

# Judicial Reform in China and Its Political Implications

*Ji Weidong*

Professor of the Graduate School of Law, Kobe University  
2-1 Rokkodai-cho, Nada-ku, Kobe City 657-8501, JAPAN  
E-mail: [jiwdlaw@kobe-u.ac.jp](mailto:jiwdlaw@kobe-u.ac.jp); [jiwdlawkobe@hotmail.com](mailto:jiwdlawkobe@hotmail.com)

## **A Brief Review of the Judiciary in Contemporary China**

- 1.1 It is common knowledge that the activities of the judiciary almost entirely halted during the “Cultural Revolution” period from 1966 to 1976. The judicial system currently in operation was reconstructed in 1976, and in reality, it has been normalized and enhanced since 1980 when the Organic Law of People’s Courts began to be put into effect and the role of lawyers in litigation was defined by a new legislation. So this presentation is limited to dealing with the development of Chinese judiciary within the period of last twenty five years.
- 1.2 **The Court Personnel:** According to incomplete statistics, the number of judges and associate judges increased by 416% from about 50,000 in 1980 pass through 131,460 in 1990 to 258,000 in 2000 during the past twenty years. The court personnel of 2000 is composed of as follows: altogether 150,000 judges, 58,000 associate judges, over 2,000 law enforcement officers, 44, 000 law clerks, 20,000 court policemen and 48,000 other staff members. Attention should be paid to the fact that in the last decade from 1990 to 2000, the number of judges increased by 40.6% from 89,114 to 150,000, and in contrast, the number of associate judges increased by 37.0% from 42,346 to 58,000. Clearly, the increase rate of judges and associate judges is still very high, but began to slow down, especially reflected in the lower increase rate of associate judges. At present, the population served by one judge is 8,600, approaching to the U. S. A. level of 8,826 in 1998/99, and making up one-fifth of the number 43,000 of Japan in 1999. The number legal profession as whole is about 496,000, the population served by one jurist is 2600, between the levels of Japan (5,642 in 1999) and France (1,309 in 2000).
- 1.3 **The Appointment of Judges:** China is building up a career judge system based on the European continental tradition. But there have been some very different features as well so far. One of the most typical examples for showing the difference is the electoral procedure

for the appointment of judges. According to the Constitution and the Organic Law of the People's Courts, the President of the Supreme People's Court is elected and subject to recall by the National People's Congress (NPC); the vice presidents, chief judges and associate chief judges of divisions as well as judges of the court are appointed or removed by the Standing Committee of NPC upon submission of the President of the Supreme People's Court. The Presidents of a local court at various levels is also elected and subject to recall by the local people's congress; and vice-presidents, chief judges of divisions, the other members of the adjudication committee as well as judges of the court are appointed or removed by the standing committee of the local people's congress at the same level upon submission of the President of the said court. Incidentally, associate judges are appointed or removed by the court where they work.

- 1.4 Professional Qualifications Provided for Judges by Law: In accordance with the Judges Law, which first adopted in 1995 and revised in 2001, general qualifications for judges include: (1) to be of Chinese nationality; (2) to have reached the age of 23; (3) to endorse the Constitution of the People's Republic; (4) to have fine political and professional quality and to be good in conduct; (5) to be in good health; (6) to measure up to the educational requirements.

The professional qualifications, particularly the requirement of academic degree and work experiences have been heightened in the new Judges Law: to become a judge, for LL.B. graduates or non-law graduates with a bachelor degree but possessing professional knowledge of law must have worked in the legal field for two years. For those who will work at a Higher Court or the Supreme Court, three years of legal working experiences are required. For those graduates with LL.M. or J.S.D. degrees, one year working experience is required. Another important revision in new Law is that from January 1, 2002, judges must at least hold bachelor degrees. In addition, entry-level judges and procurators will be selected from those who not only meet the above requirements, but also have passed the National Judicial Examination.

During March 30-31, 2002, China had the National Judicial Examination for the first time, which combines the national bar examination and different qualification tests for bench, public procurators and notaries together into a unified one. 360,000 people entered themselves for the judicial examination until the closing day, January 30 of this year, and 310,000 people took the examination in fact. It was reported on May 27, 2002 that among them only 24,000 passed the examination. In other words, the predetermined pass rate was 7%, lower than the pass rate (10%) of the national bar examination in former years.

The exception is only applicable to the minority regions where the quality of judicial personnel is lower than other regions in China. Taking the local conditions into account, the new Judges Law allows those regions which have difficulties to implement the above professional requirements may appoint, subject to a certain examination and determination by the Supreme People's Court, judges with three-year higher vocational training certificates (*da-zhuan*) in law from colleges or universities within a time limit.

For those in-service judges who do not hold bachelor degrees must receive professional training so as to meet the above qualifications. As for the training ways and means, the Supreme People's Court will lay down detailed measures. However, the new Law does not mention whether unqualified judges will be dismissed when they are unable to meet the requirements even after the training, nor specify a time limit for the legal training. In fact, these kinds of problems have been resolved by local rules of courts at different levels.

