The Judicial Cadre Evaluation System in China: From Quantification to Intra-state Legibility

Jonathan J. Kinkel* and William J. Hurst†

Abstract

Performance evaluation systems fundamentally shape the behaviour of Chinese judges, but scholarship on the concrete implementation of these institutions is scarce. Relying on nearly 15 months of fieldwork in six cities in China, we explain how the judicial cadre evaluation system, as unified by the 2011 "Guiding opinion of the Supreme People's Court," has been implemented. Over 30 indices quantitatively measure Chinese courts' "fairness" (*gongzheng* 公正), "efficiency" (*xiaolü* 效率) and "impact" (*xiaoguo* 效果), incentivizing court leaders to pressure their subordinate judges to resolve disputes as quickly as possible without unduly angering litigants or other actors. Under the hyper-quantified conditions of cadre evaluation, systemic praising and shaming bring about what we call "intra-state legibility," which leads to a variety of informal worker reactions to these tactics. This study not only uses interviews and new documentary evidence to add necessary detail to our understanding of cadre evaluation systems, it also engages debates in comparative law and politics regarding bureaucratic influence on authoritarian judicial behaviour.

Keywords: judicial behaviour; cadre evaluation; China; judicialization; rule by law; institutional incentives; quantification; legibility

Judges, like other cadres and officials in China's political system, are regularly assessed according to rigid quantitative performance metrics. Some scholars have argued that Chinese Communist Party (CCP) intervention into individual judges' decision making can help to promote the autonomy of China's judicial system,[1] whereas others have maintained that increasing extra-judicial influence in the legal system is a sign of the state's downgrading of – or "turn against" – law and judicialized dispute resolution.[2] Finally, others have looked more

* PhD in government, University of Texas at Austin, 2015. Email: jjkinkel@gmail.com.
† Northwestern University. Email: william.hurst@northwestern.edu.

1 Peerenboom 2010, 79; Zhu 2010.
2 Minzner 2011.

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broadly at policy targets and the quantification of assessment and political oversight in China.[3]

This article focuses on the highly politicized system of judicial performance evaluations that has been implemented in recent years to enhance the professionalism of China's judiciary, only to be roundly criticized and substantially curtailed in late 2014.[4] The heavy reliance of Chinese courts on performance indicators and their recent hasty overhaul suggest that close examination of these institutions is warranted. In this first attempt to unpack China's judicial cadre evaluation system and its effects systematically, we maintain that court leaders' responsibility for the collective performance of their courts and their concerns over their reputations *within and among* the judiciary are of primary importance in shaping judges' thinking and behaviour. The emergence of these patterns has been facilitated by increasingly sophisticated reporting of performance scores on formal, quantitative, evaluation indices. This overlapping interaction between written rules and practical implementation has a much stronger impact on judicial decision making and behaviour than either formal or informal factors alone. We call this highly visible supervision by central state principals of their local judicial agents "intra-state legibility." It is no surprise that concerns about their professional reputation and the esteem of their peers should influence judges' decision making or lawyers' practice in courts, as has been shown by studies conducted in other countries.[5] Such a perspective, however, is new in the study of Chinese law.

Recent research on Chinese judicial behaviour has resonated with accounts of the post-Soviet judiciary.[6] Stanley Lubman was among the first to note that burgeoning caseloads, bureaucratic incentives and quotas have pressured judges, since at least the early 1980s, to emphasize mediation instead of adversarial adjudication in the resolution of private disputes.[7] Randall Peerenboom sees formal bureaucratic supervision and evaluation promoting higher standards of professionalism through the manipulation of judicial salaries and other perquisites.[8] Rachel Stern suggests a model of civil judicial decision making in one-party states, based on her research on environmental litigation in the PRC, in which tensions between judges and non-judicial elites (as well as between formal and informal norms) threaten the integrity of the judicial process.[9] Carl Minzner examines courts' evaluation of judicial cadres against the backdrop of China's

3 O'Brien and Li 1999; Edin 2003; Whiting 2004.
4 In December 2014, the Supreme People's Court (SPC) eliminated evaluations that ranked the collective "performance" of each provincial high court (see Hu 2014), and some local courts noted that suspending their judicial performance evaluation systems actually led judges to work more productively (see Xuzhou Intermediate Court 2014). These policy changes followed criticism in some journals circulating within the judiciary about the over-reliance on quantitative indices in measuring judicial performance and "easily fluctuating numbers" (*fuzao shu*). See Zhou 2011.
5 Baum 2006; Miceli and Cosgel 1994.
6 Hendley 2012, 2013.
7 Lubman 1999.
8 Peerenboom 2002, 2006.
9 Stern 2010.

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overall cadre evaluation system and finds that bureaucratic control of the judiciary undermines the PRC legal system even more clearly than in Stern's analysis.[10] No extant scholarship, however, draws on in-country fieldwork or documentary analysis to explain just how contemporary judicial cadre evaluation, known as the Case Quality Assessment System (*anjian zhiliang pinggu tixi* 案件质量评估体系, hereafter CQAS), is implemented at the level of individual judges or courts. Nor does previous scholarship incorporate important changes made to the system since 2008.

Our study is based on fieldwork, conducted primarily from June 2012 to July 2013. During that time, Kinkel was affiliated with the East China University for Political Science and Law in Shanghai and travelled to Shenzhen 深圳, Chengdu, Foshan 佛山, Wenzhou 温州 and Beijing to conduct interviews, library research, observe court hearings and collect documents related to judicial management, performance evaluation and working conditions. Introductions to judges were generally obtained via mutual contacts, after which snowball sampling was used to gain introductions to more interview subjects. Interviews were relatively informal and ranged in length from 20 minutes to four hours. Some judges were willing to talk in their offices and even gave courthouse tours, but most were interviewed away from courthouses in more private settings. Predetermined interview questionnaires were not employed. Instead, conversations were focused and structured around specific topics, which allowed for freer discussion until opportunities for substantive inquiries emerged, thereby letting judges teach the interviewer how courts are managed in China.[11] Interview topics included the specific content and method of the CQAS, as well as interviewees' perceptions of, and reactions to, the system. Given that the interviewees cited here represent but a small and not necessarily statistically representative sample of all PRC judges, we also rely on a variety of written sources, including Chinese official documents and publications, internally circulating (*neibu* 内部) publications, Chinese and English secondary literature, and official statistics. This kind of triangulation is essential, given both the small number of interviewees and the complexity and political sensitivity of the topic. Our aim is not probabilistic hypothesis testing; instead we use qualitative methods to explore new sources and data, then generalize modestly across time and space to generate hypotheses regarding important legal and political phenomena.

