CROSS-CURRENTS
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An Irresistible Inheritance: Republican Judicial Modernization and Its Legacies to the People's Republic of China

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Abstract

Commentators have long treated the Republican and People's Republic of China (PRC) judicial systems in nearly hermetic isolation from each other. Yet it is impossible to grasp fully the history of the PRC judicial system independent of its Republican heritage, and to decouple the two is therefore to foreclose critical avenues of understanding. As a step toward repairing that rupture, this paper specifies the configurations and distributions of courts, as well as the discourses of judicial malaise and reform that the Republican period deposited on the doorstep of the PRC. It establishes the necessary empirical foundation from which to appreciate the institutional deficits and imbalances, developmental dilemmas, and normative discourses that confronted Chinese Communist Party (CCP) judicial planners in 1949, and it equips the reader to understand the planners' responses—not just through the lens of ideology but also as reasoned reactions to concrete, practical problems. Additionally, this paper suggests that memory of the Republican judicial system served as a repository of value from which to shape, assess, and comprehend law's fate in the PRC.

Keywords: Republican China, Chinese judicial system

About the 1949 Chinese Revolution, the eminent PRC legal reformer and scholar Cai Dingjian[1] once observed that

> if we had overthrown the old legal order generally, yet embraced the attitude that law could be inherited; if we had not criticized or scorned it all; if we had concretely analyzed specific laws, brought forward a series of legal concepts—such as justice, equality, impartiality, the authority of law, respect for law, honesty, keeping one's word, and so on—and inherited concrete rules and procedures for resolving conflicts, then the construction of New China's legal system would not have had such a low starting point, and perhaps would not have met such misfortune. (1997, 6)

Cai's conjecture flags a vital historiographical question: how do we weave the 1949 revolution and the PRC into the fabric of Chinese history? After all, scholars have long recognized the paradigm-shifting contributions of Republican modernization to the theory and practice of law in China. Nevertheless, like Cai, they have tended to treat the PRC legal system as decoupled from its Republican antecedents and looked instead to traditional, early CCP, and Soviet sources for its pedigree (J. Chen 2008).[2]

The reasons for this dissonance are not hard to grasp; the PRC announced itself by bluntly repudiating the legacies of Republican legal modernization. In January 1949, when Mao proposed eight terms for peace with the Guomindang in his *Statement on the Present Situation*, three of them centered on law—namely, abrogating the 1947 Republican Constitution, traitorous treaties, and the legal order (*fatong* 法统) itself. One month later, with the North China Plain under its control, the CCP Central Committee unilaterally issued a landmark *Order on Abrogating the Six Codes of the Guomindang and on Fixing the Judicial Principles of the Liberated Areas*, which was in essence restated in an April decree issued by the North China People's Government. Finally, in September of that year, Article 17 of the *Common Program of the Chinese People's Political Consultative Conference*, the PRC's de facto constitution between 1949 and 1954, announced that: "All laws, decrees, and judicial systems of the Guomindang reactionary government that oppress the people shall be abolished. Laws and decrees protecting the people's judicial system shall be established." In effect, the CCP built up the new PRC legal system by trying to tear down the old Nationalist one (*Feichu* 1949). The CCP's dominant understanding of revolution demanded that.

But if starting points and (dis-)continuities interest us, then we must turn the clock back further to clarify what the Republican legal system might actually have bequeathed to the PRC, and hence what abrogation of it amounted to concretely. In both positive and negative terms, the experiences and legacies of Republican legal modernization set the context and provided the grist for fierce battles in the early PRC over how to restructure the legal system and redefine its model of development. Republican China 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. 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.” Yet even this did not stop debate over law’s heritability from bursting forth during the Hundred Flowers Campaign or, after a withering Anti-Rightist backlash, resuming after Mao’s death (Yang Zhaolong 1956; “Beijing” 1957; Münzel 1980). If we can better describe the endpoint of Republican legal modernization on the mainland, we can fix a more accurate baseline against which to evaluate, and possibly reframe, the PRC revolution in law.

The problem is that our grasp of the legal history of the years that immediately straddled the 1949 divide remains rudimentary. Abundant misconceptions and gaps in empirical knowledge distort our understanding of the revolution and inhibit a richer, more nuanced comprehension of how one era led to (or emerged from) the other. The time is ripe to map this liminal space in detail; among the many dimensions to choose from, this article focuses on the institutional condition of the Republican court system. Its purpose and scope are limited; given how undeveloped the terrain is and how precarious our received suppositions may be, this article advisedly abstains from theorization and does not suggest an exclusive or comprehensive rubric of analysis, but aims simply to add perspective to the growing body of scholarship that touches upon the Republican court system and how it was used, and more pointedly also to lay evidentiary groundwork for a more ambitious forthcoming reconstruction of our understanding of the interplay among modernity, revolution, and law in China.

Simply put, court reform was the original catalyst 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. Yet, astonishingly, our impressions of the Republican court system derive predominantly from the bloom and vigor of its youth; we have a much weaker grasp of its later years, which witnessed significant transformations and setbacks, occasioned in part by the downstream consequences of the devastating war with Japan. Furthermore, we are far better acquainted with Republican courts in some localities and regions (namely, Shanghai and the provinces of Jiangsu, Zhejiang, and Guangdong) than others. This skews our perspective, as those were among the richest and most globally connected places Republican China had to offer. Research on frontier or inland provinces is exceedingly thin by comparison, which ties in to the problem of temporal coverage, because the war ravaged the

advanced heartland of the Nationalist judicial system and for nearly a decade shifted its center to the underdeveloped, deep interior with lasting consequences.