- 1.5 The Training System of Judges: The Supreme People's Court has strengthened the professional training for judges at their posts over the last decade. The State Judges Institute was set up in 1997, and its predecessor China's Training Center for Senior Judges was set up in 1985. It started as a part-time vocational institute and has turned to be full-time college in reality since the end of December 2001. Under this training system, senior judges have been trained by the State Judges Institute, while other judges have been trained the same kind of institutes run by the high courts. Up to the end of 1999, 11,000 senior judges have already received professional training at different levels. Among them, 63 persons attained J.S.D. degree, 2,248 attained LL.M. degree. The Supreme People's Court also has made a new training program for the period of 2001 to 2005.

It was reported that those passers of the National Judicial Examination who will become associate judges must all start their career after a certain period of practical training in the form of apprentice now or at the State Judges Institute (State Judges College or Judicial College) in the future.

- 1.6 The Adjudication Committee: In China, each court has its adjudication committee that is composed of the presidents, division chiefs and senior judges. The adjudication committee is the most authoritative body in a court, which is responsible for discussing important or difficult cases, making directions concerning other judicial matters and reviewing and summing up trial experiences. The decisions or directions on litigation and

other judicial matters are normally made by vote, and must be followed by judges or collegial panels. Thus the adjudication committee system has been criticized as an obstacle of hindering the judicial independence.

1.7 The Court Caseload: During last twenty years, people's courts heard altogether more than 62 million criminal, civil, economic and administrative cases, among which especially the number of civil cases has increased at a big margin and at a continuous accelerated pace. In this period, the average rate of increase for civil and economic cases has been 26% annually. As shown in Table 1, the workload of the first instance of civil courts rapidly increased by 94.6% from 1.8 million to 3.5 million in the period of 1989-99. The percentage of cases resolved by mediation dropped from about 70% to 40% and more, in the meantime, the percentage of judgments made through formal procedures went up from 16.5% to 35.7%. In view of the number of judges and associate judges increased by about 40% during the same period, and the issues involved had become more and more complicated, it is easy to imagine that the task burden of China's courts was finally very heavy, almost twice the size in ten years. The graphs (Graph 1- Graph 4) attached to this presentation at the end of paper can show us more clear images of this kind of changes and their differences.

## **The Cause and Effect of Judicial Reform During the 1990s**

2.1 Since the 14<sup>th</sup> National Courts Working Conference held in 1988, the reform of civil and economic adjudication method had been pushed on. At first the reform was only motivated by the need to lighten the fiscal burden related to expenses of litigation on the state and to clear the backlog of cases waiting to appear before the courts. For meeting this need, however, China had to adopt adversarial model of trial for replacing partially inquisitorial system, so as to make litigants shoulder part of the cost of investigation and testimony. This was obviously a quite limited reform. However, the outcome exceeded the original plan. At the other side of dominoes, not only efficiency but also fair-play and procedural justice have been demanded for by people, in the meantime, the rise of legal professionalism and judiciary has also unfolded before people's eyes. Especially the significance of procedure has been vigorously emphasized since 1993.

2.2 For example, the reform of civil adjudicative procedures after 1993 has shown the developments as following: (1) to adhere to open trial policy and to brighten the transparency of the judicial process. (2) To set up the system of pretrial conference and to

imbue authority to the functions of court hearing. Courts are asked to complete the preparatory work fully prior to the opening of the court and to hold the session on time and promptly. The courts validate evidence through an open session, ascertain the facts and allocate responsibilities among parties. The court may proceed with mediation at any time when necessary. (3) To stress on the burden of proof by the parties, requiring them to adduce evidences to prove the authenticity and legality of their allegations and with verification. The individual court will actively guide the parties on the issue of a burden of proof according to the law, and play the leading role in all proceedings. The judge will affirm evidences after investigation and hearing. (4) To allow the courts to properly apply summary procedures, for preventing and reducing the backlog of cases. (5) To emphasize on the responsibilities of both the individual judges and collegial panels instead of the adjudication committee of their courts.

2.3 At the extension line of the above reform of adjudication method and judicial procedures, the Supreme People's Court of China went a step further to announce a "Five-Year Program for Judicial Reform" in October 1999. This plan aims to resolve the problems such as the lack of judicial resources, the lack of qualified judges, the lack of safeguards on the independence of adjudication from interference by political bodies and local protectionism, and to heighten the fairness and efficiency of trial proceedings. The content may be summarized as follows. The first objective of the five-year reform plan is improving the judge selection system. By 2003, all the courts are asked to adopt a new personnel system that makes the higher court judges be selected from the worthy judges of lower courts, or the senior attorneys who enjoy high social prestige, or other high-level legal professionals. The unqualified judges will be dismissed. By 2001, the authorized size of judiciary will be decided, and the salary of judges will be raised for attracting the people of excellence.

