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Smart courts, smart justice? Automation and digitisation of courts in China

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Smart Courts, Smart Justice?
Automation and Digitisation of Courts in China

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Ξεκούρασε τώρα, πρέπει να είσαι κουρασμένη
Από όλα τα ταξίδια που έχεις κάνει
Από την Αρμενία στην Ελλάδα στο Βέλγιο
Ξεκούρασε τώρα, μπορείς να χαλαρώσεις τώρα
Γιατί είσαι πλέον σπίτι

September 2023

Abbreviations

Abbreviation	Full name
AI	Artificial Intelligence
BIC	Beijing Internet Court
CCP	Chinese Communist Party
CCTO	China Court Trial Online
CCPC	Chinese Communist Party's Central Committee
CJO	Court Judgment Online
CJPIO	China Judicial Process Information Online
GIC	Guangzhou Internet Court
HIC	Hangzhou Internet Court
IT	Information Technology
ODR	Online Dispute Resolution
OLR	Online Litigation Rules
OMR	Online Mediation Rules
OOR	Online Operation Rules
SC	State Council
SCR	Smart Court Reform
SCS	Social Credit System
SPC	Supreme People's Court
WTO	World Trade Organisation

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Chapter One: Introduction

1.1 Introduction

Over the past decade, the People's Republic of China (PRC) has rapidly digitised and automated its justice system. This development, called “judicial informatisation” (*sifa xinxihua* 司法信息化) and “smart court building” (*zhahui fayuan jianshe* 智慧法院建设), has seen Chinese courts quickly embrace and deploy advanced technologies involving big data analytics, algorithmic systems, and artificial intelligence (AI) across all aspects of their work (Xu 2017a). The Chinese judiciary's swift embrace is motivated by the appeal of positioning itself at the vanguard of global developments in the use of algorithmic systems and big data analytics in justice administration. Additionally, it is part of broader governance reforms that aim to strengthen centralised control and oversight through technology (Stern et al. 2021).

The Chinese Communist Party (CCP) has designated technological development as an important driver in the “modernisation of the national governance system and governance capacity” (*guojia zhili tixi he zhili nengli xiandaihua* 国家治理体系和治理能力现代化) (CCPCC 2013, 2019). In 2017, China's State Council published the country's strategy for developing AI: the *New Generation Artificial Intelligence Development Plan* (SC 2017). This strategy outlined China's goal of becoming the world leader in AI by 2030, monetising AI into a trillion-renminbi industry, and emerging as the driving force in defining ethical norms and standards for AI (Webster et al. 2017). It is clear that the Chinese government sees AI technologies as a key tool for overcoming various social, moral, and environmental challenges (Roberts et al. 2021: 65). Since then, Chinese local governments and courts have enthusiastically embraced advanced technologies, rapidly digitising and automating various aspects of their governance and judicial processes.

Beyond China, automation and digitisation in governance and adjudication have become a worldwide phenomenon. The majority of developed countries have made some progress in digitising and automating certain aspects of government and judicial services, such as the cloud-based judicial management system in Israel, Legal-Net (Reichman et al. 2020), the use of risk assessment tools in sentencing decisions (Coglianese and Dor 2021), and predictive analytics and pattern recognition tools in social care (Vogl 2021). Nonetheless, China stands at the vanguard of these developments in East Asia and the world. Many of its neighbouring countries in the region

have yet to progress beyond the digitisation of judicial services and are far removed from the comprehensive systems Chinese courts have established. Indonesia has recently set up its e-court system (Kharlie and Cholil 2020; Putra 2020), whereas Japan only began experimenting with digital courts in 2019 (Machimura 2020). In Vietnam, e-courts and online litigation were virtually non-existent before the COVID-19 pandemic (Nguyen 2021). Although these countries differ significantly in socio-economic development, it shows that compared to older and younger legal systems, China is ahead of the curve.

Jurisdictions in Europe and the United States (US) have been hesitant to integrate similar advanced technologies, primarily out of fear of their negative effects on principles such as procedural fairness and individual rights (Simmons 2018; Reiling 2020). Generally, it is argued that automated justice prioritises efficiency at the expense of fairness, compromises human decision-making, and undermines perceived human dignity in the judicial process (Hall et al. 2005; Roth 2016; Re and Solow-Niederman 2019). Although they also employ digital tools to boost efficiency and accessibility, the use of algorithms and AI is still far off (Reiling 2010; Coglianese and Dor 2021). Therefore, China presents an interesting and important case study of the automation and digitisation of justice. This dissertation aims to offer insights into the implications of automation and digitisation driven by interpretations and conceptualisations of law, justice, governance, and politics that are different from those in liberal rule of law countries.

Despite these important developments in China's judiciary, there is relatively little scholarship on smart court reform (SCR) compared to other manifestations of the Chinese government's drive to digitise and automate specific governance practices. For example, the academic literature on the social credit system (SCS) is vast while sharing the same ideological and normative foundations (see, e.g., Chen and Cheung 2017; Creemers 2018; Kostka 2019; Knight 2020; Knight and Creemers 2021).

Generally, the SCR scholarship relies on descriptive analysis to discuss the normative implications and challenges. For example, Xu (2017a) provides the first English-language analysis of two trial pilots of smart courts, examining elements of automated online dispute resolution (ODR). She identifies issues of transparency, conflict of interest, and fairness as potential bottlenecks to further development of online case resolution. Internet courts have been the primary focus of the scholarship because these provided early concrete case studies of what falls under the term "smart

court”. Likewise, Guo (2021) examines China’s Internet courts and discusses the general challenges of moving the judicial process online, such as procedural safeguards and their impact on civil jurisdiction. Meanwhile, Sung (2020) analyses them from the perspective of a single normative issue, asking whether Internet courts can promote access to justice. He argues that Internet courts substantially improve access to justice, especially for e-commerce, but numerous issues, such as due process and the validity of digital evidence, remain.

In addition, Peng and Xiang (2020) examine the legality and legitimacy of smart courts. They argue that the lack of consistent guidelines and legal basis for smart courts threatens to undermine the functioning of the judiciary. Zheng (2020) gives a comprehensive overview of SCR and contextualises the initiative as part of broader informatisation efforts and judicial reform in China. He is one of the few to recognise and argue that SCR is part of an explicit policy push to increase hierarchical control over courts and standardise adjudication through algorithmic-enhanced formalism. Zheng (2020) contends that China is moving towards an algorithm-empowered case-law system. In this, he shows the difference in the normative angles used by the scholarship. Other scholars, such as Stern et al. (2021) and Shi et al. (2021), frame the increase in hierarchical control as a negative externality. Zheng (2020) shows a better understanding of the ideological-normative context in which Chinese courts operate.

This difference becomes clear from the three normative concerns that Stern et al. (2021) make in their article. They discuss the effort and struggles of the SPC to digitise court decisions, which form the basis for data analytics and algorithmic adjudication. They illustrate how judicial disclosure, a prerequisite for good algorithmic decision-making, is difficult to achieve because of issues with compliance and legibility. Through their analysis, they make three normative points: First, they ask how the judiciary should consider weighing competing values. Moreover, they question whether standardisation through digitisation and automation equates to fairness and justice. Second, they argue that SCR is more about scoring political points for technological accomplishments rather than improving court administration. Third, they are concerned with how the perception of constant surveillance due to SCR will alter judicial behaviour. They frame smart courts as part of broader global trends related to the increase of algorithmic governance and the assault on judicial authority. Moreover, they are among the few to question the effectiveness of smart technologies in achieving more basic goals such as efficiency and compliance by judges.

In a series of publications, (Wang 2020b) and Wang and Tian (2022a, 2023) provide insight into the functioning and implementation of projects that fall under SCR. In contrast to Stern et al. (2021) and Sung (2020), they do not question the improvements in access to justice or efficiency and speed but focus on another series of concerns. Among others, there is the “black box” issue, referring to the fact that neither developers nor users can understand or interpret the outcomes and decision-making process of AI systems. In addition, they argue it is unclear how AI systems can incorporate legislative changes, how it will affect human accountability, and whether it will de-incentivise judges from dissenting with the algorithmic recommendation software. Although their concerns are warranted, much like Stern et al. (2021), they frame these consequences as negative externalities, failing to consider that they might be the intended goals of SCR. Lastly, Shi et al. (2021) also make this normative mistake: while they argue that SCR aligns with traditional values of a transparent, efficient, and people-centric judiciary, their main concern lies with the disruptive effect of algorithms and AI on judicial independence. They do not consider the place of judicial independence in China’s political-legal system.

Overall, the scholarship provides a thick description of what SCR looks like and discusses the normative implications for numerous issues, such as access to justice, legal ethics, and judicial independence. The scholarship is characterised by reasonable scepticism and concerns about the future of Chinese adjudication. However, a crucial element is missing. The scholarship primarily employs pluralistic conceptions of norms in its evaluation, derived from liberal rule of law theories. These conceptions underscore democratic trust and accountability (Rawls 1999; Bell 2019). Although some discuss the drivers of SCR (Zheng 2020; Shi et al. 2021; Stern et al. 2021), the scholarship in general fails to recognise the underlying ideological and normative ideas that underlie China’s political-legal system and how they drive and justify SCR.

The major limitation this dissertation intends to address is that most of the current scholarship on SCR maintains a Eurocentric notion of judicial values based on the rule of law and democratic trust when assessing SCR. For example, both Shi et al. (2021) and Stern et al. (2021) express concern for the effect of AI on judicial independence and the behaviour of judges without recognising that independence of courts and judges is not a priority in the PRC’s political-legal system. In contrast, courts are firmly embedded in the political and administrative system and are considered an inherent part of the PRC’s governance apparatus (Shapiro 1981; Ng and He 2017). In short, the

scholarship makes assessments based on normative values that are less important or not even part of the worldview of the Chinese party-state. In this sense, although their concerns are valid from a liberal rule of law perspective, their points might be less relevant from the Chinese state's perspective.

In this sense, the current scholarship on smart courts displays the same issues that have plagued the broader scholarship on China's legal system for decades (Clarke 2003, 2020): it has little consideration for the ideological and normative ideas that shape and influence the nature and purpose of law and courts as part of governance in the PRC. It makes little effort to understand SCR within the context of the dual nature of Chinese courts, the paradoxes of perpetual judicial reform in a one-party authoritarian state, and the importance of Marxist-Leninist ideology in China's political-legal system. These elements are crucial to generating a comprehensive and nuanced understanding of SCR in China and its drivers and intended goals. Therefore, this dissertation places Chinese ideological and normative ideas at the centre of its analysis of SCR.

1.2 Research Question

To study China's judicial and smart court reform within its own ideological-normative context, this dissertation asks: *to what extent do ideological and normative ideas about law and courts in governance shape the goals of smart court reform, and to what extent does smart court reform perpetuate these normative ideas?* I argue that judicial reform in China is inherently limited in achieving independent adjudication and procedural justice resembling judiciaries in rule of law states due to the CCP's ideological and normative ideas grounded in Marxism-Leninism. Nonetheless, their ideological and normative ideas also hinder the functioning of the judiciary as an impartial arbitrator of legal disputes. Therefore, the judiciary is attempting to leverage the power of technology to overcome these barriers without upending the ideological-normative context in which they operate. In this sense, SCR is meant to enhance other judicial reforms happening in parallel.

I also argue that the CCP's ideological and normative ideas about the role of law and courts in governance open a conceptual space for automation in adjudication and governance. Because of how the ruling party sees the world and justifies its own position in it, automation is considered a pathway to reinforce and perpetuate this worldview. Therefore, the goal of this dissertation is to

explicate existing state-sponsored normative and ideological ideas, examine how these ideas shape the purpose and functioning of smart courts “as intended by those in charge” (Creemers 2020: 33), and, finally, explain how this allows for automation to perpetuate these ideas about the functioning of law and courts.

1.2.1 Some Ground Rules

The existing literature briefly reviewed above illustrates that studying China’s political-legal system and how courts operate in this system is often a challenge when one does not recognise inherent differences in the function and purpose of law and courts in China (Clarke 2003, 2020). Therefore, I want to establish a few ground rules to study China’s political-legal system and courts.

First, this dissertation uses the term “political-legal system” to describe the group of bureaucratic institutions that together deal with broad tasks the political leadership wants to perform. These are the courts, procuratorate, police, and party political-legal committees. Their relationship is that of collaboration rather than checking and balancing (Clarke 2020). This dissertation focuses on courts and recognises their embeddedness within this political-legal structure (Ng and He 2017).

Second, this dissertation pays attention to Marxist-Leninist ideology and its relationship to law. The Chinese party-state is an activist state with its own ideology that “[...] is intrinsic to the logic of legal rules, actions, and decisions: therefore it permeates all aspects of law and is, in essence, the architectural scaffolding within which law [and courts] operate[s].” (Creemers and Trevaskes 2020a: 3). This means that law and courts are merely part of the party-state’s toolbox to achieve its ideological goals. Recognising these instrumental conceptions is crucial in better understanding their role (deLisle 2017).

Third, by consequence, the driving principle of China’s political-legal system is to achieve the collective goals of the nation, currently expressed in the slogan of National Rejuvenation of the Chinese People (*Zhonghuaminzu Weida Fuxing* 中华民族伟大复兴) (Creemers 2020: 36). Therefore, the political-legal system’s primary function is to maintain the socio-political stability that is required, proactively transform state and society to achieve those goals and protect the party-state against real and imagined threats (Sapio 2010; Trevaskes et al. 2014a; Clarke 2020).

Fourth, norms and rules play a valuable role in China’s political-legal system (Smith 2018, 2021). However, the ideological conception of party leadership over law is irreconcilable with a full

commitment to legal rationality (Creemers 2020: 48). Instead, legality has an important yet bounded role in social governance. In this sense, courts play a dual role: they must be loyal agents of the party-state while also functioning as impartial adjudicators that resolve disputes between individuals on the one hand and between individuals and the state on the other hand, based on law (Fu 2019). Their political role conditions and permeates their legal role in a systemic and comprehensive manner across all subject matters (Li 2023). This is not necessarily a uniquely Chinese characteristic (see, e.g., Shapiro 1981; Moustafa 2014), yet it is crucial in understanding the function and purpose of law and courts in the PRC.

Fifth, “smart court” is an umbrella term. As I will explain in chapter 3, *the* prototype of a smart court does not exist. Based on my research, I have developed a simple working definition to create a common departure point of analysis. Simply put, a smart court is a court where judicial officers use technological applications to facilitate their work and provide better judicial services to the public. It can be any physical or online court where the judicial process is conducted on a digital platform that is integrated with advanced applications driven by algorithms, AI, and big data analytics to automate specific tasks in the judicial process. Specific examples are covered in chapter three, six, and seven.

1.3 Data and Methods

1.3.1 Losing Access to the Field

This dissertation was initially meant to include a multi-site ethnographic component, intending to investigate the implications of digitisation and automation on the work of court personnel (i.e., judges, clerks, court presidents, and so forth), and, more specifically, how the use of digital and automated tools would shape and influence the decision-making of judges during the handling of cases. Therefore, the focus of my initial research design was much more centred on the effect of automation on human decision-making.

The political-legal system and the current climate in China under Xi Jinping, General Secretary of the CCP and China’s current President, is not very welcoming to foreign researchers. The act of speaking to foreign academics can reflect badly on Chinese judges’ and academics’ careers and is therefore avoided. Only through long and multiple physical research visits in association with a local research institute that allows the researcher to build a personal network of informants and

people who can vouch for the integrity and trustworthiness of the researcher is it possible to gain access to relevant people, especially insiders of the political-legal system, such as bureaucrats and judges. This is a long, slow, and arduous process (see, e.g. Fu 2017). In short, because of the closed context of China's official state bureaucracy, doing fieldwork there is challenging (Janenova 2019).

Unfortunately, soon after the start of this dissertation, the COVID-19 pandemic began and access to China was lost. After some attempts to conduct online fieldwork, i.e., messaging and calling Chinese lawyers and researchers, I decided to abandon this option. The situation simply made the difficult research climate worse, and my contacts slowly stopped responding to my messages. Very late into my research in 2022, and thanks to people who had personal connections with judges (e.g., former colleagues or classmates), I managed to distribute a short and simple survey questionnaire with open-ended questions among a few judges across the country. Only one judge responded. The only impression that I could derive from their answers is that this judge merely saw SCR as a purely technical approach to technical problems in the judiciary. Questions about more fundamental values, such as the fairness of automation, were avoided or answered from a technical perspective. I also discovered from my contacts why other judges had refused to answer my questions: they were not given permission by their superiors based on my affiliation with Leiden University (my employer at the time). The reason why my affiliation with the university caused problems is unknown.

Even though my experience cannot reveal much about ethnographic research in Chinese government institutions as a whole, it does illustrate how China has become more closed-off over the years. A trend that has been accelerated and exacerbated by the COVID-19 pandemic (Tan et al. 2023). Moreover, my experience is not unique; senior Chinese academics with decades of research experience in Chinese courts have personally told me that even their presence has become problematic despite their decades-old personal relationships with judges.

While getting access to the field is always difficult (see, e.g., Johnson 2003; Reny 2016; Morgenbesser and Weiss 2018; Janenova 2019), I believed it to be more fruitful to focus exclusively on written documents. With this, my dissertation is positioned within the tradition of classic Sinology. This field maintains that any fruitful analysis of Chinese politics and policy can only be achieved by surveying "... industrial quantities of the most indigestible stuff [of Chinese official documentation] ... akin to munching rhinoceros sausage, or to swallowing sawdust by the

bucketful” (Leys 1990). In this sense, the exclusive focus on written documentary sources is not unusual.

Given the methodological constraints, I also had to change my research focus and questions. That is how I started thinking about smart courts and judicial reform in a more abstract and normative sense. The inherent contradictions in China’s legal system, judicial reform, and the automation of justice were particularly intriguing. In addition, SCR was still in its early stage of development. I believe it was, therefore, more fruitful to examine what drove China’s judiciary to digitise and automate its courts so rapidly. The question arose what made technologies of automation so appealing to the Chinese party-state. Therefore, my research focus shifted from a single actor within the judicial process to the broader underlying ideological and normative ideas about law and courts, as well as justice and governance that justified automation. It allowed me to conduct my research exclusively with documentary sources. I do not focus on the perception and influence of smart courts by those who operate within the system or come into contact with it. Nor do I focus on the actual state of SCR in the PRC. Instead, I focus on state or state-adjacent conceptualisations, justifications, and rationalisations of SCR, as well as how the state and judiciary want digitisation and automation to work for them ideally. State concepts are important in Chinese policy-making and -implementation. They signal priority issues and demarcate the boundaries of how government bureaucracies can think and talk about the policy as well as how to implement it. Therefore, studying these concepts and justifications provides crucial insight into the norms, drivers, and intended goals of reforms in China (Snape 2019; Kato 2021).

1.3.2 Introducing the Data

To this end, I analysed a variety of documentary sources that I collected between 2019 and 2023. The first category of sources that I use are Chinese language academic publications. I consider the Chinese language scholarship not as secondary literature but as primary data. These sources are important because they function as a channel of political participation. Therefore, engaging with Chinese scholarship helps clarify official discourse that is used in policy-making as well as generates a better understanding of underlying normative ideas (Snape 2019; Kato 2021).

The second category of documentary sources are all relevant court and policy documents, primarily documents issued by the Supreme People’s Court (SPC), the highest judicial organ in the PRC. In a centralised and unitary legal system, the SPC wields substantial power over the development path

of its local counterparts. To achieve this, it regularly publishes numerous types of judicial documents (Finder 2020a). Moreover, the documents are aimed at an internal audience and are meant to result in actionable measures. In this sense, they are transparent about smart courts' nature, function, and purpose. Hence, they provide valuable insights into how normative concepts shape policy development and how central authorities conceptualise smart courts.

I distinguish different types of documents within this category: First, Opinions (*yijian*, 意见) and Guiding Opinions (*zhidao yijian*, 指导意见) make up the bulk of my documentary sources. These documents create and transmit new or updated judicial policies and establish new legal guidance that directs lower courts but may not be cited. In addition, they are linked to important party-state strategies or initiatives. Opinions can also consolidate rules or guidance found in disparate documents and guide and steer the behaviour of lower-ranked courts. They can be considered a type of SPC “soft law”, i.e., norms that affect the behaviour of related stakeholders, even though the norms do not have the status of formal law (Finder 2020a).

Second are Rules (*guize* 规则 and *tiaoli* 条例). These Rules, adopted by various SPC Offices or SPC Judicial Committees, are primarily used for internal court rules and procedural matters. These Rules are legally binding (Finder 2020a). They constitute the procedural framework around smart courts.

Third are Five-Year Developments Plans and white papers (*baipi shu* 白皮书) issued by the SPC. Development Plans push for broader judicial reforms and signal priorities for the next five years. White papers summarise and evaluate past reform experiences and provide an outlook for future reform.

The third category of documentary sources is research reports on smart court initiatives from the 2020, 2021, and 2022 China Court Informatisation Development Report. The research offices of different local courts write these research reports. The annual Report itself is compiled by the Chinese Academy of Social Sciences, a central state research institute and think tank for the government (see, e.g., Sleeboom-Faulkner 2007). The practice of “summarising experiences” has a long history in communist policy-legal rhetoric since the establishment of the PRC. It is meant to unite disparate practices into a unified national approach to court work (Trevaskes 2007a). These research reports evaluate the status quo and summarise experiences and achievements of different

court initiatives across the country. They are the most up-to-date official reports on the development of smart courts. They are written by and for court officials. Therefore, these reports are insightful objects of analysis because they give us an accepted official reading and evaluation of the status quo and lay out the path for future developments. Moreover, many case studies of specific digital and automated systems or applications in courts are now more widespread and used across all levels of courts nationwide. Therefore, these case studies are “model cases” meant to contribute their experience to future SCR. In this sense, they provide an important documentary resource for analysis.

Finally, I have also drawn on news articles, official court press releases, websites, books authored by court leaders (i.e., court (vice-) president, division (vice-) chief), and informal discussions with various experts on Chinese courts and judicial reform to supplement the analyses.

To analyse these sources, I draw on practices from narrative and systematic literature review methods (Hagen-Zanker and Mallett 2013) qualitative content analysis (Prior 2008; Charmaz 2014), legal analysis, and case study analysis (Flyvbjerg 2006; Simons 2014). I discuss these methods in more detail in their respective chapters.

Table 1: Overview of data and methods per chapter

Chapter	Methods	Types of data
2	Legal analysis of judicial, policy, and regulatory documents	1) SPC Opinions 2) Court Implementation Measures 3) International Scholarship
3	Legal analysis of judicial, policy, and regulatory documents, analysis of case studies	1) Five-year Plans 2) SPC Opinions 3) SPC Work Reports 4) Case studies 5) Rules 6) White Papers

4	Narrative literature review; Systematic literature review	1) 120 Chinese language academic publications 2) International Scholarship
5	Narrative literature review; Systematic literature review	1) 55 Chinese language academic publications
6	Qualitative content analysis of judicial, policy, and regulatory documents	1) Five-year Plans 2) SPC Opinions 3) SPC Work Reports 4) Case studies 5) Rules 6) White Papers
7	Case study analysis	1) Case studies

1.4 Overview of Chapters

Following this introduction, this dissertation is divided in six more chapters. Some of these chapters were originally written as articles and published in different journals, although all have been revised here. In these chapters, I answer my research question step by step, starting with a broad overview and then zooming in on specific aspects of SCR.

Chapter 2 provides an eagle's eye perspective of judicial reform over the past decade to contextualise the developments of SCR. It illustrates how SCR is an outcome of broader historical and institutional forces. It deploys theories of dual state and authoritarian legality to analyse the dual nature of courts and ongoing judicial reforms. It argues that the judiciary's continuous tension and paradox in an authoritarian regime undermine its functioning. Chinese courts must serve two masters: the prerogative and the normative state. Judicial reforms of the past decades have attempted to overcome these structural and organisational barriers yet to no avail. Because of this paradox, the judiciary has had to continue reforming perpetually. Therefore, chapter 2 tells us in what context and light we should see SCR: It is an outcome of broader trends of perpetual judicial

reform. A part of this chapter was published in an earlier version in the *Asian Journal of Law and Society* (Papagiannenas 2023a).

Chapter 3 describes the details of SCR, providing a chronological overview and legal analysis of all relevant documents. It examines how the central judiciary and government expected SCR and technology to address various issues within the judiciary, which are covered extensively in the preceding chapter. It also provides insights into how SCR has developed and what issues arose during its implementation. It illustrates how, much like all policy implementation in the PRC, it has followed a meandering and iterative process between top-down and bottom-up forces. In this sense, it extends the analysis of judicial reform in chapter 2 by focusing on the technological aspect of it.

After a bird's eye view of judicial reform in chapter 2 and a detailed look at SCR in chapter 3, the next two chapters delve into the underlying ideological-normative reasons for the enthusiastic embrace of automating technology in the judiciary and broader political-legal system. Chapter 4 first reviews the international scholarship on Chinese Marxism and Leninism to argue that the positivist organisational and ideological principles of Marxism-Leninism help explain why the Chinese party-state so enthusiastically embraces technology and automation: they provide a way forward towards achieving the dream of rational Marxist governance. Then, it draws on a dataset of 120 Chinese language periodic articles to explore these ideological foundations in the PRC's broader push towards digitisation and automation. Through a meta-synthesis, this chapter explores the Chinese scholarly debate. It attempts to flesh out how such ideas are, or may be, active in shaping academic discourse around smart governance in China today. An earlier version of this chapter was published as an article in the *China Law and Society Review* (Papagiannenas 2023b).

Chapter 5 examines how these ideological foundations also shape the debate around SCR. Although the previous chapter focused on "smart governance", the implications of automation discussed also apply to courts. Chapter 5 draws on a dataset of 55 Chinese language periodic articles to examine how Chinese legal scholars debate and evaluate SCR. It organises the review based on four reform concepts that guide the debate: efficiency, consistency, transparency and supervision, and judicial fairness. It finds that, like in the previous chapter, the consensus on SCR is positive. The instrumentalist conception of law and courts, as explained in chapter 2, and the ideological-normative context, as explained in chapter 4, clarify this positive evaluation by the

scholarship. In this sense, chapters 2, 4, and 5 are crucial to understanding how the ideological and normative ideas about law and courts in governance shape the reform goals of SCR, which chapter 3 explains. An earlier version of this chapter was published as an article in the *Journal of Current Chinese Affairs* (Papagiannenas 2021b).

The next two chapters zoom in on two specific reform goals of SCR, further illustrating how they are shaped by the ideological-normative context and how SCR is envisioned to perpetuate these ideological and normative ideas. Chapter 6 examines the goal of making justice “fairer” through automation and digitisation. To better understand why using technology in justice is equated with “fairer” justice administration by the Chinese party-state, this chapter is interested in how SCR fits *into* Chinese interpretations of “fairness”. Therefore, building on the ideological-normative context established in chapter 2 and 4, this chapter asks what notions of “fairness” drive and justify SCR. I find that smart courts promote procedural and substantive components of “fairness” that strengthen legal rationality while keeping open channels of party control, reinforcing courts’ dual function. In other words, smart courts are considered “fair” within the Chinese party-state’s worldview because the concept is interpreted in such a way that SCR reinforces it. This chapter further helps explain the rapid embrace of automation and technology in China’s justice administration: they fit perfectly within the ruling party’s worldview and perpetuate it in turn. An earlier version of this chapter was published as an article in the *Computer Law & Security Review* (Papagiannenas and Junius 2023).

Chapter 7 engages with another reform goal of SCR, namely transparency and oversight. Through two case studies, it examines how smart courts are meant to enhance judicial responsibility reform and the “trial supervision and management” mechanism. It provides an account of the automation of “trial supervision and management” and explores the role of technology in enhancing political oversight. It argues that smart courts help institutionalise and codify political oversight over China’s judiciary. Smart courts, while meant to provide better judicial services and improve access to justice, also enhance the restructuring of accountability and power hierarchies in China’s judicial system. Technology helps resolve the contradiction between the two opposing requirements of Chinese courts, stemming from their dual character, as explained in chapter 2. A part of this chapter was published in an earlier version in the *Asian Journal of Law and Society* (Papagiannenas 2023a).

Chapter Two: The Dual Nature of Law and Courts in China : Judicial Reform and the Role of Political Oversight¹

2.1 Introduction

The PRC's legal and judicial system is relatively young compared to other jurisdictions. China's current political-legal system dates from the late 1970s (Hsu 2003). It was only after the death of Mao Zedong in 1976 that developing a coherent and functioning legal system became a priority of PRC leadership (Lubman 1999; Chen 2015). The priority lay with economic laws in the 70s and 80s to expand international economic cooperation and technological exchange. From the 1990s until the 2000s, the PRC reoriented towards a market economic system, which required the development of basic civil and commercial law (Su 2009). Ongoing reforms under Xi Jinping have introduced significant changes to its political-legal system (Yu 2021).

This chapter gives an overview of Chinese judicial reform in the past decade to contextualise the developments of SCR. With judicial reform, I primarily refer to the reform of courts, although the People's Police and People's Procuratorates are considered also to be part of the PRC's judicial system. This chapter examines the courts' role and position within the broader political-legal system. Chinese courts have been the object of study by numerous Chinese law scholars and legal practitioners (see, e.g., Leng and Chiu 1985; Trevaskes 2007a; Yuwen 2016; Ng and He 2017). In addition, they have served as a case study for multiple socio-legal studies on the role of courts in authoritarian regimes (see, e.g., Ginsburg and Moustafa 2008; Cheesman 2015; Hurst 2018). Based on a short review of these two strands of literature, this chapter builds a theoretical framework to examine Chinese courts' role and function, how this affects their operation, decision-making, and the implications for reform. This review will help us to understand better how PRC conceptions of law and courts as governance tools shape SCR, which is the focus of chapters 6 and 7.

The first section of this chapter focuses on the dual role of law and courts in Chinese governance and the consequences of this role on the position of legal courts in China's broader political-legal system. It argues that courts maintain a dual identity: they are both a legal and a political task. The latter is more important than the former. Political priorities put courts in a weak position to

¹ Part of this chapter is based on a reworked version of my article "Automating Intervention in Chinese Justice". See: Papagiannenas, Straton 2023a. Automating Intervention in Chinese Justice: Smart Courts and Supervision Reform. *Asian Journal of Law and Society*:1-27.

adjudicate legal disputes as a neutral arbitrator, especially in cases involving other administrative institutions. This weak position has also negatively affected their legitimacy among citizens because law and courts cannot sufficiently protect citizens' legal rights against encroaching government action. The second section explores some of the most important judicial reforms since 2013. It argues that judicial reform under Xi Jinping has aimed to improve the status of courts *vis à vis* other political institutions and increase their legitimacy *vis à vis* the general public.

2.2 The Dual Nature and Purpose of Law and Courts in the PRC

Courts are an integral component of state governance, including in authoritarian regimes. Ideally, a court entails an independent judge applying pre-determined legal norms after adversary proceedings to achieve a decision where one party was assigned the legal right and the other found wrong. Fundamentally, a court functions as a neutral third party to resolve a conflict between two parties (Shapiro 1981: 1). Authoritarian regimes also benefit from a well-functioning legal and court system: they, among others, provide channels to exercise state power, monitor local administration, and maintain regime legitimacy (Moustafa 2014: 283; Dong and Voigt 2022). The PRC is similar in that it benefits from maintaining a well-functioning court system. They function as information-gatherers (Shapiro 1981), resolvers of principal-agent problems between the centre and periphery (Peerenboom 2009), as well as enforcers and legitimators of government policies (Stern 2013; Chen and Li 2020b).

However, although law and courts have a clear instrumental function, they are not straightforward executive institutions that advance state interests. Courts in authoritarian regimes “serve as dual-use institutions, paradoxically opening new [...] avenues for activists to challenge the state” (Moustafa 2014: 287). In this sense, they sometimes create a site of contention between state and society (Diamant et al. 2005; Balme and Dowdle 2009). Therefore, authoritarian regimes must constantly reassess how they want to shape the role of law and courts.

In addition, Chinese courts are “self-interest maximising” institutions, meaning that courts pursue their institutional interests, such as expanding their mandate (Ip 2011), improving their position *vis à vis* other state institutions (Zhang 2012), and protecting themselves against political encroachment (Ahl 2014). Although firmly part of the Chinese party-state's governance apparatus, the judiciary has interests that might not align with that of the party-state.

This ambiguous situation of law and courts poses a dilemma for authoritarian regimes. In China, “political ambivalence” exists towards law and courts due to the double-edged nature of a well-functioning legal and court system (Stern 2013). On the one hand, courts are an efficient instrument of political control, legitimisation, and economic growth. On the other hand, they produce consequences that may undermine the long-term stability and legitimacy of authoritarian governance (Gallagher 2017: 31). These are the costs and benefits encapsulated in the framework of authoritarian legality.

Authoritarian legality, therefore, refers to a system encompassing the coexistence of contradictory requirements for legal rationality, such as the institutionalisation of conflict resolution, predictability, and certainty, and authoritarian rule, such as flexibility, discretion, and pragmatism. Authoritarian legality entails the dual function of law and courts in authoritarian regimes and gives space to the authoritarian core of the Chinese party-state (Fu and Dowdle 2020).

A dual state consists of a normative system with legal rules that coexists with a prerogative state where politics trumps law (Fraenkel 2017). The legal order has a bounded role, and “zones of exception” exist within this order (Sapio 2010; Li 2023). Certain legal mechanisms, processes, and institutions exist to suspend the normative state and allow the prerogative state to intervene within this normative framework. Consequently, many types of unevenness exist across all areas of the legal system, where the law is largely irrelevant or a form of legalised repression (Fu 2019; Creemers 2020: 48). The law is not meant to be a neutral arbiter of disputes or guarantor of rights but a supporting pillar for the party to maintain power and realise its goals. At any time, the party-state may decide to suspend the normative and exercise its prerogative through procedures or simple political power. Therefore, the prerogative does not exist outside China’s political-legal system. It is inherently part of it (Sapio 2010: 23-26).

Important to remember is that these are not aberrations, inconsistencies, or exceptions, but rather the system “working as intended” (Clarke 2003, 2020). In contrast, Clarke (2022) argues that the dual state framework is not helpful in understanding China’s political-legal system. More specifically, he argues that there exists no normative state that complements the prerogative state, mainly because the PRC had no pre-existing normative state before the disrupting arrival of the prerogative state. Second, a requirement to identify a dual state is that legal norms and institutions provide sufficiently meaningful tools to oppose the arbitrariness of the prerogative state. Clarke

(2022) argues that China's law and courts provide no such meaningful resistance. Lastly, he argues that no institutional and human basis exists to distinguish a duality: the state's prerogative is exercised by the same people and institutions that operate the normative state.

It might be more prudent not to speak of a normative "state" *per se* but rather a system of rules and norms within the prerogative state, to which the party-state has decided to outsource certain aspects of governance. This system exists only at the discretion of the prerogative and is heavily circumscribed. However, we do not follow the argument Clarke (2022). The law is a powerful and effective tool within it, both as a tool of internal discipline and for right-seeking citizens (O'Brien and Li 2004; Stern 2013; Gallagher 2017). In addition, although physically indistinguishable from the prerogative state, its agents are motivated to maintain and expand the normative system (Ahl and Sprick 2018). Therefore, in contrast to what Clarke (2022) argues, this dissertation argues that the cognitive separation between law and politics *is* relevant because it testifies to the existence of a separate normative system. It exists *within* the prerogative state. Law is, therefore, not the constraining factor, but sovereign power is (Sapio 2010).

Therefore, I maintain this framework of authoritarian legality in a dual state because it does not diminish the dual function that legal courts need to maintain as part of authoritarian legality. The next section examines how this affects courts' position within the broader political-legal system.

2.2.1 Between a Rock and a Hard Place: The Judiciary's Position

The dual nature of Chinese courts has a range of implications. On the one hand, they are a legal institution with its own agency, offering institutionalised mechanisms for dispute resolution (Fu 2019; Li 2019). On the other, they are a political agent that executes the political will of the party-state in the form of stability maintenance, implementing central policies, and enhancing regime legitimacy (Li 2019; Chen and Li 2020b). The judiciary is embedded within the prerogative state and, therefore, must consider the consequences of its decisions for the broader political and administrative context (Ng and He 2017). This duality explains Chinese courts' historical preference for discretion and informality: to effectively fulfil these dual tasks; courts require substantial discretion and flexibility (Woo 1999).

This dual nature of courts and the subordination of legal rationality to the prerogatives of the party-state means that courts are generally weak compared to other political-legal institutions. While

courts are authorised to apply the law, they lack the authority to compel compliance with the law by other political-legal institutions of equal or higher rank in the power hierarchy (Li 2016a). In addition, because of their political and financial dependence, courts were easily captured by other political and economic interests, leading to many corruption scandals in the past (Gong 2004; Li 2012, 2016a, 2019).

The duality of their institutional character has influenced and guided judicial practice since the Chinese courts' establishment (He 2014). Especially in the first decade of post-Mao China, courts mainly fulfilled their political task to create order through the administration of criminal justice (Trevaskes 2007a). Administering criminal law was the primary way to exercise the state's coercive power. It also helped in creating the necessary stability for economic growth to take place in the 1980s. China's legal system was virtually non-existent, and its civil and administrative law was not adequate to provide the framework necessary for economic growth. Therefore, criminal justice was deployed to deter activities detrimental to economic growth (Lewis 2014).

Later, as China's society and economy became increasingly complex, courts became important public spaces where Chinese citizens could legitimately air their grievances and make demands against the state, as well as each other (He 2013; Stern 2013; Gallagher 2017). However, as part of a political system that greatly emphasises social stability, courts have been sensitive to the threat of unrest. This sensitivity has made protesting, petitioning, or simply the threat to do so "a successful means for litigants to pressure courts to rule in their favour or to alter decided cases" (Liebman 2011).

The dynamics of this precarious balance between normative and prerogative are especially visible in administrative litigation, where courts are caught between stronger administrative agencies and the law (O'Brien and Li 2004; He 2007), and criminal justice, where principles of due process are sacrificed for swift and severe justice (Trevaskes 2007b; Wang 2020c). Similar dynamics exist in family law, where a political ideology emphasising family preservation and stability concerns trump legal considerations (He 2021a; Michelson 2022), as well as commercial law, where private firms leverage their political connections or economic power to win court cases (Gong 2004). However, judicial protectionism of economic interests has diminished significantly because of judicial budgetary reforms (Long and Wang 2015; Zhang et al. 2022).

Due to these dynamics, whether in criminal, civil, or commercial law, legal technicalities might be of secondary importance (Ng and He 2017: 18-19). Courts find themselves between a rock and a hard place: the tension between, on the one hand, fulfilling their political tasks and, on the other hand, using the law undermines their governance capacity to maintain law and order and popular confidence in and support of courts (He 2014: 55-56).

In addition, courts are underfunded, understaffed, and overworked (He 2009; Wang 2013). This situation has also contributed to corruption, miscarriages of justice (Miao 2013; Xiong and Miao 2018), ineffective enforcement, and courts being susceptible to populist pressures (Su and He 2010). The populist pressure on courts was especially serious and one of the main drivers of court reform. Liebman (2011) goes as far as to argue that populist pressures constituted a significant barrier to the development of courts. Courts' sensitivity to litigants' (threats to) protesting or petitioning is caused by courts' weak position in a political-legal system that prioritises social stability at a significant cost.

In conclusion, the precarious and weak position of courts in the PRC is caused by the conflicting requirements of the dual state: courts are supposed to be independent adjudicators, yet they cannot fulfil this task effectively because they are heavily circumscribed and embedded within the prerogative state. The law in and of itself wields little authority, especially when enforcing compliance among political-legal institutions of equal rank (He 2007, 2013). As a result, China's courts lack legitimacy due to its weak position in the broader political-legal system and its ineffectiveness in guaranteeing justice. In the next section, I examine how China's judiciary has tried to change this in the past decade of judicial reform.

2.3 Judicial Reform Under Xi Jinping (2013-2022)

This section briefly overviews relevant themes in the judicial reform agenda to help structure and guide the study of SCR later. SCR has been happening in parallel with other judicial reforms to enhance them and break through organisation and structural barriers in the judicial system because of its dual nature.

In 2014, the CCP Central Committee launched a significant reform at the Fourth Plenum of the Eighteenth Party Congress (CCPCC 2014). The 2014 Decision made the rule of law the central theme of reform. It indicated a strengthening of party leadership *through* the conduit of law, i.e.,

‘governing the nation according to law’ (*yifa zhiguo* 依法治国) (Creemers and Trevaskes 2020a: 1-3). The *yifa zhiguo* reform platform’s primary aim was to centralise control to monitor the state through party-state constructions, with the law as its glue (Trevaskes 2018: 3). Therefore, law (and, by extension, the judicial system) came to stand at the centre of the past decade of reforms.

The 2014 Decision includes important judicial reforms to ensure the fair administration of justice and improve the judiciary’s credibility. The reforms aim to address courts’ independence, workload, strictness, people’s participation, human rights, and oversight of judicial activities (Daum 2015). In what follows, I give a brief overview of three key themes of judicial reform: transparency, consistency, and accountability. I review the main documents published by the SPC and other political-legal institutions and secondary literature examining these reforms. Because of its experimental nature, it is difficult to categorise reform initiatives under a single theme, as they overlap at times. Nonetheless, I structure the rest of this section according to three themes, but categorising an initiative under one theme does not exclude it from other themes. These three themes will recur in future chapters where I discuss their relation with digitisation and automation.

2.3.1 Transparency and Credibility

A year before the 2014 Decision, the SPC already issued two core documents on increasing transparency and improving courts’ credibility, i.e., the *Opinion on Several Issues Relating to Advancing the Establishment of Three Platforms for Judicial Openness* (SPC 2013c) and the *Opinion on the Actual Practice of Justice for the People, Vigorously Strengthening a Fair Judiciary and Continuously Increasing Judicial Credibility* (SPC 2013d). Here I briefly discuss the latter, while chapter 3 discusses the former.

The SPC Opinion (2013d) on Increasing Judicial Credibility was the first of many documents on judicial reform over the ensuing years, illustrating how the judiciary was aware of their acute deficit in legitimacy among the population, stating that “the people ardently desire improvements in the rule of law and a just judiciary” (article 2). It mentions the complex and challenging situation that they are facing, including greater demands for the rule of law and a just judiciary by the people. The preamble explains that the proposed reforms in the document are meant to enhance the implementation of the reform platform. It is an important document because it provides a long series of reform initiatives that are all meant to improve the credibility of courts, not only pertaining to transparency but also to consistency, efficiency, accountability, fairness, and so forth.

The Opinion conveys the primary motivation of court reform, i.e., making a “judiciary for the people”. It also underscores the historic opportunity for the “development of people’s courts”. The focus on the rule of law by the party leadership meant that perhaps courts could also profit from the political weight given to law to improve their position and status. The document focuses on improving courts’ independence and correct implementation of the law, improving the quality of judicial services and trial hearings, increasing judicial transparency and efficiency, strengthening oversight over court work, and strengthening fairness. Together, these initiatives aim to improve the judiciary’s credibility.

The most important reform related to judicial transparency was making court decisions publicly available in a national database, China Judgment Online (CJO) (Ahl and Sprick 2018). It has significantly increased the insight in the operations and decision-making of China’s judiciary (Ahl et al. 2019; Xi 2022). However, Ahl and Sprick (2018) argues that it does little to improve transparency among the public since laypeople are not versed or necessarily interested in how courts draft decisions. Moreover, the ubiquity of public information might impede better understanding, a common strategy among Chinese bureaucratic institutions (Gueorguiev 2021). Rather, it is an effort to improve internal and hierarchical transparency and a communication device between judges to improve professionalisation. In addition, Chen, Liu, et al. (2021) argues that this effort is part of increasing centralisation of the judiciary, meant to control and improve the information asymmetry between different hierarchical levels of courts.

Despite this scepticism, Chinese courts have become more transparent about the basic information of court personnel. They also have a bigger media presence and websites and social media accounts that host and share information such as press releases, new regulations, information about the litigation process, contact information, including judges’ names, biographies, as well as education and work history (Finder 2018: 148-151).

The judiciary also publishes white papers, research reports, and statistics on their work regularly. They are useful for academic research and public scrutiny but are only sometimes published online by courts, mainly because courts are anxious about the possible consequences. This is the same reason why judicial corruption cases or criminal decisions related to judicial misbehaviour are not published online in the court database because they have negative implications for the social stability and credibility of the courts themselves (Finder 2018: 155-158).

In short, the goal of judicial transparency to improve adjudication and legal certainty is achieved by centralising oversight and control (Liebman et al. 2019). Although some scholars argue this fails to benefit participants in the administration of justice (Daum 2014; Yu 2021: 38-41), others argue this has improved legal certainty and adjudication (Wang 2020d).

2.3.2 Consistency and Standardisation

Another main goal of judicial reform was to improve consistency in adjudication outcomes, i.e., treating like cases alike (*tong'an tong pan* 同案同判) and procedural compliance. Compliance with due process was especially relevant for criminal justice, where wrongful convictions and miscarriages of justice were common occurrences, primarily caused by the excessive focus on one type of evidence, i.e., confessions (Biddulph et al. 2017: 69) as well as the undermining effect of “strike hard” campaigns on due process (Trevaskes 2007b; Wang 2020c). Individuals were found guilty based on erroneous facts or despite insufficient evidence, and judicial authorities purposefully made mistakes in basic procedures, often to meet political objectives, such as quota targets during “strike hard” campaigns (Trevaskes 2007a). Another reason is the institutional culture and triangular relationship among judicial agencies (i.e., procuratorate, courts, and police). A guilty verdict is often reached due to coordination and cooperation in anti-crime campaigns, not due to a trial that follows due process (Xiong and Miao 2018). These practices revealed the malfunctioning of China’s justice system, threatening the legitimacy of courts and undermining people’s trust in it, potentially leading to unrest (Nesossi 2016; Daum 2017). Therefore, judicial reform under the *yifa zhiguo* platform aimed to improve the criminal judicial process and trial hearing conditions and standardise case outcomes in similar cases by providing more top-down guidance and re-establishing vertical control.