To narrow the geographic and temporal gaps in our understanding of how Republican judicial modernization on the mainland unfolded and culminated, and to specify the starting point for the PRC judicial system more precisely, this article sketches the courts with a special emphasis on Hebei Province and on the years leading up to the 1949 revolution. It delves into a hitherto unexamined facet of the state-building record bequeathed to the PRC by the Republican era, and it equips us to move beyond ideology as a blanket explanation for CCP judicial policies and to begin instead to assess those policies in part as reasoned responses to concrete, practical problems. Briefly, Hebei was the birthplace of the modern Chinese court system, but subsequently a laggard in judicial development and expansion. The province exhibited profound internal diversity, juxtaposing bounteous Beijing against a comparatively barren hinterland, and it presented in microcosm many of the achievements, shortcomings, imbalances, and reversals that characterized Republican judicial reform more generally.

There are, of course, many ways to assess the vitality of a court system, and this article predominantly employs two: data on institutional development and utilization, and commentary by concerned jurists. Much of the analysis rests on official statistics, and hence a prefatory caution about them is necessary. Although Republican governments and their divisions reported copiously on the size and operation of the court system, problems attach to the reliability and consistency of their numbers.[3] I have tried to corroborate figures across multiple sources and have used informed judgments to sort out discrepancies. Still, lest the statistics in this article convey a false sense of precision, the reader is asked generally to allow for a small margin of error owing to defects in the original data. The same holds true for population figures, which, though official estimates, were nevertheless regarded as flawed even in their own time.

The Republican Court System: A Statistical Snapshot

China's modern courts emerged in the waning years of the Qing dynasty, when they were inextricably tied to the twin problems of national survival and modernization. Under the pressure of extraterritoriality and pursuant to a raft of other New Policies designed to revive the faltering imperial state, the Qing government issued a 1906 edict premised on Western theories of judicial independence that heralded an unprecedented reorganization of the legal system (Zhao 2009).

The edict separated judicial administration from adjudication, vesting the former in the Imperial Board of Punishment, which it renamed the Ministry of Law, and the latter in the Court of Judicial Review, which it renamed the Supreme Court. An accompanying *Law on Supreme Court Organization* reorganized the imperial judiciary into a four-level, three-trial system inspired by that of Meiji Japan, consisting of a Supreme Court, provincial high courts, local courts, and courts of first instance, with procuratorial offices attached to each level (figure 1). The first such courts appeared in Tianjin in March 1907, followed by Beijing, which established a Capital High Court, a Capital Inner City Local Court, and five courts of first instance directly under the Supreme Court in December of the same year (Liu and Guo 2009, 117). Beijing's local court soon began handling two hundred cases per month (Han 2000, 109).

Figure 1. Supreme Court, 72 Ministry of Justice Street, Beijing, 1914. *Source*: "Architecture in the Chinese Capital" (1914, 356).

By the end of the dynasty, the empire had twenty-four provincial high courts, sixty-two local courts, and eighty-nine courts of first instance among 218 prefectures and 1,369 counties. Institutional weakness, competing priorities, and shortages of funds and trained personnel

confined the majority to the areas in and around provincial capitals and treaty ports. Zhili Province, which surrounded Beijing's separately administered Capital District and from which modern Hebei Province was extracted, possessed one high court and one local court each in Baoding and Zhangjiakou, and one court of first instance each in Zhangjiakou and Qingyuan. By Minister of Justice Liang Qichao's estimation, these figures cumulatively satisfied only 14.2 percent and 3.3 percent of the nationwide demand for local courts and courts of first instance, respectively (Liu and Guo 2009, 119).

Broadly speaking, the early Republican period elaborated upon the framework established in the late Qing. Progress was made building up the formal legislative and institutional bases of the judicial system, but fiscal constraints, political instability, and resistance driven by traditional modes of social organization, and competing interests, values, and agendas greeted judicial reform at every turn (Chang 1926; Xu 2008). In 1912, the founding year of the Republic, China boasted 343 modern courts or tribunals, but most were weakly provisioned and financially unsustainable. By 1926, closures, restructuring, and consolidations had reduced their number to 139, of which Zhili had five and the Capital District had seven, including the national Supreme Court (table 1). To put that 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 (Ju 2009b, 334).

The diversity of the Republican judicial system was one of its defining and most vexing features, and this aspect 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 (Xu 2008). 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 Hebei. 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.

Table 1. Inventory of Courts by Type (1912 and 1926).

Type of Court	National 1912	National 1926	Zhili Province and Capital District 1926*
Courts of First Instance	196	—	—
Local Courts	112	66	4
Branch Local Courts	11	—	5
Branch Local Court Tribunals	—	23	—
Provincial High Courts	19	23	1
Branch Provincial High Courts	4	26	1
Supreme Court	1	1	1
Total	343	139	12

Sources: Data from Ju (2009b, 334) and Commission (1926, 118).

* The courts and their locations were as follows: National Supreme Court (Beijing); Zhili Provincial High Court (Beijing); Zhili Branch Provincial High Court (Daming); Capital District Local Court (Beijing); Zhili Local Court (Tianjin, Baoding, Wanquan); Capital District Branch Local Courts (Shunyi, Wuqing, Xijiao, Zhuoxian); Zhili Branch Local Court (Tianjin).