2.4 The second objective is to strengthen competence and responsibility of the collegiate benches and individual judges in adjudication. According to the judicial reform program, except for those vital, difficult and complicated cases which should still be submitted to the adjudication committee, the collegiate benches and individual judges should independently determine all cases after 2000. The third objective is to improve the checks and balances among judges. For this purpose, the functional differentiation at different stages and in different aspects of a trial process will be promoted, and the tracking organizations will be set up in all courts to monitor case filing, trial and enforcement of the court order. As a link of the tracking mechanism, the "Judicial Inspector (*dudaoyuan*)" system had already

been introduced to all the higher people's courts until the end of 1999.

- 2.5 The fourth objective is centralization of verdict execution. According to the judicial reform plan, a national organization to exercise unified leadership over the executive divisions of courts at all level will be set up when the conditions are ripe. The fifth objective is to raise degree of judicial transparency and participation. The reform will improve the compilation and publication of legal precedents, judicial statistical data, etc. It is also necessary to make the rules of supervision by public opinion and to enhance the people's jury system.
- 2.6 Finally, the sixth objective is the use and spread of information technologies. According to the five-year judicial reform plan, computer, multimedia and other parts of IT will be popularized in courts at all level by the end of 2001, and then the administration of justice will gradually be virtualized. It is self-evident that the "Five-Year Program for Judicial Reform" represents a very important development in judiciary for China. If the plan can be implemented successfully, the situation of trial in China will change dramatically.

### **The Paradox in Pursuing Trial Independence Principle**

- 3.1 The social ordering in China depends on the fundamental tenet of personal guarantee responsibilities (*chenbao zerenzhi*) to a great extent. Namely, the approach of making the chain of personal relations to safeguard and to strengthen the actual effects of a contract or law has been adopted in common. This kind of mechanism also runs in the state. As a result, the behavioral patterns of judges or magistrates have also been programmed by the personal guarantee responsibilities and public opinion of local society in varying degrees. That is why there have been very severe sanctions to be stipulated by Chinese law in the long history for those judges or magistrates who made a wrong judgment, and the discretionary power of a judge has been controlled by not only law but also policy, the Mass Line, relational norms as well as public opinion (as for the relations of the structural factors, cf. Gragh 5).
- 3.2 But the Western style modern law is totally different from the Chinese in this aspect. The institutional design is based on the fundamental tenets of depersonalization, freedom of choice on self-responsibility and limited liability. The legal order is legitimated by the procedural due process. It is quite evident that the idea of procedural justice and the idea of personal responsibility are mutually exclusive in principle. However, these two factors have

been combined together paradoxically in the judicial reform in China. They now look like in the relationship of being both opposite and complementary to each other. In other words, since 1993, the centralized judicial power in the hands of adjudication committees, presidents and division chiefs has been cut apart and transferred to a lower level, as a result, the dependence and initiative of judges or collegiate benches who hear litigation cases have been strengthened. In the meantime, the personal guarantee responsibilities of the judges or collegiate benches have also been enhanced with the development of judicial independence.

3.3 The realignments of procedural justice and personal responsibility are different in different local courts. Four basic types can be found in trial and error at present.

- (1) The job responsibility system of an individual judge. This model has been adopted in Yangpu of Hainan Province and the other Economic Special Zones, and can be considered the most similar with the model of Western style modern law and the final aim of China's judicial reform. Here the individual judges who hear a case have power to make decision on the case, and every judge is equal in status. Just at the point of keeping balance between the procedural independence and personal responsibility by sanctions, the Chinese feature are still left.
- (2) The job responsibility system of a judge-in-charge. Under this situation, all of the enlarged collegiate benches are fixed, and the presiding judges will *ad hoc* appoint a judge-in-charge to play the leading role in a litigation case heard by collegiate system in its narrow sense. The judges-in-charge have power to make decisions concerning routine duties of trial as well as administration of justice, but in case of that his opinion is in the minority of the collegiate bench or there is an important difference of opinions in the collegiate bench, he must put the case in question to the discussion by the enlarged collegiate bench, the related division and the adjudication committee.
- (3) The collective responsibility system of a collegiate bench. According to this model, the most of decision-making powers as well as responsibilities are in a collegiate bench. At present, this is the mainstream of judicial reform concerning decision process in China.
- (4) The job responsibility system of the presiding judge of an enlarged collegiate bench. It is similar with type (2) in the aspect of organic structure, and different from type (3) in the sense of individual responsibilities replacing collective responsibilities. From the viewpoint of administration of justice, we can even say that the presiding judges are just sub-division-chiefs who share parts of the work that are originally the duties of division chiefs. In fact, the presiding judges here are held responsible to the division chiefs.

Thus this model is mostly close to existing state of affairs in Chinese judiciary.

