**Civil justice reform with political agendas**

*Xianchu Zhang*

In 2009, the People’s Republic of China (PRC) celebrated its 60th birthday

and 30th anniversary of its opening-up and economic reform. As far as civil

justice is concerned in this period, the impressive achievements that have

been made are well reflected in the White Paper published by the State

Council as part of the national endeavour to modernize the legal system in the

country’s social and economic transition towards a market economy.1 However,

given the size of the country and the complexity of the national conditions,

there will always be different sides of stories to tell. The limited space would

not allow this chapter to engage in a full-scale deliberation of the debate on

the direction and future of the civil justice reform in China.2 Instead, by

reviewing the recent developments, the author argues that in dealing with the

socialconflicts in the transitional period the judiciary of China has been

assigned increasingly and disproportionately more political tasks. As a result,

to a large extent, the agenda of the civil justice reform has been changed, at

least momentarily, at the cost of judicial efficiency and professionalism.

**11.1. An overview of the civil justice reform**

**in the past 30 years**

The civil justice development and reform have experienced four stages since

the economic reform was implemented in late 1970s. In the fi rst ten years, a

legal order and a legislative framework were restored after the ten-year lawlessness

during the Cultural Revolution. The promulgation of the Constitution

(1982), together with *Organic Law of the People’s Court* (1979), *Law of Criminal*

*Procedures* (1979) and *Law of Civil Procedures* (on trial, 1982) in the same period

was considered the milestones of the return to the ‘socialist legality’ model

under the 1954 Constitution.3

In the second ten years, the *Law of Civil Procedures* was comprehensively

amended and formally adopted in the course of the national reorientation to

develop a socialist market economy. The new ideology of giving more respect

to litigants’ autonomy and to judicial efficiency was clearly reflected. As a

result, the traditional inquisitional trial system began to give way to the

adversarial model with the introduction of the parties’ burden of proof,

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increased parties’ autonomy in civil litigations and the reduced judicial

responsibility in adjudicating civil cases.4

With the new momentum provided by the Constitutional Amendment in

1999 to officially introduce the concept of the rule of law into China,5the

civil justice reform entered into a new stage with professionalization, independence

of collegial panels, judicial efficiency and public supervision as its

major themes.6 For example, as a measure to raise the professional standard of

judges, the amendment to the *Law of Judges* in 2001 has transformed the

original bar examination to the national judicial qualification examination for

all judges, prosecutors and lawyers to be. As a symbol of the normative reform,

the judicial gown and gavel were officially introduced into the People’s Courts

in early 1990s. Moreover, two fi ve-year reform plans were promulgated by the

Supreme People’s Court in 1999 for 1999–2003 and in 2005 for 2003–2008,

respectively.7

In addition to the impressive developments on professionalizing the judiciary,

the dynamic judicial reform has also aroused the judicial activism. In a

speech made in 2002, Jintao Hu, the Secretary General of the Communist

Party of China (CPC), called for full-scale implementation of and compliance

with the Constitution and promotion of governance under the rule of law for

the entire society.8 Against this background, the Supreme People’s Court issued

its historical instruction to the lower courts to directly apply the Constitution

provisions in civil adjudication, which made the Constitution a live-law in the

judicial process for the fi rst time in PRC history. In the Yuling Qi case, the college

admission letter of the plaintiff was taken by the defendant and the ruse

was not discovered until the defendant had graduated from a business institute

and had a job in a local bank. The Supreme People’s Court took the opportunity

to address the plaintiff’s claim for compensation for violation of her education

entitlement as a constitutional right and instructed the lower court to recognize

the damage claim on the constitutional ground.9 According to Songyou

Huang, then the Vice President of the Supreme People’s Court, the opinion was

of tremendous and far-reaching importance like *Marbury v. Madison* in the

United States10 in a sense that the decision changed the long practice since the

adoption of the fi rst Constitution in 1954 not to use the Constitution as a law

alive in adjudicating process. The Supreme People’s Court’s instruction on the

Yulin Qi case virtually declared that even without specifically applicable laws,

a citizen’s basic constitutional rights should still be protected.11 As such, the

case was hailed as beginning of the new era of constitutional governance.12

China’s accession to the World Trade Organization (WTO) with the fi rm

commitments to its fundamental legal principles, such as impartial administration

of law, transparency, non-discrimination and independent judicial

review,13 has further challenged the existing regime and accelerated the civil

justice reform in China. In order to prepare the People’s Courts for China’s

WTO membership, the Supreme People’s Court further rationalized the

structure of the civil trial divisions of the entire judiciary system, verified and

amended a large number of judicial interpretations and circulars, heightened

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the internal supervision and enhanced judicial training and transparency, particularly

on the quality of judgment making. The goals in this course were

clearlyidentified to improve judicial justice, openness, efficiency, authority

and professionalism for a new image of the Chinese judiciary in the international

society.14

Despite the progress of the civil justice reform, the national reform and

opening thus far have not changed the fundamental nature of China as a socialist

country. As a result, the deepening of the judicial reform will inevitably

clash with the totalitarian regime and ideology. In promoting the ambitious

reformMr Yang Xiao, then the Chief Justice and the President of the Supreme

People’s Court, once stated that the authority of law should give its expression

to the authority of the judiciary, and the public and private interests would

only be safeguarded through judicial justice and efficiency. As such, the independence

of the People’s Courts was an indispensable means to realize the rule

of law.15 He further asked the People’s Courts to change their passive and

weak condition and as a serious political discipline to hold an unequivocal

stand with determined and resolute measures against the intensifying administrative

interference with the judicial functions.16 Such a new mindset,

together with the brave reform measures, was even considered as ‘a quiet revolution’

in China.17 In a sense, this period was the golden years of the reform.

The enthusiasm of civil justice reform apparently was dampened in the

amendments to the *Law of Civil Procedures* in 2007. With the reform experience,

there was a high hope for overhauling the law to reflect the new social

reality and to meet the demands of the rapidly developing market economy.18

However, the fi nal revision with many reform proposals being shelved by the

legislature disappointed many scholars and experts, although there has been

wide consensus on the ripeness of the conditions to introduce the new reform

measures to enhance the judicial authority, improve the judicial efficiency,

recognize public interest litigation and rationalize the existing procedural

rules. These critics noted that such amendments produced more shortcomings

than innovations19 and voiced their resentment that the minor revision should

not be an excuse to further delay the comprehensive reform.20

Soon after, the Supreme People’s Court promulgated its Third Reform Plan

(2009–2013) in March 2009.21 As compared with the fi rst two reform plans,

the new plan apparently places more emphases on the so-called adjudication

for the people and the contradiction between the increasing demand of the

public for judicial justice and the insufficient capability of the People’s Courts.