Hebei was carved out of traditional Zhili Province in 1928, when the Northern Expedition nominally unified China under Guomindang rule. It enveloped Beijing, had jurisdiction over the former capital's judicial system, and amply reflected the pathologies and irregular progress of Nationalist state building (Kirby 2000; Strauss 1998).[4] While Beijing itself enjoyed active modern courts closely connected to the elites and institutions of the national government in Nanjing, its provincial surroundings were largely bereft of them. In the 1920s, the center of judicial modernization had shifted to the Yangzi and Pearl River deltas in the south and, as the Nationalist period wore on, the contrast grew sharper; Beijing and nearby Tianjin matured into vibrant hubs of legal activity, but they anchored a region that shared little in these gains, a reflection in part of warlord strife and the feeble local economy.

The attenuated writ of the central government during this period manifested clearly in the progress of judicial expansion. Table 2 shows the evolution of the Nationalist judicial system from 1928 to 1937, indicating years of growth and retrenchment at each of its various levels. As the data suggests, 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, as table 3 shows, Hebei fared particularly poorly considering that the province incorporated the recent capital, was historically prominent, and contained two of the three largest cities in the country.

Table 2. Growth of the Nationalist Court System (1928–1937).

Year	Total	Change		Levels						
		+	-	Provincial High Courts	Provincial High Branch Courts	Local Tribunals under Provincial High Branch Courts	Local Courts	Local Branch Courts	Tribunals under Local Branch Courts	County Courts
1928	220	--	--	21	25	8	59	7	92	8
1929	301	81	--	28	31	12	88	10	104	28
1930	319	18	--	28	32	12	90	11	107	39
1931	341	22	--	28	34	13	95	21	113	37
1932	308	--	33	23	31	11	76	23	109	35
1933	335	27	--	23	32	12	83	23	127	35
1934	300	--	35	23	34	14	108	39	45	37
1935	381	81	--	23	66	2	214	67	9	--
1936	394	13	--	23	79	--	280	3	9	--
1937	416	22	--	23	91*	--	302	--	--	--

Source: Data from *Sifa nianjian* (1941, 211).

* Minister of Justice Xie Guansheng reported 84 (*China Year Book* 1937, 181).

In 1928, out of a total of fifty-nine local courts nationwide, Hebei possessed three, and because Beijing and Tianjin monopolized the province's few modern judicial resources, the surrounding hinterland acutely lagged. Moreover, the gains between 1928 and 1937 could not overcome this disadvantage. Table 4 shows that the province fell far behind others in the Nationalist heartland and Sichuan. (Sichuan, though peripheral for much of the Nanjing decade, later prospered as the seat of the wartime government.) 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 (*Sifa nianjian* 1941, 157–159, 218–219). 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. 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) (*Sifa nianjian* 1941, 263–265).

Table 3. Growth of the Hebei Provincial Court System (1928–1937).

Year	Total	Change		Levels						
		+	-	Provincial High Courts	Provincial High Branch Courts	Local Tribunals under Provincial High Branch Courts	Local Courts	Local Branch Courts	Tribunals under Local Branch Courts	County Courts
1928	9	--	--	1	2	--	3	--	3	0
1929	10	1	--	1	2	--	4	--	3	0
1930	11	1	--	1	2	--	4	--	4	0
1931	16	5	--	1	2	--	8	--	5	0
1932	16	--	--	1	2	--	8	--	5	0
1933	16	--	--	1	2	--	8	--	5	0
1934	16	--	--	1	2	--	8	--	5	0
1935	20	4	--	1	5	--	13	1	--	0
1936	18	--	2	1	5	--	12	--	--	0
1937	21	3	--	1	8	--	12	--	--	0

Source: Data from *Sifa* (1941, 218–219).

Note: This is the number of courts officially claimed by the Ministry of Justice, though the reliability of some of the figures are suspect because they conflict with other data reported by the ministry for staffing and, not least of all, because in the same data set the ministry unconvincingly claims twenty-one courts for Hebei in the years 1937–1939, during which the province was occupied by Japan.

Elsewhere in China, county-level judicial offices patterned after the abortive courts of first instance created by the Qing were being phased in with the aim 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 (*China Year Book* 1937, 181). Later that year, the entire province fell under Japanese military occupation, and a succession of Japanese-sponsored occupation governments took over and operated the provincial judicial system (*Hebei* 1942).

Table 4. Selected Court Statistics by Province (1936).

	Population (millions)*	Courts	Judges	Procurators	County Judicial Organs**	County Magistracies with Concurrent Judicial Power**
National	479.1	365	1,173	550	384	1,052
Guangdong	32.5	89	157	50	--	0
Hebei	28.6	8	34	18	0	119
Sichuan	52.7	13	74	35	28	141
Zhejiang	21.2	34	99	57	8	43

Source: Data from *Sifa nianjian* (1941, 157–159).*

Note: Though the Ministry of Justice reported more courts, I count only provincial courts and their branch courts, as well as local courts that reported staffing. The figure for judges includes court and tribunal presidents and judges, but I omit 484 candidate and prospective judges. The figure for procurators includes chief procurators and procurators, but I omit 311 candidate and prospective procurators. These omissions facilitate appropriate comparisons with the 1946 statistics in table 5.
* The population figures are official statistics compiled between January 1936 and August 1937 (*Zhonghua minguo tongji tiyao* 1940, 24).
** This represents an early stage in a three-year plan (July 1936–June 1939) to upgrade county magistracies that concurrently held judicial power to separate county-level judicial organs and, ultimately, to local courts. The conversion was interrupted by the outbreak of war. See Wang (1936, 20–22).