We examine how court leaders – for example, court presidents (*fayuan yuanzhang* 法院院长) and vice-presidents (*fayuan fuyuanzhang* 法院副院长) – are motivated to boost their courts' collective CQAS performance scores not only through institutional incentives but also through informal discipline and shame-based motivational mechanisms.[12] We find that, rather than judicial evaluations

10 Minzner 2009, 2011.

11 Merton, Lowenthal and Kendall 1990; Hurst 2009.

12 By "ordinary judges," we refer to "judges" (*shenpanyuan*) and "assistant judges" (*zhuli shenpanyuan*) under the Judges Law of the PRC (*Zhonghua renmin gongheguo faguanfa*) of 1 July 1995. Although higher-ranking judges at the associate division chief (*futingzhang*) level and above can hear and decide

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seamlessly constraining judges to mediate more cases or to avoid appellate reversal,[13] informal practices emerge as responses to quotas and ultimately exert a greater influence on judges' professional activity. The CQAS also helps us to gain a better understanding of the position of Chinese judges in relation to their colleagues in other areas of the political system and bureaucracy.

Prior work by legal scholars has mostly refrained from engaging directly with broader social science research on cadre evaluation in China. Yet, Chinese judges are still considered "cadres" (*ganbu* 干部) in the PRC political system – a term that has historically referred to the revolutionary credentials of cadres as leaders of the revolution and the masses.[14] Although "cadre" has recently developed a less ideological and more bureaucratic meaning, an understanding persists that judges must be committed to the CCP and subject to the discipline of performance evaluation systems like the CQAS.[15]

Still, Chinese judicial work and judges' understanding of their professional roles differ from those of other cadres with more characteristically political identities and general responsibilities (for example, county-level mayors or CCP secretaries).[16] In their study on village cadres, O'Brien and Li found that, "particularly important tasks such as birth control may … be granted 'veto power'," where failure on that task means a failed cadre evaluation, "no matter how well the other targets have been met."[17] Although judges are also incentivized to do their jobs efficiently and without mistakes, our interviewees did not report the implementation of draconian performance metrics like "priority targets with veto power" (*yipiao foujue* 一票否决).[18]

Judicial and court evaluations primarily emphasize the analysis of predetermined targets on quantified indices (*zhishu* 指数).[19] Court presidents generally do not face individual "veto targets" that can lead to ordinary judges or court leaders failing their performance evaluations. Rather, court leaders and their subordinates are assessed using a litany of crucial indices and target performance rates that vary in importance based on trends within each particular locality. Hence, Chinese judges face a significantly different set of standards and challenges to those faced by their counterparts in local governments and CCP committees.[20]

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cases, their duties are usually focused on the administrative work of running the court and assessing judicial performance. For a similar typology of the within-court hierarchy of Chinese judges, see Ling Li's (2012) typology of "party leaders," "leader judges," and "frontline judges."

13 See Minzner 2011.
14 Brødsgaard 2012, 71–72.
15 Ibid., 72.
16 Landry 2008.
17 O'Brien and Li 1999, 172; Whiting 2004, 102.
18 Edin 2003; O'Brien and Li 1999; Whiting 2000.
19 Edin 2003, 39; Whiting 2000, 207; Whiting 2004.
20 Whiting 2004, 107; Su et al. 2012.

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To address these issues and explain the implementation of the CQAS, we first offer a brief history of the emergence of the CQAS before moving on to give a detailed account of the within-court conflict between judges who manage courts (i.e. court presidents, vice-presidents and other court leaders) and ordinary judges who decide cases. We then posit an explanation of how the effects of quantified performance assessment go beyond traditional concepts applied to principle-agent problems and constitute a new phenomenon that we call, with a nod to James Scott, "intra-state legibility," which effectively supplants formal judicial rewards and punishments.[21] We conclude by summarizing our findings and explaining possible future steps for building on this research.

A Brief History of the Emergence of Unified Judicial Performance Evaluation

Similar to judicial bureaucracies in other countries that fit the traditional model of a civil law system (for example, Italy before the Second World War, Spain pre-1978, and Chile between 1964 and 2000),[22] employment as a judge in the PRC is intended to be a career position. Judges start on the bottom rung and gradually move up a hierarchical ladder. The CQAS mediates the movement of judges within this hierarchy via a multiple-index performance evaluation of the efficiency and accuracy of the work of judges and courts over time.

The cumbersome implementation of judicial evaluation has historically been masked by its straightforward description in the PRC Judges Law: "Appraisal of judges shall be conducted by the People's Courts the judges belong to … The result of appraisal shall be taken as the basis for award, punishment, training, [or] dismissal of a judge, and for readjustment of his or her grade and salary."[23] These formal norms of judicial evaluation reflect the post-Cultural Revolution reinstatement of performance evaluations for use in resolving principal-agent discontinuities in China's political system.[24] In a speech to the Politburo in 1980, Deng Xiaoping 邓小平 called for drastic changes to the systems of organizational and personnel management within the party-state bureaucracy.[25] A national work conference in 1983 pushed for greater emphasis on assessment of concrete achievements rather than political attitudes or style in the cadre management system, and the CCP Organization Department issued official guidelines for the annual evaluation of Party secretaries and government executives in 1988.[26]

21 For a discussion of principle-agent dilemmas, "police patrols," and "fire alarms," see McCubbins and Schwartz 1984.
22 Hilbink 2007, 224–234.
23 Judges Law, Articles 19, 22.
24 Manion 1985, 204–05.
25 Manion 1985, 206.
26 Whiting 2004, 104, citing Organization Department. 1988. "Zhonggong zhongyang zuzhibu guanyu shixing difang dangzheng lingdao ganbu niandu gongzuo kaohe zhidu de tongzhi" (Central

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In 1993, the National People's Congress (NPC) formulated general performance criteria for employees in all departments, levels and areas of the country: political integrity, competence, diligence, and achievement (*de* 德, *neng* 能, *qin* 勤, *ji* 绩). Local courts had already begun implementing cadre responsibility systems based on work targets before the State Council issued its "Outline on deepening the reform of the cadre personnel system" in June 2000.[27] Soon thereafter, national policymakers began discussing the unification of the judicial cadre evaluation system.