Moreover, among the seven guiding principles of the new plan, reform according

to the law and objective law of the judicial work are placed at the end after

the political principles, such as the CPC’s leadership, the socialist direction

and the mass line. Unlike the previous two reform plans, the third plan stresses

the Chinese characteristics of a socialist country in its preliminary stage of

development. The new reform plan further stated that while learning from

external experience, foreign judicial systems and institutions should not be

borrowed beyond the socialist reality of China.22

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**11.2. A new direction of the civil justice reform?**

Despite the great efforts devoted to judicial reform, the practical effect of the

reform seems not well appreciated in the society. In the National People’s

Congress, judicial justice has been a serious issue concerned. The Working

Report of the Supreme People’s Court is an important indicator of public

satisfaction to the judicial work. This parameter has been sliding in recent

years to a record low until 2010 when satisfaction slightly improved.23 The

Standing Committee of the National People’s Congress on its examination

report on the implementation of the *Law of Judges* and the *Law of Prosecutors*,

openly pointed out that judicial incompetence and corruption were the major

concerns of the people in China.24 Such dissatisfaction and anger are reflected

not only in the official reports, but also in some real tragedies. Since 2004, at

least six fatal incidents have been reported in fi ve different provinces with 10

deaths and 30 wounded when the losing parties in civil cases attacked the

People’s Courts with explosives or lethal weapons.25

Inside the People’s Courts, the professionalization reform is apparently

taking a reverse turn recently. When China acceded to the WTO in 2001,

most of the presidents of the People’s Courts at the provincial level, if not all,

had a formal, systematic legal education. Yang Xiao as the Chief Justice and

the President of the Supreme People’s Court then was a veteran of legal profession

with both university legal education and practical qualification. His successor,

MrShengjun Wang, when transferred from the Political and Legal

Committee of the CPC to head the Supreme People’s Court in 2008, had neither

a legal education background nor any judicial experience. As such, this

appointment was highly controversial.26 To follow suit, the newly appointed

presidents of the High People’s Courts in at least seven provinces took their

offices without any formal legal education background or any judicial experience.

27 Most of such appointments were made to replace judicial veterans.28

This trend is also well reflected in some ‘new thinking’ as to judicial

practice. At the central level, MrShengjun Wang made his well-known statement

that judicial decisions should be made according to the feeling of the

masses29and that the highest praise to the judiciary would be ‘ordinary people

judges’ (*Pingminfaguan*). Such new ideology is echoed at the local level. For

example, some comments made by MrLiyong Zhang, newly appointed

President of Henan High People’s Court from a post as a CPC secretary, are

also highly controversial. He openly criticized the judicial reform in the past

years as blind acceptance of the Western judicial model so as to eventually

desalinate, question and negate what the CPC had cultivated for a long time

based on the Chinese traditional culture. According to him, a judge will distance

himself from the masses once he wears his robe and judicial independence

does not mean keeping distance from the CPC and the government.30

Recently, in Henan Province a campaign involving 10,000 judges is being

carried out to revisit parties in litigation within their jurisdictions and to make

friends with them for the purpose of not only well settling their disputes,

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but also helping them for their living difficulties. According to the plan of the

campaign, all the bold measures to stop parties to further petition their grievances

to the upper level authorities after the normal judicial proceedings are

completed may be tried as long as they do not violate the law and state policy

and some ‘defective decisions’ of the courts may be dealt with by the measures

‘outside the law’.31

In order to implement the policy of ‘adjudication for the people’ the

Supreme People’s Court promulgated a circular with 23 concrete measures in

2003, including improvement of the personal and letter petition handling,

the reception conditions, mediation work and facilitating the parties’ access to

justice.32In recent years, various innovative measures have been developed by

local courts to facilitate the implementation of the policy to a new level, such

as establishment of ‘holiday courts’, ‘lunch time courts’, ‘evening courts’ and

‘circuit courts’,33 24-hour reception34 and provision of stationary, cups and

water, and explanation during and after the trial to the parties.35 Some more

inventive measures include adoption of an award and penalty scheme by using

the rate of successful mediation of individual judges on a monthly basis as an

assessment criterion,36 court’s own initiation to execute judgments before the

parties’ request,37 the efforts to make the court a ‘judicial supermarket’ where

consultancy for legal issues of people’s daily life will be provided in the courtroom.

38 Some leaders of the People’s Courts have openly professed the courts’

readiness to share and relieve the worries of the government.39

The brief review of the civil justice reform in the past 30 years seems to suggest

a recent change of tone. In order to better understand the new trend, attention

may be directed to debates rising with the developments in the legal circle

at the same period. These debates were over the so-called universal values, a

reflection of the ideological struggle in the political transition. Although the

rule of law was officially recognized by the Constitutional Amendment in 1999,

some recent mainstream publications have openly challenged the ideology. For

instance, some equate the so-called universal values with the Western value

system of capitalism, including democracy, freedom, human rights, equality

and rule of law. Promotion of this value system has the political purpose of

changing the socialist direction of China.40 Against this background, the recent

sentencing of DrXiaobo Liu, the leading author of the Charter 2008 advocating

universal values and further reform in China, for 11 years imprisonment

clearly demonstrates the attitude of the leadership to the demands for ideological

and political evolution.41 As such, the setback of judicial reform may be

just part of the resistance of the totalitarian political regime.

On 28 November 2008 the Politburo of the CPC issued ‘The Opinions on

Deepening the Reform of the Judicial System and its Working Mechanisms’.

This document does not respond to the demands for major reforms at the

system level, such as changing the way to fund the judiciary, appoint judges,

provide the People’s Court with more powers of judicial review and eliminate

or restrict interference with judicial independence. Rather, this document

puts its emphasis on the ‘Chinese characteristics’ and ‘the national conditions’

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with ‘popularization of law’ and ‘democratization of law’ as its major themes.

For this purpose, the tasks of the judicial reform set out by the CPC are optimizing

the distribution of judicial functions and powers, balancing strict

execution of criminal law with clemency in certain situations, ensuring a

healthy budget for the People’s Courts, stressing the function of judicial ‘service’

andflexibility while glossing over legal stability and predictability.42 In a

sense, this development has concretized the so-called Three Supremes theory,

which was fi rst raised by Jintao Hu in his speech at the National Conference

of Political and Legal Affairs Committee of the CPC at the end of 2007.

According to the theory, in their work judges should always regard as supreme the

cause of the CPC, the people’s interest, as well as the Constitution and law.43

Such a political environment has taken its expression in judicial practice.