- 3.4 It was reported that judges had enhanced their sense of responsibility and raised the efficiency of trial since the above-mentioned reforms. On the other hand, however, it was also pointed out that some judges had been abusing their power in the shadow of judicial independence and the number of wrong judgments had been increasing. Therefore, on the national forum on reforms of civil and economic trial method held in April of 1997, the Supreme People's Court shown the opinions of maintaining the inter-monitoring system of judiciary, namely a kind of administrative review and supervision by division chiefs and presidents of courts. In addition, the rules and sanctions on a wrong judgment were laid down.

## **Court System and Cyber Space**

- 4.1 As for the inter-monitoring system of Chinese judiciary, we notice that the Information Technology (IT) revolution has both given rise and a resolution to a whole series of problems in this aspect. As stated above, the "Five-Year Program for Judicial Reform" of the Supreme People's Court of China, which was issued in the autumn of 1999, attached importance to IT in the administration of justice. According to the judicial reform plan, for raising efficiency of the court system, the administration of justice will be virtualized in the period of 1999-2003, and the "trial flow tracer system" (*anjian shenli liucheng guanli zhidu*) will be popularized on what has already been achieved. Here, I shall have more to say about the implementation and influence of the IT in China's judicial reform as well as political changes.
- 4.2 The five-year judicial reform plan announced by the Supreme People's Court of China requires that all courts must allocate optical character readers (OCR), tape recorders, video cameras, digital live-recording instruments, overhead projectors (OHP), monitoring systems by cable television and so on at the earliest convenience. The model of this kind of electronic courtroom has already been shown in Beijing and Shanghai since 1998.
- 4.3 In China, a multimedia approach to adjudication is considered to be of significance in the following aspects. One is to be used as a tool of trial by acquiring litigation documents, recording results of certification, showing human testimony and material evidence, etc. Another aspect is to be considered as a part of court management. For example, a multimedia approach may be applied in court management to preserve and transmit on

judicial data as well as to do paper work according to transcription. It is also helpful in the occasions of reproducing on the screen scenes of the oral argument to check mental reservation and to improve the regular training of judges. And a real time processing system for trial processes may be built up by this kind of ways and means. The third aspect is to draw attention and trust of the people to the judiciary by visualization of trial processes through audio-visual technologies. Chinese people have long complained at the opacity of legal decision mechanism as a “black box operations”. However, the live broadcast of a class action concerning copyrights tried by the Beijing Number One Intermediate People’s Court in July 1998 marked the beginning of the efforts by Chinese courts to open the black box. Since then, in the name of adjudication supervision by public opinion and the masses, TV cameras have been allowed to shoot in the courts, and news reports about litigation have increased sharply. More and more people began to attend trials and to watch the judiciary at work.

4.4 Inside the courts, a telecommunications system has been established and amplified to virtualize administration of justice. According to the “Five-Year Program for Judicial Reform” announced by the Supreme People’s Court of China, courts at all level must basically step into the IT revolution era by applying the new technologies to the daily work of adjudication and general affairs by the end of 2001. As far as possible in five years, all of courts will be connected into the national computer network system that makes access to legal information and working documents as well as processing judicial data extremely rapid and cheap. On the basis of what have already been achieved, it is even possible to do online trial to a certain extent. At least adjudication would be more up to the standard of model judgments that are available on the unified telecommunications system of courts, and more predictability would be given to trial.

4.5 As a result of virtualizing the administration of justice, it becomes easier to check or to assess the collegiate benches and single judges in adjudication. One living example is the above-mentioned “trial flow tracer system”. So what is that? What does the five-year judicial reform plan talk about when it advocates that idea? The best short answer may be that the “trial flow tracer system” aims at putting into effect the tracking management completely at any and all stages of adjudication. Thus the Supreme People’s Court of China says in the judicial reform plan that it is necessary to set up a special organization for tracking and managing the different links in the adjudication chain, and for safeguarding the fairness as well as efficiency of all trial processes.

- 4.6 We can find two representative examples of the “trial flow tracer system”. One is experience of the Shanghai Number One Intermediate People’s Court. Suppose a litigant hand in the bill of indictment, normally he can get a notice about the venue and term of session from the registry within thirty minutes. After deciding a collegiate bench or an individual judge to hear the case, the registry will turn over the litigation documents together with the filing card, winding up card and execution tracking card to the related bench or judge. At the same time, the registry must input the major information of the case into the computer network system, and announce the necessary information on the electronic screen (e-filing). The bench or judge who is responsible for the case must input the state of affairs into the telecommunications system at every stage of the trial process immediately on the same day. The supervisory department will track and control the whole course of trial, and appraise the performance of the bench or judge (e-monitoring).
- 4.7 Another example is the experience of the Beijing Haidian District People’s Court. According to the computer network administration rules made by the court, while hearing the cases, each division of the court must synchronously input all the statistical figures and other information of adjudication. The special office for information technologies must play a role of management by objective, thus comprehensively check the information processing of all divisions of the court every quarter of a year, and randomly do spot checks whenever necessary just like the control tower of Panopticon. The IT office also conducts examinations for checking the Internet literacy and computer skills of judges, clerks and administrative staff. There are some punishments for input mistakes and going slow in information management.
- 4.8 On the base of combining the above-mentioned two examples, the Supreme People’s Court of China has pushed the said “Grand Registry (*da-li-an*)” reform forward first in Shandong Province and then throughout the whole country. It is characterized by traceability in one continuous line which takes the register office of court as the starting point and the control tower, and accountability in the way of management by objective. The goal of the reform is to set up a kind of procedure-programmed “trial flow tracer system” for guaranteeing procedural due process, restricting the discretionary power of individual judge through judicial transparency, raising efficiency of dispute resolution and promoting transformation of the courts.
- 4.9 It is clear that traceability and accountability based on the new information technologies are double-edged. Virtualizing the administration of justice may reorganize courts as more

