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

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## Chapter Seven: Automating Intervention in Chinese Justice: Smart Courts and Oversight Reform<sup>21</sup>

### 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

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<sup>21</sup> 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 representativeness 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.<sup>22</sup> 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

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<sup>22</sup> 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 limit<sup>23</sup> 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

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<sup>23</sup> 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.<sup>24</sup> 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).<sup>25</sup>

### ***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.<sup>26</sup>

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<sup>24</sup> 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.

<sup>25</sup> 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.

<sup>26</sup> 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

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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).<sup>27</sup>

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

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<sup>27</sup> 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.<sup>28</sup> 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).<sup>29</sup> 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

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<sup>28</sup> 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.

<sup>29</sup> 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.<sup>30</sup> 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

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<sup>30</sup> 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.