For example, the landmark reply of the Supreme People’s Court to the Yuling

Qi case in 2001, authorizing the local courts to decide cases by directly

relying on the provision of the Constitution was repealed in 2008, without

giving any reason.44 Some commentators have linked the withdrawal to the

CPC’s new policy on judicial reform and the ‘Three Supremes’ theory; they

believe such trend may not only delay the much-needed reform, but also

weaken the entire judicial system.45 For example, a recent message published

by the People’s Daily, the official newspaper of the CPC, is that the political

and economic systems as well as the legal cultures of China and the Western

countries are fundamentally different; as a result, there are two roads of the

rule of law. The practice of promoting judicial reform by copying Western

legal mechanisms is bound to be a dead end.46

The change of the reform direction has been noted by not only foreign

scholars, but also domestic academia. In early 2010, the Annual Report of

Judicial Reform in China (2009) was published by the South Western

University of Political Science and Law, a leading law school in China.

According to the Report, China’s judicial reform has entered into a cross-roads

where modernization, professionalism and normalization as the major themes

in the early years have been replaced with the new directions to safeguard the

social stability and to emphasize judicial popularity with mediation as the

preferred means to solve civil disputes.47

**11.3. Institutional alienation**

In order to objectively assess the civil justice reform in China, the social reality

in the transitional period should be taken into account. According to PRC

official sources, ‘public order disturbances’ grew significantly in recent years

from just more than 10,000 incidents in 2003, to 87,000 in 2005 and further

to 127,000 in 2008.48 The distinctive trends of the massive incidents in recent

years have not only been a rapid increase in number, but also increasingly

intensified and violent.49 The Blue Paper on the Rule of Law Development

published by the Social Science Academy of China in early 2010 has also

confirmed that the fi nancial crisis, high unemployment, polarization of the

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society and other social conflicts had led to a grave situation of political

instability with an increasing large number of criminal cases and massive

incidents.50The intensified social conflicts have been clearly reflected in the

judicial practice. In 2009, the civil cases heard by the People’s Courts at the

first instance reached 5,797,000 as the new record high,51 representing a steep

rise from 3,517,000 in 1999.52

Against this background, it seems clear that the challenges facing the judiciary

and civil justice reform in China include not only the intense conflicts in

the full-scale transition, but also the unpredictable struggle of political ideology

to deal with the pressing reality. Despite the bold advocacy and impressive

progress made in the past 30 years, the judicial system still belongs more

to the political regime than to the professional institution. In this context,

leaving other factors such as biased rulings, judicial corruption and ineffective

enforcement aside,53 the entire civil justice system has been caught in between

judicial justice, which is realized through impartial adjudication of disputes

between the parties concerned, and the practical popularity as a means to

provide the political regime with badly needed legitimate support. As a result,

under the direction of the political policy some judicial mechanisms may have

to be deployed to settle disputes that may not be suitable for their application

at all. In this context, mediation in judicial proceedings may be a telling

example of such institutional alienation.

Judicial mediation has been long recognized as a successful dispute resolution

process representing the value of the traditional Confucianism in the

modern society. However, the application of judicial mediation before the

social transition towards a market economy was primarily limited to smallscale

cases, such as family, neighbourhood and working-unit disputes.

Moreover, lack of laws and underdevelopment of the judicial system in the

early years of the reform also made mediation a preferable means for the courts

to handle civil litigations. Thus, the importance of mediation may inevitably

be reduced to give way to judicial efficiency and dispute settlement in strict

accordance with the law when the legal infrastructure has significantly

improved, with the rule of law being the goal of the national reorientation

and professionalism as the direction of modernization of the judicial system.

This development is explicitly recognized and reflected in the replacement of

the old rule with the emphasis on the judicial mediation54 by the new stipulation

that judicial mediation may only be carried out on the basis of the law

and the parties’ voluntariness,55 which apparently intends to strike a balance

between promotion of judicial efficiency and preservation of the traditional

Chinese legal culture.

The institutional modernization, however, was soon challenged by the

escalation of social conflicts in the transitional period. Political stability

became the top priority of the CPC and the government. In this situation, as

the judiciary has been increasingly subject to the political control, the civil

justice reform has been overtaken by the political agenda. As a result, despite

the reform, mediation has been increasingly used in civil proceedings under

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the political policy to maintain social stability by way of reducing after-trial

petitions, although the legislative framework has been constantly improved in

recent years and the People’s Courts are more capable of dealing with civil

adjudication according to the law. The latest policy set out by the President of

the Supreme People’s Court Shenjun Wang in this regard is to make mediation

a prevailing means by the People’s Courts to handle civil litigation.56 As

such, it seems that the civil justice reform on judicial mediation has taken a

full cycle in 30 years: from mediation fi rst in 1980s, to mediation in accordance

with the law and parties consent in 1990s, to deployment of mediation

and judgment according to the nature of the disputes at the beginning of the

new century, and fi nally returning to the prevalence of mediation with necessary

adjudication in 2009. However, as compared with the application of judicial

mediation in 1980s, the return of mediation is primarily guided by the

Party-state policy as a tool for political purposes.

However, the political ideology apparently does not work well with judicial

practice. In the fi rst place, conflicts in the social transition to a large

extent have taken away the basis of successful judicial mediation in the early

reform years to settle small-scale and less confrontational disputes. As a result,

judicial mediation as an institution has proved unable and inappropriate to

deal with massive cases concerning environment pollution, transformation of

state-owned enterprises, labour disputes and land appropriation. As some

scholars pointed out, these may not be cases suitable for judicial solution and

remedies in the transitional context of China.57

Moreover, the promotion of judicial mediation under the political policy

has gone far beyond the legal provisions in practice. For example, some People’s

Courts have in effect made judicial mediation a compulsory procedure for the

parties; an assessment criterion of judges’ performance; a measure applicable

to government–citizens disputes in violation of the law58 and a means to force

a party to compromise. Certain People’s Courts have even developed their

internal rigid rules to mandate parties to go through judicial mediation for

certain times before a judgment can be rendered.59

On the other hand, in certain cases suitable for judicial solution under the

legal rules, the political consideration may prevent the People’s Courts from

exercising its adjudicating powers. The examples in this regard may include the

cases concerning fraud on the securities market and the recent dairy scandal.

Fraud and securities violations have been serious problems in China’s

market development. Despite the comprehensive amendments to the *Company*

*Law* and the *Securities Law* in 2005, which have fuelled the significant increase

of the civil claims against wrongdoers,60 the People’s Court has taken an inactive

approach towards civil enforcement. For example, in the Certain Provisions

on Hearing Civil Claims against False Statements on the Securities Market by

the People’s Courts adopted by the Supreme People’s Court on 26 December

2002, a crucial condition for the People’s Court to accept such claims was set

out: in addition to other evidence the plaintiff must obtain either a punishment

order issued by the administrative authority, or a criminal judgment against

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the defendant.61 In effect, the People’s Court gives up its own independent

judicial power to fi nd violations on the evidence presented by the plaintiffs

independently. Although the amendment to the *Securities Law* in 2005 has

widened the scope of the civil liabilities include to material omission of

important information,62 the Supreme People’s Court has yet adopted any

detailed rules to implement the reform in practice.