An important judicial document on this matter is the *Opinion on Establishing and Completing Work Mechanisms for Preventing Unjust, False and Wrongly-Decided Criminal Cases* (SPC 2013b). The document recognises the many pain points in the judiciary’s criminal process. It gives special attention to enabling courts to resist undue outside influence from other judicial actors (police and prosecution) and public pressures, such as petitioning and street protests (Liebman 2011). Empowerment addresses the primary cause of judicial inconsistency: the tight relationship between the judiciary and politics. By calling for more distance between itself, public security forces, and local governments, the judiciary signalled it wanted more autonomy *vis à vis* other

actors. The document also calls to make the trial hearing the centre of the judicial process (Long 2015); improve rules around evidence collection (Zhang 2021); cross-examination and exclusion of evidence (Guo 2014, 2019b, 2020); plea bargaining (He 2022; Li 2022), and so forth. These initiatives signalled a shift towards more procedural justice to strengthen adjudication based on facts and evidence that can be examined and determined in the trial hearing (see also: Daum 2013; Ahl 2021).

Although the judicial process has become more standardised, procedural compliance has increased, and undue influence has subsided (He 2021b), achieving consistency in judicial outcomes is still difficult. Issues remain, such as the weak position of defence lawyers, difficulties in excluding evidence collected through torture, and the prevailing dominance of police power in the criminal justice process (Biddulph et al. 2017; Nesossi and Trevaskes 2017). In addition, inconsistencies in sentencing outcomes also persist, especially in petitioning and corruption cases (Gong et al. 2019; Zeng and Feng 2022), but also in other crimes (Qi 2020; Lin et al. 2022).

Likely, the primary cause of persistent issues regarding due process and judicial outcomes lies with the dual nature and purpose of law and courts. Therefore, reforms in consistency and standardisation only go so far and are more aimed at achieving an efficient judiciary, rather than a fair and just one (Nesossi and Trevaskes 2017: 2-5).

2.3.3 Accountability and Professionalisation

A third theme of judicial reform is to professionalise the judiciary further. The judiciary launched two plans to achieve this after the 2014 Decision: the judge quota reform and the judicial accountability reform. The judge quota reform aimed to downsize the judiciary. The accountability reform, also called responsibility reform, aimed to give judges more autonomous decision-making power while holding them responsible for their decisions for life.

The judge quota reform aimed to select better-qualified judges and give them resources, power, and autonomy to do their work. The long term was to limit adjudicating powers to those who judged (Sun and Fu 2022: 7). Previously, a ‘judge’ (*faguan* 法官) included management, administration, and enforcement positions. A *faguan* that adjudicates is referred to as a ‘front-line judge’ (*yixian faguan* 一线法官) and enjoys little prestige because the title carries little administrative power (Ng and He 2017: 1-30).

According to Sun and Fu (2022: 1-2), judge quota reform goals were contradictory: it aimed to disentangle judging from its bureaucratic and political controls while simultaneously increasing political control. Improving judicial professionalism is also defined in a limited way: it only refers to the quality of judges, the level of institutionalisation, and the rule-based adjudication. It does not necessarily include political neutrality or institutional autonomy that allows courts to adjudicate impartially (Sun and Fu 2022: 3).

Nonetheless, according to empirical research, the judge quota reform has improved the situation of judges: career advancement has become easier, and remuneration has increased marginally. In contrast, the workload has become much worse since the number of court personnel now mandated to handle cases has been significantly reduced (He 2021b: 54-60). Combined with budgetary and accountability reforms, it positively affected Chinese judges' autonomy according to Wang (2020d, 2021a).

The second reform is the judicial accountability reform: it pertains to issues of corruption, factual mistakes, and inappropriate legal applications, but also procedural and paperwork flaws that “cause serious consequences” (SPC 2015a). This reform included a) the deprivation of power from court leaders to review and sign off on decisions drafted by frontline judges, effectively ending the case-approval system; b) therefore reducing the power of adjudication committees²; c) replacing it with “professional judge meetings”³ to provide the adjudicating judge or collegiate panel non-binding advice for a case; d) making the recording of intervention mandatory; e) keeping judges accountable for life for the quality of the cases they adjudicated (Wang 2020d: 748; He 2021b: 53-61). The next section goes into more detail.

Although counterintuitive at first glance, empirical research has found that this reform has strengthened individual judges' autonomy and accountability, significantly eliminating opportunities for corruption and judges' means to shirk responsibility. The main reason is that individual judges are now responsible for life, making them more resistant to court leaders' intervention. In addition, the requirement to record interventions has made court leaders think twice about intervening because it is difficult to know how this will reflect on their performance

² A committee comprised of court leadership that meets to review case materials.

³ A meeting with the adjudication judge or collegiate panel and the court leadership, e.g., their division chief and the court president.

evaluation. Leaving a record of intervention could potentially destroy their career prospects, as the unpredictable nature of future political climates could cast their past interventions in a negative light (He 2021b: 61-65). Another reason for this reform's success, i.e. improving accountability and autonomy, is the increased consolidation of political power under Xi Jinping, incentivising local institutions to follow central directives better and implement reforms more diligently. Without it, these reforms would probably not have been as successful (Wang 2020d: 764-765).

In sum, judicial reform since 2013 has tried to improve the status and operation of courts, improving its judicial services by being more transparent, consistent, and professional. Through these reforms, it has also tried to improve its position in the political-legal system. Based on the above literature and documentary review, these reforms were successful, but only to a certain extent. Much like Sun and Fu (2022: 2-5) argues, the paradox of judicial reform emerges upon examining the actual content: the political nature of China's legal system limits the extent to which the judiciary can be transparent, consistent, and accountable. Even though courts have a dual nature, they cannot serve two masters. The socio-legal scholarship also calls this the autocrat's legal dilemma: autocratic systems like China's need an efficient and effective legal system to secure compliance and regulation. However, they cannot empower courts and other institutions too much lest they challenge the regime's power (Jee 2022: 4-7). For this reason, during judicial reform, courts have had to reconcile tensions between transparency and public scandals, consistency and stability, and professional autonomy and political loyalty. These opposing tensions prevent courts from becoming too empowered.

In the next and last section of this chapter, I discuss one of the key procedural mechanisms courts use to maintain their dual nature and reconcile these tensions. I argue that the "trial oversight and management mechanism" (*shenpan jiandu guanli jizhi*, 审判监督管理机制) functions as a procedural entry-point that allows the party-state to penetrate the normative system and exercise its prerogative without undermining it. This internal judicial mechanism does not necessarily involve any interaction between political and judicial actors. The next section will first detail the ideology behind political oversight of the judiciary, how the mechanism works, and how the judicial responsibility reform changed it. In chapter 7, I discuss the role of technology in enhancing this mechanism.

2.4 Maintaining Duality: The Role of Oversight in Justice and Its Reform

2.4.1 The Ideology and Functioning of Oversight in Justice

Many systems and procedures exist to supervise the judiciary and control judicial decisions. Appeal and retrial procedures, a fundamental aspect of any judicial system, are also considered a way to “supervise” trial work in China.⁴ Before the judicial accountability reforms, court leaders primarily supervised through the vertical hierarchy of the case-approval system. Chinese courts operate highly similar to a bureaucracy, with a clear hierarchy of command through a three-tiered vertical hierarchy: the collegiate panel at the lowest level, which functions as the basic adjudication unit.⁵ A frontline judge, often a junior in rank, is expected to adjudicate routine cases independently but report more complex issues to the presiding judge. The presiding judge will report the case to the next tier for potentially more serious cases, namely the divisional meeting. At the meeting, the division chief, deputy chief, and more experienced judges may give their input on deciding the case. These meetings also play an important role in determining whether cases will be reported to the higher decision-making body within a court, namely the adjudication committee. Especially when senior staff anticipates a social controversy surrounding the case, the decision might become more political than purely legal (Ng and He 2017: 85-87). This explanation is not exhaustive but gives a basic understanding of how supervision worked in courts under the case-approval system. The above-described hierarchy also exists between a lower-ranked and higher-ranked court, which can guide and coordinate with the lower-ranked court to decide a case (Jiang 2018: 137-138).

The notion of political oversight as crucial to the administration of justice is born out of China’s Marxist-Leninist-Maoist approach to justice, which advocates the “mass line” approach. This approach is characterised by informality and particularism, favouring mediation and settlement over litigation (Woo 1999). The party-state must be able to intervene and “correct errors” in judicial decisions when citizens petition to challenge final judgments. According to this approach, a

⁴ See, e.g., Administrative Procedure Law of the People’s Republic of China (2014), article 85 to 93; Criminal Procedure Law of the People’s Republic of China (2012), article 216 to 234 and 241 to 247. This is one of the judiciary’s methods to guarantee uniformity and quality of justice and central control over court work.

⁵ Collegiate panels are not permanent bodies but organised to adjudicate individual cases. A collegiate panel is composed of three to seven judges, the number of which must be odd. Simple civil cases, economic cases, minor criminal cases and cases that are otherwise provided for in law can be tried by a single judge. The presiding judge of the panel is appointed by the president of the court or the division chief. When a president or a division chief participates in a trial, they shall be the presiding judge of the panel. See: Organic Law of the People’s Courts of the People’s Republic of China (2018), article 29 to 34.

judgment's political correctness is more important than preserving its finality (Woo 1991). Especially in the early stages of China's legal development, it was a "pragmatic response to the problem of how to overcome shortcomings in the judiciary at an early stage of institutional development" (Peerenboom 2006: 69).

From this ideological perspective, supervision is a so-called "last line of defence" to ensure social fairness and justice, guarantee trial efficacy, standardise judicial behaviour, prevent judicial corruption, and overcome judicial unfairness. Even though appealing serves a similar function, supervision is deemed more trustworthy because of the Marxist-Leninist nature of the political-legal system (Shen 2001: 16; Jiang 2011: 4). Additionally, it serves as an institutional check on individual judges and offers the required flexibility to bring decisions in line with the external policies of the central government. The idea is that court leaders (i.e., the court (vice-) president, division (vice-) chief), being senior court members with political responsibilities, have a better idea of how to decide sensitive cases.

However, this approach to justice also means that party officials within and outside courts could involve themselves in cases by giving (oral) instructions to their subordinates. Party leaders refer to party members who hold positions in decision-making bodies. They often hold multiple key positions in government. They enjoy full entitlement and legitimacy to participate in the judicial process whenever they deem the issue concerns the party's interests, which is defined extremely broadly. A party leader's subordinate includes court leaders, who would relay the instructions further down the hierarchy until they reached the judge directly handling the case (Li 2012: 854-855). This practice was especially prevalent under Hu Jintao, where party-state officials would pressure courts to change decisions to appease the public (Liebman 2011: 272). However, the reforms under the Xi Jinping administration have reduced this (Finder 2015).

Therefore, supervision in China's judicial system refers to internal administrative mechanisms in a legal court that allows court leaders to monitor and guide trial activities when necessary *and* supervision by higher-ranked courts. It does not necessarily involve interaction between party officials and judges. However, court leaders are also party members and consider political concerns when supervising sensitive cases because they bear political responsibilities (Finder 2015). Much like Clarke (2022: 9-10) has argued, judicial officers consider the prerogative

of the party-state while operating the normative system. In this sense, courts are firmly embedded within the prerogative state (Ng and He 2017: 121-141).

It bears reminding that the type of influence exercised through this mechanism is “allowed, preferred, and even urged by the regime” (He 2021b: 51). It implies that an individual judge should decide cases without interference from government agencies, social groups and other individuals, but not necessarily from their collegiate panel or adjudication committee (Jiang 2011: 138). However, it also bears repeating that “a great majority of the cases handled by the Chinese courts are routine and straightforward”. A single judge tries these cases, and the decision is final (Ng and He 2017: 87).

Due to its highly opaque and discretionary character, the case-approval system was extremely vulnerable to abuse, leading to widespread corruption, unaccountability, and unlawful interference in adjudication (Gong 2004; Li 2012). As discussed before, this significantly undermined the legitimacy and credibility of courts. The previous section discussed how accountability reforms have been generally successful in curbing judicial corruption and undue interference. In the next subsection, I examine how this has affected the “trial oversight and management mechanism”.

2.4.1 Changes to Oversight Since the Judicial Responsibility Reform

Despite its success in improving the autonomy of individual judges, the judicial responsibility reform also generated several issues regarding supervision. The ensuing tensions are unsurprising, as the aims of judicial responsibility reform and supervision fundamentally contradict each other. The initial document launching this reform captures this contradiction. On the one hand, it gives adjudicating judges the authority to issue judgments independently without needing the approval of their superiors. It prohibits court leaders from reviewing and issuing judgments on cases they did not hear themselves (SPC 2015a: article 6).

On the other hand, it asks court leaders to fulfil their “trial oversight and management” duties diligently. It gives court leaders “the right to request the individual judge or collegiate panel to report the progress of a case and the results of the review” in the following circumstances:

1. cases that involve group disputes that may affect social stability;
2. cases that are difficult and complicated, and have a significant impact on society;
3. cases that may conflict with a decision of the court or a higher-ranked court; and

4. cases that involve reports of violations by the adjudicating judge.

These cases are called the “Four Types of Cases” (*silei anjian*, 四类案件) (hereinafter “Four Types”). Where a case gets identified as one of the four types above, court leaders may ask the adjudicating judge to report on this case. Where court leaders disagree on the trial process with the adjudicating judge, they must submit the case to a professional judge meeting or adjudication committee for discussion. Any advice is non-binding and must be recorded and included in the case file (SPC 2015a: article 24).

In summary, the previous case-approval system gave court leaders substantial discretion in deciding the outcome of a case because the judgment was only valid once they signed off on it. With the accountability reforms, court leaders lost this power. Additionally, they can no longer give oral instructions individually. However, where a case is deemed sensitive, court leaders can still get involved in the process and keep up to date with the case’s progress. Court leaders can now only issue non-binding advice via a professional judge meeting or the adjudication meeting. Moreover, it is mandatory to record this advice. This mechanism is “trial oversight and management”, i.e., the responsibility to supervise the full process of sensitive cases (Li and Chai 2020: 53-54).

This new situation created tensions: “A contradiction emerged between the independent operation of judicial power and the oversight and management of trials” (Long and Sun 2019: 38). This contradiction lies in the fact that the responsibility reforms gave frontline judges more autonomy in performing their trial responsibilities, while one of the primary responsibilities of Chinese court leaders is ensuring the political correctness of their subordinates’ work.⁶ The most important goal of the entire judicial reform in the past decade has been to strengthen party leadership (see, e.g., Finder 2020b; Daum 2021). These goals naturally clash with the new autonomy judges are supposed to enjoy. It has led to inertia among court leaders, who became unwilling or afraid to fulfil their oversight duties and responsibilities. According to Chinese empirical scholarship, court leaders thought exercising their oversight powers might be considered undue interference by their superiors (Long and Sun 2019: 38-39; Wang 2020a: 130).⁷ As a result, court leaders were

⁶ PRC Organic Law of People’s Courts (2018), article 41.

⁷ Courts are responsible to the People’s Congress of the corresponding level and are also supervised by higher courts. See: PRC Organic Law of People’s Courts (2018), article 9. In China’s judicial system, a court leader (i.e., division

concerned that adjudicating judges enjoyed too much power, that this was exacerbating inconsistencies in decisions, and that they were losing control over sensitive cases (Zheng 2019: 59; Wang 2020d: 759-760; He 2021b: 66).

The primary cause of this contradiction lay with the ambiguity and vagueness of court leaders' new oversight responsibilities and duties (Zhao and Zhou 2020: 11). This ambiguity and vagueness manifest the deeper-seated tension between the opposing requirements of courts, as explained in section 2.2. The Judicial Responsibility Opinion (SPC 2015a) remained vague about the exact content and scope of the above sensitive cases. The document did not specify the measures court leaders could take as part of their oversight duties and responsibilities. Therefore, the challenge of further reforming judicial responsibility and the "trial oversight and management" mechanism boiled down to "correctly dealing with the relationship between the delegation of [adjudication] power and oversight" (Zhou 2019: 8).

To address this problem, the SPC issued a series of subsequent documents to refine and clarify the different responsibilities and duties for all court staff (SPC 2017b, 2018a, 2020b). They also provided lists of powers and responsibilities for court leaders, specifically stating that performing these duties when following procedures and within the scope of the list would not constitute undue interference (SPC 2018a: article 13). It was supposed to reassure court leaders that their intervention was not illegal and, therefore, punishable if they followed the correct procedures. These central documents also tasked local courts with formulating detailed rules further to demarcate court leaders' exact powers and responsibilities.

In response, different courts issued various implementation measures, regulations, and checklists to flesh out court leaders' oversight duties and responsibilities. For example, in 2019, the Shenzhen Intermediate People's Court issued a series of "trial oversight and management checklists" that detail the exact boundaries and scope of court leaders' oversight responsibilities to ensure that they "accurately grasp the boundaries and content of oversight and management, and eliminate the worry of court leaders that oversight is exercised without legal authority [...]" (Peng 2019).⁸

chief or court (vice-) president) is an administrator and political official who is firmly embedded in an administrative and political hierarchy. Therefore, they are also responsible to a higher-ranked official who supervises their work.

⁸ See also: Shenzhen Intermediate People's Court Research Group (2019) "Research on the Construction of New Trial Oversight and Management Mechanism," pp. 27-32. Document on file with the author. These documents carry titles

In 2018, the Hunan Provincial High Court issued the *Measures to Implement Further Court Leaders' Trial Oversight and Management Duties (Provisional)* (Han 2018), refining the exact content and scope of the “Four Types of Cases” as well as the measures a court leader may take. Similarly, in 2019, the Jilin Provincial High Court issued the *Measures to Regulate the Trial Oversight and Management Duties of Court Leaders (Provisional)*, stipulating oversight measures and prohibiting other actions for court leaders (Wang and Chang 2019; Quan 2021). Likewise, in 2018, the Ningxia Autonomous Region High Court issued the *Measures to Implement Further Court Leaders' Trial Oversight and Management Duties (Provisional)* to do the same (NHC 2018).

Finally, in November 2021, the SPC issued national clarifications, taking steps towards institutionalising and codifying the mechanism of “trial oversight and management”.⁹ The SPC claimed that some courts neglected oversight duties, some inappropriately expanded the “Four Types” scope, and others had reinstated the case-approval system in all but name. They also mention the above-described concerns that court leaders had, such as fear of being seen as illegally interfering with a case (Liu et al. 2021).

Article 10 of the *Guiding Opinion on the Oversight and Management of “Four Types of Cases”* shows the options available. Among others, a court leader may:

- request the judge or collegiate panel to report on the progress of the case;
- review the case material;
- attend and observe court hearings;
- request the individual judge or collegiate panel to reconsider their judgment and report on it;
- decide to submit the case to a professional judges meeting or adjudication committee for discussion;
- decide to report a higher-ranked court, and

such as *List of Court Leaders' Oversight Powers of Single Cases* and *List of Approved Items for the Court Leaders*. Unfortunately, these documents are not publicly available.

⁹ The development of this Guiding Opinion followed the typical trajectory of judicial reform in China: the SPC issues Opinions to initiate reforms, leaving it up to the local courts to fill in many of the details. After a few years of trial and error, it centralises the experience and issues its own Guiding Opinion to consolidate the developed practices and procedures.

- any other necessary oversight and management measure appropriate to the court leader's position.

The court leaders must exercise the above measures within the scope of their authority, “which does not constitute interference or prying into cases in violation of provisions” (SPC 2021a: article 10).

It is the first time a central document has stipulated the measures that constitute “trial oversight and management” under the new accountability system. Therefore, although the Guiding Opinion (SPC 2021a) makes substantial progress in improving the “trial oversight and management” mechanism, some questions remain unanswered. For example, the Guiding Opinion does not incorporate a list of prohibited actions in the Jilin High Court Measures. In addition, it does not explicitly prohibit court leaders from giving oral instructions to adjudicating judges, which previously was the primary way to exercise influence over cases. Neither does the Guiding Opinion (SPC 2021a) specify the procedures for recording the oversight. Article 7 also allows court leaders to apply “trial oversight and management” measures to specific cases outside the scope of the “Four Types”, even including the phrase “or where it is otherwise necessary to apply [these measures]”.

Additionally, the document changed the meaning and scope of the “Four Types”, elaborating on each type of case (articles 2 to 6). Other courts now have to amend their implementation measures to comply with this central Guiding Opinion but do get a certain margin to adjust to local conditions (article 15). The Guiding Opinion stays silent on what cases trigger specific measures, so in reality, a court leader is likely free to choose whichever measure they prefer to fulfil their oversight duties. The last measure also leaves some discretion to court leaders in deciding how to exercise their oversight powers exactly. Therefore, the Guiding Opinion leaves some crucial issues unaddressed, and court leaders maintain a certain degree of discretion. As one observer commented, as long as there is no complete set of procedures for the entire system of oversight, guidance, and review of cases, it remains unstable (Liu 2021). However, from the party-state's perspective, this vagueness and discretion are required to allow courts to fulfil their political tasks. Although incomplete, these developments emphasise institutionalising and codifying the “trial oversight and management” mechanism. In addition, the Guiding Opinion consolidates and unifies the new procedures: lower-ranked courts have to amend these procedures to fit with national directives.

Chinese scholars claim that these reforms have turned the oversight mechanism, previously highly opaque and discretionary, into a transparent and rule-bound process with clear delineation between adjudication powers on the one hand and oversight powers on the other hand (Li and Chai 2020: 51; Zhao and Zhou 2020: 10).¹⁰ Other researchers remain sceptical. For example, the rules for “trial oversight and management” obligate court leaders to record their intervention and include it in the case file when performing their oversight duties (SPC 2017b: article 5; 2021a: article 11). However, He (2021b: 61) finds that, lawful or not, court leaders in their surveyed courts avoid registering the intervention. This is because court leaders and political leaders remain powerful and have large discretion over the career trajectory of judges, so they have the leverage to dissuade an adjudicating judge from recording the intervention. Moreover, the recording of intervention may trigger a formal investigation and jeopardise the careers of everyone involved. Despite this legitimate scepticism, this obligation alone has made a difference, according to Wang (2020d: 753), compelling court leaders to think twice about intervening.

In sum, it is safe to argue that institutionalising and codifying the “trial oversight and management” mechanism was necessary to maintain the dual character of courts, given the rampant abuse in the pre-2014 reform era. Courts needed to improve independent adjudication while at the same time guaranteeing they were still able to fulfil their political tasks. The key to doing this is to identify cases that require intervention, which is very difficult. Therefore, courts needed to carefully insulate individual judges from “unwanted” interference, i.e., illegitimate and illegal, while also keeping open a window, albeit tightly circumscribed and controlled, to allow the Chinese party-state, represented by court leaders, to intervene whenever they deem the party’s bottom line is affected.

2.5 Conclusion

This chapter is a first step in understanding how normative and ideological ideas in China shape SCR. It provided a theoretical explanation for the nature of law and courts in China and contextualised the past decade of judicial reform in this framework. It has helped us understand why courts find themselves between a rock and a hard place: ironically, the tension between, on the one hand, fulfilling their political tasks and, on the other hand, using the law undermines their

¹⁰ These claims do not relate to the 2021 Guiding Opinion, which came after the publication of this research.

governance capacity to ensure compliance and regulate and popular confidence in and support of courts.

This tension stems from their dual function in authoritarian regimes. On the one hand, they are political institutions that need to maintain stability. On the other hand, they are also supposed to adjudicate private disputes based on law. This tension has undermined their capacity to deliver justice, causing popular distrust in the legal system as a genuine dispute resolution channel. Judicial reform has tried to improve this situation of low efficiency and trust through a series of initiatives relating to transparency, consistency, and accountability.

Nonetheless, judicial reform in an authoritarian regime has its limits: it cannot progress far enough to the point that courts become fully independent institutions that can pose legitimate constraints on the prerogative of the party-state. Therefore, the normative system is always bound by the party-state, and it is the prerogative of the party-state to determine these boundaries. This constitutes the tension that exists in the judiciary's dual function, as well as the paradox of judicial reform.

Through a deeper examination of a specific internal mechanism, I show the limitations of these reforms. The “trial oversight and management mechanism” can be considered a procedural entry point through which the prerogative state can enter the normative system without undermining it. However, this mechanism was a double-edged sword because it undermined courts' legitimacy and proper functioning as adjudicators of legal disputes. Therefore, judicial accountability reforms aimed to improve this mechanism by institutionalising and codifying it.

However, as discussed, Chinese courts still have difficulties distinguishing this “red line”, and the reforms have not yet fully erased all opportunities for “unwanted interference”. In this sense, judicial reforms are always incomplete. Therefore, maintaining duality in China's political-legal system is as hard as balancing a tightrope. These balancing issues also persist in other judicial reforms relating to transparency, consistency, and fairness. In the coming chapters, I explore how this shapes the goals of SCR. I argue that SCR is seen as a pathway to break through these structural barriers that the dual nature of courts poses to reform.

However, first, I turn to SCR itself. Before I analyse how ideological and normative ideas shape SCR, it is important to understand what SCR entails. Therefore, the next chapter provides a comprehensive review of this reform.

Chapter Three: Smart Court Reform

3.1 Introduction

Reform in China follows a specific process called fragmented experimentation: overall principles are set centrally, but the specifics of execution are trialled at the local level (Heilmann and Perry 2011; Knight 2020). Although the SCR is a top-down policy initiative, it followed a similar trajectory. The SPC first championed this initiative and gained traction across other courts at every level (Stern et al. 2021: 521). This approach created an iterative process where top-down policy pushes interacted with bottom-up experimentation. However, as I will discuss in this chapter, this mode of “fragmented policy experimentation” often leads to implementation gaps: due to experimentation, various technical, legal, and political standards emerge across different regions and jurisdictions. It slows down the consolidation phase of policy initiatives, where the central authority consolidates local experiences in central standards. Centralising many technical and legal standards increases costs (Chen and Greitens 2022). Due to this experimental nature, “smart courts” can vary significantly across cities and regions in China.

This chapter provides a comprehensive chronological and regulatory overview of SCR from 2013 until 2022. I examine the SCR's stated goals and pain points as it developed over time and how new directives address emerging implementation issues. In so doing, I try to answer how SCR policy developed over time, examining its progress through fragmented policy experimentation.

I have opted for a chronological overview. Policy development is a complex process, making it difficult to get a firm grasp on it. Therefore, I have tried to simplify the overview. Many initiatives described and analysed below do not have perfectly connecting start or end dates. In addition, I combine this chronological narrative with a review of official directives, national regulations, and development plans. Some of the regulatory documents were not issued until years after the first initiatives had already been launched. Other documents are updated yearly, while some are not publicly available. This chronological and documentary inconsistency aligns with the typical trajectory of any reform initiative in China.

In addition, I cannot claim to have reviewed all documents related to informatisation, digitisation, and automation. Because this dissertation researches judicial reform, this chapter focuses exclusively on documents issued by the judiciary. Most of the documents I reviewed in this chapter

were collected ad hoc while writing my dissertation between 2019 and 2023. In most instances, I would discover the documents as a reference in a Chinese academic publication or news article. I then scoured the SPC website, internet search engines, and WeChat to find a full document version. My inclusion criteria were that the document needed to be relevant for the operation or establishment of smart courts or provide general development information. Documents not immediately relevant for courts, judicial reform, or judicial technology are excluded from this review.

For example, other policy plans issued by the State Council, such as the *New Generation Artificial Intelligence Development Plan (2017)* (SC 2017) set out broad, top-level goals for the wider development of (AI) technology and applications in *all* fields, not only the judiciary. It was, therefore, excluded. Moreover, some documents were not public, so I could not analyse their content. In this sense, this chapter is only aspirational in its comprehensiveness. Nonetheless, it is the first comprehensive chronological and documentary review of SCR.

The second and third sections describe and analyse the first building blocks, built between 2013 and 2015. This first phase was largely about making information digitally available and allowing digital interaction on a large scale. The fourth section describes three case studies of the earliest national, provincial, and municipal initiatives to showcase the fragmented rollout of SCR. The fifth section analyses two important documents that further determined the direction of SCR: *Opinion on Accelerating Smart Court Construction* (SPC 2017a) and the *Five-Year Development Plan for the Informatisation Construction of the People's Court (2019-2023)* (SPC 2019a). Examining these allows us to understand better the interaction between recognised pain points of fragmented policy-development and the guiding function of top-down directives. The last section provides a legal analysis of the consolidated regulatory framework of SCR, focusing on three authoritative Rules to regulate Smart Court procedures. Lastly, it describes two central directives on using blockchain and AI in the judiciary.

3.2 The Five-Year Plan for Information Construction at People's Court (2013-2017)

The SPC launched SCR with the *Five-year Development Plan for Informatisation Construction of People's Courts (2013-2017)* (SPC 2013a). The Plan conveys a sense of urgency. It calls the following five years a “key transition period” for the overall informatisation of courts and the increased application of information technology (IT) in the judicial process. It rallies courts to

employ IT to “promote fairness and justice, expand disclosure, broaden mass participation, and communicate social conditions...”.

The Development Plan (2013-2017) outlines the basic principles for informatisation: it calls for unified planning and implementation and to strengthen top-level design (*dingceng sheji* 顶层设计), a key policy term introduced in the same year at the 3rd plenum of the CCP’ 18th Party Congress. The term indicated a re-centralisation of policy coordination and implementation, making room for local discretion and bottom-up experimentation smaller (Ahlers and Schubert 2022: 13-14). Despite this call for top-level design, SCR followed an incremental approach to implementing policy initiatives, with large cities leading the way in building the first AI systems for adjudication and lower-ranked courts lagging in informatisation (Zheng 2020: 565).

The Development Plan (2013-2017) calls upon courts to maintain a people-oriented and service-oriented approach. Courts should employ IT to support the work of judges so that they can better serve court users. With this goal in mind, the next principle is to deepen and strengthen the use of IT in everyday court work. It pushes courts to intensify informatisation. Lastly, to ensure the security of the IT systems, it asks to unify and strengthen standards and norms in their construction and application. The plan's goals to deepen coordination, increase application coverage, improve information sharing and collaboration, improve information security, expand disclosure channels, and improve convenience are recurring themes.

Importantly, the Development Plan (2013-2017) asserts the coordinating role of the SPC, saying that all new information management systems should be planned and implemented by the SPC. It concedes that individualised application software can be developed locally, but these must comply with the state's and SPC's relevant technical standards. As argued throughout this dissertation, the informatisation of courts runs parallel with other judicial reforms to enhance these. The three online digital platforms are the most visible and concrete examples of this in the early stages. The following section briefly overviews these three platforms and discusses how they fit in the larger reform picture.

3.3 Building Blocks: The Three Transparency Platforms

Early digitisation efforts occurred around transparency and accessibility reforms. The SPC circulated the *Opinion on Several Issues Relating to Advancing the Establishment of Three*

Platforms for Judicial Openness (SPC 2013c), calling on all courts to rely on modern IT to deepen judicial openness. To this end, the SPC would establish three major platforms for information disclosure to enhance public understanding, trust and oversight of the judiciary. The three platforms are called China Court Trial Online (*Zhongguo Fayuan Tingshen Zhibowang* 中国法院庭审直播网); China Judicial Process Information Online (*Zhongguo Shenpan Liucheng Xinxi Gongkaiwang* 中国审判流程信息公开网), and China Judgments Online (*Zhongguo Caipan Wenshuwang* 中国裁判文书网). Through these platforms, all courts provide a long list of different types of information to the public, courts, and other political-legal institutions, ranging from organisation and personnel, litigation guidelines and procedures, to court sessions and hearing dates, and registries of affiliated institutions. The SPC (2013c) already envisions a fully centralised and integrated information network, with the three platforms at its centre, allowing large-scale communication and interaction between users and providers.

3.3.1 China Court Trial Online

The China Court Trial Online platform (CCTO) was officially launched in December 2013. As of late November 2022, it has broadcasted over 20 million trial hearings throughout the past near-decade. This might be only the tip of the iceberg. Many local courts have their own live streaming service and video archives (Finder 2016; Fan and Lee 2019; Tang et al. 2022). The official website provides a map of all provinces and courts in China, allowing users to watch the live stream of trial hearings in intermediate and grassroots level courts. Starting in July 2016, the SPC also started to broadcast its hearings.

In streaming (and video archiving) court cases, the SPC and China are part of a worldwide trend: countries ranging from the United Kingdom and Australia to India and Pakistan live broadcast their judicial proceedings (Shabbir 2021). One of its most well-known examples is the trial of OJ Simpson in the US in 1995, who was tried on two counts of murder. It allowed unprecedented access to courtroom proceedings and provided scholars with invaluable research materials (Cotterill 2003: 2). The murder trial of Oscar Pistorius was similarly broadcast in South Africa (Biber 2019).

However, CCTO goes beyond high-profile court trials: a wide range of cases across all jurisdictions are broadcast, including criminal cases. This raised many concerns among local judges about the

privacy of litigants and the balance between open justice and the right to a fair trial. Cases also do not necessarily represent all cases that pass through trial hearings. The CCTO is mainly meant for legal education rather than genuine transparency, especially because it does not include politically sensitive cases (Finder 2016).

Fan and Lee (2019) also find that the court trials are typically narrated as non-eventful episodes: they are tightly organised and follow strict procedures. They contrast this with sensationalised trials in the US (such as the OJ Simpson murder trial). They argue that this depiction of trials as uneventful and routine is intentional. It creates an image of a just and fair legal system by emphasising the orderliness of court trials. Nonetheless, public affinity with court proceedings remains limited. In addition, Tang et al. (2022) find that live broadcasting does not influence court decisions or judgments in civil or criminal cases. Their research provides preliminary evidence that live broadcasting in Chinese trial hearings makes trial participants more accountable and does not influence the principle of fair trial.

As noted in chapter 2.3.1., the CCTO and other transparency initiatives align with the judiciary's efforts to be more transparent. This concern with judicial transparency is also motivated by improving its credibility and legitimacy vis à vis the public.

3.3.2 China Judicial Process Information Online

The China Judicial Process Information Online platform (CJPIO) officially launched in November 2014. Its primary function is to improve connectivity between litigating parties and the relevant court; once logged in, users can inquire about the status of their case, contact the case handling judge, and accept electronic documents. The purpose is to provide a “one-stop shop” for litigants’ interaction with courts.

Four years later, in 2018, the SPC circulated a central directive that codified the use and functions of the CJPIO: Provisions on People’s Courts Disclosing Trial Process Information Through the Internet (SPC 2018b). This document gives a clearer insight into the functions, responsibilities, and procedures related to information disclosure through the CJPIO platform.

The CJPIO is a centralised hub for all kinds of information regarding the court system. For example, users can use a map with all courts across China to find overviews of all names of judges per court with their department and title. The central website also provides databases with litigation

guidebooks from various courts nationwide, SPC regulatory documents, guiding cases, and so forth. The CJPIO also functions as a unified connection hub between the web portals of all provincial high courts that link to the web portals of their intermediate courts.

While the CJPIO's interface is clear and structured, the web portals of lower-ranked courts are much more chaotic. There is an overload of information, the databases are not up to date, and there is a clear lack of coordination: SPC documents are spread across different websites with no interconnection. One potential reason for this is that the Chinese internet has more or less skipped the web portal phase, as most courts have official WeChat accounts and applications within the WeChat platform that allow users to conduct their communication and litigation through here. Therefore, less attention is paid to developing user-friendly interfaces on the web portals. In short, despite transparency and disclosure claims, these web portals do little to achieve this. Anyone navigating the CJPIO and local courts' disclosure platforms will understand that the overload of information and chaotic nature of these platforms obfuscates more about the judicial process than it illuminates.

This chaos might be irrelevant to the effectiveness of the CJPIO because its primary function is to allow better communication between courts and litigating parties. Once parties have made an account on the platform, courts may use additional contact information (mobile phone, e-mail) to actively push information or provide inquiry services about the case process to the parties. Most importantly, it is a centralised communication platform where litigating parties may access all related documents, i.e., notice of case acceptance, trial summons, judgments, mediation documents, and so forth.

Courts are also accessible via mobile litigation platforms based on WeChat mini-programs called "Mobile Micro Court". Documentation regarding the "Mobile Micro Court" indicates that these litigation platforms' functions overlap with those of courts' disclosure platforms, i.e., providing litigation services and supporting online litigation activities (SPC 2019b). It is unclear which channel takes precedence over the other or whether these initiatives are meant to provide as many entry points to courts as possible. It is also unclear how the information is processed. Rather than simplify the bureaucratic nature of the judicial process, the ubiquity of judicial service platforms and the overlap of responsibilities and functions seems to perpetuate the "fragmentation" of China's bureaucracy and policy in the digital environment (e.g., see Lieberthal and Lampton 1992).

3.3.3 China Judgment Online

The China Judgment Online platform (CJO) was officially launched in 2013 and, as of November 2022, hosts over 137 million court decisions, again covering all jurisdictions and courts in the PRC. The SPC Provisions on The Publication of Judgments by the People's Courts on the Internet (SPC 2013e) directed all Chinese courts to upload their decisions to the unified database. The Provisions led to a rapid expansion of public records of court decisions. The 2016 revisions tightened the publication requirements, making it more difficult for judges to evade publication. They also included exceptions such as cases involving minors or related to national security (SPC 2016c).

Ahl and Sprick (2018) find that the database establishes new channels of communication, affecting the relationship between the courts and the public and the position of judges within the judiciary. They argue that these early digitisation measures introduced an “interactive approach to judicial transparency” (Ahl and Sprick 2018: 5). At the same time, while useful for academic and legal research, it is doubtful that a database of court decisions can achieve the aim of judicial transparency and building public credibility. Therefore, the transparency objective might relate more to internal transparency as a tool of bureaucratic oversight rather than public oversight. Ahl and Sprick (2018: 10-13) argues that it increases pressure on individual judges regarding workload, quality of legal reasoning, performance evaluation, and protection from interference. Furthermore, it serves as a tool for the SPC to expand control over lower-level courts. Therefore, the CJO is crucial in enhancing reforms aimed at professionalisation and accountability (see chapter 2.3.3).

However, beginning in 2021, the SPC scaled back the cases available on the CJO. Local courts consequently followed this trend. Luo and Kellogg (2022) find a pattern of large-scale purging of criminal and administrative cases, often deemed sensitive or controversial. In addition, access to the CJO has become harder and requires users to register their phone numbers. Moreover, the CJO now only show the first 600 cases in any search inquiry. They argue that this purge highlights the flaws of the top-down judicial transparency push. It also suggests that the CJO has had a clear external effect on public perception.

Nonetheless, the CJO provides one of the fundamental building blocks of SCR. It is a powerful tool to enhance internal transparency management and increase central oversight. This effect is perpetuated by using algorithmic tools that rely on machine learning and big data analysis, discussed in the next section. These platforms provide the big data necessary to train and operate

these systems. As discussed below, many algorithmic and automated systems in smart courts rely on databases such as the CJO. It is especially relevant for functions such as automatically pushing relevant cases for reference, recommending decisions, and creating benchmarks for automatic decision-monitoring systems.

With the big data now available, courts started with the next step: creating algorithmic and automated systems. The next phase involves the deeper integration of IT into the daily operation of individual courts. Here, IT is employed to facilitate the resolution of legal cases rather than only disclose (external) and share (internal) information.

3.4 First Experiments With Digital and Automated Justice (2015-2017)

The SPC's *Fourth Five-year Reform Plan of People's Courts* (2014-2018) (SPC 2015b) wanted the above discussed three major platforms to be operational by the end of 2015. The term "smart court" was also officially introduced in the SPC's *Annual Work Report* (SPC 2016d). According to Zhou Qiang, Chief Justice of the PRC, as part of the "smart court system", courts should use informatisation to:

leave traces throughout the trial and enforcement process, standardise judicial conduct, and diligently build a comprehensive, mobile connected, transparent, convenient, safe, and reliable intelligent information system by the end of 2017.

In addition, he calls on the judiciary to:

improve the three major platforms for judicial openness and the centralised data management platform, strengthen big data analysis, unify judgment standards, and promote the standardisation of similar sentences.

To experiment, the SPC designated two People's High Courts to build pilot "e-courts" (dianzi fayuan 电子法院) to implement online filing, online trial, and online service [of documents] so that "information can travel more, and the masses have to run fewer errands" (SPC 2017c).

Xu (2017a) examined the two People's High Courts', in Jilin and Zhejiang. She found that the two High Courts had designed two significantly different systems. The e-court system in Jilin mainly attempted to move as many offline activities as possible to the online space. It encompasses all jurisdictions of all courts and all stages of the judicial process in Jilin Province. It provides twenty-four-hour non-stop services for litigating parties. The system registers all procedural steps, making this information available to relevant parties. It also collaborates with other relevant actors in the

political-legal system, such as the people's procuratorate and the people's police. According to Xu (2017a: 63-65), the main purpose of Jilin's e-court system was to facilitate parts of the judicial process, not to transform it fundamentally.

The Zhejiang High Court approached it differently. It decided to focus exclusively on e-commerce. In contrast to Jilin Province, they changed how (commercial) cases get resolved radically. Xu (2017a: 66) argues it is designed to provide a one-stop case resolution process where no offline activities are needed. This case is the most interesting because it provided a blueprint for future digitisation and automation projects by other courts.

To develop the e-court system, the Zhejiang High Court collaborated with Alibaba, an e-commerce giant in China. The e-court system's jurisdiction is limited to online commercial disputes resulting from sales conducted on Taobao or Tmall, two shopping platforms owned by Alibaba. The entire process revolves around the system using big data generated by Alibaba and the data story and cloud computing services it provides. The judicial process is intimately intertwined with a private actor (Xu 2017a: 65-67).

The experience from these two experiments likely led to the SPC formulating and circulating the *Guiding Opinion on Comprehensively Promoting the Synchronous Generation and In-depth Application of the People's Court's Electronic Archives* (SPC 2016b). This document provided the first concrete guidelines for courts on how to digitise their judicial process, specifically focusing on better digitising incoming paper documents and ensuring a more efficient digitisation of files.

It is the first document that tackles a concrete element of SCR, discussing how to generate the necessary and fundamental resources for algorithms and AI to function: big data. Ideally, all processes should be conducted digitally to generate the big data necessary to feed the algorithmic systems. However, at this stage of SCR, many processes still needed to be done by paper, and courts struggled to keep up with digitising their archives and incoming cases submitted by paper. Therefore, the overall objective was for courts to create processes where digital versions of litigation documents would be generated during the judicial process, i.e. "simultaneous generation and in-depth application of electronic files along with the case" or something akin to real-time digitisation. This measure was also necessary to reduce the burden on court personnel and judges who had to digitise case files manually.

The document has three chapters, respectively focusing on how to digitise files, how to use digital files and the surrounding safeguard measures:

1. It explains what digital files should consist of and how they should be collected, stored, and reviewed.
2. It stipulates how courts should stimulate the use of digital files by building more digital support infrastructure that enables the retrieval, sharing, and managing of digital documents in all aspects of the judicial process.
3. It outlines each court department's different responsibilities in digitisation and how courts should further promote synchronous digitisation: courts need to pay attention to technological innovations, improve rules and regulations related to implementing the guidelines, and ensure adequate funding for digitisation.

Although the Electronic Archives Opinion (SPC 2016b) does not mention smart courts, it is a crucial building block of SCR because it relates to its primary resource, which is necessary for the end goal of smart justice to be realised, i.e., big data. The quality and consistency of data must be guaranteed, which is done at the start of the “production chain” of justice. Therefore, this document is crucial because it provides concrete guidelines on properly digitising files and divides responsibility among court departments for different aspects of the digitisation process. Although one of the primary goals of SCR is increasing efficiency, it initially simply generates more tasks and burdens personnel. Therefore, the guidelines vertically divide responsibilities and direct courts to provide more funding to outsource some responsibilities.

As I will show in the following examples, the judiciary generally partnered with commercial service providers to develop platforms, systems, and software to digitise and automate justice further. While their development does not fit the chronological divisions of this chapter, they all start in the 2015-2017 period. These examples showcase the meandering and iterative development of SCR.

3.4.1 The SPC's Faxin Smart Push System (2016-2020)

The Faxin 2.0 Smart Push System is one of the first software systems developed nationally for all courts across the PRC. The SPC started developing the “legal knowledge and case big data integration service platform” in 2012. Press releases say the software is connected to various legal

knowledge and court decision databases. It uses big data analytics to process and aggregate legal provisions, cases, legal opinions, and court decisions to analyse judgments, push similar cases, and provide legal workers and the public with expert solutions. “Faxin” was officially launched in 2016 (SPC 2016e). The SPC (2016a) directed all courts to use the platform to strengthen and deepen SCR. According to its website, the Faxin System is the primary national database for laws, regulations, judicial interpretations, administrative decisions, case references, opinions, periodicals, and standards. It offers similar case retrieval, professional analysis, and intelligent assistance services.

Over the years, it was developed into the Faxin 2.0 Smart Push System (Ma 2020). This system is embedded into courts’ case-handling platforms and can automatically push matching cases, laws, and judicial opinions for judges. It has several core functions. The first is identifying and matching the incoming case based on all relevant digital files in the case-handling system. It can identify and index legal relations, facts, disputes, the case’s legal basis, and general attributes. Based on this information, it generates a kind of “portrait” of the case, which gives an easy overview of all important information.

A second function is classifying and pushing typical cases and judicial documents for reference. Pushed cases are classified into three levels as stipulated by the SPC: the Guiding Cases (Ahl 2014), then Typical Cases, and then Reference Cases issued by High People’s Courts. Court decisions are ranked according to the four levels of the court system (Supreme, Provincial, Municipal, Basic). This function helps judges and other judicial personnel prepare relevant materials to adjudicate cases and have convenient access to reference material.

A third function is that it pushes relevant legislation and regulations to the adjudicating judge. Based on identifying the case (function 1), it provides judges with the specific provisions, not entire laws. In addition, it elaborates on cited legislation in the drafting process: it will inform the judge how valid the cited legal provision is for the case on deck, its revision history, what the intended purpose is of the cited provision, higher- and lower-ranked rules, and related laws. Therefore, it helps the judge contextualise the meaning and purpose of cited legal provisions to give the judge a comprehensive understanding of the laws they want to apply.

Once the system is integrated with the case handling platform of a court, it links these and other functions into one automated process: from the retrieval and identification of relevant digital files,

automatic labelling and indexing, generation of the case portrait, and pushing of similar cases and relevant laws. Therefore, the system automates a significant part of pre-trial case preparation for judges, only requiring them to perform an oversight function to make minor adjustments during the screening and labelling process.

As was described above, the system is primarily framed as a tool that helps reduce workloads for judges in the preparatory stage of the judicial process. The 2.0 model was developed as a response to two SPC Opinions: Guiding Opinion on Strengthening Searches for Similar Cases to Unify the Application of Law (SPC 2020a) and Opinion on Improving the Working Mechanism for Unifying Law Application Standards (SPC 2020c). In this sense, its primary purpose is to achieve more consistency in adjudication by providing relevant legislation and reference material to judges. I dig deeper into these implications in chapter 6 and 7.