The Supreme People's Court's (SPC) Second Five-Year Plan (hereafter, the Plan), published in 2005, called for reforming and "perfecting" (*wanshan* 完善) the organizational structure of courts, judicial adjudication management, and judicial personnel management.[28] In Section 7, the Plan called for "establishing a scientific, unified system of assessing adjudication quality and efficiency."[29] Other sections of the Plan mandate "reforming the evaluation systems for judges and other court personnel," "unifying judges' achievement evaluation standards and processes," and establishing a robust system of judicial punishment (*chengjie* 惩戒).[30] Clause 32 of the Plan specifically seeks to reform judicial statistics so that courts can establish a system of indices capable of reflecting the work situation at every court level.

Implementation of these aspects of the Plan was not attempted nationally until 2008, when the SPC launched a pilot project to formalize a national system of judicial performance assessment and to standardize various sub-national judicial performance evaluation institutions.[31] In March 2011, the SPC gave final approval to this trial and published a decisive "Guiding Opinion" to launch a national system of "case quality" assessment of China's courts and judges.[32] According to this Guiding Opinion, courts must "establish a scientific and unified system of court evaluation" in accordance with the SPC's Second Five-Year Plan.[33] The Guiding Opinion also states that judicial evaluation systems should be based on assessment indices (*pinggu zhibiao* 评估指标) and a "quantified model of assessing judicial quality."[34]

Specific details of each locality's implementation vary, but a persistent pattern has surfaced across the country: judges' primary motivation is to obtain

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Organization Department circular regarding trial local party-state leading cadres' year-end work performance system), document No. 7; Zhuang 2010.

27 Minzner 2009, 66; Whiting 2004, 105, citing "Shenhua ganbu renshi zhidu gaige gangyao" (Outline on deepening the reform of the cadre personnel system).

28 SPC 2005.

29 SPC 2005, Clause 41.

30 SPC 2005, Clauses 42–43.

31 In the SPC's 2008 Provisional Opinion on this issue, this pilot project was referred to for the first time as "case quality assessment work." See SPC 2008; Zhang 2011.

32 SPC 2011; Zhang 2011; Ying 2011.

33 SPC 2011, Article 1.

34 Ibid.

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promotion, which requires high scores on the CQAS evaluations; to obtain high CQAS marks, judges must not only demonstrate efficiency by resolving cases quickly, they must also demonstrate accuracy by posting low levels of reversal on appeal.[35] Not surprisingly, this dual emphasis on both speedy and accurate dispute resolution can put judges in a bind: one desideratum must often be sacrificed to attain the other. The pressures inherent in the CQAS affect both court leaders, whose primary task is to manage and organize courts, and ordinary judges, whose primary responsibility it is to resolve disputes through the litigation process.

During annual performance evaluations (*nianzhong kaohe* 年终考核), ordinary judges can lose points if there are reversals by the higher court on the judge's or the court's record. This is especially true if the reversal was found to be the result of a "legal mistake" in a common type of case.[36] Court leaders then calculate performance scores based on the relative fulfilment of targets to help determine the promotional prospects of the judges and court leaders, and judges can lose points on their year-end evaluations if their performance scores are below target.[37] Judges generally will not lose their jobs based on their performance on isolated CQAS indices. In the long run, however, archived CQAS scores accumulate and shape a judge's chances for promotion.[38]

In the words of one Shanghai judge writing for a *neibu* court journal, the CQAS can be thought of as a "health check form" (*tijian biao* 体检表) for courts, and the cumulative (*zonghe* 综合) indices that evaluate courts and court divisions as collectives can be thought of as a "conductor's baton" (*zhihui bang* 指挥棒).[39] Although "every level court can, according to the major points emphasized, adjust the weight given to their specific assessment indices," the SPC maintains the authority to adjust the content and relative importance of each index "when appropriate."[40] Finally, the Guiding Opinion stipulates that judicial evaluations under the CQAS are administered via "one-level down" principles: "the court at one level above is responsible for organizing and leading the court one level below in assessment work, and can, regarding their own court and the courts in their jurisdiction, advance case quality assessment work."[41]

The Collective Nature of the Performance Evaluation of Court Leaders

Tension between court presidents and ordinary judges shapes the institutional incentives affecting decisions in the overwhelming majority of legal disputes

35 Interview with district court judge, Shanghai, May 2013; interview with judge, Shenzhen, January 2013; interview with intermediate court judge, Chengdu, May 2013.
36 Interview with district court judges, Shanghai, June and July 2013.
37 Interview with district court judge, Shenzhen, September 2012; interview with district court judge, Wenzhou, July 2013.
38 Interview with SPC judge, Beijing, May 2013.
39 Zhang 2011.
40 SPC 2011, Articles 13–14.
41 SPC 2011, Article 16. For a comprehensive discussion of "one-level down" principles, see O'Brien and Li 1999, 171–76 and Landry 2008, 48–53.

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heard in Chinese courts. Court presidents (*yuanzhang* 院长) and vice-presidents (*fu yuanzhang* 副院长) are responsible for court management, and their chances for promotion are calibrated by the CQAS scores collectively produced by the judges and court divisions under their direction. The CQAS incentivizes court leaders to obtain the highest productivity and efficiency from each judicial cadre within their courts.