trusted third parties for the litigants, but it is also possible that the lack of the independence of adjudication will worsen. What can we do to prepare for the worst and to strive for the best? How can we take more effective steps in ensuring the fair trial by information technologies as well as judicial reform? These are the new tasks for the judicial reform in China today.

## **From the Judicial Interpretation to the Judicial Review**

5.1 Given the above technological development and social phenomena as background, the judicial reform has now arrived at a completely new stage. The sign of this new stage is the changes began to emerge recently in the relationship between the People's Congress and People's Court, namely between legislative power and judicial power. For preventing the abuse of judicial independence, besides the inter-monitoring system include personal guarantee responsibility, administrative review and supervision by chief judges and the said "trial flow tracer", outside check system has also been emphasized in China. The above-mentioned court watching through the live TV program began on July 11, 1998, can also be understood as a kind of outside supervision. The most important measure for strengthening the outside supervision is the new system called as "*renmin daibiao dahui de ge-an jiandu* (supervision by the people's congresses on details of a litigation case)". The system was established on December 24, 1998, by the normative document "The Opinions of the Supreme People's Court Concerning the Arrangement of that People's Courts Must Accept the Supervision by the People's Congresses and Their Standing Committee".

5.2 The new system of "*ge-an jiandu*" means that (1) when people's courts hear a major or important case or a case that has significant impacts upon the local society, they will invite deputies to the local people's congress and its Standing Committee members to a visitor at the trial, and heed their opinions, that (2) the local people's congress and its standing committee may also has the power to bring a case up for retrial in the light of the adjudication supervision procedure, if it thinks that there is a error in a legally effective judgment or written order of the local court. This way is not utterly groundless as far as in China's state system in operation. According to the principle of popular sovereignty and the constitutional laws, people's courts at various levels are responsible and accountable to the people's congress and its standing committee at the same level. In addition, the people's congress and its standing committee has power to supervise the judicial activities of the courts at the same level as well as lower level. It

is very clear that legislative power has been in an absolutely advantageous position in China, except in the aspect concerning the leadership of the Communist Party of China. Nevertheless, there is no stipulation of law about the supervision by the people's congresses on details of a litigation case like "*ge-an jiandu*", and it has also not been a business of people's congresses to begin the adjudication supervision procedure against a legally effective judgment up to now. In fact, the new system of "*ge-an jiandu*" will almost certainly lead to the situation in which the judicial independence becomes merely in name but not in reality. Therefore soon after the system was set up, many judges and academic lawyers expressed their doubts, grievances and objections.

5.3 As a result, the Supreme People's Court has to take a very soft counterattack in self-defense.

It is the judicial interpretation made on August 13, 2001, to seek for constitutional review of laws as a judicial power in the name of "*xianfa sifahua* (taking the Constitution as adjudicative norm)". Here we can see a picture of "*ge-an jiandu* vs. *xianfa sifahua*" or "legislature supremacy vs. judiciary supremacy". Firstly, let me to explain the August 13 interpretation briefly. This judicial interpretation is an official reply to the High People's Court of Shandong Province concerning problem of application of legal norms in hearing "*Qi Yuling vs. Chen Xiaoqi*" case. Facts of this case are very simple. The defendant Chen Xiaoqi and the plaintiff Qi Yuling took an entrance examination of institutions for higher education in the same year, the former failed, and the later passed. Chen Xiaoqi's father, one of the local leading cadres, knew the outcome before it known to the public, and notified Qi Yuling of a lie. In the meantime, he arranged his daughter Chen Xiaoqi take Qi Yuling's place by assuming her name. Thus Chen Xiaoqi in the name of Qi Yuling received higher education in a college and got a good work in a local bank after graduation. But the real Qi Yuling has been living in poverty as peasant. Eleven years passed before she finally discovered the truth. Then Qi Yuling started legal proceedings against Chen Xiaoqi for infringing upon the right of personal name and the right of receiving education. However, as to the claim for educational right, the court that has jurisdiction could no find a legal basis in positive laws in force. That is why the higher court had to ask the Supreme People's Court for instructions.