3.4.2 The Internet Courts (2017-2018)

The “Internet Court” is a designation for what are now three courts in the PRC: the Hangzhou Internet Court (HIC), the Guangzhou Internet Court (GIC), and the Beijing Internet Court (BIC). The HIC was launched in 2017, and the latter two in 2018.

The Hangzhou Internet Court (*Hangzhou Hulianwang Fayuan* 杭州互联网法院) was established to focus on first-instance Internet-related civil and administrative cases within the jurisdiction of Hangzhou’s basic-level courts. The HIC, as part of broader digitisation efforts at the time, was primarily aimed at improving the efficiency of proceedings the credibility of courts, and reducing inconvenience for litigating parties to access justice (Peng and Xiang 2020: 347).

The HIC claimed parties could complete filing within five minutes through structured form options. The system automatically generates relevant legal documents and delivers them digitally via e-mail or SMS. It also enables evidence exchange and cross-examination. The trial hearing itself is conducted via video conference on a litigation platform. This platform also displays the evidence online to parties and judges, allowing the parties to examine and debate the evidence. Lastly, it claims that the system generates digital transcripts in real time through voice recognition and automatic transcription.

According to Guo (2021: 2), establishing the HIC marks the beginning of an official ODR mechanism in the PRC. At the same time, they argue that the HIC goes beyond simply moving

litigation processes online and represents a completely new type of adjudication mechanism (Guo 2021: 4). One contribution to the development of online adjudication was the acceptance of electronic evidence through the blockchain. The legal status of electronic evidence in dispute resolution could have been better. While it was introduced in the Criminal Procedure Law and the Civil Procedure Law in 2012, courts had not been clear about admitting electronic evidence due to it being easily modified or misinterpreted (Lu 2020: 105). This issue changed when the HIC determined the legal effect of electronic evidence stored by blockchain. In a particular case from 2018, the HIC provided a review method for examining and admitting blockchain-based evidence (Lu 2020: 107-111).

Following the “Zhejiang Model”, the HIC was developed in cooperation with Alibaba, which played a crucial role in the design and operation of the court. Much like the first pilot trial, Alibaba provides functions such as identity verification through Alipay, electronic evidence, data encryption, storage and monitoring. As Xu (2017a) noted, the involvement of a private company in the construction of an adjudication system causes serious conflicts of interest. Mingay (2019) concurs that this type of public-private cooperation allows big tech companies to assert their commercial influence to enter the domain of regulatory authorities. It enables them to affect the content and infrastructure of the (e-commerce) formal litigation system. Nonetheless, a year later, in 2018, the SPC launched two more Internet Courts in cooperation with local tech companies (Guo 2019a).

In 2018, the SPC issued new *Provisions on Several Issues Related to the Trial of Cases by the Internet Courts* (SPC 2018c). The goal was to regulate internet court activities better. With the establishment of the BIC and GIC, it was time that national regulations replaced individual internet courts’ regulations. The document grants the Internet Courts clearer jurisdiction over certain types of cases. Generally, it expands jurisdiction from Internet-related e-commerce disputes to broader disputes covering financial loan contracts, ownership and contract disputes, copyright disputes, property rights, and administrative acts. Simply put, any dispute arising through Internet activities should be handled by the Internet Courts.

It covers all procedural steps of a judicial process and explains how they should be conducted through the Internet Courts’ online litigation platform. It covers online evidence exchange and examination (articles 10 and 11), online trial hearings (articles 12-14), serving of documents and

materials (articles 15-17), and so forth. The document also clarifies the procedures for appeals. Since the Internet Courts only have jurisdiction over first-instance cases, a separate court has to be designed as its second-instance court. These courts, in principle, also have to conduct the second-instance trial hearing online and follow the Provisions.

A dual-track approach of local experimentation is paired with temporary national provisions to guide this local experimentation towards a more uniform system. Nonetheless, some uniformity in Internet Court procedures was relatively easy to achieve. What would prove more difficult was standardising other aspects of SCR that moved beyond Internet-related jurisdictions.

3.4.3 Shanghai High Court's 206 System (2017)

Cui (2020: xiv-xxi) embeds the development within its reform context (see chapter 2). He argues that the 206 System was a way to help achieve “trial-centeredness”, namely strengthening the role of the trial in the judicial process. Supposedly, the software helps to ensure that the trial plays a decisive role in fact-finding, evidence-identification, rights protection, and fair judgment. He states, “substantive justice of case judgment can be achieved through procedural justice”.

Once the Shanghai High Court received the task to develop an AI system for trial hearing reform, it collaborated with a private partner, iFlytek, to develop it (Cui 2020: 62). iFlytek is a state-owned enterprise (SOE) that specialises in voice recognition software and closely collaborates with the Chinese state in numerous other digitisation and automation initiatives. Together, they set up a task force composed of staff from Shanghai's courts, procuratorates, public security organs, and technical staff from iFlytek. Therefore, this system was researched and developed by both legal and technical experts (Cui 2020: 62-64). Initially, the purpose of the 206 System was to assist investigators, prosecutors, and judges in handling criminal cases. A human remains in the loop and remains the final decision-maker. It, therefore, functions as a kind of judge assistant (Cui 2020: 67-68).

The 206 System is connected to a series of databases to access the raw big data required to develop the AI. These databases contain criminal evidence standards, case information, case files, court decisions, guiding and typical cases, and laws and regulations (Cui 2020: 70-71). Cui (2020: 72-76) describes a list of 26 functions, giving better insight into what the 206 system is supposed to do. These functions can be divided into three categories: assistive - management - and oversight.

3.4.3.1 Assistive functions

The 206 System is primarily an assistive system meant to improve the efficiency of case-handling personnel during (pre-) trial hearing work. The System can help with evidence standards, reviewing arrest conditions, verification of procedures, assessing social harm, reviewing speech evidence, helping with the interrogation of suspects, finding and displaying relevant evidence during trial hearings, providing real-time references to judges, handling cases with summary procedures (even automatically generating judgments), other legal services, and search for criminal records of suspects.

Its primary contribution to justice administration lies in these assistive functions, especially in enhancing evidence procedures. Especially within the context of “trial-centred reform”, it is crucial that the trial hearing becomes a stage that enables the contestation of evidence. As discussed in chapter 2, courts are administratively weaker than public security and police organs, who submit the evidence when they bring a criminal case to court. In Chinese criminal proceedings, evidence is perceived as truth (Shytov and Duff 2019). Therefore, it is hard to contest it, even on procedures, for judges. In this sense, the different assistive functions that help with the enforcement and review of evidence procedures can be seen as a way for courts to leverage technology to improve their position vis à vis other judicial organs. As Stern et al. (2021: 542) note, this increased the workload for the police and procuratorate and received pushback. Therefore, the Shanghai 206 System provides an interesting case study for research on how technology and automation may change the relationship between the judicial organs in China’s political-legal system.

3.4.3.2 Management functions

The 206 System also functions as a basic management and organisation tool: it enables the easy transfer and sharing of digital files between the judicial organs, helps organise pretrial meetings between them, automatically generate court documents, share case notes, connect procedures, and manage confiscated assets. The system improves procedural efficiency by connecting departments and judicial organs and enhancing cooperation. It underscores the relationship between China’s justice organs, namely cooperation rather than checks and balances. All data and information should be seamlessly shared and connected. However, Stern et al. (2021: 543) again note that the abovementioned resistance might also hinder data-sharing or coordination across organs. As the

next section and chapter 5 discuss, digitisation and automation might exacerbate fragmentation across China's political-legal system.

3.4.3.3 Oversight functions

Lastly, the system also has recording and oversight functions. Every step of the judicial process taken in the digital environment of the 206 System is recorded. The System also makes full-course audio and video recordings of collegiate panel meetings, pre-trial meetings, interrogation, and even meetings by the adjudication committee. According to Cui, the recording and monitoring functions will enhance procedural adherence. It is unclear how this will affect judicial behaviour. Stern et al. (2021: 546-547) argue that constant surveillance of Chinese judges will increase their caution and avoidance of making decisions that stray from the mean.

In sum, these three examples showcase the patchiness of SCR in its early stages. Far from being the only examples, many courts nationwide rapidly embraced digital technologies and collaborated with local tech companies to develop new systems. While it shows the government's willingness to work with private industry to implement reform, it also exacerbates the issues of fragmented policy implementation.

3.5 Identifying Pain-Points and Key Tasks (2017-2021)

After the initial experimentation period that started around 2015-2017, the period between 2017 and 2021 saw a flurry of new SCR related initiatives and directives from the SPC.

The model of fragmented experimentation was central to the rollout and innovation of SCR, providing maximum agility and responsiveness while also shielding the central government from criticism should the systems have met with public pushback. This honeycomb-like pattern of siloed schemes with differing technical standards and practices has, however, caused no end of problems when it comes to integration at the regional or national level. Such unfettered expansion has come at the expense of uniformity and moderation, causing bottlenecks in the systems' standardisation that threaten their continued rollout, as well as their legitimacy in the eyes of policymakers and the wider public.

For example, the rapid embrace of digitisation and automation outpaced their incorporation into law. Without a coherent legal framework, there exists no strong legal basis for the digitised judicial

process, as procedural laws did not recognise the legal validity of electronic versions of submitted evidence, witness statements, etc. While local courts, such as the Internet Courts had issued relevant documents for digital processes, such as e-filing, they did not have national effect. Therefore, concerns emerged that this legal uncertainty and inconsistent regional regulations could undermine the credibility and ambition of the smart courts (Peng and Xiang 2020).

This section focuses on the SPC's identification of pain points and how they planned to address it in the new five-year plan and other authoritative documents. Chapter 4 goes more in depth on Chinese legal scholars' assessment of SCR.

3.5.1 The SPC Opinion on Accelerating Smart Court Construction (2017)

By far, the most important document issued by the SPC regarding SCR is the *Opinion on Accelerating Smart Court Construction* (SPC 2017a). It was the first SPC directive that mentioned the SCR by name in its title. While still very general in its aspirations and scarce in details, it created more coherence in principle and spurred courts to develop their own smart court systems.

Its primary contribution is the comprehensive and explicit definition of the term “smart court”:

Smart courts are people's courts that make full use of advanced information systems to support online handling of all business, full-process disclosure in accordance with the law, and all-round intelligent services to achieve a fair judiciary, and a judiciary that is organised, constructed, and operated for the people.

It outlines the three principal targets of giving play to the “function of advanced science and technology”: serving the people, serving adjudication and enforcement, and serving judicial management. In this, it calls on courts to uphold unified planning, indicating already that there is a need for more top-down coordination. It asks courts to integrate all their applications into a centralised platform. Some courts digitised and automated processes incrementally, building different systems and platforms with different goals over the years. This led to fragmentation within courts, on top of fragmentation between courts.

This document's call for more unified and top-down planning does not necessarily hint at more consolidation. Rather, the Opinion (SPC 2017a) is a clear signal to courts that the experimentation phase with local trial pilots is over and that the general direction has been established. All courts are now engaged in the reform of digitising and automating justice. In this, it calls on courts to fully recognise the significance of SCR and its objectives:

Correctly understand the work objectives of construction smart courts. Constructing smart courts means a networked, transparent, and intelligent people's court informatisation system, supporting the online handling of all business, lawfully disclosing the entire process of trial enforcement, offering comprehensive intelligent services for judges, litigants, society, and government departments, using informatisation to practically serve adjudication and enforcement, making the judiciary closer to the people, using advanced information technology to unceasingly increase the scientific management level of people's courts at all levels.

It also stipulates requirements for SCR, i.e., upholding unified planning by using 5-Year Development Plans and the SPC and provincial high courts as guides. This is a reiteration of the guiding role of the central judiciary in SCR and stands in contrast with how SCR has been implemented up until that point (Zheng 2020; Stern et al. 2021). It asks courts to improve integration and sharing of information both internally between intra-court departments and externally between courts.

The remaining five sections of the Opinion (SPC 2017a) focus on different aspects of smart court building. The first section discusses how courts should provide strong basic support for informatisation: it asks courts to establish network systems that allow secure data transfers between different cloud network systems, build a comprehensive internal platform that integrates all applications, and connect internal management work with external judicial services.

Second, it calls on courts to leverage technology to enhance the quality of trial work further. SCR initiatives need to focus on making the operations of trial hearings more efficient and orderly: this requires a fully digital judicial process that allows for “full traceability, dynamic oversight, and early warning[-systems] [...]” Interestingly, this document is the only SCR policy document that notes that informatisation is meant to promote the “organic unification of procedural and substantive justice”. However, the merging of procedural and substantive elements of justice in SCR is a recurring theme in official policy documents. Chapter 6 further investigates what this means.

Improving the quality of trial work also implies improving the enforcement of judicial decisions. SCR should offer the solution to the judiciary's well-known enforcement problem by better integrating the different actors that play a role in enforcement (police, procuratorate, administrative institutions, and so forth). Lastly, SCR should improve access to justice by making filing cases and other procedural steps for litigating parties easier and more convenient. Through digitisation and automation, it wants to “strengthen the sense of achievement” among litigating parties. As stated

in the previous chapter, Chinese courts suffered a serious legitimacy crisis, and their rapid embrace of advanced technologies is a bid to improve their standing among the public and other actors in China's political-legal system (Chen and Li 2020a). One way of doing this is to change people's perceptions about the effectiveness of going to court.

Third, it requires courts to use informatisation further to promote transparency and convenience of court work by expanding the three transparency platforms and building a multi-channel disclosure platform, such as websites and WeChat platforms, allowing people easier access to court information.

Fourth, courts need to leverage big data and AI technologies to provide more accurate and smart services, reduce the administrative burden on judges, and provide smarter litigation and legal educational services for people. Interestingly, it asks court management to use this technology to increase the scientific level of judicial decisions. The idea that computers are more accurate, objective, and "scientific" is deeply rooted in the Chinese conception of governance. Chapter 5 examines the ideological foundations of this conviction.

Last, it underscores the importance of creating adequate safeguards and security measures for the storing and sharing data. Given the sensitive nature of some court cases and the work accounts of court personnel, this infrastructure must be sufficiently protected.

3.5.2 The Five-year Development Plan for the Informatisation Construction of the People's Courts (2019-2023)

Another important document is the next *Five-Year Development Plan for the Informatisation Construction of the People's Court* (2019-2023) (SPC 2019a). Strangely enough, unlike other Five-year plans, this plan is updated on a rolling basis, with the five years increasing yearly. In 2021, the SPC passed the Development Plan for the period (2021-2025), but the document is unavailable to the public (SPC 2021f). Therefore, the latest publicly available plan at the time of writing (early 2023) is the 2019-2023 version.

In this Development Plan (2019-2023), the SPC reported that the "main body of the People's Court informatisation 3.0 has been established, and the smart court has moved from preliminary formation to comprehensive construction." The Development Plan lists the achievements of court

informatisation and discusses the tasks for the next five years. The main theme of the discussed achievements is improving interconnectivity and information management.

The period between 2017 and 2019 focused on interconnecting as many courts as possible on a national court private network, forming a “relatively complete information infrastructure with intra-network interconnection”. The SPC connected with various political-legal departments to enable collaboration and information sharing for enforcement and control. SCR does not only refer to the digitisation and automation of legal courts but also to improving digital interconnectivity and information sharing between all actors of the political-legal system.

According to the Development Plan (2019-2023), 95 per cent of courts have built informatised litigation service halls, 83 per cent established litigation service networks, and 78 per cent established a hotline. These three elements of SCR make up what the Development Plan calls the “Trinity” Litigation Service Centre, which allows litigating parties and their legal counsel to participate in online litigation. These public-facing elements supposedly make judicial services more efficient and accessible. Many courts now have websites allowing parties to log in and file cases remotely. However, the litigation service hall is a physical expression of the current digital infrastructure.

These service halls are equipped with machines that allow litigants to submit their cases physically, but documents are immediately processed digitally to reduce the workload of court personnel. Courts require digital files to create a functioning digital and automated justice system. This caused much extra work in the early days because court personnel had to scan case documents manually. Therefore, case documents needed to be digitised from the beginning of the judicial process. This digital entry point is now also physically represented by these machines.

Different managerial elements within the judiciary have also been almost fully digitised. Ninety-six per cent of courts have built personnel management systems, and 90 per cent have built administrative systems and internal websites. Most notably, 100 per cent of courts have achieved full recording and monitoring of all aspects of case information. The Development Plan (2019-2023) also mentions that some courts have integrated their personnel information and trial information to enhance their personnel management system; it allows courts to “grasp the judges’ case-handling in real time, conduct individualised performance evaluations, [...] and promote judges to achieve self-discipline, self-assessment, and self-management”. As Stern et al. (2021)

noted, SCR is not only about centralising control and oversight over courts but also increasing internal oversight and monitoring of the work of judges. The case studies in chapter 7 go deeper into this.

SCR also achieved a breakthrough in centralising data management. High courts established data transmission and exchange systems, and provinces installed new systems to upload and exchange data from grass-roots courts in their jurisdictions and to aggregate court case information across the country to the SPC. It is an interesting development: as argued throughout this dissertation, SCR is mainly about centralising control and oversight over the judiciary. Therefore, it would include the facilitation of vertical data transfers. However, as discussed later, fragmentation continues to persist. Moreover, courts have complex hierarchical relationships (Ng and Chan 2021), and local courts would likely try to resist hierarchical oversight by refusing to share data. The issues with uploading court decisions to the CJO and bureaucratic resistance among judicial organs testify to this assumption (Luo and Kellogg 2022).

The Development Plan (2019-2023) also features a long list of “deep-seated problems” that have emerged over the continuous informatisation of courts. First, the overall planning and top-level design of informatisation construction is an issue. It complains that there exists a “disconnect between the construction plan and implementation”, technical standards are not up to par, digital and automatic applications lack a clear legal framework, and so forth. Therefore, the “guiding role” (*zhidao zuoyong*, 指导作用) of development planning needs to be strengthened.

The plan calls for more integration and information sharing to establish full-process digital litigation services. It says that most litigation services are limited to online case filing and online notifications. Courts need to improve the digital treatment of evidence and coordination between internal and external departments. The plan addresses a pain point of SCR where courts were digitising different stages of the judicial process but rarely the entire process from start to finish. This practice creates bottlenecks between already digitised external judicial services and internal back-office processes that are still conducted offline.

Another issue was the lack of computing and storage devices to meet the growing demands of court services. Despite the achievements mentioned above, the Development Plan (2019-2023) also admits that interconnectivity is imperfect and information exchange between departments is low. This issue is spread unevenly across the country: according to the plan, the application rate in

various regions needs to be more balanced, and some courts must catch up. The plan acknowledges the issue of “emphasising construction and light application”, calling out courts that might market themselves as implementing SCR but where the new tools are not actually used.

The Development Plan (2019-2023) also includes a long list of construction requirements, development ideas and goals, and key tasks. For brevity, we outline only a few of the general key tasks. The first is strengthening top-level design based on the five-year development plan. It should be reviewed every year. Technical standards should be included in the plan. It calls on provincial high courts to play a role in expanding standardisation. It also announces a new evaluation index system to measure the progress of smart court construction.

Next, it calls to accelerate system construction (referring to how systems should operate, what applications they include, and what functions they have), focusing on expansion and integration. Smart court applications need to be expanded and, at the same time, better integrated with broader SCR systems and platforms. This integration must also lead to more sharing between higher- and lower-level courts. It also dedicates many tasks to establishing a new cybersecurity system to protect all the digital information generated by SCR applications sufficiently. However, the simultaneous call for more data sharing and protection might be self-defeating. Local courts are basically given munition to refuse to share data or make data-sharing more difficult in the name of security and sensitivity. It goes against the call for more sharing between hierarchical levels of courts. It is uncertain how SCR will resolve this issue, as it continues to persist at the time of writing. The issue of “information siloes” (*xinxi guidao*, 信息孤岛) features prominently in SCR, and future chapters elaborate on this.

A last point of interest is the claim that informatisation needs to help promote the “proceduralisation of trial work” (*shenpan gongzuo chengxuhua*, 审判工作程序化). This task substantiates one of the arguments of this dissertation that SCR is seen as a way to enhance and institutionalise procedural reforms. The framing of IT as something that can enforce procedural compliance is a key theme of SCR. Notably, the Development Plan (2019-2023) implies that the end goal of informatisation, and, therefore, SCR is to build a “systemic iron cage” or a “digital big-data iron cage” around adjudicators. The Smart Court Opinion (SPC 2017a) states that smart courts should promote “the organic unification of substantive and procedural justice”. This statement implies that digitisation should improve adherence to procedures but that these procedures remain in service of substantive

outcomes. Therefore, with other judicial reforms, SCR may be about improving and better enforcing judicial procedures at the cost of human discretion. Judicial reformers believe that this makes the judiciary more efficient, consistent, and fairer (Hu 2019). In this sense, automation might not refer so much to adjudication automation. Rather, it refers to the reduction of human agency in making discretionary decisions during the judicial process. Chapters 6 and 7 go deeper into this argument.

In sum, the Development Plan (2019-2023) indicates the end of the experimentation phase. While it recognises many of the rapid achievements made since 2015, it also recognises that this came at the cost of uniformity and compatibility. This cost has created numerous issues, which I will return to throughout the next chapters. In 2021, the SPC issued national Rules for online litigation and smart court operation. National Rules issued by the SPC are more authoritative than their directives, often formulated in Opinions and Provisions. They overrule any local procedural rules, and all courts must adopt them.

Figure 1: The Smart Court Information System

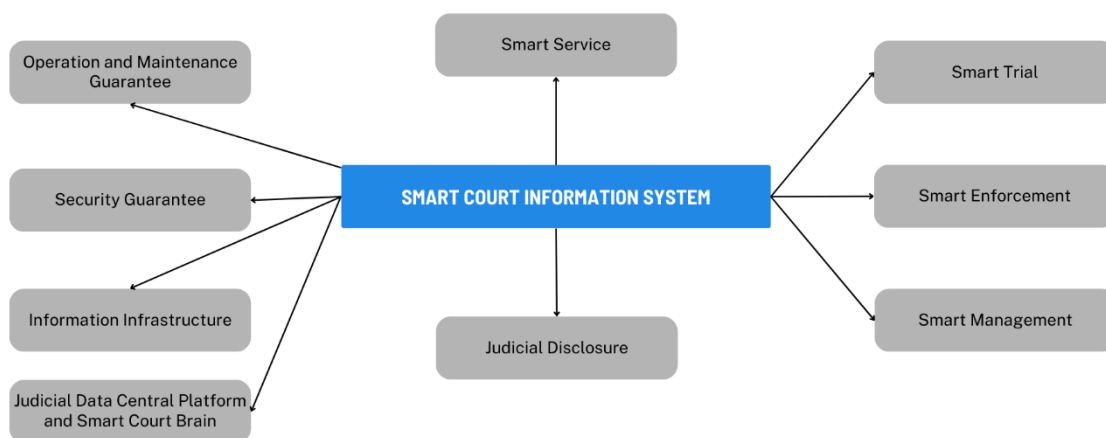


Figure 2: The Smart Service System

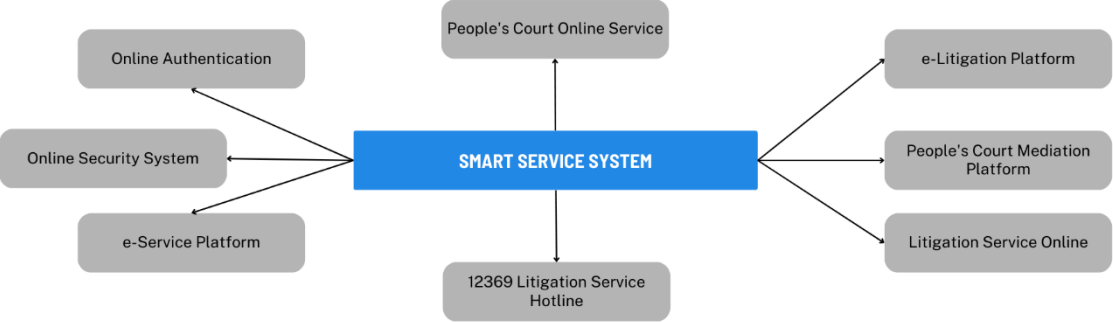


Figure 3: Judicial Disclosure Platform



3.6 Consolidation and Legal Framework (2021-2022)

According to an SPC research report in 2022, the third phase of People’s Court Informatisation is officially complete. Smart courts can conduct all judicial operations completely online, have achieved full disclosure of the judicial process through digitisation, and can provide all-around intelligent services. By the end of 2021, electronic or online litigation was used in eighteen per cent of judicial trials nationwide, a seventeen per cent-point increase from 2016. The next phase, People’s Court Informatisation 4.0, will build “all-round intelligence, full system integration, full business collaboration, full ubiquity over space and time, and full system autonomy” (Wang and Tian 2022b).

Likewise, SCR has seen the introduction of regulatory and procedural standardisation at the national level. In 2021 and 2022, the SPC introduced national rules to standardise and unify SCR. In quick succession, the SPC issued the *Online Litigation Rules* (OLR) (SPC 2021b), the *Online Mediation Rules* (OMR) (SPC 2021c), the *Online Operation Rules* (OOR) (SPC 2022b), the *Opinions on Strengthening the Judicial Application of Blockchain* (Blockchain Opinion) (SPC 2022d), and, lastly the *Opinion on Regulating and Strengthening the Applications of Artificial Intelligence in the Judicial Field* (AI Opinion) (SPC 2022c). The publication of these documents

indicates that the stage of consolidating experiences and unifying practice has begun. They are the first step in standardising smart court procedures. This last section discusses these documents.

In the future, the National People's Congress (NPC) might draft a national law related to online procedures on par with the Civil and Criminal Procedure Laws (Papagiannas 2021a). These documents aim to unify and standardise the smart systems and their application, operation, and management (OOR, article 1). They ask for more coordination and planning from the top (OOR, article 2.3), which, together with the circulation of these Rules, is a strong signal of more centralised planning and coordination. The Blockchain Opinion also signals a focus on improving interconnectivity, collaboration, and information-sharing between courts and other sectors and standardising the use of blockchain systems in the judicial system at a national level (Deng 2022). In this last section, I discuss and examine these latest regulations.

The first sign that consolidation was underway was when the SPC issued the *Provisions on Several Issues Related to the People's Court's Handling of Cases Online* (SPC 2021d). This document was published after the outbreak of the COVID-19 virus in 2020, which forced courts to accelerate their digitisation efforts to continue hearing trials online.

The provision has 36 articles covering the meaning and scope of online litigation, the role of consent, evidence treatment, trial hearings, and digital service of documents. Most notable is the concept of consent: online litigation requires the parties' consent. However, courts can opt to conduct a dual offline-online track for the litigation process where one of the litigation parties refuses to participate in online proceedings. It means that at any point in time during case proceedings, a party may revoke its consent and request to continue offline.

Regarding efficiency, including expedition and simplification of the judicial process, the issue of consent seems counterproductive. The dual track of offline/online proceedings will likely increase courts' workload and complicate matters. At the same time, though, SCR also aims to improve judicial services and credibility. The strong focus on consent could be a trade-off with efficiency and ensures that litigation participants feel that they have a sense of agency and control over the trial proceedings, which is an important element of perceived procedural justice (Sela 2019).

Articles 9 through 17 are dedicated to submitting, exchanging, and verifying electronic evidence. Evidence may be submitted through scanning, copying or transcription to digitally process and upload it to the litigation platform. These digital representations have the same validity as the originals, and the originals do not need to be submitted to the court except in specific circumstances. Articles 10 and 11 discuss the conditions to determine the validity and authenticity of the digitally submitted evidence. The court will require the parties to submit the original in specific circumstances.

A major concern remains the verification process. The Provisions (SPC 2021d) try to address this by allowing for notarisation of the creation process, but as Lu (2020) already discussed, the associated cost is high. The Provisions (SPC 2021d) also allow the use of blockchain evidence (article 14-17), which is considered a digital evidence integrity protection method. Blockchain evidence refers to evidence submitted by the party that is recorded through blockchain technology. According to Lu (2020), Chinese courts are already using blockchain, helping to improve the credibility and authenticity of electronic evidence. It is also a cheaper alternative than the notarisation of electronic evidence, which is costly.

The treatment of evidence has long been problematic in the Chinese judiciary (e.g., see Capowwski 2012; Guo 2020; Zhang 2021). Therefore, the increased application of a reliable tool to ensure authenticity is a positive development. However, it remains to be seen whether other judicial organs, especially in criminal justice, are willing to adopt it. Its success largely depends on large-scale and widespread adoption. As Stern et al. (2021) noted, horizontal bureaucratic resistance exists within the judiciary against SCR. Using blockchain evidence will also increase the strain on relations between judicial organs. According to Lu (2020: 119-120), the application of blockchain in China's judiciary has already positively impacted its efficiency. However, blockchain is not a silver bullet that can magically automate evidence verification. The chained information remains a part of the entire case and needs to be interpreted by the judge in combination with the other facts.

In addition, the Provisions (SPC 2021d) allow for asynchronous trial proceedings, albeit only for small claims procedures and administrative summary procedures. Although this option is significant for goals such as access to justice (people are unrestricted by specific times and other commitments), the limited scope of application diminishes the potential impact. Furthermore, courts are empowered to choose an offline trial hearing in certain circumstances, such as

complications with the evidence, technical conditions, or in “other circumstances that are not suitable for online trial”. This last circumstance most likely entails highly sensitive cases related to social stability, giving courts a certain degree of discretion that arguably limits the potential of online litigation.

Especially worrying is the immediate waiver of litigation rights if a party fails to complete the online litigation activities within the specified time limit. It needs to be clarified what this means for the case proceeding. There are no provisions for appeal, and the exact conditions need to be clarified. While consent to online litigation precludes appeals because of deprivation of procedural rights, the Provisions (SPC 2021d) do not plan for unforeseen circumstances that may hinder parties’ completion of required procedures within the time limits. There could be many reasons for “failure to participate” or failure to “complete litigation activities asynchronously”, such as technological barriers, internet connection, technological (il)literacy, and so forth.

The last part addresses the digital service of judicial documents. Service of judicial documents is another issue that the judiciary struggles with, as parties may change addresses and fail to inform the relevant authorities or not have a valid address. It is especially problematic when cases involve migrant workers, who are extremely mobile and often do not possess an official address. Digital service also allows the sender, i.e., the courts, to get confirmation that the service was successful. Therefore, the service of documents through digital means is a straightforward way to address this issue. The ubiquitous use of smartphones and instant messaging apps such as WeChat in the PRC will likely make the digital service the primary channel of serving documents for courts.

Therefore, the Provisions (SPC 2021d) remain quite limited in scope and leave some crucial issues related to access to justice, efficiency, fairness, and due process unaddressed. The next section analyses whether the new Smart Court Rules address these issues.

3.6.1 The Smart Court Rules

The Smart Court Rules, issued in 2021 and 2022, constitute the most authoritative documents that regulate and shape smart courts and online litigation in China. In this last section, I will analyse the OLR (SPC 2021b), the OMR (SPC 2021c), and the OOR (SPC 2022b). I examine whether these Rules and Opinions help address the identified pain points in this chapter and issues that emerged from the fragmented policy-implementation approach.

The SPC quickly decided to separate and clarify the distinctions between different judicial procedures: it separated online procedures into the two main judicial services, i.e., litigation and mediation. The third document aims to regulate internal operation rules. Therefore, I analyse the OLR (2021) and OMR (2021) together because they are externally oriented, whereas the OOR (2022) is oriented internally.

Despite their common internal orientation, the preambles of the OLR and OMR differ in their stated goals. The OLR's main goal is "to promote and standardise online litigation activities", "protect legal rights", and "ensure fair and efficient trial of cases". This sentence indicates three themes or goals: consistency (or standardisation), fairness, and efficiency. However, the OMR only mentions efficiency: its goals are to "facilitate" and "improve the efficiency" of resolving disputes. The reason for this might be simple: mediation is mainly voluntary and a non-legal way to resolve disputes, is easier for enforcement, and often satisfactory for both parties (Chan 2017: 5-12). The court only has to facilitate this process by acting as an intermediary and offering the (online) venue for mediation. Litigation generally only happens when parties cannot agree on a mutually satisfactory resolution, is often more antagonistic, and tends to be avoided by judges if possible (Ng and He 2017: 125-132). Therefore, issues of fairness and rights carry more weight in litigation.

That the OLR needs to consider more principles than the OMR is clear from the first few articles. Article 2 of the OLR discusses all the principles that the court must follow in conducting online litigation: the principle of fairness and efficiency, legality and voluntariness, rights protection, people's convenience, and, lastly, safety and reliability. In contrast, the OMR does not have such a provision, even though these principles are arguably also relevant for mediation.

OLR article 3 significantly expands the scope of online litigation. Table 2 shows the difference.

Table 2: Changes between the Provisions and the final Rules

Scope	Provisions 2021	OLR 2021
Civil and admin litigation	v	v
Special civil and oversight procedures	v	v
Civil and administrative enforcement case, enforcement of civil cases attached to criminal proceedings	v	v
Criminal expedited procedures, criminal cases, review of commutation and parole	x	v
Bankruptcy procedures and reviews of administrative enforcements	x	v
Other suitable cases	x	v

Whereas the Provisions (SPC 2021d) kept the scope of online litigation quite limited, only six months later, the OLR had already expanded it to criminal cases and added elements of civil and administrative cases. Interestingly, the OLR maintains a non-exhaustive list with the line “other suitable cases”, whereas the Provisions were exhaustive. It indicates that online litigation can be used in any case, depending on the court’s discretion and the parties’ consent.

Consent is another topic that the OLR emphasises. OMR article 4 briefly mentions the requirement of consent. In contrast, OLR article 4 is much more exhaustive on the issue of consent. It replicates most of article 4 from the Provisions (2021) but expands its content to three articles (OLR, articles 4-6). First and foremost, it underscores the importance of *informed* consent: In order for consent to be valid, courts must explain how online litigation is conducted, what the legal consequences are, and the parties’ rights and obligations. OMR article 7 also contains this provision but focuses on convincing and guiding parties to prioritise choosing online mediation.

Second, the OLR distinguishes between different forms of consent. The court considers parties to consent to online litigation when one or all parties voluntarily apply. It also allows bifurcation between online and offline proceedings when parties agree to online litigation in some procedures but disagree in others. The court clarifies that in this case, said procedures can be carried out online by the party who agreed to it and offline by the party who disagreed with online litigation for that specific procedure. This arrangement reconciles the differences in preference between parties and does not let the absence of consent stand in the way of the judicial process. While the Provisions (SPC 2021d) already provided for this kind of bifurcation, the OLR simplifies it.

Another addition is that the court may not equate consent by parties to conduct a *specific* procedure online with consent to conduct the *entire* litigation process online. It is important because it gives litigation parties more control over the judicial process. At the same time, consent hinders efficiency improvements, as the judicial process is significantly compartmentalised because of consent. However, it is likely that where SCR touches upon public-facing services, fostering a sense of control and fairness is more important to stimulate more acceptance of online litigation by the public.

What complicates procedures further is the requirement of consent from the Procuratorate. Over the past decade, the Procuratorate has overshadowed the police and further marginalised the courts (He 2022). Whereas the court still has final discretionary decision-making power over online or offline litigation and can leverage its judicial authority over private litigation parties, it does not have that luxury with the Procuratorate, a judicial actor at the same horizontal administrative level, but with significantly more leverage over courts in criminal cases.

Another change is the phrasing of the first paragraph in the Provisions (SPC 2021d): the “waiver of corresponding procedural rights” is removed in the new version. It is replaced with “[parties] will bear the corresponding legal consequences in accordance with relevant provisions of the law and judicial interpretations” (OLR, article 6). Although punishment remains, non-compliance does not explicitly lead to a deprivation of procedural rights. In sum, consent is important to the legitimacy of online litigation to foster a sense of fairness (Grimes 2006).

The Rules give litigating parties considerable control over proceedings. Whereas this raises efficiency concerns, the OLR has found a balance between the fairness-efficiency trade-off. Not granting or revoking consent during litigation does not necessarily hinder the judicial process.

Remarkably, parties are allowed to revoke consent in the middle of the judicial process. Courts do have the discretion to review, but there are no strict or clear conditions that parties need to meet to ask for offline proceedings or revoke consent. At the same time, though, courts also enjoy discretion to move proceedings offline, but this is conditional, e.g., the case needs to be too difficult or complex for online litigation, it requires witnesses to testify in person, or the court may find that evidence needs to be provided physically and cross-examined offline, rather than online. Ultimately, online litigation needs to remain optional, and ample room exists for moving between offline and online.

In contrast, the OMR does not have these considerations: as stated earlier, it is primarily geared towards efficiency and convincing parties to use the online option. There are also no provisions to bifurcate procedures into online and offline. Therefore, the OMR is more of a facilitation document, whereas the OLR is more of a (procedural) rights-giving document.

Lastly, the OOR (SPC 2022b) aims to regulate smart courts' internal procedures. It is important because it finally provides a clear and coherent framework for smart court operation and a clear understanding of what falls under the term "smart court". It covers the system construction, steps of procedure, and management of its operations. System construction relates to different systems (articles 4 to 13). These systems comprise the smart court: smart service, smart trial, smart enforcement, smart management, judicial disclosure, judicial data centres and smart court brains, general IT infrastructure, a network and information security system, and an operation and maintenance system. The section stipulates how each system *operates*, what applications it *includes*, and what *functions* it provides.

At the core of the smart court lies the judicial data centre and "smart court brain" (*zhihui fayuan danao*, 智慧法院大脑) (article 4). They include all the judicial databases and the data management and exchange platforms that enable smart courts to operate. They provide functions that allow courts to "operationalise" the big data they have at their disposal (article 10). The "brain" allows for data interconnectivity and supports collaboration between internal and external departments. Simply put, it is the engine of the smart court.

Articles 14 to 33 cover every procedural step of the judicial process and which system should be used for what purpose at each step. The first point of contact is the smart service system, which

allows litigation parties to register for online litigation or mediation. The smart service system is connected to other platforms, such as the court's online litigation, online mediation, and blockchain platform (for evidence submission).

Application and other documents are submitted through the smart service and smart trial systems. Payment of fees happens through the smart trial and smart enforcement systems. Documents submitted through the smart service system are verified and then processed to the smart trial, smart enforcement, and smart management system for circulation and use.

The trial itself is conducted through the smart trial system. The smart trial system also generates new digital files regarding the trial in real time. It is connected with the smart court brain, which processes the new data but also enables the smart trial system to push relevant legislation and cases for reference. The enforcement stage of the judicial process is conducted through the smart enforcement system, which allows for investigation and control of (seized) property, paying fees and fines, organising auctions, and so forth.

Finally, articles 34 to 44 cover operation management. Courts are required to formulate security management procedures and determine cybersecurity responsibilities. This section is less solidified than the previous two sections, reverting to broad directives on dealing with the data generated in smart courts. Courts must ensure data security throughout its life cycle and formulate procedures for dealing with data security emergencies and reviews. Courts must also draft contingency plans to effectively deal with sudden emergencies such as power outages, technical failures, cyber-attacks, and so forth. Lastly, all courts must prioritise using the national unified information system and integrate their local self-developed systems into the corresponding national unified system.

In sum, the three Smart Court Rules address multiple issues related to the initial development of SCR, i.e., the lack of a regulatory basis, the lack of clear procedures, and issues related to privacy and litigants' agency. These Rules consolidate SCR by issuing clear definitions and provisions and providing more national coherence. They call for more top-level design and underscore the importance of integrating with national-level platforms and systems. However, at the same time, they provide new directives and guidelines for further policy experimentation. The OOR illustrates how courts are still struggling to sufficiently protect all the sensitive data they now hold while simultaneously creating a sufficiently free flow of information between various horizontal and

vertical levels of the judicial system. As the PRC's data security and AI governance regime likely takes more solid shape in the coming years, SCR will also address these issues.

3.6.2 Regulating Blockchain and AI in Courts

The two last documents of this comprehensive review of SCR are the Blockchain Opinion (SPC 2022d) and AI Opinion (SPC 2022c). Both documents outline the overall objectives of blockchain and AI in courts until 2030, giving directives on the general principles, scope of application, and requirements for system construction. The general purpose of both documents is to align blockchain and AI development in the judiciary with other policy plans such as the *14th Five-Year Plan for National Economic and Social Development (2021-2025)* (NPC 2021), the *New-generation Artificial Intelligence Development Plan* (SC 2017), and the *14th Five-Year Plan for National Informatisation (2021-2025)* (CCCI 2021). In addition, both explicitly reference SCR, stating that they aim to promote the further construction of smart courts.

3.6.2.1 The Opinions on Strengthening the Judicial Application of Blockchain (2022)

The Blockchain Opinion (SPC 2022d) is the first central judicial document fully dedicated to using blockchain in the judicial process. Remarkably, it is also published in English, indicating that this also has a foreign audience in mind. The Opinion aims to leverage the role of blockchain to improve judicial credibility, efficiency, collaboration, and facilitate social governance.

Blockchain has been central to broader informatisation policies in China since 2016. Multiple central government institutions have already issued documents related to blockchain, such as the *White Paper of Blockchain Technology and Application Development in China*, which laid out a roadmap for blockchain development (Lu 2020: 103-104). The 14th Five-Year Plan (CCCI 2021) indicates that the Chinese government wants to achieve “notable advances” in cutting-edge technologies, such as AI and blockchain. It calls to foster a “healthy and orderly development of blockchain technology applications”: i.e., building standards and norms, improving testing and assessment, launching more blockchain-related initiatives, and so forth.

Therefore, the policy environment has been conducive to blockchain development. Blockchain has also been in use for several years in the judiciary. With this context in mind, the Blockchain Opinion was issued to accelerate the integration of judicial processes with blockchain, providing

key directives to standardise further and strengthen its application in the judicial process. The Opinion states that blockchain application has become widespread and that over two billion pieces of evidence have been sorted on judicial blockchain platforms nationwide.

The Blockchain Opinion focuses on six themes: national interconnectivity and sharing, creating construction standards for blockchain platforms in courts, expanding the application scope of blockchain beyond evidence, integrating blockchain with other processes, leveraging blockchain to improve collaboration, and using blockchain in economic and social governance. These themes of more bureaucratic interconnectivity, standardisation, integration, cross-institutional collaboration, and social governance recur across all general judicial reform and SCR goals. It is divided into seven chapters.

First, the Opinion envisions blockchain as the glue that binds the entire political-legal system together. By 2025, the SPC aims to have established a “blockchain alliance” that will fully connect all people’s courts and social sectors. It wants to integrate judicial blockchain in economic and social operation systems to enable information sharing and coordination between the political-legal and other sectors, e.g., commercial, financial, and social credit. These interconnectivity and integration principles are crucial to reaching the next stage of deeper collaboration and coordination between political-legal actors. It is necessary to develop common fundamental technologies through unified and open technical standards that facilitate deeper and more widespread standardisation across and between sectors.

As discussed earlier and in the following chapters, the fragmentation in SCR poses real problems for deeper integration and upscaling of future digitisation and automation. The SPC makes a clear bid for blockchain, one channel that opens up the “information-siloes” or connects the “data islands” between political-legal and other sectors.

Second, once again, the SPC calls to “strengthen top-level design”, meaning there needs to be more top-down coordination and systematic implementation of blockchain applications. It naturally ties into the aim to overcome fragmentation. Deeper blockchain application and integration between political-legal institutions are necessary to improve social governance. However, the technical capabilities must be improved by optimising technical standards and management specifications for its application to achieve this.

Chinese social governance functions like a feedback-loop system that allows the political-legal system to adapt to changing circumstances based on information that gets fed into it (see Chapter 5). However, for more efficient adaption, it is also necessary that the different actors that make up social governance are better interconnected. According to this document, interconnectivity is best achieved through blockchain.

The following three chapters discuss the use of blockchain to improve judicial credibility, efficiency, and collaboration. To improve credibility, it aims to leverage blockchain to enhance the trustworthiness of digital evidence and ensure better compliance with enforcement. To improve efficiency, the SPC aspires to automate procedures such as docketing cases after their classification and categorisation, starting trial proceedings when mediation has failed, investigating, freezing, and seizing property in eligible enforcement cases, all through blockchain technology. It also improves collaboration by automating the verification of lawyers' qualifications, facilitating case handling between political-legal actors, and enhancing enforcement that requires cross-departmental cooperation.

Lastly, it details how blockchain should be leveraged to improve economic and social governance trustworthiness. It calls to build blockchain platforms to protect intellectual property better and improve the business environment through market regulation and property and transaction registrations. Blockchain platforms support the better and more secure circulation of financial information. In addition, the SPC (2022d) wants to leverage blockchain to build the credit system further to enable more secure and reliable circulation and use of information on judgment debtors' blacklists. Ultimately, it needs to improve a "new credit-based supervision mechanism" and stimulate the "construction of the social credit system".

In short, the Blockchain Opinion focuses on improving interconnectivity and cooperation between actors within the broader political-legal system internally and externally with other economic and social actors. It presents blockchain as the glue that will help achieve a more seamless collaboration between these actors. Tellingly, the keyword in this document is "interoperation collaboration" (*kualian xietong jizhi*, 跨链协同机制). If AI is the motor that drives the automation of justice, then blockchain platforms are the nuts and bolts that bind the different cogs together within the social governance machine.

3.6.2.2 The SPC Opinion on Regulating and Strengthening the Applications of Artificial Intelligence in the Judicial Field (2022)

The AI Opinion was issued in late 2022 and is the latest (at the time of writing) SPC document to standardise and improve the use of AI in the judiciary. It has four principal goals: to strengthen its use in the entire case-handling process, in helping with clerical work, and in helping with diverse dispute resolution services and social governance (SPC 2022a).

The Opinion discusses the application scope, system construction, and comprehensive support concerning using AI in the judiciary. Its objectives are two-fold: by 2025, the SPC wants to deploy AI to support external judicial services and internal management, especially administrative work. By automating these processes, it wants to improve oversight and control functions to reduce judicial corruption and enhance the role of courts in social governance.

By 2030, these goals must be upscaled: AI must provide whole-process high-level smart support with more explicit norms and principles, significantly reduced workload, and more precise social governance functions, ultimately achieving “full application effectiveness”. In other words, AI needs to be fully operational and widespread across all courts by this date.

The Opinion also outlines the general principles for using AI in justice administration. AI must adhere to the principles of security and legality, fairness and justice, its supportive role, transparency and credibility, public order, and good customs.