Interestingly, the stunted condition of Hebei's judicial system contrasted with the province's other legal endowments. Beijing was home to several of China's leading law schools, including the famed Chaoyang Law School (Liu 2009). Though a private institution, Chaoyang Law School maintained singularly close ties to the state. It was founded in 1912 by former members of the Imperial Law Codification Commission, and throughout the Republican period its board of directors included serving ministers of justice, presidents of the Judicial and

Legislative Yuans, and presidents of the Supreme Court, National Administrative Law Court, and Hebei Provincial High Court.[5] Chaoyang produced nearly one-quarter of all the university-level law graduates in Republican China and became the preferred training ground for the state's legal and judicial bureaucracy (Zhang and Dong 2004, 85). Between 1928 and 1949, Chaoyang graduates made up approximately one-third of all successful judicial examination candidates in China, and a 1947 survey of graduates found that 75 percent aspired to court-related positions ("Sili Chaoyang" 1947).[6] But this well-connected local resource had little effect on the rate of court expansion in the province: in 1936, Hebei had only 3 percent of the judges in China, despite having 6 percent of its population.

The leading English-language study of Republican judicial modernity covers events only up to 1937, too early to register clearly a number of decisive shifts in the trajectory of the Nationalist state and judicial system (Xu 2008). The twelve years of nearly constant war that followed were not just transformational for the state and the courts but also essential to grasping insider critiques directed against them, and the fierce PRC polemics and reforms that followed.

After the Second Sino-Japanese War erupted in 1937, many court personnel worked under the collaborationist regimes supported by Japan. By choosing to serve the enemy, they effectively ended their careers. The Nationalist Ministry of Justice offered support payments to judges who loyally retreated with the government to the interior, but these payments were not enough to live on, and by 1945 many judges had moved on to other work and left the profession. The government therefore began postwar judicial reconstruction without many of its most experienced personnel. The toll on Hebei's judiciary was especially severe; in Beijing, after eight years of occupation and collaborationist rule, the city's local court underwent a nearly complete turnover of judges.

Like the judicial reform agenda of the mid-1930s, postwar judicial reconstruction was both ambitious and ill timed. In formerly occupied areas, courthouses were damaged or destroyed and stripped of furniture, equipment, libraries, and records. 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.[7]

In regard to Hebei, the Ministry of Justice's 1946 reconstruction plan aimed to restore prewar institutions with greatly expanded staffing. Specifically, it envisioned: one provincial high court with eight branch courts, three large local courts, and nine small local courts (Xie 1977, 446). Demobilized staffing targets were set at: 128 judges, 216 court clerks, 119 county-level trial officers, and 119 concurrent county government judicial clerks (Xie 1977, 470). Judging from the plan, the postwar infrastructure of Hebei's judicial system was in a dismal state. The plan sorted courts by the extent of capital construction required, and 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, which suggests greatly diminished judicial capacity across the province.[8]

Table 5 confirms this; it describes the actual condition of the Hebei judiciary and its relative standing compared to other provinces. From the data, one can see that the ranks of the Republican judiciary had greatly increased during the war. This was largely due to relaxed admission requirements and several additional pathways to judicial accreditation. The new entrants were by and large young and inexperienced, and this engendered concerns about their quality and efficiency, but the urgent need for judges was sufficient to outweigh those reservations (Yu 1948, 365–366). As for the total number of courts, Hebei's position relative to the other sample provinces had not changed significantly since 1936, with the exception of Sichuan, which experienced a boom occasioned by the wartime relocation of the national government to Chongqing. The Ministry of Justice listed eight local courts, one provincial high court, and four branch high courts in operation. However, the data reveals that the number of judges in each of these courts ballooned to an average of 15.7 judges, or 4.5 times more than Guangdong and 3.5 times the national average. In short, at the end of 1946, Hebei's judicial system was even more condensed than it had been before the war: courts were few in number, present only in the largest cities and a handful of county seats, and far larger on average than their counterparts elsewhere. Growth was restricted mainly to prewar institutions due to the inability of the Nationalist government to establish its authority far beyond the province's rail corridors, in large part because of the surging rural strength of the CCP. The province stood far short of the judicial reconstruction plan's targets.

Table 5. Selected Court Statistics by Province (1946).

	Population (millions)*	Courts	Judges	Procurators	County Judicial Organs
National	455.6	737	3,297	1,748	1,006
Guangdong	29.1	102	360	186	--
Hebei	28.5	13	204	91	--
Sichuan	47.1	75	371	198	78
Zhejiang	19.7	42	231	137	39

Source: Data from *Sifa tongji niankan* (1947, 38, 40).

Note: The figure for courts includes provincial courts and their branch courts, as well as local courts. The figure for judges includes court and tribunal presidents, and judges. The figure for procurators includes chief procurators and procurators.
* *Zhonghua minguo tongji tiyao* (1947, 2).

How well did Hebei's courts operate? CCP critics frequently charged that the Nationalist legal system was inaccessible to ordinary citizens. A host of economic, technological, and social factors influenced rates of litigation, but the available data does suggest that, even by the standards of other provinces and the national average, judicial organs in Hebei may have dramatically underserved their provincial population. Given their small number and highly concentrated geographic distribution, this is not surprising. Tables 6 and 7 show that 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. Table 7 also shows that 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. The CCP, by contrast, soon changed the structural dynamics of the Chinese legal system as a matter of deliberate policy and inverted this condition by fiat.

Table 6. Newly Accepted Civil Cases (1946).