5.4 The answer of the judicial interpretation of August 13 is also very simple. It says: "in the light of the facts of this case, Chen Xiaoqi and the other by means of violating the right of personal name, violated the basic rights of receiving education which Qi Yuling should enjoy according to the related stipulations of the Constitution, and caused concrete consequences of damages, shall bear the relevant civil responsibility for all the loses

arising therefrom". The most important point here is to allow the local courts to invoke a constitutional provision in making judgment. It means that the courts or the Supreme People's Court only may get the power of interpreting the Constitution that has not been within the competence of the Supreme People's Court as well as local courts.

5.5 After the Supreme People's Court begins to interpret the Constitution, what would happen?

Firstly, the Court will be able to declare what is the real meaning of a constitutional stipulation, and will thus become an important announcer of the will of sovereignty standing side by side with the Standing Committee of the National People's Congress. Because of that the Constitution is supreme in authority, the Court must keep all laws applied in adjudications accord with the Constitution, as a result, the Court must carry out judicial review and must have the power to negate a unconstitutional law. In this aspect, the judicial power will be in an advantageous position comparing the legislative power. Secondly, the litigations concerning basic human rights or other constitutional rights will emerge in China as well. In fact, soon after the judicial interpretation of August 13 was made public, several litigation cases were brought to courts based on constitutional laws. In hearing this kind of cases, courts will become active in public affairs, and may even play a political role in social development in the future. Thirdly, the problem of how to install of judicial review system must be placed on the agenda as soon as the possible, otherwise, the local courts would apply the Constitution as adjudicative norm in their own way following the judicial interpretation of August 13. Anyway, the changes in legal system have been further promoting.

5.6 Once the judicial reform in China went deep into the introduction of judicial review, the

relationship between the legislative power and the judicial power has to be reorganized. It means that after a qualitative leap by the judicial interpretation of August 13, the judicial reform has already touched the political regime and began to shake the People's Congress System. Therefore, we can say that the political reform is right ahead. When people began to consider constitutional litigations and public law litigations, they must face the basic task of how to keep balance between judicial review and popular sovereignty or democratic politics. No matter China would adopt what kind of institutional model, judicial review itself will surely lead to the rise of judicial power and legal professionalism. This trend is advantageous to the polyarchy or political pluralism. In addition, judicial review will also lead to trial participation or democratic control of adjudication for avoiding the said "judicial oligarchy" problem. Anyway, in China, from now on, people must combine judicial reform with political reform.

**Note:**

For details, see Ji, Weidong (2004) *The Composition of Chinese Judicial System; Judicial Reform Flows Between Public Opinion and Traceability*, Tokyo: Yuhikaku Press, and his (2005) *New Views on Constitutionalism; Law and Social Transformation in the Global Age (2<sup>nd</sup>, ed.)*, Beijing: Peking University Press.

**Table 1 The Structure of Civil Dispute Resolution Alternatives (1986-1999)**

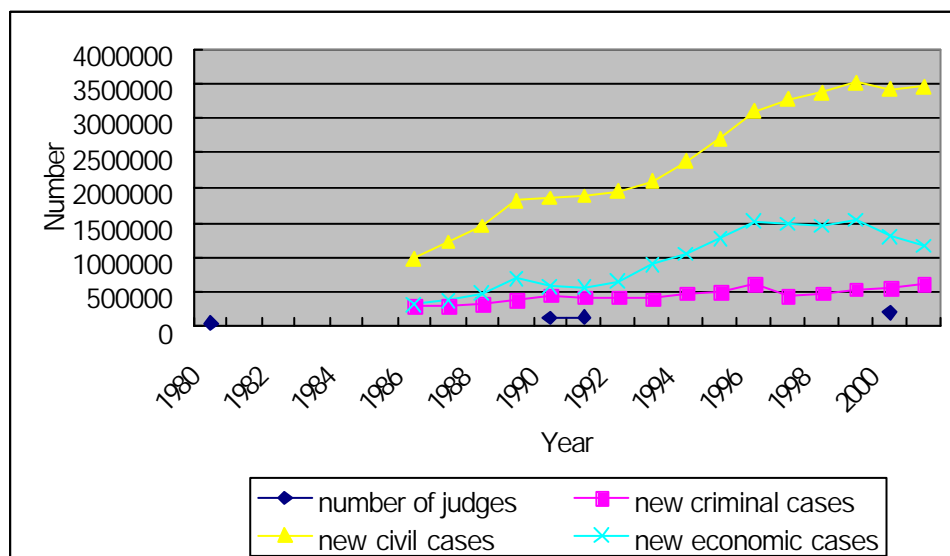
Items	Disputes by PMCs	Civil Cases in 1 <sup>st</sup> Instance	Different Settlements of Civil Cases in 1 <sup>st</sup> Instance					
			Judicial Mediation	Judgment	Ruling	Removal	Dismissal	
1986	7,307,049	978,990						
1987	6,966,053	1,196,494						
1988	7,255,199	1,419,056(100%)	1,017,829(71.7%)	213,664(15.1%)	10,725	17,173	151,025	
1989	7,341,030	1,808,538(100%)	1,253,895(69.3%)	297,999(16.5%)				
1990	7,409,222	1,849,728(100%)	1,194,350(64.6%)	353,940(19.1%)				
1991	7,125,524	1,910,013(100%)	1,128,465(59.1%)	* 456,000(23.9%)				
1992	6,173,209	1,948,949(100%)	1,136,970(58.3%)	460,932(23.7%)				
1993	6,222,958	2,091,651(100%)	1,224,060(58.5%)	487,005(23.3%)	367,222	13,364		
1994	6,123,729	2,382,174(100%)	1,392,114(58.4%)	547,878(23.0%)	429,895	12,287		
1995	6,028,481	2,714,665(100%)	1,544,258(56.9%)	658,187(24.2%)	498,636	13,584		
1996	5,802,230	3,093,995(100%)	1,672,892(54.1%)	815,741(26.4%)	579,320	16,511		
1997	5,543,166	3,277,572(100%)	1,651,996(50.1%)	955,530(29.2%)	618,748	15,928		
1998	5,267,200	3,375,069(100%)	1,540,368(45.7%)	1,115,849(33.1%)				
1999	5,188,646	3,519,244(100%)	1,500,269(42.6%)	1,257,467(35.7%)				

