Zui gao renmin fayuan gongzuo baogao,” 最高人民法院工作报告 http://www.gov.cn/test/2009-03/17/content_1261386.htm (accessed August 29, 2010); Wang Shengjun 王胜俊, “Zui gao renmin fayuan gongzuo baogao,” 最高人民法院工作报告 http://www.court.gov.cn/xwzx/yw/201003/t20100319_3244.htm (accessed August 29, 2010).

⁵⁵ Michael King, “The ‘Truth’ About Autopoiesis,” *Journal of Law and Society* 20, no. 2 (1993): 218-236; Niklas Luhmann, *Law as a Social System* (New York: Oxford University Press, 2004). *Autopoietic Law—a New Approach to Law and Society*, ed. Gunther Teubner (New York: de Gruyter, 1987); Gunther Teubner, “How the Law Thinks: Toward a Constructivist Epistemology of Law,” *Law & Society Review* 23, no. 5 (1989): 727-757; Gunther Teubner, “Legal Irritants, Good Faith in British Law or How Unifying Law Ends

autopoiesis offers a constructivist reading of modern society as fragmented into multiple fields (or *épistémès*) characterized by varying degrees of autonomy. Through contact with one another, these fields incorporate external knowledge by reconstructing it according to their own internal normative codes, which in turn transforms the fields and “triggers a whole series of new and unexpected events.”⁵⁶ These transformative processes are nondeterministic, recursive, and occur in parallel across distinct yet coupled fields in ways that reflect prevailing hierarchies of power.

Law is autopoietic to the extent that “it manages to constitute its own components, action, norm, process, identity – into self-referential cycles.”⁵⁷ It has evolved, for example, through contact with the social and natural sciences by assimilating constructs from them, but rather than passively importing their representations of reality, it “enslaves” and transforms those constructs to comport with its internal cognitive maps, and usurps authority as arbiter of their truths. This produces novel, hybrid frames of reference (e.g. sociological jurisprudence, law and economics, forensic genetics, and of course legal history), which generate idiosyncratic observations about the world. Because we cannot directly access the underlying reality those subjective artifacts represent, our task is to test their plausibility, internal coherence, and broader resonance with other fields.⁵⁸

Like much contemporary social theory, autopoiesis grew out of attempts to grapple with the condition of modern liberal societies, but its perspectives are not restricted to them.⁵⁹ Applied to the early PRC, for example, autopoiesis provides a compelling framework for analyzing how, despite intense interference from politics and ideology, law was not a docile, unproblematic instrument of revolution or a simple façade for domination. It had a distinct, and vexatiously refractory identity. Indeed, E.P. Thompson’s epiphanic point about eighteenth century England, that crude Marxist filters “throw away a whole inheritance of struggle about law,” applies equally well to modern China, which itself boasts a complicated record of arbitrary power, and ambivalence and mercuriality towards law.⁶⁰

Autopoiesis proposes that law as a mechanism for steering behavior “succeeds” only to the extent that coupled fields cope with their mutual interference by tending on

Up in New Divergences,” *Modern Law Review* 61, no. 1 (1998): 11-32. David Byrne and Gill Callaghan, *Complexity Theory and the Social Sciences: The State of the Art* (New York: Routledge, 2014). Ilya Prigogine and Isabelle Stengers, *Order Out of Chaos* (New York: Bantam, 1984).

⁵⁶ Teubner, “Legal Irritants, Good Faith in British Law or How Unifying Law Ends Up in New Divergences,” 12.

⁵⁷ Gunther Teubner, *Law as an Autopoietic System* (Cambridge: Blackwell, 1993), 27.

⁵⁸ John Paterson and Gunther Teubner, “Changing Maps: Empirical Legal Autopoiesis,” *Social & Legal Studies* 7, (1998): 451-486; Teubner, “Legal Irritants, Good Faith in British Law or How Unifying Law Ends Up in New Divergences”.

⁵⁹ John Gillespie, “Towards a Discursive Analysis of Legal Transfers Into Developing East Asia,” *International Law and Politics* 40, (2008): 657-721.

⁶⁰ Edward Palmer Thompson, *Whigs and Hunters: The Origins of the Black Act* (London: Allen Lane, 1975), 266.

balance to converge and reinforce one another. In this view, law is not a Weberian set of rationalistic state-centered institutions, rules or actors, but a concatenation of communicative acts by cognizing individuals.⁶¹ For the purposes of this study, such a formulation admits the range of legal activity, particularly in non-Western societies, that occurs in the realm of “soft law” populated by non-state actors in self-regulatory, plural regimes. It allows linkages that transcend national borders, and contexts in which the state is polycentric with society and the ruling party, rather than sharply distinguished from them.⁶² Finally, it rebuts teleological assumptions about the inexorable global convergence of law with the paradox that the universalizing intrusions of legal modernity inherently spark unintended cleavages that reproduce difference.

Insofar as autopoiesis focuses on “the transformational dynamics of recursive meaning processes,”⁶³ it aligns well with the metaphor of revolution adopted by this study. In autopoietic terms, revolution “irritates law’s ‘binding arrangements.’ It is an outside noise which creates wild perturbations in the interplay of discourses within these arrangements and forces them to reconstruct internally not only their own rules but to reconstruct from scratch the alien element itself.”⁶⁴ And within that statement lies an agenda for research. It directs us to examine the arrangements that defined and coupled the judicial system’s multiple discourses in the early PRC, how those discourses “irritated” one another and reconstructed common events in parallel according to their internal rules to minimize difference, thereby generating fresh perturbations that in turn cascaded recursively.

Themes and Structure

Guided by those insights, this study targets seven major themes. First, it forcefully intervenes in the historiography of the PRC by theorizing the 1949 revolution not as a conventional *a priori* rupture, but rather as an engine for recursively producing and negotiating difference. This exposes the revolution to heightened empirical and conceptual scrutiny, and suggests fresh methodological perspectives for gauging its dynamics. Hence, this study begins by investigating the condition and trajectory of judicial systems on both sides of the 1949 divide, and then correlates its findings to explode the persistent shibboleth of an autochthonous CCP legal tradition. It determines that the PRC judicial system bore a concealed, congenital Republican imprint, not just from the institutions and personnel inherited from the *ancien régime*, but also from the accumulated network effects of more than a decade of intimate, prior CCP engagement with Nationalist law.

⁶¹ King, “The ‘Truth’ About Autopoiesis,” 223-224.

⁶² Gillespie, “Towards a Discursive Analysis of Legal Transfers Into Developing East Asia,” 675-676.

⁶³ Paterson and Teubner, “Changing Maps: Empirical Legal Autopoiesis,” 452.

⁶⁴ Teubner, “Legal Irritants, Good Faith in British Law or How Unifying Law Ends Up in New Divergences,” 12.

Reframing the PRC as an heir (rather than as an antithesis) to Republican judicial modernization and reading its legal history as a dynamical system composed of shifting equilibriums among multiple competing visions of revolution reveals an unheralded wellspring of diversity in PRC legal policy and practice. It furnishes a new theory of change that lends coherence to a series of otherwise serpentine fluctuations, most notably the stunning speed with which suppressed policies, and the persecuted people who once promoted them, resurfaced to jumpstart legal reconstruction after Mao's death and the end of the Cultural Revolution. It also opens up new ground in the histories of signature practices such as people's mediation, and on topics such as the rule of law and judicial independence.

Second, this study pries open the black box of the PRC judicial system for an unprecedented inspection of the crackling organizational dynamics and existential controversies inside. Via a microhistory of the CCP takeover and reconstruction of Beijing's municipal court, it traces a tortuous road of political campaigns, institutional adjustments, personnel policies, and practices as the judicial system wound its way among the structural and jurisprudential legacies of the Guomindang, the late Stalinist models advanced by Soviet advisers, and the rural legal practices honed in the Party's base areas, searching amid the shifting streamlines of the revolution for balance between modernity, socialism and Chinese conditions. It uncovers fresh data about where law came from, how courts functioned, who judges were, and how they were selected and trained. At journey's end, it arrives at a chronicle of the turbulent, improvisational emergence of a new legal order that reframes our understanding of early PRC history and its grip on the present.

Third, this study injects Beijing into the historiography on early PRC cities, from which it has been conspicuously absent, despite a powerful showing in scholarship on the Republican era.⁶⁵ Shanghai boasts studies on PRC subjects as diverse as public order, prostitution, labor organization, private charity work, local capitalists and prominent families.⁶⁶ Hangzhou furnishes our principal account of the CCP takeover of a city.⁶⁷ Tianjin provides the setting for an inquiry into the PRC's rural-urban divide, and

⁶⁵ Joseph K.S. Yick, *Making Urban Revolution in China: The CCP-GMD Struggle for Beijing-Tianjin 1945-1949* (Armonk: M.E. Sharpe, 1995). Madeleine Yue Dong, *Republican Beijing: The City and Its Histories* (Berkeley: University of California Press, 2003). David Strand, *Rickshaw Beijing* (Berkeley: University of California Press, 1993). Yamin Xu, "Wicked Citizens and the Social Origins of China's Modern Authoritarian State: Civil Strife and Political Control in Republican Beijing, 1928-1937" (University of California, 2002). Janet Chen, *Guilty of Indulgence: The Urban Poor in China, 1900-1953* (Princeton: Princeton University Press, 2012). Haiyan Liu and Kristin Stapleton, "Chinese Urban History: State of the Field," *China Information* 20, no. 3 (2006): 391-427. Michael H.K. Ng, *Legal Transplantation in Early Twentieth-Century China: Practicing Law in Republican Beijing* (New York: Routledge, 2014).

⁶⁶ "Dilemmas of Victory: The Early Years of the People's Republic of China". Christian Henriot, "La Fermeture: The Abolition of Prostitution in Shanghai, 1949-58," *The China Quarterly* no. 142 (1995): 467-486.

⁶⁷ James Z. Gao, *The Communist Takeover of Hangzhou: The Transformation of City and Cadre, 1949-1954* (Honolulu: University of Hawaii Press, 2004).

a classic study of how the CCP implemented urban revolution.⁶⁸ And Guangzhou, Shanghai, Tangshan, and Wuhan have been the basis for foundational inquiries into policy implementation and the early origins of the Cultural Revolution.⁶⁹ Yet, Beijing is largely absent from their company. Only Aminda Smith has bucked that trend, but the city itself seldom emerges from the background of her work because her primary interests lie elsewhere.⁷⁰

Inga Markovits has brilliantly shown how much local judicial institutions and the people who inhabit them can reveal about revolutionary regimes and societies. They simultaneously bear witness to dark histories of injustice, a gamut of lesser tribulations and afflictions, and the unsung banality of everyday life.⁷¹ For Beijing, the BMPC logged empirical reflections of the CCP's attempts to penetrate local society, redefine subjectivities, and transform social, economic and personal relations. In myriad ways, we see individuals resist, submit to and capitalize on this changing environment, frequently celebrating official dogma while also subverting it. We witness the court's successes and strains adapting law to local conditions, translating policy into action, and negotiating among bureaucratic rivals. In all of these areas, this study adduces not only quantitative data, but also qualitative assessments gleaned from primary sources, all the while sensitive to the traps and illusions of archival immediacy.⁷²

Fourth, this study scales its findings outward, leveraging the singular immediacy with which the court, and the city it served, mingled local, regional and national affairs. Naturally, this raises questions about representativeness, and undoubtedly neither Beijing nor its courts were typical of other major municipalities, to say nothing of China's innumerable smaller cities and rural hamlets. Beijing witnessed singular legal change from the late Qing to the early PRC, traveling a forty-year circuit from the center of Chinese judicial modernization to the margins and back again. Starting in 1949, the CCP purged and reconstructed courts in Beijing with far greater alacrity and care than in cities such as Shanghai, Tianjin and Wuhan, and it tied them intimately to central judicial organs. Uniquely, the BMPC initially enjoyed direct appeals to the Supreme People's

⁶⁸ Kenneth G. Lieberthal, *Revolution and Tradition in Tienstin, 1949-1952* (Stanford: Stanford University Press, 1980); Brown, *City Versus Countryside in Mao's China: Negotiating the Divide*.

⁶⁹ *The City in Communist China*, ed. John Wilson Lewis (Stanford: Stanford University Press, 1971). Lynn T. White, *Policies of Chaos: The Organizational Causes of Violence in China's Cultural Revolution* (Princeton: Princeton University Press, 1989). Ezra F. Vogel, *Canton Under Communism: Program and Politics in a Provincial Capital, 1949-1968* (Cambridge: Harvard University Press, 1969). Shaoguang Wang, *Failure of Charisma: The Cultural Revolution in Wuhan* (New York: Oxford University Press, 1995).

⁷⁰ Smith, *Thought Reform and China's Dangerous Classes: Reeducation, Resistance, and the People*. In the PRC, the final volume of the mammoth *Comprehensive History of Beijing*, a state project sponsored by the Beijing Academy of Social Sciences, paints a lifeless portrait of the city and breaks little new ground. *Beijing tongshi* 北京通史, ed. Cao Zixi 曹子西, 10 vols., vol. 10 (Beijing: Beijing yanshan chubanshe, 2012).

⁷¹ Markovits, *Justice in Lüritz: Experiencing Socialist Law in East Germany*. Inga Markovits, "Selective Memory: How the Law Affects What We Remember and Forget About the Past: The Case of East Germany," *Law & Society Review* 35, no. 3 (2001): 513-563.

⁷² Arlette Farge, *Le Goût De L'Archive* (Paris: Seuil, 1989).

Court, answered immediately to Peng Zhen, and was directly administered by the Ministry of Justice until 1955.

This singularity recommends the city. The CCP takeover of Beijing's judicial institutions validated and refined tactics and policies that were extended to other urban centers, and tempered an inter-generational cohort of municipal and national legal cadres that remained influential across half a century. Under their watchful eyes, and often with their active involvement, Beijing served as a laboratory for judicial reforms and as an arena for sorting out the competing values, traditions and goals at stake in them. It declared to the rest of China what socialist judicial modernity and its supporting infrastructure of laws, rights, judges, and modes of dispute resolution could look like, and its courts again drew the well-worn task of colonizing and transforming the nation. One could even say that in Beijing the founding architects of the PRC judicial system composed and rehearsed China's legal future and, after the ravages of the Anti-Rightist Campaign and the Cultural Revolution, returned to perform it.

Fifth, this study aims to rebalance our assessment of ideology in the PRC judicial system. Ideology is constitutive of law everywhere, and extravagantly so in China. One cannot discuss early PRC law without keeping concepts such as class struggle and the dictatorship of the proletariat at the forefront of one's mind, particularly when looking at cases. Yet, sources matter a great deal in shaping how we understand this ideology. There was an immense performative dimension to ideological discourse in early PRC law. Consequently, materials intended for edification, or generated during a searing inquisition have especially assertive ideological frames. They speak magisterially on behalf of the CCP, but were often wielded instrumentally as weapons. Starved of empirical data, we have allowed them to shape our own impressions generously.

The profane side accompanying their piety has been all but lost. We will never know how many people were accused of counterrevolution more out of spite or avarice than conviction. But from the sources we can be certain that enforced uniformity was not the same thing as unanimity, which is to say that when we look inside of the courts we find that judicial cadres plainly did not have identical convictions, even when they used a common idiom. Thus, for the questions this study explores, beyond a basic threshold it is better to speak of CCP ideology not as a singular construct but as a shifting equilibrium among a multiplicity of competing constructs or, more simply, as politics and power. For instance, this study draws on many internal reports from different levels of the judicial hierarchy. While they are unmistakably artifacts of a revolutionary, socialist regime, more often than not they eschew the turgid ornamentation that dominates the public record. They demonstrate that cadres addressed one another in a different voice than they used among outsiders. The documents are performance oriented, and are replete with evidence of the disorder, inadequacies and glimmers of independent thought and defiance that ideological discourse tried to cover up or squelch. They are the battlefield reports of the war between revolution and the reality it aimed to bend.

Ideology is undoubtedly essential as an environmental variable, and at times it was felt acutely. But there are questions it strains by itself to answer satisfyingly. Why did the CCP successively turn to Nationalist and Soviet law as models, but then cast each off as degenerate? Why were many policies announced with great fanfare, then implemented half-heartedly, abruptly reversed or abandoned? Were the veteran cadres who took over Beijing's judicial system in 1949, and then led it for the better part of a decade plausibly guilty of anti-Party activities in 1958? Were their counterparts at the Ministry of Justice?

Not least of all, there is also the convention of glossing over the Mao years with the truism that revolution is inimical to law. Correct on its face, this observation hardens into an obfuscatory, deterministic, and at worst self-serving dictum when served *tout court*. It asks us uncritically to stretch the revolutionary moment into decades and to minimize to vanishingly small proportions locality, human agency and responsibility. It sustains the widespread conceit that pivotal points, such as the abrogation of the Nationalist legal system, were historically necessary or inevitable, and it supports an advisedly circumspect style of argument in which events unfold without anyone in particular seeming to enact them.⁷³ It tells us little about why the experience of law and revolution in China stood apart from, say, France or Russia, two common points of comparison, or about the possibilities that were entertained, the choices that were made and their contexts. Consider that in France “the Revolution was one of the greatest episodes for the sheer manufacture of law in all of modern European history,” spawning the monuments of the Napoleonic Codes.⁷⁴ Similarly, the Soviet Union featured Stučka, Pashukanis and Vyshinsky, and major legislative achievements of its own. The early PRC had nothing to compare.

Sixth, this study tests theoretical claims about legal diffusion, indigenization and globalization against a peerless empirical case: the apparent abrogation and reconstruction of an entire legal system.⁷⁵ *Apparent* because explanations of these

⁷³ He Qinhu, “Lun xin zhongguo fa he faxue de qibu-- yi ‘feichu guomindang liufa quanshu’ yu ‘sifa gaige yundong’ wei xiansuo”. Cai Dingjian, and Gao Di 蔡定剑 and 高婣, “Dui xin zhongguo cuihui jiu fazhi de lishi fansi,”对新中国摧毁旧法制的历史反思 in *Zhongguo dangdai faxue zhengming shilu* 中国当代法学争鸣实录, ed. Guo Daohui, Li Buyun, Hao Tiechuan 郭道晖, 李步云, and 郝铁川, (Changsha: Hunan renmin chubanshe, 1998); Dong Yanbin 董彦斌, “Ye tan ‘liufa quanshu’ feichu de qianhou,”也谈‘六法全书’废除的前后 *Zhongguo shehui kexueyuan xuebao* 中国社会科学院学报, May 21 2009. Li Long, and Liu Liantai, “Feichu ‘liufa quanshu’ de huigu yu fansi”.

⁷⁴ Richard Mowery Andrews, “Boundaries of Citizenship: The Penal Regulation of Speech in Revolutionary France,” *French Politics and Society* 7, no. 3 (1989): 100.

⁷⁵ He Qinhu 何勤华, *Fa de yizhi yu fa de bentuhua* 法的移植与法的本土化 (Beijing: Falü chubanshe, 2001). Su Li 苏力, *Fazhi jiqi bentu ziyuan* 法治及其本土资源 (Beijing: Zhongguo zhengfa daxue chubanshe, 2004). ; Zhang Li, and Song Hongfei 张丽 and 宋宏飞, *Falü yizhi ji bentuhua yanjiu* 法律移植及本土化研究 (Beijing: Zhongguo renmin gongan daxue chubanshe, 2010). Otto Kahn-Freund, “On the Uses and Misuses of Comparative Law,” *The Modern Law Review* 37, no. 1 (1974): 1-27; Randall Peerenboom, “Toward a Methodology for Successful Legal Transplants,” *The Chinese Journal of Comparative Law* 1, no. 1 (2013): 4-20. Pierre Legrand, “European Legal Systems Are Not Converging,” *International and Comparative Law Quarterly* 45, (1996): 52-81. Ewald, “Comparative Jurisprudence (II):

events typically comprehend the legal system as a Weberian set of formal institutions, rules and personnel, and those were indeed laid waste by the incoming CCP. But our investigation goes further. If we understand law instead as a system of social meaning, then abrogation and reconstruction look quite different, and the history of the period begins to make far more sense.

It was one thing to pronounce a revolution, quite another to realize it, and Party leaders did not actually expect the Nationalist legal system to melt away before them. They understood that effacing it would take time and effort, and with only rudimentary experience in their rural base areas administering law, their ideas in 1949 about how much to tear down, how fast and what to replace it with were still inchoate and differed widely. Moreover, revolutionary ardor notwithstanding, early PRC jurists simply could not shake free of the Republican past. Republican China set the context and provided the grist for fierce battles in the years ahead over how to restructure the PRC legal system and redefine its model of development. It educated many of the CCP's key legal specialists, shaped the conceptual and institutional terrain they inherited, and provided the counterpoint against which their vision of law crystallized. They compulsively measured themselves against it and sparred ferociously over the lessons to draw and the useful timber that might be recovered from it. Not only did it tug insistently at their fears and hopes of what law, courts, and judges in New China might ultimately become and do, but to the fury of radicals, the legal system seemed prone to assimilate and reconstitute the revolution refractorily, rather than the other way around. Like gardeners fearful of relaxing vigilance lest poisonous weeds reclaim the land, radicals intervened regularly and aggressively to stave off that outcome. As a result, long after legacy Nationalist personnel were purged and the institutions they had staffed were reconstructed, the CCP still found it necessary to "scorn and criticize" what it derisively labeled "reactionary" or "anti-people" law, to warn its members against the seductive charms and false authority of former "sham [Republican] legal traditions," and to persecute those suspected of harboring the "old legal standpoint."

Seventh, this study urges us to think more longitudinally about law in China, especially in regard to the running dialectic between rule of law and authoritarianism, and the periodicity of its oscillations. Since before the founding of the PRC, this dialectic has marked the rhythms of legal modernization in China, for Republican and CCP governments alike. The fortunes of legal education, professionalization, codification, procedural justice and judicial independence have risen and fallen in time with it. And for at least the last seventy years, the CCP has episodically strained to reconcile their promise with the ideological and political contradictions they threw up, and with its taste for untrammelled authority, campaign-style voluntarism and organizational dictat. Guided by the prevailing political climate, the contest has pulled the judicial system to and fro, sometimes violently, centering not on the liberal banes of Party supremacy over the legal system or the subordination of law to politics *per se*, but rather on the particular

The Logic of Legal Transplants". Watson, *The Evolution of Law*. Teubner, "Legal Irritants, Good Faith in British Law or How Unifying Law Ends Up in New Divergences".

terms and immediacy of those arrangements. The Party rectification of 1943 and the radical land reform campaign of 1947-48 punctuated notable early instances, and the contest continued; between 1949 and 1979, the courts of Beijing were made and unmade five times, thrice between 1949 and 1958 alone.⁷⁶

These themes develop over seven chapters. Briefly, Chapter One establishes a critical but generally overlooked baseline from which to evaluate the PRC revolution in law: the condition of the Nationalist judicial system on the eve of the CCP's ascension to power. Chapters Two and Three shift attention to the CCP, assembling from new archival findings a significantly revised theoretical and empirical portrait of the pre-1949 legal background that informed the early PRC. Chapter Four takes us deep into the mechanics of regime change, using the BMPC to uncover how the CCP took over and reconstructed the Nationalist state, and more specifically its judicial system, in 1949. Chapters Five and Six investigate the policy dynamics underlying the initial reconstruction of the judicial system, and the abrupt reversals caused by the Judicial Reform Campaign of 1952-53. Chapters Seven and Eight carry that thread forward to 1958 with the first detailed account of how a new judiciary emerged from that trauma only to be destroyed. Finally, this study concludes with brief reflections on how the ripples from that cataclysm have shaped our present.

Sources and Methods

Before proceeding further, a word about sources and methods is necessary. The principal repositories consulted for this study were the Beijing Municipal Archives (BJMA), the Institute of Law of the Chinese Academy of Social Sciences, and People's University, but it also draws on a multiplicity of other government archives, academic libraries, interviews, personal collections, digital databases, edited compilations, and book markets. The sources originated in several countries, including the former Soviet Union and Japan, however most are Chinese and in some sense "official," owing to the pervasiveness of the Party and state in the early PRC, and to the grip they jointly exercised over the production, distribution, consumption and preservation of knowledge. A partial list of the official sources consulted for this study would include the instructions, rules, and routine internal reports and correspondence issued by various levels of the Party and state bureaucracies, police or judicial case files and decisions, job applications and personnel dossiers, documents submitted by individuals, companies and associations in compliance with regulatory requirements, textbooks and cadre training manuals, and periodicals intended for internal or general circulation.

Reading such sources demands an especially critical eye, as they exemplify the echo chamber effects characteristic of well-policed discourses in which the ranges of

⁷⁶ These instances include the conquest of Beijing and the founding of the PRC by the Chinese Communist Party in 1949, the Judicial Reform Campaign of 1952-53, the Anti-Rightist Campaign of 1957-58, the Cultural Revolution unleashed in 1966, and the Deng-era reconstitution begun in 1978.

voices and views expressed are highly circumscribed, and in which subordinates and supplicants are especially prone to speak in ways that simulate the language and priorities of superiors. Sample bias is an ever-present concern, as the researcher cannot be certain why a particular source is accessible, even when it arrives through unconventional channels, and how it compares to those that are not. Many relevant archives are off-limits, most share only a fraction of their total holdings, and within that fraction archivists sometimes exercise discretion to withhold sources without explanation. Certain classes of legal documents are wholly embargoed, to wit most public security files. Furthermore, working conditions can change -- more than once during this project access to a collection was abruptly and indefinitely restricted or closed, but not before the collection provoked unsettling methodological and interpretive questions.

As a result, this study approaches its source base conservatively. Where confidence in the integrity of a sample runs high, as in the regular exchanges, instructions and reports that flowed between the BMPC and other organs of the municipal and central government, or in unbroken runs of internal periodicals and training materials, it draws heavily, reading sources critically and bouncing them off one another to corroborate claims, identify inconsistencies, and fill in gaps. The unflattering details and accusations divulged during the ritual of self-criticism, and its intensification during political campaigns provides a steady stream of useful grist for this mill.

Where confidence runs low, this study uses sources sparingly and with caution. For instance, the temptation to cite and generalize from judicial cases is especially strong. But, for the period under review, relevant archives have opened comparatively few judicial decisions and still fewer case files to researchers, and the available sample appears to be highly skewed. Judging from internal statistics, we know that criminal cases are vastly underrepresented in the archives' open sample, and of the civil cases that dominate, divorce and marriage are overrepresented. In many areas of the law, there are significant temporal gaps between accessible cases or clusters of cases, and these free-standing snapshots make it difficult to assemble a continuous image of judicial practice over time, particularly when one considers that the courts were often seized by politically-driven campaigns that briefly magnified the attention and altered the handling given to one type of case or another.

Furthermore, judicial administrators regularly complained that the quality of written verdicts fell far short of expectations despite concerted efforts to improve them. We are told that overworked and poorly skilled cadres often wrote in a slapdash, summary manner, omitting or incorrectly recording key facts, named parties, the applicable law, the reasoning and even the final judgment. Yet, the available archival sample is actually of a higher standard than that, suggesting atypicality. Next, we know that a significant percentage of cases, estimated by insiders to range as high as 50 percent in some areas of China, were later regarded as unjustly 冤案 or wrongly

decided 错案, often on political grounds.⁷⁷ These cases are rarely identifiable in the open record, but their didactically packaged reconsiderations by higher courts sometimes are. Finally, outside of the archives, one finds collections of cases published in the early 1950s, but these were compiled not for their representativeness but explicitly as models for internal reference to instruct courts in the correct interpretation of the law and Party policy on a particular issue, and to guide them in the format, syntax and style of writing proper to a judicial verdict.

In short, at the time of this writing, using case files as a general guide to judicial policy or practice in the 1950s is fraught with hazards, and without a sound sampling protocol backed by further methodological precautions the risk of cognitive bias runs perilously high.⁷⁸ Consequently, this study directs its attention elsewhere, using cases cautiously and in an illustrative capacity to complement findings grounded in other sources. Those sources represent judicial practice, its achievements and shortcomings at higher levels of analysis, and more reliably reflect the subjective understandings of the emergent PRC judicial system that circulated among those charged with administering and developing it.

Subjectivity is paradoxically a strength here, because judicial cadres did not generally operate in a universe ruled by positivist epistemologies of empirical social science, and approaching their work through that lens, while potentially valuable for our own analytical purposes, generates a form of knowledge that would have been alien to many of them. The use of statistics illustrates the point well. One of the most significant contributions of this study is its application of quantitative data to illuminate phenomena that were known to us only in rough outline, or not at all. This data makes it possible to test received narratives at an unprecedented, granular level of resolution, identify discrepancies between representations and results, and detect processes that were formerly hidden from view. But it comes with reservations.

The nascent PRC state had a thirst for data; it required courts to regularly file statistics on their operations, and it grumbled frequently about the reliability of those numbers and the poor quantitative skills of judicial cadres. Ideally, this data could serve

⁷⁷ During the Hundred Flowers Campaign, a deputy chief procurator in Guangxi province is reported to have estimated the year before that more than half of all cases in his jurisdiction were cases of injustice 冤案 or wrongly decided 错案. In the same year, an assistant judge at Shanghai's First Intermediate People's Court revealed that his court had determined that 30 percent of all criminal cases the year before were wrongly decided. Gong Jingzhi 宫敬之, "Chunji dang de zuzhi, gongguo dang de tuanjie he tongyi, chedi saochu fandang fan shehuizhuyi de lese, Guangxi dang daibiao dahui kaichu chenzaili youpai jituan de fenzi chu dang," 纯洁党的组织, 巩固党的团结和统一, 彻底扫除反党反社会主义的垃圾, 广西党代表大会开除陈再励右派集团的分子出党 *Renmin ribao* 人民日报, July 15, 1958. He Jixiang, *Hu shang fazhi meng*, 28.

⁷⁸ William J. Hurst, "Politics, Society and the Legal System in Contemporary China 2011," in *Law, Wealth and Power in China: Commercial Law Reforms in Context*, ed. John Garrick, (New York: Routledge, 2011), 78-79. For a brilliant discussion of these problems in the context of scholarship on the famine that followed the Great Leap Forward, see Anthony Garnaut, "Hard Facts and Half-Truths: The New Archival History of China's Great Famine," *China Information* 27, no. 2 (2013): 223-246.

the revolution by capturing information about social trends, local governance and threats to stability that would inform routine administration and policy-making across the government, and often it worked that way. But beyond pervasive problems with record keeping, reporting, and basic numeracy, there was a deeper tension between actual existence and verisimilitude.⁷⁹ Judicial statistics could reify phenomena that were difficult to square with ideology and, to prevent or defuse those awkward moments of reckoning, realism sometimes yielded. When judicial cadres quantified, surveyed and summarized their work, they were supposed to be reproducing Maoist constructions of the world as it ought to be. Categories, definitions and sums had to keep pace with that prime directive, even while maintaining the deceptive appearance of precision and stability, and for the empirically-minded scholar disentangling those distortions from the reality they purported to represent poses thorny problems. To varying degrees, many of the statistics in this study blend the state's incongruous needs for ordinary organizational accounting, social surveillance *and* revolutionary poiesis, and therefore occupy a murky, unstable middle ground between the actual and the imagined. They too have been read with a critical eye, considered in context, tested against other sources, and used with sensitivity to their limitations.

Next, a host of related issues connected to language and nomenclature merit comment. Joachim Kurtz points out that modern Chinese discourses are largely expressed in terms that were “coined and normalized as translations of Western or Western-derived notions,” and the vocabulary of modern Chinese law certainly conforms to that pattern.⁸⁰ Over the past century and a half, it emerged in three principal ways: resignification of existing Chinese terms to accommodate foreign legal concepts, neologisms, and importation, most often mediated by Japan. Examples include many of the terms at the heart of this study, such as court 法院, rule of law 法治, the administration of justice 司法, law 法律, verdict 判决, civil law 民法, people 人民, and rights 权利, to name a few.

In their day, these acts of interpretation generated semantic confusion, distortions and imprecisions, and the round trip back into a Western idiom, in this instance early twenty-first century American English, now compounds those. Skilled translators can mitigate such mishaps, but competence aside, the enterprise also implicates well-rehearsed controversies in ethnology about striving for emic or etic knowledge.⁸¹ In

⁷⁹ Holmes Welch, “The Chinese Art of Make-Believe,” *Encounter* 30, no. 5 (1968): 8-13. Pierre Ryckmans, “The Chinese Attitude Towards the Past,” *Papers on Far Eastern History* no. 39 (1989): 1-16.

⁸⁰ Joachim Kurtz, “Coming to Terms With Logic: The Naturalization of an Occidental Notion in China,” in *New Terms for New Ideas: Western Knowledge and Lexical Change in Late Imperial China*, ed. Michael Lackner, Iwo Amelung, and Joachim Kurtz, (Leiden: Koninklijke Brill, 2001), 147; Deborah Cao, *Chinese Law: A Language Perspective* (Burlington: Ashgate, 2004), 169.

⁸¹ Paul Bohannan, “Ethnography and Comparison in Legal Anthropology,” in *Law in Culture and Society*, ed. Laura Nader, (Berkeley: University of California Press, 1997); Max Gluckman, “Concepts in the Comparative Study of Tribal Law,” in *Law in Culture and Society*, ed. Laura Nader, (Berkeley: University of California Press, 1997); Teemu Ruskola, “Law Without Law, or is ‘Chinese Law’ an Oxymoron?,” *William & Mary Bill of Rights Journal* 11, (2002-2003): 655-670. Donald C. Clarke, “Puzzling Observations

addition, at least since Montesquieu and Weber discovered in the Chinese legal system a convenient foil for arguments about the West, our representations of it have been intimately tied with constructions of our own identity.⁸² Time and time again, Western observers affirmed their superiority by searching the Chinese legal system for things it did not have and measuring it against benchmarks it did not use, which inevitably twisted perceptions of it to the point of producing doubts over whether China properly had law, courts and judges at all.⁸³ Hence William Alford memorably labeled an inquiry into “why scholars of Chinese history and society have not had more to say about its law,” *Law, Law, What Law?*⁸⁴

Today, epistemological concerns about the colonizing effects of translation, and imputations of false equivalence have genuine merit as spurs to self-reflection, but as proscriptions they exhaust their usefulness fairly quickly. We simply cannot turn the clock back to a time before Chinese law was contaminated by Western constructs; Chinese have made those constructs their own and we are powerless to take them back. If we can speak productively in English about Sha’ria law, tennis courts, and tribal judges without abandoning our discernment or jeopardizing the integrity of language, it is not clear why China must stand apart. Choosing not to translate these terms on principle would impair readability, encumber the non-specialist with unfamiliar vocabulary from a foreign language, some of it quite similar-sounding or even homonymic (e.g. *fazhi* 法治/法制), and necessitate regular and tedious expository detours that would amount to translations in all but name. It also would not resolve the problem of shifting, ambiguous or inconsistent usage across sources, which reflects the instability and polemics revolution brought to the law and to the language that represented it.

Also, one suspects that this debate elides an important point. Far from being an inert corpus of institutions, practices, knowledge and rules, law participates in the linguistic, cognitive and symbolic dynamics of cultural change and reproduction, and is constituted through dialogues between and within societies – interlegality across space and time.⁸⁵ We must accept that legal terms borrowed from the West “have unfolded a life very much of their own in modern Chinese contexts. More often than not they have acquired new meanings that creatively alter, extend or even undermine established

in Chinese Law: When is a Riddle Just a Mistake?,” in *Understanding China’s Legal System: Essays in Honor of Jerome A. Cohen*, ed. Stephen C. Hsu, (New York: New York University Press, 2003); Peerenboom, “The X-Files: Past and Present Portrayals of China’s Alien ‘Legal System’”.

⁸² Charles-Louis de Secondat, Baron de Montesquieu, *The Spirit of the Laws* (Berkeley: University of California Press, 1977). Guenther Roth and Claus Wittich, eds., *Economy and Society*, (Berkeley: University of California Press, 1978).

⁸³ Teemu Ruskola, *Legal Orientalism: China, the United States, and Modern Law* (Cambridge: Harvard University Press, 2013).

⁸⁴ William P. Alford, “Law, Law, What Law? Why Western Scholars of Chinese History and Society Have Not Had More to Say About Its Law,” *Modern China* 23, no. 4 (1997): 398-419..

⁸⁵ Boaventura de Sousa Santos, *Towards a New Common Sense: Law, Science, and Politics in Paradigmatic Transition* (New York: Routledge, 1995), 472-473.

European conceptions.” Kurtz reminds us that “we must not merely register them as deviations” but “pay close attention to the multilayered process of translation and appropriation from which these terms have emerged.”⁸⁶ Simply put, we no longer exercise exclusive purchase over them.

Thus, when the president of the PRC’s Supreme People’s Court today calls for promoting the rule of law, judicial independence and the Constitution while resisting the infiltration of Western concepts, we must not infantilize China by speaking as if its engagement with those ideas goes back no more than a generation. We should temper the reflex to see self-contradiction or doublespeak, and try instead to comprehend his message not only in its immediate context, but also as informed by the kinds of experience and history this study investigates.⁸⁷ That is not to endorse candidates or pick sides in the fierce, ongoing debates over China’s legal system, but rather to acknowledge the authenticity and complexity of those debates more fully. As we consider law in China, and turn here to its history across the 1949 divide, we would do well to bear in mind Pierre Ryckmans’ evocative conjuring of the surprises that may await.

Western visitors in China seem to have been irritated to the point of obsession with what came to be called "Chinese lies" or the "Chinese art of stage-setting and make-believe." Even intelligent and perceptive observers did not completely escape this trap; in a clever piece written a few years ago by a good scholar, I came across an anecdote which, I think, presents a much deeper bearing than the author himself may have realised: a great Buddhist monastery near Nanking was famous for its purity and orthodoxy. The monks were following a rule that conformed strictly to the original tradition of the Indian monasteries: whereas, in other Chinese monasteries, an evening meal is served, in this particular monastery, every evening the monks received only a bowl of tea. Foreign scholars who visited the monastery at the beginning of this century much admired the austerity of this custom. These visitors, however, were quite naive. If they had had the curiosity actually to look into the bowls of the monks, they would have found that what was served under the name of "tea" was in fact a fairly nourishing rice congee, similar in any respect to the food which is being provided at night in all other Chinese monasteries. Only in this particular monastery, out of respect for an ancient tradition, the rice congee was conventionally called "the bowl of tea."⁸⁸

⁸⁶ Kurtz, “Coming to Terms With Logic: The Naturalization of an Occidental Notion in China,” 147.

⁸⁷ Zhou Qiang 周强, “Jiji tuijin shehuizhuyi fazhi guojia jianshe,” 积极推进社会主义法治国家建设 *Renmin ribao* 人民日报, August 12, 2013.

⁸⁸ Ryckmans, “The Chinese Attitude Towards the Past,” 10. Welch, “The Chinese Art of Make-Believe,” 9-10.

Chapter 1

The Republican Legacy (1906-1949)

Revolution is a comparative, relational concept. It describes difference, traditionally an abrupt, extreme change from one state to another of a magnitude that suggests disjuncture. Most comparisons of the Republican and early PRC legal systems conform to this usage; they start with a binary notion of revolution, and then illustrate it with features that showcase radical discontinuity, marginalizing or filtering out those that do not.⁸⁹ This practice maintains analytical clarity but at the cost of substantial omissions, distortions and possibly self-referential logic, and has much less to say about how revolutionary change occurs than about some of its most polarized outcomes. Alternatively, if we take our cues from recent trends in historical scholarship, recognize that revolution is not an either/or condition, and guard against the confirmation bias that comes from an *a priori* eye tuned only to high contrast, then a rather different task awaits.

When our perspective shifts from juxtaposition to correlation -- how one era led to (or emerged from) the other -- process takes center stage.⁹⁰ Suddenly, persistent misconceptions and knowledge gaps about the Chinese legal system in the years straddling the 1949 divide, and the doxa that mask them, cry out for attention. Dispelling those misconceptions and gaps requires deep empirical dives into not just the dynamics of revolution, but also its *status quo ante*. It requires marking an initial reference point against which to critically assess the differences revolution produces and the assertions about them it makes. To more fully appreciate how PRC policy makers understood and reacted to the Nationalist judicial system's successes and failures, we must, in short, map its condition as it passed into CCP hands. The logic is simple: how we characterize the endpoint of Nationalist judicial reform has profound consequences for what we make of the PRC judicial system. Shift that baseline, and our perception of the revolution must move along with it.⁹¹

No one has approached the birth of the PRC judicial system in this way, and there is ample reason for that. The CCP formally took control of Beijing's judicial organs on February 6, 1949, and in short order abrogated the Nationalist legal system, repudiated its sources of authority, restructured its institutions, and purged many of their personnel. By sweeping away those antecedents, the CCP resolved to clear the ground for the construction of a new, revolutionary legal order unencumbered by history.

⁸⁹ See for example Chen, *Chinese Law: Context and Transformation*.

⁹⁰ Mullaney, *Coming to Terms With the Nation: Ethnic Classification in Modern China*. "Dilemmas of Victory: The Early Years of the People's Republic of China". Paul A. Cohen, "The 1949 Divide in Chinese History," in *Twentieth-Century China: New Approaches*, ed. Jeffrey N. Wasserstrom, (New York: Routledge, 2003).

⁹¹ Qiang Zhang and Robert Weatherley, "The Rise of 'Republican Fever' in the PRC and the Implications for CCP Legitimacy," *China Information* 27, no. 3 (2013): 277-300.

Apparently taking the Party at its word, generations of scholars have turned a blind eye to the Nationalist legal system's dotage on the mainland, consigning it to darkness, a casualty of its prescribed irrelevance.

This study breaks decisively with that convention to demonstrate that the ferocious intensity of the CCP's ambitions to deracinate and supplant the Nationalist past belied a more complex reality. For all of the Party's revolutionary zeal, the PRC judicial system could not escape the influence of nearly forty years of Republican legal reform, and it unavoidably carried the human, institutional and normative traces of that history forward. The case for this argument will unfold over several chapters, but it begins with learning more about the legal system Nationalist China deposited on the doorstep of the PRC. And while there are many places to look, this chapter assembles snapshots of the courts, judiciary, legal education and the professional bar. Thick with detail, it fixes an empirical baseline from which to assess the 1949 revolution, and lays the groundwork for bringing Republican (especially Nationalist) legal history in from the cold as a vital generative force in the PRC.

The Court System

Judicial reform was the unifying rationale for legal modernization in the late Qing, and all of the effort spent building up legal education, professions, and codes for the next forty years came together in it and hinged on its success. Under the pressure of extraterritoriality and pursuant to a raft of other New Policies designed to revive the faltering imperial state, in 1906 the Qing government issued an edict premised on Western theories of judicial independence that heralded an unprecedented reorganization of the legal system.⁹² This edict separated judicial administration from adjudication, vesting the former in the Imperial Board of Punishment 刑部 which it renamed the Ministry of Law 法部, and the latter in the Court of Judicial Review 大理寺 which it renamed the Supreme Court 大理院. As a monument to this epic transformation, the government tore down the Court of Imperial Sacrifices 太常寺 and Censorate 都察院 and erected on their sites a towering, consummately modern, Western-style home for the new Supreme Court, the building that would stand for half a century at 72 Ministry of Justice Street.

The first modern-style courts in China appeared in Tianjin in March 1907, followed by Beijing in December of the same year.⁹³ Institutional growth was at first meteoric. Beijing's Inner City Local Court soon began handling 200 cases per month and, by 1912, the founding year of the Republic, the number of modern courts or

⁹² Zhao Yuhuan 赵玉环, "Qingmo sifa gaige de qishi," 清末司法改革的启示 *Shandong shehui kexue* 山东社会科学 no. 8 (2009): 142-144.

⁹³ Liu Huanfeng, and Guo Lijuan 刘焕峰 and 郭丽娟, "Qingmo shenpan ting shezhi kaolue," 清末审判厅设置考略 *Lishi dang'an* 历史档案 2, (2009): 117-120.

tribunals in China had risen to 343.⁹⁴ Most were weakly provisioned and financially unsustainable, and by 1926 closures, restructuring, and consolidations had reduced their number to 139. To put that further into perspective, of the 1,950 basic-level judicial institutions recorded nationwide that year, only 89 (5 percent) were modern courts, while 1,800 (92 percent) consisted of county magistrates who inherited the traditional responsibility of managing judicial affairs concurrently with their other administrative duties.⁹⁵

Fiscal constraints, political instability, and resistance driven by competing interests, values, agendas, and traditional modes of social organization greeted Republican judicial reform at every turn.⁹⁶ State power over the courts was highly fragmented, and this forced constant negotiations and compromises between judicial and administrative organs both within and across the central, provincial and local levels of government. In the vertical dimension, fragmentation manifested most clearly with respect to fiscal matters. Although the national government claimed the ultimate right to regulate the judicial system and set judicial policy, for most of the Republican period it did not control the purse. Operational expenses came from provincial-level coffers and fees levied by the courts themselves. This allowed local elites a margin of independence from national priorities, empowered factional and parochial interests, tended to amplify pre-existing economic and institutional inequalities, and generated budgets that could oscillate widely from year to year, undermining stability and the realization of long-term goals. While such pluralism was criticized and sometimes disciplined, more often the fundamental weakness and internal disunity of the central government forced grudging acquiescence to it. Thanks to the centralization of power occasioned by the war against Japan, the Nationalist government finally brought judicial expenditures under its unified national budget in 1940, but this decision did not fully reach the occupied eastern provinces and their major cities, including Beijing, until after Japan's 1945 surrender.

In the horizontal dimension, a remarkable diffusion of basic authority over the legal system belied any unity of purpose by the national government. Central-level organs notoriously competed over bureaucratic jurisdiction, stymied one another and worked at cross-purposes, apparently by design. For example, in the Nationalist period, squabbles between the Ministry of Justice and the Examination Yuan stalled the introduction of a bar exam, and the Ministry of Justice and Judicial Yuan were often at odds with the Ministry of Education over the regulation of law schools and their curricula.

⁹⁴ Han Xiutao 韩秀桃, "Qingmo guan zhi gaige zhong de dali yuan," 清末官制改革中的大理院 *Fashang yanjiu* 法商研究 6, (2000): 109.

⁹⁵ Ju Zheng 居正, "Ershiwunian lai sifa zhi wenti yu zhanwang," 二十五年来司法之问题与展望 in *Weishenme yao chongjian zhongguo faxi: juzheng fazheng wenxuan* 为什么要重建中国法系: 居正法政文选, ed. Fan Zhongxin, You Chenjun, and Gong Xianzhai 范忠信, 尤陈俊, and 龚先砦, (Beijing: Zhongguo zhengfa daxue chubanshe, 2009), 334. The remaining 50 courts were at the provincial or central level.

⁹⁶ Yao-tseng Chang, "The Present Conditions of the Chinese Judiciary and Its Future," *The Chinese Social and Political Science Review* 10, (1926): 163-182. Xiaoqun Xu, *Trial of Modernity: Judicial Reform in Early Twentieth-Century China, 1901-1937* (Stanford: Stanford University Press, 2008).

As for adjudication, oversight fell to the Judicial Yuan, and traveled downwards through the hierarchy of the Supreme Court, provincial high courts and local courts. The Ministry of Justice, however, regulated the appointment and training of judges, while a second, higher organ, the Examination Yuan, usually gave the judicial civil service examination, though not always, and a third body, a commission under the Judicial Yuan, handled judicial discipline and punishment. Beyond that, the Ministry of Justice had undivided jurisdiction over the procuratorates within each court, giving it a parallel, vertical organization within but apart from the judicial hierarchy. And those were just the formal arrangements on paper. In practice, the apportionment of responsibilities between the Ministry and the Judicial Yuan over the supervision of adjudication and over many matters of judicial administration, including prisons, personnel management and appointments, records, statistical reporting, and finance was overlapping, complex and fluid. Cleavages and tensions within and among the national, provincial and local levels of these two bureaucracies added a still higher degree of complexity.

This bears repeating. The original premise behind China's modern judicial system, the functional separation of adjudication from administration, was floundering. Tradition, habitus, bureaucratic competition, institutional shortcomings and the absence of a clear legal framework had subverted it from the start. Since the reforms of the late Qing, courts and their ministerial counterparts had variously exercised dual jurisdiction over large portions of their respective judicial portfolios by comity, and though the relationship matured, it never stabilized. Max Weber's earlier observation that "Chinese administration of justice constitutes a type of patriarchal obliteration of the line between justice and administration" continued to resonate.⁹⁷

In fact, wrangling over this basic issue disturbed the judicial system for much of the Republican period. Proponents of separation insisted that the continuing immature state of the Chinese judicial system required a distinct supervisory organ focused exclusively on operational matters, quality control, institutional learning, policy coordination, long-term planning, and not least of all on demonstrating respect for judicial independence to fault-finding foreigners. But critics contended that these roles were ineluctably judicial and properly belonged to the courts; to label them otherwise as a basis for separation was simply a fiction that generated red tape and inefficiency. The debate was hardly academic. In 1928, the newly created Judicial Yuan took over the Ministry of Justice as a subordinate organ, stripped it of many of its powers, and renamed it to indicate a reduced, administrative function.⁹⁸ But matters did not rest there and, as the controversy roiled, the Ministry of Justice was passed like a football, first in 1932 to the Executive Yuan, then in 1934 back to the Judicial Yuan, and finally in 1943 to the Executive Yuan again. Ever since, the division of labor over adjudication

⁹⁷ Weber, "Economy and Society," 845.

⁹⁸ The name it had had through the Beiyang period, 司法部 (Ministry of Justice), was changed to 司法行政部 (Ministry of Judicial Administration) in 1928. The Republic of China retained this name until 1980, when it was changed to the 法务部 (Ministry of Legal Affairs). In spite of these changes, the dominant English translation before 1949 remained more or less stable: Ministry of Justice.

and judicial administration has been a source of periodic tension, ambiguity, institutional reshuffling and renegotiation in the Chinese legal system. A related controversy simmered over abolishing, restructuring or reassigning the Ministry of Justice's signature foothold in every court, its powerful, continental-style procuratorate.⁹⁹ This too would spill over into the PRC.

These were among the key architectural problems in a Republican judicial system that exhibited immense diversity. That diversity was in fact one of the judicial system's defining and most vexing features, and has yet to receive adequate historiographical analysis. At one end of the spectrum were Jiangsu and Zhejiang Provinces, the focus of Xu Xiaoqun's groundbreaking study of the Republican judicial system, which along with Guangdong boasted dozens of courts each by the end of the Nanjing decade (1927-1937).¹⁰⁰ At the other end were the remote and poor interior provinces of the northern and southern borders, such as Xinjiang, Suiyuan, Guizhou, and Yunnan, none of which could muster more than eight courts in the same period. Conditions within provinces were similarly varied, and nowhere was this truer than in Hebei, the province surrounding Beijing. To contextualize Beijing within Hebei Province as a whole, and to compare Hebei against a selection of other provinces at the forefront of judicial modernization, is thus to generate a new and fuller image of the Republican judicial inheritance PRC policy makers confronted in 1949.

Hebei was carved out of traditional Zhili Province in 1928, when the Northern Expedition nominally unified China under Nationalist rule. Hebei enveloped Beijing, the former capital, had jurisdiction over its judicial system, and amply reflected the pathologies and irregular progress of Republican state building.¹⁰¹ Hebei was once a trailblazer, but by the early 1920s the center of judicial modernization had shifted south to the Yangzi and Pearl River deltas, and while Beijing maintained active modern courts closely connected to the elites and institutions of the central government, its provincial surroundings were largely bereft of them. Beginning in 1935, parts or all of Hebei were administered by Japanese-sponsored collaborationist regimes, and from 1937 to 1945

⁹⁹ For snapshots of the debate in the 1930s and 1940s, see: Yang Zhaolong 杨兆龙, "You jiancha zhidu zai geguo zhi fazhan shilun ji woguo jiancha zhidu zhi cunfei wenti (1936)," 由检察制度在各国之发展史论及我国检察制度之存废问题 in *Yang Zhaolong faxue wenji* 杨兆龙法学文集, ed. Ai Yongming and Lu Jinbi 艾永明 and 陆锦璧, (Beijing: Falü chubanshe, 2005). Ni Zhengyu 倪征燠, "Sifa wenti yanjiu (1947)," 司法问题研究 (1947) in *Ni Zhengyu faxue wenji* 倪征燠法学文集, ed. Shi Jiaohuai, Ni Naixian and Gao Jishun 施觉怀, 尼乃先, and 高积顺, 东吴法学先贤文丛 (Beijing: Falü chubanshe, 2006), 126. Attesting to the inconclusiveness of the debate, an intervention by Zhang Zhiben, originally published in 1937, was also reprinted in 1947. Zhang Zhiben 張知本, "Jiancha zhidu yu wuquan xianfa," 检查制度與五權憲法 *Faxue zazhi* 法學雜誌 9, no. 5-6 (1937): 600-607; Zhang Zhiben 張知本, "Jiancha zhidu yu wuquan xianfa," 检查制度與五權憲法 *Sanmin zhuyi ban yuekan* 三民主義半月刊 10, no. 3 (1947): 14-16.

¹⁰⁰ Xu, *Trial of Modernity: Judicial Reform in Early Twentieth-Century China, 1901-1937*.

¹⁰¹ William C. Kirby, "Engineering China: Birth of the Developmental State, 1928-1937," in *Becoming Chinese: Passages to Modernity*, ed. Wen-hsin Yeh, (Berkeley: University of California Press, 2000). Julia Strauss, *Strong Institutions in Weak Politics: State Building in Republican China, 1927-1940* (Oxford: Clarendon Press, 1998).

the Nationalist government lost control over judicial institutions province-wide. After Japan's surrender, the Nationalist government reoccupied Hebei, but over the next four years its authority dwindled as the CCP swept over the province like a rising tide.

The attenuated writ of the central government manifested clearly in the progress of judicial expansion. The Nationalist period began with a top-heavy distribution that reflected Beiyang (1912–1927) modernizations of the thin administrative infrastructure inherited from the Qing. Nearly every province possessed a high court, but comparatively few local courts existed and Hebei fared particularly poorly considering that the province incorporated the former capital, was historically prominent, and contained two of the three largest cities in the country. In 1928, out of fifty-nine local courts nationwide, Hebei possessed just three, and its gains over the next decade could not overcome this disadvantage. In 1936, the Judicial Yuan recorded eighteen courts in Hebei, but it reported judges and procurators for only eight, a number that seems more reliable. In comparison, Guangdong Province, with a similar population, had eleven times as many local courts and more than four times as many judges. Zhejiang Province, despite one-quarter fewer people, possessed more than four times as many local courts and three times as many judges.¹⁰² Provincial-level data published in 1938 reported that the percentage of counties nominally under the jurisdiction of a local court was as follows: Hebei (11.5 percent), Sichuan (27 percent), Zhejiang (41.3 percent), and Guangdong (100 percent).¹⁰³

Elsewhere in China, county-level judicial offices were being phased in with the goal of eventual enhancement and conversion into local courts when conditions permitted. These offices aimed to extend judicial independence to the county level by divesting magistrates of their traditional adjudicatory powers in favor of trial officers educated in modern law and selected by provincial judicial authorities. Magistrates would retain responsibility for local judicial administration and for prosecution. In 1937, China had 571 county judicial offices, but Hebei had none; provincial authorities applied to the Judicial Yuan for a deferment, allowing 119 county magistrates to continue to exercise judicial powers concurrently with their other duties, somewhat in the manner of a traditional yamen.¹⁰⁴ Later that year, the entire province fell under Japanese military occupation, and a succession of Japanese-sponsored occupation governments took over and operated its judicial system.¹⁰⁵

The Second Sino-Japanese War (1937-1945) shattered the Nationalist legal system, and for nearly eight years its most advanced centers of judicial development, the principal beneficiaries of a generation of investment, languished behind enemy lines. Afterwards, post-war judicial reconstruction was both ambitious and ill-timed. In formerly

¹⁰² *Sifa nianjian* 司法年鑒, ed. Sifayuan bianyichu 司法院編譯處 (Changsha: Shangwu yinshuguan, 1941), 157-159, 218-219.

¹⁰³ *Ibid.*, 263-265.

¹⁰⁴ *China Year Book* (Shanghai: Commercial Press, 1937), 181.

¹⁰⁵ *Hebei gaodeng fayuan tongji kan yao* 河北高等法院統計刊要 (Beiping: (wei) Hebei gaodeng fayuan shuji shi, 1942).

occupied areas, courthouses were damaged or destroyed and stripped of furniture, equipment, libraries, and records. The Ministry of Justice's 1946 official reconstruction plan sorted courts by the extent of capital construction required, and in Hebei Province fourteen of the twenty-one entries appeared under the categories "total" or "large-scale," including the provincial high court and five of its eight branch courts, a sign of greatly diminished capacity.¹⁰⁶ Nevertheless, demand for judicial services surged as criminal and civil cases arising out of the war and the general disorder that followed clogged the crippled courts. Soon, civil war and inflation sharply impinged upon judicial recovery.¹⁰⁷

The goal of establishing a local court in every county was articulated often in the early years of Republican judicial reform. However, by June 1947, only 557 of China's 1,964 counties (roughly 28 percent) officially possessed a local court, and given the central government's propensity to count organs it had yet to fully constitute an indeterminate portion of these were almost certainly figments of its imagination.¹⁰⁸ According to official figures, out of thirty provincial-level jurisdictions, just five had local court-to-county ratios exceeding 50 percent, and with the partial exception of Guangdong, all of those had been under Japanese administration since the early 1930s or before.¹⁰⁹ The Nationalist heartland of Zhejiang, Jiangsu, and Sichuan averaged only 43 percent coverage, and a further thirteen provinces, or nearly half the total in China, each had less than 25 percent. Seven provinces did no better than 15 percent.¹¹⁰

On a more positive note, if one adds county-level judicial offices—which could hear trials of first instance in many ordinary civil and criminal matters but were presided over by trial officers rather than judges—then the number of counties covered by at least some form of judicial organ in late 1947 rises nationally to 84 percent.¹¹¹ These offices handled varying proportions of the total provincial caseload. In Hebei, their contribution was modest; they closed only about nine percent of total civil and criminal cases of first instance the previous year, a striking index of how poorly Republican judicial institutions penetrated beyond major cities to serve the countryside where the overwhelming majority of China's populace lived.¹¹² Again, the intent was always to

¹⁰⁶ The breakdown was as follows: complete construction (three branch high courts, one large local court, four small local courts); large-scale construction (one high court, two branch high courts, one large local court, two small local courts); small-scale construction (two branch high courts, one large local court, two small local courts); general repairs (one branch high court, one small local court). Xie Guansheng 謝冠生, *Zhanshi sifa jiyao* 戰時司法紀要 (Taipei: Sifayuan mishu chu, 1977), 446.

¹⁰⁷ In 1946, 145 new courts were opened. In 1947, the number dropped to 60, reflecting the adverse political and economic environment. *Ibid.*, 5.

¹⁰⁸ *Zhonghua minguo tongji nianjian* 中華民國統計年鑑, ed. Guomin zhengfu zhujichu 國民政府主計處 (Nanjing: Zhongguo wenhua shuye, 1948), 393.

¹⁰⁹ The four formerly under Japanese administration were: Rehe, Liaoning, and Andong provinces, which had all been part of Manchukuo, and Taiwan.

¹¹⁰ The seven were: Chahar (11 percent), Fujian (15 percent), Hebei (6 percent), Henan (14 percent), Hunan (13 percent), Shanxi (8 percent), Yunnan (13 percent). *Ibid.*

¹¹¹ *Zhonghua minguo tongji tiyao* 中華民國統計提要 (Nanjing: Guomin zhengfu zhujichu tongjiju, 1947), 137.

¹¹² *Sifa tongji niankan* 司法統計年刊 (Nanjing: Sifa xingzhengbu, 1947), 47, 56.

elevate these provisional offices into proper courts once circumstances permitted, and the PRC actually delivered on that promise, though crudely.

Proportionally, Hebei, with only six percent local court coverage, was the worst-performing province in all of China. Even if one accepts official 1947 statistics uncritically and factors in the forty county-level judicial offices claimed for the province, no more than 52 of its 132 counties (39 percent) hosted a judicial organ of any description, and of course the number of organs actually functioning was surely lower.¹¹³ Yet if Hebei was a statistical outlier, it was no marginal borderland. Hebei was the birthplace of the modern Chinese judicial system and, until 1927, its administrative center. During the Republican period, Beijing hosted the Supreme Court and Ministry of Justice longer than Nanjing did, and it boasted the law school most closely associated with the Republican judiciary, at Chaoyang University. Hebei was the site from whence the CCP Central Committee, the North China People's Government, and the Chinese People's Political Consultative Conference fatefully abrogated the Republican legal system, and it was also the immediate neighborhood the architects of the PRC judicial system looked out upon from their windows in Beijing. In 1949, the province, in all of its diversity, offered abundant, firsthand evidence of the daunting judicial deficiencies they faced.

If Hebei's courts were comparatively few in number and unevenly distributed, then how well did they function? CCP critics frequently charged that the Nationalist legal system was inaccessible to ordinary citizens, and though a host of economic, technological, and social factors influenced rates of litigation, the available data suggests that, even by the standards of other provinces and the national average, judicial organs in Hebei dramatically underserved their provincial population. Judicial organs in Zhejiang Province, for example, had four times as many civil cases and twice as many criminal trials on their dockets, despite having a population one-third smaller, and they accepted far more new cases for trial in 1946 than their counterparts in Hebei. Comparisons with Guangdong and Sichuan Provinces confirm the unusually low per capita utilization of Hebei's courts.¹¹⁴ Interestingly, civil mediation occupied a comparatively small percentage of cases across provinces, meaning that parties with access to the courts pursued litigation in greater numbers by far.¹¹⁵ The CCP, by contrast, quickly changed the structural dynamics of the Chinese legal system as a matter of deliberate policy and inverted this condition by fiat.

Another of the principal complaints lodged against the Nationalist judicial system was its failure to deliver timely justice and the ruinous impact this had on litigants. Speaking of the protracted nature of legal proceedings, one former judge argued in the late 1940s that, "in the hands of retainers who are skillful in the game, they might keep the ball rolling for a period of three to five years or even longer. This is no exaggeration

¹¹³ *Zhonghua minguo tongji tiyao*, 137.

¹¹⁴ *Sifa tongji niankan*, 45-61. *Zhonghua minguo tongji tiyao*, 2.

¹¹⁵ *Sifa tongji niankan*, 45-50.

but a sad fact.”¹¹⁶ He attributed this to a host of shortcomings, including a distrust of judges; too many restrictions on their power for fear of abuses, error, or corruption; too much latitude for litigants in procedural remedies; and an overemphasis on formalities and technicalities, “not for practical purposes but on principle.”¹¹⁷

Chinese courts ended 1946 with significantly more cases on their dockets than they had started the year with, though the sources do not indicate how long the open cases ultimately dragged on for or why. We do know that in 1946 judicial organs in Hebei generally closed cases at a lower rate than their peers, with the exception of criminal appeals. Between 74 to 85 percent of cases of first instance on the docket cleared by year’s end, but only half of civil appeals did, a level well below the national average of nearly 81 percent.¹¹⁸ When the court system passed to CCP control, the problem of long-running cases reached actual crisis proportions, confounding the CCP’s naive optimism and propaganda on this issue and accelerating the rush toward people’s mediation to relieve the pressure.

The implication that Hebei courts were less responsive to civil disputes than their counterparts elsewhere is supported by other data. Sixty-one percent of Hebei’s entire caseload was criminal in character, compared with a national average of 45 percent.¹¹⁹ The five most common offenses accounted for 70 percent of the 15,717 criminals punished in Hebei that year: theft (5,085), treason (2,206), drug crimes (2,092), robbery and piracy (886), and infliction of bodily injury (877). Notably, Hebei courts tried 38 percent of all criminals punished in 1946 under the Traitors Punishment Statute, the highest share of any province by far.¹²⁰

In sum, for Hebei, an image of long-running social and political disorder, judicial underdevelopment, and immediate preoccupation with criminal matters at the expense of civil disputes emerges just as the CCP began to tighten its noose around the province in the end stage of the civil war. The official *Statistical Abstracts of China* nominally recorded twelve courts and 103 judges in the entire province of roughly thirty-two million people for April 1947, a reduction of one court and 52 judges from the year before. There was also a small branch of the national Supreme Court operating in Beijing, which that source omits. By comparison, the city of Shanghai alone had 85 judges, and the capital, Nanjing, had 164.¹²¹

To put these figures further into perspective, four decades after Hebei pioneered the modern Chinese judicial system, it could muster only eight local courts for 132 counties, and these were predominantly urban.¹²² Nationalist control over the province began to shrink in 1947 as the CCP stepped up military activity and increasing amounts

¹¹⁶ Kwei Yu, “Some Judicial Problems Facing China,” *Washington Law Review* 23, (1948): 367.

¹¹⁷ *Ibid.*

¹¹⁸ *Sifa tongji niankan*, 45-61.

¹¹⁹ *Ibid.*, 27.

¹²⁰ *Ibid.*, 63.

¹²¹ *Zhonghua minguo tongji tiyao*, 137.

¹²² *Zhonghua minguo tongji nianjian*, 393.

of rural territory fell under CCP administration. Shimen (now Shijiazhuang), one of the first major cities in China to come under CCP control, fell in November, and with it a local court and branch provincial high court. In June 1948, the Ministry of Justice claimed a total of twenty-five courts in the province, nearly double the number of the year before, but many of these could not have existed in more than name since, like Shimen, their sites were now behind CCP lines.¹²³ As for Beijing, the jewel of the province and third most populous city in the nation, seven months before the city fell to the People's Liberation Army (PLA), the staff roster of the local court recorded just twenty-eight judges, serving approximately 1.7 million inhabitants. Their median age was thirty-one years old; few had much experience and nearly all were replacements for the wartime collaborators purged after the Guomindang returned to the city four years before.¹²⁴ Such was the municipal court system the CCP inherited in the soon-to-be capital of the PRC.

Judges

In Imperial China, adjudication was part of a bursting portfolio of administrative responsibilities borne by local magistrates, who were “at once coroner, police superintendent, jail warden, prosecuting attorney, judge and sheriff,” to say nothing of their still more numerous duties apart from the law.¹²⁵ Consummate generalists, they cultivated humanistic erudition and received no systematic legal education, as China had none to offer them.¹²⁶ When adjudication was necessary, they relied on experience, self-study of the Qing Code, published precedents and commentaries, and a crucial stratum of legal advisors to guide them.¹²⁷ Moreover, because Confucian ideology frowned upon lawsuits, and magistrates near the end of the Qing governed districts averaging perhaps 250,000 persons, the state restricted access to the courts, suppressed those who sought to facilitate litigation, and shunted most disputes to local elites and social organizations for mediation.¹²⁸

¹²³ *Fayuan jiansuo ji xian sifa jiguan shu* 法院監所及縣司法機關數. (1948), BMA RG7/7085.

¹²⁴ This group includes four tribunal presidents 庭长 and twenty-four judges 推事, but excludes the court president, who ordinarily performed administrative duties and did not participate in adjudication. *Beiping difang fayuan zhiyuan lu* 北平地方法院職員錄 (Beiping: Beiping difang fayuan, 1948).

¹²⁵ Hosea Ballou Morse, *The International Relations of the Chinese Empire* (New York: Longmans, Green and Co., 1910), 116.

¹²⁶ For an excellent overview of legal education and the legal training imperial officials received during the Qing, see Wejen Chang, “Legal Education in Ch’ing China,” in *Education and Society in Late Imperial China, 1600-1900*, ed. Benjamin A. Elman and Alexander Woodside, (Berkeley: University of California Press, 1994).

¹²⁷ Li Chen, “Legal Specialists and Judicial Administration in Late Imperial China,” *Late Imperial China* 33, no. 2 (2012): 1-42.

¹²⁸ Melissa Macauley, *Social Power and Legal Culture: Litigation Masters in Late Imperial China* (Stanford: Stanford University Press, 1999).

The judicial reforms undertaken in the waning days of the Qing wrecked that model and the relations of knowledge and power imbricated within it. By terminating the imperial examination system and unleashing far-reaching revisions to Qing law at the same time as it was thoroughly reorganizing the courts, the state audaciously assumed the concomitant burdens of creating new legal codes, a new corps of judges, and new content and standards for educating, recruiting and credentialing them. This was nothing short of a Big Bang in the universe of Chinese law, exceeding even the 1949 revolution in its enormity. The entire infrastructure of legal education and judicial training had to be built on the fly while the courts and the law took shape around them.

When the Nationalist government took power in 1928, it inherited from the Beiyang period a mature three-stage model of judicial qualification originally patterned after Meiji Japan's. That model generally required prospective judges and procurators to possess a law degree from a three-year or longer accredited program of tertiary-level education, and pass a series of grueling judicial examinations, which were either punctuated by a court-based practicum, or followed by graduation from a course of advanced study lasting as long as two years in a central judicial training institute. Not unlike the scholar-officials who staffed the late imperial bureaucracy, it produced a hyper-elite judiciary refined from a stratum of other learned elites who sat atop the broader community of those exposed to a modern legal education.

Driven by revolutionary ambitions of its own, the Nationalist government moved swiftly to alter that model. Between 1910 and 1933, the judicial examination had served as the principal gateway to the modern Chinese bench, and as late as 1936 two out of three Republican judicial officials had passed through it.¹²⁹ Most of the examination covered conventional legal subjects that any law student educated in the European civil law tradition would have instantly recognized, but there were also sections on Chinese history, geography and language. Consistent with its goal of “partifying” the judiciary 司法党化, the Nationalist government politicized the judicial examination for the first time in 1929, adding a section on Guomindang Party Principles and Programs.¹³⁰ Then, in 1933, it broke the exam's coupling to advanced judicial training, and shifted recruitment toward alternate categories of eligible personnel.¹³¹ That effectively decentered the

¹²⁹ Ju Zheng 居正, “Shi nian lai de zhongguo sifajie (1937),”十年来的中国司法界 (1937) in *Weishenme yao chongjian zhongguo faxi: juzheng fazheng wenxuan* 为什么要重建中国法系: 居政法政文选, ed. Fan Zhongxin, You Chenjun, and Gong Xianzhai 范忠信, 尤陈俊, and 龚先砦, (Beijing: Zhongguo zhengfa daxue chubanshe, 2009), 355.

¹³⁰ Formally, this was not a regular administration of the state judicial examination, but rather the admissions exam for the newly opened Training Institute for Judicial Officials, discussed below.

¹³¹ Article 33 of the 1932 Law on Court Organization 法院组织法 enumerated five categories of people eligible for judicial appointment: those who have passed the judicial examination and completed their practicums; those with two years or more experience teaching fundamental legal courses at a state, or a registered university, independent college or polytechnic school, and who have passed examination of their qualifications; those who have previously served as a judge or procurator for one year or more, and have passed examination of their qualifications; those who have practiced law for three years or more, and have passed examination of their qualifications.

judicial examination and it never recovered its former dominance. Two years later, the government went further, introducing a special *Examination for Central, Provincial and Municipal (Guomindang) Party Committee Personnel to Engage in Judicial Work*, which boosted participation by opening a dedicated channel for the admission of Guomindang party workers. It then refashioned the content of advanced judicial training to suit this new class of recruits.¹³²

The war amplified those trends.¹³³ The Nationalist judiciary lost more than 800 judges in 1937 alone, shrinking by nearly half.¹³⁴ To recover from that precipitous collapse, in 1938 the government provisionally opened additional paths to judicial appointment, particularly for experienced personnel in lower ranked occupations, which had formerly been excluded from eligibility, such as court clerks 书记官 and trial officers 审判官/承审员.¹³⁵ To meet the demands of post-war reconstruction, in 1946, that expansion was normalized via amendments to the *Law on Court Organization*.¹³⁶

Gripped by crisis and patriotism, many jurists acquiesced to the hastening Guomindang capture of the judiciary and the courts in the interests of national unity and survival. For a time, some even dared to imagine this rebalancing of politics and law, and of Party and state as congenial to modernization. More fundamentally, however, these shifts corroded the ideal of judicial independence, and implicated the judiciary in a rising tide of official impunity that wartime exigencies helped to institutionalize. When the war ended and these trends continued apace, muted admonitions gave way to despair and full-throated outrage.¹³⁷

Witness the changes to judicial training. During the Beiyang period, judicial training had been premised upon the Confucian concept of cultivation 养成. Mastering

¹³² “Zhongyang jige shengshi dangbu gongzuo renyuan congshi sifa gongzuo kaoshi banfa dagang ji shixing xize,” 中央及各省市黨部工作人員從事司法工作考試辦法大綱及施行細則 *Sifa gongbao* 司法公報 no. 29 (1935): 1-3. In 1935, the fourth session at the Training Institute for Judicial Officials accepted 136 students, only seventeen of whom qualified via the preceding ordinary judicial examination. One hundred sixteen qualified via the special examination for Guomindang party workers, and three transferred from previous sessions. The subsequent two sessions dispensed with both examinations, and admitted only Guomindang members chosen via internal party procedures. *Sifa nianjian*, 362. The institute is discussed in detail below.

¹³³ Ju Zheng 居正, “Kangzhan liu nian lai zhi sifa xingzheng,” 抗戰六年來之司法行政 *Huaqiao xianfeng* 華僑先鋒 5, no. 7 (1943): 12-21.

¹³⁴ *Sifa nianjian*, 156.

¹³⁵ “Sifa guanren yong zhanxing banfa,” 司法官任用暫行辦法 *Minguo zhengfu gongbao* 民國政府公報 no. 35 (1938): 9-10.

¹³⁶ “Fayuan zuzhifa,” 法院組織法 in *Zuixin liufa quanshu* 最新六法全書, (Shanghai: Zhongguo fagui kanxingshe, 1946), 461.

¹³⁷ Yang Zhaolong 楊兆龍, “Zhishijie zhenxian zhi tongyi,” 知識界陣線之統一 *Jing shizhan shi tekan* 經世戰時特刊 no. 11-12 (1938): 2-7. Li Haopei 李浩培, “Fazhi yu jianguo (1943),” 法治与建国 (1943) in *Li Haopei faxue wenji* 李浩培法学文集, ed. Ling Yan 凌岩, 东吴法学先贤文丛 (Beijing: Falü chubanshe, 2006). Yang Zhaolong 杨兆龙, “Xianzheng zhi dao (1944),” 宪政之道 (1944) in *Yang Zhaolong faxue wenji* 杨兆龙法学文集, ed. Ai Yongming and Lu Jinbi 艾永明 and 陆锦璧, (Beijing: Falü chubanshe, 2005).

the skills of adjudication was necessary and highly prized to be sure, but judges were expected to be something more than adept technicians; they also were supposed to reach for the personal rectitude and cultured sagacity of traditional scholar-officials, and only this provided the ethical assurances that contemporaries required before accepting their unprecedented claims to judicial independence. This idiom changed, however, once the Leninist, militarized Guomindang rose to power. For much of the Nanjing decade, the state would no longer educate 讲习 judges or cultivate judicial talent 储才; instead, judges were a special brand of functionary to be trained 训练 and, through ideological and political study, disciplined to subordinate themselves to national goals and a modernization agenda defined by the Party.

Fittingly, the Nationalist government opened a central Training Institute for Judicial Officials 法官训练所 in Nanjing. Between 1929 and 1941, the institute graduated 1,249 judges and procurators, eleven of whom were women, spread over six consecutive training sessions 届 for prospective judicial officials 法官, and six short courses 期 for their already serving counterparts. These were numbered in accordance with occupational specialty: judges joined odd numbered sessions/courses (1,3,5), and procurators joined even numbered sessions/courses (2,4,6). Among judges, the 339 graduates of the training sessions were slightly more than a decade younger on average (29 vs. 40) than the 309 graduates of the short courses, and were at least 43 percent more likely to have graduated from university.¹³⁸ This indicates a significant elevation of academic standards in the judiciary over the 1930s.

The first judges' session, in 1929, admitted students via a two-part entrance examination, essentially an unofficial administration of the judicial examination, historic because it tested ideological content for the first time. The first judges' session lasted one year, from 1929 to 1930, after which the Ministry of Justice distributed the 172 graduates to courts for employment as candidate judges. The second judges' session graduated 125 students in 1934, after a term of study lengthened to eighteen months. This was the first and only judges' session at the institute that conformed to the idealized three-stage progression from law school through the state judicial examination to advanced judicial training. All but two of the 295 students admitted to the first two judges' sessions at the institute entered directly via examination, or 99.3 percent.¹³⁹

The third and final judges' session was dramatically different. The war forced the institute to evacuate to Chongqing, and disrupted the admissions pool. As a result, the session ran only nine months, from September 1938 to May 1939. This entering class was one-third the size of the one before it (42 versus 125) and, most importantly, it did not comprise graduates of law schools who passed through the conventional judicial

¹³⁸ *Sifa nianjian*, 347-365. The likelihood was probably higher. Here the Training Session statistics include not just the 702 judicial and procuratorial students, but also 195 students from separate training sessions for trial officers, prison wardens and judicial clerks, who would have had lower educational attainments and brought down the average for the group.

¹³⁹ Specifically, the institute admissions examination given in May 1929, and the state's second preliminary judicial examination 第二屆法官初試 given in October 1932.

examination or a functional equivalent. Instead, the class consisted solely of Guomindang party affairs personnel recruited, screened and selected by central Guomindang authorities. According to one PRC source, all of them were actually operatives of the Bureau of Investigation and Statistics, the secret police organization run by Dai Li, sent to infiltrate the judiciary to make it more politically pliant and aggressive. The procuratorial session that followed was similarly constituted.¹⁴⁰

To be clear, Guomindang membership was not a prerequisite for judicial appointment. But upon coming to power, the Guomindang openly flouted and finally rescinded a legal prohibition against judges belonging to political parties, which had been a defining attribute of the judiciary since 1910. As the Nationalist period progressed, the proportion of Party members in the judiciary rose, and the boundaries between Party and judiciary blurred.¹⁴¹ In 1937, nearly 70 percent of Judicial Yuan personnel were Guomindang members, as were 43 percent of judges on the Supreme Court, including the court president and the presidents of all but one of the court's fifteen constituent tribunals.¹⁴² Moreover, Ju Zheng, president of the Judicial Yuan, famously suggested that the primary standard for evaluating all judges should be their application of Party principles in the handling of cases.¹⁴³ To this, Zhang Zhiben, secretary-general of the Judicial Yuan and president of Chaoyang University law school, added "the administration of justice is an important branch of politics."¹⁴⁴

The institute exemplified these developments. When it opened in 1929, it restricted admission to candidates who possessed three-year or longer domestic or foreign degrees in law or political science *and* an unprecedented political qualification: Guomindang party membership. Though the latter prerequisite disappeared the following year, participation at the institute advanced in other ways: the Guomindang vetted applicants politically, required non-Party students to apply for Party membership, installed a Party loyalist as institute president, and in time opened dedicated routes to admission for Party officials. In 1936, the one-month short courses for serving judges commenced. Sent in groups of about one hundred, these judges, many of whom were Beiyang-era appointees, underwent continuing legal education and intensive "training in

¹⁴⁰ Yang Yingqi, and Zhang Wandong 杨颖奇 and 张万栋, *Erhao dixi: yi ge zhongtong da tewu de zishu* 二号嫡系: 一个中统大特务的自述 (Qingdao: Qingdao chubanshe, 1999), 137-139.

¹⁴¹ For a fuller discussion of participation, see: Hou Xinyi 侯欣一, "Dangzhi xia de sifa: nanjing guomin zhengfu xunzheng shiqi zhengdang yu guojia sifa guanxi zhi goujian," 党治下的司法: 南京国民政府训政时期政党与国家司法关系之构建 *Huadong zhengfa daxue xuebao* 华东政法大学学报 no. 3 (2009): 3-31. Xiaoqun Xu, "The Fate of Judicial Independence in Republican China, 1912-37," *The China Quarterly* no. 149 (1997): 1-28.

¹⁴² "Sifayuan xianren zhiyuan dangji tongji biao," 司法院現任職員黨籍統計表 *Sifa gongbao* 司法公報 no. 164 (1937): 48. "Zuigao fayuan tuishi jiguan nianling fuwu nianshu dangji ji xueli yilanbiao," 最高法院推事籍貫年齡服務年數黨籍及學歷一覽表 *Sifa gongbao* 司法公報 no. 195 (1937): 47-48.

¹⁴³ Ju Zheng 居正, "Sifa danghua wenti," 司法黨化問題 *Zhonghua faxue zazhi* 中華法學雜誌 5, no. 10-12 (1934): 24.

¹⁴⁴ Zhang Zhiben 張知本, "Zhanshi sifaguan ying you de renshi," 戰時司法官應有的認識 *Faling zhoukan* 法令周刊 no. 8 (1938): 8.

new ideology and new spirit” meant “to promote a foundation for the participation of the administration justice,” and “to foster their spirits of obedience to revolutionary discipline, activism, responsibility and service.”¹⁴⁵ In 1938, during the throes of Stalin’s Great Purge, the institute actually singled out the organizational and operational attributes of the Soviet NKVD for special instructional emphasis and, by the early 1940s, the government openly proclaimed that “[t]he Judicial Officials’ Training Institute aims at instilling Kuomintang principles in the trainees,”¹⁴⁶ and that “the training of judicial officials takes the participation of the administration of justice as its objective.”¹⁴⁷

The curriculum comprised four components: academic, spiritual, military, and small group discussions.¹⁴⁸ The academic component largely followed Beiyang precedents by concentrating on the administrative, jurisprudential, and practical facets of adjudication, including technical skills such as drafting legal and other government documents, and a court-based practicum. When the institute opened, core subjects in (civil and criminal) substantive and procedural law dominated but, with each successive class, extra-legal pursuits, grouped under the statistical category “Other,” grew at their expense. In terms of total course hours, “Other” climbed from 15.9 percent of the curriculum in 1929 to 37.56 percent in 1939, and 44.44 percent for the class of procurators that graduated in 1941.¹⁴⁹ To put that another way, the students who graduated from the institute’s final judges’ session in 1939 spent more than one-third of their course time on subjects outside of the law.

What, specifically, did “Other” entail? The spiritual component of the curriculum included content on: “The Chinese Guomindang and the National Revolution”; “The Main Idea of Participation of the Administration of Justice”; “The Official Duties and Self-Cultivation of Judicial Officials”; and, beginning in 1938, “Essentials of National Construction during the War of Resistance.” The military component included training in how to handle a gun and ammunition, and academic and field exercises to give budding judges a basic idea of military science. Finally, the small group discussions gave students an opportunity to compare experiences, share knowledge, raise questions, and explore special topics in judicial practice or Party programs. Minutes of each discussion were recorded and submitted to institute authorities in a written report. In addition, students heard lectures on topics in international politics, economics, law, foreign relations, and military affairs, and, finally, “to train them to respect Party discipline voluntarily and to participate in Party work energetically, their participation in Party affairs activities is supervised and encouraged 督责.”¹⁵⁰

¹⁴⁵ “Xianren faguan xunlian jihua dagang,” 現任法官訓練計劃大綱 *Sifa gongbao* 司法公報 no. 134 (1936): 2-4. *Sifa nianjian*, 347.

¹⁴⁶ Chinese Ministry of Information, ed., *China Handbook 1937-1943: A Comprehensive Survey of Major Developments in China in Six Years of War*, (New York: Macmillan, 1943), 298-299.

¹⁴⁷ *Sifa nianjian*, 347.

¹⁴⁸ “Diwu jie faguanban xunlian huaji dagang,” 第五屆法官班訓練計劃大綱 *Faling zhoukan* 法令周刊 no. 8 (1938): 14-15.

¹⁴⁹ *Sifa nianjian*, 349.

¹⁵⁰ *Ibid.*, 347-348.

The last training sessions for judges and procurators at the institute ended in 1939 and 1941, respectively. Between 1941 and 1943, the institute switched gears by convening four sessions for trial officers from county judicial offices 县司法处, producing another 121 graduates.¹⁵¹ The institute then closed in February 1943, and, after the Judicial Yuan abandoned plans to create a separate Central Judges School 中央法官学校, the institute's mandate passed to a Training Course for Judicial Officials at the Central School of Politics. To provide a framework for this course, the Nationalist government promulgated a *Program for the Training of Judicial Personnel* in August 1943, which was formalized by the 1946 *Measures on Training Judicial Officials*. The *Program* and *Measures* provided for the re-establishment of a unified national training course that would encompass both technical and political content. Tellingly, National Chengchi School, later National Chengchi University, effectively the Guomindang's central party school, hosted the program, which ran three courses between 1944 and 1948.

China emerged from the war with many more courts and judges than it had possessed a decade before (Table 1.1). Still, the country had nearly 2,000 counties, which meant that about three-quarters of them lacked local courts of their own, and the actual ratio was surely higher because judicial infrastructure was in a crippled state and not a few of the courts recorded were purely notional. More germane, the high rate of attrition caused by the war, combined with the purge of collaborators that followed, left the courts of the mid-1940s gravely depleted of experienced personnel. The toll on Beijing was especially severe; after eight years of occupation, the city's local court underwent a nearly complete turnover of judges.

Table 1.1: Numbers of Chinese Courts and Judges (1912-1946)

	1912 ¹⁵²	1926 ¹⁵³	1936 ¹⁵⁴	1946 ¹⁵⁵
Courts	343	139	365	737
Judges	--	779	1173	3297

The government anticipated this shortfall in several ways. First, the Ministries of Education and Justice collaborated with the Judicial Yuan to introduce "judicial groups"

¹⁵¹ Xie Guansheng, *Zhanshi sifa jiyao*, 401-402.

¹⁵² Ju Zheng, "Ershiwu nian lai sifa zhi wenti yu zhanwang," 334.

¹⁵³ *Ibid.*, 334-335.

¹⁵⁴ *Sifa nianjian*, 156-158. These 1936 figures omit Heilongjiang, Jilin, Liaoning and Rehe provinces, which were Japanese-occupied. The figure for courts includes provincial courts and their branch courts, and local courts. The figure for judges includes court and tribunal presidents, and judges, but I have omitted 459 candidate judges and 25 student judges to facilitate inter-temporal comparisons. The war disrupted their regular advancement into the judiciary.

¹⁵⁵ *Sifa tongji niankan*, 38&40. The 1946 figure reflects authorized staffing levels, and includes provincial courts and their branch courts, and local courts. The figure for judges includes court and tribunal presidents, and judges.

into existing law schools to streamline and accelerate the recruitment of law students into the judiciary.¹⁵⁶ Nine schools signed on at the start, including the most prestigious in the legal education hierarchy. The first judicial groups debuted in 1943, and by 1948 twenty-one had been established.¹⁵⁷ The judicial group signaled a new approach to legal education. It was the first of four thematic groups 组分制 in which undergraduate law students could pursue a focused course of study with its own specialized curriculum as an alternative to the general law degree 混合制. Crucially, graduation from a judicial group qualified students to take a *Judicial Group Graduate Assessment Examination* that fast-tracked entry into the judiciary.

Second, in 1944, the government provided for the transfer of personnel from military to civilian courts where, depending on rank and experience, they could assume a variety of judicial posts up to and including court president.¹⁵⁸ Military judges tried persons accused of “special crimes” and figured prominently in the suppression of the CCP. The educational prerequisites for them were lower than for their civilian counterparts, and in some areas the military judge was simply the local county magistrate. Absent these regulations, many would not have qualified at all for the civilian judiciary. Their admission underscored the Nationalist judiciary’s changing political and educational profile.

Third, prompted by the scarcity of personnel to carry post-war reconstruction forward, in 1946 the government codified in formal amendments to the *Law on Court Organization* the 1938 provisional expansions to eligibility for judicial appointment.¹⁵⁹ As ever, the top stratum of candidates could enter directly via the judicial examination after graduation from law school, and admission remained available to select law professors, practicing lawyers, and legal authors. In addition, several categories of experienced, lower-ranked judicial personnel, such as trial officers and judicial magistrates, distinguished by their records of loyal service to the state, but previously excluded on account of inferior educational attainments, joined them. A similar expansion of the eligibility criteria for the judicial examination soon followed.¹⁶⁰

A brief review of the 1945 to 1948 judicial examinations indicates why these additional paths to judicial appointment were necessary. For a country the size of China, the judicial examination imposed a severe bottleneck on court expansion that even extra,

¹⁵⁶ Tang Nengsong, Zhang Yunhua, Wang Qingyun, and Yan Yalin 汤能松 and others, *Tansuo de guiji: zhongguo faxue jiaoyu fazhan shilue* 探索的轨迹: 中国法学教育发展史略 (Beijing: Falü chubanshe, 1995), 352 n.3.

¹⁵⁷ The schools were: Central University, Sun Yat-sen University, Wuhan University, Guangxi University, Hunan University, Sichuan University, Southwest Amalgamated University (Qinghua, Beijing, Nankai), the eight schools merged into Northwest Amalgamated University, and Chaoyang University. Later, Soochow law school, Fudan University, and Gansu University applied to participate. Xie Guansheng, *Zhanshi sifa jiyao*, 401-402.

¹⁵⁸ “Junfa renyuan zhuanren sifaguan tiaoli,” 軍法人員轉任司法官條例 *Yunnan sheng zhengfu gongbao* 雲南省政府公報 16, no. 49 (1944): 3-4.

¹⁵⁹ “Fayuan zuzhifa,” 461.

¹⁶⁰ Liu Zhongyue 劉鍾岳, *Fayuan zuzhifa* 法院組織法 (Shanghai: Zhengzhong shuju, 1948), 62-63.

ad hoc administrations could not overcome. Cumulatively, the years of study required to pass the exam, the impractically high standards set by it, war, maladministration, fiscal constraints, bureaucratic infighting, low salaries and adverse working conditions meant that, in spite of the matriculation of thousands of law graduates, the judiciary was growing far too slowly to meet targets. To illustrate the arithmetic, from 1945 to 1947, China nominally granted 14,522 undergraduate degrees in the discipline of law 法科, which accounted for 24.15 percent of all undergraduate degrees in that period.¹⁶¹ An indeterminate fraction of these students, probably a majority, had actually graduated from qualifying law or political science departments.¹⁶² Yet, from 1945 to 1948, only 203 people passed the advanced judicial examination.¹⁶³ The problem was that the examination regime took an academically elite pool of applicants and winnowed it down further through a grueling, stylized test of memorization and stamina that advanced numbers far too small with learning much too specialized to meet the urgent, quite basic needs of national modernization and legal construction. It was as if Republican China was creating a judiciary for the country it wished to become, rather than the one it was.

As the Republican period drew to a close, the stages of the exam were renamed, the legal content was adjusted slightly, and the role of ideology and politics intensified. The last of these changes arguably converted the judicial examination into not just a test of legal knowledge, but also one of identification with the Guomindang (Table 1.2).

¹⁶¹ Tang Nengsong, Zhang Yunhua, Wang Qingyun, and Yan Yalin, *Tansuo de guiji: zhongguo faxue jiaoyu fazhan shilüe*, 318.

¹⁶² Because of differences in nomenclature and disciplinary boundaries, many Chinese law schools 法学院 in the Republican period offered concentrations in law, political science, economics, sociology, and other fields. Students in any of these were counted as law students and awarded L.L.B. equivalent degrees irrespective of their concentration. Published statistics do not permit disaggregation for 1946 and 1947, but in 1945 graduates of law departments 法系 accounted for 21 percent of degrees in the discipline of law 法科, and political science was generally the most popular of the “law” majors. *Ibid.*

¹⁶³ Figure compiled from: *Zhonghua minguo shi falü zhi (chugao)* 中華民國史法律志 (初稿), ed. Guoshiguan 國史館 (Taipei: Guoshiguan, 1994), 529-530. Leng Xia 冷霞, “Jindai zhongguo de sifa kaoshi zhidu,” 近代中国的司法考试制度 in *20 shiji waiguo sifa zhidu de gaige* 20 世纪外国司法制度的改革, ed. He Qinhuo 何勤华, (Beijing: Falü chubanshe, 2003), 353. , Xie Guansheng, *Zhanshi sifa jiyao*, 401-402.

Table 1.2: Judicial Examination (1948)¹⁶⁴

Exam		Subjects Tested
Preliminary Exam 初试	Part One	Chinese Language (write an essay in classical Chinese and an official document 公文); Teachings of Sun Yat-sen (The General Plan for National Construction, the Program for National Construction, the Three People's Principles, the Manifesto of the First National Congress of the Chinese Republican Guomindang); Chinese History; Chinese Geography; Constitutional Law (prior to promulgation of the Constitution, the Provisional Constitution of the Period of Political Tutelage); the Law on Court Organization
	Part Two	<u>Mandatory</u> : Civil Law; Criminal Law; Civil Procedure; Criminal Procedure; Commercial Laws and Regulations <u>Any Two of the Following Seven Subjects</u> : Administrative Law; Land Law; Labor Laws and Regulations; Public International Law; Private International Law; Criminology; Penology
	Part Three	Determined by the experience with the mandatory content of the preceding part.
Advanced Exam 再试		(Administered after a period of advanced study) Written portion determined by chief examiner, but drafting judicial decisions (from case files) was the main topic; oral exam based on experience of advanced study; examination of grades from advanced study.

Similarly, advanced judicial training, once the final stage of an automatic, three-part progression, including law school and the judicial examination, now served a different purpose and audience all together. To begin with, the 1946 *Measures on Training Judicial Officials* explicitly put training in politics on par with training in judicial practice. Furthermore, while the top judicial examinees were still eligible to enroll, training now also aimed to boost and harmonize the inferior educational attainments of the new categories of officials tapped for judicial appointment, such as military judges, trial officers, magistrates, and clerks.¹⁶⁵ As these new entrants surged into the depleted judiciary, they transformed it as well.

Taken as a whole, this intricate, interlocking regime of legal education, judicial examination, training, and appointment permitted the Nationalist party-state to discipline the formation of the judiciary at every stage of its preparation. Under Nationalist stewardship, the idealized Chinese judge shifted from a latter-day scholar-official worthy of the ethical burdens of judicial independence to a seasoned, technically competent cadre dutiful to the state and the ideology of its ruling party. In practice, the prestige, and morale of the judiciary suffered gravely. Inexperience abounded. Partification made a mockery of the judiciary's founding mission to independently promote rule of law by entangling it ever deeper in Guomindang impunity and dissolution. Assertive political training, the growth of counter-revolutionary tribunals, and regular supervision and interference in concrete cases by interested officials and Party authorities alike all insinuated themselves into the judicial process. The courts developed reputations for

¹⁶⁴ Liu Zhongyue, *Fayuan zuzhifa*, 64-65.

¹⁶⁵ Xie Guansheng, *Zhanshi sifa jiyao*, 401-402.

cronyism and corruption in adjudication and staffing. And those tasked by the CCP in 1949 with revolutionizing the Chinese judicial system, not a few of them veterans of it, shared in this ambivalent Republican heritage. As they tore it down with one hand, they sifted, amplified, and repurposed it with the other.

Legal Education

Courses in Western law appeared in China as early as 1867, but Western-style legal education did not enter the mainstream until the demise of the imperial examination system, the restructuring of the courts and the revision of the Qing Code between 1905 and 1910. These reforms obsoleted traditional legal learning and created vast new markets for foreign knowledge and government jobs. Virtually overnight, schools patterned on Japanese models sprouted up all over China, offering post-secondary programs of study lasting anywhere from several months to about two years. These programs typically bundled law together with other novel bodies of foreign knowledge deemed essential to the operation of the modern state, such as finance, economics, political science and administration, to create a unified field of “law and politics” 法政 that has shaped the disciplinary conception of law in China ever since.¹⁶⁶ In 1912, the government counted 62 such schools with a total enrollment of 30,803 students.¹⁶⁷

This headlong rush bred overreaching, dependence on foreign models, qualitative deficiencies, and a serious imbalance between supply and demand that dogged legal education for the remainder of the Republican period.¹⁶⁸ In a nutshell, the state desperately sought personnel trained in modern law, especially to staff the nascent courts, but China’s law schools collectively turned out far more graduates than the infant modern legal system could absorb, and because most graduates received an inferior education, the state’s thirst for competent legal personnel paradoxically went unslaked. As the years went on, critics relentlessly catalogued these and other shortcomings, urged immediate remediation and identified foreign best practices worthy

¹⁶⁶ At the turn of the twentieth century, the disciplinary boundaries of legal education and the paths by which most aspirants entered legal occupations in many Western countries were more expansive than they are today, and professionalization still had far to go. Like much of the new legal vocabulary introduced to China with the advent of Western learning, the term “law and politics 法政” was first minted in Japan. In the Republican period, “politics and law 政法” had been considered as an alternative, but reformers felt that giving politics precedence seemed to subvert the project of establishing a modern legal system and rule of law. The CCP, by contrast, embraced the transposition to emphasize the break with received Western legal tradition, and the primacy of the political.

¹⁶⁷ Xiong Xianjue 熊先觉, “Chaoyang daxue: zhongguo faxue jiaoyu zhiyimai,” 朝阳大学: 中国法学教育之一脉 *Bijiao fa yanjiu* 比较法研究 no. 3 (2001): 110.

¹⁶⁸ Rich histories of Republican legal education can be found in: Wang Jian 王健, *Zhongguo jindai de falü jiaoyu* 中国近代的法律教育, ed. Jian, Wang (Beijing: Zhongguo zhengfa daxue chubanshe, 2001). Tang Nengsong, Zhang Yunhua, Wang Qingyun, and Yan Yalin, *Tansuo de guiji: zhongguo faxue jiaoyu fazhan shilüe*.

of emulation, but after each bout of reform, the dust would settle, execution would fall short, and the cycle would repeat. It was seemingly easier to chase new solutions than to implement well those already in hand.

Detractors often charged legal education with stirring up social instability and diverting scarce human and financial capital away from other fields vital to modernization. In 1922, the National Association for the Promotion of Education 中华教育改进社 recommended at its inaugural convention the abolition of all government law schools because they produced “disorderly graduates” and “case-multiplying lawyers.”¹⁶⁹ A decade later, the Guomindang attacked the problem from the other direction, proposing to take away the privilege to establish law schools from private universities and reserving it for state universities alone.¹⁷⁰ Furthermore, to tame law graduates and harness them to its revolutionary vision, it injected into the law curriculum a first-year course on the Three People’s Principles that remained a mandatory ideological fixture of legal education until 1949.

To raise standards, the Ministry of Education progressively tightened law school licensing requirements and closed dozens of non-compliant institutions. These reforms standardized the institutional form and content of Chinese legal education, redefining law as an undergraduate-level degree requiring three to five years of study at a state-licensed comprehensive university or polytechnic school, with a curriculum that allowed little room for coursework outside of the law and drew heavily on foreign content. Law was effectively treated like a turnkey technology; by importing advanced legal models and machinery, the state could rapidly produce a vanguard of legal professionals to transplant and propagate modern legal institutions and practices across the country, leapfrogging intermediate stages of development.

The mid-1930s are widely acknowledged as the high point for Republican legal modernization, but the view from legal education was decidedly gloomy. In 1935, the discipline of law 法科 accounted for nearly 30 percent of all tertiary graduates in China, but a chorus of eminent insiders was sounding dire alarms about administration, pedagogy, faculty, students and curriculum.¹⁷¹ Ruan Yicheng, Director of the Law Department at the Guomindang’s Central School of Politics, the precursor to National Chengchi University, declared that: “Everyone says that all new forms of education over the last thirty years in China have failed.” Legal education was no exception, he argued, because it suffered from a crash mentality 速成的观念 and rigid, small-minded

¹⁶⁹ W. W. Blume, “Legal Education in China,” *China Law Review* 1, no. 7 (1923): 308.

¹⁷⁰ Ruan Yicheng 阮毅成, “Fazhi qiantu yu falü jiaoyu,” 法治前途与法律教育 *Shidai gonglun* 时代公论 40-41, (1932): 21.

¹⁷¹ By tertiary, I mean specifically universities 大学 and the less prestigious polytechnic 专科学校 schools. Sun Xiaolou 孫曉樓, *Falü jiaoyu* 法律教育 (Shanghai: Shangwu yinshuguan, 1935); Tang Nengsong, Zhang Yunhua, Wang Qingyun, and Yan Yalin, *Tansuo de guiji: zhongguo faxue jiaoyu fazhan shilüe*, 318; Yang Zhaolong 杨兆龙, “Zhongguo falü jiaoyu zhi ruodian jiqi bujiu zhi fanglüe (1933),” 中国法律教育之弱点及其补救之方略 (1933) in *Yang Zhaolong faxue wenji* 杨兆龙法学文集, ed. Ai Yongming and Lu Jinbi 艾永明 and 陆锦璧, (Beijing: Falü chubanshe, 2005).

textualism 条文主义 attributable to the early transplantation of Japanese models in the haste to build a modern legal system.¹⁷²

Reform proposals abounded, but Hu Changqing, a prominent law professor and editor-in-chief of one of China's leading law journals, had something far more radical in mind: closing all tertiary law departments and ending the study of law as an undergraduate subject.¹⁷³ Under his plan, legal education would serve largely to provision the courts. The Ministry of Justice would open a judge's school to replace the existing judicial training regime with a two-year course of law paid for by the state, and open to applicants who had completed three-year or longer programs in politics and economics. Superior graduates of this course would enter the judiciary or procuracy directly. In Nationalist circles, Hu's proposal was an outlier, but it had the virtue of making the statist rationale for legal education explicit, and it pled arguments the CCP would later echo. Specifically, Hu intended not only to relieve the surplus of unemployed law graduates, refocus legal education tightly on government priorities, and eliminate extensive redundancies between tertiary legal education and judicial training, but also to redefine the learning, identity and standpoint law graduates emerged with. By adding law to a base of politics and economics, he claimed that his plan would redress the "curdled brains" 头脑凝结, "pedantry" 知识偏倚 and cultivated isolation of the judiciary, and compel direct judicial engagement with society 社会化.¹⁷⁴ In the event, the Nationalist government opted for a much less drastic approach: it imposed a regulatory cap on law school enrollments between 1932 and 1941.

Over time, the propensity to look abroad for quick fixes saddled Chinese legal education with a cacophony of imported influences, each represented by its own local partisans tied to a network of supporting foreign sponsors. This generated a cloud of disparate, unsystematic institutions and knowledge that impeded the emergence of a unified, native jurisprudence, and regularly set jurists trained in one foreign language and tradition against those trained in others. One commentator recalled that: "[w]hen I was appointed judge of the First Special District Court of Shanghai in 1935, I found that, in spite of the little experience I had had as a legal practitioner and a law compiler to the Ministry of Justice in the previous days, I was at quite a loss to carry on with my new job. The Anglo-American law I learned at school was of no practical use to me, since it was on a different track."¹⁷⁵ Looking back in 1948, he added, "[s]o far what we have now

¹⁷² Ruan Yicheng 阮毅成, "Falü jiaoyu de shibai ji qi bujiu," 法律教育的失敗及其補救 *Jiaoyu zazhi* 教育雜誌 25, no. 4 (1935): 1.

¹⁷³ Hu graduated from Chaoyang law school in 1924 and pursued advanced studies in criminal law at Meiji University in Japan. Subsequently, he taught at Chaoyang, Zhongyang, and Yenching Universities. In 1932 he was editor-in-chief of Law Weekly 法律评论, and a section chief in the Nationalist government's Legal Affairs Bureau. Before 1948, he rose to Vice Minister of the Interior 内政部 and alternate member of the Guomindang Central Committee. Hu Changqing 胡長清, "Sifaguan xunlian wenti," 司法官訓練問題 *Shidai gonglun* 時代公論 no. 20 (1932): 8-9.

¹⁷⁴ In China, the term socialization of law was variously associated with Jhering's *sozialutilitarismus*, Duguit's *function sociale*, and Pound's "social engineering."

¹⁷⁵ Yu, "Some Judicial Problems Facing China," 371.

has been borrowed; we have not yet developed a legal system of our own,” and the sentiment was widely shared.¹⁷⁶

Of course this was not for want of trying, and the efforts themselves speak volumes about how deep-seated the problems were. With guidance from a committee of legal experts, in 1939 the Ministry of Education enacted curriculum reforms in the hopes of grounding the Chinese legal professions in a common body of basic knowledge, and of redirecting fierce palace wars over the merits of one foreign model versus another into discussions that kept China and its urgent, practical needs at the center. Revisions followed in 1942, 1944 and 1945 (Tables 1.3 and 1.4).¹⁷⁷

**Table 1.3: Revised Mandatory Curriculum for Law Departments
Mixed Degree 混合制 (October 1945)¹⁷⁸**

First Year	Second Year	Third Year	Fourth Year
<u>Shared Requirements:</u> Three People’s Principles Ethics Chinese Foreign Language Survey of Philosophy Logic Constitutional Law Intro. to Law Political Science Economics Sociology Physical Education <u>Law Dept. Requirements:</u> General Provisions of Civil Law	Liabilities Real Property Family Law Inheritance General Provisions of Criminal Law Organization of Chinese Administration of Justice Roman Law	Commercial Law Business Registration Corporations Negotiable Instruments Insurance Maritime Commerce Specific Provisions of Criminal Law Civil Procedure Administrative Law Public Int’l. Law Land Law	Criminal Procedure Anglo-American Law Private Int’l. Law Jurisprudence History of the Chinese Legal System Thesis

¹⁷⁶ Ibid., 363.

¹⁷⁷ The 1944 membership of the Ministry of Education’s Legal Education Committee was: Xia Jingmin 夏敬民, Dai Xiuzan 戴修瓚, Sun Xiaolou 孙晓楼, Sheng Zhenwei 盛振为, Lu Jun 卢峻, He Yijun 何义均, Mei Zhongxie 梅仲协, Yang Zhaolong 杨兆龙, and Bi Quanzeng 薛铨曾.

¹⁷⁸ Tang Nengsong, Zhang Yunhua, Wang Qingyun, and Yan Yalin, *Tansuo de guiji: zhongguo faxue jiaoyu fazhan shilüe*, 339-341.

**Table 1.4: Revised Elective Curriculum for Law Departments,
Mixed Degree 混合制 (October 1945)¹⁷⁹**

First Year	Second Year	Third Year	Fourth Year
N/A	Chinese History World History Psychology		Comparative Civil Law Comparative Criminal Law Problems in China's Administration of Justice
N/A	N/A	Foreign Literature Second Foreign Language Special Criminal Laws Research into China's Traditional Law Intro. to Comparative Law Modern Continental European Law Principles of Legislation Bankruptcy Evidence Restricted Enforcement Law Criminology Criminalistics Prison Science Forensic Medicine Criminal Policy Labor Law History of Chinese Legal Thought History of the Chinese Political System Chinese Economic History Litigation Practice Research into Special Legal Topics	

The drafters of these impressive curriculum lists evidently had in mind the elite American and European law schools many of them had attended, because virtually no contemporary Chinese institutions were equipped to meet the standards fully, and most could not come close.¹⁸⁰ During the war, the nation's best law schools had abandoned their campuses, undertaking epic evacuations to the rear, where the government attempted to reassemble their significantly degraded factors. Damaged facilities, dispersed libraries, low pay, and an acute shortage of faculty qualified to teach the required subjects left a yawning gap between curricular ambition and reality that the Nationalist government never managed to close.

¹⁷⁹ Ibid., 342-343.

¹⁸⁰ Even Chaoyang law school, one of the best provisioned in China, fell short. *Sili chaoyang xueyuan ge kexi kecheng yilanbiao (sanshiliu niandu diyi xueqi)* 私立朝陽學院各科系課程一覽表 (三十六年度第一學期). *Sili chaoyang xueyuan jiaowuchu guanyu xuesheng chengji ce, biyesheng jianze, kechengbiao deng wenti yu ge jiguan de lai wanghan* 私立朝陽學院教務處關於學生成績冊, 畢業生簡則, 課程表等問題與各機關的來往函 (1947), BMA J027-001-00253.

To make matters worse, starting in 1943 the government added further complexity to legal education by adding to the general course of legal study four specialized groups meant to channel students directly into the academy, diplomatic corps, bureaucracy and judiciary (Table 1.5). Needless to say, provision for five separate tracks of legal education, each with its own curriculum and overhead, was improvident for a country transitioning from one devastating war to another, and it cannibalized already scarce resources. After only five years, Minister of Education Zhu Jiahua recommended abandoning the groups experiment because of the redundancies, organization creep and disorder it had spawned. Zhu observed that law schools had failed to implement groups effectively, and that some had adopted them simply to pad the ranks of their administration and to attract students without actually giving due attention to their educational mission. Thus, even as the Ministry of Justice and Judicial Yuan pressed urgently for more judges to aid post-war reconstruction, the Ministry of Education rejected many of the schools that had applied to create judicial groups because they lacked “the necessary conditions.”¹⁸¹

Table 1.5: Revised Legal Curriculum for Judicial Group 司法组 (1945)¹⁸²

	Common to All Four Groups	Specific to Judicial Group
Mandatory Courses	General Provisions of Civil Law; Civil Debts; Real Property; Family Law; Inheritance; General Provisions of Criminal Law; Specific Provisions of Criminal Law; Administrative Law; Public International Law; Private International Law; Roman Law; Anglo-American Law; Jurisprudence; History of the Chinese Legal System; Thesis	Civil Procedure; Criminal Procedure; Organization of Chinese Administration of Justice; Commercial Law; Compulsory Civil Enforcement Law; Bankruptcy; Litigation Practice
Electives		Special Criminal Laws; Criminology; Penology; Problems in China’s Administration of Justice; Comparative Judicial Systems; Psychology; Forensic Medicine; Second Foreign Language; Modern Continental European Law; Comparative Civil Law; Comparative Commercial Law; Comparative Criminal Law; Evidence; Criminal Policy; Research into Special Topics in the Judicial System; Introduction to Comparative Law

¹⁸¹ Zhu Jiahua 朱家驊, “Falü jiaoyu sheshi,” 法律教育設施 *Jiaoyu tongxun* 教育通讯 5, no. 3 (1948): 1. Wang Jian, *Zhongguo jindai de falü jiaoyu*, 289-291.

¹⁸² Students in the special groups were responsible for the shared requirements, though course content was condensed, and in addition took the mandatory or elective law courses specific to their particular group. Tang Nengsong, Zhang Yunhua, Wang Qingyun, and Yan Yalin, *Tansuo de guiji: zhongguo faxue jiaoyu fazhan shilüe*, 342-343.

Beyond that, Zhu noted serious reservations about whether it made sense to give undergraduate students a highly specialized legal education before they had a chance to develop a deep understanding of the law, and he wondered if the groups model actually hindered the development of the kind of creative legal talent China nominally sought by producing students with too narrow a worldview.¹⁸³ These concerns mirrored fierce debates in modern Chinese education over the merits of a liberal versus specialized education, the balance between training a relative few deeply or greater numbers more generally, and which of these best served the interests of modernization and society as a whole in the short, medium and long terms.¹⁸⁴ Education policy lurched to and fro depending on which school of thought on these questions was momentarily ascendant.

As if to underscore the inconstancy and dissipation that pervaded Republican legal modernization, amid the upheavals of curriculum reform, post-war reconstruction and the collapse of the groups model, the Ministry of Education also undertook a major revision to the disciplinary conception of law, which promised to narrow the scope of legal education at a time when many thought it already too confined. The nub of the problem was that law schools had always been the institutional home for the social sciences in Republican China; this reflected the law and politics 法政 dyad around which legal education had been organized since the late Qing, and furthermore resonated with earlier conceptions of Confucian statecraft.¹⁸⁵ In practice, law school social science departments collectively graduated more students than their law departments did, which meant that most Chinese students with law degrees had not actually received an education in law. There were even examples of law schools without law departments at all, effectively schools of social science with nominal law students who could not have studied law if they had wanted to.

In the late 1940s, the Minister of Education announced an intention to terminate this arrangement. He endorsed the controversial view that law was an autonomous, technical profession akin to engineering and medicine, and distinct from fields such as political science and economics, which belonged, he argued, to the liberal disciplines.¹⁸⁶ Pursuant to this understanding, the Ministry broke new ground by licensing a handful of law schools devoted only to the teaching of law, with the intention of extending that model to legacy institutions.

¹⁸³ Wang Jian, *Zhongguo jindai de falü jiaoyu*, 289-291.

¹⁸⁴ C.H. Becker and others, *The Reorganisation of Education in China* (Paris: League of Nations' Institute of Intellectual Co-operation, 1932); Suzanne Pepper, *Radicalism and Education Reform in 20th-Century China: The Search for an Ideal Development Model* (New York: Cambridge University Press, 1996); Ruth Hayhoe, *China's Universities, 1895-1995: A Century of Cultural Conflict* (Hong Kong: Comparative Education Research Centre, University of Hong Kong, 1999).

¹⁸⁵ Ruth Hayhoe, "Chinese Universities and the Social Sciences," *Minerva* 31, no. 4 (1993): 478-503.

¹⁸⁶ Zhu Jiahua 朱家驊, "Falü jiaoyu de ji ge wenti," 法律教育的幾個問題 *Jiaoyu tongxun* 教育通訊 6, no. 7 (1948): 2.

To many prominent jurists, the effort to purify legal education of its institutional entanglements with the social sciences seemed misguided, and threatened to push the legal system further out of touch with the country it served. In 1948, Sun Xiaolou, perhaps China's foremost expert on legal education, bemoaned that Chinese law schools still filled their students with impractical illusions built on theories, doctrines and foreign models that had no basis in Chinese history or social reality. When confronted with real world legislative or judicial problems, he argued, Chinese law students "stare not knowing what to do," and China simply could not afford that indulgence.¹⁸⁷ For Sun, law was not an involuted body of rules or a disinterested intellectual pursuit, it was as an applied science for managing human affairs that demanded purposeful social engagement. Law students needed access to the knowledge and perspectives anthropology, political science, sociology, psychology, economics and kindred fields had to offer if they were to bridge the chasm between the abstract jurisprudential principles they learned in the classroom and the world they found outside.

Distress at excessive formalism and alienation were constant companions to Republican legal education, and they sounded in multiple registers at once. First, they tugged at the epistemological importance both traditional Chinese jurisprudence and Deweyan pragmatism, which swept Chinese intellectual circles, attached to particularity and context. Second, they honored the culturalist call to use foreign instruments in ways that realized Chinese essence, a position permitted by positive law's underlying constructivism. Third, they connected China to the crisis in legal education that accompanied the rise of the administrative state and the juridification of public policy in the West, especially the United States.¹⁸⁸ And most of all, they reflected a general ethical and philosophical stance that synthesized elements from the customary practices and prerogatives of China's learned elite, the modernizing imperatives of the Nationalist party-state, and the strains of paternalistic realism famously propounded by Jhering, Duguit and Pound. If modernization had severed the traditional accord in China between the governed and the principles for their governance, and redefined this relationship aridly in terms of positive law, then it fell to jurists to strike a new harmony. Only by immersing themselves in social life and conscientiously directing themselves to social needs could they harness law to coordinate interests, resolve conflict, advance collective welfare, and realize a genuinely Chinese modernity.

¹⁸⁷ Sun authored a landmark 1935 study of Chinese legal education and held leadership positions at both of Republican China's pre-eminent law schools, serving as Dean of Studies at Soochow Law School (1933-39), and president of Chaoyang University (1941-1945). In 1929, he received a SJD degree from Northwestern University School of Law in Chicago. Sun Xiaolou 孫曉樓, "Falü jiaoyu zhi zhongjian," 法律教育之重建 *Xin faxue* 新法学 1, no. 5 (1948): 3-6.

¹⁸⁸ Christopher Tomlins, "Framing the Field of Law's Disciplinary Encounters: A Historical Narrative," *Law & Society Review* 34, no. 4 (2000): 911-972. Julius Cohen, "Crisis in Legal Education," *University of Chicago Law Review* 15, no. 3 (1948): 588-594. Myres S. McDougal, "The Law School of the Future: From Legal Realism to Policy Science in the World Community," *The Yale Law Journal* 56, (1947): 1345-1355. Karl Llewellyn, "On What is Wrong With So-Called Legal Education," *Columbia Law Review* 35, (1935): 651-678.

Republican law schools are remembered for the brilliant jurists and sophisticated codification projects they helped to nurture, and in purely quantitative terms they also scored remarkable achievements. From 1931 to 1947 the discipline of law claimed a twenty-six percent share of all tertiary degrees.¹⁸⁹ In 1947, the last year for which complete Republican statistics are available, China boasted at least fifty tertiary-level departments of law 法系, five of which were located in Beijing.¹⁹⁰ The two most prestigious in the city, at Beijing and Chaoyang Universities, graduated a total of 222 students the following year.¹⁹¹

But there was another, bleaker side to this story. On the eve of the revolution, Xu Daolin, dean of National Tongji University Law School and secretary-general of Jiangsu Province, observed that “[w]hen you bring up Chinese legal education today, I’m afraid people shake their heads.” He savaged the follies and inefficiencies of the curriculum standards and groups system, insisting that no other country in the world asked so much of its law students, to which Nationalist Minister of Education Zhu Jiahua might have interjected, “and delivered so little.”¹⁹² Zhu earlier estimated that between 1912 and 1943, China had trained approximately 30,000 students in law, enough to satisfy its needs for judicial officials and lawyers at every tier of the legal system nationwide, from the Supreme Court down to the county level. But deaths and deficiencies in legal education meant that fewer than 10,000 of them were actually employable.¹⁹³ He added that most law schools were clustered in eastern and southern provinces and the municipalities of Beijing and Tianjin, and most law students came from and remained in those locales, which meant that the resulting shortfall of qualified personnel was felt most acutely in the least developed regions of the country. He vowed to tackle these long-standing geographic disparities, which enflamed similar imbalances in the courts, but before they and a great many other problems in legal education could be settled, time ran out on the Nationalist regime, leaving the PRC to grapple with them. Indeed,

¹⁸⁹ Wang Jian, *Zhongguo jindai de falü jiaoyu*.

¹⁹⁰ Tang Nengsong, Zhang Yunhua, Wang Qingyun, and Yan Yalin, *Tansuo de guiji: zhongguo faxue jiaoyu fazhan shilüe*, 318.

¹⁹¹ The figure for Chaoyang comprises 88 graduates of the law department, and 84 graduates of its affiliated judicial group. Nearly half hailed from Sichuan, vestiges of the school’s wartime displacement in Chengdu and Chongqing. The Peking University number includes an undisclosed number of graduate students. *Chaoyang daxue biye tongxue lu* 朝陽大學畢業同學錄 (Taipei: Chaoyang daxue lütai xiaoyou hui, 1958), 147-150; Zhang Gu 张谷, “Muxiao dakai wo zhengzhi sixiang de damen-- ji canjia xueyun de yiduan douzheng,” 母校打开我政治思想的大门--记参加学运的一段斗争 in *Faxue yaolan: chaoyang daxue* 法学摇篮: 朝阳大学, ed. Xue Jundu, Xiong Xianjue and Xu Kui 薛君度, 熊先觉, and 徐葵, (Beijing: Beijing yanshan chubanshe, 1997); *Bainian faxue Beijing daxue faxue yuan yuan shi (1904-2004)* 百年法学-北京大学法学院院史 (1904-2004), ed. Li Guilian, Sun Jiahong, Li Qicheng, and Yu Jiang 李贵连, 孙家红, 李启成, and 俞江 (Beijing: Beijing daxue chubanshe, 2004), 196.

¹⁹² Xu Daolin 徐道鄰, “Lun xianxing falü jiaoyu zhidu,” 論先行法律教育制度 *Guancha* 觀察 5, no. 3 (1948): 4.

¹⁹³ Zhu Jiahua 朱家驊, “Zhongguo zhi falü jiaoyu wenti,” 中國之法律教育問題 *Guofeng* 國風 no. 48 (1945): 13.

when the first entering classes of the post-war period graduated from Beijing's law schools, they did so under the auspices of the CCP.

The Bar

Not long after Minister Zhu revealed that the overwhelming majority of Republican law graduates had failed to make the grade, an impassioned editorial presented a different perspective. Its author despaired that most law students could not attain court positions and, because of regulatory impediments to private legal practice, they had no choice but to seek employment in unrelated occupations, which, he said, made about as much sense as training doctors only to have them work in banks.¹⁹⁴

The editorial made an excellent point. Law graduates faced uncertain employment prospects even in more favorable times. According to the National Academic Advisory Department 全国学术工作咨询处, 16.8 percent of law graduates in 1933 and 1934 had not found jobs. In spite of expanding legal institutions, law accounted for 37.7 percent of all unemployed tertiary graduates in those years, the largest relative and absolute share of the seven academic fields surveyed.¹⁹⁵ The post-war climate was bleaker still, especially for those hoping to enter private practice, and government policy had a large hand in that.

The Ministry of Justice regulated and supervised Chinese bar associations and their members through the procuratorial offices attached to local and provincial high courts. The social affairs departments of local governments, and local branches of the Guomindang also exercised authority over the bar.¹⁹⁶ From 1945 to the end of 1946, the number of registered lawyers in China declined from 9,827 to 1,655 because the Ministry of Justice disbarred lawyers licensed by the wartime collaborationist government, and forced them to apply for readmission.¹⁹⁷ Ostensibly a standards-based verification of qualifications, this measure afforded the government an opportunity to scrutinize lawyers' political commitments and wartime activities, and to refashion the bar.

¹⁹⁴ "Fake biyesheng de chulu wenti," 法科畢業生的出路問題 *Zhendan falü jingji zazhi* 震旦法律經濟雜誌 2, no. 9 (1946): 164-165.

¹⁹⁵ The seven fields were literature, law, business, education, science, agriculture, engineering, and medicine. Gong Zhengtao 龔徵桃, "Zhuanke yishang xuexiao biyesheng shiye wenti," 專科以上學校畢業生失業問題 *Jiaoyu zazhi* 教育雜誌 27, no. 1 (1937): 88.

¹⁹⁶ "Feichang shiqi renmin tuanti zuzhifa," 非常时期人民团体组织法 *Faling zhoukan* 法令周刊 9, no. 3 (1946): 6-7. Xu Jiali 徐家力, *Zhonghua minguo lüshi zhidu shi* 中华民国律师制度史, ed. Jiali, Xu (Beijing: Zhongguo zhengfa daxue chubanshe, 1998), 161.

¹⁹⁷ Practicing lawyers in occupied China had been forced to exchange their Nationalist credentials for replacements issued by the collaborationist Wang Jingwei government. The August 13, 1946 rules, issued as the 处理伪组织所发律师证书办法, disbarred them and made readmission subject to scrutiny of their qualifications by the Ministry of Justice. *Zhonghua minguo tongji tiyao*, 102; Chinese Ministry of Information, ed., *China Handbook 1937-1945: A Comprehensive Survey of Major Developments in China in Eight Years of War, Revised and Enlarged With 1946 Supplement*, (New York: Macmillan, 1947), 264; Xie Guansheng, *Zhanshi sifa jiyao*, 424.

A large fraction of the post-war Chinese bar consisted of former judges and law professors. Historians have attributed this to the high standards set for admission, and the knowledge and experience legal practice demanded.¹⁹⁸ They have missed a much more direct cause: the absence of a bar exam. Under Article One of the Lawyers Law, admission to practice required passage of a lawyers exam or, pending the establishment of that exam, any one of the following alternate qualifications:

1. service as a judge or procurator;
2. more than two years of experience teaching mainly law as a professor, assistant professor or lecturer at a state or registered university, independent institute or polytechnic school;
3. meeting the requirements set by Article 33(4) or Article 37(5) of the Law on Court Organization.¹⁹⁹

But the Nationalist government did not actually institute a national lawyers examination until after it relocated to Taiwan, in part because of jurisdictional disputes between the Ministry of Justice and the Examination Yuan. Consequently, the post-war bar was essentially closed to all but experienced jurists, who had already proven their loyalty and reliability.²⁰⁰ At the very least, this called into question the wisdom of the government's substantial investments in legal education and the increasing specialization it promoted, since young people had scant opportunity to apply the narrow, technical training law school gave them. It also depleted the ranks of the judiciary since judges could command much higher salaries by moving into the gated community of private practice.

Political considerations crept into the admissions process. In Xi'an, the courts obliged applicants for admission to tender support from two serving officials of *jianren* 荐任 rank or higher, a requirement that had no discernible basis in law.²⁰¹ Other rules required bar association board members to swear to "obey the Testament of Sun Yat-sen, pursue the Three People's Principles, obey the law, devote (themselves) to their duties, and willingly accept the most severe punishment if they should violate (this) oath."²⁰² All in all, such controls deliberately implicated the bar in Nationalist ideology and bound it closely to the state, keeping it smaller, older, and more insular and conservative than it otherwise might have been. They suggested a government "more

¹⁹⁸ Hou Xinyi 侯欣一, "Minguo wanqi xian diqu lüshi zhidu yanjiu," 民国晚期西安地区律师制度研究 *Zhongwai faxue* 中外法学 16, no. 4 (2004): 459.

¹⁹⁹ Article 33(4) of the Law on Court Organization provided: "having studied law for more than three years at a school at the college level or above recognized by the Ministry of Education, graduated, and been appointed a second rank judicial magistrate 荐任司法行政官 to handle civil and criminal cases for more than two years with an excellent record 优良成绩." Article 37(5) provided: "having served for more than three years as a member of a legislative drafting committee." "Lüshi fa," 律師法 in *Zuixin liufa quanshu* 最新六法全書, (Shanghai: Zhongguo fagui kanxingshe, 1946), 624; "Fayuan zuzhifa," 461-462.

²⁰⁰ Xu Jiali, *Zhonghua minguo lüshi zhidu shi*, 107.

²⁰¹ Hou Xinyi, "Minguo wanqi xian diqu lüshi zhidu yanjiu," 460.

²⁰² *Ibid.*, 466.

interested in controlling lawyers than in promoting a larger (and potentially more troublemaking) profession.”²⁰³

All lawyers admitted to practice were required to join a local bar association, hence membership rolls provide a good indication of the vitality of the profession. In 1945, for example, the median age of the Xi'an bar association's membership was 49.²⁰⁴ Two years later, in Hankou, only 10 percent of the practicing bar was younger than 40, and 62 percent was 50 or older.²⁰⁵ In August 1948, Chinese bar associations reported 5,144 members, of which approximately one-fifth were located in just two cities -- Shanghai and Beijing -- and trends were negative.²⁰⁶ From 1935 to the end of 1947, the Shanghai Bar Association shrank from 1,021 members to 798.²⁰⁷ From 1937 to early 1948, Beijing's membership fell even more precipitously, from 820 to 315.²⁰⁸ More alarming still, because of the paucity of new blood, the average age of the Beijing Bar Association's membership rose in that time from 43 to 52, making the city's lawyers more than twenty years older on average than the judges on its municipal court.²⁰⁹ By June 1948, the membership of the Beijing Bar Association had shrunk further -- to 293.²¹⁰

Lawyers were not just in short supply or clustered in a handful of urban centers, they were also expensive. Fees were established by local bar associations and approved by the state. In 1946, the cost of litigating a single civil case through trials of first and second instance in Hankou could equal as much as 125 days wages for a dockworker, or 400 days wages for a rice mill worker.²¹¹ It is little wonder then that the vast majority of Chinese who entered the Nationalist judicial system navigated its arcane rules of procedure and substantive law without the assistance of licensed counsel, and that goes a long way towards explaining the charges of inaccessibility,

²⁰³ Alison W. Conner, "Lawyers and the Legal Profession During the Republican Period," in *Civil Law in Qing and Republican China*, ed. Philip C.C. Huang and Kathryn Bernhardt, (Stanford: Stanford University Press, 1994), 246.

²⁰⁴ Hou Xinyi, "Minguo wanqi xian diqu lüshi zhidu yanjiu," 455.

²⁰⁵ Zhao Yongli 赵永利, "Zhanhou Wuhan lüshi qunti de fazhan gui'ji (1945-1949)," 战后武汉律师群体的发展轨迹 (1945-1949) *Jiangnan daxue xuebao (shehui kexueban)* 江汉大学学报 (社会科学版) 24, no. 4 (2007): 81.

²⁰⁶ *Shanghai lüshi gonghui huiyuan lu* 上海律師公會會員錄 (Shanghai: Shanghai lüshi gonghui, 1948); *Beiping lüshi gonghui huiyuan lu* 北平律師公會會員錄. *Beiping lüshi gonghui baosong huiyuan lu chuwu guicheng huiyi jilu de chengwen ji shehuiju de zhiling* 北平律师公会报送会员录处务规程会议记录的程文及社会局的指令 (1948), BMA J002-002-00335; "Quan guo renmin tuanti (xu)," 全國人民團體 (续) *Tongji yuebao* 統計月報 no. 133-134 (1948 September-October): 62.

²⁰⁷ *Shanghai lüshi gonghui huiyuan lu*. Sifa xingzhengbu tongjishi 司法行政部統計室, *Sifa tongji* 司法統計 (Nanjing: Jinghua yinshuguan, 1935).

²⁰⁸ *Beiping lüshi gonghui huiyuan lu* 北平律師公會會員錄. *Beiping lüshi gonghui huiyuan lu* 北京律师公会会员录 (1937), BMA J002-002-00394; *Beiping lüshi gonghui huiyuan lu*.

²⁰⁹ *Beiping lüshi gonghui huiyuan lu*. *Beiping difang fayuan zhiyuan lu*.

²¹⁰ *Beiping shi hezhun zuzhi zhi renmin tuanti jiqi huiyuan shu* 北平市核准組織之人民團體及其會員數. *Beiping shizheng tongji* 北京市政统计 (June, 1948), BMA J001-004-00542.