Investors’ grievances have been, in fact, well known by the People’s Courts,

but the couts are more concerned over the political impact of mass litigation.

Some judges, while being interviewed, have openly expressed their view that

mass civil actions are too politically risky63 and their biased position in favour

of political stability over other market values.64 As such, the characteristics of

the People’s Courts in dealing with civil claims against wrongdoings on the

securities market have been identified as ‘fi lings are not accepted, acceptance

may not lead to trial, trial may not have any judgment, and the judgment, if

any, may not be enforced’.65 As a result, among a large number of civil lawsuits

against various violations in the securities market during 1996–2006 only

about 1,000 investors managed to receive some compensation. This represents

less than 5 per cent of all the losses of the public investors.66 The lax enforcement

and sanctions have been long blamed for the extensive misappropriation

and fraud on the market.67

Another example is the judicial handling of the mass product liability

case of contaminated milk powders. The Sanlu scandal involved melamine

contamination in dairy products which affected 300,000 children nationwide

and the government cover-up. When the scandal became a public crisis in

September 2008, the Central Government promised to provide all the children

affected with free examination and treatment and some compensation on

a one-off basis.

Soon, the government’s settlement plan was challenged on the legal grounds

for its lack of transparency and serious inadequateness. It is pointed out that

the sum of compensation has not only proved insufficient to cover the medical

bills in many cases, but also failed to compensate the losses suffered by many

families, such as mental and physical suffering, loss of family income, costs of

nursing and transportation.68 After the confirmation of the milk contamination,

claims against Sanlu started to be fi led, but all the People’s Courts refused

to accept such actions for over six months until after Sanlu was declared bankrupt

on 12 February 2009. In early March 2009, the Supreme People’s Court

told the public that 95 per cent of children affected by the poisoned milk

products had accepted the settlement, although many forced settlements were

reported.69As a matter of fact, by the end of February 2009, the lawyers

nationwide had accepted at least 337 cases.70

In this context, some lawyers believe the bankruptcy of Sanlu to be an

unlawful proceeding directed by the government with the intention to move

the assets away from the claims of the victims. For instance, separation of

someSanlu’s factories from the bankrupt company to continue their production

in the bankruptcy proceedings, appointment of the administrator of

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Sanlu bankruptcy and the liquidation group with the government control and

settlement with some general creditors after the commencement of the bankruptcy

proceeding are considered abnormal. Moreover, the takeover by

Sanyuan, a Beijing-based dairy producer with the state controlling interest

under ‘the government instruction’ is also controversial. In fact, the local

Government openly stated in November 2008 that the government’s goal was

to restart Sanlu’s production before the bankruptcy reorganization in order to

continue the development of the enterprise and the local economy.71 At the

same time, the Supreme People’s Court made it clear that the court would not

support massive claims since administrative measures coordinated by the

Government would be better suited to deal with the crisis.72 Thus, the judicial

refusal to hear all the cases and the Sanlu bankruptcy seem a well-orchestrated

government scheme with the judicial assistance to block all the claims of

the victims. Such joint efforts become even more evident when a father of a

victim was put on a closed-door criminal trial for ‘being an agitator that

caused unrest’.73

As reflected in the aforementioned two examples, more and more policy

pressure has been imposed on the People’s Courts to engage in mediation or

other means in all judicial proceedings as part of the construction of a ‘harmonious

society’. As a result, the legal principle that judicial mediation should

be carried out in accordance with the law and the parties’ voluntariness

has been disregarded to a large extent under the political policy.74 In these

occasions, the judicial mediation is applied more likely for upholding the

Party-state interest than the parties’ dispute resolution.

The policy-guided practice, however, has met resistance in its application

from many judges who are professionally trained and who are reform minded.

This situation is well reflected in the national judicial statistics. According to

a survey made by Professor Jianfeng Pan of Peking University, despite the

forceful promotion, the settlement rate through judicial mediation has been

on the wane from over 50 per cent in 1990s and stable at approximately 33

per cent among all civil cases heard by the People’s Courts at the fi rst instance

during the last ten years and about 10 per cent at the appellate level.75 The

finding of an empirical study in three provinces has also confirmed this situation.

While answering the question on their view and using of the judicial

mediation, only 11 of 53 judges surveyed considered it was important and

effective and would use it often. The others considered it either not important

and did not use it often, or should not be generalized and its application

should depend on specifi c circumstances.76

**11.4. Transitional justice**

In assessing the development of civil justice reform in China, two academic

discourses at the international level on pragmatic adjudication may be

considered for reference. The fi rst one is the legal pragmatism movement.

Although the famous dictum of Justice Holmes that ‘the life of the law has

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not been logic: it has been experience’77 has been well accepted as the slogan

of legal pragmatism, the doctrine is further divided into philosophical

pragmatism and the so-called everyday pragmatism. The former as a ‘wet’

approach puts great emphasis on the examination of claims to knowledge not

only with regard for factual and theoretical assumptions, but equally for

assumptions about the relationship between theory and practice; whereas the

latter tends to be ‘dry’ with only the focus on what is at the stake in a practical

sense in deciding a case and ‘refuses to reify or sacralize’ the virtues of the rule

of law.78 Despite the discrepancy, it is generally agreed that judges must not

lose sight of the value of the rule of law and ‘the courting of popularity by

judges is rightly destructive of public confidence in the court’.79 As Professor

Dworkin pointed out, ‘judges do and should rest their judgments on controversial

cases on arguments of political principles, but not on the arguments of

political policy’.80

Closely related with the pragmatic discourse is the debate between the

realists and idealists on transitional justice, which is concerned with the rule

of law development in the transitional political and economic regimes. As

Professor Teitel observed, in this period:

the law is caught between the past and the future, between backwardlooking

and forward-looking, between retrospective and prospective,

between the individual and the collective. Accordingly, transitional justice

is that justice associated with this context and political circumstances.