		County Level			Local Court			High Court	
	Population (millions)*	Total Trial Load	New Trials of First Instance	New Mediations	Total Trial Load	New Trials of First Instance	New Mediations	Total Trial Load	New Trials of Second Instance
National	455.6	129,446	101,585	5,732	329,391	164,409	38,464	94,561	58,427
Guangdong	29.1	--	--	--	28,350	15,546	2,213	8,354	6,252
Hebei	28.5	874	718	13	10,576	5,539	2,770	2,469	1,960
Sichuan	47.1	26,321	19,078	394	87,352	38,596	2,626	22,757	13,833
Zhejiang	19.7	8,011	4,238	847	39,048	19,638	5,410	6,708	5,616

Source: Data from *Sifa tongji niankan* (1947, 25–52).

* *Zhoghua minguo tongji tiyao* (1947, 2).

Table 7. Newly Accepted Criminal Cases (1946).

		County Level		Local Court		High Court	
	Population (millions)*	Total Trial Load	New Trials of First Instance	Total Trial Load	New Trials of First Instance	Total Trial Load	New Trials of Second Instance
National	455.6	102,521	91,840	277,704	206,515	71,013	28,475
Guangdong	29.1	--	--	30,614	24,253	6,090	3,133
Hebei	28.5	1,220	1,117	16,584	14,460	3,529	902
Sichuan	47.1	15,354	14,182	49,715	33,519	10,813	4,763
Zhejiang	19.7	6,803	4,660	31,792	20,525	6,137	2,788

Source: Data from *Sifa tongji niankan* (1947, 54–61).

* *Zhonghua minguo tongji tiyao* (1947, 2).

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 but a sad fact" (Yu 1948, 367). 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" (Yu 1948, 367). Table 8 shows that 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. Approximately 74 to 85 percent of cases of first instance on the docket cleared by year's end, but half of civil appeals took longer, a ratio well below the national average. 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. The ratio of civil to criminal cases on their dockets in 1946 differed significantly from that of other provinces under consideration and from the national average. Table 9 indicates that 61 percent of Hebei's entire caseload was criminal in character, compared with a national average of 45 percent. 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 defendants punished in 1946 under the Traitors Punishment Statute (*chengzhi hanjian tiaoli* 惩治汉奸条例), the highest share of any province by far (*Sifa tongji niankan* 1947, 63).

In sum, the data in tables 2 through 9 provides a comparative snapshot of the evolving status, functioning, and relative position of Hebei's courts between 1928 and 1946. 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 end stage of the civil war erupted. 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 ordinary judges (*tuishi*) 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 (*Zhonghua minguo tongji tiyao* 1947, 137).

Table 8. Rate at Which Judges Cleared Their Dockets (1946).

	Civil Cases (percent)			Criminal Cases (percent)		
	County, First Instance	Local Courts, First Instance	High Courts, Second Instance	County, First Instance	Local Courts, First Instance	High Courts, Second Instance
National	86.01	88.67	80.97	85.13	88.66	87.09
Guangdong	--	93.07	83.81	--	94.05	91.01
Hebei	74.21	85.21	50.77	81.04	74.50	90.59
Sichuan	87.52	85.48	81.33	84.84	86.68	80.23
Zhejiang	88.70	89.75	79.63	91.52	92.77	85.10

Source: Data from *Sifa tongji niankan* (1947, 45–61).

Note: These figures represent the proportion of cases closed in 1946 out of the total number of cases on the docket of each court that year.

Table 9. Proportion of Civil and Criminal Cases (1946).

	Civil Cases (percent)	Criminal Cases (percent)
National	54.8	45.2
Guangdong	48.31	51.69
Hebei	39.08	60.92
Sichuan	63.32	36.68
Zhejiang	55.34	44.66

Source: Data from *Sifa tongji niankan* (1947, 27).

To put these figures further into perspective, four decades after the province pioneered the modern Chinese judicial system, it could muster only eight local courts for 132 counties, and these were predominantly urban, which meant that as far as Hebei was concerned, the government had met only 6 percent of its goal of establishing a local court in every county (*Zhonghua minguo tongji nianjian* 1948, 393).[9] Nationalist control over the province began to shrink in 1947 as the CCP stepped up military activity and increasing amounts 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 ("Fayuan jiansuo" 1948).[10] 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.[11] 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 (*Beiping difang* 1948). Such was the municipal court system the CCP inherited in the soon-to-be capital of the PRC.

Of course, it is no secret that Republican judicial modernization and expansion met with extreme adversity and fell far short of its ambitious institutional goals. This article bears that out in empirical detail. However, let us put some final numbers behind that wisdom. In October 1947, only 557 of China's 1,964 counties (roughly 28 percent) officially possessed a local court and, as we have seen, a portion of these were likely figments of Nanjing's imagination (*Zhonghua minguo tongji nianjian* 1948, 393).[12] 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 well before.[13] 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.[14]

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 (*Zhonghua minguo tongji tiyao* 1947, 137).[15] These offices handled varying proportions of the total provincial caseload. In Hebei, their contribution was modest (tables 6 and 7); they closed only about 9 percent of total civil and criminal cases of first instance the previous year (*Sifa tongji niankan* 1947, 47, 56), 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.[16] Again, the intent was always to elevate these provisional offices into proper courts once circumstances permitted, and the PRC actually delivered on that promise, though crudely.

Proportionally, Hebei, with only 6 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 (*Zhonghua minguo tongji tiyao* 1947, 137). 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. 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 judicial 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 confronted.

Beyond the Numbers

Statistics facilitate comparative and quantitative assessments of the Republican judicial system. They help to give scale and substance to what abrogation concretely meant, and to the institutional and geographic imbalances that greeted PRC judicial policy makers as they considered their own developmental priorities and agendas. At the same time, statistics take us only part of the way, and if we are to understand the legacy Republican judicial modernization delivered to the PRC more fully—to address the values and principles at the crux of what Cai

Dingjian meant in the rueful quote that opened this article—we need to consult other sources as well, for their qualitative and subjective reflections.