²¹¹ Zhao Yongli, "Zhanhou Wuhan lüshi qunti de fazhan gui'ji (1945-1949)," 83.

injustice, and socio-cultural incompatibility that critics leveled at the courts. It also helps account for the profusion of unlicensed legal advisors, successors to the litigation masters 讼师 of old, who, with varying degrees of integrity and competence, moved in the shadows of the judicial system and helped claimants draft complaints, formulate arguments and devise litigation strategies despite periodic efforts by the state to stamp them out. When coupled with the growing dissonance between the legal system in the books and actual practice, this throttling of opportunity amid deteriorating economic and political conditions demoralized law students, and accelerated their turn away from the Nationalist regime.

Conclusion

If there is a dominant image of Republican legal modernization in recent scholarship, then this summation probably comes as close as any to capturing it: “Republican China may not have achieved the ‘rule of law’, as widespread discrepancy existed between the theoretical conception of law and its customary practice, but continued legal reform, sophisticated legal codification and widespread legal expertise were part and parcel of the entire era.”²¹²

Nothing in this chapter challenges the basic facticity of that appraisal, but if that were the end of the story, then the findings adduced here would amount to little more than esoterica, except to the most committed legal historians. There is much more at stake than that. The intrinsic relationality of revolution ensures that no discussion about how the Republican period ended can free itself from the shadow of the PRC, and thus one must always be attentive to hermeneutics. Notice, then, how the quote above is divided against itself. Cognizant of reality but clinging to representation, it seems to say, “do not be swayed by the empirical condition of the legal system, because a more sanguine benchmark is available”; if we imagine Republican legal modernization as burnished by an ethereal layer of reforms, codes and expertise, never mind the matter of practice, then we can pitch the baseline against which to assess the PRC higher, and the contrast upon which our dualistic model of revolution depends will take care of itself. The ramparts, in short, are defended. Query: the same strained appraisal could apply equally well to the PRC legal system today, in spite of 1949 and a host of other intervening upheavals. In that instance, would we not find its rhetorical maneuvers unsatisfying and concealing? Does this problem not also deliciously underscore the revolution’s cyclicity?

However, if we ease away from the disjunctive polarities that have dominated the legal discourse about the 1949 revolution, towards a correlative perspective attuned to transition, then we can avoid such acrobatics. And when stark duality no longer governs our thinking, then we can stop fixating on continuities and discontinuities, since those dichotomizing rubrics lose their salience and it would no longer be meaningful to

²¹² Frank Dikötter, *The Age of Openness* (Berkeley: University of California Press, 2008), 30.

keep score. Whether by affirmation or negation, the PRC unquestionably bore the marks of what came before it, and the more central questions are: how and where? It is at this point that specifying the condition of the late Republican legal system suddenly takes on pivotal significance, and we can grasp why none felt the urgency to do it before. Armed with the data assembled in this chapter, we can analyze CCP attacks on the Republican paradigm of legal modernization -- as corrupt, deeply politicized, inordinately expensive, inefficient, decrepit, and poorly suited to China's needs -- through something other than the blunt instrument of ideology. Furthermore, we can fix a trajectory and baseline against which to re-assess the revolution that followed, starting with its opening salvo.

Previously, we could only guess at what the CCP's sweeping abrogation of the Nationalist legal system meant concretely. Now, we are closer to an answer and it is, in historiographical terms, surprising. In Beijing, more than four decades after the city pioneered legal modernization in China, the local court had just twenty-eight judges, the bar association numbered 293 lawyers, and Peking University's law department, one of the top in the country, could muster a combined teaching staff of only about twenty.²¹³ This paltry endowment meant that, in institutional terms, there was astonishingly little of the Republican legal system in the city, apart from its swollen police force, for the CCP actually to abrogate.²¹⁴

And what of the cultivated majesty of the law and the legal professions? For that, let us call upon a trio of eminent insiders. A trenchant 1947 commentary by Li Haopei, dean of National Chekiang University Law School, passionately observed that, while Republican China had assembled many of the ingredients of a modern legal system, these failed to add up to the ultimate goal: rule of law.

Naturally, in our country there are very many laws, but this absolutely does not mean that our country has already implemented rule of law. In our political and social (conditions), law is law, facts are facts, and the two are often in opposition... The people all originally enjoy rights and freedoms under the law, but in reality they have nearly no rights or freedoms to speak of. Officials originally bear their responsibilities and receive legal punishment according to law; however, in reality "tigers" nearly all escape punishment, while "flies" sometimes cannot avoid punishment, and when they are punished it is not necessary to conform completely to legal procedure.²¹⁵

Under conditions in which officials lacked legal training and were accustomed to issuing orders without regard for legal procedures or legal authority, Li asked: "How can we expect them to have the essence of administering according to the law? Moreover, engaging in favoritism, committing irregularities, and shielding one another early on

²¹³ This modest figure includes all professors, assistant professors, lecturers and teaching assistants. *Bainian faxue Beijing daxue faxue yuan yuan shi (1904-2004)*, 196.

²¹⁴ The Beijing Municipal Public Security Bureau took over 13,635 police personnel from the city's Nationalist government. By the end of 1949, nearly 7,000 were sacked and most of the remainder were returned to their native places or transferred to building departments. Only a small number were retained on the force. Liu Ren 刘仁, "Beijing shi gonganju jianli qianhou," 北京市公安局建立前后 in *Beijing de liming* 北京的黎明, (Beijing: Beijing chubanshe, 1988), 99-100.

²¹⁵ Li Haopei 李浩培, "Fazhi shixing wenti," 法治實行問題 *Guancha* 觀察 2, no. 12 (1947): 3-4.

were established as principles of ‘customary law.’ How can we expect to have real rule of law?”²¹⁶ With respect to judicial independence, which had been the organizing principle for Republican judicial modernization since the late Qing, Li maintained that a “genuine rule-of-law country must have an independent administration of justice,” but “the distance between us and genuine rule of law is still very great.”²¹⁷ The article suggested broad reforms but conceded that “in our country, judicial and supervisory officials have for years been under the accruing authority of administrative officials, and nearly all have already adopted the policy of wise self- preservation... That being so, in our country, rule of law cannot be implemented, and one may well say ‘that is inevitable and naturally meant to be.’”²¹⁸

One month earlier, Ni Zhengyu, former president of the Chongqing Local Court and a senior member of the Chinese prosecutorial team at the International Military Tribunal of the Far East (“Tokyo Trials”), offered a more dispassionate, technical analysis of the judicial system’s weaknesses, though he too shared the general conclusion that “in China the concept of the rule of law is innately weak.”²¹⁹ Ni listed specific problems and reforms in three areas: personnel, finance, and structure. For example, he pointed out that China was not producing or retaining sufficient numbers of qualified judicial personnel to meet its needs. Adverse working conditions and uncompetitive salaries meant that private legal practice was an easier and more rewarding path for experienced judges to take. Insufficient budgets meant not only that pay was low and staff support inadequate but also that the majority of courts occupied former yamens or temples and had to make do with what was available, and that even metropolitan courts had facilities far below those of administrative organs at the same level of government.²²⁰ Together, these conditions sapped the popular prestige of the courts and reflected their poor standing in the government.

Still, few eminent insiders publicly went as far as Yang Zhaolong. In late 1948, Yang, the last acting procurator-general of the Republican Supreme Court on the mainland and one of the most celebrated Chinese jurists of his generation, directed the gaze of the legal community inward, audaciously fingering his peers for complicity in their own predicament. He found them “impoverished,” accusing them of ossification, mediocrity, complacency, mechanistic adjudication, and being out of touch with society and its needs. He impugned their moral superiority, challenged them not to hide behind the obvious outrages of a degenerating regime, and dared them to reflect upon their individual and collective culpability in the misfortune that had befallen the ideals they

²¹⁶ Ibid., 5.

²¹⁷ Ibid., 3.

²¹⁸ Ibid., 5.

²¹⁹ Ni Zhengyu, “Sifa wenti yanjiu (1947),” 124.

²²⁰ Ibid., 125.

purported to represent. With uncanny timing, he called for nothing less than a fresh start, a “New Legal Science” 新法学 that would reinvent or reform the old.²²¹

Surveying the history of Republican judicial reform, one might expect that serial disappointment would have tempered the hunger for yet another new beginning. Just the same, urgent appeals for reconstruction and rebirth ran through the legal jeremiads of the late 1940s, as they had in the 1930s and before. Alas, when the time finally came in 1949, it was far easier to tear down the flawed Republican legal system than to replace it with something better, and as destruction outpaced renewal, the downward trajectory Republican jurists had decried approached free fall. With New China still inchoate, there was a large zone of indeterminacy in the legal system around which controversies, colored by the Republican period and its unfinished business, would flare for years.

²²¹ Yang Zhaolong 杨兆龙, “Xin faxue dansheng de qianxi: faxuejie de pinfa (1948),”新法学诞生的前夕: 法学界的贫乏 (1948) in *Yang Zhaolong faxue wenji* 杨兆龙法学文集, ed. Ai Yongming and Lu Jinbi 艾永明 and 陆锦璧, (Beijing: Falü chubanshe, 2005).

Section 2

From Yan'an to the Gates of Beijing: Rethinking the Base Areas

When the CCP took over the Nationalist legal system in 1949, it had already accumulated nearly two decades of experience administering judicial affairs in its rural soviets and base areas, where warfare, ideology, a poor agricultural economy, and a limited pool of talent militated against institution building, and put premiums on mobility, generalist knowledge, and procedural and substantive flexibility. In that time, the CCP developed a distinctive body of practices and ideological innovations exemplified by mass trials, on-the-spot adjudication, reform through labor, people's mediation, and the iconic Ma Xiwu style of adjudication 马锡五审判方式, which required judicial cadres to personally investigate the details of cases, canvass the opinions of the masses, and balance the interests of litigants and "the people" guided by prevailing Party policies, irrespective of any formal procedures, legal rights or positive law.²²² These were among the CCP counterpoints to the ossification and social detachment that even mainstream jurists assailed in the Nationalist legal system, and as embodiments of the "Yan'an Way" they endured in the PRC as antipodes to legal formalism and professionalization.²²³ On both sides of the 1949 divide, they constituted a flexible endowment that abruptly alternated between bursts of terror, retrenchment, and reformism, all at the pleasure of CCP leaders.

What we know of this endowment derives predominantly from a small sample of sites anchored by the Shaanganning border region in the remote northwest, and the territory ultimately administered by the North China People's Government (NCPG) to the east, which grew to encompass Beijing.²²⁴ Between 1935 and 1949, the Shaanganning border region and NCPG served as the successive headquarters for Mao and much of

²²² Wang Ziyi 王子宜, "Shaanganning bianqu tuishi shenpanyuan lianxi huiyi zongjie (December 29, 1945)," 陕甘宁边区推事审判员联席会议总结 in *Shaanganning bianqu shenpanshi* 陕甘宁边区审判史, ed. Gao Haishen, and Ai Shaorun 高海深 and 艾绍润, (Xian: Shaanxi renmin chubanshe, 2007). Ma Xiwu 马锡五, "Xin minzhuzhuyi geming jieduan zhong Shaanganning bianqu de renmin sifa gongzuo (December 1, 1954)," 新民主主义革命阶段中陕甘宁边区的人民司法工作 in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编 (上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005). Hou Xinyi 侯欣一, "Shaanganning bianqu sifa zhidu, linian ji jishu de xingcheng yu queli," 陕甘宁边区司法制度, 理念及技术的形成与确立 *Faxuejia* 法学家 no. 4 (2005): 40-51.

²²³ Zhu Suli 朱苏力, *Song fa xiexiang* 送法下乡 (Beijing: Zhongguo zhengfa daxue chubanshe, 2000); Fan Yu, "A Brief Analysis of the Ma Xiwu Trial Mode: Formation of a Civil Trial Mode and Its Historic Destiny," *Chinese Sociology and Anthropology* 41, no. 2 (2008-2009): 78-91.

²²⁴ By comparison, the legal systems of the Party's sixteen other contemporaneous base areas and earlier Jiangxi soviet (1931-1934) have attracted far less attention, and appear generally to have had much lower levels of legal development, and heterogeneous records of legal ideology, policy and practice. Ouyang Xiang, "Zhongguo gongchandang lingdao de kangri genjudi yuanyong guomin zhengfu falü wenti lunxi," 38.

the core CCP leadership. In mid-1948, Liu Shaoqi singled them out as the direct lineal ancestors of the PRC, and many of revolutionary Beijing's leading judicial cadres traced their backgrounds through one or both sites.²²⁵ Consequently, scholars routinely describe them as the “cornerstone” and “embryo” of “New China's judicial system,” respectively.²²⁶

For decades our grasp of the Shaanganning and NCPG legal systems rested on thin, handpicked collections of legislation, cases, anecdotes, speeches and other official statements of policy and ideology, which generated highly formalist, abstract and teleological studies tightly aligned with Party history.²²⁷ About a decade ago, this source base began to grow significantly. The Shaanxi Provincial Archive opened more than 1,700 folios of cases, statistics, memoranda, policy debates, conference proceedings and legal interpretations from the Shaanganning border region to researchers. To a

²²⁵ On May 20 1948, Liu said, “we set out from Shaanbei, and rested our feet in Huabei. Today we set off from Huabei toward the nation.” Here Shaanbei refers to the core of the Shaanganning border region, and Huabei refers to North China Liberated Area. *Liu Shaoqi nianpu (1898-1969)* 刘少奇年谱 (1898-1969), ed. Liu Chongwen and Chen Shaouchou 刘崇文 and 陈绍畴, vol. 2 (Beijing: Zhongyang wenxian chubanshe, 1996), 148. Wang Shirong, Liu Quan'e, Wang Jide, and Li Juan, *Xin zhongguo sifa zhidu de jishi: Shaanganning bianqu gaodeng fayuan (1937-1949)*. Yang Yonghua, and Fang Keqin 杨永华 and 方克勤, *Shaanganning bianqu fazhi shigao-susong yu zhengpian* 陕甘宁边区法制史稿-诉讼狱政篇 (Beijing: Falü chubanshe, 1987); Hou Xinyi, “Shaanganning bianqu sifa zhidu, linian ji jishu de xingcheng yu queli,” 40; Zhou Daoluan 周道鸾, “Huabei renmin zhengfu sifa zhidu zhi yanjiu,” 华北人民政府司法制度之研究 in *Yifa xingzheng de xianhe: jinian Huabei renmin zhengfu faling yanjiu* 依法行政的先河: 纪念华北人民政府法令研究, ed. Ren Jianxin 任建新, (Beijing: Zhongguo faxuehui Dong Biwu faxue sixiang yanjiuhui, 2011), 200.

²²⁶ Wang Shirong, Liu Quan'e, Wang Jide, and Li Juan, *Xin zhongguo sifa zhidu de jishi: Shaanganning bianqu gaodeng fayuan (1937-1949)*. Yang Yonghua, and Fang Keqin, *Shaanganning bianqu fazhi shigao-susong yu zhengpian*; Hou Xinyi, “Shaanganning bianqu sifa zhidu, linian ji jishu de xingcheng yu queli,” 40; Zhou Daoluan, “Huabei renmin zhengfu sifa zhidu zhi yanjiu,” 200. , Liu Zhongquan 刘忠权, “Huabei renmin zhengfu fazhi quxiang tanxi,” 华北人民政府法治取向探析 *Zhanjiang shifan xueyuan xuebao* 湛江师范学院学报 27, no. 4 (2006): 29-34; Zhou Daoluan, “Huabei renmin zhengfu sifa zhidu zhi yanjiu,” 200.

²²⁷ Han Yanlong, and Chang Zhaoru 韩延龙 and 常兆儒, *Zhongguo xin minzhuzhuyi geming shiqi genjudi fazhi wenxian xuanbian* 中国新民主主义革命时期根据地法制文献选编, 4 vols. (Beijing: Zhongguo shehui kexue chubanshe, 1984). Zhang Xipo, and Han Yanlong 张希坡 and 韩延龙, *Zhongguo geming fazhishi* 中国革命法制史, 2 vols., vol. 2 (Zhongguo shehui kexue chubanshe, 1992). Yang Yonghua 杨永华, “Yan'an shidai de fazhi lilun yu shijian,” 延安时代的法制理论与实践 *Xibeizhengfa xueyuan xuebao* 西北政法学院学报 no. 3 (1984): 83-88; Yang Yonghua, and Duan Qiuguan, “Tongyi zhanxian zhong de falü wenti: bianqu fazhi shiliao de xin faxian,” 120. *Xianxing faling huiji* 现行法令汇集, 2 vols. (Zhangjiakou: Jinchaji bianqu xingzheng weiyuanhui, 1946). *Shaanganning bianqu falü fagui huibian* 陕甘宁边区法律法规汇编, ed. Ai Shaorun, Gao Haishen 艾绍润 and 高海深 (Xian: Shaanxi renmin chubanshe, 2007); *Shaanganning bianqu falü fagui huibian* 陕甘宁边区法律法规汇编, ed. Shaanxisheng dang'anju 陕西省档案局 (Xian: Sanqin chubanshe, 2010). *Shaanganning bianqu shenpanshi* 陕甘宁边区审判史, ed. Gao Haishen, and Ai Shaorun 高海深 and 艾绍润 (Xian: Shaanxi renmin chubanshe, 2007). *Shaanganning bianqu zhengfu wenjian xuanbian* 陕甘宁边区政府文件选编, 14 vols. (Beijing: 1986). Zhongyang dang'anguan 中央档案馆, *Gongheguo chuxing: Huabei renmin zhengfu* 共和国雏形: 华北人民政府 (Beijing: Xiyuan chubanshe, 1999). *Jinchaji kangri genju di shiliao xuanbian* 晋察冀抗日根据地史料选编, 2 vols. (Shijiazhuang: Hebei renmin chubanshe, 1983).

lesser degree, the Hebei Provincial Archive liberalized access to holdings on the Party's North China base areas. Publication projects contributed to the expansion with, for instance, a compilation of hard to find NCPG directives, and the printing of a rare trove of grassroots civil decisions retrieved from the rafters of a villager's sheep pen.²²⁸ That window of opportunity has now largely shut; at the time of this writing, many of the key materials in those archives are again closed to scholars. Their brief appearance, however, sparked a renaissance of scholarship that shed new light on the empirical dialogue between judicial policy and practice, and stoked a barbed debate over which parent the PRC legal system takes after most.²²⁹

Rather than try to recapitulate that body of work, Chapters 2 and 3 supplement it with provocative, new layers of data and interpretation on the narrow threshold question of the Party's individuation from the Nationalist legal system. These chapters confront the legend of hermetic and unilinear self-realization that envelops base area legal history with unheralded evidence of multivalence, violent involution, and unreadiness. They leverage the canonical pedigrees of the Shaanganning border region and NCPG to challenge us to rethink the identities of the Party, the revolution, and the PRC.

Let us start with a naïve question: if the Shaanganning border region and NCPG plainly belong to Republican history on the basis of their chronology, then why do we not periodize them there? The short answer is that revolutionary dualism sunders them from the Republican world they inhabited, and installs them instead in a parallel universe oriented anticipatorily towards the PRC, rather than laterally towards their Nationalist present.²³⁰ Sealed off by sharp conceptual boundaries and polarities 弄清边界, they scarcely encounter Republican history until the instant they annihilate it. Hence Republican legal history terminates at 1949, while base area legal studies, as a branch of Party history, glides through that cataclysm unsullied, merging effortlessly into the

²²⁸ *Huabei renmin zhengfu faling xuanbian* 华北人民政府法令选编 (Beijing: Zhongguo faxuehui Dong Biwu faxue sixiang yanjiuhui, 2007); Bai Chao 白潮, *Xiangcun faan: 1940niandai taixing diqu zhengfu duanan 63 li* 乡村法案: 1940年代太行地区政府断案 63例 (Zhengzhou: Daxiang chubanshe, 2011).

²²⁹ Ma Xiwu, "Xin minzhuzhuyi geming jieduan zhong Shaanganning bianqu de renmin sifa gongzuo (December 1, 1954)"; Liu Quan'e, and Li Juan 刘全娥 and 李娟, "Shaanganning bianqu gaodeng fayuan dang'an jiqi xueshu jiazhi," 陕甘宁边区高等法院档案及其学术价值 *Falü kexue (xibei zhengfa xueyuan xuebao)* 法律科学 (西北政法学院学报) no. 1 (2006): 156-162; Wang Shirong, Liu Quan'e, Wang Jide, and Li Juan, *Xin zhongguo sifa zhidu de jishi: Shaanganning bianqu gaodeng fayuan (1937-1949)*, 29-39. *Yifa xingzheng de xianhe: jinian Huabei renmin zhengfu faling yanjiu* 依法行政的先河: 纪念华北人民政府法令研究, ed. Ren Jianxin 任建新 (Beijing: Zhongguo faxuehui Dong Biwu faxue sixiang yanjiuhui, 2011). Liu Zhong 刘忠, "Cong Huabei zouxiang quanguo'-- dangdai sifa zhidu chuancheng de zhongxin shuxie," "从华北走向全国'-- 当代司法制度传承的重新书写 *Beida falü pinglun* 北大法律评论 11, no. 1 (2010): 6-26. Zhu Mingshan, and Sun Wanzhong 祝铭山 and 孙琬钟, *Dong Biwu faxue sixiang yanjiu wenji: jinian Dong Biwu tongzhi danchen yibaiyishiwu zhounian* 董必武法学思想研究文集: 纪念董必武同志诞辰一百一十五周年 (Beijing: Renmin fayuan chubanshe, 2001).

²³⁰ Tony Saich, "Introduction: The Chinese Communist Party and the Anti-Japanese War Base Areas," *The China Quarterly* no. 140 (1994): 1000-1006. Mark Selden, "Yan'an Communism Reconsidered," *Modern China* 21, no. 1 (1995): 8-44.

PRC to provide an origin myth that transcends China's reactionary and feudal past.²³¹ In this way, the base areas "opened a new age for China's modern judicial system" well before the Republican period had even ended.²³²

It is easy to grasp why the CCP would characterize its origins, achievements and history in those terms, and why the Guomindang might mirror them back. There is a mutually affirming symmetry to that narrative. It is far less clear why we should follow suit. The teleology and austerity of that narrative constrain the details and horizons we perceive, the leads we follow, and the connections we can make. Take the sources of Shaanganning legal tradition, described by Hou Xinyi as: "the influence of Soviet, chiefly Leninist and Stalinist models...innovations by Chinese Communists, the influence of China's traditional legal culture, certain modern Western views about the rule of law, and so on."²³³ Notably, this list leaves off contemporary Chinese sources outside of the CCP, and characterizes "views about the rule of law" as foreign. Never mind that virtually none of the border region cadres who held those views had ever studied outside of China, let alone in a Western country, or that Chinese jurists had made "views about the rule of law" their own for more than a generation, moving with ease among Dicey, Confucius, Koellreutter, Mencius, and Sun Yat-sen.²³⁴ With deft linguistic strokes, Hou not only deprecates Republican legal modernization and excises it from the genealogy of the PRC legal system, but also hands the CCP a monopoly over Chinese authenticity. And he is hardly alone; other eminent authorities on the subject reproduce these maneuvers.²³⁵

The historiography of the NCPG undertakes a similar gambit. What Shaanganning provided the Mao-era, the NCPG offers today; it supplies the dominant legal paradigm of the moment, in this case the rule of law, with a vintage revolutionary pedigree, which directs those inclined to look to Republican China or abroad for

²³¹ Edward Friedman and others, *Chinese Village, Socialist State* (New Haven: Yale University Press, 1993).

²³² Hou Xinyi, *Cong sifa wei min dao renmin sifa: Shaanganning bianqu dazhonghua sifa zhidu yanjiu*, 79.

²³³ Hou Xinyi, "Shaanganning bianqu sifa zhidu, linian ji jishu de xingcheng yu queli," 42.

²³⁴ Zhang Zhiben 張知本, "Zhongguo guomindang de fazhi jingshen," 中國國民黨的法治精神 *Sanmin zhuyi ban yuekan* 三民主義半月刊 no. 2 (1946): 2-4. Yang Zhaolong 楊兆龍, "Fazhi de pingjia," 法治的評價 *Jingshi* 經世 1, no. 3 (1937): 1-5; Ju Zheng 居正, "Fazhi yu falü jiaoyu," 法治與法律教育 *Zhonghua faxue zazhi* 中華法學雜誌 3, no. 2 (1944): 1-8; Xie Guansheng 謝冠生, "Fazhi de xinli jianshe," 法治的心里建設 *Sixiang yu shidai* 思想與時代 no. 52 (1948): 4-5. Li Haopei, "Fazhi shixing wenti". Wu Han, "Zhiren yu zhifa (1944)," Li Zaiquan 李在全, *Fazhi yu dangzhi: guomindang zhengquan de sifa danghua (1923-1948)* 法治与党治: 国民党政权的司法党化 (1923-1948) (Beijing: Shehui kexue wenxian chubanshe, 2012).

²³⁵ Xie Juezai 谢觉哉, *Xie Juezai riji* 谢觉哉日记, 2 vols. (Beijing: Renmin chubanshe, 1984), 1091; Wang Shirong 汪世荣, "Shaanganning bianqu gaodeng fayuan de chengjiu," 陕甘宁边区高等法院的成就 *Xinan zhengfa daxue xuebao* 西南政法大学学报 12, no. 6 (2010): 10-17. Ma Xiwu 马锡五, "Xin minzhuzhuyi geming jieduan zhong Shaanganning bianqu de renmin sifa gongzuo," 新民主主义革命阶段中陕甘宁边区的人民司法工作 *Zhengfa yanjiu* 政法研究 no. 1 (1955): 7-14. Hu Yongheng 胡永恒, *Shaanganning bianqu de minshi fayuan* 陕甘宁边区的民事法源 (Beijing: shehui kexueyuan wenxian chubanshe, 2012), 25-26.

inspiration with an authoritative, CCP-centric alternative.²³⁶ As Yu Jiang puts it, "Even though the period of the Huabei (North China) People's Government nurtured the sprouts of China's modern idea of the rule of law, 'administering according to law 依法行政,' we must still recognize that the great efforts put into the idea and practice of the rule of law in this period were not continued after New China was established. Not until the Third Plenum of the Eleventh Party Congress decided in 1978 'to develop socialist democracy, and perfect socialist legality' did the idea and practice of administering according to law sprout again."²³⁷ Note the remarkable sleight of hand; Shaanganning's "modern Western views about the rule of law" are reformulated here as genuine CCP artifacts. Still better, these artifacts are said to have gone to ground in 1949, allowing them to reemerge decades later unencumbered by the baggage of the Mao-era PRC and its outrages.

The trouble is that without reference to Nationalist sources we are hard pressed to formulate a compelling account of where those "sprouts of China's modern idea of the rule of law" came from, or the circumstances of their thirty-year quiescence and sudden reawakening, which renders them little more than recurring *dei ex machina*. Disclaiming descent or derivation from the institutions, professions, and bodies of knowledge and practice that first established legal modernity in China keeps the connections between the Party's pre-1949 base areas and the PRC on the one hand, and the Nationalist legal system on the other, bare and tenuous. True, the CCP openly recognized the authority of the Nationalist legal system, copied its judicial nomenclature, and applied its Six Codes, but all of that remains safely compartmentalized. To the extent that Nationalist standards of judicial independence, professionalization and procedural formalism seeped in at all, they "very quickly ended in failure."²³⁸ The controversies they raised are recast into claims about "modern Western judicial views," which were "quickly terminated in the clean sweep of Party rectification."²³⁹ Translated into the language of autopoiesis, the perturbations introduced into the border region by Nationalist law were quelled without triggering any discernible reconstitution or network effects; they were, by

²³⁶ Liu Zhongquan, "Huabei renmin zhengfu fazhi quxiang tanxi"; Liu Xiangang 刘显刚, "Moran huishou: Huabei renmin zhengfu falüguan de wenben fenxi," 蓦然回首: 华北人民政府法律观的文本分析 *Xibu faxue pinglun* 西部法学评论 no. 3 (2008): 22-28; Liu Zhong, "'Cong Huabei zouxian guanguo'-- dangdai sifa zhidu chuancheng de zhongxin shuxie"; *Yifa xingzheng de xianhe: jinian Huabei renmin zhengfu faling yanjiu*; "Huabei renmin zhengfu shiqi de zhuyao sifa zhidu," 华北人民政府时期的主要司法制度 *Renmin fayuan bao* 人民法院报, June 27, 2011.

²³⁷ Yu Jiang 于江, "Zhengfu yifa xingzheng de sanwei toudi: lishi jingyan yu xianshi kaoyan," 政府依法行政的三维透视: 历史经验与现实考验 in *Yifa xingzheng de xianhe: jinian Huabei renmin zhengfu faling yanjiu* 依法行政的先河: 纪念华北人民政府法令研究, ed. Ren Jianxin 任建新, (Beijing: Zhongguo faxuehui Dong Biwu faxue sixiang yanjiuhui, 2011).

²³⁸ Hu Yongheng, *Shaanganning bianqu de minshi fayuan*, 74.

²³⁹ Hou Xinyi, "Shaanganning bianqu sifa zhidu, linian ji jishu de xingcheng yu queli," 42; Wang Shirong, Liu Quan'e, Wang Jide, and Li Juan, *Xin zhongguo sifa zhidu de jishi: Shaanganning bianqu gaodeng fayuan (1937-1949)*, 272-273.

all appearances, neutralized. Indeed, much the same is said about abrogation in 1949, and subsequent rectifications both large and small.

If its temporality is what fundamentally gives Republican history coherence, then surely there is room for the Shaanganning border region and NCPG among the diverse warlords, governments, policies, ruling ideologies, conflicts, and territorial revisions the period already accommodates.²⁴⁰ Chapters 2 and 3 reposition them there, opening our minds to their Republican legal entanglements and revealing suppressed dimensions of their histories. They show that by the time the PLA arrived at the gates of Beijing in February 1949, the Party had been assimilating and reconstituting Nationalist legal vocabulary, forms, concepts, institutions, and statutes for years, struggling to define itself in relation to them. The CCP did not abjure the Nationalist legal system so much as capitalize on remoteness to sort out and buffer the terms and degrees of engagement with it, full of the contradictory impulses of affinity and antagonism such a search for identity implies. Thus, the Party delivered to the PRC a rudimentary legal system at war with itself, energized by the emancipatory promise of the revolution, but hamstrung by deficiencies of nearly every description, and prone to crippling and traumatic bouts of self-mutilation.

Admittedly, this dips into revisionism. It obliges us to reconfigure not just historical time but also the paired dimension of historical space. Instead of a flat, purely territorial notion of CCP and Nationalist enclaves set off from one another by lines on a map, this study imagines those boundaries as zones of contact where connections and bridges facilitated flowing networks of people, energy and information, with results that were difficult to predict. In this schema, place enjoys no absolute or independent existence but is a relational, social construction, in which those relations produce and negotiate difference at varying orders of magnitude and scale, not just laterally, across CCP-Nationalist boundaries, but also vertically within them.

Hence, contrary to received scholarship, the judicial domain was an indeterminate, self-organizing, and kinetic system sensitive to initial conditions, subject to external coupling, and characterized asymmetrically by nonlinear perturbations, reconstitutions, feedback, and emergent properties that cascaded, and co-evolved without settling into a stable equilibrium.²⁴¹ The internal irritations caused by recursive encounters with Nationalist law rippled through the CCP, driving legal change and feeding cyclical, generative confrontations over modes of judicial practice and the underlying paradigms of revolution associated with them that ultimately bled into the

²⁴⁰ Republican history is, of course, also deeply grounded in the nation-state. Prasenjit Duara, *Rescuing History From the Nation: Questioning Narratives of Modern China* (Chicago: University of Chicago Press, 1995).

²⁴¹ Ilya Prigogine, *The End of Certainty: Time, Chaos, and the New Laws of Nature* (New York: Free Press, 1997). Niklas Luhmann, *Social Systems* (Stanford: Stanford University Press, 1995). Gilles Deleuze, *Empiricism and Subjectivity: An Essay on Hume's Theory of Human Nature*, trans. Constantin V. Boundas (New York: Columbia University Press, 2001). Teubner, *Law as an Autopoietic System*. Byrne and Callaghan, *Complexity Theory and the Social Sciences: The State of the Art*.

PRC despite strenuous efforts to repress them. These findings scale the barriers that have cordoned off the Party's revolutionary base areas from the Republican milieu they inhabited, and extend into new territory the reconsiderations of the Yan'an era (1935-1947) and the NCPG (1948-1949), and their legacies in the PRC. They link up with the endpoint of Nationalist judicial reform, described in the last chapter, in early 1949, at the moment the Party took over the courts of Beijing, to jointly reframe our understanding of the passage from one judicial system and period to the next, redefining the baseline from which the PRC began, and our measure of the revolution that created it.

Chapter 2

The Shaanganning Border Region (1935-1947)

In 1934, Nationalist armies overran the CCP's Jiangxi soviet, triggering a two-year Long March that brought the CCP leadership and its depleted armies to remote northwest China. Prodded by the war against Japan, the Guomindang and CCP entered a Second United Front (1937-1946), a tense coalition of convenience under which the Party reorganized its new central soviet into the Shaanganning border region, a provincial-level unit of the Nationalist government.²⁴² Technically, the border region's legal system was a subset of the Nationalist legal system, and its high court occupied the same rung in the judicial hierarchy as other provincial high courts, directly under the Nationalist Supreme Court.²⁴³ Authorities in the Shaanganning border region promulgated a host of laws that broadly recognized and complemented this arrangement, many of which incorporated Nationalist legislation by explicit reference, or implicitly by borrowing language and content.²⁴⁴ For example, Article One of the 1939 *Organization Statute of the Shaanganning Border Region High Court* unambiguously declared, "This statute was drafted on the basis of the *Law on Court Organization* promulgated by the national government."²⁴⁵

In practice, however, the border region high court did not answer to the national Supreme Court, and Nationalist laws did not have independent standing in the border region. CCP acceptance of Nationalist law was always selective, conditional, and subject to sudden reversal, arguably a forerunner of the "one country, two systems" framework that now governs relations with Hong Kong and Taiwan. Senior leaders, including Mao Zedong, Xie Juezai and Lin Boqu were personally engaged in determining the parameters of this policy and adjusted them freely in accordance with political conditions.²⁴⁶ Furthermore, at the micro level, innumerable particularities separated the CCP and Nationalist legal systems, and the gap between them widened over time.²⁴⁷

²⁴² The border region drew its name from the three provinces it straddled: Shaanxi, Gansu, and Ningxia. "Shaanganning bianqu zhengfu zuzhi tiaoli (April 4, 1939)," 陕甘宁边区政府组织条例 in *Shaanganning bianqu zhengfu wenjian xuanbian* 陕甘宁边区政府文件选编, (Beijing: Dang'an chubanshe, 1986).

²⁴³ Lei Jingtian 雷经天, "Lei Jingtian zai Shaanganning bianqu sifa gongzuo huiyi shang de baogao (October 1941)," 雷经天在陕甘宁边区司法工作会议上的报告 *Falü shilun ji* 法律史论集 5, (2004): 384-385.

²⁴⁴ Ouyang Xiang, "Zhongguo gongchandang lingdao de kangri genjudi yuanyong guomin zhengfu falü wenti lunxi," 35-37.

²⁴⁵ "Shaanganning bianqu gaodeng fayuan zuzhi tiaoli (April 4, 1939)," 陕甘宁边区高等法院组织条例 in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编 (上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005), 98.

²⁴⁶ Yang Yonghua, and Duan Qiuguan, "Tongyi zhanxian zhong de falü wenti: bianqu fazhi shiliao de xin faxian," 121.

²⁴⁷ *Shaanganning bianqu shenpanshi*, 51-54.

Nationalist Law, part 1

Between 1938 and 1944, Party, government, and judicial leaders explicitly endorsed Nationalist legislation as an authoritative source of law in the border region.²⁴⁸ In his 1939 *Summary Report on Current Border Region Judicial Work*, high court president Lei Jingtian laid out five expansive conditions for citing it, namely that it benefit the war, the interests of the majority of the people, democratic politics, Nationalist-CCP cooperation, and the needs of the base area.²⁴⁹ In 1941, Lei affirmed this basic position: “In judicial work we must heed this point: implement the laws of the United Front, unite with the landlords and capitalists to jointly defeat Japan...With respect to the old law of the capitalist class, we want only that it not violate the interests of the revolution and of anti-Japanese democracy. We can all use it, giving it a new interpretation.”²⁵⁰ In December 1943, in the midst of fierce Party rectification, Lei retreated a step but still argued, “Under circumstances in which our border region government does not have complete laws, Guomindang law may be used for reference. This is not completely forbidden.”²⁵¹

This policy was hardly an abstraction. Judges needed procedural and substantive standards to guide their work, their superiors sometimes demanded explicit citations and reasoning to assess the quality of judicial decisions and guard against arbitrariness, and disputants wanted clear rationales for outcomes. But until the early 1940s, the border region government enacted comparatively little legislation of its own, and to compensate judicial organs cited provisions of Nationalist law in concrete cases.

Archival findings about this have been revelatory.²⁵² In recent years, the Shaanxi Provincial Archive has opened more than 700 criminal and 300 civil cases from the Shaanganning border region high court to researchers.²⁵³ Looking at a sample of 86 civil appellate cases from 1942 and 1943, a particularly important interval for present

²⁴⁸ Gao Gang, Lin Boqu, Lei Jingtian, and Zhou Xing 高岗 and others, “Shaanganning bianqu dangwei, bianqu zhengfu bianqu baoanchu, bianchu gaodeng fayuan guanyu muqian gexian sifa ganbu bujiu banfa de yijian (May 21, 1939),” 陕甘宁边区党委, 边区政府边区保安处, 边区高等法院关于目前各县司法干部补救办法的意见 in *Shaanganning bianqu zhengfu wenjian xuanbian* 陕甘宁边区政府文件选编, (Beijing: Dang’an chubanshe, 1986), 261; Hu Yongheng, *Shaanganning bianqu de minshi fayuan*, 43.

²⁴⁹ Yang Yonghua, and Duan Qiuguan, “Tongyi zhanxian zhong de falü wenti: bianqu fazhi shiliao de xin faxian,” 121.

²⁵⁰ Lei Jingtian, “Lei Jingtian zai Shaanganning bianqu sifa gongzuo huiyi shang de baogao (October 1941),” 389.

²⁵¹ When Lei uttered this particular statement, he was no longer president of the border region high court, but was weeks away from resuming that posting. , Hu Yongheng, “Shaanganning bianqu minshi shenpan zhong dui liufa quanshu de yuanyong: jiyu bianqu gaodeng fayuan dang’an de kaocha,” 75.

²⁵² Once, even talking about this “was out of the question.” Yang Yonghua, and Duan Qiuguan, “Tongyi zhanxian zhong de falü wenti: bianqu fazhi shiliao de xin faxian,” 120.

²⁵³ This represents a small fraction of the total number of cases the court decided in its lifetime (1937-1950), but complete statistics are unavailable. , Wang Shirong, Liu Quan’e, Wang Jide, and Li Juan, *Xin zhongguo sifa zhidu de jishi: Shaanganning bianqu gaodeng fayuan (1937-1949)*, 32-36.

purposes, Hu Yongheng has found that 46 ended in a judgment, and 29 (63 percent) of those cited substantive civil and criminal law, or civil procedure provisions of the Nationalist Six Codes. Indeed, all 29 cited the Nationalist civil procedure code, which helped give structure to the proceedings, and seven also cited the Nationalist civil code as a source of substantive law.²⁵⁴ Moreover, in fifteen of the 29 cases, the citations entered the record at the trial of first instance in a basic level judicial organ. Of the fifteen, six cited the Nationalist civil code as the only basis for decision, two more cited the Nationalist criminal code as the only basis, another three cited the Nationalist civil procedure code as the only basis, and the remainder invoked more than one source of Nationalist law.²⁵⁵

In addition, the high court archive contains 34 civil cases that went up to the government adjudication committee 政府审判委员会, the highest appellate body in the border region between 1942 and 1944, which was led by Lin Boqu, the chairman of the border region government. The committee decided seven of these cases by citing the Nationalist civil code and civil procedure code.²⁵⁶ In June 1942, when the high court president petitioned to ask if the Nationalist civil code could be used to decide certain cases involving conditional sales of property 典, Lin replied affirmatively.²⁵⁷

In short, we can say that up until 1944 the Party's core Shaanganning border region not only affiliated itself with the Nationalist legal system as a matter of general policy, and borrowed language from Nationalist legislation, but also that it selectively invoked specific provisions of Nationalist law in judicial practice at every level of its court hierarchy, from top to bottom, so long as that law did not infringe on Party policy or on areas reserved for special handling, such as marriage and many land disputes.²⁵⁸ Evidence further suggests that, during this general period, when the courts cited any law at all in their civil decisions, it was more apt to be from Nationalist than border region

²⁵⁴ The 40 cases that did not end in a judgment were withdrawn or mediated. Hu Yongheng, *Shaanganning bianqu de minshi fayuan*, 27, 30-31.

²⁵⁵ Hu Yongheng, "Shaanganning bianqu minshi shenpan zhong dui liufa quanshu de yuanyong: jiyu bianqu gaodeng fayuan dang'an de kaocha," 69.

²⁵⁶ *Ibid.*, 69-70. "Shaanganning bianqu zhengfu weiyuanhui zuzhi tiaoli (August 1942)," 陕甘宁边区政府委员会组织条例 in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编 (上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005).

²⁵⁷ Lin Boqu, and Li Dingming 林伯渠 and 李鼎铭, "Shaanganning bianqu zhengfu guanyu dianquan, zhaiquan deng falü wenti de pida (June 17, 1942)," 陕甘宁边区政府关于典权, 债权等法律问题的批答 in *Shaanganning bianqu zhengfu wenjian xuanbian* 陕甘宁边区政府文件选编, (Beijing: Dang'an chubanshe, 1988).

²⁵⁸ Admittedly, marriage or land disputes constituted the majority of civil cases. Hu Yongheng, *Shaanganning bianqu de minshi fayuan*, 42-43.

sources.²⁵⁹ Even Ma Xiwu himself, after whom the CCP's flexible, populist style of adjudication was named, cited the Nationalist Six Codes in his decisions.²⁶⁰

Courts and Cadres

Before the CCP seized control of the area, the Shaanganning border region shared unevenly in the fruits of Republican judicial modernization, and local deficits, frequent reorganizations, and swings in Party policy retarded judicial development thereafter.²⁶¹ Working down the three-level, three-trial hierarchy, in the Spring of 1943 the border region judicial system consisted of an adjudication committee; one high court with three prefectural branch tribunals 分庭; a single local court, at Yan'an, and 29 county judicial offices 司法处.²⁶² General administrative cadres rather than legal specialists typically led these organs. The chairman of the border region government led the adjudication committee, county magistrates concurrently led judicial offices (not unlike their Nationalist counterparts), and even Ma Xiwu kept his prefectural administrative post when he began his judicial career as president of the Longdong high court branch tribunal.²⁶³ This practice was later justified on the grounds that it kept judicial organs under unified government leadership and avoided "the deviation of judicial independence," but it was also a concession to the scarcity of employable cadres.²⁶⁴ In most judicial organs, a single judge drawn from the pool of local cadres

²⁵⁹ Out of a sample of 200 civil cases from various levels of the judicial hierarchy decided between 1942 and 1946, Hu Yongheng found only nineteen that explicitly cited border region policies or laws, though undoubtedly many more used them as unspoken grounds for decision. *Ibid.*, 85-86.

²⁶⁰ Hu Yongheng, "Shaanganning bianqu minshi shenpan zhong dui liufa quanshu de yuanyong: jiyu bianqu gaodeng fayuan dang'an de kaocha," 63 n.3.

²⁶¹ In 1935, Shaanxi province had a total of eight Nationalist courts, Gansu province had eighteen, and Ningxia province had five. But the border region occupied only a fraction of each province. *Sifa nianjian*, 219-220.

²⁶² Liu Quan'e 刘全娥, "Shaanganning bianqu zhengfu shenpan weiyuanhui zhi lishi yange," 陕甘宁边区政府审判委员会之历史沿革 *Yunnan xingzheng xueyuan xuebao* 云南行政学院学报 no. 1 (2012): 85. Ma Xiwu, "Xin minzhuzhuyi geming jieduan zhong Shaanganning bianqu de renmin sifa gongzuo (December 1, 1954)," 163.

²⁶³ Wang Shirong wrongly cites this as evidence of continuity with Imperial tradition. It was in fact much closer to Republican practice, especially Nationalist county judicial offices, in which courts were under the leadership of county magistrates, who handled administrative matters but left adjudication to a subordinate official. Unlike Nationalist county judicial offices, CCP magistrates did not prosecute. Wang Shirong, "Shaanganning bianqu gaodeng fayuan de chengjiu," 12.

²⁶⁴ "Shaanganning bianqu gaodeng fayuan dui gexian sifa gongzuo de zhishi (May 10, 1941)," 陕甘宁边区高等法院对各县司法工作的指示 in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事民事诉讼法参考资料汇编 (上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005), 121. Xie Juezai, *Xie Juezai riji*, 756-757; Lei Jingtian 雷经天, "Bianqu gaodeng fayuan liangnianban gongzuo baogao (September 30, 1944)," 边区高等法院两年半工作报告 in *Shaanganning bianqu shenpanshi* 陕甘宁边区审判史, ed. Gao Haishen, and Ai Shaorun 高海深 and 艾绍润, (Xian: Shaanxi renmin chubanshe, 2007), 245. Lin Boqu 林伯渠, "Shaanganning bianqu zhengfu yi nian

sat under these officials to try cases. The principal exception was the main high court, a legendary institution in the annals of PRC legal history, which counted four full-time judges in 1943.²⁶⁵

The educational qualifications for judicial cadres in the border region were extraordinarily low, which was to be expected given the extremely high rate of illiteracy among the local population and the Party's preference for recruiting workers and peasants.²⁶⁶ Of the 101 personnel working in the border region high court in 1943, reportedly eight had university-level educations, six had middle school-level educations, and three had primary school-level educations.²⁶⁷ The remainder presumably had something less, and political purges at the top would soon pull the distribution lower.

gongzuo zongjie (January 6, 1944),”陕甘宁边区政府一年工作总结 in *Lin Boqu wenji* 林伯渠文集, (Beijing: Huayi chubanshe, 1996), 360.

²⁶⁵ Lei Jingtian, “Bianqu gaodeng fayuan liangnianban gongzuo baogao (September 30, 1944),” 243. In this period, the CCP used a variety of terms to describe its judges, depending on their rank and the institutions they served in. In general, judges serving on the border region high court, its branch tribunals and the Yan'an local court were known by the Republican title of *tuishi* 推事, while judges in county judicial offices were known as *caipanyuan* 裁判员 and later *shenpanyuan* 审判员. *Shenpanyuan* became the default term for judges in the early PRC, when *tuishi*, because of its Imperial and Republican associations, was no longer acceptable. An egalitarian term, it literally connoted a person who tried cases, without any pretensions to special rank, office or learning.

²⁶⁶ Joseph W. Esherick, “Deconstructing the Construction of the Party-State: Gulin County in the Shaan-Gan-Ning Border Region,” *The China Quarterly* no. 140 (1994): 1052-1079. Hou Xinyi estimates a literacy rate of less than one percent. Hou Xinyi, “Shaanganning bianqu sifa zhidu, linian ji jishu de xingcheng yu queli,” 46.

²⁶⁷ Gao Haishen indicates that the court was authorized for only 86 personnel, but incomplete implementation of a staff reduction actually left it with 101. *Shaanganning bianqu shenpanshi*, 35. Lei Jingtian, “Bianqu gaodeng fayuan liangnianban gongzuo baogao (September 30, 1944),” 243.

**Table 2.1: Standards for Judicial Cadres
Shaanganning Border Region High Court** ²⁶⁸

May 1941	Faithfulness to the cause of revolution Law-abiding Able to analyze problems and tell right from wrong Hard-working without complaint, energetic and conscientious Able to read provisions of law, and work reports (i.e. basic literacy)
December 1943	Faithfulness to the CCP Steadfast mass standpoint Determination to serve the border region regime Willingness to struggle for the Chinese revolution Intimate connection to the masses Incorruptible and hardworking, energetic and conscientious Law-abiding, impartial Competent, upright
December 1945	Study and mastery of the law, familiarity with [local] social customs Clarity about right and wrong, and degrees of severity; does not treat people unjustly Implements the law fairly and disinterestedly; industrious and prudent; courageously corrects mistakes Conscientiously resolves disputes for the people; towards offenders adopts the attitude of curing the disease to save the patient; conscientiously educates and reforms

At least two of the four judges on the high court that year had attended Republican law schools, but no prior knowledge of the law was necessary, and up to late 1945 the standards for appointment stipulated purely political or character traits (Table 2.1). To instruct county judges in the rudiments of their jobs, the high court therefore inaugurated a two-week training course in December 1937.²⁶⁹ This course outlined Nationalist civil and criminal law, trial work, procuratorial work, and principles for rooting out spies, and for handling land, marriage, debt and other cases.²⁷⁰ In 1939, the court instituted a somewhat more demanding course, which enrolled a total of 61 students spread over three consecutive sessions lasting from three to seven months.²⁷¹ The second session ran from November 1939 to March 1940 and covered: judicial work, survey of legal science, criminal law, civil law, criminal trials, civil trials, official

²⁶⁸ Wang Shirong, Liu Quan'e, Wang Jide, and Li Juan, *Xin zhongguo sifa zhidu de jishi: Shaanganning bianqu gaodeng fayuan (1937-1949)*, 278. "Shaanganning bianqu gaodeng fayuan dui gexian sifa gongzuo de zhishi (May 10, 1941)," 121; Wang Ziyi, "Shaanganning bianqu tuishi shenpanyuan lianxi huiyi zongjie (December 29, 1945)," 277.

²⁶⁹ *Shaanganning bianqu shenpanshi*, 37.

²⁷⁰ Wang Shirong, Liu Quan'e, Wang Jide, and Li Juan, *Xin zhongguo sifa zhidu de jishi: Shaanganning bianqu gaodeng fayuan (1937-1949)*, 87.

²⁷¹ Roughly similar to Nationalist offerings, but pitched at a far lower level, the course covered politics, judicial administration, border region laws and decrees, judicial documents, a survey of law, outlines of civil and criminal law, civil and criminal trial work, procuratorial work, statistics, forensic medicine, and other subjects. Hou Xinyi, *Cong sifa wei min dao renmin sifa: Shaanganning bianqu dazhonghua sifa zhidu yanjiu*, 110, 132. *Shaanganning bianqu shenpanshi*, 37. Lei Jingtian, "Lei Jingtian zai Shaanganning bianqu sifa gongzuo huiyi shang de baogao (October 1941)," 387. Wang Shirong, Liu Quan'e, Wang Jide, and Li Juan, *Xin zhongguo sifa zhidu de jishi: Shaanganning bianqu gaodeng fayuan (1937-1949)*, 88.

documents, clerical work, Chinese, statistics, and forensic medicine.²⁷² The high court invited the small number of intellectuals in the border region who had worked in the Nationalist judicial system to assist with this training.²⁷³ Starting in 1941, the court also started a correspondence course on judicial practice in which county level judges 裁判员, procurators and clerks regularly submitted discussion reports on assigned political, cultural and occupational topics and took quizzes, all of which were graded and ranked.²⁷⁴

Yan'an University trained mid- and high level judicial cadres. By border region standards, its student body had a comparatively elite composition. In June 1944, 75 percent of the students in the School of Administration, to which the judicial department belonged, had a middle school or higher level of education, and 85 percent of the students in the university as a whole came from middle peasant or higher family backgrounds.²⁷⁵ That year, its judicial department arranged a two-year course of study that balanced general and occupationally specialized subjects (Table 2.2) in a 30/70 split, organized further around a 60/40 split between academic study and practice in the field.²⁷⁶ Faculty included a VIP roster of Party theoreticians, and senior political and judicial cadres. General course materials gave basic coverage to topics such as Marxism-Leninism, historical and dialectical materialism, the Three People's Principles, and National Democracy. Titles prepared specially by the judicial department included "Quotations by Marx, Engels, Lenin, and Stalin on Law," "Comparative Constitutional Law," "Study Materials on Judicial Professional Work," "Outline of Border Region Laws and Decrees," "Prison Materials," and an "Outline for the Study of Decided Cases."²⁷⁷ Mao himself delivered a lecture on "China's Campaign for Constitutionalism." In February 1946, another judicial training course took shape for about 60 prefectural and county level cadres, but the outbreak of civil war disrupted it and interfered with several subsequent, peripatetic judicial training courses held over the next eighteen months.²⁷⁸

²⁷² Ibid., 88-89. Dong Jieying 董节英, 1949-1957 年的中国法学教育 (Zhonggong zhongyang dangxiao, 中共中央党校, 2006), 39.

²⁷³ Wang Shirong, Liu Quan'e, Wang Jide, and Li Juan, *Xin zhongguo sifa zhidu de jishi: Shaanganning bianqu gaodeng fayuan (1937-1949)*, 88.

²⁷⁴ Hou Xinyi, *Cong sifa wei min dao renmin sifa: Shaanganning bianqu dazhonghua sifa zhidu yanjiu*, 148-149; *Shaanganning bianqu shenpanshi*, 37. Wang Shirong, Liu Quan'e, Wang Jide, and Li Juan, *Xin zhongguo sifa zhidu de jishi: Shaanganning bianqu gaodeng fayuan (1937-1949)*, 88.

²⁷⁵ Half of the university's total student body came from worker or peasant family backgrounds in June 1944. *Yan'an daxueshi (1937-2007)* 延安大学史 (1937-2007), ed. Yan'an daxueshi bianweihui 延安大学史编委会 (Beijing: Renmin chubanshe, 2008), 136-137.

²⁷⁶ Dong Jieying, 44.

²⁷⁷ *Yan'an daxueshi (1937-2007)*, 154.

²⁷⁸ Wang Ziyi, "Shaanganning bianqu tuishi shenpanyuan lianxi huiyi zongjie (December 29, 1945)," 278. Wang Shirong, Liu Quan'e, Wang Jide, and Li Juan, *Xin zhongguo sifa zhidu de jishi: Shaanganning bianqu gaodeng fayuan (1937-1949)*, 89, 285; Ceng Luping 曾鹿平, "Xibei zhengfa daxue: zhongguo gongchandang Yan'an shiqi falü gaodeng jiaoyu de zhijie yanxu," 西北政法大学: 中国共产党延安时期法律高等教育的直接延续 *Falü kexue (xibei zhengfa xueyuan xuebao)* 法律科学 (西北政法学院学报) no. 3 (2013): 193.

Table 2.2: Yan'an University Judicial Department Course Plan (1944)²⁷⁹

Common Courses	University: History of Border Region Construction History of the Chinese Revolution Revolutionary Point of View Current Affairs School of Administration: Democratic Politics in the Border Region
Judicial Department Courses	Border Region Laws and Decrees Study of Decided Cases Judicial Professional Work Survey of Legal Science Social Policies Study of Laws in Force

These were the base area precedents for judicial training in the early PRC. In general, their curricula ranged from superficial to basic and fell far short of the academic preparation given in Nationalist law schools. Enrollments were small, self-study was the dominant mode of pedagogy, and most of the students in the law or judicial training programs at Yan'an University never actually graduated because warfare and transfers to other, more urgent work interrupted their studies. They were subsequently assigned to non-judicial employment.²⁸⁰ After the premature suspension of the 1946 course, Party leaders did not restart judicial training in earnest until late 1947.²⁸¹ The impact of these courses on judicial practice in the border region was therefore extremely limited.

Reflecting how far the Party had to go, in 1943, Lei Jingtian conceded, "because Yan'an court president Zhou Yujie is not able to interpret legal provisions, or try cases, she has to ask a judge who has studied law to help her write verdicts."²⁸² As late as 1948 a prefectural work report from the border region lamented, "Looking at cadre cultural levels over the last few years, many judges are illiterate, and this presents a major obstacle to work-- they cannot take notes when investigating cases, they cannot read orders and instructions, when trying cases they cannot from the basis of theory persuade parties, they poorly analyze the facts of cases, and so on."²⁸³ These challenges crossed the 1949 divide.

²⁷⁹ Dong Jieying, 40-41; *Yan'an daxueshi (1937-2007)*, 139.

²⁸⁰ Ma Xiwu, "Xin minzhuzhuyi geming jieduan zhong Shaanganning bianqu de renmin sifa gongzuo (December 1, 1954)," 163.

²⁸¹ Ceng Luping, "Xibei zhengfa daxue: zhongguo gongchandang Yan'an shiqi falü gaodeng jiaoyu de zhijie yanxu," 193. "Huabei renmin zhengfu wei zhaoji diyi qi sifa ganbu xunlianban de tongling," 华北人民政府为召集第一期司法干部训练班的通令 in *Huabei renmin zhengfu faling xuanbian* 华北人民政府法令选编, (Beijing: Zhongguo faxuehui Dong Biwu faxue sixiang yanjiuhui, 2007).

²⁸² Hu Yongheng, "1943 nian Shaanganning bianqu tingzhi yuanyong liufa quanshu zhi kaocha: zhengfeng, shengan yundong dui bianqu sifa de yingxiang," 93, note 1.

²⁸³ Wang Shirong, and Liu Quan'e 汪世荣 and 刘全娥, "Shaanganning bianqu gaodeng fayuan bianzhi panli de shijian yu jingyan," 陕甘宁边区高等法院编制判例的实践与经验 *Falü kexue (xibei zhengfa xueyuan xuebao)* 法律科学 (西北政法学院学报) no. 4 (2007): 160.

The Rule of Law, part 1

During the war against Japan, a stream of urban intellectuals disaffected with the Nationalist regime flocked to Yan'an to learn about and serve the CCP.²⁸⁴ Among the new arrivals was a small group of progressive legal professionals and law students who, in 1941, formed a New Law Society 新法学会 dedicated to ameliorating the border region legal system, and emancipating ordinary Chinese through the rule of law.²⁸⁵ The language and goals of the society's opening manifesto conjured unmistakable Republican associations, for up until this time the CCP had no "rule of law" tradition to call its own and no appetite to speak of for building a "fine legal system."

The task of this society is to promote the New Democratic Rule of Law Campaign... We believe that New Democracy should possess a detailed and explicitly stipulated legal system, so that all of the peoples 民族人民 participating in the struggle for national liberation can on the basis of express provisions [of law] pursue their own personal and national interests. This doctrine is not mere verbiage. This society consequently believes that there is a need to draft written civil, criminal, commercial, labor and other types of law, and with regard to these, this society desires with great care to seek experience, offer opinions and draft laws and regulations for the government to adopt. The New Democratic Rule of Law must become a tool for safeguarding personal and national 民族 interests that the people themselves genuinely understand and use. Only if the people truly can understand and use it, can the various classes among the people resisting Japan have the possibility of genuinely accommodating their vital interests of their own accord. Having a fine legal system that the people cannot use is for that fineness to be in vain and for the rule of law to remain an open question.²⁸⁶

Eager to tap their skills, the border region government catapulted members of the New Law Society to leading positions in the judicial system, and none was more central than Li Mu'an.²⁸⁷ One of China's earliest modern law graduates and procurators, and a pioneer in the establishment of the Republican bar, Li joined the CCP in 1925 and, after arriving in Yan'an in late 1940, was swiftly appointed chief procurator of the high court,

²⁸⁴ David E. Apter, "Discourse as Power: Yan'an and the Chinese Revolution," in *New Perspectives on the Chinese Communist Revolution*, ed. Tony Saich and Hans van de Ven, (Armonk: M.E. Sharpe, 1995), 207.

²⁸⁵ Leading members included Li Mu'an 李木庵, Zhang Shushi 张曙时, Lu Fomin 鲁佛民, Zhu Ying 朱婴, and He Sijing 何思敬. These five all received modern legal educations, and worked as lawyers, judicial officials or law professors in the Republican period.

²⁸⁶ Hou Xinyi 侯欣一, "Faxue de zhongguo xuepai: yuanyin, fangfa ji houguo-- yi Yan'an xinfaxuehui wei zhongxin de kaocha," 法学的中国学派: 原因, 方法及后果--以延安新法学会为中心的考察 *Zhengfa luntan (zhongguo zhengfa daxue xuebao)* 政法论坛 (中国政法大学学报) no. 11 (2006): 13.

²⁸⁷ This was made possible by the "3-3 system 三三制," which starting in 1940 opened cadre positions to members of the CCP, other political parties, including the Guomindang, and non-party fellow travelers. A small number of Guomindang members were in fact given posts in the judicial system. Li Mu'an was a 1905 graduate of the law course at the imperial Capital Institute for Law and Politics 京师法政专门学堂. Mao Zedong 毛泽东, "Kangri genjudi de zhengquan wenti (March 6, 1940)," 抗日根据地的政权问题 in *Mao Zedong xuanji* 毛泽东选集, (Beijing: Renmin chubanshe, 1991).

and acting high court president from June 1942 to late December 1943, while Lei Jingtian attended the Central Party School.

Li and his associates carried the aspirations of the New Law Society into the judicial system, giving it new energy and focus.²⁸⁸ His 1942 Work Report announced that the high court intended to “eliminate the vestiges of guerilla-ism, establish revolutionary procedures, and cultivate the habits of the rule of law.”²⁸⁹ Li demonstrated what this meant through action more than doctrine. Chiefly, he instituted a raft of reforms that expanded, systematized and raised the standards of judicial practice.²⁹⁰ He unified judicial power by ordering an end to mass trials and closing county level adjudication committees 裁判委员会. He simplified judicial procedure, advocated for the creation of an independent procuratorate, supervised the drafting of a burst of substantive and procedural laws, pushed back against meddling by administrative cadres in adjudication, and tried to curb the customary dominance of political considerations over facts and law at trial.²⁹¹ He also encouraged judicial cadres to cite Nationalist laws in their decisions as legitimate supplements to border region legislation, and it was under his watch that this practice peaked. As he said in 1943, “when I first arrived, I saw that the administration of justice in the border region had no basis in articles (of law)...in the past I was accustomed to (legal) articles, but after arriving here there were no articles, and I felt that matters were being handled without foundation.”²⁹²

To improve the low quality of judicial work in the border region, the New Law Society sponsored an after-hours law school 业余法律学校 under the public security bureau, with Li serving as school vice president. More ambitious still, Li proposed an eighteen-month judicial training course for up to 60 literate county level judicial cadres that would cover twelve practical subject areas, and culminate in a six-month practicum.²⁹³ The 1944 and 1946 programs at Yan’an University actually grew out of this idea, but at much lower levels of sophistication. Looking into the future, he imagined using such measures to select students for an even longer course of study at a law school or school of public administration, graduates of which would replace the current crop of judicial cadres and elevate standards further.

²⁸⁸ Lu Fomin 鲁佛民, “Duiyu bianqu sifa ji dian yijian (November 15, 1941),” 对于边区司法几点意见 in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编 (上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005). *Shaanganning bianqu shenpanshi*, 55.

²⁸⁹ Hou Xinyi, *Cong sifa wei min dao renmin sifa: Shaanganning bianqu dazhonghua sifa zhidu yanjiu*, 133.

²⁹⁰ *Ibid.*, 125-153.

²⁹¹ Lei Jingtian, “Bianqu gaodeng fayuan liangnianban gongzuo baogao (September 30, 1944),” 253.

²⁹² Hu Yongheng, *Shaanganning bianqu de minshi fayuan*, 40.

²⁹³ The subjects were: a general survey of the border region, problems facing China, border region laws and decrees, judicial procedure, general legal knowledge, trial and procuratorial practice, detention work, judicial documents, judicial administration, forensic medicine, notarization, and punishment. Hou Xinyi, *Cong sifa wei min dao renmin sifa: Shaanganning bianqu dazhonghua sifa zhidu yanjiu*, 148.

Mediation Reconsidered

For all of the attention Li paid to systematizing adjudication, his most far-reaching contribution lay in shepherding the Party's historic pivot towards mediation. Mediation enjoys a lofty status in the lore of PRC legal history because it showcases the distinctly native character of legal modernity in China, and the Party's intimate connection with the people.²⁹⁴ While no longer as prevalent as it was during the Mao era, mediation nevertheless accounted for more than 30 percent of all civil cases closed by PRC courts in 2007.²⁹⁵ Once depicted as an outgrowth of the mass line, scholars have in recent years begun to acknowledge a more complex history. But they have yet to cross the boundaries between party lines, and that furnishes an opportunity to demonstrate the larger perspective this study brings to bear.²⁹⁶

While Nationalist and CCP approaches to mediation differed markedly in their mature forms, evidence indicates that they originally sprang from common soil, diverged over time, and retained far deeper linkages and epistemological commonalities than most accounts allow.²⁹⁷ It was, for instance, under Nationalist auspices that mediation in China began its transition from a traditional community-based custom to a modern state-based institution complementary to, but distinct from, adjudication and its structures of positive law. In 1930, the Nationalist government adopted a *Statute on Civil Mediation* that provided for mediation offices 调解处 under every court of first instance. This statute was influenced by the provisions for compulsory mediation contained in the German Code of Civil Procedure and aimed to mitigate the deficiencies inherited from Beiyang judicial modernization, and to “prevent disputes and reduce litigation” 杜息争端, 减少讼累.²⁹⁸ In the same year, the Nationalist government also promulgated *Jurisdictional Regulations for District, Village, Township and (City) Lane Mediation Committees*, which extended the state-led mediation regime down to the grassroots, and covered both civil and minor criminal matters.²⁹⁹ The 1935 *Civil Procedure Law* superseded the *Statute on Civil Mediation*, and shifted judicial mediation work from court mediation offices to tribunals of first instance, effectively turning mediation into a mandatory first step in Nationalist civil adjudication.³⁰⁰

²⁹⁴ Yang Yonghua, and Fang Keqin, *Shaanganning bianqu fazhi shigao-susong yu zhengpian*, 188.

²⁹⁵ “Zuigao renmin fayuan gongzuo baogao (zhaiyao),” 最高人民法院工作报告 (摘要) *Renmin ribao* 人民日报, March 14, 2007.

²⁹⁶ Hou Xinyi, *Cong sifa wei min dao renmin sifa: Shaanganning bianqu dazhonghua sifa zhidu yanjiu*, 259-312.

²⁹⁷ 191-226.

²⁹⁸ “Minshi tiaojie fa,” 民事调解法 *Guomin zhengfu gongbao* 國民政府公報 no. 375 (1930): 3. “Xiuzheng minshi tiao jiefa shixing guize,” 修正民事调解法施行規則 *Sifa xingzheng gongbao* 司法行政公報 no. 50 (1934): 1-5.

²⁹⁹ “Qu xiang zhenfang tiaojie weiyuanhui quanxian guicheng (April 3, 1930),” 區鄉鎮坊調解委員會權限規程 *Shandong jiaoyu xingzheng zhoubao* 山東教育行政週報 no. 133 (1931): 40-41.

³⁰⁰ Article 2 of the 1930 Statute on Civil Mediation forbade civil litigation for matters under the jurisdiction of grassroots level courts unless disputants had first failed to achieve a settlement in a mediation office or

In spite of widespread problems with implementation and with parties manipulating procedure, Nationalist mediation took place on a vast scale.³⁰¹ Nationalist courts closed 83,873 mediations in 1936 alone, and this crush of activity provoked controversy because it injected unwelcome tensions into judicial philosophy and operations, diverted already inadequate resources from adjudication, and seemed perfunctory to many.³⁰² Moreover, this figure does not include the large number of disputes mediated by local government offices, *baojia* personnel, and clan or commercial organizations. Courts routinely diverted disputants to those forums, often accepting cases for judicial mediation only if the latter failed to broker a settlement.³⁰³

The year Mao reached Yan'an and made it his headquarters, Nationalist courts in the three principal provinces the Shaanganning border region straddled reported closing 2,439 cases by mediation.³⁰⁴ They employed a corporatist model, which the CCP readily adapted to its incipient state infrastructure and network of mass organizations. The Party vested formal responsibility for mediation in a changing assortment of local civil affairs departments, arbitration committees 仲裁委员会, mediation committees 调解委员会, and sometimes branch courts, with major participation from workers, youth, and women's groups. It is difficult to say more about this, however, because detailed evidence of practice from the first half of the border region's history is virtually invisible

other mediation organ, or the head of the mediation office believed that mediation was impossible. "Minshi tiaojie fa," 3. The 1935 Implementing Regulations for the Civil Procedure Law, rolled back this requirement but kept mediation mandatory for certain classes of cases, for example, in divorce, marital cohabitation, and adoption cases (articles 573 and 583). Philip Huang notes that from 1934 to 1936 the number of cases mediated was roughly equivalent to the number of adjudications closed, and surmises that mediation may have in practice been a prerequisite to adjudication. Huang, *Chinese Civil Justice, Past and Present*, 198.

³⁰¹ For an overview of some of the problems, see: Liu Ying 刘颖, "Yizhi he shanbian: minguo shiqi 'minshi tiaojiefu' yu minshi tiaojie zhidu," 移植和嬗变: 民国时期'民事调解法'与民事调解制度 in *Falü shi de chengchang (xia)* 法律史的成长(下), ed. Huadong zhengfa daxue falüshi yanjiu zhongxin 华东政法大学法律史研究中心, (Beijing: Falü chubanshe, 2012).

³⁰² Chen Yizhang 陳義章, "Minshi tiaojiechu yingfou cunzai zhi shangque," 民事調解處應否存在之商榷 *Fazheng ban yuekan* 法政半月刊 1, no. 5 (1935): 39-41; Shi Zhiquan 石志泉, "Minshi tiaojie zhidu," 民事調解制度 *Faxue zhuanke* 法学專刊 no. 6 (1936): 23-37. "Qu xiang zhenfang tiaojie weiyuanhui quanxian guicheng (April 3, 1930)"; Yu Si 玉斯, "Minshi tiaojie fa ji ying feizhi zhi wo jian," 民事調解法亟應廢止之我見 *Fazhi zhoubao* 法治週報 1, no. 31 (1933): 1-2; Cang Sheng 倉聖, "Minshi tiaojie fa de libi," 民事調解法的利弊 *Renyan zhoukan* 人言週刊 1, no. 1 (1934): 280-282; Fang Maosong 方茂松, "Daxue fake fushe minxing anjian tiaojiechu zhi jianyi," 大學法科附設'民刑案件調解處'之建議 *Fazheng ban yuekan* 法政半月刊 1, no. 5 (1935): 29-33; Chen Yizhang, "Minshi tiaojiechu yingfou cunzai zhi shangque"; *Sifa nianjian*, 239.

³⁰³ Liu Xinjie 刘昕杰, "Yi he wei gui: minguo shiqi jiceng minshi jiufen zhong de tiaojie," 以和为贵: 民国时期基层民事纠纷中的调解 *Shandong daxue xuebao (zhexue shehui kexueban)* 山东大学学报(哲学社会科学版) no. 4 (2011): 39-45.

³⁰⁴ This is the annual total for 1935. *Sifa nianjian*, 239.

in the published record, and the historiography on the subject races to get past this period or avoids dealing with it altogether.³⁰⁵

Signs definitely point to awkward beginnings. For one thing, mediation flowered comparatively late in Shaanganning, and ranked well behind adjudication among modes of (semi-) official dispute resolution. According to imperfect statistics, between 1939 and 1941, local authorities mediated civil cases about half as often as they adjudicated them.³⁰⁶ In 1942, mediation closed only about 18 percent of civil cases.³⁰⁷ By contrast, in 1935 and 1936, just before the war shattered it, the Nationalist court system closed 46 percent of civil cases by mediation.³⁰⁸ Also, it seems clear from relevant sources that CCP mediation in these years had yet to acquire many of the Maoist hallmarks that subsequently distinguished it, and that some of the organs charged with leading it were purely chimeras.³⁰⁹

1943 was the turning point. In June of that year, Li Mu'an abruptly announced "it is the border region's new judicial policy to mediate all civil cases without exception."³¹⁰ Furthermore, he advised lower courts to study and implement this policy shift assiduously because cadre performance evaluations would begin taking into account the total number of successful mediations concluded every month. The effect of this announcement was immediate and profound. From 1942 to 1943, the share of civil cases decided by mediation in the Shaanganning border region shot up from 18 to 40

³⁰⁵ Yang Yonghua, for instance, devotes fifty-three pages to mediation practice, but only one covers the period between 1937 and 1942. Yang Yonghua, and Fang Keqin, *Shaanganning bianqu fazhi shigao-susong yu zhengpian*, 189. Wang Shirong devotes just a couple of scattered sentences, as does Hou Xinyi, though Hou acknowledges the background relevance of Republican judicial modernization. Wang Shirong, Liu Quan'e, Wang Jide, and Li Juan, *Xin zhongguo sifa zhidu de jishi: Shaanganning bianqu gaodeng fayuan (1937-1949)*, 240-269. , Hou Xinyi, *Cong sifa wei min dao renmin sifa: Shaanganning bianqu dazhonghua sifa zhidu yanjiu*, 259-312.

³⁰⁶ The reporting periods for mediation and adjudication do not coincide exactly. Before 1943, organs of local governments generally had jurisdiction over mediation, not courts. They performed 446 mediations from the second half of 1939 through the first half of 1941. Meanwhile, courts handled 1,151 cases at trial from 1939 through the first half of 1941, a period several months longer. Also, in the border region, mediation and adjudication handled different mixes of cases. For instance, in this period, marriage disputes constituted 58 percent of mediations, but only 18 percent of adjudications. *Ibid.*, 208.; *Shaanganning bianqu shenpanshi*, 74.

³⁰⁷ *Shaanganning bianqu shenpanshi*, 247.

³⁰⁸ The absolute figures were: 198,407 adjudications to 166, 915 mediations closed 终结. Using this interval as a point of comparison, just before the war, arguably gives a truer picture of its design and ordinary operation than a strictly contemporaneous comparison against the CCP would. *Sifa nianjian*, 230-231, 239.

³⁰⁹ *Tiaojie weizhu shenpan weifu* 调解为主审判为辅 (Yan'an: Shaanganning bianqu zhengfu bangongting, 1944); Yang Yonghua, and Fang Keqin, *Shaanganning bianqu fazhi shigao-susong yu zhengpian*, 189.

³¹⁰ "Shaanganning bianqu gaodeng fayuan zhishi xin: ling ge gaodeng fenting ji ge difang fayuan, xian sifachu shixing tiaojie banfa gaijin sifa gongzuo zuofeng jianshao renmin songlei you (June 8, 1943),"陕甘宁边区高等法院指示信: 令各高等分庭及各地方法院, 县司法处实行调解办法改进司法工作作风减少人民讼累由 in *Shaanganning bianqu falü fagui huibian* 陕甘宁边区法律法规汇编, ed. Ai Shaorun, and Gao Haishen 艾绍润 and 高海深, (Xian: Shaanxi renmin chubanshe, 2007), 339, 340.

percent, while those decided at trial fell from 72 to 43 percent.³¹¹ Given the influence this pivot had on the course of Chinese judicial history, its speed and timing cry out for explanation, to say nothing of the provocative fact that a former Republican procurator and lawyer, notorious for his inclination to adapt Nationalist legal conventions to the border region, led it.

What prompted the pivot? Conventional systemic factors such as rising caseloads, popular demands for accessible and timely justice, and desperate shortages of judges, courts and codified law surely contributed. Border region authorities credited mediation with higher efficiency than adjudication at lower social and economic cost, and asserted that it would promote harmony among the Party's core constituencies, keep disputants engaged in production, and elevate social consciousness while respecting local customs. But most of all they hoped that it would bring courts relief from the mounting pressure of litigation and appeals.³¹² Taken together, these expectations were hardly unique to the CCP; Nationalist jurists had raised them since the late 1920s, and they tapped into a still older Imperial discourse.³¹³ Yet, as bad as the judicial system's deficiencies were, most were chronic maladies unlikely to set off a seismic shift in practice by themselves. A more acute trigger was required, which intensified Nationalist pressure on the border region duly provided.

In 1939, the Nationalist government blockaded the Shaanganning border region, and in the following year it cut off subsidies that accounted for 73.5 percent of the border region government's budget.³¹⁴ This forced the border region to develop new, self-sufficient streams of revenue and to implement radical austerity measures, formalized in 1941 by the Crack Troops and Simple Administration 精兵简政 Campaign.³¹⁵ Calls to economize and increase local production spread across multiple

³¹¹ Lei Jingtian, "Bianqu gaodeng fayuan liangnianban gongzuo baogao (September 30, 1944)," 244. "Bianqu zhengfu guanyu puji tiaojie, zongjie panli, qingli jiansuo zhishi xin (June 6, 1944)," 边区政府关于普及调解, 总结判例, 清理监所指示信 in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编 (上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005); *Shaanganning bianqu shenpanshi*, 247.

³¹² *Tiaojie weizhu shenpan weifu*; Xie Juezhai 谢觉哉, "Guanyu tiaojie yu shenpan (May 11, 1944)," 关于调解与审判 in *Xie Juezhai lun minzhu yu fazhi* 谢觉哉论民主与法制, ed. Wang Ping, Wang Dingguo, and Ji Shilin 王萍, 王定国, and 吉世霖, (Beijing: Falü chubanshe, 1996); "Shaanganning bianqu gaodeng fayuan zhishi xin: ling ge gaodeng fenting ji ge difang fayuan, xian sifachu shixing tiaojie banfa gaijin sifa gongzuo zuofeng jianshao renmin songlei you (June 8, 1943)," 340.

³¹³ Xie Zhenmin, and Zhang Zhiben 谢振民 and 张知本, *Zhonghua minguo lifashi* 中华民国立法史, 2 vols. (Beijing: Zhongguo zhengfa daxue chubanshe, 1999), 1033. Philip C.C. Huang, "Court Mediation in China, Past and Present," *Modern China* 32, no. 3 (2006): 275-314. But many Nationalist critics insisted that Nationalist mediation actually backfired, generating excess litigation, expense and burdens for the courts. Liu Ying, "Yizhi he shanbian: minguo shiqi 'minshi tiaojiefu' yu minshi tiaojie zhidu," 488.

³¹⁴ David E. Apter and Tony Saich, *Revolutionary Discourse in Mao's Republic* (Cambridge: Harvard University Press, 1994), 218.

³¹⁵ Yung-fa Chen, "The Blooming Poppy Under the Red Sun: The Yan'an Way and the Opium Trade," in *New Perspectives on the Chinese Communist Revolution*, ed. Tony Saich and Hans van de Ven, (Armonk: M.E. Sharpe, 1995).

base areas, to which judicial organs in part responded by promoting mediation, and by instituting circuit trials, which enjoyed a comparable provenance though they are not covered here.

CCP laws on mediation first appeared in 1941 -- outside of the Shaanganning border region, and *before* the rectification campaign and the coherent articulation of the mass line had begun. Thus, contrary to common belief, mediation's resonance with those phenomena was a later, albeit profoundly transformative and intensifying development.³¹⁶ These laws conflicted with the Nationalist *Statute on Civil Mediation*, but they also borrowed terms and language from it. The most comprehensive among them recognized local customs while remaining within the framework of the Nationalist Six Codes and openly incorporating provisions of Nationalist law by citation.³¹⁷ Only a few months later, amid the throes of Party rectification, that would no longer have been possible.

The Shaanganning border region joined these developments. In 1942, Li Mu'an prepared a draft civil procedure law that recommended judicial mediation before trial as a way of preventing litigation.³¹⁸ He abolished grassroots arbitration committees, ordering that "neighbors, relatives, and friends in the villages where the parties live could take the initiative to mediate. There is no need for a specially designated organ."³¹⁹ This reform transferred jurisdiction over the bulk of mediation work from the Party and state to the community, giving birth to the CCP institution of "popular mediation" 民间调解.³²⁰ It also brilliantly harmonized objectives usually in conflict,

³¹⁶ "Shaanganning bianqu gaodeng fayuan dui gexian sifa gongzuo de zhishi (May 10, 1941)," 122. Zedong Mao, "Some Questions Concerning Methods of Leadership (June 12, 1943)," in *Selected Works of Mao Tse-Tung*, (Peking: Foreign Languages Press, 1965); "Shandong sheng tiaojie weiyuanhui zhanxing zuzhi tiaoli (April 18, 1941)," 山东省调解委员会暂行组织条例 in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编 (上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005). Shaoqi Liu, "On the Party (May 14, 1945)," in *Selected Works of Liu Shaoqi*, (Peking: Foreign Languages Press, 1984), 339-352.

³¹⁷ "Jinchaji bianqu xingzhengcun tiaojie gongzuo tiaoli (April 1, 1942)," 晋察冀边区行政村调解工作条例 in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编 (上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005).

³¹⁸ "Shaanganning bianqu minshi susong tiaoli caoan," 陕甘宁边区民事诉讼条例草案 (1942) in *Shaanganning bianqu falü fagui huibian* 陕甘宁边区法律法规汇编, ed. Shanxisheng dang'anju 陕西省档案局, (Xian: Sanqin chubanshe, 2010).

³¹⁹ Yang Yonghua, and Fang Keqin, *Shaanganning bianqu fazhi shigao-susong yu zhengpian*, 189.

³²⁰ A translation note: 民间调解 is typically rendered as civil mediation, but the way the Chinese term is used in this context distinguishes it from judicial modes of mediation, on account of its intimacy with "the people." Also, because it could cover minor criminal matters, rendering it as "civil" would be needlessly confusing. PRC historiography recognizes popular mediation as one of the two major types of post-1943 mediation practice, the other being judicial mediation 司法调解. Popular mediation consists of three variants: mediation by grassroots masses, mediation by mass organizations, and mediation by local administrative organs of government. , Wang Shirong, "Shaanganning bianqu gaodeng fayuan de chengjiu," 240. Yang Yonghua, and Fang Keqin, *Shaanganning bianqu fazhi shigao-susong yu zhengpian*, 189.

namely it promoted austerity by stripping away a layer of bureaucracy, facilitated judicial independence by eliminating a source of local administrative meddling in adjudication, reduced pressure on judicial dockets, which freed up the courts to focus on more serious disputes and crimes, and showed consideration for the growing ideological imperative to heed the masses, which blunted intimations that the judicial system was tilting too far towards Nationalist formalism.

By 1943, Li had completed a draft mediation statute for the border region, and the Nationalist government played a role in nudging it forward. Responding to wartime hardship of its own, on June 3 the Nationalist Ministry of Justice instructed provincial high courts to promote mediation more concertedly.³²¹ Five days later, Li's court complied by issuing a corresponding instruction to judicial organs in the border region, and three days after that the border region government seized back the initiative by promulgating his *Statute on Mediation of Civil and Criminal Cases*.³²² Like the Nationalist mediation regime of 1930, this statute stipulated popular mediation for all civil disputes and many minor crimes, again for the sole stated purpose of reducing litigation. It sparked a surge of mediation in the border region, and laid foundations for the practice in the PRC.

It is clear from these documents and related initiatives that Li conceived of mediation as a carefully calibrated complement to adjudication that would empower ordinary people, conserve scarce resources, and mitigate the judicial system's extreme incapacity. His reforms dealt in the technicalities of judicial practice, but their moderate, communitarian values are unmistakable.³²³ For example, the June 1943 instruction announcing the pivot advised lower courts, "mediation is a new institution of border region judicial policy for educating the people to listen to reason and do good, preserving peace among humanity, promoting social production, and benefitting both public and private."³²⁴ The reformist vision captured by this language and the manifesto of the New Law Society soon collapsed, however, as Party rectification radicalized the atmosphere and inflamed class struggle. Mediation then mutated and swelled, and the problems of how to reconcile it with adjudication and balance the two constructively

³²¹ Xie Guansheng, *Zhanshi sifa jiyao*, 165.

³²² "Shaanganning bianqu minxing shijian tiaojie tiaoli (June 11, 1943)," 陕甘宁边区民刑事事件调解条例 in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编 (上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005); "Shaanganning bianqu gaodeng fayuan zhishi xin: ling ge gaodeng fenting ji ge difang fayuan, xian sifachu shixing tiaojie banfa gajjin sifa gongzuo zuofeng jianshao renmin songlei you (June 8, 1943)".

³²³ Consider some of the guiding principles articulated in Article 2 of the border region's 1942 draft civil procedure law, which eschewed the rhetoric of class struggle and radical leveling for phrases such as "the wealthy must guide and support the poor," and "the cultured must help the unlettered." "Shaanganning bianqu minxing shijian tiaojie tiaoli (June 11, 1943)," 148.

³²⁴ "Shaanganning bianqu gaodeng fayuan zhishi xin: ling ge gaodeng fenting ji ge difang fayuan, xian sifachu shixing tiaojie banfa gajjin sifa gongzuo zuofeng jianshao renmin songlei you (June 8, 1943)," 340.

became recurring flashpoints in a long-running existential contest over the future of the legal system.³²⁵

These various strands point to an inconvenient conclusion: the border region's pivot towards mediation, that most archetypical of CCP judicial practices, began independent of and prior to rectification and the mass line, and advanced under the high court president with the deepest ties of all to the Republican judicial system, in response to systemic deficiencies inherited from Republican judicial modernization and acute pressure from the Nationalist government. Prior to that, mediation occupied a small and neglected corner of CCP judicial practice. But then the Nationalist government supplied the architects of judicial policy in the border region with a fiscal crisis and an expedient template for coping with it, which they harnessed to pre-existing practices and a forceful revolutionary ideology on the cusp of spiraling radicalization, ultimately generating something indubitably their own.

If we are unaccustomed to thinking about mediation this way, then it is because the literature on the practice subtly redirects our gaze from the heterodox, transgressive chemistry of creation toward posterior, sanitized ideal types. Mediation appears to leapfrog its Republican embroilments to rise spontaneously from the Party's sublimation of traditional, communal practices, like an unalloyed Maoist triumph.³²⁶ Inconsistent evidence is excluded, gaps in the record occur advantageously, and the world outside of the border region and the CCP largely falls away, pungent proof of the fragile, mutually validating co-dependency between empirical lapses, analytical myopia, revolutionary dualism, and Party historiography. This is what ails PRC legal history in microcosm.

The object lesson is as simple as it is powerful. Leaving behind the conventional zero-sum arithmetic of the revolution and embracing the border region's immersion in Republican history points to not only a more productive understanding of its judicial system's dynamics but also the buried subtleties of the Party's participation in them. We can begin to appreciate how, once the Nationalist government transformed mediation into a state-sponsored companion to adjudication tasked in part with sculpting subjectivity, the two modes of dispute resolution began a singularly modern and intimate Chinese embrace, each competing with but also promising to complete the other, both co-evolving in time with the political and judicial currents around them. This is quintessential autopoiesis at work, and an eye-opening primer for how we might

³²⁵ Pan Huaiping 潘怀平, "Shaanganning bianqu 'tiaopan guanxi' de xietiao jiqi qishi," 陕甘宁边区'调判关系'的协调及其启示 *Falü wenhua zhouban 法律文化周刊*, November 8 2013. Xie Juezai, "Guanyu tiaojie yu shenpan (May 11, 1944)".

³²⁶ Jerome A. Cohen, "Chinese Mediation on the Eve of Modernization," *California Law Review* 54, (1966): 1201-1226. Stanley Lubman, "Mao and Mediation: Politics and Dispute Resolution in Communist China," *California Law Review* 55, (1967): 1284-1359. Yang Yonghua, and Fang Keqin, *Shaanganning bianqu fazhi shigao-susong yu zhengpian*. Wang Shirong, Liu Quan'e, Wang Jide, and Li Juan, *Xin zhongguo sifa zhidu de jishi: Shaanganning bianqu gaodeng fayuan (1937-1949)*, 240-269. Hou Xinyi, *Cong sifa wei min dao renmin sifa: Shaanganning bianqu dazhonghua sifa zhidu yanjiu*, 259-312. *Shaanganning bianqu shenpanshi*, 68-75.

understand the recursive cycles of perturbation and reconstitution that have shaped legal change more generally across the 1949 divide.

Backlash and Retrenchment

During his eighteen-month tenure at the high court, Li's ambitions outstripped the modest resources at hand. The sudden arrival and rapid ascent of other New Law Society members displaced those who had previously dominated the border region judicial system, and the direction, speed and scale of the reforms they launched disturbed established practices, drew attention to a multitude of inadequacies, inflamed ideological antagonisms, and sparked an intense backlash.³²⁷ In December 1943, the border region government convened a judicial work conference that unleashed a torrent of criticisms against them, and set in motion a cycle of bitter conflict over judicial policy that reached into the 1950s and beyond.

Some resented and distrusted Li and his associates as urban interlopers prepossessed of their own superiority and steeped too much in Nationalist ways. Lei Jingtian, Li's predecessor at the high court, spoke of a deviation in cadre policy by which "local worker-peasant cadres were looked down upon, and cadre intellectuals from outside [of the border region] 外来 were highly valued."³²⁸ Their advocacy of legal procedure and higher professional standards, and their sympathies for legal formalism and judicial independence irritated those who saw the courts as weapons of class struggle, and had grown accustomed to meddling in the disposition of cases, and to arresting, adjudicating and punishing as they saw fit.³²⁹

Despite the turn toward mediation, the judiciary failed to keep pace with the tide of cases thrown up by the changing social and political environment of the border region. Though Li intended to balance rigor with responsiveness and accessibility, his detractors charged that peasants still found the abstract legal principles, pretentious language 掉文, and formalism 司法八股 of the courts frustrating and at odds with local customs. Disputes were generally simple and undemanding, but cases dragged on too long, and judges, allegedly in the throes of "dogmatism" 教条主义 or "judge-ism" 推事主义, too often disposed of them mechanistically or on technicalities at the expense of substantive justice, which generated ill will and wasteful appeals.³³⁰

³²⁷ Hou Xinyi, *Cong sifa wei min dao renmin sifa: Shaanganning bianqu dazhonghua sifa zhidu yanjiu*, 133, 153-180. Wang Shirong, Liu Quan'e, Wang Jide, and Li Juan, *Xin zhongguo sifa zhidu de jishi: Shaanganning bianqu gaodeng fayuan (1937-1949)*, 269-286. Hou Xinyi 侯欣一, "Shaanganning bianqu gaodeng fayuan sifa zhidu gaige yanjiu," 陕甘宁边区高等法院司法制度改革研究 *Faxue yanjiu* 法学研究 no. 5 (2004): 129-143.

³²⁸ Lei Jingtian, "Bianqu gaodeng fayuan liangnianban gongzuo baogao (September 30, 1944)," 243.

³²⁹ Lu Fomin, "Duiyu bianqu sifa ji dian yijian (November 15, 1941)".

³³⁰ Lei Jingtian, "Bianqu gaodeng fayuan liangnianban gongzuo baogao (September 30, 1944)," 244-245, 252; *Shaanganning bianqu shenpanshi*, 68. Hu Yongheng, *Shaanganning bianqu de minshi fayuan*, 48.

These accusations surely had kernels of truth, but they also capitalized on the incendiary atmosphere and rhetoric of Party rectification, and with border region politics shifting radically leftward, the operational deficiencies and philosophical differences they described escalated into grave ideological errors.³³¹ Li Weihan accused the judicial system of “losing the class standpoint, and lacking a concept of the enemy.” Lin Boqu, the border region chairman, labeled it “thoroughly Guomindang.”³³² Seizing the opportunity for a comeback, Lei Jingtian abruptly switched his position on the Nationalist Six Codes and declared that conditions in the border region had changed such that the codes no longer had any role to play in it. Lei now maintained, “We believe law is an instrument of class domination, consequently we consistently point out that the law of Guomindang is landlord-capitalist law. With respect to the worker-peasant laboring masses, it has only an exploitative and fettering function. We do not use it in the border region.”³³³ Accordingly, the conference summary concluded that, “Law is a class product; we cannot cherish any fantasies or thoughts of retaining the sham [Nationalist] Six Codes, we must thoroughly smash [them].”³³⁴

Once the denunciations turned personal, the inspiration Li and his associates had drawn from the features and values of the Nationalist legal system, as well as their personal connections to it, left them dangerously exposed. Border region chairman Lin Boqu had them specifically in mind when he criticized “the tendency towards judicial Guomindang-ification (mainly in the leading organs).”³³⁵ Lei Jingtian menacingly declared, “All told, one can say that 90 percent of the intellectuals who have come from outside have problems. Those without problems are few.”³³⁶ More specifically, Lei argued that Li Mu’an and his associates “deny the special circumstances of the border region’s historical environment, and regard the border region in the same way as the territory under Nationalist rule, and therefore emphasize that capitalist law is completely applicable to the border region.”³³⁷ Lei went further, “In his work at the Border Region High Court, Li Mu’an implemented the New Law Society’s program, and made border region judicial work completely Guomindang.”³³⁸ Xie Juezai agreed: “the New Law Society was an out-and-out Old Law Society. The old law, this we do not need.”

³³¹ For an overview of the rectification campaign, see Gao Hua 高華, *Hong taiyang shi zenmeyang shengqi de: Yan’an zhengfeng yundong de lailongqumai* 紅太陽是怎麼樣升起的: 延安整風運動的來龍去脈 (Xianggang: Zhongwen daxue chubanshe, 2000).

³³² Wang Shirong, Liu Quan’e, Wang Jide, and Li Juan, *Xin zhongguo sifa zhidu de jishi: Shaanganning bianqu gaodeng fayuan (1937-1949)*, 104.

³³³ Hu Yongheng, “1943 nian Shaanganning bianqu tingzhi yuanyong liufa quanshu zhi kaocha: zhengfeng, shengan yundong dui bianqu sifa de yingxiang,” 101.

³³⁴ *Ibid.*, 97.

³³⁵ Lin Boqu 林伯渠, “Shaanganning bianqu sansanzhi de jingyan jiqi yinggai jiuzheng de pianxiang (March 25, 1944),” 陝甘寧邊區三三制的經驗及其應該糾正的偏向 in *Shaanganning bianqu zhengfu wenjian xuanbian* 陝甘寧邊區政府文件選編, (Beijing: Dang’an chubanshe, 1988), 115.

³³⁶ Hu Yongheng, “1943 nian Shaanganning bianqu tingzhi yuanyong liufa quanshu zhi kaocha: zhengfeng, shengan yundong dui bianqu sifa de yingxiang,” 93.

³³⁷ *Ibid.*, 99.

³³⁸ Hu Yongheng, *Shaanganning bianqu de minshi fayuan*, 57.

Surveying the scene on December 4, 1943 he lamented, “Many years after establishing a judicial system, experience and achievements are hard to speak of.”³³⁹

The human toll from this backlash was severe and merged into the general orgy of persecution rectification brought on. The New Law Society was disbanded. Li self-criticized for his errors and stepped down from leadership of the high court on December 31, 1943, although he survived politically and continued to serve as a legal policymaker. Others fared far worse. The Cadre Rescue Campaign 抢救运动 detained, interrogated, and tortured many judicial cadres as suspected members of the Red Banner Party 红旗党, an imagined fifth column said to have been planted in the CCP by the Guomindang. Purges wracked the high court, claiming seventeen of its thirty-six cadres, including all four of its judges and both of its tribunal presidents. One of the tribunal presidents, Wang Huai’an, spent three years in prison before the Party rehabilitated him and returned him to judicial duties.³⁴⁰ Lei Jingtian ordered a review of all cases handled by Wang and a list of other disgraced cadres to accumulate evidence of their transgressions and correct flawed verdicts.³⁴¹ On the basis of his findings, Lei later reported, “several bad elements had carried out wrecking activities in judicial work.”³⁴² Wang Ruqi, who will enter this study in Chapter 4, underwent three years of severe criticism for allegedly leading Wang Shiwei’s “Five-Member Anti-Party Gang.”³⁴³ Decades later, she recalled that the “whole thing destroyed me physically and

³³⁹ Xie Juezai, *Xie Juezai riji*, 557.

³⁴⁰ Wang arrived in the border region in 1940 as a law student from National Sichuan University, and was a member of the New Law Society. He was back on the high court as a judge in 1946, but was sent to Manchuria just as the Second United Front officially collapsed. In February 1947, he was named vice president of the Harbin Local Court and, in that December, court president. In May 1949, Wang was appointed Secretary-General of the Northeast People’s Government’s Ministry of Justice. Huang Xiaoyun 黄晓云, “Xin zhongguo sifajie de bu laosong: ji zuigao renmin fayuan fuyuanzhang Wang Huai’an,” *新中国司法界的不老松: 记最高人民法院副院长王怀安 Zhongguo shenpan* 中国审判 no. 10 (2006): 16-17.

³⁴¹ Hou Xinyi, “Shaanganning bianqu gaodeng fayuan sifa zhidu gaige yanjiu,” 133; Lin Boqu, Li Dingming, and Lei Jingtian 林伯渠, 李鼎铭, and 雷经天, “Shaanganning bianqu zhengfu zhishi xin (February 18, 1944),” 陕甘宁边区政府指示信 in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编 (上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005), 150.

³⁴² Lei Jingtian, “Bianqu gaodeng fayuan liangnianban gongzuo baogao (September 30, 1944),” 243-244.

³⁴³ Wang Ruqi (1912-1990) was a 1934 law graduate of Fudan University, a participant in the drafting of the 1950 Marriage Law, the head of the PRC Ministry of Justice department charged with reconstructing the bar in the mid-1950s and again in the late 1970s, and an organizer of the trial of the Gang of Four. She was married to Chen Chuan’gang 陈传纲, a 1935 graduate of Soochow Law School, and her older brother was the politician Wang Kunlun 王昆仑. Xiong Xianjue 熊先觉, “Lüshi zhidu de tuohuangzhe Wang Ruqi,” 律师制度的拓荒者王汝琪 *Zhongguo lüshi* 中国律师 no. 12 (1999): 36-37. Wang Shiwei (1906-1947) was a Party member who famously penned “Wild Lilies,” an essay that criticized the privileges senior cadres enjoyed and the constraints on artistic freedom in Yan’an. The essay helped to spark the rectification campaign, and Mao’s 1942 Yan’an talks on the roles of literature, art and intellectuals in the revolution. For his outspokenness, Wang was arrested in 1942 and executed in 1947.

psychologically.”³⁴⁴ Across the border region, approximately 1,500 people were imprisoned and as many as 15,000 were purged as spies, while dozens escaped psychological and physical tortures through suicide.³⁴⁵

Only five days after Li stepped down, Lin Boqu unveiled a new direction for the legal system.³⁴⁶ In part a retrenchment, he depreciated the status of adjudication and legal knowledge in favor of informal mediation and faithfulness to Party policy, and pointedly omitted Nationalist enactments from the enumerated sources of law judicial organs could consult. Though the high court would restate its endorsement of conditional citations to Nationalist law several months later, the actual practice now carried dire political risks and was effectively dead.³⁴⁷ Following his speech, the government adjudication committee, an institution championed by the New Law Society, was abolished, eliminating the top appellate level in a judicial system that was still undermined by extremely uneven performance, and many of the initiatives pursued by the society -- codification, procedural rigor, professionalization, and the rule of law -- either lapsed or were swept away.³⁴⁸ Lin also flatly refuted arguments floated by society members for separating judicial administration from adjudication.³⁴⁹

Lin's speech anointed a momentous, new model of adjudication, the Ma Xiwu style, which Party organs instantly lionized.³⁵⁰ The self-taught Ma had been a judge for only eight months, and the style attributed to him raised his judicial nonprofessionalism to a virtue. It required judges to further simplify the language and procedures they used, and to venture forth from the courtroom to investigate personally the circumstances behind the cases before them. Judges were to seek the opinions of the masses so that they might better understand pertinent facts and the potential ramifications of their rulings, grasp the conjunctions between law and local society, spread the teachings of

³⁴⁴ Ruqi Wang, “On the Circumstances of Yan’An’s ‘Five Member Anti-Party Gang’: An Interview With Comrade Wang Ruqi [Wang Li], January 7, 1981,” in *Wang Shiwei and ‘Wild Lilies’: Rectification and Purges in the Chinese Communist Party 1942-1944*, ed. Dai Qing, (Armonk: M.E. Sharpe, 1994), 169.

³⁴⁵ Hu Yongheng, “1943 nian Shaanganning bianqu tingzhi yuanyong liufa quanshu zhi kaocha: zhengfeng, shengan yundong dui bianqu sifa de yingxiang,” 93. Hu Qiaomu 胡乔木, *Hu Qiaomu huiyi Mao Zedong* 胡乔木回忆毛泽东 (Beijing: Renmin chubanshe, 2003), 280.

³⁴⁶ Liu Quan’e, and Wang Jide 刘全娥 and 王吉德, “Shaanganning bianqu gaodeng fayuan liren yuanzhang renqi qizhi kaolüe,” 陕甘宁边区高等法院历任院长任期起止考略 *Shaanxi dang’an* 陕西档案 no. 5 (2006): 37-39. Lin Boqu, “Shaanganning bianqu zhengfu yi nian gongzuo zongjie (January 6, 1944),” 360-362.

³⁴⁷ Hou Xinyi, *Cong sifa wei min dao renmin sifa: Shaanganning bianqu dazhonghua sifa zhidu yanjiu*, 206. “Shaanganning bianqu sifa gaikuang (1944),”陕甘宁边区司法概况 in *Shaanganning bianqu shenpanshi* 陕甘宁边区审判史, ed. Gao Haishen, and Ai Shaorun 高海深 and 艾绍润, (Xian: Shaanxi renmin chubanshe, 2007), 268.

³⁴⁸ *Shaanganning bianqu shenpanshi*, 32, 56.

³⁴⁹ Lu Fomin, “Duiyu bianqu sifa ji dian yijian (November 15, 1941),” 117.

³⁵⁰ Lin Boqu, “Shaanganning bianqu zhengfu yi nian gongzuo zongjie (January 6, 1944),” 361; “Ma Xiwu shenpan fangshi (March 13, 1944),”马锡五审判方式 in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编 (上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005).

Party policy, and deliver more timely and responsive justice.³⁵¹ Mediation suited these methodologies still better, and the high court therefore promoted it with unprecedented zeal, making it the preferred route for dispute resolution in the border region. The court printed a small cadre handbook entitled “Mediation First, Trial Second” 调解为主, 审判为辅 and sure enough, between 1943 and mid-1944, the pivot continued. The share of civil cases decided by mediation rose from 40 to 48 percent, while adjudication sank from 43 to 29 percent.³⁵²

Mao then pushed this to extremes, declaring “[t]he administration of justice should also be hands-on by everyone. It should not depend on judges and trial officers expert in trying cases. One rule of Party work is: every matter must pass through the masses, create a mass campaign, and only then can it be done well.”³⁵³ Picking up on that theme, Xie Juezai stated “it would be best if 90 to 100 percent of disputes could be mediated in the villages by the people themselves.”³⁵⁴ Under the slogan of “justice for the people” 司法为, the distinctions between adjudication and mediation blurred, judicial decisions increasingly cited no law whatsoever, and invocations of class struggle and class dictatorship multiplied. The weak prestige and efficiency of the courts suffered further as judges declined in many civil cases to enforce procedural deadlines or compel conduct, which emboldened cadres and parties to drag their heels. Civil judgments lost finality because disputants took full advantage of judicial indulgence to ignore settlements and decisions they did not like, and mediate, relitigate or appeal matters over and over again across multiple forums, irrespective of procedural rules.³⁵⁵

When the political atmosphere briefly cooled in 1945, following the Seventh Party Congress, Xie Juezai looked back disapprovingly,

[t]he high court has been at work for eight years, but in review nothing has come out of it...not only are leading cadres weak, and assistance and leadership from above poor...since the border region high court was established until now not a single thing (statute) has been written from the basis of experience that can be used.”³⁵⁶

Xi Zhongxun concurred. “After many years of past judicial work, a guiding policy has not emerged. We still have not, on the basis of border region reality, worked out a

³⁵¹ Hou Xinyi, *Cong sifa wei min dao renmin sifa: Shaanganning bianqu dazhonghua sifa zhidu yanjiu*, 206.

³⁵² Lei Jingtian, “Bianqu gaodeng fayuan liangnianban gongzuo baogao (September 30, 1944),” 244. *Tiaojie weizhu shenpan weifu*; “Bianqu zhengfu guanyu puji tiaojie, zongjie panli, qingli jiansuo zhishi xin (June 6, 1944);” *Shaanganning bianqu shenpanshi*, 247.

³⁵³ Xie Juezai quotes Mao in his diary entry of April 28, 1944. Xie Juezai, *Xie Juezai riji*, 612.

³⁵⁴ Xie Juezai, “Guanyu tiaojie yu shenpan (May 11, 1944),” 136.

³⁵⁵ Hu Yongheng, “1943 nian Shaanganning bianqu tingzhi yuanyong liufa quanshu zhi kaocha: zhengfeng, shengan yundong dui bianqu sifa de yingxiang,” 100.

³⁵⁶ Xie Juezai, *Xie Juezai riji*, 822. The Senior Cadres Conference was held from October 19, 1942 to January 14, 1943.

scale, and systems and laws, and we have not made policies more correct. These years have not been on the right track.”³⁵⁷

To redress that, the government convened another judicial work conference in late 1945, at which the new president of the high court, Wang Ziyi, announced various course corrections that recalled elements of Li Mu’an’s abortive reforms. First, Wang revitalized adjudication, and strongly criticized a litany of problems and misunderstandings connected to the blind rush towards mediation. Mediation was an effective way to reduce litigation in the border region, he said, and it was the best method for handling village-level civil disputes. But the high court had recently erred in rigidly establishing it as a prerequisite to adjudication, and in evaluating cadres on the basis of how many cases they mediated. Mediation and adjudication were in reality complementary rather than opposed, and because they were appropriate to different circumstances neither could as a matter of general policy take precedence.³⁵⁸ Striking the right balance between them has been a chronic concern of the judicial system and a reliable indicator of its priorities ever since.³⁵⁹

Second, Wang restored the legitimacy of specialization and training. “Judicial work is not equivalent to other work. Judicial cadres should also have their own special standards.” While fidelity to Party and government policy were non-negotiable, he added “study and mastery of the law and familiarity with social customs” to the court’s list of judicial qualifications for the first time, in the top slot.³⁶⁰ To reduce disruptions to institutional development and operations, Wang also joined a list of high court presidents who protested, usually ineffectually, against the regular diversion of judicial cadres to other work. “Judicial work is skilled work, and judicial cadres therefore should not be transferred lightly...From now on, when it is necessary to transfer judicial cadres, the approval of the high court must first be sought.”³⁶¹

Third, Wang laid down the basic position on judicial independence that guides the Party even today. Articles 3 and 15 of the 1939 *Organization Statute of the Shaanganning Border Region High Court* declared that the “border region high court exercises its judicial official powers independently,” and “tribunal presidents and judges carry out their adjudicatory powers independently.”³⁶² Perhaps misdirected by the winds

³⁵⁷ Hou Xinyi, *Cong sifa wei min dao renmin sifa: Shaanganning bianqu dazhonghua sifa zhidu yanjiu*, 315.

³⁵⁸ “Shaanganning bianqu gaodeng fayuan zuzhi tiaoli (April 4, 1939),” 98; Wang Ziyi, “Shaanganning bianqu tuishi shenpanyuan lianxi huiyi zongjie (December 29, 1945),” 271-274.

³⁵⁹ Minzner, “China’s Turn Against Law”. Stanley Lubman, “Dispute Resolution in China After Deng Xiaoping: Mao and Mediation Revisited,” *Columbia Journal of Asian Law* 11, no. 2 (1997): 229-391. Cohen, “Chinese Mediation on the Eve of Modernization”. Huang, “Court Mediation in China, Past and Present”; Vicki Wayne and Ping Xiong, “The Relationship Between Mediation and Judicial Proceedings in China,” *Asian Journal of Comparative Law* 6, no. 1 (2011): 1-34.

³⁶⁰ Wang Shirong, Liu Quan’e, Wang Jide, and Li Juan, *Xin zhongguo sifa zhidu de jishi: Shaanganning bianqu gaodeng fayuan (1937-1949)*, 284-285.

³⁶¹ Wang Ziyi, “Shaanganning bianqu tuishi shenpanyuan lianxi huiyi zongjie (December 29, 1945),” 278.

³⁶² “Shaanganning bianqu gaodeng fayuan zuzhi tiaoli (April 4, 1939),” 98-99.

of revolutionary dualism, scholars have sometimes traced these principles to the USSR, but the language and drafting history make quite clear that they came directly out of Nationalist models.³⁶³

Li Mu'an took those principles to heart in 1943 and tried to extend them downward through the judicial hierarchy by chipping away at the intimate control administrative cadres exerted over local judicial affairs, but his efforts met forceful resistance. A 1944 review of the judicial system opened with the declaration, "the administration of justice obeys politics. So-called 'judicial independence,' which extricates the administration of justice from politics, is not suitable to the border region."³⁶⁴ In a veiled reference to Li's tenure, Xie Juezai explained, "We had this sort of thing happen: certain judicial personnel who were Party members refused to obey Party leadership, and did not implement Party instructions. They used judicial independence as their excuse, and were at odds with leading administrative cadres. But this has nothing to do with judicial independence."³⁶⁵ Xie caricatured judicial independence 司法独立 as tantamount to arbitrariness and unaccountability, contrasting it against a legitimate, narrower conception of *adjudicatory* independence 审判独立, which bound courts to accept the general leadership of the Party on matters of policy, but authorized them within that overarching constraint to decide concrete cases free of interference from Party, military and government organs.

Here, too, the commonalities with Nationalist law are striking. Republican jurists spoke freely of judicial independence, but the term actually used by Republican constitutions since 1914 was *adjudicatory* independence. Adjudicatory independence provided the basis for the Guomindang policy of judicial participation, with one major difference from the CCP.³⁶⁶ In the border region, adjudicatory independence applied only to courts as institutions and not, as in Nationalist territory, to individual judges. Thus, individual CCP judges remained liable to internal supervision, correction and command from judicial superiors while deciding cases. Considering the immature state of the legal system and the low level of training and basic education most border region judicial cadres had, this made a certain amount of sense, at least at the time. Xie explained, "The law is incomplete and judicial personnel are naïve. We must adopt

³⁶³ First, as has already been noted, the statute openly proclaimed its debt to the Nationalist Law on Court Organization, and the language used very closely tracked Article 80 of the 1936 Draft Republican Constitution, also known as the Five-Five Constitution, and Article 90 of the Republican Law on Court Organization. It differed significantly from the relevant provisions of the 1936 Stalin Constitution, and 1938 Judiciary Act of the USSR. By contrast, the 1954 PRC Constitution emulated the 1936 Stalin Constitution.

³⁶⁴ "Shaanganning bianqu sifa gaikuang (1944)," 265.

³⁶⁵ Xie Juezai, *Xie Juezai riji*, 755.

³⁶⁶ Han Xiutao 韩秀桃, *Sifa dili yu jindai zhongguo* 司法独立与近代中国 (Beijing: Qinghua daxue chubanshe, 2003), 167-168. Zhang Min 张珉, "Shilun qingmo yu minguo shiqi de sifa dili," 试论清末与民国时期的司法独立 *Anhui daxue xuebao (zhexue shehui kexue ban)* 安徽大学学报 (哲学社会科学版) 28, no. 3 (2004): 83-89.

these measures so that verdicts are correct and to establish judicial prestige.”³⁶⁷ For similar reasons, the 1914 Republican constitution contained the same limitation. Reformers revisited this precedent in the mid-1950s, but once it was set it proved impossible to dislodge, and by then the arguments against it conjured perilous associations with the old law standpoint.

The realization that the CCP had turned back the clock on judicial independence and set an even lower bar than the Guomindang sparked frustration in some quarters. Steeped in Republican ideals (as opposed to practice), “Certain comrades who have studied law say: the administration of justice in the border region is only half-empowered 半权, and [that this] incompleteness is rubbish.”³⁶⁸ Nevertheless, high court president Wang dutifully hewed to the new Party line. Elaborating on the theme of adjudicatory independence, he denounced the dual errors of administrative organs and cadres interfering in concrete cases, and of judges ruling without deference to Party policy. On the one hand, “With respect to the leadership of high court branch tribunals and county judicial offices, we should stress policy leadership and not take an interest in everything...decision making power belongs to judicial organs...when tribunals decide cases, other personnel from non-judicial organs should only offer suggestions, not interfere.”³⁶⁹ On the other hand, “Adjudication should be independent, but comrades must not believe that anything goes. That would amount to a refusal to obey the leadership [of the Party], and a wrong turn.”³⁷⁰

The political environment in the border region favored this studied ambiguity into the following year. In 1946, with the post-war competition against the Nationalist government and its draft constitution heating up, the CCP presented its own *Constitutional Principles of the Shaanganning Border Region*, which elevated the principle of adjudicatory independence to constitutional standing for the first time in Party history. The text selectively mirrored the new draft Republican constitution, stipulating: “Judicial organs at all levels exercise their official powers independently. Apart from following the law, they accept no interference.”³⁷¹ Interestingly, two of the seven members of its drafting committee had been New Law Society members: He Sijing, former vice-dean of Sun Yat-sen University Law School, and Li Mu’an.³⁷² In the same year, the Party also adopted Li’s earlier proposal to create an independent procuratorate, though implementation was deferred until 1949, due to the civil war.³⁷³

³⁶⁷ Xie Juezai, *Xie Juezai riji*, 755.

³⁶⁸ *Ibid.*, 756.

³⁶⁹ Wang Ziyi, “Shaanganning bianqu tuishi shenpanyuan lianxi huiyi zongjie (December 29, 1945),” 276.

³⁷⁰ *Ibid.*, 282.

³⁷¹ Article 80 of the 1947 Republican Constitution read: “Judges must transcend political parties and factions, adjudicate independently on the basis of the law, and not accept any interference.”

³⁷² He Sijing 何思敬 led the law curriculum at Yan’an University, was a CCP legal advisor during the failed two-party peace talks in Chongqing in 1946, and led the Law Department of People’s University from 1950-53.

³⁷³ Lin Boqu, and Li Dingming 林伯渠 and 李鼎铭, “Shaanganning bianqu zhengfu mingling: jianquan jiancha zhidu de youguan jue ding (October 19, 1946),” 陕甘宁边区政府命令: 健全检查制度的有关决定 in

Thus, the 1945 judicial conference climbed down from the campaign-style radicalism that had swept the judicial system in the wake of Li's 1943 dismissal and assimilated some of the reforms he had promoted, tempered by an uncompromising demand for political subservience. It tried to reconcile informal and formal modes of dispute resolution, and reaffirmed specialized training and competence. Although adjudicatory independence foundered on feeble institutional capacity and cadre resistance, in principle constitutionalization shifted the conversation about it away from nullification towards arguments about implementation and performance that have raged ever since.

In the final analysis, the conference marked a shaky equilibrium between politics and law in the judicial system. Its fragility was exposed when the United Front collapsed several months later and all-out civil war against the Nationalists broke out. Over the next two years, Nationalist and Communist armies traded control of the border region, shifting battle lines forced the high court to relocate twice, and the total number of cadres on staff fell from twenty-seven to a hardly functional seven.³⁷⁴ More significantly, Shaanganning's moment in the sun faded as the Party leadership, and the nucleus of its revolution, ultimately followed the surging PLA east, into the North China region towards Beijing.

Shaanganning bianqu zhengfu wenjian xuanbian 陕甘宁边区政府文件选编, (Beijing: Dang'an chubanshe, 1991), 264.

³⁷⁴ *Shaanganning bianqu shenpanshi*, 21. Lin Boqu, Li Dingmin, and Liu Jingfan 林伯渠, 李鼎铭, and 刘景范, "Shaanganning bianqu zhengfu mingling: fabu ge jiguan renyuan mapi bianzhibiao (October 5, 1947)," 陕甘宁边区政府命令: 发布各机关人员马匹编制表 in *Shaanganning bianqu zhengfu wenjian xuanbian* 陕甘宁边区政府文件选编, (Beijing: Dang'an chubanshe, 1991), 221.

Chapter 3

The North China People's Government (1947-1949)

Unlike the Shaanganning border region, which lay beyond the territorial control of the Japanese military, CCP base areas to the east, in occupied North China, faced punishing Japanese suppression between 1937 and 1945 that severely constrained and disrupted their organizational and operational capabilities.³⁷⁵ After Japan's surrender, CCP and Nationalist forces vied to dominate this area, triggering a full-scale civil war in mid-1946, and dueling campaigns of terror.

Once civil war erupted in North China, CCP leaders impelled cadres and mass organizations in the countryside to seize the initiative, settle scores, quicken the pace of land reform, and intensify redistribution. The 1947 *Outline for the Chinese Land Reform Law* harnessed their energies by giving them a direct, populist hand in the administration of justice. It introduced people's tribunals 人民法庭 to the Party's repertoire of judicial institutions, and going forward these temporary mass organs would feature prominently in a succession of campaigns across China. What is more, to give the tribunals and the radicalized activists who staffed them free rein, the Party leadership took an extraordinary step. It dismantled the judicial system it had only recently committed to reforming by merging regular judicial organs across North China into civil affairs, educational and public security organs, and by folding judicial prisons and detention houses into jails operated by the public security bureau.³⁷⁶

Violence spilled out in all directions as villagers branded class enemies were hounded, beaten, stripped of property, driven to suicide or killed. Venomous mass trials and struggle sessions dominated the landscape. Frank Dikötter approximates that land reform resulted in between 500,000 and one million deaths in the region.³⁷⁷ Furthermore, large numbers of cadres with unfavorable class backgrounds, or those thought to be vacillating or standing in the way of this tide of "mass democracy" were

³⁷⁵ David S.G. Goodman, *Social and Political Change in Revolutionary China: The Taihang Base Area in the War of Resistance to Japan, 1937-1945* (Boston: Rowman & Littlefield, 2000); David S.G. Goodman and Chongyi Feng, eds., *North China At War: The Social Ecology of Revolution, 1937-1945*, (Boston: Rowman & Littlefield, 2000).

³⁷⁶ "Taihangqu zhongxin guiding shenji shenhe zhidu de tongling (August 11, 1946),"太行区重新规定审级审核制度的通令 in *Minshi susongfa cankao ziliao (diyi ji)* 民事诉讼法参考资料 (第一辑), (Beijing: Falü chubanshe, 1981). "Taihangqu zhixing xin shenji zhidu ying zhuyi shixiang de zhishi (May 23, 1946),"太行区执行新审级制度应注意事项的指示 in *Minshi susongfa cankao ziliao (diyi ji)* 民事诉讼法参考资料 (第一辑), (Beijing: Falü chubanshe, 1981); "Huabei renmin zhengfu wei tongyi ge xingshu sifa jiguan mingcheng, huifu gexian yuanyou sifa zuzhi ji shenji de guiding tongling (October 23, 1948),"华北人民政府为统一各行署司法机关名称,恢复各县原有司法组织及审级的规定通令 in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编 (上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005).

³⁷⁷ Dikötter, *The Tragedy of Liberation: A History of the Chinese Revolution, 1945-1957*, 74.

swept aside by activists, or arrested and persecuted as “stones 石头,” obstacles to be cleared from the path of revolution.³⁷⁸ In many villages, the Party literally tore itself apart, with local branches, administration and discipline fracturing under the assault. Xie Juezai later called it “waging revolution against ourselves,” and a “usurpation of political power.”³⁷⁹

In early 1948, the Party brought this searing wave of rectification to a close, and on May 20, it merged the Jinchaji and Jinchaluyu border regions into a consolidated North China Liberated Area, which ushered in an ambitious new phase of preparation for the takeover and administration of the country. According to Liu Shaoqi, first secretary of the Party’s North China Bureau, “We are now constructing various types of systems upon which the whole country will be patterned. The main work of the Party Center is the work of the North China Bureau, and the work of the North China Bureau carries national significance.”³⁸⁰ Within days, the Central Committee and People’s Liberation Army moved their headquarters to the village of Xibaipo, about 175 miles southwest of Beijing. To handle day-to-day administration, on September 26, the North China Bureau inaugurated a North China People’s Government (NCPG) with Dong Biwu as chairman. Over the next few months, the whirlwind advance of the PLA expanded the NCPG’s jurisdiction to all of Hebei, Shanxi, Pingyuan, Suiyuan and Chahar provinces, and the municipalities of Beijing and Tianjin.³⁸¹

Liu set the opening terms for the North China legal system’s reconstruction before Mao even reached Xibaipo. On May 25, he invited Xie Juezai and Chen Jinkun, to lead the prospective judicial department and people’s court of the NCPG, and gave them astonishing orders.³⁸²

The North China region for the most part already has no enemy [presence], [we] may set about establishing formal rule of law 着手建立正规法治...first revise the old criminal and civil laws a bit, revising as you implement, something is better than nothing. It is now urgent to stabilize order and safeguard property so that the people will happily engage in construction. Cadres depend on training courses, send some for several months of training and return them to work.³⁸³

³⁷⁸ Frederick C. Teiwes, “The Origins of Rectification, Inner-Party Purges and Education Before Liberation,” *The China Quarterly* no. 65 (1976): 15-53. Zhang Ming 张鸣, “Dongyuan jieyou yu yundong moshi: Huabei diqu tudigaige yundong de zhengzhi yunzuo (1946-1949),” 动员结构与运动模式: 华北地区土地改革运动的政治运作(1946-1949) *二十一世纪* (网络版), <http://www.cuhk.edu.hk/ics/21c/supplem/essay/0205048g.htm>; Huang Daoxuan 黄道炫, “Xilian-1946nian zhi 1948nian nongcun tugaige zhong de ganbu zhenggai,” 洗脸-1946年至1948年农村土改中的干部整改 *Lishi yanjiu* 历史研究 no. 4 (2007): 89-110; Liu Qingli 刘庆礼, “Qianlun 1947-1948nian zhongguo gongchandang de zhengdang yundong,” 浅论 1947-1948年中国共产党的整党运动 *Heilongjiang shizhi* 黑龙江史志 no. 222 (2010): 39-40, 45.

³⁷⁹ Xie Juezai, *Xie Juezai riji*, 1205.

³⁸⁰ *Liu Shaoqi nianpu (1898-1969)*, 148.

³⁸¹ *Ibid.*, 154-155.

³⁸² Mao arrived on May 27. Chen was an eminent law professor who had served as a Supreme Court judge and faculty member at the School for Cultivating Judicial Talent under Beiyang governments, and as director of the civil division of the Ministry of Justice under the Nationalist government.

³⁸³ *Ibid.*, 148.

These instructions challenge fundamental tenets of our historiography. They prove that just eight months before the fall of Beijing the second most powerful member of the CCP aligned himself with the Nationalist legal system and the values of the New Law Society, notwithstanding past purges, polemics, and adverse currents. Specifically, Liu rehabilitated the “rule of law” and put it back on the Party’s agenda for the first time since 1943, when leaders had denounced the concept as a reactionary fraud. In a similarly breathtaking reversal, he instructed the North China judiciary to implement “the old” (Nationalist) criminal and civil codes subject to rolling revisions, and he endorsed expert legal knowledge, which jumpstarted preparations for the first dedicated judicial training course in years. These were far from empty words; they materially changed the direction of CCP legal policy going into 1949 and beyond.

The Rule of Law, part 2

So long as we view history through the blinders of revolutionary dualism, Liu’s invocation of the rule of law will seem to materialize out of thin air. The concept flew in the face not only of the extravagant radicalism the Party had freshly emerged from, but also the preceding five years of judicial policy since the rectification of 1943. Take off those blinders, however, and a different vista unfolds. Nationalist political and legal discourse at the time was buzzing with references to the rule of law. The 1947 Republican constitution ended nineteen years of one-party political tutelage by the Guomindang, and famously shifted the doctrinal basis of Nationalist governance from “ruling the country by the Party” to “ruling the country by law.” Chiang Kaishek personally exhorted graduates of the third judicial training course at National Chengchi University to “rule the country by law” 以法治, even while a growing chorus of critics publicly denounced his government’s own performance on that metric as gravely deficient.³⁸⁴ Whether Liu took inspiration from the commitments to the rule of law expressed years before by Li Mu’an and the New Law Society or looked to more immediate sources, and the answer was probably both, all evidence points to a common Nationalist root. There simply were no other rule of law traditions at hand in China for him to draw upon, and his adjacent favorable reference to applying Nationalist codes bolsters the argument.

Liu did not define “rule of law” 法治, but simply by endorsing it he steered the Party back towards mainstream Republican legal reform. This had obvious advantages in the outward facing battle for the hearts and minds of Chinese disenchanted with Nationalist rule, but its most important consequences were local. It revitalized a suppressed standpoint and, following Liu’s lead, a subset of senior Party policy makers again began to invoke the rule of law as integral to the CCP, often prefaced by “socialist” or “people’s” to inoculate it against fatal associations with the “old law” and the

³⁸⁴ *Guoli zhengzhi daxue faguan xunlianban disan qi biye tongxue lu*, 12.

Guomindang. Thus, in a major report issued on the first anniversary of the PRC's founding, Vice Premier Dong Biwu listed among the central government's most important political and legal tasks "building a people's judicial system and constructing the rule of law."³⁸⁵ In 1951, Xu Deheng, a former leader of the May Fourth movement, now serving as a Vice Chairman of the PRC Legal Affairs Commission, introduced the Provisional Statute on the Organization of PRC Courts by noting that it would help the courts to "raise the people's capacity for rule of law" and "publicize the state's rule of law spirit."³⁸⁶ Similar appeals circulated in the PRC until the Judicial Reform Campaign of 1952, after which the Soviet concept of "socialist legality," which Liu and Dong also supported, assumed much the same discursive space and function.³⁸⁷ Suddenly, obscure NCPG regulations and decisions began incorporating references to the rule of law, as well.³⁸⁸

Insofar as it attacked localism, tightened discipline, and impressed upon cadres the habits of strictly abiding by policies, instructions and procedures, Liu's invocation of the rule of law went hand in glove with his intention to nurture an incipient state and create a space for it to develop administrative competence. Thus, the North China Bureau tentatively inched back from the minutiae of day-to-day administration, reserving the right to decide policy and intervene on major questions while leaving many of the

³⁸⁵ Dong Biwu 董必武, "Yi nian lai zhongyang renmin zhengfu zai zhengzhi falü fangmian de ji xiang zhongyao gongzuo," 一年来中央人民政府在政治法律方面的几项重要工作 *Renmin ribao* 人民日报, October 1, 1950.

³⁸⁶ Xu Deheng 许德珩, "Guanyu 'Zhonghua renmin gongheguo renmin fayuan zhanxing zuzhi tiaoli' de shuoming," 关于'中华人民共和国人民法院暂行组织条例'的说明 *Renmin ribao* 人民日报, September 5, 1951.

³⁸⁷ "Jiaqiang yu gonggu renmin geming de fazhi," 加强与巩固人民革命的法治 *Renmin ribao* 人民日报, September 5, 1951. Also, in a 1950 lecture to students in the first judicial training course at the New Legal Science Graduate School on the former grounds of Chaoyang Law School in Beijing, Tao Xijin spoke at length about building a "revolutionary people's rule of law 革命人民的法治." At the time, Tao was deputy secretary-general of the Government Administrative Council, and secretary-general of the Government Administrative Council's Political-Legal Commission, serving directly under its director, Dong Biwu. Previously, he had been secretary-general of the NCPG while Dong was its chairman. He attended, but did not graduate from, Central University Law School in Nanjing, a prominent law school closely associated with the Nationalist government. Tao Xijin 陶希晋, "Jiaqiang renmin sifa gongzuo de ruogan wenti (November 9, 1950)," 加强人民司法工作的若干问题 in *Xin zhongguo fazhi jianshe* 新中国法制建设, (Tianjin: Nankai daxue chubanshe, 1988). The terms for socialist legality in Russian and Chinese are: социалистическая законность, and 社会主义法制.

³⁸⁸ "Huabei renmin zhengfu wei guding qiuliang eshu, quxiao songfei ji qucun jieshao qisu zhidu de tongling (November 23, 1948)," 华北人民政府为固定囚粮额数, 取消讼费及区村介绍起诉制度的通令 in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编 (上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005). "Huabei renmin zhengfu xunling: chuli gexian taowang pingjin deng da chengshi renfan de guiding (February 7, 1949)," 华北人民政府训令: 处理各县逃亡平津等大城市人犯的规定 in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编 (上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005).

details of implementation to the NCPG.³⁸⁹ During its brief thirteen-month history, the NCPG accordingly recruited skilled non-Party cadres and issued more than 200 laws, decrees, and regulations, twenty-two of which concerned various aspects of the judicial system.³⁹⁰ Most of these were rough responses to exigent problems written in terms that poorly trained cadres could readily grasp, but others exhibited greater refinement, particularly in areas such as tax and finance, and a few draft texts approached the sophistication of Nationalist codes. Not least of all, the NCPG initiated the drafting of the 1950 Marriage Law and hosted the drafting of the founding constitutional documents of the PRC: the *Organization Law of the Central People's Government*, which was based on the 1948 *Program of the North China People's Government*, and the *Common Program of the Chinese People's Political Consultative Conference*.

In late 1949 many of the NCPG's leading organs were bootstrapped into national service as parts of the Central People's Government. Of special interest, its judicial department and people's court were the kernels from which the PRC Ministry of Justice and Supreme People's Court directly sprouted. Beyond that, the NCPG inaugurated many of the internal organizational procedures, reporting systems, and document management rules used in the early PRC, and the hierarchical system of people's congresses still in use today.³⁹¹ Dong Biwu, its chairman, summed up the remarkable new spirit of the times by advising cadres to "handle matters according to law" 依法办事.

Creating a new regime naturally requires establishing new laws, regulations, and systems. We have smashed the old, we must definitely establish the new. Otherwise it would be anarchism. If we do not have laws, regulations, and systems, how (can we) maintain the new order? Consequently, after establishing the new, we demand that matters be handled according to laws, regulations, and systems. These kinds of new laws, regulations, and systems everyone must formulate on the basis of the wills and interests of the proletarian class and the vast laboring masses. I (once) wrote a sentence, 'Bad law is better than no law,' which means that although for the time being our law cannot be perfect, it is generally still better than no law at all.³⁹²

³⁸⁹ Liu Zhongquan, "Huabei renmin zhengfu fazhi quxiang tanxi," 31.