... Accordingly, in transition, the ordinary institution and predicates

about the law simply do not apply.81

In a context of political flux, the legal adjudication may have to struggle

between settled and unsettled rules and ideologies; as a result, adjudication’s

distinctive feature as reflected in the transitional economies is its mediating

function.82

The arguments in the two dynamic discourses may provide China with

valuable guidelines and references. However, in a sense neither of them may

squarely apply to China. On the one hand, with the rule of law as a developing

concept, the judiciary in China as part of the totalitarian regime cannot make

their decisions without considering their political and social consequences. As

such, the popularity of adjudication in the period with unsettled legal rules

and political ideology may provide the CPC and the government with more

pragmatic legitimacy. On the other hand, the transitional justice arguments

may not be completely suitable to China, simply because the CPC is still not

willing to give up socialism and totalitarianism in its governance. The persistence

will inevitably render the transitional adjudication more in favour of

the old or existing regime than making its contribution to shaping the new

value and constitutionalism according to the rule of law.

Unlike other transitional countries where the judicial justice has been

developed to facilitate the reform and political reorientation, in China the

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assignment of the primary importance on social stability to the judiciary is in

effect to maintain social injustice in many cases. Despite the impressive economic

achievement, the reform in China itself is entering a crucial stage where

the confrontation caused by social polarization, distribution inequality, corruption,

environment pollution, labour violations, deprivation of peasants

through land requisition, socio-economic rifts including poverty, racism and

exploitation is taking the country to the verge of revolution.83

In this context, any reform indeed should not go beyond the social reality

and pragmatic compromise will be needed to skilfully deal with the complexity

of the political transition.84 In a huge developing country like China,

insufficient resource, underdeveloped supporting institutions and the persistence

of the legal culture are all serious concerns on the manner of civil justice

reform and should be taken into account to decide the pace and ways of the

reform.85However, the resistance of the Party-state since the Tiananmen

Event has rendered the political reform long overdue and many social conflicts

are actually the results of such intended delay for prolonging the political

regime.86As Professor Jianrong Yu of the Social Science Academy of China

correctly pointed out, deepening social conflicts were caused by the CPC’s

obsession with preserving its monopoly on power through ‘state violence’ and

‘ideology’, rather than justice.87

Many experts have argued that the Party-state should take more measures

through political reform and democratic development to deal more effectively

with the social conflicts in the transitional period.88 The CPC and the government

should give more recognition to public power rather than use administrative

power to suppress social conflicts. However, thus far, only very limited

progress has been made in developing such a resilient political system. As a

result, ‘the Chinese Party-state faces the pressure of maintaining both social

order and regime legitimacy’. In this context, ‘weak legal institution and the

resulting limited institutionalization of dispute resolution are undermining

the regime legitimacy’.89

As some scholars observed, in China once disputes are classified as politically

sensitive cases including socio-economic cases and class action suits, the

attention of the Party-state will be expected. Even after 30 years of reform,

the Party-state influence will still determine, either directly or indirectly, the

results of these cases.90 As such the civil justice reform is bound to clash with

the political agenda of the Party-state. With limited independence, the judiciary

may only carry out its judicial justice within the totalitarian environment,

which may not be measured by professional standards, but social popularity.

In fact, the change of direction in civil justice reform may raise many fundamental

issues on a broader context concerning the development of the rules

of law in China. For instance, the ‘Three Supremes’ theory itself may be illogical

and directly contradictory with the Constitution, which explicitly stipulates

that all the parties must abide by the Constitution and the law and shall

not have any greater privilege.91 On the ‘adjudicating for the people’ ideology,

the challenge has been raised on the ground that ‘adjudication for justice’ is a

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legal principle well accepted by the whole world whereas ‘adjudication for the

people’ is a political terminology. Adjudication will lose all its value if it deviates

from safeguarding justice and dignity of the law.92 Moreover, judicial

justice, which is principally limited to the concrete cases and parties, and

social justice, which to a large extent depend on the social environment and

perception, are not the same and there is always difference in between. Thus,

the judiciary may only earn its public trust with judicial justice; otherwise,

neither judicial justice nor social justice can be realized.93

**11.5. Conclusion**

The brief examination of the developments in civil dispute resolution in the

past 30 years demonstrates the difficulties and challenges facing civil justice

reform as well as the development of the rule of law in China. The promotion

of judicial professionalism, efficiency and authority has made its profound

contribution to the institutional capacity building of the judiciary in the

country’s reorientation, although the pace of the reform may need to be

adjusted according to the social conditions. However, after the 30-year evolution,

the reform has apparently reached the stage where no further progress may be

made without the corresponding political reform. From the Party-state perspective

the potential implications the judicial reform carries is close to their

tolerable limit. As a result, more political agendas have been inserted recently

so as to provide the totalitarian regime with more legitimate and popular support

in the reform at the cost of dignity of the law and the judiciary. In this

context, the momentary change of the reform direction and focus may be unavoidable,

but in the long run, the trend for more serious civil justice reform to

support judicial professionalism, independence and efficiency is irreversible.

**Notes**

1 The Information Office of the State Council of the PRC, ‘White Paper – China’s

Efforts and Achievements in Promoting the Rule of Law’, 28 February 2008, sec.

VI. An English version is available at http://news.xinhuanet.com/english/2008-

02/28/content\_7687418.htm (accessed 2 May 2009).

2 For some opinions on this debate, *see*, J. Cohen, ‘The PRC Legal System at Sixty’, *East*

*Asia Forum*, 1 October 2009, available at http://www.eastasiaforum.org/209/10/01/

the-prc-legal-system-at-sixty/ (accessed 19 December 2009); J. V. Feinerman, ‘In

China, Justice in Reverse’, *The Washington Post*, (Washington, DC 18 December

2008), A25; and R. Peerenboom, ‘Are China’s Legal Reform Stalled?’, Legal Studies

Working Paper Series of La Trobe University School of Law 2008/13, available at

http://ssrn.com/abstract=1283203 (accessed on 15 January 2010).

3 A. H. Y. Chen, *An Introduction to the Legal System of the People’s Republic of China*

(3rd edn), Hong Kong: LexisNexis-Butterworths, 2004: 44.

4 R. Peerenboom, *China Modernizes*, Oxford: Oxford University Press, 2007:

216; DongshengZang, ‘Shifting the Burden: Judicial Reform and the Political

Economy of Evidence Law in China’, paper presented at the annual meeting of the

266 *Xianchu Zhang*

Law and Society Association, Canada on 27 May 2008, available at http://www.

allacademic.com/meta/p236328\_index.html (accessed 15 December 2009).

5 Article 13 of the Constitutional Amendment of 1999, which reads that ‘China

shall practice ruling the country in accordance with the law and building a

socialist country under the rule of law’.

6 For a brief review of the achievements of the reform, *see*, Liming Wang, ‘The

Achievements and Prospects of Court Reform in China’, *Frontiers of Law in China,*

1, 2006: 1–13.