Regarding fairness and justice, it states that AI products and services should be free from discrimination and prejudice. The Opinion underscores that AI can never impair the fairness of judicial processes or trial outcomes. It aims to offer fair, reasonable, and feasible solutions based on judicial demands. Furthermore, the Opinion affirms the supportive role of AI in adjudication: the human user will always maintain their decision-making authority. AI is not meant to make judicial decisions and can only be a reference tool for adjudication, management, and oversight. Using judicial AI may also not damage public interests and social order and not violate public morals and ethics. To achieve this, the Opinion calls to establish mechanisms for risk management, emergency response, and responsibility investigation in case of risks to morality and ethics.

The Opinion also clarifies the scope of application for AI. Simply put, it ideally wants to use AI at every stage of the judicial process. It aims to use AI in case-handling procedures, such as evidence guidance and review, and providing adjudicating assistance. Furthermore, AI must play a crucial role in administrative work and management. AI tools are needed to help detect deviations and irregularities in judicial procedures and other “prevention and control” mechanisms against judicial corruption to maintain judicial integrity. In addition, the Opinion indicates a willingness to further expand the use of AI in the judiciary, specifically AI services for dispute resolution and social governance. For example, AI tools must help the judiciary detect and assess risks to social governance better.

Like many other central-level documents, the AI Opinion also calls for strengthening top-level design. Moreover, it states that the SPC shall now guide and regulate AI system construction of courts at all levels across the country. At the same time, it will broaden the application scope of judicial AI while strengthening internet-, data- and personal information security. It could mean that the SPC will get more hands-on with developing AI systems in local courts. The document is a strong signal of a top-down policy push, but how local courts will receive this remains to be seen.

The Opinion also calls on the judiciary to support the research and development of judicial AI. Therefore, courts are expected to support innovation, encourage patent applications and copyright registrations, and provide other types of comprehensive support that will facilitate further integration of AI in the judicial process. This is in line with the general public-private partnership approach that the judiciary has taken in developing AI systems for the judiciary. In this sense, it depends on the success and cooperation of tech companies in developing AI applications.

In the typical fashion of central-level documents, both the AI Opinion and Blockchain Opinion contain grand goals and broad directives with little detail. The former is especially sparse in details. However, it is notable that it mentions that the SPC will take the lead in guiding further development of AI systems. It might indicate a more hands-on approach to local policy implementation, but it is unlikely to resolve the fragmentation issues completely. A possible consequence could be that the SPC will coordinate to set up cross-provincial judicial platforms and AI systems. However, at this stage, this remains purely speculative. As stated, AI is the driver of automation, and blockchain is its nuts and bolts. However, the oil, i.e., big data, without which automation cannot survive, remains jealously guarded by governments and judiciaries at all

hierarchical levels. Information asymmetry in Chinese policy implementation and governance is an age-old issue (Zhan and Qin 2016) that digitisation and automation cannot solve overnight.

Nonetheless, the ambitions of the judiciary to use blockchain and AI to strengthen the judicial process and its social-governance role as part of the broader political-legal system are clear. These two Opinions are a clear starting shot for the next step in court informatisation that will increasingly expand and upscale the use of technologies such as AI and blockchain.

3.7 Conclusion

This chapter provided a comprehensive and chronological review of the official documents that make up SCR. It showed how SCR followed the typical trajectory for Chinese policy development: it starts with a signal from the centre giving broad directives and aspirations but with little detail. It signals local governments to start experimenting within the given framework. Local experimentation in policy implementation naturally leads to fragmentation: different regions focus on different elements, partner up with different tech companies, maintain different standards for system construction, and so forth.

Consequently, what constitutes a “smart court” can vary depending on which court one looks at. This variation is not necessarily a negative consequence, as it allows the Chinese party-state to move fast and experiment and then pick and choose between successful initiatives to use them as “model cases”, i.e., successful policy initiatives that should serve as an example of future reform, and other governments or courts are expected to emulate. However, it also leads to many pain points, such as compatibility, legality, and legitimacy issues. Especially with the SCR, the nature of the reform and the role of data and digital technologies exacerbated these problems. Moreover, fragmentation contradicted its goals, i.e., creating a more consistent and homogenous judicial system.

SCR started by creating three national digital platforms, obliging all courts to digitise their processes, upload, and make their court decisions publicly available. While it aligned with transparency reforms and attempts to improve the judiciary’s public credibility and legitimacy, it also aimed to increase vertical control and oversight over local courts. It shows how information, in the form of digital data, is often the object of bureaucratic resistance and hierarchical control: local courts, as an administrative bureaucracy, want to maintain ownership and authority over their

information. Forcing them to put it in a central database equals asking them to surrender their advantage in the information-asymmetric relationship with the SPC.

This chapter also reviewed three examples of SCR initiatives to showcase different systems' foci. Each court, whether at the national, provincial, or municipal level, has its considerations and trade-offs to make but is also driven by different goals: the national Faxin Smart Push System aims to improve judicial consistency by providing relevant legislation and decisions for the reference of judges. The Internet Courts mainly focus on providing more efficient and quick judicial services for online commercial and other Internet-related disputes. Lastly, Shanghai's AI System mainly focuses on enhancing procedural compliance in processing evidence. All three initiatives were developed in partnership with three different private players, which caused different issues relating to conflict of interest, fairness, and quality.

Starting in 2017, SCR took off in earnest while the SPC simultaneously formulated a more coherent policy, giving clear guidance on what a smart court should look like. The consequences of fragmentation became clear and were addressed in development plans throughout this period, paving the way towards consolidation. Consolidation, especially legal, came in 2021 and 2022 with three landmark national rules regarding smart courts. They provide a legal foundation for smart court operations, online litigation, and mediation procedures. 2022 closed with two important SPC Opinions on the use of blockchain and AI in courts. Although these two Opinions remain scarce in detail, they provide a more coherent direction for the future development of blockchain and AI.

Important to note is that this trajectory is not linear: experimentation and consolidation go hand in hand. Some smart courts preceded the invention and definition of the terminology in the SPC Work Report (SPC 2016d). By the time of the Smart Court Opinion (SPC 2017a), there already existed many different initiatives related to smart courts. It explains why the Smart Court Opinion focused on general principles and tried to reassert the guiding role of the central judiciary to bring more cohesion in future development, albeit only in principle. Likewise, the use of AI in adjudication precedes the AI Opinion (SPC 2022c). The document does not announce the application's start but wants to strengthen and regulate ongoing and future use of AI. The goal is again to bring coherence to policy implementation by centralising the focus after a few years of fragmented development. In this sense, these directives do not function as starting points of policy development but rather as a way to rectify and address pain points and provide more coherence and consistency for future

development. Therefore, SCR is a meandering and iterative process where top-down directives and bottom-up initiatives occur and interact simultaneously.

Chapter Four: Ideological Foundations for Automation of Justice and Governance¹¹

4.1 Introduction

In 2019, Cui Yadong, a former president of the Shanghai Municipal High People's Court, claimed that AI would turn justice into a real science. He added that science would make adjudication fairer and more efficient (Hu 2019). This remark revealed a common conviction among China's intellectual and ruling elites: that governance and justice must be "scientific" to be legitimate and fair (Bakken 2000). This chapter asks what ideological foundations lie at the core of this claim and how they explain the PRC's push towards digitisation and automation of courts and its broader political-legal system.

It argues that the positivist organisational and ideological principles of Marxism-Leninism help explain why technology and automation are embraced so enthusiastically by the Chinese party-state: they offer a way to achieve the dream of rational Marxist governance. As chapter 3 shows, China has rapidly expanded the integration of advanced technologies with its governance and justice apparatus, leading to the widespread digitisation and automation of judicial and government services.

The Chinese Communist Party's Central Committee (CCPCC) has designated technological development as an important driver in the "modernisation of the national governance system and governance capacity" (*guojia zhili tixi he zhili nengli xiandaihua*, 国家治理体系和治理能力现代化) (CCPCC 2013, 2019). The Chinese government sees AI as a key tool for overcoming various social, moral, and environmental challenges (Roberts et al. 2021: 65).

This development is encapsulated in the term "smart governance" (*zhihui zhili*, 智慧治理). Smart governance entails new approaches to social and political control by the political-legal system in China that leverages advanced technologies driven by algorithms, AI, and big data analysis. It can also be described as digitising and automating social governance, a holistic policy approach to

¹¹ This chapter is based on a reworked version of my article "Smart Governance in China's Political-Legal System". See: Papagiannas, Straton 2023b. Smart Governance in China's Political-Legal System. *China Law and Society Review* 6:146-180.

public security and stability maintenance. The framework of social governance and its objective to maintain stability is the primary objective of China's political-legal system.

Automation is allegedly conducive to the “scientific and objective administration of justice” (*kexue keguan de sifa*, 科学客观的司法). In parallel with China's judiciary, other Chinese governance institutions have leveraged technological innovations to improve administration and implementation and control and manage public life (Creemers 2018; Sprick 2019). This includes using AI in education, cities, traffic management, and social governance (Elliott 2020).

Contrary to the common misconception that China lacks debate around the ethics of AI and automation, ethics played a central role in China's rapid digitisation and automation drive (Gal 2020). In the past few years, China's legislature and executive have moved to regulate AI's future development and establish new ethical norms to support the continued digitisation and automation of public and private life.¹² In this way, China's regulatory regime for automation and AI is rapidly taking shape (Sheehan 2022).

These developments in rapid digitisation and automation in China's political-legal system are a manifestation of specific ideological convictions. One important element is the association of AI with impartiality and scientific objectivity, with a promise that it will fundamentally transform and improve governance. This assumption explains the general acceptance of AI by the political-legal system in social governance and justice administration. For example, in a survey of Chinese internet users and legal aid seekers on the automation and digitisation of Chinese courts, Chen and Li (2020b: 42-51) found that the vast majority of online respondents perceived computer algorithms and related technology to be beneficial for law and legal institutions. The mass digitisation and publication of judicial decisions increased confidence in the justice system: Online respondents believed that introducing big data and machine learning would enhance the accuracy of legal outcomes. Respondents among legal aid seekers were more divided but generally held positive attitudes toward the automation of judicial services.

China has demonstrated great enthusiasm for advanced technologies in its governance system, albeit for different reasons. AI and algorithms are perceived as scientific, reliable, and impartial.

¹² See, e.g., the Cybersecurity Law (2017), Personal Information Protection Law (2021), the Data Security Law (2021), and, most recently, the Algorithmic Recommendation Management Provisions (2022).

Previous scholarship has examined Marxist-Leninist axioms that underpin Chinese theoretical conceptions and justifications of the world that drive the rapid adoption of these new technologies (Voegelin 1948; Munro 1971). This chapter builds on this scholarship to argue that the CCP has a strong ideological affinity with quantification and automation. Its “scientific and objective” (*kexue keguan*, 科学客观) approach to law and governance is driven by Marxist-Leninist ideas about the malleability of humans, social control, technological determinism, and rational governance (Hua 1995; Hoffman 2017; Gueorguiev 2021). This Marxist-Leninist approach reduces human morality and society to a set of scientifically objective truths (Bakken 2000). Automation technologies are, therefore, important elements in building a scientifically objective mode of governance because they cater to the belief in science as the primary legitimating principle for governance decisions (Creemers 2020).

To get a handle on these ideas and illustrate the salient of such ideas in shaping discourse around smart governance in the PRC today, this chapter analyses debates by PRC intellectual elites over the “smartness” (*zhihuizhuan*, 智慧化) of China’s governance, that is, smart governance, with a particular focus on the discourse around automation technologies. It uses the theoretical frameworks by Hoffman (2017) and Gueorguiev (2021) to reveal key themes and attitudes that recur in the debate over automation and the smartness of governance and to analyse the underlying normative themes and ideological commitments critically.

Analysis of Chinese academic literature is an essential part of understanding Chinese politics. Academic publications are among the few safe forms of political participation for Chinese intellectuals, and they reveal how policy ideas are understood, shaped, and contested. Given the increasing significance of big data, algorithms, and AI in the modernisation of the Chinese state, it is crucial for us to gain a better understanding of the ideological foundations of CCP governance and statecraft and how these commitments shape the embrace and deployment of smart technologies.

This chapter contributes to the literature in a few ways. First, it provides a comprehensive English-language review that defines and analyses Chinese academic discussions on smart governance. Chinese academic debates often play an important role in Chinese policy formulation. They are among the few arenas available for a certain degree of open debate, including expressing critical

opinions. Therefore, analysing Chinese academic literature is integral to understanding Chinese policy-making and reform (Snape 2019).

Second, it builds on previous research that discusses the link between China's adoption of technology and broader social management and control strategies. Most notably, Hoffman (2017) is one of the first to explain how the Chinese party-state conceptualises social governance in a way that offers a clear role for automation. Additionally, Gueorguiev (2021) shows that modern technologies are enhancing the Leninist governance principles of control and social inclusion. This chapter contributes to this stream of research by reviewing the interaction among these questions in Chinese scholarship.

Third, it connects critical literature on metric fixation, quantification, and automation (see, e.g., Morozov 2014; Merry 2016; O'Neil 2016; Muller 2019; Zuboff 2019) with Chinese research on smart governance, a policy initiative that is arguably a manifestation of metric fixation, a tendency to emphasise metrics as a legitimate basis for decision-making excessively. This dialogue offers insight into the implications of automated governance driven by Marxist-Leninist interpretations of society and guided by political priorities entirely different from those in the West. By doing so, it hopes to enrich the global debate on automation in governance and adjudication by introducing these contemporary Chinese voices to the English-speaking world.

In what follows, the chapter first reviews the international theoretical discussion on Marxism-Leninism to determine the axioms that underpin the CCP's approach to governance and how it relates to automation. It explains why science and technology are seen as central to CCP rule. This theoretical discussion precedes an empirical analysis to identify the degree of salience of these ideas in shaping academic discourse on smart governance in China today. Second, I present the data and methods. The empirical analysis examines journal articles published in the China National Knowledge Infrastructure (CNKI) database from 2014 to 2021. The review is a meta-synthesis using narrative and systematic literature review practices. It is an immanent evaluation and interpretation of the Chinese scholarship and theory. Then, I review the debate, using the emerging themes to structure the review. These sections analyse discussions by Chinese scholars about the implications of digitisation and automation for China's governance. Finally, the conclusion discusses the implications for broader social governance reforms and the importance of ideology in understanding change in the PRC.

4.2 A Theory of Marxism-Leninism and Science and Technology

Since the early nineteenth century, the standardisation and quantification of nature and public life have been intimately intertwined with the emergence of the modern nation-state and bureaucracy (Porter 1995; Desrosières 2002). Because of a drive for more efficiency and accountability, the belief in quantitative indicators based on standardised data as an effective tool has only become more entrenched in public and corporate governance (Scott 1998; Demortain 2019). This metric fixation is further reinforced in societies with low social trust and systems with pronounced principal-agent conflicts (Muller 2019).

The increasing power of automated computational systems and storage capacity, as well as the ubiquitous availability of big data, have multiplied the potential uses of quantification and numerical indicators. In the twenty-first century, automatic systems have grown more complex, powerful, and intrusive. Their application ranges from sports analysis to credit ratings to recidivism risk assessments and beyond (O'Neil 2016). Inherent in this trust in numerical indicators is the belief that they represent scientific objectivity, an ideal that implies fairness, impartiality, and, most importantly, authority (Porter 1995: 3-8). This belief creates what Merry (2016: 9) calls indicator culture: “a body of technocratic expertise that places a high value on numerical data as a form of knowledge and as a basis for decision-making.” Nonetheless, consumers of these indicators often forget about the contingent social processes that generate the data, meaning they can only simulate objectivity.

Indicator culture, metric fixation, and a culture of quantification all refer to the trends described above.¹³ They can be traced back to scientism, an intellectual movement from the early sixteenth century. It is based on three central dogmas: (1) The assumption that mathematisation of natural phenomena is a model science that all other sciences should emulate. (2) All realms in the universe are accessible using scientific methods. (3) All reality inaccessible to mathematised science is either irrelevant or illusory. This belief found its way to modernity via positivism and, according to some scholars, found its perfect expression in Marxism and communism (Voegelin 1948). More recently, quantification has gained popularity since the 1950s through the rise of managerialism, since the 1960s through the demand for greater public accountability, and since the 1980s via the development of new public management styles that require clear goal-setting, monitoring, and

¹³ These terms are used interchangeably here.

incentivising (Muller 2019: 42-70). The ubiquitous availability of big data is now driving this global trend, in turn leveraged by (machine-learning) algorithms (O'Neil 2016; Zuboff 2019). Most public and corporate governance is arguably subject to quantification (Berman and Hirschman 2018). In the following sections, I explain step by step that Chinese ideology about governance and modernisation are closely intertwined with science and technology and that this stimulates a push toward automation in its rule. To do so, I draw primarily on the theoretical interpretations of Chinese governance by Hoffman (2017) and Gueorguiev (2021).

4.2.1 Chinese Marxism and Scientism

The CCP's affinity with quantification and automation has deep ideological roots. Beginning with Chinese Marxism, China's intellectual elite believes in human malleability. According to Munro (1971: 610-612), a fundamental assumption of Marx and Engels's historical materialism is the belief in human perfectibility. Chinese interpretations of Marxism highlight this human changeability. However, this capacity for change is reoriented by educators and propagandists for social ends. Therefore, Munro argues that "malleability" is more appropriate "than changeability".

Human malleability refers to the Pavlovian doctrine of the plasticity of the central nervous system, meaning that, under the right conditions, a person can be taught anything. This idea minimises the innate differences in human intellect and emphasises plasticity. Individual interests and abilities are not important, as both are malleable.¹⁴ Munro (1971: 618-629) explains that this view provided a scientific justification for educational policies that emphasise uniformity in instructional methods and materials. Consequently, actively shaping people's values, beliefs, desires, and intentions through political and ideological education takes on central importance (Munro 1971: 630-634). This conviction justifies social engineering for improving "human quality" in the service of modernisation. Human "perfectibility" is an important component of economic growth and national progress: "It is not an end in itself, but is geared towards the very aim of Chinese reform ...: making the country rich and strong" (Bakken 2000: 39).

Although technological determinism is not considered part of orthodox Marxism (MacKenzie 1984: 473-480), during the early reform period (1978-2001), Chinese elites became inspired by the belief

¹⁴ In behavioral psychology, this idea is also called classical conditioning. For a deeper elaboration on Pavlov's research, see, e.g., Pavlov, Ivan P. 1927. "Conditioned Reflexes: An Investigation of The Physiological Activity of The Cerebral Cortex." <http://psychclassics.yorku.ca/Pavlov/>.

that national progress and social change depend on scientific and technological development (Bakken 2000: 32). Moreover, according to Hua (1995), Chinese-style scientism emphasises technological determinism, an important component of Chinese scientism, which maintains that the development of history follows objective laws, which are determined by the development of productive forces, and that socialist development has to undergo several stages. It holds that modernisation is a panacea for ensuring the perpetuation of socialism: when productive forces are more developed, society will be more advanced. These two positions draw heavily on orthodox Marxist historical materialism. This line of thinking, especially the need for gradual development in stages and the tolerance of capitalist aspects in the earlier stages, was adopted by Chinese intellectuals in the reform period, such as Hu Qiaomu, and Su Shaozhi, and became part of the official theory guiding reform (Hua 1995: 49-75).

Chinese scientism combines these two concepts. Bakken (2000: 31-57) recounts that, during the reform period, political and intellectual elites became convinced that scientific and technological development are the primary drivers of national progress and that all social problems can be solved through the application of science and technology. During this period, Chinese scientism also became preoccupied with culture and morality. Human morality became seen as reducible to a set of scientifically objective truths, and human society could be changed by adhering to them. In other words, citizens can be transformed by emulating scientific or “exemplary” models.

According to Hua (1995: 7), scientism became dominant during the reform period because it follows Chinese traditional monist thinking, and the claim to objectivity is compatible with Chinese political culture. The term “scientific objectivity” (*kexue keguan*, 科学客观) encapsulates this ideal of Chinese scientism. A policy decision is scientific when it is based on a precise measurement of factual reality—this objectivity means (Bakken 2000: 203-206). Therefore, given their proximity to social processes, this “objective” information about reality comes from the masses, which brings us to the next part of the argument.

4.2.2 Inclusion, Monitoring, and Social Control

The belief in human malleability and the existence of “scientific objectivity” opens the way for the construction of a system of total surveillance, with the ultimate goal of total management and control. Social control requires measurement and evaluation: “Evaluation is the main way in which

[the] exemplary society links people's behaviour closer to the exemplary norm" (Bakken 2000: 195). Evaluation starts with monitoring and registering behaviour, then comparing it to the exemplary standards, and ultimately steering it toward the norm (Bakken 2000: 204).

This belief leads to the Leninist part of Chinese Marxism-Leninism. The next building blocks combine the work of Munro (1971) on Chinese Marxism and the work of Bakken (2000) and Hua (1995) on Chinese scientism with the theoretical frameworks of Chinese governance developed by (Hoffman 2017) and Gueorguiev (2021).

At its core, Leninism was a theory of inclusive authoritarianism, that is, the people govern the country through a vanguard party that embodies the interests of the people and leads them in the achievement of shared political and economic goals (Gueorguiev 2021: 53). Therefore, the CCP views the people as the "legitimate foundation of political power" (Ding 2020: 194). To correctly represent the people and make democratic decisions, the CCP must follow the mass line: they collect disorganised ideas from the masses, organise and concentrate them, and then propagate them back to the masses until they embrace these (now properly structured) ideas as their own (Tsang 2009: 867; Ding 2020: 202).

However, given the party's vanguard character, "following the mass line" does not imply widespread public participation in governance. Another core characteristic of Leninism is the centrality of control. Although governance includes the public through a variety of channels—such as people's congresses (Truex 2017), local village elections (Levy 2007; Li 2007), deliberative consultation (He 2018), online consultation (Balla and Liao 2013; Balla and Xie 2021), and government portals (Min and Xu 2009)—this all happens within a framework tightly circumscribed by the CCP (Meng et al. 2017). Through this participation, the CCP creates a bottom-up feedback loop to control a decentralised and fragmented government. In other words, public participation enhances party control. This loop is what Gueorguiev (2021: 55) aptly calls "Leninist methods of controlled inclusion." Under Jiang Zemin and Hu Jintao, the central leadership endorsed consultation as a mode of participation; that is, it called on local governments to engage the public in decision-making through consultation, public opinion polls, and so forth. The CCP also engages the public to oversee local governance institutions by accepting complaints, petitions, and tips. According to the CCP, these practices of controlled inclusion make their governance scientific and democratic (Gueorguiev 2021: 74-88).

4.2.3 Automation and Governance Modernisation

Although incomplete, this outline of Chinese Marxism-Leninism suffices to demonstrate the PRC's ideological affinity with the virtues of automation and indicator culture. Simply, the CCP's organisational ideology holds that social reality is reducible to a set of objective truths that simply exist and have yet to be extracted. Furthermore, it underscores the importance of a vanguard party in identifying these objective truths and transforming them into actionable decisions so as to lead the masses onto a path for national progress. The vanguard party then uses this input-driven decision-making process to control the masses and simultaneously adapt its capacity to maintain this control, with the ultimate goal of sustaining itself as a benevolent and efficient ruler.

Therefore, the CCP blends public participation with top-down control, which enables it to constantly shape, manage, and respond to society. Another way to understand this approach to governance is through using the theoretical framework by Hoffman (2017: 47). The above-mentioned processes and methods are best understood as a complex systems management process: a feedback loop of shaping, managing, and responding, ultimately aimed at ensuring stability and legitimacy. Hoffman argues that this feedback process best resembles the autonomic nervous system (ANS) found in biology. The ANS is a component of the human nervous system that autonomically regulates important survival processes. By analogy, the party leadership is the “core” of China's ANS, and the party masses are the “backbone” that relay information from “the body” (non-party masses) to the party leadership. The party leadership then adjusts its survival processes to respond to the changes effectively (Hoffman 2017: 48-49). It is important to note here that this is only a model for the CCP's governance processes. To party theorists, it constitutes a “scientific” way of thinking. Hoffman (2017: 12) argues that this model is “directly behind the technologies used to automate the social management process.”

Because of the increased legibility of society and access to millions of data points, it is impossible for the Chinese party-state to manually monitor, shape, and respond to everything happening. Harvesting and processing this information to exert political and socioeconomic control is difficult and requires a high degree of party embeddedness in society. Establishing controlled feedback loops requires party organs to be constantly in touch with the masses—that is, informants, constituents, and representatives—who inform oversight, policy-making, and administrative

agencies. Technology and automation, then, facilitate setting up different autonomic (i.e., self-managing systems) through the automation of lower, routine decision-making and implementation. They are part of the larger system, which is directed by the system controller (the party). The ideal is a system capable of preventing and addressing crises when they occur (Hoffman 2017: 57-61). To return to the words of Gueorguiev (2021: 220-43): the controlled feedback loop of oversight—planning—implementation is supposed to be conducted by these autonomous systems. Automated, big data-driven governance is the next iteration of this Leninist mode of controlled inclusion.

In sum, the organisational and ideological principles of Marxism-Leninism explain why the Chinese party-state so enthusiastically embraces technology and automation: they provide a way to achieve the dream of rational Marxist governance. They optimise existing Leninist structures and practices for input-driven decision-making and controlled inclusion. In other words, governance modernisation does not imply a departure from the party-state's basic governance and organisational structures. Rather, technology and automation enhance existing procedures for control and monitoring. Therefore, according to this theoretical discussion, the digitisation and automation of governance practices, such as the social credit system or smart courts, are more about putting old wine in new bottles or “retrofitting” Leninism (Gueorguiev 2021: 53-57).

4.3 Data and Methods

This chapter reviews Chinese scholarship to examine how smart governance and Marxist-Leninist principles interact. The review is a meta-synthesis using a mixture of practices from narrative and systematic literature reviews. A narrative review aims to enrich discourse by generating understanding rather than accumulating knowledge, which may reduce the comprehensiveness of the review (Geertz 1973). The chapter compensates for this by adopting systemic review practices, such as specifying literature search procedures and being explicit about inclusion and exclusion criteria (Hagen-Zanker and Mallett 2013).

As noted in the introduction, Chinese scholarship functions as a channel for political participation. Engaging with Chinese academic literature helps to clarify the official discourse used in policy-making and governance reform. Official terminology and political concepts (e.g., smart governance, the focus of this chapter) “function as grounds for political contention over which

arguments about fundamental values and policy directions can be played out” (Snape 2019: 386).¹⁵ This means that seemingly objective interpretations of political concepts are in fact an argument for a scholar’s preferred policy or interpretation, using political discourse to give their ideas authority, legitimacy, and a protective barrier (Snape 2019: 391; Kato 2021). Ultimately, this enables us to better understand how policy is developed and how scholars try to reframe official framing as a means of political participation.

To this end, I reviewed periodical articles from 2014 to 2021 downloaded from the CNKI database. I searched the database with the keywords “smart governance” (*zhihui zhili*, 智慧治理). The document type was set to “periodicals” (*qikan*, 期刊), which include academic and policy journals, and party and government publications. The keyword search yielded a little more than 300 articles. Because the distribution of published articles over the period was uneven (the majority of articles were published between 2019 and 2021), the articles were first categorised by year and then sorted by the number of downloads to reflect how broadly the articles have circulated (Kato 2021: 142). Then, all articles with more than 250 downloads were downloaded for screening. After a manual screening of the abstracts and titles, a total of 120 articles remained for analysis.¹⁶

In the first step, I read a random selection of articles and then inductively coded them. In the second step, I selected a series of themes to further guide my analysis after triangulating the emerging themes with the theoretical discussion. The analysis focuses on Chinese scholars’ discussions about how smart governance is supposed to change the nature of social governance in China, what is being said about democratisation and public participation with respect to smart governance, and issues such as technological alienation and human agency in connection to smart governance. I do not discuss all themes here. I chose particular themes because they relate to the Marxist-Leninist principles discussed in the theoretical section and were dominant in the literature. I then used these themes to analyse the entire corpus in NVivo systematically, qualitative data analysis software. I switched between extensive reading and coding the articles in this process, creating an iterative process. The coding sheet is shown in Appendix II.

¹⁵ For an in-depth discussion of the role of policy concepts in the shaping of Chinese politics, see Schoenhals, Michael 1992. *Doing Things with Words in Chinese Politics: Five Studies*. Berkeley: Institute of East Asian Studies.

¹⁶ While I cite the literature extensively in the analysis below, to conserve space, not all articles that are part of the analysis are cited. A database of the literature collected and analysed is available in Appendix 1. Appendixes are available directly from the author upon request.

4.4 Smartness as a Transformative Vehicle: Upgrading Service-Oriented Governance and Changing the Nature of Social Governance

Smart governance literature in the PRC can be divided into two distinct areas: service-oriented governance (public service, crisis management, etc.) and social governance (public participation, surveillance and control, etc.). From the perspective of ANS, the former relates to outputs, and the latter relates to inputs. For practical reasons, the next two subsections divide the analysis into these areas. Nonetheless, to remain consistent with the ANS model, they need to be seen as inherently connected to and constantly in interaction with each other.

First, this section reviews how the literature defines smart governance and how it will improve governance by the political-legal system (see, e.g., Zhang and Zhou 2016; Huang and Chen 2019). In one of the earliest definitions, Chen et al. (2014: 99) describes smart governance as:

an innovative strategy oriented by technology and with governance as the vehicle, its main features are (1) relying on internet technology to promote the optimisation and upgrades of social governance; (2) advancing the promotion of government governance capabilities on the basis of “intelligentisation” and datafication; (3) connecting virtual and real society through the combination of network technology and governance innovation, thereby forming a new social governance space.

Yan and Wang (2019: 28) argue that “smart governance” as a concept is subordinate to the modernisation of a national system of governance and governance capacity. Therefore, it must be analysed in this context. It is not only a technical concept but also a concept that embodies the norms and values of governance. It comprises a holistic approach to governance and can unify different morality and value systems (see also Song 2018).

The idea that “smartness” will inevitably improve governance dominates the literature (see, e.g., Fu 2018; Fan and Guan 2019). Yin (2018: 80) claims that it will raise the scientific level of decision-making as well as expand the input (“democratic participation”) and output (“supply capacity of public services”). Wang (2014: 54) calls smart governance “a dynamic interactive system that integrates technology, government functions, and public participation.” “Smartness” allows the government to keep its finger on the pulse, make pro-active decisions, and adapt to changing circumstances. In this, it is the “driving force” behind the transformation of the way in which it governs society by improving interactions and communication between the government and society (Chen et al. 2014: 99). It helps to integrate government functions as well as monitor

them because it enhances coordination between different political-legal departments (Wang 2014: 54; Deng 2019).

Lastly, smart governance is considered part of building a rule of law country and is said to reinforce the conditions for a good rule of law environment (Guo 2017a: 178; Fu 2018: 61). It is considered consistent with the political platform of “ruling the country in accordance with the law” (*yifa zhiguo*, 依法治国). Peng (2020: 30) goes so far as to say that rule of law can be achieved through smart governance because it improves the political-legal system’s scientific and democratic decision-making. Improvement in governance thus refers to a more integrated government that, thanks to modern technology, can better serve and monitor society.

For scholars such as Tan (2019: 52-53) and Chen and Pan (2021), big data analytics will improve decision-making by making it more “objective, scientific, and forward-looking.” This will lead to a more holistic approach to governance, stimulating integration, collaboration, and information sharing across government entities. Holistic governance and data-driven decision-making will make responses to “governance issues,” such as tackling environmental pollution, more dynamic and accurate (Guo 2017b: 49; Yao 2020: 67). This is also contrasted to previous modes of governance: decisions made by people based on subjective assumptions and personal experience often lead to “arbitrary and impulsive” decisions (Dong 2016: 35; Ge 2019). In short, the literature depicts human decision-making as faulty and biased. In contrast, big data analytics and algorithms are accurate and objective, improving “scientific decision-making” (Shen and Zhu 2019: 49). Hence, improvement comes from the elimination of human error.

Going even further, Wang (2018) envisions the operation of smart governance premised on a platform-based “smart governance centre,” which functions as the brain of the entire governance system. The basic logic behind it is that a smart governance centre can automatically collect and process information, which is then used to make decisions and take actions related to social management, macro-control, and public services. It thus creates a kind of closed feedback loop with input from “social governance targets” (i.e., the people, businesses, cyberspace), which is then processed and analysed for transformation into “governance directives.” The human element seems to have been utterly removed from this smart decision-making process.

This chapter argues that these interpretations of improvement follow from the underlying ideological principles discussed in the previous section: the scientific objectivity of social

governance depends on the input of correct information and data retrieved from society. Big data analytics and algorithms are primed to improve this input and, by extension, social governance itself. It also enables the government to respond and adapt in real-time, that is, improving the output of social governance. Therefore, technology and governance are unified in smart governance (Hu et al. 2021: 16). Moreover, “smartness” increases “rule of law” in the sense that it improves scientific and democratic decision-making and, in turn, justifies the existence of surveillance and control technologies.

In sum, the authors conceptualise social governance in a way that mirrors the earlier theoretical discussion drawing on Hoffman (2017: 16-18) with respect to a holistic approach to social governance, that is, observing and studying specific social phenomena or issues not in isolation but as part of a larger system that is constantly interacting with other fields. Smart technologies offer this possibility.

4.4.1 Improving Outputs: Holistic Versus Fragmented Governance

According to the literature, smartness can improve social governance by facilitating the transformation from fragmented to holistic social governance. Despite many attempts at centralisation over the past few decades, China’s governance has traditionally been fragmented (see, e.g., Lieberthal 1992; Mertha 2005; Bulman and Jaros 2021). However, smartness is said to improve connectivity, integration, and coordination among government institutions, businesses, government services, and communication channels, creating a seamless, integrated, and service-driven holistic governance model (Chen 2021). According to Xu and Wu (2018: 41-42), the use and cross-departmental sharing of big data will lead to integration and coordination, allowing government departments to make holistic and scientific decisions. Technology’s transformative power to these scholars comes from its ability to improve data collection and analytics that inform decision-making to provide better public services and govern more pro-actively (Yin 2018: 80). Zhang and Zhang (2021: 158) define holistic governance as follows:

[It] refers to being oriented toward meeting the needs of the public and using information technology to strengthen communication and cooperation within and between governmental and nongovernmental organisations and to coordinate and integrate governance hierarchies and functions and the public and private sectors. [It is] a governance method to achieve seamless services under common governance goals. The main content of the holistic governance theory can be divided into three points: governance based on

public needs, emphasis on the integration and coordination of governance structure, and information technology and services as the main means of governance.

Therefore, smartness is a way to transform traditionally fragmented governance into more holistic governance through IT, big data collection, and sharing, thus integrating and connecting otherwise fragmented areas of China's political-legal system. The discussion on the effect of smartness by Zhang and Zhang (2021: 158-160) shows that the approach to governance is consistent with the theoretical discussion above: They divide governance into three key channels for meeting public needs: collection, integration and coordination, and implementation. Smartness facilitates the collection, integration, and analysis of information inputs and the coordination and determination of the required outputs. Most important, "the governance process is continuously adjusted based on information feedback until problems are solved" (Zhang and Zhang 2021: 158). Ultimately, this improves outputs because it simultaneously allows gains in short- (quick adjustments to crises) and long-term (monitoring and analysing more complex issues) governance, as well as simplifying government services that are highly repetitive and involve multiple departments (e.g., through online "one-stop" portals).

Nonetheless, some scholars have scepticism about smart governance's holistic effect. Although the scholars mentioned earlier frame smartness as a panacea for all governance issues, others argue that smartness alone is not enough. Lan (2019: 142) says smartness cannot overcome the inherent problems of fragmentation, poor collaboration, and information silos. For smart governance to be effective, it is first necessary to break through organisational barriers between department levels to create greater information exchange. Che (2017) concurs that smartness cannot miraculously reverse fragmentation: given that smart governance relies on big data, a key requirement is to strengthen information management by expanding cybersecurity regulations and stimulating information exchange between government departments.

Government digitisation and automation might lead to further fragmentation as different local governments implement their digital systems and standards. Zhang (2015: 136) argues that because of the division of functions and interests, government departments have different data standards and disclosure conditions, making it impossible to compare and handle data across different platforms and government levels. Shen and Zhu (2019: 52) claim that, despite the government's advanced informatisation level, fragmentation persists horizontally and vertically: government institutions only use data that they generate themselves and do not share it with others of equal

administrative rank. Moreover, Shen and Zhu warn against “techno-optimism”: the presence of technology cannot be the only evaluation criterion. For them, technology can only be a tool for data collection, process optimisation, and in-depth analysis. By itself, technology will not improve governance processes (Shen and Zhu 2019: 51).

It is well documented that relations between hierarchical levels of government are complex (e.g., see Mertha 2005; Choong 2016; Mattingly 2019). Lower-level governments might refuse to share their data with governments at a higher level. In a perverse sense, informatisation has the potential to perpetuate fragmentation, with different departments jealously guarding their data. It raises questions about many of the claims made by the scholars cited above. However, as explained earlier, this might not be the point of Chinese scholarship. One interpretation is that the scholarship advocates for a resolution of government fragmentation and uses the policy slogan of smart governance as a vehicle for doing so.

Therefore, its actual point might be that the “modernisation of the national governance system” does not necessarily consist only of technological innovation. A prerequisite for smartness is addressing fragmentation and “information silos” among government institutions (Li and Chen 2018: 205). Zhang et al. (2017) suggests the construction of more centralised data-sharing platforms that can be used among different organisations and government departments. Li and Chen (2018: 207) similarly make the case for building a unified big data system to standardise data collection, processing, and sharing, as well as a national data-sharing platform for government services at all levels, in order to promote cross-regional and cross-departmental data and information sharing across the political-legal system.

Zhang and Zhou (2016: 26-27) discusses fragmentation and smart governance in more detail. They argue that government institutions have insufficient incentives for sharing data and cooperating more in creating unified smart platforms. This lack of incentives hinders the establishment of truly holistic and comprehensive smart governance systems. Thus, the real challenge is overcoming the government's deep-rooted organisational and political differences. No true smart governance can be created if this is not addressed. Hence, Zhang and Zhou (2016: 28) suggests that local governments be encouraged to integrate informatisation platforms, standardise smart governance technologies and services, promote platform and system compatibility and data resource sharing, and eliminate communication barriers.

It is clear that critical scholars in the literature reviewed believe improvement and modernisation are not necessarily a function of how much technology is used. They suggest that fragmentation is not only a technical issue but also a political one. Critiques in the discussion about overcoming fragmentation are framed under the policy slogan “modernisation of governance” but try to redirect the focus from one that is purely technological, arguing that improving governance also requires other—that is institutional and structural—reforms. In this sense, the ideological foundations of the critique of automation are not necessarily different from those of their approval: according to these scholars, automation also has the potential to “numb” or “disrupt” the nerves in the ANS. Therefore, critique and approval are both articulated in terms of the Marxist-Leninist understanding of governance and technology.

4.4.2 Improving Inputs: Smartness, Democratisation, and Public Participation

The idea that smartness will improve the consultative and participatory elements of governance in China is a common theme in the literature. Smartness opens up new pathways for “democratisation,” that is, broadening the scope and increasing the quality of public participation and, therefore, raising the quality of decision-making (Huang and Chen 2019: 64-65).

This understanding shapes the discussion. For example, Fu (2018: 60-61) claims that digital platforms, as part of smart governance, provide new channels for public participation, which will foster political democratisation as well as ensure better democratic oversight, restriction, and regulation of government actions. In this sense, smart governance is meant not only to provide better public services (outputs) but also to improve the monitoring and collection of information (inputs). These improvements will make governments more attuned to “the masses.” The increased quantity and quality of information from people will increase the democratic, and therefore scientific, nature of decision-making (Zeng and Ma 2018: 19). Although Zhang and Zhang (2021) discuss this more from an output perspective, they also recognise that better outputs depend on better inputs. In particular, their framing of how the governance responses constantly change and adapt to inputs resonates with the ANS model by Hoffman (2017).

Interestingly, the literature does not discuss smart governance or “democratisation” in connection with the liberal understanding of democracy, that is, free elections, separation of powers, and granting of political and civil rights. This might indicate the limits of the open debate in academic scholarship. The idea of “democratisation” is primarily interpreted in Marxist-Leninist terms in the

sense that smart governance enhances the “public oversight” role played by the people in the Leninist state structure. Public participation is legitimate only to the extent that it facilitates the collection and monitoring of information, which are necessary for making the right decisions and improving social governance and control (Gueorguiev 2021: 30-37). Going beyond this Leninist interpretation of controlled participation might exceed what is considered acceptable in academic debates.

Others argue that governments should actively stimulate this participation, as the public is an important big data source (Zhang 2014: 103). Under the government’s leadership, big data should be used to draw on civil society and industry for more and better inputs into the decision-making process (Cui 2016; Guo 2017b). By stimulating interaction between the government, on the one hand, and the people, social organisations, and industry actors, on the other, some authors argue that big data and smart governance will lead to a new form of “multi-collaborative social governance” (*duoyuan xietong zhili*, 多元协同治理) (Dong 2016; Lin 2018).

Scholars also discuss smartness in connection with the political concept of a “social governance system based on co-construction, co-governance, and co-sharing” (*gongjian gongzhi gongxian de shehui zhili zhidu*, 共建共治共享的社会治理制度). This policy slogan was introduced by Xi Jinping in his report at the nineteenth National Party Congress (Snape 2019) along with the concept of a “smart society” (*zhihui shehui*, 智慧社会). Following Snape’s argument, this discussion is consistent with how scholars use official discourse as a channel for political participation. They use these concepts to peddle their own arguments and interpretations of what social governance should be and what the political-legal system should look like.

For example, Ma (2019: 23) argue that “co-construction” should be framed in tandem with a people-centred (*yi ren wei ben*, 以人为本) approach. The point of smart governance should be to minimise the human factor but to maintain the status and dignity of the people. According to him, this approach is the only way to make smart governance a success and is central to being “people-centred” and having “co-construction, co-governance, and co-sharing.” Chen, Chen, et al. (2021: 3-4) state that the achievement of smart governance is inseparable from participation by and the support of all actors: government, industry, social organisations, and citizens. In this sense, smart

governance does not stand on its own as a new mode of governance but, rather, is a pathway toward social governance based on co-construction (see also Yan and Wang 2019: 30).

The slogans “people-centeredness” and “co-construction” are both used to contrast smart governance with traditional governance, which is described as top-down, heavily dominated by the state, and very rigid overall (Wang 2014; Tan 2019). However, smart governance is people-centred, meaning that it considers citizens’ rights and interests, and “citizens should be encouraged to actively participate in the formulation of various visions and construction plans so that the selection and function of projects can truly meet the needs of citizens and society” (Shen and Zhu 2019: 53). Similarly, according to Shen (2019: 102), smart governance is a form of governing that prioritises respect for the people and truly reflects the value of people because they are “the most essential and active force in social development.”

However, although smart governance revolves around providing the people with better and more accurate public services and, at the same time, creates more and better ways for society to give its input, it does not seem to entail specific mechanisms or systems that allow citizens to influence decision-making in the political-legal system genuinely. Rather, “people-centeredness” seems to involve a deeper embeddedness of the state in society, enabling it to attain a more accurate grasp of the public. This participation or co-governance can take place only under the party’s leadership. As Fan and Guan (2019: 86) state:

It is necessary to adhere to the “people-centred” value orientation under the leadership of the Chinese Communist Party, to ensure that the people can widely participate in democratic decision-making, democratic management, and democratic oversight in the construction of a “smart society” through various channels and forms in accordance with the law, so as to ensure that the construction of a “smart society” in China advances in the right direction—that of socialism with Chinese characteristics.

Chen et al. (2014: 4) argue: “Therefore, smart governance must always adhere to the party’s leadership and give full play to the party’s core leadership role in overseeing the overall situation and coordinating all parties.” This makes it abundantly clear that any discussion on the democratising effect of smartness should be understood in Marxist-Leninist terms; the party remains at the centre of the nervous system as the interlocutor between the state and society, and the people remain passive. Smartness is supposed to open new channels of public participation, yet this participation is heavily circumscribed and controlled. Very few authors make a connection

between smartness and self-governance (*zizhu zhili*, 自主治理) (Chen et al. 2014) or with liberal interpretations of public participation.^[1] As stated earlier, one reason might be that this is merely an indication of the limits of Chinese academic debate. Another interpretation is that “smart governance” is being peddled as a way to improve “service-oriented” or “people-centred” governance, which therefore justifies enhancing technologies of surveillance and, thus, social governance. Therefore, smart governance seems to entail the creation of new and more efficient feedback loops in the political-legal system that expand social control. It does not treat citizens or other social actors as active decision-makers who participate in social governance. They participate only in the sense that they provide the information required to operationalise smart governance. This aligns with a Leninist understanding of controlled inclusion as conducive to better governance while also complementary to control. Technology multiplies these synergies (Gueorguiev 2021: 39).

4.5 Issues in and Criticism of Smart Governance

The scholarship is filled with concerns and criticisms, often discussing and analysing smart governance from both sides. It is, therefore, difficult to identify different streams in the scholarship. Nonetheless, this is where the scholarship is the most direct in its attempt to participate in policy-making while remaining within the space demarcated for acceptable discussion. Aside from the information silos discussed in the previous section, a few other relevant discussions emerged. The biggest themes as part of the critique of smart governance are fear of technological alienation and infringement of personal privacy. Interestingly, this is also where issues of legality and law come into play more explicitly.

4.5.1 Technological Rationality and Dehumanisation

One of the biggest criticisms in the literature is that smart governance will lead to dehumanisation or the loss of human subjectivity (*ren de zhutixing*, 人的主体性). Guo (2018: 19) argues that the excessive focus on quantification and metrics, often referred to in the literature as technical rationality (*jishu lixing*, 技术理性), risks conflating the ends with the means of smart governance. In doing so, Guo repeats a common critique of the international literature that quantified data are not only shaped by values, choices, and preferences of people (Merry 2016; Lynch 2019) but, in

turn, also shape people and institutions as well (Espeland and Sauder 2007; Mayer-Schönberger and Cukier 2013). This has become especially visible in China's political-legal institutions (Smith 2020; Ng and Chan 2021).