During the Nationalist period, the government progressively partified the judicial system (*sifa danghua* 司法党化), both in terms of ideology and personnel. While the government did not formally require judges to join the Guomindang, the president of the Judicial Yuan, Ju Zheng, proposed as the primary standard for evaluating all judges their application of party principles in the handling of cases, and Guomindang members in the judiciary enjoyed distinct career advantages (Ju 1934b, 27). Partification was in fact one of the most important legacies of Republican judicial modernization to the PRC.[17]

Initially, the Nationalist government appointed Beiyang-era technocrats to leadership positions in the judicial system, but over the course of the early 1930s the Guomindang seized those commanding heights for itself, and 1934 was the tipping point. In the final months of that year, a wave of reinforcing changes swept over the judicial system, among them: a famous affirmation of judicial partification by Ju Zheng (Ju 1934b); the replacement of Dong Kang as president of the Training Institute for Judicial Officials by Hong Lanyou, a protégé of the CC (or Central Club) Clique; the return of the Ministry of Justice from the Executive Yuan to the Judicial Yuan; and the replacement of Minister of Justice Luo Wengan with party loyalist Wang Yongbin. Minister Luo was a critic of partification and a staunch defender of the political independence of the judicial system, and former Legislative Yuan President Zhang Ji reportedly averred at the time that forcing Luo's resignation was the real objective behind the ministry's transfer (Wang and Xu 1990, 1166). Tellingly, by 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 ("Sifayuan" 1937; "Zuigao" 1937). Furthermore, at the Judicial Yuan, these were not just any Guomindang members; Ju packed the institution with fellow Hubei natives, and even after efforts by Chiang Kaishek to dilute this bloc with northerners, in 1943 they still made up more than half of the Judicial Yuan's total staff (Zhang 2003, 180). As this implies, the judicial system was a site of fierce factional competition even within the Guomindang itself, and patronage appears to have figured prominently in appointments.

The lower ranks of the judiciary took longer to transform and resisted Guomindang encroachments more successfully. Undeterred, the Nationalist government broke with Beiyang precedent as early as 1929 by baldly inserting political and ideological content directly into the law school curriculum and ordinary judicial examination, and as the years went on it devoted an increasing share of advanced judicial training to those topics. Just after Luo Wengan's purge, in 1935, it introduced a special recruitment *Examination for Central, Provincial and Municipal (Guomindang) Party Committee Personnel to Engage in Judicial Work*, and then filled the 1939 and 1941 classes in its advanced Training Institute for Judicial Officials exclusively with screened party personnel who were actually, according to one account, covert secret police operatives from Dai Li's Bureau of Investigation and Statistics (Yang Yingqi 1999, 137–139). In the mid-1940s, National Chengchi University, the government's central cadre school, took over this advanced judicial training course. The rationale for these maneuvers was clear. In his 1946 manifesto, entitled "Why Must We Reconstruct the Chinese Legal System?," Ju Zheng said: "In conclusion, we earlier mentioned that we must reconstruct the Chinese legal system. Henceforth every legal institution, law and regulation, decree, code, everything that could take the form of law, regardless of whether its aspect is of creating, implementing, studying, or interpreting law, must not only thoroughly take the Three People's Principles as its main idea, but must also take the Three People's Principles as its guiding principle" (Ju 2009a, 88).

By the end of the Republican period, courts were expected to operate within the parameters of Guomindang ideology and policy, and adjudication was supposed to faithfully track party priorities. Even in ordinary matters, courts functioned at the pleasure of their political masters and lacked the resources to reliably enforce formal prohibitions against outside meddling in their affairs or in concrete cases. This threw the door open to nepotism and cronyism in staffing, judicial corruption, and interference by external parties in judicial outcomes. The actual extent of these maladies requires further study, but they were sufficiently prevalent that not just CCP propaganda, but also Republican insiders, decried them as widespread and debilitating, and they tarred the courts with the same governance deficit that attached to other parts of the state.

Moreover, the Nationalist government further delegitimized the courts by using them to attack critics in politically charged prosecutions, the most famous of which was the 1937 trial of the Seven Gentlemen, but there were countless others involving minor labor activists, students, and journalists. It also carved out of the ordinary courts a parallel channel of special criminal

tribunals staffed by politically dependable judges dedicated to the prosecution of "special crimes," including but not limited to counterrevolution. Defendants in these unpopular tribunals, many of whom were CCP members or suspected sympathizers, did not enjoy the rights to counsel or appeal, and those sentenced to death were executed swiftly. The regime came to rely upon them more and more as its position deteriorated along with the general state of law and order, and they exacerbated the alienation of many in the legal community and population at large. Prominent jurists denounced the tribunals, one imploring, "How can this be called practicing the rule of law?" (Fei 1948).

Unsurprisingly, the record reveals a quickening discourse about malaise and reform, which one could read as a proxy for dissatisfaction with the Nationalist regime. Many jurists, among them the most educated and capable professionals Republican China produced, were torn by patriotism, sense of duty, and mounting despair. They had in different ways devoted their careers to building up the legal system and had served the Nationalist government through adversity for years, but by the late 1940s their faith in the trajectories of both had faded, and their responses were variously to withdraw, plead, endure, and remonstrate.

One trenchant 1947 commentary by Li Haopei, dean of National Zhejiang University Law School and hardly a fringe critic, passionately captured the mood. It observed from a variety of angles that China had assembled many of the ingredients of a modern legal system, yet 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. (Li Haopei 1947, 3-4)

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 were established as principles of

'customary law.' How can we expect to have real rule of law?" (Li Haopei 1947, 5) 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" (Li Haopei 1947, 3). 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'" (Li Haopei 1947, 5).