7 The two reform plans of the Supreme People’s Court are available at http://

www.dffy.com/faguixiazai/xf/200511/20051128111114.htm and http://www.

dffy.com/faguixiazai/xf/200512/20051214221735.htm, respectively (accessed

12 March 2010).

8 The speech was made by Jintao Hu at the meeting to celebrate the 20th anniversary

of the promulgation of the current Constitution on 5 December 2002; available

at http://past.people.com.cn/GB/shizheng/252/9921/9922/20021204/881364.

html (accessed 12 December 2009).

9 The case was published at *ZuigaoRenminFayuanGongbao*(The Bulletin of the

Supreme People’s Court of PRC), 5, 2001: 158–161. For a report of the case in

English, *see* ‘Qi Yuling v. Chen Xiaoqi et al’, *Chinese Education & Society*, 39, 2006:

58–74.

10 5 U.S. 137 (1803). As a landmark case it set out the basis for the exercise of

judicial review in the United States under Article III of the Constitution.

11 Songyou Huang, The Importance of Institutionalizing the Constitution in

Judicial Process, *People’s Court News*, 13 August 2001, available at http://

lawprofessors.typepad.com/china\_law\_prof\_blog/fi les/1109\_huang\_songyou\_

qi\_yuling\_case.pdf (accessed 12 December 2009).

12 Kui Shen, ‘Is It the Beginning of the Era of the Rule of the Constitution?

Reinterpreting China’s First Constitutional Case’ (translation), Pacifi c Rim Law

& Policy Journal, 12, 2003: 199.

13 Protocol on the Accession of the People’s Republic of China, WT/L/432, 23

November 2001: (01-5996), Part I.

14 Exiang Wan (Vice President of the Supreme People’s Court), Accession to the

WTO and the Judicial Reform in China, *Shanghai DuiwaiMaoyiXueyuanXuebao*

(Journal of Foreign Trade College of Shanghai), 7, 2001: 4–7.

15 The speech made at the Conference of the National High Court Presidents on

5 August 1999, printed in the Research Department of the Supreme People’s

Court (ed.), *RenminFayuanWunian Gaige Gangyao*(Outlines of the Five-Year

Reform of the People’s Court), Beijing: People’s Court Press, 2000: 227–228.

16 The speech made at the Conference of the National High Court Presidents on

14 December 1999, printed in the Research Department of the Supreme People’s

Court (ed.), *ibid.*, 222.

17 C. Lin, ‘A Quiet Revolution: An Overview of China’s Judicial Reform’, *Asian-*

*Pacifi c Law and Policy Journal*, 4(2), 2003: 255.

18 Wei Jiang and Bangqing Sun, Overhauling the Civil Procedure Law Is Expected,

*MinshiSusongLuntan*(Civil Procedure Tribune), 2, 2008: 49–51.

19 Yong-an Liao and Hejun Deng, ‘Comments on the Decision to Amend the Civil

Procedure Law’, *XiandaiFaxue*(Modern Law Science), 1, 2009: 150–160.

20 Liu Jialiang, ‘It Is Necessary to Overhaul the Civil Procedure Law’, *JianchaRibao*

(The People’s Procuracy Daily), 18 March 2008, 4.

*Civil justice reform with political agendas* 267

21 The Third Reform Plan of the People’s Courts (2009–2013) is available at http://

www.court.gov.cn/html/article/200903/25/680.shtml (accessed 12 December

2009).

22 *Ibid.*, Sec. 1 (3).

23 The total votes against the Working Report and abstaining votes among the less

than 3,000 national representatives presented at the annual meeting deputies

were 470, 641, 711 and 607 in 2007, 2008, 2009 and 2010, respectively. The

numbers are calculated by the author according to the media reports of the recent

annual meetings of the National Congress.

24 Report of the Vice Chairwoman, XiulianGu of the Standing Committee of the

National People’s Congress dated 26 August 2006: ‘The People’s Concerns

with Judicial Justice Caused by Minority Judges and Prosecutors’, *Xinhua She*

(Xinhua News Agency), available at http://news.xinhuanet.com/politics/2006-

08/28/content\_5016788.htm (accessed 20 July 2008).

25 The statistics made by the author based on the various media reports in this period.

26 J. Cohen, Body Blow for the Judiciary, *South China Morning Post*, 18 October

2008, 13; and R Peerenboom, ‘Between Global Norms and Domestic Realities:

Judicial Reforms in China’, 8 May 2009, available at http://papers.ssrn.com/sol3/

papers.cfm?abstract\_id=1401232 (accessed 12 December 2009).

27 Based on the information of the introduction to the newly appointed presidents

of High People’s Courts, *Xinhua Wang* (Xinhua News Web site), 23 January 2008,

available at http://news.xinhuanet.com/legal/2008-01/23/content\_7479184.htm

(accessed 5 January 2010) and the report, ‘Half of the Presidents of the High

People’s Courts Coming from the Party or the Government’, *Zaobao*(Morning

Daily of Singapore), 21 July 2009, available at http://www.zaobao.com/special/

china/cnpol/pages2/cnpol090721.shtml (accessed 24 July 2009).

28 Based on the author’s own comparative study of the information available at the

various Web sites.

29 *See*, *Xinhua Wang* (Xunhua News Web site), 11 April 2008, available at http://news.

xinhuanet.com/legal/2008-04/11/content\_7956313.htm (accessed 20 November

2009).

30 Yongtong Su, ‘The High Court President Who Does Not Function According to

the Legal Principles’, *NanfangZhoumo*(Southern Weekend), 18 February 2009,

available at http://www.infzm.com/content/24067/ (accessed 25 July 2009).

31 For more details of the campaign, *see*, *ZhongguoFayuanwang*(The Web site of the

China Courts), 8 January 2010, available at http://www.chinacourt.org/html/

article/201001/08/389996.shtml (assessed 3 March 2010).

32 ‘The Guiding Opinion of the Supreme People’s Court to Implement 23 Concrete

Measures for Adjudication for the People’, available at http://news.xinhuanet.

com/legal/2003-12/03/content\_1211777.htm (accessed 23 September 2009).

33 *See*, the report on the practice of the ’adjudication for the people’ policy in Jiangsu

Province, *Xinhua Ribao*(Xinhua Daily), 21 September 2009, available at http://

jsnews.jschina.com.cn/a/200909/t186572.shtml (accessed 5 December 2009).

34 *See*, the report on the practice of the Haikuo Intermediate People’s Court of

Hainan Province of the ‘adjudication for the people’ policy, 26 October 2009,

*FazhiRibao*(Legal Daily), available at http://jsnews.jschina.com.cn/a/200909/

t186572.shtml (accessed 5 December 2009).

