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

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## 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.