One month earlier, Ni Zhengyu, former president of the Chongqing Local Court, offered a more dispassionate, technical analysis of the court system's weaknesses, though he too shared the general conclusion that "in China the concept of the rule of law is innately weak" (Ni [1947] 2006, 124). 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 to take.[18] 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 (Ni [1947] 2006, 125). These conditions adversely impacted the prestige of the courts and reflected their poor standing in the government. Ni suggested reviving a host of reforms that had been experimented with briefly during the war, some of which he had helped to implement, including instituting circuit courts; simplifying procedures; simplifying the format, style, and length of judgments; and turning over the management of courts to professional administrators so that senior judicial personnel could focus more on deciding cases.

These suggestions were topics of lively debate and bureaucratic wrangling in late Republican legal circles, but none would make significant headway until the CCP ascended to power and, propelled by the winds of revolution, took them further, in many cases, than their Nationalist sponsors had ever intended. Indeed, the CCP was highly attentive to Nationalist judicial discourse on a wide range of matters, including the cultural and economic inequalities

the courts perpetuated and their excessive formalism, elitism, social alienation, bureaucratism, and limited penetration of the Chinese countryside. The CCP absorbed that discourse and the proposals it generated and then echoed them back dialogically to color itself as a more progressive, democratic alternative. Those connections deserve careful study.

Looking back, the Republican court system left a mixed legacy: inspiring achievements sapped by grave disruptions and setbacks from both within and without. Consider the arresting timelessness of this assessment, excerpted from a 1947 essay by Judicial Yuan President Ju Zheng entitled “A Lawless State of Affairs”:

> Today we speak of democratic constitutionalism, but we first must cultivate the spirit of the rule of law. 1) Henceforth legislative organs must truly represent popular will. All laws must reflect the needs of the people; 2) Freedom of speech should develop greatly so that officials who violate, break, disparage, and take lightly the law will receive effective sanction of public opinion; 3) In today’s society, the pernicious vestiges of autocracy and feudalism have not been eliminated. The power of officials exceeds all else. Personal orders and calling cards from senior officials are more effective than law.… [If] this kind of bureaucratic evil custom is not restrained, [we will] have no way to speak of rule of law. 4) The judicial system is fragile and pitiable, judicial personnel are looked down upon, the selection [of candidates for appointment] is flawed, everywhere improvements await. (Ju 2009c, 96)

Pace Cai Dingjian and others, *this* was arguably “the starting point for the construction of New China’s legal system” and, seen from the vantage of 1949, it is little wonder that PRC judicial planners seized the opportunity to plot a different course (Cai 1997, 6; Dikötter 2008, 29–30). The dissolution and politicization of the courts, particularly in the final years of the Nationalist regime, poisoned them in the eyes of the CCP and provided a sharp, evidence-based edge to its abstract, ideologically informed hostility to them. CCP leaders reasonably regarded the Republican paradigm of judicial development as corrupt, inordinately expensive, inefficient, and poorly suited to China’s needs, and justified hostility to it by pointing directly to some of the key deficits this article has described. By all indications, they were not wrong, and that observation injects a crucial, missing dimension backed by hard data into a historiography that has to date rested on an almost exclusively ideological account of their motivations and policy choices.

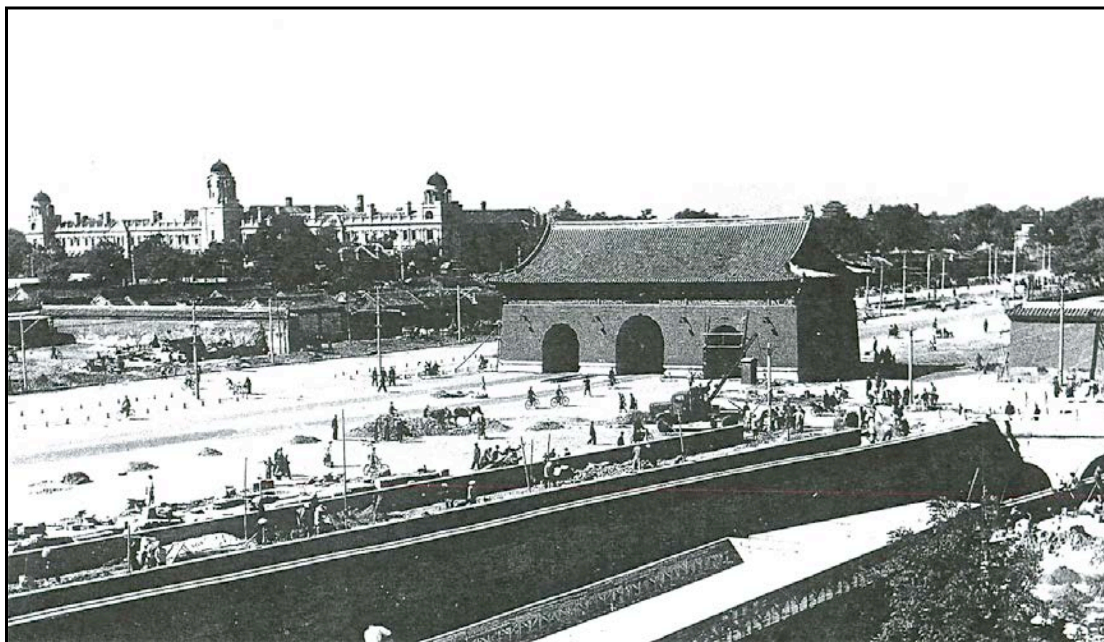

Figure 2. Supreme People's Court (Chang'an Avenue in foreground), 72 Ministry of Justice Street, Beijing, 1952. *Source*: Beijing shi guihua sheji yanjiuyuan (1996, 92).