35 *See*, the report on the measures adopted by the Shijiazhuang Intermediate People’s

Court of Hebei Province to implement the ‘adjudication for the people’ policy,

268 *Xianchu Zhang*

10 April 2009, Shijiazhuang Government Web site, available at http://www.

sjzzfw.gov.cn/art/2009/04/10/art\_29317\_307334.html (accessed 5 December

2009).

36 *See*, the report on the measures of Bazhou District People’s Court of Sichuan

Province to implement the ‘adjudication for the people’ policy, 11 June 2008,

Bazhou District People’s Court Web site, available at http://www.scbzrd.gov.cn/

bzfayuan/dwjs/200806/885.html (accessed 5 December 2009).

37 *See*, ‘Certain Provisions on Implementation of Court’s Own Initiation of Execution’

adopted by the Guangdong High People’s Court (on a trial basis) on 29 July 2009.

38 *See*, the report on the measures of Wushe County of Henan Province to implement

the ‘adjudication for the people’ policy, 2 November 2009, Jiaozuo People’s Court

Web site, available at http://jzzy.chinacourt.org/public/detail.php?id=1573

(accessed 5 December 2009).

39 Speech made by MrDianlong Luo, the President of the High People’s Court of

Guangxi Zhuang Autonomous Region on 7 January 2009, available at *Fazhi*

*Kuaibao*(Legal Express), available at http://www.pagx.cn/html/2009/1-8/

20090108101322 604.html (assessed 5 November 2009).

40 Yizhang Feng, ‘How to Understand the So-Called “Universal Values”’, *Renmin*

*Ribao*(People’s Daily), 10 September 2008; Tiancheng Zhou, ‘Universal Values

Promoted Are Actually Western Values’, *GuangmingRibao*(Guangming Daily),

16 September 2008; and Study Center of Deng Xiaoping Theory and ‘Three

Representative Thoughts’ of the Ministry of Education, ‘Certain Issues Concerning

the “Universal Values”’, *Qiushi*(Truth Seeking), 22, 2008: 59–62.

41 Xun Jiang, ‘30 Years Reform – The Universal Values – Charter 2008’, *Yazhou*

*Zhoukan*(Asia Weekly), 25 December 2008, available at http://www.iasiaweekly.

com/archives/1159 (accessed 20 November 2009).

42 For a detailed report of the Opinions of the CPC, *see*, Xudong Qin, ‘Judicial

Reform: A New Round’, *Caijing*(Caijing Magazine), 24 January 2009, available

at http://english.caijing.com.cn/ajax/ensprint.html (accessed 5 March 2009).

43 The speech of Jintao Hu is reported at the *Xinhua Wang* (Xinhua News Web site),

25 December 2007, available at http://news.xinhuanet.com/newscenter/2007-

12/25/content\_7312439.htm (accessed 5 December 2009).

44 Decision of the Supreme People’s Court on Abolition of Certain Judicial

Interpretations Promulgated before the End of 2007, dated 18 December 2008,

item 26. Normally, a reason will be provided when an opinion of the Supreme

People’s Court is repealed, which may include ‘circumstance change’, ‘replaced

with the new rule’, ‘conflicting with other laws’ or ‘the amendment of the relevant

law’; but in the Yuling Qi case the reason given is merely ‘no longer applied’.

45 T. Kellogg, ‘The Death of Constitutional Litigation in China?’,*China Brief,*

vol. 9 (7), 2009: 4–7.

46 ‘Comment: Let the People to Effectively Experience the Achievements of the

Judicial Reform’, *RenminRibao*(People’s Daily), 22 February 2010: 1.

47 Ming Yang, ‘The Judicial Reform in China Enters into a Crossroads’, *Liaowang*

*DongfangZhoukang*(Oriental Outlook), 24 February 2010, available at http://news.

ifeng.com/society/5/201002/0224\_2579\_1554358.shtml (accessed 6 April 2010).

48 I. Johnson, ‘China Protects Surge as Labor Makes Demands’, *The Wall Street*

*Journal (Asia)*, 10 July 2009, 3; and T. Lum, ‘Social Unrest in China’, Congressional

Research Services – Library of Congress, 2005, available at http://www.fas.org/

sgp/crs/row/RL33416.pdf (accessed 4 April 2010).

*Civil justice reform with political agendas* 269

49 Guangnai Shan, ‘A Full Analysis of Massive Incidents in 2009’, *NanfangZhoumo*

(Southern Weekend), 4 February 2010, available at http://www.chinaelections.

org/newsinfo.asp?newsid=168508 (accessed 4 April 2010).

50 Lin Li (ed.), *ZhongguoFazhiFazhanBaogao (2010)* (The Rule of Law Development

Report of 2010), Beijing: Social Science Publishing House, 2010. A brief on the

report is available at *Shanghai FazhiBao*(Legal Daily of Shanghai), 1 March 2010, 1.

51 The Working Report of the Supreme People’s Court of 2010, available at http://

news.qq.com/a/20100311/003135.htm (accessed 8 April 2010).

52 The Working Report of the Supreme People’s Court of 2000, *ZhonghuaRenmin*

*GongheguoZuigaoRenminFayuanGongbao*(The Bulletin of the Supreme People’s

Court of PRC), 2, 2000: 41.

53 For a discussion on these problems, *see*, Xin He, ‘The Recent Decline in Economic

Caseloads in Chinese Courts: Exploration of a Surprising Puzzle’, *The China*

*Quarterly*, 190, 2007: 352–374.

54 Article 6 of the *Civil Procedure Law* of 1982 (on trial), which stated that the

People’s Court in hearing civil disputes should put emphasis on mediation; the

decision should be made in a timely manner if the meditative efforts failed.

55 Article of the *Civil Procedure Law* of 1991 as amended in 2007 provides that

mediation should be carried out by the People’s Court in hearing civil disputes in

accordance with the law and the voluntariness of the parties; the decision should

be made in a timely manner if the meditative efforts failed.

56 Speech of MrShengjun Wang made at the national conference on judicial

mediation on 28 July 2009, published at *RenminFayuanwang*(Web site of the

People’s Courts), available at http://www.chinacourt.org/html/article/200907/

29/367194.shtml (accessed 5 April 2010).

57 R Peerenboom, ‘More Law, Less Courts: Legalized Governance, Judicialization

and Retrenchment in China’, in T. Ginsburg and A. H. Y. Chen (eds), *Administrative*

*Law and Governance in Asia: Comparative Perspectives*, New York: Routledge,

2008: 190.

58 Article 50 of the *Procedure Law of Administrative Litigation* of 1989 explicitly

provides that mediation shall not be applied to administrative cases.