³⁹⁰ The NCPG was dissolved on October 31, 1949 and many of its institutions were assimilated by the infant central government. "Zhongyang renmin zhengfu zhuxi Mao Zedong guanyu chexiao Huabei renmin zhengfu ling (October 27, 1949)," 中央人民政府主席毛泽东关于撤销华北人民政府令 in *Gongheguo chuxing: Huabei renmin zhengfu* 共和国雏形: 华北人民政府, ed. Zhongyang dang'anguan 中央档案馆, (Beijing: Xiyuan chubanshe, 1999); "Huabei renmin zhengfu jieshu gongzuo de gonggao (October 28, 1949)," 华北人民政府结束工作的公告 in *Gongheguo chuxing: Huabei renmin zhengfu* 共和国雏形: 华北人民政府, ed. Zhongyang dang'anguan 中央档案馆, (Beijing: Xiyuan chubanshe, 1999); "Dong Biwu guanyu jieshu Huabei renmin zhengfu gongzuo de baogao (October 28, 1949)," 董必武关于结束华北人民政府工作的报告 in *Gongheguo chuxing: Huabei renmin zhengfu* 共和国雏形: 华北人民政府, ed. Zhongyang dang'anguan 中央档案馆, (Beijing: Xiyuan chubanshe, 1999).

³⁹¹ Zhao Xiaogeng, and Wang Yang 赵晓耕 and 王杨, "Huabei renmin zhengfu xianzheng zhidu kaocha," 华北人民政府宪政制度考察 in *Yifa xingzheng de xianhe: jinian Huabei renmin zhengfu faling yanjiu* 依法行政的先河: 纪念华北人民政府法令研究, ed. Ren Jianxin 任建新, (Beijing: Zhongguo faxuehui Dong Biwu faxue sixiang yanjiuhui, 2011), 42-48.

³⁹² Dong Biwu 董必武, "Lun xin minzhuzhuyi zhengquan wenti (October 16, 1948)," 论新民主主义政权问题 in *Dong Biwu zhengzhi falü wenji* 董必武政治法律文集, (Beijing: Falü chubanshe, 1986), 41.

Systemic reform reached the judicial system on October 23, 1948, when the NCPG extracted adjudicatory organs from the administrative ones into which they had been merged during land reform the year before. It also established within them judicial committees 司法委员会 to supervise adjudication and sentencing, and adopted a harmonized judicial nomenclature.³⁹³ Overnight, reconstituted judicial organs at the administrative office 行署 level and in directly administered cities became people's courts 人民法院, and shortly thereafter the term was extended (too generously given their rudimentary condition) to a hodgepodge of county judicial organs, creating a three-tier system. At the top stood the North China People's Court, followed by an intermediate level made up of seven administrative office-level courts and two directly administered municipal courts, and finally a base populated by dozens of county level courts, which ordinarily were the trial organs of first instance.³⁹⁴ The order set a limit of one appeal for most cases, though the Chairman of the NCPG could make exceptions.³⁹⁵

More to the point, the NCPG broke decisively with Shaanganning precedent by splitting adjudication from judicial administration. It granted its judicial department administrative authority over the courts and their handling of civil and criminal affairs, and over the selection, appointment and education of judicial personnel.³⁹⁶ This arrangement paved the way for the NCPG to promote judicial specialization and higher occupational standards, and it chipped away at the organizational control local cadres had over the courts, which facilitated their interference in adjudication. Notably, it also mirrored Nationalist practices and realized a core objective of the New Law Society. Not everyone supported this reform. For instance, Xie Juezai's counterpart in Manchuria, Li

³⁹³ "Huabei renmin zhengfu wei tongyi ge xingshu sifa jiguan mingcheng, huifu gexian yuanyou sifa zuzhi ji shenji de guiding tongling (October 23, 1948)," Hu Liyan 胡丽燕, "Huabei renmin zhengfu sifa zhidu yanjiu," 华北人民政府司法制度研究 in *Yifa xingzheng de xianhe: jinian Huabei renmin zhengfu faling yanjiu* 依法行政的先河: 纪念华北人民政府法令研究, ed. Ren Jianxin 任建新, (Beijing: Zhongguo faxuehui Dong Biwu faxue sixiang yanjiuhui, 2011), 207. On March 22, 1949, another order renamed the judicial committees adjudication committees 裁判委员会, redefined their powers somewhat, and specified their membership. "Huabei renmin zhengfu wei tongyi ge xingshu sifa jiguan mingcheng, huifu gexian yuanyou sifa zuzhi ji shenji de guiding tongling (October 23, 1948)".

³⁹⁴ Zhou Daoluan, "Huabei renmin zhengfu sifa zhidu zhi yanjiu," 193.

³⁹⁵ On September 8, 1948, Mao proposed to the Politburo prefacing the names of all government organs with the distinctive modifier "people's. For example, courts would be called people's courts." That this idea was ultimately implemented directly by the NCPG, rather than through the Party, is a small but meaningful distinction. , Zhang Xipo 张希坡, "Huabei renmin zhengfu shi zhongyang renmin zhengfu de chuxing," 华北人民政府是中央人民政府的雏形 in *Yifa xingzheng de xianhe: jinian Huabei renmin zhengfu faling yanjiu* 依法行政的先河: 纪念华北人民政府法令研究, ed. Ren Jianxin 任建新, (Beijing: Zhongguo faxuehui Dong Biwu faxue sixiang yanjiuhui, 2011), 134.

³⁹⁶ See Articles 14 and 17 of the Law on the Organization of the Various Departments of the North China People's Government. "Huabei renmin zhengfu ge bumen zuzhi guizhang (October 1948)," 华北人民政府各部门组织规章 in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编 (上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005), 605-606.

Liuru, the head of the Northeast Bureau's judicial department, felt that separating the judicial department from the courts would be detrimental to judicial work.³⁹⁷ Nevertheless, the reform was soon extended to other regions and it endured in the PRC until 1959, when the Party abolished the Ministry of Justice, purged many of its leading personnel, and restored the Shaanganning model by reuniting adjudication and administration under the auspices of the Supreme People's Court.

Owing to the weak condition of the judiciary, the 1948 division between administration and adjudication was not absolute. Like the early Republican Ministry of Justice, the NCPG Judicial Department retained supervisory jurisdiction over court judgments. Article 10 of the *Program of the North China People's Government* declared: "The North China People's Court (NCPC) is the final court of appeal in the North China Region. However, decisions in major cases must be reviewed by the Judicial Department; the execution of death sentences must also be approved by the Chairman (of the NCPG) and carried out by order."³⁹⁸

The *Regulations on the Organization of the Various Departments of the North China People's Government* further stipulated that when the Judicial Department reviewed a major case, it should ask the Chairman for ratification of its opinion, who would then issue a final determination to the court. In the event of doubts or judicial disputes, the law instructed the Chairman to convene a meeting of relevant personnel from the opposing courts to settle the matter. Of course, this law did not define what a major case was, and did not address the numerous punishments and killings that continued to occur in villages under the color of law or local authority but outside of regular judicial process. The former of these infirmities was corrected by a separate order the following March that required county and municipal level courts to send cases with sentences longer than five years in which no appeal was heard to the NCPC for review, after which the NCPC would finalize the verdict, revise it or send the case back for retrial.³⁹⁹ The latter infirmity has proved more entrenched, a manifestation of deeper systemic problems with the accountability of local officials and the relations between Party and state, center and periphery.

Under the emerging model of a "people's judicature" 人民司法, legal policymakers sought to balance institution building against the intense, short-term demands of the CCP leadership by proleptically harmonizing adjudicatory independence with the ideological requirement of law's subservience to politics. On the one hand, judges were expected to aspire to scrupulous fact-finding and procedural rigor free of

³⁹⁷ Xie Juezai, *Xie Juezai riji*, 1285.

³⁹⁸ "Huabei renmin zhengfu zuzhi dagang (August 16, 1948)," 华北人民政府组织大纲 in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编 (上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005), 600.

³⁹⁹ "Huabei renmin zhengfu wei queding xingshi fuhe zhidu de tongling (March 23, 1949)," 华北人民政府为确定刑事复核制度的通令 in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编 (上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005).

interference from outside of the courts. On the other hand, the notion of law as a justiciable emanation of Party policy with an intrinsic class nature militated against impartiality and required them not only to distinguish clearly friend from enemy, but also to use the law adaptively to advance Party policy, consolidate the people's democratic dictatorship and promote revolutionary goals.⁴⁰⁰ For unschooled cadres, that was a difficult needle to thread, made much more so by the fact that the equilibrium between these forces moved in time with the protean heartbeat of class struggle, as did the mix of knowledge, skills, precision, and aggression it demanded, and the threshold for allowable error.

Consequently, local judicial cadres and their superiors vexed one another endlessly. If higher level authorities periodically demanded respect for judicial process to hem in rampant abuses of power, such as unjustified detentions, arrests, and punishments (the “three errors” 三错), they insisted that this was not to be done at the expense of striking swiftly at counterrevolution and other threats to the regime and social order, and they furthermore defined those categories sufficiently vaguely to permit wide, vitiating discretion in application. Later purges would bear out that these mixed messages were not necessarily signs of insincerity or lack of commitment to procedurally rigorous justice so much as reflections of competing, fluid goals left deliberately in tension.

The burden of resolving them fell to frontline judicial cadres, who often indulged petty tyrannies, were inundated by work, and regularly received directives that they struggled to understand, and lacked the institutional capacity, training, or support to implement. Torn between getting it right and getting it done, they frequently hedged their risks by cutting corners or responding ambivalently, which led superiors to castigate them further for their lapses, and introduce new procedures and standards to discipline them and extract still higher performance. Ultimately, the cycle might escalate into campaign-style mobilization, which invariably produced frantic excesses followed by retrenchment. Judicial cadres at every level continually had to gauge which goals had how much priority at any given moment. Experience had proven that their survival, at times quite literally, depended on it.

The handling of capital crimes exemplified this pattern. According to the NCPG, people were being condemned to death with no written verdicts issued, or when verdicts were issued they were not announced or served to defendants.⁴⁰¹ Some verdicts did not stipulate the period in which an appeal could be filed, and some defendants were not informed of that period. Higher judicial organs received cases for review and approval in which the verdict had not been announced and the defendant had not waived his or her right to appeal. Judicial committees were drawing up lists of criminals

⁴⁰⁰ Liu Xiangang, “Moran huishou: Huabei renmin zhengfu falüguan de wenben fenxi”.

⁴⁰¹ “Huabei renmin zhengfu tongling: chuli sixing anjian yinggai zhuyi de shixiang you (October 23, 1948),” 华北人民政府通令: 处理死刑案件应该注意的事项由 in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编 (上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005).

and determining their guilt and sentences without participation or input from the actual trial cadres. At trial, cadres commonly favored confessions over other evidence; they encouraged defendants to confess without verifying the details, and hastily wrote these confessions down as facts, leaving holes in the case record unfilled.

The NCPG not only singled out these lapses for internal criticism, but also responded to them with an astonishingly detailed order that exemplified the Party's new dispensation towards law.⁴⁰² It declared flatly that in most locales the guerilla war was over, that CCP control over the region had consolidated, and that the work style of judicial cadres had better adapt to these new conditions and conform more fully to judicial procedure. Specifically, it detailed six steps to be taken:

1. Trial work must respect the three conditions ordered by Chairman Mao: a) prohibit corporal punishment; b) stress evidence not confessions; c) no leading interrogations;
2. the investigation of case facts and determinations of guilt must be done by Judicial Committees, but must have the responsible trial judges participating in the investigation and decision;
3. after the punishment has been decided, a written verdict must be issued that states that a party who disagrees with the verdict has 10 days to file an appeal with the original trial organ. The appeal period must always must be 10 days, not less;
4. the verdict must be announced in court session, the verdict must be given to the defendant, and the defendant must sign, stamp or place a fingerprint upon a proof of receipt;
5. when an appeal is filed, the original court must send the appeal petition along with the matching case file and judgment to the higher level judicial organ. It must not keep them or hinder (their delivery). When the defendant waives appeal or the appeal period elapses without an appeal filed, the original court must document that, and send it along with the matching case file and judgment to the NCPC for review. Only after the Chairman approves the judgment can it be executed;
6. from now on, if verdicts are not announced or defendants do not stipulate that they are waiving appeal and there is evidence that the appeals period elapsed without an appeal, the NCPC will return applications for approval and order the original applying organ to undertake supplementary procedures.

Of course, killings still frequently occurred outside of formal judicial channels, which were primitive and only starting to recover from the calamity of land reform. The military dealt out punishments and, in a few zones of active conflict, the NCPG applied a separate regime under which the death penalty for “the most evil and treacherous elements who cause severe military or political damage” was subject only to an expedited, administrative office-level review.⁴⁰³ Yet, even in purely symbolic terms this order was significant for the tone it set, and we know that it was to some degree applied.

Between October 1948 and the end of June 1949, NCPG Chairman Dong Biwu reviewed 138 death penalty cases involving 162 defendants, and approved 114 cases involving 129 defendants. That is, 80 percent of reviewed death sentences received

⁴⁰² Ibid.

⁴⁰³ Capital cases without a political dimension were still subject to the ordinary NCPG review procedure. “Huabei renmin zhengfu zhiling: youji qu pan chu si xing an jian ke you xing shu pi zhun you (October 5, 1948),” 华北人民政府指令：游击区判处死刑案件可由行署批准由 in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编 (上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005).

approval and were executed. In nine cases affecting seventeen defendants, the verdict was changed to imprisonment. Fifteen cases involving sixteen defendants were sent back for retrial.⁴⁰⁴ Once Nationalist resistance collapsed and Beijing came under CCP administration, the volume of cases subject to mandatory review expanded greatly. In practice, the city's Municipal Party Committee and Government, both of which were populated by top Party members, assisted with the vetting process for verdicts from the Beijing Municipal People's Court, which freed the NCPG and Judicial Department to focus on cases outside of the city.

Redefining the relationship of the courts to the police was another crucial step in reconstituting the judicial system and establishing "formal rule of law." Having detached judicial from public security organs in late October 1948, the NCPG clarified their respective jurisdictional powers and divisions of labor the following month.⁴⁰⁵ Given the generally higher authority of public security over judicial cadres in the base areas and the impunity with which the former were known to act, this order must be read as one of many attempted restraints on their domination of the legal process, and an effort to nurture judicial identity and power distinct from it.⁴⁰⁶

According to the order, the public security bureau (PSB) had the power to investigate 侦查 treason, espionage, war crimes and, the perennial catch-all, "other" cases, which specifically meant gathering suspects, the facts and evidence of a crime, and filing the prosecution (there was as of yet no procuratorate). If an investigation did not sustain a suspicion of criminality or the acts did not constitute a crime, or it was appropriate not to file prosecution though a crime was committed, the PSB had to set the suspect free and not file prosecution. Judicial organs were not to interfere. After a prosecution was filed, it fell to judicial organs to conduct a trial, and to assess the evidence, the defendant and the crime. During the trial, the PSB conducted the prosecution and could raise opinions, but the judge was free to reject them. If the PSB disagreed with the determination of guilt, the sentence or its severity, the PSB could lodge an appeal.

⁴⁰⁴ "Huabei renmin zhengfu yi nian lai gongzuo gaishu (jielu) (October 1949)," 华北人民政府一年来工作概述(节录) in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编(上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005), 621.

⁴⁰⁵ "Huabei renmin zhengfu guanyu xianshi gongan jiguan yu sifa jiguan chuli xingshi anjian quanze de guiding (November 30, 1948)," 华北人民政府关于县市公安机关与司法机关处理刑事案件权责的规定 in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编(上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005).

⁴⁰⁶ "Zhonghua suweiai gongheguo zhongyang zhixing weiyuanhui xunling (diliu hao): chuli fangeming anjian he jianli sifa jiguan de zhanxing chengxu (December 13, 1931)," 中华苏维埃共和国中央执行委员会训令(第六号): 处理反革命案件和建立司法机关的暂行程序 in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编(上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005). Lei Jingtian, "Lei Jingtian zai Shaanganning bianqu sifa gongzuo huiyi shang de baogao (October 1941)," 380-381.

Admittedly, this order left public security cadres considerable discretion, but it was significant in that it explicitly prohibited them from detaining suspects indefinitely and dictating trial verdicts to judicial cadres, who often lacked the standing and courage, particularly in light of recent campaigns, to resist. It also pointed to a frictive relationship between the two organs rooted in their different missions that would require further, regular intervention by the Party to manage.⁴⁰⁷ As we shall see, in this regard, Beijing was special. When the court pushed back against the tendency of municipal public security cadres to flout procedures, and on occasion it did, it was taking on not just a more powerful city department, but the formidable national minister of public security himself, Luo Ruiqing, who concurrently led the Beijing force. This was, in short, very complicated terrain.

Judicial Training

The cadres who presided over the NCPG court system were among the most versed in legal affairs the Party had to offer. Many were university graduates, had elite Republican legal educations, and/or years of experience administering the Party's border region legal systems (Table 3.1). For example, Chen Jinkun, president of the North China People's Court, was one of Republican China's most esteemed legal academics, had served as a judge on the Beiyang-era Supreme Court 大理院, taught Republican judicial trainees, and briefly led the Civil Division of the Nationalist Ministry of Justice. Tao Xijin, secretary-general of the NCPG, had attended National Central University Law School, a top training ground for Nationalist legal officials and had risen to secretary-general of the Jinchaluyu regional bureau of the CCP Central Committee. Chen Shouyi, the director of the NCPG's judicial training course, was a 1929 graduate of Chaoyang law school. Jia Qian, the presiding judge of the NCPG's adjudication committee, was a 1928 Chaoyang graduate with more than a decade of experience as a litigator in Republican courts. Jia's deputy, Wang Feiran, had previously served as president of the Jinchaji Border Region High Court. Four months after receiving their appointments, Jia and Wang would lead the takeover of Beijing's Nationalist courts at 72 Ministry of Justice Street.

⁴⁰⁷ Hurst, "Politics, Society and the Legal System in Contemporary China 2011," 82, 86.

Table 3.1: Selected North China People’s Government Legal Officials (1948-49)

Name	NCPG post	Selected Pre-1949	Selected Post-1949
Dong Biwu 董必武	Chairman	Law graduate, Nihon Law School; practicing lawyer; president, Shaanganning Border Region High Court	Vice premier (1949-54); director, Government Administration Council Politics and Law Commission (1949-54); president, Supreme People’s Court (1954-59); acting president of the PRC (1972-75)
Yang Xiufeng 杨秀峰	Vice chairman	University professor; chairman, Jinchaluyu border region government	Minister of Education (1954-65); president, Supreme People’s Court (1965-75); director third redraft of Civil Law (1979)
Tao Xijin 陶希晋	Secretary-general	Attended Central University Law School; secretary-general, Jinchaluyu bureau of CCP Central Committee	Secretary-general, Government Administration Council Politics and Law Commission (1949-54); vice president, Central Political-Legal Cadre School (1951-56); director, State Council Legislative Affairs Office (1954-59); member, Political-Legal Leadership Small Group (1978-80); deputy director, third redraft of Civil Law (1979)
Xie Juezai 谢觉哉	Minister, Judicial Department	President, Shaanganning Border Region High Court; deputy president, CCP Party School; author of cadre legal training materials; drafter of key base area laws	Minister of Internal Affairs (1949-59); president, Supreme People’s Court (1959-65)
Chen Jinkun 陈瑾昆	President, North China People’s Court	Law graduate, Tokyo Imperial University; tribunal president, Supreme Court 大理院; law professor	Vice chairman, Central People’s Government Legal Affairs Commission (1949-52); advisor, Supreme People’s Court (1955).
Jia Qian 贾潜	Presiding judge, North China People’s Court	Graduate, Chaoyang law school; practicing lawyer; president, Jinchaji Border Region United High Court	Member, Supreme People’s Court Party Committee (1949-1958); lead drafter, Law on the Organization of the People’s Courts (1954); president, Criminal and Military Tribunals of the Supreme People’s Court (1955-1958)
Wang Feiran 王斐然	Deputy presiding judge, North China People’s Court Adjudication Committee	University graduate; more than one decade of experience in CCP judicial work; president, Jinchaji Border Region High Court	President, Beijing People’s Court (1949-55); president, Beijing High People’s Court (1955-58)
Chen Shouyi 陈守一	Chief, Judicial Department Office for Legal Education; director Judicial Cadre Training Course	Graduate, Chaoyang law school; director, Yu’E border region administrative office judicial office	Director, Ministry of Justice legal education bureau (1950-59); chair, Peking University law department (1954-66, 1978-82)

Beneath this thin stratum, however, a persistent shortage of qualified personnel hamstrung the NCPG judicial system's recovery. Implementation of Liu Shaoqi's order to resume cadre training in the courts did not begin until after the North China judicial department was organized in the Fall. On October 18, it belatedly announced four successive training sessions premised on the mass line's synthesis of theory and practice:

Some comrades say: 'I have not studied law, and am a layman.' This is to accept the poison of scholars from the capitalist class. Law must be studied. In the past, law students graduated in four years, however not a few of our comrades have engaged in judicial work for several multiples of that, and ought to have learned more things than others.

'A matter for legal experts.' This kind of saying also requires analysis. It does not mean that if everyone can understand a thing there is no need for experts. It means that experts should take many concrete, real experiences from the masses and raise them into a theoretical ordering, to become written law. This is the function of experts. To stand outside of the people, or experts who stand on the heads of the people are not experts, but laypeople. We have no need of them."⁴⁰⁸

The first such training session convened in Pingshan on January 15, 1949 with 102 cadres drawn from judicial organs at the county level or above. To fulfill their distinctive epistemological mandate, organizers intended to review local judicial practice and compile course materials using documents students brought in from the field. These compilations would then be sent down to local judicial organs and government offices for study and discussion, culminating in a judicial work conference to hammer out policy for the region. Alas, poor preparation left them far short of these goals, and they instead delivered a diminished, top-down curriculum of official reports, policy pronouncements, laws, and anecdotal experiences. Xie Juezai gave most of the lectures, but other leading cadres, such as Wang Ming, Chen Jinkun, Chen Shouyi, Li Mu'an, and He Sijing also participated. Slated to run for three months, the course ended prematurely when the NCPG moved to Beijing in late February. The second session began in July 1949, this time in an expanded format on the Beijing campus of Chaoyang law school.⁴⁰⁹ The final two sessions never met, but similar courses were held elsewhere in the North China region.

⁴⁰⁸ Xie Juezai 谢觉哉, "Zai sifa xunlianban de jianghua (zhaiyao)," in 司法训练班的讲话(摘要) in *Xie Juezai lun minzhu yu fazhi* 谢觉哉论民主与法制, ed. Wang Ping, Wang Dingguo, and Ji Shilin 王萍, 王定国, and 吉世霖, (Beijing: Falü chubanshe, 1996), 155-156. Xie Juezai 谢觉哉, 谢部长在司法训练班的讲话 (Beijing: Zhongguo zhengfa daxue jiaowuchu, 1949), 22; "On the September Meeting: Circular of the Central Committee of the Communist Party of China (October 10, 1948)," in *Selected Works of Mao Tse-Tung*, (Peking: Foreign Languages Press, 1961), 274.

⁴⁰⁹ This University of Politics and Law is distinct from and not directly related to the current China University of Politics and Law 中国政法大学. This University of Politics and Law was a short-lived cadre training school, a transitional step between Republican Chaoyang law school on the one hand, and the Law Department of People's University and the Central Political Legal Cadre School on the other. Xiong Xianjue 熊先觉, "Fada shenming shimo," 法大身名始末 *Bijiao fa yanjiu* 比较法研究 no. 1 (2003): 124-127. "Huabei renmin zhengfu sifabu gongzuo baogao (October 1949)," 华北人民政府司法部工作报告 in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编 (上册), ed. Wu Yanping, and

By this time, the Party had been training judicial cadres on and off for at least a dozen years. But it had little to show for its efforts. After land reform, cadres complained that “there is no future in judicial work,” and that “leaders do not take (it) seriously.”⁴¹⁰ Old cadres did not want to resume judicial work, newer cadres feared becoming “stones,” and mistrust divided them all from the aroused population they served.⁴¹¹ Writing from Beijing in October 1949, at the founding of the PRC, the North China judicial department observed, “cadres were few in number and weak, and everywhere they shouted ‘there is no law to administer, there are no employable personnel.’” This was as much an assessment of quality as it was quantity.

At the instant of its birth, the PRC judicial system therefore faced a desperate shortage of cadres with legal knowledge or experience managing complex legal institutions. That in turn had a lasting effect on its ability to establish a strong identity and demonstrate its utility to its political masters, who were in any case already habituated and ideologically committed to the less resource-intensive, and more efficient, flexible and responsive tools of informal mediation, ad hoc tribunals and extra-judicial punishments. The Party squeezed judicial cadres at every level, but also compensated for their inadequacies by embracing a variety of other ways to get its legal business done. Administrative measures, especially those wielded by the public security bureau, met that need.⁴¹²

Nationalist Law, part 2

Our historiography teaches that the CCP reached 1949 implacably opposed to the Nationalist Six Codes and committed to their abrogation. The reality, however, was more ambiguous and complex. Certainly, in the Shaanganning border region, the high court kept the memory of Li Mu’an’s notorious transgressions alive. In late 1948, it declared, “From 1942 to 1944, certain leaders and judicial personnel in the border region judicial system mistakenly believed that the Six Codes of the Guomindang reactionary clique were still ‘progressive’ and cited them indiscriminately...fortunately our Party and border region government quickly rectified this error.”⁴¹³ To drive the point home, the court’s 1949 judicial work report declared that to cite the Six Codes was to go down the “road to deviation.”⁴¹⁴ Revising Nationalist law also seemed out of the question. In 1947, Xie Juezai said, “very few of the old [Nationalist] laws can be adopted. It is not enough to revise them, we must start from scratch (I had not read

Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005), 628. *Zhongguo faxuejia fangtanlu*, 368.

⁴¹⁰ “Huabei renmin zhengfu sifabu gongzuo baogao (October 1949),” 628.

⁴¹¹ Fangchun Li, “Class, Power, and the Contradictions of Chinese Revolutionary Modernity: Interpreting Land Reform in Northern China, 1946-48” (University of California Los Angeles, 2008), 199-219.

⁴¹² Hurst, “Politics, Society and the Legal System in Contemporary China 2011,” 79.

⁴¹³ Hu Yongheng, *Shaanganning bianqu de minshi fayuan*, 73.

⁴¹⁴ *Ibid.*

them before and did not realize).”⁴¹⁵ That parenthetical admission incidentally exposes the irrefutably political nature of his earlier attacks against Nationalist law and the cadres who sympathized with it.

Crucially, at this stage, the Shaanganning border region was neither the only voice on Nationalist law nor even the most important, and the bracing clarity rectification brought to the subject in 1943 diminished with time and distance. In late 1944, for instance, a judicial work report from the Jinchaluyu border region again argued for a more moderate, reformist approach, and greater respect for law and legal procedure in general.

We cannot cast aside or totally negate the old law and (legal) system, and cannot slavishly follow or mechanically copy it intact...Trading the old for the new is an arduous process. We must expend a great deal of effort and time...some cadres are impatient and hope to create a ‘new set’ right away without knowing that this way of thinking comes out of fantasy.”⁴¹⁶

The author of this report was Jia Qian, who assumed the presidency of the NCP’s precursor in June 1948, just three weeks after Liu Shaoqi instructed it to apply Nationalist civil and criminal laws subject to rolling revisions. Three months later, Jia was appointed presiding judge of the NCP, and helped to guide the flurry of codification and revisions to Nationalist law Liu’s order actually set in motion.⁴¹⁷

In fact, spurred by Liu’s instructions, codification advanced rapidly during the summer of 1948. By mid-July, Xie Juezai, who had rejected the possibility of revising Nationalist law a year before in Shaanganning, now reported to Dong Biwu that he “hoped quickly to have draft civil and criminal codes standing by.” A few days later, Chen Jinkun, the president of the North China People’s Court, hinted at the sources they were working with when he unveiled a comprehensive draft civil procedure code comprising 375 articles based explicitly on revisions to the corresponding Nationalist code.⁴¹⁸ In a companion explanatory note, he listed thirty major differences between the revised and original texts, and explained the unmistakable spirit of the time. “In this transitional period – the period of replacing old with new law, and drafting laws, we

⁴¹⁵ Xie Juezai, *Xie Juezai riji*, 1131.

⁴¹⁶ The document was the annual judicial work report from the border region’s Jiluyu administrative office. Jia Qian 贾潜, “Yijiusisi nian sifa gongzuo zongjie baogao (1944 di),”一九四四年司法工作总结报告 (1944 底) in *Zhonggong jilu yubianqu dangshi ziliao xuanbian* 中共冀鲁豫边区党史资料选编, (Zhengzhou: Henan renmin chubanshe, 1988), 366-367.

⁴¹⁷ The North China bureau was formed on May 9, 1948 by the merger of the Jianchaji and Jinjiluyu border regions, and Jia was named president of the resulting merged high court on June 12. Wang Feiran was named a tribunal president at the merged court. Zhang Shejun, and Liu Shousen 张社军 and 刘守森, “Jia Qian,”贾潜 in *Henan dangshi renwu zhuan* 河南党史人物传, ed. Henan shengwei dangshi yanjiushi 河南省委党史研究室, (Zhengzhou: Henan renmin chubanshe, 2000), 250, n. 1. On September 29, Jia was named presiding judge of the succeeding North China People’s Court, and Wang was named deputy presiding judge.

⁴¹⁸ Chen Jinkun 陈瑾昆, “Zhonghua minguo xin minshi susongfa caogao (July 21, 1948),”中华民国新民事诉讼法草稿 in *Minshi susongfa cankao ziliao (dier ji diyi fence)* 民事诉讼法参考资料 (第二辑 第一分册), (Beijing: Falü chubanshe, 1981); *Liu Shaoqi nianpu (1898-1969)*, 153.

should revise the old law. We cannot obliterate it out of existence. We consult the old law to create the new law so that the transitional period can be properly managed. This is not at all inheriting the old legal system or neglecting the revolutionary standpoint.”⁴¹⁹

The question arises: how do we reconcile this receptiveness to Nationalist law with the act of abrogation a few months later? Our historiography is of little help because it fails to even perceive the underlying disharmony. From early 1948 to early 1949 the Party in North China switched dizzyingly from demolishing to rebuilding its legal system, and from riding roughshod over law to energetically studying, revising, and implementing formerly reviled Nationalist codes, only to snap back to ruthlessly maligning and deracinating them again, all in a single year.

At the very least, this maelstrom explodes what remains of the myth of the PRC judicial system’s origin in a unitary base area tradition categorically antagonistic to Nationalist influence. There are not just the confounding legal initiatives of the NCPG to contend with, but also their sponsorship by senior leaders such as Liu Shaoqi and Dong Biwu, all taking place within sight of Mao and the rest of the Central Committee. One must ask why, after the searing experiences of rectification and land reform, judicial cadres would still have the temerity to consult the Six Codes, apply them in decisions, and express sympathy for their forms and values, if not as a result of deliberate policy? After years of vehement official denunciations, purges, arrests, and remedial work conferences across multiple base areas, why in early 1949, *after* abrogation, did the NCPG still have to admonish *its own courts* at length that “citation of Guomindang law is prohibited”?⁴²⁰ And lest we think that the erstwhile embrace of Nationalist law was geographically limited to the North China region, the Central Committee singled out for censure an official Party publication issued in its Northeast region, entitled *How to Build Up Judicial Work*, which exemplified the “error and confusion” among cadres because it “raised various points of view from the Six Codes.”⁴²¹

⁴¹⁹ Chen Jinkun 陈瑾昆, “Zhonghua minguo xin minshi susongfa caogao zhonghua minguo xin minshi susongfa caogao gangling (July 21, 1948),” 中华民国新民事诉讼法草稿中华民国新民事诉讼法草稿纲领 in *Minshi susongfa Cankao ziliao (dier ji diyi fence)* 民事诉讼法参考资料 (第二辑 第一分册), (Beijing: Falü chubanshe, 1981), 114-115.

⁴²⁰ “Wei tongbao zhongda anjian liangxing biao zhun (March 23, 1949),” 为通报重大案件量刑标准 in *Huabei renmin zhengfu faling huibian* 华北人民政府法令汇编, (Beiping: Huabei renmin zhengfu mishuting, 1949), 183. One response might be that the order was directed at former Nationalist courts and judges that had passed into CCP hands. To some degree, this was no doubt true, but the Party was especially outraged that many of its own cadres were guilty of citing Nationalist law. Also, recall from Chapter 1 how thin the Nationalist judicial infrastructure was in that part of China in 1948. There were fewer than eight Nationalist local courts in all of Hebei province, and at the moment this order was issued the largest, in Beijing, was actually closed to normal business while the Party established control over it. By necessity, nearly all NCPG judicial organs and judges emanated from the Party, and in rural areas they simply pushed aside county-level Nationalist trial officers who had not already fled the change in regime. By August 1949, the NCPG had established more than 300 judicial organs at various levels. Liu Zhongquan, “Huabei renmin zhengfu fazhi quxiang tanxi,” 33.

⁴²¹ “Zhonggong zhongyang guanyu feichu guomindang de liufa quanshu yu queding jiefangqu de sifa yuanze de zhishi (February 1949),” 中共中央关于废除国民党的六法全书与确定解放区的司法原则的指示 in

To what should we attribute such error and confusion? The usual explanations— inexperience, poor supervision, force of habit, muddled ideology, seduction by the forces of reaction, and estrangement from the masses – have merit, but by focusing on individual culpability, they conveniently skirt the taboos of collective Party inconstancy, ambivalence, and discord. Considering how high the transgressions went among veteran leaders who presumably should have known better, the principal remaining possibilities strain credulity: a CCP momentarily seized by fecklessness or a cabal. In the alternative, it is possible that Mao may have briefly countenanced the NCPG’s legal initiatives as sops to the United Front or as tactical ploys, but that hardly trivializes them. For a few months in 1948, they deeply agitated the North China Party and state apparatuses by rehabilitating currents of thought that the Party had earlier suppressed with great effort. Unearthing those currents refreshed old cleavages, and primed the PRC to refight old battles.

Abrogation Reconsidered

In October 1948, Party leaders widely assumed that the defeat of the Nationalist regime could take up to three more years, and were planning accordingly.⁴²² But in the weeks that followed, a succession of major military victories telescoped their projections, and rendered the NCPG’s original program of legal reconstruction obsolete. Tasting victory, CCP hostility against the Nationalist legal system quickened, and codification projects tied to it stalled. Though far less prepared than it had originally hoped to be, the Party backed away from transitional legal reform towards the “fantasy” of a radical disjuncture, and abrogation fit the bill brilliantly. Marx had argued, “you cannot make the old laws the foundation of the new social development...they were engendered by the old conditions of society and must perish with them. They are bound to change with the changing conditions of life.”⁴²³ Abrogation was a natural if impatient corollary to this dualism, necessary for the PRC to lay claim to an immaculate conception free from the stain of Republican history in general, and the Nationalist legal system in particular. It had no use for Marx’s contention that law/right (*Recht*) could never be higher than the economic structure of a society and its cultural development, or his claim that its transformation could therefore only come *after* the transition to a higher phase of communism.⁴²⁴

On the surface, the CCP moved methodically, and presented a united front on abrogation. As part of the planning for the occupation of Beijing, the January 10, 1949

Xingshi susong faxue cankao ziliao huibian (zhongce) 刑事诉讼法学参考资料汇编 (中册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005), 645.

⁴²² “On the September Meeting: Circular of the Central Committee of the Communist Party of China (October 10, 1948)”.

⁴²³ Karl Marx, “The Trial of the Rhenish District Committee of Democrats (February 25 & 27, 1849),” in *The Revolution of 1848-49: Articles From the Neue Rheinische Zeitung*, ed. Bernard Isaacs, (New York: International Publishers, 1972), 232-233.

⁴²⁴ Karl Marx, *Critique of the Gotha Program* (Peking: Foreign Languages Press, 1972), 17.

Draft Decision of the CCP Beijing Municipal Party Committee on Several Specific Tasks after Entering the City stipulated that “State organs such as military administration organs, police, military police, courts, prisons, etc. shall be thoroughly smashed...”⁴²⁵ Four days later, Mao’s *Statement on the Present Situation* demanded that the Nationalists abrogate their 1947 Constitution and legal order 法统. The following day, the Party Center elaborated on the fate of Guomintang judicial personnel. “Guomintang military, police, judicial, prison, and their various levels of governmental organization shall be thoroughly smashed, and cannot be used. We must establish a new political structure to rule, and personnel serving in the old political organs can only be differentially used after undergoing reform. They cannot be used without them all undergoing reform. To do otherwise would be to commit an error of principle.”⁴²⁶ Finally, on January 21, the Party Center addressed the validity of Nationalist law. It ordered the Beijing Municipal Party Committee, upon taking control of the city, to “proclaim that all Guomintang government laws are void, prohibit citation of any Guomintang law in any criminal case, and handle all court trials on the basis of orders promulgated by the Military Control Commission and policies of the People’s Government.”⁴²⁷

The punctuated extension of these principles to the nation as a whole began in late February with an *Order of the CCP Central Committee on Abrogating the Six Codes of the Guomintang and Establishing the Principles for the Administration of Justice in Liberated Areas*, which authoritatively vitiated nearly forty years of accumulated Republican laws and jurisprudence and indicated only fragmentary substitutes to fill the resulting void.

The people’s judicial work can no longer be based on the Six Codes of the Guomintang, and should be based on the new law of the people. Before the new law of the people is systematically promulgated, judicial work shall be based on Communist Party policy and the various programs, laws, orders, acts and resolutions issued by the People’s Government and the People’s Liberation Army. Currently, in circumstances in which the people’s law is not complete, the principle by which judicial organs handle matters shall be: where a program, law, order, regulation or resolution is provided, they shall act in accordance with the program, law, order, regulation or resolution. Where no program, law, order, regulation or resolution is provided, they shall act in accordance with the policies of the New Democracy. At the same time, judicial organs shall by constantly scorning and repudiating the Six Codes and all other reactionary laws and decrees of the Guomintang, by scorning and repudiating the anti-people laws and decrees of the

⁴²⁵ “Zhonggong Beiping shiwei guanyu ruchenghou jige juti gongzuo de jue ding (caoan) (January 10, 1949),”中共北平市委关于入城后几个具体工作的决定(草案) in *1948.12-1949: Beijing shi zhongyao wenxian xuanbian 1948.12-1949: 北京市重要文献选编*, ed. Beijing shi dang’anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang’an chubanshe, 2001), 78.

⁴²⁶ “Zhongyang guanyu jieshou guanliao ziben qiye de zhishi (January 15, 1949),”中央关于接收官僚资本企业的指示 in *Zhonggong zhongyang wenjian xuanji 中共中央文件选集*, (Beijing: Zhonggong zhongyang dangxiao chubanshe, 1991).

⁴²⁷ “Guanyu jieguan pingjin guomintang sifa jiguan de jianyi (January 21, 1949),”关于接管平津国民党司法机关的建议 <http://cpc.people.com.cn/GB/64184/64186/66650/4491615.html> (accessed September 15, 2010).

European, American and Japanese capitalist countries, and by studying and mastering the Marxist-Leninist-Mao Zedong Thought theory of the state, theory of law, and New Democratic policies, programs, laws, orders, regulations and resolutions, educate and reform judicial cadres.⁴²⁸

In keeping with the effort to build distinct identities for the Party and state, the NCPG reproduced these prohibitions through government channels by incorporating them into a series of reports and instructions, and a corresponding comprehensive order on *Abrogating the Guomindang's Complete Book of the Six Codes and All Reactionary Laws*, issued in early April.⁴²⁹ Finally, in late September, Article 17 of the *Common Program of the Chinese People's Political Consultative Conference* elevated abrogation to the level of constitutional law in the PRC. From a certain distance, it all appears seamless.

Closer up, however, the grain is far from uniform, and cracks are evident. Let us start with the Russian Revolution, which has often been cited as lighting a path for the CCP on abrogation. In 1952, for instance, the *People's Daily* devoted an entire article to authoritative quotations from Lenin and Stalin “on abrogating the anti-people, old legal system and constructing a revolutionary, new legal system.”⁴³⁰ *Soviet Decree No. 1 on the Courts*, issued in November 1917, was typically a centerpiece of this argument because it abolished the private bar and all tsarist courts, as well as their judges, prosecutors and investigating magistrates. But what was invariably left out was that the drafters of this decree initially considered but ultimately rejected total abrogation of

⁴²⁸ “Zhonggong zhongyang guanyu feichu guomindang de liufa quanshu yu queding jiefangqu de sifa yuanze de zhishi (February 1949)”. The precise date of this Order is given variously as February 22 or February 28, 1949.

⁴²⁹ The gist of the Central Committee order trickled out immediately. On February 21, in his *Summary Report on Work Since the Establishment of the (North China People's) Government*, Dong Biwu declared that “all of the old feudal landlord and bureaucratic capitalist laws, for example of the type of the Six Codes, have deceptive, class oppressive essences, and are fundamentally reactionary.” “Guanyu ben zhengfu chengli yilai de gongzuo gaikuang baogao (February 21, 1949),”关于本政府成立以来的工作概况报告 in *Huabei renmin zhengfu faling huibian* 华北人民政府法令汇编, (Beiping: Huabei renmin zhengfu mishuting, 1949), 213. On March 23, the NCPG told regional courts that “citing Guomindang criminal law over and over is mistaken. 'The Complete Book of the Six Codes' is an instrument of the old ruling class for dominating and repressing the people. It has been revised and supplemented by Jiang's bandits to appear more ferocious. It is fundamentally incompatible with the spirit of our new democratic judicature. The people's government must thoroughly smash and stop citing it because we cannot simultaneously implement and protect the law of the feudal-landlord and bureaucratic-capitalist classes while dreaming of overthrowing their domination and exploitation. We must use our own laws and policies to repress all counterrevolutionaries and wreckers.” “Wei tongbao zhongda anjian liangxing biao zhun (March 23, 1949),” 183; “Huabei renmin zhengfu xun ling (wei feichu guomindang de liufa quanshu ji yiqie fandong falü you ling geji zhengfu) (April 1, 1949),”华北人民政府训令 (为废除国民党的六法全书及一切反动法律由令各级政府) in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编 (上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005).

⁴³⁰ “Liening, Sidalin lun feichu fan renmin de jiu fazhi he jianshe geming de xin fazhi,” 列宁, 斯大林论废除反人民的旧法制和建设革命的新法制 *Renmin ribao* 人民日报, August 18, 1952.

tsarist law in favor of authorizing its conditional application.⁴³¹ *Decree No. 2 on the Courts* made that plainer still by endorsing compliance with the imperial procedural codes of 1864, and requiring courts to specify reasons whenever they declined to apply tsarist law.⁴³² Although references to tsarist law were finally prohibited in November 1918, its influence fueled the surge of codification during the early 1920s, leaving behind unmistakable traces.⁴³³ In stark contrast to the PRC, many leading Bolsheviks accepted the necessity of establishing a new system of revolutionary laws, procedures, and institutions, and once the immediate crisis of civil war passed there emerged “a complex set of tribunals reminiscent of those to be found elsewhere on the continent of Europe...[that] lacked novelty, except for those tending to see a difference in kind in a difference of degree.”⁴³⁴ Bourgeois jurists dominated Soviet legal education and permeated the Soviet state apparatus as advisors for a dozen years after the October revolution.⁴³⁵

Viewed in this light, the practice of citing early Bolshevik precedents to support the CCP’s sweeping 1949 abrogation of the Nationalist legal system verges on sophistry, and informed contemporaries knew it.⁴³⁶ If anything, the October Revolution aligns more closely with the transitional policies staked out by Liu Shaoqi and the NCPG in mid-1948 than the radical position advanced later, and perhaps the ultimate irony is that the Guomindang may have captured the spirit of *Decree No. 1* best. In August 1927, as the Guomindang moved to overthrow the Beiyang regime, its Central Political Committee ordered that “until laws are formulated and implemented, all substantive and procedural laws and all other laws previously in force are provisionally approved for citation, apart from those that conflict with the platform or ideology of the Guomindang or the laws of the Nationalist government.”⁴³⁷

⁴³¹ Samuel Kucherov, *The Organs of Soviet Administration of Justice: Their History and Operations* (Leiden: E.J. Brill, 1970), 19-23, 32-33.

⁴³² *Ibid.*, 32, 37. John N. Hazard, *Settling Disputes in Soviet Society: The Formative Years of Legal Institutions* (New York: Octagon Books, 1978), 16-19.

⁴³³ Asya Ostroukh, “Russian Society and Its Civil Codes: A Long Way to Civilian Civil Law,” *Journal of Civil Law Studies* 6, no. 1 (2013): 381-382.

⁴³⁴ John N. Hazard, “Soviet Law: The Bridge Years, 1917-1920,” in *Russian Law: Historical and Political Perspectives*, ed. William E. Butler, (Leyden: A.W. Sijthoff, 1977); Hazard, *Settling Disputes in Soviet Society: The Formative Years of Legal Institutions*, 477-479; Daniel Asher Newman, “Criminal Strategies and Institutional Concerns in the Soviet Legal System: An Analysis of Criminal Appeals in Moscow Province, 1921-1928” (University of California, Los Angeles, 2013), 1.

⁴³⁵ Robert Sharlet, “Pashukanis and the Withering Away of Law in the USSR,” in *Cultural Revolution in Russia, 1928-1931*, ed. Sheila Fitzpatrick, (1978), 182-183.

⁴³⁶ Yang Zhaolong 杨兆龙, “Falü de jieji xing he jichengxing,” 法律的阶级性和继承性 *Huadong zhengfa xuebao* 华东政法学报 no. 3 (1956): 27,33. Today, mainstream PRC scholars also recognize the variance. Li Long, and Liu Liantai, “Feichu ‘liufa quanshu’ de huigu yu fansi,” 49.

⁴³⁷ Xie Zhenmin, and Zhang Zhiben, *Zhonghua minguo lifashi*, 211. For comparison, Article 5 of Soviet Decree No.1 on the Courts read “Local courts decide cases in the name of the Russian Republic, and are guided in their decisions and verdicts by the laws of the overthrown government only insofar as these are not abrogated by the revolution and do not contradict revolutionary consciousness and revolutionary legal consciousness. Note: Abrogated are all laws contrary to the decrees of the Central Executive Committee

Furthermore, to think of abrogation in China only in terms of the CCP or 1949 is to adopt too narrow a perspective. In spite of their ideological differences, policymakers at the apex of the CCP and Nationalist legal systems shared an elemental conviction that law was subservient and instrumental to politics, and they spoke about that in remarkably similar terms. If Zhang Zhiben, secretary-general of the Nationalist Judicial Yuan, invoked the Three People's Principles to assert that "the administration of justice is an important branch of politics," then Shaanganning high court president Lei Jingtian could concur with a Marxist argument that "law and politics have an intimate connection. Law is a branch of politics, and serves politics."⁴³⁸ Likewise, senior Nationalist figures shared a taste for the creative destruction revolution impelled in the law. Hu Hanmin, president of the Legislative Yuan, declared in 1929, "revolution is an undertaking in which destruction and construction advance in tandem. Destruction is the beginning of construction. Construction is the culmination of destruction... on the one hand we must abolish all unsuitable laws from the old era, while on the other hand formulating laws that suit the new era...we must now in a China with a rotting old society and old order create a new nation and new society."⁴³⁹ Almost two decades later, Zhang Zhiben explained the Nationalist understanding of revolution, abrogation, and the rule of law in Manichaeian terms remarkably similar to the NCPG's:

Revolution must have order, but it must destroy the old order and create a new one. Not only must revolution not repudiate the rule of law, on the contrary it needs the rule of law, only then can it guarantee success. The constitutions of various countries around the world are all products of revolution. You could say that the goal of revolution is to destroy the old law, and follow with new law.⁴⁴⁰

Of course, in practice, the transition from the Beiyang to the Nationalist legal systems in 1927-28 belied such a cataclysm, and thus the question was: would the CCP reprise that example?

There were reasons to think it might. In 1937, the CCP Central Committee decided to "abrogate all old laws and decrees that fetter the people's patriotic movement, and promulgate new revolutionary laws and decrees," and in 1940 Mao himself issued a more limited command "to oppose all laws, orders, propaganda and criticism...from the anti-communist diehards aimed at containing, restricting and opposing the CCP, and to

of Soviets of Workers', Soldiers', and Peasants' Deputies, and the Workers' and Peasants' Government, as well as the minimum program of the Russian Social-Democratic and Social-Revolutionary Parties."

⁴³⁸ Zhang Zhiben, "Zhanshi sifaguan ying you de renshi," 8. Lei Jingtian, "Lei Jingtian zai Shaanganning bianqu sifa gongzuo huiyi shang de baogao (October 1941)," 379.

⁴³⁹ Hu Hanmin 胡漢民, "Sanminzhuyi zhi lifa jingyi yu lifa fangzhen (December 5, 1928)," 三民主義之立法精義與立法方針 in *Hu Hanmin xiansheng wenji: geming lilun yu geming gongzuo (er)* 胡漢民先生文集: 革命理論與革命工作 (二), (Taipei: Zhongguo guomindang dangshi weiyuanhui, 1978), 774, 778.

⁴⁴⁰ Zhang Zhiben, "Zhongguo guomindang de fazhi jingshen," 3. Among the many positions Zhang held in the Republican legal system, in late 1911, he was minister of justice for the Hubei military government formed during the Wuchang uprising that sparked the overthrow of the Qing dynasty. In January 1949, he was appointed minister of justice again under the Nationalist government.

adopt an attitude of firm struggle [against them].”⁴⁴¹ Nevertheless, between 1937 and 1944, the CCP openly assimilated Nationalist law into its border region legislation and judicial decisions. The newfound receptiveness of the CCP to Nationalist codes and the rule of law in mid-1948 made it impossible to dismiss this earlier episode as a youthful aberration. Despite fundamentally different political circumstances, thirty years of precedents from the Soviet Union, the Guomindang, and the CCP hung like a shadow over 1949, leading some judicial cadres to behave as if the ostensibly stern language of abrogation now before them allowed similar elasticity.

NCPC president Chen Jinkun continued to press for a transitional role for Nationalist law as late as December 1948. But at a high-level meeting of legal cadres called to review work on codification, he was overruled and finally agreed to abandon the argument and premise all future drafts on the “new legal viewpoint.”⁴⁴² From that point forward, democratic centralism suppressed dissent on this matter, forcing it underground. With that settled, the Central Committee organized a Law Commission led by Wang Ming tasked in part with drawing up such legislation.⁴⁴³ Whether this commission truly could leave the “old law viewpoint” behind is open to question. Five of its nine members had served as Republican judges, procurators or law professors, and three of them, including Li Mu’an, were former members of the New Law Society.

What can the various abrogation texts issued in 1949 add to this? It is worth pausing to consider the shift in tone and scope across them because there is considerable evidence that their seemingly straightforward proscriptions masked fundamental disagreements within the Party over exactly what to do about the Nationalist legal system. After a sensational splash, confusion, followed by retrenchment and long-running skirmishes seems to have reigned.

Take the sweeping call to abrogate the Nationalist “legal order” issued by Mao in January 1949, which was faithfully echoed one week later by the unqualified invalidation

⁴⁴¹ The abrogation order was issued on August 25, seven weeks after the CCP drafted its manifesto on cooperation with the Guomindang 中共中央为公布国共合作宣言. At the time, Wang Ming was still in Moscow. *Zhongguo gongchandang kangri jiuguo shida gangling (August 25, 1937)* 中国共产党抗日救国十大纲领, vol. 5 上 (Beijing: Zhongguo renmin daxue chubanshe, 1989), 195. Mao Zedong 毛泽东, “Fangshou fazhan kangri lilian, dikang fangong wangu pai de jingong (May 4, 1940),” 放手发展抗日力量, 抵抗反攻顽固派的进攻 in *Mao Zedong xuanji* 毛泽东选集, (Beijing: Renmin chubanshe, 1991), 754.

⁴⁴² Xie Juezai, *Xie Juezai riji*, 1271.

⁴⁴³ Originally established as the Central Research Association on Legal Questions 中央法律问题研究会 in June 1946, it was reorganized as the Central Commission 中央法律委员会 on December 12, 1948. The commission was led by Wang Ming 王明, and the additional members were: Xie Juezai 谢觉哉, Zhang Shushi 张曙时, Li Mu’an 李木庵, Chen Jinkun 陈瑾昆, He Sijing 何思敬, Guo Renzhi 郭任之, Yang Shaoyi 杨绍萱, and Meng Qingshu 孟庆树. Zhang Xipo 张希坡, “Jiefang zhanzheng shiqi ‘zhongyang falü weiyuanhui’ de bianqian jiqi gongzuo chengjiu-- jianping dui Zhonggong zhongyang feichu guomindang ‘liufa quanshu’ zhishi de mouxie bu shizhici,” 解放战争时期‘中央法律委员会’的变迁及其工作成就--兼评对中共中央废除国民党‘六法全书’指示的某些不实之词 *Faxuejia* 法学家 6, (2004): 111; Chen Zhongyi 陈重伊, *Guowuyuan 24 buwei zujian shilu* 国务院 24 部委组建实录, ed. Zhongyi, Chen (Beijing: Zhonggong dangshi chubanshe, 2009), 54-55.

of all Guomindang law contained in the *Proposal for the Takeover of Guomindang Judicial Organs in Beijing and Tianjin*. Just one month later, the Central Committee seemed to retreat a half step by explicitly addressing not the entire legal order but only the “Six Codes of the Guomindang,” and other “reactionary” and “anti-people” laws. That small wobble was enough to muddle the message, and prompted clarification in April by way of the NCPG order, which aimed to dispatch lingering ambiguities over whether the old law could be retained if it seemed progressive, whether it could be used provisionally in the absence of new law, and whether there was any continuity at all between the old and new law, answering all emphatically in the negative.⁴⁴⁴ This order registered the hardline position of its author, Xie Juezai. It called for “thoroughly abrogating Guomindang law to the last,” and used absolute terms such as “complete,” and “all” to create an uncompromising tone.

To what should we attribute the Central Committee’s February wobble? Multiple sources agree that Wang Ming drafted the original order, but leading historians in China have read it differently, especially the extent to which it represented his own personal views, or the considered opinion of the Party leadership.⁴⁴⁵ Wang’s original draft of the February order said that the Party “should regard it [the Guomindang Six Codes] as law completely not conforming to the interests of the vast people” 应当把它看作全部不合乎广大人民利益的法律. But, interestingly, in reviewing the draft, Mao moderated the tone and hinted at flexibility by replacing the words “completely” with “fundamentally” 基本上.

Picking up on that, Zhou Enlai tried to take it much further. Echoing Soviet thinking in 1917, CCP border region precedents over the preceding decade, and the line laid down by Liu Shaoqi only nine months before in the NCPG, he commented on the draft: “With respect to provisions from the old law, under the legal spirit of New Democracy, we can still critically use and amend some, but not fundamentally use them. Going forward, this is still necessary for judicial work. Please have Comrade Wang add this point.”⁴⁴⁶ In fact, Wang did not incorporate Zhou’s suggested revisions, and some Chinese scholars believe that Mao, preoccupied with the war, may have signed the final

⁴⁴⁴ Zhang Xipo, “Huabei renmin zhengfu shi zhongyang renmin zhengfu de chuxing,” 136.

⁴⁴⁵ Known as a doctrinaire Marxist, Wang was once a Comintern favorite to lead the CCP, but by 1942 Mao had sidelined him and in 1945 gave him the comparatively peripheral post of leading the Law Commission of the Central Committee 中共中央法律委员会, the principal organ in charge of setting Party legal policy in the base areas. He Qinhua, “Lun xin zhongguo fa he faxue de qibu-- yi ‘feichu guomindang liufa quanshu’ yu ‘sifa gaige yundong’ wei xiansuo”. Cai Dingjian, and Gao Di, “Dui xin zhongguo cuihui jiu fazhi de lishi fansi”; Li Long, and Liu Liantai, “Feichu ‘liufa quanshu’ de huigu yu fansi”; Zhang Xipo, “Feichu weifa tongjiu shi feichu yi guomindang liufa quanshu wei daibiao de de yiqie fandong falü-- jianping dui ‘zhonggong zhongyang feichu guomindang liufa quanshu zhishi’ de mouxie bu shizhici”; Xiong Xianjue, “Feichu ‘liufa quanshu’ de yuanyou ji yingxiang”; Dong Yanbin, “Ye tan ‘liufa quanshu’ feichu de qianhou”. Ji Pomin 纪坡民, *Chanquan yu fa* 产权与法 (Beijing: Sanlian shudian, 2001).

⁴⁴⁶ Zhou wrote: “对于旧法律条文, 在新民主主义的法律精神下, 还可以批判地采用和修改一些, 而不是基本采用, 这对今后司法工作仍然需要. 此点请王明同志加以增补.” He Qinhua, “Lun xin zhongguo fa he faxue de qibu-- yi ‘feichu guomindang liufa quanshu’ yu ‘sifa gaige yundong’ wei xiansuo,” 133. *Zhou Enlai nianpu (1898-1949)* 周恩来年谱 (1898-1949) (Beijing: Zhonggong zhongyang wenxian chubanshe, 1990), 815.

draft after only cursory review, permitting Wang to lock his own more radical position into policy.⁴⁴⁷ While possible, this seems highly unlikely and it should be said that Wang makes a convenient scapegoat because in 1956 he left for the Soviet Union never to return, and later wrote a disparaging memoir of Mao and the CCP.⁴⁴⁸

Certainly, other Party leaders saw Wang's draft, including Zhu De, Ren Bishi, Dong Biwu and Lin Boqu and, while not all of their positions on it are publicly known, tentative inferences of agreement with Wang based on positions articulated in other contexts are possible for some.⁴⁴⁹ We know, for example, that Xie Juezai already enthusiastically concurred. More than a month before, he had made the case for radical abrogation in his opening lecture to the NCPG's judicial training course, which adduced crude Marxist arguments about economic determinism and the necessity for class struggle in the law.⁴⁵⁰ The uncompromising abrogation order Xie drafted in April also publicly brought along Dong Biwu in his capacity as NCPG chairman, which compelled Dong to disown his former position that "bad law was better than no law," and recast it instead as a "Western" maxim, now imploring if "reactionary law is better than having no law, then what need is there for a revolution?"⁴⁵¹ And after that, Yang Xiufeng 杨秀峰, Dong's vice chairman at the NCPG, seemed to concur,

'Prohibiting the use of the Complete Book of the Six Codes is not equivalent to abrogating the old law, still less so to abrogating the old legal order.' This is lawyers splitting hairs. We take the revolutionary class standpoint, and proclaim abrogation of the Complete Book of the Six Codes as a representative document of the reactionary ruling class. This also proclaims the annulment of all the laws of the reactionary ruling class. It is not necessary to list them one by one.⁴⁵²

Thanks to democratic centralism, no CCP policymaker of any standing openly questioned that law was an instrument of class struggle and an emanation of the social relations of production, or that the revolution had rendered the Nationalist legal system intolerably anachronistic and reactionary.⁴⁵³ Yet to look no further than that is to miss something crucial because the most significant debates about law in the early PRC began where these blanket dicta left off, and thus all was not quite what it seemed. For instance, a few lines above his categorical exposition on abrogation, in the same document, Yang engaged in some subtle, lawyerly word play of his own. "International

⁴⁴⁷ Xiong Xianjue, "Feichu 'liufa quanshu' de yuanyou ji yingxiang"; He Qinhua, "Lun xin zhongguo fa he faxue de qibu-- yi 'feichu guomindang liufa quanshu' yu 'sifa gaige yundong' wei xiansuo".

⁴⁴⁸ Ming Wang, *Mao's Betrayal* (Moscow: Progress, 1975); 纪坡民, 产权与法, 301-311. Ji Pomin, *Chanquan yu fa*, 301-311. Dong Yanbin, for instance, calls the argument that Wang exceeded the Party line "preposterous." Dong Yanbin, "Ye tan 'liufa quanshu' feichu de qianhou".

⁴⁴⁹ Chen Zhongyi, *Guowuyuan 24 buwei zujian shilu*, 53.

⁴⁵⁰ Xie Juezai,

⁴⁵¹ Dong Biwu 董必武, "Jiu sifa gongzuo renyuan de gaizao wenti (January 4, 1950),"旧司法工作人员的改造问题 in *Dong Biwu faxue wenji* 董必武法学文集, ed. Biwu, Dong (Beijing: Falü chubanshe, 2001), 30.

⁴⁵² Yang Xiufeng 杨秀峰, "Huabei renmin zhengfu yang fuzhuxi da pengyou xin (yi) (April 8, 1949),"华北人民政府杨副主席答朋友信(一) in *Feichu weifa tong jianshe xin fazhi* 废除伪法统建设新法制, 司法业务参考材料(第二辑) (Beijing: Zhongguo zhengfa daxue jiaowuchu, 1949), 14.

⁴⁵³ "Guanyu feichu weifa tong," 关于废除伪法统 *Renmin ribao* 人民日报, February 16, 1949.

trade in Tianjin has already recovered. Consequently, we need laws on negotiable instruments, maritime commerce, shipping, insurance, etc. It is possible some of the old ones are being used, but this absolutely is not copying, it inevitably changes them beyond recognition.”

Here we have the argument Li Mu’an made for using Nationalist law in Shaanganning in 1942, and the defense Chen Jinkun gave for revising it in 1948. Like the monks in Ryckmans’ evocative tale, Yang was essentially presenting Nationalist porridge as a CCP “bowl of tea.”⁴⁵⁴ What else could he say? For the preceding eight months, he had directed the NCPG’s détente with the rule of law and the Nationalist legal system alongside Dong Biwu. And a careful reading of Dong’s statements suggests that he, too, was more slippery than appearances might suggest. Without a doubt, Dong opposed “*completely* following the old,” but this was a far cry from abjuring the entirety of the PRC’s Republican legal inheritance, and the frequency with which he couched himself in such language indicates that he was advisedly holding out for a margin of discretion.⁴⁵⁵ What is more, internally he was at this time proposing what came to be known as the “bricks and tiles, wood and stones thesis 砖瓦木石论,” which held that, notwithstanding abrogation, useful elements from the demolished Nationalist legal system should still be used to construct an authentically CCP successor.⁴⁵⁶ In this way, Dong, Xie, and Yang, consecutive presidents of the Supreme People’s Court from 1954 to 1975, poured their own meanings into abrogation on the eve of the PRC’s founding, pointing the way to unheralded controversies and paths.

Months after unsuccessfully lobbying Wang Ming to preserve a transitional role for Nationalist law, Zhou Enlai weighed in once more. In September, the Common Program of the CPPCC, the *de facto* PRC constitution until 1954, for the first time extended the scope of abrogation from Guomindang laws and decrees to the entire judicial system. Yet, in mentioning only those laws and institutions “that oppress the people,” it arguably stepped back from April’s “thoroughly abrogating Guomindang law to the last.”⁴⁵⁷ One must be sensitive to the danger of over-interpreting such language, but the fact remains that this subtle retreat reopened the ambiguities the Party had deliberately tried to close in April, and reestablished a handhold for those in the Party inclined to adapt elements of their Republican legal inheritance. Zhou led its drafting group.

⁴⁵⁴ Ryckmans, “The Chinese Attitude Towards the Past”.

⁴⁵⁵ Dong Biwu, “Jiu sifa gongzuo renyuan de gaizao wenti (January 4, 1950),” 30.

⁴⁵⁶ Jiang Yanling, and Liu Jingyao 蒋燕玲 and 刘晶瑶, “Lun Dong Biwu lifa sixiang dui dangdai zhongguo fazhi jianshe de qishi,” 论董必武立法思想对当代中国法治建设的启示 *Shehui kexue* 社会科学 5, (2009): 71-73. Xiong Xianjue, “Feichu ‘liufa quanshu’ de yuanyou ji yingxiang,” 12.

⁴⁵⁷ Article 17 of the Common Program read in full: “Abrogate all laws, decrees and judicial systems of the reactionary Guomindang that oppress the people, establish laws and decrees that protect the people, and construct a people’s judicial system.” “Zhongguo renmin zhengzhi xieshang huiyi gongtong gangling (jielu youguan tiaowen) (September 29, 1949),” 中国人民政治协商会议共同纲领(节录有关条文) in *Xingshi susong faxue cankao ziliao huibian (zhongce)* 刑事诉讼法学参考资料汇编(中册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005).

Ultimately, the official line on abrogation did take a radical turn, and it would therefore be easy to write off these textual and semantic discrepancies merely as curiosities. But by the CCP's own admission many legal cadres could not actually bring themselves to "scorn and repudiate" 蔑视和批判 Nationalist law or its standards and practices.⁴⁵⁸ Why? In large part, it was because these cadres took a dim view of the CCP's own legal endowments, which remained stunted after a decade of alternating investment, destruction, and neglect. In January 1949, Xie Juezai spoke of one who impudently asserted, "I am a judicial [cadre], you all are legislators. If you pass laws, then I will administer them."⁴⁵⁹ Xie chastised this attitude as reactionary and narrowly formalist, and directed cadres to rely on experience, politics, and the mass line to steer them through the rocky transition.⁴⁶⁰ But without the concrete principles and procedures Nationalist law provided to guide their work, they simply felt adrift, and the various abrogation orders sharpened that sentiment. North China legal cadres reportedly implored: "The administration of justice? What law is there for us to administer?" 司法司法, 所司法.⁴⁶¹ Furthermore, held-over Nationalist personnel, who knew the craft of adjudication and judicial administration better than anyone, and were relied upon to keep many urban courts running, seemed daily to confirm that assessment. Xu Chongde recalls a judge on the Shanghai Intermediate People's Court who surreptitiously kept a copy of the Six Codes in a desk drawer beside him because the PRC had yet to furnish viable substitutes.⁴⁶²

Outwardly, the CCP appeared unyielding in its commitment to thoroughly deracinate the Nationalist legal order. It went to great lengths to explain away and bury its past entanglements with Nationalist law and move on, warning cadres never to look back.⁴⁶³ The *People's Daily* mendaciously announced, "regardless of which liberated area, over the past twenty years, apart from occasionally using certain of the enemy's laws to aid the struggle against the enemy, [we] never recognized or cited the old law. The Six Codes of the Guomindang were not abolished by decree, but rather in the liberated areas they never existed."⁴⁶⁴ Other statements were more circumspect, but the ultimate conclusion that revolution had irrevocably broken with that past remained. Judicial policy makers even prepared a *Discussion Plan on the Abrogation of the Six*

⁴⁵⁸ Wang Ming 王明, "Guanyu muqian sifa gongzuo de ji ge wenti (July 27, 1950),"关于目前司法工作的几个问题 in *Xingshi susong faxue cankao ziliao huibian (zhongce)* 刑事司法参考资料汇编 (中册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005).

⁴⁵⁹ Xie Juezai, 27.

⁴⁶⁰ *Ibid.*, 27-31.

⁴⁶¹ Xiong Xianjue, "Feichu 'liufa quanshu' de yuanyou ji yingxiang," 12.

⁴⁶² *Zhongguo faxuejia fangtanlu*, 116.

⁴⁶³ "Guanyu feichu weifa tong".

⁴⁶⁴ "Jianshe xin zhongguo de falü yu sifa gongzuo," 建设新中国的法律与司法工作 *Renmin ribao* 人民日报, June 18, 1949.

Codes of the Guomindang to shape the discourse.⁴⁶⁵ Thus, what began in the Shaanganning border region in late 1943 resumed and spread over the nation at large; holding the “old legal standpoint” became a dangerous proposition, and accusing someone of it a weapon.

This brought the Party full circle, and posed a serious dilemma for the CCP. Tearing down the Nationalist legal system was comparatively easy, but building a replacement was far more difficult, and the history of the preceding decade forecast a Party unable to muster the unity and consistency required to do the job.⁴⁶⁶ Only three weeks after Beijing passed into CCP hands, Dong Biwu spoke of the “need to create people’s law codes and build and perfect a New Democratic judicial system.”⁴⁶⁷ Well-placed jurists from outside of the Party pressed the government promptly to fill the void created by abrogation. In June 1949, Shen Junru, an eminent Republican lawyer who would soon lead the PRC Supreme People’s Court, urged, “The construction of new laws is now extremely urgent. We have already defeated the reactionary army militarily, but to consolidate the New Democratic state system and calm social order, we need to establish the people’s own laws.”⁴⁶⁸

To rekindle codification, the Central Law Commission and judicial department of the NCPG, respectively led by Wang Ming and Xie Juezai, jointly established ten study groups staffed by cadres and prominent Republican jurists who were tasked with making headway on a long list of constitutional, civil, criminal, and commercial laws for the nation.⁴⁶⁹ Among the first major texts to come out of these groups was the *Draft Outline for a PRC Criminal Law* drawn up by Chen Jinkun, Li Zuyin, Cai Shuheng, Li Guangcan, and others.⁴⁷⁰ Following on the codification work undertaken in 1948 by the

⁴⁶⁵ “Feichu guomindang liufa quanshu taolun tigang,” 废除国民党六法全书讨论提纲 in *Feichu weifa tong jianshe xin fazhi* 废除伪法统建设新法制, 司法业务参考材料 (第二辑) (Beijing: Zhongguo zhengfa daxue jiaowuchu, 1949).

⁴⁶⁶ *Feichu weifa tong jianshe xin fazhi* 废除伪法统建设新法制 (Beijing: Zhongguo zhengfa daxue jiaowuchu, 1949).

⁴⁶⁷ Dong Biwu 董必武, “Dong Biwu guanyu Huabei renmin zhengfu chengli yilai de gongzuo gaikuang baogao (February 21, 1949),” 董必武关于华北人民政府成立以来的工作概况报告 in *Gongheguo chuxing: Huabei renmin zhengfu* 共和国雏形: 华北人民政府, ed. Zhongyang dang’anguan 中央档案馆, (Beijing: Xiyuan chubanshe, 1999), 168.

⁴⁶⁸ Lu Hao 陆灏, “Zhongguo xin faxue yanjiuhui faqiren hui, taolun jianshe xin falü, tongguo zhanxing jianzhang chengli chouweihui,” 中国新法学研究会发起人会, 讨论建设新法律, 通过暂行简章成立筹委会 *Renmin ribao* 人民日报, June 30, 1949.

⁴⁶⁹ “Zhonggong zhongyang falü weiyuanhui, Huabei renmin zhengfu sifabu zhaoji huiyi zuotan xin lifa wenti, yizhi renwei: Mao Zedong sixiang zhidao ying chengwei xin zhongguo de lifa yuanze, zuzhi shige zu yanjiu xianfa minxing deng fagui, yong xin de guandian fangfa jinxing lifa gongzuo,” 中共中央法律委员会, 华北人民政府司法部召集会议 座谈新立法问题, 一致认为: 毛泽东思想指导应成为新中国的立法原则, 组织十个组研究宪法民刑等法规, 用新的观点方法进行立法工作 *Renmin ribao* 人民日报, June 18, 1949.

⁴⁷⁰ At this point, Chen was Vice Chairman of the Legal Affairs Commission of the Central People’s Government. Before 1949, Li Zuyin had been a renowned Chaoyang Law School professor and chief editor of its law journal *Law Weekly* 法律评论, and Cai Shuheng had been a Peking University law

NCPG, it was released internally on July 25, 1950 for discussion and commentary at the First National Judicial Work Conference. Though its 157 articles contained many rough edges and holes, they represented a promising, comparatively centrist step forward for codification in the PRC.⁴⁷¹ Witness Article One, which declared that one of the goals of criminal legislation was safeguarding the “people’s democratic legal order” 人民民主主义的法律程序. As the decade went on, subsequent texts would replace this language with sterner, more politicized references to “upholding revolutionary order,” carrying out struggle, and “upholding the people’s democratic dictatorship, which is led by the working class.”

In the sharpened ideological climate 1949 beget, consensus on legislation was elusive. A few days after the codification study groups were announced, Mao publicly issued “On the People’s Democratic Dictatorship,” which declared the Western models Republican China had chased “counterrevolutionary” and “bankrupt.”⁴⁷² Against that background, the ambiguities over abrogation and what distinguished old law from new represented a daunting minefield. While many judicial organs and members of the business community pressed hard for new laws, not everyone shared their sense of urgency, and all understood that the present was simply a transitional period in preparation for the leap into socialism, which would render today’s efforts outmoded.

In the interim, on practical and epistemological grounds, some top leaders preferred the flexibility ruling by decree conferred in a locally diverse, fast changing environment. As Dong Biwu later explained, “we want to draft a comparatively complete code. If we sit in a house and pay no heed to conditions outside, is it not possible to write a book? It is possible. Not only is it possible, we already have three criminal law drafts. Writing these things is very hard work, and we cannot say that it is not an achievement, but do these things suit China’s current conditions?”⁴⁷³ Besides, if the base areas had coped without a robust or stable legal system, then the nation presumably could for a time, too. Hasty enactments might open a path for residual Republican values and conventions to sink roots in the PRC under the flag of socialism, impeding or even corrupting the revolution in its infancy. The lessons of 1943 still hung in the air, and to prove the point Chen’s 1950 Draft Outline and his immediate 1954 successor, the *Draft Guiding Principles of the PRC Criminal Law*, fizzled.

department professor. In 1950, Li Guangcan was director of the Office of the State Council’s Political-Legal Committee, under Dong Biwu, and later a fierce critic of the “old legal standpoint.”

⁴⁷¹ “Zhonghua renmin gongheguo xingfa dagang caoan (July 25, 1950),” 中华人民共和国刑法大纲草案 in *Zhongguo xingfa lifa wenxuan ziliao jingxuan* 中国刑法立法文选资料精选, ed. Gao Mingxuan, and Zhao Bingzhi 高铭暄 and 赵秉志, (Beijing: Falü chubanshe, 2007).

⁴⁷² Mao Zedong 毛泽东, “Lun renmin minzhu zhuanzheng: jinian zhongguo gongchandang ershiba zhounian (June 30, 1949),” 论人民民主专政: 纪念中国共产党二十八周年 in *Mao Zedong xuanji* 毛泽东选集, (Beijing: 1991).

⁴⁷³ Dong Biwu 董必武, “Muqian zhengfa gongzuo de zhongdian he zhengzhi bumen gongzuo renyuan zhong cunzai de ji ge wenti (September 11, 1951),” 目前政法工作的重点和政治部门工作人员中存在的几个问题 in *Dong Biwu faxue wenji* 董必武法学文集, (Beijing: Falü chubanshe, 2001), 90.

As the legal vacuum created by the first flush of revolution dragged on, and the Party failed to build a credible, well-appointed judicial system of its own, old concepts and standards nevertheless resurfaced along the margins, as shadow guides to adjudication. For all of its flaws, Nationalist law enjoyed a prestige that transcended the profanity of politics. As a body of learning, principles and practices, it offered a framework for achieving a just and modern China that many still found enticing and full of promise. Its notorious ties to foreign sources of authority contributed to its alienation, but they also insulated it from the warring local ideologies of the moment, and provided an external benchmark against which to measure the CCP and Guomindang, which neither could control and both found intolerable.

In this way, provisional deference to Nationalist law became furtive nostalgia, which lingered in the more sophisticated quarters of the PRC judicial system despite furious efforts to expunge it. Months after abrogation, the NCPG's Judicial Department criticized prefectural level, Party-led governments for rejecting court imposed death sentences based on "old formalities."⁴⁷⁴ Throughout the 1950s, a steady trickle of editorials and articles attacking the "old law standpoint" pointed to ambivalence not just among the rank and file, but also much nearer the top. In 1952, Jia Qian, the former Presiding Judge of the North China People's Court, then serving on the Party Committee of the Supreme People's Court, revived the "bricks and tiles" 砖瓦论 thesis, though it registered publicly only in a cryptic counter-fusillade issued to make sure that lower cadres did not waver.⁴⁷⁵ Ultimately, it took a former Nationalist official to bring the debate out into the open. Yang Zhaolong, working as a law professor at Fudan University, set the legal world on fire in 1956 with what probably ranks as the most explosive article in PRC legal history: "The Class Nature and Heritability of Law."⁴⁷⁶ In it, Yang systematically debunked the crude theoretical justifications for rejecting all Nationalist law and pointed out that the Soviet Union and China's advanced socialist allies in Eastern Europe had retained elements of their pre-revolutionary legal heritage and found ways to make use of bourgeois legal traditions. For this candor, he was pilloried.

⁴⁷⁴ "Huabei renmin zhengfu sifabu gongzuo baogao (October 1949)," 624.

⁴⁷⁵ "Suqing jiu fa guandian, jinyibu jianshe renmin sifa gongzuo: quanguo gedi sifa gaige gongzuo jinru jianshe jieduan jinyibu qingchu jiu fa guandian, jianli yu jianquan renmin sifa gongzuo de xin zhidu, xin zuofeng," 肃清旧法观点, 进一步建设人民司法工作: 全国各地司法改革工作进入建设阶段--进一步清除旧法观点, 建立与健全人民司法工作的新制度, 新作风 *Guangming ribao* 光明日报, December 2 1952; Li Guangcan, and Li Jianfei 李光灿 and 李剑飞, "Suqing fan renmin de jiu fa guandian," 肃清反人民的旧法观点 *Renmin ribao* 人民日报, August 22, 1952; Wang Huiming 王辉明, "Suqing jiu fa guandian, jinyibu jianshe renmin sifa gongzuo: pipan wo de jiu minzhuzhuyi de fazhi sixiang," 肃清旧法观点, 进一步建设人民司法工作: 批判我的旧民主主义的法治思想 *Guangming ribao* 光明日报, November 29 1952. Zhang Shangzhuo, and Min Sheng 张尚鸾 and 民胜, "Jianguo chuqi dui suwei 'jiu fa guandian' de pipan," 建国初期对所谓'旧法观点'的批判 in *Zhongguo dangdai faxue zhengming shilu* 中国当代法学争鸣实录, ed. Guo Daohui, Li Buyun and Hao Tiechuan 郭道晖, 李步云, and 郝铁川, (Changsha: Hunan renmin chubanshe, 1998), 31-32.

⁴⁷⁶ Yang Zhaolong, "Falü de jieji xing he jichengxing".

Conclusion

This completes our survey of the Republican background to the birth of the PRC judicial system. That choice of words is deliberate because, as the last three chapters have shown, the Party's revolutionary base areas, and the fraught traditions it carried out of them belong to the Republican period not just as a temporal matter, but also as history. And taking that seriously compels a collision with the circumlocutions, blind spots, and structures of time and space revolutionary dualism inflicts.

Recall that the case for segregating CCP legal traditions from Republican history rests on a claim about dissociation expressed on two scales. First, with respect to the base areas, it admits certain institutional and legislative congruities with the Nationalist legal system but reads them as superficial artifacts of the United Front. The principal exception pertains to Li Mu'an's stewardship of the Shaanganning high court, which it brackets as an anomaly promptly nullified by rectification. Taking the base areas as an otherwise autonomous system, it disregards a multitude of linkages to construct an inward looking narrative of legal change that delivers the CCP straight to 1949 essentially free and clear of Nationalist entanglements. Second, abrogation reproduces this dissociation on a national scale. It empties the pot not only of Republican laws, institutions, sources of authority, and concepts, but also of the attendant path dependencies and policy dilemmas described in Chapter One, allowing a robust, aseptic endowment of judicial policies and practices to pour in from the base areas without risk of adulteration or complication. The result is history as Maoist consommé, the purified stock from which the PRC judicial system was made, further clarified as necessary by occasional skimming.

The trouble is that the Shaanganning and NCPG legal systems did not develop along largely autochthonous lines, and Republican legal history could not be externalized, compartmentalized, or abrogated by fiat, though Party leaders and historians have tried. To state the argument most simply, no one needed to explain to Mao what a modern court, judge, code or constitution was, and if they had to they certainly would not have used primarily foreign illustrations to do so. There were vibrant domestic examples close at hand, and tens of thousands of Chinese, including senior cadres, had deep knowledge and well-formed views about them. How have we lost sight of this?

More fundamentally, the Nationalist legal system played an integral role in the CCP's turbulent negotiation of identity. In the base areas, the Party attacked the Nationalist legal system repeatedly, but could not break free from its grip, and ironically assimilated more from it by degrees, culminating, however briefly, in the extraordinary reconstitution of Nationalist codes and the concept of the rule of law by the NCPG in 1948. That moment, sandwiched between rectification in 1943 and land reform in 1947 on the one hand, and the diversity of opinions and drafting language on the question of abrogation on the other hand, collapses the fallacy that the Party arrived at 1949 with a

ripe, unilinear legal endowment. In fact, the recipe changed constantly, fueling battles over which of these transient equilibriums constituted a model and path for revolution, and which were simply momentary accommodations to be discarded as soon as conditions allowed.

Nearly twenty years of underinvestment, neglect, abortive measures, and bouts of self-mutilation in the base areas, coupled with the unanticipated speed and scale of Nationalist collapse, left the CCP debilitated and ill-prepared to fill the space abrogation cleared. 1949 then projected those deficits, the involutory dynamics that sustained them, and the discord over where to go next into the PRC. Judicial independence illustrates that spectacularly. During rectification in 1943, senior cadres vehemently denounced the call by the New Law Society to separate adjudication from court administration as a senseless imitation of the “old law.” Regardless, the NCPG adopted that proposal in 1948, and the PRC upheld it. When it collapsed in 1959, it did so amid a wave of savage purges directed against (what else?) the “old law standpoint.”⁴⁷⁷ More remarkable still, that cycle maps perfectly on to the Xie Juezai - Dong Biwu - Xie Juezai sequence in policy leadership over the legal system, tying it clearly to turmoil at the top, and showing that a decade into the PRC the Party’s legal elite were still struggling to come to grips with the legacies of Republican judicial reform, and divided over how best to do it.

The historiography of the PRC struggles to account for or connect such occurrences because, by disclaiming Republican history, it loses a critical dimension of what gave CCP legal policy its dynamism. Fervent representations notwithstanding, the “old law standpoint” was not simply an orphaned relic of the past; rather, the Party had actively assimilated, transformed and appropriated it, giving it a new lease on life. That is why it took root in the base areas, outlasted the Nationalist regime, and endured in the PRC. The further forward in time one looks, the clearer that becomes. Between 1949 and 1957, elements from the old law recursively irritated the legal system, and if one stretches the time horizon out further, one finds them emerging from the wreckage of the Cultural Revolution stronger than ever, eventually ascending to post-Mao primacy in all but name.

Ultimately, the preceding chapters superimpose upon our existing historiography a layer of refraction that compels a reckoning. If the Shaanganning and NCPG legal systems were synchronically imbricated in and constituted by Republican, and specifically Nationalist, historical processes, then their celebrated roles as the “cornerstone” and “embryo” of the PRC judicial system take on radically disruptive dimensions. In place of a simple, binary antagonism, we obtain a complex series of recursive, unstable, nondeterministic, and energetic perturbations and reconstitutions, which push the intimacy of the Party’s engagement with Nationalist law so far beyond the frontiers of our historiography that they demand a paradigm shift in how we

⁴⁷⁷ Lin Boqu, “Shaanganning bianqu zhengfu yi nian gongzuo zongjie (January 6, 1944),” 360.

understand the CCP-Nationalist conjunction, the relationship between the Republican and PRC periods, and the kinetics of the revolution.⁴⁷⁸

To develop this argument further, let us return to late 1948, and the eve of the CCP's occupation and administration of Beijing. Senior judicial cadres were used to improvising with scarce resources, and had a repertoire of practices and policies to draw upon, but they were now preparing to enter uncharted territory. They would no longer be presiding over a network of villages and county seats, but the sophisticated and bewildering capital of a new state. With that would come intense scrutiny and the pressure to set an example for the nation. For the moment, most of China, including its most developed provinces, remained in the hands of the crumbling Nationalist government. When Beijing fell, the Party therefore focused on stabilizing its gains, while devoting itself to a final thrust across the rest of the country. This was just as well because the city's courts scarcely had a chance to reopen before they confronted a crush of cases, impatient superiors with ambitious agendas and, for the second time in forty years, the problem of building new bodies of laws, knowledge, institutions and people simultaneously and on the fly, in an environment punctuated by adversity, uncertainty and turmoil.

⁴⁷⁸ For a related, provocative discussion of the politics-law 政法 antinomy across the Republican and PRC periods, see Xu Yawen, and Deng Daqi 徐亚文 and 邓达奇, "Zhengfa: zhongguo xiandai falü chuantong de yinxing weidu," 政法: 中国现代法律传统的隐性维度 *Hebei daxue xuebao (zhexue shehui kexueban)* 河北大学学报 (哲学社会科学版) 36, no. 5 (2011): 103-108.

Section 3

Seeing Differently:

Law, Modernity, and Revolution in the PRC

In the early twentieth century the Danish psychologist Edgar Rubin conducted a groundbreaking study of visual perception that demonstrated the brain's capacity to shape what it sees.⁴⁷⁹ His most celebrated example, remembered as Rubin's vase, involves an ambiguous duotone image, in which one tends to see either a vase, or a pair of opposing faces in profile. Visualizing one image tends to blind the viewer to the other, as if the brain can comfortably accommodate only one interpretation at a time. Visualizing them both simultaneously requires conscious exertion and imposes a greater cognitive load because it swims against our propensity to impose patterns on ambiguous or contradictory data by discarding information and complexity. Similar processes operate with respect to memory or the ability to discriminate among stimuli in a sensory rich environment, such as the cacophony of sounds or voices in a noisy room. They are mechanisms for coping with cognitive insufficiency.

Revolution is like this; it relies on the pattern matching proclivities of the mind's eye. What we see is a subjective projection of internal cognitive maps, which filter the fragments of the past that reach us by chance and design, and impose an order and causal narrative upon them. Cartographers of the revolution shower us with such maps aiming to guide us toward favored destinations and to dazzle us with their stories. The danger is that we miss the negative spaces that hide in plain sight, and the competing visualizations they offer, which can usurp and radically transform our perceptions of the whole. The paradox is that neither image -- the figure or its ground, the vase or the faces -- exists independently. Each frames and completes the other, yet materializes only to the extent that its partner vanishes, and the starker the boundary between them, the more abrupt the effect. Too gradual a gradient and the entire scene dissolves into noise.

This mode of seeing shapes not just representations of revolution, but crucially also the practice of it. Influenced by Hegel, theorists in the Marxist tradition, including Mao, devoted tremendous effort to elucidating the dialectical laws of History.⁴⁸⁰ Yet the subtleties of these exegeses were often lost on the revolutionary parties that professed fealty to them. Ultimately, their mission was to remake the world, and if their reified projections of it outstripped the objective conditions of material reality before them, then reality had to yield. Power and dogma took precedence. Thus, once reality had been transfigured and social actors still failed to perform to expectations, the next step was to

⁴⁷⁹ Jörgen L. Pind, *Edgar Rubin and Psychology in Denmark: Figure and Ground* (New York: Springer, 2013).

⁴⁸⁰ Nick Knight, *Mao Zedong on Dialectical Materialism* (Armonk: M.E. Sharpe, 1990); Chenshan Tian, *Chinese Dialectics: From Yijing to Marxism* (Lanham: Lexington Books, 2005).

restore ontological autonomy to subjectivity, to blame pathologies of consciousness, and to focus more and more on revolutionizing thought and culture. This inverted Marx by remystifying the dialectic and tilting it back towards its idealist head.⁴⁸¹ When that too wore thin, the coercion undergirding the revolution lay bare.

The CCP experienced the world through binary projections. Like Rubin's vase, each of these pairs -- socialist/capitalist, revolutionary/reactionary, new/old, friend/enemy (there were countless) -- formed an antagonistic unity. It was in this spirit that the 1949 January Proposal on the takeover of Beijing's judicial system called for "widely disseminating explanations of the basic distinctions between the judicial policies of the people's democratic dictatorship state, which takes the worker-peasant alliance led by the proletarian class as its core, and the judicial policies of the Guomindang dictatorship, which safeguards the privileges of the imperialists, feudal landlords, compradors, warlords and bureaucrats."⁴⁸² Similarly, the central government's January 1950 *Instruction on Strengthening People's Judicial Work* directed, "in order to engage in the construction of people's judicial work, we must first clearly draw a dividing line between the principles of the new and old law," and a few months later Wang Ming devoted an epic speech at the First National Judicial Work Conference to doing just that.⁴⁸³

Sharpening such boundaries gave their opposing elements more definition, but made it harder for the mind to accommodate them simultaneously, or to visualize the space they mutually occupied at a higher order of perception that revealed something all together new and transcendent. For all of the talk of dialectics, it was easier simply to champion one element and suppress its partner in the name of harmony. Thus, while revolution could not exist independent of the abstract negative concept of reaction, in practice the former materialized only to the extent that it pushed the latter toward extinction. This debased dialecticism into a crude license to annihilate. As Peng Zhen, Beijing's mayor and the deputy director of the central government's Politics and Law Commission, put it during the 1952 Judicial Reform Campaign, "With respect to viewpoints about law, revolutionary and counterrevolutionary, people and anti-people, these are two opposing systems of thought. They cannot co-exist peacefully. If we do not criticize and eliminate the reactionary old law standpoints, they will inevitably erode us and take us captive. Consequently, the old law standpoints must be thoroughly eliminated."⁴⁸⁴

⁴⁸¹ Karl Marx, *Capital: A Critique of Political Economy*, vol. 1 (New York: Modern Library, 1906), 25.

⁴⁸² "Guanyu jieguan pingjin guomindang sifa jiguan de jianyi (January 21, 1949)".

⁴⁸³ "Zhongyang renmin zhengfu zhengwuyuan guanyu jiaqiang renmin sifa gongzuo de zhishi (November 3, 1950),"中央人民政府政务院关于加强人民司法工作的指示 in *Xingshi susong faxue cankao ziliao huibian (zhongce)* 刑事诉讼法学参考资料汇编 (中册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005), 651; Wang Ming, "Guanyu muqian sifa gongzuo de ji ge wenti (July 27, 1950)".

⁴⁸⁴ Peng Zhen 彭真, "Guanyu sifabumen de gaizao yu zhengdun wenti (June 24, 1952),"关于司法部门的改造与整顿问题 in *Lun xin zhongguo de zhengfa gongzuo* 论新中国的政法工作, (Beijing: Zhongyang wenxian chubanshe, 1992), 70-71.

Abrogation epitomized the monovalent yearnings of that worldview and augured poorly for the future. Thoughtful cadres understood that the policy of hastily deracinating the Nationalist legal system perverted the Party's own philosophical doctrines and the laws of history. Indeed, the hubris it expressed, the habit of ramming an *a priori* vision of the world on to a recalcitrant reality, and seeking to wipe out alterity as a vulgar shortcut to rising above it, fueled much of the revolution's sorrow in years to follow. The Party may have seen different vases at different times, but it insisted ferociously on the gestalt of a vase just the same, and swept the surrounding space clean lest that cherished vision destabilize.

The irony is that, in the negative spaces offset by the official revolution, a richer, subtler form of dialectics did in fact flourish. The preceding chapters have shown how the trajectories of the CCP's base area legal systems were inexorably pulled from the periphery of the Nationalist legal system towards its more massive center. Along the way, they assimilated and reconstituted information from it, feeding a cascading process of hysteretical learning, feedback, and adaptation manifested in legislation, institutions, personnel, vocabulary, and practices. Energy injected by wars, mass campaigns, Party rectification, and other phenomena further agitated their trajectories, and as that energy dissipated, they settled down towards new transient equilibriums.

1949 shook but did not break this pattern. In spite of the extinction of the Nationalist regime and the abrogation of its legal system, the PRC conserved information about the Republican past, not just through the people, bodies of knowledge, discourses, and institutions it inherited from the old regime, but also through the fraught endowment the CCP itself concurrently bore out of the base areas. What Dong Biwu said of former Nationalist judicial personnel applied to its own cadres, too. "Old things can even permeate every cell from head to toe. When a new environment arrives, people can't help but change a bit, but the old bad habits run too deep."⁴⁸⁵ Thus, heterodox, sublative dialectics continued to yield a gamut of emergent, co-evolving solutions that necessitated constant weeding lest they contaminate the fragile purity that gave coherence to the authorized revolution. In this sense, history weighed down upon the PRC and compromised it congenitally, forming an encumbrance that Mao in particular struggled to break free of in ever more daring and tragic ways. In the long run, this furnished a valuable reservoir of diversity from which his successors could draw as conditions changed. But in the nearer term, the human cost was immense, and that must be recognized. If the chapters that follow do not review the cruelties and atrocities carried out in the name of the revolution, it is not to diminish or refute their enormity, it is only because a substantial body of scholarship has covered that ground already and its basic claims are now widely known and well-established.⁴⁸⁶ With the aim of taking our

⁴⁸⁵ Dong Biwu, "Jiu sifa gongzuo renyuan de gaizao wenti (January 4, 1950)," 3.

⁴⁸⁶ Dikötter, *The Tragedy of Liberation: A History of the Chinese Revolution, 1945-1957*. Philip F. Williams and Yenna Wu, *The Great Wall of Confinement: The Chinese Prison Camp Through Contemporary Fiction and Reportage* (Berkeley: University of California, 2004). Richard L. Walker, *China Under Communism: The First Five Years* (New Haven: Yale University Press, 1955). Ping Hu, *The*

understanding of the early PRC in a different direction, I have devoted my energies in the chapters that remain to matters that have received far less attention. The time has come to sketch the emergence of the PRC judicial system, and let us start by diving into its center at the instant of creation.

Thought Remolding Campaign of the Chinese Communist Party-State, trans. Philip F. Williams and Yenna Wu (Amsterdam: Amsterdam University Press, 2012). 杨奎松, *中华人民共和国建国史研究*. Jisheng Yang, *Tombstone: The Great Chinese Famine, 1958-1962* (New York: Farrar, Straus and Giroux, 2012).

Chapter 4

The Anatomy of Regime Change: 1949 in Beijing's Courts

In 1948 Beijing, the former imperial capital and third most populous city in China, was descending into crisis.⁴⁸⁷ The economy was collapsing, political repression intensified and the Nationalist state's capacity to govern was crumbling. In the Fall, the tide of battle in the Chinese civil war shifted decisively as the People's Liberation Army (PLA) took Manchuria, and Nationalist control of North China shrank to garrisoned cities linked by thin corridors through a countryside dominated by the CCP. By mid-December, 900,000 PLA soldiers had converged around Beijing, where they paused to ready a final assault.

The attack never came. Earlier victories in Manchuria and the nearby city of Shimen (Shijiazhuang) had tarnished the Party's image with scenes of urban warfare, pillaging by PLA soldiers, mob violence and looting.⁴⁸⁸ Mindful of the price replaying those events in Beijing might exact in blood and legitimacy, Party leaders opted not to storm or lay siege to the city, but rather to orchestrate a peaceful surrender, one that would conserve military resources, preserve Beijing intact, entice other cities to yield and possibly hasten the collapse of the Nationalist regime. For weeks, the PLA squeezed Beijing while spies, emissaries and ordinary people crossed the battlefield. The city's CCP mayor-designate, General Ye Jianying, noted the stakes at hand:

Beijing is an ancient, cultural and international city. Foreign journalists reckon that the Communist Party will establish a people's capital in Beijing. Consequently, after we enter the city, the implementation of every policy, the views and actions of personnel and the speeches of leading cadres are all closely bound to what people will know about our Party. They take Beijing as a test of whether or not the Communist Party can rule the whole country, and whether or not it can administer cities, industry and commerce. Consequently, the good and bad points of our takeover of Beijing and the influence they produce are not questions isolated to certain cadres or to Beijing itself, but are connected to the impression (they give) to the entire world. It is a question of whether or not the Chinese people can under the leadership of the Communist Party govern themselves.⁴⁸⁹

⁴⁸⁷ Joseph Yick reports the mid-1948 population of Beijing as 1.72 million, and Tianjin as 1.78 million. Yick, *Making Urban Revolution in China: The CCP-GMD Struggle for Beijing-Tianjin 1945-1949*, 57, 69. For comparison, the Nationalist census bureau estimated Beijing's 1947 population to be 1,602,234. The population of Shanghai was given as 3,853,511 and Tianjin was 1,679,210. Glenn T. Trewartha, "Chinese Cities: Numbers and Distribution," *Annals of the Association of American Geographers* 41, no. 4 (1951): 347, n. 8.

⁴⁸⁸ Liu Songbin 刘宋斌, *Zhongguo gongchandang dui da chengshi de jieguan (1945-1952)* 中国共产党对大城市的接管 (1945-1952) (Beijing: Beijing tushuguan chubanshe, 1997), 10-11.

⁴⁸⁹ Ye Jianying 叶剑英, "Guanyu junjie guanhuide renwu, zuzhi jigou ji ruhe gongzuo de baogao yao dian (December 24, 1948)," 关于军接管会的任务, 组织机构及如何工作的报告要点 in *1948.12-1949: Beijing shi zhongyao wenxian xuanbian 1948.12-1949: 北京市重要文献选编*, ed. Beijing shi dang'anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang'an chubanshe, 2001), 31.

Inside the city an underground CCP apparatus of approximately 3,000 members, supplemented by several thousand more sympathizers, had infiltrated key civilian and military institutions. It was recruiting allies, delivering intelligence, conducting psychological operations to undermine the resolve of the city's Nationalist garrison, and arranging for the preservation of critical infrastructure, assets and documents. Disillusionment at the foundering Nationalist regime and resignation gripped many of the city's civil servants, and the CCP skillfully exploited fractional loyalties, personal political commitments, self-preservation and patriotism to turn some of them against the government they nominally served. The Nationalist general in charge of the city, Fu Zuoyi, had lost faith in the reliability of his overmatched troops and credible rumors of impending mutiny began to circulate. Members of his inner circle, including his personal secretary and daughter, were in fact active CCP informants. Lacking viable alternatives, General Fu essentially held Beijing and its inhabitants hostage while he bargained with the CCP over the terms of a peaceful handover.

Beijing's legal community shared in the anticipation and intrigue gripping the city. On university campuses, student agitation against the Nationalist government and Guomindang party intensified despite fierce repression. Law faculty defended arrested students, mixing jurisprudential arguments with the May Fourth rhetoric of their youth to demand freedom, constitutionalism and the rule of law.⁴⁹⁰ In mid-December, Tsinghua and Yenching Universities, located outside of the city walls, fell to the PLA, weeks before the city proper. At Yenching University, more than half of the student body answered the CCP's call to assist in the full liberation of the city. Some faculty fled south to Nationalist territory, but after years of economic hardship, disappointment and tyranny, many demonstrated a willingness to accommodate to the CCP and met promises of a New Democracy with varying degrees of wariness and hope.⁴⁹¹

Tension mounted within the city walls. At Chaoyang law school, a wave of arrests in August had forced many pro-communist staff and students to flee the city, and some were helping the CCP to take over nearby courts. Less fortunate classmates were thrown into a Nationalist military prison awaiting possible trial as counterrevolutionaries.⁴⁹² In a last-gasp bid to strike at suspected communists and their sympathizers, Nationalist authorities established a special criminal tribunal on the law school campus.⁴⁹³ Meanwhile Qian Duansheng, one of China's leading constitutional

⁴⁹⁰ *Bainian faxue Beijing daxue faxue yuan yuan shi (1904-2004)*, 199-203.

⁴⁹¹ Suzanne Pepper, *Civil War in China: The Political Struggle 1945-1949* (Berkeley: University of California Press, 1980), 427-429.

⁴⁹² *Zhongguo faxuejia fangtanlu*, 66.

⁴⁹³ Special Criminal Tribunals 特种刑事法庭 first appeared under the Guomindang in 1927 and underwent subsequent revisions. The 1948 regulations governing them, the notorious *Statute on the Organization of Special Criminal Tribunals* and *Statute on Trials in Special Criminal Tribunals*, provided extraordinary rules and procedures to punish suspected CCP members along with other political offenders and certain classes of serious conventional criminals. Under the regulations, defendants had no right to appeal and

scholars, rushed back to Beijing from teaching at Harvard and assumed leadership of Peking University's law school, where he sheltered pro-communist faculty and students from the secret police on behalf of the underground CCP. Months later, he wrote back to his friend John Fairbank to say "I sincerely admire the creators of the new order."⁴⁹⁴ Student activists guarded Wang Tieya, chairman of the university's political science department and later one of the PRC's most distinguished international lawyers, against Guomindang agents, and cajoled and compelled other faculty not to evacuate the city, sometimes against their better judgment. When the PLA entered Beijing, Wang joined the onlookers, later recalling "[w]e were very enthusiastic."⁴⁹⁵

Meticulous preparation went into the CCP takeover of Beijing's Nationalist judicial system.⁴⁹⁶ Inside the city, an underground Party branch reported on the morale, behavior, political attitudes and associations of court personnel, quietly promoted the CCP's United Front and intervened to protect endangered comrades. Aggressive surveillance led to the arrest of some members and the abrupt departure of others, but the branch grew to approximately thirteen people, augmented by sympathetic co-workers and an affiliated professional youth league.⁴⁹⁷ They paved the way for the CCP takeover by helping the Party to assess the reliability of legacy personnel, and by identifying embedded Guomindang loyalists and agents, who were swiftly detained by public security cadres and shipped to the nearby Qinghe prison camp after the city fell. Branch leaders sent letters to court workers warning them to begin life under the CCP on the right foot by preserving court buildings, archives, accounting registers and assets such as stockpiled rations, cash, vehicles and weapons for use by the incoming regime. The documents they produced and secured would later surface in attacks against former Nationalist personnel, litigants, criminal defendants, witnesses and informants. Judicial archives figured prominently, for example, in the 1950 Campaign to Suppress Counterrevolutionaries, including the trial and execution of former Nationalist special criminal tribunal president Hui Bihua, in the purge of the courts during the Three-Anti and Judicial Reform Campaigns, and in the savage denunciations of the Anti-Rightist Campaign and Cultural Revolution.

punishment was severe and swift. "Tezhong xingshi fating shenpan tiaoli (April 2, 1948)," 特種刑事法庭審判條例 *Faling zhoukan* 法令周刊 11, no. 17 (1948): 1; "Tezhong xingshi fating zuzhi tiaoli (April 2, 1948)," 特種刑事法庭組織條例 *Faling zhoukan* 法令周刊 11, no. 17 (1948): 1.

⁴⁹⁴ Letter from Qian to Fairbank dated March 9, 1949. This letter resurfaced in the attacks on Qian for being an American spy during the Anti-Rightist Campaign. Qian Duansheng 钱端升, "Wo de zuixing: Beijing zhengfa xueyuan yuanshang Qian Duansheng," 我的罪行: 北京政法学院院长钱端升 *Renmin ribao* 人民日报, August 6, 1957.

⁴⁹⁵ Ronald St. John MacDonald, "Introduction: Wang Tieya: Perservering in Adversity and Shaping the Future of Public International Law in China," in *Essays in Honor of Wang Tieya*, ed. Ronald St. John MacDonald, (Boston: Martinus Nijhoff Publishers, 1994), 11.

⁴⁹⁶ Liu Songbin, *Zhongguo gongchandang dui da chengshi de jieguan (1945-1952)*, 132-139.

⁴⁹⁷ Zheng was Party branch secretary, and Zhou was a branch committee member. They reported to Urban Work Department Student Committee member Shen Bo, and coordinated the activities of a professional youth league 职业青年联盟, one of many CCP front organizations operating in the city.

The CCP infiltration of Beijing's judiciary owed much to the efforts of Zheng Mengping and Zhou Lichuan. Zheng had briefly worked for the Beijing Local Court as an English translator after graduating in 1946 from the Western languages department of Yanjing University.⁴⁹⁸ Her father shared native place ties with the court president, Wu Yuheng, and the two men were distant relatives and had once been classmates. Zheng subsequently left Beijing, but after a thorough vetting by Liu Ren, chief of underground Party operations in the city, she was asked to resume connections with Judge Wu, who had agreed to assist the CCP and was already employing her cousin, an underground Party member, as an accountant.⁴⁹⁹ Zheng complied, and took a job in the clerk's office of the Hebei Provincial High Court, where she made contact with Zhou Lichuan, a law student and Party operative working in the court's library.⁵⁰⁰ In short order, they organized an underground Party branch in the judiciary and divided their labor; Zheng, trading on her relationship with Judge Wu, took charge of CCP intelligence, recruitment and organizational matters in the Local Court and Procuratorate, while Zhou performed similar duties at the Provincial High Court and Procuratorate, and its special criminal tribunal.

The Party branch was small and youthful, but it had well-placed friends. Judge Wu was a member of the banned China Democratic League, moved in left-leaning intellectual circles and was personally acquainted with top CCP cadres, including Dong Biwu, Ye Jianying and Xu Bing. In 1947, when General Ye and his CCP delegation were expelled from Beijing after peace talks with the Nationalists broke down, Wu gave them a farewell banquet at his home. In November 1948, as the Nationalist army suffered sharp reversals, Wu hosted a series of clandestine nighttime meetings at the court between CCP representatives and Liu Houtong, a venerable general, former instructor and close adviser to the city's Nationalist defender, Fu Zuoyi.⁵⁰¹ Liu soon joined the growing company of prominent citizens who pressed General Fu to concede the hopelessness of his situation, sue for peace and spare the city and its inhabitants ruin.

Judge Wu assisted the Party in myriad other ways. By recruiting court personnel to the China Democratic League, he brought them within the ambit of the underground CCP, harnessed their energies to the revolutionary cause and equipped some to remain

⁴⁹⁸ Zheng Mengping 郑孟平, "Wei jieguan jiu Beiping fayuan zuo zhunbei," 为接管旧北平法院做准备 in *Beijing de liming* 北京的黎明, (Beijing: Beijing chubanshe, 1988).

⁴⁹⁹ The cousin was Duan Changrong 段昌荣.

⁵⁰⁰ , Zhou Lichuan 周丽川, "Baxun laoren Zhou Lichuan jiangshu xin zhongguo fayuan," 八旬老人周丽川讲述新中国法院 *Renmin fayuan bao* 人民法院报, July 11, 2007, 8. From 1964 to 1978, Zhou Lichuan served as secretary 秘书 for vice president of the Supreme People's Court Zhang Zhirang 张志让, who was a graduate of Columbia University Law School and had been a prominent Republican-era law professor. The library collection he worked in at the Hebei Provincial High Court was comprised of volumes that had once been part of the Chaoyang law school library. The court took over the control of these volumes at the end of the war, and from there they entered the judicial organs of the early PRC.

⁵⁰¹ Zheng Mengping attended the talks and Zhou Lichuan served as lookout.

active in legal affairs after 1949 as veterans of the United Front.⁵⁰² He intervened in judicial cases to protect arrested communists from the death penalty, and audaciously sheltered one of the most important CCP operatives in the city, Shen Diqing, the hunted secretary of the underground student committee, in his living quarters at the court. Finally, after direct appeals from the CCP had failed, Wu personally rushed to the airport to persuade Deng Zhexi, president of the Hebei Provincial High Court, to abandon his escape to Nanjing and remain at his post. With Wu and Deng aiding the CCP cause, two of Beijing's three Nationalist courts were compromised before the city even fell. When the PLA formally paraded into Beijing on February 3, 1949, the combined staff of the Beijing Local Court and the Hebei Provincial High Court stood along the procession route clasping a long banner that read "Welcome Chinese People's Liberation Army" 欢迎中国人民解放军, making them perhaps the first state organs in the city to embrace the Party publicly.

Outside of Beijing, the Party had been rehearsing the takeover for weeks.⁵⁰³ On December 2, 1948, Xie Juezai, head of the NCPG's Judicial Department, and Chen Jinkun, president of the NCPG, convened a high-level CCP legislative working group meeting at Xibaipo with two main items on the agenda: first, summarizing progress on the drafting of a new constitution, and working out the theoretical details of the form of government and state that constitution would describe; and, second, ironing out controversies in the Party's legislative work, particularly on the question of criticizing the Nationalist Six Codes and the old law viewpoint. The meeting adjourned with a formal decision to begin preparations for the takeover of Nationalist judicial organs, and for the legislative work that would accompany the imminent conquest of the region's cities.⁵⁰⁴

In mid-December, as the PLA encroached on Beijing's outlying districts, the CCP Central Committee appointed Peng Zhen secretary of a new Municipal Party Committee and General Ye Jianying to serve concurrently as mayor and director of the city's occupation authority, the Military Control Commission. On December 24, the Military Control Commission announced four subordinate work units through which it would administer the city: a garrison command, a materials and goods 物资 takeover commission, a cultural takeover commission, and a municipal government, which had responsibility for the courts and public security bureau. They were guided by the "Two Fast, Two Slow" 两块两慢 policy, which envisioned rapid takeovers of the city's seats of economic and political power, but slower movement on cultural institutions and foreign interests.

⁵⁰² After the CCP took the city, a number of these individuals studied at the New Legal Science Graduate School 新法学研究院, about which more will be said below, and subject to background checks received work assignments in the legal system. During the early years of the PRC, members of the China Democratic League were well represented in the upper reaches of legal academia, the judiciary and the Ministry of Justice. As a token of the CCP's commitment to the United Front, the first president of the Supreme People's Court and the Minister of Justice were both long-time CDL members and had been prominent members of the Republican bar.

⁵⁰³ Liu Songbin, *Zhongguo gongchandang dui da chengshi de jieguan (1945-1952)*.

⁵⁰⁴ Chen Zhongyi, *Guowuyuan 24 buwei zujian shilu*, 54-55. Xie Juezai, *Xie Juezai riji*, 1271.

To train for the occupation, 2,800 CCP cadres assembled at a staging area in Liang township, twenty kilometers southwest of Beijing.⁵⁰⁵ They studied Party ideology, received mission assignments, analyzed intelligence, and digested a stream of fresh directives and speeches on matters ranging from monetary policy and the provision of consumer commodities to the management of public welfare, commercial enterprises, cultural institutions and state employees.⁵⁰⁶ Most were peasants and, to prepare them for Beijing and its urban social and cultural novelties, the Party issued handbooks with titles such as “Survey of Beijing,” “Investigation of Beijing,” and “Survey of Beijing’s Districts” containing information compiled from Beijing natives and underground Party members operating inside the city. The instruction also covered mundane topics like how to use electric light switches and modern toilets, and observe traffic rules.⁵⁰⁷

Starting in early January 1949, the Party directly addressed the fate of Beijing’s courts in a pair of documents that offer a glimpse into its ripening policy on abrogation weeks before the first general instruction on the subject actually appeared. The January 10 *Draft Decision of the CCP’s Beijing Municipal Party Committee on Several Specific Tasks after Entering the City* established the general principle that “[s]tate organs such as military administration organs, police, military police, courts, prisons, etc. shall be thoroughly smashed...”⁵⁰⁸ Then, on January 21, the Central Committee unfurled a blueprint for the takeover of the court system, an example of Party planning at its most thorough.

The *Proposal for the Takeover of Guomindang Judicial Organs in Beijing and Tianjin* advised that “[a]s the people liberate the cities, they must immediately and completely take over Guomindang judicial organs, establish the judicial organs of the New Democratic state, and carry out the tasks of suppressing counterrevolutionary

⁵⁰⁵ Xu Dongmei 许冬梅, “Jieguan Beiping ganbu zai liangxiang peixun jishi,” 接管北平干部在良乡培训记事 *Beijing dangshi* 北京党史 no. 4 (2007): 57-58; Wang Feng, Song Zhan 王峰 and 宋湛, “Beiping heping jieguan qian de zhunbei gongzuo,” 北平和平接管前的准备工作 *Beijing dangshi* 北京党史 no. 1 (2009): 48-50.

⁵⁰⁶ , Ye Jianying 叶剑英, “Beiping shi junshi guanzhi weiyuanhui chengli bugao (January 1, 1949),” 北平市军事管制委员会成立布告 in *1948.12-1949: Beijing shi zhongyao wenxian xuanbian* 1948.12-1949: 北京市重要文献选编, ed. Beijing shi dang’anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang’an chubanshe, 2001); Ye Jianying, and Xu Bing 叶剑英 and 徐冰, “Beiping shi renmin zhengfu chengli bugao (January 1, 1949),” 北平市人民政府成立布告 in *1948.12-1949: Beijing shi zhongyao wenxian xuanbian* 1948.12-1949: 北京市重要文献选编, ed. Beijing shi dang’anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang’an chubanshe, 2001); “Zhonggong Beiping shiwei guanyu ruchenghou jige juti gongzuo de jue ding (caoran) (January 10, 1949);” “Beiping shi junguanhui jieguan ren yuan gongzuo tiaoli ji jieguan jilü (January 22, 1949),” 北平市军管会接管人员工作条例及接管纪律 in *1948.12-1949: Beijing shi zhongyao wenxian xuanbian* 1948.12-1949: 北京市重要文献选编, ed. Beijing shi dang’anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang’an chubanshe, 2001).

⁵⁰⁷ Liu Songbin, *Zhongguo gongchandang dui da chengshi de jieguan (1945-1952)*, 94.

⁵⁰⁸ “Zhonggong Beiping shiwei guanyu ruchenghou jige juti gongzuo de jue ding (caoran) (January 10, 1949),” 78.

activities and safeguarding the interests of the people.”⁵⁰⁹ It listed the organs slated for takeover by name and included instructions to the municipal party committees of both cities on a host of related matters, including how to handle legacy personnel, archives, criminal suspects, buildings, equipment, books and property, and post-takeover priorities. Although execution of some of these details yielded to exigency, cadres faithfully followed the proposal in the main.

Specifically, it directed the Beijing Municipal Party Committee to establish a Judicial Organ Takeover Small Group under the city’s Military Control Commission, and to appoint a cadre drawn from the NCPG Judicial Department or People’s Court to lead it. Wang Feiran, deputy presiding judge of the NCPG, fit this requirement perfectly.⁵¹⁰ The group was to be staffed by ordinary cadres because “legal knowledge or judicial experience is by no means important.” Thus, on January 31, the day Beijing officially changed hands, Wang and 26 other CCP members formed a temporary Party branch in Liang township to direct and execute the takeover of the city’s judicial system.

The *Proposal* additionally required Nationalist judicial personnel, as applicable, not to destroy, remove or hide buildings, equipment, property, archives, books and other items in these final days. Nor were they to handle any criminal suspects without permission, presumably to protect CCP operatives and sympathizers in their custody. Within Beijing, Judge Wu and the underground Party branch led by Zheng Mengping and Zhou Lichuan mobilized to achieve those objectives. They also drafted an up-to-date roster and salary schedule for the local court that listed 388 total personnel, including 27 judges and tribunal presidents, and sixteen procurators.⁵¹¹ Upon entering

⁵⁰⁹ “Guanyu jieguan pingjin guomindang sifa jiguan de jianyi (January 21, 1949)”.

⁵¹⁰ Wang Feiran 王斐然 (1904-1994) was born in Fuping 阜平 county, Hebei province, and joined the CCP in 1924 at l'Université Franco-Chinoise 北京中法大学. In 1937, he began working in the legal system of the CCP’s Jinchaji base area and played a key role in drafting a number of its laws and decrees, and developing its distinctive approaches to mediation and correctional labor. He served as president of the Jinchaji Border Region High Court, and in 1949 was deputy presiding judge of the North China People’s Court when he was chosen to lead the takeover of the Beijing judicial system. From 1949-55 he served as president of the Beijing People’s Court, and from 1955-58 was president of the Beijing People’s High Court, before being denounced as a rightist, removed from the bench and sent to work in the Capital Library. In 1979 he was rehabilitated along with a number of other prominent legal figures from the 1950s, and played an important part in the reconstruction of the city’s legal system as deputy director of the Standing Committee of the Beijing Municipal People’s Congress, and vice president of the Beijing Law Society 北京市法学会.

⁵¹¹ This is three more people than the Beijing People’s High Court cites and I am unable to account for the discrepancy. *Hebei Beiping difang fayuan yuangong mingce* 河北北平地方法院员工名册. Hebei Beiping difang fayuan, jianchachu, diyi kanshousuo xianyou zhigong mingce ji xianzhi dixin shumu qingce yiji zuigao fayuan Beiping minxing shilin shiting guanyu yuangong shenghuo jidai weichi qing bofa weichifei gei shizhengfu de cheng (fuyuan gongxing mingce deng) 河北北平地方法院, 检查处, 第一看守所现有职工名册及现支底薪数目清册以及最高法院北平民刑事临时庭关于员工生活亟待维持请拨发维持费给市政府的呈(附员工姓名册等) (1949 February 1, 1949), BMA J009-002-00198; *Hebei Beiping difang fayuan jiancha chuyuan jingong mingce* 河北北平地方法院检察处员警工名册. Hebei Beiping difang fayuan, jianchachu, diyi kanshousuo xianyou zhigong mingce ji xianzhi dixin shumu qingce yiji zuigao fayuan Beiping minxing shilin shiting guanyu yuangong shenghuo jidai weichi qing bofa weichifei gei shizhengfu de cheng (fuyuan

the city, takeover cadres were to direct Nationalist personnel to inventory court holdings and surrender them item-by-item. They were also promptly to free comrades held in the various prisons, jails and other detention facilities scattered around the city, and invite them to select representatives to assist in judicial work, especially the clearing up of outstanding criminal cases. With respect to ordinary detainees, the proposal laid out the following guidelines: free minor criminals and persons detained in connection with civil matters after checking into the details of their cases, but hold and continue to take into custody suspects in major crimes, such as murder or robbery.

Finally, the *Proposal* listed four post-takeover tasks that redirected the evolution of Beijing's judicial system. First, new court presidents, judges, procurators, chief clerks and other leading cadres were to be appointed promptly. These personnel could be selected from among the communist party members and other revolutionaries freed from jail, the only requirement being that they had staunch political views and the ability to do the work. "Whether or not they have studied law is of no great concern." Second, former Nationalist judges, procurators, and chief clerks had to suspend their duties because they were all "full of counterrevolutionary and anti-people legal concepts" and served "to repress the revolutionary movement and punish and extort the laboring people." However, the *Proposal* promised that "if non-counterrevolutionary elements and non-malefactors among them desire to participate in the judicial work of the People's Democratic state, they must undergo ideological reform and reform their work style, and only then can they be employed subject to screening." Third, the Municipal Party Committee was to "proclaim that all Guomindang government laws are void, prohibit citation of any Guomindang law in any criminal case, and handle all court trials on the basis of orders promulgated by the Military Control Commission and policies of the People's Government." Fourth, the Military Control Commission was immediately to carry out propaganda to explain to former Nationalist personnel the differences between CCP and Guomindang judicial policies, and decide and announce simple and clear rules for judicial personnel, "so as to eliminate the age-old abuses of the old judicial organs and establish the work style of new judicial organs serving the people."

The *Proposal* expanded on a transfer of power agreement signed two days earlier between the CCP and Beijing's Nationalist garrison commander that freed the Party to shift from planning a military assault to a peaceful takeover. Both sides declared a ceasefire and undertook to establish a temporary Joint Office 联合办事处 to smooth transitional matters, such as the disposition of the 260,000 Nationalist troops encircled in the city, and the handover of municipal organs and their personnel.⁵¹² This

gongxing mingce deng) 河北北平地方法院, 检查处, 第一看守所现有职工名册及现支底薪数目清册以及最高法院北平民刑事临时庭关于员工生活亟待维持请拨发维持费给市政府的呈(附员工姓名册等) (1949 February 1, 1949), BMA J009-002-00198; Gaoji fayuan nianjian bianjibu 高级法院年鉴编辑部, "Beijing shi fayuan qianjin de guiji (1)," 北京市法院前进的轨迹(1)

<http://bjgy.chinacourt.org/article/detail/2002/11/id/817394.shtml> (accessed June 25, 2014).

⁵¹² "Guanyu Beiping heping jieju wenti de xieyishu (January 19, 1949),"关于北平和平解决问题的协议书 in 1948.12-1949: *Beijing shi zhongyao wenxian xuanbian* 1948.12-1949: 北京市重要文献选编, ed. Beijing

arrangement, both face-saving and practical, minimized disruptions to civic order and the provision of essential services, co-opted much of the remaining Nationalist administrative structure, temporarily sidestepped the technical and educational shortcomings of the Party's occupation cadres, and permitted the Party to enter Beijing with a far lighter footprint than it had originally contemplated. Instead of flooding the city with soldiers and cadres at the outset, the CCP executed its takeover and administration phases sequentially, first by securing the city, next by sending in small teams to assess needs, assert authority over critical municipal institutions and enterprises and ensure their continued operation by legacy staff, and finally by methodically building up and training its own personnel to take granular control of the city.

Thus, when Beijing formally changed hands on January 31, a small number of PLA representatives accompanied by Nationalist liaisons entered the city. Over the next few days, companies of troops secured sites in Zhongnanhai and the former German, Italian, and Japanese embassies for the Municipal Party Committee, Military Control Commission, and other key organs of the Party and incoming state, hunted for armed resistance cells, and confirmed that Nationalist defense and military police units had in fact laid down their weapons. On February 3, PLA units paraded into Beijing and, two days after that, occupation cadres boarded trains or trucks and began moving from Liang township into the city. During the first three weeks of the occupation, cadres formally took over more than 700 institutions comprising around 100,000 staff, frequently with no more than a token presence.⁵¹³

The judicial system fit that pattern. On the evening of February 5, a small advance team of eight cadres led by Wang Feiran arrived at 72 Ministry of Justice Street, home of the Beijing Local Court and Hebei Provincial High Court. The following day, Wang convened a general meeting where he proclaimed to approximately one thousand staff drawn from the city's nine judicial organs: "From this day forth, use of the seals of Beijing's various Guomindang courts shall cease. Personnel from the old courts are dismissed without exception. Prepare the procedures to conduct the

shi dang'anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang'an chubanshe, 2001).

⁵¹³ "Beiping shi renmin zhengfu jieguan gongzuo zongjie (May 1, 1949),"北平市人民政府接管工作总结 in *1948.12-1949: Beijing shi zhongyao wenxian xuanbian* 1948.12-1949: 北京市重要文献选编, ed. Beijing shi dang'anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang'an chubanshe, 2001). Ye Jianying 叶剑英, "Guanyu Beiping shi jieguan gongzuo de chubu zongjie (March 1, 1949),"关于北平市接管工作的初步总结 in *1948.12-1949: Beijing shi zhongyao wenxian xuanbian* 1948.12-1949: 北京市重要文献选编, ed. Beijing shi dang'anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang'an chubanshe, 2001).

handover.”⁵¹⁴ With that, the courts, procuratorates and prisons of Nationalist Beijing passed into CCP hands.⁵¹⁵

Formally, Wang’s group had jurisdiction over only municipal level judicial organs. The North China Judicial Department and People’s Court took over organs at the provincial level and above. But in reality, the shortage of cadres and the enormity of their responsibilities compelled close coordination. After establishing an initial presence across multiple sites, they focused first on the local and provincial high courts and attached procuratorates and jails, then moved to the provisional Beijing branch of the Supreme Court, and concluded with the prisons. The major exception to this plan concerned the famed Number One prison, to which Wang dispatched a handful of cadres by car on or about February 1 in order to identify and free detained Party members. That was how this monument to Republican legal reform passed improbably into CCP hands.⁵¹⁶

Relying on official statements, most accounts suggest that the local court was closed to the outside world in the weeks immediately after its takeover. But Zhang Sizhi recalls differently, and the court’s own internal statistics support him.⁵¹⁷ In the six weeks before it formally reopened to the public as the Beijing Municipal People’s Court (BMPC), it received 455 new cases, closing 222 of them.⁵¹⁸ Moreover, an inquiries office, born of the mandate to serve the people, opened to resolve disputes and assist the public with other minor matters on a walk-in basis. Major criminal cases that demanded immediate attention were handled by Wang’s subordinates, He Zhanjun and Zhang Shuding.⁵¹⁹ Boosted by reinforcements, the total number of personnel participating in the initial takeover rose rapidly to 52.⁵²⁰

⁵¹⁴ Wang Zhiyu 王志宇, “Jieguan guomindang difang fayuan chengli Beijing shi renmin fayuan,” 接管国民党地方法院成立北京市人民法院 *Fayuan ribao 法院日报*, 2007 July 17, 2007. “自即日起, 国民党北平各法院的印章停止使用, 旧法院人员一律解职, 准备办理移交手续。”

⁵¹⁵ Officially, the nine organs were: the Beijing Local Court and Procuratorate; the Hebei Provincial High Court and Procuratorate; the Beijing Provisional Civil and Criminal Tribunals of the (National) Supreme Court, its Procuratorate and Jail; and the Number 1 & 2 Prisons. A number of other, related organs were taken over as well, such as the jail of the Beijing Local Court, the Beijing Special Criminal Tribunal, and the Beijing Reformatory. Liu Songbin, *Zhongguo gongchandang dui da chengshi de jieguan (1945-1952)*, 134, 137.

⁵¹⁶ They were He Zhanjun 贺战军, Li Geng 李更, Zhang Shuding 张书鼎, Jia Lanjun 贾兰俊, Ma Ying 马英 and Wang Chongzhong 王充中. The North China Judicial Department participated, including cadres Wang Naihui 王乃惠 and Wang Dingguo 王定国, and it assumed responsibility for the prison.

⁵¹⁷ Zhang Sizhi, “Guaidan moming faguan lu”.

⁵¹⁸ Beiping shi renmin zhengfu tiaocha yanjiushi 北平市人民政府调查研究室. *Tongji ziliao sifa bufen yijiusijiunian qiye* 统计资料司法部份-一九四九年七月. *Tongji ziliao (renkou, caizheng shuishou, sifa bufen)* 统计资料(人口, 财政税收, 司法部分) (1949), BMA 002-020-00945.

⁵¹⁹ He Zhanjun 贺战军 had been a colleague of Wang’s at the North China People’s Court, and was named president of the Beijing Intermediate People’s Court on February 11, 1955.

⁵²⁰ Wang Feiran 王斐然, “Beiping shi fayuan jieshou gongzuo chubu zongjie (April 8, 1949),” 北平市法院接受工作初步总结 in *1948.12-1949: Beijing shi zhongyao wenxian xuanbian* 1948.12-1949: 北京市重要文献

Fan Ping and Zhang Sizhi were among the new arrivals. Both had been students at Chaoyang law school and had fled Beijing in late 1948 to avoid arrest by Nationalist authorities.⁵²¹ When the city fell, they were assisting the CCP takeover of the local Nationalist court in nearby Baoding, but soon found themselves among a group of students dispatched to Beijing. They gave special attention to the Beijing Local Court's archives, especially the files and documents relating to open cases, or closed cases in which judgments had not yet been executed, personnel, accounting, and general affairs files, and the library. The courts of Beijing and Tianjin had an astounding 11,578 unresolved civil and criminal cases on the books when the Party took control of them. At the BMPC, the CCP took possession of 250 cabinets worth of files and more than 10,000 volumes. As per the January *Proposal*, the most recent case files were checked in detail, categorized, sealed and organized in cabinets to facilitate later examination.

During the closure, Fan recalls a daily stream of people coming to the court's inquiries office for advice and help with problems, including one postal worker in his thirties accompanied by his wife, both of whom, in spite of acting amiably towards one another, could not be dissuaded from seeking divorce. As he tells the story, the problem was that the court had not yet reopened, and had no official seal or established procedures. Fan ultimately had them sign their names to an improvised divorce decree, sought approval from Wang Feiran, and by his own signature granted the divorce. The couple celebrated by going out to eat and having one last portrait taken together before warmly splitting up. Fan confesses to not being clear at the time if the divorce had any legal validity whatsoever.⁵²²

On March 18, 1949, the CCP officially disbanded Beijing's Nationalist courts in an emotionally charged ceremony on the tennis court grounds behind 72 Ministry of Justice Street. Witnesses provide somewhat conflicting accounts. The first recalls that Deng Zhexi represented the former Hebei Provincial High Court and Procuratorate, as well as the city's Local Court and Procuratorate. Deng bowed deeply, and approached the dais with the official seals of the courts clasped tightly in both hands. He handed the seals to Wang, who bowed deeply, and then placed them on a table, after which workers from

选编, ed. Beijing shi dang'anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang'an chubanshe, 2001), 366.

⁵²¹ Fan Ping 范平 left the court in May, 1949 to work in the personnel bureau of the Beijing Municipal People's Government. He spent a career rising to the top of various Beijing and National level administrative and academic organizations focused on party-building 党建 and is a prominent, elder Party intellectual. Zhang Sizhi 张思之 became a model judge in the BMPC, a guiding hand in the abortive re-establishment of the Chinese bar in 1956 and its more successful re-emergence in the late 1970s, and most recently a vocal critic of the government's tight controls on the legal profession. He is perhaps most famous for his role as one of the defense counsels assigned to Jiang Qing, Mao's widow, in the Gang of Four trial.

