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How Political Pressure Rigidifies Legal Formalism in China: A Small Tragedy Under Xi Jinping's Reform, 53 UIC J. Marshall L. Rev. 909 (2021)

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HOW POLITICAL PRESSURE RIGIDIFIES
LEGAL FORMALISM IN CHINA:
A SMALL TRAGEDY UNDER XI JINPING’S
LEGAL REFORM

YU LUO*

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Abstract

While scholars debate the achievements of Xi Jinping’s legal reform, the tragic case of Zhang Jianguo raises a critical question: what are the costs of Xi’s achievements? Political pressure, which loomed large in Xi’s campaign to improve civil judgment enforcement, led to the “rigidification” of legal formalism and, in the specific case of Zhang examined in this article, an unreasonable outcome. While legal formalism as agreed by Chinese civil lawyers does not preclude interpretation beyond textual reading, rigid formalism only considers the *most concrete rule* without caring for its appropriateness in a specific case. Political pressure rigidified legal formalism via three paths. It directly compelled judges to adopt rigid formalism by altering their motives and choices. It also weakened judges’ sense of justice and the functioning of *guanxi* (social connections), two avenues to overcome rigid formalism. In turn, rigid formalism masked the presence of political pressure through the language of legal inexorability and through separating a legal world from the real world. Zhang’s case provides a critical perspective to understand Xi’s enforcement campaign. Paradoxically, the campaign that improved enforcement also created enormous political pressure on judges and sacrificed substantive justice in hard cases through recourse to rigid formalism.

I. LEGAL REFORM AND ITS DISCONTENTS

Much has been written on China's legal reform under Xi Jinping from 2013 to the present. Although some scholars remain skeptical about its potential, others believe that the reform promotes judicial independence and makes China more law-oriented.¹ While both sides contain some truth, the enforcement case examined in this Article raises a different and critical question: What are the costs of Xi's achievements? The framing of the question distances itself from the skeptical stance because it does not dispute the overall achievements of the reform; it also departs from the optimistic standpoint because it looks at the cost side of the coin.

Scholars are just beginning to touch on the cost of Xi's achievements. For example, take the regime's effort to promote judicial independence of individual judges.² Before this reform, issuing a court judgment was subject to various internal approvals.³ Xi's reform successfully eliminated this practice.⁴ However, at the same time, the quality of the judgments made by inexperienced judges declined. Internal approvals that undermined the independence of judges also functioned as *de facto* quality control. After they have been eliminated, even an inexperienced judge has

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1. For a skeptical assessment, see, for example, Carl Minzner, *Legal Reform in the Xi Jinping Era*, 20 ASIA POL'Y 4 (2015); KWAI HANG NG & XIN HE, EMBEDDED COURTS: JUDICIAL DECISION-MAKING IN CHINA 195–201 (2017). For a moderately positive evaluation, see, for example, Jacques deLisle, *Law in the China Model 2.0: Legality, Developmentalism and Leninism Under Xi Jinping*, 103 J. CONTEMP. CHINA 68 (2017); Hualing Fu, *Building Judicial Integrity in China*, 39 HASTINGS INT'L COMP. L. REV. 167 (2016). For an affirmative standpoint, see, for example, Yueduan Wang, *The More Authoritarian, the more Judicial Independence? The Paradox of Court Reforms in China and Russia*, 531 U. PA. J. CONST. L. 549 (2020). For an official and extremely optimistic view, see THE SUPREME PEOPLE'S COURT, JUDICIAL REFORM OF CHINESE COURTS (2013–2018) 67 (2019).

2. Before Xi's reform, China used to stress judicial independence of courts, not of individual judges. Ray Worthy Campbell & Fu Yulin, *Moving Target: The Regulation of Judges in China's Rapidly Evolving Legal System*, in REGULATING JUDGES: BEYOND INDEPENDENCE AND ACCOUNTABILITY 114–15 (Richard Devlin & Adam Dodek eds., 2016).

3. Ling Li, *The "Production" of Corruption in China's Courts: Judicial Politics and Decision Making in a One-Party State*, 37 L. & SOC. INQUIRY 848, 858–60 (2012).

4. Yueduan Wang, *Overcoming Embeddedness: How China's Judicial Accountability Reforms Make Its Judges More Autonomous*, 43 FORDHAM INT'L L.J. 737 (2020).

to make her own decision.⁵ This kind of assessment of cost, unfortunately, is scarce.

As this case study will show, Xi's measures that improved civil judgment enforcement also created enormous political pressure on enforcing judges, compelling them to stick to the most concrete rules even if this contradicted their sense of justice. This cost is the other side of a major achievement of Xi's reform: the better-enforced civil judgments. I do not intend to evaluate whether the cost I identify outweighs the corresponding achievements, which is infeasible for a qualitative case study. But I do want to stress that a reforming path may be a double-edged sword. Of importance is not how typical or atypical this case is, but that the hidden mechanism it reveals may function potentially in other cases and compromise the benefit of the reform. As a critical project, this Article calls for attention to the costs and unintended consequences along with the achievements.