The Guiding Opinion states in Article 1 that court leaders are evaluated by cumulative indices regarding the performance of their court and the subordinate judges and units within that court's jurisdiction.[42] Aggregating individual judges' CQAS results allows political elites to assess the performances of whole courts and their divisions as collectives by viewing their scores in comparison with those of other similar units throughout the country.[43] Indeed, comparative rankings are explicitly mandated by the Guiding Opinion: "For every half-year and year-long period, the SPC will engage in analysis of assessment statistics and indices, and publish an 'all-country case quality analysis report'; engage in summarization (*zongjie* 总结) of higher-level courts, intermediate-level courts, basic-level [i.e. first-instance] people's courts' case quality situations, and at regular intervals provide feedback (*fankui* 反馈) regarding every level court's case quality assessment situation."[44]

Section 4 of the Guiding Opinion informs courts that "Case assessment computer management software is issued in unified fashion by the SPC," and every level court should use this software to publish documents, reports and statistical reporting sheets at regular intervals and according to SPC requirements.[45] Using the CQAS software, the SPC and high courts throughout China distribute cumulative court and divisional index results, upon which lower levels of the court system should rely to "guarantee the objectivity of the assessments." CQAS results thus become "the cumulative reflection of people's courts' adjudication work situation."[46]

CQAS reports, internal newsletters, and computer software reveal how the CQAS is interpreted and implemented across several research sites, pressuring court leaders and ordinary judges. For example, spreadsheets in Zhejiang province and in Shanghai list the CQAS performance ranking for each court – from the basic level to the high court – on specific indices.[47] In Shenzhen, the "Guangdong provincial court's analysis of the 2011 CQAS primary index situation" was drafted in response to cross-provincial analysis and "feedback" provided in the SPC's 2011 "Report regarding the 2011 case quality assessment situation for courts throughout the country." The analysis in "Guangdong high

42 SPC 2011, Article 1.
43 Examples of similar, comparable courts would be all first-instance district courts in a municipality or all intermediate courts in a given province or region.
44 SPC 2011, Article 24. As noted, the SPC has eliminated evaluations that ranked the collective "performance" of each provincial high court. See Hu 2014.
45 SPC 2011, Articles 20, 23.
46 SPC 2011, Articles 17, 27.
47 Interviews with district court judge, Shanghai, July 2013, and district court judge, Wenzhou, October 2012.

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court's report," as approved by the Guangdong high court president, explicitly discusses Guangdong province's cumulative CQAS in comparison with other court systems throughout the country. Newsletters distributed throughout the provincial court system specify the exact number of CQAS indices upon which courts within the province outperformed the national average, even identifying the specific provinces ranking higher on the cumulative provincial CQAS index score.[48]

Consistent with the spreadsheets from Zhejiang and Shanghai, court leaders in Guangdong are specifically cognizant of their own court's CQAS ranking relative to other similar courts. To understand the overall quality and efficiency (*zhixiao* 质效) of courts in Shanghai, court-specific publications note the importance of comparing indices which have met targets, those which nearly met targets, and those which displayed a clear disparity with targets.[49] With the CQAS providing greater variety and comparability of statistical feedback, higher-level principals possess more detailed information regarding lower-level agents' performance, facilitating bureaucratic management of the court system.[50]

Instead of an exclusive focus on limiting reversals of judgments on appeal[51] or "priority targets with veto power," local court evaluation systems have informally emphasized specific sets of indices, similar to the practice of "hard targets" (*ying zhibiao* 硬指标) observed by other scholars of China's bureaucracy.[52] As Whiting describes the term, "hard targets" are a by-product of the excessive number and variety of tasks evaluated through performance-based measures, which force higher-level officials to identify primary sets of targets that leaders actually consider critical to success during appraisal.[53] In Chinese courts, the term for "hard target" seems to vary by locality – Guangdong judges use the term "core targets" (*hexin zhibiao* 核心指标), whereas a judge interviewee working in a Shanghai district court referred to "first class targets" (*yilei zhibiao* 一类指标) when discussing similarly important indices.[54] Generally speaking, however, mediation is no longer emphasized as strongly as during the 2008–2013 tenure of SPC president Wang Shengjun 王胜俊;[55] rather, there are general imperatives to resolve cases quickly and to operate correctly in a complementary and combined fashion.[56] Table 1 summarizes this combined focus on speed and accuracy and lists the important indices that were most frequently identified by interviewees as being equivalent to "hard targets" under the CQAS.

48 Interview with district court judge, Shenzhen, September 2012.
49 Zhou 2011.
50 Scott 1999; see also McCubbins and Schwartz 1984; He 2009.
51 See, e.g., Minzner 2011.
52 See, e.g., Whiting 2004, 116.
53 Ibid.
54 Interviews with district court judge, Shanghai, December 2013, and district court judge, Shenzhen, September 2012.
55 Interview with intermediate court judge, Shanghai, June 2013; interview with intermediate court judge, Chengdu, May 2013.
56 Interviews with separate district-level judges, Shanghai, May and June 2013, intermediate court judge, Shenzhen, January 2013, and intermediate court judge, Chengdu, April 2013; cf. Minzner 2009; Minzner 2011.

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Table 1: **Selection of "Hard Target" Indices in the Case Quality Assessment System, 2008–2013***

Case quality index type	Case quality system index name	Effect of higher scores on index
"Fairness"	Rate of first-instance cases in which judgment corrected on appeal (mistake) (*yi shen panjue anjian bei gaipan fahui zhongshen lü (cuowu)* 一审判决案件被改判发回重审率(错误))	Negative
	Rate of first-instance cases reversed and remanded (*shengxiao anjian bei gaipan fahui zhongshen lü* 生效案件被改判发回重审率)	Negative
	Rate of judgments corrected on cases in effect at first-instance level (*shengxiao anjian gaipan lü* 生效案件改判率)	Negative
"Efficiency"	Average cases cleared per judge per year (*fayuan nian ren jun jie'an shu* 法院年人均结案数)	Positive
	Rate of cases resolved within statutory (normal) time limits (*fading (zhengchang) shen xiannei jie'an lü* 法定(正常)审限内结案率)	Positive
	Rate of first-instance cases in which the simplified procedure is used (*yi shen jianyi chengxu shiyong lü* 一审简易程序适用率)	Positive
	Index of resolving cases in balanced time throughout a year-long work cycle (*jie'an junheng du* 结案均衡度)	Positive
"Impact"	Rate of first-instance cases in which neither re-trial nor appeal is sought (*yi shen fupan xisu lü*一审服判息诉率)	Positive
	Rate of mediation (*tiaojie lü* 调解率)	Positive
	Rate of case withdrawal (*chesu lü* 撤诉率)	Positive
	Rate of citizen petitioning against court (*xinfang tousu lü* 信访投诉率)	Negative

Sources:

Interviews with separate district court judges, Shanghai, March and July 2013; interview with intermediate court judge, Chengdu, May 2013; interview with intermediate court judge, Shenzhen, July 2013; interview with district court judge, Shenzhen, September 2012; SPC 2011.