59 Jianfeng Pan, ‘Mediation Storm: A Landscape in Construction of a Harmonized

Society’, presentation made to the Conference on Constitutional Reform and

Financial Regulation at the University of Hong Kong on 12 December 2009.

60 In terms of the compensation demanded, the fi gure for the year 2006 stood 20

times higher than the number in 2002. By June 2007, more than 250 civil actions

had been fi led with the People’s Courts. Xiaoming Wang, ‘Claims against

Management Blowout’, *21 ShijiJingjiBaodao*(21st Century Business Herald),

1 June 2007: 16.

61 Art.6 of the Provisions.

62 Art.69 of the *Securities Law* of 2005.

63 W. Hutchens, ‘Private Securities Litigation in China: Material Disclosure about

China’s Legal System’, *University of Pennsylvania Journal of International Economic*

*Law* 24, 2003: 645.

64 N. Howson, ‘Judicial Independence and the Company Law in Shanghai Courts’,

in R. Peerenboom (ed.), *Judicial Independence in China: Lessons for Global Rule of*

*Law Promotion,* Cambridge: Cambridge University Press, 147.

65 Haitao Yu, ‘Be Aware of Investors’ Protection’, *21 ShijiJingjiBaodao*(21st Century

Business Herald), 1 January 2007: 9.

270 *Xianchu Zhang*

66 *ZhongguoZhengquanbao*(China Securities), 24 July 2006, available at http://news.

xinhuanet.com/stock/2006-07/24/content\_4871138.htm (accessed 4 June 2008).

67 Zhong Zhang, ‘Legal Deterrence: the Foundation of Corporate Governance –

Evidence from China’, 15 *Journal of Compliance*, 2007: 741–767.

68 ‘Report, Lawyers for the Affected Babies: Salu Compensation Is Not Sufficient

and Transparent’, *Sing Tao Web site* (Hong Kong), 9 December 2008, available at

http://www.stnn.cc/china/200812/t20081229\_950829.html (accessed 7 May 2009).

69 Report, ‘No Free Treatment Will Be Given If the Parents Refuse to Sign the

Settlement Agreement’, *Ming Pao*(Hong Kong), 29 May 2009, A 20.

70 Ye Doudou and ChenzhongXiaolu, ‘Sanlu Civil Claims Are Expected to Be

Accepted’, *Caijing*(Caijing Journal), 5 March 2009, available at http://www.

caijing.com.cn/2009-03-05/110113358.html (accessed 19 December 2009).

71 *China Law Net,* 7 November 2008, available at http://www.chinafalv.com/

news/106/ 200811/07-14994.html (accessed 14 June 2009).

72 *Nanfang Daily* (Southern Daily), 12 March 2009, available at http://www1.

nanfangdaily.com.cn/b5/www.nanfangdaily.com.cn/nfjx/200903120039.asp

(accessed 6 June 2009).

73 ‘Milk Scandal: Closed Door Trial for Seeking Justice for Sick Children’, Asia

News, 31 March 2010, available at http://www.asianews.it/view4print.php?l=

en&art=18028 (accessed 5 April 2010).

74 *See*, the report on the new concept of ‘judicial harmony’ of the Supreme People’s

Court, *Xinhua She* (Xinhua News Agency), 7 January 2007, available at http://news.

163.com/07/0107/11/347SD32N000122EH.html (accessed 5 December 2009).

75 Pan, *supra note* 59.

76 Margaret Woo and Yaxin Wang, ‘Civil Justice in China: An Empirical Study

of Courts in Three Provinces’, *American Journal of Comparative Law* 53, 2005:

936–937.

77 O. W. Holmes, Jr, The Common Law (1881), 1.

78 R. Posner, *Law, Pragmatism, and Democracy*, Cambridge: Harvard University Press,

2003: 11–12.

79 *Ibid*., 334.

80 R. Dworkin, ‘Political Judges and the Rule of Law’, in A. Kavanagh and

J. Oberdiek (eds), *Arguing about Law,* London/New York: Routledge, 2009:

193–194.

81 R. Teitel, *Transitional Justice,* Oxford: Oxford University Press, 2000: 1–6.

82 *Ibid*.*,*220.

83 Jianrong Yu, ‘Social Conflict in Rural China’, *China Security* 3, 2007: 2–17, and

Lum, *supra note* 48.

84 Peerenboom, *supra note* 26.

85 Woo and Wang, *supra note* 76, 911–940; and Hualing Fu, ‘Access to Justice in

China: Potentials, Limits, and Alternatives’, 2009, available at http://ssrn.com/

abstract=1474073 (accessed 5 January 2010).

86 ‘Hu Rejects China Political Reform’, *BBC News*, 15 September 2004, available at

http://news.bbc.co.uk/2/hi/asia-pacifi c/3657906.stm (accessed 23 February 2010).

87 J. Garnaut, ‘China Insider Sees Revolution Brewing’, *Sydney Morning Herald*,

27 February 2010, available at http://www.smh.com.au/world/china-insider-seesrevolution-

brewing-20100226-p92d.html (accessed 12 April 2010).

88 Fu, *supra note* 85.

*Civil justice reform with political agendas* 271

89 YongshunCai, ‘Social Conflicts and Modes of Action in China’, *The China Journal,*

59, 2008: 107–108.

90 Hualing Fu and R. Cullen, ‘From Mediatory to Adjudicatory Justice: The Limits

of Civil Justice Reform in China’, 2007, available at http://papers.ssrn.com/so13/

papers.cfm?abstract\_id=1306800 (accessed 15 January 2010); Yulin Fu and

R. Peerenboom, ‘A New Analytic Framework for Understanding and Promoting

Judicial Independende in China’, 2009, available at http://ssrn.com/abstract

=1336069 (accessed 2 March 2010).

91 Article 5 of the Constitution of the PRC.

92 Zhong Chen, ‘An Analysis of the Paradox of Adjudication for the People’, *Sichuan*

*WenliXueyuanXuebao*(Sichuan University of Arts and Science Journal [Social

Science Edition]), 3, 2008: 33–36.

93 Qimei Zhang, ‘Thoughts on Judicial Justice and Social Justice’, *SifaRedianWenti*

*Diaocha*(Investigation of Pressing Issues in Judicial Practice), 1, 2004: 9.

The development of the Chinese legal system : change and challenges/

Guanghua Yu.

p. cm.

Includes index.

ISBN 978-0-415-59420-2

1. Law—China. I. Yu, Guanghua.

KNQ74.D48 2010

349.51–dc22 2010021548

ISBN13: 978-0-415-59420-2 (hbk)

ISBN13: 978-0-203-83775-7 (ebk)

This edition published in the Taylor & Francis e-Library, 2011.

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ISBN 0-203-83775-4 Master e-book ISBN