⁵²² Fan Ping 范平, "Jieguan jiu Beiping fayuan de yiduan huiyi,"接管旧北平法院的一段回忆 in *Beijing de liming* 北京的黎明, (Beijing: Beijing chubanshe, 1988), 156-157.

the Military Control Commission smashed them loudly with hammers.⁵²³ The second account places Wang and Wu Yuheng, president of the Nationalist Beijing Local Court, at opposite ends of the dais facing one another, and describes the destruction of the seals by acid. As Judge Wu watched the acid eat away at the seal of the former Beijing Local Court, his face reportedly flushed, full of emotion and thought.⁵²⁴ The destruction of the seals was a foreboding act of symbolic violence against the old judicial system and, on that day, the BMPC opened for business, with Wang Feiran its first president.⁵²⁵

Building a New Court

Terminating the Nationalist legal system was deceptively straightforward, but it was immediately evident that policymakers were far richer in polemics than in the concrete laws and resources the city's new courts actually needed to operate. Having taken ownership of the municipal judicial system, Wang Feiran and his team faced the challenge of restarting normal operations, deciding the individual fates of the hundreds of former Nationalist personnel who remained on staff, and replacing them as needed with new cadres and an institutional structure able to meet both the basic functions required of courts and the political dictates of the Party. The Party had never before attempted to graft its ideology and rural legal traditions onto a metropolitan landscape like Beijing's. Nor had it appreciated how the possibilities opened up by its capture of the Republican state would stir the deferred aspirations of the legal reformers within and among its ranks. It was, in short, entering new territory.

Legacy Personnel

Once the initial administrative tasks related to the court takeover, such as inventorying archives and materiel, and checking registers and accounts were substantially completed, personnel matters moved to the fore. Across the city, occupation units struggled with an acute shortage of cadres, especially ones with the educational backgrounds necessary to keep the administrative and clerical machinery of government running, and the training to supervise or perform skilled tasks. Although Wang Feiran had officially dismissed the employees of Beijing's former Nationalist courts on February 6, many of them continued to report to work in the weeks that followed because they needed the income, the Party relied on the continuity they provided, and no one else was available to take over their jobs. Some former

⁵²³ Liang Jinkui 梁金奎, "Cong jiu fayuan dao zuigao renmin fayuan de zhuanzhe," 从旧法院到最高人民法院的转折 *Renmin fayuan bao 人民法院报*, 2009 October 10. He Fan 何帆, "1949: zhanxin de fazhi shidai pengran kaiqi," 1949: 崭新的法制时代砰然开启 *Henan fazhi bao 河南法制报*, May 12 2014.

⁵²⁴ Fan Ping, "Jieguan jiu Beiping fayuan de yiduan huiyi," 157.

⁵²⁵ *Fengling renming Wang Feiran wei Beiping shi renmin fayuan yuanzhang* 奉令任命王斐然为北平市人民法院院长. *Fengling renming Wang Feiran wei Beiping shi renmin fayuan yuanzhang* 奉令任命王斐然为北平市人民法院院长 (March 16, 1949), BMA 002-020-01267.

Nationalist judges even carried on deciding cases with CCP cadres shadowing them to observe, supervise and, when necessary, intervene. Going forward, the prospects of legacy court personnel would hinge on factors such as their occupational rank, education or skills, class background, associational ties, political views, and personal history, including service to the CCP or the Guomindang.

Recall that in January, before the city fell, its incoming Municipal Party Committee dangled before Nationalist judges, procurators, and clerks an offer of possible future participation in the court system. In March, however, the Central Committee modified that offer and upbraided Beijing authorities for their leniency. Unfazed by actual conditions on the ground, it defiantly proclaimed, “we do not depend on them to carry out their work, still less do we depend on their former organs. You must throw them into upheaval, not to do so would be a mistake.”⁵²⁶ It advised giving them political training, and sending a portion of them to attend the six-month courses offered by the new cadre schools at People’s Revolutionary University, North China University, or North China Military and Political University. For older or highly qualified staff, only training courses specially established by the North China or Beijing Municipal People’s Governments would do.

Under this new policy, no former Nationalist judges or procurators were to return to their former places of employment after graduation, except when necessary. They were to be assigned jobs in other, unrelated work units or locales, or sent to participate in the Party’s advance into southern China 南下. Those awaiting employment were to receive a living allowance. Older personnel who chose to retire rather than serve the new government were to receive a severance amounting to one to two months of pay. Exceptionally senior or high-level functionaries with skills for whom a suitable position was not available and retirement was inappropriate could be assigned temporary jobs or given positions in research associations. By contrast, lower level judicial personnel selected for retention were not to be paid money wages, but put on the public supply system 供给制 like the Party’s own cadres, which provided for their needs with rationed provisions of basic commodities.⁵²⁷ The Central Committee instructed Beijing authorities not to threaten legacy personnel who expressed opposition or dissatisfaction with this treatment, but instead to encourage them to reform their thinking and work style, to serve the people, and to strive to get them to work for the government. A

⁵²⁶ “Zhonggong Beiping shiwei guanyu jiu ren yuan chuli yuanze xiang zhongyang, Huabeiju de qingshi baogao (zhongyang pishi) (March 3, 1949),”中共北平市委关于旧人员处理原则向中央,华北局的请示报告(中央批示) in *1948.12-1949: Beijing shi zhongyao wenxian xuanbian 1948.12-1949: 北京市重要文献选编*, ed. Beijing shi dang’anguan, and *Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室*, (Beijing: Zhongguo dang’an chubanshe, 2001), 220.

⁵²⁷ As a rule, high-level personnel included court presidents, tribunal presidents, judges, chief procurators, procurators, and prison wardens. Middle and lower level functionaries included student trial officers, clerks, student clerks, reporters, bailiffs, judicial police and workers. Cai Cheng, *Dangdai zhongguo de sifa xingzheng gongzuo*, 18.

Personnel Committee 人事处理委员会 within the municipal Joint Office translated these directives into city policy.

[C]ourt judges and procurators, etc. are in principle not to be held-over and must undergo long-term reform (appropriate placements can be found for a few high-level individuals who may serve as models, so that their example may win over Guomindang organs). The vast numbers of middle and lower level functionaries should undergo specific scrutiny and be decided upon separately. Major special agents among them should be transferred to the public security bureau for questioning and confirmation through investigation. Ordinary special agents or functionaries of the [Guomindang] party and other [Guomindang] organizations should be discharged and registered pending disposition. Corrupt elements should be discharged, with major cases sent to the court for investigation and disposition. Those aged and in failing health, incompetent and ideologically obstinate, and with degenerate lifestyles should be dismissed without severance pay, and forced into retirement. The rest should be differentially held-over, and receive short-term training in their departments or be sent to the three North China universities (Huabei University, People's Revolutionary University, North China Military and Political University) to study...⁵²⁸

Wang Feiran led the personnel group at the BMPC himself. His deputy director was the leader of the court's underground Party branch, Zheng Mengping and, joined by other branch members with personal knowledge of their former Nationalist colleagues, and by recently arrived cadres, the group addressed legacy personnel collectively, and then interviewed them one by one to get to know them, develop their background histories and comprehensively vet them. Consistent with Party practices elsewhere, the process entailed lengthy biographical essays, confessions, and self-criticisms.

The screening process produced dramatic turnover. According to its own figures, the BMPC inherited around 385 personnel from the Nationalist local court, and by April 1 only 137 of them remained on staff, all on a probationary basis.⁵²⁹ Factoring in the attached jail, the new court had 274 total employees, of which 156 were Nationalist holdovers. At 57 percent, their share was exactly in line with the average across all of the municipal government's work units at that particular moment.⁵³⁰ By mid-August, transfers from other Party organs had displaced some of the holdovers, and their number dropped to 82.⁵³¹

Most held-over personnel at the BMPC were assigned mid- to low-level jobs in the secretariats of the court and its jail. Higher office (section chief 科服长 or above) was generally reserved for base area or urban underground Party cadres, preferably

⁵²⁸ "Beiping shi jinguanhui jieguan gongzuo gaikuang (April 1949),"北平市军管会接管工作概况 in *1948.12-1949: Beijing shi zhongyao wenxian xuanbian* 1948.12-1949: 北京市重要文献选编, ed. Beijing shi dang'anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang'an chubanshe, 2001), 478.

⁵²⁹ Gaoji fayuan nianjian bianjibu, "Beijing shi fayuan qianjin de gui'ji (1)".

⁵³⁰ "Beiping shi renmin zhengfu ji suo zhu ge danwei jieguan ji liuyong renyuan baifenbi," 北平市人民政府及所属各单位接管及留用人员百分比 *Beiping shi zhengbao* 北平市政报 1, no. 1 (1949): 70.

⁵³¹ *Shiyong liuyong renyuan dengjibiao, shi renmin fayuan (August 15, 1949)* 试用留用人员登记表, 市人民法院. Shi renmin fayuan, mishuchu, waiqiao shiwuchu guanyu gongzuo renyuan renmian de qingshi ji shizhengfu de pishi 市人民法院, 秘书处, 外侨事务处关于工作人员任免的请示及市政府的批示 (1949), BMA 123-001-00033.

with legal experience. Select holdovers, including former judges from the Nationalist local courts in Beijing, Tianjin, and Baoding, and the Hebei Provincial High Court, were appointed as alternate judges 代理审判员, which authorized them once more to try cases. The majority of holdovers did not pass muster and wore labels such as “judge on the sham local court,” which guaranteed a transfer or substantial demotion, and a ceiling on advancement.

Personnel dossiers recorded background histories, and tracked abilities and progress at thought reform, with notations for items like past service to the Party and attendance at Party-run administrative cadre courses. They also included frank thumbnail assessments such as “works hard, but organizational ability is lacking,” “writing ability is good,” “passive when doing things,” “too individualistic,” “thinks too highly of himself,” “cannot connect with the masses,” and “has not sufficiently eliminated the old law standpoint.”⁵³² All in all, a review of these files suggest that through 1949 the BMPC observed the strictures of Party policy on legacy personnel tempered by pragmatism and at least some faith in the redemptive power of reeducation.

Beijing’s other former Nationalist courts joined the housecleaning. Wang Yuechen, director of the NCPG Judicial Department’s secretariat, and a future deputy minister of justice, led the personnel review at the Hebei Provincial High Court, assisted by Wang Ruqi and Jia Qian, presiding judge of the North China People’s Court. In April, when the review was complete, the NCPC took on 64 of the former court’s legacy personnel. However, events transpired differently at the Provisional Civil and Criminal Tribunals of the Supreme Court, the smallest of the city’s three Nationalist courts. Wang Feiran promptly dissolved this court and offered most of its 29 personnel, of whom six were judges, the option of retirement, or job assignments elsewhere after study. “To preserve the livelihoods of Provisional Tribunal staff during the takeover” and no doubt to ease their cooperation, Wang successfully petitioned the Municipal People’s Government for emergency funds to pay them two weeks worth of salaries.⁵³³

In June, the Beijing Military Control Commission pronounced the city’s takeover complete.⁵³⁴ Cadres had vetted a total of 39,135 legacy Nationalist personnel, of which

⁵³² Ibid.; *Ganbu qingwei mingce, shi renmin fayuan (August 19, 1949)* 干部请委名册, 市人民法院. Shi renmin fayuan, mishuchu, waiqiao shiwuchu guanyu gongzuo renyuan renmian de qingshi ji shizhengfu de pishi 市人民法院, 秘书处, 外侨事务处关于工作人员任免的请示及市政府的批示 (1949), BMA 123-001-00033.

⁵³³ Wang Feiran, and Yang Shoucen 王斐然 and 杨寿岑. *Wei zuigao fayuan Beipingmin xingshi linshi ting yuangong shenghuo jidai weichi lihe zaoju mingce qing zhunyu bofa weichifei you (February 10, 1949)* 为最高法院北平民刑事临时庭员工生活亟待维持合理造具名册请准予拨发维持费由. Hebei Beiping difang fayuan, jianchachu, diyi kanshousuo xianyou zhigong mingce ji xianzhi dixin shumu qingce yiji zuigao fayuan Beiping minxing shilin shiting guanyu yuangong shenghuo jidai weichi qing bofa weichifei gei shizhengfu de cheng (fuyuan gongxing mingce deng) 河北北平地方法院, 检查处, 第一看守所现有职工名册及现支底薪数目清册以及最高法院北平民刑事临时庭关于员工生活亟待维持请拨发维持费给市政府的呈 (附员工姓名册等) (1949), BMA J009-002-00198.

⁵³⁴ “Beiping shi renmin zhengfu jieguan gongzuo zongjie (May 1, 1949),” Ye Jianying, “Guanyu Beiping shi jieguan gongzuo de chubu zongjie (March 1, 1949)”.

30,570, or 78.9 percent, were cleared to serve the new government in at least some capacity, though often not in their former jobs or workplaces. Of these, 80 percent had been sent for ideological training or study, or to participate in groups being organized to follow the PLA's conquest and occupation of southern China. 4,395 personnel, or 11.3 percent, were given severance. Only 889 were dismissed outright.⁵³⁵ The remaining 3,281 are not accounted for, nor are figures provided for persons detained on suspicion of counterrevolution or criminality. In its detailed summary report, which informed personnel reviews in cities further south, the commission warned against two extremes: the leftist tendency to regard all, or nearly all, of them as unusable and unreformable; and the rightist tendency to treat genuine reactionaries lightly and overlook their faults. Still, on balance it argued perhaps too optimistically that most legacy personnel had genuinely embraced ideological reform and shown rapid, real progress.

Several months later, Dong Biwu authored the definitive statement on "The Question of Reforming Old Judicial Personnel," which concluded with the observation that "reforming intellectuals was difficult and painful, but necessary and possible."⁵³⁶ The North China Judicial Department, led by Xie Juezai, tended to agree.⁵³⁷ Summarizing the status of legacy Nationalist judicial personnel across the region's cities, it reported in October 1949 that higher-level judicial personnel possessed deep-seated reactionary thoughts, which required reforming their whole outlook on life – hardly surprising from the CCP's point of view given Guomindang efforts to partyize the judiciary, the social background of Nationalist judges and procurators, the process by which they were selected and trained, and the nature and sources of Republican law. But the Judicial Department took a more sanguine view on mid- or lower-level staff, believing that few had been engaged in political activities, and that their principal weakness was one of viewpoint: they did no more than they were paid for, worked simply to put food on the table, and had no sense of serving the people. It proclaimed that after this group completed its studies their spirits were high and not a single political reactionary had been discovered among them.

"Study" could entail different things, but at a minimum it aimed to transform the subjectivities and work styles of its participants. Some organs sent new recruits and select legacy staff to off-site cadre training courses, which sprang up all over Beijing and the North China region. Rather than burnish technical or vocational skills, these courses focused almost exclusively on political and ideological content, and their graduates tended to fill entry-level jobs, or jobs that required a high level of education,

⁵³⁵ "Beiping shi junguanhui ge da danwei chuli yuan guomindang jiguan renyuan de gongzuo zongjie (June 1949),"北平市军管会各大单位处理原国民党机关人员的工作总结 in *1948.12-1949: Beijing shi zhongyao wenxian xuanbian 1948.12-1949: 北京市重要文献选编*, ed. Beijing shi dang'anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang'an chubanshe, 2001), 575.

⁵³⁶ Dong Biwu, "Jiu sifa gongzuo renyuan de gaizao wenti (January 4, 1950)," 35.

⁵³⁷ "Huabei renmin zhengfu sifabu gongzuo baogao (October 1949)," 631.

experience or skill. For instance, by late May, the BMPC had assigned 28 such graduates to its Record-Keeping, Documents, and Receiving and Dispatch 收发 units.

The NCPG and Beijing city governments both opened training courses of this sort. At the Municipal Administrative Cadre School, each thirteen-week session covered historical materialism, Party history, class struggle, socialist internationalism, and current events as interpreted by the Party, with the goals of unifying theory and practice, and using Marxism and ideological education to define a revolutionary outlook on life.⁵³⁸ The first two sessions began successively in May and September, and cumulatively trained 782 students. Most graduates went to the tax bureau, bureau of education, newspapers, trade offices and other government departments. But at least 35 personnel went to the BMPC after graduation.⁵³⁹

More commonly, municipal institutions re-educated held-over personnel on-site, which in theory preserved immediate access to their knowledge and labor. But because of ambiguities in Party policy and unease over how to use these personnel, many of those without pre-existing ties to the CCP were sidelined during their studies and prevented from contributing to their full potential. At the BMPC, for instance, students read and discussed Party policy and ideological documents in small, supervised groups, and heard lectures from senior Party cadres on topics such as the people's democratic dictatorship and law's subservience to politics.⁵⁴⁰

The North China People's Court ran an unusually organized on-site Administrative Personnel Training Course with a curriculum comparable to the Municipal Administrative Cadre School's. Approximately 200 legacy personnel from the former Hebei Provincial High Court attended between June 14 and August 26, including the court president, chief procurator, judges, clerks, copyists and other administrative and adjudicatory staff. Students were organized into nine groups according to their backgrounds.⁵⁴¹ They participated in collective extra-curricular activities every week, heard lectures from top CCP legal cadres, and watched Soviet films that depicted the bright, modern, socialist future ahead. At the conclusion of the course, each participant

⁵³⁸ "Beiping shi renmin zhengfu ganbu xuexiao jiaoyu jihua yu juti shishi caoan," 北平市人民政府干部学校-教育计划与具体实施草案 *Beijing shi zhengbao* 北京市政报 no. 3 (1949): 14-17; "Ye shichang zai xingzheng ganbu xuexiao kaixue dianli jianghua," 叶市长在行政干部学校开学典礼讲话 *Beijing shi zhengbao* 北京市政报 1, no. 2 (1949): 4-7. For a description of the fourth session's students, course content and pedagogical methods, see: "Beijing shi renmin zhengfu xingzheng ganbu xuexiao disi qi jiaoyu jihua shishi fang'an," 北京市人民政府行政干部学校第四期教育计划实施方案 *Beijing shi zhengbao* 北京市政报 2, no. 5 (1950): 41-44.

⁵³⁹ Gu Hong, and Jin Jirong 顾红 and 靳继荣, "Beiping heping jiefanghou dui jiu zhengfu liuyong renyuan de jiaoyu gaizao he anzhi," 北平和平解放后对旧政府留用人员的教育改造和安置 *Beijing dangshi* 北京党史 no. 1 (2006): 45-46.

⁵⁴⁰ Wang Feiran 王斐然, "Beijing shi renmin fayuan Wang Feiran yuanzhang dui jiu sifa renyuan jianghua jieli," 北京市人民法院王斐然院长对旧司法人员讲话节录 in *Feichu weifa tong jianshe xin fazhi* 废除伪法统建设新法制, 司法业务参考材料 (第二辑) (Beijing: Zhongguo zhengfa daxue jiaowuchu, 1949). Xie Juezai, *Xie Juezai riji*, 1292.

⁵⁴¹ Liang Jinkui, "Cong jiu fayuan dao zuigao renmin fayuan de zhuanzhe".

wrote a lengthy and searching autobiography that was used to judge their ideological progress and facilitate further investigation of their background and associates. Sometimes multiple drafts were necessary before course instructors judged the tone and content sufficient. During the political campaigns that swept China over the next twenty-five years, many of these would come back to haunt their authors and the people they named.

Discipline was strict. Students were not issued court IDs and instead wore white badges on their chests that differentiated them clearly from the CCP cadres who had displaced them. The white badge indicated that they were former Nationalist personnel, authorized them to enter the compound, and marked them for supervision from the masses out on the street. Among those who passed the course and its background checks, 69 mostly younger, lower-ranking personnel were retained to work at the North China People's Court.⁵⁴² In October, when the NCPC closed to make way for the Supreme People's Court of the PRC, this contingent accounted for 31 percent of its total headcount.⁵⁴³ The remaining graduates of the training course were dispersed among other government organs, mostly in the cultural or educational spheres, or retired and given severance, and in this way the former Nationalist Hebei Provincial High Court faded into history.

The Party made special provision for influential figures whose submission could confer prestige on the new regime and defuse resistance to it, especially resistance from among the lower ranks of skilled personnel needed to keep the machinery of the state and economy afloat.⁵⁴⁴ The fates of the city's Nationalist court presidents illustrate well how the CCP artfully modulated emoluments, appointments, and labels to reward, coopt, and punish.⁵⁴⁵ For example, former local court president Wu Yuheng made an atypically advantageous transition to the PRC, owing to his vigorous underground support for the CCP. He remained prominent in legal and political affairs until his death in 1963, serving as a full member of the national government's Legal Affairs Committee and Supreme People's Court Committee, a delegate to the National People's Congress and member of its bills committee, and deputy director of the Beijing branch of the China Democratic League, one of the fettered alternate political parties tolerated by the CCP.

⁵⁴² Ibid.

⁵⁴³ "Huabei renmin fayuan gongzuo baogao (October 1949),"华北人民法院工作报告 in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编 (上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005), 633.

⁵⁴⁴ "Zhongyang guanyu dui fanyou sizui de fangeming fenzi ying dabu caiqu panchu sixing huanqi zhixing zhengce de jue ding (May 8, 1951),"中央关于对犯有死罪的反革命分子应大部采取判处死刑缓期执行政策的决定 in *Jianguo yilai Mao Zedong wengao: yijiuwuyi nian yi yue yijiuwuyi nian shier yue* 建国以来毛泽东文稿: 一九五一年一月-一九五一年十二月, (Beijing: Zhongyang wenxian chubanshe, 1988); Eddy U, "Dangerous Privilege: The United Front Campaign and the Rectification Campaign of the Early Mao Years," *The China Journal* no. 68 (2012): 32-57.

⁵⁴⁵ U, "Dangerous Privilege: The United Front Campaign and the Rectification Campaign of the Early Mao Years".

Deng Zhexi, former president of the Hebei Provincial High Court, also enjoyed favor. As befit his age, status, and service to the underground Party, he was appointed director of the general-affairs department of the Institute of Socialism, was elected several times to the CPPCC, held national and municipal leadership positions in the Revolutionary Committee of the Guomindang, another satellite political party, and became a member of the China Political Science and Law Association. By contrast, Yang Shoucen, president of the city's provisional branch of the Supreme Court, had an unpleasant passage into the PRC. He was the only Nationalist court president in Beijing who had not gone over to the CCP before the city fell. Moreover, in 1938, as a judge on the criminal tribunal of the Nationalist Supreme Court, he had participated in the politically-charged prosecution of the Seven Gentlemen, two of whom, in a striking twist of fate, would serve respectively as the PRC's first Minister of Justice and president of the Supreme People's Court. Yang was not invited to contribute to the PRC legal system, suffered under the withering label of "feudal bureaucrat" 封建官僚, and died within months.

New Structures and Operations

Internal BMPC documents from 1949 indicate an institution racing to constitute itself and to keep pace with a crescendo of work. Through the end of the year, the court strained to support the restoration of social and administrative order in the city, as a tide of crime and civil disputation rooted in the disruptions and displacements of war, and the collapse of Nationalist power and the economy in the region overwhelmed it. Authorities stretched the court still further by forcing it to venture out into the city at large and to surrounding rural areas, where it mixed with the masses, organized mediation, held circuit trials and investigated cases. Capacity building and triaging its docket dominated the court's agenda.

On April 1, Wang finished preliminary personnel assignments and split the court into two basic administrative divisions: an adjudication group and a secretariat.⁵⁴⁶ The adjudication group began with 63 permanent staff: two veteran cadres who arrived from the old liberated areas to serve as judges and anchor the court's adjudication committee, six student judges 学习审判员, a court recorder's small group consisting of eighteen people, an enforcement small group consisting of 30 people, and an inspection small group of seven. Meanwhile, the secretariat had 44 permanent staff. Wang reported to his superiors in the municipal government that the foundations for a more mature structure were present within these groups, and could be rolled out once cadres arrived to assume key positions vacated by the dismissal of Nationalist personnel. Not surprisingly, the main obstacle was the shortage of judges, and section and office chiefs.

⁵⁴⁶ "Beiping shi renmin fayuan jianli jiguan gongzuo baogao," 北平市人民法院建立机关工作报告 *Beiping shi zhengbao* 北平市政报 1, no. 1 (1949): 52-53.

Wang implored his superiors: “if we had leading cadres, we could within a short time create a regular organ.”

Staffing was not the only priority. Wang aimed to define a new work style and identity for the BMPC, in part by juxtaposing the court against the putatively remote, mechanistic and corrupt Nationalist organ it had superseded. On April 2, he convened a court-wide meeting to proclaim four fundamental breaks with Nationalist judicial practice.⁵⁴⁷ First, addressing the widely denounced social alienation of the Republican judiciary, he stressed the need for cadre activism. Courts were not just places for resolving people’s problems, he said, they were also places for educating and connecting with the masses. Second, he urged staff to break the practice attributed to the old Nationalist judiciary of everyone doing things in their own way, and mistrusting and impeding one another. Henceforth the courts would operate under unified leadership, and tie administrative and adjudicatory practice closely together. Third, trials would employ panels of more than one judge 集体责任制 so that the subjective views of a single individual would not determine outcomes. This was an established CCP practice to be sure, but it was especially necessary in light of the personnel Wang was working with and the paucity and ambiguity of what passed for extant law and policy. Fourth, cadres were supposed to strive to simplify every procedure for the convenience of the public. As an example, he adduced the opening of a free public scrivener’s 代书 office attached to the inquiries office, which would draft documents and complaints for illiterate litigants without charge. For the benefit of its staff and the municipal government that supervised it, the nascent BMPC published the following comparative tables (Tables 4.1 and 4.2) to contrast its emerging procedural rules against those of the inaccessible and formalist Nationalist court it replaced.

⁵⁴⁷ Ibid.

Table 4.1: Comparison of Criminal Litigation Process between the Beijing Municipal People’s Court and the Sham (伪) Beijing Local Court⁵⁴⁸

	Past Sham Beijing Local Court	Present Beijing Municipal People’s Court
Criminal Cases	<ol style="list-style-type: none"> 1. All indictments handled must be on (legal) forms bought from the sham Ministry of Justice. 2. The court wrote forms for illiterates. Fees were collected for all. 3. After handling forms for private prosecution, a receipt was issued, pending subpoena. 4. Various organs transferred the case, first to the inspection office to investigate whether or not to bring a case. If a public prosecution was raised, after sending an indictment, the case was transferred to a criminal tribunal for adjudication. 5. When the defendant was questioned, he was affected by the oppressiveness of the court’s power 堂威 and was not really free. 6. There were set amounts for shouldering or posting bail. 7. Most ordinary cases were decided by a single judge, major cases were decided by a panel. A party that did not agree with the decision could only appeal to the high court, and could not skip a level to appeal. 	<ol style="list-style-type: none"> 1. Not constrained by (legal) forms 2. Illiterates come directly to the inquiries office to have an oral complaint recorded or statement taken. No fees of any kind are received. 3. After handling the indictment, reception and dispatch sends it to the adjudication committee, which assigns it to judges. If both parties are present, questioning begins immediately. 4. In the absence of an inspection system, after receiving a case, carry out investigation, research, education, persuasion, and mediation. If mediation is not successful, begin adjudication. 5. When defendants are questioned, they are not to receive any intimidation. 6. There is no set bail. 7. All cases are decided jointly, with collective responsibility, regardless of whether they are ordinary or major. A party that disagrees with the decision can skip one level to appeal.

⁵⁴⁸ “Beiping shi renmin fayuan yu wei Beiping difang fayuan susong guocheng bijiao biao,” 北平市人民法院与伪北平地方法院诉讼过程比较表 *Beiping shi zhengbao* 北平市政报 1, no. 1 (1949): 54.

Table 4.2: Comparison of Civil Litigation Process between the Beijing Municipal People’s Court and the Sham (伪) Beijing Local Court⁵⁴⁹

	Past Sham Beijing Local Court	Present Beijing Municipal People’s Court
Civil Cases	<ol style="list-style-type: none"> 1. Purchase a (legal) form sold by the sham Ministry of Justice. 2. Many plaint forms were handled by lawyers or written by the court on behalf of plaintiffs. All required the collection of fees (by the court). 3. After filing the plaint form, an adjudication fee was paid (1.3 percent of the amount in controversy). If the amount in controversy could not be determined at that time, the judge would rule on a deadline for payment and acceptance of the case, or else the suit would be rejected. 4. After filing the plaint and paying the fee, a receipt was issued, and the parties were ordered to wait for a summons. The case was transferred internally by reception and dispatch to the court president to read, after which it was assigned to a judge who set a time to summon (the parties) for questioning. 5. If the parties had questions, the inquiries office only answered after requesting instructions from the tribunal president. 6. If mediation failed, the case was then reported to reception and dispatch and reassigned as if it was a new case. 7. Successful mediation generally had to be sent for recording in writing within six or seven days. 8. Most ordinary cases were decided by a single judge, major cases were decided by a panel. A party that did not agree with the decision could only appeal to the high court, and could not skip one level to appeal. 	<ol style="list-style-type: none"> 1. Not constrained by (legal) forms. 2. For all plaints, lawyers are not currently used. Parties come directly to the inquiries office, write the plaint themselves or have it written on their behalf. No fees of any kind are collected. 3. No litigation fee is collected (i.e. adjudication fee). 4. After handling the plaint, reception and dispatch sends it to the adjudication committee, which assigns it to judges. If both parties are present, questioning begins immediately. 5. Parties with questions can directly inquire at the inquiries office. The inquiries office also has a judge, and the case can be mediated at that time. 6. If mediation fails, then adjudication begins. The case does not have to be re-assigned as if it is a new case. 7. If mediation succeeds, it is recorded in writing at that time. 8. All cases are decided jointly, with collective responsibility, regardless of whether or not they are ordinary or major. A party that disagrees with the decision can skip one level to appeal.

Preliminary job assignments at the BMPC were posted on April 3. CCP cadres from the old base areas were given permanent posts. As for legacy Nationalist personnel, Wang divided them into two groups: “probationally employed” 试用 and “probationally retained” 试留. Their probationary status was intended to encourage

⁵⁴⁹ Ibid.

them to reform quickly and serve the people. Wang reported optimistically that most of the probationally employed were hard working, and that those involved in trial work and the inquiries office left the court late. The probationally retained were more reserved, perhaps because of overwork, he said. But the prognosis for them was encouraging; their ideological consciousness was awakening and they were attentive in their political studies. To his chagrin, five of the CCP student trainees did not want to stay at the court and no amount of persuasion succeeded in changing their minds. They were therefore working temporarily pending transfer to positions elsewhere.

Reflecting on the initial takeover, Wang averred that the transfer of power in the court had been pursued too hastily, with not enough thought given to management. The shortage of cadres and the mountain of business to occupy them deeply compromised their work. In his assessment, leaders had been too busy to give guidance and coordinate the various tasks going on around them, making the results often slapdash. There was a superficial tendency to check tasks off as complete without looking for latent problems. Cadres, he said, should have canvassed the masses for specific information about former Nationalist personnel, and integrated that with assessments of the progress those personnel were making in their ideological studies, the insights revealed by the autobiographies they were asked to write, and the way their political standpoints manifested in their daily work to assemble a comprehensive and deep understanding of each legacy staff member. But this was not done and, as a consequence, the court, out of caution and prejudice, did not dare to use former Nationalist personnel as effectively as it might have, in spite of dire need. Cadres had to do nearly everything themselves, whether or not they possessed the necessary skills, while former staff studied Party policy and ideology, or sat idle.⁵⁵⁰

The court made due with what it had. The serial disruptions caused by the takeover, CCP personnel policy and the abrogation of the Nationalist legal system did not prevent it from accepting cases at an impressive rate. On February 5, the day the court was taken over, there were 346 civil cases and 576 criminal cases actively in process. The court's new leadership stopped them all and reset the dockets. For civil matters, if parties re-filed their complaints, the court accepted them as new cases. Inherited criminal cases in which the defendants were already in custody were all handled as new cases and sorted according to the following dispositions: interrogation, education, and release on bail.⁵⁵¹ Between the takeover on February 5 and the formal reopening of the court on March 18, activity was as follows:

⁵⁵⁰ Wang Feiran, "Beiping shi fayuan jieshou gongzuo chubu zongjie (April 8, 1949)," 368.

⁵⁵¹ Beiping shi renmin zhengfu tiaocha yanjiushi, Tongji ziliao sifa bufen yijiusijiunian qiye.

Table 4.3: Caseload at the Beijing People’s Court (February 5-March 17, 1949)⁵⁵²

Type	New	Closed	Open	Percent Open at End of Reporting Period
Court Civil Cases	235	94	141	60
Procuratorial Cases	459	54	405	88
Court Criminal Cases	220	128	92	42

The high number of cases that remained open at the end of the reporting period was a troubling indication of things to come. Most obviously, it meant that at the moment of the BMPC’s birth, 638 existing cases awaited action, with new ones arriving every hour. Keen to demonstrate its achievements to the municipal government, the BMPC devised a way to frame itself more favorably. Table 4.4 contrasts the relative performance of the BMPC during the first month it was open to the public against the Beijing Local Court in December 1948, the last full month of Nationalist control. It shows that BMPC judges were hearing more than twice as many cases per day and, among those they closed, deciding them three to five times faster, presumably evidence of the court’s greater responsiveness to the public. On the down side, they closed fewer total cases per day than their immediate Nationalist predecessors, which meant that the inherited backlog grew from the moment the court opened its doors.

Table 4.4: Beijing Local Court vs. Beijing People’s Court (per judge)⁵⁵³

	Cases Heard Daily		Cases Closed Daily		Summons/Subpoenas per Case		Elapsed Time from Receipt to Closure of a Case (Days)	
	Before	Now	Before	Now	Before	Now	Before	Now
Civil Cases	1.4	4	1.8	1.3	4.8	2.3	17.2	3.3
Criminal Cases	1.6	3.5	1.8	1.7	3.7	2.5	11	3.3
Notes	Before: Monthly Statistical Register of the Beijing Local Court for December, 1948 Now: Beijing People’s Court March 18, 1949 through the first half of April, 1949							

The BMPC generally compiled caseload statistics according to calendar months, and thus it is not possible from the available reports to tease out the precise numbers on which Table 4.4, which straddled March and April, are based. But a detailed look at the court’s activity during the month of April is enlightening because it suggests the instantaneity and scale of the accumulating backlog, and the extent to which the BMPC sought to put the best face forward to its superiors. During April 1949, an astonishing 89 percent of all civil cases and 74 percent of all criminal cases on the court’s docket remained open, belying the rapid conversion rate suggested in Table 4.4, and proving how the takeover and the sidelining of Nationalist judges and staff thoroughly crippled

⁵⁵² Ibid.

⁵⁵³ “Beiping shi renmin fayuan yu wei Beiping difang fayuan banan jindu bijiao biao (March 1949),” 北平市人民法院与伪北平地方法院办案进度比较表 *Beiping shi zhengbao* 北平市政报 1, no. 1 (1949): 55.

the operation of the court, just as populist procedural reforms made it easier for litigants to file suit, and social and economic disorder made law enforcement an urgent priority.

In fact, the ruined state of the economy generated a profusion of civil disputes, particularly because Nationalist hyperinflation had debased the sums specified in contracts, such as loan arrangements, leases and sales. Debtor's and property rights disputes accounted for 44 percent and 28 percent respectively of the civil docket, whereas divorce cases, which dominate our historiography, represented just eleven percent. In a sharp departure from Nationalist practices, of the eleven percent of civil cases that were cleared in April, fewer than seven percent were adjudicated, while 43 percent were mediated.⁵⁵⁴

This last statistic reflected clear ideological and policy preferences traceable to the base areas. But practically speaking, the profound weakness of the court's trial infrastructure left few alternatives. A February 25 *Decision of the North China's People's Government on Mediating Disputes Among the People* extolled mediation as a way of keeping people from wasting precious time and money on litigation that could better be spent on production to support the troops. At the same time, it upheld the freedom of parties to sue and, echoing Wang Ziyi's 1945 admonition from the Shaanganning Border Region High Court, it ordered cadres to stop infringing upon that by treating mediation as a prerequisite.⁵⁵⁵

This put the BMPC in a bind. In CCP discourse, case backlogs had long been associated with the failures of the Nationalist judicial system and, despite a herculean effort to clear its dockets before opening to the public, the court at once found itself falling behind. The outlook was still worse because, driven to serve the people, the court had lowered the barriers to litigation and eliminated fees with hardly any capacity for timely adjudication yet in place. Wang conceded as much by saying that his team had deeply underestimated what it took to run an urban court. They had rushed to open an inquiries office with only two judges and only three cadres assigned to the entire secretariat, which guaranteed a mismatch between the court's external and internal operations.

To head off a budding crisis, on May 29 the BMPC convened a joint citywide meeting of judicial cadres with representatives from the North China People's Court and Judicial Department also in attendance. Ma Runsheng, deputy chief of the court's secretariat, discussed the February decision on mediation at length and, pursuant to it,

⁵⁵⁴ In April, 1949 Bodde reported the experience of a German friend who successfully sued a Chinese party in Tianjin for payment of interest and principal on a property mortgage. The trial lasted fifteen minutes, payment was calculated based on historic millet prices, and the terms were settled within a half hour. He concluded, "[t]hus in one day's time a lawsuit was disposed of which in the old days might have dragged on interminably." Derk Bodde, *Peking Diary: A Year of Revolution* (London: Jonathan Cape, 1951), 155-156.

⁵⁵⁵ "Huabei renmin zhengfu guanyu tiaojie renjian jiu fen de jue ding (February 25, 1949)," 华北人民政府关于调解人间纠纷的决定 in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编 (上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005).

the court decided to establish a District Mediation Leadership Group the following day that would guide the extension and institutionalization of mediation work in districts all over the city. Taking a page from Li Mu'an's 1943 reforms, this eventually shifted the frontline of civil dispute resolution out of the judicial system all together and into the work units that housed and employed nearly every Chinese. The Group had five members, and the district sections they led could mediate minor criminal cases and all manner of civil disputes except for labor-management cases and cases involving foreign nationals. These district sections did not issue court verdicts and could not arrest or detain people directly. In minor criminal cases, with the prior written approval of the BMPC, district mediation sections could request the PSB to detain suspects, but this was to be understood as a delegation of the court's power rather than as a power inherent in the mediation section; detention was not to be used in civil cases at all. Mediation sections, civil affairs sections and the local PSB offices were to maintain a close, mutually supportive working relationship.

This development promoted a much-needed alternative to resource-intensive litigation, but in the near-term it did not resolve the underlying contradiction: plaintiffs wanted to sue. As of late May 1949, the BMPC did not have a solution. It was searching for a way to adapt base area traditions to the city, but the clearest instruction it could give the cadres about the new mediation sections was that their work was "not the same as civil mediation in the old liberated areas, and not the same as tribunal reconciliation. In character, it actually shares some things with the district mediation offices 区调处 of the Jinchaji Border Region...Right now we lack materials for study. We will do our best to find some and send them to you. But they are only for reference. Study their spirit in order to handle matters, but do not treat them as articles for quotation."⁵⁵⁶

Between February and August, twenty district mediation sections sprang up across the city, including its rural areas. They accepted 6,999 cases, closed 5,963 of them, leaving 1,036, or almost 15 percent, still open. Similar to the figures for civil litigation, real property rights disputes comprised 43 percent of the caseload, with marriage and family cases a distant second, at not quite 16 percent.⁵⁵⁷ But with inexperienced cadres and poor guidance from above, a pattern quickly emerged: over

⁵⁵⁶ Beijing shi renmin fayuan mishuchu 北京市人民法院秘书处, "Beijing shi gequ tiaojieke gongzuo gaikuang-- Wang yuanzhang zai qu sifa ganbu lianxihui shang de fayan (zhaiyao) (May 29, 1949),"北京市各区调解科工作概况 -- 王院长在区司法干部联席会上的发言 (摘要) in *Renmin sifa gongzuo juyu* 人民司法工作举隅, (Beijing: Xinhua shudian, 1950), 50.

⁵⁵⁷ Beijing shi renmin fayuan mishuchu 北京市人民法院秘书处, "Beijing shi gequ tiaojie anjian tongjibiao (diyi biao),"北京市各区调解案件统计表 (第一表) in *Renmin sifa gongzuo juyu* 人民司法工作举隅, (Beijing: Xinhua shudian, 1950). The seven sections in the inner city were numbered in consecutive order and were located at: Wangfujing Street 王府井大街, Xidan 西单, North Dongsu Street 东四北大街, Yangshi Street 羊市大街, Andingmen 安定门, Jingshan Beihai Street 景山北海大街, and Rongxian Alley 绒线胡同. Beijing shi renmin fayuan mishuchu 北京市人民法院秘书处, "Beijing shi neiqi ge qu tiaojie gongzuo guan cha baogao (zhaiyao) (August 15, 1949),"北京市内七个区调解工作观察报告 (摘要) in *Renmin sifa gongzuo juyu* 人民司法工作举隅, (Beijing: Xinhua shudian, 1950), 51.

and over again, legal policymakers would promote mediation with one hand and chastise the local cadres who implemented it with the other for sloppy work, violating procedures, getting policies wrong, denying parties their day in court and compelling them to mediate against their wishes. As in the base areas, frustrated parties reportedly responded by turning to self-help, ignoring mediated settlements, and taking their disputes to court anyway.

With respect to criminal law, the April BMPC statistics show that economic crimes such as robbery, fraud, embezzlement and burglary were rife. These particular offenses made up half of a diverse criminal docket in which virtually every category of crime had substantially more open than closed cases. Of particular concern, the city was awash in illicit weapons from the wars that had engulfed it, and smuggling rings, and counterfeiting operations for currency and official documents were rampant. He Zhanjun, head of the court's criminal (case) group, recalled that during the first few months of 1949, staff investigated and handled dozens of petty crimes each day, and vehicles from the public security bureau rolled up regularly at the court to disgorge suspects. At this stage, court cadres still tended to regard petty criminals through the lens of the Party's rural policies, as pitiable victims of the old, exploitative order, and punished them lightly or released them after a brief ideologically-infused lesson.⁵⁵⁸ For example, 100 of the 108 burglars whose cases were closed in April were "educated and released," and fifteen of the 24 fraud cases closed were similarly handled. Other data confirms this approach. From February 5 (the date the CCP first arrived at the court) to May 18, the court accepted 474 burglary cases involving 704 suspects, of which it closed 229 cases involving 355 convicts, who received the following sentences: educate and release (285 convicts), other (41), sent to the government for education (15), imprisonment (10), forced labor (3), suspended sentence (1). Of the 704 total suspects, 590 were classified as first time offenders, 114 were recidivists. The unemployed made up the largest segment of both groups by far, followed distantly in descending order by merchants, workers and dispersed Nationalist soldiers.⁵⁵⁹

This phenomenon is also reflected in the population of the jail attached to the BMPC. The jail accommodated over a thousand suspects in April 1949, nearly half of them inherited from the month before, when the court first opened. Fewer than seven percent were women. A close reading of available statistics indicates that for some categories of crimes, cases outnumbered detainees, which suggests a number of possibilities, including: that many suspects were never booked at the jail, some detainees were charged with multiple offenses; or, some combination of the two. Whichever was the case, and the figures offer no help here, it is clear that the court promptly discharged 40 percent of the suspects booked at the jail back on to the streets without serving time by methods such as revoked or suspended detentions. Sixty-six percent of all burglary suspects that entered the jail that month were handled this way,

⁵⁵⁸ He Zhanjun 贺战军, "Daji diren baohu renmin: jianli jianquan renmin de sifa jigou," 打击敌人保护人民: 建立健全人民的司法机构 in *Beijing de liming* 北京的黎明, (Beijing: Beijing chubanshe, 1988), 161.

⁵⁵⁹ Beiping shi renmin zhengfu tiaocha yanjiushi, Tongji ziliao sifa bufen yijiusijiunian qiye.

an indication of the court's law enforcement priorities, problems with jail overcrowding, a sympathetic, class-based view of their crimes, and the optimistic position Party policy took at this time on human perfectibility.

Suspects in crimes serious enough to warrant detention experienced brutality at the hands of their jailers, many of whom were held over from the Nationalist regime, but at least in these early days indications are that judicial authorities took proscriptions against abuse seriously and made an effort to snuff out the violence. Accounts of beatings at the jail must have leaked out because in June Wang Feiran reported abashedly on his handling of the issue to the mayor, and several months later the NCPD Judicial Department decried prisoner abuse elsewhere in the region.⁵⁶⁰ According to Wang, a culture of impunity had taken root among jailers, and their immediate superiors had not taken steps to rectify that. Jailers knew that abuse was prohibited, but justified it by reasoning that “wrong may be wrong, but for these vile criminal suspects educating them over and over again won't work.” After an investigation, the court took corrective measures. It temporarily relieved three cadres of their duties at the jail, forced them to appear before it for public soul-searching 反省, and stepped up training among staff. More interestingly, it also publicized these steps to the inmates at the jail as an act of self-criticism and a gesture of its *bona fides*. Nevertheless, the mildness of its response augured poorly for the future, when the Party's position was more secure, and when criminality was no longer seen as an ailment of the oppressive old society but a galling sign of maladjustment or resistance to the new.

When municipal party committee secretary Peng Zhen got wind of the court's leniency toward minor offenders, he called Wang to insist upon sterner measures, such as putting them to correctional labor.⁵⁶¹ This call anticipated a May 12, 1949 *Decision of the Municipal Government Affairs Commission on Measures to Compel Beggars, Thieves and Pickpockets to Perform Productive Labor to Put Them on the Right Road*, by which the BMPC, in conjunction with the civil affairs bureau, public security bureau, health bureau and other units created a joint structure for the management and control 管理收容 of those groups. Detainees swept up by this decision and a follow-up set of *Municipal Provisional Measures for Handling Beggars* worked on improvement projects all over Beijing. On May 26, the People's Daily even reported that a labor production brigade consisting mostly of beggars from the city had been sent to repair works along the Yellow River, where they “obtained an opportunity to reform through labor” 得到劳动改造的机会, a phrase that would soon euphemistically describe internment in a labor

⁵⁶⁰ Wang Feiran 王斐然. *Beijing shi renmin fayuan baogao (June 14, 1949)* 北京市人民法院报告. Shi renmin fayuan, mishuchu, waiqiao shiwuchu guanyu gongzuo renyuan renmian de qingshi ji shizhengfu de pishi 市人民法院, 秘书处, 外侨事务处关于工作人员任免的请示及市政府的批示 (1949), BMA 123-001-00033. “Huabei renmin zhengfu sifabu gongzuo baogao (October 1949),” 625.

⁵⁶¹ He Zhanjun, “Daji diren baohu renmin: jianli jianquan renmin de sifa jigou,” 161.

camp.⁵⁶² The initiative ended on July 22 after detaining, ideologically educating and putting to labor 1,358 persons, and was credited with significantly improving social order.⁵⁶³ Later, Beijing was cited as a national model for promptly moving detainees out of jail and harnessing their productive labor while they awaited sentencing.⁵⁶⁴

This marked possibly the first time the BMPC was mobilized to participate in a coordinated, Party-led assault by multiple state organs within and outside of the formal legal system. Such campaign-style events had been pioneered in the CCP's revolutionary base areas and became a hallmark of PRC justice that continues today. However, as the bureaucracy matured and differentiated, the interests, functional competencies and commitments of participating organs began to diverge and impinge on the unity and flexibility such measures required. Repeated use of these coordinated assaults made the boundaries and procedural safeguards the Party periodically defined to keep policing, procuratorial and judicial organs separate provisional at best, and kept the relationships between all three in a near constant state of flux.

The most celebrated early example of a coordinated legal blitzkrieg began on the evening of November 21, 1949. The previous March, the city government had enacted regulations that, among other things, required the guesthouses in which prostitution flourished to register. But this merely pushed prostitutes into other establishments such as bathhouses and barbershops, or underground. In early August, the municipal people's congress took up the matter, after which regulations tightened, and systematic preparation for a citywide ban began.⁵⁶⁵ Senior officials, such as minister of public security Luo Ruiqing took a personal interest in the prostitution trade, and Peng Zhen himself led a group to Bada Alley 八大胡同 outside Qianmen to survey the problem firsthand. At six o'clock in the evening on November 21, the municipal people's congress adopted a resolution on closing down brothels, and two hours later, with military precision, 2,400 police and public security cadres divided into 27 teams fanned out across five districts in the city and its environs.⁵⁶⁶ By morning they had closed down approximately 224 brothels and taken 1,268 prostitutes into custody.⁵⁶⁷

⁵⁶² "Gaizao qigai, zuzhi laodong shengchan dadui," 改造乞丐, 组织劳动生产大队 *Renmin ribao* 人民日报, May 26, 1949. Li Hua 李华, "Laojie fangqu zenyang gaizao qigai xiaotou," 老解放区怎样改造乞丐小偷 *Renmin ribao* 人民日报, May 18, 1949.

⁵⁶³ Chao Qi 超祺, "Pingshi zenyang chuli qigai yu xiaotou de?," 平市怎样处理乞丐与小偷的? *Renmin ribao* 人民日报, July 22, 1949.

⁵⁶⁴ "Disan ci quanguo gongan huiyi jueyi (May 15, 1951)," 第三次全国公安会议决议 in *Jianguo yilai Mao Zedong wengao: yijiuwuyi nian yiyue yijiuwuyi nian shier yue* 建国以来毛泽东文稿: 一九五一年一月-一九五一年十二月, (Beijing: Zhongyang wenxian chubanshe, 1988), 298.

⁵⁶⁵ "Zhonggong Beijing shiwei guanyu benshi jinü qingkuang he chuzhi fangzhen xiang zhongyang, Huabeiju de baogao (November 7, 1949)," 中共北京市委关于本市妓女情况和处置方针向中央, 华北局的报告 in *1948.12-1949: Beijing shi zhongyao wenxian xuanbian* 1948.12-1949: 北京市重要文献选编, ed. Beijing shi dang'anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang'an chubanshe, 2001).

⁵⁶⁶ "Guanyu fengbi jiyuan de jueyi (November 11, 1949)," 关于封闭妓院的决议 in *1948.12-1949: Beijing shi zhongyao wenxian xuanbian* 1948.12-1949: 北京市重要文献选编, ed. Beijing shi dang'anguan, and

Up to about midnight, the teams sealed the brothels, took down the names of patrons and workers, explained the rationale for the crackdown and then let them go. Prostitutes were transported to a production reformatory 生产教养院 where for six months they received ideological education and learned employable skills, after which they returned to their families, were married or organized to work.⁵⁶⁸ After clearing the brothels, public health workers cleaned and disinfected them until sunrise while police searched for evidence and inventoried their contents. The PSB set up joint committees with the city's health bureau to provide medical care to the prostitutes, with its civil affairs bureau to seize the properties of brothel owners and managers, and with the BMPC to interrogate suspects in preparation for trial. Between February and April 1950 the court heard 363 cases in three separate batches, 356 of which it closed, resulting in two death sentences, nineteen sentences of more than ten years imprisonment, 74 sentences of more than five years, 1,260 sentences of more than one year, four fines or sentences of penal labor, and twenty people given suspended sentences, warnings or "education and release." One hundred sixty-eight properties were confiscated.

For purposes of the judicial takeover, the temporary Party branch established in January in Liang township served well. But with the reconstructed court open for business, it had outlived its usefulness and the time had arrived to normalize CCP control of the judicial system, and unite occupation cadres, underground branch members and more recent admissions to the Party into a single, unambiguous hierarchy that would ensure ideological discipline and cohesion. On April 16, the BMPC inaugurated a permanent Party branch consisting of 66 members, with Wang Feiran serving as secretary, and former underground Party branch leader Zheng Mengping as deputy secretary. Interestingly, the existence of the Party branch and the identity of its members remained closely held secrets until August 31, when they were disclosed at a ceremony that publicly marked the branch's creation.

Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang'an chubanshe, 2001).

⁵⁶⁷ "Zhonggong Beijing shiwei guanyu fengbi jiyuan de qingkuang xiang zhongyang, Huabeiju de baogao (December 21, 1949),"中共北京市委关于封闭妓院的情况向中央,华北局的报告 in *1948.12-1949: Beijing shi zhongyao wenxian xuanbian* 1948.12-1949: 北京市重要文献选编, ed. Beijing shi dang'anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang'an chubanshe, 2001); "Luo Ruiqing guanyu zhixing dahui fengbi jiyuan jueyi de baogao (zhaiyao),"罗瑞卿关于执行大会封闭妓院决议的报告(摘要) in *1948.12-1949: Beijing shi zhongyao wenxian xuanbian* 1948.12-1949: 北京市重要文献选编, ed. Beijing shi dang'anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang'an chubanshe, 2001).

⁵⁶⁸ Aminda Smith discusses the reformation of drug addicts, prostitutes, and beggars at length in, Smith, *Thought Reform and China's Dangerous Classes: Reeducation, Resistance, and the People*. Also, see Liao Shengping 廖胜平, *北京游民改造研究 (1949-1953)* (Zhonggong zhongyang dangxiao, 中共中央党校, 2010).

On May 20, Wang updated the municipal government on the state of the BMPC.⁵⁶⁹ His superiors had evidently heard his pleas for extra staffing, and many leading cadres were now in place owing to an infusion of personnel from the North China Judicial Department. On May 13, the adjudication and administrative groups were officially split into offices, committees and sections, but the offices generally still lacked directors. Organizational procedures were also starting to take shape. Beginning on May 15, the secretary of the adjudication committee office took over the allocation of cases and the monitoring of general conditions and caseloads among the judges, and officially established receiving and dispatch, record-keeping, enforcement, investigation and other sections to free judges to focus purely on adjudication. Newly established civil and criminal groups under the adjudication committee office each had a director and vice-director. These groups supervised the work of the judges organized under them and from behind the scenes guided the adjudication of particularly important or complex cases. Initially, the criminal group had nine tribunals, and the civil group had five, though these numbers shifted to accommodate the caseload as the year went on. Each tribunal was allocated one to three judges (regular and alternate), and each judge was allocated one to two court clerks. When possible, the Adjudication Committee Office also dispatched staff to conduct field investigations into the facts of particular cases that would be used at trial. Each tribunal reported to their group leader on a nightly basis.

The division of labor and responsibilities within the court was now clearer, operations were becoming more regular, morale was reportedly high and efficiency was up. Wang proudly noted that each civil judge was now closing as many as five cases per day, compared to an earlier average of two. Ever lobbying for more resources, he argued that after these improvements the shortage of cadres was actually felt even more acutely. Specifically, he asked for each office chief to receive two to four additional personnel, for each section chief to receive two to six, and for fifteen to twenty more judges to round out the court. On top of that, space was now a constraint, and he suggested that, in the absence of an obvious solution, it might be better to revive the base area tradition of making the court dormitories perform double duty as courtrooms. Three to four cases at a time were being squeezed into a single tribunal for hearings, which negatively impacted the quality of the court's work.⁵⁷⁰

On June 15, the Military Control Commission opened a military law office 军法处 at the BMPC. The office was led by Wang Feiran and specialized in the most serious or politically significant criminal cases, especially those involving counterrevolution, espionage, firearms, or advanced organization. Not unlike the Nationalist government's special criminal tribunals, persons convicted by the military law office did not have the right to appeal or defense by a lawyer, prison sentences were intended to be served in

⁵⁶⁹ "Beiping shi renmin fayuan jianli jiguan gongzuo xubao," 北平市人民法院建立机关工作续报 *Beijing shi zhengbao* 北京市政报 1, no. 2 (1949): 59-60.

⁵⁷⁰ Beijing shi renmin fayuan mishuchu 北京市人民法院秘书处, *Renmin sifa gongzuo juyu* 人民司法工作举隅 (Beijing: Xinhua shudian, 1950), 8.

full, and death sentences were promptly executed. On its opening day, five suspects were convicted of being GMD “bandit spies” and shot the very same afternoon. He Zhanjun, who served concurrently as a BMPC tribunal president and as a military office judge, recalls that every three days or so a couple of convicts were executed. The procedure was as follows: cases were tried individually, opinions were signed by the judges and, in the case of death sentences, reported to the Municipal Party Committee for approval. If the sentence was approved, as it almost invariably was, the court requested vehicles and personnel from the public security bureau to transfer convicts as a group to the execution ground, where they were shot. To accommodate the volume of activity, new execution grounds were opened around the city, including at Beitucheng 北土城, Guang’anmenwai 广安门外.⁵⁷¹ Notably, the military law office did not appear on the court’s public organization charts, and its caseload was not broken out in the regular reports the court filed with the Municipal People’s Government.⁵⁷² As the name would suggest, it reported to a separate chain of command: principally the Municipal Military Control Commission as opposed to the Municipal People’s Government. The details and scope of its activities are therefore mostly absent from the public record, except for occasional fragments. When the office closed in February 1955, the city’s high and intermediate courts absorbed its remit and some of its key personnel.

Not that the court was ashamed of the counterrevolutionary cases it handled; far from it. In keeping with the educative and disciplinary mission of the courts, bulletins were often issued to newspapers to propagandize specific cases and their results. Selected counterrevolutionary cases were tried before prominent city figures, and representatives from the minor democratic parties and various levels of government, who were invited to large meetings to participate directly in adjudication. Wang Feiran would open the case file for inspection by these participants, answer their questions and solicit their opinions. The final verdict of the military law office was supposed to take their input into account. The exercise was effectively a loyalty test, a lesson in the affirmative revolutionary subjectivity even non-Party members were expected to assert, and a caution for those inclined to passivity or resistance. Such trials received the personal endorsement of senior officials such as Peng Zhen and Luo Ruiqing. Municipal Party Committee members such as Liu Ren and Deng Tuo actually participated in some.

For wider audiences, the court drew upon two decades of CCP experience with mass trials and accusation meetings. In the beginning, Party activists had to introduce city residents to the proper performance of these rituals by priming them in advance with polarizing ideological and political slogans, delivering incendiary speeches that communicated the policies, values and symbols at issue in the trials, and then locating and stirring up aggrieved citizens to act as sparks “from the people.” These performances aimed to incite, define and channel a spontaneous mob hatred towards the accused, and enact through revolutionary justice the Party’s unity with and

⁵⁷¹ He Zhanjun, “Daji diren baohu renmin: jianli jianquan renmin de sifa jigou,” 162.

⁵⁷² See for example: Beijing shi renmin fayuan mishuchu, *Renmin sifa gongzuo juyu*, 42.

leadership over the masses. For some early targets, such as gang leaders, speculators and commodity hoarders, this was not difficult to achieve. Having guided such fervency, the court would consummate and often push the boundaries of the ritual by aiming to sentence defendants beyond the crowd's expectations. In the heart of Beijing, the court used the music hall at Zhongshan Park, just north of the Forbidden City, for such events. More pointedly, it deliberately staged mass trials in areas that it knew to be strongholds of anti-CCP sentiment, such as Nanyuan 南苑, Fengtai 丰台, and Mentougou 门头沟.

Mass trials were also organized for more ordinary crimes. Bodde recounts the trial of a shoe store proprietor accused of repeatedly beating and mistreating an apprentice.⁵⁷³ Nearly one thousand shop owners, employees and apprentices were assembled from the surrounding district to observe and participate. The head of the Municipal General Labor Association served as prosecutor, and after testimony from fellow apprentices was taken and the assembled shouted political slogans such as "Down with feudalistic oppression," a member of the BMPC pronounced a three and a half year sentence of imprisonment. Owing to the educational mission of the courts to communicate new government policies, ideological frames and standards of behavior, such trials were common, and the newspapers were full of their stories in unmistakably class-tinged, revolutionary prose.

As the summer of 1949 progressed, the court was falling further behind in its caseload. In this respect, Beijing was hardly alone. The problem was cropping up all over the North China region despite a stern May 21 directive on the subject. Incomplete statistics from 130 county and city level judicial organs indicate that, between January and June 1949, 46,710 cases closed out of a total volume of 54,382, which left 7,672 cases, or 14 percent, open. In typical fashion, the directive blamed lower level personnel, stating that the accumulation of cases was "due to a shortage of cadres, their low quality, and their inability to master policy and promptly solve the problems caused by this," and to "inappropriate viewpoints and methods for handling cases."⁵⁷⁴ As evidence, the directive adduced a county level treason and espionage case that was bottled up in investigation because the facts were unclear. With insufficient evidence to proceed to trial, the suspects should have been freed, but the cadres on the scene reportedly feared that doing so would arouse public anger and therefore let the case and the suspects languish. In other cases, the facts were clear but the cases remained stuck in investigation because they touched on mass campaigns, and risk-averse cadres either didn't dare stir up old passions by taking them to trial or simply left them for the masses to decide. As the NCPG understood matters, these were all problems of viewpoint or methods, and there was undoubtedly truth to such criticisms. But it also reflected the incentive structure cadres operated under, and the highest court in the

⁵⁷³ Bodde, *Peking Diary: A Year of Revolution*, 215.

⁵⁷⁴ "Huabei renmin zhengfu wei guan che qingli jian, bing yanjiu jianshao jian fangfa de xunling (May 21, 1949)," 华北人民政府为贯彻清理积案, 并研究减少积案方法的训令 in *Xingshi susong faxue cankao ziliao huibian (shangce)* 刑事诉讼法学参考资料汇编 (上册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005), 618.

region, the NCPG, actually performed proportionally worse; during the first half of 1949 it closed only 478 of its 1,186 cases, leaving 60 percent open.

After chastising its cadres, the NCPG pushed them harder to keep up and to implement procedural reforms designed to streamline the handling of old and new cases alike. As new cases arrived, it advised cadres immediately to sort them by their degree of urgency, determine the policy governing them, whether or not there was precedent, and whether or not to carry out further investigation. In apparent oblivion to the growing backlog in Beijing, it cited the BMPC's Inquiries Bureau as a model: litigants would arrive, answer preliminary questions, and after cadres grasped the basics of the dispute, they handled it accordingly. For disputes in which a lawsuit was optional, cadres tried to resolve the matter right away through persuasion and return the litigants to production. For disputes that could go to trial but were amenable to mediation, mediation was attempted. Disputes in which mediation failed or was not attempted would go to trial. On the spot mediation was preferred because it would save time and manpower and prevent new cases from clogging the court's dockets. From March 18 through October, the BMPC Inquiries Bureau accepted 3,853 cases, and the scrivener's office for illiterates appurtenant to it accepted 1,366 cases, of which 1,063 were civil and 303 were criminal.⁵⁷⁵

As for old cases, the NCPG reminded cadres of its earlier January 13 directive on clearing dockets, which was in fact the first order on legal administration it had ever issued, a testament to the seriousness with which Party authorities regarded backlogged cases and how it viewed them as a proxy for judicial performance and devotion to serving the people. Cadres were promptly to investigate disputes with unclear facts, and handle them with equal alacrity upon clarifying the missing details. Where suspicions or evidence were insufficient to sustain a case, they were to release the suspect with an explanation of the rationale.

In a twist of breathtaking audacity, the NCPG revived the problem of "stones," that is those cadres who had been persecuted in the burst of radical land reform the year before and whose cases apparently lingered on, too hot to touch.⁵⁷⁶ Petitions for redress were piling up, and aiming to put that episode behind it the Judicial Department rebuked current judicial cadres for avoiding these cases and simply told them to sort the miscarriages of justice out from genuine criminality, and to release the innocent and punish the guilty. Never mind that this kind of discernment was exactly what some "stones" had been punished for in the first place. As a general matter, the May directive concluded by admonishing cadres not to permit cases to drag out, but to ensure that they reached definite conclusions. The tendency to do otherwise demanded immediate

⁵⁷⁵ Wang Feiran 王斐然. *Beijing shi renmin fayuan zuzhi jigou he gongzuo gaikuang* 北京市人民法院组织机构和工作概况. *Beijing shi renmin fayuan gongzuo gaikuang he zuzhi jigou yiji sulian sifa jiguan de huodong yuanze, zuzhi jigou he zhiquan* 北京市人民法院工作概况和组织机构以及苏联司法机关的活动原则, 组织机构和职权 (1950), BMA 002-026-00064.

⁵⁷⁶ "Huabei renmin zhengfu wei guan che qingli jian, bing yanjiu jianshao jian fangfa de xunling (May 21, 1949)," 619.

rectification, and cadres needed to search for methods to quickly but not hastily clear up old cases and reduce the backlogs. Plainly, this ducked the larger structural issue of asking weak institutions and poorly prepared cadres to do too much, and it acknowledged only obliquely that their passivity was to some degree a rational, self-protective response to the trauma of Party rectification the year before.

Things then went from bad to worse. Two months later, the July figures for the BMPC indicate that only 25 percent of cases on the civil docket and 50 percent of cases on the criminal docket were closed.⁵⁷⁷ The backlog now amounted to literally thousands of cases, which was unacceptable for a court that staked its legitimacy in part on its efficiency. As emergency measures, the court borrowed cadres from other organs to clear the accumulation, and it institutionalized forms of collective justice to prevent a return, hailing them as testaments to engagement with the masses. The court would group similar types of cases, assembling all of the interested parties in them together, and then arrange for a judge to explain the governing policies to the group. Civil disputants were encouraged to use this information to reach their own mediated settlements, and criminal defendants were encouraged to confess voluntarily on the spot with the promise of a lighter sentence. By July 23, the BMPC had reportedly cleared more than 4,000 unresolved cases using these combined methods. But its August work report revealed that more than 2,700 remained. Explaining itself to the municipal government, the court said: "On the one hand our work efficiency must go up. On the other hand, we ask leaders to add trial personnel."⁵⁷⁸

Reviving a CCP tradition, the court also forced judges out from behind the bench. On July 26, five people from the BMPC's Circuit Adjudication Small Group visited Mentougou on the fringes of the city to hear cases, the first such circuit trial in revolutionary Beijing, well ahead of the introduction of this practice to other large cities such as Tianjin and Shanghai. But the pursuit of such populist measures was also cited as a reason for why the court could not keep up with its existing caseload. After the emergency measures of the summer, the BMPC's key points report for September-October showed the number of outstanding cases creeping upwards again, this time to 3,148.⁵⁷⁹ November brought relief as stabilizing social order, rising awareness of Party policy among citizens and the growing use of district mediation cut the number of new cases accepted to the lowest level in months. The court singled out mediation as the single most effective method for reducing litigation and creating the space necessary to

⁵⁷⁷ "Beijing shi renmin fayuan xingshi anjian tongjibiao," 北京市人民法院刑事案件统计表 *Beijing shi zhengbao* 北京市政报 1, no. 5 (1950): 70; "Beijing shi renmin fayuan minshi anjian tongjibiao," 北京市人民法院民事案件统计表 *Beijing shi zhengbao* 北京市政报 1, no. 5 (1950): 69.

⁵⁷⁸ *Beiping shi renmin fayuan bayuefen gongzuo jianbao* 北平市人民法院八月份工作简报. *Beiping shi renmin fayuan gongzuo 1949 nian 7-10 yue gongzuo jianbao he yaoxiang* 北平市人民法院工作 1949 年 7-10 月工作简报和要项 (1949), BMA 002-026-00015.

⁵⁷⁹ *Beiping shi renmin fayuan jiushi yuefen gongzuo yaoxiang* 北平市人民法院九十月份工作要项. *Beiping shi renmin fayuan 1949 nian 7-10 yue gongzuo jianbao he gongzuo yaoxiang* 北平市人民法院 1949 年 7-10 月工作简报和工作要项 (1949), BMA 002-026-00015.

catch up on its work. This was surely true, because mediation shifted much of the burden of routine dispute resolution out of the central court to other venues, but still allowed it to bask in the glow of the successful settlements they achieved.⁵⁸⁰ Cadres were explicitly being told to push mediation hard, though not to the extreme of denying parties their day in court.

The Systemic View

According to official Nationalist figures, in mid-1947, the four principal provinces comprising the North China region contained 277 counties and municipalities, with 35 courts and 130 county-level judicial offices among them, which meant that four decades after judicial modernization had begun at least forty percent of those jurisdictions still contained no judicial organ.⁵⁸¹ Yet, just two years later, after the twin tempests of land reform and abrogation, the NCPG claimed 312 judicial organs in roughly the same territory. They were spread over three tiers: county and municipal judicial sections, judicial offices, people's tribunals and people's courts at the bottom; administrative office and provincial people's courts and their administrative office-level 行署 branches in the middle; and finally the NCPC in Beijing at the top, which had grown to ten judges.⁵⁸²

As before, an immense gulf separated these organs from their Nationalist predecessors, and few of them or their personnel would have passed Republican muster. But to dismiss them on that ground is to overlook several crucial points. First, their presence was a decisive break with CCP base area tradition, which had cultivated a small judicial footprint until the advent of the NCPG. Second, it powerfully rebuts the tendencies to project onto abrogation the legal nihilism attributed to later years, or to conflate the two.⁵⁸³ Never before had the Party undertaken so ambitious a project of judicial expansion, and the rapid proliferation of judicial organs across North China at a time when the region was staging a dress rehearsal for the founding of the PRC demonstrates that the NCPG's commitments to a well-articulated state and legal system remained strong even as it repudiated their Nationalist antecedents. Abrogation and legal nihilism were demonstrably distinct, though overlapping phenomena.

Third, the speed and scale of this project also indicated that the Party entered the PRC holding fast to its policy of sidestepping the elitist paradigms and developmental

⁵⁸⁰ Beijing shi renmin fayuan mishuchu, *Renmin sifa gongzuo juyi*, 2-3.

⁵⁸¹ *Zhonghua minguo tongji tiyao*, 125-126, 137. The provinces were Hebei, Shanxi, Chahar, and Suiyuan.

⁵⁸² The 1947 Nationalist figures do not include the Henan and Shandong counties that contributed to Pingyuan province, which was established by the CCP in August 1949 and then dissolved in 1952. "Huabei renmin zhengfu sifabu gongzuo baogao (October 1949)," 622.

⁵⁸³ Li Lin 李林, "Jianguo qianxi he jianguo chuqi dui jiu fazhi de feichu yu xin fazhi de jianshe," 建国前夕和建国初期对旧法制的废除与新法制的建设 *Shanghai dangshi yu dangjian* 上海党史与党建 no. 4 (2006): 23-27; He Qinhu, "Lun xin zhongguo fa he faxue de qibu-- yi 'feichu guomindang liufa quanshu' yu 'sifa gaige yundong' wei xiansuo".

models that had choked Chinese judicial construction for decades. Steeled by the privations of the base areas and fired by an ideology that celebrated grassroots engagement, cadres fanned out campaign-style, piggybacking on the CCP's unprecedented penetration of rural and urban society to found adjudicatory organs of enormously varied competence and staffing levels, many in places that had never had them before. For now, creating them, warts and all, was the main thing, perfecting and knitting them into a unified whole could come later. Like the hastily provisioned tribunals that blossomed in 1911, their existence alone proclaimed difference. Revolution waved a judicial flag.

The annual work reports of the NCPG's Judicial Department and People's Court give some indications of how this unfolded outside of Beijing.⁵⁸⁴ For the first year of its existence, the NCPC juggled its responsibility for supervising adjudication in the North China region with its ordinary trial functions. But as the middle tier of the judicial system filled in and reclaimed the role it had played under Republican governments, the NCPC narrowed its remit. For instance, it devolved its primary supervisory authority over local adjudication in Hebei to a reconstructed provincial high court established in Baoding on September 5. The administrative office courts in the province converted into branches of that high court. As for trial work, during the twelve months following its September 1948 creation, the NCPC accepted 2,602 cases (excepting cases concerning properties belonging to traitors). Of these, 1,203 (49 percent) remained open at the end of the reporting period. During that time, the court's staff increased from 36 to 187 with most of the growth coming from students and legacy Nationalist personnel.⁵⁸⁵

In its capacity as an appellate court, the NCPC could deny certiorari, hear an appeal or retry a case directly. It ruled not just on matters of law, but also on facts, and generally conducted trials from the case record, though it occasionally entertained oral arguments. Because Beijing and Tianjin did not have intermediate-level appellate courts available to them owing to their status as directly administered cities, appeals from their municipal level courts, such as the BMPC, went straight to the NCPC and, after the NCPC converted to the Supreme People's Court, to the Supreme People's Court. As this meant that parties to cases from the BMPC would exhaust the national judicial hierarchy after only one appeal, the NCPC observed that it was under great pressure to decide these cases correctly.

Among civil cases in the North China region as a whole, marriage disputes were most common, making up more than 64 percent of the docket, and reaching 70 percent in some areas. The majority were brought by women, whom the NCPG understood to be standing up politically and economically as they strove for equality and freedom. And remarkably, this was before the adoption of the 1950 Marriage Law. It criticized local cadres for cursing them, ignoring their complaints, and placing obstacles in their

⁵⁸⁴ "Huabei renmin zhengfu sifabu gongzuo baogao (October 1949)"; "Huabei renmin fayuan gongzuo baogao (October 1949)". The next several pages draw heavily on these two work reports.

⁵⁸⁵ Liu Ji 刘洁, "Lun Huabei renmin fayuan shiqi de sifa zhidu jianshe," 论华北人民法院时期的司法制度建设 <http://www.hbcourt.org/public/detail.php?id=5729> (accessed September 15, 2014).

path. According to its Judicial Department, many cadres retained traditional, chauvinistic ideas, favored men when applying Party policy on family relations and, again, feared stirring up opposition from the rural masses, in this case, by upholding the principle of marriage freedom and assisting women who wished to break free of nonconsensual relationships.

Marriage cases initially dominated the docket at the NCPC, while debt and other commercial cases were comparatively few in number, reflecting the court's mostly rural early jurisdiction. But after the CCP took Beijing and Tianjin, this ratio flipped and the court struggled to meet the new demands placed upon it. Appeals from the BMPC and its counterpart in Tianjin increased the NCPC's caseload by as much as twelve times, and these urban cases involved far more complex legal relationships and problems than the court's cadres were used to handling. Only legacy Nationalist personnel were competent to adjudicate them, but their backgrounds typically precluded that, and not enough cadres were available to compensate. Moreover, those on hand had yet to appreciate fully that the rough and ready methods tolerated in village judicial work simply would not do in the cities.

In these opening months, judicial policy appears to have favored economic stabilization and moderate redistribution over radical class-based justice. Many disputes still had origins in the Republican legal system, and parties now maneuvered to turn the emerging ideological climate and the legal void created by abrogation to their advantage. Debt cases, for example, were especially difficult to handle because of the general economic crisis in the region. Inflation was still rampant and there were problems obtaining funds deposited in the banks before the city fell. The court declaimed against an alleged Nationalist bias towards creditors, endorsing the principle of freedom of contract so long as performance did not violate social or community interests, a standard the court redefined as circumstances warranted. Similarly, rental disputes were guided by a flexible official policy of balancing the interests of both landlord and tenant and promoting mutual agreement. Labor disputes were still few and mediation was stressed over litigation. Treason, espionage, theft, banditry, murder, and wrecking of banking and production represented the main share of criminal cases.

Earlier systemic problems with the administration of justice in the NCPG persisted. The Judicial Department noted that Party committees at various levels were properly engaged in court business, for example, overseeing the disposition of major cases, especially murder, issuing orders, assisting judicial recovery and construction, and allocating personnel. But judicial work was only one of their many responsibilities, and they tended to neglect the critical tasks of providing theoretical guidance to the courts and summarizing judicial experience, which left potentially valuable lessons unlearned. Perhaps echoing its own experience, the Department lamented that these governments rarely discussed judicial work, and although court presidents and office chiefs participated in legal policy meetings, very few of them actually sat as members of the government committees that made decisions at any level.

Relations between the courts and the public security bureau were full of problems in the North China region, some of them rooted in bureaucratic competition over power and scarce resources, others indicative of opposing conceptions of law rooted in their different missions. For instance, the PSB dominated the allocation of legal cadres, which left courts gravely understaffed and impaired judicial operations and effectiveness. That in turn made it difficult for courts to defend their authority and relevance, and intensified the existing ideological pressure to divert ordinary cases to extra-judicial channels, such as mediation offices or administrative agencies. With respect to criminal matters, while both organs shared use of the jails, most jails had been turned over to PSB leadership and jailers mistreated inmates of the court as unwelcome burdens. Furthermore, the PSB gave priority to political cases, which meant that ordinary criminal cases arrived at the courts without ever having received sufficient investigation and therefore piled up. For some political cases, the Department reported that PSB organs overstepped their role as investigative and pre-trial 预审 organs, and replaced the judiciary's official powers completely. PSB cadres declined to forward case materials to courts and would simply issue judgments in a court's name. Regulations from the NCPG on the proper division of labor between these organs had reduced the frequency and severity of such problems, but had by no means eliminated them entirely, and the tensions simmered.

Frustrated, the Judicial Department lobbied for the creation of an investigatory apparatus of its own within the courts, because without it adjudication remained hostage to PSB priorities and lapses. It noted that suspects in outstanding cases languished due to the mixed up state of detention and adjudication, and practices varied from place to place. The Department accused judicial cadres of "arresting people with no basis, detaining them with no basis, and determining guilt with no basis," because they tolerated "mistaken arrests, but no mistaken releases." This preserved the "face" of individual cadres at the cost of violating the liberty of the masses. A spot check of the Number One Prison, for example, resulted in the release of four hundred inmates, many of whom were given inappropriately harsh sentences. Seeking to harmonize practices across the region and prevent such errors, the Department established Judgment Research Committees 裁判研究委员会 out of the pre-existing Judicial Committees 司法委员会 at the county level and up in order to guide the adjudication of important or complex cases, pool wisdom and answer interlocutory requests for instruction or clarification on points of law and policy. It also issued handbooks to judicial cadres on the proper methods and procedures for handling criminal cases, which it urged them to study and apply. These included standards for reaching verdicts, revising them, and rules for determining punishment, shortening sentences and freeing suspects. With judges few and far between, cases piling up, and the Party always demanding higher productivity, implementation of these requirements was unsurprisingly a problem.

By October, the BMPC had six civil tribunals with an equal number of full or alternate judges, and ten criminal tribunals with only five full or alternate judges. On average, the BMPC was accepting 1,687 cases per month and closing 1,027, not quite

61 percent. In fact, Beijing and nearby Tianjin alone accounted for 28 percent of the cases accepted by all city and township judicial organs in the North China region. In Beijing, burglaries remained the most common category of criminal cases, which the authorities classified into three types: professional and organized; urban poor, people fallen on hard times and the unemployed; and spies and former Nationalist soldiers. Apart from the latter group and those who murdered, both of whom required suppression, the NCPG's Judicial Department continued to endorse a general policy of "educating and reforming."

October was a momentous month for the court and the country. On the first of the month, Mao proclaimed the founding of the People's Republic of China. A few days before, the Chinese People's Political Consultative Conference adopted a pair of documents that collectively would serve as the country's effective constitution: the *Common Program of the Chinese People's Political Consultative Conference*, and a skeletal *Organization Law of the Central People's Government of the People's Republic of China*. The *Organization Law of the Central People's Government* provided for a Supreme People's Court, a Ministry of Justice, and an independent Supreme People's Procuratorate. Using their North China antecedents as a foundation, the first two bodies constituted by the end of the year and quickly took charge of building the court system. But the Supreme People's Procuratorate was novel; it required not only new staff, procedures and organizational structures, but also a redistribution of power and workflow among existing legal organs. The procuratorate's jurisdiction over pre-trial investigations, criminal prosecutions and appeals or protests had previously been within the mandate of the public security bureau. But as the procuratorate had no immediate CCP forerunner it developed slowly, and in much of the PRC public security organs continued to exercise procuratorial functions for a period of years as a stopgap measure. All three organs were under the authority of Dong Biwu, former head of the NCPG, who now led the Political-Legal Committee of the nation's highest executive organ, the Government Administration Council.

The government appointed Shen Junru president of the Supreme People's Court and Shi Liang Minister of Justice. Both had been leading members of the Republican Shanghai bar, prominent critics of the Guomindang, and founders of the left-leaning China Democratic League. Their deputies and high-level staffs included a mixture of esteemed Republican jurists such as Lou Bangyan, Chen Jinkun, Cao Jie, Wu Yuheng, Fei Qing, Lu Hongyi, and Zhang Zhirang, reassigned personnel from the PLA, and veteran cadres with elite Republican legal educations.⁵⁸⁶ High-profile targets of the 1943 purge of the Shaanganning Border Region High Court figured prominently among the latter; Li Mu'an was appointed PRC Deputy Minister of Justice, and Wang Huai'an took charge of the Ministry's secretariat. There were of course policy differences in

⁵⁸⁶ For the Supreme People's Court, see Sun Junqi 孙俊奇, "Dui zuigao fayuan jianyuan chuqi yixie qingkuang de xingfu huiyi," 对最高法院建院初期一些情况的幸福回忆 *Renmin fayuan bao 人民法院报*, July 22 2011.

these groups, but collectively they strove to create a socialist legal system that reflected their advanced training, and Beijing, being their backyard, was a natural testbed.

The Supreme People's Court and Ministry of Justice absorbed many personnel from their progenitors in the NCPG and, crucially, they also retained unmediated jurisdiction over Beijing's municipal judicial organs. In the earliest years of the PRC, appeals from the BMPC went straight to the Supreme People's Court. Similarly, between 1949 and 1955, the city did not have its own municipal judicial administration office; the national Ministry of Justice provided those services directly, in conjunction with the city government and Municipal Party Committee, just as the NCPG judicial department had done before it.⁵⁸⁷ This meant that the BMPC had three masters, and it filed reports with all of them.

As the year drew to a close, Wang Feiran reflected on what had been achieved and the manifold tasks that lay ahead.⁵⁸⁸ Over the preceding twelve months, Beijing's judicial system had passed from Nationalist to CCP hands, and the NCPG cadres who had gathered in Liang township to rehearse the takeover of the city the previous winter were now the masters of a new national capital. Since opening in March, the BMPC had decided 14,106 cases, 9,116 of them criminal, and 4,490 civil.⁵⁸⁹ It now employed 256 staff, including one court president, 176 personnel in its adjudication committee division, and 79 in the secretariat. The court had 30 judges at three levels: regular, alternate and student.⁵⁹⁰ Of the total staff, 168 had cadre status (Figure 4.1). Taking into account the exclusion of jail personnel from this total and the shift of procuratorial duties to the public security bureau, in terms of net judicial personnel, the BMPC was now larger than the Nationalist local court it had replaced -- far larger, if one is to add the district-level mediation cadres it supervised. Supplementing these personnel, and fashioning them into an efficient, responsive and competent organ was the next order of business.

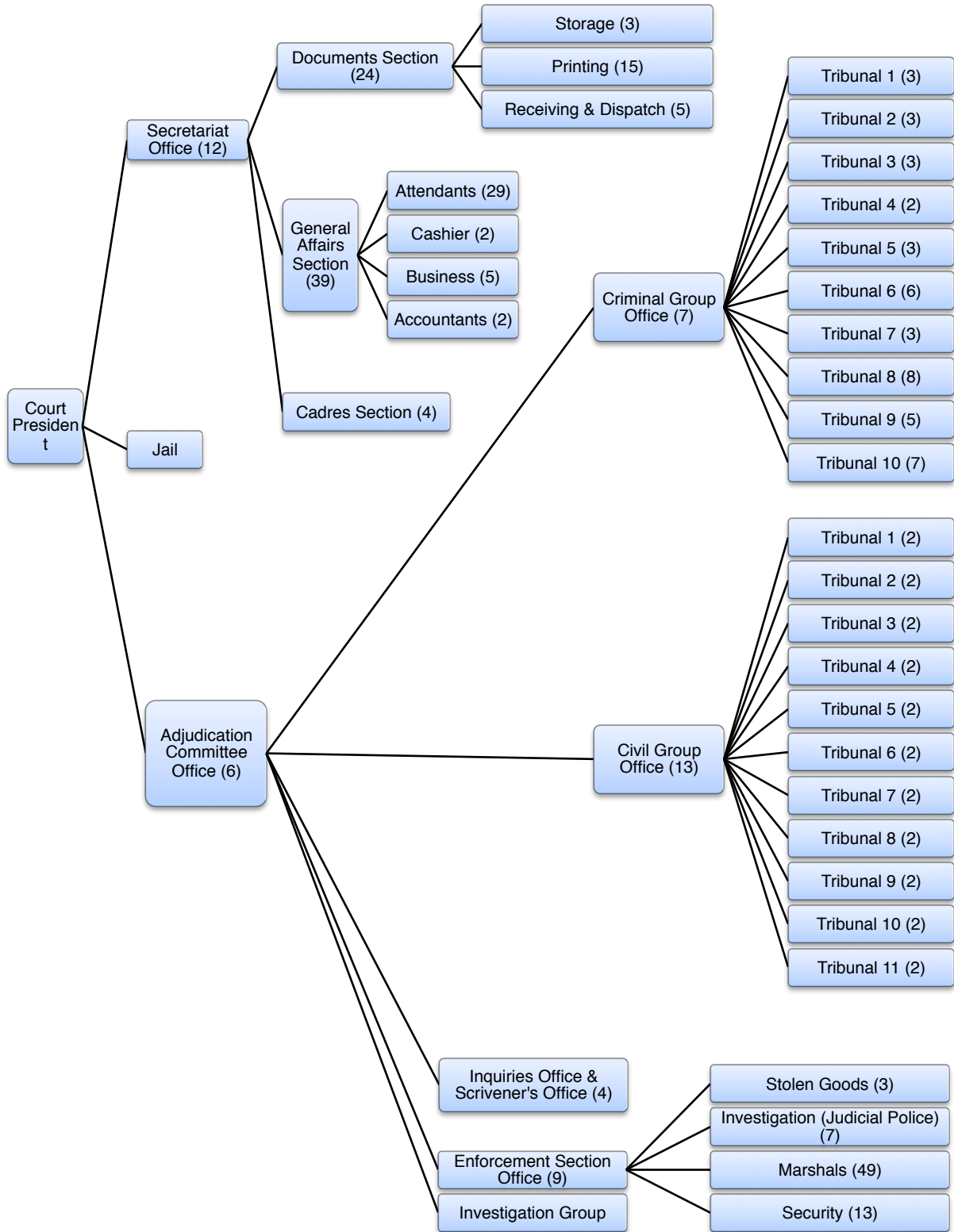
⁵⁸⁷ *Sifa xingzheng zhi* 司法行政志, ed. Beijing shi difang zhi bianzuan weiyuanhui 北京市地方志编纂委员会, 107 vols., vol. 28 (Beijing: Beijing chubanshe, 2005), 12-13.

⁵⁸⁸ Wang Feiran 王斐然, "Beijing shi renmin fayuan shenpan gongzuo zongjie (December 1949)," 北京市人民法院审判工作总结 in *Renmin sifa gongzuo juyi* 人民司法工作举隅, ed. Beijing shi renmin fayuan mishuchu 北京市人民法院秘书处, (Beijing: Xinhua shudian, 1950).

⁵⁸⁹ He Zhanjun, "Daji diren baohu renmin: jianli jianquan renmin de sifa jigou," 164.

⁵⁹⁰ Beijing shi renmin fayuan mishuchu 北京市人民法院秘书处, "Beijing shi renmin fayuan zuzhi gaikuang," 北京市人民法院组织概况 in *Renmin sifa gongzuo juyi* 人民司法工作举隅, (Beijing: Xinhua shudian, 1950), 39.

Figure 4.1: Organization and Staffing of the Beijing Municipal People's Court (December 1949)



Chapter 5

Striking a New Path (1950-52)

Discussions of the early PRC judicial system generally follow two distinct lines. The first peers down from high above, surveying a wide expanse of formal changes to institutional structure, jurisprudence, and governing policies and legislation without saying a great deal about granular features or actual implementation. The second approaches from the side, searching emanations of judicial practice for higher-order insights into the nature of politics, law, and social change. In both instances, the courts are central but, strangely, neither takes a direct interest in them. Each treats them as a sort of black box instrumentality.

This reflects a larger condition: simply put, our historiography tends to take the PRC state as a given. We neither witness it coming into being nor see its construction close up; it simply *was*, a ready-made artifact of the CCP, sprung to life. In fact, a tremendous amount of activity and upheaval was taking place. As the CCP swept across China, countless state organs, including hundreds of courts, changed hands and many more sprouted up. By 1953, the PRC claimed more than 2,000 courts and more than 8,000 judges, two to three times what the Nationalist government had reported only a few years before.⁵⁹¹ In light of abrogation, a series of intervening purges, and the closure of most of the nation's law schools, this striking achievement cries out for scrutiny.

Personnel policy might seem an uninspiring avenue for that investigation. But it weighed heavily on the minds of judicial authorities like Wang Feiran who, like their Republican predecessors, understood that achieving their aspirations hinged on the quantity and qualities of the people they employed. Additionally, in a revolutionary context, staffing became a high stakes battlefield because it crystallized competing political and ideological visions of New China. Peering into personnel policy therefore reveals much more than just the dry minutiae of judicial construction. It also opens windows into normally inaccessible regime dynamics, internal dissension and diversity, thereby illuminating the Party-state as an emergent, contested work in progress at a seminal moment in its history.

As with the base areas, for many years it was difficult to conduct such an inquiry in detail because the PRC government safeguarded its biography by sharply constraining the available source base. Thus, empirical data on the development and composition of the early PRC judicial system was sparse and hard to come by. The next two chapters break that stranglehold by drawing on a multiplicity of mostly untapped materials that had highly restricted, internal circulations, among them

⁵⁹¹ *Sifa tongji niankan*; Zhang Peitian 张培田, *Xin zhongguo hunyin gaige he sifa gaige shiliao: Xinan diqu dang'an xuanbian* 新中国婚姻改革和司法改革史料: 西南地区档案选编 (Beijing: Beijing daxue chubanshe, 2012), 510.

personnel dossiers, memoranda and reports generated by the BMPC and its municipal superiors, and also local, regional, and central government documents. These sources record the privileged knowledge authorities at various levels of government produced about the interior constitution and operations of the courts in their own respective jurisdictions, and equip us for the first time to bring detailed, multi-layered evidence of actual practice to bear on the formation of the early PRC judicial system. Accordingly, this chapter starts with several questions. Where did the PRC's courts and the judges and other cadres who served in them come from, and how did they get there? What can Beijing tell us about the conditions under which this expansion occurred, and its consequences for the construction of the PRC judicial system and state?

Awakening to a Crisis

Reflecting on the CCP takeover of the Nationalist judicial system, Vice Premier Dong Biwu observed in 1952 that “the victory of the revolution was too fast,” by which he meant that it had caught the Party flat-footed.⁵⁹² The CCP scrambled to keep pace with the cascade of provinces, villages, industries, schools, and other institutions that fell under its authority, and a dire shortage of cadres quickly threatened regime consolidation and governance. Excluding the PLA, in 1949, the CCP had only about 60,000 cadres to go around, too few to cover basic administration, let alone push through a revolution.⁵⁹³ Moreover, the majority had low levels of education, literacy, and managerial skills owing to their rural origins.⁵⁹⁴

The judicial system felt this squeeze acutely; under-resourced to begin with, abrogation stressed it further, and relief was nowhere in sight. Twenty years of war, revolution, and intra-Party conflict had retarded institution building, training, codification and the development of a coherent jurisprudence.⁵⁹⁵ Judging from the experience of the BMPC in 1949, securing control over former Nationalist organs, screening, replenishing and augmenting staff, changing operating principles, keeping the wheels of justice moving, and tackling the growing mountain of backlogged cases would push even experienced judicial cadres to their limits. Undeterred, the government began to pile on new missions, such as organizing circuit courts, supervising mediation committees and people's tribunals, implementing the marriage law, suppressing counterrevolutionaries, deciding voter eligibility, and expanding into neglected neighborhoods and counties. As early as 1950, Dong warned that this course was untenable. “Currently we lack cadres in every facet of our work, especially in judicial work, and still more so in areas liberated later. Cadres determine everything. If we do not have cadres, then even if we build a

⁵⁹² Dong Biwu 董必武, “Gei Huadong shichazu Wang Huai'an tongzhi de xin (June 1, 1952),” 给华东视察组王怀安同志的信 in *Dong Biwu faxue wenji* 董必武法学文集, (Beijing: Falü chubanshe, 2001), 133.

⁵⁹³ Yang Kuisong, *Zhonghua renmin gongheguo jianguo shi yanjiu*, 366-411.

⁵⁹⁴ Zhao Jing 赵京, “Xin zhongguo chengli chuqi gaoxiao kecheng gaige yanjiu,” 新中国成立初期高效课程改革研究 *Dangdai zhongguo yanjiu* 当代中国研究 18, no. 3 (2011): 63.

⁵⁹⁵ Dong Biwu, “Gei Huadong shichazu Wang Huai'an tongzhi de xin (June 1, 1952),” 133.

judicial system, it will still be difficult to complete our work.”⁵⁹⁶ He put resolving the cadre crisis at the top of the judicial agenda.⁵⁹⁷

The crisis had unmistakable Republican roots. In early 1947, Yang Zhaolong, then chief of the criminal division of the Nationalist Ministry of Justice, estimated that if each of China’s roughly 2,000 counties had “a district court or branch court manned by two to three judges and one to two procurators, the total number of judges and procurators would be six to ten thousand, a number it would take many peaceful years to train.”⁵⁹⁸ Owing to crash recruitment, the government actually reached the lower end of that range later the same year, however its judges were concentrated geographically to such a degree that about 70 percent of counties hosted none at all. To address this coverage gap, the government also maintained 1,116 county judicial offices, where 1,692 trial officers decided cases, but they had far fewer resources than the judges who staffed ordinary courts, in spite of the vastly larger population they served.⁵⁹⁹ On paper, at least fifteen percent of Chinese counties contained no judicial organ whatsoever, and the true number was likely far higher because of the disruptions caused by the civil war, and because the Nationalist government routinely counted organs it had yet to fully constitute.⁶⁰⁰

The CCP took over this unbalanced system and aggravated its deficiencies. In counties with no pre-existing Nationalist infrastructure to commandeer, institutions had to be built and staffed from the ground up. In areas with county-level judicial offices, the CCP spurned its inheritance by replacing Nationalist prosecutors (usually the county magistrate) and trial officers with demobilized soldiers or grassroots cadres. The deposed officials were among the first casualties of the Campaign to Suppress Counterrevolutionaries (1950-53).

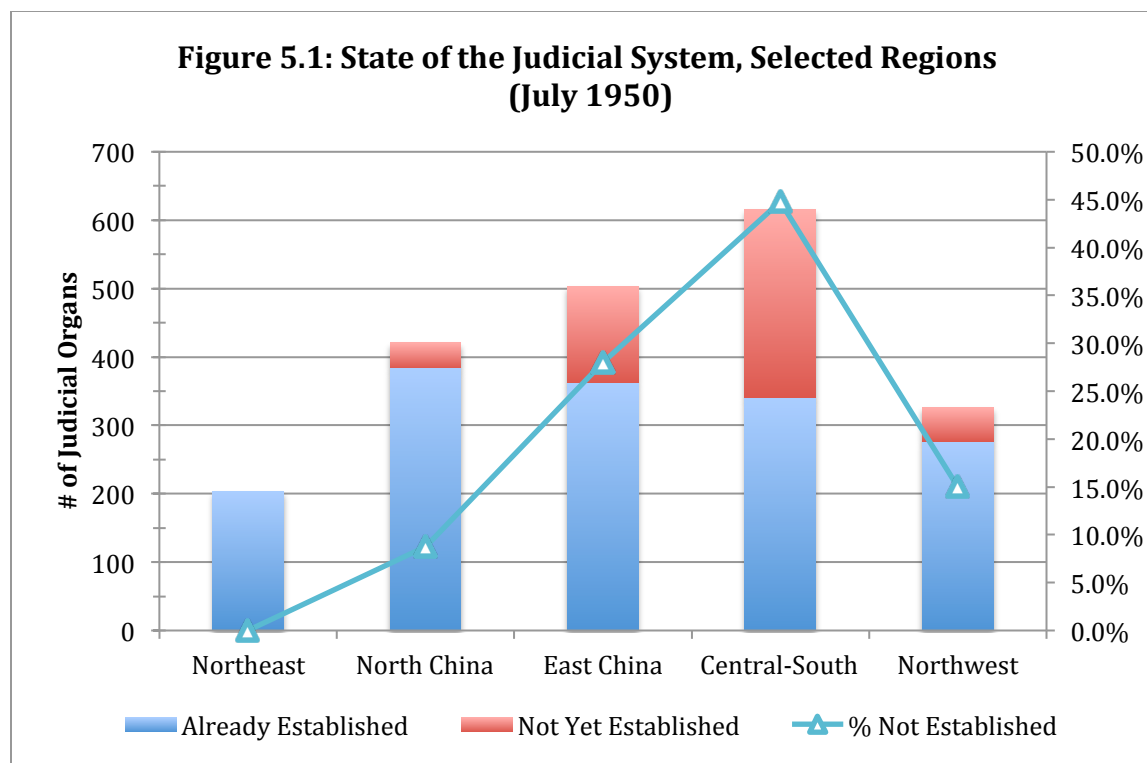
⁵⁹⁶ Dong Biwu 董必武, “Yao zhongshi sifa gongzuo (July 26, 1950),”要重视司法工作 in *Dong Biwu faxue wenji* 董必武法学文集, (Beijing: Falü chubanshe, 2001), 39.

⁵⁹⁷ Ibid.

⁵⁹⁸ Chao-lung Yang, “The Power of Chinese Courts,” *Vanderbilt Law Review* 1, (1947-1948): 16-46.

⁵⁹⁹ *Zhonghua minguo tongji tiyao*, 137.

⁶⁰⁰ *Zhonghua minguo tongji nianjian*, 393-393.



According to incomplete statistics, as of July 1950 nearly one quarter of the judicial organs allotted to five of the country's main administrative macro-regions had yet to be established.⁶⁰¹ This deficit was spread unevenly around the country. Regions with well-developed pre-1949 base areas did far better than those without because an administrative infrastructure and pool of cadres was already available close at hand. Thus, the Northeast completely met its targets, and North China nearly so, though the latter had comparatively few Nationalist judicial organs to take over. Elsewhere, cadres were usually imported from the north or reassigned from the civilian units accompanying the PLA as it moved south, or from the PLA itself. Comparatively few of them could be spared for judicial duties, and for this reason the East China and Central-South regions fared less well. The source does not report data for Inner Mongolia or the Southwest region, but given that the latter was the last major area to fall to the CCP, one would expect that it trailed the rest of the country significantly (Figure 5.1).

The new judicial cadres were typically of peasant origin, and had no formal schooling in law. According to the Minister of Justice, as of July 1950 the vast majority of them (excluding legacy personnel) had middle or primary school levels of education or below. The relevant figures for select regions were: Northeast region (91.6 percent), North China region (83.3 percent), and East China region (80.1 percent).⁶⁰² Given what

⁶⁰¹ The source does not report figures for the Southwest macro region or Inner Mongolia. Shi Liang 史良, "Guanyu muqian sifa xingzheng gongzuo baogao," 关于目前司法行政工作报告 *Fujiansheng renmin zhengfu gongbao* 福建省人民政府公报 2, no. 11 (1950): 46-53.

⁶⁰² *Ibid.*, 48.

we know about the base areas, we can expect a clustering at the “primary school level or below” end of that range, and remarks about weak literacy in fact abounded. Judicial work was often one of many administrative responsibilities these cadres held. Under the rubric of Ma Xiwu style justice, they disposed of cases guided by the revolutionary policies of the moment, which favored a rough and ready mode of practice colored by petty tyrannies, irregularities, and ferocious class struggle.

The CCP handled ordinary courts, especially in the cities, differently. In Beijing, the fate of judicial personnel was at first guided by the January 21, 1949 *Proposal for the Takeover of Guomindang Judicial Organs in Beijing and Tianjin*, and then by a more combative March 3 special instruction from the CCP Central Committee, which triggered a spate of dismissals and transfers to short-term training courses, and required offsetting infusions of cadres from the NCPG that spread Party resources still thinner.⁶⁰³

[A]part from a small number who must be held-over, in principle most should be assembled for training...after training, those who must return to their original organs may (do so), otherwise personnel who can be employed should generally not return to their original organs, but should, according to our needs, be distributed to other organs or localities to work, or be appointed in the [cadre] swaps between Beijing, Tianjin, Tangshan and Zhangjiakou, or transferred to Jiangnan, or transferred to various counties to work, in order to disperse them.⁶⁰⁴

In spite of such orders, the dearth of cadres generated powerful incentives to treat former Nationalist personnel leniently and, without competent replacements in reserve, many courts, including the BMPC, retained them in quantity out of necessity. This put the spotlight on a crucial textual ambiguity. Did the “judicial work” 司法工作 that former Nationalist personnel might be eligible to return to under the January *Proposal* include adjudication work 审判工作? If not, then realistically they had limited options for judicial employment because adjudication work, as a category, occupied more than two-thirds of court personnel, with the remainder serving in administration. If they could perform adjudication work, then could they serve as judges and decide cases, or were they limited only to less responsible, supporting roles such as clerks?⁶⁰⁵ Did abrogation change the answer?

In the absence of authoritative guidance from the Center, local Party committees and courts decided for themselves, with many appointing former Nationalist judicial personnel to the bench and in some places even to positions of court leadership, particularly in the south, where Party organization was much weaker and veteran cadres were in extremely short supply.⁶⁰⁶ Figure 5.2 disaggregates the judicial cadre population in select regions of the country, giving the proportion of legacy personnel

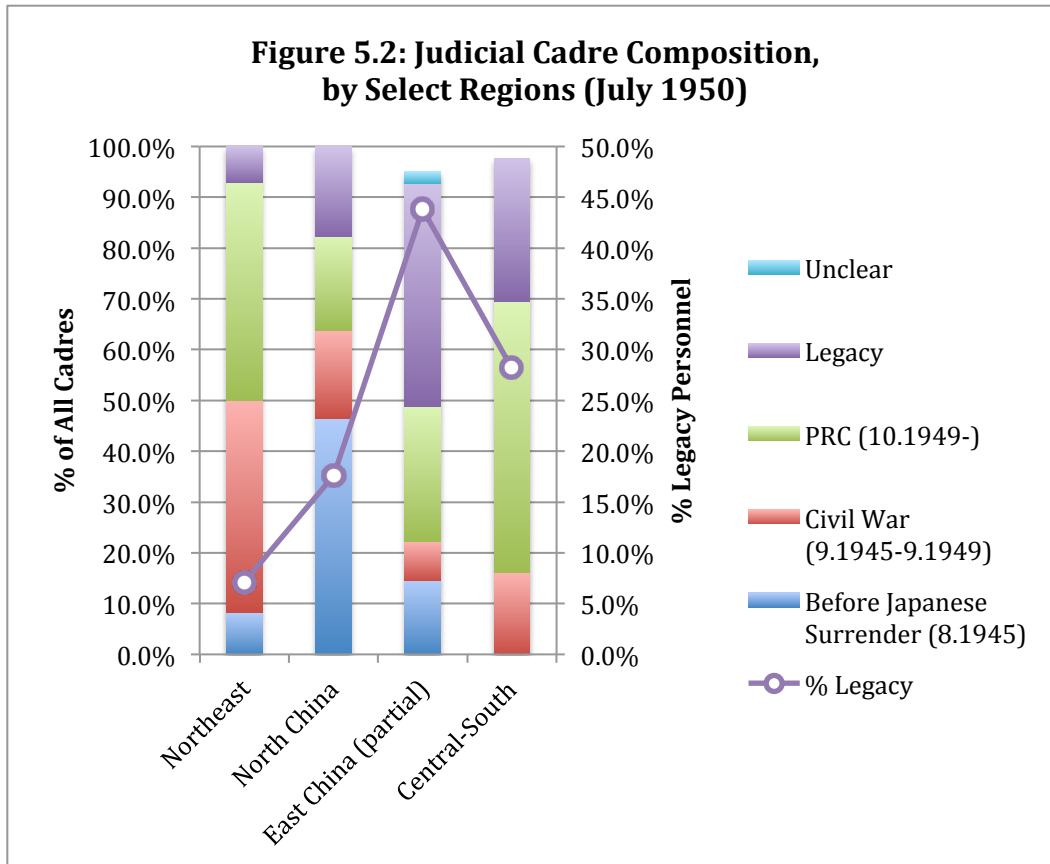
⁶⁰³ “Guanyu jieguan pingjin guomindang sifa jiguan de jianyi (January 21, 1949)”.

⁶⁰⁴ “Zhonggong Beiping shiwei guanyu jiu renyuan chuli yuanze xiang zhongyang, Huabeiju de qingshi baogao (zhongyang pishi) (March 3, 1949),” 220.

⁶⁰⁵ Dong Biwu 董必武, “Guanyu sifa duiwu de gaizao he buchong wenti gei Zhonggong zhongyang shujichu, Liu Shaoqi de xin (June 25, 1952),” 关于司法队伍的改造和补充问题给中共中央书记处, 刘少奇的信 in *Dong Biwu faxue wenji* 董必武法学文集, (Beijing: Falü chubanshe, 2001), @130.

⁶⁰⁶ Dong Biwu, “Gei Huadong shichazu Wang Huai’an tongzhi de xin (June 1, 1952),” 133.

...serving in the courts, and the shares held by various cohorts of cadres broken down by the dates they began participating in CCP work.⁶⁰⁷ Of the areas surveyed, the North China region surrounding Beijing had the largest share of pre-1949 cadres, and beyond that the largest share dating to the Anti-Japanese War period by far.



Without legacy personnel to lean on, the judicial system would have faltered in large sections of the country and most major cities. Nationwide, the competition for cadres was fierce, training programs were barely getting off the ground, and academic legal education was in disarray. Furthermore, judicial work compared poorly to other assignments. Local governments neglected it, and often dumped cadres with physical or ideological infirmities, or with problems in their backgrounds into judicial organs. Conversely, they routinely assigned promising judicial cadres and even fresh law graduates to postings with higher prestige or priority, sometimes at the request of the candidates themselves, who perceived judicial jobs to be dead-ends.⁶⁰⁸

⁶⁰⁷ The East China data is not complete. It covers five cities and two prefectures, which may distort the data. Urban courts tended to retain higher shares of legacy personnel because their casework and administration were more complex. Shi Liang, "Guanyu muqian sifa xingzheng gongzuo baogao," 48.

⁶⁰⁸ Shi Liang 史良. *Huadong sifa gongzuo shicha de baogao (May 9, 1951)* 华东司法工作视察的报告. Sifa buzhang shiliang guanyu Huadong sifa gongzuo shicha de baogao 司法部长史良关于华东司法工作视察的报告 (1951), BMA 002-003-00067.

Vacancies therefore abounded, especially in the former Nationalist heartland. The share of unfilled positions in some regions was staggering: Central-South region (58.3 percent), East China region (71.6 percent), Southwest region (80 percent).⁶⁰⁹ One year later, the situation remained dire. One quarter of the nation's counties still lacked courts.⁶¹⁰ County chiefs commonly served concurrently as local court presidents, which ruled out even the limited adjudicatory independence the Party sometimes professed. In most parts of the East China region, courts were missing one-third of their cadre allotments. In Shandong province, the shortfall reached 43 percent, and in southern Anhui 皖南 it was 48 percent.⁶¹¹ Nationwide, only one-sixth of counties had procuratorates that year, and many of those had only skeletal staffs.⁶¹²

This had decisive organizational and operational consequences. Extreme local variation, not least of all with respect to the quality and quantity of staffing, militated against a uniform, vertical system of judicial administration, and favored a strong local hand in management. The PRC therefore adopted a dual leadership model that split power over the courts between their corresponding levels of government, which were attuned to local personnel and conditions, and a vertical chain of judicial and administrative authorities, which reviewed cases and set overall policy.⁶¹³ To simplify somewhat, county courts would answer to county governments, municipal courts would answer to municipal governments, provincial courts would answer to provincial governments, and all would also fall under the oversight of the Supreme People's Court and national Ministry of Justice.

Without sufficient resources, the courts bogged down. As of May 1950, the BMPC had a backlog of 3,670 cases, and more than 1,150 criminals in detention awaiting sentencing.⁶¹⁴ Five months later, minister of public security Luo Ruiqing asserted that it took at least two to three months for courts in East China to approve criminal verdicts, and sometimes up to two to three years, a figure that must have

⁶⁰⁹ Shi Liang, "Guanyu muqian sifa xingzheng gongzuo baogao," 48.

⁶¹⁰ *Dong Biwu chuan*, 755.

⁶¹¹ Shi Liang, Huadong sifa gongzuo shicha de baogao (May 9, 1951).

⁶¹² *Dong Biwu chuan*, 755.

⁶¹³ Peter H Solomon Jr., "Local Political Power and Soviet Criminal Justice, 1922-41," *Soviet Studies* 37, no. 3 (1985): 305-329. "Zhonghua renmin gongheguo renmin fayuan zhanxing zuzhi tiaoli," 中华人民共和国人民法院暂行组织条例 *Renmin ribao* 人民日报, September 5, 1951; Xu Deheng, "Guanyu 'Zhonghua renmin gongheguo renmin fayuan zhanxing zuzhi tiaoli' de shuoming".

⁶¹⁴ "Beijing shi renmin fayuan guanyu qingli jian gongzuo de baogao (August 8, 1950),"北京市人民法院关于清理积案工作的报告 in *1950: Beijing shi zhongyao wenxian xuanbian 1950: 北京市重要文献选编*, ed. Beijing shi dang'anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang'an chubanshe, 2001), 396; Peng Zhen 彭真, "Guanyu qingli jian wenti (May 24, 1950),"关于清理积案问题 in *1950: Beijing shi zhongyao wenxian xuanbian 1950: 北京市重要文献选编*, ed. Beijing shi dang'anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang'an chubanshe, 2001), 204.

reflected Nationalist trends, given the date.⁶¹⁵ This was unacceptably slow for a regime that was determined to decisively consolidate power and that reveled in the instantaneity of mass campaigns. Significantly, Luo cited those figures just as the Campaign to Suppress Counterrevolutionaries was commencing, and within months jails were bursting with additional suspects, and courts felt intensified pressure to accelerate their workflows to clear the accumulations.⁶¹⁶

The Campaign to Suppress Counterrevolutionaries was one of the first national stress tests for the young PRC legal system, and when the results were in, it was evident that much of the campaign sidestepped the ordinary civilian courts altogether. From 1951 to 1953, the ordinary courts closed 746,340 first instance cases of counterrevolution, convicted 320,208 people of counterrevolutionary crimes, and sentenced 56 percent of them to a band of punishment ranging from more than five years of imprisonment to death.⁶¹⁷ At the same time, internal figures cited by Mao and deputy minister of public security Xu Zirong run much higher, putting the number of executions at around 700,000, and the number sentenced to imprisonment and control (an administrative punishment comparable to house arrest, usually with compulsory labor) at a further 2,490,000.⁶¹⁸ If this data is reliable, then the ordinary courts handed down only a small fraction of the sentences of “execution, imprisonment, or control 杀关管” issued pursuant to the campaign.

Other institutions dramatically upstaged the courts. Especially in the countryside, where ordinary courts were few and poorly staffed, public security, Party, and military authorities arrested, condemned, and executed many counterrevolutionaries of their own accord, but interestingly often under the cover of law. In northern Anhui 皖北, for example, the regional Party committee deputized public security bureau interrogation departments to act as trial organs on behalf of the courts, which substantially increased the throughput of cases, but fostered abuses by moving interrogation, trial, and sentencing entirely in-house.⁶¹⁹ In addition, the 1950 Regulations on the Organization of People’s Tribunals channeled many of the cases stirred up by this and other mass campaigns into ad hoc tribunals staffed by grassroots cadres and activists. As during land reform, they performed revolutionary terror as public spectacle. Finally, the 1951 Statute on the Punishment of Counterrevolution authorized military tribunals to try cases of counterrevolution. In Beijing, the Military Control Commission had anticipated this move two years earlier by establishing a military law office at the BMPC.

⁶¹⁵ Luo Ruiqing 罗瑞卿, “Zhongyang gonganbu guanyu quanguo gongan huiyi xiang zhongyang de baogao (October 26, 1950),” 中央公安部关于全国公安会议向中央的报告 in *Zhonggong dangshi jiaoxue cankao ziliao* 中共党史教学参考资料, (Beijing: Qunzhong chubanshe, 1986), 207.

⁶¹⁶ “Disan ci quanguo gongan huiyi jueyi (May 15, 1951),” 298. Shi Liang, *Huadong sifa gongzuo shicha de baogao* (May 9, 1951).

⁶¹⁷ Zuigao renmin fayuan yanjiushi, *Quanguo renmin fayuan sifa tongji lishi ziliao huibian (xingshi bufen)*, 10-28.

⁶¹⁸ Yang Kuisong, *Zhonghua renmin gongheguo jianguo shi yanjiu*, 217.

⁶¹⁹ *Anhui sheng zhi: gongan zhi* 安徽省志: 公安志安徽省地方志编纂委员会 (Hefei: Anhui renmin chubanshe, 1993), 176-177.

From 1949 to 1953, the BMPC reports closing 7,008 cases of counterrevolution, which made up about seventeen percent of all the criminal cases it accepted in that period.⁶²⁰ Its military law office would have handled the bulk of these, and essentially all from 1951 onwards, when that office had a monopoly on counterrevolution cases in the city. Trusted cadres from the BMPC's criminal tribunal and the municipal public security bureau staffed the office, and BMPC judges simply put on their military hats, so to speak, when they tried cases. That came naturally at a time when some veteran cadres were still apt to wear sidearms at court, a habit left over from the civil war.

During the first six months of the campaign, the BMPC's military law office received 3,267 written accusations and 3,036 oral accusations of counterrevolutionary activity.⁶²¹ During the first eight months, it tried and executed 703 people, including one batch of 199 on March 25, 1951 and another batch of 221 on May 20 of the same year, both by firing squad.⁶²² That is an average of more than three per day. As Zhang Sizhi recalls of the time, "with a single bulletin tens of people would lose their lives, and without a bulletin you could still execute people."⁶²³ Some defendants were sent to execution without written verdicts. The People's Congress later dispatched representatives to investigate reports of those improprieties, which sparked a small panic at the court. BMPC cadres hastily drew up the missing verdicts, but it was easy to tell that some of them had been faked because the documents looked too fresh. To conceal this, one fast-thinking cadre came up with the idea of ageing the verdicts by soaking them in vinegar, which prompted a colleague later to protest on a big character poster, "The Court pickles its judgments. Where has its conscience gone?"⁶²⁴

Sourcing Cadres: Recruitment Policy

Resolving the cadre crisis, building new courts, and bolstering the institutional relevance of the judicial system hinged on aggressive recruitment. At the First National Judicial Work Conference in July 1950, Dong Biwu authoritatively defined the three principal sources of judicial cadres, namely: 1) cadres who had performed judicial or other work including military service in the "old liberated areas," provided they underwent a short period of study prior to their new appointments; 2) legacy judicial

⁶²⁰ *Shenpan zhi* 审判志, ed. Beijing shi difang zhi bianzuan weiyuanhui 北京市地方志编纂委员会, vol. 27 (Beijing: Beijing chubanshe, 2008), 77,91.

⁶²¹ *Beijing zhi zhengfa pian* 北京志政法篇. Beijing zhi: zhengfa pian (diyi ci xiugai gao) 北京志: 政法篇(第一次修改稿) (1959), BMA 001-012-00862, 122.

⁶²² "Beijing shi junshi weiyuanhui junfachu guanyu panjue 505 ming fangeming zuifan de bugao (May 22, 1951),"北京市军事委员会军法处关于判决 505 名反革命罪犯的布告 in *1951: Beijing shi zhongyao wenxian xuanbian* 1951: 北京市重要文献选编, ed. Beijing shi dang'anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang'an chubanshe, 2001). *Beijing zhi zhengfa pian*, 122.

⁶²³ Zhang Sizhi 张思之, "Jingguo duonian fanfu de douzheng, wo bu name xunfu le," 经过多年反复的斗争, 我不那么驯服了 <http://www.shz100.com/article-9483-1.html> (accessed January 26, 2015).

⁶²⁴ *Ibid.*

personnel who had successfully reformed and passed background checks; and, 3) students.⁶²⁵ Dong recognized that the ranks of the first two categories were finite and insufficient to meet demand, but they had the virtue of being available almost right away. The new blood necessary for long-term growth would come from the third. Deng Zihui summed up the policy this way, “allocate a certain number of veteran cadres to serve as backbone cadres in people’s judicial organs, cultivate large numbers of new cadres, and boldly select legacy judicial personnel.”⁶²⁶

The 1950 recruitment policy broke with base area conventions in two major respects. First, it conferred an elite identity on the judiciary by enumerating only groups with superior political, occupational, or educational credentials. In principle, this excluded the poorly schooled or untrained initiates upon whom Party judicial organs had traditionally relied, and it also called into question the suitability of many current judicial cadres.⁶²⁷ Senior judicial officials were confident, however, that quality would rise as they deployed the resources now at their disposal to train a new generation of cadres. Indeed, when they spoke of recruiting students into the courts, they expected reconstituted university law departments to supply that contingent, evidence of how deeply their commitments to Republican ideas about law as an academic discipline ran.⁶²⁸ Wu Gaizhi, deputy president of the Supreme People’s Court, made clear that new standards applied when he elaborated on the qualities a judge should have.

First, a resolute political standpoint and a staunch ideology and work style of serving the people; second, familiarity with the policies, laws, and legislative spirit of the people’s government, and proficiency at flexibly integrating them and applying them to concrete criminal and civil cases; third, they must have a certain cultural level, scientific knowledge, and general knowledge about society.⁶²⁹

Second, the policy ratified the continued retention of legacy judicial staff. All the same, it left open the ambiguity over whether they could perform adjudication. Given the large numbers of former Nationalist personnel who were on the bench openly deciding cases, that oversight should be read as tacit consent.

The policy supported ambitious recruitment targets. Employing the same kind of back-of-the-envelope extrapolation that Yang Zhaolong had used four years earlier, Dong calculated in 1951 that the PRC needed about 20,000 “chief political-legal cadres;” 15,000 spread across its roughly 2,200 counties and cities, and the remainder for its

⁶²⁵ Dong Biwu, “Yao zhongshi sifa gongzuo (July 26, 1950),” 40.

⁶²⁶ Wu Gaizhi 吴溉之, “Renmin fayuan shenpan gongzuo baogao (July 1950),” 人民法院审判工作报告 in *Xingshi susong faxue cankao ziliao huibian (zhongce)* 刑事诉讼法学参考资料汇编 (中册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005), 704.

⁶²⁷ At the 1949 judicial training course in Pingshan, Xie Juezai listed four qualities for judicial cadres: 1) a theoretical level and understanding of Marxism-Leninism; 2) a political level and understanding of various CCP policies; 3) suitable social and work experience; and, 4) a suitable cultural level. Nowhere did he specify knowledge of the law or proficiency in judicial practice. Xie Juezai, 31-32.

⁶²⁸ Shi Liang, “Guanyu muqian sifa xingzheng gongzuo baogao,” 49.

⁶²⁹ Wu Gaizhi, “Renmin fayuan shenpan gongzuo baogao (July 1950),” 704.

provincial and macro regional governments.⁶³⁰ To be sure, he was talking about a wider class of offices than Yang had in mind; “chief political-legal cadres” included not just judges and procurators, but also select higher officials in local administration. For example, his estimate allocated a single cadre each to the local government office, public security bureau, court, procuratorate, and supervisory commission, about five or six cadres in all for every city and county. This worked out to roughly half the number of local judges and procurators that Yang had proposed but, on the upside, it deftly hitched judicial expansion to the larger project of state construction, which commanded far greater attention and resources. As a consequence, he projected that it would take another three to five years (1954-56) to meet those goals, provided that governments at all levels intensified and pooled their efforts.⁶³¹ Naturally, those cadres would need a complementary number of support staff.

Reaching the targets was not simply a matter of signing people up. As a rule, veteran cadres lacked the necessary skills, legacy personnel lacked the necessary ideological consciousness, and students were in want of both. Remedying those gaps required convening short-term occupational and ideological training programs for the first two groups, and the more arduous task of reconstructing the nation’s law schools for the third.⁶³² Thus, the government inescapably took on the burden of reconstituting legal education.

Legal Education

During the Republican period, legal education was synonymous with Continental-style, tertiary law schools. Most were university-based, but some belonged to a subset of vocational colleges 专科学校, and as a group they nearly monopolized admission to the higher legal professions.⁶³³ Since the elite model of judicial recruitment and qualification adopted in Republican China bound the quality of the courts to the performance of these law schools, legal education’s endemic problems regularly provoked impassioned demands for deep reform.

1949 brought the opportunity for a fresh start. While the CCP had no experience operating urban law schools, it did have its own model of legal education. Developed during the civil war years and rooted in its distinctive epistemology of knowledge, this was a variant of general cadre training that typically combined several months of

⁶³⁰ Dong Biwu 董必武, “Guanyu choushe zhongyang zhengfa ganbu xuexiao fangan de shuoming (July 12, 1951),”关于筹设中央政法干部学校方案的说明 in *Dong Biwu faxue wenji* 董必武法学文集, (Beijing: Falü chubanshe, 2001), 82.

⁶³¹ Ibid.

⁶³² Dong Biwu, “Yao zhongshi sifa gongzuo (July 26, 1950),” 39-40. Shi Liang, “Guanyu muqian sifa xingzheng gongzuo baogao,” 49.

⁶³³ Strictly speaking, their grip was not absolute. For instance, during the Nationalist period, university graduates in political science were eligible to sit for the judicial examination. But it should be pointed out that political science departments were generally housed in law schools.

rudimentary ideological instruction with an introduction to current affairs, statutes, policies and practical skills. In some ways, these offerings presented a Maoist version of the *fazheng* 法政 pastiche that had sprouted up in the years straddling 1911. *Fazheng* bundled law with a smattering of social science fields deemed essential to the construction and administration of the modern state (e.g. finance, accounting, politics, sociology) into a coherent program of secondary or tertiary study. While these constituent fields soon developed distinct identities, the *fazheng* concept had a lasting effect on law's disciplinary boundaries. Many jurists tended to think of law not as autonomous, but as naturally overlapping with other bodies of social knowledge, especially politics and ethics, which resonated with still older, imperial traditions, and with contemporary Western schools of legal pragmatism and sociological jurisprudence.⁶³⁴

In the base areas, the CCP pitched this legal training mainly to rural cadres with primary or middle school educations, sometimes less. But after its ascent to national power, the demands on it exploded. To govern effectively, it needed not only to scale its existing programs radically upwards, but also to introduce more advanced, technical training for judicial cadres destined to work in the cities and in higher-level organs.

The government addressed the first challenge by proliferating short-course programs cut from the base area mold. As already noted, for example, in 1949 authorities in Beijing convened on-site ideological study sessions and reeducation courses for hundreds of personnel from the city's former Nationalist local court and Hebei Provincial High Court. Similar programs for legacy personnel appeared around China.⁶³⁵ A few dozen BMPC cadres attended courses last several weeks hosted by organs such as the city's new administrative cadre school, and comparable programs sprouted up around the region, some of them with an occupational focus.⁶³⁶ On November 1, 1949, for example, Hebei province inaugurated a special three-month course in which 35 county-level judges and clerks studied basic legal ideology, judicial practice, and policies on pressing issues such as land reform and marriage.⁶³⁷ Between 1949 and 1953, around 15,000 students received this kind of training at more than 20 provincial, municipal, or autonomous region-level political-legal or administrative cadre schools, and judicial and procuratorial cadre courses around China.⁶³⁸

⁶³⁴ Sun Xiaolou 孫曉樓, "Falü shehuihua zhi tujing," 法律社會化之途徑 *Jingshi* 經世 1, no. 6 (1937): 13-17.

⁶³⁵ Shi Liang, "Guanyu muqian sifa xingzheng gongzuo baogao," 49.

⁶³⁶ Gu Hong, and Jin Jirong, "Beiping heping jiefanghou dui jiu zhengfu liuyong renyuan de jiaoyu gaizao he anzhi," 45-46.

⁶³⁷ *Hebei sheng shenpan zhi* 河北省审判志 (Shijiazhuang: Hebei sheng gaoji renmin fayuan, 1993), 374; Yang Xiufeng 杨秀峰, "Zai Hebei sheng diyi qi sifa xunlianban biye dianli dahui shang de jianghua (January 31, 1950)," 在河北省第一期司法训练班毕业典礼大会上的讲话 in *Zuigao renmin fayuan liren yuanzhang wenxuan* 最高人民法院历任院长文选, ed. Chen Deyong 沈德咏, (Beijing: Renmin fayuan chubanshe, 2010).

⁶³⁸ Huo Xiandan 霍宪丹, *Zhongguo faxue jiaoyu de fazhan yu zhuanxing (1978-1998)* 中国法学教育的发展与转型 (1978-1998) (Beijing: Falü chubanshe, 2004). Tang Nengsong, Zhang Yunhua, Wang Qingyun,

The Party dramatized its response to the second challenge by employing the *fazheng* concept as an artful foil. After the CCP took over Chaoyang University in May 1949, it cleaved the campus into two parts. The first, the New Legal Science Graduate School 中国新法学研究院, focused on re-educating legacy personnel with stiff doses of Party ideology and policy before returning them to legal employment.⁶³⁹ The second specialized in training a broader range of legal cadres. Amid discussions about what to call it, Jia Qian, the presiding judge of the North China People's Court and a Chaoyang alumnus, suggested a clever Marxist inversion of *fazheng* to communicate at a glance the new primacy of politics over law. In June 1949, the academy was dubbed the Beiping College of Politics and Law 北平政法学院 and, in August of that year, the China University of Politics and Law 中国政法大学, and from there the neologism *zhengfa* 政法 achieved universal currency.⁶⁴⁰

Though it existed for only eight months, the China University of Politics and Law did more to restructure early PRC legal education and judicial recruitment than any other school. To begin with, it hosted the first resident Soviet legal advisors in the PRC, N.G. Sudarikov (苏达里可夫 Судариков) and B.S. Bykov (贝可夫 Быков), who were among the contingent of experts dispatched to follow Liu Shaoqi home from Moscow in late 1949.⁶⁴¹ They quickly became the central government's most influential counsels on Soviet legal affairs. More importantly, the school also supplanted the monolithic system of academic law inherited from the Republican era with a multiform model keyed to provisioning various levels of the emergent legal system with personnel trained in suitably different ways. Both the CCP and Guomindang had previously experimented piecemeal with such a model, and the Nationalist government had even tried to incorporate aspects of it into central planning, but 1949 was the first time in China all of its various components were coherently integrated. Once ensconced, it was difficult to dislodge, and despite efforts towards convergence, its basic parameters remained intact for decades.

Because we can trace the configuration of judicial cadre training and recruitment in the early PRC directly to the programs this school devised, it behooves us to linger a moment on their details.⁶⁴² The school sorted its approximately 1,412 students into

and Yan Yalin, *Tansuo de guiji: zhongguo faxue jiaoyu fazhan shilüe*, 595-596. Cai Cheng, *Dangdai zhongguo de sifa xingzheng gongzuo*, 87. Tang Nengsong and Cai Cheng report 13,588.

⁶³⁹ There were 78 students in that school's opening class, mainly Republican-era law school faculty. In August, 1951, the school merged with the incipient Central Cadre School for Politics and Law.

⁶⁴⁰ Confusingly, this is not the university of the same name that exists today. Their pedigrees are separate.

⁶⁴¹ *Sulian faxue zhuanjia Sudaniketu tongzhi zai benxiao kaixue dianli shang de yanshuo (December 15, 1949)* 苏联法学专家苏达尼可夫同志在本校开学典礼上的演说. Benchu dui zhengfa daxue, dengji chuli yijian de baogao, ji youguan wenjian 本处对政法大学, 登记处理意见的报告, 及有关文件 (1949), BMA 008-002-00721.

⁶⁴² Xiong Xianjue, "Fada shenming shimo". *Benxiao jiaoyu jihua (December 8, 1949)* 本校教育计划. Benchu dui zhengfa daxue, dengji chuli yijian de baogao, ji youguan wenjian 本处对政法大学, 登记处理意见的报告, 及有关文件 (1949), BMA 008-002-00721; Fan Ming 范明. *Diyi bu de tedian ji yi ge banyue de*

three groups 部 distinguished by their Party and educational statuses. Each group received a distinctive course of study tuned to the role in the legal system its graduates were expected to fill. Group One was led by Chen Shouyi, soon chief of the Ministry of Justice's Education Section and later the longest serving chair of the law department at Peking University. He too was a Chaoyang alumnus. It admitted serving or former cadres, namely: county section chiefs 县科长 and judicial or administrative cadres of similar rank or higher; those who had graduated or attended polytechnic or higher law schools before being trained at a revolutionary cadre school; and personnel sent from provincial level or higher organs, military units or mass organizations "with the proper experience and theoretical foundations."

They studied a conventional menu of Party ideology and doctrinal concepts, but their experience as veteran cadres made this less of a priority, and the course instead emphasized basic practical skills, namely: adjudication, current policies, laws and decrees, and the elements of interrogation, investigation, prison management, forensic medicine and "mass work." Group One trained 411 cadres in a four-month program of study descended from the CCP's pre-1949 cadre training courses, and was in fact the sequel to the interrupted course convened earlier that year by the NCPG in Pingshan. After graduation, several students went to the BMPC. When the group ended in early 1950, the China University of Law and Politics closed. In due course, both the program and its leader transferred to the Central Political-Legal Cadre School, which took over and continued its basic mission. A curriculum list reveals an all-star instructional cast, including Party theorists such as Li Da and Ai Siqi, and legal policymakers including Xie Juezai, Shen Junru, Jia Qian, Wang Huai'an, Li Mu'an and Li Liru.⁶⁴³

Group Two was led by Wang Ruqi, a graduate of Fudan University law school who had assisted with the takeover of the Hebei Provincial High Court and would shepherd the reconstitution of the bar in the PRC as Chief of the Ministry of Justice's Section on Lawyers and Notaries from 1954-58, and again in the early 1980s. It comprised legacy personnel, the majority of whom were actually continuing Chaoyang students, but also included: those who had graduated or attended polytechnic or higher law schools, those who had worked in the Nationalist judicial or legal education communities, those who had graduated or attended polytechnic or higher schools and wished to be judicial workers, and those sent from provincial level or higher organs, military units or mass organizations "with proper work experience and cultural levels." In contrast to Group One, this cohort had much higher social and cultural backgrounds, usually including Republican legal educations, and their course of study therefore focused on thought reform.

xuexi gaikuang (December 15, 1949) 第一部的特点及一个半月的学习概况. *Benchu dui zhengfa daxue, dengji chuli yijian de baogao, ji youguan wenjian* 本处对政法大学, 登记处理意见的报告, 及有关文件 (1949), BMA 008-002-00721.