Therefore, Guo (2018: 19-21) criticises the centrality of technology in the discussion of smart governance. This kind of “big data thinking” overshadows traditional causal thinking, which prefers to prioritise finding correlations as a basis for decision-making, regardless of their relevance. This pretence of making value-neutral decisions will lead to a loss of ethical values in decision-making. In this way, he positions technical rationality as linearly opposed to what he calls “value rationality,” going so far as to state that smart governance makes public life seem “permeated with science and democracy,” but people are oppressed by technical rationality.

Others share this sentiment: Ma (2019: 93) and Hu et al. (2021: 19-20) argue that technical rationality poses a significant social risk of reducing humans to data points. Additionally, they seem indirectly to criticise claims about the “people-centeredness” of smart governance. Given the increasing role of algorithms and big data in governance and society, their impact and influence on public decision-making will be significantly larger than actual public input. How, then, can smart governance be people-centred if decision-making is automated and based on big data? Ma (2019: 95-96) concludes that algorithms will diminish human agency after they dominate governance decision-making. Chen (2021: 37) concurs that, rather than being people-centred, smart governance is dominated by data, which weakens the humanistic aspect of governance. Tan and Han (2021: 143) also argue that excessive focus on technology and big data would not empower the political-legal system but simplify issues and public opinion, reducing the effectiveness of governance responses. In turn, this will also negatively affect public participation.

For these authors, doing this would undermine the core function of the party: as a vanguard party, the CCP must be in tune with the masses so as to make the correct policy decisions. Technology enhances both public participation (input) and social control (output). In the framework by Gueorguiev (2021: 19-40), inclusion and control need to be balanced, as inclusion facilitates control, but too much control hinders inclusion. An excessive focus on technology for the sake of technology or control destabilises the dynamic equilibrium of governance. The way to prevent this undermining effect is to distinguish correctly between the goal of improving governance and the means used to achieve that goal—that is, big data. The goal of smart governance should be to

provide better public goods and better management and to uphold moral responsibility. The means, that is, technology, should not undermine these goals.

4.5.2 Personal Privacy, Inequality, and Other Ethical Considerations

Another main concern expressed in the literature is that smart governance infringes on personal privacy. This is an area in which the law features prominently in the discussion of smart governance. Many authors stress the need to have a better system for regulating data and privacy protection and lament the lack of policies for promoting the disclosure of government and public data (see, e.g., Yang 2015: 165; Li and Chen 2021: 74). Shen and Zhu (2019: 51) also complain that smart governance has reduced regulatory constraints on government use of public data. Cui (2016: 25) and Yin (2018: 81) put it simply: “the rule of law is the premise and foundation of smart governance.” Therefore, collecting and applying personal information for smart technologies should first have laws that must be followed (Lin 2018: 49).

Some of these issues may have already been addressed in new Chinese legislation and regulations regarding protecting personal information and data security (Creemers 2022). However, despite these new legislative protections, Fang and Wang (2021: 182-184) are concerned that they are insufficient for addressing key issues, such as the potentially excessive or even illegal collection of personal information, incorrect classification and correlation between data and the abuse of personal information by third parties. At the time, they claimed that the legislation did not sufficiently emphasise individual control over personal information or properly regulate the government’s use of personal information.

Guo (2018: 20) also uses legality to criticise smart governance. He argues that it increases the risk of legal infringement of people’s privacy rights. He does not criticise the collection of personal data itself per se. However, he points out that it will undermine people’s legal right to self-determination and control over their personal information and that data leaks undermine their right to privacy. In this sense, he does not necessarily criticise the government’s unrestricted access to people’s data but, rather, the fact that private information can become publicly available because of bad practice or used excessively to infringe on people’s freedom outside the scope of the law.

Another issue tied to the people-centeredness of smart governance is the digital divide it might cause. For example, Zhang and Zhou (2016: 26) ask: Who benefits most from smart governance?

To them, smart governance might not necessarily be the panacea for achieving the common prosperity that it is portrayed as. Instead, it might cause new social crises, polarisation, and general social alienation from the government. They argue that smart governance and big data technology mainly serve high-income groups and will cause a digital divide between the urban elite and the elderly and less fortunate. According to Guo (2018: 20-21), this digital divide will create inequality in “data discourse power”: some social groups will become data rich, and others data poor. This means that certain social groups will be more represented in big data databases, and therefore, decision-making based on this data ultimately will not be comprehensive.

Moreover, these decisions are likely to positively affect those who already have many advantages in society and negatively impact the disadvantaged. Therefore, smartness has a certain exclusionary effect (Yang 2021: 65). This argument could be a direct rebuttal to claims that smart governance will make decision-making more democratic and scientific. Whereas classification and compartmentalisation are inherent parts of Leninist modes of governance because they make inclusion less risky and its input more visible (Gueorguiev 2021: 34), excessive divisions created by smartness again disrupt the equilibrium necessary for good governance.

In sum, the Chinese literature mainly concerns the dehumanising effect of increased digitisation and automation in China’s political-legal system. The fear that excessive focus on big data and algorithms removes human agency from decision-making processes is prevalent. Similarly, many authors question whether smart governance will truly be as democratic and scientific as it is claimed to be if it includes infringement on individual privacy and exacerbates inequality among social groups. Big data is of questionable quality, incomplete, and isolated. Automation and digitisation cater only to the idea of scientific objectivity, yet their achievement of it remains questionable.

Although these critiques might hint at more liberal interpretations of the role of the people in social governance, the concern about fragmentation, dehumanisation, and digital divide does not contradict the ideological foundations of governance described above. To reiterate, a crucial aspect of social governance in China’s Marxism-Leninism is maintaining the connection between the party and the non-party masses (Hoffman 2017: 47-48). These scholars warn about an overemphasis on technology and big data to maintain this connection, which risks losing sight of what truly matters: staying in tune with the masses. Technology can also disconnect the core from the masses. Rather than embedding the party more deeply in society, smart governance creates an

extra layer of separation through datafication and automation. The party might risk falling out of tune with the masses. In other words, from the perspective of ANS, technologies might numb the nervous system that maintains the connection between the core and the rest of the body. Therefore, the concern over the increased use of technology can also be seen as departing from a similar interpretation of governance.

In this regard, the Chinese academic literature echoes comparable concerns in the international scholarship on increased automation and digitisation in governance and public life. However, this does not mean that these concerns necessarily have a similar ideological foundation. Moreover, these concerns do not necessarily affect the Chinese political-legal system's use of algorithmic systems and smart technologies, as they do in other countries. Despite these concerns, the underlying conceptualisation of governance facilitates the acceptance of automation.

4.6 Conclusion: Creating a Smart State

This chapter examined the ideological foundations that lie at the basis of the rapid embrace of automation through a case study of “smart governance”, a new approach to social and political control by the political-legal system, including SCR. Law and courts are part of the social governance structure studied in this chapter. Therefore, the findings of this chapter are also relevant to addressing the question of how these normative ideas shape the goals of SCR.

The Chinese party-state is on a continuous quest to “innovate” social governance, and the advent of smart technologies has only further fuelled those ambitions. Social governance innovation is intimately connected to the modernisation of the state. Since the early twentieth century, science and democracy have been considered important drivers of this modernisation process. According to the literature reviewed, smart governance promotes both and thus is a crucial element in modernisation.

The argument that smartness will inevitably improve social governance in China is omnipresent in the Chinese literature. The sense is that it will fundamentally transform the nature of governance via algorithmic decision-making based on big data analytics. This chapter argues that this conviction is based on how Chinese Marxist-Leninist ideology conceptualises governing. Accordingly, how social governance in China is conceived resembles the operation of an ANS that requires continuous feedback control and adaption to changing circumstances (Hoffman 2017).

This requires a high degree of regime embeddedness. Smart governance, then, is a mode in which the ANS is assisted by smart technologies to improve its outputs (i.e., government services) and can process and analyse real-time and broad-reaching input from society (i.e., better surveillance and control). The wide spectrum of what is called “smart governance” includes both service-oriented and social governance as part of China’s political-legal system because the added value of smartness to the former justifies the latter’s existence. In this sense, the Leninist understanding of governance is compatible with smart technology and the automation of justice.

The empirical analysis shows that the Chinese academic literature shares this vision of governance. How it discusses the transformative power of smartness reflects a similar understanding of how governance operates: the literature primarily discusses how smartness enhances the interaction between the state and society and improves information input. This makes decision-making more “scientific and objective,” meaning that decisions are based on reality expressed through big data rather than on subjective human decision-makers. Big data analytics also enables better and more accurate output, improving public services and, in turn, legitimising the Chinese political-legal system and the mode of input.

Marxist-Leninist principles also explain why the notion that smartness will improve democratisation in China is taken for granted in the Chinese literature. Democracy in Marxism-Leninism refers to the collection and processing of bottom-up inputs. Public participation is essential to Chinese social governance (Gueorguiev 2021). According to the Chinese literature, smartness further facilitates and increases the channels for public participation. Smart governance is both scientific and democratic because it caters to two fundamental principles of Marxism-Leninism: regime embeddedness and social control.

This does not mean the absence of concerns about smart governance. The literature discusses the persistence of data silos, technological alienation, infringement on personal privacy, and ethical issues—as obstacles to the success of smart governance. Only here does the law explicitly feature in the debate: scholars call for a better regulatory framework for smart governance, especially when collecting personal information and processing data. However, the legality and legitimacy of smart governance are not questioned. On the contrary, some scholars claim it is in line with “ruling the country in accordance with the law.” This reinforces the instrumentalist understanding of law in the wider governance project of the Chinese party-state. Yet it also hints that the law has gained

importance: some scholars are careful to frame smart governance as part of improving or adhering to the rule of law, and a crucial criticism of smart governance comes from a legal perspective—that is, if the political-legal system uses technology to intensify the monitoring, collecting, and processing of personal information to create big data-driven decision-making, it must do so in accordance with the law. Simply put: smart governance requires a legal framework. The Chinese state recognises this and is considering new ways to unlock the social value of big data (see, e.g., the Fourteenth Five-Year Plan for National Informatisation), regulating the use and development of algorithms (see, e.g., the Provisions for Algorithmic Recommendation Management), and drafting new rules for the handling of personal information (Creemers 2022).

The next chapter discusses how these ideological and normative ideas shape scholarly discussion on SCR. Chapters 6 and 7 examine how these ideas shape SCR.

Chapter Five: Towards Smarter and Fairer Justice? A Review of the Chinese Scholarship on Smart Courts¹⁷

5.1 Introduction

The previous chapter examined the ideological foundations of China's rapid embrace of technology in its governance system. By now, I have established how law and courts function in China (chapter 2) and how CCP ideology justifies the instrumental conceptualisation of law and courts in governance, which further explains their positive attitude towards the automation of justice and governance (chapter 4).

This chapter continues to illustrate the importance of these ideas in shaping discourse on digitisation and automation by analysing scholarly discussions on SCR and automation of justice. In this way, it further examines how scholars assess and perceive the implications of smart courts. Reviewing how academics discuss and weigh in on policies is integral to understanding Chinese policy-making and reform (Snape 2019). However, no international scholarship on smart courts has conducted a systematic and critical review of this scholarship or the normative ideas guiding this debate.

The central aim of this dissertation is to examine to what extent ideological and normative ideas shape the goals of SCR. To this end, this chapter asks how Chinese scholarship evaluates smart courts and the automation of justice. It argues that the ideological and normative ideas outlined in chapter 6 explain the positive evaluation of SCR. Therefore, this review asks: "How does China's scholarship evaluate smart courts in the context of the 2014 judicial reform agenda?" With this review, the chapter aims to reveal key attitudes and themes that recur in the evaluation of smart courts and, more broadly, digitisation and automation of China's judiciary and critically analyse the normative concepts behind SCR goals within the context of China's political-legal system. It finds that the scholarship considers digitisation and automation crucial pathways to achieve reform objectives in key areas.

The main contribution of this chapter lies in its introduction of the Chinese academic debate on a specific policy and the normative concepts used to evaluate it. This review may help other

¹⁷ This chapter is based on a reworked version of my article "Towards Smarter and Fairer Justice?". See: Papagiannenas, Straton 2021b. Towards Smarter and Fairer Justice? A Review of the Chinese Scholarship on Building Smart Courts and Automating Justice. *Journal of Current Chinese Affairs* 51:327-347.

disciplines, such as socio-legal studies and law and technology studies, interested in how normative concepts regarding judicial fairness, efficiency, and consistency shape and influence the debate on automation and digitisation of justice.

In the next section, the chapter identifies and contextualises four key areas where smart courts are meant to enhance judicial reform to construct an evaluative framework of smart courts. Then, it discusses the data and methods, after which it conducts the review, using the four key areas of reform to guide it. The conclusion discusses the implications for broader judicial reform and justice administration in China.

5.2 An Evaluative Framework of Smart Courts

As the introduction explains, this dissertation opts for a broad definition of smart courts. Due to the fragmented approach to policy implementation, no prototype of a ‘smart court’ exists. It is also important to reiterate that smart courts are not a separate circuit of courts such as maritime or military courts. All courts in China now show some level of digitisation or automation, and many different initiatives by local courts may fall under the SCR policy.

Therefore, with ‘smart courts’, this dissertation refers to courts where the majority or all stages of the judicial process may take place in an online digital environment (but do not necessarily have to), where some, but not necessarily all, tasks are automated with programmes that may or may not be using learning algorithms. Central to this digitised and automated judicial process is the interaction between humans and the technology supporting the process.

5.2.1 The Judicial Reform Agenda

As explained, China’s judiciary suffered a crisis of public confidence caused by Hu Jintao’s policy prioritising mediation over formal law and court adjudication (He 2007; Minzner 2011). Therefore, one of the key goals of judicial reform was to restore public confidence in and the authority of China’s judiciary (Biddulph et al. 2017). Chapter 2 briefly overviewed the key themes specific reform initiatives tried to address, such as transparency, consistency, and accountability. The reform agenda and the ensuing initiatives are oriented towards better and stricter procedures and procedural enforcement.

In addition, chapter 3 outlined all relevant government and judicial documents related to SCR. It shows how the judiciary recognised the power of technology to support judicial reforms related to

efficiency and uniformity and, in general, provide better decision-making support for judges. However, the true acceleration of judicial informatisation came after the publication of the 2017 SPC Opinion, which clarified work goals and overall requirements. Although chapter 3 outlined this document already in full, the next sub-section identifies four key areas of reform goals that smart courts are supposed to help achieve. These four areas are efficiency, consistency, transparency and oversight, and judicial fairness.

5.2.2 Smart Courts in the Judicial Reform Agenda

5.2.2.1 Efficiency

Efficiency is the relation between input and output: in this case, how much funding, judges, hardware, and so on are needed to process and decide a given number of cases. Processing more cases with the same number of judges or the same amount of funding would increase efficiency (Reiling 2010).

Due to judicial reform, the public has become more reliant on the courts for dispute settlement (Ng and He 2017: 5). In addition, due to the judge quota reforms, explained in chapter 2, and the changes to the case-registration system, courts have become increasingly overwhelmed by the dramatic growth in court cases. While cases grew, the population of court personnel did not (see, e.g., Chen 2019; Zuo 2020). Therefore, further improving the efficiency of the judicial system is a cornerstone of the current reform agenda. According to the Smart Court Opinion (2017), technology is primed to help courts provide faster and more efficient judicial services (section III.9, IV.12, V.14).

However, one must consider the local context in the discussion of efficiency. Nonetheless, within the context of a dual state, as explained in chapters 2 and 4, other efficiency concerns exist, such as their social governance tasks. As discussed earlier, these are ensuring the implementation of central policies (Trevaskes et al. 2014a; Trevaskes 2017), maintaining social stability, and ensuring regime legitimacy (Nesossi and Trevaskes 2017; Chen and Li 2020b). Therefore, I examine the scholarship on this double track of smart courts' aim to improve the efficiency of judicial services and social governance.

5.2.2.2 Consistency

Consistency, or uniformity, refers to the uniform application of law and the degree to which similar cases have the same substantive outcome. Chinese policy documents refer to this with the term *tong'an tongpan* (same case, same judgment, 同案同判). In addition, it refers to procedural consistency, namely the extent to which court personnel comply with procedural requirements. This is referred to as the 'uniform application of the law' (*tongyi falu shiyong*, 统一法律适用). Consistency has been a long-time weak spot in the Chinese judiciary due to lack of expertise, relative vagueness of laws, and vested interests (Gong 2004; Li 2012; Wang 2013).

Traditionally, consistency was also not considered important in the Chinese judiciary. In contrast, uniform application of law and consistency have become essential hallmarks of the current judicial reform agenda. Through digitising the entire judicial process and automating specific procedural tasks, smart courts provide an array of functions that help improve both substantive and procedural uniformity.

The Smart Court Opinion (2017) calls for courts to develop programs that can trace and record all steps of the judicial process to enable both live and post-facto oversight (section II.6, III.7). Courts are to develop programs for evidence treatment, allowing for the tracing of production, cross-examination, and authentication of evidence. Every single step is recorded and accessible to senior court personnel. In this way, these programs are meant to help standardise evidence treatment (section III.10). Chapter 3 describes one such system.

Later regulations again illustrate how smart courts are meant to enhance procedural reforms regarding the uniform application of law and procedural compliance.

However, it merits repeating that one must understand uniformity from a Marxist-Leninist perspective. Procedural compliance or consistency cannot be equated with due process. Uniform application of the law is only legitimate insofar as it facilitates the fulfilment of courts' dual tasks (Guo 2014; Nesossi and Trevaskes 2017). Chapter 7 illustrates this in more depth through a case study.

5.2.2.3 Transparency and Oversight

Transparency is traditionally considered a primary vehicle towards procedural justice. It also helps increase social acceptance of judgments. When litigating parties understand the judicial process

and how judges make decisions, they will trust and respect the outcome (Tyler 2006; Grimmelikhuijsen and Klijn 2015).

Digitisation and automation are supposed to help with court management by providing more detailed insights into its operations (section I.2, II.6). As explained in chapter 3, digitisation efforts of the judiciary were meant to disclose as much information about the operation of courts as possible. The online availability of all case-related business through digital platforms should enable a fuller, transparent judicial process by allowing litigants to have easier access to information related to their case (section IV.13). The Smart Court Opinion (2017) frames this as promoting courts' "direct accountability to the people" (section I.1, I.2, III.10, IV), reiterating the ideological foundations of people's oversight in a Leninist state structure.

In addition, the Smart Court Opinion (2017) clarifies that it envisions technology as a tool to improve internal oversight. Smart surveillance hardware and software enable better monitoring. In this sense, it restricts the discretionary exercise of judicial power. This should, in turn, induce a more uniform application of law and ensure more substantive and procedural consistency (section V.16). The entire judicial process is made traceable and transparent, allowing senior personnel to have insights into who did what at what particular time in the case-handling process (section III.10).

Therefore, transparency should not be understood only in terms of increasing public accountability and credibility but also as a way for the central judiciary to regain oversight and control over its local counterparts. It illustrates how technology is meant to overcome the tension in central-local governance by resolving information asymmetries (Fewsmith and Gao 2014). The judiciary is no exception to this.

5.2.2.4 Judicial Fairness

The overarching goal connected to all previously mentioned reform goals is the improvement of judicial fairness. Smart courts are meant to enhance trial-centred reform and modernise the trial and governance system. As discussed in chapter 2, judicial reforms and smart courts are meant to make people feel fairness and justice in every judicial case.

Nonetheless, fairness, expressed in substantive and procedural justice, is highly contextual. The concept of fairness in China's political-legal context is encapsulated in the term 'judicial justice'

(*sifa gongzheng*, 司法公正). In Chinese legal scholarship and political-legal culture, it refers to procedural justice as part of facilitating and obtaining a fair substantive outcome. Therefore, this concept entails substantive and procedural elements, prioritising the former. In other words, procedural requirements are primarily structured to make substantive law more receptive to central-party state policies (Nesossi and Trevaskes 2017).

Nonetheless, the new focus on procedures is remarkable in a legal system that has long prioritised substantive outcomes instead of procedural compliance (Seppänen 2017). However, procedural justice, as understood from a Western rule of law perspective, would hinder the political tasks of Chinese courts, which require a certain degree of judicial discretion (Trevaskes et al. 2014a; Clarke 2020). Therefore, there is an inherent contradiction between the technology-imposed restrictions and standardisation on the one hand and its political tasks on the other. Especially for local courts, the increased focus on procedural compliance is in tension with their primary task of resolving local conflicts, which sometimes requires substantial judicial discretion (Ng and He 2017).

The Smart Court Opinion (2017) calls to reduce this tension between the two by promoting the organic unification of substantive and procedural justice (section III.7). ‘Organically unifying’ (*youji tongyi*, 有机统一) is an often-used policy term that refers to promoting a particular way of thinking that binds together “what might otherwise be read as dissonant concepts or statements” (Lin and Trevaskes 2019: 51). Chapters 6 and 7 examine how technology and smart courts are meant to overcome these tensions.

In sum, the meaning of these concepts in the Chinese political-legal context differs from their meaning in a liberal rule of law context. As chapters 2 and 3 have explained in detail, it is essential to recognise the political imperatives of law and courts in the PRC and the ideological foundations that lead to an instrumentalist understanding of what these concepts mean. This understanding also shapes and influences the debate around technology and smart courts.

5.3. Data and Methods

5.3.1 Retrieval Protocol

In line with practices of systematic literature reviews (Hagen-Zanker and Mallett 2013), I used a review question to guide the search and retrieval process: ‘How does the Chinese legal scholarship evaluate smart courts against the judicial reform agenda?’. Based on this question, I developed

specific keyword search strings to conduct the retrieval. I retrieved the articles from the CNKI database. In addition, I used filters to make the number of results manageable. To illustrate the difference this made, when conducting the first keyword search using only the publication year as a filter, it resulted in 141 hits. After using stricter filtering, only 54 hits remained.

I opted for a broader time range to capture as much relevant discussion on smart courts and judicial informatisation as possible. However, the filters excluded all hits before 2016. The closeness to the launch of the policy in 2017 might explain this. In addition, the term “smart court” was only used for the first time in 2016. Given the clear demarcation of the research topic as a domestic policy of technological innovation within the judiciary, I further excluded papers on smart technology unrelated to the judiciary, on tribunals as part of the Belt and Road Initiative (BRI), or that researched actual judicial practice based on big data. To maintain academic quality, I also excluded papers with no citations and fewer than six pages. Although this last criterion might be arbitrary, its primary motivation was maintaining a manageable number of articles. In total, I retrieved 55 articles through the formal collection. I conducted this research in November 2019. Therefore, the review reflects the literature up to this point.

Most retrieved articles were published in 2018 and 2019 (85 per cent). The short time frame and proximity to the launch of SCR might explain the relatively small amount of empirical research in the literature: only six articles conducted a case study, survey, or court visits. Because I conducted this review at the beginning of my dissertation, another limitation is that it does not include the literature from 2020 until 2022.

I read all 55 articles yet did not cite all of them. In hindsight, some articles could have been excluded by using stricter exclusion criteria. Saturation was achieved before completing the analysis when no new themes were identified. Once the key themes were selected based on triangulation, data saturation was also achieved when attitudes or arguments were repeated multiple times across different publications, diminishing the added value to continue the analysis (Saunders et al. 2018).

A total of 64 scholars participated in the debate. The overwhelming majority of the authors (80 per cent) were affiliated with a university as a professor, researcher, or PhD Candidate. Only 17 per cent was affiliated with a judicial organ as a judge, researcher, or officer. The remaining three per

cent was affiliated with a party school. In the selection, the authors are mainly criminal (procedure) and procedural law experts.

References to English language literature on law and technology (e.g., Isaac 2018; Simmons 2018; Sourdin 2018) were prevalent in the selection: 62 per cent of the reviewed articles had at least one reference to English language literature. The Hangzhou Internet Court and the Shanghai 206 System were the most cited examples. They were also covered in detail as a case study (Yu and Li 2018; Ge 2019). Their frequency is self-explanatory because, at the time, these two courts were the most advanced in their pilot projects. Chapter 3 features these examples for similar reasons.

In this sense, the review does not tell us anything about the empirical reality of SCR. It is possible that filtering has excluded voices from government and judicial officials as well as other empirical research. However, multiple check during the period of 2021 did not indicate that significant research was missed.

5.3.2 Analysis

Similar to chapter 4, I opted for a mixture of practices from narrative and systematic literature review methods. Practices from these methods enhance transparency and reproducibility (Geertz 1973; Hagen-Zanker and Mallett 2013). In the first step, I inductively coded the literature. I triangulated the identified themes with key reform concepts identified in official policy documents. I chose these themes because they were (1) the most critical themes according to official documents (see chapter 2), and (2) discussions relating to these themes were more numerous in the literature than others, such as equality of arms or access to justice.

Based on this, I organised relevant paragraphs and sentences according to the theme. This process was all done manually. In the second step, I used basic coding according to the reform concepts. I then analysed all articles systematically in NVivo, a qualitative data analysis software.

5.4 The Chinese Scholarly Debate on Smart Courts

5.4.1 Efficiency

Many scholars consider efficiency to be the main advantage of SCR. It is significantly easier to achieve when it comes to simple processes. There is a consensus about the positive contributions of digitisation and automation to judicial efficiency. SCR is said to increase trial efficiency,

expedite litigation, reduce costs, expedite information retrieval, and allow quicker closing of cases (Guo 2017c; Pan 2017; Feng and Hu 2018; Qian 2018; Zhou 2018; Gao 2019b; Xu et al. 2019). Given that one of the most significant issues with China's judiciary was the long process and delays due to understaffed and overworked courts, it is understandable that increasing efficiency is also framed as a way to re-establish judicial credibility (Xu et al. 2019: 88). This framing also aligns with the broader reform goals outlined in Chapter 2. In addition, the scholarship frames courts mainly as administrative governance institutions rather than institutions that protect citizens' rights. In this sense, the scholarship does not question the appropriateness and usefulness of automation to improve courts' efficiency.

Nevertheless, this lens is flawed because it leaves out many important considerations. For example, Wang (2019) notes that while basic digitisation of the judicial process may improve efficiency, applying big data analysis and algorithmic technology risks diminishing inherent attributes of the judiciary. He argues that judicial reform risks being reduced to a technical problem, where every issue is perceived to be solvable with technological innovation rather than institutional reform. It risks blindsiding observers in their evaluation of judicial digitisation and automation. Reform goals are implicitly achieved by equating efficiency with "a more just and fairer judiciary" (Pan 2017) despite not being explicitly addressed. Judicial informatisation is not a 'magic cure' that will suddenly resolve all issues in the judiciary.

The scholarship rarely considers the negative influence of efficiency goals on other principles. While efficiency is equated with more fairness, a faster process might not necessarily mean a fairer trial. For example, in their empirical research on divorce in China, both He (2021a) and Michelson (2022) show that efficiency concerns perpetuate discriminatory and gendered outcomes. However, the scholarship does not discuss these implications. Therefore, it reflects the instrumental conceptualisation of law and courts in that technology will improve the governance capacity of courts rather than their capacity to resolve legal disputes and protect rights.

5.4.2 Consistency

The scholarship is more divided on consistency or uniformity: different considerations play out in the debate. On the one hand, digitisation and automation are suitable for standardising the judicial process and making outcomes more consistent (Gao 2018; Wang 2019). Consistent outcomes and standardised adjudication are other prerequisites for judicial fairness because they improve

predictability and uniformity (Feng and Hu 2018; Qian 2018). On the other hand, the potential of mechanically enforcing consistent adjudication risks limiting judicial discretion, “the essence of justice” (Huang 2017; Wu 2018). Liu (2019) argues that courts should not be recklessly pursuing uniform adjudication just for the sake of it. The adjudicator can consider smart systems’ advice but should not mindlessly follow it.

This second group of scholars argues that it can potentially jeopardise the primary function of courts to ensure substantively fair outcomes, which requires consideration of the unique circumstances of a case. Smart systems are not equipped to maintain the balance between consistency and unique circumstances of a case (Huang 2017; Pan 2018; Sun 2019).

Others argue that the automation of tasks upsets the power balance in courts. Wang (2019) argues that a digitised and automated judicial process presents a new form of knowledge production. Technical knowledge becomes more important than legal knowledge. His point is that this would lead to new power dynamics in the judiciary, where more ‘tech-savvy’ judges might become better at adjudicating, regardless of their legal knowledge. Ultimately, these ‘tech-savvy’ judges might hold more authority than those who are not.

For Sun (2019) and Ji (2018), this situation could lead to dramatic consequences: the subversion of judicial discretion by technology. They argue that by trying to achieve consistency through technology, the judicial system risks surrendering its power, shifting the nexus of decision-making power to the algorithms behind the smart systems. Judicial informatisation could lead to a fully automated judicial process with little human agency. Judges would become mere law-applying bureaucrats with little to no discretion.

These scholars fear that exaggerated uniformity and aversion to discretion will endanger judicial pluralism. Previous campaign-style judicial reforms prove this fear is not unfounded: the balance tilts too far toward uniformity (Trevaskes 2007a; Biddulph et al. 2017; Wang 2020c). This ‘dystopian technocracy’ hypothesis, mainly focused on the replacement dilemma, is a recurring argument in the literature.

Other authors dismiss the idea; they argue SCR goals are not to replace human judges but rather to assist and support them. Adjudication remains a value-laden and normative judgment over human affairs, even in a dual state. It, by default, should be presided over by other humans because a

computer does not have values (Xu 2017b; Luo 2018; Tu and Yu 2018; Jiang 2019; Wu and Chen 2019). However, by dismissing the potential of judges being replaced, they fail to recognise that technology does not need to fully replace humans to reduce human agency or perpetuate human biases.

The above illustrates the point of Qian (2018) that judicial informatisation is useless if other reforms do not accompany it. Smart systems can undermine or support judicial reform goals, depending on what choices are made during the design and application of technology. He argues that observers, whether scholars or public officials, need to assess SCR within the context of judicial reform goals. They must ask: “Is this specific (smart) program that digitises or automates certain tasks helping us achieve stated policy goals?”

For example, Wu (2018) argues that the questions that should be asked are “How much discretion should be granted to judges under a given legal system?” and “Do we want to regulate judicial discretion through computers?” Here, he also hints at the tension between central and local courts. Depending on the answer to these questions, the so-called adverse effects of digitisation and automation turn into desired outcomes. According to Wu (2018), the way to achieve more consistency is to restrict judges’ discretion. By extension, the primary way to restrict their discretion is through digitisation and automation.

Interestingly enough, Qian (2018) disagrees with this restriction, arguing that it would hamper the judiciary’s role in interpreting the law and reduce the judiciary to another ‘law enforcement’ agency. Technology-induced formalism and standardisation can reduce the interpretative and innovative role that the judiciary plays in Chinese society (Li 2018). The question is, then, what outcome is desired by the reform agenda? Based on the larger policy context outlined in chapters 2 and 3, it is clear that reducing human discretionary decision-making is likely a desired outcome.

Therefore, most scholars assess that technology will make Chinese administration of justice more consistent in procedure and substance. However, they disagree on the implications this has for justice in China and whether this is desirable.

5.4.3 Transparency and Oversight

Judicial transparency is considered the primary vehicle to restore credibility and people’s sense of justice, both in the reform agenda and the scholarship. However, the transparency of smart justice

goes further than online disclosure, as discussed in chapter 3. Instead, SCR guarantees full procedural transparency, where every step is disclosed and accessible to the public. Many scholars argue that this makes adequate public oversight possible and improves credibility vis à vis the public (Guo 2017c; Xu 2017b; Yu and Li 2018; Lu 2019). This argument illustrates the Leninist interpretation of the people as an oversight entity rather than an entity with rights (see chapter 4). The first empirical survey on Chinese public attitudes towards judicial digitisation supports the validity of this argument (Chen and Li 2020a).

Feng and Hu (2018) and (Liu 2019) argue that this kind of transparency best guarantees procedural fairness. If the process happens completely transparently, it will also encourage procedural compliance by the court. Full process transparency will lead to increased procedural standardisation. Ultimately, courts' legitimacy and acceptance of outcomes will increase. They envision an interactive dynamic between an open, transparent judiciary and a scrutinising public. In turn, transparency becomes a way to supervise and hold the court accountable. It would also require standardising the judicial process through a clear procedural framework.

In contrast, some scholars argue that smart systems do not improve and potentially undermine transparency because the algorithms driving these systems are inherently opaque. They refer to the 'black box dilemma' meaning that the exact functioning of learning algorithms that drive the programs will change over time and experience, to the extent that its original developers do not know anymore how the algorithm exactly functions (Huang 2017; Sun 2019; Wang 2019).

Zuo (2018) argues that simple disclosure of decisions is insufficient to convince the public. The black box characteristic of algorithms is in natural conflict with the transparency required to gain acceptance of judicial decisions. Also, he argues that the procedural obsession induced by transparency will hinder judges' task to focus on substantive outcomes. Likewise, Feng and Hu (2018) points out the contradiction between the openness and standardisation of front-end elements and the 'mystification' of back-end behaviour. Technology cannot overcome the inherently opaque decision-making process in the judiciary, which is also influenced by other elements.

In addition, in their analysis of the strategic cooperation between courts and private companies, Li and Wang (2019) worry that the smart systems' private developers will ultimately determine outcomes because of their technology's dominant presence in the judicial process. Automation of judicial tasks requires codifying procedures and substantive laws and regulations. When these

codes are not part of the public domain but rather the intellectual property of private enterprises, it is difficult to argue that automation will make the judicial process more transparent.

Like with consistency, these scholars have difficulties reconciling technical and legal expertise. There is an inherent contradiction in the transparency objective of judicial informatisation and the opaqueness of algorithms (Tu and Yu 2018; Chen and Sun 2019). Technical staff does not have legal expertise, and judicial staff might not have the technical expertise to understand the system's output (Wu and Chen 2019).

While these standpoints vary, scholars discuss transparency through the lens of external explainability and accountability. Their primary concern is how SCR will improve judicial transparency to the public. As explained in chapters 2 and 3, this is also the primary justification of these reforms: to restore public trust in the judiciary.

However, few scholars recognise the goal of official reform to increase monitoring and central control over the judiciary through SCR. Smart systems are also meant to monitor judicial work for internal and hierarchical oversight. Therefore, smart courts also play an essential role in improving internal transparency and oversight, mainly meant to increase judicial accountability and reduce misconduct (Feng and Hu 2018).

Qian (2018) is one of the few to recognise that consistency and standardisation have the implicit goal of tightening oversight over judges' behaviour. He argues that smart systems are the perfect tools to re-establish supervisory control over judges. In this, he acknowledges the political element of judicial informatisation.

Gao (2019a) points out transparency and oversight are inherently linked to accountability. He discusses the implications of automation for avoiding responsibility among judges (also called shirking). He argues that this will allow the judiciary to hold judges better accountable for their decisions and reduce shirking because, at every step of the judicial process, it will be clear who took what decision.

On the contrary, Ji (2018) argues that, while these systems may make the entire judicial process traceable, judges can still divert responsibility by blaming or deferring to the wisdom of the algorithm. Long (2019) and Cheng (2018) agree, arguing that the increased oversight capacities of smart systems matter little when judges rely on AI to make their decisions. With this, he refers to

the phenomenon of algorithmic complacency. These authors see the learning algorithms as a second authority external to the judge, making allocating responsibility more complex.

In sum, the scholarship lauds judicial informatisation for improving external transparency, public oversight and accountability. This attitude neglects its internal supervisory purpose, despite internal oversight being an important tool in guiding the work of lower-ranked courts (Finder 2019b, c). Smart courts will only improve the SPC and provincial high courts' ability to supervise and guide the work of lower-ranked courts. This increased oversight is bound to have a normative effect on Chinese jurisprudence, yet it is barely mentioned in the scholarship, with a few exceptions. In contrast, some of the early English language literature on SCR had already recognised the major oversight potential of smart courts (Zheng 2020; Stern et al. 2021).

This discussion also illustrates how, even within Chinese scholarship, there are different ways smart courts are being assessed. More positive and enthusiastic people assess SCR through a lens closer to that of the Chinese party-state. Other scholars maintain different understandings of the concepts. Chapter 7 examines the implications of technology for oversight and accountability in more detail.

5.4.4 Judicial Fairness

The scholarship believes that SCR can contribute little to substantive justice (Huang 2017; Pan 2018; Sun 2019; Wang 2019). However, SCR can improve procedural justice and reduce 'injustice' (Guo 2017b; Xu 2017b; Qian 2018; Zhou 2018; Liu and Chen 2019). Nonetheless, few scholars attempt to define what 'judicial justice' means, and it remains an ambiguous concept throughout the literature—chapter 6 attempts to clarify more.

For now, Feng and Hu (2018) 's definition provides sufficient clarity. They argue that to achieve judicial justice, the judicial process must follow proper legal procedures, and the substantive outcomes must reflect the spirit of fairness. Therefore, judicial justice can be seen as procedural and substantive justice. They hold that judicial informatisation can only assist in achieving judicial justice in the context of current reforms. In essence, they come back to a previous argument, namely that the technology of SCR can only be a conduit to achieve reform goals of restoring judicial fairness. The implications of judicial informatisation depend on the people that make up the judiciary.

Most scholars prefer to maintain a procedural interpretation of judicial justice when discussing SCR. They argue that digitisation and automation will make procedures more visible and tangible for litigants, improving people's sense of fairness and increasing the judiciary's credibility (Xu 2017b; Zhou 2018). Other scholars argue that judicial informatisation will improve efficiency, consistency, standardisation, and, by extension, judicial fairness (Guo 2017c; Gao 2018; Liu and Chen 2019). Pan (2017: 102) goes as far as to say that "judicial efficiency is judicial justice in a sense".

These scholars envision technology as a facilitator of procedural reforms aimed at providing better judicial services but not necessarily at protecting procedural rights. The instrumentalist understanding of judicial justice might explain the positive assessment of smart courts' influence on this concept. At the same time, it might also demarcate the limits of the academic debate. Technology as a way to improve right seekers' search for justice is beyond the function and scope of SCR.

In a more nuanced assessment, Yuan and Xu (2018) labels procedural justice as the entry point to achieve judicial justice. It requires transparency of the judicial process, clear and rational procedures, and parties' participation. They argue that digitisation and automation help reduce arbitrariness, making it more rational. They simultaneously point out that this also limits judges' discretion. They argue that judicial fairness is based on carefully considering a case's complex and unique circumstances. However, technology enforces a certain degree of rigidity in the judicial process, reducing the subjectivity required to solve an individual case.

This argument points out the contradiction between technological rigidity and human flexibility. In search for more consistency, accuracy, and efficiency, the judiciary risks diminishing human agency during decision-making, which could negatively affect people's sense of fairness. A few scholars repeat and expand this argument (Feng and Hu 2018; Jiang 2019; Liu 2019; Sun 2019).

Long (2019) also warns that the increased use of smart systems will lead to overreliance, affecting the autonomy of human judges. However, this does not imply that human biases or subjectivity are removed from the judicial process, as humans ultimately design smart systems. Wang (2019) argues that technology in and of itself does not constitute judicial fairness. Instead, it is a conduit through which to achieve it. Its advantages can also become disadvantages that subvert reform goals in other contexts.

For example, Cheng (2018) associates judicial fairness with the criminal evidence treatment. He argues that judges' discretion is crucial in correctly evaluating evidence and providing a fair judicial outcome. Automating this evaluation through the use of learning algorithms will disrupt this. To automate the evaluation of evidence, one needs to give every type of evidence a certain weight so that the algorithm can determine whether the evidence meets certain thresholds for a verdict. He implies that this kind of "automated statutory evidence system" will limit judges' capacity to assess the evidence according to their logic and the circumstances of the case. Judicial officers could 'play' the system and only provide evidence they know will meet statutory requirements so that the judge can render a preferred verdict.

He also asks who ultimately decides what fairness means. Automating justice requires the explicit specification of all judicial knowledge through coding. It forces a developer to make explicit the grounds for every single decision and reasoning. Judicial organs outsource the development of these algorithms. Therefore, they allowed technology companies and computer engineers to influence the administration of justice. He concludes that algorithms will inevitably hold judicial fairness hostage.

In short, when it comes to judicial fairness, it is unsurprising that judicial informatisation is discussed as a double-edged sword. Positive and negative implications are often discussed together. Nonetheless, while this partly helps us answer how normative ideas around fairness and justice shape the evaluation of SCR, we still need a clearer understanding of the concept.

5.5 Conclusion

This chapter analysed the Chinese scholarship on SCR. It found that, in general, the scholarship assesses SCR in a positive light. This assessment is driven by an instrumentalist understanding of the reform concepts and the specific function and purpose of law and courts in China's political-legal system. In this sense, it confirms the arguments made in chapter 2. In addition, it supports the arguments made in chapter 4, namely that the party-state's strong ideological affinity with quantification and automation also shapes and influences how China's intellectual elite conceptualise the implications of technology for justice.

Despite nearly four decades of constant reform, many political-legal barriers remain hard to overcome. The key reform concepts that I identified in this review have, in fact, been part of judicial

reform discourse for decades (Nesossi and Trevaskes 2017). In this sense, the literature reflects longstanding issues identified as hard-to-resolve problems.

Therefore, SCR should be understood in this light of constant reform. It has aimed to improve efficiency and fairness for decades (Grimhede 2006). It occurs in notoriously understaffed and underfunded courts (Gong 2004; Wang 2013). One might argue that reforms are doomed to fail without addressing fundamental political-legal and organisational barriers. In other words, it illustrates the autocrats' dilemma of balancing judicial empowerment with ensuring that the judiciary does not become too strong to overpower the prerogative state (Moustafa 2014). According to the scholarship, there is no doubt that judiciary technology will finally address the efficiency conundrum in many courts. However, how courts' embrace of AI and other technologies is changing their operations remains to be seen.

In addition, many discussions that the review covered relate to judicial discretion. The scholarship is divided over how smart courts will impact this. Whether 'codified' or 'mechanised' justice is desirable depends on whether one favours standardisation or discretion (Roth 2016; Re and Solow-Niederman 2019). In this, Wu (2018)'s comments on how to manage judicial discretion reflect the general discretion of China's judicial system (Woo 1999; Roberts and Pei 2016). Chapter 7 delves deeper into this dilemma and the implications of SCR for judicial oversight and accountability. Nonetheless, more empirical research into how SCR impacts judges' behaviour and work is necessary.

The success of SCR in enhancing procedural and substantive fairness remains to be seen as well. Here, the review finds a more divided debate: it sharply illustrates how normative concepts shape and influence the evaluation of digitisation and automation of justice. The next chapter digs deeper into this, exploring how Chinese interpretations of "fairness" shape and influence SCR.

Finally, it is undeniable that technology has become essential to China's judicial reform goals. China is leveraging the power of technology to break through the limits of authoritarian legality (Gallagher 2017). The party-state and China's intellectual elite regard technology as the primary pathway to overcome specific issues in justice administration and governance (chapter 4).

In the next chapter, which I previously co-authored as an article with Nino Junius, we explore this conviction by examining how notions of fairness are conceptualised and operationalised in SCR

policy documents, pilot trials, and discourse. SCR is seen as a way to achieve and ‘organically unify’ the contradictory requirements of substantive and procedural justice. This unification is conceptually possible only thanks to the specific way that fairness and justice are conceptualised as part of SCR.

Chapter Six: Fairness and Justice Through Automation in China's Smart Courts¹⁸

6.1 Introduction

Previous chapters have focused on explicating and illustrating the normative and ideological foundations of Chinese official thinking that help explain the enthusiastic embrace of automation in both the judiciary and broader political-legal system. In this chapter, we zoom in on a single reform goal of SCR and how the PRC's ideological-normative notion of this concept shapes the SCR.

According to official Chinese discourse, SCR allegedly makes the justice system “fairer” (Cui 2020). I have already argued that the PRC has a strong ideological affinity with quantification and automation, which explains its enthusiastic embrace (chapter 4). However, research has not yet established how this is connected to SCR and “fairness” exactly. Therefore, in this chapter, together with Nino Junius, we ask what notions of “fairness” drive and justify smart court reform. To this end, we investigate how smart courts and automation fit into the official Chinese interpretation of “fairness” as stated in official documents.

This dissertation's introduction discussed how most international scholarship primarily employs pluralistic conceptions of norms in its evaluation (Shi et al. 2021; Stern et al. 2021). These conceptions are mainly derived from the rule of law theories, which generally underscore values such as democratic trust and accountability (Rawls 1999; Bell 2019; Helberger et al. 2020; Kazim et al. 2020; Sourdin 2021). The main limitation of this literature is that it maintains a Eurocentric notion of “fairness” when assessing SCR.

In this chapter, we argue that the Chinese concept of “fairness” justifies SCR because it enhances the party-state's ability to intervene when it deems it necessary. In turn, SCR perpetuates the concept endorsed by the party-state, which underscores values such as consistency and internal accountability. While these values are not necessarily unique to China's legal system, they drive and justify SCR in China because there exists no official conceptual space to contest the prerogative of the CCP to determine what “fairness” means. The conceptual dynamics between automation,

¹⁸ This chapter is based on a reworked version of my article “Fairness and Justice Through Automation in China's Smart Courts”. See: Papagiannenas, Straton, and Nino Junius 2023. Fairness and Justice Through Automation in China's Smart Courts. *Computer Law & Security Review*:1-65.

law, and “fairness” inherently differ from Western conceptions. In the unilateral and uncontested worldview of the CCP,

automation perpetuates, rather than undermines, what it deems to be “fair”.

To this end, we draw on Chinese socio-legal studies, which recognise that law and justice are politically and ideologically bounded (Trevaskes et al. 2014a; Ng and He 2017; Sapio et al. 2017a). This recognition implies that the discussions about “fairness” and legal rationality need to be placed within boundaries determined by the collectivist and teleological conception of law (Sapio 2010; Creemers and Trevaskes 2020b). Hence, if local political and ideological dynamics bind law, the conceptual dynamics between smart courts and “fairness” are different from those assumed by scholarship employing Eurocentric evaluative frameworks. Scholars have yet to fully appreciate what notions of “fairness” might underly automation reforms such as SCR in the Chinese context. After all, if we want to get a clear sense of SCR’s ramifications in China’s political-legal system, we need to understand what normative principles animate and justify the reform.