Note: The blank space is unknown. “PMCs” is the abbreviation for the People’s Mediation Committees

\* The number of rulings is included.

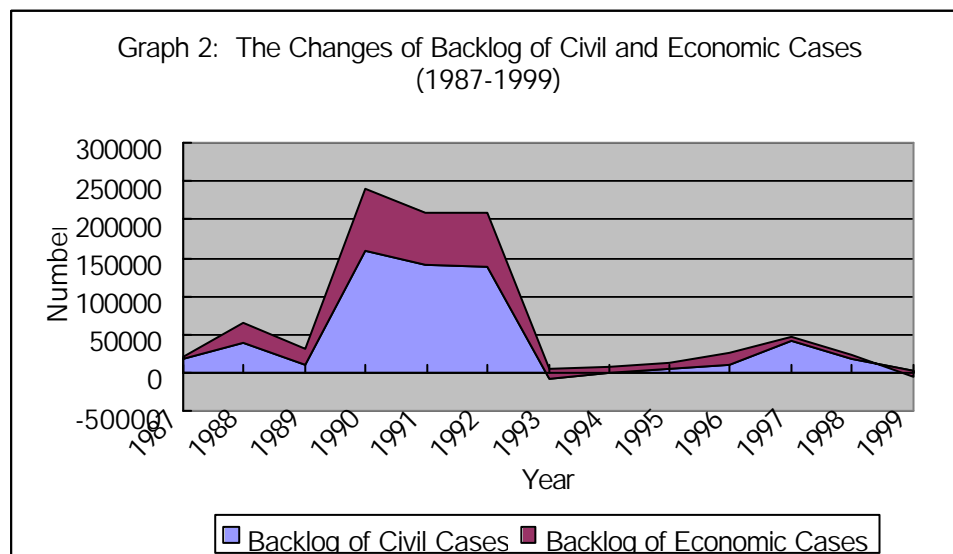
Sources: *Zhongguo Falu Nianjian* (Yearbook of Chinese Law) 1987-2000.

**Graph 1: The Annual Number of Three Major New Cases Compared to the Number of Judges (1980-2001)**



Sources: *Zhongguo Falu Nianjian* (Yearbook of Chinese Law) 1987-2002 and some annual reports of the Supreme People's Court.

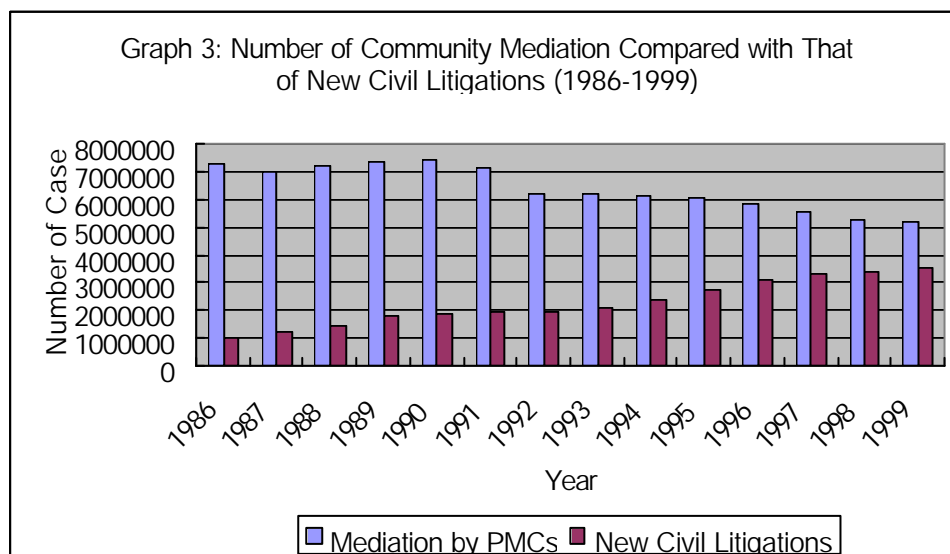
Caption: Graph 1 gives a picture of the steep rise of new civil and economic cases, but the rise of the number of criminal cases and judges flows very much gently. It accounts for to some extent the reasons why did China start its judicial reform from the reform of civil and economic adjudication method.