Notes:

*Interviewees indicated that the "impact" category evaluates whether judicial decisions have resulted in social or mass instability. Interviews with district court judges, Shanghai, June and July 2013. Additionally, this table refers to "hard targets," or quotas related to rendering judgments in legal disputes, and does not include targets for other functions assessed in Chinese courts, e.g. enforcement of judgments.

Judges also stated in interviews that although some CQAS indices listed in the 2011 Guiding Opinion appear to have equivalent weight on paper, they are not as important in practice as those listed in Table 1. For example, the Guiding Opinion notes that "Assessment of the degree of public satisfaction can be collected according to needs from survey questionnaires given to people's congress representatives, members of consultative committees, clean government supervision personnel, parties to litigation and their legal representatives, which are administered by court organizations at every level."[57] Judges indicated, however, that court leaders did not consider this "public satisfaction" index critical in

57 SPC 2011, Article 18, Section 2.

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judicial evaluations because it has proven impossible to measure "public satisfaction" reliably using the methods spelled out in the Guiding Opinion.[58] Similarly, the index for "rate of immediate enforcement of judgments" is listed in the Guiding Opinion as an impact index, but interviewees stated that it has little value and is never relied upon by court leaders because judgments are so rarely "immediately enforced."[59] Even in a recently unified formal system, hard targets have emerged to distinguish between indices suggested by the SPC and those that "really matter" at the local level.

The spreadsheets and reports that comprise the formal system's ranking of courts, judges and court leaders make explicit which courts are performing well in the eyes of the system, but informal practices of discipline and shaming can be even more powerful influences over judges' lives than formal factors alone.[60] Because the court system publishes the unvarnished quantitative rankings of each court in a jurisdiction and each judge within a court, unsuccessful court leaders can be shamed by poor showings and motivated to improve their court's (and their own individual) performance. Court leaders are constantly interacting during judicial conferences and various other social networking events. Indeed, travel to administrative meetings can keep court leaders away from their "home" courts for more than 200 days per year, leading to the criticism – oft-repeated by those they supervise – that court leaders "should hold fewer meetings and handle more cases" (*shao kai hui, duo ban'an* 少开会, 多办案). When SPC rankings are particularly favourable for a given local court system, the results can also find their way into the public press. For example, an article entitled "Shanghai courts' judicial fairness index and transparency level are highest in the country" was published in the *Liberation Daily* (*Jiefang ribao* 解放日报) and then re-printed in *People's Court News* (*Renmin fayuanbao* 人民法院报). It claimed that, "According to SPC statistics, Shanghai courts' judicial fairness indices have for five consecutive years ranked first among all the country's courts."[61] Under such circumstances, CQAS rankings become important status markers in the social lives of court leaders.[62]

Quantified Assessment of Ordinary Judges and the Salience of Intra-state Legibility

Ordinary judges' perspectives in urban China.

Individual Chinese judges exhibit reservations regarding the trend towards quantification as they perceive a discrepancy between, for example, measuring

58 Interviews with separate district court judges, Shanghai, May and June 2013.
59 Ibid.; SPC 2011, Article 10.
60 Interview with intermediate court judge, Foshan, July 2013.
61 Guo 2013. It is plausible that this public shaming element played a role in the curtailing of collective court "fairness" rankings in late 2014. See Hu 2014.
62 Interview with intermediate court judge, Wenzhou, July 2013.

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company bottom lines and acts of governance. Still, the true power of quantitative assessment lies in its influence on subjectivity itself, as judges tend to accept CQAS performance scores as legitimate assessments of their own professional merit, resonating with the expansion of quantitative assessments in various professional contexts around the world.[63] Individual judges suggested in interviews that it is not merely the CQAS evaluation itself that creates professional pressure; rather, individual judges' self-evaluations against peers motivate them to obtain better scores. Every judge's annual evaluation score (*niandi kaohe chengji* 年底考核成绩) relies on broad aggregations of CQAS measures referenced during within-court competitions between colleagues for promotion to vacancies within courts.[64]

It was telling, then, that an interviewee emphasized the importance of "pretty" (*piaoliang* 漂亮) quantitative scores in their work and for judicial promotion prospects.[65] A different judge, when asked whether the court leaders post rankings to encourage everyone to work harder, replied, "No, you can't really call it encouragement (*guli* 鼓励), it's really pressure (*yali* 压力), and we feel the pressure because it's embarrassing to be ranked lower. Of course we know it doesn't really have much of a material impact, but a lower performance is just embarrassing and makes us want to do better."[66]

Conversely, case-deciding judges frequently complain that the system assumes all aspects of judicial performance can be quantified and measured. As one judge from Wenzhou put it: "We are not workers in a factory, nor are we workers in a company, so a judge's performance cannot simply be measured by production metrics. There are many aspects of judicial performance that cannot be measured."[67] The courts' limited abilities to make sense of a morass of quantitative indices have also led to a noticeable shift towards emphasizing adjudicating cases quickly rather than avoiding reversal on appeal.[68] A district-level judge from Shanghai explained that by focusing primarily on the speed of adjudication, the CQAS distorts the reality of judging, in which many factors including the technical or legal complexity of a case, or scheduling difficulties, can influence the time needed to resolve a dispute.[69] As observed elsewhere, Chinese judges perceive the tensions inherent in applying numerical measures to complex phenomena and glossing over context in pursuit of comparability, classification, objectivity and scientific assessment.[70]

Not surprisingly, judges are fond of discussing the pressure exerted by the system on their daily lives. One judge was eager to share a parody song that was

63 Merry 2011, S88.
64 Interview with district court judge, Shenzhen, January 2013.
65 Interview with district court judge, Wenzhou, July 2013.
66 Interview with intermediate court judge, Foshan, July 2013.
67 Interview with district court judge, Wenzhou, July 2013.
68 See Minzner 2011.
69 Interview with district court judge, Shanghai, March 2013.
70 Merry 2011, S85.