We qualitatively analysed the foundational texts and discourse about smart courts in China, such as judicial policy documents, judicial reform plans, white papers, and regulations, in addition to case studies and official press releases. We find that SCR enhances specific procedural and substantive components of “fairness”. However, beneath the surface, our analysis reveals that procedural fairness is conceptualised in a way that is subordinate to substantive fairness. Our main argument is that elements of procedural fairness, i.e., internal accountability, external visibility, and due process, must be conducive to the substantive goals of legitimation, social stability, and user convenience. Most noteworthy, there is a strong emphasis on due process or *procedural* consistency, referring to the extent to which rules and procedures are applied and followed consistently in all cases, regardless of the individuals involved. It is the main goal of procedural fairness because there exists, *in fine*, only one single substantive standard to which law and courts’ functioning can be evaluated: sustaining the legitimacy of the CCP by following the single truth to the single common good. Therefore, automation makes justice “fairer” because it enhances the party-state’s ability to intervene when it deems it necessary. This conceptualisation of “fairness” only makes sense within the bounded context of the Chinese case and cannot be uncovered by adopting a Western gaze.

Hence, our focus on China offers valuable lessons for the broader discussion on algorithmic and automated justice (Sourdin 2018; Završnik 2019). It shows how adopting local normative frameworks in which technology operates casts a different light on how and why this technology operates in a particular context. As a result, this study illustrates what occurs when the assessment of automation is guided by interpretations of key concepts such as “fairness” that are entirely different from jurisdictions based on liberal and democratic rule of law ideals.

The article is structured as follows: The next section reviews Chinese conceptions of “fairness” to inform the empirical investigation. The third section introduces data and methods. The fourth section presents the results of our analysis by showing how “fairness” features in SCR documents and relates to notions of technology and automation. The analysis sheds light on internal justification and discursive framing of automation in SCR and discusses the implications. In our conclusion, we discuss the implications of the study of fairness and automation.

6.2 Chinese Conceptions of “fairness”

We map the extant international literature on its meaning to understand Chinese conceptions of “fairness” in China’s political-legal context. It will help us interpret our findings in the analysis, which we will connect with the literature. This section discusses the role of Marxist-Leninist ideology and traditional philosophy in shaping understandings of law and justice.

The Chinese concepts of “fairness” and “justice” in relation to the administration of justice are encapsulated in the term “judicial fairness” or “judicial justice” (*sifa gongzheng*, 司法公正), which explains why “fairness” and “justice” are often used interchangeably.¹⁹ Nonetheless, we differentiate between the two from hereon and maintain the term “fairness” in our analysis to avoid confusion. Despite the contention on a precise definition of both, a common core is a distinction between process and substance (Cohen 1996). Substantive fairness refers to the fairness of the outcome, and procedural fairness refers to the fairness of proceedings. In the Chinese context, substantive fairness has traditionally trumped procedural fairness in the sense that law, institutions, and litigants are more outcome-oriented in evaluations of the fairness of a process (Leng and Chiu 1985; Lubman 1999; He and Feng 2021).

¹⁹ To reiterate, “fairness” in this article refers to the fairness of justice administration and encompasses both procedural and substantive components.

To unravel the interpretation of “fairness” from the perspective of the party-state, we briefly return to the CCP’s Marxist-Leninist ideology. We follow Creemers (2020) on the premise that a discussion of law and justice administration cannot be understood adequately without recognising the role that Party ideology plays in the development of China’s legal system “as intended by those in charge” (p.33). The driving purpose of the Chinese political context in which law operates has consistently been teleological and collectivist, which takes precedence over the individual. In addition, Chinese legal scholars follow a clear substantive doctrine: advancing the cause of socialist modernisation for the collective people instead of the autonomous individual (Seppänen 2017). Procedural rights are only important in so far that they contribute to achieving overarching political goals and do not exist as an inalienable right in and of itself (Nesossi and Trevaskes 2017: 3-5). China’s political-legal system exists to achieve a utopian future, not to govern the present (Bakken 2000). Therefore, “fairness” in the Chinese context is collectivist and instrumentalist in nature and purpose. The “fairness” of a case outcome is determined by the extent to which it serves the broader socio-economic and political context.

In addition, according to Leninist organisational principles, the CCP legitimises itself as a vanguard party with exclusive access to the truth. Therefore, it is the only entity able to achieve the aim of China’s prosperity. It is tasked to disseminate this truth to the people (Ding 2020). Through this dissemination, “the people”, a faceless, imperfect mass, can be moulded into this ideal notion determined by the party (Munro 1971; Lin and Trevaskes 2019: 50). Simply put, the role of the people in China’s political-legal system is to be governed by the vanguard party. Legitimate conflicts of values and interests are impossible in this monist interpretation of public life (Creemers 2020: 51). Following these lines, “the people” possess no inherent rights and merely exist to be cultivated.

This exclusive position of the CCP also entails that no entity but itself can hold it accountable. Consequently, internal self-discipline and party unity are more important than external, legal, and procedural accountability. Law and justice are in name a form of the people’s will expressed through the party (Ding 2017). This means that party leadership over the law and its required flexibility in governance are irreconcilable with procedural rationality and accountability that lie at the heart of Western conceptions of “fairness” (Creemers 2020: 45-50).

Because law cannot exist outside of the party's power, what is "fair" in the Chinese context also carries a strong moral and substantive component. Morality must act with the law to discipline individual behaviour and constrain power (Lin and Trevaskes 2019; Lin and Trevaskes 2020: 122). In addition, traditional moral philosophy distinguishes between 'high' and 'low' justice. The former, expressed in the term (*zhengyi*, 正义), is a moral doctrine about the legitimacy and moral supremacy of the ruler and discards the needs of the individual. The latter, expressed in (*gongzheng*, 公正), pertains to a fair system and fair treatment and ranks at the lower end of what is considered fair governance in Chinese conceptions (Lin 2017: 67-69). "Unfairness" does not necessarily affect the legitimacy of the system because it does not affect the moral superiority of the ruler. This unique prioritising of moral superiority rather than the legality of governance blinds Chinese interpretations of "fairness" for abuse of power. Therefore, China's legal system is not made to protect individual rights in a social structure and has less interest in procedures.

In short, "fairness" is collectivist and instrumental in nature and purpose, is determined by the vanguard party, cannot be contested, and has a strong moral and substantive component. According to Sapio et al. (2017b: 8), this performative and instrumental function "pervades every dimension of the PRC legal system". This interpretation of "fairness" explains why the focus lies on substantive outcomes: it needs to adhere to the utilitarian goals of the party-state. An outcome can only be considered "fair" if it sustains the political-legal culture and legitimacy of the PRC. Moreover, as a Leninist vanguard party, only the CCP can determine what is "fair" and administrate it. Political-legal institutions, such as courts, perpetuate this by legitimising the authority of the CCP and its prerogative to determine what is 'fair.' They are an integral component of social governance, which is not necessarily unique to the Chinese context (Shapiro 1981).

For example, a fair outcome in criminal justice is an outcome that repairs the "social harm" that specific behaviour has caused and one that punishes the wrongdoer (Nesossi and Trevaskes 2017: 2-3). Therefore, judicial fairness needs to contribute to social harmony and stability (Trevaskes et al. 2014b) and the overarching goals of national modernisation and development. In this sense, judicial "fairness", as a lower form of "justice", is merely a conduit to sustain the party-state's legitimacy.

These priorities trump concerns over due process, fair trial standards, and Western notions of procedural fairness more broadly. While criminal justice reforms have focused on improving

procedural fairness, its fundamental normative purpose remains to achieve a collectivist society and protect socialist morality (Yin and Duff 2010: 1106). Therefore, criminal procedures aim to achieve an acceptance of substantial outcomes of proceedings (Shytov and Duff 2019: 300).

In sum, “fairness” in the Chinese political-legal context primarily entails a specific interpretation of substantive fairness, with only a minor role for procedural fairness. In addition, it prioritises the collective and is part of a larger toolbox at the disposal of the party-state to achieve a Marxist utopia. It is a state-centred and unilateral interpretation. China’s political-legal context is not pluralistic and does not allow much contestation of the meaning of these concepts.

In this regard, it fundamentally differs from and stands in contrast with Western conceptions that rely on a strong procedural component, such as Habermas’ deliberative conception of law as a legitimising force and Rawls’ theory of justice (Habermas 1996; Rawls 1999). These conceptions stand in the Kantian tradition but forgo metaphysical foundations and substantive doctrines in favour of an intersubjective and procedural interpretation of individual moral autonomy, in which reasoning can lead to legitimation (Forst 2011). Crucially, they allow for competing claims of what is and is not fair (Kymlicka 1992). The next section briefly discusses the data and methods and then turns to the analysis.

6.3. Data and Methods

We qualitatively analysed a series of different documentary sources, introduced in detail in chapter 1.3. Because we are not interested in the empirical reality of SCR, we do not evaluate the actual fairness of SCR against pre-determined normative benchmarks. Chinese scholars, judges, litigants, and officials at different levels naturally have different understandings of “fairness”. Moreover, the SPC is a rational actor that pursues its institutional self-interest (Ip 2011; Zhang 2012; Ahl 2014, 2019). Despite this, the judiciary remains firmly embedded in China’s political-legal system and is an inherent part of its governance apparatus (Ng and He 2017; Clarke 2020). We are interested in how smart court and automation fit into official Chinese interpretations of “fairness”. Therefore, the singular focus on official documentary resources of this empirical research is appropriate because it gives us ample insight into how a certain policy is justified and rationalised by the party-state (see, e.g., Trevaskes 2007a; Sapio 2010; Creemers 2022; Mittelstaedt 2022, for a similar approach).

We adopted a two-step coding approach for the analysis, creating a parallel track of “bottom-up” and “top-down” research. First, we coded the data by staying close to the text and being open to theoretical surprises while drafting memos. Line-by-line, we constructed the principles of “fairness” from the empirical material. Second, we connected the identified themes with the theoretical discussion in international scholarship to further guide our analysis and help us identify and interpret recurring patterns of “fairness” standards. To do this, we engaged in more focused coding by synthesising larger data segments and comparing various codes. Finally, we used these themes to systematically analyse the entire corpus in NVivo, a qualitative data analysis software. My co-author, Nino Junius, and I undertook this step in dialogue and switched between extensive reading and coding the corpus, creating an iterative process. The coding sheet is shown in Appendix III.

6.4. “Fairness” in Smart Court Reform

We divided the analysed corpus into four themes. We first analyse the challenges of judicial reform discussed in SCR documents. Then, we discuss how SCR aims to resolve these issues in terms of procedural and substantive fairness. Finally, we analyse how, according to the official narrative, automation and technology can harmonise procedural and substantive fairness.

Table 3: List of identified themes and sub-themes

Challenges of Reform
Corruption
Fallibility of humans
Uniformity vs flexibility
Procedural Fairness Goals
Internal accountability
Due Process
External visibility
Substantive Fairness Goals
Sustaining legitimacy

Maintaining social stability
User convenience

6.4.1 Challenges of Reform

We identified three key themes around the challenges of reform in SCR discourse: the persistence of corruption, the fallible nature of human beings, and the dilemma of balancing uniformity with flexibility. These three themes are also at the forefront of judicial reform. Moreover, they strongly relate to judicial fairness: scandals of judicial corruption and inconsistencies in judicial outcomes have severely damaged courts' credibility. According to SCR documents, these are key goals of judicial reform, which it has been unable to achieve satisfactorily. Therefore, we interpret this discourse around the challenges as the judiciary legitimising the decision to digitise and automate their processes. As we continue the analysis, we further clarify how these documents conceptualise technology as a pathway to resolve these persistent issues and, by extension, achieve “fairness” from the perspective of the party-state.

In this sense, we identified a strong presence of the narrative that corruption is primarily caused by undue interference. The Development Reports' case studies argue that undue interference is caused by the lack of specific procedural rules that clarify and divide the division of powers and responsibilities and how exactly ‘trial oversight and management’ needs to be conducted (Huang 2020). While judicial reforms have tried to address this through stricter procedures, the documents also reveal that these more stringent procedures caused tensions between the role of individual judges and court leaders (i.e., the court (vice-) president, division (vice-) chief). Moreover, empirical scholarship on these reforms of accountability and oversight argues that the vagueness of procedures led to a situation where court leaders do not dare to supervise or even know *how* to exercise their responsibilities properly (see, e.g., Long and Sun 2019; Wang 2020a; Zhao and Zhou 2020). In short, SCR aims to tackle these challenges of unclarity and lack of consistent oversight and compliance.

A second challenge we identified in the documents is that human adjudication is fallible. SCR documents clearly articulate that the risks for mistakes in adjudication will be lower when machines do most of the work. This belief is also consistent with prevalent “data fixation” in China’s

judiciary and Marxist-Leninist ideology. From the standpoint of the CCP's Marxist-Leninist convictions, social reality is reducible to a set of objective truths that simply exist and can be extracted. In addition, it stresses the role of the CCP as the vanguard party, which is the only entity capable of identifying these objective truths. This conviction explains why reformers believe machines can track this scientific truth better than humans (Bakken 2000). One case study in the analysed Development Reports praises the effectiveness of their smart system because it “effectively eliminates the human factor” and avoids “human feelings” in the adjudication process (Li and Wu 2021). This belief also explains why the Shanghai 206 AI System, another case study in our corpus, is touted to “make a real science out of justice [administration]” (Cui 2020).

A final challenge we identified is the dilemma between the uniform application of law and the flexibility to address individual circumstances in cases. The SPC considers the uniform application of law as a prerequisite to achieving fairness (SPC 2021e), and judicial reforms in the past decade aimed to improve this (Finder 2019a). These reforms have improved uniformity because judges are increasingly unwilling to violate clear-cut rules or procedures. The increased professionalisation of judges has also made them more law- and formality-oriented. (Wang 2020d). Nonetheless, courts still need discretion and flexibility to address special circumstances or ensure the “political correctness” of case outcomes. Another major goal of judicial reform, parallel to improving judges' autonomy and uniformity in applying the law, was strengthening party leadership over courts to guarantee this “fairness” (Finder 2020b; Daum 2021).

Balancing these opposing needs of uniformity versus flexibility has been a consistent issue in China's judicial reform over the past decade (He 2014). This issue can be attributed to legal courts' dual role and function in an authoritarian regime like China: they are caught between serving the normative legal system and the prerogative of the party-state (Fu 2019). Courts need to fulfil their political task by taking political considerations into account when dealing with sensitive cases. The outcome of such cases is more political than legal (Ng and He 2017: 85-87). This requires a certain degree of flexibility and discretion for judges to deviate from the procedural and substantive rules. It explains why courts have historically preferred discretion and informality (Woo 1999).

However, because of increasingly complex disputes arising from social and economic transformation, courts needed to become more professional and adjudication more predictable. Therefore, the judiciary has tried to increase the professionalism and credibility of courts as

legitimate dispute resolvers over the past decades. Nonetheless, the tension between uniformity and flexibility remains. This inherent tension constitutes a persistent barrier to judicial reform and exemplifies the autocrat's legal dilemma (Ginsburg and Moustafa 2008; Moustafa 2014; Meng 2023). The SPC conceptualises technology and automation as key pathways to resolving this contradiction by using technology to improve the “scientific and technological application for the uniform application of law and regulate the exercise of discretionary powers” (SPC 2021e), thus achieving “fairness”.

In sum, we identified three key challenges that justify the construction of smart courts. The following sections explain how smart courts should resolve these issues by achieving specific procedural and substantive fairness goals. First, we organise the identified solutions according to procedural and substantive elements, then bring them together to discuss how SCR is supposed to unify their contradicting requirements.

6.4.2 Procedural Fairness Goals of Smart Court Reform

We identified a strong emphasis on procedural fairness in SCR documents, confirming the shift towards more procedural fairness suggested in the literature. However, the conception implied in the empirical material is remote from what is usually understood with procedural fairness by Western literature. We organise our analysis of procedural fairness in three main goals of SCR: internal accountability, due process, and external visibility. We discuss these goals and how SCR operationalises these goals in the everyday functioning of smart courts. We find that procedural fairness in the SCR context has characteristics that align with the CCP's status as the sole and superior actor from a morality, legitimacy, and epistemic perspective. It underscores the Chinese conceptions of “fairness” discussed previously.

6.4.2.1 Internal accountability

First, procedural fairness in SCR aims to foster internal accountability. We previously stated that procedural fairness should not be considered as including procedural accountability. Nonetheless, it has a clear internal component, meaning that courts and their judges are not necessarily accountable to the law but to CCP discipline as governed *through* law (Trevaskes 2018). It fits within the CCP's worldview of law, reflecting the people's collective will as represented by the party (Ding 2017). Given the challenges discussed above, especially corruption, smart courts

provide a pathway to resolving this by enforcing more internal accountability through a dual process.

On the one hand, smart courts aim to create conditions for more self-discipline among judges. On the other hand, they are built to institutionalise and automate oversight mechanisms. In this sense, they enhance reform efforts to create better oversight procedures and increase judicial accountability. Oversight is realised and reinforced in many ways by the SCR. We also find that SCR connects increased oversight with ‘fairness.’ Given that the CCP is the sole arbitrator of what is fair and only accountable to itself, this means that, by extension, better enforced procedural compliance leads to more discipline and more “fairness”. For example, the *Online Court Operation Rules* (SPC 2022b) and the *Opinion on Accelerating Smart Court Construction* (SPC 2017a) explicitly state that courts should establish a unified information system, creating conditions for both goals. A unified information system is only internally accessible and would strengthen central control and oversight over adjudication. SCR documents strongly state that procedures are to be strictly enforced through these information systems.

SCR documents discuss additional tools to bring about internal accountability. Digitisation is considered a way to clarify rules and responsibilities to judges. Digitisation creates the conditions for standardising procedures, practices, and decision-making. Standardisation is important since it eases the analysis of the acquired big data and allows for more top-down control of judges. An example from one of the case studies is the Faxin 2.0 Smart Push System²⁰, one of the first software systems developed at the national level and implemented in all courts across the PRC (Ma 2020). It uses big data analytics to process and aggregate legal provisions, cases, legal opinions, and court decisions to analyse judgments, push similar cases, and provide judges with expert solutions (Fang 2016). The software is embedded into courts’ digital platforms and automatically pushes matching cases, laws, and judicial opinions to case-handling judges. It also includes a deviation trigger, warning judges that their judgment deviates too much from the average judgment in similar cases. Deviating from the consensus might have serious implications for the future career prospects of the judge.

Although the system is primarily presented as a tool to help reduce workloads for judges, we also found explicit references to using technology to achieve aims of consistency and uniformity in the

²⁰ An explainer can be found on their website [here](#) (in Chinese).

Guiding Opinion on Strengthening Searches for Similar Cases to Unify the Application of Law (SPC 2020a) and *Opinion on Improving the Working Mechanism on Standards for the Uniform Application of Law* (SPC 2020c). Therefore, it is safe to interpret this system as a way to enforce better due process and hold judges accountable in case they deviate too much from procedural norms. Although the Faxin 2.0 System is meant to be used by the judge, it also functions as a monitoring device for central court leadership.

We can see this more clearly in a case study of the smart management system the Jiangxi Provincial High Court developed. The ‘Trial e-Management Platform’ system allegedly enables intra-court communication, intra-department data integration, and personnel management (Li and Wu 2021). This platform constitutes a central digital venue where court clerks, frontline judges, and court leaders can handle a case together and interact throughout the judicial process. Although it is presented as streamlining cooperation and collaboration in courts, it also has a strong accountability and enforcement component. The platform acts like a line manager that oversees and regulates the behaviour of judges at every stage in the judicial process. It limits judges’ choices when dealing with a case and records their actions. Because users each have their own account, these actions are automatically tied to the correct court member and may impact their performance assessment. As a result, a judge’s actions can easily be monitored, measured, and compared to their peers. In this sense, these platforms also function as self-discipline tools for judges. Digital file management systems also increase self-awareness through self-assessment and self-management. Despite the constraints for judges, SCR is not merely implemented top-down. The reforms also incentivise judges to comply of their own volition. In other words, they are lured into a digital iron cage of procedural oversight and self-discipline by the promise that smart courts will facilitate their work.

Another case study on the Integrated Judicial Power Oversight and Restriction Platform, developed for courts in Hebei province, further illustrates how digitisation and automation make oversight mechanisms extremely granular and pervasive: it allows daily and precise oversight of key actions at key moments in the judicial process. Through automatic identification and flagging of ‘troublesome cases’, supervisors supposedly have an immediate grasp of the issues at hand and which measures to take. It explicitly frames this as “letting fairness and justice shine through by locking the judiciary in a systemic cage” (Bai et al. 2022: 265).

In short, SCR enhances new procedures and rules around accountability and oversight by drawing the entire judicial process into these systems and logging every procedural step so that, at any point, court leaders know who did what and who is responsible. From our findings emerges a sense that “fairness” can be achieved through rigid oversight and strict enforcement of compliance and accountability. It aligns with the international scholarship on the Chinese conception of “fairness”. According to Chinese conceptions of “fairness”, a fair and just world can only be achieved if all actors adhere to the monist party-state doctrine, which requires a high level of compliance and self-discipline by the agents of the party-state. Following Leninist maxims, this can only be achieved by high levels of party embeddedness and control. This control is exercised through strict procedures. In addition, the power of technology is leveraged to enforce compliance with these procedures, thus achieving ‘fairness.’ As stated earlier, this does not consider popular or subjective experiences of the fairness of proceedings. Where the people are considered in the equation, the party-state determines what is important and how “fairness” *should be* experienced or defined.

6.4.2.2 Due Process

A second procedural goal of SCR is to improve the consistency of all court processes and outcomes. Moreover, improving procedural consistency or due process is key to the judiciary’s efforts to digitise its courts. Although the consistency of procedures might relate to a legislative issue, many court practices are determined and documented in SPC Rules and Guiding Opinions (Finder 2020a). Therefore, it is primarily an issue of the judiciary.

Our corpus contains lamentations that judges are overly free to manage cases. The documents express consternation that this might lead to unsatisfactory results, such as too many diverging judgments. In this sense, SCR reflects the general distrust of human judgment and perpetuates the conviction that humans are fallible. It is also noted that a lack of consistency harms internal accountability. As stated above, the more standardised and consistent the procedures are, the easier they are to control. Hence, internal accountability and due process are intrinsically connected. Although consistency in Chinese judicial reform also refers to treating like cases alike (*tong’an tong pan*, 同案同判), the emphasis of SCR lies on improving procedural consistency, which we refer to as due process: the extent to which rules and procedures are applied and followed consistently in all cases, regardless of the individuals involved.

SCR promotes both types of consistency in multiple ways. First, there is a standardisation of judicial outcomes. I already discussed how the Faxin 2.0 Smart System promotes consistency and internal accountability by automatically recommending laws, cases, and past decisions as a reference to the case handling judge, along with a sentence recommendation. Although there is no empirical proof that this effectively improves consistency in outcomes, the context in which adjudication takes place in China, as well as the intentions expressed both in the case studies and regulatory documents in the corpus, point towards the reinforcement of an environment where there is pressure to comply with the consensus as expressed by the algorithm (see also, e.g., He 2021b). In addition, the Jiangxi Provincial High Court case study illustrates how unified digital case management platforms ensure that adjudicators stay within the legally permitted parameters in their decision-making.

Another case study of the Yibin Intermediate Court's Full Process Automated Oversight Platform combines automated and manual functions to enhance "trial oversight and management." It is a platform that screens and indexes incoming cases. Based on a set of parameters, the platform decides whether a case requires closer review by court leaders, who are obliged to conduct this review. This case study is explicitly presented as a solution to the tension between normative and prerogative principles in justice administration. It justifies the existence of automated oversight mechanisms by arguing that the absence of oversight will lead to unfairness. In this sense, this platform is not necessarily concerned with enforcing consistency in outcomes but with consistent application of oversight procedures.

The platform was designed with keywords that trigger the system to flag incoming cases requiring oversight by court leaders. According to the case study, the platform "intelligently" identifies, flags, and pushes cases that require oversight to senior court leadership (Huang 2020). Superiors are then obliged to exercise their oversight powers by the system. The platform can also warn higher-ranked courts of incoming sensitive cases requiring further attention. It records every action taken at every procedural step, reporting non-compliance. Given that all case-handling procedures are managed in a digital and automated platform, court leaders oversee all cases handled by their court with the assigned responsible judge. Neither the adjudicating judges nor the supervising senior judge can escape this oversight mechanism. It is argued that this oversight mechanism enhances due process.

In this sense, SCR standardises power and oversight procedures. The above case studies show that SCR entails that the powers and responsibilities of presiding judges, court leaders, and all other personnel should be explicitly listed and clarified. As discussed above, China's courts require a certain degree of flexibility to address their normative and prerogative tasks. SCR is presented as a way to ensure further institutionalisation of this flexibility by integrating new procedural reforms regarding oversight responsibilities into a digital platform. In addition, smart courts are meant to standardise court practices across the country: the SPC calls to integrate existing standards in various regions into one unified and consistently applied standard that applies to all four-level courts.

How can intervention in adjudication be considered fair? Again, according to Marxist-Leninist principles, the vanguard party has the exclusive prerogative to decide what is “fair”. Hence, it can justify party intervention in the normative framework of the court system. However, courts do not always know what is “fair”, and special cases require direct party intervention to maintain a “fair” outcome. The party-state must be able to intervene and “correct errors” in judicial decisions when citizens petition to challenge final judgments. According to this approach, a judgment's political correctness is more important than preserving its finality (Woo 1991). Oversight is crucial because of the Marxist-Leninist nature of the political-legal system (Shen 2001: 16; Jiang 2011: 4). Additionally, it serves as an institutional check on individual judges and offers the required flexibility to bring decisions in line with the external policies of the central government.

To prevent abuse of this prerogative, SCR presents a satisfactory solution because it helps codify intervention mechanisms in a rigid procedural framework. Accordingly, it contains clear conditions for action, descriptions of specific actions to be taken when conditions are met, and consequences in case of non-compliance. This clear and rigid structure, akin to an IF-THEN chain set, allows for the automation of these mechanisms. Thus, SCR helps achieve “fairness”.

6.4.2.3 External visibility

External visibility is the final procedural goal that we identified in the corpus. By external visibility, we refer to the transparency efforts to make court information and procedures visible and available to ordinary Chinese citizens. Smart courts facilitate this and thus make ‘fair justice administration’ possible because of their transparent character (Wang and Tian 2022b). This move is explicitly motivated by the idea that courts should accept the people's oversight. In other words, citizens are

called upon to fulfil an oversight function. It aligns with how the role of the people is envisioned within the Leninist state structure, meaning that oversight is not linked to external accountability but only to the extent that it perpetuates internal accountability and self-discipline (Gueorguiev 2021). Therefore, external visibility prevents the development of accountability that fosters impartial judgments and fairness from a Western perspective (Daum 2014).

However, according to Leninist maxims, a key difference exists between internal accountability and external visibility. Judges and other court personnel are only held accountable internally. As a vanguard party, the CCP is the only credible guardian of accountability within the Chinese state. Citizens are merely activated to supervise and report to official party authorities in case of perceived abuse, creating a feedback loop for Chinese governance. However, disciplinary actions remain the party's prerogative (Hoffman 2017). Therefore, the call for popular oversight by SCR documents must be understood in light of big data's imperfections and the current crackdown on judicial corruption (Rui 2021). External visibility helps the CCP to achieve internal accountability but is by no means its legitimate equivalent.

Nevertheless, SCR documents claim that the people have the right to participate in and monitor judicial activities. It was also the idea driving many of the digitisation efforts, referring to creating a 'sunshine judiciary', such as in the *SPC Opinion on Several Issues Relating to Advancing the Establishment of Three Platforms for Judicial Openness* (SPC 2013c). However, as we just explained, the ideological ideas behind law and justice in China imply that external visibility is merely instrumental to internal accountability.

SCR documents call on courts to present visualised, quantified, and evaluable court information to the public. This practice aligns with common governance practices of outsourcing oversight to the public (Gueorguiev 2021). Therefore, the judiciary's public work should be enhanced and stimulated in all instances. One way to achieve this is to construct a multi-channel authoritative information disclosure platform. It should disclose court work via multiple channels, such as WeChat (a Chinese all-in-one messenger platform), Weibo (a social media site), and various online portals. The most prominent examples are the three transparency platforms, CCTO, CJPIO, and CJO, discussed previously in chapter 3.

Therefore, smart courts provide various oversight channels by disclosing judicial activities to the public, granting court leadership clearer oversight powers, monitoring judicial behaviour and

cultivating self-discipline through digitising and automating judicial practices. It draws the judiciary into a “[big] data iron cage” (*shuju tielong*, 数据铁笼). Therefore, our analysis finds that SCR perpetuates the monist and instrumentalist conception of procedural fairness. Our findings dovetail with the previously discussed literature that underscores law’s monist and instrumentalist role in China, which also explains how fairness is conceptualised in the data. Because the CCP, as the vanguard party, has the sole prerogative to decide what is “fair”, procedures only exist to allow the CCP to enforce their conception of “fairness”, not to protect diverging contestations of this concept. In the next section, we analyse what kind of substantive fairness goals the SCR perpetuates.

6.4.3 Substantive Fairness Goals of Smart Court Reform

We identified three main goals of SCR related to substantive fairness and organised the analysis accordingly: sustaining the CCP’s legitimacy, maintaining social stability, and improving user convenience. The analysis reveals how these three elements overlap and interact with each other. Finally, we discuss how SCR achieve these goals in justice administration.

6.4.3.1 Sustaining legitimacy

A first goal of SCR is to sustain the ruling party’s legitimacy. Like other institutions, courts are tasked with the political imperative to continuously reinforce the party’s legitimacy and repeat the ideological justifications of party rule. Smart courts must play their part in achieving party leadership through the law by modernising and improving the ruling party’s governance capacity. SCR needs to adhere to a ‘two-pronged approach of system construction and technological innovation’ (SPC 2022e), i.e., applying technology to enhance continuous reform of the judicial system.

Smart courts are envisioned to support CCP legitimacy through a variety of pathways. We distinguish between internal and external ones. As discussed earlier, SCR aims to enhance judicial transparency for Chinese citizens. The point of smart courts’ transparent and visible character is to ensure that people ‘can feel the judge is in the middle of the judgment, basically realising the organic unity of the social and legal effects of cases’ (SPC 2019a). In this sense, SCR enhances the

propagating effect of courts and makes “fairness” tangible. They need to feel that the CCP is acting in their interest as the vanguard of the masses. The idea of a morally good and benevolent ruler is an important aspect of traditional conceptions of justice. Therefore, “fairness” is an important legitimization device.

Internally, smart courts need to function as iron cages. Smart courts create an environment where judicial personnel are strictly monitored and guided in their behaviour by digital and automated platforms. The result is a holistic oversight of the entire judicial process. This environment fosters self-discipline and a strict application of procedures. SCR documents claim this leads to better substantive outcomes: walking the party line leads to fair and just outcomes. Beyond their oversight function, smart courts’ digital platforms are also expected to help build political loyalty and improve party control or “party building”: they need to be used to foster party loyalty by establishing interconnected channels for learning and communication across courts.

Our findings confirm the literature’s consensus that the goal of judicial and legal reform has been about increasing party leadership over courts and that courts are important actors in sustaining regime legitimacy (Ahl and Tieben 2015; Finder 2015; Ahl 2021). We also find that procedural fairness is employed as a rhetorical device to describe smart courts’ role in educating loyal bureaucrats well-versed in the party’s protocol and goals. Again, this makes sense within the CCP’s worldview because only the CCP can determine what is “fair”. Implied is that diligently studying and implementing the party line will lead to fair outcomes.

6.4.3.2 *Maintaining social stability*

A second theme we identified in the corpus is the importance of leveraging smart courts to maintain social stability. Courts function as stability maintenance institutions (Clarke 2020). Interestingly, we found many references to ‘individual citizens’ in the data, especially in the procedural rules around smart courts. It contradicts the idea that the Chinese worldview and the CCP’s policies are tailored towards the collective at the cost of individuals. However, further analysis revealed that individuals must only be met in their needs to achieve social stability. For example, courts are concerned with ensuring that losing parties will not protest or appeal to higher levels of government or courts. In this sense, procedures’ recognition of individual needs should not be interpreted from a rights perspective but rather from an appeasement perspective.

The propagating and tangible effect of smart courts is an attempt to cultivate a sense that procedures, and thus the way justice is being administered, are just as important as the substantial outcomes. Giving people a sense of control and full information and making them ‘have a stronger sense of gain in judicial reform’ is one way of satisfying them. Research has shown that the online digital environments of courts provide a fairly intuitive system to litigants that handholds them through the process, giving them a sense of empowerment to make procedural and substantive decisions and to take legal action (Sela 2019). This empowerment is conducive to litigants having a sense of fairness, and smart courts are presented as conducive to this.

There are several ways in which procedural rules in the OLR (SPC 2021b), the OMR (SPC 2021c), and the OOR (SPC 2022b) attempt to achieve this goal. First, smart court procedures grant individual litigating parties substantial control over the online judicial process and focus on protecting their litigation rights. Adjudicators of smart courts need to consider the judicial needs of different groups, such as the elderly or the digitally illiterate, and provide corresponding judicial conveniences. Obtaining consent for online litigation from litigants is crucial: Explicit and informed consent are prerequisites for launching online litigation. In addition, the parties may withdraw their consent at any point during the process. They may also ask to manage specific procedures offline while continuing the rest of the process online. Another important way to cultivate people’s sense of control and courts’ credibility is to improve procedural transparency: the data in the corpus underscore the importance of making the process visible and tangible, on top of controllable. Finally, smart courts are integrated with judicial disclosure platforms that allow litigants to retrieve and access information about their cases and the court.

The design of court procedures embodies a fundamental tension between the goals of fairness and efficiency (Sela 2019). In this trade-off, the smart court procedural rules favour empowering litigants. The centrality of consent and individual procedural rights in these rules come closest to interpretations of “fairness” in Western traditions. Nonetheless, the scholarship nuances this: courts’ primary role is maintaining social stability (Guo 2014; Trevaskes et al. 2014a). This knowledge is a caveat to what appears like a focus on empowering litigants. Interpreting these rights as a positive externality to the core aim embedded in these rules is more analytically fruitful. These procedural rights exist primarily to appease litigants but can just as easily be suspended when the party-state deems fit (Sapio 2010). As discussed earlier, some case studies illustrate how automation and

technology are meant to enhance the party's ability to intervene in adjudication and exercise its sovereign power.

6.4.3.3 User convenience

A last theme is how smart courts lower barriers to justice. Technology makes courts and participation in trial hearings more convenient, i.e., smart courts promote easier and more affordable access to legal dispute resolution. With user convenience, we consider the substantive benefits to litigants finding their way to the courtroom. In other words, how technology incentivises people to turn to courts to resolve problems rather than turning elsewhere for help or to attempt to resolve problems independently. In this sense, it relates to the physical accessibility of justice and justice as a social institution and experience (Sandefur 2009).

SCR is framed as an important contributor to making justice accessible. It is important because grievances and conflicts must be channelled into courts as easily as possible. In this sense, courts are safety valves that channel pressures and frustrations out of society. However, we find that this is primarily done in an active and propagating way, i.e., bringing justice to the people by “expanding new channels of justice for the people”, “enriching judicial services for the people” and helping “reduce the suffering of the masses and reduce litigation and judicial costs” through technology (SPC 2019a).

One of the most effective ways of doing this is by bringing the court to people's homes. Online litigation has made this possible. Smart courts allow for parties to participate in the judicial process asynchronously. Through the online litigation platforms the court provides, they can log on separately within a pre-set timeframe (SPC 2021b). For specific procedures such as small claims or summary procedures, courts and parties may record and upload videos of themselves conducting their part of the trial hearing to complete the trial asynchronously. When parties do not have the technical equipment and conditions for the online use of audio and video, they will be provided with a place and the necessary equipment to participate. In short, SCR documents tout technology's contributions to the user's convenience of participating in court proceedings. In this sense, we identify a clear socialist bent in substantive fairness. It aligns with how judicial reform has developed under the slogan of creating a “socialist rule of law country” (Liebman 2011; Lin and Trevaskes 2019).

In conclusion, we identified that SCR aims to reinforce substantive fairness, but only in self-serving ways that sustain the legitimacy of the CCP, maintain social stability, and improve user convenience. As reviewed in the literature, maintaining social stability and sustaining legitimacy are intimately intertwined (Trevaskes et al. 2014a). By improving courts' capacity to maintain social stability through technology, it also, by extension, helps sustain party rule. Smart courts use a blend of socialist and Leninist tools, such as making justice administration tangible and accessible and increasing vertical control, respectively. Following the conception of law and the people in the CCP's worldview, "fairness" can be achieved through propagation and control (Ding 2017, 2020). Propagating because the people need to be told what "fair" and 'just' is, and control because legal bureaucrats need to perpetuate this unilateral concept. The final section discusses how procedural and substantive fairness come together in smart courts to be "organically unified."

6.4.4 Unifying Procedural and Substantive Fairness Goals

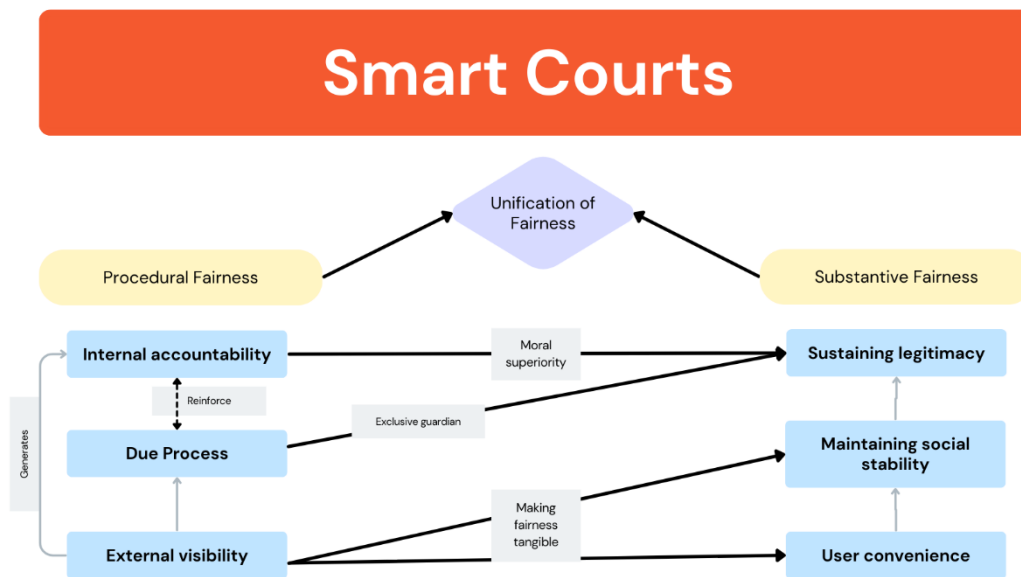
The "organic unification" of fairness is an overarching theme in the analysed corpus. For example, the SPC Opinion on Accelerating Smart Court Construction (SPC 2017a) explicitly states that smart courts should "promote the organic unification of procedural and substantive fairness" (*youji tongyi chengxu gongzheng yu shiti gongzheng*, 有机统一程序正义与实体公正) (section III.7).

"Organic unification" or "organically unifying" is a key term in party and state documents on judicial reform and building the rule of law. "Organically unifying" (*youji tongyi*, 有机统一) is a signal from central party-state institutions that it wants to promote a particular line of thinking that binds together or "organically unifies" concepts or statements that might otherwise be contradictory (Lin and Trevaskes 2019: 51). For example, under Xi Jinping's *yifa zhiguo* reform agenda, there was an effort to "organically unify" law and morality to justify embedding the party as deeply as possible into the legal system because they maintain moral supremacy as the ruler, and are therefore best positioned to govern through law. The rule of law is only possible through strong and moral party leadership (Trevaskes 2018; Lin and Trevaskes 2020).

Therefore, the fact that smart courts are supposed to "organically unify" procedural and substantive fairness indicates a recognition that these are contradicting concepts. In both authoritarian and democratic contexts, procedural fairness is commonly defined in contrast to substantive fairness (Nesossi and Trevaskes 2017: 6). However, in China's political-legal system, procedural fairness

needs to be constructed in a way conducive to achieving substantive fairness. Therefore, procedural fairness, as a concept which underscores the protection of rights and enforcement of procedural accountability through legal liability and legal remedies to deter misconduct, cannot exist in China's political-legal system (Keith and Lin 2001; Chen 2011). Western conceptions of the rule of law and procedural fairness, which focus on a plural conception of the common good, sit ill with the CCP's assertion that there is a singular and intelligible absolute truth that leads to unity and harmony. Hence, procedural fairness must be tamed to fit the Chinese party-state's agenda.

Figure 4: Unification of procedural and substantive fairness in smart courts



We found that the elements of procedural fairness mentioned in the corpus, i.e., internal accountability, external visibility, and due process, must be conducive to the substantive goals of legitimation, social stability, and user convenience. Internal accountability strongly supports the idea that only the CCP can be its legitimate guardian and reinforces its top-down influence over courts. External visibility, on the one hand, creates room for the expression of malcontent, which fosters social stability. On the other hand, external visibility is employed to strengthen internal accountability because it creates oversight channels through a feedback mechanism. Furthermore, external visibility is used to maintain internal discipline, which fosters more legitimacy as it sustains the idea of the vanguard party as the morally superior entity in the political-legal system. Finally, the emphasis on procedural consistency plays into substantive goals, echoing the CCP's monist worldview. Reinforcing due process is the main goal of procedural fairness because there is, *in fine*, only one single substantive standard exists to which law and courts' functioning can be evaluated: sustaining the legitimacy of the CCP by following the single truth to the single common good.

6.5 Conclusion

This article investigated the concept of “fairness” underlying China’s smart court reform. In the Chinese view, SCR leads to a unification of procedural and substantive components of “fairness”. Our analysis reveals that this is done by subordinating procedural fairness to substantive fairness. In practice, elements of procedural fairness, i.e., internal accountability, external visibility, and due process, must be conducive to the substantive goals of legitimation, social stability, and user convenience. Therefore, “fairness” is meant to enhance sovereign power, not bind it. In this sense, normative procedures exist to facilitate its coercive power (Sapio 2010; Trevaskes 2018). Party rule is a prerequisite to ensure good governance, achieving Marxist utopia, and, therefore, “fairness”. Within the collectivist, instrumental, and indisputable conception of “fairness” endorsed by the party-state, automation and smart courts can indeed be considered “fair” because they enhance the power of the party-state to achieve Marxist utopia.

Our findings illustrate how consequences of SCR that are negatively evaluated by scholars such as Stern et al. (2021) and Shi et al. (2021) are, in fact, intentional goals of SCR. The main concern of the scholarship is that SCR will undermine judicial independence. However, our findings reveal that increasing party leadership, political oversight, and reducing the discretionary space of judges are intentional goals of SCR. These developments fit within the party-state’s official worldview and, hence, are considered “fair”. At the same time, broader judicial reform has focused on increasing the autonomy of courts and judges (Wang 2020d; He 2021b), which nuances our findings.

However, our findings illustrate that SCR intends to allow both dynamics to exist simultaneously. Smart courts enhance due process and internal accountability while simultaneously allowing party oversight (see chapter 7). In this sense, the Chinese judiciary can become more autonomous while remaining firmly embedded in the party-state’s governance system. It makes party control and oversight more ubiquitous and diffused while not undermining the autonomous functioning of courts. This analysis helps better understand why the Chinese party-state believes smart courts will make adjudication “fairer”. It explains why the judiciary has enthusiastically adopted advanced technology in their courts.

Naturally, our findings come with a few limitations. Our analysis reveals little about the actual perceived “fairness” of smart courts by individual judges, officials, and litigants (Chen and Li

2020a). Moreover, we do not consider how local judges and officials think about issues such as “fairness” in adjudication (Sapio et al. 2017a). Therefore, our analysis is only concerned with the official conception of “fairness” as stated in central documents.

Despite these limitations, this article offers valuable lessons for the broader literature on algorithmic and automated justice beyond the Chinese context (O’Neil 2016; Sourdin 2018; Re and Solow-Niederman 2019). While according to Eurocentric literature, automation is considered to have a cheapening effect on justice and cannot escape from all normative conflict (Roth 2016; Green 2022), in the Chinese case, it is considered to have an enhancing effect. The reason is that there exists no official conceptual space for normative conflict. The monist interpretation of “fairness” blinds it to the disparity between formal fairness and the real-world impact of automation. This conception is diametrically opposed to Western notions of “fairness” that guide evaluations of automation in Eurocentric literature (Helberger et al. 2020; Barysè and Sarel 2023; Yalcin et al. 2023). Only by recognising this specific interpretation of what “fairness” means can we understand how smart courts fit into it.

Our findings also provide insights into the adoption of technology in courts in other jurisdictions. These developments are not necessarily unique to China. Many countries worldwide are struggling to harness the power of technology for justice. The Chinese case shows how technology is mobilised to improve accountability, due process, and user convenience (Sung 2020; Wang 2021b; Wang and Tian 2022a). These goals are achieved by integrating the judicial process into a digital, online, and all-encompassing platform. This technology-driven ecosystem streamlines the judicial process, standardises each procedural step, and records every action undertaken. In addition, it reduces barriers to courts by, among others, enabling litigants to participate in legal proceedings online and allowing them to upload legal documents or file a case via a court’s online portal.

However, while technology provides these advantages, it might come at the expense of other judicial values, such as equity or discretion (Roth 2016; Re and Solow-Niederman 2019). These platforms also serve as management and monitoring systems of the entire judicial process, increasing the “panoptic control” of Chinese judges (He 2023). Reichman et al. (2020) have already shown that this has normative implications for the judicial role: this environment diminishes judges into “assembly-like” law-applying bureaucrats. Whether these outcomes are considered a positive

or negative development ultimately depends on a system's normative approach toward the role of law and the judiciary.

The main challenge underscored by our findings is the importance of clearly determining how “fairness” and other judicial values are conceptualised and how they are embedded and prioritised in a judicial system. Technologies are not value neutral but embedded in a certain vision of law and society. Therefore, it is important for jurisdictions adhering to liberal rule of law ideals to emphasise the democratic and pluralistic values of their judicial system and to prioritise safeguarding those values while adopting technology.

In summary, embedded in SCR documents, we find that automation perpetuates a notion of “fairness” that fits within the CCP's official worldview. Smart courts provide pathways to achieve this specific ‘fairness.’ In broader terms, our analysis illustrates how the party-state's worldview is embedded and promoted into its legal system to sustain its legitimacy. As chapter 4 showed, this also helps explain the rapid embrace of automation and technology in China's justice administration: they fit perfectly within the ruling party's worldview and perpetuate it in turn.

In the next chapter, I zoom in on another reform goal of SCR, namely transparency and oversight. As discussed in chapter 2, political oversight is considered a prerequisite to guarantee fairness and justice. In this chapter, I showed how SCR are envisioned to achieve this fairness. In the next, I illustrate through two case studies how this ideological conviction shapes how specific SCR projects have developed, and how they are considered to perpetuate it.