The key question that follows from this and remains to be investigated is exactly how that new course took shape, because in 1949 it was still undetermined and a subject of fierce contestation. 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 many late Republican jurists had decried approached free fall. Even so, abrogation was not the last word on the fate of Republican legal modernization, but rather the start of a new role for it to play. Empowered by the revolution to break with their Republican past, early PRC jurists could not quite shake free of its grip; they compulsively measured themselves against it and sparred ferociously over the lessons to draw and the useful timber that might be recovered from it, and it tugged insistently at their fears and hopes of what law, courts, and judges in New China might ultimately become and do (figure 2).

There is ample reason to probe that neglected history. Mere months before the CCP seized the Republican court system and thrust it into the crucible of revolution, the epigraph to the 1948 *Yearbook of the Third Judges Training Course at National Chengchi University* declared in crisp calligraphy: “Rule the country by law – (signed) Chiang Kaishek” (*Guoli* 1948, 12). 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. Yet in 1979, just as the dust of the Cultural Revolution had settled and the Gang of Four was awaiting trial, "ruling the country by law" resurfaced as a catchphrase, apparently 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 today (A. Chen 1999, Li, Wang, and Chen 1980; Li and Li 1999). 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. The story between those matching exhortations—separated by three decades of turbulent history, like bookends to the Mao era—aches to be told.

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Notes

1 In 2004, after seventeen years at the National People's Congress, Cai Dingjian (1955–2010) departed as a Deputy Bureau Chief in the Secretariat of its Standing Committee for an academic career at the China University of Political Science and Law.

2 A welcome, recent exception to this pattern may be found in Mühlhahn (2009).

3 1936, a good year for the Republican judicial system, is an illustrative example. In that year, the Judicial Yuan counted 394 courts nationwide but elsewhere reported staffing for only 365. Moreover, as is often the case, other authoritative Nationalist sources cited different numbers. Ju Zheng claimed 398 courts for 1936, 4 more than the Judicial Yuan he presided over (Ju 2009b, 334). For 1939, the Judicial Yuan still attributed 3 courts to Chahar, 21 to Hebei, and 24 to Jiangsu, even though all three provinces were under Japanese occupation or collaborationist control (*Sifa nianjian* 1941, 214–220). Similarly, in mid 1948, the Ministry of Justice claimed dozens of courts in parts of Manchuria that were already securely behind CCP lines ("Fayuan jiansuo ji xian sifa jiguan shu" 1948).

4 With respect to the Beijing Local Court, the Hebei Provincial High Court exercised supervision over adjudication, and provincial judicial officials acting under the mandate of the Ministry of Justice in Nanjing exercised day-to-day administrative control.

5 In 1948, the board of directors was chaired by Ju Zheng, president of the Judicial Yuan, and its members included: Wang Chonghui, Jiang Yong, Sun Ke, Xie Guansheng, Zhang Zhiben, Xia Qin, Chen Lifu, and Deng Zhexi.

6 The survey of 1947 graduates from Chaoyang Law School's law department and judicial group recorded that 105 (75 percent) of the 141 respondents aspired to a job in the courts. The numbers were as follows: judges (52), judicial officers (17), clerks (7), procurators (5), and other court related positions (24).

7 In 1946, 145 new courts were opened. In 1947, the number dropped to 60, reflecting the adverse political and economic environment (Xie 1977, 5).

8 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 1977, 446).

9 The goal of a local court in every county was articulated often in the early years of Republican judicial reform. Later, the 1929 Nationalist Judicial Work Six-Year Plan for the Period of Political Tutelage (*Xunzheng shiqi sifa gongzuo liunian jihua*), proposed adding 1,773 local courts to the existing stock of 88 by 1935. The total number actually established by 1935 was 214, a modest increase of 126, or 1,647 fewer than called for in the plan (Ju 1934a, 74; *Sifa nianjian* 1941, 211). In a nod to how far out of reach the goal of creating one local court in every county remained, Article 9 of the 1946 Law on Court Organization permitted geographically small jurisdictions to band together to establish joint local courts ("Fayuan zuzhi fa" 1946, 459).

10 This figure included the provincial high court in Beijing, eight branch high courts, and sixteen local courts. Inexplicably, it does not include the branch of the national Supreme Court then provisionally operating in Beijing.

11 This figure includes the four tribunal presidents, but not Court President Wu Yuheng, because his position was mostly administrative.

12 Inexplicably, this source reports the percentage as 34 percent, when the raw data indicates 28 percent.

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

14 They were: Chahar (11 percent), Fujian (15 percent), Hebei (6 percent), Henan (14 percent), Hunan (13 percent), Shanxi (8 percent), Yunnan (13 percent).

15 Unlike the Law on Court Organization, the 1944 Statute on County Judicial Organization expressly provided for one office per county and did not provide for joint offices covering multiple jurisdictions ("Xian sifachu zuzhi tiaoli" 1946, 467).

16 The 1946 county-level judicial office to court ratios for closed cases of first instance in Hebei were: civil (826: 9216), and criminal (1,171: 12,562) (*Sifa tongji niankan* 1947, 47, 56).

17 Detailed discussions of judicial partification in the Republican period may be found in Han (2003) and Hou (2009).

18 See also Zhang (2002).

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