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circulating on Chinese social media. Sung by an "Entire corps of judicial cadres," the song is set to the melody of the popular Chinese song, *Because of Love*. It opens with the lyrics, "I give you the whole court report/Look at last month's rankings/My dreams are interrupted/By the need to resolve more cases." Continuing with the judge-singer pledging "to go crazy working hard" and bemoaning work that makes "young judges age beyond their years," the parody concludes with hyperbole: "When the deadline comes, some will die on the battlefield/Not dead – only injured *^_^* ."[71]

This song parody, complete with concluding emoticon signifying stress or tension, captures the pressures Chinese judges face: heavy caseloads, increasingly strict surveillance, and one's CQAS scores laid bare on the "whole court report." By contrast, the parody does not mention any desire to obtain performance bonuses or avoid fines. Indeed, even some court leaders have recognized problems in focusing too heavily on statistical indices. Some local court leaders in Shanghai have urged courts to avoid problems created by "fluctuating numbers" (*fuzao shu* 浮躁数) or by relying solely on numbers.[72]

Beyond Police Patrols and Fire Alarms: "Intra-state Legibility" and the Principal-Agent Dynamic

Even as lower-ranking judges bristle at its stripping away of the complexities of judicial work, the CQAS remains a powerful disciplinary tool because, as noted above, judges fold their own self-reflexive assessments of their professional worth into its highly visible results. As these lived experiences of Chinese judges are distinct from state principals' use of "police patrols" or "fire alarms" to monitor the performance of local agents, the CQAS thus surpasses any grand project to quantify, rank and compare governance and civil society programmes.[73] Many modernist states have used similar tactics to render subject populations "legible" and exert greater political authority over them.[74] Notably, however, the PRC central government and the SPC are employing this system to govern the behaviour of actors working *within* the state. Indeed, more than anything else, the CQAS showcases the centre's desire to command and control its unruly bureaucracy through quantitative and visible mechanisms of supervision.

Whereas in the past courts simply reported aggregate numbers from lower levels (and individual indicators could easily be ignored), there has been an abrupt and extensive clarification and quantification of the system since the SPC Provisional Guiding Opinion on the CQAS was issued in 2008.[75] A Chengdu judge stated that, before 2008, there were hardly any quantitative

71 Personal communication with district court judge, Wenzhou, July 2013.
72 Zhou 2011, 14–15.
73 McCubbins and Schwartz 1984; Merry 2011.
74 Scott 1999: see especially Ch. 1–2.
75 Interview with intermediate court judge, Wenzhou, conducted via phone, July 2013; interview with intermediate court judge, Shanghai, June 2013; Hu 2014.

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indices, and the system mainly used a single metric – whether cases were reversed on appeal – to assess the quality of courts and judges.[76] Another judge in Guangdong noted that in his court, as opposed to the near-constant surveillance under the unified CQAS, quantitative reports on courts' and individual judges' performances used to come only once per year, much like the work reports given by local courts to NPC branches at corresponding levels throughout the country. Court leaders have also become more focused on the CQAS because it gives them specific numbers that can be referenced in pressuring subordinate judges.[77]

Judges in the basic and intermediate courts receive monthly internal newsletters assessing the relative performance of individual judges, court divisions and courts as a whole.[78] The scores of individual judges and court divisions are also readily available to all court personnel via computer software on each court's intranet (*neibuwang* 内部网). In a Shenzhen district court, for example, a grid on the court intranet displays the "Half-year court 'frontline soldier report' for every internal court unit reaching target situation," which shows performance statistics across several courts and within-court divisions, and allows all court personnel to have constant, almost real-time, information regarding each judge's work.[79] These reports detail whether judges and internal court units meet predetermined values on CQAS index targets, with scores calculated under a parallel system, the Target Management Responsibility System (TMRS). A specific target score is assigned for each CQAS index, with indices on which the court fell short highlighted in red. Each division in the Shenzhen district court was assessed over a six-month period regarding the rate of cases that were reversed and remanded on appeal. The goal was to keep the percentage of cases reversed and remanded on appeal to 12 per cent or less. In one particular period, 23.64 per cent of cases resolved by this division had been reversed by the intermediate court. Given that the division's performance on this index was worth 9 points, the division's failure to meet the target resulted in their receiving only 7.81 out of a possible 9 points on the cumulative performance assessment system for their court.[80]

The TMRS rules constitute the mechanism by which hard target indices are enforced upon individual, ordinary judges. A Wenzhou judge explained that, in his court, points as calculated under the TMRS rules (*banfa* 办法) determine the promotion opportunities for judges and court leaders[81] but, consistent with the lack of "priority target with veto power" reported by our interviewees, none of the hard target indices is so important that a low score on that one measure results in automatic failure or termination of employment, especially if the

76 Cf. Minzner 2011; interview with Sichuan high court judge, Chengdu, July 2013.
77 Interview with district court judge, Wenzhou, July 2013.
78 Interviews with district court judge, Wenzhou, August 2012, district court judge, Shanghai, May 2013, and district court judge, Shenzhen, September 2012.
79 Interview with district court judge, Shenzhen, September 2012.
80 Ibid.
81 Interview with district court judge, Wenzhou, July 2013.

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mistake only occurred in a small proportion of cases handled.[82] As several interviewees indicated, judges only lose their jobs if they are investigated for a serious crime like bribery.[83] Instead, if a given judge's performance on a particularly important index is substantially lower than that of the other judges in the same court, it is possible that he or she may face a fine, a demotion, a loss of nominal bonus pay, or a transfer to a different position within the court.[84] Similar to courts in Russia, rising caseloads and increased deadline pressures raise the probability of judicial error when deciding complex civil and economic cases,[85] prompting the PRC courts to continue including "reversal on appeal" among the many performance indices. Hard targets increase the pressure on Chinese judges, enhancing the self-evaluating character and intra-state legibility of the CQAS.