⁶⁴³ *Beiping shi renmin fayuan bayuefen gongzuo jianbao.*

Group Two enrolled 559 students in an eight-month course of study. Its curriculum was the basis for the introductory ideological and political courses later required of law students at tertiary institutions, subjects such as: The History of Social Development, Marxist-Leninist Theory of the State, Basic Problems of the Chinese Revolution, History of the Chinese Revolution, On New Democracy, and Dialectical and Historical Materialism. When the China University of Law and Politics closed, the Group transferred mid-stream to People's University and became the germ for that institution's short-course 专修科 legal education program. In contrast to the specialty programs introduced for lower-status occupations such as judicial clerks, accountants and statisticians in the late Republican period, these short-courses aimed to train over one to two years practice-oriented cadres destined for the mid-reaches of the legal system and possessed of a higher level of skill and sophistication than the ordinary cadres dispatched into the legal system's trenches. Many of them went to local and provincial courts, and the public security apparatus.

Group 3 was led by Ji Gongquan, former president of the Nationalist Shanxi Provincial High Court. It aimed to provide a three-year undergraduate-level course of study open to high school graduates and a small number of the youngest continuing Chaoyang students.⁶⁴⁴ These were the progressive youth the Party hoped to mold into red experts for the most intellectually demanding corners of the legal system. The group comprised 442 students, 316 of whom moved to People's University mid-stream in March 1950 as the inaugural entering undergraduate class of that institution's academic law department.

We can see from this that within months of taking Beijing the Party had already crafted a coherent, three-pronged attack on the Republican model of legal education. Its aim was simple and focused: to mitigate a dire shortage of qualified political-legal cadres at every level of government. The three groups at the China University of Politics and Law exactly anticipated the three principal sources of judicial cadres the CCP identified for recruitment in 1950; veteran cadres, legacy Nationalist personnel, and students, even listing them in the same order.⁶⁴⁵

More significantly, Group 3 posed the first deep foray by the CCP into academic law, and was meant to challenge the grip Republican university law departments exercised on that niche. Efforts to deliver a rigorous, multi-year program of legal education never got very far in the base areas and, from the perspective of the CCP, the infrastructure of tertiary Republican law schools inherited in 1949 was too flawed to rely upon without a complete overhaul. Republican law schools were creatures of the old regime and captive to its reactionary commitments. They had served the Nationalist

⁶⁴⁴ See for example, *Disanbu xuexi fazhanshi sixiang xiaojie gongzuo huibao (February 1950)* 第三部学习发展史思想小结工作汇报. Zhongguo zhengfa daxue guanyu shehui fazhanshi jiaoxue zongjie, jihua caoan ji sanbu ganbu dui shehui fazhanshi jiaoxue de yijian he xuexi xiaojie, huibao, zongjie, baogao deng wenjian 中国政法大学关于社会发展史教学总结, 计划草案及三部干部对社会发展史教学的意见和学习小结, 汇报, 总结, 报告等文件 (1950), BMA 028-001-00020.

⁶⁴⁵ Dong Biwu, "Yao zhongshi sifa gongzuo (July 26, 1950)," 39-40.

state by teaching Nationalist law and Guomindang ideology, and by training the judges, procurators, and police employed to suppress the revolution. What is more, Guomindang party members and foreign-trained scholars permeated their ranks.

By the time the PRC was founded, the inherited Republican system of tertiary law schools was already on its knees owing to war and economic crisis. From 1947 to 1949, enrollments plummeted by more than 80 percent.⁶⁴⁶ Then, abrogation of the Nationalist Six Codes eviscerated curriculums and the special claims to knowledge that endowed law professors with authority, and they struggled to rebuild those resources in an environment hostile to the old hierarchies. New courses, pedagogical methods, institutional and organizational forms, ideological standpoints, and modes of faculty-student interaction plunged departments further into turmoil.

Beijing, for example, had five tertiary law departments when the CCP took the city in February 1949: at Peking University, Chaoyang University, Tsinghua University, China University, and the North China College of Humanities and Law. The last two of these closed within weeks, starved of funds, and their law departments were absorbed by the CCP's North China University, essentially a short-course cadre training school with roots in the Party's revolutionary base areas. Then, in May 1949, the Party took over Chaoyang University. Of the original five law departments, only two, at Beijing and Tsinghua universities, survived the year.

Peking University illustrates well the turbulence that beset academic law in this period. By May 1949, the university's law department had dropped thirteen courses, hastily sanitized and repurposed the remainder to cover emerging policies and decrees, and added five new ones on ideologically-inflected topics such as Dialectical and Historical Materialism, and the Marxist Theory of Law. Total enrollment in the department during the second half of that year amounted to 190 students, taught by 13 faculty.⁶⁴⁷ In November, Yu Shutong, a former underground Party member and graduate of the law department, perceptively surveyed the scene:

Today, the basic conditions confronting legal education are: reactionary law has already been abolished, and while the people's own legal system is being drawn up, the laws in effect are few, and there is a shortage of new teaching materials and qualified instructors; next, basic knowledge of Marxism-Leninism among students is generally insufficient, particularly the Marxist-Leninist conceptions of the state, law, and society. We must clearly establish them all as the basis of professional work and study. Furthermore, the old ideology faculty and students carry from the old society should in the course of study be continuously reformed, only then can we cultivate genuine people's legal cadres. Old methods of education have already proven unsuited to today's learning. Everyone reckons that now due to the rapidly developing revolutionary situation, every locale urgently needs legal cadres. Consequently during their studies students must

⁶⁴⁶ Tang Nengsong, Zhang Yunhua, Wang Qingyun, and Yan Yalin, *Tansuo de guiji: zhongguo faxue jiaoyu fazhan shilüe*, 317.

⁶⁴⁷ Yu Jiang 俞江, "Wenge qian de beida falü xi (1949-1966 nian)," '文革'前的北大法律系 (1949-1966 年) *Zhongwai faxue* 中外法学 16, no. 2 (2004): 149.

prepare sufficient basic knowledge and an ideology of serving the people in order to be able whenever necessary competently to assume a post.⁶⁴⁸

The PRC Ministry of Education revised the curriculum standards for law departments almost annually, which kept faculties continually off balance as they rushed to write lesson plans, create and adjust courses, and find appropriate content to fill them. Moreover, endless political campaigns tugged at instructors and students alike. For example, the 1949 curriculum standards were released only in October, too late for Peking University's law department to integrate them fully into teaching that year. The 1949 standards were then amended in August 1950, but just as faculty received them and began to formulate lesson plans, the Campaign to Study Marxism-Leninism commenced, and for the next six months more than 3,000 students and faculty from Beijing and Tianjin area universities were called to participate in a cascade of rallies, political study sessions and criticism meetings that thoroughly obstructed teaching.

In June 1951, the Ministry of Higher Education revised the 1950 standards, but this curriculum was not fully implemented by the department either. Of the six faculty assigned to develop it, three were undergoing thought reform and study, one was away on other business and a fifth was but a new hire. As a result, the department could muster only lesson outlines, with few of the details fleshed out, and course materials were incomplete. Alas, this had only a slight impact on teaching because a few weeks before the academic year was to begin, orders came down suddenly to organize students and faculty to participate in land reform work, and after weeks consumed with preparations for that venture, on September 5, 1951 all second, third and fourth year students in the law department along with many of their instructors departed for points in the Central-South, Northwest and Southwest administrative regions. This left only 44 first year law students on campus for much of the academic year. The others did not return for six months (March 1952) at which point they took highly abbreviated versions of the courses allotted for that term in the two months remaining before it ended. Propaganda and pressures to conform notwithstanding, these serial disruptions took a toll on the morale of the department's students, and some began applying to transfer to other units on campus or other universities, which required intervention by faculty and cadres to arrest.

Yet, the news was not all gloomy. If Peking University represented academic law's crumbling past, People's University embodied its hopeful future. People's University was the flagship of a new system of higher education premised on Soviet-style central planning, and built from the ground up to escape the inefficiencies, and ideological and institutional baggage of Republican universities.⁶⁴⁹ Rushed

⁶⁴⁸ Yu Shutong 余叔通, "Gaizhi zhong de beida falü xi," 改制中的北大法律系 *Renmin ribao* 人民日报, November 15, 1949. Yu Shutong was a former underground Party member and a 1949 graduate of the law department at Peking University. In the early 1980s, he was vice-president of the China University of Politics and Law, and chief of the Ministry of Justice's Education Section.

⁶⁴⁹ Douglas Stiffler, "Building Socialism At Chinese People's University" (Ph.D. Dissertation, University of California, San Diego, 2002).

implementation of the grandiose plan to build a university from scratch, and the decision to foreswear experts from the old regime meant that, when the doors opened in 1950, administrators and faculty came largely from the intra-Party ranks of the cadre training tradition. They knew political education well, but were not versed in the academic disciplines or the advanced managerial techniques needed to catapult the PRC towards socialist modernity. The law department in particular had little to teach because the new regime had abrogated the Nationalist legal system and scarcely instituted any domestic jurisprudence, legislation or systematic legal doctrines of its own.

As a matter of national higher education policy, People's University aspired "to unite Soviet experience and Chinese national conditions." However, because Soviet law offered a ready-made solution to the urgent need for lesson plans, lecture notes and readings, it poured into the void left by abrogation and dominated teaching until around 1956, when the fraying of Sino-Soviet relations began to undermine its authority. The curriculum was patterned after Moscow State University's, with exhaustive guidance from resident Soviet advisors, who taught regularly and enjoyed immense prestige. In these opening years, Chinese content was effectively consigned to a supporting role, not unlike its position after 1911.

Until 1956, People's University accepted only students and cadres sent by government organs, Party committees, military units, and mass organizations, which gave the campus a very different social composition than the tertiary education system at large.⁶⁵⁰ Among its entering class in 1950, 23.5 percent of students were members of the Communist Youth League, and a further 45 percent were full Party members, of whom 46 percent had joined three to eight years prior. A striking 53.8 percent had no more than primary or lower-middle school educations.⁶⁵¹ In its early years, 72 percent of the total student body had worker or cadre backgrounds and, from 1950 to 1958, 49 percent were Party members. Accordingly, the university acquired the reputation of being the CCP's "Second Party School."⁶⁵²

Interestingly, however, the nascent law department strayed from that pattern. The first batch of graduates numbered 737 from a pair of short-courses held in 1950 and 1951. Many were completing studies begun under the Nationalist regime at Chaoyang law school, or were legacy Nationalist legal personnel sent for re-education before assignment back into the legal system and, on that account, they had far higher levels of education and less favorable class backgrounds than was typical for short course students elsewhere in the university. Desperate for skilled talent, Party and state organs, including the BMPC, snapped them up.

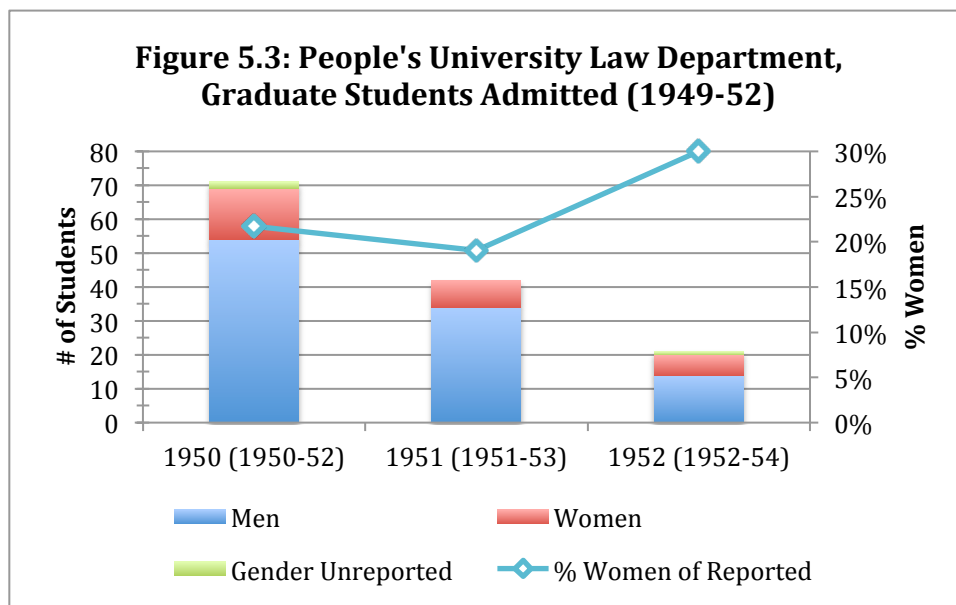
⁶⁵⁰ *Zhongguo falü nianjian 1989* 中国法律年鉴 1989 (Beijing: Falü chubanshe, 1990), 30 n.1.

⁶⁵¹ Stiffler, "Building Socialism At Chinese People's University," 151.

⁶⁵² *Zhongguo renmin daxue xiaoshi (chugao)* 中国人民大学校史(初稿). (1960), BMA 220A, 14. It is doubtful that the cadre contingent came predominantly from worker or peasant backgrounds. Stiffler, "Building Socialism At Chinese People's University," 180. *Zhongguo gongchandang zhongguo renmin daxue zuzhi shi ziliao: 1937 nian 7 yue-1991 nian 12 yue* 中国共产党中国人民大学组织史资料: 1937年7月-1991年12月 (Beijing: Zhongguo renmin daxue, 1992), 298-299, 338-339.

The department's graduate students had similar backgrounds. Between 1950 and 1952, the law department accepted 134 students into a two-year graduate program (Figure 5.3).⁶⁵³ They worked directly under Soviet advisors, and after graduation many were assigned to cadre schools, law departments and, politics and law institutes, where they in turn trained many of the people who staffed the legal system. A parade of eminent post-Mao jurists, such as Gao Mingxuan, Ma Kechang, Sun Guohua, Xu Chongde, and Zhang Jinfan, belonged to these cohorts.

The law department's inaugural undergraduate class also comprised many former Chaoyang students and their Group 3 peers from the China University of Politics and Law. However, the undergraduate profile reverted to the university mean in subsequent years, when middle school level educations were common. The typical undergraduate was a promising young cadre with a few years of work experience sent to acquire skills for their next posting, which was apt to be in a state legal or administrative organ.⁶⁵⁴ Between 1950 and 1952, the department accepted 327 undergraduates into a four-year course of study (Figure 5.4).⁶⁵⁵ Following Soviet practice, the program instituted a practicum by which students spent a total of twelve weeks working in courts, procuratorates and other legal organs to better prepare them for future employment.⁶⁵⁶

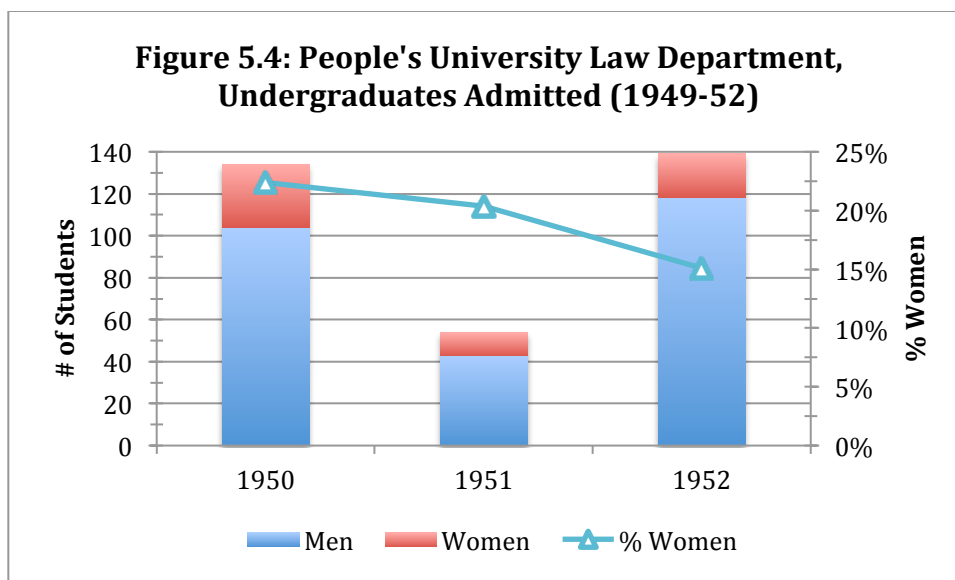


⁶⁵³ *Zhongguo renmin daxue faxueyuan xiaoyou tongxunlu (1950-2000)* 中国人民大学法学院校友通讯录 (1950-2000) (Beijing: Zhongguo renmin daxue faxueyuan, 2000).

⁶⁵⁴ *Zhongguo faxuejia fangtanlu*, 121,141.

⁶⁵⁵ *Zhongguo renmin daxue faxueyuan xiaoyou tongxunlu (1950-2000)*.

⁶⁵⁶ Yang Huanan 杨化南, "Zhongguo renmin daxue falü san nianji xuesheng yijiuwusan niandu zhuanke shixi zongjie," 中国人民大学法律三年级学生一九五三年度专业实习总结 *Jiaoxue yu yanjiu* 教学与研究 no. 6 (1954): 38-43.



People's University was one of the few bright spots in an otherwise bleak landscape. It admitted an average of 109 law students per year between 1950 and 1952, which in purely numerical terms stacked up reasonably well against the 172 students Chaoyang University's law department and affiliated judicial group graduated in 1948, or the 190 students enrolled across Peking University's entire law department in 1949.⁶⁵⁷ But it could not offset the rapid reversal in academic law's fortunes nationwide, which frustrated the Political-Legal Committee's recruitment goals, and held back legal reconstruction.

In 1951, Dong Biwu expressed his consternation by scolding the Ministry of Education for neglecting legal education.⁶⁵⁸ Nevertheless, conditions worsened before they improved; in 1952 law-related undergraduate enrollments totaled just 3,830, compared to 37,780 in 1947, a drop from 24 percent of the total undergraduate population to just 2 percent.⁶⁵⁹ A traumatic restructuring then followed that eliminated all but one of the surviving law departments inherited from the Nationalist era, scattering capital that had taken a generation or more to build. This restructuring dispersed

⁶⁵⁷ *Chaoyang daxue biye tongxue lu*, 147-150; Zhang Gu, "Muxiao dakai wo zhengzhi sixiang de damen-ji canjia xueyun de yiduan douzheng,"

⁶⁵⁸ Ma Xulun 马叙伦, "Guanyu yijiuwulingnian quanguo jiaoyu gongzuo zongjie he yijiuwuyi nian quanguo jiaoyu gongzuo de fangzhen he renwu de baogao (May 18, 1951),"关于一九五零年全国教育工作总结和一九五一年全国教育工作的方针和任务的报告 in *Zhonggong dangshi jiaoxue cankao ziliao* 中共党史教学参考资料, ed. Zhongguo renmin jiefangjun guofang daxue dangshi dangjian zhenggong jiaoyanshi 中国人民解放军国防大学党史党建政工教研室, (Beijing: Guofang daxue chubanshe, 1979); Dong Biwu 董必武, "Dui jiaqiang zhengfa yuanxiao jiaoyu gongzuo de yijian (May 18, 1951),"对加强政法院校教育工作的意见 in *Dong Biwu faxue wenji* 董必武法学文集, (Beijing: Falü chubanshe, 2001), 78.

⁶⁵⁹ The data sets prevent ideal comparisons. The 1947 data refers to multi-disciplinary law departments 法科, while the 1952 data refers to multi-disciplinary programs of politics and law 政法. The boundaries and composition of the two categories differ somewhat, but overlap substantially. Tang Nengsong, Zhang Yunhua, Wang Qingyun, and Yan Yalin, *Tansuo de guiji: zhongguo faxue jiaoyu fazhan shilüe*, 317, 41.

libraries, and transferred faculty to other, far less prestigious occupations. Most never worked in the law again.

A confluence of factors contributed to this cataclysm, the most obvious of which was the hard logic of abrogation. In 1952, anxieties in the Party over ideological and organizational purity reached one of their periodic peaks, and that energy in turn disrupted the legal system. The Three-Anti Campaign produced a wave of arrests throughout the government for corruption and other derelictions of duty, public security organs sacked thousands of held-over personnel, and the Judicial Reform Campaign unleashed similar purges and a searing rectification of the courts. As presumptive bastions of the old law standpoint, the surviving Republican law schools were ripe targets in this adverse climate.

At the same time, there were compelling policy arguments recommending the closures. Since the late Qing, legal education's core mission had always been to turn out the skilled personnel required for building and administering the modern state, especially the courts. Thus, when the CCP repudiated the elite Republican model of judicial recruitment and expansion, the case for preserving the corresponding university-centric model of legal education collapsed. It was no longer functionally appropriate. Moreover, the conviction that legal education had reached hypertrophic proportions and become parasitic on economic development was widely held outside of the legal community, and difficult to deny given the share of enrollments law had commanded in a nation with many other basic, unmet needs. On that theory, the Guomindang had contemplated sweeping closures of law schools in the 1930s, but was only able to muster mild caps on enrollments. The CCP went further. From 1952 to 1953, the PRC government carried out a comprehensive restructuring of Chinese higher education that redirected scarce resources toward the scientific and industrial priorities of the upcoming First Five-Year Plan. Across the country, new schools were built, old schools were split up or merged, departments were moved, and disciplines were redefined. The law school closures were one facet of that monumental rebalancing.

Crucially, the closures did not signify a turn against academic law in general, but rather a rejection of one particular configuration of it. The 1950 judicial recruitment policy and supporting statements by the Minister of Justice explicitly called for training students in university law departments, and the cultivation of two new law departments, one at the aforementioned People's University, and the other at Northeast People's University in Changchun, validated that intent.⁶⁶⁰ Similarly, the Ministry of Education's

⁶⁶⁰ Shi Liang, "Guanyu muqian sifa xingzheng gongzuo baogao," 49. Northeast People's University also established a law department in 1950. The following year it began offering students a four-year course of study. The first graduating class of 52 emerged in 1955, having studied a very Soviet-style curriculum. The department is the institutional ancestor of Jilin University law school, and began in December 1948 as the judicial department 司法系 of the Northeast Administrative Institute, a Yan'an-style cadre training academy. Jiang Peng 姜朋, "Dongbei renmin daxue falüxi zaoqi lishi shulüe (1950-1953)," 东北人民大学法律系早期历史述略 (1950-1953) *Fazhi yu shehui fazhan (shuangyuekan)* 法制与社会发展 (双月刊) no. 3 (2007): 118-125.

1950 Uniform Curriculum implied receptiveness to academic law. It defined the role of university law departments as “training legal cadres and qualified instructors who will serve the people and understand present policies, laws and decrees and new legal science in order to consolidate the people’s democratic dictatorship. Currently, the main task is to train general judicial cadres.”⁶⁶¹ In 1952, that task remained as urgent as ever.

Accordingly, Dong Biwu resisted the scope of the law school closures, especially as applied to Peking University, but did not prevail.⁶⁶² Instead, he negotiated a compromise, which attached academic law, in a much-reduced form, to the Soviet model of specialized technical institutes the Ministry of Education was forcing on the rest of higher education.⁶⁶³ That move opened the way for the establishment of four institutes of politics and law 政法学院 distributed around the country, each of which was assigned responsibility for nurturing the local personnel needed to drive legal development forward in its respective region. In light of the Ministry of Education’s past indifference to legal education and the undiminished imperative to get trained cadres out into the legal system quickly, Dong’s Political-Legal Committee (1952-54), and then the Ministry of Justice (1954-58) kept direct administrative jurisdiction over these institutes to themselves.

That allocated academic law a key role in the construction of the judicial system. It lost its monopoly on the provision of skilled judicial personnel to the state, but was given a spot at the top of a new multi-form pyramid of training and recruitment designed to supply different levels of the legal system with personnel calibrated to a diverse array of needs. Accordingly, the number of tertiary law departments in China dropped from 50 in 1947 to the equivalent of eight in 1953, seven of which were PRC creations.⁶⁶⁴ But enrollments steadily picked up, exceeding their 1949 levels by 1957.⁶⁶⁵

Academic law’s position at the top of that pyramid carried certain responsibilities, foremost among them defining a common core of orthodox knowledge, developing authoritative teaching materials, and training politically reliable cadres for the most technically demanding positions in the legal system. As these cadres trickled into the legal system, they were supposed to assimilate its connection to the masses, while spurring it on to higher standards of doctrinal compliance, sophistication, and performance. At a stroke, the PRC government hoped to solve the endemic geographic imbalances, and problems with quality, uniformity, alienation and dissipation that mainstream critics of Republican legal education had clamored about fruitlessly for

⁶⁶¹ *Gaodeng xuexiao wen, fa, li, gong xueyuan kecheng caoan* 高等学校文, 法, 理工学院课程草案 (Beijing: Zhongguo renmin zhengfu jiaoyubu, 1950).

⁶⁶² *Dong Biwu chuan*, 758.

⁶⁶³ *Ibid.*

⁶⁶⁴ Equivalent is the key term here. After reorganizing its system of higher education, the PRC had only four university law departments in 1953, but it also taught academic law in four institutes of politics and law. Huo Xiandan, *Zhongguo faxue jiaoyu de fazhan yu zhuanxing (1978-1998)*, 282-284.

⁶⁶⁵ Tang Nengsong, Zhang Yunhua, Wang Qingyun, and Yan Yalin, *Tansuo de guiji: zhongguo faxue jiaoyu fazhan shilüe*, 462.

decades, to say nothing of the army of unemployable, ineffectual, and disruptive students that had poured out of Republican law schools.

That, in any case, was the plan, and in this era of learning from the Soviets, the plan was vital. Still, under the best of circumstances this plan would not bring the courts relief for several years. The first full undergraduate class of law students from People's University would not be ready for employment until about 1954, and it would take longer still for the PRC to build up a critical mass of academically trained judges and other experts comparable in skill to their Nationalist predecessors. The institutes of politics and law, and the parallel network of advanced cadre training programs Dong hoped to build were even slower to start. Their contributions would not begin to arrive in significant numbers until around 1953. In the meantime, what were the courts to do? Faced with crippling personnel problems, exploding caseloads, and litigants clamoring at the gates, they had to find solutions immediately just to remain afloat, and the compromises they struck set the stage for an explosion.

The Cadre Crisis at the BMPC

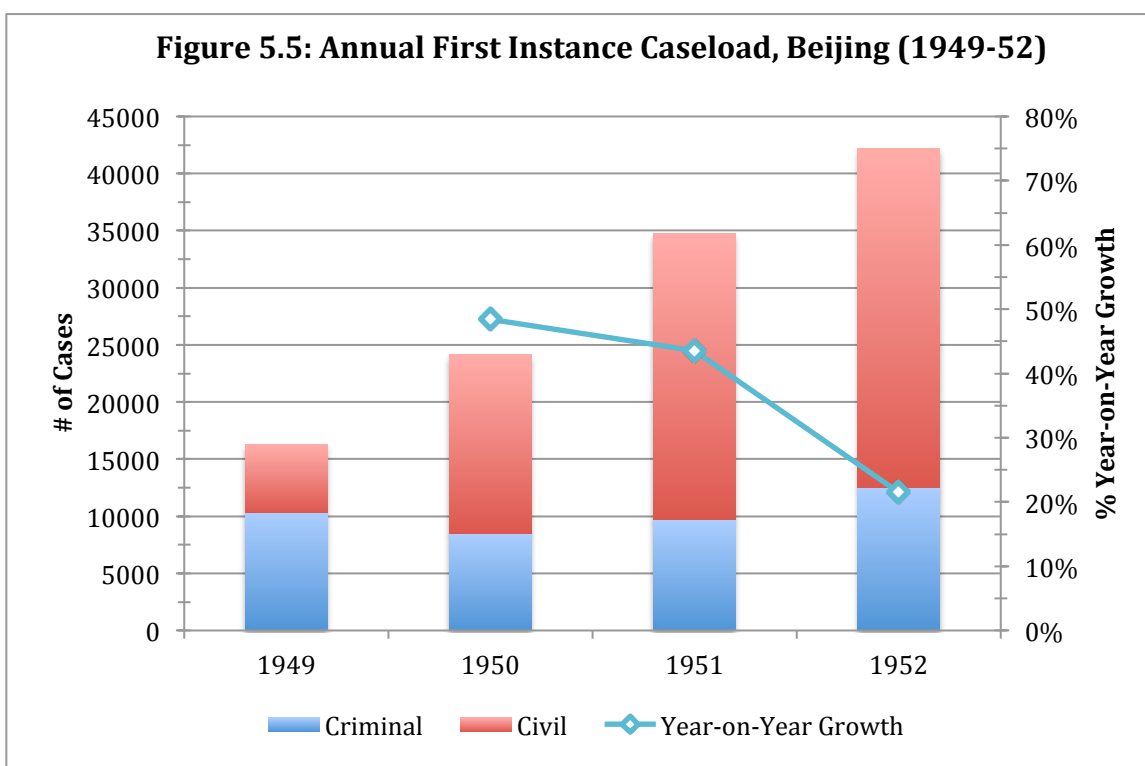
Out of the roughly 385 staff formerly employed by Beijing's Nationalist local court, the BMPC initially retained 137, or slightly more than one-third. The shortage of judges was such that, in spite of clear proscriptions, municipal authorities approved a March 28, 1949 request by Wang Feiran "to appoint judges and procurators from the (former Nationalist) local court who have shown outstanding progress in thought reform after undergoing short-term training" to serve as probationary judges 见习审判员, the lowest of the three new judicial grades established by the new court, and to appoint former (Nationalist) clerks who had specialized in handling cases as assistant judges 助审员.⁶⁶⁶ The BMPC struggled for the remainder of the year to supplement this recycling, regularly pleading for infusions of veteran cadres capable of filling the court's managerial and judicial ranks.

The cadre shortage impacted every aspect of its work, but registered most conspicuously in its inability to keep up with its spiraling caseload. 1949 had been extremely challenging in this respect. Expanded policing and the restoration of public order inundated the BMPC with criminal cases. Meanwhile, the elimination of litigation fees, simplifications to filing procedures and greater public outreach attracted a tidal wave of civil disputes, many of them quite minor, in spite of the establishment of district level mediation sections, which prevented thousands more cases from reaching the court at all. 1950 was worse, and the year had barely started when the BMPC was compelled to move to new quarters at 10 Four-Eyed Well 大四眼井 10 号, about a block

⁶⁶⁶ *Beiping shi renmin fayuan qingshi ganbu shiyong dengji* 北平市人民法院请示干部使用等级. Shi fayuan guanyu ganbu shiyong he genggai mingcheng de qingshi, Huabei caiwei guanyu gedi dianxunju tonggui junweihui dianxunju lingdao de tongzhi 市法院关于干部使用和更改名称的请示, 华北财委关于各地电讯局统归军委会电讯局领导的通知 (1949), BMA 002-001-00011.

away, which disrupted operations not least of all by further disarranging already jumbled evidentiary materials, case files, and archives. The Supreme People’s Court, Supreme People’s Procuratorate and the central government’s Legal Affairs Commission took over 72 Ministry of Justice Street, making it the nucleus of the Chinese judicial system once more.

The numbers vary slightly from source to source and should therefore be taken as close approximations rather than exact figures, but by any measure the scale and rapidity of the increase in cases was impressive. In 1947, Beijing’s Nationalist local court accepted around 7,379 cases. The figure for the BMPC’s first twelve months of operations (March 18, 1949-March 18, 1950) was more than triple that: 22,689 (Figure 5.5).⁶⁶⁷ The court had clearly struck an untapped well of litigiousness.



It strained to adapt to the flow. Almost from the start, it experimented with collective trials and mediations, and on-the-spot adjudication to raise efficiency, but it quickly became evident that the burden of serving the people in a city with a population of nearly two million was too heavy for a single court to bear. Hence in February 1950, Shen Junru, president of the Supreme People’s Court (SPC), proposed a pilot project to bootstrap some of the city’s new district mediation sections into district-level people’s courts. The proposed courts would take over most ordinary civil and criminal cases of first instance, with appeals going to the BMPC. The BMPC would retain principal

⁶⁶⁷ “Beijing shi renmin fayuan guanyu qingli jian gongzuo de baogao (August 8, 1950),” 398.

jurisdiction over major or complex cases, with the corresponding appeals going to the SPC, and it would exercise leadership and supervisory powers over the district courts.

Insofar as it upgraded mediation sections, Shen's proposal preserved the institutional centrality of the courts intrinsic to the inherited Republican model of justice. However, it added a level to that model, at the bottom, which decentralized adjudication by distributing basic level courts across the city and making their services more accessible to the public. To ensure that cases did not become bogged down, Shen suggested changing the existing three-trial system to a two-trial system.⁶⁶⁸ This meant that appeals of cases originating in the proposed district-level courts would end at the BMPC, unless the SPC exercised discretionary review.

By bringing the courts closer to the people and their cases, Shen's proposal promised to boost judicial performance by facilitating fact-finding, and making it easier for parties and witnesses to appear. It would also underscore the CCP's campaign to democratize the culture of adjudication and the work style of judges, hopefully increasing popular satisfaction with the courts. District courts were expected to develop mass line ethnographic knowledge about their jurisdictions through relentless summarization of trial work. Such knowledge would empower judges to grasp the subtle personal and social dynamics of the cases before them, and craft suitably tailored decisions. They would catch emerging trends, formulate timely interventions, and generate useful prescriptions for legal practice and policymaking more generally. In his proposal, Shen cited the 24 district courts operating in Moscow as an inspiration, and announced that the presidents of the Beijing and Tianjin People's Court's were already collaborating on provisional measures to guide the experiment, which the SPC and Ministry of Justice jointly released less than two weeks later.⁶⁶⁹

The BMPC began preparations for the new district courts right away, and to begin the experiment with a clean slate, it set about clearing the logjam of cases that

⁶⁶⁸ The 1951 Provisional Organization Statute for the People's Courts of the PRC applied the three-level, two-trial system nationwide. Interestingly, in his official explanation of the provisional statute, Vice Chairman of the Law Commission, Xu Deheng 许德珩, demonstrated that the "rule of law," re-introduced as a valid concept in CCP discourse in 1948 by the NCPG, remained orthodox in late 1951. Xu spoke of "raising the people's capacity for rule of law," and asserted that "the courts would become our platform for propagandizing policies and laws, and for propagandizing our nation's rule of law spirit." "Zhonghua renmin gongheguo renmin fayuan zhanxing zuzhi tiaoli (September 3, 1951)," 中华人民共和国人民法院暂行组织条例 in *Xingshi susong faxue cankao ziliao huibian (zhongce)* 刑事诉讼法学参考资料汇编 (中册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005). Xu Deheng 许德珩, "Guanyu 'zhonghua renmin gongheguo renmin fayuan zhanxing zuzhi tiaoli' de shuoming (September 3, 1951)," 关于'中华人民共和国人民法院暂行组织条例'的说明 in *Xingshi susong faxue cankao ziliao huibian (zhongce)* 刑事诉讼法学参考资料汇编 (中册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005).

⁶⁶⁹ "Jingjin liang shiqu renmin fayuan shixing banfa (March 8, 1950)," 京津两市区人民法院试行办法 in *1950: Beijing shi zhongyao wenxian xuanbian* 1950: 北京市重要文献选编, ed. Beijing shi dang'anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang'an chubanshe, 2001).

had built up over the preceding months. According to Peng Zhen, about one in every 125 households in Beijing was involved in at least some capacity in a case before the court, and that was exacting a toll on society and regime legitimacy. As if to prove the point, he asserted that people were grumbling, “After Liberation, everything has been reformed except the backlog of court cases, which is about the same as it was under the Guomindang.” In reference to criminals, they allegedly complained “those who should be executed aren’t!”⁶⁷⁰

Without enough cadres of its own to do the job, the BMPC was forced to reprise the extraordinary measures of the previous summer. Specifically, between May and August 1950, the court mobilized around 260 cadres borrowed from schools, people’s organizations, and various organs of city and district-level government into twelve teams.⁶⁷¹ Although (or perhaps because) the seconded personnel lacked judicial training and familiarity with court procedures, they managed to close 8,239 cases in 80 days, an average of more than 100 cases per day. Such feats of voluntarism featured frequently in the work of the courts, and were loudly celebrated for epitomizing the indomitable spirit of popular revolutionary praxis. But without fail, they left a wake of missteps, abuses and errors to contend with afterwards. Moreover, the relief was only temporary, and the backlogs promptly began to accumulate again, setting the stage for yet another crash drive to clear them.

Between August and late October 1950, four experimental district courts opened around Beijing (Table 5.1). Each had jurisdiction over several of Beijing’s 16 administrative districts; three of them were weighted in favor of districts close to the city core, and one was completely suburban, oriented towards the Capital Iron and Steel Works and its environs. The courts also stationed satellite trial groups 审判组 in some of the areas under their jurisdiction to try civil and criminal cases. In July 1951, the Ministry of Justice ordered the new courts to begin routine reporting to the people’s congresses in their home districts, which launched the integration of district organs of local government into the formal supervision of the courts.

⁶⁷⁰ Peng Zhen, “Guanyu qingli jian wenti (May 24, 1950),” 204.

⁶⁷¹ Again the sources differ as to the precise numbers. At the start of the drive, Peng reported 265 cadres, the final report issued by the BMPC put the figure at 247, and the Beijing Gazette simply says more than 260. Ibid. “Beijing shi renmin fayuan guanyu qingli jian gongzuo de baogao (August 8, 1950),” 398. *Shenpan zhi*, 108.

Table 5.1: Beijing District Level Courts (1950-51)⁶⁷²

#	Date Est. (1950)	Site	Juris. Over Districts (1950)	Renamed (1951)	Juris. Over Districts (1951)
1	8/29	Jinyu hutong 金鱼胡同	1,2,5,10	Central City District People's Court	1,2,5,10
2	10/30	Xiguan hutong 细管胡同	3,4,11	North City District People's Court	3,4,14
3	10/28	Guanyin temple 观音寺	6-9,13	Outer City District People's Court	6-9,11
4	9/20	Shijingshan Beixin'an township 石景山北辛安镇	12,14-16	Suburban District People's Court	12,13,15,16

As ever, the stated goal of the judicial system remained “causing people not to sue,” but this reform took it in the other direction.⁶⁷³ People flocked to the district courts that suddenly opened in their midst, causing the average monthly caseload for Beijing’s court system as a whole to increase by 50 percent, or more than 1,000 additional cases per month. From the narrow perspective of the main BMPC downtown, this brought relief because it shifted a share of the caseload and backlogs down to a lower level of the court system, and the backlogs did in fact begin to accumulate there immediately. To deflect some of this pressure, the district courts applied “persuasion and education.” In practice, that might include simple guidance on what the governing law or policy on an issue was, procedural stonewalling, dropping hints at how the case might turn out if it was litigated, and even bald coercion to encourage parties to patch up disputes of their own accord or to submit to mediation. True to their origins in mediation sections, in 1950 only 6.4 percent of the cases they accepted were adjudicated, about half were mediated, with the remainder handled in other ways.⁶⁷⁴ The trials embraced the mass line work style promoted by the Party, often taking place on-site and in the evening so as not to interfere with production, for example in a worker’s home after dinner. As the courts matured, adjudication took over a much larger share of their work, and adopted more formal procedures.

In 1952, the government was ready to expand the experiment, and when the city redrew its map, each of the resulting 13 administrative districts was given a name, most of which are still in use today, and a corresponding district level court. The district courts in the city core were assigned an authorized staffing level of 35, and the

⁶⁷² Ibid., 34-35.

⁶⁷³ Shen Junru 沈钧儒, “Zuigao renmin fayuan Shen Junru yuanchang guanyu shibanqu renmin fayuan de jianghua (February 26, 1950),” 最高人民法院沈钧儒院长关于试办区人民法院的讲话 in *Beijing shi renmin daibiao dahui wenxian ziliao huibian 1949-1993* 北京市人民代表大会文献资料汇编 1949-1993, ed. Beijing shi dang’anguan 北京市档案馆, (Beijing: Beijing chubanshe, 1996).

⁶⁷⁴ “Beijing shi renmin zhengfu guanyu jianli shi renmin jiancha weiyuanhui hequ renmin fayuan de baogao,” 北京市人民政府关于建立市人民检察院委员会和区人民法院的报告 in *Beijing shi renmin daibiao dahui wenxian ziliao huibian 1949-1993* 北京市人民代表大会文献资料汇编 1949-1993, ed. Beijing shi dang’anguan 北京市档案馆, (Beijing: Beijing chubanshe, 1996), 137.

remaining districts had a cumulative authorized staff of 168.⁶⁷⁵ From late 1952 onwards, the district courts were Beijing's front line judicial organs, taking over from central BMPC the majority of court mediations and first instance civil and criminal trials. With their opening, the judicial construction initiatives launched by the NCPG in 1948 reached an important milestone. In the four years since the city changed hands, one basic level court had grown to thirteen, and by 1952 their total caseload was 2.5 times larger than the BMPC's had been in 1949, and 5.7 times larger than the Nationalist local court's in 1947, all with about a third fewer total staff than the Nationalist court had possessed.⁶⁷⁶

Sourcing Cadres at the BMPC

Under the circumstances, provisioning those courts posed daunting challenges. Fortunately, Beijing was better stocked than most places with eligible candidates, and judging from an examination of dozens of personnel dossiers, authorities at the BMPC were able to apply the 1950 recruitment policy fruitfully.⁶⁷⁷ These dossiers include a standard registration form, first issued by the Beijing municipal government in 1949, and revised slightly from year to year thereafter. The 1951 edition, for example, took up both sides of a single printed page, and asked for biographical details, class and family background, Party status, past service to the revolution, social ties, employment history and evaluations, and other related data (Figure 5.6). This provided a basis for deeper scrutiny of cadres and their associates, and the CCP attached great importance to verifying and following up on the particulars. The dossiers could also include supplemental information gathered during background checks, assessments or recommendations from supervisors, records of distinctions or awards and disciplinary sanctions, and detailed autobiographies and self-criticisms.⁶⁷⁸

The court handled lower level staff appointments internally via its personnel department. The municipal government and municipal Party committee appointed its higher ranks, including court president, vice president, and judges, subject to approval from the North China Bureau and Party Center.⁶⁷⁹ For judicial appointments, typically the BMPC would first vet a candidate on its own, and then forward the nominee's

⁶⁷⁵ *Shenpan zhi*, 34-35.

⁶⁷⁶ *Quanshi linian lai shou lixing minshi diyi shensusong anjian tongji* 全市历年来受理刑民事第一审诉讼案件统计. Laodongju, renshiju, shi fayuan waishichu jiuji fenhui deng 1954 nian shangbannian he jidu gongzuo baogao 劳动局, 人事局, 市法院外事处救济分会等 1954 年上半年和季度工作报告 (1954), BMA 014-002-00053. *Shenpan zhi*, 77,258.

⁶⁷⁷ For a discussion of personnel dossiers, see: Hong Yung Lee, *From Revolutionary Cadres to Party Technocrats in Socialist China* (Berkeley: University of California, 1990), 329-351.

⁶⁷⁸ *Zhonggong Beijing shiwei zuzhibu guanyu ganbu dang'an guanli zhidu de zhanxing guiding (January 1955)* 中共北京市委组织部关于干部档案管理制度的暂行规定. *Zhonggong Beijing shiwei zuzhibu, Beijing shi renmin fayuan, Beijing shi renmin zhengfu gonganju guanyu ganbu dang'an wenti youguan guiding de tongzhi* 中共北京市委组织部, 北京市人民法院, 北京市人民政府公安局关于干部档案问题有关规定的通知 (1955), BMA 133-001-00056.

⁶⁷⁹ *Shenpan zhi*, 52.

application form and dossier to the municipal government's personnel department for authorization. It is important to note that authorization was not automatic, and in some cases questions about a candidate's past or suitability for a position stalled appointments pending further investigation, or derailed them altogether, even for veteran CCP cadres. In principle, access to personnel dossiers was tightly restricted, and cadres were therefore often unaware of accusations or marks against them. This militated against retaliation but also gave them no opportunity for rebuttal. Planting innuendos or negative information into dossiers, whether truthful or not, sabotaged careers and could physically imperil cadres and their families or associates, even years later. During the Judicial Reform Campaign (1952-53), the Campaign to Eliminate Counterrevolutionaries (1955), the Anti-Rightist Campaign (1957-58), and the Cultural Revolution (1966-76), cadres ruthlessly exploited dossiers to undermine or destroy rivals.

Figure 5.6: Cadre Registration Form (1951)⁶⁸⁰

[Front]

Current Name:	Gender:	Household Economic Class:
Real Name:	Age:	Individual Class:
Names Previously Used:	Marital Status:	Educational Level:
Native Place:	Coming From Where?	Occupation:
When/Where/Who Recommended You for Party Membership?	Length of Waiting Period, Date of Party Registration:	Current Work:
When/Where Did You Take Part in This Work or Enter the Communist Youth League?	Illnesses:	Special Aptitudes:
Family Financial Circumstances Before and After Taking Part in the Revolution:		
Family's and Your Social Relations, and their Occupations and Political Backgrounds:		
Took Part in What Kind of Revolutionary Organization (Under Party Leadership)? When/Where/Who Can Provide Proof?		
Training Received In and Out of the Party, and Its Main Content:		
Took Part in Which Political Parties or Religious Organizations? Do You Maintain Ties To Them Now?		
Previously Arrested, Taken Prisoner, or Lost Contact (with the CCP)? How Was It Resolved? Who Can Prove It? Your Personal Opinion About How It Was Handled:		
Awards and Punishments Received. When/Where/Types/Reasons:		

[Back]

Year Month Day Completed

Personal Biographical Sketch:
Evaluation by Organization and Self (Place, Date):
Personal Opinion Towards Work:
Reference Materials:

Beijing Municipal People's Government Personnel Office

⁶⁸⁰ I have reformatted the layout of the original document somewhat. The positions of the fields in relation to one another are reproduced accurately, but their sizes have been altered to fit the margins of this page.

Three registrants convey the flavor of cadre recruitment at the nascent BMPC. First, was quintessential CCP veteran Ma Runsheng. In March 1949, the NCPG's Judicial Department transferred Ma to the BMPC to take up a posting as director and deputy chief of its secretariat, just as the court was opening for business. He was 38 years old, classified as a rich peasant, and was a high school graduate with a dozen years of service to the CCP in its North China base areas. In that time, he held a variety of judicial positions, rising from chief of a county judicial department in 1942 to chief of a prefectural level judicial department in 1948. Before joining the BMPC, he attended the NCPG's abortive judicial training course in Pingshan in January 1949. In 1950, he applied for a promotion to chief of the court's secretariat with the support of BMPC president Wang Feiran, and mayor Nie Rongzhen approved the promotion. That gave Ma a great deal of power over most of the personnel at the young court. He had access to their dossiers, determined their assignments, and his evaluations of them shaped their prospects. This bred resentments against him that later exploded in recriminations during politically charged episodes at the court.

Second, Ning Zi was a 55 year-old graduate of one of China's earliest modern law schools. He first entered legal practice in Tianjin in 1917, and held a variety of professional positions in the law across the Republican period. His family carried landlord class status, but he reported that land reform had stripped them of their holdings and rental income. After the PRC banned the private practice of law in 1950, Ning also lost his livelihood, and the family relied for support on the wages earned by their eldest son.⁶⁸¹ Such hardship was not uncommon among those with backgrounds in the Republican legal system; the BMPC's files reveal many applicants for employment who pled desperate financial circumstances at a time when official policy pledged to provide for their welfare.⁶⁸² Interestingly, a man of Ning's age and background would have had a history of entanglements with the Nationalist state and Guomindang, but no such information appears on his registration form. Instead, he crafted his responses to conceal unfavorable details and frame himself in a more flattering light. Where Ma Runsheng identified his status as a rich peasant, and Zhang Sizhi as a student, Ning wrote "People's University Law Department Special Training

⁶⁸¹ "Zhongyang renmin zhengfu sifabu guanyu qudi heilishi ji songgun shijian de tongbao (December 21, 1950),"中央人民政府司法部关于取缔黑律师及讼棍事件的通报 in *Zhonghua renmin gongheguo fayuan zuzhi susong chengxu cankao ziliao (dier ji)* 中华人民共和国法院组织诉讼程序参考资料(第二辑), (Beijing: Zhongguo renmin daxue xingfa minfa jiaoyanshi, 1953).

⁶⁸² "Zhongyang guanyu bangzhu ge minzhu dangpai jiejie shiye, xuexi deng wenti de zhishi (May 15, 1950),"中央关于帮助各民主党派解决失业, 学习等问题的指示 in *Zhonggong dangshi jiaoxue cankao ziliao* 中共党史教学参考资料, ed. Zhongguo renmin jiefangjun guofang daxue dangshi dangjian zhenggong jiaoyanshi 中国人民解放军国防大学党史党建政工教研室, (Beijing: Guofang daxue chubanshe, 1979); "Zhengwuyuan guanyu chuli shiye zhishifenzi de buchong zhishi (October 27, 1950),"政务院关于处理失业知识分子的补充指示 in *Zhonggong dangshi jiaoxue cankao ziliao* 中共党史教学参考资料, ed. Zhongguo renmin jiefangjun guofang daxue dangshi dangjian zhenggong jiaoyanshi 中国人民解放军国防大学党史党建政工教研室, (Beijing: Guofang daxue chubanshe, 1979).

Course.” Asked about “Training received in or out of the Party,” Ning listed only CCP-run courses at the University of Politics and Law, and People’s University. Admission to these programs was by nomination, and in Ning’s case they provided a highly experienced legacy lawyer with a structured program of ideological study as evidence of the reform required for court employment. The only problematic nugget he volunteered from his past was former participation in the Society of Goodness 同善社, a syncretic religious organization that had supported Qing restoration and was banned by the Nationalist government, and finally suppressed by the CCP.

Third, Zhang Sizhi exemplified the university-educated intellectual youth the Ministry of Justice yearned to recruit into the judiciary. Zhang enrolled at Chaoyang law school in 1947, and a few months later joined the corps of civilian sympathizers 民工 covertly assisting the work of Beijing’s underground CCP. In December 1948, Zhang’s campus liaison to the CCP was betrayed by fellow classmates, arrested, and imprisoned, prompting Zhang to flee to CCP-held territory outside the city, where he joined the Party’s urban work department in Bozhen. In February 1949, the CCP transferred him to the BMPC, where he stayed on to join the first class of judges at the age of 22. After a waiting period of six months, the Party admitted him to membership in July 1949. He listed the class identity of his family as “free professions,” noting that his father was a doctor working in Sichuan. That put him outside the most favored categories of workers and peasants, but did not amount to a disability at this point in history.

According to his file, between 1944 and 1945 Zhang had joined the Nationalist Chinese Expeditionary Force fighting in Burma, had received training as an infantry soldier, and was a former member of the Guomindang’s party youth organization, the Three Principles Youth League 三青团. In spite of this baggage, Zhang quickly attracted the notice of the BMPC president, who in January 1950 recommended him effusively to the municipal government for promotion from student to assistant judge, noting that his tribunal had been elected as the best model tribunal at the court.⁶⁸³ The promotion was approved and later that year the court sent Zhang for ten months of further study to the inaugural special training course 专科 offered by the law department at People’s University, after which he returned to the bench. In 1955, during the Campaign to Eliminate Counterrevolutionaries, and again in 1957, during the Anti-Rightist Campaign, factional adversaries in the city’s judicial system dredged up Zhang’s Guomindang past to attack him.⁶⁸⁴ Both times, he was arrested, and the second instance culminated in a fifteen-year sentence of reform through labor.

⁶⁸³ Wang Feiran 王斐然. *Tisheng Zhang Sizhi wei daili shenpanyuan you (January 12, 1950)* 提升张思之为代理审判员由. Shi renmin fayuan guanyu ganbu renmian cailliao 市人民法院关于干部任免材料 (1950), BMA 123-001-00109.

⁶⁸⁴ Zhang Sizhi, “Jingguo duonian fanfu de douzheng, wo bu name xunfu le”; Zhang Sizhi, “Guaidan moming faguan lu”.

These three cadres were archetypical, and bear out that while many of the BMPC's original cadres lacked the exalted academic and professional distinctions of their Nationalist predecessors, as a group they were far from unschooled amateurs. Further evidence of that lies in the appointment of Li Fenglin as a judge and as secretary of the BMPC's powerful adjudication committee, which verified every decision issued by the court and handled particularly important cases directly. Li was a 1930 Chaoyang law graduate with more than a decade of judicial experience in the base areas. The BMPC also recruited young intellectuals like Zhang Zesheng, a Tsinghua University alumnus who came from a landlord family stripped of its holdings during land reform. Zhang entered the CCP in 1949 and, before joining the court as a judge in 1951, had helped the public security bureau clear up backlogged cases during the Campaign to Suppress Counterrevolutionaries.

It is impossible to ascertain how genuinely or deeply legacy personnel rectified their thoughts, but the files reveal that they emerged from their brief training courses attesting fulsomely to reform, and the BMPC embraced that. As Wang Feiran reported in December 1949, "after study, self-criticism, appraisal, and determination of their ranks and wages, the vast majority of held-over personnel went from 'probationary employment' or 'held-over employment' to regular staff appointments." Of the 188 cadres at the court at the time, 108 (57 percent) had been held-over Nationalist personnel, 28 were new hires, and 52 were personnel from the CCP's previously liberated areas, ten of whom were students, four of them from Peking University.⁶⁸⁵ Similarly, Minister of Justice Shi Liang, freshly back from an inspection tour of the East China region to survey its implementation of the Campaign to Suppress Counterrevolutionaries, personally reported to Dong Biwu and Zhou Enlai in the Spring of 1951 that 69.5 percent of judicial cadres in Shanghai were held-over personnel, and she declared the majority of them good.⁶⁸⁶

At the end of 1951, legacy personnel made up more than half of the BMPC's cadres, and 63.5 percent of those engaged in adjudication work at the court's main branch (Table 5.2). Remarkably, they included held-over judges from the former Nationalist local court, and from the municipal court dating to the city's occupation by the Japanese. Most of them had been shifted into supporting positions, but some were assistant judges, and as a group their skills and experience amplified their influence over adjudication behind the scenes. To jumpstart the work of the new district courts established in 1950, the BMPC stocked them with legacy judicial personnel, another sign that it understood them as evolutionary rather than fundamentally disruptive. One year after the first four district courts opened, just under half of their adjudication staff

⁶⁸⁵ Wang Feiran 王斐然, "Beijing shi renmin fayuan zuzhi jigou he gongzuo gaikuang," 北京市人民法院组织机构和工作概况 *Xin jianshe* 新建设 1, no. 8 (1950): 7.

⁶⁸⁶ Shi Liang, Huadong sifa gongzuo shicha de baogao (May 9, 1951). The Shanghai judicial gazette reported a similar share for the Shanghai municipal people's court in 1950, namely 322 of 452 cadres (71 percent). *Shanghai shenpan zhi* 上海审判志, ed. Teng Yilong 腾一龙 (Shanghai: Shanghai shehui kexueyuan chubanshe, 2003), 104.

were legacy personnel. Courts in other major urban centers around China rebuilt themselves in a similar fashion (Table 5.3).

Table 5.2: Cadre Staffing Levels at BMPC (late 1951)⁶⁸⁷

Court	Number of Cadres			Subset in Adjudication 作审判工作		
	Total	Legacy	% Legacy	Subtotal	Legacy	% Legacy
Main BMPC	133	85	63.9	74	47	63.5
Branch Courts	132	62	47	81	38	46.9
Total	265	147	55.5	155	85	54.8

Table 5.3: Legacy Personnel Performing Adjudication, Four Cities (1951-52)⁶⁸⁸

City	Total Adjudication Personnel	Legacy Share	% Legacy
Beijing	155	85	54.8
Guangzhou	71	43	60.5
Shanghai	527	290	54.0
Wuhan	121	69	57.0

Crucially, staff retention (i.e. true holdovers) can explain only a fraction of these figures. The remainder came from new hires. PRC courts were in fact actively recruiting external legacy personnel because they had skills veteran cadres and students lacked. In Beijing, for instance, authorities occasionally differentiated between held-over personnel and “newly absorbed legacy judicial personnel” 新吸收的旧司法人员, which included not just former Nationalist personnel dismissed from other courts, but also lawyers like Ning Zi, who had been forced underground or into unemployment by the banning of private legal practice.⁶⁸⁹ Cadre dossiers confirm the presence of “newly absorbed legacy judicial personnel” in significant numbers. One can get a rough estimate of their contribution by looking at the years 1949 to 1951, when the total

⁶⁸⁷ “Beijing shi renmin zhengfu guanyu Beijing shi sifa gaige jihua ji sifa gaige gongzuo jinxing qingkuang xiang Huabei xingzheng weiyuanhui de baogao (September 13, 1952),”北京市人民政府关于北京市司法改革计划及司法改革工作进行情况向华北行政委员会的报告 in *1952: Beijing shi zhongyao wenxian xuanbian* 1952: 北京市重要文献选编, ed. Beijing shi dang’anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang’an chubanshe, 2002), 495.

⁶⁸⁸ The Beijing data covers late 1951, just before the outbreak of the Three-Anti Campaign. The data for the other cities covers mid-1952, just before the Judicial Reform Campaign. “Zhonggong Beijing shiwei guanyu sifa gaige de chubu qingkuang ji jinhou gongzuo jihua xiang zhongyang, Huabeiju de baogao (September 1, 1952),”中共北京市委关于司法改革的初步情况及今后工作计划向中央, 华北局的报告 in *1952: Beijing shi zhongyao wenxian xuanbian* 1952: 北京市重要文献选编, ed. Beijing shi dang’anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang’an chubanshe, 2002), 495. Dong Jiaying, 87-88.

⁶⁸⁹ “Zhonggong Beijing shiwei guanyu sifa gaige de chubu qingkuang ji jinhou gongzuo jihua xiang zhongyang, Huabeiju de baogao (September 1, 1952),” 460; “Beijing shi renmin zhengfu guanyu Beijing shi sifa gaige jihua ji sifa gaige gongzuo jinxing qingkuang xiang Huabei xingzheng weiyuanhui de baogao (September 13, 1952),” 495.

number of cadres at the BMPC grew by 40 percent, while the legacy share remained stable.⁶⁹⁰ Moreover, during the 1952 Judicial Reform Campaign, when legacy judicial personnel at the BMPC were attacked by name, the names are almost never found in the 1948 personnel roster of the city's former Nationalist local court, which suggests that the targets could not have been true holdovers but belonged almost exclusively to the "newly absorbed" category. Lending support to this conclusion, an investigation team dispatched from Beijing in mid-1952 to the Central-South region found that out of a sample of 1,088 legacy personnel, only 295 (27 percent) were true Nationalist holdovers, while 793 (73 percent) were actually new hires with "legacy" backgrounds.⁶⁹¹

The key finding is that even as the Central Committee compelled Wang Feiran to dismiss the leadership and most of the judges of the former Nationalist local court, he and his lieutenants at the BMPC generously availed themselves of the full range of candidates eligible under the 1950 recruitment policy to appoint a core of politically admissible alternatives of comparable experience or potential. Other urban courts appear to have done the same. This invariably entailed hiring significant numbers of personnel with legacy backgrounds because, at this early moment in PRC history, when advanced cadre training programs and law schools had yet to yield sufficient alternatives, there were virtually no other people with formal training in judicial work or the law to choose from. Under intense pressure to perform and expand, courts around China essentially sacked one cohort of legacy personnel only to quietly hire another. The CCP later buried this ideologically awkward fact, and our historiography has generally missed it. That some personnel also happened to be CCP cadres and therefore escaped the "legacy" label altogether further concealed the far-reaching scale of the swap.

On empirical grounds, Dong's assessment was therefore sound; measured by the judicial resources the CCP could muster between 1949 and 1952, the victory of the revolution had indeed arrived too quickly. When it acceded to power, the Party had far too few judicial cadres to meet its requirements and a plethora of other priorities for them to attend to. Obligated to enact its revolution, it rushed into abrogation, but could not agree on what that meant, and had not devised a clear plan for where to take the legal system next. In the countryside, the government was able to draw on base areas precedents to compensate for some of that haste. Hence, without missing a beat, it rolled the NCPG program of proliferating rudimentary local judicial organs out across China as far as its meager resources would stretch. This accounted for the vast majority of the more than 2,000 courts and 8,000 judges reported in 1953, and it is little

⁶⁹⁰ Wang Feiran, "Beijing shi renmin fayuan zuzhi jigou he gongzuo gaikuang," 7.

⁶⁹¹ The courts in question were: the Central-South branch of the Supreme People's Court in Wuhan, the municipal people's courts in Wuhan and Guangzhou, the provincial courts of Jiangxi, Guangdong, and Hubei, and the courts at various levels in Henan, Hunan, and Guangxi provinces. *Zhongyang zhengfa jiguan lianhe guanchazu sifa tiaocha baogao huibian* 中央政法机关联合观察组司法调查报告汇编 (Beijing: Zhongyang zhengfa jiguan sifa gaige bangongshi, 1952), 23.

wonder that the relevant personnel were poorly prepared for their jobs. As before, the immediate priority was establishing a footprint. Qualitative upgrades could come later.

The cities exposed the CCP's limits more plainly. In multiple arenas, there were indications of high-level ambivalence over policy. For example, crippling shortages of skilled personnel, and mounting caseloads and backlogs did little to spur either the reform of Republican law schools or the establishment of advanced legal cadre training programs, in spite of repeated appeals by Vice Premier Dong Biwu and Minister of Justice Shi Liang. People's University, a project personally championed by Liu Shaoqi, was prospering, but the rest of the three-tiered pyramid of legal education piloted at the China University of Politics and Law had yet to be realized, and the pools of qualified cadres and students the 1950 recruitment policy favored therefore remained largely out of reach. Worse, the government forced thousands of legacy legal personnel out of work and warned that "properly engaging in the construction of people's judicial work first requires clearly drawing the boundaries between the principles of the new and old law." "Consequently no government personnel should retain any confusion about the boundaries between the new and old law."⁶⁹² But all the same, such pieties did not stop courts from hiring large numbers of legacy personnel, often with only token proof of ideological reform, precisely for the experience and skill they developed under the old law.

The ramifications of abrogation, in short, remained contested. While Dong Biwu may have lost the argument on ideological grounds in 1949, he still found a way to salvage bricks and tiles from the wreckage of the Nationalist legal system via recruitment policy. Hence the BMPC not only retained a large group of personnel from the former Nationalist local court, but also actively recruited supplementary staff from law schools, universities, and the dispossessed bar, showing a penchant for personnel with educational credentials and experience unavailable in the base areas. This combined cohort was integrated into the adjudicatory work of the court, where its talents were most useful. Furthermore, when it was time to expand in 1950, the BMPC repeated those choices, making sure to seed the new district courts with a kernel of legacy cadres to ensure that they got a solid start. The result was an emerging hybrid institution.

So long as the CCP was based in the hinterland, its leadership had been able to combat the pull of Nationalist conventions. But the closer the center of the CCP's world moved to Beijing, the stronger the gravitational effects of the Nationalist legal system became and the more actively affinities for it stirred. In Yan'an, a multi-year, university-level legal education was an unrequited dream. In Beijing, the new government established two successive academic law programs within its first year, each populated by students from the city's top Republican law school. In Yan'an, the high court held authority over both adjudication and judicial administration in the border region. In

⁶⁹² "Zhongyang renmin zhengfu zhengwuyuan guanyu jiaqiang renmin sifa gongzuo de zhishi (November 3, 1950)".

Beijing, these powers were split between the Supreme People's Court and Ministry of Justice, respectively. In Yan'an, rectification had purged progressive judicial cadres with Republican legal backgrounds and savaged their vision of a New Democratic Rule of Law. In Beijing, rule of law was again part of the lexicon and Li Mu'an, was back in high judicial office.

Such shifts reflected the Party's vaunted talent for adaptation and reinvention, but in the context of the revolution they had more ominous potentialities. From 1949 to 1952, CCP legal practice began to internally differentiate for the first time in its history. The base area model remained the template for the countryside, but in Beijing and other cities cracks opened up as courts gradually pulled away from that heritage by assimilating legacy personnel and aiming for higher standards of knowledge, technical competence, and specialization. This unavoidably provoked anxieties about the legal system's identity, and about the corrupting influence Nationalist conventions seemed to exert upon it at every opportunity. Legacy personnel were convenient scapegoats for this divergence and would bear the brunt of the backlash against it, but its roots ran deeper than that, and after they were gone, the underlying impulses would remain.

Chapter 6

Abrogation Redux: The Judicial Reform Campaign

As of late 1951, more than half of the BMPC's cadres qualified as legacy personnel, and among the adjudication cadres in the court's main branch, the share was nearly two-thirds.⁶⁹³ Indeed, the share of legacy personnel in the court's main branch was actually higher after the promulgation of the 1950 recruitment policy than before it. It is inconceivable that this could have happened without assent at the highest levels, since the BMPC was the principal court in the nation's capital and was under the direct oversight of the central government's highest legal organs.

Those circumstances changed abruptly with the Three-Anti Campaign against official corruption, waste, and bureaucratism, which swept state organs across China from late 1951 to late 1952. Between the 1949 takeover of the city and the start of the campaign, Beijing authorities charged at least 650 personnel from municipal enterprises and organs of government with corruption. Financial organs, enterprises, and the public security bureau accounted for nearly 82 percent of that total, and 514 were held-over or new cadres, with many of the latter newly absorbed legacy personnel.⁶⁹⁴ Significantly, in a pair of key status reports on the early progress of the campaign, the city's Party committee never saw fit to raise corruption in the courts as a problem.⁶⁹⁵

At the BMPC, the Three-Anti Campaign began slowly. Initially, the court avoided setting up a "tiger-fighting" group to root out internal wrongdoing, but the external pressure to comply grew too great to resist, and the campaign ultimately claimed 81 employees, including 40 judicial personnel and 16 enforcement personnel. That reduced total staffing by around 30 percent.⁶⁹⁶ Some were prosecuted for violations of the law and others were transferred administratively to different workplaces pending a period of ideological study. Most of the 40 judicial personnel were holdovers or recently hired legacies, who made easy political targets and lacked crucial factional support. For example, at the Qianmen district branch court in the heart of the city, 90 percent of the

⁶⁹³ "Zhonggong Beijing shiwei guanyu sifa gaige de chubu qingkuang ji jinhou gongzuo jihua xiang zhongyang, Huabei ju de baogao (September 1, 1952)," 495.

⁶⁹⁴ "Beijing shiwei guanyu fan tanwu xianxiang de baogao (December 4, 1951)," 北京市关于反贪污现象的报告 in *Zhonggong dangshi jiaoxue cankao ziliao* 中共党史教学参考资料, ed. Zhongguo renmin jiefangjun guofang daxue dangshi dangjian zhenggong jiaoyanshi 中国人民解放军国防大学党史党建政工教研室, (Beijing: Guofang daxue chubanshe, 1979).

⁶⁹⁵ Ibid.; "Zhonggong Beijing shiwei guanyu jixu kaizhan fan tanwu fan langfei fan guanliao zhuyi douzheng de baogao (January 1952)," 中共北京市委关于继续开展反贪污反浪费反官僚主义斗争的报告 in *Zhonggong dangshi jiaoxue cankao ziliao* 中共党史教学参考资料, ed. Zhongguo renmin jiefangjun guofang daxue dangshi dangjian zhenggong jiaoyanshi 中国人民解放军国防大学党史党建政工教研室, (Beijing: Guofang daxue chubanshe, 1979).

⁶⁹⁶ "Zhonggong Beijing shiwei guanyu sifa gaige de chubu qingkuang ji jinhou gongzuo jihua xiang zhongyang, Huabei ju de baogao (September 1, 1952)," 460. *Shenpan zhi*, 2.

corrupt cadres reportedly fell into these groups.⁶⁹⁷ Citing widespread reports of disciplinary and ideological irregularities in the courts, the government launched a more far-reaching, nationwide probe, which ripened into the Judicial Reform Campaign, a pivotal moment in PRC legal history.

Methodological Questions

Before diving into the Judicial Reform Campaign, it is important to be forthright about a number of methodological questions. As with all empirical data sets from the Mao era, the reliability and precision of the sources on which this chapter relies warrant critical reflection. Much of the data they contain comes from surveys by visiting inspection teams, or self-reporting by courts and their immediate governmental superiors, usually in the form of summary narratives or standardized tabular statistical reporting forms, which were subject to possible manipulation or fabrication. It is unknown how carefully higher authorities collated these disparate data streams, or to what extent they took measures, apart from irregular spot checks, to verify them and promote internal consistency and commensurability. Certainly, the sources contain occasional contradictions and quantitative anomalies, such as sums that do not quite add up, round numbers that suggest approximations rather than exact measurements, or values that are not consistent. In the case of the Judicial Reform Campaign, the exact dates of the constituent surveys are not recorded in the statistical abstracts, leaving us simply with “before” and “after” snapshots, but circumstantial evidence suggests the end of 1953 as the terminal point.⁶⁹⁸ The bulk of these abstracts are based on a sample of 2,063 courts from all of China’s various administrative regions, and is far and away the largest such data set available for the period, but still falls short of complete coverage owing to gaps in reporting. Perhaps around twenty percent of the PRC’s courts are missing from the sample.⁶⁹⁹

Concerns about the data extend not just to accuracy and completeness, but also to the homogeneity of what was being classified and counted. For instance, it is unclear if cadres interpreted the relevant categories uniformly. This refers not just to routine subjectivism, but also to the acute effects of politics since localities differed in their histories and circumstances, and political campaigns waxed and waned across them unevenly. Generally speaking, when categories overlapped, such as when “new cadres”

⁶⁹⁷ *Qianmen qu renmin fayuan 1952 nian gongzuo zongjie* 前门区人民法院 1952 年工作总结. Qianmen qu renmin fayuan 1952 nian gongzuo zongjie 前门区人民法院 1952 年工作总结 (1952), BMA 038-001-00064.

⁶⁹⁸ Tao Xijin quotes data from the sample as year-end totals for 1953. Tao Xijin 陶希晋, “Lun sifa gaige,” *论司法改革* *Zhengfa yanjiu* 政法研究 no. 5 (1957): 15.

⁶⁹⁹ It does not include data for: Rehe, Suiyuan, Xinjiang, Hubei, and Guangdong provinces; a small number of courts in Guangxi, Hunan, Shandong, Sichuan, and Yunnan provinces; the branch of the Supreme People’s Court and the judicial department in the Central-South region, and the city of Guangzhou. Zhang Peitian, *Xin zhongguo hunyin gaige he sifa gaige shiliao: Xinan diqu dang’an xuanbian*, 508-509. Cai Cheng indicates 2,516 judicial work units at the time of the campaign. , Cai Cheng, *Dangdai zhongguo de sifa xingzheng gongzuo*, 39.

新干部 also happened to be “legacy judicial personnel,” as was the case in many urban courts, the immediate political context governed which of the two labels took precedence, and that left room for variations among places and individuals.

In addition, terms are employed ambiguously or inconsistently. For example, sources seem to use the labels “performing adjudication” 作审判工作 and “personnel in adjudication departments” 在审判部门人 identically or, to give another example, “legacy judicial workers” 旧司法工作者 and “legacy judicial personnel” 旧司法人员. Similarly, sources often move back and forth between the terms “holdover” 留用 and “legacy” 旧, sometimes using them interchangeably and other times not. For instance, legacy judicial personnel might describe only the judges, procurators and judicial clerks held-over when a court passed from Nationalist to CCP hands, or the larger community of personnel who had once worked in the courts or higher legal professions of the old regime or, broader still, anyone who had studied law before 1949. Usually, one has to infer the relevant scope from context because the sources do not provide clear or consistent guidance. The resulting ambiguity has sustained the misconception that most legacy personnel at the time of the Judicial Reform Campaign were Nationalist holdovers. In fact, as the last chapter demonstrated, many legacy personnel were hired *after* the CCP takeover, and they furthermore carried lighter political baggage and had greater opportunities than their held-over peers. Ultimately, however, the common usage of the label “legacy” to describe virtually all personnel with backgrounds in the Nationalist legal system elided such distinctions. It symbolically shifted the entire class outside of *New China*, and implied an obsolescence that few escaped.

To add a layer of complication, some internal sources actually do break out of the legacy category a subset of workers who served the judicial organs of the Nationalist regime in administrative capacities, so-called “*ordinary* legacy personnel” 一般旧人员, such as accountants and enforcement personnel 执行人员. Because of their lower social statuses and separation from the dagger hilt 刀把子 of Nationalist adjudication, they occupied a privileged ideological position over legacy *judicial* personnel, and survived the purges that accompanied abrogation and the Judicial Reform Campaign in significantly higher numbers. More often than not, however, this group is not bracketed from the whole, and one can only speculate about how its quiet inclusion affects the relevant findings.

While substantial, these kinds of flaws are not unique, nor are they fatal if one reads the sources closely, and searches for patterns of complementarity and interference, particularly with reference to other materials. Given their diverse provenance, the sources cited here are most valuable not for their ostensible rigor, which is unverifiable, but as general indicators of the direction and magnitude of systemic trends that are otherwise difficult to discern or gauge. We must remember that contemporary judicial policymakers, too, were subject to the limitations of this data, and if we are to try to glimpse some of what they saw, we must take the data seriously. It captures some of the best information they had about conditions in the judicial system,

and therefore opens a rare, private window into how that system constructed and comprehended itself. In fact, top judicial figures cited data from this sample in their internal reports and public pronouncements, which helps us to pinpoint significant gaps between representation and reality, and implies that policymakers were at least conscious, if not necessarily supportive, of those discrepancies.⁷⁰⁰ Still, the reader is reminded that the figures cited are imperfect, and not to impute false precision or finality to them.

Planning and Implementation

The Judicial Reform Campaign was a watershed moment for the courts.⁷⁰¹ Since 1949, they had figured prominently in a succession of mass campaigns aimed at groups such as landlords, counterrevolutionaries, and corrupt officials, each of which elevated their internal political temperatures and claimed a number of their cadres, but never before had a campaign put the courts themselves in the crosshairs. Outwardly, the campaign began as an attempt to root out corruption and malpractice, but its main thrust was to eliminate legacy personnel, ideas, and practices, and infuse the courts with a new, thoroughly revolutionary identity. Related legal organs such as the police and procuracy also participated, as did law schools.

⁷⁰⁰ Shi Liang cited some of this data in her April 11, 1953 report to the Second National Judicial Work Conference. Shi Liang 史良, “Guanyu jiaqiang renmin sifa gongzuo jianshe de baogao (April 11, 1953),” 关于加强人民司法工作建设的报告 in *Xingshi susong faxue cankao ziliao huibian (zhongce)* 刑事诉讼法学参考资料汇编 (中册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005), 756. Peng Zhen cited some it in his 1953 Report on Political-Legal Work. Peng Zhen 彭真, “Guanyu zhengzhi falü gongzuo de baogao (September 16, 1953),” 关于政治法律工作的报告 in *Xingshi susong faxue cankao ziliao huibian (zhongce)* 刑事诉讼法学参考资料汇编 (中册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005), 782. In 1957, Tao Xijin, director of the State Council’s Legal Affairs Office, also cited this data, but he distorted it by arguing that at the end of 1953 the courts still retained 2,369 legacy judicial personnel, of which 1,142 performed adjudication work. He was combining two sub-groups and therefore exaggerating the sums by a multiple of three. His figures exactly report the sum of legacy judicial *and* ordinary legacy personnel in the data sample used by this chapter. However, according to the raw data, the number of legacy judicial personnel retained was actually 819, of which 340 were performing adjudication work. Tao Xijin, “Lun sifa gaige,” 15. Zhang Peitian, *Xin zhongguo hunyin gaige he sifa gaige shilliao: Xinan diqu dang’an xuanbian*, 505,510. It should be said that in 1995 Cai Cheng reported different though compatible data. Cai Cheng, *Dangdai zhongguo de sifa xingzheng gongzuo*, 39.

⁷⁰¹ Huang Wenyi 黄文艺, “1952-1953 nian sifa gaige yundong yanjiu,” 1952-1953 年司法改革运动研究 *Jiangxi shehui kexue* 江西社会科学 no. 4 (2004): 37-42; Dong Jieying 董节英, “1952 nian Beijing shi de sifa gaige yundong,” 1952 年北京市的司法改革运动 *Beijing dangshi* 北京党史 no. 2 (2007): 21-24; Hou Songtao 侯松涛, “Jianguo chuqi de sifa gaige yundong: huigu yu sikao,” 建国初期的司法改革运动: 回顾与思考 *Zhongguo tese shehuizhuyi yanjiu* 中国特色社会主义研究 no. 1 (2008): 93-98; He Qinhua, “Lun xin zhongguo fa he faxue de qibu-- yi ‘feichu guomindang liufa quanshu’ yu ‘sifa gaige yundong’ wei xiansuo”; Chen Guangzhong, and Ceng Xinhua 陈光中 and 曾新华, “Jianguo chuqi sifa gaige yundong shuping,” 建国初期司法改革运动述评 *Faxuejia* 法学家 6, (2009): 1-8; Xiong Xianjue 熊先觉, “1952-1953 nian sifa gaige yundong,” 1952-1953 年司法改革运动 *Yanhuang chunqiu* 炎黄春秋 no. 5 (2012): 67-68.

Officially, the campaign ran from August 1952 to April 1953, but preparations for it quietly began months before, on instructions from Mao. On March 24, 1952, Mao commented on a report filed by deputy minister of public security Xu Zirong on the punishment and purge of violators of law and discipline in the public security apparatus. He wrote, “with respect to the political-legal system, and public security and judicial departments in particular, thoroughly launch the ‘Three-Anti’ struggle, and resolutely punish violators of law and discipline. The Center has repeatedly ordered that conditions in judicial departments are very serious and must be punished in the same way.”⁷⁰²

Heeding these pointed instructions, on April 12, the Party branch of the State Administrative Council’s Political-Legal Committee, led by Dong Biwu and Beijing mayor Peng Zhen, put judicial reform at the top of their agenda for the latter half of the year. To test the planned campaign, Fujian province launched a pilot rectification and reform of its courts in early May.⁷⁰³ In preparation for the upcoming Second National Judicial Work Conference, central legal organs had been planning to send several joint inspection groups to various regions of the country to investigate and report on local judicial conditions. The budding Judicial Reform Campaign delayed that conference, and the inspection groups were repurposed to serve a different agenda. On May 7, Dong instructed them to focus particularly on legacy personnel, and on the question of infusing the judicial system with new blood.⁷⁰⁴ In mid-May, the first of five groups departed. It was led by Wang Huai’an, and was tasked with surveying courts in the East China region.⁷⁰⁵

On May 24, Dong and Peng reported back to Mao and the Central Committee that they wished “to use the favorable circumstances created by the Three- and Five-Anti Campaigns to carry out a thorough reform of the courts.”⁷⁰⁶ They outlined a plan to purge personnel, eliminate the old law work style, rectify and strengthen Party leadership over the courts, and clear up backlogged cases. By June 1, the plan was already in motion, and its themes dominated the Political-Legal Cadre Training Conference Dong and Peng keynoted later that month.⁷⁰⁷ As Dong reported to Liu Shaoqi,

⁷⁰² *Dong Biwu chuan*, 783.

⁷⁰³ Hu Shangyuan 胡尚元, “Jianguo chu sifa zhongjian tanxi,” 建国初司法重建探析 *Anhui shixue* 安徽史学 no. 6 (2012): 60.

⁷⁰⁴ The inspection groups were also tasked with looking into other matters, including the experiences accumulated by people’s tribunals, the state of procuratorates and people’s supervision committees, and questions related to the implementation of the marriage law and land reform. Dong Jieying, 91.

⁷⁰⁵ The groups went to the East China, Central-South, Northeast, Northwest and North China macro regions. *Dong Biwu chuan*, 783-784.

⁷⁰⁶ *Dong Biwu nianpu* 董必武年谱 (Beijing: Zhongyang wenxian chubanshe, 1991), 407.

⁷⁰⁷ Peng Zhen, “Guanyu sifabumen de gaizao yu zhengdun wenti (June 24, 1952);” Dong Biwu 董必武, “Guanyu gaige sifa jiguan ji zhengfa ganbu buchong, xunlian zhu wenti (June 24, 1952),” 关于改革司法机关及政法干部补充, 训练诸问题 in *Dong Biwu faxue wenji* 董必武法学文集, (Beijing: Falü chubanshe, 2001); Dong Biwu, “Gei Huadong shichazu Wang Huai’an tongzhi de xin (June 1, 1952)”.

[O]ur courts cannot allow legacy judicial personnel to perform adjudication work. Comrade Huai'an gave this letter to the comrades of the East China Political-Legal Party Group to read, and they completely agreed...The 'question of legacy judicial personnel not being permitted appointments to court adjudication work' is a matter of principle. We should ask the Party Center to give it consideration and issue instructions.⁷⁰⁸

Remarkably, Dong framed this principle as a corollary of abrogation. Paraphrasing the January 1949 *Proposal*, he admonished cadres for having allowed "old judicial personnel in the courts of many localities to actually hold important positions, up to the court leadership, and to grasp the power of adjudication."⁷⁰⁹ Personnel policy had leaned too far in their favor, he said, and that was a mistake. In what could only have been mock astonishment, he protested, "This violated the central policy barring old personnel from serving as backbone cadres and allowing them only to be assistants...handing over weapons [of proletarian dictatorship] to unreliable people (regardless of how great their ability and learning) is to commit an error!"⁷¹⁰

The 1950 *Instruction on Strengthening People's Judicial Work* stipulated, "when absorbing old judicial personnel to participate in work, they must first be reformed, and afterwards assigned jobs according to their abilities."⁷¹¹ Implicitly, this put judicial authorities in the position of vouching for the reform of the legacy personnel they appointed. Dong now reproached them for their hasty endorsements. He argued that assigning according to abilities did not license deviations from the prohibition against legacy personnel performing adjudication work, and grimly described the betrayal that followed. According to his figures, approximately one-third of the 12-13,000 judicial personnel the Party had trained up to that point were legacy personnel, and despite the great effort expended to help them reform, only around 20 percent had shown genuine signs of progress. Fifty percent of them were corrupt to the point that they were leading veteran cadres astray and rotting entire courts with degeneracy and corruption. As a group, they had proven themselves unreliable and still harbored "counterrevolutionary and anti-people legal concepts."⁷¹² Apparently, gullible cadres had erred by thinking that legacy personnel "understood 'professional work' and possessed 'experience'... and not only trusted them to the point of relying on them, but also wanted new and old

⁷⁰⁸ Dong Biwu, "Guanyu sifa duiwu de gaizao he buchong wenti gei Zhonggong zhongyang shujichu, Liu Shaoqi de xin (June 25, 1952)," 130. Comrade Huai'an, was Wang Huai'an. He was now director of the Ministry of Justice's secretariat, deputy secretary of its Party group, and deputy director of the national office that administered the Judicial Reform Campaign.

⁷⁰⁹ Dong Biwu, "Guanyu gaige sifa jiguan ji zhengfa ganbu buchong, xunlian zhu wenti (June 24, 1952)," 120.

⁷¹⁰ Dong Biwu 董必武, "Guanyu zhengdun he gaizao sifabumen de yixie yijian (June 20, 1952),"关于整顿和改造司法部门的一些意见 in *Dong Biwu faxue wenji* 董必武法学文集, (Beijing: Falü chubanshe, 2001), 117.

⁷¹¹ "Zhongyang renmin zhengfu zhengwuyuan guanyu jiaqiang renmin sifa gongzuo de zhishi (November 3, 1950)," 中央人民政府政务院关于加强人民司法工作的指示 *Beijing shi zhengbao* 北京市政报 2, no. 8 (1950): 8-9.

⁷¹² Dong Biwu, "Guanyu gaige sifa jiguan ji zhengfa ganbu buchong, xunlian zhu wenti (June 24, 1952)," 120-121.

cadres to patiently learn from them, and wanted them to train apprentices and become their captives.”⁷¹³

To seal the indictment, Dong cited 1,239 legacy personnel in the courts of Shanghai, and Zhejiang, Fujian and Sunan 苏南 provinces, among whom 830 (67 percent) were ostensibly members of reactionary parties or organizations, or special agents.⁷¹⁴ In Beijing, the Qianmen district branch court reported that 37.5 percent of its cadres were members of reactionary parties or organizations.⁷¹⁵ Of course, these findings could not possibly have been a surprise since the Guomindang had openly demanded judicial participation, thousands of such people had registered with PRC authorities pursuant to regulations, and PRC courts were supposed to have investigated the backgrounds of their legacy personnel and newly absorbed intellectuals at the time of initial hiring, and a second time just thirteen months before Dong spoke.⁷¹⁶ The findings simply meant that, three years after coming to power, the CCP leadership was no longer interested in looking the other way.

Dong now explicitly barred former Nationalist judges and procurators from adjudication work, and ordered their retraining and reassignment to skilled jobs in courts at other locations, or their transfer to different departments outside of the judicial system, provided that previous campaigns had not uncovered any problems in their backgrounds, and their thought and work indicated that reform was still possible.⁷¹⁷ On this basis, 59 percent of legacy judicial personnel in the 2,063 judicial work units sampled were either reassigned directly to other lines of work, such as teaching in primary or middle schools, working in libraries, or as minor clerical functionaries, or sent

⁷¹³ Ibid., 121.

⁷¹⁴ Ibid., 120.

⁷¹⁵ Qianmen qu renmin fayuan 1952 nian gongzuo zongjie.

⁷¹⁶ For example, in Beijing, between March 11, 1949 and May 16, 1950, 3,715 special agents and 3,357 members of reactionary parties and organizations had registered pursuant to the *Implementing Measures for the Registration of Beijing Municipal Guomindang Special Agents Applying for Repentance* and the *Specific Implementing Measures for Carrying Out the Registration of Reactionary Party Personnel*. Ye Jianying 叶剑英, “Beiping shi junguanhui guanyu fandong dangpai renyuan lüxing dengji zhi juti shishi banfa de bugao (July 23, 1949),” 北平市军管会关于反动党派人员履行登记之具体实施办法的布告 in *1948.12-1949: Beijing shi zhongyao wenxian xuanbian 1948.12-1949: 北京市重要文献选编*, ed. Beijing shi dang’anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang’an chubanshe, 2001); “Beiping shi guomindang tewu renyuan shenqing huiguo dengji shishi banfa (March 11, 1949),” 北平市国民党特务人员申请悔过登记实施办法 in *1948.12-1949: Beijing shi zhongyao wenxian xuanbian 1948.12-1949: 北京市重要文献选编*, ed. Beijing shi dang’anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang’an chubanshe, 2001). Liu Ren, “Beijing shi gonganju jianli qianhou,” 101. “Zhongyang guanyu qingli zhongceng neiceng wenti de zhishi (May 21, 1951),” 中央关于清理‘中层’‘内层’问题的指示 in *Zhonggong dangshi jiaoxue cankao ziliao 中共党史教学参考资料*, ed. Zhongguo renmin jiefangjun guofang daxue dangshi dangjian zhenggong jiaoyanshi 中国人民解放军国防大学党史党建政工教研室, (Beijing: Guofang daxue chubanshe, 1979).

⁷¹⁷ Dong Biwu, “Guanyu gaige sifa jiguan ji zhengfa ganbu buchong, xunlian zhu wenti (June 24, 1952).”

to training courses before such reassignment.⁷¹⁸ Around 819, or 30 percent of their original number, actually survived the purges and remained court employees in some capacity. Prosecutions, dismissals, and forced retirements accounted for the remainder. By contrast, lower-ranked, general legacy personnel fared better and remained eligible in principle for promotion to adjudication work, provided they had thoroughly reformed and were strictly tested. They survived the purges at almost twice the rate of their legacy judicial peers.⁷¹⁹

Interestingly, several categories of legacy judicial personnel were exempt on political grounds from these rules, namely: underground CCP members; underground members of CCP mass organizations who had joined the Party or its Youth League after Liberation; members of the “red masses” who had taken part in the pre-1949 revolutionary struggle; and “democratic figures” who had taken part early in the work of the revolution and stood with the Party. They accounted for at least 115 judges and 225 clerks in the post-campaign sample.⁷²⁰

Dong established “purity” – political, organizational, and ideological – as the overriding theme of the campaign. Cued to demonstrate revolutionary ardor, courts rushed to ferret out and eliminate the impurities ostensibly in their midst. In Beijing, deputy mayor Zhang Youyu directed the campaign. His final summary report on it, like many others from around China, led off with references to conventional malfeasance and corruption by legacy staff but swiftly came to the special charges against them. Rehashing accusations first thrown at Li Mu’an in 1943, it accused them collectively of having the “old law standpoint” and of “judge-ism” 推事主义. They reportedly subverted revolutionary justice by sticking to official documents, procedures, jurisdictional rules, and formalities. They held to the distinctions between criminal and civil cases, and the adjudication and execution phases 执行 of litigation. They resisted applying law retroactively, used the concept of “attempt” 未遂 to shield counterrevolutionaries from proper criminal responsibility, and supposedly mischaracterized thefts of state property by capitalists as “contractual relationships.”⁷²¹ Having demonstrated a failure to reform, there was nothing left but to remove them from office, it concluded.

Around the nation, newspapers filled with lurid accounts of judicial corruption, duplicity, injustice, formalism, and conservatism. These accounts reflected genuine frustration at the inadequate capacity and complacency of the courts, but more importantly they functioned as political theater meant to mobilize cadres and the broader

⁷¹⁸ Zhang Peitian, *Xin zhongguo hunyin gaige he sifa gaige shiliao: Xinan diqu dang'an xuanbian*, 506.

⁷¹⁹ *Ibid.*, 504.

⁷²⁰ *Ibid.*, 510.

⁷²¹ “Zhonggong Beijing shiwei guanyu sifa gaige de chubu qingkuang ji jinhou gongzuo jihua xiang zhongyang, Huabeiju de baogao (September 1, 1952),” 496. For a similar indictment, see also, Wang Ruqi 王汝琪, “Zhengque kaizhan sifa gaige yundong (August 22, 1952),” 正确开展司法改革运动 in *Xingshi susong faxue cankao ziliao huibian (zhongce)* 刑事诉讼法学参考资料汇编 (中册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005). Li Guangcan, and Li Jianfei, “Suqing fan renmin de jiufa guandian”.

public alike around a common repertoire of polemical idioms and symbols, and signal to all that the developing campaign would be far-reaching in scope. Judging from these reports, malevolent or backward personnel were everywhere using the instruments of the law for personal gain or to subvert revolutionary justice. No less an authority than Minister of Justice Shi Liang declared on the front page of the *People's Daily* that in the Sunan region and on the municipal courts of Shanghai, Nanjing, and Hangzhou, half of all legacy judicial personnel had engaged in corrupt behavior, which accounted for nearly 60 percent of the corrupt elements on those courts.⁷²²

Deep skepticism about such breathtaking accusations is called for because legacy personnel were disproportionately targeted and treated more harshly than other cadres yet, in the end, the absolute number of punishments meted out pursuant to the campaign (Table 6.1) was rather low. For the sake of comparison, the Campaign to Suppress Counterrevolutionaries resulted in at least than 712,000 executions, and more than 1.2 million arrests, and the Three-Anti Campaign levied criminal sanctions against 59,182 cadres and other personnel.⁷²³ By comparison, according to internal reports, the entire East China region, to which the courts in Shi's report belonged, handled just 152 of its more than 7,000 judicial workers "according to law" 法办. In the 2,063 work units from around China about which we have data, only 338 judicial cadres were "handled according to law" during the entire campaign, fewer than half of whom (163) were legacy judicial personnel, or about six percent of the legacy judicial cadres in the sample.⁷²⁴ In fact, around 93 percent of legacy court cadres (judicial and general) around China completely escaped prosecution or expulsion 开除.⁷²⁵ Nevertheless, most of those (55 percent) were administratively transferred out of the courts, which impaired judicial operations and aggravated the cadre crisis by stripping the courts of many of their most skilled and experienced staff before the government had prepared competent substitutes. The BMPC was ahead of that curve. Its leaders had preemptively cleared away most legacy personnel during the Three-Anti Campaign. Sources indicate that only 13 cadres and judicial police were purged as a result of the Judicial Reform Campaign.⁷²⁶

⁷²² Shi Liang 史良, "Guanyu chedi gaizao he zhengdun geji renmin fayuan de baogao," 关于彻底改造和整顿各级人民法院的报告 *Renmin ribao* 人民日报, August 23, 1952.

⁷²³ Kuisong Yang, "Reconsidering the Campaign to Suppress Counterrevolutionaries," *The China Quarterly* no. 193 (2008): 120. Zhu De 朱德, "Zhongyang jilü jiancha weiyuanhui guanyu quandang jilü jiancha gongzuo de zongjie baogao," 中央纪律检查委员会关于全党纪律检查工作的总结报告 *Dangnei tongxun* 党内通讯 no. 106 (1952): 6-8.

⁷²⁴ "Huadong qu sifa gaige yundong zongjie baogao," 华东区司法改革运动总结报告 in *Sifa gaige yu sifa jianshe cankao wenjian* 司法改革与司法建设参考文件, (Beijing: Zhongyang zhengfa jiguan sifa gaige bangongshi, 1953), 48. Zhang Peitian, *Xin zhongguo hunyin gaige he sifa gaige shiliao: Xinan diqu dang'an xuanbian*, 506.

⁷²⁵ This coincides perfectly with statistics publicly cited by Minister of Justice Shi Liang in 1957. Leng, *Justice in Communist China: A Survey of the Judicial System of the Chinese People's Republic*, 59.

⁷²⁶ *Shenpan zhi*, 2.

Table 6.1: Personnel Handled Under the Law, Judicial Reform Campaign⁷²⁷

	Handled under Law	Sentenced to Death	Suspended Death Sentence	Life Sentence	Fixed Sentence	Reform through Labor	Sentenced to Control	Pending Disposition
#	344	3	1	5	159	23	25	128
%	100	0.8	0.3	1.5	46.2	6.7	7.3	37.2
Notes:	Six of the 344 personnel handled under law were judicial police 法警. The final dispositions of the 128 not yet sentenced remained pending at the end of the reporting period.							

Table 6.2: Official Sources of Judicial Cadre Recruitment (1950-52)⁷²⁸

1950	1952
Veteran judicial and military cadres	Veteran cadres for backbone 骨干 court positions
Former Nationalist judicial personnel	Workers and shop activists from the Five-Anti Campaign
	Activists from land reform teams and the peasantry
	Demobilized soldiers (especially the disabled for backbone 骨干 court positions)
	Cadres with judicial work experience and activists selected with assistance from people's tribunals, and mass organizations such as unions, peasant associations, the Women's Federation, and the Communist Youth League
Students	Intellectual youth

The cumulative effect of these campaigns was staggering; as of late September 1952, Beijing's municipal political-legal organs were short 30 percent of their total authorized staffing, and an astonishing 57 percent in their middle to upper ranks. Crucially, this figure excluded the public security apparatus, which was counted separately and fared much better.⁷²⁹ Desperate for new blood, the central government revamped recruitment (Table 6.2). Legacy personnel dropped out all together, but the pool remained elite in other ways. Veteran cadres now comprised two distinct sub-groups: those who had begun their revolutionary work before Japan's surrender (1945), and those who began their revolutionary work before liberation (1949). The first cohort numbered only around 20 percent of the CCP's 1952 membership, and therefore amounted to a revolutionary aristocracy dominated by those who had served in the legendary base areas of the north *before* membership exploded during the closing

⁷²⁷ Hu Wei 胡伟, 1952—1953 年西南地区司法改革运动研究 (Xinan zheng fa daxue, 西南政法大学, 2012), 115.

⁷²⁸ Dong Biwu, "Guanyu gaige sifa jiguan ji zhengfa ganbu buchong, xunlian zhu wenti (June 24, 1952)," 123; Dong Biwu, "Yao zhongshi sifa gongzuo (July 26, 1950)," 40.

⁷²⁹ Middle to upper ranks refers to cadre grades fourteen through sixteen. "Zhonggong Beijing shiwei zuzhibu guanyu jingshi ganbu qingkuang xiang Huabei zuzhibu de baogao (September 25, 1952)," 中共北京市委组织部关于京市干部情况向华北局组织部的报告 in *1952: Beijing shi zhongyao wenxian xuanbian 1952: 北京市重要文献选编*, ed. Beijing shi dang'anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang'an chubanshe, 2002), 518.

phase of the civil war, when the second cohort joined.⁷³⁰ Intellectual youth corresponded to the “students” listed in 1950, and raised the pressure on the Ministries of Education and Justice to accelerate work on formal legal education and cadre training programs.

More significantly, four new categories of soldiers, workers and activists appeared that pushed recruitment into new territory. At the time, China had around 60,000 students enrolled in schools for wounded military veterans from the Korean and civil wars, many of whom had minor disabilities. In view of their sacrifices for the revolution and their high political consciousness, Dong recommended those with adequate levels of education (higher primary or middle school) for leadership positions in the courts after a short course of training.⁷³¹

Similarly, Dong singled out people’s tribunals and CCP-affiliated mass organizations such as the women’s federation, trade unions, peasant associations and certain youth groups as prime sources of judicial recruits. Earlier, Zhou Enlai had also raised the possibility of recruiting from people’s tribunals, but the Ministry of Justice had turned a deaf ear to that proposal.⁷³² Now, its hand was forced. Recruitment from these groups centered on the ongoing Five-Anti Campaign directed against the bourgeoisie. Because that campaign was largely urban, the government set educational targets for the recruits at middle school or higher. Lower levels were allowable for peasants. All together, Dong optimistically projected that these new sources of recruitment and the myriad training programs supporting them could turn out 20-25,000 political-legal cadres over three years (1955), which would meet the nation’s basic needs all the way down to the county level and, by implication, finally end the cadre crisis.⁷³³

Rectification

With the twin issues of legacy personnel and recruitment settled, the campaign’s imperative to “implement the program of mutually uniting thought reform and organizational rectification” turned inwards.⁷³⁴ Since 1949, judicial authorities had frequently expressed alarm at the heterodox ideas circulating in the courts about the impact of the revolution on legal theory and practice. They singled out ideological

⁷³⁰ Shiping Zheng, *Party Vs. State in Post-1949 China: The Institutional Dilemma* (Cambridge: Harvard University Press, 1997), 267-268. Dong Biwu, “Guanyu zhengdun he gaizao sifabumen de yixie yijian (June 20, 1952),” 117.

⁷³¹ Dong Biwu 董必武, “Gei zhonggong zhongyang ge zhongyang ju fuze tongzhi de xin (May 23, 1952),” 给中共中央各中央局负责同志的信 in *Dong Biwu faxue wenji* 董必武法学文集, (Beijing: Falü chubanshe, 2001), 132.

⁷³² Ibid., 131.

⁷³³ Dong Biwu, “Guanyu gaige sifa jiguan ji zhengfa ganbu buchong, xunlian zhu wenti (June 24, 1952),” 124.

⁷³⁴ “Bixu chedi gaige sifa gongzuo,” 必须彻底改革司法工作 *Renmin ribao* 人民日报, August 17, 1952.

unification as a high priority, but made only halting progress towards that goal.⁷³⁵ The Judicial Reform Campaign amounted to a belated reckoning of that failure. It brought the sublimated differences attending abrogation out of the shadows and polarized them into the time-tested dichotomy between a “reactionary old law standpoint” and a “mass line standpoint and work style.” At first, this was directed mainly at legacy personnel and the cadres they reportedly beguiled, but that was merely a prelude to a deeper cleansing. As Dong announced in early July:

The thorough reform and rectification of the courts is not simply a question of adjusting personnel, but is also question of political and ideological struggle to eliminate the vestiges of the Guomindang reactionary old law standpoint and old law work style. We ask every level of Party committee to pay close attention to leadership, attack from above and below, attack from inside and out, to vigorously and methodically launch a campaign against the old law standpoint and to reform and rectify judicial organs.⁷³⁶

At the BMPC, rectification ran from August 18 to the middle of November. To prosecute this phase of the campaign, the Beijing municipal government established a judicial reform office led by BMPC vice president, He Shenggao, a move that deliberately bypassed Wang Feiran. He Shenggao was not among the cadres who had taken over the court in 1949. He was originally from the vicinity of Yan’an and joined the CCP in 1934, before Mao had even arrived in the region. He spent much of the war in the military, and immediately after 1949 made his name as a deputy section chief in the Beijing public security bureau. The municipal government transferred him to the BMPC in April 1951, along with a team of loyal subordinates, to provide a counterweight to Wang, who had attracted concern during the Campaign to Suppress Counterrevolutionaries for being too cautious. He’s arrival and subsequent leadership of the city’s judicial reform office challenged Wang’s authority over the court, and fed a climate of dissension and intrigue.⁷³⁷

There were no sweeping arrests of Party personnel at the BMPC, yet struggle was intense. Convention demanded that Wang Feiran, as court president, submit to scrutiny first, and in the weeks that followed the investigations filtered down the ranks. Wang’s cultivation of legacy cadres, his poor execution of earlier reforms, and his tepid early implementation of the campaign made him especially vulnerable to attack.⁷³⁸ After almost two weeks of impassioned discussions, on September 6, at a city-wide meeting

⁷³⁵ Dong Biwu 董必武, “Dui canjia quanguo sifa huiyi de dang ganbu de jianghua (August 13, 1950),”对参加全国司法会议的党干部的讲话 in *Dong Biwu faxue wenji* 董必武法学文集, (Beijing: Falü chubanshe, 2001), 41.

⁷³⁶ *Dong Biwu chuan*, 789.

⁷³⁷ He was also named deputy director of the city’s Judicial Reform Committee, which oversaw the office. *Beijing shi sifa gaige yundong zongjie* (December 31, 1952) 北京市司法改革运动总结. Zhengwuyuan Huabei xingzheng weiyuanhui guanyu chedi zhengdun yu gaizao sifa gongzuo de zhishi ji Beijing shi sifa gaige yundong zongjie baogao 政务院华北行政委员会关于彻底整顿与改造司法工作的指示及北京市司法改革运动总结报告 (1952), BMA 002-004-00037, 8.

⁷³⁸ “Zhonggong Beijing shiwei guanyu sifa gaige de chubu qingkuang ji jinhou gongzuo jihua xiang zhongyang, Huabeiju de baogao (September 1, 1952),” 461.

of higher legal cadres called “to investigate the old law standpoint” among the leadership of the BMPC and its branch courts, Wang “self-criticized his past emphasis on the abilities of legacy judicial personnel and his excessive faith in them, and his failure to systematically cultivate individual veteran cadres with comparatively low cultural levels to perform adjudication work.”⁷³⁹ The *People’s Daily* reported on the self-criticism on its front page, making him a national example.

He said: he himself had been severely influenced by the old law standpoint. This manifested in his emphasis on correctional education toward enemies, and his neglect of punishment. After entering Beijing, with respect to the handling of counterrevolutionary criminals, he was long lost in self-indulgence, so that when the protest against “boundless leniency” erupted, he still believed that Beijing was “within bounds.” This kind of mistaken thought proved that he did not deeply hate enemies. Over the last three years, the municipal people’s court was short of fresh measures to conform to the demands of people’s judicial work, instead many were fragmentary reforms. This is because he himself had not thoroughly reformed, and lacked the bold vision of the proletarian class to remake the world. In the work of the municipal people’s court, he not only used the old law, but also appointed legacy judicial personnel to important positions, and handed over the great power over life and death seized by the victory of the people’s revolution to unreliable people, even to enemies. He resolutely expressed that in this campaign [he must] correct errors, strengthen his class standpoint, and perform people’s judicial work well.⁷⁴⁰

Crucially, BMPC vice president He Shenggao led that meeting, but did not comment on Wang’s performance, letting him twist in the wind with no hint of whether he had passed the ordeal.⁷⁴¹ He Shenggao then went further. Obligated to integrate the masses into the campaign, his office convened more than 500 meetings around the city to solicit oral and written feedback on the BMPC from former litigants and other members of the public. The city government’s judicial reform committee also issued a public appeal for tips to help identify problematic cadres and practices.⁷⁴²

⁷³⁹ Ibid., 498. “Zhonggong Beijing shiwei guanyu sifa gaige yundong disan jieduan gongzuo zongjie xiang zhongyang, Huabei ju de baogao (January 27, 1953),” 中共北京市委关于司法改革运动第三阶段工作总结向中央, 华北局的报告 in *1953: Beijing shi zhongyao wenxian xuanbian* 1953: 北京市重要文献选编, ed. Beijing shi dang’anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang’an chubanshe, 2002), 39.

⁷⁴⁰ “Beijing shi sifa gaige gongzuo quanmian zhankai,” 北京市司法改革工作全面展开 *Renmin ribao* 人民日报, September 13, 1952.

⁷⁴¹ Zhang Sizhi, “Guaidan moming faguan lu”.

⁷⁴² “Beijing shi sifa gaige weiyuanhui gonggao (September 10, 1952),” 北京市司法改革委员会公告 *Beijing shi zhengbao* 北京市政报 4, no. 6 (1952): 6-7. At the time, Feng Jiping was deputy chief of the municipal public security bureau, and had been He Shenggao’s superior there.

In the course of the great Three-Anti Campaign, Beijing people from various walks of life reported a portion of the illegal activity committed by judicial personnel, which led to great success in the Three-Anti Campaign in the people's judicial organs in the capital. Now, in order to promote rectification of the people's judicial organs in the capital, particularly under the leadership of the municipal people's government, we create a judicial reform committee and launch a large-scale judicial reform campaign. We hope that all of the people in the city will further develop the Three-Anti Campaign's spirit of struggle, and to the best of their abilities reveal all unreasonable trial phenomena. We welcome them regardless of whether or not they were experienced personally, or whether or not there is proof. Report them in writing or face-to-face, with attribution or anonymously, openly or in secret; the choice is yours. For oral reports, please go to the inquiries bureau at the Beijing Municipal People's Court. There are already people assigned to receive you. Take letters or send mail to the Beijing Municipal Judicial Reform Committee Office (located in the Beijing Municipal People's Court at Four-Eyed Well in Qianmen 前门内大四眼井) or drop them into the tips boxes 检举箱 established by the Beijing Municipal People's Procuratorate in various parts of the city.

Beijing Municipal Judicial Reform Committee	Director	Zhang Youyu 张友渔
	Deputy Directors	Feng Jiping 冯基平
		Wang Feiran 王斐然
		He Shenggao 贺生高

These efforts yielded more than 2,000 letters and opinions, ample fodder for determined critics of Wang's stewardship of the court. Yet, ultimately they brought to light only 21 wrongly or inappropriately decided cases, out of more than 110,000 closed over the preceding three years.⁷⁴³ By the court's own reckoning, 64 percent of the opinions registered dissatisfaction with the outcomes or duration of cases, less than 10 percent cited a poor work style, and less than one percent suspected corruption or violations of discipline or law.⁷⁴⁴ If one discounts a certain amount of dissatisfaction with the results and duration of litigation as normal, and takes into account the extreme shortage of cadres, then these figures suggest that the extravagant behavioral or occupational faults laid publicly at the feet of legacy BMPC staff during the campaign were at best exceptional, and more than likely hyperbole. By these measures, the judicial personnel Wang had assembled at the BMPC seemed to have performed well. But that hardly rebutted the ideological and political cases against them.

Wang seethed with anger at He's handling of his September self-criticism, and suspected He of scheming to usurp his authority, a theory that was bolstered by the

⁷⁴³ The 21 wrongly decided cases broke down along the following categories: local despot (3), marriage (9), sexual assault (2), ordinary minor crimes (3), debt (2), property rights (1), and land reform (1). Beijing shi sifa gaige yundong zongjie (December 31, 1952), 1-2. "Zhonggong Beijing shiwei guanyu sifa gaige yundong disan jieduan gongzuo zongjie xiang zhongyang, Huabeiju de baogao (January 27, 1953)," 38.

⁷⁴⁴ *Beijing shi renmin fayuan sigai yundong zhong qunzhong laixin qingkuang de jiancha baogao (January 16, 1953)* 北京市人民法院司改运动中群众来信情况的检查报告. Beijing shi renmin fayuan sifa gaige yundong zhong qunzhong laixin qingkuang de jiancha baogao, shifu guanyu jianjue jiuzheng tongji, baogao zhong de cuzhi daye zuofeng de tongbao 北京市人民法院司法改革运动中群众来信情况的检查报告, 市府关于坚决纠正统计, 报告中的粗枝大叶作风的通报 (1953), BMA 002-005-00017. Dong Jieying, "1952 nian Beijing shi de sifa gaige yundong," 23.

significant contingent of public security cadres among the new recruits, which bred talk of a “second takeover of the court.”⁷⁴⁵ Their mutual discord divided the BMPC and when the time came to summarize the campaign in December, the court’s Party group proved unable to draft a consensus report. Deputy mayor Zhang Youyu sent the head of the city government’s political-legal affairs office, Zhou Kuizheng to break the impasse. At Zhou’s suggestion, the party group took the unusual step of drafting two separate summary reports, each representing the views of one camp, and sent them to the deputy mayor’s office for consideration. Zhang rejected them both. Tellingly, the city’s final report on the campaign reads very differently from the reports filed by many other cities, provinces, and regions. It lacks the usual statistics, departs from a common, stylized format, and simulates far fewer stock phrases from the campaign’s guiding policy documents. The drafting fiasco at the BMPC only deepened the ill will between Wang and He, and augured poorly for the future. Within a year, news of vulturine factions at the court spread throughout the city.⁷⁴⁶

It is ironic that a campaign intended to galvanize the BMPC actually intensified its divisions, but that was a corollary of the CCP’s crude, repressive brand of dialectics, which feasted on a diet of antagonistic constructions, all of them involving abstraction, caricature or invention. As a vehicle for inciting hostility in the courts, the *old* law standpoint was brilliant. By definition, it had no place in *New China*. It had the appearance of principled constancy, but was reusable and flexible, expanding or contracting as exigency required. In a revolutionary environment, no one willingly subscribed to it, and anything the label stuck to was by definition alien and illegitimate, and instantly anathematized. Ideas and practices that were openly tolerated one year were suddenly corrupt, dangerous, and marked for elimination 肃清 the next.⁷⁴⁷ It converted reformed personnel into pariahs, and hardened Party veterans into apostates. Cadres scrambled to avoid the label, which skewed the center of gravity in the judicial system, and more than once nearly capsized it. The cycle was endless because impurities could always be found or, as Mao put it, “such struggles will never end. This is the law of the development of truth and, naturally, of Marxism.”⁷⁴⁸

During the Republican era, many intellectuals had identified national salvation with novelty, from a “new culture” and “new legal science” to a “new democracy” and “New China.” Revolutionary ideologies then elevated newness to a cult, with prescribed orthodoxies and prophethoods. Hence, in 1943, after Li Mu’an and his coterie styled themselves a New Law Society, the CCP’s shrewd riposte was naturally to tar them with the heresy of the “old law standpoint.” This was a rectification of names, an artifact of brutal Maoist poetics that sorted the world into predators and prey, and compelled all to

⁷⁴⁵ Zhang Sizhi, “Guaidan moming faguan lu”. Beijing shi sifa gaige yundong zongjie (December 31, 1952), 8.

⁷⁴⁶ Zhang Sizhi, “Guaidan moming faguan lu”. Beijing shi sifa gaige yundong zongjie (December 31, 1952).

⁷⁴⁷ Li Guangcan, and Li Jianfei, “Suqing fan renmin de jiufa guandian”.

⁷⁴⁸ “On the Correct Handling of Contradictions Among the People,” in *Selected Works of Mao Tse-Tung*, (Peking: Foreign Languages Press, 1977), 409.

join the hunt in one role or the other. Nearly a decade later, when Peng Zhen joined Zhang Youyu, Shi Liang and others in praising the Judicial Reform Campaign as “clarifying the boundaries between old and new legal thought” and a “struggle against a standpoint that did not distinguish between enemy and friend,” they were borrowing from that script.⁷⁴⁹

In practice, clarifying those distinctions was a challenge because the relevant boundaries were not defined by fixed coordinates, but rather by the adaptive, shifting contours of circumstance and politics. Personnel policy illustrated as much. About a week before the Party took Beijing in 1949, Xie Juezai paraphrased Lenin to the students of the NCPG’s judicial cadre training course in Pingshan, saying, “We will not reform the old courts, we will destroy them, thereby clearing the path for the creation of true people’s courts.”⁷⁵⁰ Xie’s strident promise evoked Bolshevik precedents but could not erase important disagreements in the CCP about how fast and far that destruction should go and what should follow in its wake. Even as he spoke, the Central Committee was taking a step back, striking a more moderate, nuanced tone by authorizing the retention of select Nationalist judicial personnel, including judges, procurators, and clerks. This move prefigured official policy and practice over the next three years and, thus, the finality of abrogation was compromised at the highest levels before it even began.⁷⁵¹

As a group, legacy personnel were plainly intended to serve a transitional role. They were finite in number and, left to their own, natural attrition and fresh recruitment would have diluted their ranks over time, as it did under the Guomindang. The key controversy therefore centered around the timing and terms of their replacement. Would the changeover be selective, gradual, and systematic, tied to the cultivation of a crop of successors in cadre training programs and reconstructed law schools who could then advance up the ranks with the appropriate ideological preparation and skills? Or would it transpire suddenly and indiscriminately, in the paroxysms of a mass campaign,

⁷⁴⁹ Shi Liang 史良, “San nian lai renmin sifa gongzuo de chengjiu,” 三年来人民司法工作的成就 *Renmin ribao* 人民日报, September 23, 1952. “Beijing shi sifa gaige gongzuo quanmian zhankai”; *Beijing shi renmin fayuan yijiuwusan nian gongzuo zongjie baogao* (February 10, 1954) 北京市人民法院一九五三年工作总结报告. *Beijing shi renmin fayuan gongzuo jianbao* (1-29 qi) *ribao* (1-3 qi) 北京市人民法院工作简报 (1-29 期) 日报(1-3 期) (1954), BMA 014-002-00030; Peng Zhen, “Guanyu zhengzhi falü gongzuo de baogao (September 16, 1953),” 784-785.

⁷⁵⁰ Xie Juezai, 20. The original Russian reads: “Пусть кричат, что мы, не реформируя старый суд, сразу отдали его на слом. Мы расчистили этим дорогу для настоящего народного суда и не столько силой репрессий, сколько примером масс, авторитетом трудящихся, без формальностей, из суда, как орудия эксплуатации, сделали орудие воспитания на прочных основах социалистического общества.” Lenin, V.I. В.И Ленин, “Doklad o dejatel’nosti Soveta Narodnyh Komissarov (January 11(24), 1918),” Доклад О Деятельности Совета Народных Комиссаров in *Lenin V.I. Polnoe Sobranie Sochinenij* Ленин В.И. Полное Собрание Сочинений, (1974), 270. This quote was often invoked by PRC authorities in justification of abrogation and the Judicial Reform Campaign. Tao Xijun, “Lun sifa gaige,” 14.

⁷⁵¹ “Guanyu jieguan pingjin guomindang sifa jiguan de jianyi (January 21, 1949);” “Zhongyang guanyu jieshou guanliao ziben qiye de zhishi (January 15, 1949)”.

filling the courts with a wave of unprepared novices from impeccable class backgrounds, full of revolutionary ardor but weak on ability?

The CCP had already faced this dilemma in the base areas, where at least twice before it had abruptly disavowed incremental judicial construction in favor of struggle, purges and radical activism only to pronounce those misadventures debacles. Chastened by that experience, judicial policymakers in the PRC adopted a more measured approach right up to the Judicial Reform Campaign, suspending their prudence only at the top leadership's behest. Indeed, a review of dozens of high-level memoranda and reports from before the Three-Anti Campaign, including early drafts of the provisional agenda for the Second National Judicial Work Conference, betrays no indication of the coming firestorm.⁷⁵² To the contrary, they are dominated by routine organizational and operational matters, and calls for better management, greater investment, tighter ideological uniformity, more attention to the mass line, and higher efficiency and responsiveness.

Taken at face value, Xie's 1949 vision of creative destruction was incompatible with a cadre workforce that, on the eve of the Judicial Reform Campaign, was 25 percent legacy personnel, half of whom were legacy *judicial* personnel, and many of whom were not holdovers at all but actually new hires.⁷⁵³ Indeed, the affront to his maximalist position on abrogation actually ran much deeper still. The final summary report on the campaign filed by the Beijing municipal government alleged that the old law standpoint at the BMPC infected not just legacy personnel or even Wang Feiran, but many of the other senior veteran cadres at the court, too.

In employing veteran cadres, the [BMPC] court leadership also stressed having a foundation in the old law as a standard...veteran cadres occupy all of the important positions, but these cadres for the most part have some foundation in the old law, and some still have a pronounced old law standpoint...not a few of the cadres who have studied and applied the old law believe that law transcends class and can only manifest its impartiality if it separates from politics...Also, some believe that the new law is born of the old, which can be used critically, and some do not study policies and decrees because they believe that since there are no provisions [of law in them], there is no law to adjudicate 无法可司。⁷⁵⁴

These accusations have a formulaic quality to be sure, and similar examples could be cited from all around the PRC, but we must not discount them entirely, because they carried real consequences and comport with what other sources tell us about the fractured identity of legal policy, the personal histories of some of the cadres

⁷⁵² Dong Biwu 董必武, "Tong zhengfa bumen dangyuan fuze tongzhi tan yao dian (July 1951),"同政法部门党员负责同志谈要点 in *Dong Biwu faxue wenji* 董必武法学文集, (Beijing: Falü chubanshe, 2001).

⁷⁵³ Zhang Peitian, *Xin zhongguo hunyin gaige he sifa gaige shiliao: Xinan diqu dang'an xuanbian*, 504.

⁷⁵⁴ Beijing shi sifa gaige yundong zongjie (December 31, 1952), 2-6. "Zhonggong Beijing shiwei guanyu sifa gaige yundong diyi jieduan jinxing qingkuang he chubu zongjie xiang zhongyang, Huabei ju de baogao (October 18, 1952),"中共北京市委关于司法改革运动第一阶段进行情况和初步总结向中央, 华北局的报告 in *1952: Beijing shi zhongyao wenxian xuanbian* 1952: 北京市重要文献选编, ed. Beijing shi dang'anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang'an chubanshe, 2002), 532.

concerned, hiring patterns, and the unease over the direction of judicial practice that prompted the municipal government to transfer He Shenggao to the BMPC in the first place.

How is it possible that PRC courts suffered a plague of “ideologically irresolute veteran cadres captive to the old law standpoint?”⁷⁵⁵ One common explanation, blaming irregularities on naiveté and inexperience, begs disbelief at a court like the BMPC. Another explanation, that the old law standpoint was deeply ingrained and would therefore require a protracted struggle to efface, is more convincing, but raises existential questions about the identity of the CCP and its revolution. Consider Wang Feiran, who had a stellar pedigree. He joined the CCP in 1937 straight out of university, and rose up its judicial ranks for a dozen years to lead the high court of the Jinchaji base area. In 1948, he weathered the devastation land reform unleashed on judicial organs in the region to become deputy presiding judge of the NCPC. One level down from Wang, the heads of the BMPC’s secretariat and adjudication committee were similarly tempered by long experience. By dint of seniority and service to the revolution, they were among the last people who should have been susceptible to the old law standpoint, and yet, by all indications, they were trying to build a court that could serve the revolutionary aims of the CCP without completely forfeiting standards of judicial practice and competence internalized from the old regime.

Was their error attributable to lack of oversight? Unlikely. In 1949, the original takeover of Beijing’s Nationalist courts was carried out under the direct leadership of the Central Committee.⁷⁵⁶ Pursuant to article 10 of the 1951 Provisional Organization Statute of the People’s Courts, adjudication at the BMPC was under the leadership and supervision of the Supreme People’s Court, which shared the same building at 72 Ministry of Justice Street with the BMPC until the latter moved across the street. Similarly, judicial administration was under the leadership of the Ministry of Justice, also about a block away.⁷⁵⁷ Finally, because the court was part of the city government, it was also under the general leadership and supervision of the Beijing municipal committee, led by mayor Peng Zhen, who happened to be the chief deputy director and Party secretary of the state legal affairs commission under Dong Biwu. For an extended interval, Peng had actually served as the de facto head of that commission while Dong recovered from illness, and he had co-authored with Dong the original May 24, 1952 plan for the Judicial Reform Campaign. All of the court’s major appointments, including legacy personnel, passed through his municipal government committee. In fact, many of them went to deputy mayor Zhang Youyu, who held the political-legal portfolio in the city. If the BMPC was out of step, then there was plenty of blame to go around.

The Judicial Reform Campaign seems to have belatedly awakened many judicial policymakers to the principle that legacy personnel were prohibited from performing adjudication work. Right under the respective noses of Dong Biwu and the East China

⁷⁵⁵ Shi Liang, “San nian lai renmin sifa gongzuo de chengjiu”.

⁷⁵⁶ Liu Songbin, *Zhongguo gongchandang dui da chengshi de jieguan (1945-1952)*, 133.

⁷⁵⁷ “Zhonghua renmin gongheguo renmin fayuan zhanxing zuzhi tiaoli (September 3, 1951),” 712.

Political-Legal Party Group, legacy personnel accounted for 97 out of 120 judges on the Tianjin Municipal People's Court, and 80 of the 104 judges on the Shanghai Municipal People's Court, to say nothing of those serving in Beijing, the capital.⁷⁵⁸ By the Minister of Justice's own overblown reckoning, at the start of the campaign about 22 percent of court cadres nationwide were legacy judicial personnel, most of whom were involved with adjudication work (internal statistics indicate the number was actually closer to half that).⁷⁵⁹ The transparency and scale of those activities implied high-level assent, and once Mao expressed a personal interest in the purity of the courts, that assent turned toxic.

Mao's sudden intervention caught judicial officials off guard, changed their political calculus and upended their designs. Until then, the courts had actively participated in but escaped being overtaken by the various campaigns that engulfed the early PRC. Now, those forces crashed down on the courts all together like a perfect storm and, along with the shrinking space afforded New Democracy and the United Front, elevated what had begun as a straightforward drive to root out corruption and malfeasance into a wholesale purge and intra-Party rectification, complete with ideological struggle and easy political scapegoats.

Judicial officials at every level recalibrated, dove for cover and offered up as sacrifices the legacy personnel they had only recently cultivated. But they took longer to comprehend the gravity of the turn inward, to rectification. On July 9, the Central Committee instructed Party committees at every level to formulate plans and establish working groups to "launch struggle by stages, reforming and rectifying all courts, and simultaneously mustering and training new judicial workers."⁷⁶⁰ Nevertheless, six weeks later, the central government's judicial reform office, which was itself an outgrowth of that order, roundly condemned courts for implementing the campaign conservatively, through ordinary administrative measures such as "personnel swaps" and "trading old [legacy staff] for new [recruits]."⁷⁶¹ Courts in the North China region, for instance, "did not mobilize the masses, did not want struggle [but a] peaceful judicial reform, and were satisfied with certain adjustments to personnel."⁷⁶² In Tianjin, judicial cadres would not

⁷⁵⁸ Shi Liang, "Guanyu chedi gaizao he zhengdun geji renmin fayuan de baogao".

⁷⁵⁹ Ibid. In a sample of 2,438 courts taken before the campaign, 6,436 out of 26,089 cadres were legacy personnel, or 24.7 percent. However only 3,395 of that group (13 percent) were legacy judicial personnel. The remainder were not labeled, but were presumably ordinary legacy personnel. Zhang Peitian, *Xin zhongguo hunyin gaige he sifa gaige shiliao: Xinan diqu dang'an xuanbian*, 504.

⁷⁶⁰ Comments to the 中央同意七月六日政法分党组报告, quoted in *Dong Biwu chuan*, 790.

⁷⁶¹ Zhongyang zhengfa jiguan sifa gaige bangongshi 中央政法机关司法改革办公室, "Sifa gaige zonghe jianbao (dier hao) (August 21, 1952),"司法改革综合简报 (第二号) in *Sifa gaige yu sifa jianshe cankao wenjian* 司法改革与司法建设参考文件, (Beijing: Zhongyang zhengfa jiguan sifa gaige bangongshi, 1953), 20.

⁷⁶² Zhongyang zhengfa jiguan sifa gaige bangongshi 中央政法机关司法改革办公室, "Sifa gaige zonghe jianbao (diyao hao) (August 4, 1952),"司法改革综合简报 (第一号) in *Sifa gaige yu sifa jianshe cankao wenjian* 司法改革与司法建设参考文件, (Beijing: Zhongyang zhengfa jiguan sifa gaige bangongshi, 1953), 19.

perform self-criticisms, and the campaign briefly stalled.⁷⁶³ In Beijing, Zhang Youyu admonished the BMPC that mere personnel changes were inadequate to the campaign. “I’m afraid this is not thorough...Work methods, systems, procedures and so on have scarcely been reformed ...everyone’s level of ideology has stopped completely at the level of the old law standpoint...a systematic, planned intense struggle against the old law standpoint has not been launched.”⁷⁶⁴ It took concerted pressure and, in the case of the BMPC a subversion of the chain of command that left rancorous divisions, to break that resistance, and cadres such as Wang Feiran paid a price. Originally scheduled to run six weeks, the campaign dragged on for double that.⁷⁶⁵

The campaign put senior judicial cadres in the humiliating position of self-criticizing for the system they had built. It vitiated the 1950 recruitment policy and the considerable investments made in legacy personnel, some of whom had returned to the bench from extended training programs only a few months before. It also exposed the cadres who had vouched for those personnel to withering criticism. Regardless of the extent to which those assurances may have been wishful thinking or a ploy to retain skilled workers, officials all the way up to the Minister of Justice and Supreme People’s Court were implicated.⁷⁶⁶ The paper trail was long and damning.

Personal backgrounds often magnified that vulnerability. One of the least appreciated aspects of the campaign is the staggering degree to which its leaders were themselves compromised by past association with the old law standpoint. A partial list would include Dong Biwu, who had studied law in Japan and practiced in Republican Wuhan, two of the vice-chairmen of the state Legal Affairs Commission, both of whom had been Republican judges, the Minister of Justice and the president of the Supreme People’s Court, both famed Shanghai lawyers, and many of their top subordinates including, not least of all Li Mu’an, the deputy Minister of Justice. The director of the national office established to oversee the campaign, Min Ganghou, was a 1933 graduate of Soochow Law School, prominent Shanghai lawyer, and former Chaoyang law school professor. His deputy director, Wang Huai’an, was an alumnus of National

⁷⁶³ “Huabei qu sifa gaige yundong zongjie baogao (December 29, 1952),”华北区司法改革运动总结报告 in *Sifa gaige yu sifa jianshe cankao wenjian* 司法改革与司法建设参考文件, (Beijing: Zhongyang zhengfa jiguan sifa gaige bangongshi, 1953), 29.

⁷⁶⁴ Zhang Youyu 张友渔, “Zai sifa gaige baogaohui shang de jianghua (September 6, 1952),”在司法改革报告会上的讲话 in *1952: Beijing shi zhongyao wenxian xuanbian* 1952: 北京市重要文献选编, ed. Beijing shi dang’anguan, and Zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang’an chubanshe, 2002), 476.

⁷⁶⁵ “Dongbei quanqu kaishi jinxing sifa gaige, Beijing shi sifa gaige weiyuanhui chengli bing dingchu jihua,”东北全区开始进行司法改革, 北京市司法改革委员会成立并订出计划 *Renmin ribao* 人民日报, August 28, 1952.

⁷⁶⁶ In 1952, at the start of the Judicial Reform Campaign, 13 of the 16 judges on the central-south branch of the Supreme People’s Court in Wuhan were former Nationalist judicial personnel. In a mid-1951 internal report to Dong Biwu and Zhou Enlai, Minister of Justice Shi Liang pronounced the majority of held-over Shanghai judicial cadres as good. Shi Liang, “Guanyu chedi gaizao he zhengdun geji renmin fayuan de baogao”. Shi Liang, *Huadong sifa gongzuo shicha de baogao* (May 9, 1951).

Sichuan University law school, and had been imprisoned for three years by the CCP as a Guomindang spy after the 1943 rectification of the Shaanganning Border Region High Court. In Hebei province, the director of the campaign was Yang Xiufeng, once a professor at the Hebei School of Law and Business, and a deputy chairman of the NCPG when Liu Shaoqi directed it to adopt revised Nationalist codes. The director of the campaign in Beijing, Zhang Youyu, was a 1927 graduate of National Beijing College of Law.

The preponderance of figures with ties to the Republican legal system at the top and operational forefront of the Judicial Reform Campaign hints at more subtle politics and psychology than the usual Republican/PRC binaries and bromides about CCP legal nihilism allow. These individuals were in difficult positions because, while their past associations did not assure incrimination, blowback from the campaign was a constant danger. Once the CCP commenced redrawing its dialectical maps, no one was secure. Little wonder then that Dong emphasized the possibility of reform and rejected a blanket purge by insisting, “We should treat people who have studied the old law, and old judges, procurators, and lawyers according to their differences.”⁷⁶⁷

Such fine distinctions were difficult to uphold in the fevered atmosphere of a mass campaign, particularly the further down in the hierarchy one went. In the ideological wars over judicial policy, battles over the old law standpoint were inextricably bound up with social identity and the explosive question of whom the revolution belonged to.⁷⁶⁸ Struggles and purges redistributed power and created openings for advancement, allowing some opportunistically to expand their authority at the expense of others. Especially in these early years, the binary logic of the revolution tended to array personnel who owed their appointments mostly to their political or class credentials against those of higher rank and social origin, who possessed more education or formal legal training and judicial experience. But these boundaries were not always primary, and sometimes cadres coalesced around other attributes, such as records of prior service together or common native place ties, and ultimately loyalty trumped even those markers of identity. In the high stakes atmosphere created by frequent struggle and rectification, personal slights and criticisms were perceived as inchoate threats, and safety came from enforced group solidarity. Factions therefore singled out vulnerable or unreliable individuals for submission or retribution, often machinating to bring down others.