Chapter Seven: Automating Intervention in Chinese Justice: Smart Courts and Oversight Reform²¹

7.1 Introduction

This chapter conducts two case studies to examine how SCR enhance oversight and accountability reforms, particularly the mechanism of “trial oversight and management” (*shenpan jiandu guanli*, 审判监督管理). These two cases, one from the Jiangxi Provincial High Court and one from the Yibin Intermediate Court in Sichuan Province, provide an account of how digitisation and automation shape procedural mechanisms of political oversight.

The chapter argues that SCR helps institutionalise and codify political oversight over China’s judiciary. Smart courts, while meant to provide better judicial services and improve access to justice, also enhance the restructuring of accountability and power hierarchies in China’s judicial system. Therefore, the double track of, on the one hand, judicial reform and, on the other hand, informatisation helps resolve the contradiction between the two opposing requirements of Chinese courts. As explained in chapter 2, courts are confronted with the Sisyphean task of serving both the normative and prerogative state. These two case studies substantiate my argument that technology provides a pathway to break through these structural barriers.

This chapter conceptualises the oversight mechanism as a channel through which the prerogative state can exercise its sovereign power in adjudication. China’s legal system has developed into a dual system with a prerogative state that rules according to political priorities but leaves conventional matters to legal rules (Fu 2019: 3). However, the Chinese party-state needs to be able to suspend legal rationality at any time to ensure that it can intervene in the legal system whenever its bottom line is in jeopardy by real or imagined threats (Sapio 2010: 3-5). “Trial oversight and management” is one such internal mechanism that allows this.

Smart courts help resolve the tension between these two opposed requirements of China’s judiciary. The digitisation and automation of justice are envisioned as enhancing legal rationality and independent adjudication while simultaneously leaving enough discretionary space for political intervention that the central party-state considers appropriate. The judiciary sees technology as a

²¹ This chapter is based on a reworked version of my article “Automating Intervention in Chinese Justice”. See: Papagiannas, Straton 2023a. Automating Intervention in Chinese Justice: Smart Courts and Supervision Reform. *Asian Journal of Law and Society*:1-27.

key pathway to solve this tension between the contradicting need for legal rationality and independent adjudication on the one hand and the need for flexibility to allow party intervention on the other.

This chapter starts with the premise that Chinese courts have a dual role. As mentioned in chapter 2, this has undermined the governance capacity and legitimacy of the judiciary. New judicial reforms to trial oversight and management helped institutionalise and codify political oversight over China's judiciary. It is said to improve independent adjudication and maintain their ability to fulfil political tasks. The key to doing this is to identify cases that require intervention, which is very difficult. Therefore, courts needed to carefully insulate individual judges from outside interference, i.e., illegitimate and illegal, while also keeping open a window, albeit tightly, circumscribed and controlled, to allow the Chinese party-state, represented by court leaders, to intervene whenever they deem their bottom line is affected.

The rest of this chapter is structured as follows: First, it discusses the data and methods. I took the case studies from the 2020 and 2021 China Court Informatisation Development Report (Report). The Reports contain multiple “model” cases of smart court initiatives. The judiciary selected these model cases because it deemed them important and successful enough to emulate them. Model cases are meant to unite disparate practices into a unified national approach to court work. Therefore, they provide excellent material for case studies. Second, this chapter gives an account of how SCR digitises and automates the “trial oversight and management” mechanism. The first case study is the trial e-management platform, designed and implemented by the Jiangxi Provincial High Court. The second case study is the full process automated oversight platform designed and implemented by the Yibin Intermediate Court. The article takes them as paradigmatic, representative cases of different levels of China's court system to provide a complete picture of smart court development in China. Third, the article compares the cases: the two case studies are examples of how technology is envisioned and operationalised to create an iron cage around the judicial process. China's legal system has previously been described as a “bird in a cage” (Lubman 1999). With smart courts, the bars of the cage have been reinforced with technology, allowing for an all-encompassing surveillance of judicial behaviour.

Finally, this article concludes that automating the “trial oversight and management” mechanism allows court officials to detect specific cases requiring intervention more systematically without

compromising the normative system. In addition, the case studies illustrate the arguments of chapter 4: The Chinese party-state firmly believes in algorithmic technology's power to resolve inherent tensions in the legal and governance system without fundamentally altering it. Using technology in governance and justice reform is considered a facilitator for improving governance structures while maintaining and enhancing party dominance. Ultimately, in line with the analytical framework of chapter 2, technology enhances authoritarian legality by allowing the prerogative state to better and more efficiently exercise its sovereign power through the legal system without undermining legal rationality.

7.2 Data and Methods

In this chapter, I examine how digitisation and automation are perceived and operationalised in judicial reform through case-study research. I base my case studies on court reports about court informatisation initiatives focusing on trial oversight and management. These reports were published in the 2020 and 2021 China Court Informatisation Development Report (Report). The practice of “summarising experiences” has a long history in communist policy-legal rhetoric since the establishment of the PRC. It is meant to bring together disparate practices into a unified national approach to court work (Trevaskes 2007a). News articles, official press releases by courts, and official implementation measures supplemented these reports. The analysis has also benefitted from informal discussions with experts on Chinese courts and judicial reform.

The first case study is the Jiangxi Provincial High People's Court's (hereinafter “Jiangxi High Court”) “trial management” platform (“*shenpan e-guanli pingtai*”, “审判 e-管理” 平台) from the 2021 report. The Jiangxi High Court is one of two High Courts in China that has been covered in the Report for five consecutive years. The trial management platform is part of its e-series, a series of initiatives related to automating and digitising the judicial process. For example, the 2020 report covers its e-assistant judge platform, an artificial intelligent assisted case handling system that helps judges prepare and adjudicate cases.

The second case study is the Sichuan Province, Yibin City Intermediate People's Court's (hereinafter “Yibin Court”) “entire court, entire staff, entire process” supervision platform (“*quanyuan quanyuan quancheng jianguan pingtai*”, “全院全员全程” 监管平台) from the 2020 report. In addition, multiple other provincial courts have developed similar platforms, which were

featured on a list of “example cases of judicial reform in people’s courts”, published occasionally by the SPC Judicial Reform Leading Small Group to share experiences. Therefore, while the procedures and technology described are from the Yibin Court, they also apply to several other provinces’ courts.

I chose these cases because of their explicit supervisory intentions and because the reports directly refer to the opinions on the judicial responsibility system as part of their regulatory context (discussed in 2.3.3. and 2.4.1.). I chose two cases from different levels of the court system to give a more complete picture of how SCR is perceived and designed as part of judicial reform. The point is not necessarily to theoretically compare them but rather to achieve a more in-depth and complete understanding of new developments.

The choice of only two case studies might limit the representatives of the research outcomes. However, the case studies presented in the Reports are a selection of that year’s most promising smart court initiatives, meant to contribute their experience to future SCR. Therefore, the case studies are “model cases”. The judiciary deems them important and successful cases that are meant to set an example and guide future reforms in other courts. Moreover, based on these examples, multiple other provincial courts have also introduced similar digital platforms. Therefore, these case studies should be considered paradigmatic cases highlighting characteristics of digitisation and automation in Chinese courts (Flyvbjerg 2006). The article does not examine how judicial officers use these systems and how this influences the operation of courts ‘in action’. Rather, the case studies represent how the judiciary perceives digitisation and automation and how the judiciary wants digitisation and automation to operate as part of judicial reform.

Lastly, these reports are written by judicial officials for officials, favouring the reliability and accuracy of the assessments and descriptions made in the report. Therefore, they are significant because they are rich in detailed information on local Chinese policy developments and their role as a reference for future reform. In this sense, I also focus on how they shape and influence future policy and reform. Therefore, their official character makes them interesting in their own right (Prior 2008). The next section presents the two case studies after briefly reiterating the reform context of smart courts.

7.3 Automating Intervention: A Tale of Two Platforms

As discussed in detail in chapter 3, one of the key themes of SCR is the role of technology in facilitating better vertical control and formalisation of oversight. For example, the Smart Court Opinion (SPC 2017a) asks courts to develop programs that record all procedural steps of the judicial process to enable live and post-facto oversight. It commands courts to develop digital trial management platforms that cover the entire process with full traceability and active oversight.

In the rest of this section, I analyse two ‘model cases’ of such platforms. These cases are used as exemplary models to unify future court reform. Consequently, many courts have introduced similar platforms and procedures to automate “trial oversight and management”. For example, the Hebei Provincial High Court, the Beijing Daxing District Court, the BIC, the Zhejiang Provincial High Court, the Xiamen Siming District Court, and the Beijing Secondary Intermediate Court all have designed digital platforms to improve “oversight and management” after issuing their Measures (Han 2020a, b; Liu 2020).

Therefore, it is highly likely that these model cases guided other courts. Moreover, the Jiangxi Provincial High Court introduced its new platform in all courts across the province and the Yibin Intermediate Court in all its district courts. Finally, as chapter 2.4.1. has discussed, other courts developed similar procedural regulations to codify oversight responsibilities. The previously discussed Guiding Opinion (SPC 2021a) consolidated and unified new oversight procedures: lower-ranked courts must amend these procedures to fit national directives.

7.3.1 The Jiangxi Provincial High Court Trial e-Management Platform

The “Trial e-Management Platform” (Jiangxi Platform) enables court leaders to supervise remanded and revised cases (*fagaizai anjian*, 发改再案件), long-term unresolved cases, and the ‘Four Types of Cases’ (*silei anjian*, 四类案件) on the digital trial management platform. Remanded (*fahui*, 发回), revised (*gaipan*, 改判) or retried (*zaishen*, 再审) cases are legal cases where a first-instance court has rendered a decision, and one of the parties has appealed to the second-instance court. Where the second-instance court agrees with the first-instance court, it may reject the appeal and affirm the original decision. However, where it disagrees, the second-instance court has a few options: it may remand the case to the first-instance court for a new trial or decide

the case itself.²² It is the normal appeal mechanism, part of every judicial system, to guarantee uniformity and quality of justice. The Jiangxi courts moved this mechanism to a new platform. However, it seems the “trial oversight and management” mechanism also applies to these cases, as remanded and revised cases can also fall under the “Four Types”, so there is some overlap (Zheng 2019: 70).

Previously, the Jiangxi Provincial High Court had already moved the judicial process to its central digital platform. As a result, court members can now scan and upload legal documents onto the platform. In addition, judges and court leaders can draft and issue documents and monitor and manage the trial process via the platform (Li and Wu 2021: 218). It means a digital trial management platform already existed, and the court built the new e-Management Platform onto this previous work. The report claims the new platform adheres to the requirements of the judicial responsibility reforms.

The central dilemma that the Jiangxi Platform tries to tackle is standardising and monitoring oversight and communication between different hierarchical levels within the court and between higher- and lower-ranked courts. The authors state that the platform addresses several issues: Firstly, they claim the consistency of rulings was not up to standard, implying that individual judges were not applying the law uniformly, leading to similar cases getting different outcomes. They argue that the lack of consistency in judgments harms the court’s credibility. Secondly, they were having difficulties handling the large number of cases, leading to significant delays in closing cases, increasing conflicts between different courts, and increasing mistakes in trial procedures.

Other issues arose after the judicial responsibility reform: there were uncertainties about properly fulfilling “trial oversight and management” duties of sensitive cases, given that it lacked clear procedures. Additionally, the court was unsure about how to protect the autonomy of adjudicating judges while at the same time strengthening the oversight of specific cases. Most significantly, there were issues with detecting such sensitive cases, not only because of the vagueness in the Judicial Responsibility Opinion (SPC 2015a) but also because there were no procedures for detecting and reporting these cases. Ideally, the Case Docketing Department (*li'an bumen*, 立案部门), the department in a Chinese court responsible for registering cases and explaining procedures

²² PRC Administrative Procedure Law (2014), article 85 to 93; PRC Criminal Procedure Law (2012), article 216 to 234 and 241 to 247.

to litigants) identifies sensitive cases and immediately reports this to court leaders according to clear procedures. However, the report admits that the responsible staff did this largely *ad hoc*, implying it relied too much on personal discretion to report a case. As a result, some sensitive cases were not reported to the court leadership and detected too late. In sum, the court lacked proper screening procedures for incoming cases and warning mechanisms when a sensitive case was detected. In addition, there was no unified approach to dealing with these cases and no proper communication channels for coordination between court leaders and frontline judges (Li and Wu 2021: 215-216).

7.3.1.1 The ‘Trial e-Management’ Platform

The Jiangxi High Court addressed these problems by designing a new trial management system called the ‘Trial e-Management Platform’. Previous digitisation work allowed the court to integrate cases with the new platform easily, thus completely digitising their oversight and management. According to the report, the Jiangxi Platform automatically screens the digital files of a docketed case to capture and categorise all the relevant data and compare this to data of other cases in the database. Based on AI, the platform ‘intelligently’ identifies the type of case and produces a first analysis and a risk assessment. In addition, it uses AI to realise ‘intelligent oversight’ of the entire trial management process. It also enables intra-court communication, data integrations between departments and services, and personnel management (Li and Wu 2021: 219). With this platform, the Jiangxi High Court designed a central venue where court clerks, frontline judges, and court leaders handle a case and interact during the judicial process.

The Jiangxi Platform integrates five functions related to “trial oversight and management”: First, the oversight and management of remanded and revised cases. The Jiangxi Platform enables ‘real-time monitoring’ of these cases, i.e., a supervisor may consult the case’s progress at any time via the platform to ensure the ‘quality of case handling. It also standardises, facilitates, and monitors the oversight process itself, meaning that a court leader cannot unduly interfere and must perform their oversight duties through the platform so that it can be recorded. Additionally, they have limited options in what kind of supervisory measure they can take. It automatically sorts and indexes the differences between first-and second-instance rulings for remanded cases. It also searches and summarises typical cases to provide a reference for the first-instance judge when they follow up on the remanded case (Guang 2021; Li and Wu 2021: 220).

In addition, the Jiangxi Platform allows the second-instance court to communicate with the first-instance court, functioning as an online, multi-party discussion forum. It automatically notifies the first-instance judge when one of their rulings is reversed or remanded and prompts them to reply to the second-instance judge as soon as possible. The first-instance judge may agree or object to the second-instance ruling. The platform automatically notifies the second-instance judge, who can justify their decision in another reply. Where there remains significant disagreement, even after online evaluation, the High Court's case review committee reviews the case. The Jiangxi Platform can automatically assign eligible personnel from a centralised database to form a case evaluation committee and create an online discussion group. It permanently retains the opinions of the evaluation committee (Li 2020).

Second, the Jiangxi Platform can supervise and manage long-term unresolved cases. It automatically indexes and categorises cases that have exceeded a certain time limit²³ into a database, automatically triggering “trial oversight and management” procedures. It also uses “AI, data mining and other technologies” to conduct an in-depth analysis of the case’s progress and identify causes for the delay (Li 2020). The report mentions that the database includes all overdue cases of the entire Jiangxi Province, implying that intermediate and provincial-level courts are the primary users of this function. Cases that remain unresolved for longer than a year are, without a doubt, complex and sensitive cases. These kinds of cases always get sent to a higher-ranked court. The report claims that the Jiangxi Platform makes inter-court communication and coordination more efficient.

The third function is the oversight and management of “Four Types of Cases”. As stated earlier, the Jiangxi Platform screens and indexes the docketed cases. Again, based on AI, the Jiangxi Platform detects and flags cases under the “Four Types” and immediately pushes them to a court leader. It allows courts to detect and review sensitive cases more quickly and efficiently. Court leaders must choose a measure to commence “trial oversight and management” procedures via the platform. While the report does not mention what kind of measures the Jiangxi Platform allows, it does mention different implementation measures stipulating these procedures. Therefore, it is safe

²³ It is not mentioned how long. However, according to the Civil Procedure Law of the People’s Republic of China (2013), article 149: “A people’s court trying a case in which the ordinary procedure is followed, shall conclude the case within six months from the date of docketing the case. Where an extension of the period is necessary under special circumstances, a six-month extension may be allowed subject to the approval of court president. Further extension, if needed, shall be reported to the people’s court at a higher level for approval.”

to assume that the measures are similar to what has been consolidated in the Guiding Opinion (SPC 2021a), such as reviewing case material, asking the adjudicating judge or collegiate panel to reconsider their decision, or submitting the case to a professional judge meeting or the adjudication committee.²⁴ It is especially important to note that the Jiangxi Platform records any measure a court leader undertakes. This function responds to a general reluctance to record interventions directly (He 2021b: 61).

The fourth function is called “case information data quality monitoring”, i.e., general data analytics, cleaning, and indexing. The Jiangxi Platform detects and automatically ‘repairs’ routine data errors and omissions in cases. Where it needs manual input of case information, it automatically contacts the judge who adjudicated the case and sends them daily reminders. The fifth function is “judicial risk dynamic prevention and control”. It has 41 “integrity risk nodes” in the judicial process and will send warnings in case of procedural errors at each key node. Lastly, a higher-ranked court may use the generated data from all these activities to evaluate judges’ and court leaders’ performance (Li and Wu 2021: 220-221).²⁵

7.3.1.2 Discussion

In sum, the Jiangxi Platform functions as a smart tool for judges. However, it also acts as a supervisor or line manager in the sense that it oversees and regulates the behaviour of judges. On a more abstract level, when judges can only work exclusively through a digital platform, it essentially becomes a closed-choice architecture. This architecture limits the choices of users when dealing with a case. Additionally, it records their actions. Because the users each have their accounts, these actions are also automatically tied to the correct staff member. As a result, a judge’s actions can easily be monitored, measured, and compared to their peers. Therefore, the Jiangxi Platform is arguably a self-monitoring tool and a supervising tool.²⁶

²⁴ These measures can be found across multiple local implementation measures, as well as empirical scholarship, published well before the 2021 Guiding Opinion. It is therefore very safe to argue that these measures are also available to court leaders in courts in Jiangxi Province.

²⁵ For more on judges’ and courts’ performance evaluation, see: Kinkel, Jonathan J., and William J. Hurst 2015. The Judicial Cadre Evaluation System in China: From Quantification to Intra-state Legibility. *The China Quarterly* 224:933-954. 10.1017/S0305741015001290. Ng, Kwai Hang, and Peter C.H. Chan 2021. ‘What Gets Measured Gets Done’: Metric Fixation and China’s Experiment in Quantified Judging. *Asian Journal of Law and Society* 8:255-281.

²⁶ Reichman et al. (2020) make a similar claim. The authors examined how technology affected the regulation and management of judges in Israel’s court system, which has been completely digitised. They found that the digital system

This report does not allow us to make any claims about the effect of this automated system on how judges and court leaders operate and perform their “trial oversight and management” duties or how this influences how courts operate. Yet, this report presents a system that makes it seemingly incredibly harder for court leaders to abuse these mechanisms for improper interference. The system is presented as an “iron cage” that draws judges and their activities into a digitally closed environment, allowing automatic recording. It also allows courts to post-facto review a case’s handling and evaluate the “trial oversight and management” measures for their appropriateness. Court leaders’ performance evaluation includes how well they ‘supervised and managed’ their courts’ work. Therefore, it is crucial to record this so the higher-ranked court can review this. As noted earlier, empirical research has shown that recording intervention, even legitimate, has put court leaders on edge and has been avoided as much as possible (Wang 2020d). The digital trial management platforms are identified as a key pathway to strengthen “trial oversight and management” procedures. It indicates that the refusal to record intervention is a persistent issue and that technology is envisioned as a way to finally overcome this issue. The Jiangxi High Court presents its system as such: drawing the entire process in a digitally regulated and closed environment is the only solution to enforce procedures.

The report does mention two issues regarding its application. First, it states that some local courts have not been diligent enough in using the platform and organising their practice around it, resulting in a low awareness and use of the trial management platform. Second, first-instance judges are reluctant to object to revisions of the second-instance judges. Conversely, the report also states that second-instance judges were unhappy with first-instance judges ‘talking back’ (Li and Wu 2021: 224). On the one hand, it raises some scepticism about the success of these platforms in improving oversight. On the other hand, it shows how resistance and reluctance are two real obstacles to digitisation and automation. The fact that the Jiangxi High Court decided to mention these issues and not others might indicate that resistance and reluctance to change are pertinent issues.

The oversight of lower courts’ work through revising and remanding decisions is frequently a source of tension in the relations between higher- and lower-ranked courts. This tension might

was built in a “command-and-control architecture” style, with “built-in ‘do’s’ and ‘don’ts’, walls and paths – to strictly channel the judicial process.” (p. 593).

explain the reluctance and dissatisfaction with the system. “Grassroot courts hate having their decisions reversed or remanded for retrial” (Ng and Chan 2021: 268-270). Reversal and retrial rates reflect badly on grassroots courts’ legitimacy and competence as an institution because these rates negatively affect their performance evaluation and ranking relative to other courts. Therefore, it is understandable that a system allowing higher-ranked courts to have easier insight and control over grassroots courts’ work leads to dissatisfaction among grassroots judges. Again, the report shows how technology is perceived and operationalised to resolve these issues.

In conclusion, the most important contribution of this digital trial management platform is that it allows ubiquitous oversight of every key node in the judicial process. Where courts have become completely paperless, it is almost impossible to avoid using a digital trial management platform. The Jiangxi High Court’s report conveys this feeling of unavoidability: the system creates an iron cage that draws its users and procedures into a closed-choice digital environment. It limits discretionary freedom and monitors every action undertaken. Nonetheless, I cannot make any claims about the systems’ success, its effect on oversight, and its effect on courts’ operation. In addition, I do not know how this has shaped judges’ behaviour, e.g., what strategies they have developed to avoid or resist surveillance. These are questions that remain unanswered as of now.

Similar to Jiangxi’s Trial e-Management Platform, the next digital platform was also developed to improve the oversight of judicial cases. The Yibin Intermediate Court’s model case is also a direct response to rising tensions and issues resulting from the new judicial responsibility reform.

7.3.2 The Yibin Intermediate Court’s Full Process Automated Oversight Platform

The Yibin Court’s “Entire Court, Entire Staff, Entire Process” Oversight and Management Platform (Yibin Platform) combines automated and manual functions to enhance “trial oversight and management.” The report mentions that the judicial responsibility reforms have reinforced tensions between the court leadership and frontline judges. It argues that many judges resisted supervision because they wanted an independent trial, while court leaders worried their supervision would be misinterpreted as illegitimate interference. The report faults the “abstract and delegating” manner in which the reform documents formulated new responsibilities and duties, causing uncertainty about the “trial oversight and management” measures, which were unspecified and not standardised (Huang 2020: 124-5). The report refers with this, among others, to the Judicial Responsibility Opinion (SPC 2015a) and the issues with judicial responsibility reforms mentioned in chapter 2.4.1.

7.3.2.1 Reforming Oversight Procedures

In response, the Yibin City Intermediate People's Court took several measures to “correctly handle the relationship between delegating [adjudication] power and effective oversight”. In 2017, the Yibin Court issued the *Measures for the Oversight and Management of the Whole Court and the Whole Trial (Provisions)* (YIC 2017) (Oversight Measures), implementing the judicial responsibility reform discussed in chapter 2. It stipulated new rules to clarify the duties and responsibilities of “trial oversight and management”, standardise the practice, and strengthen internal oversight, creating a procedural framework that covers the entirety of the judicial process.

The Oversight Measures immediately underscore the importance of the “full oversight” principle: courts should supervise cases from docketing to archiving (YIC 2017: article 3.4). Articles 18 to 24 detail measures court leaders' may take when fulfilling their oversight and management duties. It gives court leaders the authority to review and approve procedural matters, but any substantive issues must be discussed and handled via professional judge meetings and adjudication committees. It lists the measures they may take via the online trial management platform, e.g., reviewing a case's progress. Additionally, it explicitly prohibits court leaders from intervening in cases where they did not directly participate in its trial hearing, nor are they allowed to give oral instructions, which the document calls a hidden form of the old “case-approval system” (YIC 2017: article 18). Finally, article 23 gives court leaders the authority to check, operate, and monitor the progress of a case (within the scope of their duties), to control and review key nodes in the judicial process, “correct improper behaviour, and coordinate rectification measures”. It creates a “silent process oversight mechanism” to achieve a “full recording” of all case-handling activities. Court leaders who overstep their authority or cause “serious consequences” due to gross negligence shall “bear responsibility in accordance with the law”. The local Discipline Inspection Commission may even get involved (YIC 2017: article 36 to 38).²⁷

A year later, in 2018, the Yibin Court issued the *Measures for the Oversight and Management of “Four Types of Cases” (Provisions)* (YIC 2018) (Four Types Measures), stipulating the scope and

²⁷ The involvement of the Discipline Inspection Commission is extremely serious. They exist on the same administrative level as the party committees of courts. They are responsible for policing the political order of the party and investigating individual violations of party discipline with coercive investigatory measures that are not available to any other party or state organ. Because court leaders are also party officials, they fall under the jurisdiction of the local disciplinary commissions. See: Li, Ling 2016b. The Rise of the Discipline and Inspection Commission, 1927–2012: Anticorruption Investigation and Decision-Making in the Chinese Communist Party. *Modern China* 42:447-482.

content of the “Four Types” and how to supervise them.²⁸ Copying article 24 of the Judicial Responsibility Opinion (SPC 2015a), the “Four Types” are 1) cases involving group disputes that may affect social stability; 2) cases that are difficult and complicated and have a significant impact on society; 3) cases that may conflict with a decision of the court or a higher-ranked court; and 4) cases that involve reports of violations by the adjudicating judge (YIC 2018: article 4). The Four Types Measures (YIC 2018) go into more detail than the Judicial Responsibility Opinion (SPC 2015a) and clarify their meaning and scope: the “Four Types” are cases ranging from involving a large number of litigants relating to issues such as labour disputes; to cases involving criminal gangs; to cases where one of the litigating parties is a government department of the same administrative level as the legal court; to cases where there are problems in the application of the law, and so forth (YIC 2018: article 5 to 8).

The Four Types Measures also clarify the start-up procedure, giving both the case-docketing department and adjudicating judge the responsibility to flag a case as a “Four Types” and submit it to a court leader to initiate the “oversight and management” procedures. Court leaders are also responsible for initiating procedures when identifying cases as “Four Types” during their routine work. Other departments must do the same in specific circumstances (YIC 2018: article 9 to 12).

Articles 13 to 17 stipulate the “trial oversight and management” measures: court leaders may perform so-called “silent oversight”, i.e., they may monitor the progress of a case, push relevant decisions and typical cases for reference to the adjudicating judge, may review case material and consult case files; attend trial hearings, even change the adjudicating judge or collegiate panel when necessary. They may also instruct the adjudicating judge to report on the case’s progress. However, where they object to the way the trial process is going or to an adjudicating judge’s ruling, they are not allowed to directly change the adjudicating judge’s or collegiate panel’s rulings but must submit the case to a professional judge meeting or adjudication committee (YIC 2018: article 13 to 15).²⁹ The time, content, stage of the process, and the results of the “trial oversight and management” must be permanently recorded on the digital trial management platform. These measures may not

²⁸ Both the Yibin Oversight Measures (2017) and the Yibin Four Types Measures (2018) are not publicly available anymore after the SPC Guiding Opinion on Oversight and Management of Four Types was issued in November 2021. Their full translation remains on file with the author.

²⁹ It merits repeating that these measures can be found across different local courts’ Implementation Measures regarding oversight, and also in the Guiding Opinion SPC 2021a. “Guiding Opinion on the Oversight and Management of “Four Types of Cases”.” *Supreme People’s Court of China*, 4 November. <https://www.chinalawtranslate.com/en/4-types-of-cases/>. This once again underscores the consolidating and codifying function of the Guiding Opinion.

interfere with the autonomy of the individual judge or collegiate panel (YIC 2018: article 16). Lastly, where the relevant people are found having neglected the reporting of a “Four Types” case, or where court leaders have neglected to exercise or improperly exercised their duties, they will be held accountable in accordance with relevant regulations (YIC 2018: article 18 and 19).

7.3.2.2 Digitising and Automating Oversight Procedures

Based on these Measures, the Yibin Court built the “Entire Court, All Staff, Full Process” Oversight and Management Platform (Yibin Platform). The court designed lists with specific items according to criminal, civil, and administrative jurisdiction to classify cases requiring oversight. Based on these items and a decision-tree model, the Yibin Platform “intelligently” identifies, flags and pushes the cases that require oversight (Huang 2020: 125).

The report explains the main functions of the Yibin Platform. The first function is intelligent recognition and indexing. It screens docketed cases, extracts, cleans, indexes the case data, and finally determines the type of case. Where it identifies a case as a “Four Types”, the Yibin Platform flags them to a court leader, providing the necessary case information. It uses a colour scheme to visually indicate oversight progress and give court leaders easy status updates. A court leader must review the flagged case and initiate oversight measures through the platform. A court leader cannot ignore these automatic warnings as the Yibin Platform records non-response. It also records decisions not to launch oversight procedures. It provides the “oversight and management” measures a court leader may take, which they initiate by selecting from a list of options (Huang 2020: 125-127). Additionally, the Yibin Platform records who adjudicated the case, the reasons for identifying a case as “Four Types”, the reasons the court leader accepted or rejected the case, the measures the court leader took, and the results of the oversight (Huang 2020: 129-130).

The second function is called “hierarchical early warning oversight”. The Yibin Platform can send warnings to the court one level immediately above the court where it discovered a “Four Types” case. Each court can predefine the degree of sensitivity of cases according to the actual situation of the court. Certain sensitive cases are immediately reported to a higher level depending on the

severity.³⁰ The higher-ranked court decides whether to leave oversight to the reporting court or initiate oversight itself and provide guidance through the Yibin Platform (Huang 2020: 127).

The third function is “full process oversight and management”, i.e., the Yibin Platform records the entire judicial process. At any given stage, the adjudicating judge, a court leader, or someone from the case-docketing or trial management department can initiate the oversight and management procedures with one click. In addition, it allows adjudicating judges to request their superiors to initiate “trial oversight and management” procedures. However, to avoid abuse and the shirking of adjudicating responsibilities, a court leader can naturally suspend this process where they deem the case not to be a “Four Types” (Huang 2020: 127-129).

The fourth function is a key node control function. The Yibin Platform records every action an adjudicating judge takes at every procedural step and can report procedural non-compliance, such as exceeding deadlines. When such procedural issues are detected, it can freeze the case, triggering oversight. The adjudicating judge must report to their court leader, who can unfreeze the case after review (Huang 2020: 129). The platform can also perform automatic searches and provide decision-making references. For cases under supervision, it can perform a preliminary analysis of case material, find similar or related cases, display applicable laws and regulations, and supposedly provide “more accurate and scientific reference material” for judges and court leaders (Huang 2020: 130-131).

7.3.2.3 Discussion

In sum, the Yibin Intermediate Court drafted new supervision procedures using technology to enforce compliance. The report claims the system has strengthened the transparency of internal case oversight and ensures proper oversight by court leaders following procedures and the law. Therefore, an important contribution of the Yibin Platform is that it facilitates and standardises oversight and “watches the watchdogs”. Recording and monitoring the court leader’s “oversight and management” actions helps to enforce procedures. There can also be no confusion about what

³⁰ It is unclear what these kinds of “extra sensitive” case are, and this depends on the type of work that a court deals with. For example, cases that get docketed at a grassroots court, but involve a municipal level administrative institution, would immediately get sent to an immediate court to equalise the administrative power balance. Criminal cases involving foreigners would also immediately be sent to a higher level. For a theoretical explanation, see: Li, Ji 2017. The power logic of justice in China. *The American Journal of Comparative Law* 65:95-144.

measures or how to conduct oversight since the Yibin Platform only has a predetermined, limited list of options that a court leader can take.

Here, again, technology is envisioned and operationalised to resolve a lasting tension in the work of court leaders. It is also presented as such: the report mentions that with the new judicial responsibility reforms, there was a lot of unclarity and unwillingness to comply. In line with the increase of vertical control as part of judicial reform, the Yibin Intermediate Court increased surveillance to ensure compliance. The report narrates how previously opaque and discretionary mechanisms to exercise oversight responsibilities are fully codified into a rigid procedural framework. Accordingly, it contains clear conditions for action, descriptions of the specific actions to be taken when conditions are met, and consequences in case of non-compliance. In the next step, this clear and rigid structure, akin to an IF-THEN chain set, allows for the automation of this mechanism.

Like the previous case, the Yibin Intermediate Court presents its platform as a system of total surveillance that cannot be escaped. The Yibin case underscores that every single procedural node in the judicial process is monitored: there is no possibility for abuse. The next section compares the two cases in more detail.

7.4 Drawing Justice into a “Digital Iron Cage”

The case studies pertain to an intermediate and provincial high court. This was done because the main purpose of this article was to give a descriptive and analytical account of SCR, and focusing on different levels of courts gives a more complete picture. Therefore, substantial differences exist in the purpose and functions of both systems. Nonetheless, it merits a short comparison: some points of overlap and difference between the two are worth discussing.

The case studies showcase the different priorities between higher and lower-ranked courts. The Jiangxi High Court focuses not only on codifying oversight but is mainly on facilitating and institutionalising how lower- and higher-ranked courts communicate with each other. As a provincial high court, their main concern is controlling and ensuring consistency across lower-ranked courts. The system allows them to have a better overview of their province's cases, improving uniformity.

In contrast, the Yibin Intermediate Court is more concerned with clarifying oversight responsibilities and codifying these procedures. It creates a rigid procedural framework, which it enforces through an all-encompassing digital and automated system. In this sense, there is a difference in priorities: lower-level courts are more concerned with getting an immediate grasp on sensitive cases and managing them carefully. Ideally, there is no need for extensive communication with higher-ranked courts. If local court leaders perform their oversight responsibilities correctly, a higher-level court will not remand or revise an appealed case.

Next to the difference in rank and priorities, there are also a few points of overlap. A first point is that both systems are supposed to make detecting sensitive cases, i.e., cases where the state's prerogative is at stake, more efficient. The courts have standardised and automated this detection process to eliminate the possibility of potential cases slipping through the net. It shows how the judiciary's primary concern is not necessarily adjudication. Rather, as an administrative institution, they likely perceive technology as a way to reduce bureaucratic errors.

A second point is that both systems have far-reaching surveillance functions. They are presented in the reports as encompassing every node of the judicial process, monitoring and registering every action undertaken. Whether this is true remains to be seen. However, the presented idea shows how the judiciary thinks about judges' work: it is far more important to control judges' work and determine who is responsible for what action than to allow judges to do their work well.

A third point also concerns judicial responsibility reform. Namely, SCR enables the judiciary to "collectivise" responsibility. Empirical research found that the reform has given individual judges more autonomy but has made adjudication more inconsistent (Wang 2020d). The systems help ensure procedural compliance and improve consistency, not only by their surveillance capacity but also by enhancing the cooperation between different hierarchical levels of courts and judicial staff. When the system flags a case for oversight, it draws a second person into the adjudication process. The Jiangxi platform also facilitates conveying judge meetings, which has become one of the go-to ways to exercise oversight to spread responsibility for decisions.

In sum, technology allows the Chinese party-state to have its cake and eat it, too: it has a functioning normative system with procedures that allow it to exercise its prerogative to protect its bottom line without upending the entire normative system.

In other words, judicial reform has been about unifying the opposing requirements of the courts' dual role in China's party-state. On the one hand, they need to function as institutions that resolve legal disputes according to law. In this sense, they present the normative state. On the other hand, they also need to act as agents of the party-state, defending its interests where required. In this sense, they present the prerogative state. Judicial reforms have focused on improving procedures and restructuring accountability and control to create a more synchronous operation between the normative and prerogative state.

The case studies show how smart courts are envisioned and operationalised to facilitate and institutionalise the prerogative state's procedural pathways to enter the normative domain. The systems enhance procedural mechanisms by enforcing compliance through recording and monitoring. The systems create a closed-choice architecture by drawing these processes into a digital environment where every discretionary decision is heavily circumscribed and monitored. The normative process has become fully transparent for the prerogative state.

The cases also show how technology allows the party-state to "proceduralise" prerogative intervention while guaranteeing the normative state, i.e., the judges' autonomy. The system does not allow a court leader to get involved when it is not required. Conversely, where the system identifies a case requiring oversight, court leaders must get involved within predetermined boundaries, ensuring they do not overstep their responsibilities. Through all-around surveillance, it prevents abuse of these mechanisms, where individual agents of the state pursue their interests to protect the state's prerogative. Therefore, technology creates a discretionary space within the normative process, where the state's prerogative can be protected without this discretionary space being abused. Automation of justice does not necessarily need to be conceptualised as the reduction or removal of human input in adjudication. Rather, automation of justice could refer to reducing human discretionary decision-making during the process. While the human input remains more or less the same, their decisions are based on predetermined codification. This kind of automation is especially convincing in a dual state such as the PRC.

7.5 Conclusion

Balancing the contradicting purposes of serving political objectives on the one hand and providing judicial services and legality on the other has been a decades-old challenge for China's judiciary. The judicial responsibility system attempts to resolve this tension between courts' political and legal tasks by giving frontline judges more individual autonomy. Simultaneously, it codifies intervention by clarifying procedures regarding 'trial oversight and management'. Smart courts are envisioned and operationalised to unify these contradicting purposes further.

The case studies of the Jiangxi High Court and Yibin Intermediate Court have shown how technology is envisioned as further strengthening these reforms by digitising and automating the "trial oversight and management" mechanism. Many Chinese courts have designed all-encompassing and comprehensive digital environments to monitor every judicial step. This closed-choice environment enforces procedural compliance. It enables court leaders to get involved in cases and align the outcomes with the political and social considerations according to the party-state's bottom line. It allows sufficient space for discretionary decision-making in politically or socially sensitive cases, but this discretion remains tightly codified and monitored. This chapter shows how the transparency goals of reform discussed in chapter 3 are primarily meant to enhance vertical control: both the Jiangxi and Yibin Platform to increase superiors' insights into the actions of their subordinates. This, in turn, strengthens the feedback loop between the centre and the local, aligning with the Leninist tenets of monitoring and social control discussed in chapter 4.

This issue concerns a central question in the literature on automated justice: How much discretion does a legal system want to grant its adjudicators? Smart courts and broader judicial reform reveal that the Chinese party-state grants its judges only a minimum of autonomy, and the digital environment highly circumscribes even this minimum. Whereas ethical questions related to algorithmic justice have heavily occupied Western debates, the Chinese party-state has chosen without much concern for such questions. The case of China's smart courts showcases how governments leverage technology to encroach on judicial authority and independence. Nonetheless, chapter 2, 4, and 6 illustrated how these developments fit within the dual role of legal courts in China's political-legal system and the CCP's worldview.

Another question remains whether this resolves China's courts' precarious position. Answering this question may serve as a cautionary tale of how external observers assess political and legal

reform in China and complete the puzzle of what reform means in the context of the PRC. Despite all reform rhetoric, efforts have mainly focused on increasing oversight and reducing discretionary decision-making. Therefore, reform is not fundamentally rethinking existing structures but rather more of the same. Ultimately, the judicial system remains firmly embedded in the country's administrative hierarchy, favouring cooperation and where courts are often the weakest.

Reforming these fundamental characteristics to increase courts' credibility and effectiveness is significantly harder than increasing control mechanisms through automation and digitisation. Moreover, broader developments in China's political and legal landscape, where Xi Jinping has underscored the importance of party control and political loyalty, also indicate that these structural reforms do not fit the party-state's vision. Therefore, SCR might be a case of both judicial empowerment and circumvention of judicial power.

Lastly, smart courts are only one of many digitising and automating efforts across different governance areas in China, such as the social credit system and smart cities. Like with smart courts, local government officials conceptualise the technology of the social credit system somewhat like a "cheat code" that will enable them to solve decade-old issues in Chinese governance and justice without fundamentally rethinking the structure of China's political-legal system. In this sense, both embody the prevalent techno-optimism or "technological solutionism" among Chinese reformers. From their viewpoint and the central party-state's viewpoint, SCR is developing as intended, and its problematic consequences are, in fact, logical consequences of automation and digitisation.

Chapter Eight: Conclusion

8.1 Introduction

This dissertation started with the assertion that the study of Chinese law needs to recognise its function and purpose within the political and normative context that it operates in (Clarke 2003, 2020; Creemers 2020). With this in mind, it examined the digitisation and automation of China's judiciary over the past decade, exploring the ideological and normative ideas that underlie this development. To this end, it asked *to what extent do ideological and normative ideas about law and courts in governance shape the goals of smart court reform, and to what extent does smart court reform perpetuate these normative ideas?* This dissertation answered this question step by step.

First, the political-legal system in which courts and law operate exists to achieve a utopian future, not to govern the present. The organisational ideology of the CCP holds that a vanguard party needs to lead the masses onto a path of national progress. Courts, law, and justice are merely instruments at the disposal of the CCP to achieve this. Therefore, courts serve both the prerogative and normative state, where the former takes priority over and conditions the latter. To the CCP, courts function as their representatives and are responsible for upholding the social and political stability necessary for attaining the objectives of national modernisation. Moreover, they should be actively engaged in reshaping the state and society in order to accomplish these goals.

At the same time, they must serve the normative state, acting as impartial adjudicators to decide legal disputes between individuals. However, the courts' dual role puts them between a rock and a hard place: the tension between their dual tasks undermines their own functioning. Maintaining duality is as hard as balancing a tightrope. Perpetual judicial reform has tried to improve the situation of courts despite being restrained by the political order in which they operate. Nonetheless, it has its limits: it cannot progress far enough to the point that courts become fully independent institutions that can pose legitimate legal or normative constraints on the prerogative of the party-state. Therefore, the normative system is always bound by the party-state, and it is the prerogative of the party-state to determine these boundaries. This dynamic constitutes the tension that exists in the judiciary's dual function, as well as the paradox of judicial reform. In addition, it forms the contextual background of SCR: I argue that technology is seen as a way to overcome these barriers:

to expand the capacity of the normative state while maintaining the dominance of the prerogative state.

Second, I argue that this perception of technology and automation as a “magic weapon” to overcome age-old issues in governance and judicial reform comes from the positivist organisational and ideological principles of Marxism-Leninism: they offer a way to achieve the dream of rational Marxist governance. Consequently, technologies of automation and AI are associated with impartiality and scientific objectivity, with a promise that they will fundamentally transform and improve governance and justice administration. Therefore, the CCP has designated technological development as an important driver in national modernisation.

I argue that the instrumental conceptualisation of law and courts and their subordinate position to the political will of the CCP make the adaption of technology to automate and digitise justice appealing. Smart courts cater to the belief in science as the primary legitimating principle for decision-making. According to the CCP, they allegedly make judicial decisions more “scientific and objective”, meaning that decisions are based on reality expressed through big data rather than subjective human interpretations. The CCP believes that big data analytics and automation will also enable better judicial services and, in turn, legitimise smart courts.

Third, I find that these ideological and normative ideas shape the scholarly discussion on smart courts. The firm belief in the transformative power of smartness in academia reflects a similar instrumentalist understanding of courts: it primarily frames courts as an administrative governance institution rather than a legal one. Hence, this explains the positive evaluation of smart courts. Moreover, the ideological-normative context shapes the goals of SCR. The efficiency goals of SCR are seen in this light: the primary goal is to expedite case handling by digitising and connecting all key nodes of the judicial process and providing better and faster judicial services through digital platforms. However, as we saw in chapter seven, these digital systems are also geared towards improving vertical oversight and control over the work of judges to ensure uniformity. Efficiency goals are not necessarily concerned with the quality of adjudication itself. Moreover, efficiency is equated with “fairness” within this ideological-normative context.

Similarly, for the goals of consistency, SCR has focused on standardising both the judicial process and outcomes through digitisation and automation. Consistency and standardisation are framed as prerequisites for “fairness” because they ensure internal accountability. Although there are

concerns among legal scholars that smart courts may negatively impact judicial discretion and subvert it to technology, it is, in fact, the goal of SCR. Within the CCP's worldview, judges do not need to exercise their own discretion or act as independent adjudicators but simply serve as loyal bureaucrats who follow the party line. Therefore, SCR's consistency and uniformity goals are actively aimed at binding judges and courts closer to the political order.

Fourth, SCR aims to achieve more consistency by increasing the transparency and oversight of courts. Furthermore, achieving consistency through transparency and oversight will ultimately make justice "fairer". In this sense, the goals are interconnected. SCR draws courts and judges into a "digital iron cage" of all-encompassing and comprehensive digital environments, where every decision is heavily circumscribed and monitored. This cage facilitates the political oversight of courts. Consequently, the monitoring aspect of smart courts reduces discretionary decision-making and firmly entrenches courts in the party-state's governance apparatus. It is more important to control judges' work, reduce bureaucratic errors, and ensure they follow the party line than to allow judges to do their work well.

Finally, within the party-state's worldview, the goal of making justice "fairer" is to make the judiciary more efficient, standardised, controlled, and attuned to the party's prerogative. They achieve this by enhancing oversight mechanisms, promoting self-discipline, circumscribing judges' discretion, and standardising power, responsibilities, and general court practices. In the monist and teleological worldview of the CCP, it alone may decide what is fair. The technology of SCR facilitates and enhances the ability of the CCP to exercise its prerogative. We can only comprehend how and why SCR is equated with "fairness" by understanding this ideological-normative worldview.

Therefore, ideological and normative ideas about the role of law and courts in China shape the goals of SCR: they are primarily oriented towards entrenching courts deeper and tighter into the party-state's governance apparatus. Although important, improving user convenience and judicial services are not necessarily the main objectives of SCR. In turn, SCR perpetuates these normative ideas: SCR facilitates the party-state's control and oversight capacities and courts' capacity to adhere to the party line on the road towards national modernisation. In this sense, the automation and technology of SCR fit perfectly within the ruling party's worldview and perpetuate it in turn.

8.2 Implications for Scholarship

China's embrace of automation technologies in governance and justice administration has been happening at breakneck speed. By now, most administrative and judicial institutions are using some form of technology driven by big data and algorithms. It has a range of implications for governance, surveillance, and justice in the PRC. Smart courts are only a small element of far-reaching reforms in China's broader political-legal system under Xi Jinping (Ahl 2021; Vogel 2021; Wang 2022). With my dissertation, I contend that automating technologies is the most important characteristic of Chinese governance in the past decade. This development, in and of its own, makes China worthy of study.

