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Legality, discretion and informal practices in China's courts : a socio-legal investigation of private transactions in the course of litigation

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Citation

Li, L. (2010, June 29). *Legality, discretion and informal practices in China's courts : a socio-legal investigation of private transactions in the course of litigation*. Retrieved from <https://hdl.handle.net/1887/15737>

Version: Not Applicable (or Unknown)

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Note: To cite this publication please use the final published version (if applicable).

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- A socio-legal investigation of private transactions in the course of litigation

Summary

As is generally recognized, the functioning of China's legal system is seriously impaired by widespread corruption in courts. This thesis intends to identify the systemic causes of corruption in China's courts by firstly investigating *how* corruption is carried out in China's courts. Apart from the introducing and concluding chapters, this thesis is consisted of six main chapters.

Chapter 2 develops a typology of various corrupt activities in China's courts and examines its general patterns. It finds that corruption takes place in the central court divisions, at almost all levels of the judicial system, regardless of its hierarchical level and geographic location. Such conduct may involve all types of judges, regardless of their competence or salary. Chapter 2 recognizes, however, that the prevalence and the features of the corrupt conduct are more closely associated with the nature, range as well as value of the decision-making power held by the offender. Chapter 2 also shows that among all corrupt activities corruption conducted in the form of exchange, namely bribery or favoritism, is the most prevalent and resilient type. This particular type of corruption is then selected as the focus of the rest of the thesis.

Chapter 3 sets out with an introduction of the main analytical framework, which overarches the thesis. This analytical framework treats corruption as a four-phase contracting process, namely 1) the phase of initiation of the exchange; 2) the phase of negotiation of the exchange; 3) the phase of contractual performance; and 4) the phase of enforcement of the contract in case of non-performance. This framework is employed in an endeavor to analyze the empirical data collected from various sources and to demonstrate in details the features and patterns of corrupt conduct in each of the four phases so as to identify more accurately which factor(s) has(have) facilitated corruption in China's courts. In doing that, Chapter 3 identifies two phases that are most critical to the completion of corrupt exchange. The first phase is the initiation phase, in which corrupt intent is communicated between potential exchange parties. The second phase is the phase of contractual performance, especially that of the bribed. These two phases are further examined respectively in Chapter 4 and in Chapter 5 and 6, demonstrating how these two phases are completed by corruption participants in China's courts and what factors have facilitated the process and contributed to its "success".

Chapter 4 recognizes that the initiation phase is facilitated by the omnipresent and omnipotent "*guanxi*-practice" in China. It finds that *guanxi*-practices are effective in reducing the legal, moral and cognitive barriers that prohibit the communication of corrupt intent and hence have greatly improved the efficiency of the otherwise prohibitively costly initiation phase of corrupt exchange. Chapter 5 and 6 identifies the decision-making mechanism in China's courts as a structural factor, which has facilitated the delivery of corrupt services in courts and resulted in the proliferation of corrupt

opportunities. Chapter 6 also discusses the dynamics of corrupt activities in China's courts, which appear as a multi-player, multi-dimensional and dynamic phenomenon instead of being one-on-one, one-dimensional and static.

Chapter 7 investigates corruption in anti-corruption institutions and finds that the same factors that have facilitated corruption in China's courts have also contributed to the spreading of corruption in anti-corruption institutions, which are governed by similar rules of decision-making and which are exposed to the same social institution of guanxi-practices. Following the above-mentioned findings, some policy recommendations are provided in the concluding chapter suggesting the directions of future reforms.