In the name of the revolution, cadres jockeyed for position, scrambled for exculpation, protected their own flanks by fingering rivals, pressed colleagues into demeaning self-criticisms, and added to the tinder of accumulated grudges and grievances that kept savage intra-Party conflict in the judicial system just a few sparks

⁷⁶⁷ Dong Biwu, “Guanyu gaige sifa jiguan ji zhengfa ganbu buchong, xunlian zhu wenti (June 24, 1952),” 122-123.

⁷⁶⁸ For a detailed, parallel discussion of how CCP policies towards professionals stoked tensions among teachers, see Eddy U, “Leninist Reforms, Workplace Cleavages, and Teachers in the Cultural Revolution,” *Comparative Studies in Society and History* 47, no. 1 (2005): 106-133.

away. It happened in 1943, when Lei Jingtian exploited social cleavages to oust Li Mu'an and reclaim his position as president of the Shaanganning high court. It happened in 1947 when radicalized land reform activists in North China swept away local judicial cadres from inauspicious class backgrounds. And it would happen again, in 1957, during the Anti-Rightist Campaign. Once ensconced, the beneficiaries of this agitation pressed their advantage and defended it with a fervor that sprang from self-interest, ideological righteousness, and insecurity. The losers were often demoted, arrested or given stigmatizing political "hats." In extreme cases, they could also be punitively assigned a less favorable class status, a sanction profoundly at odds with the CCP's materialist self-image. Such outcomes were inscribed in the dossiers that determined life chances, and stigmatized people for decades.

In spite of all that, the CCP worked hard to make the connection between the Judicial Reform Campaign and abrogation appear seamless. The *People's Daily* said, "The old law standpoint is the Guomindang reactionary clique's 'Six Codes' and all of its reactionary legal views including the entire anti-people rule of law 法治 handed down from the reactionary rulers, from the system of legal thought to the system of judicial organization, and many of the methods and work styles that dominate and stifle the people."⁷⁶⁹ In Beijing, Zhang Youyu expressed the connection more succinctly, "past opposition to the Six Codes standpoint has now become opposition to the old law standpoint."⁷⁷⁰ Prominent historians consequently gloss over the intervening contradictions and draw a straight line between abrogation and the Judicial Reform Campaign, positioning them as adjacent steps in the inexorable path of the revolution. He Qinhua, for example, concludes, "these two major events were historically inevitable. Today, Chinese academics on the whole endorse this."⁷⁷¹

As with abrogation, imputing inevitability to the Judicial Reform Campaign sneaks determinism in through the back door with a politics that buries contingencies, reroutes debate and dissuades us from closely scrutinizing details, inconsistencies, choices, and culpability. Who, after all, can swim against the tide? Moreover, when that tide purports to sweep away not just the laws and institutions, but also the personnel and outmoded beliefs and practices inherited from Nationalist China, it orchestrates a world out of time, unmoored from history. The attraction of this argument for models of the revolution premised on discontinuity, juxtaposition and high contrast is obvious. It reifies the partition that separates the PRC from Republican China, converting it from a heuristic to a real, preordained, and therefore irrefutable barrier.

Ultimately, this ends in a trap. Most obviously, it severs the present PRC from any serviceable Chinese past, and by default credits post-Mao legal reform mostly, if not entirely, to foreign inputs. For his part, He Qinhua evades that unpalatable outcome by arguing, "after the passage of thirty years (1949-1979), that which was abrogated or

⁷⁶⁹ Li Guangcan, and Li Jianfei, "Suqing fan renmin de jiu fa guandian".

⁷⁷⁰ Zhang Youyu, "Zai sifa gaige baogaohui shang de jianghua (September 6, 1952)," 475-476.

⁷⁷¹ He Qinhua, "Lun xin zhongguo fa he faxue de qibu-- yi 'feichu guomindang liufa quanshu' yu 'sifa gaige yundong' wei xiansuo," 143.

eliminated was nevertheless recovered and inherited.”⁷⁷² We have, of course, encountered such acrobatics before, with respect to the NCPG. Both examples invite us to take a great leap over the Mao era, connecting Republican to present-day China with no intermediation or specified mode of transmission. They ask for unsubstantiated leaps of faith.

At the end of the day, we must not mistake the uniformity democratic centralism and censorship imposed on official legal discourse in the PRC for consensus, and then extrapolate from that a linear teleology. The historiographical practice of leaping from one mass campaign against the old law standpoint to the next, connecting the peaks without descending into their interstitial valleys, amplifies the sanitized, public cloak the CCP wrapped around what it was doing, and dubs that normative. It leaves out conflicting data and smooths away fluctuations to generate a deeply misleading graph of the judicial system’s dynamics.

Only by casting off those blinders can we recognize abrogation, the Judicial Reform Campaign and kindred events as the disruptive, dissipative shocks they were, and devote comparable attention to the complementary spaces that lie between them. After all, Wang Feiran, too, was serving in Pinghsan when Xie Juezai vowed to destroy the courts of the old regime. Exactly two weeks later, he entered Beijing and began his tenure as the head of its municipal court. The personnel and recruitment practices he oversaw at the BMPC, and the blowback they produced, are difficult to square with foreknowledge of an impending campaign against legacy personnel and the old law standpoint. The strain on budgets and administrative efficiency of establishing off-site training courses and sending students to them for months at a time was immense when the courts were under crushing pressure to perform. Resident Soviet legal advisors registered disbelief at the evident faith senior judicial cadres placed in the reformability of legacy personnel and regarded it as recklessly naïve. Simply putting legacy personnel to work under tight supervision until their usefulness had run out would have been much less risky and burdensome.

Furthermore, the government might also have done more to prepare adequate replacements. Certainly, the resources expended on re-educating them might have gone to better use training a new generation of judges. As it was, veteran cadres were as scarce and hard to transfer as ever, qualified students had yet to materialize because legal education was still floundering, efforts to turn that around were mired in delays and, for all that, the courts still refused to relax hiring standards. In that sense, the Judicial Reform Campaign exposed the 1950 recruitment policy as a dismal failure, and declared that the only way out of the cadre crisis was to turn to categories of people judicial planners had not seriously contemplated before, or had previously resisted admitting. The haste of that turn showed in awkward moments, such as when Zhang Youyu censured the BMPC’s leaders for emphasizing “a foundation in the old law as a standard” for employment while fretting that the unbidden new staff the campaign had

⁷⁷² Ibid., 145.

injected into the court required urgent remediation because they lacked the skills to do their jobs.⁷⁷³

Results

The Judicial Reform Campaign shook the courts to their cores, but how did it affect their composition? Until recently, detailed empirical data about the system-wide impact of the campaign was out of reach, but newly accessible sources allow us to answer that question with unprecedented specificity, and surprises await. Unless otherwise noted, the following discussion is based on a statistical sample of 2,063 court work units from every major macro-region around China.⁷⁷⁴ Of note, the sources treat the Inner Mongolian Autonomous Region separately from the North China macro region to which it belonged administratively, and this chapter preserves that distinction by omitting it when referring to North China. Again, the sample is not perfect, but it is far and away the most complete data set ever published on the campaign, and is revelatory in its detail.

Let us begin by laying one canard to rest: the Judicial Reform Campaign did little to end the cadre crisis. At the end of the campaign, total headcount in the sample grew by only three percent, or five percent if one looks narrowly at adjudication alone.⁷⁷⁵ Figures 6.1 and 6.2 break down the changes to different categories of personnel.⁷⁷⁶ Legacy personnel were the primary targets of the campaign and the only major category to suffer losses, dropping by 57 percent on average in our sample. The available statistics disaggregate them into two subtypes, legacy judicial and ordinary legacy personnel. For reasons already noted, the campaign struck these subtypes unequally, changing the ratio between them from parity to nearly 1:2. Cumulatively, that still left around 2,300 legacy personnel in place, but their presence in the front lines of adjudication was greatly diminished. When the campaign ended, there were 70 percent fewer legacy judicial personnel and they represented just 1.4 percent of cadres of judicial rank or higher, and 3.2 percent of clerks. Ordinary legacy personnel were more numerous, with 3.4 and 7.2 percent shares of those jobs (Figure 6.1).

⁷⁷³ Beijing shi sifa gaige yundong zongjie (December 31, 1952).

⁷⁷⁴ The statistics come from a series of documents preserved in Folio 3-10 of the archive of the Xikang Provincial High Court, currently housed in the Sichuan provincial archives in Chengdu. Xikang was a Chinese province from 1939 to 1955, after which its territory was incorporated into Sichuan province and later the Tibet autonomous region. The statistics have been reprinted in Hu Wei, 111-121. and Zhang Peitian, *Xin zhongguo hunyin gaige he sifa gaige shiliao: Xinan diqu dang'an xuanbian*, 503-510.

⁷⁷⁵ Ibid., 505.

⁷⁷⁶ Ibid., 504.

Figure 6.1: Judicial Cadres Before and After the Judicial Reform Campaign, By Type (1951-53)

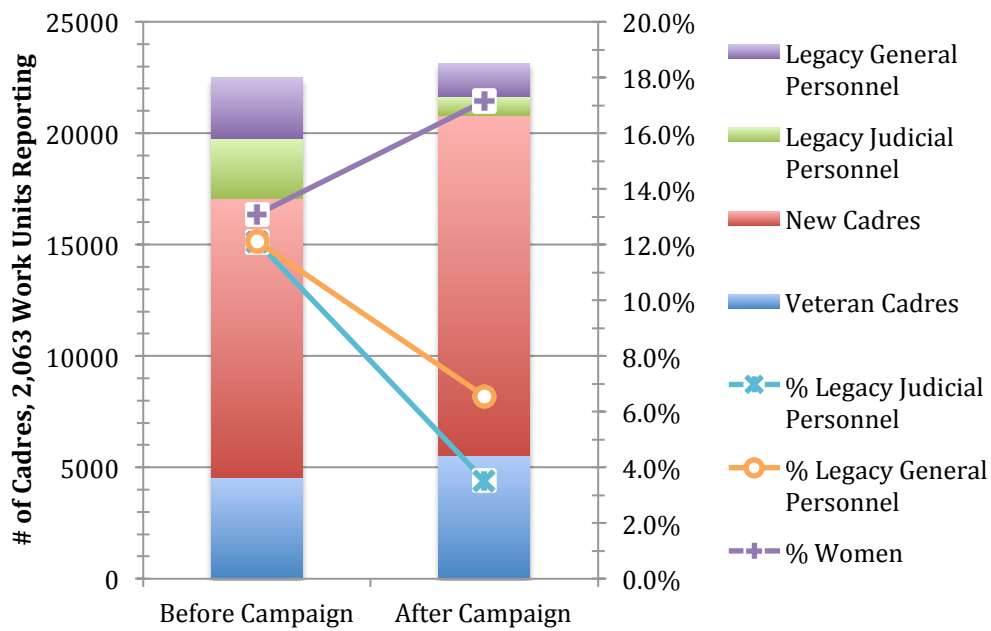
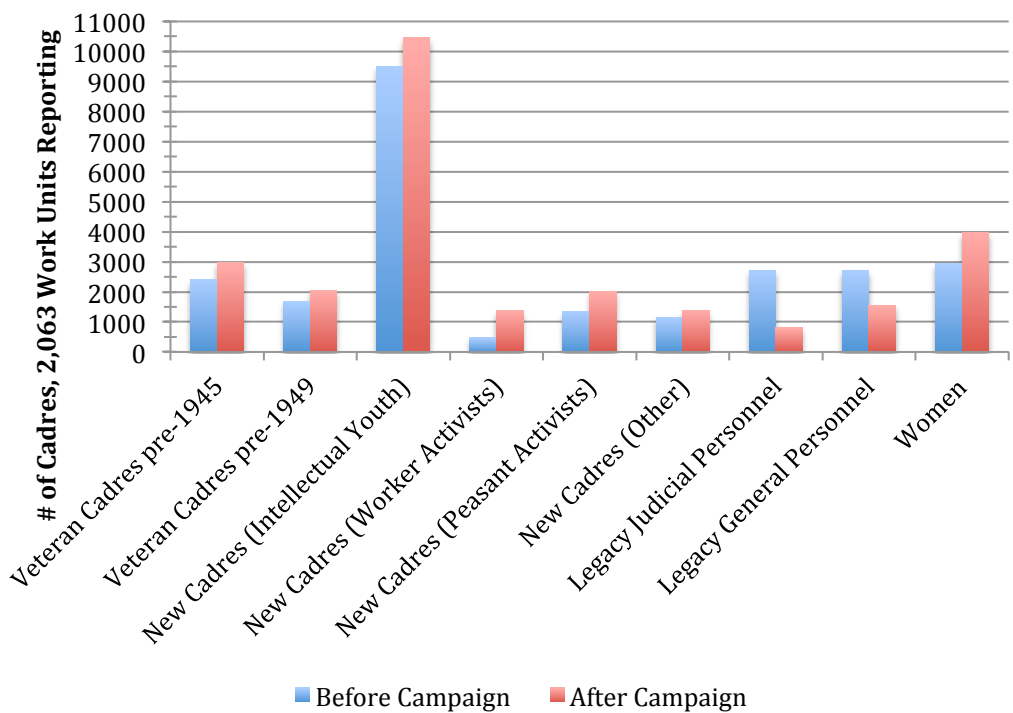
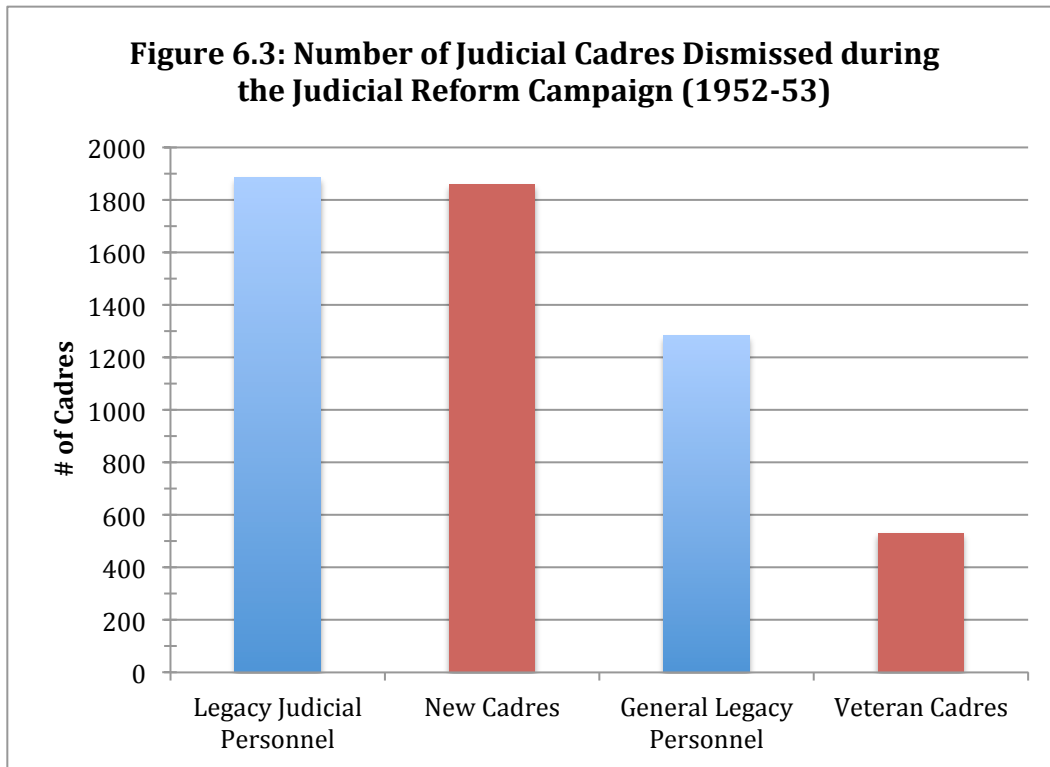


Figure 6.2: Judicial Cadres Before and After the Judicial Reform Campaign, By Sub-type (1951-53)



For all the abuse directed at legacy judicial personnel, they accounted for only 34 percent of dismissals during the campaign. Surprisingly, a nearly identical number of “new” (post-1949) cadres were dismissed from the courts during the campaign. Ordinary legacy cadres and veteran cadres made up the remainder (Figure 6.3).⁷⁷⁷ Furthermore, in absolute terms, nearly as many veteran and new cadres as legacy personnel were transferred out of the courts to other professions. Tellingly, the CCP hid these awkward equivalencies, preferring to keep the visible face of the campaign focused on a single category of scapegoats. Indeed, more than three-quarters of the nearly 500 cadres expelled or handled by law were legacy personnel and, in contrast to the muted dismissals of veteran and new cadres, such cases were ardently publicized and portrayed as representative of legacy personnel as a whole.



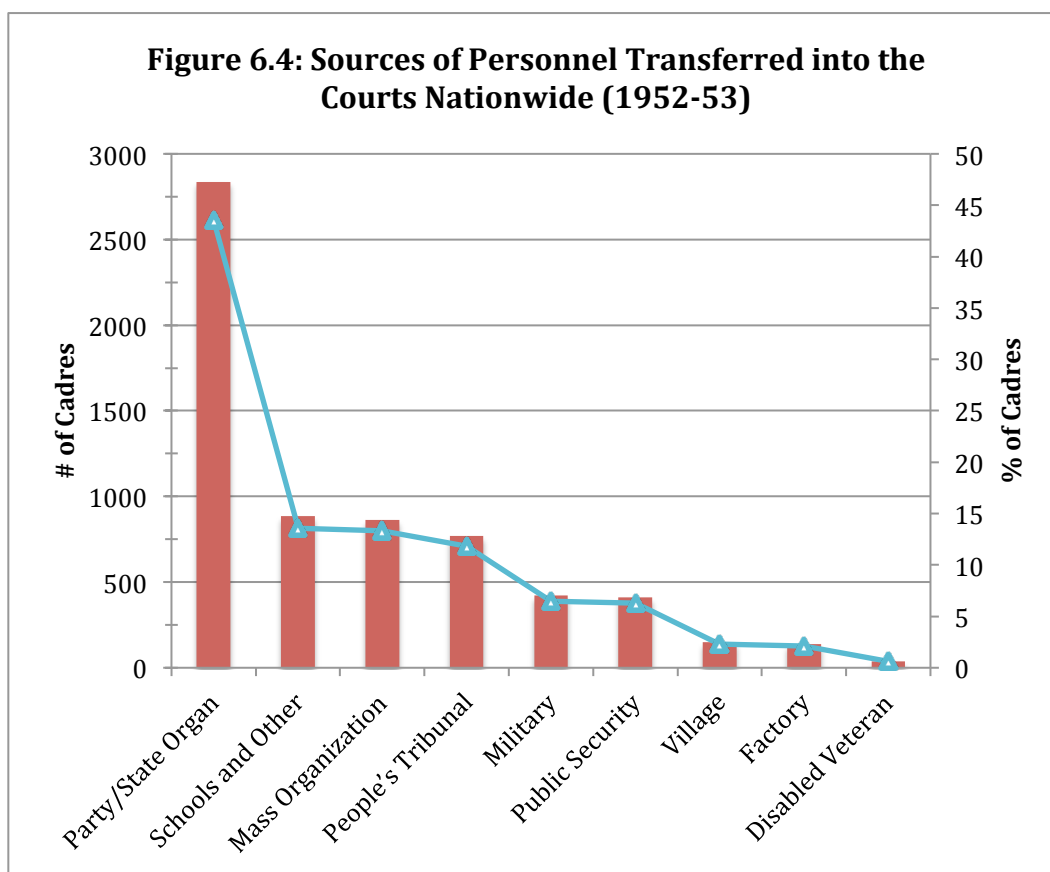
The statistics on new recruits also contain surprises. In terms of pedigree, about one-quarter of the cadres transferred into the courts were veteran cadres, having joined the revolution before 1949, and 73 percent were new cadres, having joined it that year or after. Unexpectedly, the courts hired a small number of legacy personnel during the campaign, and they made up the remaining two percent of entrants. When the campaign ended, the shares of serving personnel from veteran, new, and legacy cadres came to 28, 65, and 7 percent, respectively. In relative terms, women were among the largest beneficiaries. In 1950, the Minister of Justice made the promotion and cultivation of women judicial cadres a priority.⁷⁷⁸ As a result of the campaign, their

⁷⁷⁷ Ibid.

⁷⁷⁸ Shi Liang, “Guanyu muqian sifa xingzheng gongzuo baogao,” 49.

share of the total judicial workforce grew from 13 to 17 percent, and they accounted for almost 11 percent of judges.⁷⁷⁹

The campaign trumpeted recruitment from mass organizations, people’s tribunals, factories, and village associations, framing it as a mass line imperative. However, these groups collectively contributed only around 28 percent of new entrants in our sample (Figure 6.4).⁷⁸⁰ Similarly, the sources do not sustain the widespread belief that the campaign sent a surge of demobilized soldiers into the courts. Soldiers and disabled veterans directly accounted for only about seven percent of the entrants at this time. By contrast, assorted organs of the Party and state, plus the public security apparatus, provided nearly half of the entrants, the largest share by far, which means that in the final analysis the campaign replenished the courts most of all by laterally tapping tested personnel from other branches of the state.



The association with the masses is still more tenuous because, sociologically speaking, the largest cohort of entrants consisted of “intellectual youth,” an ill-defined category anchored by high school and middle school graduates, but which could also include university graduates. They accounted for 38 percent of the new entrants, significantly more than the 27 percent share represented by workers and peasants

⁷⁷⁹ Zhang Peitian, *Xin zhongguo hunyin gaige he sifa gaige shiliao: Xinan diqu dang'an xuanbian*, 510.

⁷⁸⁰ Hu Wei, 116.

combined.⁷⁸¹ In short, even in the fiercely populist environment of the campaign, judicial authorities retained a preference for the educated, and with legacy judicial personnel now off limits, they sought out the closest surrogates available, intellectual youth. To that end, they also renewed calls to “reform university political-legal curriculums so that they can foster large numbers of urgently needed political-legal cadres.”⁷⁸² The rapid dissemination of a Sovietized curriculum across PRC law schools, a subject taken up in the next chapter, responded to those appeals.

The preference for educated cadres was most true on the bench (Figure 6.5).⁷⁸³ Worker and peasant activists made up about 15 percent of all judicial personnel, but remarkably, their share of judges (or higher) and clerks amounted to just 12 percent, which means that in spite of the CCP’s base area traditions, the rural work units that dominate our sample, and the celebratory propaganda accompanying the campaign, they remained underrepresented.⁷⁸⁴ Veteran and new cadres, many of whom had peasant or worker backgrounds, compensated for this disappointing result, but neither detail could hide the unmistakable failure of the campaign to transform the judiciary by infusing it with large numbers of new recruits from these politically favored categories (Figure 6.6).

When comparing, say, peasants to intellectual youth among the new cadres, the former boasted twice as many CCP members, but the latter had four times as many judges (or higher) and six times as many clerks.⁷⁸⁵ Similarly, ordinary legacy personnel outnumbered worker activists among judges (or higher) and clerks. The story was quite different for veteran cadres. At the end of the campaign, they were extremely over-represented in the top judicial offices, accounting for around 19 percent of all court personnel, but about two-thirds of those ranked judge or higher. Nonetheless, new cadres, still outnumbered them at that level, helped in part by an overall numerical superiority of almost three to one. Together, the intellectual youth segment of the new cadre population, and the veteran cadre group as a whole dominated the judge or higher (79 percent) and clerk (70 percent) categories, which accords with anecdotal evidence of an effort to anchor the judicial system with proven political stalwarts while grooming academically capable novices.

⁷⁸¹ Zhang Peitian, *Xin zhongguo hunyin gaige he sifa gaige shiliao: Xinan diqu dang’an xuanbian*, 507.

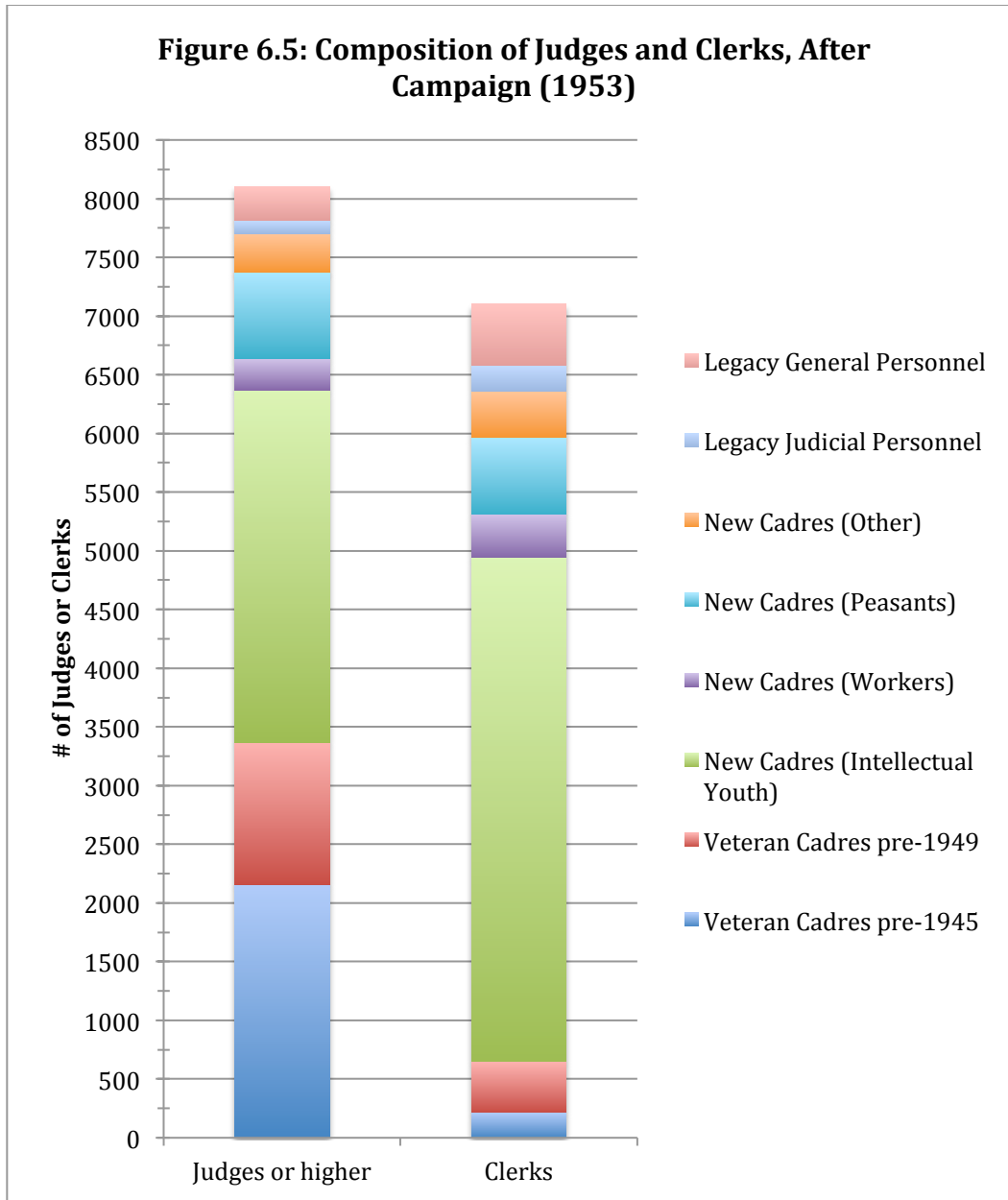
⁷⁸² “Bixu chedi gaige sifa gongzuo”.

⁷⁸³ The total numbers of judges and clerks reported in the raw data are 8,400 and 7,154, respectively. However, 8,100 of the judges (96.4 percent) and 7,100 (99.2 percent) of the clerks are broken down into these categories. The remainders are unclassified. For veteran cadres, the dates refer to the period in which the cadre joined the revolution, specifically: before “Liberation,” or before the Japanese surrender. In Chinese the category names are: 一般旧人员, 新干部 (其他, 农民积极分子, 工人积极分子, 青年知识分子), and 老干部 (当地解放前参加者, 日本投降前参加者). Zhang Peitian, *Xin zhongguo hunyin gaige he sifa gaige shiliao: Xinan diqu dang’an xuanbian*, 510.

⁷⁸⁴ *Ibid.*, 505, 510.

⁷⁸⁵ *Ibid.*, 507.

Figure 6.5: Composition of Judges and Clerks, After Campaign (1953)



Interestingly, there were several times more Communist Youth League (CYL) members among the young intellectuals than CCP members, but about half were neither CYL nor CCP members. Across the board, around 68 percent of the 6,505 entrants were either CCP or CYL members, but the range went as high as 94 percent for the subgroup of 844 veteran cadres who had joined the revolution before 1945, and as low as 19 percent for the tiny inflow of 16 legacy judicial personnel.⁷⁸⁶ Of note, the purge and replacement of legacy judicial personnel facilitated a rapid participation of the judiciary. When the campaign ended, 71 percent of clerks and personnel ranked judge

⁷⁸⁶ Ibid.

or higher belonged to either the CCP or CYL. Members of the various minor political parties allied with the CCP accounted for 1.1 percent. The remaining 28 percent were presumably unaffiliated.⁷⁸⁷

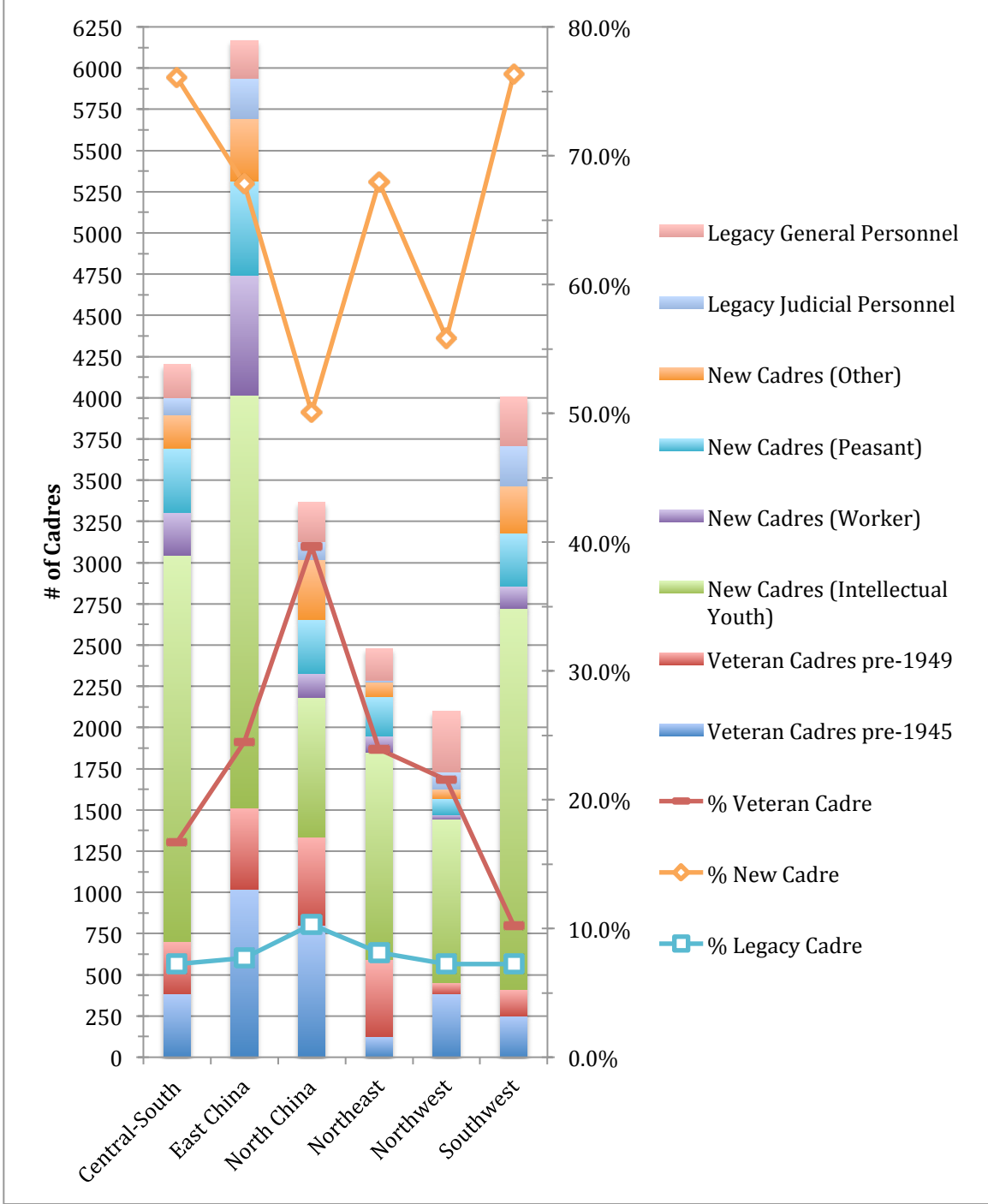
Figure 6.6 illustrates regional variations in the implementation of the campaign and the resulting composition of the judicial system.⁷⁸⁸ Some of these clearly demonstrate the lingering imbalances of Republican judicial development. For instance, the regions with the highest numbers of courts and judicial cadres corresponded to the heartland of the former Nationalist regime, particularly the East China, Central-South and Southwest regions. By virtue of their size, these were also the regions that retained the largest numbers of legacy personnel after the Judicial Reform Campaign. Basically, the PRC judicial system was piggybacking on a pre-existing Nationalist infrastructure and still subject to its disparities. In the regions where the Nationalist state had been strongest, namely Southwest and Central-South China, veteran cadres had the lowest share of court staff. Conversely, their share was highest where the CCP had its major base areas, as in the North and Northwest. Due to its special history, North China, home of the NCPG and Beijing, underwent the lowest overall turnover of personnel (14 percent) and ended the campaign with the highest share of veteran cadres by far (nearly 40 percent). This reduced the demand for new upper-level recruits, and hence the region had the lowest share of intellectual youth (25 percent). By contrast, East China, which included Shanghai and Nanjing, the former Nationalist capital, had the highest turnover of personnel (36 percent), and ended up with the most diverse workforce, including the highest share of worker and peasant activists (nearly 20 percent), suggesting a more concerted pursuit of the campaign's populist recruitment goals.⁷⁸⁹

⁷⁸⁷ Ibid., 510.

⁷⁸⁸ Ibid., 508-509.

⁷⁸⁹ Ibid.

Figure 6.6: Composition of Judicial Cadres by Region (1953)



Turning to key cities, in Shanghai the municipal court and its various branches transferred out 356 cadres and 219 judicial police and jailers, 317 (55 percent) of whom were held-over personnel, and took in 827 new staff. In spite of the prominence given to accusations of corruption and other crimes during the Judicial Reform Campaign, the

court handled only 18 staff “according to law.” In the East China region as a whole, only two percent of judicial cadres were prosecuted. By the time the campaign ended, the municipal court had 355 cadres, 85 of whom were CCP members, and 73 of whom were CYL members. That doubled their combined share of the cadre workforce at the court from 22 percent to 44.5 percent. More importantly, CCP and CYL members now constituted 62 of the 82 judges (75.6 percent) on the court.⁷⁹⁰

In Tianjin, the North China region’s second city, the percentage of legacy judicial personnel dropped from 65.4 to 36.1 percent.⁷⁹¹ As a result of the campaign, city authorities prosecuted only three judicial personnel for crimes, or less than one percent of the court workforce. All together, they purged, criminally sanctioned, or transferred out 102 judicial personnel, or 24.3 percent of the total judicial headcount, and received 130 new personnel, of whom 37 were veteran cadres, 84 were new cadres, and nine were held-over cadres. Among the new personnel, 61 were CCP members, 37 were CYL members, and 32 were women. The vast majority (105) were appointed to ordinary staff duties, though 20 filled section 科股长 chief positions, which indicated that, while the top level management of the city’s courts remained intact, the middle level was substantially replaced.⁷⁹²

At the BMPC, purges, reassignments, and transfers connected to the Three-Anti campaign decimated the legacy contingent assigned to adjudication work. By the time the Judicial Reform Campaign started, their number had already fallen to around 20, or from 63.5 to 25.6 percent of all adjudication personnel.⁷⁹³ When the campaign ended, the court retained in adjudication work just eleven cadres who had performed adjudication work for the Nationalist local court. Ten of them were young and had worked for the Nationalist court for only a short time as stenographers. The eleventh, Zhang Xiuhai, had been a Nationalist judge. Zhang was a 1937 graduate of the law department at Central University in Nanjing, which had extremely close ties to the Nationalist government. He had served as a judge in the Nationalist Ministry of Justice and on the Chongqing and Beijing local courts. Nevertheless, he survived the purges because he had joined the city’s CCP-affiliated professional youth league before the city fell, had ties to Zheng Mengping and the court’s underground Party branch, and received excellent marks for ideological reform. Together, the eleven amounted to just five percent of the adjudication personnel at the BMPC.⁷⁹⁴

⁷⁹⁰ *Shanghai shenpan zhi*, 104.

⁷⁹¹ “Huabei qu sifa gaige yundong zongjie baogao (December 29, 1952),” 28.

⁷⁹² “Tianjin shi sifa gaige yundong zongjie baogao (December 25, 1952),” 天津市司法改革运动总结报告 in *Sifa gaige yu sifa jianshe cankao wenjian* 司法改革与司法建设参考文件, (Beijing: Zhongyang zhengfa jiguan sifa gaige bangongshi, 1953), 89.

⁷⁹³ “Zhonggong Beijing shiwei guanyu sifa gaige de chubu qingkuang ji jinhou gongzuo jihua xiang zhongyang, Huabei ju de baogao (September 1, 1952),” 460.

⁷⁹⁴ At year end, there were 216 cadres assigned to adjudication work. Beijing shi sifa gaige yundong zongjie (December 31, 1952), 8; “Zhonggong Beijing shiwei guanyu sifa gaige yundong disan jieduan gongzuo zongjie xiang zhongyang, Huabei ju de baogao (January 27, 1953),” 39.

Of the 368 cadres on staff at the BMPC and the city's district courts, 170 were new, or nearly half. This "greatly changed the identity of the courts," and destabilized Wang Feiran's grip on them. They included demobilized soldiers and activists from mass organizations and people's tribunals, who replaced some of the ordinary legacy personnel dismissed. At least 43 had transferred in from the public security bureau, procuratorate, and municipal administrative cadre school, and they clustered in the higher ranks.⁷⁹⁵ Judging from an opportunistic sample of personnel files, the pool included more women, workers, and poor peasants than before, as one might expect, and a sprinkling from the bourgeoisie and landlord class, which one might not. Some had not actually sought transfers to the court at all, and had doubts about their suitability or preparation for judicial work. Most were in their late 20s or 30s and had a minimum of a middle school education, but some from the countryside had only attended a couple of years of primary school. In the frenzy of the campaign, plans to send the new recruits for short-term training were scrapped, which left them unready for their jobs.⁷⁹⁶ Owing to this infusion of recruits, the North China Administrative Committee proudly announced to the central government, "the staffing problems that have gone unresolved at the Beijing Municipal People's Court for the last three years have been solved."⁷⁹⁷ However, the municipal government saw things differently, noting that the court still fell 167 cadres short of its authorized staffing level, with the deficit felt most acutely in the higher ranks, where legacy judicial personnel had concentrated.

To recap, the Judicial Reform Campaign wrenched the PRC judicial system from its Nationalist origins, and further chipped away at its ideological and substantive foundations via attacks on the old law standpoint, and by purging from the courts more than half of their legacy personnel, who personified the debt the courts owed to the Nationalist past. The rectification phase of the campaign drove the struggle deep into the heart of the courts, like a wedge, shaking up their authority structures, and in some cases splitting them into factions. In our sample, more than a quarter of the personnel dismissed from the courts were veteran or new cadres, a fact the CCP kept well-hidden, perhaps because it opened up distracting questions about internal power struggles and ideological and moral fitness. Presumably, their transgressions were not grave since only three percent of these dismissed cadres were "handled by law," and 94 percent were transferred to other professions or to training programs.

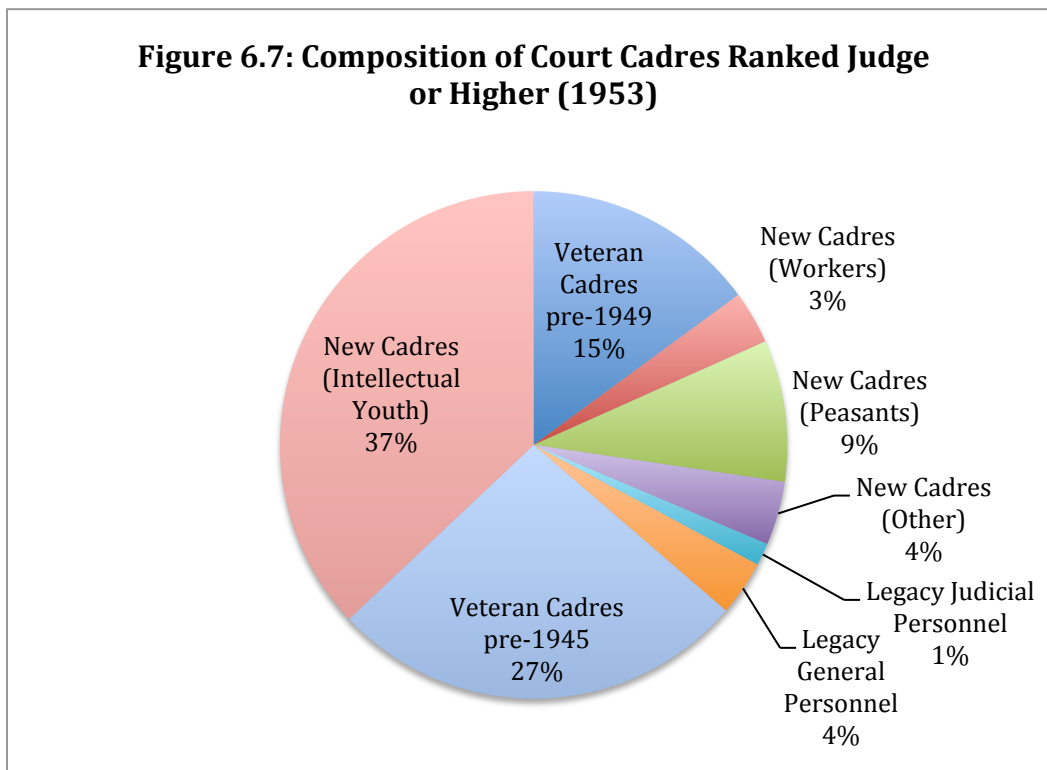
Turnover among adjudication personnel as a whole was greater than 30 percent, and was felt most acutely among judges (or higher) and clerks, among whom more than 70 percent were members of the CCP or CYL by the end of the campaign. This disproportionately impacted urban courts, where caseloads were highest and most

⁷⁹⁵ Beijing shi sifa gaige yundong zongjie (December 31, 1952), 8; "Zhonggong Beijing shiwei guanyu sifa gaige de chubu qingkuang ji jinhou gongzuo jihua xiang zhongyang, Huabei ju de baogao (September 1, 1952)," 460. "Zhonggong Beijing shiwei guanyu sifa gaige yundong disan jieduan gongzuo zongjie xiang zhongyang, Huabei ju de baogao (January 27, 1953)," 39.

⁷⁹⁶ Dong Biwu, "Gei zhonggong zhongyang ge zhongyang ju fuze tongzhi de xin (May 23, 1952)," 132.

⁷⁹⁷ "Huabei qu sifa gaige yundong zongjie baogao (December 29, 1952)," 28.

complex, and set back the caliber and culture of adjudication for half a century. Thus, in terms of politics and capabilities, the change was profound, but in sociological terms, much less so. If the campaign aimed to transform the judiciary by filling it with workers and peasants, then it came up short. More than 1,600 worker and peasant activists were recruited into the courts, nearly doubling their previous share of the workforce, yet they remained underrepresented among clerk and judge (or higher) positions, extremely so if measured against their joint share of the general population. By contrast, intellectual youth were overrepresented in those positions, and veteran cadres significantly so. Consequently, when the campaign ended, the judiciary stood on two legs, with 79 percent of clerks and judges (or higher) coming from intellectual youth or veteran cadres (Figure 6.7). We do not have comparable data from just before the campaign, but it would be surprising if the social composition of the judiciary had changed dramatically, since intellectual youth appear to have hailed from backgrounds not far removed from the legacy personnel they helped to displace. And legacy personnel did not entirely disappear; 819 legacy judicial personnel held on, down from 2720, and 115 of those survivors were judges or higher. Ordinary legacy personnel fared almost twice as well.



This is not how the Judicial Reform Campaign is remembered and, crucially, its outcomes set up further upheaval later in the decade. As intense as the campaign was, it fell short of and even boomeranged on some of its original goals. Mass line principles perturbed the judicial system and compelled it to adapt, but rather than passively yield to those principles, it assimilated and domesticated them. The purge of legacy

personnel did not unify the courts so much as eliminate expedient scapegoats and shift the fault lines over judicial policy back inside of the CCP. In particular, it created a largely bifurcated judiciary with one foot planted in the fires of revolution and the other on the path to modernization. Veteran cadres staked their identities primarily on political attributes, namely past service and fidelity to the CCP, while intellectual youth drew special strength from their educations and their capacity to contribute to socialist construction. Those traits tended to pull each in a different direction, and with each passing year the tension between them mounted.

In one vital respect, the Judicial Reform Campaign departed from the CCP's other historic assaults on the old law standpoint: the top layer of judicial policymakers survived it intact, and their commitments to building a robust and competent judicial system abided. Once the heat of the campaign dissipated, they resumed their drive for institutionalization, professionalism and formalism, this time riding the currents of the First Five-Year Plan and the paradigm of Soviet-style socialist legality. Peng Zhen declared that "henceforth the main task of our political-legal work is to gradually implement a comparatively complete people's democratic legal system in order to safeguard and promote the progressive development of social productive forces."⁷⁹⁸ That played disproportionately to the strengths of intellectual youth, and threatened to claw back some of the gains veteran cadres, workers and peasants had reaped from the campaign. In the relational logic of revolutionary struggle, intellectual youth stepped into the shoes formerly worn by legacy personnel, an association eased by their overlapping class backgrounds. And sure enough, the accumulating strains would erupt in a new confrontation once the political climate provided an opening. Dong Biwu predicted as much in 1954 when after tallying the successes of the Judicial Reform Campaign, he said, "the vestiges of the old law standpoint have not been completely eliminated. They are still constantly influencing us, and we must carry out a long term struggle and thoroughly eliminate them."⁷⁹⁹

⁷⁹⁸ Peng Zhen, "Guanyu zhengzhi falü gongzuo de baogao (September 16, 1953)," 783.

⁷⁹⁹ Dong Biwu 董必武, "Wu nian lai zhengzhi falü gongzuo zhong de jige wenti he jiaqiang shoufa jiaoyu wenti (September 24, 1954)," 五年来政治法律工作中的几个问题和加强守法教育问题 in *Xingshi susong faxue cankao ziliao huibian (zhongce)* 刑事诉讼法学参考资料汇编 (中册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005), 800.

Chapter 7

Criticality: A New Judiciary Emerges (1953-56)

The Judicial Reform Campaign introduced the PRC to the crippling cycles of creation and dissolution that punctuated the legal history of the base areas. Over the preceding three years, urban courts had eagerly cultivated legacy personnel and their sublimated Nationalist knowledge and practices while higher authorities temporized. When the campaign demolished those pillars, the courts were gravely weakened and disoriented. Meanwhile, the restructuring of higher education annihilated the legacy law schools on which judicial planners had originally pegged their goals for recruitment and growth. Out of the shock of these twin events came a fresh opportunity to overhaul and revolutionize the courts.

Policymakers moved quickly to seize the moment. First, at the Second National Judicial Work Conference (April 11-25, 1953), they rallied the courts around an ambitious, forward-looking agenda of institutional experimentation, growth, and reform. Next, at the National Political-Legal Education Conference (April 26-May 8, 1954), they launched a concerted drive to cultivate the skilled cadres needed to carry that agenda forward. These initiatives were part of a broad shift in policy: from demolishing the remnants of the old society towards creating a new one. In short order, the Party and government issued a succession of documents to guide the historic enterprise of building socialism, including the First Five-Year Plan, the General Line, the 1954 Constitution, and a host of related, fundamental laws, including the Law on the Organization of the People's Courts. The legal system rode that wave for the next four years.

A rich literature documents the formal attributes and discourses of the various projects to “implement a comparatively complete people's democratic legal system” that ran through this period.⁸⁰⁰ It takes its cues mainly from legislation, major policy documents, and leading newspapers and law journals, which for decades comprised the principal source base accessible to scholars. It consequently has a great deal more to say about official goals and their theoretical rationales than about implementation or its bearing on how the courts were actually constructed, maintained, and run. From ideal types, we are left to infer the corresponding practices, a choice that discreetly sidesteps the fit between representation and reality, and the awkward question of why, if this

⁸⁰⁰ Peng Zhen, “Guanyu zhengzhi falü gongzuo de baogao (September 16, 1953),” 783. Leng, *Justice in Communist China: A Survey of the Judicial System of the Chinese People's Republic*; Cohen, *The Criminal Process in the People's Republic of China, 1949-1963: An Introduction*; Cai Cheng, *Dangdai zhongguo de sifa xingzheng gongzuo*; Yang Yifan, Chen Hanfeng, and Zhang Qun, *Zhonghua renmin gongheguo fazhishi*; Zhao Chunyan 赵春燕, *Zuichu de lixiang: xin zhongguo jianguo chuqi de fazhi huayu yu shijian* 最初的理想：新中国建国初期的法制话语与实践 (Beijing: Falü chubanshe, 2012). Huang, *Chinese Civil Justice, Past and Present*.

project developed according to plan, it nevertheless led directly to another, still more ferocious and destructive campaign against the old law standpoint in 1957.

Nowhere are the gaps more obvious than with respect to judicial personnel. Our historiography has virtually nothing to say about the cadres who populated the courts in this crucial period. Consumed by well-worn questions of ideology and architecture, it simply takes them for granted, and assumes that they were present, doing what was asked of them, without inquiring further. We do not know who they were, how many there were, where they came from, how they were trained, or what views they may have had about the legal system they were helping to create. And yet the revolution in the courts rested on their shoulders.

This chapter dives into that neglected space, telling the story of how Beijing's courts rebuilt their human capital between 1953 and 1957, a period of comparative internal ideological stability, but extreme operational stress owing to high caseloads, and a chain of aggressive institutional reforms. Staffing was again at the heart of the problem.

The socialist transformation of the country hinged on cadres swiftly and faithfully carrying out the will of the Party and government. That was a tall order. Deciding cases was easy; getting them right was not. The cadres who successively entered Beijing's courts after the Judicial Reform Campaign may have had the right political and class backgrounds, and even a basic grasp of CCP ideology, but they were of little use, and potentially a liability, until they had mastered judicial procedures and the city's changing suite of policies and regulations.

Beijing was not the rural hinterland. Its caseload included corporate bankruptcies, complex contractual disputes, unusual forms of property rights, industrial labor strife, guild arbitrations, organized crime, and cases that spanned multiple jurisdictions, or involved central government agencies, or sensitive foreign interests. Even seemingly ordinary disputes were vexing because the city's residents were prone to be assertive and resourceful (cadres sometimes called them "devious") in preserving their interests. The Republican-educated technocrats who led the judicial system understood this well, but many of the rural cadres who rode the Party's victory into office either did not, or were unsympathetic.

How, then, did they fashion a new judiciary? They rapidly took on new cadres. Under pressure to bootstrap novices into adepts, policymakers improvised an approach to judicial training that combined elements of Maoist epistemology with orthodox Soviet learning and central planning. They breathed new life into the tiered pyramid of legal education introduced in 1949, aiming to satisfy immediate basic needs while also providing for "high-level legal experts" who would elevate standards as they flowed into the legal system over the long term. In 1943, Li Mu'an imagined just such a strategy; he was now the deputy Minister of Justice.

Coherent bodies of law and doctrine started to coalesce at every level, along with constituencies invested in applying them. Especially in major cities like Beijing, the

courts began to self-organize and assemble internal logics grounded in these emerging sources of authority. Like the country around them, these cadres were not already socialist. They were in the process of becoming so, and discovering what that meant. Taught to take some policies and regulations seriously, they were apt to regard others in the same way, particularly when those documents spoke directly to their prerogatives. The logics they constructed conserved information hysteretically from earlier cycles of judicial creation and dissolution, and therefore were of the Party but not passive before it. In short, the judicial system was finding its own voice, and settling into a path that would again leave it far out of equilibrium when the external political environment radicalized.

To frame the discussion, this chapter opens with a brief summary of the organization of the judicial system. Second, the chapter shifts down to the grassroots with a behind-the-scenes look at how Beijing's courts constructed the knowledge and personnel they needed to pursue their goals. Third, it analyses the composition of the judiciary that actually resulted from those policies. Fourth, it sketches the caseload this judiciary handled.

Administrative Snapshot

In late 1949, Beijing encompassed more than 480 square miles, but its two-tiered judicial system was strikingly compact. There was a single municipal court at the bottom, and the Supreme People's Court (SPC) on top, both of which were located in the city center at 72 Ministry of Justice Street. The Ministry of Justice took up residence barely one block away. The simplicity of this design obviated the need for a sprawling municipal court bureaucracy, but it also left most of the city's two million residents without effective access to judicial services.

Owing to successive incorporations of surrounding portions of Hebei province, by 1958 the city grew to 6,500 square miles with a population of about 6.5 million. To serve them better, the municipal judicial system underwent several restructurings. First, in 1950, the government added a third-tier of courts by opening four experimental district level courts under the BMPC. Then, in 1952, the number of district courts increased to thirteen. In short order, they took over most ordinary civil and criminal cases of first instance, with appeals going to the BMPC. The BMPC retained primary jurisdiction over certain categories of sensitive or complex cases, most of which could be appealed to the Supreme People's Court, the principal exception being counterrevolution. The BMPC was under the overlapping state authority of multiple organs, chiefly the Supreme People's Court, the Ministry of Justice, the Beijing Military Control Commission, and the Beijing municipal people's government. It exercised administrative oversight over district level courts in conjunction with their local district level government offices, which appointed the district court presidents.

The 1954 Constitution and Organization Law of the People's Courts added a fourth tier of courts. Accordingly, the BMPC closed in February 1955, and a municipal

high court and a municipal intermediate court took its place. The Supreme People's Court sat above this duo, and the district courts below them, making Beijing the only city in the PRC with courts at all four levels. In addition, the Constitution codified practices such as the use of people's assessors and the right to a defense at trial, as well as the concept of adjudicatory independence, all of which had institutional ramifications.

Initially, the BMPC did not have a consolidated administrative office of its own, but it established one in 1953 pursuant to the resolution of the Second National Judicial Work Conference. This office took over the court's secretariat, and its sections on judicial construction, cadre education, propaganda, and personnel. It was led by BMPC vice president He Shenggao and had an authorized staffing level of 30 cadres.⁸⁰¹ Then, one month before the promulgation of the 1954 Constitution, the Ministry of Justice announced that the separation between judicial administration and adjudication operative at the national level between the Ministry of Justice and Supreme People's Court should expand down to the provincial and municipal levels, as circumstances allowed. The Ministry singled out 18 provinces and cities, including Beijing, to lead the way, ordering their governments to create judicial bureaus immediately.⁸⁰² In February 1955, Beijing complied, spinning the BMPC's judicial administration office 司法行政处 off into a distinct bureau 司法局 of the city government at the same time as the BMPC split into high and intermediate courts. Senior BMPC cadres led all three of these new organs: Wang Feiran was appointed president of the high court, He Zhangjun was appointed president of the intermediate court, and He Shenggao was appointed chief of the judicial bureau. This trio led the municipal judicial system into 1958.

The Second National Judicial Work Conference

The CCP Central Committee officially announced the pivot towards this new phase of institution building on April 7, 1953, with an instruction that read in part, "Currently, the social reform movements to eliminate the vestigial power of the Three Enemies have largely concluded. From now on, the work of the people's democratic dictatorship must and can be implemented through a regular revolutionary legal system so as to guarantee the people's interests and the smooth advance of the cause of national construction."⁸⁰³ Several days later, the Minister of Justice echoed those sentiments in an address to the landmark Second National Judicial Work Conference.⁸⁰⁴

⁸⁰¹ *Shenpan zhi*, 21.

⁸⁰² "Sifabu guanyu gesheng yu zhongyang zhixia shi shenpan jiguan yu sifa xingzheng jiguan fenli wenti de yijian (August 13, 1954),"司法部关于各省与中央直辖市审判机关与司法行政机关分立问题的意见 in *Zhonghua renmin gongheguo sifa xingzheng lishi wenjian huibian 1950-1985* 中华人民共和国司法行政历史文件汇编 1950-1985, ed. Zhonghua renmin gongheguo sifabu 中华人民共和国司法部, (Beijing: Falü chubanshe, 1987).

⁸⁰³ The Three Enemies were feudalism, imperialism, and bureaucratic capitalism. He Lanjie, and Lu Mingjian, *Dangdai zhongguo de shenpan gongzuo*, 42. A few weeks earlier, Peng Zhen submitted a report to Mao on behalf of the Political-Legal Committee which included very similar language. Peng

The Second National Judicial Work Conference took stock of the preceding three years of judicial practice and laid down the blueprint for judicial policy over the next several years. The final conference resolution began by firmly shutting the door on the Judicial Reform Campaign. It credited the campaign with “carrying out ideological, political, and organizational rectification and purification in the various levels of the people’s courts, attacking the surviving old law standpoint and old law work style effectively, and with respect to cadre ideology, fundamentally drawing clear boundaries between the new and old law.”⁸⁰⁵ To preserve these achievements and keep the judicial system true, it directed judicial workers to follow the Maoist precepts of the mass line and seeking truth from facts, and to ceaselessly study Marxist-Leninist theory, the advanced experience of the Soviet Union, the instructions of Chairman Mao, and state policies and laws. This brilliantly inoculated the reforms that followed against casual association with the old regime.

Next, the resolution directed courts to remedy a litany of operational flaws in their work, including wrongful arrests, detentions and convictions, backlogged dockets, weak cadre training, staffing shortfalls, slipshod work habits, and vestiges of the old law standpoint. Courts soon mobilized to accomplish these tasks. At least 350,000 backlogged cases nationwide required clearing.⁸⁰⁶ Beijing had a head start on this front. Between January and April, its courts cleared 15,000 backlogged cases, a feat that absorbed the energies of the entire municipal judicial system, and raises serious questions about the care with which decisions were reached.⁸⁰⁷

The resolution then unveiled a list of far-reaching initiatives, including election tribunals, adjudication committees, special rail and water transport courts, enterprise-level comrades courts, county-level circuit tribunals, people’s assessors, reception rooms, local-level judicial training courses, and dedicated offices to handle judicial administration. Some of these, such as adjudication committees and circuit tribunals, had already been adopted on a limited basis, but the resolution, and series of follow-up instructions and policy statements propelled them forward with new intensity.⁸⁰⁸

Finally, the resolution urged a significant cultural change in judicial work. Up to that point, the Maoist injunction to seek truth from facts had long encouraged cadres to

Zhen 彭真, “Jiaqiang sifa gongzuo (March 14, 1953),” 加强司法工作 in *Lun xin zhongguo de zhengfa gongzuo* 论新中国的政法工作, (Beijing: Zhongyang wenxian chubanshe, 1992), 77.

⁸⁰⁴ Shi Liang, “Guanyu jiaqiang renmin sifa gongzuo jianshe de baogao (April 11, 1953),” 757.

⁸⁰⁵ “Dier jie quanguo sifa huiyi jueyi (May 8, 1953),” 第二届全国司法会议决议 in *Xingshi susong faxue cankao ziliao huibian (zhongce)* 刑事诉讼法学参考资料汇编 (中册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005), 773.

⁸⁰⁶ Shi Liang, “Guanyu jiaqiang renmin sifa gongzuo jianshe de baogao (April 11, 1953),” 756.

⁸⁰⁷ Beijing shi renmin fayuan yijiuwusan nian gongzuo zongjie baogao (February 10, 1954).

⁸⁰⁸ “Zhongyang renmin zhengfu sifabu guanyu zhixing dier jie quanguo sifa huiyi jueyi de zhishi (August 31, 1953),” 中央人民政府司法部关于执行第二届全国司法会议决议的指示 in *Xingshi susong faxue cankao ziliao huibian (zhongce)* 刑事诉讼法学参考资料汇编 (中册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005). “Jiaqiang guojia jianshe shiqi de renmin sifa gongzuo,” 加强国家建设时期的人民司法工作 *Renmin ribao* 人民日报, May 14, 1953.

unite knowledge and practice through direct experience, particularly local initiative in concert with the masses.⁸⁰⁹ When authorities launched new projects, they therefore focused on goals, strategies, and broad principles rather than on detailed rules, with the understanding that the latter would arise inductively through trial and error. It was more important to get the spirit right first, and to leave room to adapt to local particularities; specific operational details would work themselves out through experimentation, and remain open to adjustment as circumstances required.

The conference resolution sought to discipline those traditions with a strong dose of methodological rigor. In contrast to the haphazard initiatives, abrupt course changes, and crash drives of the past, courts were now enjoined to carry out their work meticulously and with comprehensive planning. Major initiatives were supposed to begin with limited field trials or pilot projects defined by clear objectives, and prefaced by careful selection and preparation of suitable sites, cadres, and mass representatives. Ideally, these models would generate systematic feedback and provide ample opportunities to troubleshoot problems and refine implementation prior to broader dissemination.⁸¹⁰ Judicial administrators aimed to put the “guerrilla work style” 游击作风 characteristic of the base areas behind them.

Producing Knowledge

Bureaucratic reporting was integral to this knowledge economy. Courts were supposed to tirelessly summarize their experiences, reflect on their shortcomings, draw conclusions about what succeeded and what did not, and pass that information up their chains of command. As a genre, these internal reports are practical in orientation and, while they are unmistakably artifacts of a revolutionary, socialist regime, for the most part they eschew turgid ideological ornamentation. They were written by and for bureaucratic insiders focused on demonstrating and evaluating performance. Strung together, they chronicle the lives of their subjects, revealing secrets about the working judicial system that contemporary open sources dared not. The Ministry of Justice published an edited selection of these reports, along with relevant policy updates and circulars, a few times every month in an internal *Judicial Work Bulletin* to propagate models, accelerate learning, and stimulate laggards. Lower level jurisdictions, such as Beijing and Shanghai, issued their own similar publications attuned to local concerns.⁸¹¹

⁸⁰⁹ Tse-tung Mao, “On Practice: On the Relation Between Knowledge and Practice, Between Knowing and Doing (July 1937),” in *Selected Works of Mao Tse-Tung*, (Peking: Foreign Languages Press, 1965).

⁸¹⁰ “Jiaqiang guojia jianshe shiqi de renmin sifa gongzuo”. “Zhongyang renmin zhengfu sifabu guanyu zhixing dier jie quanguo sifa huiyi jueyi de zhishi (August 31, 1953),” 中央人民政府司法部关于执行第二届全国司法会议决议的指示 *Renmin ribao* 人民日报, September 10, 1953.

⁸¹¹ Some examples include: the *Beijing shi renmin fayuan gongzuo jianbao* 北京市人民法院工作简报, the *Beijing renmin fayuan gongzuo ribao* 北京市人民法院工作日报, and the *Shanghai sifa gongzuo tongxun* 上海司法工作通讯.

Done well, the reports functioned on three complementary levels. First, at their most prosaic, they facilitated organizational discipline and accountability. Thus, in Beijing, the courts filed monthly, quarterly, and annual work reports and action plans on general operations, and on special topics, such as clearing backlogs, matters of substantive law, case investigation work, cadre training, the implementation of particular reforms, and compliance with new legislation. Their reports are replete with achievements, lapses, ideological heterodoxies, defiance, and mundane minutiae. They include copious statistics, summaries of notable cases and developments, explanations for errors and missed targets, and requests for guidance on unsettled questions.

Second, the reports provided vehicles to deepen knowledge and cultivate qualitative perfection, especially through the Maoist conventions of self-reflection and self-criticism. More than simple recitations of facts and figures, the reports were supposed to prompt judicial cadres to grapple with the subjective and objective factors conditioning their work so that they might better comprehend the roots of their successes and failures, and adjust accordingly. Third, and this was new, the reports also evinced the rational, managerial idioms of Soviet-style central planning. Indeed, prior to the Second National Judicial Work Conference, courts hardly spoke of “fulfilling work plans” 完成工作计划, or of carrying out work “in a planned, step-by-step” 有计划有步骤地 way, but after the conference they used that language, and the quantitative accounting and target setting that went along with it, pervasively. As the years went on, it became more difficult to sustain the authenticity of these rituals, and the reports acquired formulaic qualities, save when mass campaigns briefly fired them with baroque invective.

By harnessing the energy of cadres from the bottom up, this approach to knowledge aimed to spur creativity and efficiency, and ground judicial practice concretely in popular social reality, a goal many contemporary jurists believed Republican judicial modernization had badly botched. At the same time, it imposed onerous burdens. Bureaucracies sprang up at every level to formulate and administer the necessary plans, monitor implementation, summarize results, make refinements, and draft reports or instructions on every conceivable aspect of judicial work. Higher organs, including the Ministry of Justice and the Supreme People’s Court, regularly sent inspection teams on circuits around the country to perform spot surveys to check the basic integrity of the information they were receiving. The inspection teams that prefaced the Judicial Reform Campaign were one example of this practice.

The burdens of knowledge production extended to the most basic judicial functions. For instance, in lieu of a criminal code, local, provincial, and national organs issued an overlapping, inconstant hodgepodge of policies, instructions, regulations and statutes, as needed. Some areas of law received more attention than others, and courts had to fill in the gaps. Coupled with low levels of judicial competence, this produced wide variations in practice and necessitated cumbersome compensatory procedures that strangled productivity; for example, in 1954 criminal verdicts at the

BMPC conventionally passed through six or seven layers of review before the court approved them.⁸¹²

This shone through in the internal surveys courts regularly undertook to search for, analyze, and summarize wrongly decided cases. Such surveys often accompanied mass campaigns, and either reconsidered old cases under new, heightened standards or, alternatively, corrected the excesses the application of those heightened standards during the campaign produced. For instance, after the first phase of the 1955 Campaign to Eliminate Counterrevolutionaries, the Beijing high court launched a review of all 15,464 criminal cases decided in the city from the beginning of 1955 through the first half of 1956. A review on that scale could not have been more than cursory, but it still found a 6.9 percent error rate, which was almost certainly an understatement since courts were usually relied upon to discover their own errors and had strong incentives to avoid high figures.⁸¹³ Pushing the harmonization of practice on to such case reviews or to the formal appeals process squandered scarce judicial resources, reached only a fraction of errors, and addressed symptoms rather than causes.

Even without the pressure of a mass campaign, the same facts could be judged dramatically differently from one month or court to the next. For example, as of early 1954, there was no clear, promulgated law covering statutory rape, and Beijing's courts had yet to establish common standards for the age of consent or for the appropriate punishment. District courts instituted their own guidelines and worked to achieve internal consistency, but there was no uniformity across courts, and the outcome of cases therefore depended in part on where in the city defendants lived. The BMPC, which had to deal with the inevitable appeals, found this intolerable. In order to assemble the raw material from which to distill consistent rules, it ordered lower courts to report comprehensively on their prior handling of such cases. Thus, at the Qianmen district court, cadres reviewed and summarized eighteen months of relevant practice.⁸¹⁴ Meanwhile, around the city, dozens of open cases were frozen, hanging on the result of this exercise, which kept suspects languishing in detention and victims waiting for justice.⁸¹⁵ Without the principle of *stare decisis* to act as a restraint, a cloud of uncertainty descended over settled verdicts as well, which were potentially open to

⁸¹² *Xian jiang shi, qu renmin fayuan de bianzhi qingkuang he women de yijian, baogao* (November 6, 1954) 现将市、区人民法院的编制情况和我们的意见,报告. Beijing shi zhengfa weiyuanhui guanyu shiqu renmin fayuan bianzhi qingkuang he xidanqu fayuan jiben qingkuang de baogao 北京市政法委员会关于市、区人民法院编制情况和西单区法院基本情况的报告 (1954), BMA 014-001-00015.

⁸¹³ *Shenpan zhi*, 113. He Lanjie, and Lu Mingjian, *Dangdai zhongguo de shenpan gongzuo*, 70-71.

⁸¹⁴ *Beijing shi Qianmen qu renmin fayuan yijiuwusi nian dier jidu (siwuliu yuefen) gongzuo zongjie* (July 1954) 北京市前门区人民法院一九五四年第二季度(四五六月份)工作总结. Beijing shi Qianmen qu renmin fayuan yue, ji gongzuo jihua zongjie, zonghe baogao, xingshi panjue deng 北京市前门区人民法院月、季工作计划总结, 综合报告, 刑事判决等 (1954), BMA 038-002-00119.

⁸¹⁵ *Beijing shi renmin fayuan zongjie shenpan jingyan gongzuo qingkuang baogao* 北京市人民法院总结审判经验工作情况报告. Shi renmin fayuan, guanyu zongjie shenpan gongzuo jingyan, baogao 市人民法院, 关于总结审判工作经验, 报告 (1954), BMA 014-002-00080.

reconsideration. Many other areas of judicial practice, such as bankruptcy, condensed in similar ways.

Remarkably, this mode of knowledge production was practiced at every level of the judicial system.⁸¹⁶ In 1954, Dong Biwu initiated a project to summarize the diversity of procedural practices that had arisen around China as a step towards unification and codification. A working group led by Ma Xiwu, who was now a vice president of the Supreme People's Court, gathered materials from fourteen different large and medium-sized cities pertaining to civil and criminal trials of first and second instance, issued summaries, sent them to local courts for feedback, and carried out revisions, which ultimately yielded experimental regulations for implementation by October 1956.⁸¹⁷

Likewise, in 1955, Zhang Zhirang, vice-president of the Supreme People's Court, assembled a high-level group of jurists to crystallize from a pool of more than 19,000 court cases a uniform set of crimes, punishments, and sentencing grades for incorporation into the emerging criminal code. After studying a subset of 5,500 cases, they reported their results to the Third National Judicial Work Conference in 1956.⁸¹⁸

⁸¹⁶ Lu Mingjian 鲁明健, "Zongjie shenpan jingyan gongzuo de xin fazhan," 总结审判经验工作的新发展 *Zhengfa yanjiu* 政法研究 no. 3 (1956): 8-11. He Lanjie, and Lu Mingjian, *Dangdai zhongguo de shenpan gongzuo*, 71-75.

⁸¹⁷ "Zuigao renmin fayuan guanyu jige jiceng renmin fayuan shixing 'geji renmin fayuan xing, minshi anjian shenpan chengxu zongjie' jiancha qingkuang de tongbao (July 25, 1957)," 最高人民法院关于几个基层人民法院试行'各级人民法院刑, 民事案件审判程序总结'检查情况的通报 in *Minshi susongfa cankao ziliao (dier ji diyi fence)* 民事诉讼法参考资料 (第二辑 第一分册), (Beijing: Falü chubanshe, 1981); "Guanyu 'shisi ge da chengshi gao, zhongji renmin fayuan xing, minshi anjian shenli chengxu chubu zongjie' de shixing zongjie he jinhou zai quanguo shixing de yijian (February 19, 1956)," 关于'十四个大城市高, 中级人民法院刑, 民事案件审理程序初步总结'的试行总结和今后在全国试行的意见 in *Minshi susongfa cankao ziliao (dier ji diyi fence)* 民事诉讼法参考资料 (第二辑 第一分册), (Beijing: Falü chubanshe, 1981); "Zuigao renmin fayuan guanyu geji renmin fayuan minshi anjian shenpan chengxu zongjie (October 1956)," 最高人民法院关于各级人民法院民事案件审判程序总结 in *Minshi susongfa cankao ziliao (dier ji diyi fence)* 民事诉讼法参考资料 (第二辑 第一分册), (Beijing: Falü chubanshe, 1981); Ma Xiwu 马锡五, "Zuigao renmin fayuan fuyuanzhang Ma Xiwu zai sifa zuotanhui shang dui liang ge shenli chengxu chubu zongjie de jidian shuoming (June 1955)," 最高人民法院副院长马锡五在司法座谈会上对两个审理程序初步总结的几点说明 in *Minshi susongfa cankao ziliao (dier ji diyi fence)* 民事诉讼法参考资料 (第二辑 第一分册), (Beijing: Falü chubanshe, 1981); "Guanyu Beijing, Tianjin, Shanghai deng shisi ge da chengshi gao, zhongji renmin fayuan xingshi anjian shenli chengxu de chubu zongjie (July 1955)," 关于北京, 天津, 上海等十四个大城市高, 中级人民法院刑事案件审理程序的初步总结 in *Xingshi susong faxue cankao ziliao huibian (zhongce)* 刑事诉讼法学参考资料汇编 (中册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005); "Guanyu Beijing, Tianjin, Shanghai deng shisan ge da chengshi gao, zhongji renmin fayuan minshi anjian shenli chengxu de chubu zongjie (July 1955)," 关于北京, 天津, 上海等十三个大城市高, 中级人民法院民事案件审理程序的初步总结 in *Xingshi susong faxue cankao ziliao huibian (zhongce)* 刑事诉讼法学参考资料汇编 (中册), ed. Wu Yanping, and Liu Genju 武延平, and 刘根菊, (Beijing: Beijing daxue chubanshe, 2005). *Geji renmin fayuan xing, minshi anjian shenpan chengxu zongjie* 各级人民法院刑, 民事案件审判程序总结 (Beijing: Zhonghua renmin gongheguo zuigao renmin fayuan, 1956).

⁸¹⁸ *Guanyu xingshi anjian de zuiming xingzhong he liangxing fudu de cankao ziliao* 关于刑事案件的罪名刑种和量刑幅度的参考资料 (Beijing: Quanguo renda changweihui falüshi, 1957). Zhou Jue 周珏, "Jianguo chuqi xingshi shenpan gongzuo de huiyi," 建国初期刑事审判工作的回忆 *中国法院网*,

However, all of that effort came to naught when the Anti-Rightist Campaign delayed the adoption of the code for two decades. Had the draft reached timely fruition, it undoubtedly would have spawned still more rounds of planning and reporting up and down the judicial hierarchy regarding implementation.

Thus, to an extraordinary degree, judicial organs were responsible for producing their own knowledge, mastering it, and keeping it fresh. With little in the way of codified law or a functioning system of academic legal education or training to guide them, each court was a research, teaching and propaganda organ, in addition to a forum for dispute resolution. They improvised as they went along, interpreting poorly drafted state and Party policies and instructions as best they could, and adapting precedents from the base areas, the ghosts of Republican practice, and other socialist regimes. The judicial system was in constant churn, exchanging information from top to bottom in exhausting, recursive cycles of self-constitution and renewal. It is little wonder that cadres strained under the weight of these punishing requirements, and were routinely fingered for straying from the proper line, sometimes erring to the right, other times to the left, sometimes punishing too severely, other times too leniently.

Cadre Staffing

After the Judicial Reform Campaign, it was far easier to lower the prevailing ideological temperature and guide the judicial system back towards an institutionalizing path, than to deal with the effects of the campaign on human capital. The Judicial Reform Campaign replaced the most experienced and capable personnel in the judicial system with a wave of hastily recruited, unready, and sometimes indifferent substitutes. In purely numerical terms, this influx only barely offset the losses. The average level of competence in the courts therefore fell precipitously even as they entered the most ambitious phase of construction in their short history. Quantity and quality had to rise dramatically for the reforms envisioned by the Second National Judicial Conference to succeed, and policymakers therefore snapped into action.⁸¹⁹

In September 1953, the Ministry of Justice noted that “currently various levels of people’s courts have dire shortages, backbone cadres are weak, and therefore backlogged cases are numerous...cultivating and training cadres, particularly supplementing basic level courts and providing special tribunals with trial personnel is one of the main tasks in the basic construction of current judicial work.”⁸²⁰ The Ministry

<http://www.chinacourt.org/article/detail/2007/09/id/268326.shtml> (accessed December 10, 2014). He Lanjie, and Lu Mingjian, *Dangdai zhongguo de shenpan gongzuo*, 74-75.

⁸¹⁹ “Dier jie quanguo sifa huiyi jueyi (May 8, 1953),” 776. Shi Liang, “Guanyu jiaqiang renmin sifa gongzuo jianshe de baogao (April 11, 1953),” 758. Dong Biwu 董必武, “Lun jiaqiang renmin sifa gongzuo (April 11, 1953),” 论加强人民司法工作 in *Dong bi wu faxue wenji* 董必武法学文集, (Beijing: Falü chubanshe, 2001), 163.

⁸²⁰ “Zhongyang renmin zhengfu sifabu guanyu zhixing dier jie quanguo sifa huiyi jueyi de zhishi (August 31, 1953)”.

therefore ordered all provincial and municipal level courts, in consultation with government personnel departments, to draw up concrete plans for adding judicial cadres, and to end the transfer of leading judicial cadres out of the courts to other work.

The Ministry laid down some general standards to guide courts through this new phase of recruitment. It could not demand particular skill sets owing to the delays in reforming legal education and establishing advanced cadre schools. Instead, consistent with past practices, it established a flexible “virtue and talent” 德才 standard of eligibility, directing that all trial personnel had to be politically pure, have a “certain” amount of work experience and a “certain” cultural level, and undergo short-term training before qualifying as cadres. The standard for judges was defined a bit more clearly. They had to qualify for specific ranks in government, which functioned as a sort of proxy for political reliability, discipline, and overall competence. (Table 7.1) In effect, this restricted recruitment for the bench to serving cadres, a phenomenon explored in richer empirical detail below.

Table 7.1: Standards for Judicial Appointment (September 1953)⁸²¹

Judicial Rank	Qualifying Government Rank	
	Provincial (City) Courts	County (City) Courts
Tribunal Presidents and Vice Presidents	Provincial (city) government section 处 chiefs and deputy chiefs	
Adjudication Group Chiefs		County (city) government section 科 chiefs and deputy chiefs
Judges	Provincial (city) government section 科 chiefs and deputy chiefs	County (city) government section 科 general staff

As a result of this recruitment drive, between 1953 and the end of 1954, authorized staffing levels in the judicial system rose to 36,902 cadres nationwide, which provided for a 60 percent increase over the number of cadres serving in 1953.⁸²² The judicial system went on a hiring binge, but it was not enough. In 1955, the average basic level court in China still only had a total staff of about 13 people. A survey that year of 1,977 of the 2,255 courts nationwide revealed that trial personnel were each closing an average of 10.6 cases per month, but receiving an average of 23.14.⁸²³ The courts were drowning in cases, which forced them to take desperate measures, including allowing clerks to decide cases. Using clerks in that way contravened the Constitution and the Law on the Organization of the People’s Courts, which interestingly bothered administrators at multiple levels of the judicial hierarchy. As the minister of justice told Zhou Enlai,

⁸²¹ Ibid.

⁸²² *Quanguo geji renmin fayuan sifa xingzheng jiguan yijiuwuwu nian bianzhi fangan shuoming* 全国各级人民法院司法行政机关一九五五年编制方案说明. Guowuyuan bianwei, caizhengbu, sifaju, shi renwei guanyu bianzhi gongzuo de youguan tongzhi 国务院编委, 财政部, 司法局, 市人委关于编制工作的有关通知 (1955), BMA 123-001-00499.

⁸²³ Ibid.

[W]hen various levels of people's courts were handling cases, for a long time not only were judges having to interrogate and record proceedings themselves, and were clerks responsible for handling cases themselves, and other improper phenomena, but also they commonly worked extra shifts and overtime, and borrowed large numbers of cadres from outside for crash drives to handle cases. There was no way to change these disadvantageous conditions, with the result that the various levels of the courts had too few people and too much work to do, backlogs built up as soon as they had been cleared, cases were handled carelessly, and wrongly decided cases emerged.⁸²⁴

The Ministry of Justice calculated that the judicial system needed to double its headcount to 72,245 cadres just to keep its head above water. Knowing that figure was unrealistic, it put in a request for 50,306, which was approved.⁸²⁵

As for Beijing, between early 1953 and the end of 1954, the total number of cadres at the BMPC and its district courts grew much faster than the national average, nearly doubling from 368 to 628.⁸²⁶ (Tables 7.2 and 7.4) Here, too, escalating backlogs and sudden drives to clear them were a constant fixture, and clerks routinely decided cases in lieu of judges, all because the courts could not otherwise keep pace with their workloads.⁸²⁷ After 1954, the rate of growth in the city's judicial system slowed. In 1956, the cadre count was only eight percent higher than it had been two years before.⁸²⁸

Performance varied. Based on data from twelve of the city's thirteen district courts, trial personnel in Beijing's urban core were each closing an average of between

⁸²⁴ Ibid.

⁸²⁵ Ibid. *Guowuyuan bianzhi gongzi weiyuanhui, zhonghua renmin gongheguo caizhengbu, zhonghua renmin gongheguo sifabu guanyu quanguo geji renmin fayuan he sifa xingzheng jiguan bianzhi mingge fenpei de tongzhi (May 31, 1955)* 国务院编制工资委员会, 中华人民共和国财政部, 中华人民共和国司法部关于全国各级人民法院和司法行政机关编制名额分配的通知. *Guowuyuan bianwei, caizhengbu, sifaju, shi renwei guanyu bianzhi gongzuo de youguan tongzhi* 国务院编委, 财政部, 司法部, 市人委关于编制工作的有关通知 (1955), BMA 123-001-00499.

⁸²⁶ Xian jiang shi, qu renmin fayuan de bianzhi qingkuang he women de yijian, baogao (November 6, 1954); "Zhonggong Beijing shiwei guanyu sifa gaige yundong disan jieduan gongzuo zongjie xiang zhongyang, Huabeiju de baogao (January 27, 1953)," *Zhengfa xitong baobiao* 政法系统报表. Shi zhengfa, caimao, gongye, waimao, jiaotong, nonglin, wenjiao xitong guanyu 1954 nian ganbu nian baobiao he zonghe baobiao 市政法, 财贸, 工业, 外贸, 交通, 农林, 文教系统关于 1954 年干部年报表和综合报表 (1954), BMA 123-001-00433. The November figures in Table 7.2 total 627 cadres and have a slightly different distribution than the December total reported here.

⁸²⁷ *Beijing shi renmin fayuan jiancha gexiang faling zhangze yu xianfa xiang dihong de qingkuang baogao (October 11, 1954)* 北京市人民法院检查各项法令章则与宪法相抵触的情况报告. Shifu zhengfa xitong ge danwei jianchazhang ze faling de qingkuang, huibao 市府政法系统各单位检查章则法令的情况, 汇报 (1954), BMA 014-002-00082. *Beijing shi gao, zhongji renmin fayuan shenpan gongzuo qingkuang de baogao (chugao)* 北京市高, 中级人民法院审判工作情况的报告(初稿). Tongzhan, zhengfa xitong ge danwei xiang shiwei de gongzuo huibao 统战, 政法系统各单位向市委的工作汇报 (1956), BMA 001-006-01248, 4.

⁸²⁸ *1956 nian quanguo ganbu dingqi tongji baobiao: sifa xitong* 1956 年全国干部定期统计报表: 司法系统. Benju, shi zongjiao, waishi, minzu, minzheng, sifa jiancha, fayuan, zhengquan xitong 1956 nian nianzhong tongji baobiao 本局, 市宗教, 外事, 民族, 民政, 司法监察, 法院, 政权系统 1956 年年终统计报表 (1956), BMA 123-001-00519.

10.05 and 15.08 cases per month, generally well above the national average, while those in the suburbs were performing at half that rate, between 5.66 to 7.91 cases per month.⁸²⁹ (Table 7.2) On average, in 1954, the courts in the urban core accepted 252 new cases every month, while the suburban courts accepted 127.⁸³⁰ The Qianmen court, in the commercial center of Beijing, provides a good snapshot of how the staffing in a district court was distributed. In October 1955, it had 43 personnel, 25 of whom were trial personnel. Of the trial personnel, twelve were judges or assistant judges, or 28 percent of the court's total headcount.⁸³¹ (Table 7.3)

The city's judicial system was very top-heavy. The BMPC accounted for 43 percent of all cadres, and 57 percent of all staff. (Table 7.4) In 1954, the BMPC averaged 390 new cases per month. On average, its judges had fewer cases to handle than their counterparts on the district courts, but many of the cases were weightier or more complex.

In terms of political affiliations, slightly more than a quarter of all the cadres in the court system were CCP members, and slightly fewer were CYL members. These groups dominated the senior ranks of administration and the judiciary. Only two cadres belonged to the minor democratic parties, leaving 49 percent of the workforce with no recognized political affiliation at all.⁸³²

⁸²⁹ Xian jiang shi, qu renmin fayuan de bianzhi qingkuang he women de yijian, baogao (November 6, 1954). It is important to realize that this statistic was a collective measure of productivity since trial personnel included not just judges, but also tribunal presidents and vice presidents, and clerks.

⁸³⁰ *Shixing xin de shouan fanwei hou geji fayuan de shouan shu* 实行新的收案范围后各级法院的收案数. Beijing shi renmin fayuan guanyu choushe zhong gaoji renmin fayuan de qingkuang baogao he gaozhong ji renmin fayuan guanxia anjian fanwei zhanxing banfa caoan 北京市人民法院关于筹设中高级人民法院的情况报告和高中 级人民法院管辖案件范围暂行办法草案 (1953), BMA 014-002-00028.

⁸³¹ *Beijing shi Qianmen qu renmin fayuan bianzhi qingkuang baogao* (October 28, 1955) 北京市前门区人民法院编制情况报告. Qianmen qu renmin fayuan xiangqian menqu diyi jie renmin daibiao dahui disan ci huiyi de gongzuo baogao 前门区人民法院向前门区第一届人民代表大会第三次会议的工作报告 (1955), BMA 038-002-00153.

⁸³² *Beijing shi shi, qu renmin fayuan zuzhi jigou he gongzuo gaikuang* 北京市市, 区人民法院组织机构和工作概况. Sulian zhuanjia Luniefu lai woshi liaojie zuotan guanyu jiancha gongzuo de jianghua ji shi renmin jianchashu de baogao ji youguan wenjian 苏联专家鲁涅夫来我市了解座谈关于检察工作的讲话及市人民检察院的报告及有关文件 (1954), BMA 014-001-00043.

Table 7.2: Beijing District Court Staffing (November 1954)⁸³³

Court	Total Staff	Trial	Administrative	Enforcement	Other	Average # Cases Closed Per Judge Per Month
Chongwen	35	20	9	4	2	10.05
Dongdan	39	23	9	5	2	11.68
Dongsi	36	21	7	5	3	13.1
Dongxiao	30	14	9	5	2	7.14
Fengtai	24	13	5	4	2	7.91
Haidian	29	17	6	4	2	7.87
Jingxikuang	52	30	7	11	4	5.66
Nanyuan	27	17	5	3	2	6.43
Qianmen	41	24	10	5	2	15.08
Shijingshan	20	9	6	3	2	6.25
Xidan	41	25	9	5	2	13
Xisi	38	23	7	6	2	N/A
Xuanwu	40	26	8	4	2	12.56
Total	452 (359 cadres)	262	97	64	29	

Table 7.3: Composition of Qianmen District Court (October 1955)⁸³⁴

Office	# Staff	Office	# Staff
President	1	Odd Jobs	1
Secretary	1	Food	1
Personnel	1	Judicial Police	4
General Affairs	1	Tribunal President	1
Accounting	1	Tribunal Vice President	2
Receiving and Dispatch	2	Judges	6
Statistics and Archives	1	Assistant Judges	6
People's Letters and Admin. Documents	1	Clerks	10
Printing	3		
Total = 43			

⁸³³ Xian jiang shi, qu renmin fayuan de bianzhi qingkuang he women de yijian, baogao (November 6, 1954).

⁸³⁴ Beijing shi Qianmen qu renmin fayuan bianzhi qingkuang baogao (October 28, 1955).

Table 7.4: BMPC Staffing (November 1954)⁸³⁵

Division	# of Staff	Comments
President/Vice President	2	Wang Feiran, He Shenggao
Secretariat	88	
Criminal Tribunals	82	4 trial groups (counterrevolution, three and five-anti, enemy & traitor's property, ordinary crime)
Civil Tribunals	70	4 trial groups (debts, housing, marriage, labor-management); 1 notary group
Judicial Administration Office	97	
People's Reception Room	16	
Total	355 (268 cadres)	In addition, 7 out on leave

In February 1955, the BMPC closed to accommodate the introduction of a fourth tier of courts into the judicial hierarchy. At that time, it had 299 cadres, 36 judges, and 14 assistant judges. This workforce was divided among a new high court, intermediate court, and municipal judicial bureau. The high court inherited only 31 cadres from the BMPC, but it reached its fully authorized strength of 50 by the end of the year. As in 1952, the new hires were not of the caliber the court desired.⁸³⁶ According to a 1956 report, most of them were demobilized soldiers “who were unfamiliar with judicial work, had cultural levels that were not high, and needed urgent adjustment and strengthening.”⁸³⁷ This was not at all unusual. If anything, conditions were worse elsewhere in China. As the Minister of Justice reported:

Many local courts are organizationally impure and not a few cadres are unsuitable for court work (for example, at some high courts close to half of the authorized staff cannot do their jobs, and among them there are political problems, some provinces still have judges and clerks who are illiterate or nearly so).⁸³⁸

Because the high court's cadres were spending more than half of every day on routine administrative work, it was difficult for them to develop the occupational skills they needed. To remedy that, in 1956, the high court put 20 percent of its cadre workforce on leave to study or take university entrance examinations. Thus, while the court looked well-appointed on paper, in reality it was considerably less so.

⁸³⁵ Xian jiang shi, qu renmin fayuan de bianzhi qingkuang he women de yijian, baogao (November 6, 1954).

⁸³⁶ *Beijing shi xianxing xingzheng bianzhi qingkuangbiao (October 31, 1955)* 北京市现行行政编制情况表. Guowuyuan bianwei, caizhengbu, sifaju, shi renwei guanyu bianzhi gongzuo de youguan tongzhi 国务院编委, 财政部, 司法局, 市人委关于编制工作的有关通知 (1955), BMA 123-001-00499.

⁸³⁷ Beijing shi gao, zhongji renmin fayuan shenpan gongzuo qingkuang de baogao (chugao), 1.

⁸³⁸ *Guanyu xuexi he guanche renmin fayuan zuzhifa zuotanhui qingkuang he wenti de baogao (May 18, 1955)* 关于学习和贯彻人民法院组织法座谈会情况和问题的报告. Guowuyuan bianwei, caizhengbu, sifaju, shi renwei guanyu bianzhi gongzuo de youguan tongzhi 国务院编委, 财政部, 司法局, 市人委关于编制工作的有关通知 (1955), BMA 123-001-00499.

This was especially true at the upper levels. Of the two court vice presidents, one was out on long-term sick leave, and both the civil and criminal tribunals were being led part-time. Wang Feiran, the court president, was serving concurrently as criminal tribunal president, while the head of the court's general office was concurrently filling in as tribunal vice-president. Given the scope of their responsibilities, the level of supervision they were able to provide was low, and that opened the door to judicial errors.

The intermediate court was not fairing much better. In 1956, more than a year after opening, it was still 22 percent short of its authorized staffing levels. Furthermore, both courts complained that higher organs were constantly saddling them with extra tasks that forced them temporarily to reassign cadres, form study groups, and otherwise divert their energies from their core responsibilities: trying cases and supervising lower courts. The courts singled out the 1955 Campaign to Eliminate Counterrevolutionaries as especially disruptive of operations. This campaign began not long after the courts opened, and for months prevented them from strengthening their internal structures and systematizing their work.⁸³⁹ It also entailed enervating follow-up surveys of wrongly decided cases. What the courts did not say is that some of the disruption derived from the fact that the campaign reignited simmering conflict left over from the Judicial Reform Campaign, and plunged the judicial system back into factional intrigue, struggle sessions and venomous denunciation meetings.

Cadre Education

We have already seen how neither the orderly training and expansion envisioned by the 1950 recruitment plan, nor the much more modest goal raised during the Judicial Reform Campaign of giving recruits at least a preliminary introduction to judicial work were honored in practice. Courts first proliferated, then scrambled to fill their rosters, and finally found themselves swimming in cadres who lacked the knowledge or skills to do their jobs.

This outcome was not for lack of trying. Cadre training had figured prominently on the agenda of the Second National Judicial Work Conference. But the postponement of the conference from its original date of November 1951 to April 1953, and the intervening Three-Anti, Five-Anti and Judicial Reform Campaigns, held back major new initiatives. Political infighting added further complications.

At a certain point, Dong Biwu could delay no longer. To prepare for the imminent purge of legacy personnel during the Judicial Reform Campaign, the Political-Legal Committee convened a National Political-Legal Cadre Training Conference in June 1952. At the conference, Dong tried to revive the three-tier system of legal education introduced in 1949. University law departments would turn intellectual youth into jurists;

⁸³⁹ Beijing shi gao, zhongji renmin fayuan shenpan gongzuo qingkuang de baogao (chugao), 3. He Lanjie, and Lu Mingjian, *Dangdai zhongguo de shenpan gongzuo*, 66-71.

political-legal cadre schools would provision the government's political-legal departments via rotating courses lasting six months to a year for serving cadres at the county level and up; and, provincial level jurisdictions would run similar, four-month long courses for lower-level personnel. As befit the occasion, he announced a new goal: training 25,000 cadres within three years, just at the county level and up.⁸⁴⁰

On October 4, 1952, with the Judicial Reform Campaign in full swing, Dong sent a detailed report to Mao and the Central Committee elaborating on the methods, duration, and content of this pyramid. Zhou Enlai supported the report, but others on the Central Committee, steeped in the experience of the base areas and fortified by the energy the Judicial Reform Campaign had breathed into the mass line, took exception to it. They argued that the government's political-legal departments had no need for specially trained cadres, let alone dedicated political-legal cadre schools or rotating cadre courses. These critics felt that the existing infrastructure of revolutionary universities, which provided a rudimentary grounding in Party ideology and major policies, could supply the required personnel. They therefore blocked Dong's proposal.⁸⁴¹

On November 28, Dong appealed directly to Zhou. He repeated the arguments that political-legal work required specialized knowledge, and because the people transferring in to the courts lacked this knowledge, they needed training urgently. Finance and education departments had their own cadre training courses, he noted. Why not legal organs? Besides, he pointed out, the government had in fact already approved the establishment of a Central Political-Legal Cadre School in Beijing, and cadre training programs at the local level; his proposal simply elaborated on existing policy.⁸⁴² On that basis, Zhou approved Dong's plan.⁸⁴³ But, in the interim, a new complication had arisen. The closure of nearly all university law departments in the months since the June conference eviscerated the top tier of the pyramid, and delayed the plan's realization further, with fateful consequences for the composition of the judiciary.

⁸⁴⁰ Dong Biwu, "Guanyu gaige sifa jiguan ji zhengfa ganbu buchong, xunlian zhu wenti (June 24, 1952)," 124.

⁸⁴¹ *Dong Biwu chuan*, 757-758.

⁸⁴² "Zhongyang renmin zhengfu zhengwuyuan guanyu ge diqu ge jiguan zhaopin gongzuo renyuan he zhaokao ganbu xunlian xuexiao, xunlian ban xueyuan de zhanxing guiding," 中央人民政府政务院关于各地区各机关招聘工作人员和招考干部训练学校、训练班学员的暂行规定 *Beijing shi zhengbao* 北京市政报 3, no. 4 (1951): 2-3. "Zhengwuyuan zhengzhi falü weiyuanhui, guanyu choushe zhongyang zhengfa ganbu xuexiao fang'an," 政务院政治法律委员会, 关于筹设中央政法干部学校方案 *Renmin ribao* 人民日报, August 4, 1951. Dong Biwu, "Guanyu choushe zhongyang zhengfa ganbu xuexiao fangan de shuoming (July 12, 1951)".

⁸⁴³ *Dong Biwu chuan*, 757-758.

On-the-Job Training

Beijing's courts could not afford to wait for the legal education pyramid to take shape. They had to put their new recruits to work immediately, and they coped as best they could by improvising judicial boot camps and supplying a steady diet of continuing education. Consider the Xuanwu and Qianmen district courts, which piloted many of the reforms contained in the 1953 Second National Judicial Work Conference resolution, and were selected as the city's official test sites for the major measures codified in the 1954 Constitution.⁸⁴⁴

The Xuanwu district court was founded in December 1952 with a staff of just 15. By 1954, it had grown to 40 personnel, 33 of whom were cadres. Apart from the court vice president, who was a veteran cadre, only seven had prior experience doing judicial work. The remaining 25, or three-quarters, were a mix of demobilized soldiers, and newly hired or promoted cadres, who because of their modest backgrounds were unprepared for their jobs and intimidated by the parties who came to court.⁸⁴⁵ In early 1954, a little over a year after opening, the court observed,

They do not understand judicial work, are not familiar with their duties, some have never heard of judicial work, and their policy level is low, to the point that some cadres do not dare speak to parties. They say, 'the parties are much better with words than I. I don't dare face them.' Their cultural level is generally early middle school, therefore developing work and training cadres must begin with training the new cadres. That should be made the top priority.⁸⁴⁶

Conditions had been similar at the Qianmen district court, where new cadres had been making a hash of litigation because of their unfamiliarity with policies and procedures. To fix that, at the end of 1952, the court drew up a comprehensive, year-long program of study. (Table 7.5) The court established an education committee led by advanced cadres and the court president, while tribunal presidents planned out the program a month at a time, gathering relevant documents and inviting people to give brief reports. Every Saturday afternoon, all of the administrative and adjudicatory personnel attended the classes together, and then broke up into small group discussions. The first half of the program was devoted to detailed procedures and policies for handling cases in several key areas of the law, beginning with a warm-up session in December on criminal law, and commercial debts and housing, which dominated its civil docket. The segment devoted to ideological and political topics was longest, but came last. Under pressure to perform, practical knowledge took clear precedence, an inversion of the usual sequence.

⁸⁴⁴ *Shiyan fayuan zuzhifa caoan suo guiding de yixie zhidu de gongzuo jihua* 试验法院组织法草案所规定的一些制度的工作计划. Beijing shi renmin fayuan guanyu shiyan fayuan zuzhifa zhong ji xiang zhidu de jihua 北京市人民法院关于试验法院组织中几项制度的计划 (1954), BMA 014-001-00039.

⁸⁴⁵ *Xuanwu qu renmin fayuan 1953 nian gongzuo zongjie (January 5, 1954)* 宣武区人民法院 1953 年工作总结. Xuanwu qu fayuan gongzuo jihua zongjie, baogao 宣武区法院工作计划总结, 报告 (1954), BMA 014-002-00027.

⁸⁴⁶ Ibid.

Table 7.5: Judicial Training Course, Qianmen District Court (1953)⁸⁴⁷

Term	Content
Jan.-mid Feb.	Civil and Criminal Procedure (from receiving cases to trial verdicts, to the necessity and some of the required procedures for enforcement, including studying the case files, the “plan for interrogation,” “how to transcribe/record,” “how to do investigation reports,” etc.
mid-Feb.- March	Marriage Law (including the national campaign to implement the marriage law, and systematic study of rich materials on practice).
April-June	Commercial Debts (including labor-management policies, public-private enterprise policies, debtor rights and duties, liquidation of partnerships, purchase-sale contracts, contracting to do jobs, compensation); Housing and Land (including housing rental debts, <i>pudi</i> 铺底 rights, confirming property rights); Criminal Questions (including basic knowledge about statutes on punishing counterrevolution and corruption, the Five Poisons 五毒 (bribery, tax evasion, theft of state property, cheating on government contracts, stealing economic information), criminal law, punishments, various kinds of crimes, etc.)
June-Dec.	Democratic Regime Construction (including the people’s democratic dictatorship, and the people’s congresses, the organization of the regime, the Organization Law of the People’s Courts, documents from the First & Second National Judicial Work Conferences, the Common Program (incorporate national election democratic campaign), the Draft Constitution (once it is published), etc.

The BMPC took a similar approach. In May 1953, it took in 92 new cadres from a mix of organizations, including the Beijing Administrative Cadre School, the municipal nationalities political training course, teacher training courses, trade unions, and the Sino-Soviet Friendship Association. As at the district courts, the majority were youth with early middle school educations, and the BMPC put its superiors on notice that they “had no knowledge of judicial work...and encountered great difficulties in their work.” Leaving no doubt as to the origins of this problem, it added, “this describes the situation as regards work for the cadres transferred into the court since the Three-Anti and Judicial Reform Campaigns.”⁸⁴⁸

On June 4, the court began a four-month training course for them and 23 other cadres drawn from the BMPC and district courts.⁸⁴⁹ The court selected candidates who had already had several months of basic political and ideological training before arriving,

⁸⁴⁷ *Beijing shi Qianmen qu renmin fayuan yijiuwusan nian zhengce yewu xuexi jihua* 北京市前门区人民法院一九五三年政策业务学习计划. Qu fayuan yuefen gongzuo jihua, baogao, zhuan ti baogao, panjueshu 法院月份工作计划, 报告, 专题报告, 判决书 (1953), BMA 038-002-00101.

⁸⁴⁸ *Beijing shi renmin fayuan ganbu xunlian ban gongzuo jihua (August 5, 1953)* 北京市人民法院干部训练班工作计划. Shi renmin fayuan minzhengju renshiju deng danwei guanyu xunlian ganbu jihua qingkuang baogao 市人民法院民政局人事局等单位关于训练干部计划情况报告 (1954), BMA 014-002-00044.

⁸⁴⁹ *Ibid.*; *Sifa xingzheng zhi*, 113. The 2005 edition of Beijing’s official gazette on judicial administration reports the total number of students as 113, a discrepancy of two.

and so the course covered mostly policy and occupational topics, similar to the Qianmen course, but in highly abbreviated form. Part of the challenge was in overcoming poor attitudes among the students, some of whom thought the courts were a “backwater” and “were not willing to do judicial work.” Others were afraid of making mistakes and being punished, or “did not want to work hard.”⁸⁵⁰

In 1954, the BMPC went a step further with a more ambitious, year-long boot camp on trial work run by the education section of its judicial administration office in coordination with various district courts around the city.⁸⁵¹ This course offered cadres a basic primer on substantive law in various key practice areas, but more importantly also an introduction on how to unpack fact patterns, apply rules, reach decisions, and reflect critically on precedents and model cases. (Table 7.6) It was delivered through “trial work units,” which at the district level might comprise an entire court, but for the larger BMPC corresponded to each of its eight adjudication groups.

The course was divided into two stages, and embodied collectivist Maoist knowledge production from bottom to top. First, between January and August, a committee within each trial unit selected some of that unit’s past cases to serve as models for group study, discussion, and analysis. The cases were drawn from several major case categories (“for example, the five kinds of counterrevolution, wrecking economic construction, ordinary criminal cases, marriage, labor-management, housing, etc.”).⁸⁵² Each model case might be introduced by the cadre who originally handled it. The discussions were supposed to be open, but always arrive in the end at the “correct” insights about the strengths and weaknesses of the case, which the group leader would affirm and sum up.

The opinions aired in these discussions were recorded and reported to higher levels. Then, the lessons gleaned from each group of cases were comprehensively summarized by category, under the leadership of tribunal presidents, or in the case of the district courts, the court presidents. To stay on the same schedule, the city’s courts all moved together in a sequence across marriage, debt, housing, and ordinary criminal cases, spending about two months on each group. Saturday mornings were the designated course time. After eight months, each trial unit had produced a set of provisional summaries derived from its own casework.

⁸⁵⁰ Beijing shi renmin fayuan ganbu xunlian ban gongzuo jihua (August 5, 1953).

⁸⁵¹ *Beijing shi renmin fayuan yijiuwusi nian shenpan yewu xuexi jihua (January 12, 1954)* 北京市人民法院一九五四年审判业务学习计划. Beijing shi renmin fayuan gongzuo jianbao (1-29 qi) ribao (1-3 qi) 北京市人民法院工作简报(1-29期) 日报(1-3期) (1954), BMA 014-002-00030.

⁸⁵² Ibid.

Table 7.6: Judicial Training & Case Summarization, BMPC (1954)⁸⁵³

Summaries	Points to Cover
Summaries of each model case for discussion:	<ol style="list-style-type: none"> 1. The facts of the case 2. After the case was accepted, how was it at first analyzed? What were the key questions? 3. How was it investigated (including court interrogation and on-site investigation)? Why this way and not that? 4. How did you make up your mind? On what basis? 5. How were policies and laws applied to reach the verdict? The reasoning? Was it done properly? What of the effect and reaction? 6. Circumstances of enforcement? 7. Difficult questions? 8. What has one learned? What lessons can be applied to other cases? What negative lessons should be avoided for future cases? 9. Objective and subjective reasons for success, failure, or difficulties 10. Other
Comprehensive summaries after discussion:	<ol style="list-style-type: none"> 1. Case types and model decisions 2. How to seek truth from facts in investigation and analyze case circumstances, confirm facts 3. How to apply policies, laws. How to weigh concrete circumstances from every facet to correctly solve problems 4. Other problems, such as how to prepare after accepting the case, how to investigate, how to transcribe, analyze, write verdict, and enforce it

The second phase began in September, when the BMPC reported on the various summaries filed by each of the trial units, and opened up discussions about them. This round was intended to yield a uniform, authoritative set of summaries for the entire city, subject to continual revision, supplementation, and improvement.⁸⁵⁴ By year's end, the courts had produced 51 summaries, of which 36 covered general categories of cases, and 15 dealt with specific cases. On a separate project, the Qianmen, Chongwen, and Xuanwu courts also jointly produced summaries of cases accepted since 1953 involving tax evasion, and violations of contracts for the purchase of processed goods.⁸⁵⁵

The production of these summaries was an expedient way of coping with a deficient workforce, and a paucity of codified law and legal education, but it was no panacea. Not long after the project concluded, the court acknowledged that deep problems remained. Wang Feiran and He Shenggao observed,

Currently, the basic conditions for cadres in the municipal and district courts are: quality is low, in particular some people have extremely low cultural levels, and are basically unable to perform judicial work...we request that the (municipal) personnel bureau make other arrangements for

⁸⁵³ Ibid.

⁸⁵⁴ Beijing shi renmin fayuan zongjie shenpan jingyan gongzuo qingkuang baogao.

⁸⁵⁵ *Beijing shi renmin fayuan yijiuwusi nian quannian gongzuo zongjie (February 12, 1955)* 北京市人民法院一九五四年全年工作总结. Shi renmin fayuan, jianchayuan, minzhengju, renshiju gongzuo jianbao 市人法院, 检察院, 民政局, 人事局工作简报 (1955), BMA 014-002-00069.

them and keep the vacancies open by not immediately adding cadres. As for cadres with low levels that can be nurtured, we should energetically nurture them.⁸⁵⁶

Low quality was only partly about the level of education cadres had. Bear in mind that the Nationalist government took up to six years to educate and train its judges, and only a small minority made it through the various stages of rigorous testing and evaluation to finally don the robes. The BMPC, by contrast, set aside only eight months worth of Saturday mornings to turn novice cadres into frontline judges and, on top of that, the students were being asked to help generate the content of the curriculum as they went along. Unsurprisingly, they came away inadequately prepared and made mistakes. In particular, the court blamed its new judges, and the poor supervision they were getting from their overworked superiors, for many of its wrongly decided cases. This is important because observers have often disparaged early PRC judicial practice on the assumption that it accurately reflected the will of the Party and state, and in a broad sense it surely did. However, the discourse internal to the courts indicates that, when it came to actual cases, higher judicial authorities, too, found the performance of their judges deeply wanting and frustrating.

Many of the main judges do not handle cases, but are up to their ears in reviewing them. The new cadres are handling cases on their own, and find it difficult to get help. When they do not understand how to handle a case, they either postpone it for a long time or decide it rashly. This is the main reason for wrongly decided cases...Leading cadres are worn out from their everyday work, and lack intensive study of occupational work, and therefore cannot systematically give cadres an occupational education. This makes errors and deviations hard to avoid...(As for) new cadres, the majority do not grasp the spirit of policies sufficiently, and lean left or right. Their thinking is one-sided, they heed only one side (in the case), stress confessions, do not investigate deeply, and are unfamiliar with occupational work to the point that some do not know where to start when handling cases. There are also some cadres whose work is slapdash, lack a sense of responsibility, decide cases without clarifying right and wrong, and only chase the statistics on closed cases.⁸⁵⁷

The problems were not confined to jurisprudence. District people's congresses were asking courts to account for a litany of problems, including delays, and cadres with bad attitudes or careless work habits.⁸⁵⁸ The courts also investigated and substantiated complaints from parties about the poor "work style" of judicial cadres. These included instances where cadres spoke rudely, treated parties imperiously, threatened to compel behavior, or refused to explain themselves clearly. One complaint alleged that a cadre called a party who refused mediation and insisted on the right to sue a "bastard" 混蛋. Quite a few others alleged that cadres insulted them as "devious" for resisting mediation.

⁸⁵⁶ Xian jiang shi, qu renmin fayuan de bianzhi qingkuang he women de yijian, baogao (November 6, 1954).

⁸⁵⁷ *Beijing shi renmin fayuan jiancha cuoan gongzuo zongjie baogao (March 4, 1954)* 北京市人民检察院检查错案工作总结报告. Beijing shi renmin fayuan gongzuo jianbao (1-29 qi) ribao (1-3 qi) 北京市人民法院工作简报(1-29期)日报(1-3期) (1954 March 4, 1954), BMA 014-002-00030, 4.

⁸⁵⁸ *Qianmen qu renmin daibiao dahui daibiao gei fayuan suo ti yijian fangwen hou de zongjie* 前门区人民代表大会代表给法院所提意见访问后的总结. Qianmen qu jianchayuan, fayuan baosong quwei de yuefen jihua, baogao ji jianbao 前门区检察院, 法院报送区委的月份计划, 报告及简报 (1955), BMA 038-002-00172.

Judges routinely cut parties off during proceedings, and prohibited family members from attending trials in the hope of minimizing bother 麻烦, saying things like “I haven’t summoned you! You haven’t done anything!”⁸⁵⁹

The pressures to clear dockets and hit performance targets were clearly factors in some of this misconduct. Directives to reduce “unnecessary lawsuits” impelled cadres regularly to stonewall, pressure, or coerce parties out of exercising their rights to sue, and to mediate or withdraw their disputes instead.⁸⁶⁰ Disputants protested that cadres raced through mediations and hardly gave them a chance to speak. Furthermore, the BMPC noted that many of the resulting mediation settlements had material omissions or errors. Some of them conflicted with applicable policies and laws. Occasionally, the names of the parties were recorded incorrectly. More often, key terms were left out or vaguely defined, which may have eased the initial resolution of the dispute but made enforcement a nightmare – for example, an alimony settlement that directed a man to “pay as much as you earn,” or an eviction settlement that read in part, “landlord and tenant will energetically look for (alternative) housing, and when they find it the tenant will move out.”⁸⁶¹

Astoundingly, the Qianmen district court reported with disapproval that many judges were treating parties differently based on class, evidence it said of the ideological error of a “privileged mentality” 特权思想. They “treat workers with kindness, but speak severely to capitalists. When the worker has a shortcoming, the capitalist is told to leave, and the matter is discussed individually with the worker. But the capitalist is ‘grabbed by the hair’ and criticized openly for being ‘dishonest’ or ‘cunning.’”⁸⁶²

Some of the lapses were more alarming, including one judge who infringed on a party’s right to appeal by threatening, “If you’re like this, after the appeal you could be shot.”⁸⁶³ Another, apparently believing that a party was being dishonest, loaded a gun, put it to the party’s head and escorted the party out of the tribunal. The BMPC also censured judges and bailiffs for degrading, frightening, or manhandling criminal suspects, and made some of the offending judicial personnel apologize to their victims. It should be said in this regard that courts generally only had physical custody of suspects during proceedings, and the worst abuses seem to have happened elsewhere,

⁸⁵⁹ *Beijing shi Qianmen qu renmin fayuan guanyu zonghe xuexi fayuan zuzhi fa jinxing sixiang jiancha de zhuanti huibao (December 1954)* 北京市前门区人民法院关于综合学习法院组织法进行思想检查的专题汇报. *Beijing shi Qianmen qu renmin fayuan yue, ji gongzuo jihua zongjie, zonghe baogao, xingshi panjue deng* 北京市前门区人民法院月, 季工作计划总结, 综合报告, 刑事判决等 (1954), BMA 038-002-00119.

⁸⁶⁰ *Xuanwu qu renmin fayuan 1953 nian gongzuo zongjie* (January 5, 1954).

⁸⁶¹ *Beijing shi renmin fayuan yijiuwusi nian dier jidu gongzuo baogao (gao)* 北京市人民法院一九五四年第二季度工作报告 (稿). *Laodongju, renshiju, shi fayuan waishichu jiuji fenhui deng 1954 nian shangbannian he jidu gongzuo baogao* 劳动局, 人事局, 市法院外事处救济分会等 1954 年上半年和季度工作报告 (1954), BMA 014-002-00053.

⁸⁶² *Beijing shi Qianmen qu renmin fayuan guanyu zonghe xuexi fayuan zuzhi fa jinxing sixiang jiancha de zhuanti huibao (December 1954)*.

⁸⁶³ *Ibid.*

especially during interrogations and detention in facilities managed by the public security bureau.

Relations with the public security bureau were in fact a regular bone of contention. Judicial authorities chastised cadres for authorizing arrests by the public security bureau too readily, which led to many wrongful detentions. Compounding the problem, judges too often treated case files sent to them from the public security bureau as cut and dried, which kept the dockets moving swiftly but led to wrongful convictions.⁸⁶⁴ At the Xidan district court, for example, a judge sentenced a man to one year for statutory rape without checking into the details of the case. When it later turned out that the case was in fact one of adultery, the BMPC ordered the defendant released, but the lower court dragged its heels for several months fearing the convict would make a fuss. The judge who originally handled the case subsequently tried to have the convict re-arrested to silence him. The BMPC declared in its internal report that this is “a serious violation of human rights (that is being investigated and handled),” but the ultimate disposition of the matter is unknown.⁸⁶⁵ In one case, at the Haidian district court, a defendant denied the facts of the crime just before his sentence was pronounced, whereupon the judge declared, “I have the power to cancel your suspended sentence!” and did, forcing the defendant to serve time.⁸⁶⁶

Certain mass campaigns intensified class struggle, and the transgressions were then of an entirely different order. At those times, courts submitted to states of exception, and while their internal reports occasionally raised concerns about excesses, these were couched more as unease about collateral damage than as doubts about basic revolutionary strategy or tactics. As instruments of the people’s democratic dictatorship, the courts were barred by design from exercising restraint at those critical junctures, and after the traumas inflicted on judicial cadres during the 1943 rectification, the 1948 land reform, and the 1952 Judicial Reform Campaign, it would have been foolhardy for them to try.

Because the Party could never be wrong in any fundamental sense, so long as the courts were faithfully doing the Party’s business, they were operating within specifications. Injustices, even on a grand scale, were always laid at the feet of individual misunderstandings, corrupt intentions, poor implementation, or exuberance. This left the door open to abuses, most egregiously the summary executions conducted during land reform and the Campaign to Suppress Counterrevolutionaries, which legacy

⁸⁶⁴ *Beijing shi Qianmen qu renmin fayuan yijiuwusi nian diyi jidu gongzuo zongjie (April 1954)* 北京市前门区人民法院一九五四年第一季度工作总结. *Beijing shi Qianmen qu renmin fayuan yue, ji gongzuo jihua zongjie, zonghe baogao, xingshi panjue deng* 北京市前门区人民法院月,季工作计划总结,综合报告,刑事判决等 (1954), BMA 038-002-00119.

⁸⁶⁵ *Beijing shi renmin fayuan 1954 nian diyi jidu gongzuo zongjie baogao* 北京市人民法院 1954 年第一季度工作总结报告. *Laodongju, renshiju, shi fayuan waishichu jiuji fenhui deng 1954 nian shangbannian he jidu gongzuo baogao* 劳动局, 人事局, 市法院外事处救济分会等 1954 年上半年和季度工作报告 (1954), BMA 014-002-00053.

⁸⁶⁶ *Ibid.*

personnel were unavoidably complicit in. Set against such atrocities, the faults routinely acknowledged by the courts seem trivial by comparison.

All the same, during the 1950s, Beijing's courts do not seem to have descended into general ruthlessness without first being pushed hard by political authorities, and as soon as the pressure relented, they withdrew and tried to reclaim some dignity. The usual penitence, though always inadequate, involved a search for wrongly decided cases, adjustments to marginal verdicts, and criticisms of misguided cadres.⁸⁶⁷ There was no sentimentality or sense of natural rights involved; the goal was simply to ensure that the governing policy had been applied correctly to the facts, that the right people had been punished to the proper degree, and that the evidence and procedure sustained those outcomes. This was cold comfort to most of the victims, but significant in that it demonstrated in a small way that commitments to legality abided in the space allotted to them, and the question that followed from that was how expansive that space might become if given the chance.

Even at the extremes, this shaped behavior in surprising ways. In 1956, Beijing's high court upbraided some cadres for punishing counterrevolutionaries too lightly, but it also criticized others for "one-sidedly emphasizing severity, and simplistically understanding the act of not confessing as resistance," and then cited examples, albeit exceptional, in which it had vacated death sentences upon mandatory review.⁸⁶⁸ Similarly, the BMPC was ashamed of how it had handled counterrevolutionaries in 1951 and subsequently tried to cover up this stain with a falsified veneer of legality. Such an episode was never going to amount to more than a closely held internal scandal, and so there was little point in the court or the investigating representatives sent from the people's congress to play it out if larger principles of legality had not been at stake. One must be careful not to make too much of these episodes, yet they did make a difference in the lives of defendants, and the compunction they exhibited ultimately cost the courts dearly.

Judicial authorities were plainly vexed by the extent of the problems with competence and comportment, and amelioration was difficult to achieve while courts were racing to keep up with their caseloads, rolling out one major systemic reform after another, and trying to stay on top of shifting political currents, not a few of which made things worse. One essential way that courts coped was by feeding serving cadres a steady diet of continuing education. Weekend or after-hours classes covered basic occupational skills, such as how to improve preparations for trial, the composition of verdicts, or the organization of case files. Some classes tried to raise ideological consciousness, or address problems with attitude or standpoint. Others introduced

⁸⁶⁷ Beijing shi gao, zhongji renmin fayuan shenpan gongzuo qingkuang de baogao (chugao). Beijing shi renmin fayuan jiancha cuoan gongzuo zongjie baogao (March 4, 1954). *Beijing shi Qianmen qu renmin fayuan jiancha anjian gongzuo de zongjie (chugao)* 北京市前门区人民法院检查案件工作的总结 (初稿). Qianmen qu fayuan gongzuo jihua, qingshi baogao, jianbao, panjueshu 前门区法院工作计划, 请示报告, 简报, 判决书 (1956), BMA 038-002-00209.

⁸⁶⁸ Beijing shi gao, zhongji renmin fayuan shenpan gongzuo qingkuang de baogao (chugao), 7.

adjustments to the policies or regulations governing the disposition of cases. Still others closely examined particular legislative enactments, such as the 1950 Marriage Law, the 1954 Law on the Organization of the People's Courts, and the 1954 Constitution. These were usually timed to coincide with promulgation or the launch of a campaign related to implementation. In addition, groups met regularly to assist less-educated cadres with literacy.

Beyond that, the BMPC and district courts ran workshops to prepare cadres for upcoming initiatives, such as the introduction of election tribunals, reception rooms, neighborhood mediation committees, people's assessors, open trials, and advocates 辩护.⁸⁶⁹ They also convened training sessions lasting one or two days for the mass representatives elected to serve as mediation committee members or people's assessors, which covered the nature of their duties and how to perform them. Attendees sometimes received reading materials for reference, but it was impossible to convey more than superficial knowledge in these settings before sending them into the field.

Because Beijing was a trailblazer on many of these fronts, in 1954 the Ministry of Justice singled out the publications generated by the city's central level legal organs and its various judicial training courses for dissemination as study materials nationwide, and recommended that personnel from Beijing's judicial training courses be sent to carry out investigations of cadre training courses in other provinces and cities in order to exchange experiences and return information that the ordinary bureaucratic reporting system did not capture.⁸⁷⁰

The National Political-Legal Education Conference

To get cadre training on track, the Ministry of Higher Education convened a National Political-Legal Education Conference from April 26 to May 8, 1954. The conference laid out a roadmap for the systematization of rotating cadre training programs and the reconstruction of academic law. This conference, too, had to position itself in relation to the Judicial Reform Campaign by declaring that the reforms of the preceding years and the restructuring of higher education had "fundamentally eliminated the old law standpoint in political-legal education and established the leadership of proletarian ideology." Having done that, it then gave voice to the deferred aspirations of the CCP's judicial modernizers, and the frustrations of its administrators, by taking legal education in a strikingly professionalizing direction. Fortuitously, Yang Xiufeng took

⁸⁶⁹ *Jianli yishen peishenzhi xuanchuan tigang* 建立一审陪审制宣传提纲. Beijing shi renmin fayuan guanyu jianli peishen zhidu de baogao ji shi zhengfa weiyuanhui de yijian 北京市人民法院关于建立陪审制度的报告及市政法委员会的意见 (1954), BMA 014-001-00017.

⁸⁷⁰ *Ganbu jiaoyu guanlisi yijiuwusi nian gongzuo yaodian* 干部教育管理司一九五四年工作要点. Neiwubu, sifabu zhongyang zhengwei gongsifa zuotanhui deng jianbao 内务部, 司法部中央政法委员会司法座谈会等简报 (1954), BMA 014-002-00052.

over as Minister of Higher Education later that year. Yang had been a Republican-era academic, and deputy chair of the NCPG, serving directly under Dong Biwu. He would later become the fourth president of the Supreme People's Court.

Going forward, legal education had just one purpose: to supply the state with personnel tuned to the particular needs of every level of the legal system. The CCP had put itself in a position similar to that faced by early Republican legal reformers. Legal curriculums had to be devised from the ground up using foreign models as guides with the overriding aim of cultivating talent 培养人才 or, as the conference put it, “cultivating cadres and jurists who love the motherland, are faithful to the task of socialist construction, have a firm proletarian standpoint, grasp advanced political-legal science, and are proficient in specialized political-legal occupational work.”⁸⁷¹ It would accomplish this by “uniting theory and practice, studying the program of uniting advanced Soviet experience with Chinese national conditions, and actively carrying out the reform of education and raising quality.”⁸⁷²

The push would be two-pronged, “emphasizing the cultivation of students at the polytechnic school level and higher, and short-term training for serving cadres.”⁸⁷³ Each of those branches was assigned its own “mother institution” 工作母机; People's University led academic law, while the Central Political-Legal Cadre School led short-term training for serving cadres. The Ministry of Justice helped to coordinate the two. Together, they were tasked with creating a core of common knowledge, training a new generation of faculty, and producing standard sets of teaching materials for use nationwide, goals that Republican legal reformers had clamored fruitlessly about for years.

In principle, this move toward planning and centralization aimed to guarantee orthodoxy, uniformity and quality, and keep legal education tightly focused on concrete, Chinese conditions, avoiding the Republican scandal of an army of unemployable, ineffectual or unwanted graduates whose heads were muddled by impractical ideas.⁸⁷⁴ It also cleared the way for rapid disciplinary bifurcation. Cadre training would cover the nuts and bolts of localized practice, freeing academic law to indulge its penchant for legal science, doctrine, codes and architecture via a tide of Sovietization. Once ensconced, that dichotomy structured Chinese legal education well into the 1990s.

⁸⁷¹ *Zhongguo jiaoyu nianjian 1949-1981* 中国教育年鉴 1949-1981, ed. Zhongguo jiaoyu nianjian bianjibu 中国教育年鉴编辑部 (Beijing: Zhongguo dabaiké quanshu chubanshe, 1984), 267.

⁸⁷² Ibid.

⁸⁷³ Ibid.

⁸⁷⁴ Ruan Yicheng, “Falü jiaoyu de shibai ji qi bujiu”; Zhu Jiahua, “Zhongguo zhi falü jiaoyu wenti”; Sun Xiaolou, “Falü jiaoyu zhi zhongjian”; Xu Daolin, “Lun xianxing falü jiaoyu zhidu”; Yang Zhaolong, “Zhongguo falü jiaoyu zhi ruodian jiqi bujiu zhi fanglüe (1933)”.

Rotating Cadre Courses

The bottom two tiers of the legal education pyramid consisted of rotating cadre courses: provincial-level or municipal programs aimed at grassroots judicial cadres, and more demanding courses provided by higher-level cadre schools and institutes of politics and law. In 1953, the BMPC sent 32 cadres to these courses, and the following year the figure rose to 56, cumulatively about one-third of its cadre workforce.⁸⁷⁵ Let us take them in turn.

In September 1953, when the Ministry of Justice ordered courts to increase their staffing, it also directed 32 provincial-level jurisdictions (including major cities) to convene two judicial training courses each by the following Spring. Each jurisdiction would train 200-500 students drawn from among its new and serving cadres, for a total of 6,620 nationwide.⁸⁷⁶ In November, the Ministry followed up with more detailed instructions, ordering these jurisdictions to draw up five-year plans for the creation of a permanent infrastructure of judicial cadre training courses staffed by full-time personnel devoted to teaching. It instructed courts to take a direct role in these courses by assigning skilled cadres to lead them, and by tuning their pace, content and methods to local conditions. Then, in December, it convened a National Judicial Cadre Training Work Conference that pulled in officials from around the country to exchange experiences and develop a common format.

According to the Ministry, the provincial-level courses were supposed to focus on training judges and clerks, and to give priority to new recruits, and serving cadres being groomed for promotion. They were to run for three to four months each, with narrow but deep coverage, mostly of ideological and policy topics, such as the Marxist-Leninist Theory of the State and Law, the Party's General Line during the transition to socialism, and the content of the resolution of the Second National Judicial Work Conference. The Ministry discouraged spending time on concrete laws and policies, and suggested introducing those later as needed.⁸⁷⁷

Implementation varied widely across jurisdictions, and even the BMPC only partially met the Ministry's deadlines. There were an assortment of training programs offered in Beijing by various cadre and Party schools, which covered the required ideological and policy topics sufficiently, and the court relied on them as temporary

⁸⁷⁵ Beijing shi renmin fayuan yijiuwusi nian quannian gongzuo zongjie (February 12, 1955); *Sifa xingzheng zhi*, 70.

⁸⁷⁶ "Dier jie quanguo sifa huiyi jueyi (May 8, 1953)," Shi Liang, "Guanyu jiaqiang renmin sifa gongzuo jianshe de baogao (April 11, 1953)," "Jiaqiang guojia jianshe shiqi de renmin sifa gongzuo".

⁸⁷⁷ *Zhongyang renmin zhengfu sifabu pifu: guanyu jiaqiang gesheng (shi) sifa ganbu xunlian gongzuo de zonghe pifu (November 4, 1953)* 中央人民政府司法部批复: 关于加强各省(市) 司法干部训练工作的综合批复. Zhengwuyuan, Huabei xingzheng weiyuanhui deng danwei guanyu zuzhi zhengfa lianhe bangongshi menti, xunsu qingli jian he zuohao junren zhuan ye an zhi deng wenti de zhishi 政务院, 华北行政委员会等单位关于组织政法联合办公室问题, 迅速清理积案和做好军人转业安置等问题的指示 (1953), BMA 014-002-00075.

substitutes, though they could not provide specialized training in the occupational skills judicial cadres needed. The court's in-house classes supplemented these offerings until the city's judicial bureau could organize a dedicated judicial cadre training course, which trained around 40 students per year. Nationally, from 1953 to 1954, the number of provincial-level training sessions and their enrollments grew by around 50 percent. In 1954 alone, 43 sessions trained 6,252 cadres, coming very close to the Ministry's target of 6,620.

By the end of 1954, 11,912 of the 25,271 judges and clerks (42 percent) in China's basic level courts had reportedly received judicial training in some form, which still left the majority unreached – a sobering thought.⁸⁷⁸ This training was by and large rudimentary, much as it had been in the base areas. To standardize it, the Ministry of Justice drafted a pair of detailed lecture plans in 1954 that covered the essential ideological and practical dimensions of judicial work for serving cadres: a “Lecture Outline on Basic Level Judicial Cadre Occupational Work,” and another based on the Central Political-Legal Cadre School's “Lecture Outline for Basic Marxist-Leninist Knowledge Related to the Theory of the State and Law.”⁸⁷⁹ Between 1949 and 1958, the various courses run at the provincial, autonomous region, and municipal level trained 28,350 judicial cadres, generally lower-level, grassroots personnel.⁸⁸⁰

Related to these, but usually forgotten, the Central-South, Northwest, and Southwest Nationalities Institutes also ran judicial training courses that cumulatively turned out 301 graduates in this period.⁸⁸¹ Furthermore, between 1956 and 1958, the Ministry of Justice operated law colleges. These offered a two-year, secondary-level vocational education modeled on similar schools operated by republic-level ministries of justice in the Soviet Union. The plan was originally to establish fifteen around the country to train as many as 5,000 clerks for courts and procuratorates, but in the end only three ever opened, in Shanghai, Jinan, and Chongqing. The first two graduated a total of 263 and 386 students respectively, but figures for the last are unknown.⁸⁸² After their inaugural classes graduated, they closed.