Sources: *Zhongguo Falu Nianjian* (Yearbook of Chinese Law) 1987-2000.

Caption: Graph 2 tells us not the total number of cases in stock every year but just how many new cases cannot be

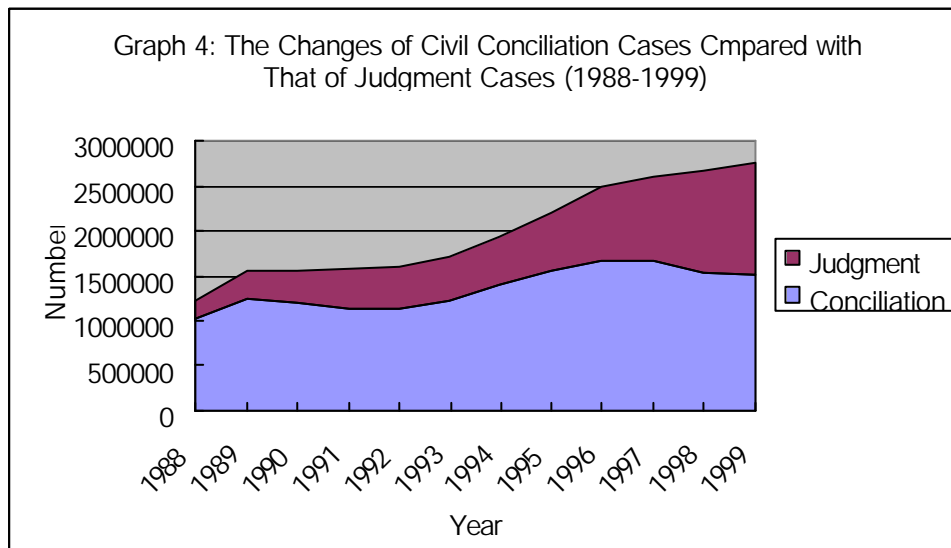
resolved within the legal time limit annually. Therefore, the negative number comes from the efforts to resolve the long-pending cases and does not mean the backlog has already been cleared in that year. During 1988-92, the backlog of new cases reached the peak, and the efficiency of trial was also emphasized to the maximum. Since 1993, the backlog has become a not so serious problem, and procedural justice has entered the field of vision in China.



Sources: *Zhongguo Falu Nianjian* (Yearbook of Chinese Law) 1987-2000.

Caption: From Graph 3, we can find the traditional community mediation as a major means of civil dispute resolution

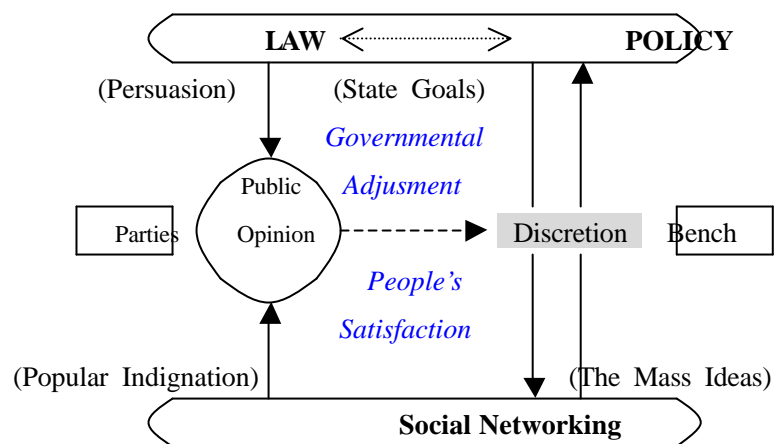
has been going downhill, and the number of civil litigation cases has been decreasing.



Sources: *Zhongguo Falu Nianjian* (Yearbook of Chinese Law) 1987-2000.

Caption: From Graph 4, we can find that inside the civil courts, the rate of court -annexed mediation or conciliation has been coming down, more and more civil litigations are finally resolved by a formal judgment.

**Graph 5 The Relations Among Law, Discretion and Public Opinion in Chinese Judicial System**



**(END)**