Studying China's political-legal system on its own terms entails considering the socio-political context in which concepts such as law, courts, and justice operate (Nesossi and Trevaskes 2017). It is vital to enable a better understanding of these developments, the ideas that shape them, and the implications that they bring. This dissertation illustrates how the normative lens through which we analyse China's political-legal system shapes the implications and conclusions we draw from the analysis. It has shown that the evaluation and adoption of automation technologies depend on and are guided by the political priorities of the political-legal system in which they are deployed. As argued extensively in this dissertation, China's political priorities underscore regime legitimacy, political and social stability, and national development. These priorities shape perceptions of algorithmic governance and justice. Only by recognising this can one better contextualise and understand these developments in China.

At the same time, the unique development of automated governance and justice, as manifested, among others, in China's SCR and SCS, constitutes an important case study for broader scholarship on automation. Western discussions on automation are dominated by principles that underscore the importance of a human decision-making process that is based on democratic trust and legal accountability. This dissertation offers insights into the implications of automated governance driven by Marxist-Leninist interpretations of society that are entirely different from those in countries founded on liberal rule of law concepts. Therefore, the Chinese experience is extremely valuable for the global debate on automated governance and justice.

Lastly, through the extensive reviews of Chinese language scholarship, this dissertation has introduced a wide range of contemporary Chinese voices on the automation of governance and

justice in the English-speaking world. What is often missing in Western debates on the automation of justice (or any other particular matter) are insights from non-Western voices. With this dissertation, I contend that these voices are also relevant for discussing automation in justice and governance, regardless of its geographical focus.

8.3 Limitations and Future Avenues

Naturally, this dissertation comes with several limitations. First, this dissertation is purely based on documentary research. Therefore, little can be said about the empirical reality of smart courts in China, as I could not verify or triangulate any of the claims made in research reports, case studies, or academic publications. Second, the primary focus of this dissertation was on the underlying norms and ideas that drive SCR and how SCR is conceptualised as fitting within that normative and ideological framework. In this sense, this dissertation concerns itself with the internal justification and discursive framing of SCR. Therefore, nothing can be said about the perceptions or experiences of digital and automated justice from judges or litigants.

However, these two limitations provide excellent opportunities for future research. Future work may focus on whether the normative and ideological ideas identified in this dissertation also interplay in court actors' decision-making processes. In addition, the effect of smart courts on judges' autonomy, behaviour, and work is still a black box. Future scholarship may want to examine how automation has affected judges and how they perceive the “digital iron cage” they are supposedly operating in. Likewise, little has been written on the effect of automation on Chinese litigants' perception of justice administration and its allegedly increased fairness. Future research may investigate how smart courts have affected access to legal services and trust by the general public, how technologies are actually used in adjudication, and identify issues and solutions caused by smart courts. Finally, this dissertation provides an excellent starting point for comparative research: many countries struggle with the same questions as the PRC. It is only natural that we remain open-minded and try to learn from other jurisdictions, regardless of differences in values and ethics.

8.4 Readership and Relevance

Finally, I hope that this dissertation reaches a varied readership. These developments are not necessarily unique to China. Many countries worldwide struggle to harness the power of advanced

technologies for justice. Therefore, this dissertation and its research are relevant to other jurisdictions and speak to multiple audiences.

Although positioned within Sinology, this dissertation is relevant for scholars in various disciplines, including socio-legal studies, Chinese law studies, law and technology studies, science and technology studies, and surveillance studies. Despite the focus on one country, this dissertation also provides an insightful case study for law and technology scholars about the implications of broader global developments in automation and the use of technology in justice administration.

Based on the Chinese experience, automation and digitisation serve court leadership the most. Creating a digital and automated justice system naturally requires weighing competing judicial values. It is clear how the Chinese judiciary has prioritised oversight and standardisation over autonomous adjudication. Although Western scholars would argue that SCR undermines fairness, the Chinese case also illustrates how the specific interpretation of norms and values influences the perception of automation and digitisation of justice. In the Chinese worldview, the technology-enhanced standardisation and political oversight in justice administration bring more “fairness”. Jurisdictions founded on liberal rule of law principles should be careful to copy the Chinese case blindly. Naturally, their justice systems’ norms and values differ from the PRC. Therefore, the PRC provides meaningful lessons regarding the dangers (from a liberal perspective) of automation and digitisation.

Surveillance scholars will be interested in the disciplinary character of some applications in smart courts. The use of technology creates a “digital iron cage” around judges, enhancing the monitoring of their behaviour. From a liberal rule of law perspective, this is problematic as it significantly impedes the impartiality of the judiciary. These jurisdictions must consider how they can continue digitising and automating justice without undermining this fundamental principle.

Therefore, I hope I can enrich the global debate on digitisation and automation of justice by introducing the Chinese experience. Inversely, for socio-legal scholars of Chinese law and courts, this dissertation provides insights into the implications of automating justice and governance for China’s broader political-legal system. It has struggled for decades to create a functioning legal and court system within the ideological-normative boundaries of its governance apparatus. This contradiction has required perpetual judicial reform to reshape and fit law and courts into its worldview. It explains why smart technologies are so enthusiastically embraced: they are imagined

as a “magic weapon” that allows the CCP to eat its cake and have it, too. With technology, it believes it can create an independently functioning normative system without sacrificing its prerogative to protect its bottom line.

Lastly, I hope that the introduction of the many Chinese academic voices on automation and justice provides new insights to Western scholars of law and technology. For far too long, Western academia has ignored Chinese voices on topics that involve us all, or indeed, China itself as a subject of study as part of broader theorisation. I hope they will provide a fresh perspective on debates about fairness and the ethics of automated justice.

Summary

Over the past decade, the People's Republic of China has rapidly digitised and automated its justice system. This development, called “judicial informatisation” (*sifa xinxihua*, 司法信息化) and “smart court building” (*zhihui fayuan jianshe*, 智慧法院建设), has seen Chinese courts rapidly embrace and deploy advanced technologies involving big data analytics, algorithmic systems, and artificial intelligence across all aspects of their work. The Chinese judiciary's rapid embrace is motivated by the appeal of positioning itself at the vanguard of global developments in the use of algorithmic systems and big data analytics in justice administration. In addition, it is part of broader governance reforms that aim to strengthen centralised control and oversight through technology.

These developments raise a series of questions, relating to normative issues such as judicial independence, fairness, accountability, transparency, consistency, as well as procedural and substantive justice. Addressing these questions becomes a complex endeavour when we consider that Chinese party-state maintains distinct socio-political values and norms that shape their approach to these issues. Nevertheless, examining how digitisation and automation of justice is shaped by normative issues, and how this influences state approaches to digitisation and automation will help us better understand the consequences of these developments, and what that could mean for our societies. To this end, this dissertation conducts an empirical and legal analysis of case-studies, scholarly debates, and a corpus of state documents on the digitisation and automation of courts in the PRC.

This dissertation examines the digitisation and automation of Chinese courts from 2013 until 2022. Occurring in parallel with a multitude of other judicial reforms, this dissertation argues that Marxist-Leninist ideological conceptions of the role of law and courts in governance facilitate the rapid embrace of automated technologies. They shape the adoption and deployment of these technologies as well as the consequences. The principal ideological conviction that drives smart court reform (SCR) is that the technologies of automation will turn justice administration into a real science, and that science will make adjudication fairer and more efficient. The digitisation and automation of courts reveal that there exists a pervasive conviction among China's intellectual and ruling elite that governance and justice need to be “scientific” to be legitimate and fair. This conviction guides the digitisation and automation of all domains in China's political-legal system.

In addition, this dissertation argues that SCR has contradictory goals that seem difficult to reconcile. However, because of ideological conceptions, these goals are not seen as contradictory within the Chinese political-legal system itself. On the one hand, SCR is a way for the judiciary to secure and improve its status *vis à vis* other actors *within* China's political-legal system. It also has the external goal to improve its status and legitimacy *vis à vis outside* court users: overburdened and understaffed, algorithmic systems and other technologies of automation are seen as a pathway to increase their effectiveness, efficiency, and authority. This allows courts to improve their judicial function as a dispute resolver while simultaneously increasing its position as part of the party-state's governance apparatus.

However, on the other hand the central party-state sees technology as a way to regain control over its judiciary and broader social governance apparatus: smart courts are meant to restructure accountability and control hierarchies within the judiciary. Therefore, technology and automation introduce a new dynamic in the relationship between the state and the judiciary. China's SCR showcases how the party-state is leveraging technology to increase vertical control and encroach on judicial authority and independence. How automation shapes and is shaped by the seemingly contradictory goals of judicial empowerment and hierarchical control on the one hand, and efficiency and fairness on the other, are the red thread in this dissertation.

To study these contradictions, this dissertation asks *to what extent do ideological and normative ideas about law and courts in governance shape the goals of smart court reform, and to what extent does smart court reform perpetuate these normative ideas?* I argue that judicial reform in China is inherently limited in achieving independent adjudication and procedural justice resembling jurisdictions based on rule of law principles due to these ideological and normative ideas. Nonetheless, these ideological and normative ideas also hinder the functioning of the judiciary as an impartial arbitrator of legal disputes between individuals. Therefore, the judiciary is turning towards the power of technology to overcome these barriers. SCR must be seen as parallel with other judicial reforms with the aim to enhance them.

I answer these questions step by step: I first introduce the position and role of legal courts in China's broader political-legal system and discuss ongoing judicial reforms since 2013, which aim to make the judiciary more efficient, transparent, and professional. Next, I give a chronological overview and legal analysis of SCR starting with early digitisation efforts in 2012, and finishing in 2022 with

its consolidated national legal framework. Then, I discuss the ideological foundations that help explain the enthusiastic embrace of automation and technology in the PRC. I seek to flesh out how such ideas are, or may be, active in shaping academic discourse on automation in governance. Following this, I review and analyse Chinese debates on SCR to examine how these ideological foundations also play into the scholarly discussion of smart courts. Further, I try to tease out visions of “fairness” as reflected in government policy documents about SCR, and examine how these visions relate to the scholarly debates. I finish with two case studies of SCR, with a particular focus on how political intervention in courts is automated. In what follows, I summarise each chapter in detail.

Chapter 2 aims to better understand the dual character of Chinese courts, that serve both the normative and prerogative state. It asks what the role of courts is in China’s political-legal system and how judicial reform has tried to address the consequent issues. Courts are not only legal institutions, but also act as stability maintenance institutions. Their stability-maintenance function impedes their role and position as impartial adjudicators. This is especially pronounced in China’s political-legal system, where maintaining stability and regime-legitimacy is the fundamental *raison d’être* of all political-legal institutions in the PRC. This goal leads to a relative weak position of courts *vis à vis* other political-legal institutions. Drawing on theories of the dual state and authoritarian legality, I discuss how judicial reforms in the past decade related to transparency, consistency, and accountability, have tried to address this issue. Then, through a case study of the role of political oversight in maintaining Chinese courts’ dual character, I examine how the judiciary tries to reconcile their political task with their legal function.

Chapter 3 explores the SCR chronologically and legally. It asks how SCR policy developed over time and what particular issues arose in its implementation. It argues that SCR implementation has followed the typical China’s policy implementation trajectory, based on regional experimentation. This approach led to different issues with compatibility, information asymmetries, and lack of legal framework. First, it discusses digitisation initiatives related to transparency and access to justice in 2012 and 2013. Then, it describes the first experiments with digital and automated justice and examines the stumbling blocks during its rapid expansion phase between 2017 and 2021. Lastly, it analyses the legal framework around SCR existing out of multiple national rules and authoritative judicial interpretations and directives.

Chapter 4 asks what ideological foundations lie at the PRC's broader push towards digitising and automating its political-legal system. Drawing on international scholarship on Chinese Marxism and Leninism, it argues that the positivist organisational and ideological principles of Marxism-Leninism help explain why technology and automation are so enthusiastically embraced by the Chinese party-state: they provide a way forward towards achieving the dream of rational Marxist governance. Using the key political concept of "smart governance", this chapter explores the Chinese scholarly debate, and attempts to flesh out how such ideas are, or may be, active in shaping academic discourse around smart governance in China today. This is an important endeavour because academic discourse has a significant influence on party-state discourse and policy direction. Using practices of narrative and systematic literature review, it analyses 120 periodic articles from the China National Knowledge Infrastructure (CNKI), published between 2014 and 2021. The chapter finds that the way Chinese scholarship discusses the transformative power of smart technologies demonstrates a similar ideological understanding of social governance to the one endorsed by the party-state. This ideological understanding also helps explain further the instrumentalist and positive evaluation of SCR in the debate reviewed in the next chapter.

Chapter 5 examines how Chinese scholarship debate SCR. It asks how Chinese scholars evaluate smart courts in the context of the 2013 judicial reform agenda. It organises the review based on four reform concepts that guide the debate: efficiency, consistency, transparency and oversight, and judicial fairness. It reviews how Chinese scholarship discuss the implications of digitisation and automation in the judiciary. Using similar methods as in chapter 4, it analyses 55 periodic articles from the CNKI, published between 2012 and 2019. The analysis finds a generally positive evaluation in the debate, driven by an instrumentalist understanding of the reform concepts and the political purpose of legal courts in the Chinese political-legal system.

Chapter 6 shifts the focus from academic debates to the perception and framing of smart courts by the government. This chapter was previously co-authored with a colleague, Nino Junius, as an article. It explores the conception of "fairness" as reflected in government documents on smart courts. Smart courts allegedly bring more "fairness" to China's political-legal system. What is precisely meant with "fairness" in Chinese reform documents, remains unclear. It remains an open question how SCR can be considered "fair" in the Chinese context. Therefore, we ask how SCR and automation fit in the Chinese conception of "fairness". To this end, we qualitatively analyse

numerous documentary sources to study the principles of “fairness” in SCR. We argue that because of specific Chinese conceptualisation of “fairness”, SCR advances certain goals related to procedural and substantive fairness that strengthen legal rationality while simultaneously keeping open channels of controls. In other words, automation and digitisation of justice can be considered “fair” within the Chinese party-state’s worldview, because the concepts are interpreted in such a way that SCR reinforce them.

Chapter 7 investigates the SCR in detail by analysing two case studies. It examines how smart courts enhance judicial responsibility reform and the “trial oversight and management” mechanism. Through two case studies, one from the Jiangxi Provincial High Court and one from the Yibin Intermediate Court in Sichuan province, it provides an account of the automation of “trial oversight and management”, and explores the role of technology in enhancing political oversight. It argues that smart courts help institutionalise and codify political oversight over China’s judiciary. Smart courts, while meant to provide better judicial services and improve access to justice, also enhance the restructuring of accountability and power hierarchies in China’s judicial system. It helps resolve the contradiction between the two opposing requirements of Chinese courts, stemming from their dual character.

Finally, the conclusion summarises the findings to answer the central research question. I conclude that there exists an ideological affinity for automated justice in the worldview of the Chinese party-state. Chinese Marxist-Leninist conceptions of governance, fairness and justice, the law and courts, facilitate these developments. In this sense, the SCR embodies a set of normative values and principles that open a conceptual justification for the use of algorithmic systems and artificial intelligence. These values underscore the importance of social control, standardisation, and minimal human discretion. In this sense, the SCR is a case-study of broader developments relating to the quantification, digitisation, and automation of the governance of public life in China.

I contend that these developments are not necessarily unique to China. Many countries around the world are struggling to harness the power of advanced technologies for justice. Therefore, this dissertation and its research are relevant for other jurisdictions and speak to multiple audiences. It is not only an attempt to better understand and analyse judicial reform and automation in China in and of itself. It also hopes to enrich the global debate on digitisation and automation of adjudication by introducing the Chinese experience. By researching how ideological norms and values shape

the development and deployment of technology in justice administration, it hopes to illuminate pain-points and trade-offs in this endeavour as well as provide conceptual tools to policy-makers regarding automation and justice.

Samenvatting (Summary In Dutch)

De afgelopen tien jaar heeft de Volksrepubliek China haar rechtssysteem snel gedigitaliseerd en geautomatiseerd. Onder deze ontwikkeling, genaamd “gerechtelijke informatisering” (*sifa xinxihua*, 司法信息化) en “bouw van slimme rechtbank” (*zhahui fayuan jianshe*, 智慧法院建设), hebben Chinese rechtbanken op snel tempo geavanceerde technologieën geïntegreerd en implementeert in alle aspecten van hun werk, waaronder big data-analyse, algoritmische systemen en kunstmatige intelligentie. De snelle acceptatie door de Chinese rechtspraak wordt gedreven door de wens om zichzelf voorop te stellen in wereldwijde ontwikkelingen op het gebied van het gebruik van algoritmische systemen en big data-analyse in de rechtspraak. Bovendien maakt het deel uit van bredere bestuurshervormingen die tot doel hebben om gecentraliseerde controle en toezicht te versterken via technologie.

Deze ontwikkelingen roepen een reeks vragen op met betrekking tot normatieve kwesties zoals rechterlijke onafhankelijkheid, rechtvaardigheid, verantwoordelijkheid, transparantie, consistentie, evenals procedurele en substantieve rechtvaardigheid. Het aanpakken van deze vragen wordt een complexe onderneming wanneer we bedenken dat de Chinese partijstaat verschillende sociaal-politieke waarden en normen handhaaft die hun benadering van deze kwesties vormgeven. Desalniettemin zal het onderzoeken van hoe de digitalisering en automatisering van justitie wordt gevormd door normatieve kwesties en hoe dit de benadering van de staat tot digitalisering en automatisering beïnvloedt, ons helpen de gevolgen van deze ontwikkelingen beter te begrijpen en wat dat zou kunnen betekenen voor onze samenlevingen. Om dit te bereiken, voert deze dissertatie een empirische en juridische analyse uit van casestudies, wetenschappelijke debatten en een corpus van staatsdocumenten over de digitalisering en automatisering van rechtbanken in de Volksrepubliek China.

Deze dissertatie onderzoekt de digitalisering en automatisering van Chinese rechtbanken van 2013 tot 2022. Deze dissertatie betoogt dat marxistisch-leninistische ideologische opvattingen over de rol van wet en rechtbanken in het bestuur de snelle omarming van geautomatiseerde technologieën vergemakkelijken. Ze vormen de adoptie en implementatie van deze technologieën en de gevolgen ervan. De belangrijkste ideologische overtuiging die de slimme rechtbanken drijft, is dat de technologieën van automatisering de rechtspraak tot een echte wetenschap zullen maken, en dat wetenschap de rechtspraak eerlijker en efficiënter zal maken. De digitalisering en automatisering

van rechtbanken laten zien dat er een alomtegenwoordige overtuiging bestaat onder de intellectuele en heersende elite van China dat bestuur en rechtvaardigheid “wetenschappelijk” moeten zijn om legitiem en rechtvaardig te zijn. Deze overtuiging leidt de digitalisering en automatisering van alle domeinen in het politiek-juridische systeem van China.

Daarnaast betoogt deze dissertatie dat SCR tegenstrijdige doelen heeft die moeilijk te verzoenen lijken. Echter, vanwege ideologische opvattingen worden deze doelen niet als tegenstrijdig beschouwd binnen het Chinese politiek-juridische systeem zelf. Aan de ene kant is SCR een manier voor de rechterlijke macht om haar status te beveiligen en te verbeteren ten opzichte van andere actoren binnen het politiek-juridische systeem van China. Het heeft ook het externe doel om haar status en legitimiteit ten opzichte van externe rechtbankgebruikers te verbeteren: overbelast en onderbemand worden algoritmische systemen en andere automatiseringstechnologieën gezien als een manier om hun effectiviteit, efficiëntie en autoriteit te vergroten. Dit stelt rechtbanken in staat om hun functie als onafhankelijk beslechter van juridische geschillen te verbeteren en tegelijkertijd hun positie als onderdeel van het bestuursapparaat van de partijstaat te versterken.

Aan de andere kant ziet de centrale partijstaat technologie als een manier om de controle over haar rechterlijke macht en bredere bestuurlijke apparaat te herwinnen: slimme rechtbanken zijn bedoeld om de verantwoordings- en controlehiërarchieën binnen de rechterlijke macht te herstructureren. Daarom introduceren technologie en automatisering een nieuwe dynamiek in de relatie tussen de staat en de rechterlijke macht. Deze ontwikkeling laat zien hoe de partijstaat technologie benut om verticale controle te vergroten en inbreuk te maken op de rechterlijke autoriteit en onafhankelijkheid. Hoe automatisering de schijnbaar tegenstrijdige doelen van rechterlijke versterking en hiërarchische controle aan de ene kant, en efficiëntie en rechtvaardigheid aan de andere kant, vormgeeft en gevormd wordt, vormt de rode draad in deze dissertatie.

Om deze tegenstrijdigheden te bestuderen, stelt deze dissertatie de vraag *in hoeverre ideologische en normatieve ideeën over wet en rechtbanken in het bestuur de doelen van slimme rechtbanken vormgeven, en in hoeverre slimme rechtbanken deze normatieve ideeën in stand houden?* Ik betoog dat gerechtelijke hervorming in China inherent beperkt is in het bereiken van onafhankelijke rechtspraak en procedurele rechtvaardigheid die lijkt op jurisdicties gebaseerd op de beginselen van de rechtsstaat vanwege deze ideologische en normatieve ideeën.

Bovendien belemmeren deze ideologische en normatieve ideeën ook de werking van de rechterlijke macht als een onpartijdige beslechter van juridische geschillen tussen individuen. Daarom richt de rechterlijke macht zich tot de kracht van technologie om deze obstakels te overwinnen. Slimme rechtbanken moeten worden gezien als parallel aan andere gerechtelijke hervormingen met als doel ze te versterken.

Deze vragen worden stap voor stap beantwoord: eerst introduceer ik de positie en rol van de rechtbanken in het bredere politiek-juridische systeem van China geïntroduceerd en bespreek ik de lopende gerechtelijke hervormingen sinds 2013 die tot doel hebben de rechterlijke macht efficiënter, transparanter en professioneler te maken. Vervolgens geef ik een chronologisch overzicht en juridische analyse van de ontwikkeling van slimme rechtbanken, te beginnen met vroege digitaliseringsinspanningen in 2012 en eindigend in 2022 met het geconsolideerde nationale juridische kader. Daarna bespreek ik de ideologische grondslagen die verklaren waarom automatisering en technologie zo enthousiast worden omarmd door de Chinese partijstaat. Ik leg uit hoe dergelijke ideeën actief zijn in het vormgeven van academische discussies over automatisering in bestuur. Vervolgens analyseer ik de Chinese debatten over slimme rechtbanken om te onderzoeken hoe deze ideologische grondslagen ook invloed hebben op het wetenschappelijke debat over slimme rechtbanken. Verder probeer ik de visies op “rechtvaardigheid” zoals weerspiegeld in overheidsbeleidsdocumenten over SCR te ontrafelen en te onderzoeken hoe deze visies zich verhouden tot de wetenschappelijke debatten. Ik sluit af met twee casestudies van SCR, met een bijzondere focus op hoe politieke interventie in rechtbanken wordt geautomatiseerd. In wat volgt, zal ik elk hoofdstuk in detail samenvatten.

Hoofdstuk 2 heeft tot doel het dubbele karakter van de Chinese rechtbanken beter te begrijpen die zowel de normatieve als prerogatieve staat dienen. Het vraagt wat de rol van rechtbanken is in het politiek-juridische systeem van China en hoe gerechtelijke hervorming heeft geprobeerd om de gevolgen daarvan aan te pakken. Rechtbanken zijn niet alleen juridische instellingen, maar fungeren ook als instellingen voor het handhaven van stabiliteit. Hun functie om stabiliteit te handhaven belemmert hun rol en positie als onpartijdige scheidsrechters. Dit is vooral duidelijk in het politiek-juridische systeem van China, waar het handhaven van stabiliteit en regime-legitimiteit de fundamentele *raison d'être* is van alle politiek-juridische instellingen. Dit doel leidt tot een relatief zwakke positie van rechtbanken ten opzichte van andere politiek-juridische instellingen.

Op basis van theorieën over de dubbele staat en autoritaire legaliteit wordt besproken hoe gerechtelijke hervormingen in het afgelopen decennium hebben geprobeerd dit probleem aan te pakken, met betrekking tot transparantie, consistentie en verantwoording. Vervolgens wordt aan de hand van een casestudie de rol van politiek toezicht op het handhaven van het dubbele karakter van Chinese rechtbanken onderzocht hoe de rechterlijke macht probeert haar politieke taak met haar juridische functie te verzoenen.

Hoofdstuk 3 onderzoekt de slimme rechtbanken chronologisch en juridisch. Het vraagt hoe het beleid voor slimme rechtbanken zich in de loop der tijd heeft ontwikkeld en welke specifieke kwesties zich hebben voorgedaan bij de uitvoering ervan. Het betoogt dat de implementatie van slimme rechtbanken de typische traject van beleidsimplementatie in China heeft gevolgd, gebaseerd op regionale experimenten. Deze aanpak leidde tot verschillende problemen met compatibiliteit, informatie-asymmetrieën en het ontbreken van een wettelijk kader. Eerst worden digitale initiatieven besproken die betrekking hebben op transparantie en toegang tot justitie in 2012 en 2013. Vervolgens worden de eerste experimenten met digitale en geautomatiseerde justitie beschreven en worden de struikelblokken tijdens de snelle uitbreidingsfase tussen 2017 en 2021 onderzocht. Ten slotte wordt het wettelijke kader rond slimme rechtbanken geanalyseerd, bestaande uit meerdere nationale regels en gezaghebbende juridische interpretaties en richtlijnen.

Hoofdstuk 4 onderzoekt welke ideologische ideeën ten grondslag liggen aan de bredere inspanningen van de Volksrepubliek China om haar politiek-juridische systeem te digitaliseren en te automatiseren. Puttend uit internationale literatuur over het Chinese marxisme en leninisme betoogt het dat de positivistische organisatorische en ideologische principes van het marxisme-leninisme helpen verklaren waarom technologie en automatisering zo enthousiast worden omarmd door de Chinese partijstaat: ze bieden een manier om de droom van rationeel marxistisch bestuur te verwezenlijken. Met behulp van het belangrijke politieke concept van “slim bestuur” onderzoekt dit hoofdstuk het Chinese wetenschappelijke debat en probeert het uit te leggen hoe dergelijke ideeën actief zijn in het vormgeven van academische discussies over slim bestuur in China vandaag de dag. Dit is een belangrijke onderneming omdat academische discussie een aanzienlijke invloed heeft op het discours en de beleidsrichting van de partijstaat. Met behulp van praktijken van narratieve en systematische literatuurreview analyseert het 120 periodieke artikelen uit de China National Knowledge Infrastructure (CNKI), gepubliceerd tussen 2014 en 2021. Het hoofdstuk

concludeert dat de manier waarop de Chinese wetenschap de transformerende kracht van slimme technologieën bespreekt, een vergelijkbaar ideologisch begrip van sociaal bestuur weerspiegelt als dat wat wordt ondersteund door de partijstaat. Dit ideologische begrip helpt ook verder de instrumentele en positieve evaluatie van slimme rechtbanken in het debat te verklaren.

Hoofdstuk 5 onderzoekt hoe het Chinese wetenschappelijke debat slimme rechtbanken bespreekt. Het vraagt hoe Chinese wetenschappers slimme rechtbanken beoordelen in het kader van de gerechtelijke hervormingsagenda van 2013. Het organiseert de review op basis van vier hervormingsconcepten die het debat leiden: efficiëntie, consistentie, transparantie en toezicht, en juridische rechtvaardigheid. Het bekijkt hoe het Chinese wetenschappelijke debat de implicaties van digitalisering en automatisering in de rechterlijke macht bespreekt. Met behulp van vergelijkbare methoden als in hoofdstuk 4 analyseert het 55 periodieke artikelen uit de CNKI, gepubliceerd tussen 2012 en 2019. De analyse vindt over het algemeen een positieve evaluatie in het debat, gedreven door een instrumentele kijk op de hervormingsconcepten en het politieke doel van juridische rechtbanken in het Chinese politiek-juridische systeem.

Hoofdstuk 6 verplaatst de focus van academische debatten naar de perceptie en framing van slimme rechtbanken door de overheid. Dit hoofdstuk was eerder in samenwerking met een collega, Nino Junius, als een artikel geschreven. Het onderzoekt het begrip “rechtvaardigheid” zoals weerspiegeld in overheidsdocumenten over slimme rechtbanken. Slimme rechtbanken zouden meer “rechtvaardigheid” brengen in het politiek-juridische systeem van China. Wat er precies wordt bedoeld met “rechtvaardigheid” in Chinese hervormingsdocumenten, blijft onduidelijk. Het blijft een open vraag hoe SCR als “rechtvaardig” kan worden beschouwd in de Chinese context. Daarom vragen we hoe SCR en automatisering passen in het Chinese begrip van “rechtvaardigheid”. Om dit te bereiken, analyseren we kwalitatief talrijke documentaire bronnen om de principes van “rechtvaardigheid” in SCR te bestuderen. We betogen dat vanwege de specifieke Chinese conceptualisatie van “rechtvaardigheid”, SCR bepaalde doelen met betrekking tot procedurele en materiële rechtvaardigheid bevordert die de juridische rationaliteit versterken en tegelijkertijd kanalen voor controle open houden. Met andere woorden, automatisering en digitalisering van justitie kunnen als “rechtvaardig” worden beschouwd binnen de wereldvisie van de Chinese partijstaat omdat de concepten op een manier worden geïnterpreteerd dat slimme rechtbanken ze versterken.

Hoofdstuk 7 onderzoekt slimme rechtbanken in detail door twee casestudies te analyseren. Het onderzoekt hoe slimme rechtbanken de hervorming van de gerechtelijke verantwoordelijkheid en het “controle en beheer van processen” verbeteren. Aan de hand van twee casestudies, één van het Hooggerechtshof van de provincie Jiangxi en één van het Lagere Gerechtshof van Yibin in de provincie Sichuan, geeft het een verslag van de automatisering van het “controle en beheer van processen” en onderzoekt het de rol van technologie bij het verbeteren van politiek toezicht. Het betoogt dat slimme rechtbanken helpen om politiek toezicht op de Chinese rechtspraak institutioneel te maken en te codificeren. Slimme rechtbanken, hoewel bedoeld om betere juridische diensten te bieden en de toegang tot justitie te verbeteren, versterken ook de herstructurering van verantwoordings- en machtsverhoudingen in het Chinese juridische systeem. Ze helpen de tegenstrijdigheid op te lossen tussen de twee tegenstrijdige eisen van Chinese rechtbanken die voortkomt uit hun dubbele karakter.

Tot slot vat de conclusie de bevindingen samen om de centrale onderzoeksvraag te beantwoorden. Ik concludeer dat er een ideologische affiniteit bestaat voor geautomatiseerde justitie in de wereldvisie van de Chinese partijstaat. Chinese marxistisch-leninistische opvattingen over bestuur, rechtvaardigheid, wet en rechtbanken vergemakkelijken deze ontwikkelingen. In die zin belichamen de slimme rechtbanken een reeks normatieve waarden en principes die een conceptuele rechtvaardiging bieden voor het gebruik van algoritmische systemen en kunstmatige intelligentie. Deze waarden benadrukken het belang van sociale controle, standaardisatie en minimale menselijke discretie. In die zin is de SCR een casestudy van bredere ontwikkelingen met betrekking tot de kwantificatie, digitalisering en automatisering van de bestuur van het openbare leven in China.

Ik beweer dat deze ontwikkelingen niet noodzakelijkerwijs uniek zijn voor China. Veel landen over de hele wereld worstelen met het benutten van de kracht van geavanceerde technologieën voor justitie. Daarom is deze dissertatie en het onderzoek relevant voor andere rechtsgebieden en spreekt het meerdere doelgroepen aan. Het is niet alleen een poging om gerechtelijke hervorming en automatisering in China op zichzelf beter te begrijpen en te analyseren. Het hoopt ook het wereldwijde debat over digitalisering en automatisering van rechtspraak te verrijken door de Chinese ervaring te introduceren. Door te onderzoeken hoe ideologische normen en waarden de ontwikkeling en implementatie van technologie in gerechtsadministratie vormgeven, hoopt het

pijnpunten en compromissen in deze onderneming te verduidelijken en conceptuele instrumenten te bieden aan beleidsmakers met betrekking tot automatisering en justitie.

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Appendices

Appendix I: Overview of Relevant Official Documents

Where possible, I have opted to refer to the English translation of the documents wherever available. Where I did not find translations, I referred the original Chinese versions. I translated the majority of those documents myself. Some of them are hosted on China Law Translate, a public repository for English translations of Chinese legal documents.

Date Issued	Title	Issuing Authority	Reference
2013			
15 November	Resolution concerning Some Major Issues in Comprehensively Deepening Reform	CCPCC	https://chinacopyrightandmedia.wordpress.com/2013/11/15/ccp-central-committee-resolution-concerning-some-major-issues-in-comprehensively-deepening-reform/
21 November	Opinion on Several Issues Relating to Advancing the Establishment of Three Platforms for Judicial Openness	SPC	https://www.chinalawtranslate.com/en/spc-opinion-3-platforms-for-judicial-transparency/
21 November	Provisions on People's Courts Release of Judgments on the Internet (amended in 2016)	SPC	https://www.chinalawtranslate.com/en/spc-regulation-on-releasing-opinions-online/
1 December	Five-Year Plan for Informatisation Construction at People's Courts (2013—2017)	SPC	http://www.lawinfochina.com/Display.aspx?lib=law&Cgid=242335
2015			
26 February	Fourth Five-Year Reform Plan of the People's Courts (2014-2018)	SPC	https://www.chinalawtranslate.com/en/court-reform-plan/
16 September	Opinion on Improving People's Courts' Judicial Responsibility System	SPC	https://www.chinalawtranslate.com/en/judicial-accountability/
2016			
16 March	Annual Work Report	SPC	https://www.court.gov.cn/zixun-xiangqing-82592.html
16 April	Give full play to the functions of the "Faxin" platform and actively promote the construction of "smart courts"	SPC	http://www.courtbook.com.cn/u/cms/dongfang/201610/14141121jr2f.pdf
28 July	Guiding Opinion on Comprehensively Promoting the Synchronous Generation and In-depth Application	SPC	https://www.court.gov.cn/fabu-xiangqing-37402.html

	of the People's Court's Electronic Archives		
29 August	Provisions on People's Courts Release of Judgments on the Internet (amendment of 2013 version)	SPC	https://www.chinalawtranslate.com/en/the-supreme-peoples-court-provisions-on-peoples-courts-release-of-judgments-on-the-internet/
2017			
12 March	Annual Work Report	SPC	https://www.court.gov.cn/zixun-xiangqing-82602.html
12 April	Opinion on Accelerating Smart Court Construction	SPC	http://gongbao.court.gov.cn/Details/5dec527431cdc22b72163b49fc0284.html
12 April	Opinion on Putting a Judicial Responsibility System in Place and Improving Mechanisms for Trial Oversight and Management	SPC	https://www.chinalawtranslate.com/en/supreme-peoples-court-opinions-on-putting-a-judicial-responsibility-system-in-place-and-improving-mechanisms-for-trial-oversight-and-management-provisional/
20 July	New Generation Artificial Intelligence Development Plan	SC	https://digichina.stanford.edu/work/full-translation-chinas-new-generation-artificial-intelligence-development-plan-2017/
2018			
4 March	Provisions on People's Courts Disclosing Trial Process Information Through the Internet	SPC	https://www.court.gov.cn/zixun-xiangqing-85532.html
6 September	Provisions on Several Issues Related to Trial of Cases by the Internet Courts	SPC	https://www.chinalawtranslate.com/en/the-supreme-peoples-courts-provisions-on-several-issues-related-

			to-trial-of-cases-by-the-internet-courts/
4 December	Opinion on the Further and Full Implementation of Judicial Responsibility Systems	SPC	https://www.chinalawtranslate.com/en/spc-opinions-on-the-further-and-full-implementation-of-judicial-responsibility-systems/
2019			
19 March	Promoting the Pilot Program of “Mobile Micro Court” in Certain Courts	SPC	http://www.lawinfochina.com/display.aspx?id=30283&lib=law&EncodingName=big5
12 April	Five-Year Development Plan for the Informatisation Construction of the People's Courts (2019-2023)	SPC	https://drive.google.com/file/d/1iTObeRxs-75t3d-HY37TQIOWEjRs1dl/view?usp=sharing
31 October	Decision on Some Major Questions in Adhering to and Improving the Socialist System with Chinese Characteristics and Promoting the Modernisation of the National Governance System and Governance Capability	CCPCC	http://english.scio.gov.cn/m/20thcpcongress/2022-10/22/content_78480781.html
2020			
26 July	Guiding Opinion on Strengthening Searches for Similar Cases to Unify the Application of Law	SPC	https://www.chinalawtranslate.com/en/case-review/
14 September	Opinion on Improving the Working Mechanism for Unifying Law Application Standards	SPC	https://www.chinalawtranslate.com/en/spc-unity-of-law/
5 August	Implementation Opinion on Deepening the Comprehensive Reform Supporting the Judicial Accountability System	SPC	http://www.lawinfochina.com/display.aspx?id=33684&lib=law
2021			

20 January	Provisions on Several Issues Related to the People's Court's Handling of Cases Online	SPC	https://www.chinalawtranslations.com/en/online-cases-draft/
11 March	14th Five-Year Plan for National Economic and Social Development	NPC	https://cset.georgetown.edu/publication/china-14th-five-year-plan/
16 June	Online Litigation Rules	SPC	https://www.court.gov.cn/fabu-xiangqing-309551.html
4 November	Guiding Opinion on the Oversight and Management of "Four Types of Cases"	SPC	https://www.chinalawtranslations.com/en/4-types-of-cases/
28 December	14th Five-Year Plan for National Informatisation (2021-2025)	CCCI	https://digichina.stanford.edu/work/translation-14th-five-year-plan-for-national-informatization-dec-2021/
30 December	Online Mediation Rules	SPC	https://www.court.gov.cn/fabu-xiangqing-339521.html
2022			
20 January	Provisions on Several Issues Related to the People's Court's Handling of Cases Online	SPC	https://www.chinalawtranslations.com/en/online-cases-draft/
26 January	Online Operation Rules	SPC	https://www.court.gov.cn/fabu-xiangqing-346471.html
8 March	Annual Work Report	SPC	https://www.court.gov.cn/zixun-xiangqing-349711.html
25 May	Opinion on Strengthening the Judicial Application of Blockchain	SPC	https://www.court.gov.cn/zixun-xiangqing-360281.html
8 December	Opinion on Regulating and Strengthening the Applications of Artificial Intelligence in the Judicial Field	SPC	https://www.court.gov.cn/fabu-xiangqing-382461.html

Appendix II: Codebook Chapter Four

Name	Description
Critiques	
Digital divide	
Ethical challenges	
Fragmentation	
Persistence of information siloes	
Reduces human agency	
Loss of humanity or human touch	
Technological alienation	
Undermines privacy	
Techno-optimism	
Confusing goals and means	
Indicator culture	
Ideological - Official Slogans	
Adhere to party leadership	
Co-construction co-governance co-sharing	
Modernisation of national governance system	

Name	Description
Scientific decision-making	
Smart governance as a vehicle	
For collaborative and participatory governance	
For democratisation	
Collaborative governance	
Expand public participation	
Expansion of civil society	
People-centred	
Public participation	
Improving connectivity and participation	
For governance and government reform	
For scientific decision-making	
For technical rationality	
To adhere to rule of law	
To expand data collection and monitoring	

Name	Description
To improve active responsiveness of governance	
To improve holistic governance	
What is smart governance	
Big data driven decision-making	
Centrality of technology	
Collection & Monitoring	
Holistic governance	
Integrated system	
New mode of government	
Service-oriented	

Appendix III: Codebook Chapter Six

Name	Description
Challenges	The practical and normative challenges of judicial reform
Anti-corruption	How digitisation and automation can contribute to anti-corruption efforts.
Improving (procedural) oversight	One mechanism through which the judiciary tries to reduce corruption is by increasing and improving mechanisms of oversight through, e.g., new and stricter procedures and stricter enforcement.
General consistency vs considering individual cases	A consistent challenge of China's judicial reform has been to find an equilibrium between judicial consistency (same judgment for same cases) and acknowledging the uniqueness of every legal case.
Considering local differences	
Humans are fallible	A central starting point of judicial digitisation and automation; influenced by the Marxist ideal of rational governance.
Improving efficiency	Efficiency means more output with less input.
Reducing human element	Reducing or limiting human discretionary decision-making in the judicial process through digitisation and automation.
Goals	The normative goals of smart courts
Procedural Justice	Relating to formalities and procedures
Consistency	
Absence of oversight leads to unfairness	
Digitisation as a gateway	Digitisation helps improve procedural justice by strengthening consistency.
Enforcing procedures	

Name	Description
Equalising online and offline	Online and offline procedures and documents have the same legal validity.
Improving decision-making	
Promoting consistency	
Standardising judicial outcomes	
Standardising power	Clarifying and formalising responsibilities and duties of each position in courts.
Standardising practices	Clarifying and formalising practices, i.e., actions and measures, one may undertake in specific situations.
Standardising sentencing	
External visibility	
Increasing visibility of justice	
Informing parties	Informing parties about the technicalities of online litigation, their rights during an online process, etc.
Informing and guiding parties	
Informing parties about their rights	
Protecting rights	The protection of rights during the judicial process.

Name	Description
Giving parties the freedom of choice	
Protecting data and information	
Protecting privacy and neutrality	
Protecting the right to a trial	
Standardising litigation	
Internal accountability	Increasing and improving internal accountability
Centralising court work	
Clarifying responsibilities	
Clarifying rules	
Correct oversight is a prerequisite	The idea that correct (political) oversight is a prerequisite to a "fair" outcome in a judicial process.
Digitisation as a gateway	
Enforcing procedures	
Oversight	
Enhancing judicial activities	

Name	Description
Facilitating court work	
Holistic oversight	An all-round, all-encompassing way of oversight that covers every node in the judicial process from beginning until end.
Improving (procedural) oversight	
Improving accountability	
Improving procedural transparency	
Self-discipline	Digitisation and automation foster self-correction and self-discipline among its users.
Facilitating court work	Smart courts make the judicial process easier which is an incentive for judges to use it.
Improving (procedural) oversight	
Substantive Justice	Relating to substantive outcomes of the judicial process
CCP Legitimacy	
Enhancing judicial activities	
Ensuring fairness	
Giving discretion to the court	
Choosing online litigation under certain conditions	

Name	Description
Moving to offline	
Holistic oversight	
Strengthening political loyalty	
Strengthening party leadership	
Individuality as access	This concerns the provision of access to a legitimate venue of airing grievances, functioning as a safety valve to let out pressure from society. It is a provision for the faceless masses, i.e., the poor and powerless (because the rich and powerful would never use the courts, rather internal party mechanisms). Provision of access is not only formal and passive (letting the people come to justice), but bringing justice to the people (through smart courts and propagating).
Accommodating different needs	
Consent	
Getting implicit consent	
Getting informed consent	
Isolating consent	
Needing consent	
Withdrawing consent	

Name	Description
Facilitating the judicial process	
Providing more convenient services	
Improving access to justice	
Individuality as social stability	The fact smart courts allow for individual rights and try to accommodate individual needs, is not so much motivated by liberal principles of individual rights, but rather from a concern with social stability for the collective. This is in line with the literature of the Chinese conception of "fairness" and "justice" as a collective concept.
Accommodating different needs	
Consent	
Getting implicit consent	
Getting informed consent	
Isolating consent	
Needing consent	
Withdrawing consent	
Considering local differences	

Name	Description
Contesting matters of procedure	
Ensuring fairness	
Improving access to justice	
Improving procedural transparency	
Losing rights	Individual rights are only relevant as long as they serve the collective goals of social stability and prosperity.
Protecting rights	
Giving parties the freedom of choice	
Protecting data and information	
Protecting privacy and neutrality	
Protecting the right to a trial	
Standardising litigation	
Unifying procedural and substantive justice	
Consolidating judicial reform	
Following procedures closely	

Name	Description
Pathways	How are Smart Courts helping to overcome the challenges and achieve the goals set out in the data?
Procedural Justice	Relating to formalities and procedures
Centralising court work	
Clarifying responsibilities	
Clarifying rules	
Digitisation as a gateway	
Facilitating court work	
Holistic oversight	
Improving decision-making	
Institutionalising procedures through platformisation	
Promoting consistency	
Standardising judicial outcomes	
Standardising power	
Standardising practices	
Standardising sentencing	
Promoting interconnectivity	
Reducing human element	

Name	Description
Substantive Justice	Relating to substantive outcomes
Centralising court work	
Considering local differences	
Consolidating judicial reform	
Digitisation as a gateway	
Giving discretion to the court	
Choosing online litigation under certain conditions	
Moving to offline	
Holistic oversight	
Improving access to justice	
Improving efficiency	
Improving trial enforcement	
Institutionalising procedures through platformisation	
Modernising the judiciary	
Promoting interconnectivity	
Strengthening political loyalty	

Name	Description
Strengthening party leadership	

Curriculum Vitae

Straton Papagianneas was born on April 25, 1994, in Brussels, Belgium. He lived in Cyprus before returning to Belgium in 1998. In 2012, he began his bachelor's degree in Sinology at the Catholic University of Leuven. During the summer of 2014, he attended a summer program at Shanghai Jiao Tong University, where he was first introduced to Chinese law. For his final undergraduate year, he participated in an Erasmus exchange at Ruprecht-Karls-Universität in Heidelberg, where he also completed his Master's in Sinology in 2017.

After obtaining his MA, Straton pursued a Postgraduate Certificate in Economic Diplomacy at the Brussels Diplomatic Academy, including an internship at a law firm in Shanghai. In 2018, he moved to Wuhan to study International Law at Wuhan University, completing this program in 2019.

In the summer of 2019, Straton relocated to the Netherlands to begin his PhD in Chinese Studies at Leiden University. His research was conducted at the Institute for Area Studies, the Van Vollenhoven Institute, and eLaw – Center for Law and Digital Technologies. His PhD work was challenged by the global COVID-19 pandemic, which impeded his ability to conduct research visits to China. During this period, he moved to Paris for personal reasons in 2020 and returned to Leiden in 2022. He completed his PhD in early 2023 after a research stay at Griffith University in Australia. Throughout his PhD journey, he published several articles, book chapters, and various works for a broader audience.

Besides his research, Straton was an editor for projects like the Mapping China Journal, the China Guiding Cases Project, and Sinotalks. He was also engaged in teaching and supervision, focusing on courses related to Chinese governance, law, and politics.

Currently, Straton works as a Study Coordinator at the Faculty of Humanities at Leiden University. He also works part-time as a boxing coach.