For higher-level judicial cadres, a network of regional political-legal cadre schools belatedly took shape. Dong Biwu originally envisioned them as “schools for political-legal departments.”⁸⁸³ The flagship of the system was the Central Political-Legal Cadre

⁸⁷⁸ Huo Xiandan, *Zhongguo faxue jiaoyu de fazhan yu zhuanxing (1978-1998)*, 278.

⁸⁷⁹ Ganbu jiaoyu guanlisi yijiuwusi nian gongzuo yaodian.

⁸⁸⁰ Huo Xiandan, *Zhongguo faxue jiaoyu de fazhan yu zhuanxing (1978-1998)*, 281.

⁸⁸¹ *Ibid.*

⁸⁸² *Shandong sifa xingzheng zhi* 山东司法行政志, ed. Jiang Renbao, Liu Zhengxin, Yao Chenglin, Qu Jiebin, Song Shuming, Tian Shijiang, Wu Shiyuan, and Zhao Shurong 江仁宝, 刘正新, 姚成林, 曲介宾, 宋曙明, 田士江, 吴士元, and 赵树荣 (Jinan: Shandong sifa ting, 1989), 120. Shi Qiupo, Shao Jianping, and Tang Xiufeng *Shanghai sifa xingzheng zhi* 上海司法行政志史秋波, 邵建平, and 唐秀凤 (Shanghai: Shanghai shehui kexueyuan chubanshe, 2003), 251. Guanyu xuexi he guanche renmin fayuan zuzhifa zuotanhui qingkuang he wenti de baogao (May 18, 1955).

⁸⁸³ Dong Biwu, “Guanyu gaige sifa jiguan ji zhengfa ganbu buchong, xunlian zhu wenti (June 24, 1952),” 124.

School in Beijing, which inherited the cadre training mantle from the defunct University of Politics and Law and the New Legal Science Graduate School, both of which were established in 1949 on the campus of the former Chaoyang law school. Dong's Political-Legal Committee directly administered the school, and when it opened in 1952 Peng Zhen was appointed president. The BMPC sent a small number of cadres to study there as well.

The school had a remit to train “mainly chief cadres of county (city) people's governments, and leading personnel from (county, city) courts, procuratorates, supervision committees, and public security bureaus, serving cadres transferred to political-legal departments at the prefectural level or higher; and to cultivate political-legal educators and propaganda workers.” The inaugural class was split into eight sections 班 corresponding to a wide spectrum of legal assignments: county heads and mayors (who were often the chief legal officials in their localities); department chiefs of internal affairs; chiefs of county-level public security bureaus; military judges and procurators; judicial department chiefs; court presidents; chief procurators; and educators. Sections 1-7 were reserved for CCP members, and only section eight, for law school faculty, was open to non-Party members.

Students, lived, ate and studied communally, and most went back to their original work units after graduation. The course of study lasted one year, consisting of six classes, of which the first three concerned ideological topics (On Practice, On Contradiction, Party Construction), and the last three dealt with theoretical and practical issues in the law (Theory of the State and Law, The Common Program of the CPPCC, Specialized Duties). Soviet expert N.G. Sudarikov taught the course on the Theory of the State and Law, and along with B.S. Bykov lectured on the Soviet legal system, but in contrast to academic law departments, the curriculum did not at first have a strong Soviet flavor because the other instructors, such as Gong Zirong, Xie Juezai, and Ai Siqi, were high-level CCP cadres with deep experience in the revolutionary base areas.

In 1954, the school absorbed as branch campuses two regional political-legal cadre schools that opened the year before in Xi'an and Shenyang. The Beijing school also had responsibility for the curriculum at a fourth regional school that opened in Wuhan in 1956. However, when Dong's Political Legal Committee was dissolved in 1954, the Central Political-Legal Cadre School lost a powerful patron, and its prestige and influence went into decline. That year, it passed to the Ministry of Higher Education until 1956, when the Ministry of Justice took control. By July 1958, the four major cadre school campuses had trained 10,314 students, of whom 4,194 were judicial cadres, or about 40 percent.⁸⁸⁴ As part of the fallout from the Anti-Rightist Campaign, the Ministry of Justice was dissolved in 1959, and the Central Political-Legal Cadre School was merged with the Public Security Institute under the authority of the Public Security Bureau.

⁸⁸⁴ Huo Xiandan, *Zhongguo faxue jiaoyu de fazhan yu zhuanxing (1978-1998)*, 281.

The course materials compiled by the Central Political-Legal Cadre School were used in provincial, county, and municipal level training courses around China. A thorough textual analysis is beyond the scope of this study, but a sample of volumes on constitutional, criminal, and civil law from 1955 to 1958 reveals substantial congruence with the academic materials on PRC law coming out of Renmin University, which is to be expected given the strong hand of the Ministry of Justice at both institutions in that period. Consistent with its audience of serving cadres, they provided comprehensive coverage of regulations, decisions, and judicial work reports on every major practice area of the law, as well as discussions of the underlying principles that informed them.

Crucially, these materials were not external propaganda, but training documents oriented towards practice produced by central PRC legal authorities for consumption by ranking cadres rotated in from the field, and they open a rare window into the under-examined politics of law during the 1950s, and the contending internal visions of what New China should look like. To a striking degree, they reflect the commitment the school's immediate institutional masters had to inculcating in cadres respect for the rule-based dictates of socialist legality, and they give substance to what that elusive term meant to some in the regime at a time when political forces, and the deficiencies of personnel and practice pulled powerfully in other directions. Indeed, many of the principles found in them were soon denounced as "rightist," and when the school was transferred to the Ministry of Public Security in 1959, it sharply dissociated itself from this past. An excerpt from the Draft Lectures on Civil Procedure, published in February 1957, on the cusp of the Anti-Rightist Campaign, helps to illustrate why in its rejection of class struggle.

The people's courts treat all citizens as equal before the law, which means that no matter who violates the law, they all receive the same punishment of law, and the rights of all people receive the same legal protections. Here there are no privileged classes or ethnic discrimination. The law is applied equally to all. The rights of litigants are equal, which means that the procedural rights of plaintiffs and defendants in a case are equal. The law does not endow any side with more procedural methods or more opportunities to use procedural methods.⁸⁸⁵

In addition to the cadre schools, some of the BMPC's cadres attended the Beijing Institute of Politics and Law. This was one of four such institutes seeded around the country by the 1952 restructuring of higher education, each with responsibility for nurturing advanced cadres in its local region. Officially, the Beijing institute was led by Qian Duansheng, formerly dean of Peking University law school, and one of the leading constitutional scholars of the late Republican era, but real power was held by the school's Party secretary, Wang Run, a 1927 graduate of Chaoyang law school and former member of the Beijing bar.⁸⁸⁶ A number of highly-regarded Republican-era

⁸⁸⁵ *Zhonghua renmin gongheguo minshi susong jiangyi (chugao)* 中华人民共和国民事诉讼讲义(初稿) (Beijing: Zhongyang zhengfa ganbu xuexiao minfa jiaoyanshi, 1957), 19.

⁸⁸⁶ Qian Duansheng 钱端升, "Dui zhengfa jiaoyu fangzhen renwu de yixie tihui," 对政法教育方针任务的一些体会 *Renmin ribao* 人民日报, June 29, 1954. *Chaoyang daxue biye tongxue lu*, 62. Qiu Zhihong 邱志红, "Chaoyang daxue falü jiaoyu chutan: jianlun minguo shiqi Beijing lüshi de yangcheng," 朝阳大学法律教育初探: 兼论民国时期北京律师的养成 *Shi lin* 史林 no. 2 (2008): 85.

professors from the legacy Beijing area law schools closed by the 1952 restructuring of higher education joined the faculty, particularly from Peking University.⁸⁸⁷

Between 1952 and 1955, the Beijing institute held three rotating cadre courses that trained 1,174 judicial and administrative country-level or higher cadres from the North China region. Each session lasted one year and covered a mix of ideological and practical topics in the law. The school characterized these students as having “experience with revolutionary struggle, and a capacity for rapid uptake, but comparatively low cultural levels, and lacking in systematic theoretical knowledge.”⁸⁸⁸

The institute also offered a two-year polytechnic program in law, which had an enrollment of 289, most of them continuing students inherited from legacy law schools. These students generally had conventional undergraduate backgrounds, and when they graduated in 1954, most were assigned to political-legal organs in Beijing and the North China region, though some went into teaching.⁸⁸⁹ The program included mandatory Soviet-style practicums lasting several weeks at area legal organs. In December 1954, the first batch of 70 students arrived at the BMPC, and a further ten interned at the municipal procuratorate. Earlier in the year, a similar group of law students from the four-year program at People’s University arrived for a one-month practicum in Beijing’s district level courts.⁸⁹⁰

The practicum students were assigned to various parts of the court, where they shadowed serving cadres, assisted with casework, heard lectures, and participated in regular group discussions to deepen their training. They kept daily journals and produced summaries of their work, all of which were reviewed by supervisors. The journals indicated that the academic education they were receiving was sinking in, though with some unintended effects. As the municipal procuratorate noted:

We must regularly review in detail the practicum journals and brief work summaries in order to promptly discover problems and correct them. For example, general supervision office practicum student Xia Guoqiang in his daily journal wrote, “The Constitution provides for freedom of (internal) migration. Why are peasants prevented from blindly flowing into the cities, and why do villages not allow migration permits? Is this not in the Constitution?,” and other mistaken viewpoints. They were promptly corrected.⁸⁹¹

Originally, the 1954 National Political-Legal Education Conference assigned the institutes of politics and law the dual role of training academic students and serving

⁸⁸⁷ *Zhongguo zhengfa daxue xiaoshi* 中国政法大学校史, ed. Zhongguo zhengfa faxue xiaoshi bianxiezu 中国政法学校史编写组 (Beijing: Zhongguo zhengfa daxue chubanshe, 2002), 5.

⁸⁸⁸ *Ibid.*, 14.

⁸⁸⁹ *Ibid.*, 16.

⁸⁹⁰ Yang Huanan, “Zhongguo renmin daxue falü san nianji xuesheng yijiuwusan niandu zhuanye shixi zongjie”.

⁸⁹¹ *Zhongguo renmin daxue falü xi xuesheng canjia Beijing shi renmin jianchayuan shengchan shixi jihua* (February 21, 1955) 中国人民大学法律系学生参加北京市人民检察院生产实习计划. Shi renmin fayuan, jianchayuan, minzhengju, renshiju gongzuo jianbao 市人民法院, 检察院, 民政局, 人事局工作简报 (1955 February 21, 1955), BMA 014-002-00069.

cadres, but by year's end that policy unraveled. The Ministry of Justice took over direct control of the institutes from the country's macro-regional governments and converted them into straightforward academic law schools. In 1955, the Beijing institute ended its one and two-year programs, and adopted a rigorous, highly theoretical four-year undergraduate law curriculum heavily influenced by Soviet models, which like the PRC's university law departments, aimed to "cultivate high level legal talent."⁸⁹² The next year, the other three institutes followed suit.⁸⁹³ (Table 7.7) The parallels to elite Republican law schools, which shared a common continental architecture and debt to abstract, foreign knowledge, were rich (see Chapter One). From that point onwards, the courts could no longer use the institutes to rapidly enhance the skills of their serving cadres. The first graduates of these new academic programs did not obtain their degrees until 1959, during the radicalized atmosphere of the Great Leap Forward.

⁸⁹² *Zhongguo jiaoyu nianjian 1949-1981*, 267; *Zhongguo zhengfa daxue xiaoshi*, 18.

⁸⁹³ Huo Xiandan, *Zhongguo faxue jiaoyu de fazhan yu zhuanxing (1978-1998)*, 278.

Table 7.7: Uniform Four-Year Curriculum, Institutes of Politics and Law and Certain Academic Law Departments (June 1955)⁸⁹⁴

Mandatory		Mandatory Specialized Course (or Elective)
<p><u>Political Courses:</u> Foundations of Marxism-Leninism History of the Chinese Revolution Political Economy Dialectical & Historical Materialism</p> <p><u>Cultural Courses:</u> Logic Russian Modern Chinese Physical Education</p>	<p><u>Major Courses:</u> Theory of the State and Law General History of the State & Law History of Soviet State & Law History of Chinese State & Law Int'l. Law, Soviet & People's Democracies Int'l. Law, Chinese Int'l. Law, Capitalist Organization of Chinese Courts & Procuratorates Civil Law Criminal Law Civil Procedure Criminal Procedure Administrative Law Finance Law Land Law & Collective Farm Law Labor Law Criminal Policy Principles of Accounting & Judicial Statistics, Appraisal Int'l. Law Forensic Medicine & Judicial Psychiatry Special Lectures & Discussions on Theory of State & Law</p> <p>Inspection & Supervision Practicum (14 weeks served in court, procuratorate or other legal organ, in 2 installments) State Exam (6 weeks)</p>	<p><u>Specialized Course (or Elective):</u> Civil Law & Civil Procedure Criminal Law & Criminal Procedure</p> <p><u>Electives:</u> Russian Language History of Political Theory Int'l. Private Law Judicial Statistics</p>

⁸⁹⁴ Tang Nengsong, Zhang Yunhua, Wang Qingyun, and Yan Yalin, *Tansuo de guiji: zhongguo faxue jiaoyu fazhan shilüe*, 490, 494.

Table 7.8: Major PRC Law Schools (1950-1958)

	School	Year Est.	Comments
University Law Depts.	Renmin University Law Department	1950	Seeded by University of Politics and Law at former Chaoyang University Law School.
	Northeast People's University Law Department (Changchun)	1950	Originated in Northeast Administrative Institute.
	Northwest University (Xi'an)	1952	Special judicial course, expanded to a full law department in 1954.
	Wuhan University	1953	Pre-1949 law department preserved but reorganized.
	Peking University	1954	Closed in 1952, reopened in 1954.
	Fudan University	1954	Closed in 1952, reopened in 1954.
Institutes of Politics and Law	Beijing Institute of Politics and Law	1952	Departments of law, political science, and "social and civil affairs major" from Peking, Tsinghua, Yanjing, and Furen Universities.
	East China Institute of Politics and Law (Shanghai)	1952	Departments of law from Fudan University, Nanjing University, Anhui University, Zhenan University (l'Université l'Aurore), Shanghai Institute, Soochow University Law School, Xiamen University; departments of political science from Fudan, Nanjing, St. John's, and Hujiang Universities.
	Southwest Institute of Politics and Law (Chongqing)	1952	Departments of law from Sichuan University, Chongqing University, Chongqian Institute of Finance, Furen Institute, Yunnan University, Guizhou University.
	Central-South Institute of Politics and Law (Wuhan)	1953	Departments of law, political science and sociology from Zhongyuan University Institute of Politics, Hunan University, Sun Yat-sen University, Guangxi University.
Law Colleges	Chongqing Law College	1956	Two year vocational, secondary-level program for clerks.
	Jinan Law College	1956	Two year vocational, secondary-level program for clerks.
	Shanghai Law College	1956	Two year vocational, secondary-level program for clerks.
Political-Legal Cadre Schools	Central Political Legal Cadre School (Beijing)	1952	Inherited second class from the New Legal Science Graduate School established on grounds of former Chaoyang University Law School.
	Central Political Legal Cadre School Northeast Branch (Shenyang)	1952	Began as Northeast Political-Legal Cadre School, merged with Central Political Legal Cadre School in 1954.
	Central Political Legal Cadre School Northwest Branch (Xi'an)	1953	Began as Northwest Political-Legal Cadre School, merged with Central Political Legal Cadre School in 1954.
	Central-South Political-Legal Cadre School (Wuhan)	1956	

Academic Law

The top tier in the legal education pyramid was comprised of academic law departments at comprehensive universities and institutes of politics and law. By 1953, academic law was in a parlous state. The number of law schools and law departments in China dropped from 53 in 1949 to just eight by 1953, and their faculties and libraries had been broken up and dispersed. During the same period, enrollments fell from 7,338 to 3,908, only 1,740 of whom were in traditional undergraduate programs. The remaining 2,168 were enrolled in the shorter, polytechnic programs designed specifically to prepare skilled cadres for service in the field, such as the course just described at the Beijing Institute for Politics and Law.⁸⁹⁵ Wuhan University claimed the only surviving pre-1949 law department in the PRC, and it had been thoroughly reorganized. (Table 7.8)

The 1954 National Political-Legal Education Conference reversed this decline, and announced the reopening of the law departments at Peking and Fudan Universities, though with few of their original faculty. Once all of the institutes of politics and law switched over to four-year undergraduate curriculums, the number of academic law programs reached ten. To sustain the momentum created by the 1954 conference, a front-page editorial in the *People's Daily* proclaimed a bold target of training 10,000 tertiary law students by 1957.⁸⁹⁶ Policymakers intended to reach that goal by admitting large numbers of serving cadres and graduates of worker-peasant middle schools, institutions of adult education that compressed the usual six-year middle school curriculum into two or three years.⁸⁹⁷ This strategy collapsed, however, when the worker-peasant middle schools were abruptly disbanded in 1955, and universities raised their admissions standards in the name of supplying the qualified technical personnel needed to fulfill the First Five Year Plan.⁸⁹⁸ Thus, the actual result, 4,630 graduates, fell well short of the target.⁸⁹⁹ Still, the trend was positive.⁹⁰⁰ Enrollments gradually rebounded across the ten schools such that, by 1957, 8,245 students were studying politics and law, all but 300 of whom were regular undergraduates taking either a four or five-year academic course of study.⁹⁰¹ (Table 7.8)

Judicial policymakers faced a dilemma. A long-awaited wave of law graduates was appearing on the horizon, but without a corresponding increase in judicial hiring, these graduates would either have to displace serving cadres, or settle for jobs

⁸⁹⁵ *Zhongguo falü nianjian 1989*, 1104.

⁸⁹⁶ “Jiji peiyang zhengfa jianshe rencai,” 积极培养政法建设人才 *Renmin ribao* 人民日报, May 15, 1954.

⁸⁹⁷ *Zhongguo jiaoyu nianjian 1949-1981*, 267.

⁸⁹⁸ Pepper, *Radicalism and Education Reform in 20th-Century China: The Search for an Ideal Development Model*, 189-191.

⁸⁹⁹ *Zhongguo falü nianjian 1989*, 1104.

⁹⁰⁰ Chen Shouyi 陈守一, “Bixu jiaqiang falü kexue de yanjiu gongzuo (1957),” 必须加强法律科学的研究工作 in *Faxue yanjiu yu faxue jiaoyu lun* 法学研究与法学教育论, (Beijing: 1996).

⁹⁰¹ *Zhongguo falü nianjian 1989*, 1104.

incommensurate with their training and expectations. Furthermore, the superior claims to knowledge they possessed, and the higher standards and greater professionalization they augured seemed to some like throwbacks to the days before the Judicial Reform Campaign. Experience taught that the best way to combat that threat was by recourse to the revolutionary cards of class and ideology, and in this way the ingredients for another round of conflict began to take shape.

During the Hundred Flowers period of late 1956 and early 1957, loud complaints circulated about a class ceiling that effectively froze new law school graduates out of desirable positions in the judicial system, protests that only validated the Party's suspicion of their ideological fitness. No less an authority than the president of the East China Institute of Politics and Law, Lei Jingtian (formerly Li Mu'an's nemesis at the Shaanganning border region high court) said: "institutes of politics and law offer four-year [undergraduate] degrees, and their graduates are only appointed as clerks. Yet, graduates of the two-year law schools, which admit middle-school graduates, are appointed as procurators or judges. This confused phenomenon has a bad influence on students, and must be studied well and solved."⁹⁰² Similarly, another law graduate protested:

People say that non-party personnel have jobs without power 有职无权, I have power without a job 有权无职. Some people raise the issue like this: many judges have arrived at the court who not only do not know how to write verdicts, but delegate the task. It's even to the point where they need guidance on courtroom procedure and correction during questioning...I do a judge's job, but my position will always be a secretary's. This is typical in judicial work among current intellectual graduates of university law departments. This is also so-called "making use" of intellectuals, using them to write verdicts, handle difficult cases and do other literate tasks. Consequently, many of those "made use of" feel that they "have power but no job," are "underground judges" 地下审判员, will always be limited to (Cadre) Grade 25, and do not expect promotion.⁹⁰³

To put those remarks in context, it is essential to grasp that Grade 25 was among the lowest ranks a cadre could possibly have had in the municipal courts. It was below the rank of basic level court clerks, who overwhelmingly had only early middle school level educations and were hired with no formal training in law whatsoever. It would

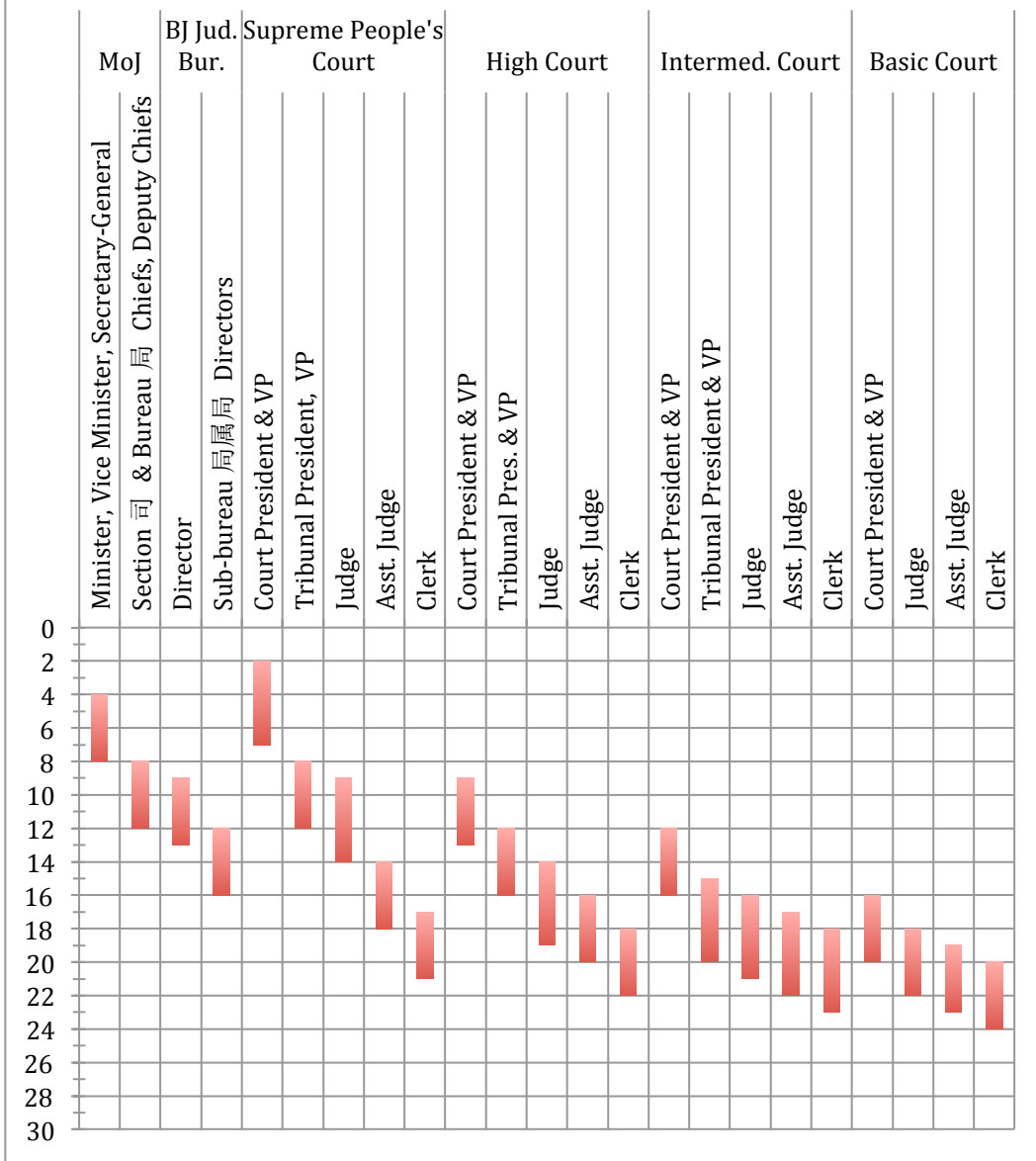
⁹⁰² "Zhengfa gongzuozhe zuotan tichu de xin wenti, guojia lingdao xia de ziyou zhiyezhe ba lüshi diwei bianwei," 政法工作者座谈提出的新问题, 国家领导下的自由职业者把律师地位变为 *Xin minbao* 新民报, May 16 1957. However, the 2003 edition of the Shanghai Gazette of Judicial Administration disputes this assertion, at least with respect to graduates of the two-year Shanghai law school 上海法律学校. It declares that "most went to education work units, not a single one entered a political-legal department." The author cannot independently verify which claim is correct. Shi Qiupo, Shao Jianping, and Tang Xiufeng, *Shanghai sifa xingzheng zhi*, 251.

⁹⁰³ "Sifa gongzuo 'qiang' gao 'gou' shen, minmeng shiwei zhaokai sifa zuotanhui pangting ji," 司法工作'墙'高'沟'深, 民盟市委召开司法座谈会旁听记 *Xin minbao* 新民报, May 19 1957. Qian Duansheng 钱端升, "Piping 'sanhai'," 批评 '三害' in *Zhengfajie youpai fenzi miulun huiji* 政法界右派分子谬论汇集, ed. Zhongguo zhengzhi falü xuehui ziliaooshi 中国政治法律学会资料室, (Beijing: Falü chubanshe, 1957), 39.

therefore have barred law school graduates from the frontlines of trial work.⁹⁰⁴ (Figure 7.1) Indeed, only lower administrative staff 办事人 and odd-jobs personnel 勤杂人员 would have counted as peers. Understandably, this might have struck university-educated law students as demeaning or outrageous.

⁹⁰⁴ 1956 nian quanguo ganbu dingqi tongji baobiao: sifa xitong, 69. *Guojiajiguan gongzuo renyuan gongzi biao zhun biao (yi), (er), (san), (si), (wu), (liu) (July 1956)* 国家机关工作人员工资标准表 (一),(二),(三),(四),(五),(六). Guowuyuan, guowuyuan renshiju, neiwubu, gonganbu, weishengbu, shi zuigao fayuan, caizhengju, minzhengju, laodongju guanyu gongzuo renyuan gongzi daiyu de guiding banfa de youguan guiding cailiao 国务院, 国务院人事局, 内务部, 公安部, 卫生部, 市最高法院, 财政局, 民政局, 劳动局关于工作人员工资待遇的规定办法的有关规定材料 (1956), BMA 123-001-00504, 164. In Figure 7.1, MoJ stands for Ministry of Justice.

Figure 7.1: Cadre Rank of Select Judicial Officials (1956)



There is solid evidence to support the notion that law students faced high obstacles to entering the judiciary. When Beijing’s courts needed personnel with advanced skills, they did not generally turn to the law schools; they sent existing personnel to short-term cadre or polytechnic courses instead. And, when they did hire law students, they took not fresh-faced college graduates, but former cadres who were already admissible to politically sensitive positions on account of their work histories and dossiers. In the eighteen months from July 1, 1956 to December 31, 1957, 21 cadres left Beijing’s judicial organs (not counting purges), while 18 cadres joined. Of the 18,

eleven were students assigned by the government; all of them were former cadres.⁹⁰⁵ On this evidence, academic law departments lost their best hope of contributing to the courts during the 1950s when the plan to channel serving cadres into them fizzled (it was later revived during the Great Leap).

In Beijing, biases in favor of serving or former cadres gave the short-course students at the institutes of politics and law, and the Soviet-trained undergraduates at People's University a leg up over the city's other law programs. Between 1950 and 1956, People's University accepted only students and cadres sent by government organs, Party committees, the military, and mass organizations.⁹⁰⁶ In its early years, 72 percent of the total student body had worker or cadre backgrounds and, from 1950 to 1958, 49 percent were Party members.⁹⁰⁷ Consequently, as the years went on, People's University became as closely associated with the judiciary in the PRC as Chaoyang law school had been in the Republican period. By contrast, at Peking University, an average of 66 percent of entering students from 1952 to 1956 came from white collar and merchant families, while only 28 percent were children of workers or peasants.⁹⁰⁸ Few of them could compete.

The biases attached to class, ideology, and cadre status were powerful, but in this instance probably secondary to timing. Virtually all of the major growth in Beijing's judicial system occurred from 1953 to 1955, in the immediate rebound after the Judicial Reform Campaign, and as a consequence of the Second National Judicial Work Conference. During the same interval, only 1,724 students nationwide received undergraduate degrees in politics and law, and in Beijing the number was around 263.⁹⁰⁹ Furthermore, those 263 provisioned not just Beijing, but the entire North China region, from the local, up to the provincial, and central levels of government. Some of the most advanced students were already spoken for; they were slated to fill out the fledgling faculties at cadre schools and law departments. Under those conditions, the meager supply of undergraduates did not reach very far. Once the burst of new

⁹⁰⁵ 1956 nian quanguo ganbu dingqi tongji baobiao: sifa xitong; *Quanguo ganbu dingqi tongji baobiao: zhixia shiji zhengfa xitong* 全国干部定期统计报表: 直辖市级政法系统. Benju guanyu ganbu nianzhong dingqi tongji baobiao (baogua zhengquan, zhengfa, gongan, jiaotong, waijiao, waimao, shougong yeshe, renmin tuanti, gongxiaoshe, huaqiao minzu deng xitong renyuan tongjibiao 本局关于干部年终定期统计报表(包括政权, 政法, 公安, 交通, 外交, 外贸, 手工业社, 人民团体, 供销社, 华侨民族等系统人员统计表 (1957 February 26, 1958), BMA 123-001-00580.

⁹⁰⁶ *Zhongguo falü nianjian* 1989, 30n.1.

⁹⁰⁷ *Zhongguo renmin daxue xiaoshi* (chugao), 14. It is doubtful that the cadre contingent came predominantly from worker or peasant backgrounds. Stiffler, "Building Socialism At Chinese People's University," 180. *Zhongguo gongchandang zhongguo renmin daxue zuzhi shi ziliao: 1937 nian 7 yue-1991 nian 12 yue*, 298-299, 338-339.

⁹⁰⁸ Liang Chen, and Li Zhongqing 梁晨 and 李中清, "Wusheng de geming, Beijing daxue yu suzhou daxue xuesheng shehui lai yuan yanjiu (1952-2002)," 无声的革命, 北京大学与苏州大学学生社会来源研究 (1952—2002) *Zhongguo shehui kexue* 中国社会科学 no. 1 (2012): 106, 108.

⁹⁰⁹ "Faxue jiaoyu tongji ziliao," 法学教育统计资料 in *Zhongguo falü nianjian* (1989) 中国法律年鉴(1989), ed. Zhongguo falü nianjian bianji weiyuanhui 中国法律年鉴编辑委员会, (Shanghai: Falü chubanshe, 1989), 1104. Huo Xiandan, *Zhongguo faxue jiaoyu de fazhan yu zhuanxing* (1978-1998), 321.

positions that opened up in the courts from 1953 to 1955 were filled, they were gone, and the headcount in the judicial system leveled off.

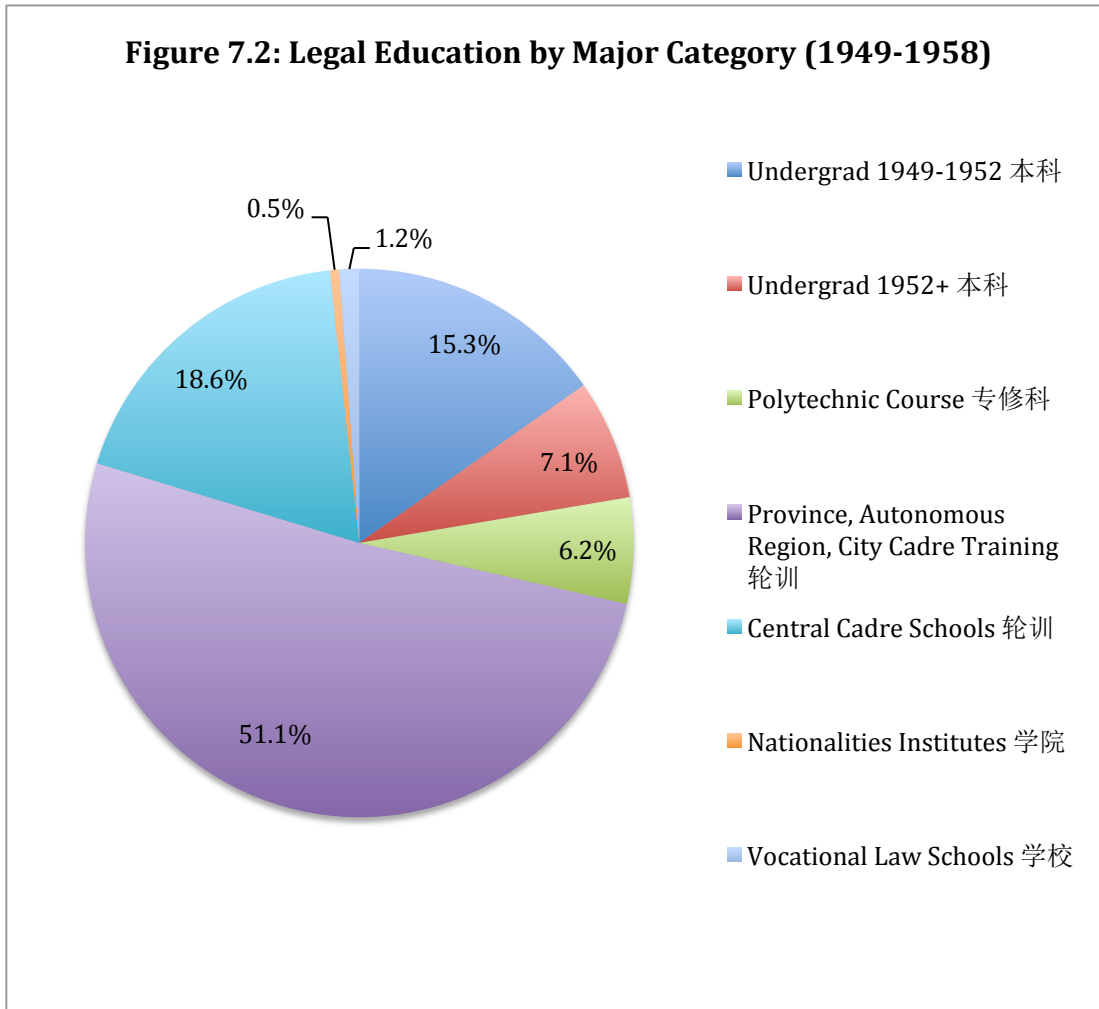
The data on legal education is admittedly imperfect, but for the purposes of a broad comparison the findings should be robust.⁹¹⁰ Taking a few steps back, we can see that university-level undergraduate programs accounted for perhaps 22 percent of the legal education pie from 1949 to 1958, and if we exclude graduates from 1949-1952 on the assumption that most would have entered university under the Nationalist regime and been exposed to the Six Codes, then the share falls to seven percent.⁹¹¹ By comparison, if we add up all of the students who studied at the rotating legal or judicial cadre training courses from the municipal to central level, and the relevant polytechnic course graduates, then we arrive at a number ten times greater. (Figure 7.2) The point is not that these forms of legal education were equivalent; they manifestly were not. But one trained the people who actually populated the judicial organs of the 1950s, and the other by and large did not. For all of their talents, undergraduate law students simply arrived too late, in numbers too small, with class and political backgrounds too complicated to participate significantly in the creation of the PRC judicial system.⁹¹² Try as they might, judicial policymakers in this respect could not escape the long shadows of abrogation and the Judicial Reform Campaign. Thus, seven years after the takeover, Dong Biwu could still lament,

⁹¹⁰ The undergraduate and special course figures are taken from “Faxue jiaoyu tongji ziliao,” 1104. However, these undergraduate figures slightly differ from those given by Huo Xiandan, from whose research the figures on cadre training and minorities schools are taken. Huo Xiandan, *Zhongguo faxue jiaoyu de fazhan yu zhuanxing (1978-1998)*, 281. Also, the special course total is provisional. The official legal education yearbook reports no special course graduates during the years 1949-52, and 1958. The author has therefore taken the liberty to adjust its totals upward to include the Group One students graduated by the China University of Politics and Law in 1950, and the two cohorts of special course students graduated by Renmin University in 1951. *Zhongguo renmin daxue faxueyuan xiaoyou tongxunlu (1950-2000)*, 206-275. There may be additional special course graduates during these years from programs that have not come to the attention of the author. Finally, the total for vocational schools is incomplete since the graduation figures for the Chongqing campus were not available. Judging from the other two campuses, the missing students may have numbered around 200-300. That does not change the proportions greatly considering that the total number of students counted in Figure 7.2 comes to more than 55,000.

⁹¹¹ I have also excluded the 39 post-graduates who graduated in 1949 and 1950, but have opted to include the 67 post-graduates who graduated from 1951 to 1952 because some may have been admitted under the PRC. *Zhongguo falü nianjian 1989*, 1104, 1106.

⁹¹² From 1951-1956, 66 Chinese undergraduates attended Soviet law schools in Moscow and Leningrad. From 1954-57, 20 Chinese graduate students attended Soviet law schools. Most returned to China just in time to be swept up in the Anti-Rightist Campaign and the turn away from Soviet law. Jiang Ping recalls that because the priority was on training new legal talent, almost all of the returned students in his group were assigned to law school or research institutes, and none went to the courts. Huo Xiandan, *Zhongguo faxue jiaoyu de fazhan yu zhuanxing (1978-1998)*, 281. *Zhongguo faxuejia fangtanlu*, 109.

Legal work is a kind of specialized work, but the personnel engaged in legal work have not yet been given the kind of treatment that should be given to personnel working in a specialized field.⁹¹³



The Soviet Influence

One important corollary of these findings is that there is much less to the influence of Soviet models on Chinese judicial practice during the 1950s than meets the eye. The first generation of Western scholars who confronted the PRC legal system puzzled over how deeply resemblances to Soviet features extended, while the late Cai Dingjian famously concluded that the “the legal system was practically transplanted from the former Soviet Union.”⁹¹⁴

⁹¹³ Biwu Dong, “Speech By Comrade Tung Pi-Wu (September 19, 1956),” in *Eighth National Congress of the Communist Party of China: Speeches*, (Beijing: Foreign Languages Press, 1981), 90.

⁹¹⁴ Cai Dingjian, “Guanyu qian sulianfa dui zhongguo fazhi jianshe de yingxiang: jianguo yilai faxuejie zhongda shijian yanjiu (22),” 2-3. Jerome A. Cohen, “The Criminal Process in the People’s Republic of

Soviet theories of the state and law were plainly integral to the PRC legal system's ideological frameworks, as were core concepts such as class struggle and the dictatorship of the proletariat. The PRC also adapted numerous architectural features from the Soviet judicial system, most obviously the procuratorate and aspects of trial supervision. But that accounts for a small fraction of the Soviet law that was actually introduced to China, much of which remained locked away in universities and abortive codification projects. For confirmation of that, one need only consider the opposing trajectories of the two legal systems in the decades that immediately followed. For the PRC, the turn to Soviet law was a long-term investment, as the turn towards Japanese law had been in the early Republican period. Under the best of circumstances, it would have required years to bear fruit, and lamentably just as its first flowers began to bloom, the environment turned hostile.

The undergraduates who studied Soviet law did not begin appearing in significant numbers until 1958, and they stepped into the maelstrom of the Anti-Rightist Campaign.⁹¹⁵ By then, nearly all of the Soviet legal experts in China had returned home, and none remained in Chinese law schools. What is more, the government radically rewrote the uniform law school curriculum that year. Academic legal education lost its primarily professional and technical rationale, textbooks that had taken years to prepare were shelved, Soviet law disappeared from the classroom, and the share of hours spent on political classes rose from 17.1 percent to 58.3 percent, while the share of hours spent on the law dropped from 65.2 percent to 24.1 percent. In the law department of People's University, the epicenter of Soviet legal learning in China, around 60 faculty and students were declared rightists.⁹¹⁶ Undergraduate law exhibited the inklings of a recovery in 1962, but admissions went into an uneven and ultimately precipitous decline nationwide that did not reverse until the 1980s.⁹¹⁷

For much of the 1950s, Chinese propaganda touted the contributions of Soviet legal experts. Yet, the best available research indicates that out of about 18,000 Soviet experts resident in China between 1949 and 1960, most of whom were in scientific or industrial fields, only around 35 were legal experts, and no more than fifteen were

China: An Introduction," *Harvard Law Review* 79, no. 3 (1966): 469-533. Stanley Lubman, "Form and Function in the Chinese Criminal Process," *California Law Review* 69, no. 4 (1969): 535-575. George & Arthur Stahnke Ginsburgs, "The Genesis of the People's Procuratorate in Communist China 1949-1951," *The China Quarterly* no. 20 (1964): 1-37. : Wang Jinbao 王金宝, "Guangdong gaoyuan yuanchang: dangqian shenpan jizhi yi bu shiying shidai (June 28, 2013)," 广东高院院长: 当前审判机制已不适应时代 *中国新闻周刊*, <http://politics.inewsweek.cn/20130628/detail-46773-all.html> (accessed May 18, 2015). Patrick Boehler, "Guangdong Chief Justice Calls for Reform of China's 'Soviet' Court System (July 3, 2013)," *South China Morning Post*, <http://www.scmp.com/news/china/article/1273758/guangdong-chief-justice-calls-reform-chinas-soviet-court-system> (accessed May 18, 2015).

⁹¹⁵ People's University had been educating students in a four-year, Soviet-based law curriculum since 1950, however, between 1953 and 1957 it graduated just 625 students, many of whom were being groomed for teaching jobs in the budding network of cadres and law departments. Huo Xiandan, *Zhongguo faxue jiaoyu de fazhan yu zhuanxing (1978-1998)*, 321.

⁹¹⁶ *Zhongguo faxuejia fangtanlu*, 102.

⁹¹⁷ "Faxue jiaoyu tongji ziliao," 1104. *Zhongguo jiaoyu nianjian 1949-1981*, 268.

present in the country during any given year.⁹¹⁸ About half of the legal experts were assigned to academic institutions, and only around seven actually worked directly in the chief organs comprising the judicial system; none embedded at the local level. No more than two or three of the seven appear to have been resident in China at any one time. (Figure 7.9) The experts relied on translators since few if any spoke Chinese, and the PRC government seems to have carefully circumscribed their roles. Shen Zongling recalls that N.G. Sudarikov and B.S. Bykov, perhaps the most influential of the legal experts, lectured frequently on Soviet topics, but did not regularly participate in the business of the Political-Legal Committee, where they were based.⁹¹⁹ The academic experts were more distant still from the working legal system.

Table 7.9 Soviet Legal Advisors in Central Judicial Organs (1949-1959)

English	Russian	Chinese	Host Institution	Years
B.S. Bykov	Б.С. Быков	贝可夫	Political-Legal Committee	1949-52
N.G. Sudarikov	Н.Г. Сударинов	苏达里可夫	Political-Legal Committee	1949-53
A.E. Lunev	А.Е. Лунев	鲁涅夫	Political-Legal Committee	1953-54
B.Ia. Koldin	В.Я. Колдин	柯尔金	Ministry of Justice	1954-57
I.A. Basavin	И.А. Басавин	巴萨文	Ministry of Justice	1955-57
G.E. Kovalenko	Г.Е. Коваленко	柯瓦连科	Ministry of Justice, Supreme People's Court	1954-57
B.P. Kolmakov	В.П. Колмаков	柯勤马柯夫	Ministry of Justice, Supreme People's Court	1957-59

In light of that, how did their contributions impact the courts at an operational level? Certainly, judicial cadres could not help but be cognizant of Soviet legal learning; in Beijing, some of them attended lectures by Soviet experts, and many more were required to study materials on how Soviet courts implemented practices the PRC was preparing to adopt.⁹²⁰ Furthermore, an assortment of uplifting personal narratives and

⁹¹⁸ Tang Shichun 唐仕春, "Jianguo chuqi laihua Sulian faxue zhuanjia de qunti kaocha," 建国初期来华苏联法学专家的群体考察 *Huanqiu falü pinglun* 环球法律评论 no. 5 (2010): 133-151.

⁹¹⁹ *Zhongguo faxuejia fangtanlu*, 212.

⁹²⁰ *Zhuanjia Luniefu tongzhi dui Beijing shi renmin jianchashu suo ti guanyu jiancha gongzuo jige wenti de jieda (November 13, 1953)* 专家鲁涅夫同志对北京市人民检察院所提关于检察工作几个问题的解答. Lian zhuanjia Luniefu lai woshi liaojie zuotan guanyu jiancha gongzuo de jianghua ji shi renmin jianchashu de baogao ji youguan wenjian 联专家鲁涅夫来我市了解座谈关于检察工作的讲话及市人民检察院的报告及有关文件 (1954), BMA 014-001-00043; *Sulian zhuanjia Luniefu yijiuwusan nian shiyi yue ershiyi ri zai zuigao renmin fayuan guanyu Sulian minshi susong de baogao jiyao* 苏联专家鲁涅夫一九五三年十一月二十一日在最高人民法院关于苏联民事诉讼的报告纪要. Sulian zhuanjia Luniefu lai woshi liaojie zuotan guanyu jiancha gongzuo de jianghua ji shi renmin jianchashu de baogao ji youguan wenjian 苏联专家鲁涅夫来我市了解座谈关于检察工作的讲话及市人民检察院的报告及有关文件 (1954), BMA 014-001-00043; *Sulian zhuanjia Luniefu tongzhi yu yijiuwusan nian shi yue shijiu ri zai Beijing shi renmin jianchashu zuotan gongzuo qingkuang shi de fayan (October 19, 1953)* 苏联专家鲁涅夫同志于一九五三年十月十九日在北京市人民检察院座谈工作情况时的发言. Lian zhuanjia Luniefu lai woshi liaojie zuotan guanyu jiancha gongzuo de jianghua ji shi renmin jianchashu de baogao ji youguan wenjian 联专家鲁涅夫来我市了解座谈关于检察工作的讲话及市人民检察院的报告及有关文件 (1954), BMA 014-001-00043; *Sulian zhuanjia Luniefu tongzhi zai Huadong qu guanyu fayuan, jiancha gongzuo yanjiang de jilu* 苏联专家鲁涅夫同志在

handbooks told Chinese cadres what it meant to be an outstanding Soviet judge, and exhorted them to learn from the “advanced experience of the Soviet Union.”⁹²¹

Nevertheless, apart from a small number of documents devoted to explaining Soviet practices or summarizing lectures by Soviet experts, it is striking how rarely references to the Soviet Union appear in the reports filed by Beijing’s courts, even when they were grappling with reforms that were clearly Soviet-inspired. Soviet conventions no doubt shaped their expectations, but they do not appear to have been in the habit of self-consciously looking over their shoulders, measuring themselves against those distant benchmarks. They had much more pressing concerns to worry about. On occasions when they broke form and were ordered by superiors to try to emulate Soviet practice strictly, the results were very often poor.

For instance, in 1955, the Qianmen district court, Beijing’s most advanced, attempted experimental trials with a full suite of Soviet features, including advocates, assessors, and procurators. The pilot project foundered right from the start and was swiftly called off because resources and training simply were not up to the task.⁹²² Chastened, the court’s leaders called on judges henceforth to adapt these elements flexibly. But that entailed its own problems because, left to their own devices, judges did not much care for some of these reforms, and thwarted their progress.

People’s assessors were a particular sore point. Assessors were a kind of lay judge elected from mass organizations and other bodies. The idea was that a pair of assessors would join a regular judge to form a three-person panel in which the assessors would have full and equal powers to participate in every stage of the handling of a case, including review of the case file, questioning, and the determination of the verdict and sentencing. In theory, they could even outvote the regular judge.

Reports from the field described widespread resistance to the integration of assessors into trial work, and judicial authorities had to work hard to overcome doubts,

华东区关于法院, 检察工作演讲的记录 (Shanghai: Zuigao renmin fayuan Huadong fenyuan, zuigao renmin jianchashu Huadong fenzhu, 1954); *Sulian zhuanjia Luniefu tongzhi jieda sifa gongzuo he jiancha gongzuo de ji ge wenti* 苏联专家鲁涅夫同志解答司法工作和检察工作的几个问题. Sulian zhuanjia Luniefu lai woshi liaojie zuotan guanyu jiancha gongzuo de jianghua ji shi renmin jianchashu de baogao ji youguan wenjian 苏联专家鲁涅夫来我市了解座谈关于检察工作的讲话及市人民检察署的报告及有关文件 (1954), BMA 014-001-00043.

⁹²¹ *Sulian sifa gongzuozhe de xianjin jingyan jieshao* 苏联司法工作者的先进经验介绍 (Beijing: Zhonghua renmin gongheguo sifabu, 1956). Yifannuofu, Qiaozhi (Иванов, Г.) 乔治 伊凡诺夫, *Zenyang zuo renmin faguan: yi ge Sulian faguan shouji* (Записки народного судьи) 怎样作人民法官: 一个苏联法官手记 (Beijing: Zhongwai chubanshe, 1951).

⁹²² *Beijing shi Qianmen qu renmin fayuan yijiuwuwu nian qi yuefen gongzuo baogao* (August 13, 1955) 北京市前门区人民法院一九五五年七月份工作报告. Qianmen qu jianchayuan, fayuan baosong quwei de yuefen jihua, baogao ji jianbao 前门区检察院, 法院报送区委的月份计划, 报告及简报 (1955), BMA 038-002-00172; *Beijing shi Qianmen qu renmin fayuan yijiuwuwu nian yi yuefen gongzuo baogao* (February 8, 1955) 北京市前门区人民法院一九五五年一月份工作报告. Qianmen qu jianchayuan, fayuan baosong quwei de yuefen jihua, baogao ji jianbao 前门区检察院, 法院报送区委的月份计划, 报告及简报 (1955), BMA 038-002-00172.

“erroneous thought,” and deviations.⁹²³ Well into 1956, internal documents accused court personnel of holding outmoded, elitist ideas about what it meant to be a judge, and of failing to grasp the political significance of the assessors as vehicles for bringing democracy to the courts and keeping them socially grounded. Judges reportedly acted as if assessors were beneath them, possessing neither the skills nor the character for trial work.⁹²⁴ They insisted that assessors would make unreliable partners, commit errors and only slow them down, resulting in more appeals, higher backlogs and penalties for missed targets. They therefore tended to keep the assessors at arm’s length and treated them like outsiders. Some judges saw an opportunity to skip the on-the-spot case investigations mass line adjudication encouraged, and sent assessors out in their stead, essentially using them like gofers. Others put the assessors to work on tasks that had nothing to do with trials. Bear in mind that this was not a cabal of unreconstructed, legacy personnel, but the CCP’s handpicked judiciary, which met regularly for mandatory ideological study sessions. Socialist consciousness and mass line thinking apparently still had far to go.

Despite several months of tinkering with assessors, and a hard target from the BMPC to use them in 20 percent of all cases, the Qianmen court could cite only two cases during the entire first quarter of 1955 in which it had used assessors, and by June the rate had improved to just seven percent of cases. Only the Campaign to Eliminate Counterrevolutionaries, which made the costs of noncompliance prohibitive, smashed this indifference, rocketing the monthly utilization rate up to 83.5 percent by December.⁹²⁵ Of course, that was exactly the opposite of the methodical, step-by-step approach to plan fulfillment that judicial administrators aspired to inculcate, but it happened time and again.

To cite another example, later that year, a high-level delegation of Chinese judicial officials embarked on a three-month visit to the Soviet Union.⁹²⁶ When they

⁹²³ Beijing shi renmin fayuan yijiuwusi nian dier jidu gongzuo baogao (gao).

⁹²⁴ *Zhonggong Qianmen qu weiyuanhui Qianmen qu renmin fayuan gongzuo zongjie* 中共前门区委员会-前门区人民法院工作总结. Qianmen qu renmin fayuan 1954 nian gongzuo zongjie ji renmin fating gongzuo zongjie 前门区人民法院 1954 年工作总结及人民法庭工作总结 (1954), BMA 038-001-00113. Beijing shi gao, zhongji renmin fayuan shenpan gongzuo qingkuang de baogao (chugao).

⁹²⁵ *Beijing shi Qianmen qu renmin fayuan yijiuwuwu niandu gongzuo zongjie* 北京市前门区人民法院一九五五年度工作总结. Qianmen qu renmin fayuan, renmin jianchayuan 1955 nian gongzuo zongjie 前门区人民法院, 人民检察院 1955 年工作总结 (1955), BMA 038-001-00139.

⁹²⁶ *Sulian sifa gongzuo fangwen ji-guanyu shenpan sifa xingzheng gongzuo bufen* 苏联司法工作访问记-关于审判司法行政工作部分, ed. Zhongguo sifa gongzuozhe fangsu daibiaotuan 中国司法工作者访苏代表团 (Beijing: Zhongguo sifa gongzuozhe fangsu daibiaotuan, 1955); *Sulian sifa gongzuo fangwen ji-guanyu falü jiaoyu gongzuo bufen* 苏联司法工作访问记-关于法律教育工作部分, ed. Zhongguo sifa gongzuozhe fangsu daibiaotuan 中国司法工作者访苏代表团 (Beijing: Zhongguo sifa gongzuozhe fangsu daibiaotuan, 1955); *Sulian sifa gongzuo fangwen ji-guanyu jiancha gongzuo bufen* 苏联司法工作访问记-关于检察工作部分, ed. Zhongguo sifa gongzuozhe fangsu daibiaotuan 中国司法工作者访苏代表团 (Beijing: Zhongguo sifa gongzuozhe fangsu daibiaotuan, 1956); Tang Shichun 唐仕春, “1955 nian zhongguo sifa gongzuo fang su daibiaotuan yu Sulian fazhi xingxiang de suzao,” 1955 年中国司法工作访苏代表团与苏联法制形象

returned, the Ministry of Justice issued a circular inspired by Soviet practice that ordered appellate courts to end *de novo* reviews, and shift instead to checking appeals for evidence of procedural integrity, application of the proper legal principles, sound reasoning, and indications that material facts were verified. When tried in Beijing, this reform raised the productivity of appellate judges from closing an average of 18 cases per month to 50, which brought an end to the scourge of backlogs tantalizingly within sight.⁹²⁷ At the 1956 Third National Judicial Work Conference, intermediate court president He Zhanjun gave a speech in praise of the reform. But shortly thereafter, it too was abandoned as reports started coming in from the field that too many judicial errors were getting through. Beijing's high and intermediate courts then declared, "it can no longer be implemented. After our investigation, we believe that this mechanical application of Soviet advanced experience was [marked by] impatience for success, the time given to practice was very short, experiences were not very successful and, after summarizing them, they confirm that the method was mistaken."⁹²⁸ A similar fate befell many other features drawn from Soviet practice that the courts originally launched with great fanfare, including enterprise level comrades courts, special rail and water transport courts, various codification projects, and most spectacularly the professional bar. Even the use of people's assessors fizzled after the Great Leap Forward. He Qinhua is accordingly too kind when he declares that, "the transplantation of the Soviet judicial system had a definite formalist quality. We only studied its surface, not its spirit."⁹²⁹

The Judiciary

Let us now get right to the heart of who the judiciary was on the cusp of the Anti-Rightist Campaign. No scholar has described its composition before. From the data on Beijing, we can glean multiple significant developments.⁹³⁰ To begin with, the size of the judiciary expanded immensely. In 1948, Beijing's Nationalist local court counted 28 judges and tribunal presidents. In 1956, the corresponding figure for the fifteen courts making up the various levels of the municipal judicial system was over 200. The gender composition of the courts changed dramatically, too. In 1948, four of the 28 judges (14 percent) were women, including one of the two civil tribunal presidents.⁹³¹ By 1956, the share of women judges more than doubled to around 32 percent, and among the new district courts, one-third of presidents and vice-presidents were women.⁹³² (Figure 7.3)

的塑造 *Zhongguo shehui kexueyuan jindaishisuo qingnian xueshu luntan* 中国社会科学院近代史所青年学术论坛 (2008): 475-490.

⁹²⁷ Beijing shi gao, zhongji renmin fayuan shenpan gongzuo qingkuang de baogao (chugao), 5.

⁹²⁸ Ibid.

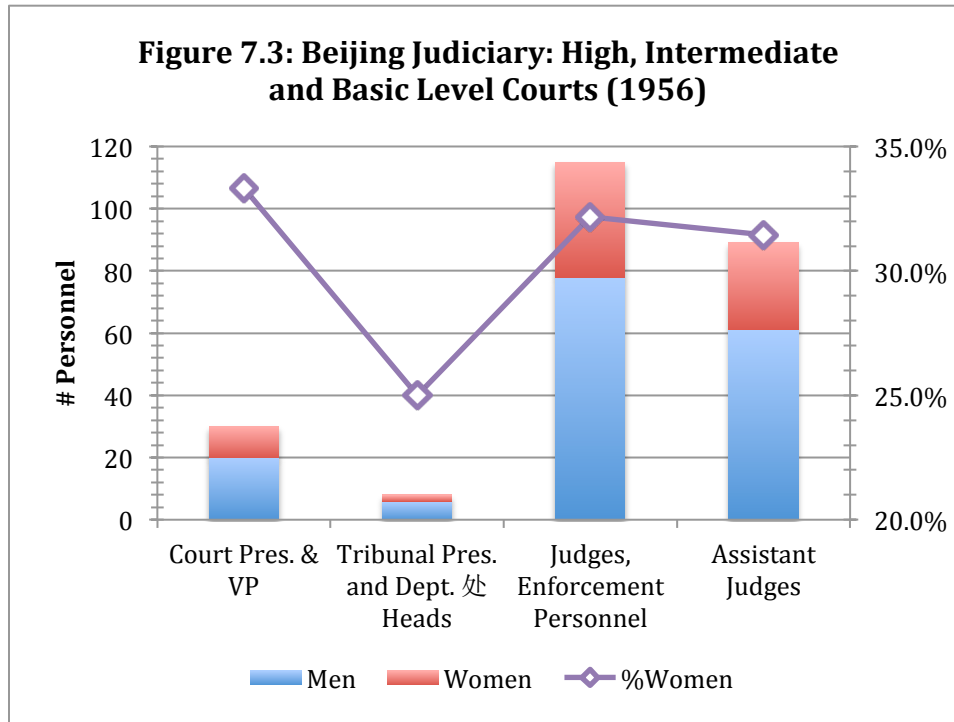
⁹²⁹ He Qinhua, and Li Xiuqing, "Guanyu 50 niandai zhongguo yizhi sulian sifa zhidu de fansi," 544.

⁹³⁰ 1956 nian quanguo ganbu dingqi tongji baobiao: sifa xitong.

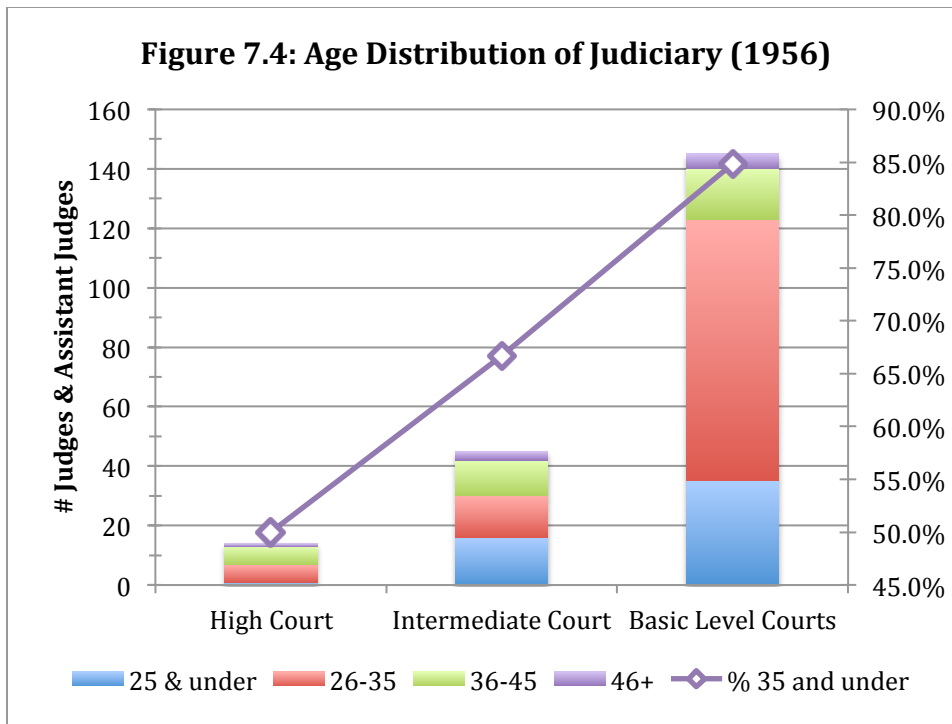
⁹³¹ *Beiping difang fayuan zhiyuan lu*, 1-3.

⁹³² There is a small amount of imprecision in the figure due to the fact that, in this data set, the intermediate court counts judges and enforcement personnel collectively. The other courts do not do that.

The courts also grew younger as they shed people who had ties to the legacy Nationalist system. At the district level, 85 percent of judges and assistant judges were age 35 or less; however, the proportion fell to 50 percent at the high court, which had a large contingent of Yan'an era revolutionaries. (Figure 7.4)



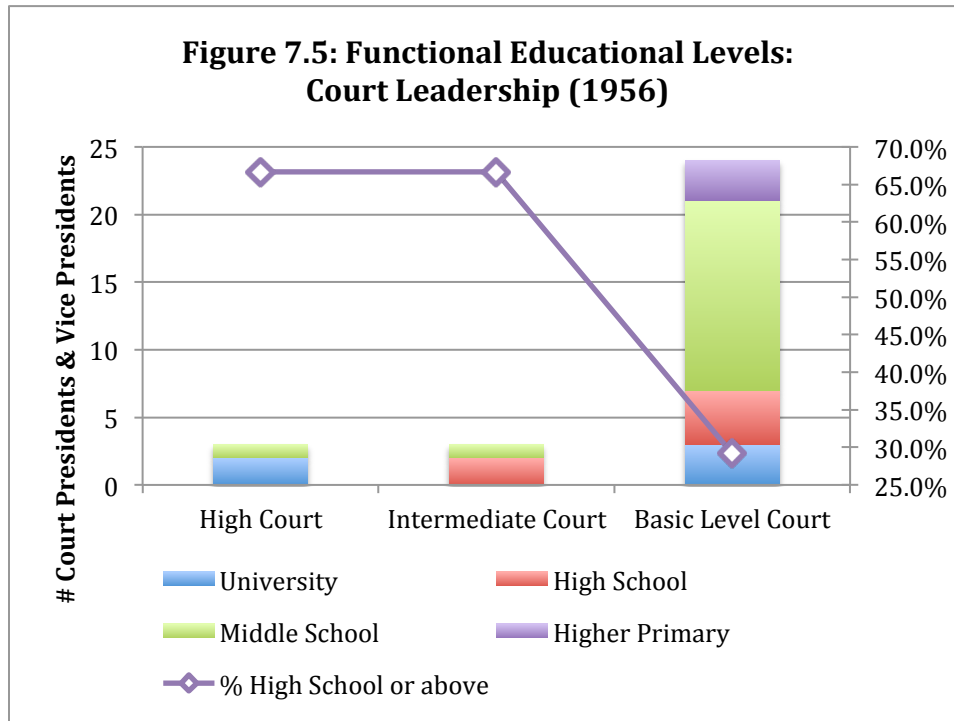
Based on what was common at other courts, the number of enforcement personnel might have numbered around five, which would mean that around 23 of the 28 in this category were actually judges. But the data does not report the gender composition of that subset.



The purges of legacy personnel and the repopulation of the judiciary predominantly by veteran cadres and intellectual youth during and after the Judicial Reform Campaign fundamentally altered the educational profile of the courts. Before 1949, the Nationalist Law on Court Organization required all judges to be graduates of tertiary-level institutions, such as universities or qualifying polytechnic schools. By contrast, in 1956, only about 30 percent of judges functionally met this standard, and few of them would have studied law. The operative term here is “functional,” because owing to the disruptions of the civil war many people had not formally graduated from the highest level of schooling they had attended. One example was Zhang Sizhi, whose elite legal education was interrupted in 1949 when the CCP took Beijing and closed Chaoyang law school. To make up for that, the judicial bureaucracy tracked the distributions of both formal credentials and functional levels in the courts. The latter was usually higher; for instance, judicial cadres at the bottom of the educational ladder might have only attended higher primary school but acquired sufficient skills along the way to be counted at the middle school level.

The combined share of judges and assistant judges with university level aptitudes was 24 percent. In general, educational attainments fell as one descended down the hierarchy, which helps to account for the frequent complaints about incompetence at the lower levels. For instance, at the municipal high court, 57 percent of all judges and assistant judges were university educated, while at the district level the figure was 17 percent. Of the 680 cadres in the judicial system as a whole, including the municipal judicial bureau, 121 had university-level educations, or 17.8 percent. Much higher proportions had at least the functional equivalent of high school: 93 percent at the high court level, and 31 percent at the district court level. (Figures 7.5-7.7) Set

against the city's population as a whole, this was still a very high standard.⁹³³ Considering the sources the courts were forced to recruit from after the Judicial Reform Campaign, these figures suggest that courts tried to funnel the better-educated toward the bench. Admittedly, Beijing as a major city, and the capital, may have been unrepresentative in that respect.



⁹³³ In 1950, only about four percent of Beijing residents had high school 高中 or higher levels of education. More than half of all residents had no formal schooling, and were described as illiterate. *Beijing shi renkou tongji ziliao huibian (1949-1987)* 北京市人口统计资料汇编 (1949-1987), ed. Beijing shi tongjiju 北京市统计局 (Beijing: Zhongguo tongji chubanshe, 1989), 398-399.

Figure 7.6: Functional Educational Levels: Judges (1956)

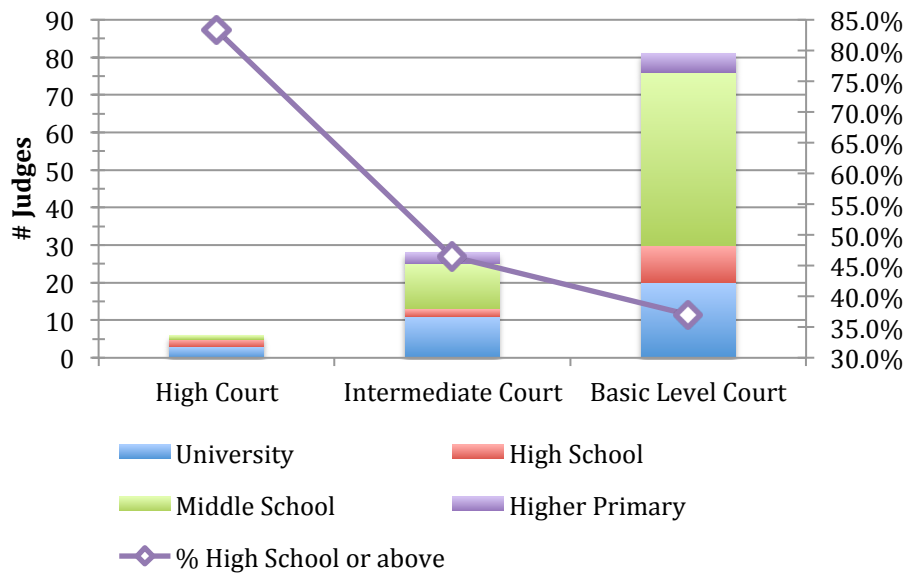
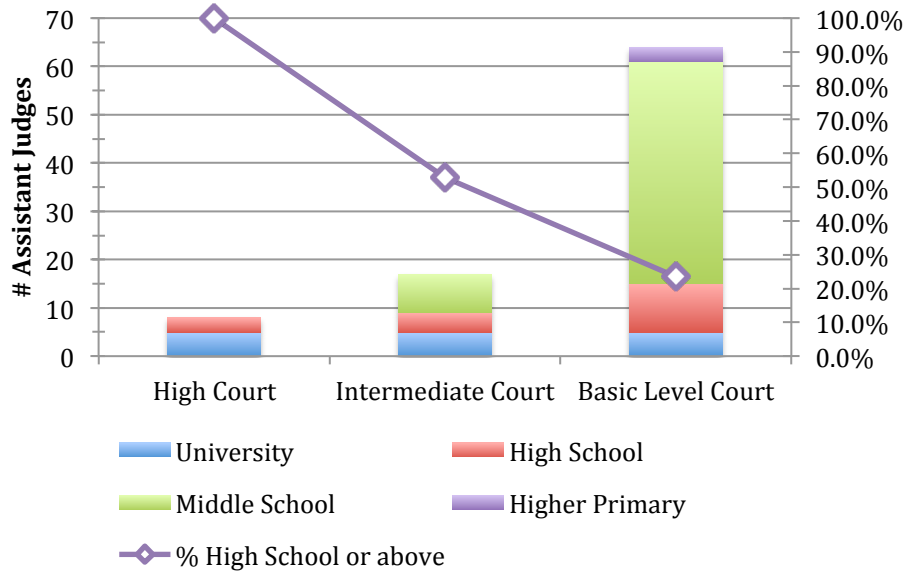
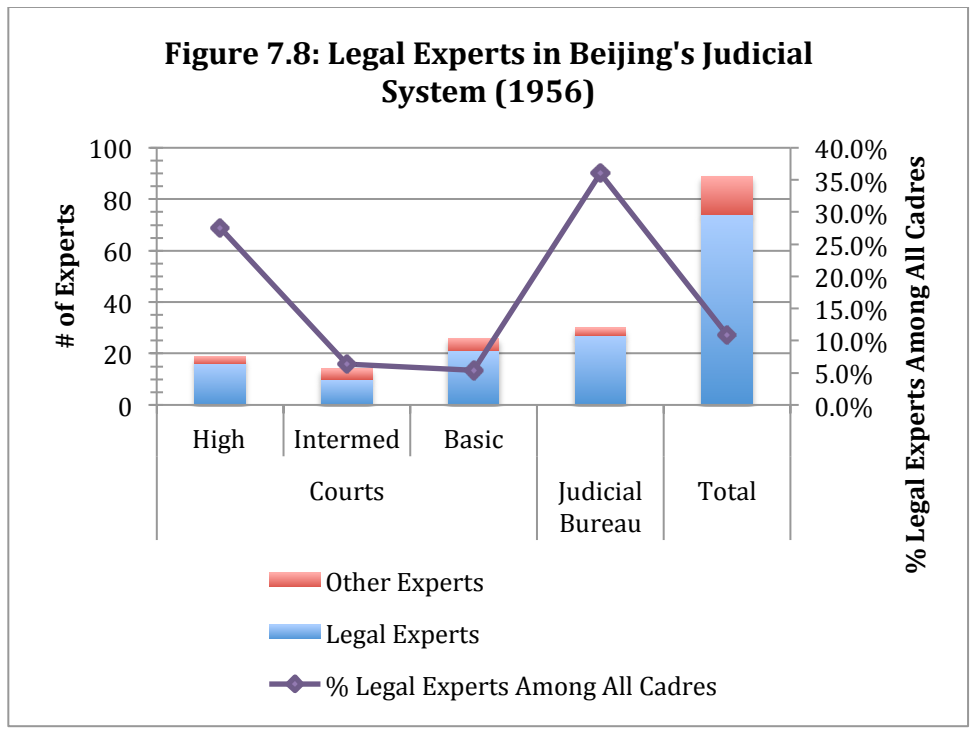


Figure 7.7: Functional Educational Levels: Assistant Judges (1956)



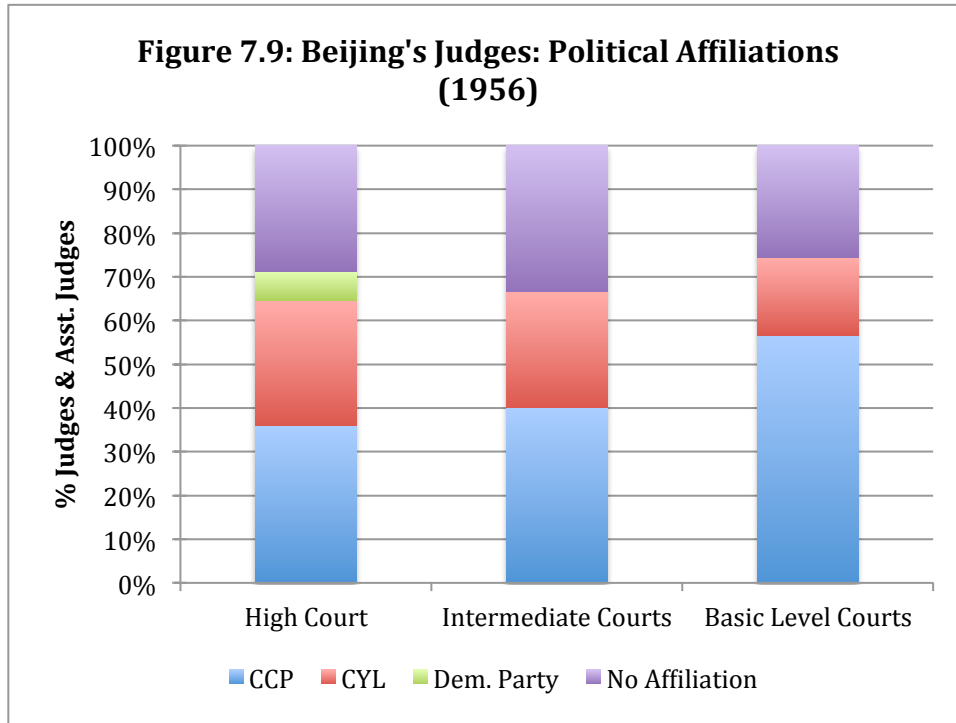


The courts singled out cadres who had acquired sufficient formal, technical training to qualify as “experts” 专门人才. (Figure 7.8) In 1956, the vast majority of the experts in the judicial system were in fact legal experts, and all of them had university-level educations. They were distributed unevenly; more than a third of them were not in the courts at all, but in the judicial bureau, which handled administration, cadre training, and the fledgling bar, among other tasks. The basic level courts had nearly as many in absolute terms, but they were distributed across a much larger workforce. Altogether 74 out of the 680 cadres in the judicial system, or 11 percent, qualified as legal experts. The corresponding figure for the courts alone was 47 out of 605 cadres, or 7.8 percent.⁹³⁴ Few of them could have served on the bench because only 12 of the 59 experts in the courts were ranked section chief 科长 or higher, the threshold that conventionally qualified one to serve as a judge in the municipal judicial system. Forty-seven, the vast majority, were ranked as general cadres, which would ordinarily have excluded them. This substantiates the contemporary impression that high legal expertise was weakly correlated with judicial appointment.

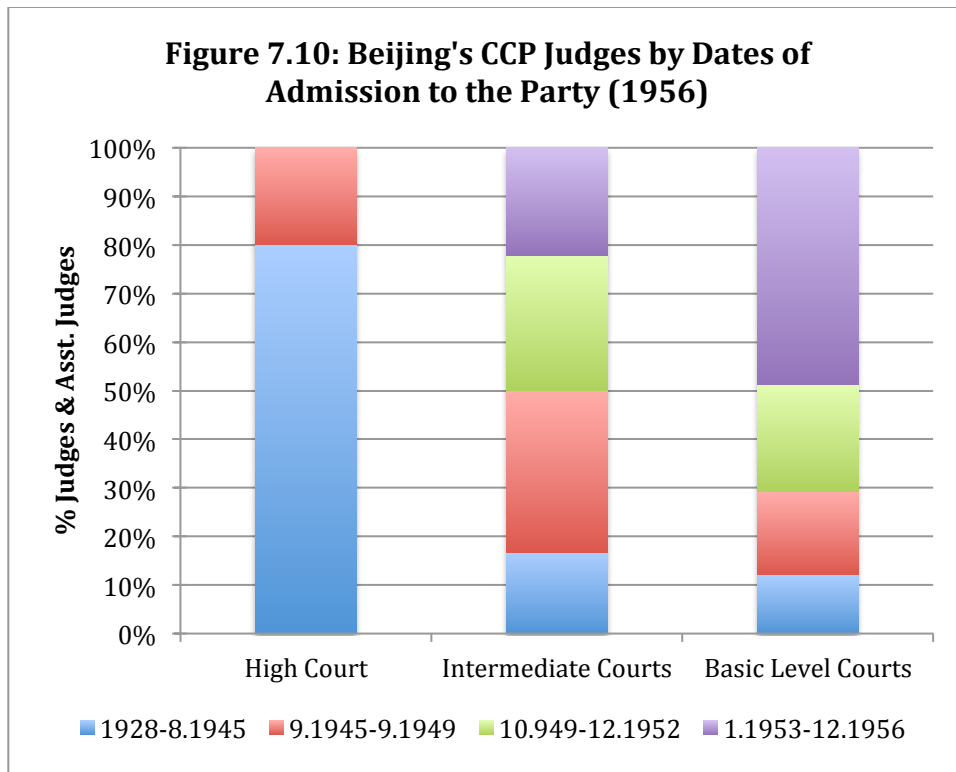
The regime consciously sliced the judiciary into clearly defined political cohorts, each of which enjoyed a different level of status by virtue of its affiliation, and its period of admission to the CCP or participation in the revolution. From 1955 to the end of 1956, the share of CCP and CYL members in the city’s total judicial cadre workforce grew from 50 percent to 64 percent and, as one would expect, the share among judges and assistant judges was higher still: 72 percent. Only one judge in the city was a member

⁹³⁴ 1956 nian quanguo ganbu dingqi tongji baobiao: sifa xitong, 74.

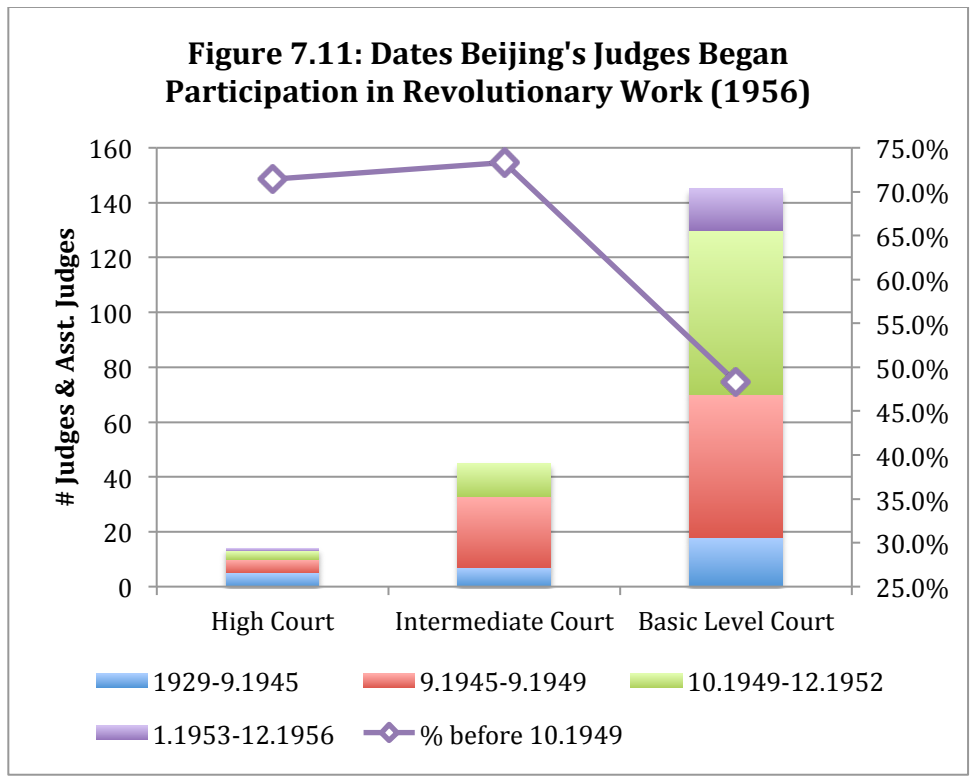
of a minor democratic party; the remaining 27 percent, still a sizable share, had no recognized political affiliations. (Figure 7.9)



Among the CCP members, a hierarchy is immediately discernible that correlates with age and seniority. At the high court, eighty percent of the judges and assistant judges who had joined the CCP did so before the Japanese surrender in 1945, comprising a Yan'an-era judicial aristocracy. The remainder joined before October 1949, the founding date of the PRC. As one travels down the judicial ladder, the judges and assistant judges get younger, the proportion of CCP members goes up and the dates of their admission to the Party get more recent. By the time one reaches the district level, nearly half of the judges and assistant judges who joined the CCP did so after 1952, that is after the Judicial Reform Campaign had concluded in the city. (Figure 7.10)



The date of “participation in revolutionary work” was a broader political credential that established when a cadre had thrown his or her lot in with the Party. It encompassed not just CCP members, but also people who had worked with the Party but had not been accepted for admission, namely CYL members, members of minor democratic parties, and those with no recognized political affiliation. More than 70 percent of judges and assistant judges at the higher and intermediate courts had participated in revolutionary work before the founding of the PRC in October 1949. This corresponds extremely closely to the share of CCP and CYL membership in these courts, and suggests that the roughly 30 percent share in those courts that was politically unaffiliated had not worked with the CCP significantly before 1949. They joined the revolution after the new regime was founded. The corresponding figure for participation after October 1949 at the district level was 52 percent. Most district level judges and assistant judges were therefore also quite new to the revolution, but of these the overwhelming majority had proven themselves in other work before joining the district courts. Most of the district courts opened in late 1952, yet only 10 percent of their judges joined the revolution after that year. The takeaway: there was very little room for fresh converts to the cause on the bench, and that would have included most law students. (Figure 7.11)



To sum up, the archetypical judge and assistant judge at each level might have had the following characteristics. At the district level, they were under 35, predominantly middle school educated and, of the 56 percent who were CCP members, equally likely to have joined before as after January 1953. At the intermediate court level, they were mostly also under 35, almost equally likely to be high school educated as not and, of the 40 percent who were CCP members, equally split between those who joined before and after the founding of the PRC. At the high court level, they were evenly split between those older and younger than 35, nearly all high school or university educated and, of the 38 percent who joined the Party, the lion's share did so in the storied age of the base areas before the Japanese surrender in 1945. Without question, the CCP had completely reconstituted not just the composition of the judiciary, but implicitly also its qualifications. Judging from the data, the ambition policymakers repeatedly expressed of filling the courts with academically trained law students from reconstructed socialist law faculties had been frustrated.

The Case Record

Up to now, this study has tread lightly on the case record because it is an analytical minefield. As ought to be clear by now, the variability with which cases were handled owing to local idiosyncrasies, incompetence, the absence of clear law, and the vicissitudes of political campaigns is dizzying, and without meticulous empirical foundations all but the most general assertions about the state of the law merit steep

discounts. Representations were not necessarily reflective of practice, and standards that applied one year might turn out to be inapplicable the next without warning. Moreover, comparisons across both space and time are difficult because courts did not reliably report statistics according to uniform categories, and even when they used the same labels they might mean different things by them. The purge of legacy personnel during the Judicial Reform Campaign, and their replacement by untrained cadres appears to have dealt not just trial work, but also basic record keeping a blow that took the courts years to recover from.

In the accessible case record, some areas of law are vastly over-represented, while other areas are vastly under-represented. Many decisions have only schematic recitations of facts, and lack detailed reasoning, or a way of ascertaining the final disposition of the case.⁹³⁵ One can therefore read a decision without ever being aware that it was revised on appeal or sent back for retrial, or that a judge a few miles away was deciding a nearly identical set of facts not just within an ordinary margin of discretion, but according to very different inferences about what the law actually was. In short, there are sound methodological reasons why, for the time being, the history of PRC law is one of promulgated policies and anecdotes rather than of systematic case analyses.

Nevertheless, this study must address the work that Beijing's courts actually performed, and what follows is therefore a preliminary sketch based on educated inferences drawn from internal court records and present sources. How Beijing relates to China as a whole is left open because answering that question with more than speculation requires a well-designed, multi-site survey of the sort beyond the scope of this study. Judging from internal reports, most of the caseload originated in the courts of the city's urban core, and these courts had disproportionately high shares of certain types of cases, such as debts, commercial contracts, and housing. But the data does not permit disentangling the precise urban/rural shares of the total caseload or its various components. Given the enormous scope of Beijing's city limits, about half the district courts were located in areas that were predominantly rural.

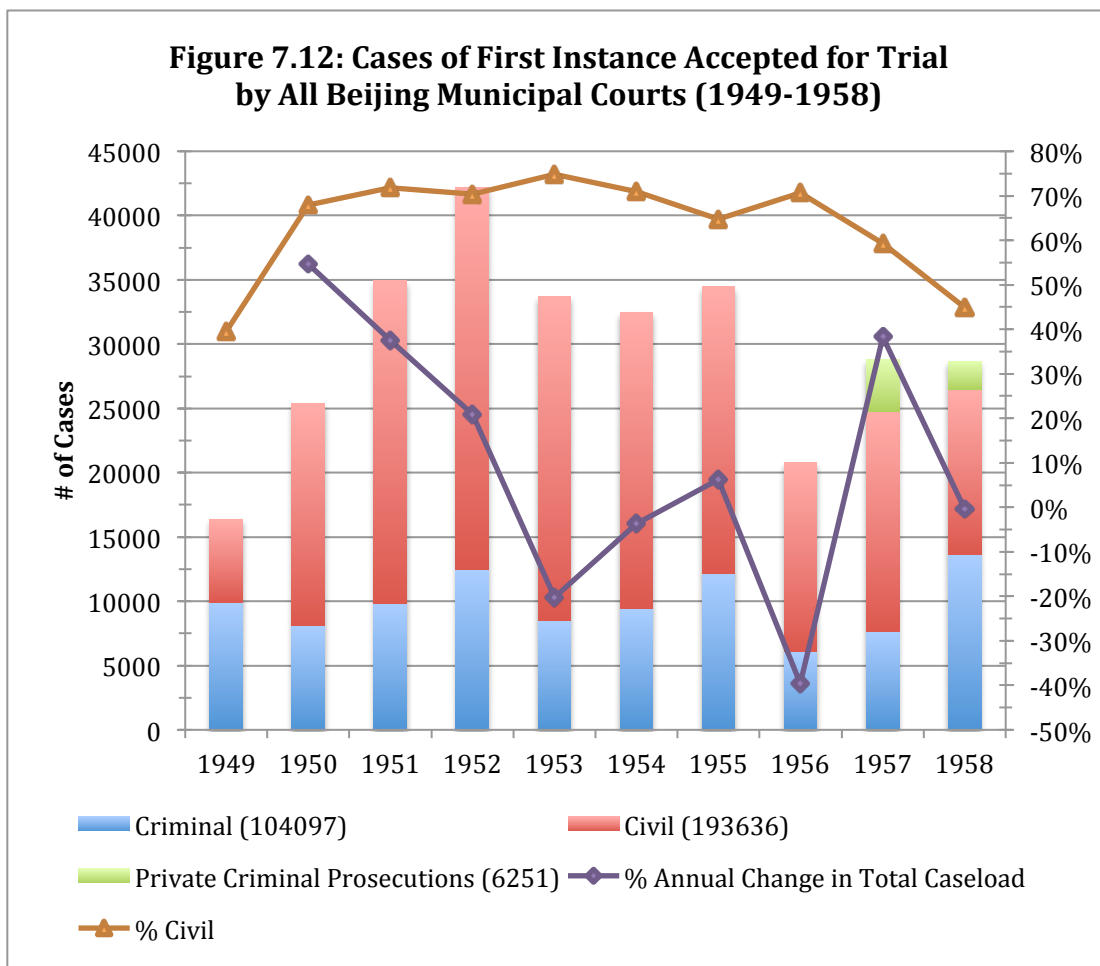
A good place to start is with the basic civil/criminal dichotomy. Between 1949 and 1958, civil cases made up 65 percent of closed cases of first instance in Beijing's municipal courts, and this probably understates the amount of civil casework the courts were actually doing since thousands of civil disputes annually never made it to trial because they were diverted into court-based mediation or resolved as "simple cases" in the people's reception rooms 人民接待室 that handled intake.⁹³⁶ Thus, to the extent that the Western language literature on the early PRC legal system has long focused on matters of criminal law, especially high stakes issues such as counterrevolution and

⁹³⁵ Especially in the years before 1954, judicial reports complain regularly of these kinds of errors. For example, see: *Waichengqu fayuan de jihua, zongjie, baogao* 外城区法院的计划, 总结, 报告. *Waichengqu fayuan de jihua, zongjie, baogao deng* 外城区法院的计划, 总结, 报告等 (1951), BMA 038-002-00038.

⁹³⁶ *Shenpan zhi*, 77, 258.

labor camps, it had missed the lion's share of judicial practice. This literature also takes no notice of the intriguing emergence of private criminal prosecutions towards the end of the 1950s, concurrent with the Anti-Rightist Campaign.⁹³⁷ (Figure 7.12)

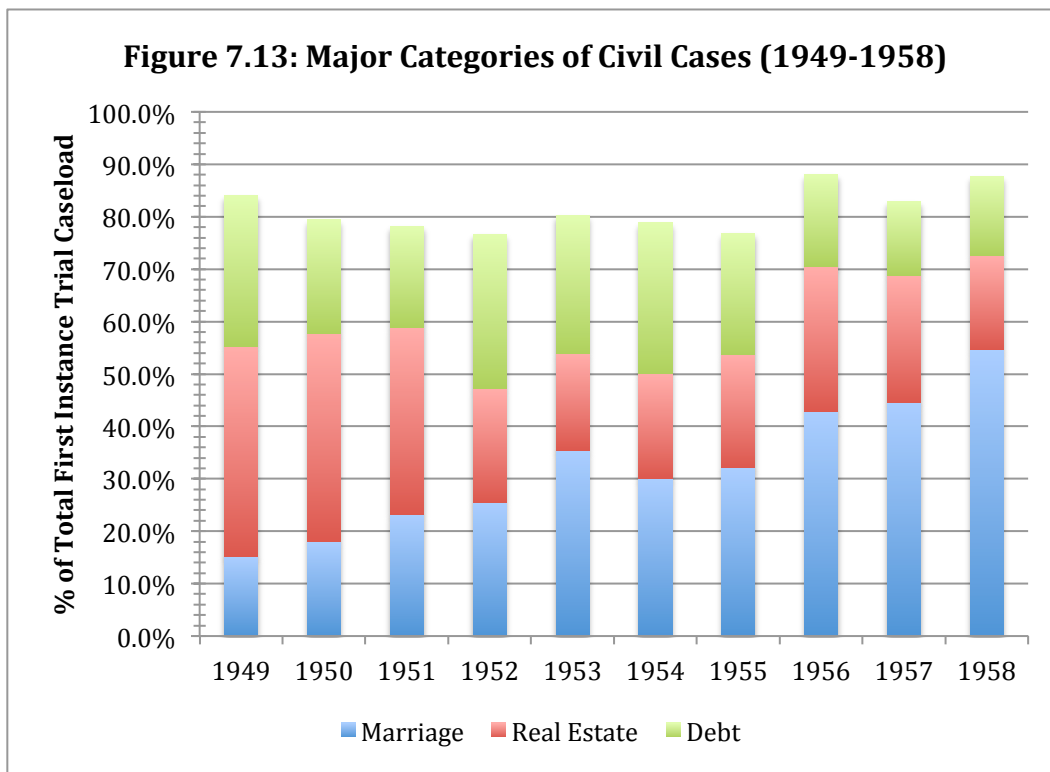
The effect of that campaign on the balance of trial work is immediately discernible; the criminal caseload doubled from 1956 to 1958. The only comparable years were 1952 and 1955, the years of the Three and Five-Anti Campaigns, and the Campaign to Eliminate Counterrevolutionaries, the latter of which also coincided with a drive against social parasites and "hooligans" that briefly resulted in extravagant sentences, such as two years of imprisonment for riding a pedicab without paying, two years for stealing four cucumbers and eating two of them, and fifteen years for a former thief who was arrested and punished simply for "passing frequently by a department store without buying anything or asking about prices." In all three cases, the sentences were later vacated, and the convicts set free on appeal.⁹³⁸



⁹³⁷ Ibid., 501.

⁹³⁸ Beijing shi gao, zhongji renmin fayuan shenpan gongzuo qingkuang de baogao (chugao).

Eighty percent of the total civil caseload came from one of five areas: marriage, real estate (mostly housing), debt, inheritance, and labor relations cases. Marriage cases are especially well-represented in the archival record, and received generous contemporary coverage in state media as proof of the liberation brought by the revolution. (Figure 7.13) Reflecting this source base, marriage cases loom large in the recent historiography on early PRC civil law.⁹³⁹ Marriage cases are of course rich objects of study. All the same, it is probably important to be aware that they accounted for only 35 percent of the first instance civil caseload Beijing's courts closed between 1949 and 1958, a rate around half that of Hebei province as a whole.⁹⁴⁰ Inferences about the nature of Chinese law drawn from them do not necessarily travel far in Beijing. By comparison, debt and housing cases accounted for 55 percent across the same period, and 63 percent from 1949 to 1952, but there is virtually no body of scholarship on them. Here again, we are missing most of the picture.



Another crucial insight leaps from the data. The total civil caseload in 1958 was less than half that of 1951. Neighborhood mediation committees do not appear to have been a major factor in this; in Beijing, they were uncommon in 1951 and gone in 1958,

⁹³⁹ Diamant, *Revolutionizing the Family*; Huang, *Chinese Civil Justice, Past and Present*; Xiaoping Cong, *Self-Determination: Marriage, Law, and Gender Construction in Revolutionary China, 1940-1960* (Cambridge: Cambridge University Press, forthcoming).

⁹⁴⁰ This difference is not surprising because urban areas tended to have more diverse and complex civil relationships. *Hebei sheng shenpan zhi*, 313-314.

having been disbanded two years before because they “did not have any function.”⁹⁴¹ Amid the declining caseload, the annual *share* of marriage cases more than tripled as the decade went on. This was not because the absolute number of marriage cases went up; apart from a spike in 1953 resulting from a campaign to implement the marriage law the annual number was fairly stable during much of the decade. Rather, the change was a function of a drop-off in other areas of civil litigation. Very likely, the socialization of the economy reduced the incidence of justiciable disputes over employment, debts, housing, and other areas of civil law.⁹⁴²

Scholars interested in empirically investigating the changing face of the Chinese economy, and of social relations outside of the family would do well to mine the macro and micro dimensions of these fluctuations. The case record opens a fascinating window into the process of the courts figuring out how to be revolutionary and socialist, and reveals, perhaps more than we might have thought, that they sought to balance interests rather than simply mete out harsh, class-based justice. For instance, in the years immediately after 1949, they puzzled over how to map the web of traditional property rights (e.g. *pudi* 舖底/铺底) on to crude Marxist categories that fit reality poorly.⁹⁴³ Land reform in particular spawned a burst of litigation that touched on these questions. There were many cases in which villagers jointly had rights to land owned by absentee landlords, and when land reform awarded the land to only one of them, the others sued to preserve use. There were cases involving villagers who had agreed to look after the rural family gravesites of city residents. Perhaps because of the civil war, many of the city dwellers had not visited the sites in years, and in the interim the villagers began to cultivate or sublet the properties as their own. Disputes inevitably arose. In one, the court split its decision down the middle. It granted the villager the right to keep the land in production, which served the interests of the villager and state, while also upholding the right of the family to continue using part of the parcel as their gravesite. In another case, someone classified as a landlord pre-emptively gave away his property before land reform stripped it from him. When he was later reclassified as a middle peasant, he sued to get some of it back. The court found against him without having to invoke the politics of land reform at all, on the theory that the property had been gifted.⁹⁴⁴ This case record, in short, shows us vibrant sides of everyday life in the early PRC that have been buried under the attention grabbing, but smaller number of

⁹⁴¹ 1956: *Beijing shi zhongyao wenxian xuanbian* 1956: 北京市重要文献选编, ed. Beijing shi dang'anguan zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, vol. 8 (Beijing: Zhongguo dang'an chubanshe, 2003), 323. *Sifa xingzheng zhi*, 3, 164.

⁹⁴² *Shenpan zhi*, 258, 272, 278, 286-287, 298-299, 312-313, 318-319.

⁹⁴³ Ding Shihua 丁世华, “Jiu Beijing de fangwu pudiquan,” 旧北京的房屋铺底权 *Beijing fangdichan zazhi* 北京房地产杂志 10, (1995): 61-62. *Shenpan zhi*, 302. *Shencha guanyu xiuzheng Beijing shi fangwu zuren de zhanxing guize yiji pudiquan de shixing banfa de baogao zongjie* 审查关于修正北京市房屋租赁的暂行规则以及铺底权的实行办法的报告总结. Shi zhengfa, caimao, gongye, waimao, jiaotong, nonglin, wenjiao xitong guanyu 1954 nian ganbu nian baobiao he zonghe baobiao 市政法, 财贸, 工业, 外贸, 交通, 农林, 文教系统关于 1954 年干部年报表和综合报表 (1954), BMA 123-001-00433.

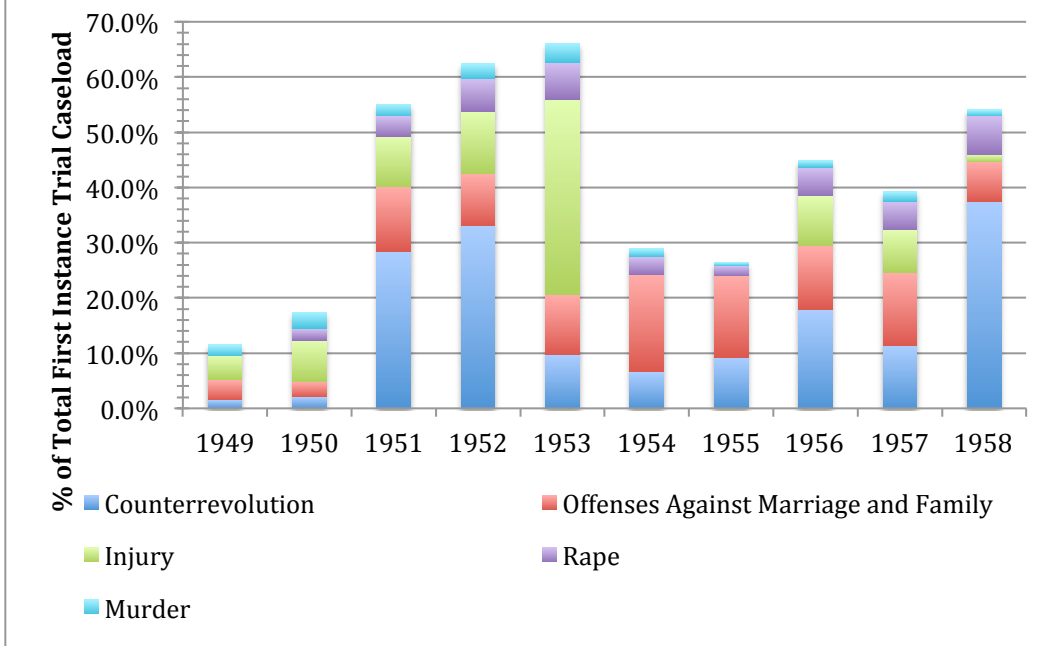
⁹⁴⁴ Waichengqu fayuan de jihua, zongjie, baogao.

cases involving spasms of severe revolutionary justice against groups such as landlords, capitalists, and counterrevolutionaries.

The data on criminal law is unfortunately marred by deep flaws, but worth discussing nonetheless. Broadly reliable figures exist for the total number of criminal cases decided, but data on the individual categories is fragmentary and variable, and in some instances the figures cited in current sources deviate significantly from the numbers that Beijing's courts were reporting internally in real time. This is most apparent with respect to the crime of counterrevolution, in which the figures for 1949-1953 from the 2008 edition of Beijing's official trial gazette far exceed those reported internally by the BMPC to the city's party committee. The grounds for these discrepancies are not clear, but may derive at least in part from different definitions being used.⁹⁴⁵ (Figure 7.14)

⁹⁴⁵ For instance, in 1954, the BMPC reported internally that counterrevolutionary cases represented 4.9 percent of the criminal cases it accepted in 1953. The 2008 judicial gazette puts the figure at 9.7 percent. Quanshi linian lai shou lixing minshi diyi shensusong anjian tongji; *Quanshi linian lai shouli ge leixing anjian tongjitu* 全市历年来受理各类型案件统计图. Laodongju, renshiju, shi fayuan waishichu jiuji fenhui deng 1954 nian shangbannian he jidu gongzuo baogao 劳动局, 人事局, 市法院外事处救济分会等 1954 年上半年和季度工作报告 (1954), BMA 014-002-00053; *Shenpan zhi*, 91-92. Similarly, the BMPC had principal jurisdiction over cases of counterrevolution in the city. It reported that it heard 265 cases of counterrevolution in 1954. But the 2008 gazette reports that the city's courts heard 622 such cases in the same year. While these figures are not wholly incompatible, they raise questions. *Beijing shi geji renmin fayuan guanxia anjian fanwei zhanxing banfa (caoan)* (February 18, 1955) 北京市各级人民法院管辖案件范围暂行办法 (草案). Beijing shi renmin fayuan guanyu choushe zhonggaoji renmin fayuan de qingkuang baogao he gaozhong ji renmin fayuan guanxia anjian fanwei zhanxing banfa caoan 北京市人民法院关于筹设中高级人民法院的情况报告和高中级人民法院管辖案件范围暂行办法草案 (1953), BMA 014-002-00028.

Figure 7.14: Major Categories of Criminal Cases (1949-1958)



The 2008 data on counterrevolution for later years accords better with contemporary sources. It tells us, for instance, that from May 1955 to May 1956, a period that captures much of the intense first phase of the Campaign to Eliminate Counterrevolutionaries, Beijing’s intermediate court heard 1,342 first instance cases of counterrevolution. This court had primary jurisdiction over cases of counterrevolution, and they accounted for one quarter of its total first instance caseload in that period. The high court heard a further 148 second instance cases of counterrevolution in the same period, which accounted for one-third of its total caseload. This is an unexpected finding since counterrevolutionaries did not ordinarily have the right to appeal, and indeed the high court revised or vacated some sentences. Five hundred fourteen of the 558 people held in detention on order of the intermediate court while they awaited determination of their cases were accused counterrevolutionaries, 77 of whom had been locked up for six months or longer. In this latter group, at least some of the cases were delayed over questions of evidence, which indicates that the court was not simply ramming their cases through as it might have done in 1951.⁹⁴⁶ To get a sense of the punishments meted out, from July to December 1955, the most intense period of the campaign, “historical counterrevolutionaries” received the following distribution of sentences: death (118), suspended death (20), indefinite imprisonment (67), more than ten years imprisonment (240), more than five years imprisonment (96), under five years (24).⁹⁴⁷ In short, one-fifth were executed.

⁹⁴⁶ Beijing shi gao, zhongji renmin fayuan shenpan gongzuo qingkuang de baogao (chugao), 4.

⁹⁴⁷ Ibid., 6.

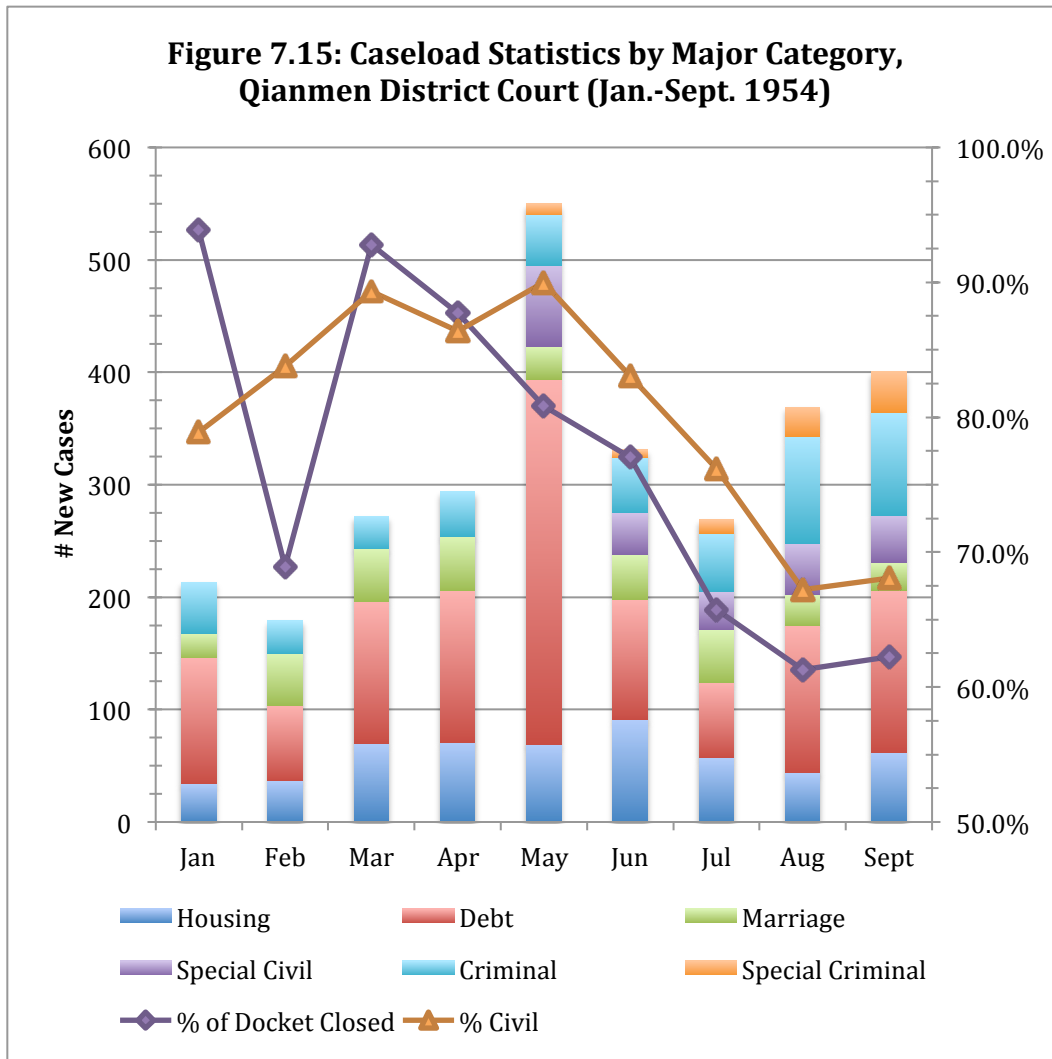
Courts internally kept track of dozens of varieties of crime, but did not report them consistently. Thus, unlike civil law, the data resists abstracting into a handful of broad, stable categories. Between 1949 and 1951, crimes such as counterfeiting or speculating in currency, forgery, fraud, illegal possession of firearms, armed robbery, and banditry all made up significant shares of the criminal caseload, but they declined precipitously as the state restored public order, revived the economy, and tightened its penetration of society. Some old crimes acquired intensely political dimensions, such as speculation in commodities and hoarding during the grain supply crises of 1953 and 1955. Furthermore, new crimes emerged, such as wrecking economic construction, which elevated workplace accidents, missed production targets, and decisions about enterprise management or investment into potential crimes against the state. Most of the crimes were prosaic. Prompted to strike at hooligans, courts in 1955 were suddenly reporting about men groping women on buses, or peeping in on them, and youths who ate generous restaurant meals and then absconded without paying their bills. For illustrative purposes, Figure 7.14 selects a few of the most conventional crimes, and reports their share of the total caseload. That share varied significantly from year to year, and regrettably leaves much of the total criminal caseload unaccounted for. The absence of data does not imply an absence of cases. For instance, in this data set, there are no rape statistics recorded in 1949, or injury cases recorded in 1954-55, though such cases were surely adjudicated.

Even bearing in mind the serious problems with the data, useful insights are discernible. For instance, the share of counterrevolution cases was extremely variable and tied closely to the timing of particular campaigns. During the onset of the 1957 Anti-Rightist Campaign, the relative share of counterrevolution jumped from 11.3 percent of all criminal cases of first instance to 37.5 percent in a single year; in absolute terms the number of cases multiplied by nearly six times. By the same token, counterrevolution had a much lower share of the criminal caseload in between these campaigns, which suggests that the police and the courts did not have a standing preoccupation with counterrevolutionaries, but ramped up prosecutions in response to mobilizations from above, and once that pressure relented, the prosecutions rapidly fell off again to much lower levels. Contemporary internal reports corroborate this rhythm, which pitches the baseline of criminal practice in the early PRC in a different place than our historiography might suggest, and brings the cycles of excitation and dissipation that shaped the impact of the revolution on the courts into sharper relief.

For finer grain resolution, we can examine an October 1954 report by the Qianmen district court, which provides a nine-month breakdown of its caseload for the year.⁹⁴⁸ Qianmen was admittedly unusual in that it hosted the most sophisticated district level court in Beijing, and was the commercial hub for the city. Accordingly,

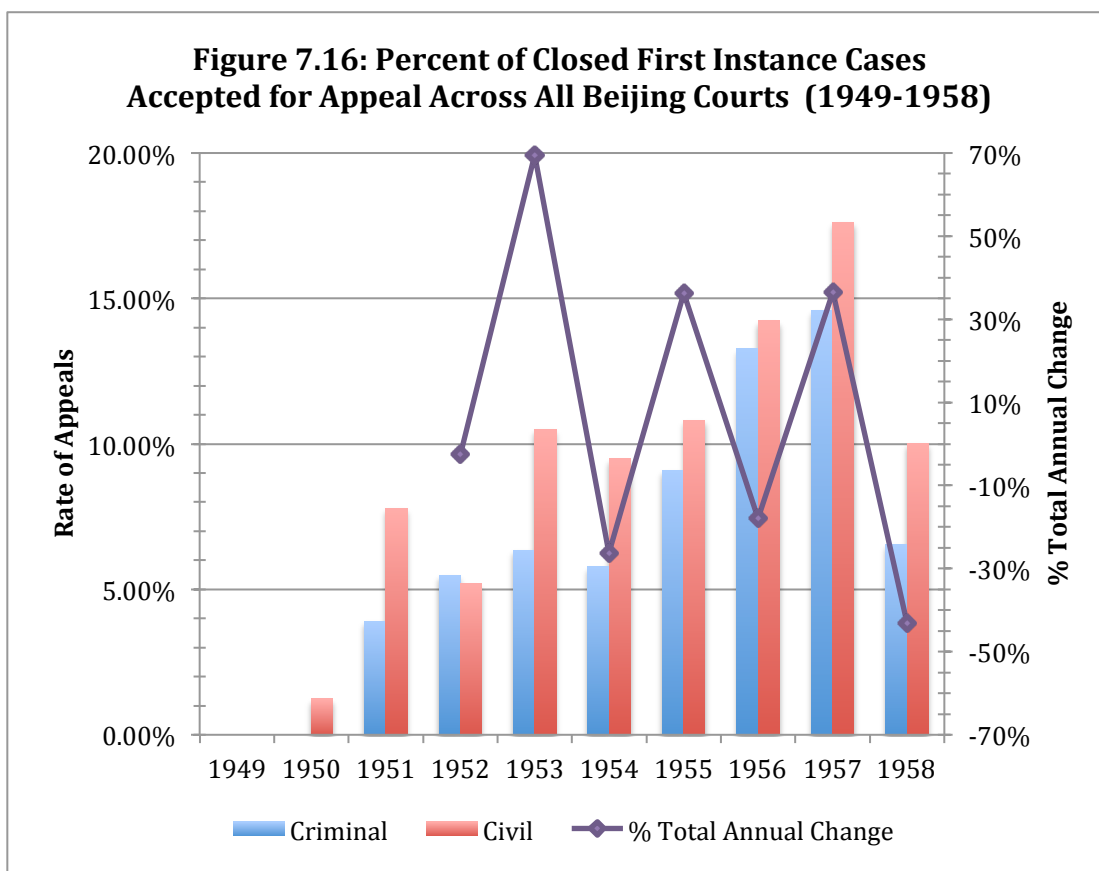
⁹⁴⁸ *Beijing shi Qianmen qu renmin fayuan yijiuwusi nian disan jidu gongzuo zongjie (October 20, 1954)* 北京市前门区人民法院一九五四年第三季度工作总结. Beijing shi Qianmen qu renmin fayuan yue, ji gongzuo jihua zongjie, zonghe baogao, xingshi panjue deng 北京市前门区人民法院月, 季工作计划总结, 综合报告, 刑事判决等 (1954), BMA 038-002-00119.

between January and September 1954, the court accepted 2,878 cases, of which 80 percent were civil. Marriage cases occupied only 12 percent of the total caseload, while housing and debt cumulatively occupied a 61 percent share. The statistics also demonstrate a recurring cycle. Courts endeavored to start every year with a clear docket, but as the year progressed backlogs steadily accumulated. On average, the court closed 23 fewer cases than it took on every month. It began the year with 14 pending cases, but by September the number had snowballed to 264, which was equivalent to 18 days of work at the prevailing closure rate.⁹⁴⁹ The solution was always the same; at some point, the court would have to mobilize to clear those cases so that it could start the next year fresh. One therefore wonders whether cases tried in November received less care than those tried in January. (Figure 7.15)



⁹⁴⁹ Ibid.

For the same year, the BMPC accepted 4,673 cases, of which 2,100 were first instance, and 2,573 were second instance.⁹⁵⁰ Among its first instance cases, the court handled 265 cases of counterrevolution, 33 of which led to death sentences (a small but unspecified number of which were suspended). Twelve cases of counterrevolution remained open awaiting determination of a sentence of either death or suspended death (which usually entailed life imprisonment). The municipal court system as a whole carried out 422 death sentences for the year, 400 of which were handed down by the military law office, and only 22 were handled by the court's regular criminal tribunal.⁹⁵¹ When the military law office closed in 1955, primary jurisdiction for counterrevolution passed to the intermediate court.



On appellate level work, the data is also problematic. Figure 7.16 is based on the 2008 edition of Beijing's judicial gazette.⁹⁵² According to this source, from 1951 to 1958, about nine percent of closed cases of first instance were accepted for appeal. Of note, the BMPC reported at the time that in 1953 and 1954 the rate of appeals in certain types of cases ran as high as 20 percent.⁹⁵³

⁹⁵⁰ Shixing xin de shouan fanwei hou geji fayuan de shouan shu.

⁹⁵¹ Beijing shi geji renmin fayuan guanxia anjian fanwei zhanxing banfa (caoan) (February 18, 1955).

⁹⁵² *Shenpan zhi*, 77, 258.

⁹⁵³ Beijing shi geji renmin fayuan guanxia anjian fanwei zhanxing banfa (caoan) (February 18, 1955).

We can get a sense of what kinds of cases were being appealed by looking at a table the BMPC prepared as it was on the cusp of closing. The court mapped its actual 1954 caseload on to the new jurisdictional rules that were taking effect in 1955 in order to get a sense of what the projected appellate load for the city's new intermediate court might be.⁹⁵⁴ The total 1954 caseload in the municipal judicial system was 32,437 cases.⁹⁵⁵ The BMPC expected that, under the new jurisdictional rules, the intermediate court might receive 2,817 appeals. Criminal cases were under-represented at the appellate level: 31 percent of first instance cases closed were criminal, but only 21 percent of appeals were. (Figure 7.17) Counterrevolutionaries were not entitled under the law to appeal.

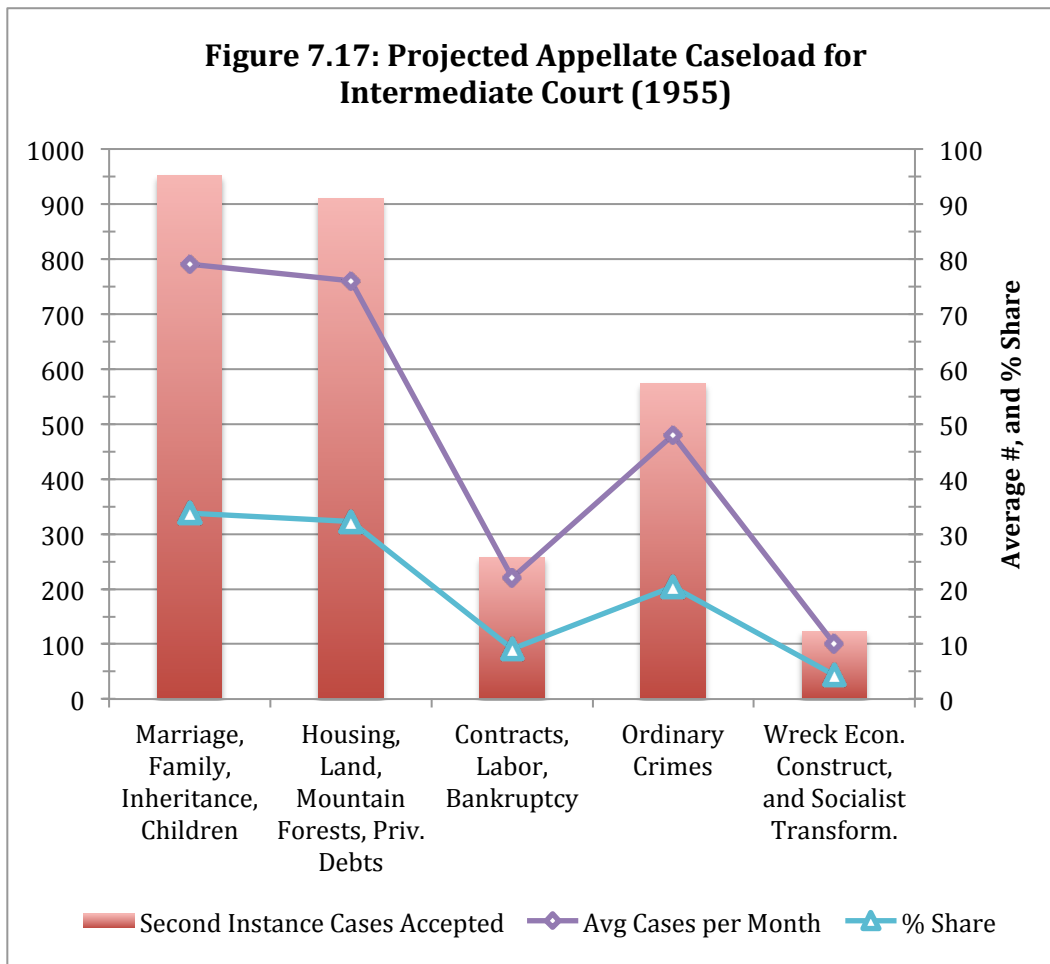


Figure 7.17 provides a useful guide to actual conditions in 1954, but it turned out to have been a poor prediction of 1955. In his 1957 report on the work of Beijing's high and intermediate courts, Wang Feiran cited rates of appeal for 1955 and 1956 more than double that of previous years, and double what the 2008 edition of the gazette reports. What changed? The adoption of the 1954 Law on the Organization of the

⁹⁵⁴ Ibid.

⁹⁵⁵ Shixing xin de shouan fanwei hou geji fayuan de shouan shu.

People's Courts in September guaranteed the right to appeal, courts were being told not to obstruct its exercise, and parties were availing themselves of it vigorously. Interestingly, Wang notes that one quarter of the appeals resulted in revisions to the original decisions.

In 1955, 22 percent of cases of first instance were appealed. In 1956, the figure rose to 32 percent. According to statistics from an investigation into appeals conducted at the end of 1956 by the intermediate court, among cases in which the original decision was appealed or protested (by the procuratorate), 65 percent of the original verdicts were upheld, 9.9 percent were sent back for retrial, and more than 25 percent were revised.⁹⁵⁶

Wang does not tell us what proportion of these revised verdicts was criminal in nature, or how many of those were revised up rather than down. But the internal reports on wrongly decided cases from this period are absolutely clear that while some sentences were reduced or vacated, others were increased on appeal, including cases of counterrevolution and theft, because the higher court weighed the facts and any applicable mitigating or aggravating circumstances differently.

The foregoing merely sketches the broad outlines of the trial work Beijing's courts performed from 1949 to 1958. Clearly, much more research needs to be done before we can move beyond fragmentary anecdotes to characterize the caseload more deeply, examine how notions of class struggle conditioned it as a whole, and relate it to judicial practice on a national level. Integrating into that data the parallel streams of court-based mediation and simple case resolution, which handled thousands of disputes in this period, including minor crimes, remains an outstanding challenge. It is not clear if the judicial system generated enough data of sufficient quality to support such inquiries, and until then, like the parable of the blind men and the elephant, we are only guessing at the nature of legal practice from the slivers we have access to, conditioned by the assumptions we bring to them.

⁹⁵⁶ Wang Feiran 王斐然, "Guanyu Beijing shi gao, zhongji renmin fayuan gongzuo de baogao (zhaiyao) (July 27, 1957),"关于北京市高, 中级人民法院工作的报告(摘要) in *Beijing shi renmin daibiao dahui wenxian ziliao huibian 1949-1993* 北京市人民代表大会文献资料汇编 1949-1993, ed. Beijing shi dang'anguan 北京市档案馆, (Beijing: Beijing chubanshe, 1996), 394.

Chapter 8

A Catastrophic Reckoning (1957-58)

*“The Beijing Court has rotted, Peng Zhen reported to Mao Zedong during the Anti-Rightist Movement. Mao answered with a laugh, “Rotted. Fine! [We] can make another.”*⁹⁵⁷

By many measures, the PRC judicial system was poised to cross a threshold in 1956. The courts had grown dramatically and were well along in the transformation of their untutored recruits into a flawed but functioning judiciary. Legal education had been reconstructed and was on the cusp of finally generating the “high-level legal experts” judicial policymakers had been thirsting for since 1949. Major codification projects in the realms of civil and criminal law were advancing steadily, and the political environment seemed as congenial as it had ever been.

In September 1956, the CCP held its Eighth Party Congress, the first such gathering since 1945. Earlier in the year, Khrushchev dropped a bombshell at the Soviet Twentieth Party Congress in Moscow, fingering Stalin, his cult of personality, and the secret police for “mass acts of abuse against socialist legality.”⁹⁵⁸ Cracks were appearing in the edifice of Stalinism, and would soon propagate across the socialist bloc.

At the Eighth Party Congress, Liu Shaoqi and Dong Biwu endorsed legal construction in the strongest terms yet, and openly revived the spirit of their earlier collaboration to build a fully-appointed legal system in the NCPG. Speaking on behalf of the Central Committee, Liu said,

[O]ne of the urgent tasks facing our state at present is to begin the systematic codification of a fairly complete set of laws and to put the legal system of the country on a sound footing...the period of revolutionary storm and stress is past, new relations of production have been set up, and the aim of our struggle is changed into one of safeguarding development of the productive forces of society, a corresponding change in the methods of struggle will consequently have to follow, and a complete legal system becomes an absolute necessity...All state organs must strictly observe the law, and our security departments, procurator’s office and courts must conscientiously carry out the system of division of function and mutual supervision in legal affairs.⁹⁵⁹

Dong echoed those sentiments, and wrapped them in his slogan “handling affairs according to law” 依法办事, which had lain largely quiescent for eight years but now made an assertive comeback.⁹⁶⁰

The Party’s Central Committee calls on all public security organs, procuratorates, law courts and all other state organs to conduct their affairs according to law. I believe that doing everything

⁹⁵⁷ Zhang Sizhi, “Guaidan moming faguan lu”.

⁹⁵⁸ Nikita Khrushchev, “The Cult of the Individual,”

<http://www.theguardian.com/theguardian/2007/apr/26/greatspeeches2> (accessed July 29, 2015).

⁹⁵⁹ Shaoqi Liu, “The Political Report of the Central Committee of the Communist Party of China to the Eighth National Congress of the Party (September 15, 1956),” in *Eighth National Congress of the Communist Party of China: Documents*, (Beijing: Foreign Languages Press, 1981), 83-84.

⁹⁶⁰ Dong Biwu, “Lun xin minzhuzhuyi zhengquan wenti (October 16, 1948),” 41.

according to law is a most important link in the forging of a sounder and stronger people's democratic legal system. To do things according to law has two aspects: First there must be laws to go by...Second, laws must be complied with...We oppose all arbitrary, illegal acts and anything which departs from the regulations. From now on, all those who consciously violate the law must be dealt with according to law, no matter how high their present position and however great their services in the past...To do things according to law is one of the principal methods of getting rid of the attitude of disregarding and refusing to abide by the legal system of the state.⁹⁶¹

There was an unmistakable political dimension to these statements. Mao's position had weakened because of a grain supply crisis in 1955, and an abortive push to accelerate collectivization, known as the socialist high tide (1955-1956). With Liu Shaoqi's guidance, the CCP congress voted to remove references to Mao Zedong Thought from the Party constitution, and a parade of speakers then touted the principle of collective leadership.⁹⁶² Moreover, Khrushchev's pointed attacks on Stalin and the cult of personality were undermining Mao's prospects for making a full comeback. Calls by Liu and Dong to build up the authority of the law and for state organs to submit to it threatened to box Mao in further and sheath some of the most powerful weapons in his arsenal.

Specifically, Liu and Dong argued that the era of leading "the masses in direct action" was over. As Dong put it, the mass revolutionary movements that had characterized the earliest years of the PRC, while appropriate to the time, were prone to "manifestations of the anarchist thinking of the petty-bourgeoisie," and had given rise to "indiscriminate disregard for all legal systems." They lacked "the perseverance, the sense of organization and discipline, and steadfastness" current goals required.⁹⁶³ The logic of that position promised to clip the power of officials to act outside of regular bureaucratic channels, including not least of all Mao, who had a history of stirring up the masses to achieve his ends. Meanwhile, asking public security organs to conduct their affairs according to law, and subject to mutual supervision from the courts and the procuratorates challenged the customary impunity with which those organs had executed Mao's will. This was not idle talk. In the Soviet Union, the NKVD was taking a lashing from Khrushchev, who had earlier arranged for Beria, its feared leader, to be shot.

In spite of these developments, two years later, Mao was again ascendant, and the PRC judicial system was reeling from the most intense and destructive onslaught of purges and ideological attacks it had ever experienced. At a secret leadership retreat at Beidahe in August 1958, Mao captured how much the ground had shifted by alluding to the aftermath of the rectification campaign he had launched fifteen years before, when

⁹⁶¹ Dong, "Speech By Comrade Tung Pi-Wu (September 19, 1956)," 95.

⁹⁶² Lorenz Lüthi, *The Sino-Soviet Split: Cold War in the Communist World* (Princeton: Princeton University Press, 2008), 53.

⁹⁶³ Dong, "Speech By Comrade Tung Pi-Wu (September 19, 1956)," 92-93; Liu, "The Political Report of the Central Committee of the Communist Party of China to the Eighth National Congress of the Party (September 15, 1956)," 83.

mediation swallowed up adjudication, and the budding Ma Xiwu style derailed Li Mu'an's attempts to promote higher judicial standards and the rule of law.

Having no law will not do. But we have Ma Qingtian's [Ma Xiwu], which is good, investigate and study, resolve things on the spot, stress mediation. Since the Great Leap, everyone is engaged in production, and fully airing views on big character posters. There is no time to break the law. Not relying on the masses to deal with thieves will not do. (Liu XX [Shaoqi] interrupts: in the final analysis, is that the rule of law or the rule of men?) In actuality, law relies on people. Law can only be a guide to handling matters...We have so many civil laws and criminal laws. Who can remember them? I participated in the drafting of the constitution and I don't even remember it. Han Feizi spoke of the rule of law, later the Confucians spoke of the rule of men. Every one of our resolutions is law, holding meetings is law...Our various regulatory systems, the majority, 90 percent are written by [bureaucratic] departments, we basically don't rely on them, but rely mainly on resolutions, and on meetings, hold four per year, but do not rely on civil and criminal law to preserve order.⁹⁶⁴

Scholars have scrutinized the pivot between 1956 and 1958 from a variety of angles, but its legal dimensions have received only glancing attention.⁹⁶⁵ We know them principally through the criticisms non-Party jurists and intellectuals lodged against the legal system during the Hundred Flowers Campaign of late 1956 and early 1957, and through the Anti-Rightist backlash that immediately followed.⁹⁶⁶ These trenchant exchanges received generous coverage in contemporary Chinese newspapers and law journals, and are therefore easy to access.⁹⁶⁷

⁹⁶⁴ Mao Zedong 毛泽东, "Zai Beidaihe zhengzhiju kuoda huiyi shang de jianghua (si)," in 北戴河政治局扩大会议上的讲话 (四) in *Mao Zedong sixiang wansui (1958-1960)* 毛泽东思想万岁 (1958-1960), (n.d.), 109.

⁹⁶⁵ Andrew G. Walder, *China Under Mao: A Revolution Derailed* (Cambridge: Harvard University Press, 2015). Frederick C. Teiwes and Warren Sun, *China's Road to Disaster: Mao, Central Politicians, and Provincial Leaders in the Unfolding of the Great Leap Forward, 1955-1959* (Armonk: M.E. Sharpe, 1999). Roderick MacFarquhar, *The Origins of the Cultural Revolution: Contradictions Among the People, 1956-1957*, vol. 1 (New York: Oxford University Press, 1974). Dikötter, *The Tragedy of Liberation: A History of the Chinese Revolution, 1945-1957*.