How Intra-state Legibility Supplants Formal Rewards and Punishments

With quantified and highly visible performance measures and their embedded mechanisms of self-discipline taking centre stage under the CQAS, the other nominal, performance-related bonus payments and fines designed to motivate judges have been rendered largely obsolete. Nonetheless, the SPC has continued to issue detailed rules designed to discipline, motivate and reward judicial cadres:[86]

> Bonus standards shall be implemented, according to rank, for personnel-awarded judicial bonuses; for every level of judge, the following bonuses shall be awarded: for every chief major judge (*shouxi dafaguan* 首席大法官), award 340 yuan; for every first-level major judge (*yiji dafaguan* 一级大法官), award 318 yuan; for every second-level major judge (*erji dafaguan* 二级大法官), award 298 yuan; for every first-level high-level judge (*yiji gaoji faguan* 一级高级法官), award 278 yuan; for every second-level high-level judge (*erji gaoji faguan* 二级高级法官), award 262 yuan; for every third-level high-level judge (*sanji gaoji faguan* 三级高级法官), award 246 yuan; for every fourth-level high-level judge (*siji gaoji faguan* 四级高级法官), award 233 yuan; for every first-level judge (*yiji faguan*一级法官), award 220 yuan; for every second-level judge (*erji faguan* 二级法官), award 210 yuan; for every third-level judge (*sanji faguan* 三级法官), award 200 yuan; for every fourth-level judge (*siji faguan* 四级法官), award 190 yuan; for every fifth-level judge (*wuji faguan* 五级法官), award 180 yuan.[87]

The Judges Law of China states that the "result of appraisal shall be taken as the basis for award, punishment, training, dismissal of a judge, and for readjustment

82 Interviews with district court judge, Shenzhen, July 2013, intermediate court judge, Chengdu, May 2013, intermediate court judge, Shanghai, May 2013, and intermediate court judge, Shenzhen, January 2013. The TMRS rules in Zhejiang assign 100 points to "Party style and clean government" (*dangfeng lianzheng*) evaluations, and 100 points to professional (*yewu*) evaluations (the primary topic of this article). Interviewees in Wenzhou and Shanghai both stated that the *dangfeng lianzheng* evaluations are mere ritual, and the only evaluations that practically influence promotion opportunities are the *yewu* evaluations. Interviews with district court judge, Wenzhou, October 2012, and district court judge, Shanghai, July 2013.

83 Interviews with district court judge, Shanghai, June 2013, district court judge, Shanghai, July 2013, intermediate court judge, Shenzhen, July 2013, and intermediate court judge, Chengdu, May 2013.

84 Interview with district court judge, Shanghai, June 2013; personal communication with district court judge, Shanghai, December 2013.

85 Hendley 2013, 802.

86 SPC 2007; Personnel Department 2007.

87 Personnel Department 2007. Approximately US$1 was equal to 6.3 yuan at the time of writing.

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of his or her grade and salary."[88] Interviewees indicated, however, that performance-based awards, fines and categorization carry little weight outside of the quantified CQAS evaluation itself and take a backseat to within-group shame or pride arising from the visibility of scores. The bonuses – often seen as arbitrary and unrelated to performance – are paltry to begin with, sometimes as little as 10 yuan. A district court judge in Shenzhen explained that even judges in his court who achieve high performance scores receive a modest year-end bonus that usually only adds up to 1,000 yuan – so little that, "if you treat your friends to one dinner, then your bonus is gone, so the bonus is basically nothing."[89] Another judge was even more direct: "The reason we want good CQAS scores isn't because of money. It's because of face (面子 *mianzi*)."[90] Similarly, a Shanghai interviewee, who did not take fines for "mistake" cases seriously, was surprisingly concerned about the loss of face that came with a "mistake case." For him, one or two "mistake" cases bore no real consequences, except for the shame in his interactions with colleagues.[91] Another judge concurred that monetary fines do not affect judges' decision making, as their pay will not usually be docked (or will be docked by only a negligible amount). Rather, three difficulties arise for the judge when a case is reversed: loss of face, "bothersome trouble" (*mafan* 麻烦), which means a scolding or public shaming by one's boss, and finally, their prospects for promotion are damaged.[92]

Judges in big cities also consider the bonus system patronizing because their salaries are relatively low in comparison to lawyers in the burgeoning private sector. Civil servants' salaries have not increased since 2008.[93] Even in high or intermediate courts, court leaders cannot unilaterally increase basic salaries to reward good performance as, "no locality … can adjust bonuses on their own."[94] As a recent Xinhua article noted, one of the benefits of working for the state, despite the higher wages available in some private-sector companies, is that "government workers' salaries are stable and it is not as though they have nothing to eat."[95] Still, as an SPC judge pointed out, "in some small countryside towns, yes, 70–80,000 yuan is a comfortable salary, but it's extremely difficult in a place like Beijing with the rising cost of living. The fluctuation of housing, food, and child rearing costs is so rapid that it is hard to say whether this salary is enough

88 Judges Law, Articles 19, 22.
89 Interview with intermediate court judge, Shenzhen, July 2013.
90 Interview with intermediate court judge, Foshan, July 2013. Among the several scholarly works that describe the phenomenon of "face," which used here refers loosely to within-group or social status, please see Ho 1976.
91 Interview with district court judge, Shanghai, March 2013.
92 Interview with intermediate court judge, Shanghai, July 2013.
93 Xinhua News Agency 2013; interviews with district court judge, Shanghai, June 2013, and district court judge, Wenzhou, October 2012. Judges have traditionally been considered equivalent to general civil servants in China, although reforms introduced in 2014 explore the possibility of creating a separate, parallel personnel management for judges.
94 Interview with district court judge, Shanghai, June 2013; Personnel Department 2007.
95 Xinhua News Agency 2013.

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today, let alone tomorrow."[96] One Shanghai judge summed up his valuation of bonuses: "For example, in July and August, the Shanghai municipal government might give us some supplemental money to help civil servants deal with the summer heat, maybe to buy something like ice cream."[97]

Judges also did not particularly fear fines or the withholding of salaries, as a judge's basic pay (*jiben gongzi* 基本工资) is determined by his or her status as a civil servant, and is not affected by the evaluation system. As one Shanghai district-level judge explained (highlighting the tension between enforcing standards of judicial "accuracy" and, at the same time, piling on judicial caseloads):

> Nobody can meet the caseload deadlines required under the CQAS. You could ask Xi Jinping 习近平 to come and be a judge, he couldn't do it either … So, if the higher court reverses one of the cases I decided, it won't really affect my chances for promotion. Also, there is not that much pressure from the fines given for reversal on appeal – I will get fined 200 yuan [approximately US$30] for a reversed case or a "mistake" case, and it's a fixed-amount fine. But, in my view, one mistake case is no problem. There are a lot of these cases.[98]

Quantified assessment has also rendered several older categories of judicial performance superfluous. Although Article 22 of the Judges Law calls for courts to classify judges as excellent (*youxiu* 优秀), competent (*chenzhi* 称职) or incompetent (*bu chenzhi* 不称职) based on professional performance, many interviewees indicated that the overwhelming majority of judges receive a "competent" classification, such that when opportunities for promotion arise, their chances can be determined by variations in CQAS scores. For example, according to interviewees in Foshan city, and Longgang 龙岗 district in Shenzhen, approximately 10 per cent of judges are rated "excellent" during annual evaluations and 90 per cent are rated "competent"; unless someone is investigated for judicial corruption, usually no one is rated as "incompetent."[99] In the Wenzhou intermediate court in Zhejiang, a judge stated that he had "never heard of" an "incompetent" judge; instead, their court has a modified system by which another category is added to the "competent" status, which is called "relatively good," denoting an upper echelon of competence.[100] Some jurisdictions create a lower distinction of "basically competent" (*jiben chenzhi* 基本称职), which is designed to affect judicial promotion opportunities. Shanghai interviewees also indicated that judges all tend to be categorized similarly (*mei yi ge ren chabuduo* 每一个人差不多).[101] Across the board, the quantified and visible CQAS, combined with informal discipline and shaming, provides a new and extremely powerful set of tools to put pressure on judges socially and institutionally to succeed professionally. They are made legible actors within the state, and thus subject to far more intrusive and effective top-down controls in a way that they never were before, through the application of this new system. Crucially, this happens

96 Interview with SPC judge, Beijing, May 2013.
97 Interview with district court judge, Shanghai, June 2013.
98 Interview with district court judge, Shanghai, March 2013.
99 Interviews with intermediate court judge and district court judge, Shenzhen, July 2013.
100 Interview with district court judge, Wenzhou, July 2013.
101 Interview with district court judge, Shanghai, July 2013.

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because of the internalized and *subjective* appropriation of the CQAS as a measure of judges' self-worth, rather than through the state's use of it as an *objective* assessment measure.

Conclusion

In some other civil law countries, judges are secretly supervised not only for their official performance but also for their private conduct, fostering "anxious dependence on the higher echelons of the judicial hierarchy" among subordinate judges.[102] In China, by contrast, ubiquitous *and highly visible* CQAS rankings, statistics and scores create public and transparent markers of status within urban China's court system, largely desensitizing judges to the system's formal carrots and sticks. Instead, horizontal peer group shaming motivates judges to improve their CQAS scores and obtain within-group success. While other states have used similar tools to achieve hierarchical control over subject populations, in China the quantification, hard targets and rankings of the CQAS have instead been used to produce increased supervisory capacity *within the Chinese state* over the PRC's local court system.[103] Because Chinese judges – like many of their counterparts across civil law systems – tend to remain in the judicial system for their entire careers, they are especially susceptible to mechanisms of both control and motivation, as specifically facilitated by an increasingly quantified and visible reporting system that is manifested in practice via informal discipline and shaming.[104]

Our findings highlight court leaders' vested interests in their subordinates' performance, as well as the competing demands of bureaucratic evaluations at different levels of the judicial hierarchy within courts. We thus move beyond previous studies of cadre evaluation in China, which have focused on tensions between territorial leaders and citizens, and engage these studies by examining which features of cadre evaluation in courts and other bureaucratic units are similar or dissimilar.[105] More broadly, our findings are consistent with those of Hilbink and others that bureaucratic reforms can shape judicial behaviour in authoritarian regimes.

To paraphrase Martin Shapiro, as the people's courts that helped legitimize the communist revolution become part of larger modernization and bureaucratization efforts, the Party often discovers that more empowered courts are no threat to a workers' state – so long as judges remain subject to the career discipline of the judicial bureaucracy.[106] Thus, greater intra-state legibility accruing from the bureaucratization of the CQAS might go hand-in-hand with broader reforms that seek to professionalize and de-politicize courts in China. Accordingly, under the

102 Hilbink 2007, 229; DiFederico and Guarnieri 1988.
103 See Scott 1999, Ch. 1–2.
104 See Garoupa and Ginsburg 2009.
105 O'Brien and Li 1999; Whiting 2004; Edin 2003.
106 Shapiro 1981, 61–62; see also Hazard 1969.

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unified CQAS, judges in urban areas face professional pressures not from a single source but from a variety of bureaucratic sources, including rising caseloads, informal shaming and praising, and stagnant rates of judicial pay. Because these institutional arrangements appear resilient and adaptable to unforeseen difficulties in implementation, they serve as the basic incentive structure for judges in China.

We move beyond previous works on this topic by mapping the CQAS and examining its implementation across several courts. We acknowledge, however, that operationalizing these CQAS institutions as variables and then testing causal statements regarding Chinese judicial behaviour are primarily tasks for further research. Future studies can and should incorporate analyses of local or other particular variations in these incentive structures with differences in judicial decision making by using judicial opinions, decisions on promotion and dismissal, and other similar evidence. This could help alleviate some of the deficiencies in the present study, including the prominent urban bias in our data. Comparison across other urban localities, regions, rural areas, or even carefully selected provinces, could use such materials to identify variations across space and different eras of reform and opening, a critical first step in formulating reasonable hypotheses and testing them against antecedent conditions at this early stage of the research cycle.[107] Then, broader hypothesis testing could assess external causal validity. Carefully selected case studies could further pin down causal mechanisms and trace the processes of performance assessment to judicial decision making under specific conditions. Such a research agenda would greatly advance the field of both Chinese judicial politics and comparative behavioural accounts of judicial decision making in authoritarian regimes moving forward.

摘要: 干部考核制度对中华人民共和国法官的行为的影响很重要, 而关于这两方面的社会科学研究到现在并不多。本文章根据所在中国六个城市、将近十五个月的实证调研说明 “案件质量评估体系” 在 2011 年最高人民法院指导意见下实践中的过程。在中国法院定量分析 “公正” 、 “效率” 和 “效果” 的程度时, 有超过 30 个指标激励法院领导和压力下级官员在解决纠纷时尽快判决、不过分激怒当事人或其他公民。干部考核制度也利用赞扬和批评方法激励下级法官, 同时从超定量 (hyper-quantified) 条件带来所谓的 “政府内部的易读性” (intra-state legibility), 该导致各种非正式的反应和工人战术。这项研究不仅采用访谈和新的书面证据提高我们干部考核体系的意识, 同时其对专政下的法官行为、官僚主义和政法的动态也有所涉及。

关键词: 干部考核、评价体系、评价机制、法官行为、法制、法治、官僚主义

107 Hurst 2010, 174–76.

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