⁹⁶⁶ *Zhengfajie youpai fenzi miulun huiji*; Roderick MacFarquhar, *The Hundred Flowers Campaign and the Chinese Intellectuals* (New York: Octagon, 1960); Guo Daohui, Li Buyun, and Hao Tiechuan, *Zhongguo dangdai faxue zhengming shilu*; Tie Li, Lu Jinbi, and Yang Liming 铁犁, 陆锦碧, and 杨黎明, "1957 nian cuopi Yang Zhaolong de 'falü ji chenglun' jishi, jianguo yilai faxuejie zhongda shijian yanjiu (ba)," 1957 年错批杨兆龙的 '法律继承论' 纪实, 建国以来法学界重大事件研究(八) *Faxue* 法学 no. 1 (1998): 3-6; Ding Shu 丁抒, *Yinmou: fanyoupai yundong shimo* 阴谋: 反右派运动始末 (Xianggang: Kaifang zazhishe, 2007). Feng Yingzi 冯英子, "1957 nian de Wang Zaoshi: jianguo yilai faxuejie zhongda shijian yanjiu (shi)," 1957 年的王造时: 建国以来法学界重大事件研究(十) *Faxue* 法学 no. 3 (1998): 2-3; He Jixiang, *Hu shang fazhi meng*; Chen Xiahong 陈夏红, "1949 nian hou de Qian Duansheng," 1949 年后的钱端升 *Dushu wenzhai* 读书文摘 no. 5 (2008): 30-35. Leng, *Justice in Communist China: A Survey of the Judicial System of the Chinese People's Republic*, 54-63; Cai Dingjian, *Lishi yu biange: xin zhongguo fazhi jianshe de licheng*, 82-88. Zhao Chunyan, *Zuichu de lixiang: xin zhongguo jianguo chuqi de fazhi huayu yu shijian*.

⁹⁶⁷ Rich sources include the newspapers *People's Daily* 人民日报, *Guangming Daily* 光明日报, *Beijing Daily* 北京日报, *Shanghai's New People's Daily* 新民报, and the law journals *Zhengfa yanjiu* 政法研究, *Faxue* 法学, *Renmin sifa* 人民司法, *Renmin sifa gongzuo* 人民司法工作, and *Huadong zhengfa xuebao* 华东政法学报.

They centered on several major themes, namely: the lack of comprehensive law codes, the tangle of poorly drafted, inconsistent rules and regulations issued haphazardly by organs at every level, the ideological subordination of law to politics, the injustice of class struggle, the mistreatment of Nationalist-era jurists and the squandering of their talents, the corresponding poor quality and incompetence of judicial cadres, the regular interference of Party organs in legal matters, particularly the disregard for adjudicatory independence, and various questions related to the right of criminal suspects to be presumed innocent or given the benefit of the doubt by judges.⁹⁶⁸

The fingerprints of revolutionary dualism are plain to see. In masterful fashion, CCP polemicists seized control of the narrative early, explaining the controversies over law mostly by externalizing them. They reached into the Party's ideological toolbox for polarizing filters that could cast events in binary terms. Specifically, they distinguished the Party's own orthodoxy sharply from those "capitalist rightists who used the opportunity of national rectification to savagely attack our people's democratic legal system."⁹⁶⁹ A cascade of ferocious denunciations against the old law standpoint then exploded forth, torn from the script of earlier campaigns. Some of the combatants even rehashed the Judicial Reform Campaign.⁹⁷⁰

To a remarkable degree, outside observers have taken this staging at face value and adopted its seductive conventions. At first blush, it works brilliantly because it overlays neatly on to the cognitive maps we have internalized about the 1949 revolution, and therefore fits our sense of where the salient fault lines lay. Most of the best-known targets slot in perfectly, vulnerable for their prominence in the Nationalist-era and their Western educations, figures such as Luo Longji, Qian Duansheng, Wang Tiewa, Wang Zaoshi, Yang Zhaolong, and Zhang Bojun.⁹⁷¹ It hardly matters which side one roots for because either way the core duality holds. The climax is a set-piece battle populated by archetypal heroes and villains, according to one's preferences. It fully embodies the CCP's way of seeing the world. But it has also led us astray.

Without in any way denigrating their extraordinary courage, conviction, and sacrifice, or the cogency of their arguments, by 1956 most of the prominent critics that

⁹⁶⁸ A useful summary of the debates appears in: Leng, *Justice in Communist China: A Survey of the Judicial System of the Chinese People's Republic*, 54-63; and Cai Dingjian, *Lishi yu biange: xin zhongguo fazhi jianshe de licheng*, 82-88.

⁹⁶⁹ *Zhengfajie youpai fenzi miulun huiji* 政法界右派分子谬论汇集, ed. Zhongguo zhengzhi falü xuehui ziliaooshi 中国政治法律学会资料室 (Beijing: Falü chubanshe, 1957).

⁹⁷⁰ Tao Xijin, "Lun sifa gaige". Tao Xijin 陶希晋, "Falüjie de douzheng," 法律界的斗争 *Renmin ribao* 人民日报, September 13, 1957. , Zhou Jihu 周继湖, "Bochi zichan jieji youpai dui sifa gaige yundong de wumie," 驳斥资产阶级右派对司法改革运动的诬蔑 *Zhongnan zhengfa xueyuan xuebao* 中南政法学院学报 2, (1957): 34-39.

⁹⁷¹ One notable exception is Lin Xiling, a law student at People's University who was perhaps the most famous student critic of the regime during the Hundred Flowers Campaign. During her course of study, she had participated in one of her law department's court practicums. Walder, *China Under Mao: A Revolution Derailed*, 143. *Zhengfajie youpai fenzi miulun huiji*.

define our understanding of this episode were already impotent and marginal -- frustrated exiles in their own country. No matter how attractive their ideas may have been, those ideas were not self-executing. Taking them as more than poignant remonstrations requires showing that they had traction among others more central to the operation of the legal system, that is to say those with power. Given that Party members monopolized those positions, we have no choice but to plunge into the heart of CCP legal discourse and practice – not just the rarified public record of formal policy declarations and academic controversies, but also more importantly the subterranean traces of how cadres on the ground actually brought their courts to life – goals this study has tried to achieve, and which this chapter brings to conclusion.

Consider that in 1957 the CCP could have dealt with the critics of the PRC legal system in many ways; making extravagant examples of them, as it actually did, is not the most obvious choice, and begs some explanation. It is true that they commanded moral authority on account of their learning and former accomplishments, but that was hardly an impediment to simply squelching the controversies they had stirred up, arresting them, and moving on. Evidently, the CCP had much grander ambitions than that; it needed them as scapegoats for a larger battle that was kept mostly out of sight. Since the early 1940s, every major inflection point in the legal system's trajectory began with a galvanizing attack on vulnerable outsiders, particularly those who could be tarred with the old law standpoint. As during abrogation and the Judicial Reform Campaign, they provided the necessary foil against which the Party could define and purify itself, and they were therefore singled out and isolated as rallying points against which to mobilize a scorching inward rectification. Instead of burying their criticisms, the CCP took the supremely confident step of compiling, publishing, and widely disseminating them as study materials, along with accompanying rebuttals, so that absolutely everyone in the legal community would know exactly where to stand, and have sharp hooks upon which to impale one another.⁹⁷²

Indeed, in September 1957, the preface to one of these early compilations ended with an ominous solicitation, "The materials chosen were mainly reactionary speeches made by rightists from the legal community during the [external phase of the] rectification campaign, and include fallacies related to the legal system made by other rightists in society or published before the rectification campaign. We are planning to successively gather articles with these fallacies and those criticizing them, and hope that readers will offer opinions and furnish [us] materials."⁹⁷³ Major law journals did their part; for more than a year they poured out articles pillorying *ad nauseum* people and ideas they had only recently published.

One can read this voluminous record and come away none the wiser about the internal dimensions of the Anti-Rightist rectification. It is like witnessing a bloody

⁹⁷² *Zhengfajie youpai fenzi miulun huiji. Wei baowei shehuizhuyi fazhi er douzheng: zhengfajie fanyoupai douzheng lunwen xuanji* 为保卫社会主义法制而斗争: 政法界反右派斗争论文选集, ed. Zhongguo zhengzhi falü xuehui ziliaoshi 中国政治法律学会资料室 (Beijing: Falü chubanshe, 1958).

⁹⁷³ *Zhengfajie youpai fenzi miulun huiji.*

parking lot brawl between rival fans, while the main event is taking place inside, out of view. Apart from a few tantalizing clues, we do not know the extent to which the courts shared in the ferment of this period, or even the scope of their exposure to the reprisals against it.⁹⁷⁴ Were the cleavages really reducible to the antagonism between the CCP on the one hand, and a loose collection of daring academics and cast-off Republican intellectuals on the other, or did they extend deeper, and more treacherously, within the Party and legal system themselves? The answers matter a great deal because they go to the heart of how we understand the CCP, its revolution, and the traditions it claims to represent.

Party and State

A good way to explore these questions is to consider some of the points Dong Biwu raised in his speech to the Eighth Party Congress.

[O]ur Party is the nucleus of our country's leadership. But our Party has made a strict and clear-cut distinction between Party organizations and state organs. The Party guides the state organs through its own members and its own organizations, but does not take the affairs of state organs into its own hands. This is a principle we have always insisted on. The state under the leadership of the working class must establish a perfect legal system so as to be able to perform the function of the state more effectively and protect the rights of the people. It is the legal system which tells the state organs and citizens what is permitted by the state and what is not. That is why, if only we work within the framework of the legal system, we shall be able to work better and more successfully.⁹⁷⁵

As a description of reality, that excerpt is empirically false. Nevertheless, it would be a mistake to regard Dong's statement as a sop, lacking real meaning or consequence. Against the background of an ongoing struggle within the regime over exactly how to balance the relationship between state and Party, Dong's positions had an acute political edge, not least of all because their subtext angled for a redistribution of power. Let us look at that more closely.

First, we must recognize that actual lines of authority in the judicial system were far more fluid and contested than the organization charts imply, which was both a feature and a bug. For instance, in December 1951, five central-level legal organs informally consolidated their administrative operations into a single general office in

⁹⁷⁴ Ruo Quan, and He Fang 若泉 and 何方, "Buxu cuangai renmin fayuan de xingzhi bo Jia Qian deng ren 'shenpan duli' 'youliyu beigao' deng miulun," 不许篡改人民法院的性质: 驳贾潜等人'审判独立' '有利于被告'等谬论 *Renmin ribao* 人民日报, December 24, 1957; Feng Ruoquan 冯若泉, "Bo Jia Qian de 'shenpan duli' de fandang miulun," 驳贾潜的'审判独立'的反党谬论 *Zhengfa yanjiu* 政法研究 no. 1 (1958): 18-23; Jia Yangzhou, and Su Delin 贾仰周 and 苏德林, "Bo Lu Mingjian deng ren zai renmin fayuan de xingzhi he renwu fangmian de miulun," 驳鲁明健等人在人民法院的性质和任务方面的谬论 *Renmin sifa* 人民司法 no. 1 (1958): 24-25.

⁹⁷⁵ Dong, "Speech By Comrade Tung Pi-Wu (September 19, 1956)," 88-89, 91.

Beijing to reduce expenses and utilize scarce personnel more efficiently.⁹⁷⁶ This office coordinated the work of the courts nationwide during the Three-Anti-, Five-Anti, and Judicial Reform Campaigns. Likewise, Beijing's high, intermediate, and district level courts operated a shared general office in the middle of the decade. Beyond that, during political campaigns, the local PSB, procuratorate, and court in a given locality might set up a temporary joint office to coordinate and speed the handling of cases. Senior officials, such as Peng Zhen, praised such "cooperation" as mutually beneficial.⁹⁷⁷ Some localities went further, adopting the radical base area convention of merging legal organs outright. Dong Biwu criticized that as a step too far, but particularly during the Anti-Rightist Campaign, when his influence had ebbed, such mergers were common.⁹⁷⁸ They favored the already powerful public security bureau, weakened adjudication and sometimes obviated it all together, facilitating countless abuses.⁹⁷⁹

More importantly, following Leninist conventions, Party and state authorities shared dual authority over Beijing's municipal-level courts. On the Party side, the hierarchy began with the BMPC's internal Party group 党组, and led successively upwards to the municipal Party committee, the CCP's North China bureau (until it was abolished in 1954), and finally the Central Committee. On the state side, the courts initially reported directly to the municipal people's government. To provide integrated leadership over the various organs in the city's legal system, in 1953 the municipal government established a political-legal committee (PLC) 政法委 led by Zhang Youyu and Wang Feiran.⁹⁸⁰ Unlike today's PLCs, this was a state rather than Party organ. For affairs of greater importance, the chain of command branched upwards to the North

⁹⁷⁶ "Dui Dong Biwu deng guanyu wu jiguan heshu bangong ji kaizhan sanfan douzheng qingkuang baogao de fuxin (December 30, 1951),"对董必武等关于五机关合署办公及开展三反斗争情况报告的复信 in *Jianguo yilai Mao Zedong wengao: yijiuwuyi nian yi yue yijiuwuyi nian shier yue* 建国以来毛泽东文稿: 一九五一年一月—一九五一年十二月, (Beijing: Zhongyang wenxian chubanshe, 1988). The organs were the political-legal committee of the Government Administration Council, the Supreme People's Court, the Supreme People's Procuratorate, the Legal Affairs Committee, and the Ministry of Justice.

⁹⁷⁷ Peng Zhen 彭真, "Guanyu zhengfa gongzuo de qingkuang he muqian renwu (May 11, 1951),"关于政法工作的情况和目前任务 in *Lun xin zhongguo de zhengfa gongzuo* 论新中国的政法工作, (Beijing: Zhongyang wenxian chubanshe, 1992), 26.

⁹⁷⁸ Dong Biwu, "Guanyu gaige sifa jiguan ji zhengfa ganbu buchong, xunlian zhu wenti (June 24, 1952)," 127.

⁹⁷⁹ Hou Meng 侯猛, "Dang yu zhengfa' guanxi de zhankai: yi zhengfa weiyuanhui wei yanjiu zhongxin," '党与政法'关系的展开: 以政法委员会为研究中心 *Faxuejia* 法学家 no. 2 (2013): 4. Zhang Peitian 张培田, "Xin zhongguo shenpan zhidu quzhe yanbian de shishi kaolun (1957-1976)," 新中国审判制度曲折演变的史实考论 (1957-1976) *Gansu zhengfa xueyuan xuebao* 甘肃政法学院学报 no. 80 (2005): 26-37.

⁹⁸⁰ *Guanyu benfu gongzuo ren yuan ren ming de gexiang mingdan* 关于本府工作人员任命的各项名单. Beijing shi zhengfa weiyuanhui zhuren, fu zhuren mingdan he qiyong yinxin de baogao 北京市政法委员会主任, 副主任名单和启用印信的报告 (1953), BMA 014-001-00001; *Beijing shi renmin zhengfu zhengzhi falü weiyuanhui zhanxing zuzhi guicheng* 北京市人民政府政治法律委员会暂行组织规程. Shifu guanyu jiaqiang zuzhi lingdao de jixiang guiding, zhengfa weiyuanhui zhanxing zuzhi guicheng 市府关于加强组织领导的规定, 政法委员会暂行组织规程 (1953), BMA 002-005-00174.

China Executive Committee, the Ministry of Justice, and the PLC of the Government Administration Council (GAC), led by Dong Biwu with Peng Zhen as his deputy.

The 1954 Constitution modified these arrangements in multiple ways. First, it eliminated the North China macro-region, and the CCP's North China bureau and executive committee. Second, it formalized dual executive and legislative oversight over the courts. In the case of Beijing, district committees, and the municipal PLC and government retained routine leadership and coordinating functions, but courts at every level now also had to answer to their respective people's congresses, too. Third, at the central level, the Constitution abolished the GAC and its powerful PLC. Dong Biwu lost his post as vice premier and his commanding position astride the legal system, moving to the less influential post of Supreme People's Court president. Fourth, general supervisory authority over executive legal organs passed to Office Number One at the new State Council, led by minister of public security Luo Ruiqing.

As the young regime worked out the proper relationship between Party and state, the boundaries between them in the legal system were exceedingly porous and changeable. Recall that in 1948, both Liu Shaoqi and Dong Biwu aspired to pull the Party back a step from day-to-day administration in order to give the nascent NCPG state room to grow and develop. In Party circles, this concept became known as "democratic regime construction" 民主建政, and Dong articulated a clear vision of it for the PRC in 1950.⁹⁸¹ The BMPC was born in that space, and the Qianmen court taught cadres about democratic regime construction in its on-the-job training courses. But a succession of campaigns, culminating in the Judicial Reform Campaign whittled that space away. In 1953, members of the CCP leadership then criticized "democratic regime construction" as a "capitalist slogan" on the grounds that the power of regime construction was not within the purview of state organs at all, but rather of the Party, and Dong accordingly had to deliver a self-criticism.⁹⁸²

In line with that shift, the Central Committee issued a draft decision the same year to strengthen "direct Party leadership over the work of the government," which signaled a turning point in Dong's influence over legal affairs.⁹⁸³ Before this decision, the various Party groups in central-level legal organs reported to the Party group of the state central political-legal committee, led by Dong. After the decision, Dong had to share oversight of Party affairs in the political-legal sector with Peng Zhen and Luo Ruiqing, both of whom favored tighter Party discipline, and a more granular, activist role

⁹⁸¹ Dong Biwu 董必武, "Muqian minzhu jianzheng de zhuyao xingshi (July 1950)," 目前民主建政的主要形式 in *Dong Biwu zhengzhi falü wenji* 董必武政治法律文集, (Beijing: Falü chubanshe, 1986).

⁹⁸² Sun Qi 孙琦, "Wang Huai'an xiansheng fangtanlu," 王怀安先生访谈录 *Huanqiu faxue pinglun* 环球法学评论 夏季, (2003): 176.

⁹⁸³ "Zhonggong zhongyang guanyu jiaqiang zhongyang renmin zhengfu xitong ge bumen xiang zhongyang qingshi baogao zhidu ji jiaqiang zhongyang duiyu zhengfu gongzuo lingdao de jue ding (caoan) (March 10, 1953)," 中共中央关于加强中央人民政府系统各部门向中央请示报告制度及加强中央对于政府工作领导的决定 (草案) in *Jianguo yilai zhongyao wenxian xuanbian* 建国以来重要文献选编, 中共中央文献研究室, (Beijing: Zhongyang wenxian chubanshe, 1992).

for Party authorities in the daily operation of the law. The following year, when the new constitution took effect, the PLC closed and Dong lost his commanding perch above the legal system.

Mao often adroitly paired major leaps in national policy with intra-Party radicalization to mobilize personnel, clear away internal resistance, and build momentum. For example, in 1955, he launched the socialist high tide, and concurrently ratcheted up the political temperature by initiating the Campaign to Eliminate Counterrevolutionaries 肃反, which scoured the state and Party for internal enemies. This campaign subjected millions of cadres to fresh background investigations, interrogations, and denunciations, and by the end of 1956 labeled nearly 34,000 of them counterrevolutionaries or bad elements.⁹⁸⁴ As might be expected, the courts experienced a collateral quickening in adjudication as cadres proved their ideological mettle by hunting new counterrevolutionaries in society, cracking down hard on ordinary crimes and recidivism, meting out unusually harsh sentences bristling with the logic of class struggle, and elevating even minor offenses into more serious categories such as “social parasitism” and “wrecking.” As we have seen, it also generated a spike in appeals: 32 percent of all cases of first instance in 1956, one quarter of which resulted in revised sentences.⁹⁸⁵

In this heightened atmosphere, judicial authorities proposed to restore unified leadership of the city’s legal system, not by way of a state organ like the municipal PLC, but rather through a political-legal joint Party group made up of representatives from the municipal PSB, procuracy, courts, judicial bureau, and other organs.⁹⁸⁶ These joint Party groups proliferated down to the district level in Beijing, and reached the national level late in 1956, when the Politburo put Peng Zhen in charge of political-legal affairs for the CCP Secretariat. Crucially, this was the moment that Dong made his play at the Eighth Party Congress for a “strict and clear-cut distinction between Party organizations and state organs.” He was trying to staunch the tide, and it put him on a collision course with Peng.

Second, in practice, the boundaries between Party and state were blurred because the same person frequently held dual appointments – a Leninist convention made imperative by the persistent cadre shortage. Thus, Wang Feiran was Beijing’s ranking court president, secretary of his court’s internal Party group, and deputy-director of the municipal government’s PLC.⁹⁸⁷ Similarly, Zhang Youyu was deputy mayor with the portfolio for legal affairs, deputy secretary of the municipal Party committee, and director of the municipal government’s PLC. Such conjunctions made it possible to

⁹⁸⁴ Wang Xiaoping 王小平, “Wushi niandai sufan yundong de lailong qumai tanjiu,” 五十年代肃反运动的来龙去脉探究 *Xibu xuekan* 西部学刊 no. 4 (2014): 14-21.

⁹⁸⁵ Wang Feiran, “Guanyu Beijing shi gao, zhongji renmin fayuan gongzuo de baogao (zhaiyao) (July 27, 1957),” 394.

⁹⁸⁶ Beijing shi gao, zhongji renmin fayuan shenpan gongzuo qingkuang de baogao (chugao).

⁹⁸⁷ Guanyu benfu gongzuo renyuan renming de gexiang mingdan; Beijing shi renmin zhengfu zhengzhi falü weiyuanhui zhanxing zuzhi guicheng.

speak of adjudicatory independence in the abstract, without challenging actual CCP control of the courts.

Nevertheless, formal arrangements mattered a great deal. For instance, the full implications of the 1953 Central Committee decision on strengthening direct Party leadership took time to develop because the 1954 Constitution actually gave legal organs greater leeway to manage their own affairs. Crucially, for a few years after the demise of Dong's PLC and its internal Party group, the CCP maintained no comparable central-level organ with comprehensive Party authority over the legal system, and while the pairing of state and Party appointments provided a general basis for more muscular CCP leadership over the legal system, this could actually cut both ways. Broadly speaking, the pairing guaranteed that legal organs would abide by CCP policy since their leading cadres wore two hats, and on the surface this could be construed as straightforward Party domination of the state. But a closer look reveals that a more subtle, reciprocal mode of interaction was at play. Leading Party groups in legal organs enjoyed a degree of latitude in interpreting Party policy for themselves, and since these leading Party groups were composed of the top administrative cadres in their respective organs, they tended to read Party policy through the lenses of their own institutional capacities, priorities and interests. Hence Party policy looked somewhat different depending on where one sat, all the way down to the grassroots, and in this way the state contributed reciprocally to the Party/state duality.

We see this at the local level, where many of the mass line initiatives promoted with great fanfare by the Second National Judicial Work Conference sputtered due to institutional weaknesses, limited attention spans, discordant thinking, and simple noncompliance. For instance, neighborhood mediation committees aroused little interest from the BMPC or the residents of Beijing's urban core. But national leaders would not let them die in the capital, perhaps for reasons of ideology and tradition. Thus, over the course of the 1950s, they blipped in and out of existence by the hundreds, oscillating back and forth between neglect and frenetic, campaign-driven restorations.⁹⁸⁸

⁹⁸⁸ *Sifa gongzuo jianbao guanyu zhengdun tiaojie weiyuanhui de jige wenti* 司法工作简报—关于整顿调解委员会的几个问题. Zhongyang ji Huabei, benshi lingdao jiguan youguan zhengfa gongzuo tongbao, jianbao 中央及华北, 本市领导机关有关政法工作通报, 简报 (1953), BMA 014-002-00083; Beijing shi shi, qu renmin fayuan zuzhi jigou he gongzuo gaikuang; "Beijing shi renmin zhengfu guanyu jingjiao huaxiang fangan xiang Huabei xingzheng weiyuanhui de baogao (April 24, 1953),"北京市人民政府关于京郊划乡方案向华北行政委员会的报告 in *1953: Beijing shi zhongyao wenxian xuanbian* 1953: 北京市重要文献选编, ed. Beijing shi dang'anguan, zhonggong Beijing shiwei dangshi yanjiushi 北京市档案馆 and 中共北京市委党史研究室, (Beijing: Zhongguo dang'an chubanshe, 2002). Ren Jianxin, and Xiao Yinghua 任建新 and 萧英华, "Jiaqiang tiaojie gongzuo, shixian sifa qunzhonghua (1953),"加强调解工作, 实现司法群众化 in *Zhonghua renmin gongheguo fayuan zuzhi susong chengxu cankao ziliao (dier ji)* 中华人民共和国法院组织诉讼程序参考资料(第二辑), (Beijing: Zhongguo renmin daxue xingfa minfa jiaoyanshi, 1953); *Benshi chengqu renmin tiaojie weiyuanhui shijian gongzuo zongjie* 本市城区人民调解委员会试建工作总结. Beijing shi renmin fayuan gongzuo jianbao (1-29 qi) ribao (1-3 qi) 北京市人民法院工作简报(1-29期) 日报 (1-3期) (1954), BMA 014-002-00030, 4; *1956: Beijing shi zhongyao wenxian xuanbian*, 323; *Sifa xingzheng zhi*, 3, 164.

Likewise, as noted in the last chapter, not a few Beijing judges regarded people's assessors as incompetent interlopers and had to be strong-armed into accepting them.⁹⁸⁹ This reform too would likely have fizzled but for the duress of a campaign.

Once the energy of the Judicial Reform Campaign began to dissipate, it did not take long for the courts to develop gumption. In 1953, the Qianmen district court railed against Party and state organs, including the powerful Ministry of Heavy Industry, for stirring up disputes by flouting municipal regulations meant to dampen the distortions the meteoric growth of the central government was having on the local property market. It demanded that such infractions stop.⁹⁹⁰ In 1955, the BMPC fretted about having to give precedence to a government policy on evictions that sometimes "excessively favored tenants" over the actual stipulations of the law. It noted sympathetically that landlords came to court citing chapter and verse of the applicable regulations and were not easily dissuaded from suing for instant satisfaction. In language remarkable for a socialist court, the BMPC cautioned the city government that the eviction policy was harming the legitimate interests of the landlords, and backfiring because some landlords were choosing not to rent properties at all for fear of not being able to repossess them in the future, which, in the midst of an acute housing crisis, reduced the inadequate market supply still further.⁹⁹¹

More remarkable, in 1955, Wang Feiran volunteered to relinquish some of his Party authority over Beijing's courts to uphold their independence. He led the Party group that jointly supervised the city's nascent high and intermediate courts. The adjudication committees at both courts referred major or complex cases to this Party group for discussion and decision. From the perspective of unified Party leadership, this was ideal, but it impinged on the prerogatives of the judiciary because it reduced appeals to little more than petitions for reconsideration by the joint Party group, which made the high court superfluous. Accordingly, the courts recommended dissolving their joint Party group to uphold the integrity of the trial process. The internal memorandum read in part:

According to stipulations in the Law on the Organization of the People's Courts, courts implement a two-trial system in which the second trial is final. However, at the intermediate court, after a verdict was announced in a case that had been discussed and decided by the joint Party group, the dissatisfied party appealed to the high court, where the appeal was then discussed and

⁹⁸⁹ Zhonggong Qianmen qu weiyuanhui Qianmen qu renmin fayuan gongzuo zongjie; *Beijing shi Qianmen qu renmin fayuan xiang Qianmen qu diyi jie renmin daibiaodahui disan ci huiyi de gongzuo baogao* 北京市前门区人民法院向前门区第一届人民代表大会第三次会议的工作报告. Qianmen qu renmin fayuan xiangqian menqu diyi jie renmin daibiaodahui disan ci huiyi de gongzuo baogao 前门区人民法院向前门区第一届人民代表大会第三次会议的工作报告 (1955 March 14, 1955), BMA 038-002-00153.

⁹⁹⁰ *Beijing shi Qianmen qu renmin fayuan yijiuwusan nian yiersan yuefen gongzuo baogao* 北京市前门区人民法院一九五三年一二三月份工作报告. Qianmen qu renmin fayuan 1953 nian jidu gongzuo zongjie baogao 前门区人民法院 1953 年季度工作总结报告 (1953), BMA 038-001-00083.

⁹⁹¹ *Beijing shi renmin fayuan renmin jiedaishi yijiuwusi nian gongzuo zongjie* 北京市人民法院人民接待室一九五四年工作总结. Shi, qu renmin fayuan renmin jiedaishi gongzuo zongjie ji youguan wenjian 市, 区人民法院人民接待室工作总结及有关文件 (1955), BMA 014-002-00090.

decided by the [same] joint Party group. This influenced the implementation of the trial system. We recommend abolition of the existing joint Party group, and that the high and intermediate courts establish separate Party groups (the Judicial Bureau already has one).⁹⁹²

In a judicial system bound to a unitary vision of CCP policy, with a conflation of Party and state, this impulse to separate would not have been possible. Wang was asserting the need for greater independence within the broad scope of Party leadership so that the courts could more ably perform the functions assigned to them, and in doing so he was reclaiming some of the space they had lost. He was taking the law seriously.

In concert with He Zhanjun, Wang then took this further. In 1956, Beijing's intermediate court noted that district courts in the city were deadlocked over the disposition of certain cases with the district joint Party groups recently established above them. Reflect for a moment on what this meant; the courts were refusing to budge in spite of higher Party authorities taking a different view on how certain live cases should be decided.

The intermediate court tried to finesse the issue, but ultimately insisted that the judiciary had precedence, and if a district joint Party group did not like the result, then it could follow the law, and prevail upon the district procuratorate to lodge an official protest, effectively an appeal. Either way, a court -- not an extra-judicial Party group -- would have the final say.

Currently, there are resolutions by the district court adjudication committees that are not in accord with the opinions of district joint Party groups, and the deadlocks are unresolved. In order to prevent these kinds of problems from recurring, we propose that district court adjudication committees not exceed five members, with CCP members in the majority. After vetting from the district committee, they [should be] appointed by the district people's committee. Before a president of a district court sends major cases to [the court's] adjudication committee for discussion, the president should first get a decision from the joint Party group, then send the case to the adjudication committee for discussion and adoption [of the joint Party group decision]. If the opinions of the adjudication committee and the joint Party group differ, then the case should still be decided on the basis of the stipulations of the Law on the Organization of the People's Courts, and the sentence should be pronounced according to the resolution of the adjudication committee. In addition, it can be resolved according to trial supervision procedure if the procuratorate protests the original decision, or the higher-level court [independently] reviews it, etc.⁹⁹³

Third, the courts were taking on not just the authority of external Party organs to meddle in cases, but also the state power of the public security apparatus. This was extremely delicate work. In principle, courts, public security bureaus, and procuratorates were supposed to cooperate, but also provide bureaucratic checks on one another in an arrangement called "mutual supervision." That was difficult to achieve in practice because the moments when abuses were most likely to proliferate, as during campaigns, were also those in which it was ideologically unwise to suggest restraint. In addition, staffing across the three organs was hopelessly uneven. In 1956, Beijing's

⁹⁹² Beijing shi gao, zhongji renmin fayuan shenpan gongzuo qingkuang de baogao (chugao), 8.

⁹⁹³ Ibid., 12.

courts had 605 cadres, its procuratorate had 399, and its public security bureau had 7,196.⁹⁹⁴ The numbers are even more lopsided when one takes into account the myriad lower personnel who did not have cadre status. Not surprisingly, the police tended to dominate joint political-legal Party groups and set the tone in law enforcement, while the other two organs generally tried to keep up.

Astonishingly, in spite of their weakness, as courts developed distinct identities some of them began to take their role in mutual supervision seriously, just as Liu and Dong had proposed. In late 1956, after the Third National Judicial Work Conference, the Party Center instructed public security bureaus, procuratorates, and courts at various levels to review their recent work suppressing counterrevolutionaries. In many localities, the investigation expanded to cover ordinary criminal cases as well.⁹⁹⁵ In Beijing, the procedure required that, when a district court discovered a wrongly decided case in its portfolio, it had first to send the case to the intermediate court's adjudication committee for approval before implementing its proposed revision to the decision. The findings of this city-wide review with respect to counterrevolution were discussed in the last chapter, as was the official error rate of 6.9 percent found in the more than 15,000 ordinary criminal cases decided between the beginning of 1955 and the first half of 1956.⁹⁹⁶ Worth noting in this context, the intermediate court mentioned in an early report that among 69 cases it had reviewed, 26 required revisions (38 percent): specifically, in five cases the defendants were declared innocent, in eight cases the verdict was changed to no punishment, and in the remaining thirteen cases the sentence was reduced.

Since most ordinary criminal cases were handled at the district level, the intermediate court designated the Qianmen district court as an investigation site with the intention of using its findings there to guide work in other districts.⁹⁹⁷ The Qianmen court surveyed 438 cases from several categories of crime punished between 1954 and September 1956. It identified 101 cases with actionable errors, or 23.1 percent of the total sample. Among the subset of 158 cases decided in September 1956, the error rate was an astonishing 39.9 percent, which the court audaciously attributed to “deviations”—code in part for a public security crackdown against hooliganism and unlicensed street peddlers, which the court was complicit in, but saw as excessive in retrospect. In 70 of the 101 wrongly decided cases, the court decided upon

⁹⁹⁴ *1956 nian quanguo ganbu dingqi tongji baobiao: gongan xitong* 1956 年全国干部定期统计报表: 公安系统. Benju, shi zongjiao, waishi, minzu, minzheng, sifa jiancha, fayuan, zhengquan xitong 1956 nian nianzhong tongji baobiao 本局, 市宗教, 外事, 民族, 民政, 司法监察, 法院, 政权系统 1956 年年终统计报表 (1956), BMA 123-001-00519; *1956 nian quanguo ganbu dingqi tongji baobiao: sifa xitong*; *1956 nian quanguo ganbu dingqi tongji baobiao: jianchayuan xitong* 1956 年全国干部定期统计报表: 检察院系统. Benju, shi zongjiao, waishi, minzu, minzheng, sifa jiancha, fayuan, zhengquan xitong 1956 nian nianzhong tongji baobiao 本局, 市宗教, 外事, 民族, 民政, 司法监察, 法院, 政权系统 1956 年年终统计报表 (1956), BMA 123-001-00519.

⁹⁹⁵ He Lanjie, and Lu Mingjian, *Dangdai zhongguo de shenpan gongzuo*, 70.

⁹⁹⁶ *Shenpan zhi*, 113.

⁹⁹⁷ Beijing shi gao, zhongji renmin fayuan shenpan gongzuo qingkuang de baogao (chugao).

reconsideration that the offenders were completely innocent of the charges, or that the offenses had been too minor to constitute crimes, or that the crimes had been too minor to warrant judicial sentences. As for the remainder, it recommended sentence reductions for 20 cases, and retrials for eleven because the facts were unclear. None of the 438 cases warranted higher sentences.⁹⁹⁸

As it reconsidered its deference to the public security bureau, the court raised an especially thorny issue. In September 1956, the Supreme People's Court sternly reprimanded a county court in Guizhou province for casually increasing, without regard for the law or for proper judicial procedures, the sentences of convicts for offenses or minor infractions committed while serving in labor camps.⁹⁹⁹ Ordinarily, these increases were made at the request of camp authorities, who belonged to the public security apparatus. Based on the Guizhou rebuke, the Qianmen district court included in its review a further 100 of its own "increased sentence" 加刑 cases, and found that 49 of them, almost half, were problematic. However, the district court could do nothing about them because the local labor reform department run by the public security bureau refused to acknowledge the errors ("the labor reform department's opinion is very much at odds"), and so the court scrubbed the 100 cases from its statistical table of errors as if they had never been found, and the convicts whose sentences it had wrongly increased received no relief.

The reason we know about this episode is that the court, perhaps as an insurance policy, announced in the draft text of a report sent up its own chain of command that it did not approve of this result by noting with evident pique the existence of the 100 cases, and the nature of its deadlock with the labor camp authorities. If the court had prevailed and fully incorporated these cases into its statistics, the total share of wrongly decided cases in its sample of 538 cases would, by its own count, have gone up to 27.9 percent, an appalling figure, particularly for a local court that was the designated model for the city, and recognized as one of the country's most advanced. What is more, this figure may well have understated the full extent of the problem.¹⁰⁰⁰ In short, the evidence is strong on multiple fronts. The courts were deeply flawed, but they were also developing backbone, and that was attracting attention.

Something similar was happening at the central level, where the Ministry of Justice, which had responsibility for administering the courts and nurturing the reconstituted bar, clashed with the public security authorities over a host of issues, including the former's comparatively robust readings of adjudicatory independence, and

⁹⁹⁸ Beijing shi Qianmen qu renmin fayuan jiancha anjian gongzuo de zongjie (chugao).

⁹⁹⁹ "Zuigao renmin fayuan tongbao benyuan guizhousheng gongzuo zu 'guanyu pingbaxian renmin fayuan chuli pingba nongchang laogai fanren suowei jiaxing anjian qingkuang de baogao'," 最高人民法院通报本院贵州省工作组'关于平坝县人民法院处理平坝农场劳改犯人所谓'加刑'案件情况的报告' http://www.law-lib.com/law/law_view.asp?id=1103 (accessed June 23, 2015).

¹⁰⁰⁰ Beijing shi Qianmen qu renmin fayuan jiancha anjian gongzuo de zongjie (chugao).

the constitutional right of criminal suspects to obtain defense.¹⁰⁰¹ Most of all, it was evident in provocative reports from the ministry highlighting the derogation of judicial power by local Party officials and public security officials, and the mistreatment of inmates by prison staff. At the Eighth Party Congress, Dong made some pointed accusations that have not been read as seriously as they perhaps should have been.

It must be pointed out here also that, sometimes when a person has violated the law or committed a crime, attention is concentrated on whether he is guilty or not, but no attention is given to seeing that legal procedure is strictly observed. This sort of thing has occurred in some localities and has not yet been completely eradicated. For instance, some judicial personnel have at times put criminals under arrest without going through the established legal procedure, and restricted the defendants' exercise of the rights to defence and appeal. Some personnel in charge of prisons and units for the reform of prisoners through labour, disregarding the Party policy, the laws and the principle of revolutionary humanitarianism, subject the criminals to acts of cruelty. All these things are serious violations of the law and must be brought to an end.¹⁰⁰²

We now have some inkling of specifically what he had in mind, and the behind-the-scenes power plays with Luo Ruiqing that resulted. In early 1956, Wang Huai'an led a joint inspection group from the Ministry of Justice and Supreme People's Court to Sichuan province. The group reviewed 388 counterrevolutionary case files from the preceding year in three county courts. It found an error rate of 6.1 percent, higher than the 4 percent the counties had reported.¹⁰⁰³ More significantly, the resulting *Inspection Report on the Work Suppressing Counterrevolutionaries in the Courts of Jiangjin, Leshan, and Dayi Counties, Sichuan Province* attributed the wrongly decided cases in part to the practice of local Party committees "deciding cases first, then trying them." A related *Report on Problems in the Dayi County Prison* documented instances of prison staff severely abusing inmates.¹⁰⁰⁴ In the second half of the year, a separate inspection of Anhui province also found examples of "deciding cases first, then trying them." In these instances, county public security bureau chiefs who served concurrently as their local political-legal Party group secretaries took the liberties of not only authorizing arrests, but also determining the judicial sentences. Luo reportedly responded by mocking the lead Anhui investigator as a self-important "imperial envoy."¹⁰⁰⁵

¹⁰⁰¹ Huang Yixiang 黄怡祥, "Yingdang pipan bianhuren de youli beigao lun," 应当批判辩护人的'有利被告论' *Faxue* 法学 no. 3 (1958): 19-21. Liu Yueqing 刘岳清, "Renmin lüshi: geming fazhi de weihuzhe," 人民律师: 革命法制的维护者 *Renmin ribao* 人民日报, February 22, 1957; Yang Huilu, and Wang Tongge 杨会禄 and 汪桐阁, *Renmin lüshi shi zuo shenme de* 人民律师是做什么的 (Beijing: Tongsu duwu chubanshe, 1957); Lin Ziqiang 林自强, "Chedi pipan renmin lüshi gongzuo zhong de zichan jieji sixiang," 澈底批判人民律师工作中的资产阶级思想 *Faxue* 法学 no. 2 (1958): 39-43; Zhang Geng 张耕, *Zhongguo lüshi zhidu fazhan de lichengbei* 中国律师制度发展的里程碑 (Beijing: Falü chubanshe, 1997), 5-6. Zhang Peitian, "Xin zhongguo shenpan zhidu quzhe yanbian de shishi kaolun (1957-1976)," 26-32.

¹⁰⁰² Dong, "Speech By Comrade Tung Pi-Wu (September 19, 1956)," 90.

¹⁰⁰³ Huang Xiaoyun, "Xin zhongguo sifajie de bu laosong: ji zuigao renmin fayuan fuyuanzhang Wang Huai'an," 18.

¹⁰⁰⁴ Xiong Xianjue 熊先觉, "1959 nian sifabu bei chexiao zhenxiang," 1959年司法部被撤销真相 *Yanhuang chunqiu* 炎黄春秋 no. 12 (2003): 32.

¹⁰⁰⁵ *Ibid.*, 31.

In June 1957, just as the Anti-Rightist Campaign was gathering steam, the Ministry of Justice went further. It issued an internal *Report on Current Conditions in Village Crime*, which inconveniently found that while rates of crimes were going down significantly, the class composition of criminals was moving in the wrong direction. On the basis of a review of court records from nine counties in three provinces, it found that by late 1956 and early 1957 laboring people -- not class enemies, counterrevolutionaries, or capitalists -- were committing 91 percent of the crimes. Similarly, in 17 counties in Hunan province, the share of crimes committed by laboring people rose from 40 percent in 1955 to 90 percent in early 1957.¹⁰⁰⁶ The report painted a sobering picture of the countryside, noting that the majority of crime consisted of offenses against public assets, personal injuries, cadres violating human rights, adultery, and gambling. It found a widespread tendency among village cadres to handle minor “contradictions among the people” punitively, and of rural courts to take a mistaken class viewpoint by refusing to punish laboring people for crimes, or by punishing them too lightly. At a time when the socialist high tide was supposed to be ushering in a glorious new age, the report’s conclusion was incendiary.

A change has taken place in judicial work. The vast majority of defendants who stand before our tribunals to receive judgment have changed from class enemies and residues of the old society to laboring people. This is in fact the emergence of a new situation, and reflects a change in the main contradiction within our country.¹⁰⁰⁷

Heterodoxy in the Courts

The figures in charge of Beijing’s judiciary were not liberals by any stretch. They were revolutionaries tempered on the front lines of the wars against the Japanese and the Nationalists, and were comfortable with the courts serving as instruments of state and Party policy, and with meting out death sentences by the hundreds. Indeed, Wang Feiran, He Zhanjun, and others were striking hard against rightists and counterrevolutionaries up to the moment the revolution turned against them.¹⁰⁰⁸ Just the same, the preceding pages are an argument for finally breaking free of the persistent fallacy that CCP judicial cadres understood their environment and what it meant to build a “regular revolutionary legal system” in a uniform way. If that had been the case, then the wild fluctuations covered by this study would never have transpired. To the contrary, heterodoxy was hysteretically sprouting up on a regular basis.

¹⁰⁰⁶ Ibid.

¹⁰⁰⁷ Cai Cheng, *Dangdai zhongguo de sifa xingzheng gongzuo*, 46-47.

¹⁰⁰⁸ Zheng Shaowen 郑绍文, “Bixu chedi huaqing xin jufu de jixian,” 必须彻底划清新旧法的界限 *Zhengfa yanjiu* 政法研究 no. 3 (1958): 28-29. He Zhanjun 贺战军, “Yansu youpai fenzi xiang renmin sifa gongzuo jingong de jige miulun,” 严肃右派分子向人民司法工作进攻的几个谬论 *Zhengfa yanjiu* 政法研究 no. 5 (1957): 38-40. Wang Feiran, “Guanyu Beijing shi gao, zhongji renmin fayuan gongzuo de baogao (zhaiyao) (July 27, 1957)”.

By the mid-1950s, some judicial cadres were clearly taking the abstract legal principles they were studying in their training classes seriously, with awkward results. The record of these sessions reveals the fascinating construction of socialist models of legality in real time. The key revelation is that the participants did not already share principles we now take for granted about the PRC judicial system, because those had yet to congeal, and in some cases they took positions that look positively daring in retrospect. Two years after the Judicial Reform Campaign, the Republican court system still cast a shadow over the courts, and when cadres confronted familiar-looking features, they could not help but imagine them through their memories of that recent past and the residual imprint of the old law standpoint.

The evidence is arresting. On December 1, 1954, Wang Feiran held a question and answer session for judicial cadres drawn from all over the city on the new Law on the Organization of the People's Courts. The raw minutes of that meeting record 52 questions, some of which are extraordinary in their audacity and for the subtexts of the answers.¹⁰⁰⁹ Notably, Wang declined to clarify the distinctions between the concepts of judicial independence and adjudicatory independence, reflecting a vigorous contemporary debate within CCP circles on whether the 1954 Constitution had broken with pre-existing orthodoxy and shifted the balance closer to the former. He could easily have quoted back the orthodox line established by Xie Juezai in 1946, but he demurred, a suggestive choice in light of the stance the city's courts later took regarding conflict with joint Party groups.

Wang staked out a very permissive position on legal representation, endorsing the admissibility of former Republican lawyers and even convicted counter-revolutionaries to advocate for parties at trial in criminal matters. When asked whether advocates were obligated to inform the courts about facts their clients did not wish to divulge, he diplomatically sidestepped the question, and subordinates noticed. The important thing to bear in mind is that in the cloud of uncertainty that surrounded the passage of this law, Wang's interpretations set the tone for the rest of the municipal court system, and on many of these points his instincts would ultimately turn out to be gravely heterodox. A few selections give the flavor of the exchange.¹⁰¹⁰

Q: What is the difference between courts independently performing adjudication and judges independently performing adjudication?

A: Comrades, please discuss this fully. For the moment, I will not answer.

Q: Can close relatives be permitted to act as advocates if they are sham (伪, i.e. former Republican) lawyers or counterrevolutionaries? What if the masses don't agree?

¹⁰⁰⁹ Wang Feiran yuanchang dui xuexi fayuan zuzhifa de wenti jieda (December 1, 1954) 王斐然院长对学习法院组织法的问题解答. Shi renmin fayuan guanyu jianyu, kanshousuo gongzuo de baogao he gongzuo ribao 市人民法院关于监狱,看守所工作的报告和工作日报 (1954), BMA 014-002-00021.

¹⁰¹⁰ Ibid.

A: Yes. However, whether or not counterrevolutionaries in detention can (act as advocates) still requires clarification from above 请示. Close relatives refers to spouses, parents, brothers, and sisters, and people who lived together.

Q: If a party tells an advocate facts about the case, but doesn't wish to tell the court, what should the advocate's attitude be? Can the advocate tell (the court)?

A: The advocate can encourage the party to state the facts.

Q: Courts are collectively led. If, on the adjudication committee, the court president's opinion is correct, but the majority do not agree, what then?

A: The court president should propagandize 宣传, and persuade the others. If the president still cannot obtain agreement from the majority, then the president should obey the majority.

In the weeks after that meeting, judicial cadres from various district courts held follow-up study sessions of their own, in which they debated the law in further detail, and raised additional questions. For instance, in five sessions held across December, cadres at the Qianmen district court compiled 140 questions about the law, which the court's leading cadres then answered as best they could, or forwarded on to the BMPC for clarification.¹⁰¹¹ The questions and the debates about them were incisive, specific, and sometimes daring. "How do you explain 'all are equal before the law'?" "Can someone who has received criminal punishments but has not been deprived of political rights be elected president of a court?" "Who carries out death sentences?"

The new advocates (lawyers) system introduced by the law was a topic of particularly animated discussion. For instance, cadres argued about whether advocates were supposed to be impartial, helping the court to find truth, or whether they were supposed foremost to uphold the interests of defendants. Could they say things to the

¹⁰¹¹ *Beijing shi Qianmen qu renmin fayuan guanyu fayuan zuzhifa xuexi qingkuang de huibao diyi ci (December 3-4, 1954)* 北京市前门区人民法院关于法院组织法学习情况的汇报 第一次. *Beijing shi Qianmen qu renmin fayuan yue, ji gongzuo jihua zongjie, zonghe baogao, xingshi panjue deng* 北京市前门区人民法院月, 季工作计划总结, 综合报告, 刑事判决等 (1954), BMA 038-002-00119; *Beijing shi Qianmen qu renmin fayuan guanyu fayuan zuzhifa xuexi qingkuang de huibao disan ci (December 10, 1954)* 北京市前门区人民法院关于法院组织法学习情况的汇报 第三次. *Beijing shi Qianmen qu renmin fayuan yue, ji gongzuo jihua zongjie, zonghe baogao, xingshi panjue deng* 北京市前门区人民法院月, 季工作计划总结, 综合报告, 刑事判决等 (1954), BMA 038-002-00119; *Beijing shi Qianmen qu renmin fayuan guanyu fayuan zuzhifa xuexi qingkuang de huibao disi ci (December 11, 1954)* 北京市前门区人民法院关于法院组织法学习情况的汇报 第四次. *Beijing shi Qianmen qu renmin fayuan yue, ji gongzuo jihua zongjie, zonghe baogao, xingshi panjue deng* Beijing shi Qianmen qu renmin fayuan yue, ji gongzuo jihua zongjie, zonghe baogao, xingshi panjue deng 北京市前门区人民法院月, 季工作计划总结, 综合报告, 刑事判决等 (1954), BMA 038-002-00119; *Beijing shi Qianmen qu renmin fayuan guanyu fayuan zuzhifa xuexi qingkuang de huibao diwuci (December 16, 1954)* 北京市前门区人民法院关于法院组织法学习情况的汇报 第五次. *Beijing shi Qianmen qu renmin fayuan yue, ji gongzuo jihua zongjie, zonghe baogao, xingshi panjue deng* 北京市前门区人民法院月, 季工作计划总结, 综合报告, 刑事判决等 (1954), BMA 038-002-00119; *Beijing shi Qianmen qu renmin fayuan guanyu fayuan zuzhifa xuexi qingkuang de huibao dier ci (December 9, 1954)* 北京市前门区人民法院关于法院组织法学习情况的汇报 第二次. *Beijing shi Qianmen qu renmin fayuan yue, ji gongzuo jihua zongjie, zonghe baogao, xingshi panjue deng* 北京市前门区人民法院月, 季工作计划总结, 综合报告, 刑事判决等 (1954), BMA 038-002-00119.

judge in court that were not in the interests of the defendant? Was an advocate obligated to inform the court about facts of a crime? Could a procurator investigate an advocate for concealing such facts? Remarkably, after spirited debate, the Qianmen court went further than Wang Feiran had, and adopted the position that “during proceedings advocates advocate in the interests of defendants. They can make misrepresentations 虚伪的陈述, may not during proceedings expose the facts of a crime that the defendant is not willing to divulge, and should safeguard defendant’s secrets. They cannot be investigated or punished for responsibility for ‘shielding a crime.’”¹⁰¹² In 1957, this position was excoriated as rightist, and indeed it is more liberal than the current state of PRC law.¹⁰¹³ But this was the official position Beijing’s designated model court for implementing the judicial reforms introduced by the 1954 Constitution took on a frontier question of law after careful deliberations.

It was not an isolated incident. One risk in developing judicial knowledge from the ground up was that the grassroots would arrive at ideologically renegade conclusions of their own initiative, and it was the task of the judicial establishment to take note of these and then try to correct them methodically. In that sense, the reporting system functioned as intended.

The profusion of heretical ideas circulating in connection with the Law on the Organization of the People’s Courts definitely got the attention of policymakers. After 28 provincial-level meetings on the law, in November 1954 the Ministry of Justice and Supreme People’s Court convened a three-week national Conference on the Study and Implementation of the Law on the Organization of the People’s Courts attended by court presidents and vice presidents from all over the PRC to compare notes and hammer out a common platform. Wang Feiran attended the conference, but it did little to dampen the boundary stretching nature of his question and answer session nine days after the conference ended, or the debates at the Qianmen district court that ran through the rest of the month. Indeed, on May 18, 1955, minister of justice Shi Liang reported to Zhou Enlai that judicial cadres, pulled by the old law standpoint, were veering alarmingly off message; “their understanding is confused to the point of committing errors.”

Some do not understand that the legal system and laws of our country and those of capitalist countries have fundamental differences. They are not clear that our past criticism of the hypocrisy of capitalist ‘equality before the law’ and ‘judicial independence’ was necessary, still is and will be in the future. They mix those up with ‘the law is applied equally to all’ and ‘the people’s courts adjudicate independently, subject only to the law’ and other principles that we put forward today, and that gives rise to doubts.¹⁰¹⁴

¹⁰¹² Beijing shi Qianmen qu renmin fayuan guanyu fayuan zuzhifa xuexi qingkuang de huibao disan ci (December 10, 1954).

¹⁰¹³ Yanfei Ran, “When Criminal Defense Lawyers Become the Criminals,” *Fordham International Law Journal* 32, no. 3 (2008): 988-1042. Andrew Jacobs and Chris Buckley, “China Targeting Rights Lawyers in a Crackdown,” *New York Times*, July 22, 2015.

¹⁰¹⁴ Guanyu xuexi he guanche renmin fayuan zuzhifa zuotanhui qingkuang he wenti de baogao (May 18, 1955).

Social and Factional Cleavages

One of the great weaknesses of the meager historiography on the legal dimensions of the Anti-Rightist Campaign is its attention to ideology and doctrine at the expense of other, less principled aspects of the affair. The social dimensions of the conflict were particularly acute, and fought across multiple strata. To begin with, former members of the Nationalist legal community expressed public dismay at the shabby way they had been treated, and at the usurpation of their former status and power by inferior but ideologically privileged arrivistes. The latter were meanwhile conscious of their intellectual shortcomings and absolutely determined to hold on to their recent gains by shifting the battle to where they were strongest: class and politics.¹⁰¹⁵

Less visible, but arguably more important, Beijing's courts experienced a version of this budding conflict in the seemingly reasonable preference of the judicial system's leadership for cadres with higher educations and ability. They were, after all, under tremendous pressure to perform. Over time, the category of recruits known as intellectual youth, who were disproportionately sent out to cadre schools and short-course programs for more advanced training, started to "push veteran CCP cadres aside," to the point that by 1956 30 percent of all judges in the city had university-level aptitudes, and 42 percent met the standard of high school or better.¹⁰¹⁶ Wang Feiran was getting his educated judiciary by hook or by crook.

But even these judges could not compete on knowledge against the wave of Soviet-trained academic law graduates on the near horizon. They threatened to shift the baseline for competence beyond the reach of all who had shared the spoils up to that point. It was one thing to send promising cadres off for self-improvement, quite another to admit outsiders from white-collar and merchant families. To guard against them, sturdy walls had to be built. One Beijing judicial cadre reflected on this, saying: "When it comes to work, the CCP regards intellectuals as 'gold and jade eggs,' but when it comes to promotion, commendations, and admission to the Party, they are 'tortoise eggs' [a coarse colloquialism roughly equivalent to 'sons of bitches']."¹⁰¹⁷ Hence a tinderbox of cross-cutting social antagonisms accumulated in the courts, waiting for a spark to set it alight.

On top of this, there is a related factor that the coverage given to the polemical debates of the period generally omits, but which proved crucial to the undoing of

¹⁰¹⁵ "Sifa gongzuo 'qiang' gao 'gou' shen, minmeng shiwei zhaokai sifa zuotanhui pangting ji".

¹⁰¹⁶ *Beijing shi sifajie youpai fenzi shi zenyang jinxing fandang pohuai huodong de* 北京市司法界右派分子是怎样进行反党破坏活动的, ed. Zhongguo renmin daxue kexue yanjiu yuejin zongshu 中国人民大学科学研究跃进丛书 (Beijing: Zhongguo renmin daxue chubanshe, 1958), 43. 1956 nian quanguo ganbu dingqi tongji baobiao: sifa xitong.

¹⁰¹⁷ "He Zhanjun, He Shenggao you pai mianmu bei chedi jielu: juebu rang youpai fenzi cuanduo sifa jiguan de lingdao," 贺战军, 贺生高右派面目被彻底揭露: 决不让右派分子篡夺司法机关的领导 *Beijing ribao* 北京日报, March 10 1958.

Beijing's judiciary: owing to wounds left over from at least as far back as the Judicial Reform Campaign, the climate in the city's courts was poisonous.

The 1955 Campaign to Eliminate Counterrevolutionaries provided an especially rich opportunity to settle scores. For example, Zhang Sizhi was one of the principal internal targets of that campaign. High court president Wang Feiran had once held Zhang up as a model judge, but now Wang turned on him because Zhang was associated with He Shenggao's faction. Zhang's slim, pre-1949 connections to the Nationalist army and Guomindang offered liabilities that Wang could exploit, even though Zhang had voluntarily disclosed those details in his personnel dossier years before. During the 1954 Campaign Against Hu Feng, the court investigated Zhang on suspicion of running a small cell of counterrevolutionaries, which was really just a group of advanced cadres who facilitated the court's weekly ideological study sessions. In 1955, cadres from Wang's faction again seized on that historical baggage, producing fabricated letters to make it seem as though Zhang was an active Guomindang agent. This ordeal too passed, though not before Wang revealed the larger prize he had been stalking all along, by personally trying to blackmail Zhang into implicating He Shenggao as a counterrevolutionary.¹⁰¹⁸

The Anti-Rightist Campaign

The Campaign to Eliminate Counterrevolutionaries segued almost seamlessly into the Anti-Rightist Campaign. By July 1958, approximately 550,000 people had been declared rightists, and not a few of them were consigned to years in ruinous labor camps, internal exile, house arrest, or professional oblivion.¹⁰¹⁹ Around 5.8 percent of all the cadres in the PRC were labeled rightists, and others were so-called "black rightists" 黑右派, who bore the costs of carrying a rightist label but lacked the official documentation necessary to later apply for rehabilitation.¹⁰²⁰

For the PRC judicial system, this was a campaign unlike any other. Encouraged to speak up during the Hundred Flowers Campaign, cadres raised many of the same defects outsiders were drawing attention to, including the absence of codified law, the weak competence and legal commitments of many veteran cadres, and external Party interference in judicial cases.¹⁰²¹ Their comments were recorded, which was standard practice for study sessions and meetings, and later used as evidence against them.

Primed by years of factional intrigue, once the internal rectification phase of the campaign began, Beijing's judicial cadres descended into an orgy of denunciations that

¹⁰¹⁸ Zhang Sizhi, "Jingguo duonian fanfu de douzheng, wo bu name xunfu le". *Beijing shi sifajie youpai fenzi shi zenyang jinxing fandang pohuai huodong de*.

¹⁰¹⁹ Cai Dingjian, *Lishi yu biange: xin zhongguo fazhi jianshe de licheng*, 82.

¹⁰²⁰ *Zhongguo faxuejia fangtanlu*, 359.

¹⁰²¹ "He Zhanjun, He Shenggao you pai mianmu bei chedi jielu: juebu rang youpai fenzi cuanduo sifa jiguan de lingdao".

played into the hands of those who wished to smash the courts. Leaders of the city's judicial system fell at every stratum. When it was over, the cohort that had taken over the city's Nationalist courts in 1949, and then dominated the municipal and national judicial hierarchy for nearly a decade had been swept aside.

Wang Feiran, He Shenggao, He Zhanjun, Lou Bangyan (deputy chief of the municipal judicial bureau), and Bai Zhenwu (head of the city's fledgling bar association) were singled out as the "leaders and backbone elements of an anti-Party clique."¹⁰²² Wang Feiran and He Shenggao were both expelled from the CCP.¹⁰²³ Close associates fell all around them. The list included: Zhou Kuizheng, the former head of the city government's political-legal affairs office, whose misguided idea it had been in 1952 for the two factions at the BMPC to file separate final reports on the Judicial Reform Campaign; Zhang Xiuhai, the only former Nationalist judge to have survived the Judicial Reform Campaign at the BMPC; Zheng Mengping, who had prepared the takeover of the city's Nationalist courts in 1949 as head of their underground Party branch; and Zhang Sizhi, who by this time was deputy director of one of the new legal advisor's offices seeding the reconstitution of the bar.¹⁰²⁴ The decapitation was thorough and deliberate.

The authorities printed a volume, entitled *How the Rightists in Beijing's Judicial Community Carried Out Anti-Party Wrecking Activities*, which offered up a lurid tale of corruption going back years on multiple levels, detailing how a court system not only succumbed to a capitalist conspiracy to restore the old law standpoint, but also violated the most basic precepts of Party discipline and unity.¹⁰²⁵ Interestingly, that volume stands up under scrutiny. The archival record corroborates many of the substantive charges it makes, and this study has detailed not a few of them. Moreover, the accusations that cannot be independently verified are generally consistent with those that can be. Where the volume stumbles badly is in the fevered, conspiratorial interpretation given to this evidence, which was ripped straight from the mold of every campaign against the old law standpoint the Party had launched since it had toppled Li Mu'an and the New Law Society in 1943.

The official numbers are striking. The Anti-Rightist Campaign claimed 83 municipal-level judicial cadres, 36 of them judges (45 percent).¹⁰²⁶ A connection was

¹⁰²² , *Beijing shi sifajie youpai fenzi shi zenyang jinxing fandang pohuai huodong de*, 1.

¹⁰²³ "Zhonggong Beijing shi gaoji renmin fayuan, sifaju zhibu weiyuanhui guanyu kaichu youpai fenzi Wang Feiran dangji de jue ding (September 23, 1958),"中共北京市高级人民法院, 司法局支部委员会关于开除右派分子王斐然党籍的决定 in *Qianming zhongguo youpai de chuli jielun he geren dang'an* 千名中国右派的处理结论和个人档案, ed. Song Yongyi 宋永毅, (2015); "Zhonggong Beijing shi sifaju zhibu weiyuanhui guanyu kaichu youpai fenzi He Shenggao dangji de jue ding (March 28, 1958),"中共北京市司法局支部委员会关于开除右派分子贺生高党籍的决定 in *Qianming zhongguo youpai de chuli jielun he geren dang'an* 千名中国右派的处理结论和个人档案, ed. Song Yongyi 宋永毅, (2015).

¹⁰²⁴ "He Zhanjun, He Shenggao you pai mianmu bei chedi jielu: juebu rang youpai fenzi cuanduo sifa jiguan de lingdao"; *Beijing shi sifajie youpai fenzi shi zenyang jinxing fandang pohuai huodong de*, 2.

¹⁰²⁵ *Beijing shi sifajie youpai fenzi shi zenyang jinxing fandang pohuai huodong de*.

¹⁰²⁶ Ding Shu, *Yinmou: fanyoupai yundong shimo*, 210. *Shenpan zhi*, 3.

made between their rightist activities and their family backgrounds, noting that half of the 83 came from “exploiting classes,” and various proportions had close family members with political problems, namely: executed, imprisoned, or under control (9.6 percent); punished as historical counterrevolutionaries (24.1 percent); and legacy judicial personnel (14.5 percent).¹⁰²⁷ Fully one quarter of the total staff at the city’s judicial bureau were sent down to the countryside or otherwise punished more severely. In October 1958, the bureau was reorganized into a judicial office of the municipal people’s committee.

The internal numbers are even more dramatic. Beijing’s courts ended 1956 with 605 cadres on staff.¹⁰²⁸ One year later, the number was 476, a drop of 21.3 percent.¹⁰²⁹ The total number of judges and assistant judges in the city’s courts fell by 39 percent.¹⁰³⁰ District level courts were especially hard hit. Intellectual youth were found mostly there and, as the upwardly mobile standard bearers for Wang Feiran’s post-Judicial Reform Campaign reconstruction of the courts, they fell hard, not unlike the legacy personnel they had replaced. The number of district level judges (“DC”) declined by 63 percent. (Figure 8.1) For the third time in a decade, the courts had to rebuild their human capital, but this time under completely new leadership and in an environment dominated by the radical politics of the mass line and the Great Leap Forward.¹⁰³¹ What achievements they could muster would not last very long, in any case, because the Cultural Revolution was just a few years over the horizon.¹⁰³²

¹⁰²⁷ *Beijing shi sifajie youpai fenzi shi zenyang jinxing fandang pohuai huodong de*, 1.

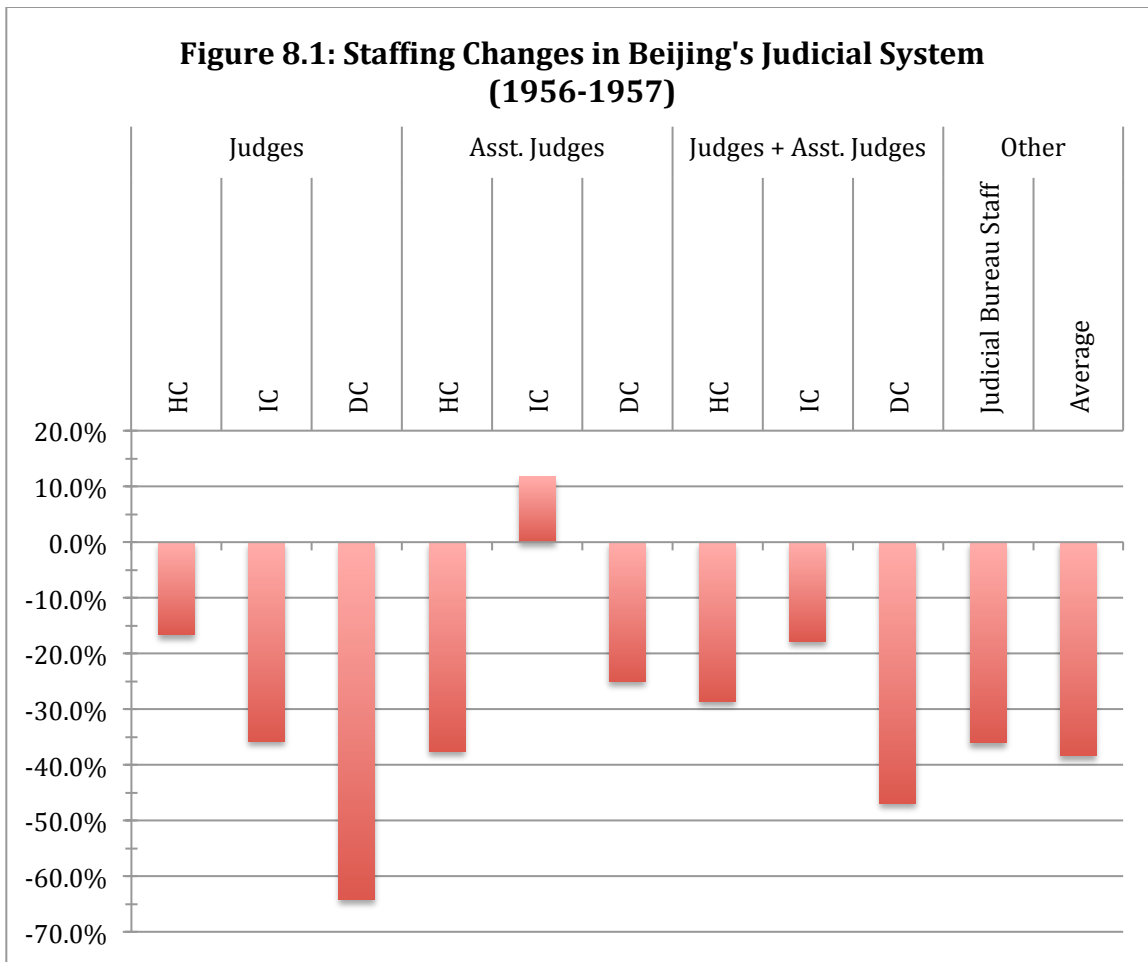
¹⁰²⁸ 1956 nian quanguo ganbu dingqi tongji baobiao: sifa xitong.

¹⁰²⁹ Quanguo ganbu dingqi tongji baobiao: zhixia shiji zhengfa xitong.

¹⁰³⁰ The ranks of the municipal judiciary fell across the board with the sole exception of assistant judges at the intermediate court, which rose by nearly twelve percent. The data does not suggest an explanation for this anomaly.

¹⁰³¹ *Renmin sifa gongzuo zai yuejin: zenyang zuohao shenpanyuan gongzuo* 人民司法工作在跃进: 怎样做好审判员工作, ed. Zhonghua renmin gongheguo zuigao renmin fayuan sifabu bangongting 中华人民共和国最高人民法院司法部办公厅 (Beijing: Falü chubanshe, 1958); *Renmin sifa gongzuo zai yuejin: fayuan he gongan, jiancha jiguan bixu jiaqiang xiezu* 人民司法工作在跃进: 法院和公安, 检察机关必须加强协作, ed. Zhonghua renmin gongheguo zuigao renmin fayuan sifabu bangongting 中华人民共和国最高人民法院司法部办公厅 (Beijing: Falü chubanshe, 1958); *Renmin sifa gongzuo zai yuejin: jiceng renminfayuan he renmin fating zenyang jinxing gongzuo* 人民司法工作在跃进: 基层人民法院和人民法庭怎样进行工作, ed. Zhonghua renmin gongheguo zuigao renmin fayuan sifabu bangongting 中华人民共和国最高人民法院司法部办公厅 (Beijing: Falü chubanshe, 1958); *Renmin sifa gongzuo zai yuejin: renmin sifa gongzuo bixu guanche qunzhong luxian (diyi ce)* 人民司法工作在跃进: 人民司法工作必须贯彻群众路线(第一册), ed. Zhonghua renmin gongheguo zuigao renmin fayuan sifabu bangongting 中华人民共和国最高人民法院司法部办公厅, vol. 1 (Beijing: Falü chubanshe, 1958); *Renmin sifa gongzuo zai yuejin: renmin sifa gongzuo bixu guanche qunzhong luxian (dier ce)* 人民司法工作在跃进: 人民司法工作必须贯彻群众路线(第二册), ed. Zhonghua renmin gongheguo zuigao renmin fayuan sifabu bangongting 中华人民共和国最高人民法院司法部办公厅, vol. 2 (Beijing: Falü chubanshe, 1958).

¹⁰³² *Ganbu nianzhong tongji baobiao: zhengfa xitong* 干部年终统计报表: 政法系统. *Ganbu nianzhong tongji baobiao* (zhengquan xitong, zhengfa xitong, caimao xitong, gongye xitong) 干部年终统计报表(政权系统, 政法系统, 财贸系统, 工业系统) (1959), BMA 123-001-00666.



The damage was by no means limited to Beijing's municipal courts. Similar purges rippled outwards through provincial, county and local level courts and judicial bureaus across China. After years of hard won growth, the number of judicial cadres nationwide declined between 1956 and 1958 by 22.7 percent.¹⁰³³ Most significantly of all, for the first time in the PRC, the flames reached the very top, tipping the balance of power in the legal system decisively against Dong Biwu, and the coterie of modernizers he had assembled at the central level. The ensuing purification extended not just to ideas and people, but also to physical space. Much as late imperial revolutionaries had done fifty years before, the government tore the legal system down to its foundations, razing the actual buildings at its center, including the iconic structure at 72 Ministry of Justice Street. In their place, rose the monumental Great Hall of the People, which projected a new face of power, and a new vision of the future over the city.

During the summer of 1958, while Dong was out of the country leading a delegation on a two-month visit to Eastern Europe and the Soviet Union, the Politburo elevated Peng Zhen to lead a new political-legal small group, the direct ancestor of the

¹⁰³³ He Lanjie, and Lu Mingjian, *Dangdai zhongguo de shenpan gongzuo*, 91.

Central Committee's current PLC.¹⁰³⁴ The following year, Luo Ruiqing succeeded him in that post. Peng and Luo immediately seized the opportunity presented by Dong's absence to hastily convene the Fourth National Judicial Work Conference, which they used as a platform to undermine Dong and crush the judicial system, relentlessly attacking Dong in all but name.¹⁰³⁵

Specifically, the political-legal small group savaged the leadership of the Ministry of Justice. This was an unprecedented move that struck at the heart of Dong's power base and anticipated the high-level bloodletting of the Cultural Revolution. In a November 29 report based on the conference, the small group declared the ministry's entire Party group and three of its non-CCP section chiefs an "anti-Party clique" guilty of "opposing the dictatorship of the proletariat," "opposing Party leadership over the administration of justice," "insisting on the old law standpoint," and "harboring rightists."

¹⁰³⁶ Wang Ruqi, who had helped take over the Nationalist Hebei Provincial High Court in 1949, and was leading the reconstruction of the professional bar, was among the nine. So was Wang Huai'an. Ironically, Wang had been the deputy director of the national office in charge of implementing the Judicial Reform Campaign. As head of the ministry's secretariat, he personally led the 1956 surveys of local practice in Sichuan, and had a major hand in producing the 1957 *Report on Current Conditions in Village Crime*, which the small group singled out for "erasing the distinction between friend and enemy," "lacking a class standpoint," "advocating the death of class struggle," and "opposing the dictatorship of the proletariat."¹⁰³⁷ Accordingly, it fingered him as the mastermind of the ministry's anti-Party clique 反党军师 and labeled him an extreme rightist 极右. Recall that Wang spent three years under arrest in Yan'an as a result of the 1943 rectification; now he was expelled from the CCP and sent to a labor camp in Manchuria.¹⁰³⁸ Altogether, around thirteen percent of the ministry's cadres were declared rightists.¹⁰³⁹

¹⁰³⁴ "Zhengwuyuan, zuigao renmin fayuan, zuigao renmin jianchashu guanyu sheng yishang zhengfu jianli zhengfa weiyuanhui de zhishi (May 31, 1951)," 政务院, 最高人民法院, 最高人民检察院关于省以上政府建立政法委员会的指示 *Renmin ribao* 人民日报, June 3, 1951. Lin Zhongliang 林中梁, *Geji dangwei zhengfawei de zhineng ji hongguan zhengfa gongzuo* 各级党委政法委的职能及宏观政法工作 (Beijing: Zhongguo chang'an chubanshe, 2004), 66-69.

¹⁰³⁵ *Disi jie quanguo sifa gongzuo huiyi wenjian* 第四届全国司法工作会议文件 (Beijing: Falü chubanshe, 1958); Cui Min 催敏, "Disi jie quanguo sifa gongzuo hui de huigu yu fansi," 第四届全国司法工作会议的回顾与反思 *Xingshi sifa luntan* 刑事司法论坛 (2011): 9-23.

¹⁰³⁶ Xiong Xianjue, "1959 nian sifabu bei chexiao zhenxiang," 30-31. , Cai Cheng, *Dangdai zhongguo de sifa xingzheng gongzuo*, 50-53. Cui Min, "Disi jie quanguo sifa gongzuo hui de huigu yu fansi". Cui Min 催敏, "1958 nian sifabu dangzu bei dacheng 'fandang jituan' zhi yuanwei," 1958 年司法部党组被打成'反党集团'之原委 *Yanhuang chunqiu* 炎黄春秋 no. 8 (2011): 26-30.

¹⁰³⁷ Xiong Xianjue, "1959 nian sifabu bei chexiao zhenxiang," 31.

¹⁰³⁸ "Zhonggong sifabu jiguan weiyuanhui guanyu jiyoupai fenzi Wang Huaian de jielun ji chuli jueding (November 15, 1958)," 中共司法部机关委员会关于极右派分子王怀安的结论及处理决定 in *Qianming zhongguo youpai de chuli jielun he geren dang'an* 千名中国右派的处理结论和个人档案, ed. Song Yongyi 宋永毅, (2015).

¹⁰³⁹ *Zhongguo faxuejia fangtanlu*, 360.

The minister herself endured, but only after issuing an abject self-criticism, and her reprieve in office was short-lived. The following April, the Party side purge spread to the state side when the State Council abolished the Ministry of Justice altogether and handed its administrative powers over the courts, in a much reduced form, to the Supreme People's Court. The ministry would not reopen for another twenty years.¹⁰⁴⁰ In July 1959, a parallel move at the municipal level led to the closure of Beijing's judicial office, and the transfer of its powers to the city's high court.¹⁰⁴¹ This ended China's fraught, fifty-two-year experiment with separating judicial administration from adjudication, an institutional precondition for judicial independence that had been the organizing principle for the Westernizing judicial reforms originally introduced in the late Qing.

Because the Supreme People's Court devoted far fewer resources to judicial administration than the ministry had, it also effectively reversed years of steady centralization in the management of the Chinese court system. Many localities revived the pre-1949 CCP practice of coordinating or merging public security, procuratorial and judicial organs, which repudiated the functional separation, professionalization and institutional checks that modernizing CCP judicial policymakers in Beijing had struggled for a decade to promote.¹⁰⁴²

Dong returned to Beijing towards the end of the conference, but he had been completely outmaneuvered, and the damage was already done. The following month, the Supreme People's Court issued a self-abasing report that captured the judicial system's new mission statement in a single phrase: "the conference believed that the people's courts should absolutely obey the leadership of the Party, and become a docile instrument of the Party."¹⁰⁴³ A spate of publications drove that point home with titles such as "the law must obey Party policy." Propaganda lambasted by name some of the toppled figures accused of getting that principle the wrong way around.¹⁰⁴⁴ The vision of

¹⁰⁴⁰ "Zhonghua renmin gongheguo dier jie quanguo renmin daibiaodahui diyi ci huiyi guanyu chexiao sifabu, jianchabu de jueyi," 中华人民共和国第二届全国人民代表大会第一次会议 关于撤销司法部, 监察部的决议 *Renmin ribao* 人民日报, April 29, 1959.

¹⁰⁴¹ *Sifa xingzheng zhi*, 13-14.

¹⁰⁴² Depending on the details, this was known variously as "one chief acting for all three 一长代三长," or one member being as good as three 一员顶三员." Where formal mergers occurred between judicial, public security and procuratorial organs, the products were called "political-legal departments 政法部." *Renmin sifa gongzuo zai yuejin: fayuan he gongan, jiancha jiguan bixu jiaqiang xiezuo*.

¹⁰⁴³ "Zuigao renmin fayuan dangzu guanyu disi jie quanguo sifa gongzuo huiyi de qingkuang de baogao (September 14, 1958)," 最高人民法院党组关于第四届全国司法工作会议的情况的报告 *Renmin sifa* 人民司法 增刊, (1958): 4.

¹⁰⁴⁴ Guang Bo 光博, "Falü bixu fucong dang de zhengce," 法律必须服从党的政策 *Faxue* 法学 no. 5 (1958): 54-57; Zhonghua renmin daxue falü xi 'zhengfa gongzuo' yanjiu xiaozu 中国人民大学法律系'政法工作'研究小组, "Zhengfa gongzuo bixu juegui fucong dang de lingdao," 政法工作必须绝对服从党的领导 *Zhengfa yanjiu* 政法研究 no. 2 (1959): 9-12. Huo Mingguang 霍明光, "Sifa gongzuo bixu wei zongluxian fuwu," 司法工作必须为总路线服务 *Zhengfa yanjiu* 政法研究 no. 5 (1958): 36-41.

a “sunder, stronger people’s democratic legal system” laid out at the Eighth Party Congress two years before had been dealt a mortal blow.

Dong was not officially a casualty of the Anti-Rightist Campaign, but other high-ranking cadres at the Supreme People’s Court unmistakably were.¹⁰⁴⁵ Jia Qian, president of its criminal tribunal, was the principal target at the court. Jia was the former presiding judge of the North China People’s Court, and had also assisted with the takeover of the Nationalist Hebei Provincial High Court, and led the 1956 war crimes trials of captured Japanese officers. He was also one of the three lead drafters of the 1954 Law on the Organization of the People’s Courts, along with Wang Huai’an and Li Mu’an. Of the three, only Li escaped the campaign, because he had retired in 1954, and was in ill health. Jia was expelled from the CCP.¹⁰⁴⁶ Additionally, Lin Hengyuan, the vice president of the Supreme People’s Court’s civil tribunal, and Lu Mingjian, director of the court’s research office, were labeled rightists. Cadres from the Supreme People’s Court joined their colleagues from the Ministry of Justice in labor camps. When Dong’s term as president of the court expired in 1959, Xie Juezai, who had steered judicial policy in the Yan’an era, replaced him, and Dong never figured in legal policymaking again. Just after leaving, he reminded legal personnel to “resolutely listen to the Party, and obey Party leadership.”¹⁰⁴⁷

In this way, over the course of a decade, comprehensive management of the legal system flipped from a state to a Party organ, and primacy shifted from Dong to Peng to Luo, and after that to Cultural Revolution luminary Xie Fuzhi, lurching to the left with each new leader.¹⁰⁴⁸

The principal targets of the Anti-Rightist Campaign from Beijing’s judicial establishment spent the next twenty years in a range of circumstances. Some languished for more than a decade in distant labor camps or in minor postings to far-flung provinces, while others were allowed back into Beijing and had their rightist “hats” removed during a brief thaw around 1961, made possible by the fall in Mao’s stock after the catastrophic famine of the Great Leap Forward. Among the latter, Zhou Enlai tapped Jia Qian to work as an advisor at the State Council.¹⁰⁴⁹ Likewise, Wang Feiran

¹⁰⁴⁵ Feng Ruoquan, “Bo Jia Qian de ‘shenpan duli’ de fandang miulun”. Jia Yangzhou, and Su Delin, “Bo Lu Mingjian deng ren zai renmin fayuan de xingzhi he renwu fangmian de miulun”.

¹⁰⁴⁶ “Zhonggong zuigao renmin fayuan xingting zhibu guanyu kaichu youpai fenzi Jia Qian dangji de jue ding (February 15, 1958),”中共最高人民法院刑庭支部关于开除右派分子贾潜党籍的决定 in *Qianming zhongguo youpai de chuli jielun he geren dang’an* 千名中国右派的处理结论和个人档案, ed. Song Yongyi 宋永毅, (2015).

¹⁰⁴⁷ Dong Biwu 董必武, “Dong Biwu fuxi zai quanguo gongan, jiancha, sifa xianjin gongzuozhe dahui de jianghua,” 董必武副主席在全国公安, 检察, 司法先进工作者大会上的讲话 *Renmin sifa* 人民司法 no. 10 (1959): 9.

¹⁰⁴⁸ Pitman Potter, *From Leninist Discipline to Socialist Legalism: Peng Zhen on Law and Political Authority in the PRC* (Stanford: Stanford University Press, 2003); Alice Miller, “The CCP Central Committee’s Leading Small Groups,” *China Leadership Monitor* no. 26 (2008): 1-21; Cui Min, “Disi jie quanguo sifa gongzuo hui de huigu yu fansi”.

¹⁰⁴⁹ Zhang Shejun, and Liu Shousen, “Jia Qian,” 254.

was sent to work at the Beijing library. None were allowed back into the courts, and the black marks in their dossiers kept them vulnerable to misfortune at any moment. Indeed, when the Cultural Revolution broke out, most suffered persecution again, as did their associates.

Triumphant in 1958, Peng Zhen and Luo Ruiqing were among the first elite casualties of the Cultural Revolution. Among the myriad charges against them, their attackers lumped them together with Liu Shaoqi in an unlikely trinity, supposedly bound by shared commitments to a “feudal, capitalist, and revisionist legal system.”¹⁰⁵⁰ Red Guards in fact cited Wang Feiran’s posting to the Beijing library as evidence that Peng had shielded someone who had “viciously attacked the Party and was labeled a rightist,” apparently unmoved by the fact that Peng had originally engineered Wang’s downfall.¹⁰⁵¹ Such episodes simply remind us that, for all the vehemence attached to ideological purity, combatants proved time and again that they had no scruples about opportunistically wielding ideology as a weapon against one another, treating it like gilt on the dagger.

¹⁰⁵⁰ “Completely Smash the Feudal, Capitalist and Revisionist Legal System (彻底打碎封建, 资本主义及修正主义的法制, 反彭罗黑线, 广州市政法机关干警反彭罗黑线斗批改小组编辑部编, 第二期, July, 1968)” *Chinese Law and Government* 2, no. 4 (1969): 7-11.

¹⁰⁵¹ Yuan Beijing shiwei jiguan Mao Zedong sixiang hongqi bingtuan 原北京市委机关毛泽东思想红旗兵团, “Daye xinjia, da yinmou: Peng Zhen zui’e shi (1925-1966) (July 1967),”大野心家, 大阴谋: 彭真罪恶史 (1925-1966) in ‘Wenge’ chuqi youguan Peng Zhen wenti de pipan ziliao (yi) ‘文革’初期有关彭真问题的批判资料(一), 中共重要历史文献资料汇编 (Luosanji: Zhongwen chubanshu fuwu zhongxin, 1996), 37.

Conclusion

Inevitably, the energy of the Cultural Revolution dissipated and, by 1978, the cycle was turning once more, this time without the helmsman at the wheel. Mao was dead, the Gang of Four was in custody, and the CCP leadership was beginning to lay the foundations for what would become known in official parlance as the era of “reform and opening up.” The leadership faced the linked challenges of compartmentalizing responsibility for the Cultural Revolution, while rescuing the battered legitimacy of the Party, correcting past wrongs, and rebuilding the state. Law offered a crucial pathway to accomplishing those goals.

The Communiqué of the Third Plenum of the Eleventh Party Congress, adopted on December 22, 1978, is often seen as the beginning of that journey.¹⁰⁵² What is less well appreciated is how reliant that Communiqué was on the record of the 1950s, which furnished a Party shorn of legal resources a convenient trove of authentic, internal precedents upon which it could draw on short notice. Although Dong Biwu died in 1975, the Communiqué plainly channeled many of the talking points raised in his 1956 address to the Eighth Party Congress:

In order to safeguard people's democracy, we must strengthen the socialist legal system...there must be laws for people to follow, these laws must be strictly enforced, and lawbreakers must be investigated...Procuratorial and judicial organs shall maintain due independence, shall be faithful to the law and the system, and be faithful to the interests of the people and to the truth; they shall maintain the people's equality before their own law, and not allow anyone to have special prerogatives above the law.¹⁰⁵³

In fact, the CCP had been reaching back for months to Dong for authority, dribbling out republished speeches from the 1950s about the importance of strengthening the legal system, building up the courts, and promulgating basic legislation, usually accompanied by timely commentary linking the failure of those goals to the depredations committed by the Gang of Four.¹⁰⁵⁴ Also, earlier in the year, both Ye Jianying and Deng Xiaoping had called for restarting shelved codification projects, particularly the draft criminal law begun in the mid-1950s, with an eye towards prosecuting the Gang of Four.¹⁰⁵⁵

¹⁰⁵² Potter, *From Leninist Discipline to Socialist Legalism: Peng Zhen on Law and Political Authority in the PRC*.

¹⁰⁵³ “Zhongguo gongchandang dishiyi jie zhongyang weiyuanhui disan ci quanti huiyi gongbao (December 22, 1978),” 中国共产党第十一届中央委员会第三次全体会议公报 *Renmin ribao* 人民日报, December 24, 1978.

¹⁰⁵⁴ “Dong Biwu tongzhi yijiuwuqi nian zai junshi jianchayuan jianchachang, junshi fayuan yuanzhang huiyi shang de jianghua (zhaiyao) (March 18, 1957),” 董必武同志一九五七年在军事检察院检察长, 军事法院院长会议上的讲话 (摘要) *Renmin sifa* 人民司法 no. 1 (1978): 1-8. “Jianyi chongxin fabiao Dong Biwu tongzhi tan fazhi de zhongyao fayan,” 建议重新发表董必武同志谈法制的重要发言 *Renmin ribao* 人民日报, May 15, 1978.

¹⁰⁵⁵ Gao Mingxuan 高铭暄, *Zhonghua renmin gongheguo xingfa de yunyu dansheng he fazhan wanshan* 中华人民共和国刑法的孕育诞生和发展完善 (Beijing: Beijing daxue chubanshe, 2012), 2.

The plenum unleashed a wave of rehabilitations, and everywhere targets of the Anti-Rightist Campaign began to resurface in Beijing, in many cases tasked by the Party leadership with reprising their former roles.¹⁰⁵⁶ The PRC legal system owes a tremendous debt to the fortuity that these individuals outlived Mao, and were in a position to authoritatively pick up the reigns again. For some this call to duty amounted to a remarkable fourth round of legal reconstruction in their long careers, making them living embodiments of the recursive qualities of Chinese revolution.

Eight days after the issuance of the Communiqué, the verdict against the Ministry of Justice's "anti-Party clique" was reversed. Six months later, the political-legal small group recommended re-establishing the ministry, and on September 13, 1979, the National People's Congress (NPC), which meets on the former site of 72 Ministry of Justice Street, decided to do just that. More significantly, the NPC separated adjudication from judicial administration, shifting the latter from the courts back to the ministry, which was briefly restored to its former powers. That recovery was short-lived, however. Once Deng Xiaoping's grip was secure and the Gang of Four were in prison, a retrenchment set in. When the 1982 Constitution took effect, judicial administration reverted to the courts, where it remains.¹⁰⁵⁷

When it reopened, the ministry was stocked with familiar faces. Minister Wei Wenbo had once served as a deputy minister (1952-56). One of his new deputies was Wang Yuechen, who had led the NCPG judicial department's secretariat in 1948, directed the takeover of the Nationalist Hebei Provincial Court in 1949, and been a section chief at the ministry in the early 1950s. Jia Qian and Wang Ruqi had been at Wang Yuechen's side in the NCPG and during the takeover at 72 Ministry of Justice Street. Now, Jia was a counselor at the ministry. Meanwhile, Wang Ruqi was back in her old post as chief of the section on notaries and lawyers, to resume the abortive project of creating a professional bar, this time with a crucial and urgent twist.

In 1956, she had been in charge of organizing the 28 advocates assigned to the trials of Japanese war criminals in Shenyang and Taiyuan. In 1980, she was given a similar, but much more important assignment: organizing the defense team for the Gang of Four trial. She quickly assembled a group of 18 lawyers from Shanghai, Wuhan, and Beijing, including people she had worked with closely in the past, such as Zhou Kuizheng and Zhang Sizhi. Zhang was recalled from teaching middle school after fifteen years in labor camps to take charge of the entire lawyers group, and to defend Mao's widow, Jiang Qing. He went on to lead the fledgling Beijing bar association, and to an outstanding career as a lawyer, renowned for representing dissident clients such as Wei Jingsheng, Bao Tong, and Pu Zhiqiang.

¹⁰⁵⁶ Ma Kechang 马克昌, *Tebie bianhu* 特别辩护 (Beijing: Zhongguo chang'an chubanshe, 2007).

¹⁰⁵⁷ Wang Xiaomei 王笑梅, "Woguo sifa xingzheng jigou de zhineng yanbian tanxi," 我国司法行政机构的职能演变探析 *Shanxisheng zhengfa guanli ganbu xueyuan xuebao* 山西省政法管理干部学院学报 23, no. 2 (2010): 106. Su Shangyao, and Han Wenwei 苏尚尧 and 韩文伟, *Zhonghua renmin gongheguo zhongyang zhengfu jigou* 中华人民共和国中央政府机构 (Beijing: Jingji kexue chubanshe, 1993), 474-475.

Others from the former Ministry of Justice also made a strong comeback. In 1958, Zheng Shaowen and Chen Yangshan had both been deputy ministers, and joint deputy secretaries of the ministry's Party group when the political-legal small group labeled them "leaders" of the ministry's anti-Party clique. After the Supreme People's Procuratorate was restored in 1978, Chen was recalled from Ningxia province to become a deputy procurator general. In 1979, Zheng was recalled from Guangxi province to become vice president of the Supreme People's Court, and secretary of its Party group. Similarly, Lu Mingjian, who had led the court's research office until 1958 returned to his old job. Wang Huai'an was rehabilitated in 1979 after 20 years in labor camps, and joined the court as a vice president in 1980, where he became a leading voice for the professionalization of the post-Mao judiciary.¹⁰⁵⁸ On January 25, 1983, he was the presiding judge who commuted Jiang Qing's death sentence to life imprisonment.¹⁰⁵⁹

The verdicts for Wang Feiran and He Shenggao were "revised" in 1979, which erased the stain from their records completely.¹⁰⁶⁰ Though dying of stomach cancer, He was named an advisor to the public security bureau. Wang was swiftly elected a deputy director of the standing committee of the Beijing's People's Congress, and joined Jia Qian among the founding vice presidents of the Beijing Law Society in 1980, a group led by Chen Shouyi, Dong Biwu's former chief aide on matters of legal education.¹⁰⁶¹

The echoes of the past were not restricted to personnel. Chen Shouyi made a splash at an academic law conference two months before the 1978 plenum by provocatively putting the concept of the "rule of law" back on the table. Almost overnight, a vigorous discussion sprang up about the competing ideas of rule of law, rule by man

¹⁰⁵⁸ Wang Huai'an 王怀安, *Lun shenpan fangshi de gaige* 论审判方式的改革 (Beijing: Renmin fayuan chubanshe, 1995).

¹⁰⁵⁹ "Zuigao renmin fayuan xingshi shenpan ting zuori caiding, yifa jiang Jiang Qing, Zhang Chunqiao jian wei wuqi tuxing, yuan panchu boduo zhengzhi quanli zhongshen bu bian," 最高人民法院刑事审判庭昨日裁定, 依法将江青张春桥减为无期徒刑, 原判处剥夺政治权利终身不变 *Renmin ribao* 人民日报, January 26, 1983.

¹⁰⁶⁰ "Tiaodong yiqie jiji yinsu wei sige xiandaihua fuwu, Beijing shi yipi cuohua wei youpai de tongzhi dedao gaizheng," 调动一切积极因素为四个现代化服务, 北京市一批错划为右派的同志得到改正 *Renmin ribao* 人民日报, February 3, 1979.

¹⁰⁶¹ "Beijing shi faxuehui zhengshi chengli," 北京市法学会正式成立 *Renmin ribao* 人民日报, January 28, 1980. Chen was a 1929 graduate of Chaoyang law school. He had administered the judicial cadre training course at Pingshan in 1948, led one of the three groups at the China University of Politics and Law in 1949, led the Ministry of Justice's judicial cadre training course in 1950, served as vice dean of academic affairs at the Central Political-Legal Cadre School, and as section chief for education at the Ministry of Justice, before being tapped by Dong to chair the reconstituted law department at Peking University in 1954. Chen served there until 1966. After a decade of internal exile during the Cultural Revolution, he was recalled to Beijing in 1978 to take his old job, and rebuild the department. He was the longest serving dean in its history.

and rule by the Party, with Mao and the Gang of Four very much the elephants in the room.¹⁰⁶²

Enabled by favorable political winds, similar discussions soon broke out over the heritability of law, the presumption of innocence, equality before the law, judicial independence, the nature and role of legal education and the legal professions, and the sources, precedents and nature of the law.¹⁰⁶³ These exchanges revived debates last aired vigorously in the 1950s, and were among the pivotal issues on which the fate of Chinese law, the institutions that complemented it, and the reformers who pushed it forward had last turned.¹⁰⁶⁴ Indeed, many of the participants bore the scars of those

¹⁰⁶² Zhang Jinfan, and Zeng Xianyi 张晋藩 and 曾宪义, “Ren zhi yu fazhi de lishi pouxi,” 人治与法治的历史剖析 *Faxue yanjiu* 法学研究 no. 5 (1979): 32-39; Wang Liming, “Ren zhi yu fazhi”; Wang Liming 王礼明, “Shilun ren zhi yu fazhi,” 试论人治与法治 *Xuexi yuekan* 学习月刊 no. 11 (1979): 22-25,32; Wang Liming, Liu Hainian, and Luo Yaopei 王礼明, 刘海年, and 罗耀培, “Fazhi yu fazhi,” 法制与法治 *Xuexi yu tansuo* 学习与探索 no. 5 (1979): 33; Gu Chunde, Lü Shilun, and Liu Xin 谷春德, 吕世伦, and 刘新, “Lun ren zhi he fazhi,” 论人治和法治 *Faxue yanjiu* 法学研究 no. 5 (1979): 27-31; He Huahui, Ma Kechang, and Zhang Quanlin 何华辉, 马克昌, and 张泉林, “Shixing fazhi jiu yao bingqi ren zhi,” 实行法治就要摒弃人治 *Faxue yanjiu* 法学研究 no. 4 (1980): 62-63; Liao Jingye 廖竞叶, “Fazhi he ren zhi meiyou jue du jiejian,” 法治和人治没有绝对界限 *Faxue yanjiu* 法学研究 no. 4 (1980): 63-64; Zhang Guohua 张国华, “Lüelun chunqiu zhanguo shiqi de ‘fazhi’ yu ‘ren zhi’,” 略论春秋战国时期的‘法治’与‘人治’ *Faxue yanjiu* 法学研究 no. 2 (1980): 46-52; Li Buyun, Wang Dexiang, and Chen Chunlong, “Lun yi fazhiguo,”; Li Buyun, and Wang Liming 李步云 and 王礼明, “Ren zhi he fazhi neng huxiang jiehe ma?,” 人治和法治能互相结合吗? *Faxue yanjiu* 法学研究 no. 2 (1980): 40-45; Yang Mansong 杨满松, “Fazhi wei wuchan jieji zhuanzheng suo bixu,” 法治为无产阶级专政所必需 *Faxue yanjiu* 法学研究 no. 4 (1980): 61-62.

¹⁰⁶³ Lin Rongnian 林榕年, “Lüe tan falü de jichengxing,” 略谈法律的继承性 *Faxue yanjiu* 法学研究 no. 1 (1979): 13-16; Li Jin 栗劲, “Bixu kending fa de jichengxing,” 必须肯定法的继承性 *Faxue yanjiu* 法学研究 no. 2 (1979): 44-46. Wang Zhaosheng 王兆生 and 魏若萍, “Dui ‘wuzui tuiding’ yuanze de kanfa,” 对‘无罪推定’原则的看法 *Faxue yanjiu* 法学研究 no. 2 (1979): 47-48; Zhao Hong, and Dou Jixiang 赵虹 and 窦继祥, “Dui ‘wuzui tuiding’ yuanze de lijie,” 对‘无罪推定’原则的理解 *Faxue yanjiu* 法学研究 no. 3 (1979): 47-48. Liu Guangming 刘光明, “Renmin fayuan dili shenpan zhifu cong falü,” 人民法院独立审判只服从法律 *Faxue yanjiu* 法学研究 no. 3 (1979): 29-32; Zhang Jinqing, and Xie Bangyu 张晋清 and 谢邦宇, “Duli shenpan yu dang de lingdao,” 独立审判与党的领导 *Faxue yanjiu* 法学研究 no. 2 (1980): 27-29; Lin Qian 林千, “‘Sifa dili’ de qi yuan,” ‘司法独立’的起源 *Renmin ribao* 人民日报, September 9, 1980. 李步云, 坚持公民在法律上一律平等 *人民日报*, December 6, 1978. He Huahui, Ma Kechang, and Zhang Quanlin, “Shixing fazhi jiu yao bingqi ren zhi”; Su Qian 苏谦, “Ye tan falü de jichengxing,” 也谈法律的继承性 *Faxue yanjiu* 法学研究 no. 1 (1980): 59-61.

¹⁰⁶⁴ Zhang Guangbo 张光博, “Guanyu ‘gongmin zai falü shang yilü pingdeng’ de yiyi,” 关于‘公民在法律上一律平等’的意义 *Faxue* 法学 no. 2 (1957): 60-64. Wu Zisu 巫字苏, “Pipan zichan jieji ‘wuzui tuiding’ yuanze,” 批判资产阶级‘无罪推定’原则 *Zhengfa yanjiu* 政法研究 no. 2 (1958): 37-41. Yang Zhaolong, “Falü de jie jixing he jichengxing”; Hou Zhiwei 侯志纬, “Xin jiu falü jiu jing you meiyou jichengxing? Fensui youpai qitu fubi wei fatong de yinmou,” 新旧法律究竟有没有继承性? 粉碎右派企图复辟伪法统的阴谋 *Faxue yanjiu* 教学与研究 no. 12 (1957): 45-49. Feng Ruoquan, “Bo Jia Qian de ‘shenpan dili’ de fandang miulun”. Liu Kunlin 刘昆林, “Dui ‘renmin fayuan dili jin xing shenpan, zhi futu falü’ de renshi,” 对‘人民法院独立进行审判, 只服法律’的认识 *Zhengfa yanjiu* 政法研究 no. 1 (1955): 35-40. *Disi jie quanguo sifa gongzuo huiyi wenjian*.

earlier battles personally, having suffered years of persecution as a consequence of them.¹⁰⁶⁵

A piece by Li Buyun, entitled “Insist on All Citizens Being Equal Before the Law,” was one of the earliest such efforts.¹⁰⁶⁶ Li was a protégé of Zhang Youyu, and one of the beneficiaries of the opening of law school admissions to soldiers during the Great Leap. Notably, his article anticipated various ideas expressed in the 1978 plenum Communiqué, and revived a debate about whether rights applied broadly to “citizens,” a legal term, or the more plastic political community of “the people.” For authority, it began with quotes from the 1954 Law on the Organization of the People’s Courts, then still in effect, and was written from the perspective that various principles enshrined in that law had yet to be realized because radical ideological positions had derailed them, the implication being that the moment was now ripe to make up for lost time.

Li’s article received attention in high places. After the plenum, Hu Yaobang ordered work to begin on an authoritative Party document on the “socialist rule of law,” and Li was tapped to prepare the draft.¹⁰⁶⁷ After several revisions, the final document was released in 1979. Known popularly as “Document 64,” it was a pivotal text in the reconstitution of the legal system. It was the first time the CCP Central Committee formally endorsed “implementing socialist rule of law as an important standard,” and it gave ideas regarded as apostasies during the Anti-Rightist Campaign the imprimatur of orthodoxy.¹⁰⁶⁸

¹⁰⁶⁵ “Falüjie neibu cunzai bushao maodun : minmeng shiwei yaoji youguan mengyuan jinxing zuotan,” 法律界内部存在不少矛盾: 民盟市委邀集有关盟员进行座谈 *Beijing ribao* 北京日报, May 29 1957; “Wang Tieya de fandang yinmou pochan,” 王铁崖的反党阴谋破产 *Renmin ribao* 人民日报, August 6, 1957; Li Haopei 李浩培, “Tan falü he falü kexue de jichengxing,” 谈法律和法律科学的继承性 *Guangming ribao* 光明日报, April 29, 1957; Ruo Quan, and He Fang, “Buxu cuangai renmin fayuan de xingzhi bo Jia Qian deng ren ‘shenpan duli’ ‘youliyu beigao’ deng miulun”; Qian Duansheng, “Wo de zuixing: Beijing zhengfa xueyuan yuanzhang Qian Duansheng”; *Beijing shi sifajie youpai fenzi shi zenyang jinxing fandang pohuai huodong de; Wei baowei shehuizhuyi fazhi er douzheng: zhengfajie fanyoupai douzheng lunwen xuanji*; Huang Xiaoyun, “Xin zhongguo sifajie de bu laosong: ji zuigao renmin fayuan fuyuanzhang Wang Huai’an”; Zhang Sizhi, “Gaidan morning faguan lu”.

¹⁰⁶⁶ Li Buyun 李步云, “Jianchi gongmin zai falü shang yilü pingdeng,” 坚持公民在法律上一律平等 *Renmin ribao* 人民日报, December 6, 1978.

¹⁰⁶⁷ Li Buyun, and Li Qing, “Cong ‘fazhi’ dao ‘fazhi’, ershi nian gai yizi-- jianguo yilai faxuejie zhongda shijian yanjiu (26),” 3.

¹⁰⁶⁸ Cui Min 催敏, “64hao wenjian: guanda haishi fada,” 64号文件: 官大还是法大 *Yanhuang chunqiu* 炎黄春秋 no. 12 (2009): 15-20. There is evidence that some of these ideas remained alive internally at a high level. In 1962, with Mao’s power diminished by the catastrophic famine that followed the Great Leap, Liu criticized the local excesses of the Anti-Rightist Campaign and Great Leap, and attributed them in part to the fear and impunity cultivated by the public security bureau, and the primacy of Party committees over the courts. At a meeting to discuss the political-legal small group’s *Summary Report on Political-Legal Work Since 1958*, he said: “It is correct for courts to adjudicate independently; that is stipulated in the Constitution. Party committees and the government shall not interfere when they try cases...We cannot propose that political-legal organs obey the leadership of Party committees at various levels absolutely. If they [the committees] violate the law, they cannot be obeyed. If the decisions of local Party committees are the same as law, when they differ from central policies, which should be obeyed? Under these

Specifically, Document 64 resumed the abortive efforts to disentangle Party and state, and buffer the courts from interference by outside organs. It demanded that organs and individuals abide by state law, and conform to legal procedures if they did not agree with judicial decisions. It heralded the resumption of large scale legal propaganda 普法 campaigns in the PRC. Finally, with academic law again in shambles, it ordered a new wave of judicial recruiting from traditional sources, and formally opened the door to the return of the old guard who had first built the PRC judicial system nearly thirty years before.

Party committees and judicial organs each have their own special responsibilities. One cannot substitute for the other, and they must not be mixed up. Consequently, the Center decides to eliminate the system of Party committees approving the adjudication of cases...Relevant work units and individuals must resolutely implement judgments and decisions issued by judicial organs according to the law, and if they do not agree, they should file an appeal according to judicial procedure, which the relevant judicial organ has the responsibility to accept...The Party leads judicial work mainly through programmatic and policy leadership. Party committees at various levels must resolutely change the past [practice] of substituting the Party for the government, or of words for law...

The Center charges...the formulation of a concrete program for completing judicial structures at various levels and strengthening the ranks of judicial cadres, a planned, step-by-step transfer of a large cohort of cadres with sound ideology, correct work styles, good health, and a certain policy and cultural level from Party and government organs, military units, and economic departments. Carry out a general survey of those who have studied law or done judicial work in the past, including teachers and researchers, and all of those who are currently still suitable for judicial work should be mobilized to the utmost to return.¹⁰⁶⁹

To jumpstart the growth of the legal system, jurists dusted off old texts and restarted frozen initiatives. The 1979 Criminal Law sprang from the thirty-third draft of a project that underwent its first twenty-two revisions between 1954 and 1957. The 1979 Criminal Procedure Law and a proposed Civil Law, which has yet to be adopted, also refreshed drafts from that period.¹⁰⁷⁰ Tao Xijin, who had just been recalled from 18 years in Guangxi province, directed the final revisions to the criminal laws, and then joined Yang Xiufeng to lead the civil law project. Tao had been among the legal officials who continued to invoke the “rule of law” during the 1950s, though in increasingly radicalized tones as the political environment quickened. He had been intimately involved with the original civil and criminal law drafting projects as a personal secretary

circumstances, the law and central policy should be obeyed.” Liu Shaoqi 刘少奇, “Zhengfa gongzuo he zhengque chuli renmin neibu maodun (May 23, 1962),”政法工作和正确处理人民内部矛盾 in *Liu Shaoqi xuanji (xia juan)* 刘少奇选集 (下卷), (Beijing: Renmin chubanshe, 1985), 452. Cui Min, “Disi jie quanguo sifa gongzuo hui de huigu yu fansi,” 20-22.

¹⁰⁶⁹ “Zhonggong zhongyang guanyu jianjue baozheng xingfa, xingshi susongfa qieshi shishi de zhishi (September 9, 1979),”

¹⁰⁷⁰ Li Xiuqing 李秀清, “Zhongguo yizhi sulian minfa moshi kao,” 中国移植苏联民法模式考 *Zhongguo shehui kexue* 中国社会科学 5, (2002): 130. Zhang Zhihui 张智辉, “Huishou xin zhongguo xingfaxue yanjiu wushi nian,” 回首新中国刑法学研究五十年 *Guojia jianchaguan xueyuan xuebao* 国家检察官学院学报 8, no. 1 (2000): 12.

to Dong Biwu, and as director of the State Council's legislative affairs bureau (1954-1959).

Likewise, in 1982, the government adopted a new constitution, which remains in force today after several rounds of amendments. In the words of one Chinese scholar, the 1982 Constitution "took the 1954 Constitution as the basis of its formulation." The correspondence even extended to the senior leaders who closely supervised the production of both texts, most prominently Deng Xiaoping and Peng Zhen.¹⁰⁷¹

Supporting textbooks and multi-volume documentary collections quickly appeared to guide the re-emerging legal professions and catalyze legal education. They reprinted instructions, interpretations and regulations from the 1950s that were nominally still in force but had become dead letters in areas as diverse as criminal procedure, the regulation of the bar, and virtually every corner of the civil law.¹⁰⁷² Legal scholars then carried the spirit of this enterprise still further back by compiling documents from the CCP's pre-1949 history to construct a deep chronology of legal development that generously colored the maelstrom from which China had just emerged an interruption.¹⁰⁷³ Finally, in the early 1990s, this elder generation began in memoirs, academic scholarship, and popular media to reflect on their experiences in the formative early years of the PRC legal system, opening the topic for public discussion and intervening, not always obliquely, in live controversies.¹⁰⁷⁴

That past is unavoidably bound to the PRC's present, and this study has probed a seminal interval in it, when the recurring protagonists and controversies that gave

¹⁰⁷¹ Zhang Qingfu, and Ren Yi 张庆福 and 任毅, "1954 nian xianfa: xianxing xianfa de jichu," 1954 年宪法: 现行宪法的基础 in *1954 nian xianfa yanjiu* 1954 年宪法研究, ed. Zhang Qingfu, and Han Dayuan 张庆福 and 韩大元, (Beijing: 2006), 7. Glenn D. Tiffert, "Epistrophe: Chinese Constitutionalism and the 1950s," in *Building Constitutionalism in China*, ed. Michael Dowdle and Stephanie Balme, (New York: Palgrave-Macmillan, 2009)

¹⁰⁷² *Xingshi susongfa cankao ziliao (diyij) (shangce)* 刑事诉讼法参考资料(第一辑)(上册), ed. Beijing zhengfa xueyuan susongfa jiaoyanshi 北京政法学院诉讼法教研室, vol. 1 (Beijing: Beijing zhengfa xueyuan, 1980); *Minshi susongfa cankao ziliao (diyij)* 民事诉讼法参考资料(第一辑), ed. Zhongguo shehui kexueyuan faxue yanjiusuo minfa yanjiushi minsuzu, and Beijing zhengfa xueyuan minshi susongfa yanjiushi 中国社会科学院法学研究所民法研究室民诉组 and 北京政法学院民事诉讼法研究室, vol. 1 (Beijing: Falü chubanshe, 1981). *Zhonghua renmin gongheguo sifa xingzheng lishi wenjian huibian (1950-1985)* 中华人民共和国司法行政历史文件汇编(1950-1985), ed. Zhonghua renmin gongheguo sifabu 中华人民共和国司法部 (Beijing: Falü chubanshe, 1987); Xiong Xianjue, and Zhang Min 熊先觉 and 张懋, *Zhongguo sifa zhidu ziliao xuanbian* 中国司法制度资料选编 (Beijing: Renmin fayuan chubanshe, 1987).

¹⁰⁷³ Han Yanlong, and Chang Zhaoru, *Zhongguo xin minzhuzhuyi geming shiqi genjudi fazhi wenxian xuanbian*.

¹⁰⁷⁴ The irony of the era's victims writing its history is powerful. Lu Mingjian, for example, head of the Research Office of the Supreme People's Court before being purged as a rightist, was one of the two chief editors of an official history of the court. His co-editor had been president of the court's civil adjudication tribunal at the time, but was not purged and went on to become a deputy president of the court in the early 1980s. He Lanjie, and Lu Mingjian, *Dangdai zhongguo de shenpan gongzuo*. He Jixiang, *Hu shang fazhi meng*. Jiang Ping, and Chen Xiahong, *Chenfu yu kurong: bashi zishu*. *Zhongguo faxuejia fangtanlu*.

decades of judicial upheaval a patterned coherence inscribed themselves upon the founding of a nation. The preceding chapters have told this story in a radically new way, and challenged the theoretical frameworks through which we have traditionally understood it. By proposing a different model of the revolution premised on correlation rather than antagonism, they have sidestepped the brittle, categorical dualism that structures much of our historiography on 1949 for a richer palette, better able to accommodate polyvalence, and the discrepancies between representation and reality. They have mapped lost connections between the late Republican judicial system, the CCP's iconic pre-1949 base areas, and the takeover and reconstruction of Beijing's courts, attentive to the limitations of established teleologies and to the neglected empirical dimensions of how the courts actually experienced revolution.

Most significantly, they have knocked down the walls that historiographically quarantined the CCP from the Republican milieu it inhabited to show that the Party was pulled inexorably into the orbit of the Nationalist legal system. The Party assimilated and reconstituted key Nationalist concepts and practices until they became a part of its own identity, and therefore integral to its revolution and the fractured pedigree of its legal system. Those elements render comprehensible for the first time the erratic path judicial construction actually took in the PRC, and the spasms of intense violence that periodically perturbed it.

It takes no great analytical acumen to realize that the tidy temporal and ideological boxes into which we conventionally organize PRC history cannot accommodate the fantastic twists and turns this study has documented, or the convulsions interspersed among them. Nor will substituting notions of liminality or transition for the exhausted conceit of a clean revolutionary rupture do. The leaps in either direction are too extreme and abrupt from year to year, and decade to decade. Extrinsic shocks prevented the judicial system from following anything like a smooth trajectory.

For decades, it was possible to speak of unitary ideological postures and traditions on matters of Party judicial policy because the CCP tightly controlled information, tended to externalize its cleavages, and no one had an opportunity to peer into the empirical record of practice. In light of the findings presented in this study, those conceits are no longer sustainable. What we see instead is a series of transient equilibriums, populated by a recurring cast of characters, riven by unresolved controversies over first order problems like where law comes from, how to reconcile it with revolution, and how to manage the relationship between Party and state. In a word: politics, but of a feral intensity. To be sure, these issues were larger than just the CCP; they vexed the Guomindang as well, and were symptomatic of the structural contradictions thrown up by the marriage of revolutionary ideologies and Leninist organizations. But the CCP took them to new heights, seized by a vision of revolution that required a constant diet of victims to sustain itself, and which Mao harnessed as a weapon to abet his will to power. This cycle of destruction ended only when he died, but the questions themselves remain alive.

The judicial system was by no means static; it adapted constantly as the surrounding environment impinged upon it, picking up new ideological currents, personnel, and policy objectives, and absorbing shocks from wars and mass campaigns that gravely wounded it. Points of reference changed; judicial modernizers initially looked to the Nationalist legal system, and when that was no longer tenable they found support for their cause by invoking “advanced Soviet experience.” Either way, this left them vulnerable to the charge of promoting the old law standpoint. It could not have been otherwise. In China, the modern judicial system was a product of the Republican period, from its institutions and professions, to the way its bodies of knowledge were organized and propagated. Under those conditions, it was not possible to build a judicial system that was recognizably modern without exposing themselves to the charge of promoting the old law standpoint, as many of them discovered when their shelter under Soviet models failed to protect them.

Mao was fundamentally hostile to a modern legal system, and he proved that by successively laying waste to every version his cadres delivered. His ideological commitments to the mass line and continuous revolution left little room for the stability law required, and he would not tolerate bureaucratic restraints on the campaign-style mobilizations from which he drew strength. With his encouragement, other Party leaders exploited vulnerable categories of people such as legacy personnel, imagined spies, and rightists as kindling to feed the fires of the revolution whenever they seemed to flag. That in turn aroused savage, opportunistic internal competitions for power and survival, and appetites for vengeance. The leaders of the Judicial Reform Campaign at the national and municipal levels were no less compromised by attachments to the Nationalist legal system than many of those they purged. At the BMPC, the impulse for organizational purity produced exactly the opposite by fracturing the court into conspiratorial blocs that cynically used ideology and fabricated evidence to sabotage one another.

Just the same, the judicial system exhibited a remarkable capacity to recover from those insults, and settle back into a cognizable trajectory once each storm had passed. A persistent cohort of cadres, many of them with Republican legal educations, steered the courts towards higher standards of professionalism, rigor, and institutionalization at every opportunity, and they repeatedly paid prices for it. In recognition of their roles, the CCP finally purged them from the legal system en masse in 1958. Their absence coincided with the darkest years in PRC legal history.¹⁰⁷⁵ To speed closure of that period and spur recovery, the Party then brought them back.

The resources available in the base areas were primitive, but once the judicial modernizers Dong Biwu assembled had access to Beijing their preferences became

¹⁰⁷⁵ Zhang Peitian, “Xin zhongguo shenpan zhidu quzhe yanbian de shishi kaolun (1957-1976)”;
Yan Zhu 祝彦, “Jianguo chuzhong zhongguo gongchandang yifa zhiguo de tansuo yu quzhe,” 建国初中国共产党依法治国的探索与曲折 *Dangshi yanjiu yu jiaoxue* 党史研究与教学 no. 5 (2008): 11-17. Yang Runshi, “Cong yifa banshi dao yifa zhiguo: jianlun Dong Biwu dui shehuizhuyi fazhi jianshe de lilun gongxian,”; Yang Yifan, Chen Hanfeng, and Zhang Qun, *Zhonghua renmin gongheguo fazhishi*, 58-71.

abundantly clear. Unlike their Republican predecessors, they put state-building first. They aimed to rapidly establish a rudimentary judicial footprint across the nation, and then gradually raise its quality via a tiered system of legal education that would provide training appropriate to every stratum. Without waiting for that to deliver results, in Beijing, Wang Feiran gathered a mix of veteran cadres, legacy personnel, and students, blending red and expert. The Judicial Reform Campaign overturned this formula, but the city's courts found other ways to cope and by 1956 they were again on sound footing, trending towards greater institutional assertiveness, procedural rigor and a stronger emphasis on competent trial work.

With around eight times as many judges distributed across multiple sites in the city, Beijing's municipal courts in the mid-1950s operated on a scale that the city's former Nationalist local court never could. In fact, they had nearly twice as many judges as the courts of *all of Hebei province* had a decade before, and they closed an average of a third more cases by trial annually. Given the stream of campaigns launched by the CCP and the coercive dimensions of making revolution, we might expect their caseloads to have been heavily criminal in nature. Surprisingly, the record indicates otherwise. Hebei's Nationalist courts tried almost double the share of criminal cases as their counterparts in PRC Beijing, 58 percent versus 30 percent.¹⁰⁷⁶ PRC courts truly were serving the people, and not just via mediation, as is commonly believed, but through unprecedented levels of trial activity; by comparison, the Nationalist courts in the region look like stunted instruments of punishment.

Similarly, in 1956, Beijing's district level courts had as many judges with university level aptitudes as the city's Nationalist local court had in 1948; they also had around 180 additional judges with lower levels of education, which was arguably a temporary condition. After years of delays and false starts, academic law schools were starting to turn out better-trained candidates, and the courts seemed poised to begin a belated transition towards a more highly skilled judiciary that had more in common with its Nationalist antecedents than the Ma Xiwu model celebrated in the lore of the base areas. Against the backdrop of the revolution, the political and social implications of that project invited a confrontation, and the Anti-Rightist Campaign delivered it. Undeterred, veteran cadres regrouped in the 1980s, and by the early 2000s their successors had largely accomplished that shift.

It is a pity that the literatures on Chinese history and law neglect the dissonant heritage described in this study, or its anchoring effects, but that is also not surprising.¹⁰⁷⁷ The linear, binary frameworks that structure our understanding of

¹⁰⁷⁶ *Zhonghua minguo tongji nianjian*, 395, 400; *Shenpan zhi*, 77, 258. The pre- and post-1949 figures for Hebei are not directly comparable because after 1949 they do not count the centrally administered cities of Beijing and Tianjin. Having said that, the share of criminal cases for Hebei province from 1950 to 1958 was around 43 percent. *Hebei sheng shenpan zhi*, 223, 313-314.

¹⁰⁷⁷ Yang Runshi 杨润时, "Cong yifa banshi dao yifa zhiguo: jianlun Dong Biwu dui shehuizhuyi fazhi jianshe de lilun gongxian," 从依法办事到依法治国: 简论董必武对社会主义法制建设的理论贡献 in *Dong Biwu faxue sixiang yanjiu wenji: jinian Dong Biwu tongzhi danchen yibaiyishiwu zhounian* 董必武法学思想

revolution are so deeply ingrained that we scarcely take notice of them, or the cages they impose. What we have been taught about abrogation and the various campaigns against the old law standpoint shuts down inquiry before it starts. Research then diverts down other paths that follow the grain of our expectations. The problem of course is that our instincts about such matters are not founded on any deep empirical argument, but rest mainly on binary representations about the revolution that partisans had an interest in propagating, and which by now have acquired the status of dogma by dint of repetition.

The consequences of this are breathtaking. The last major work of Western scholarship that inquired into the actual operation of the early PRC judicial system was written nearly fifty years ago.¹⁰⁷⁸ The definitive recent scholarly work in the English language on the rule of law in the PRC makes no mention at all of Document 64 or of any of the precedents this study has described.¹⁰⁷⁹ Such oversights are hardly anomalies; they are indicative of the unreflectively ahistorical state of our knowledge about contemporary Chinese law, which is in turn a product of the temporal and ideological straightjackets revolutionary dualism continues to exercise on our imaginations. What is worse, foreign observers find widespread vindication for this in Chinese scholarship, not realizing that by relying on Chinese sources in this way they are inadvertently assimilating a selective genealogy that purposefully expunges whole branches of history. This is how the CCP subtly exports its censorship and orthodoxy. The result is an alarmingly successful, collective forgetting.

There are disturbing signs that this may continue. For decades, the Party tried hard to bury its early assignments with the rule of law because its uncompromising revolutionary line on abrogation left no room for “capitalist” legal constructs. Now that the CCP wears the rule of law like a badge, controlling the narrative is of equal concern, but in a different way. Rule of law has become a method of proclaiming an authentic form of legal modernity that celebrates Chinese exceptionalism. To wit, in 2014, the Fourth Plenum of the Eighteenth Party Congress coined the damp exhortation, “resolutely travel down the path of socialist rule of law with Chinese characteristics, build a socialist rule of law system with Chinese characteristics.”¹⁰⁸⁰

This study has investigated what those characteristics might be, and what the stakes for the judicial system were in the punctuated series of doctrinal shifts attending the rule of law going back at least as far as Li Mu’an’s original elevation of the concept to CCP orthodoxy in Yan’an in 1941. At the time, critics rightly connected this gambit to Li’s training and career in the Republican judicial system, and they then capitalized on changing political winds to topple him. The brutal campaign that followed to expunge

研究文集：纪念董必武同志诞辰一百一十五周年，ed. Zhu Mingshan and Sun Wanzhong 祝铭山 and 孙琬钟，(Beijing: Renmin fayuan chubanshe, 2001).

¹⁰⁷⁸ Cohen, *The Criminal Process in the People’s Republic of China, 1949-1963: An Introduction*.

¹⁰⁷⁹ Peerenboom, *China’s Long March Toward the Rule of Law*.

¹⁰⁸⁰ “Zhonggong zhongyang guanyu quanmian tuijin yifa zhiguo ruogan zhongda wenti de jue ding,” 中共中央关于全面推进依法治国若干重大问题的决定 *Renmin ribao* 人民日报, October 29, 2014.

Nationalist legal ideas and practices from the base areas by labeling them the “old law standpoint” set a powerful precedent. Every time the Party reached for that precedent, it underscored how thoroughly it had assimilated those ideas and practices. Multiple bouts of self-harm to expunge this unwelcome part of its identity, or at least suppress it, ensued. Unsure of how to deal with this miscegenation, Party historiography has either ignored it or twisted in stupendous knots to avoid it.

To compress the dizzying fluctuations that followed over the next seventy years into a digestible sequence, Liu Shaoqi reconsecrated the “rule of law” in the NCPG and proposed in the same breath to adopt revised editions of Nationalist codes, and restart judicial cadre training. In concert with that, Dong Biwu introduced the supporting ideas of “administering according to law” 依法行政 and building a state apparatus distinct from the Party.¹⁰⁸¹ Not coincidentally, this happened just after the Nationalist government shifted the basis of its authority from “ruling the country through the Party” 以党治国 to “ruling the country using law” 依法治国, a transition the CCP would echo fifty years later.

The NCPG’s rule of law and “administering according to law” evolved into formulations like “people’s revolutionary rule of law” in the early 1950s, and then, in the mid-1950s, “handling affairs according to law” 依法办事 and socialist legality.¹⁰⁸² That came with a palette of strong assertions about the buffer between Party and state, the role of codified law, and adjudicatory independence. The Anti-Rightist Campaign and the Cultural Revolution drove this discourse underground, but did not extinguish it and, in late 1978, it suddenly roared back to life, full of pent up energy. The following year, the Central Committee formally recognized “socialist rule of law” in Document 64, and revived the call for recasting the Party-state relationship in the courts. A step backward into socialist legality occurred in the 1980s, followed by a leap forward into socialist rule of law again during the mid-1990s. A complementary jump occurred in 1993, when the Central Committee widened debate about the rule of law and marketization by publicly endorsing for the first time the iconic NCPG slogan “administering according to law” 依法行政, which in short order became “ruling the country according to law” 依法治国.¹⁰⁸³ Notably, Guo Daohui observed at the time that the meaning of these two phrases was in

¹⁰⁸¹ Guo Ji 郭济, “Xuexi Huabei renmin zhengfu xingzheng guanli jingyan tuijin fuwuxing zhengfu jianshe: zai jinian Huabei renmin zhengfu chengli 60 zhounian zuotanhui shang de jianghua,” 学习华北人民政府行政管理经验推进服务型政府建设: 在纪念华北人民政府成立 60 周年座谈会上的讲话 in *Yifa xingzheng de xianhe: jinian Huabei renmin zhengfu faling yanjiu* 依法行政的先河: 纪念华北人民政府法令研究, ed. Ren Jianxin 任建新, (Beijing: Zhongguo faxuehui Dong Biwu faxue sixiang yanjiuhui, 2011), 10. Wang Songfeng 王松峰, “Huabei renmin zhengfu shiqi de yifa xingzheng sixiang ji jiejian yiyi,” 华北人民政府时期的依法行政思想及借鉴意义 in *Yifa xingzheng de xianhe: jinian Huabei renmin zhengfu faling yanjiu* 依法行政的先河: 纪念华北人民政府法令研究, ed. Ren Jianxin 任建新, (Beijing: Zhongguo faxuehui Dong Biwu faxue sixiang yanjiuhui, 2011), 111.

¹⁰⁸² “Jiaqiang yu gonggu renmin geming de fazhi”.

¹⁰⁸³ “Zhonggong zhongyang guanyu jianli shehuizhuyi shichang jingji tizhi ruogan wenti de jue ding (October 14, 1993),” 中共中央关于建立社会主义市场经济体制若干问题的决定 *Renmin ribao* 人民日报, November 17, 1993.

fact identical.¹⁰⁸⁴ But the change in wording suited the circumstances and was part of a larger plan; in 1999 “socialist rule of law” and “ruling the country according to law” entered the PRC constitution together, each for the first time.

Such maneuvers are necessary in the arcane, ritualized world of Party doctrine. They provide a mechanism for adaptation within the ostensibly timeless frame of CCP orthodoxy, where the nuances of every slogan are scrutinized carefully. By reaching into the past for serviceable precedents with revolutionary pedigrees, they confer legitimacy on present goals, burnish the gilt of CCP exceptionalism, and inoculate the legal system against competing, foreign sources of authority. Of course, the irony is that, in the case of the professionalized judiciary, academic legal education, and a host of affiliated concepts such as adjudicatory independence, equality before the law, and the presumption of innocence, the road unavoidably leads back to Republican sources. No less an authority than Tao Xijin connected the dots when he pithily observed in 1981 that “what we call the ‘rule of law 法治,’ to put it simply, is to handle matters according to law 依法办事, and to rule the country using law 依法治国.” He then sealed the point with references to the Party congresses of 1956 and 1978.¹⁰⁸⁵

Today these talents for reinvention are being put to new purposes. An emerging body of scholarship is supplying an authoritative backstory to the national project to “build a socialist rule of law system with Chinese characteristics” that goes back generations.¹⁰⁸⁶ Dong Biwu earns pride of place in this genealogy, which like all such efforts in the PRC borrows generously from his official oeuvre, without ever peering too closely under the hood. However, what was daring in the 1950s, and progressive in the 1980s has today become an originalist brief for conservatism. It demonstrates how far the CCP has come, but also reveals the limits of how much further it is willing to go. Only time will tell if this reconstruction of the past will buoy the courts and help them to ameliorate some of the congenital defects that have weighed heavily on reformers for decades. Based on experience and the recent tightening of archival access on relevant documents, the prospects are not encouraging. If the CCP succeeds in exercising a proprietary claim over the rule of law, and converts yet another rich aspect of China’s legal heritage into a neatly sculpted, fenced off topiary in the garden of Party history, then it will have robbed the concept of its vitality, adaptivity, and resilience, and this study will have memorialized some of what was lost.

¹⁰⁸⁴ “Yifa zhiguo jianshe shehuizhuyi fazhi guojia xueshu yantaohui jiyao,” 依法治国建设社会主义法治国家学术研讨会纪要 *Faxue yanjiu* 法学研究 18, no. 3 (1996): 7. Among his other distinctions, for much of the 1980s Guo was deputy director of the research center of the National People’s Congress’ Legislative Work Committee, and was responsible for compiling briefings on the top-level discussions that produced the landmark 1981 Resolution on Party History. In 1949, he introduced a young Zhu Rongji, future premier of the PRC, to the Party.

¹⁰⁸⁵ Tao Xijin 陶希晋, “Tan shehuizhuyi fazhi,” 谈社会主义法治 in *Xin zhongguo fazhi jianshe* 新中国法制建设, (Tianjin: Nankai daxue chubanshe, 1988), 194.

¹⁰⁸⁶ Yang Runshi, “Cong yifa banshi dao yifa zhiguo: jianlun Dong Biwu dui shehuizhuyi fazhi jianshe de lilun gongxian.” Zhao Chunyan, *Zuichu de lixiang: xin zhongguo jianguo chuqi de fazhi huayu yu shijian*.

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