More specifically, this Article focuses on civil judgment enforcement under Xi's legal reform. By "enforcement," I mean the execution of a civil judgment in case of the debtor's inertia or resistance.⁶ In China, enforcement is carried out by courts of first instance,⁷ in which professional enforcing judges (*zhixing faguan*) take the lead,⁸ and court police officers (*sifa jingcha*) provide assistance.⁹ A creditor's petition triggers the procedure of enforcement,¹⁰ during which an enforcing judge may employ

5. *Id.* at 759–60.

6. In the tradition of China study, the term "enforcement" is used in two manners. First, the way this article uses it. *E.g.*, Donald C. Clarke, *Power and Politics in the Chinese Court System: The Enforcement of Civil Judgments*, 10 COLUM. J. ASIAN L. 1 (1996). Second, the process of making law work. *E.g.*, Benjamin van Rooij et al., *Centralizing Trends and Pollution Law Enforcement in China*, 231 CHINA Q. 583 (2017); Willy Wo-Lap Lam, *The Politicisation of China's Law-Enforcement and Judicial Apparatus*, 2 CHINA PERSP. 42 (2009).

7. The court of first instance which adjudicates the case, or a same-level court in the place where the property subject to enforcement is located, is responsible for enforcing the judgment. *Minshi Susong Fa* (民事诉讼法) [The Civil Procedure Law] (promulgated by the Standing Comm. Nat'l People's Cong., June 27, 2017, effective July 1, 2017), art. 224, CLI.1.297379 (Chinalawinfo).

8. For the term "enforcing judges," see, for example, Guanyu Renmin Fayuan Zhixing Liucheng Gongkai de Ruogan Yijian (关于人民法院执行流程公开的若干意见) [Several Opinions on the Transparency of the Procedure of Enforcement of People's Courts] (promulgated by the Sup. People's Ct., Sept. 3, 2014, effective Sept. 3, 2014), art. 3, CLI.3.244417 (Chinalawinfo).

9. *Renmin Fayuan Sifa Jingcha Tiaoli* (人民法院司法警察条例) [Regulations on Court Police Officers] (promulgated by the Sup. People's Ct., Oct. 29, 2012, effective Dec. 1, 2014), art. 7, CLI.3.199167 (Chinalawinfo).

10. If a civil judgment requires the debtor to make a pecuniary payment, the judgment should specify a period for the debtor to fulfill her obligation. Guanyu zai Minshi Panjueshu zhong Zengjia xiang Dangshiren Gaozhi Minshi Susong Fa Di-Erbai Ershijiu Tiao Guiding Neirong de Tongzhi (关于在民事判决书中增加向当事人告知民事诉讼法第二百二十九条规定内容的通知) [Notice on Informing Case Parties of Matters Related to Article 229 of the Civil Procedural Law in

coercive measures, such as transferring deposits from a debtor's bank accounts, auctioning her house, and so on.¹¹

The enforcement of civil judgments in China is under-researched, although difficulties in enforcement (*zhixing nan*) have plagued China for decades. Since 1988, the Supreme People's Court (Supreme Court) started to highlight this issue routinely.¹² As a response, most works by Chinese scholars attempt to offer legislative suggestions to improve enforcement.¹³ To date, the most comprehensive and critical research is still found in a 1996 article by Donald Clarke, professor of law at the George Washington University. Clarke identifies a series of internal and external obstacles to enforcement. The former include reluctance to use coercive measures, lack of interest in enforcement, and lack of finality; the latter concerns insolvency, local protectionism, administrative interferences, lack of cooperation by other institutions, and inadequacy of legal means of coercion.¹⁴ Jianfu Chen, professor of law at La Trobe University, conducts a similar survey.¹⁵ Xin He, professor of law at the University of Hong Kong, makes distinctive contributions through empirical research on enforcement in different areas of China. Overall, he argues that the difficulties in enforcement are not as severe as portrayed by the media, despite regional disparity. The diversification of local economies, creative institution-building within courts, and staff professionalism facilitate efficient and effective enforcement.¹⁶

The above works provide useful background in which to understand the current development. Because of internal and

Civil Judgments] (promulgated by the Sup. People's Ct., Dec. 16, 2008, effective Dec. 31, 2008), art. 1, CLI.3.315449 (Chinalawinfo). If the debtor fails to honor the judgment upon the expiration of this period, the creditor needs to file a petition for enforcement within two years. The Civil Procedure Law, art. 239.

11. The Civil Procedure Law, arts. 241–55. For a comprehensive and up-to-date introduction of the procedure of enforcement in China, see ZHIQIONG JUNE WANG & JIANFU CHEN, DISPUTE RESOLUTION IN THE PEOPLE'S REPUBLIC OF CHINA: THE EVOLVING INSTITUTIONS AND MECHANISMS 262–68 (2019).

12. Clarke, *supra* note 6, at 27–29.

13. See, e.g., Jing Hanchao & Lu Zijuan (景汉朝&卢子娟), “*Zhixing Nan*” *jiqu Duice* (“执行难”及其对策) [*The Difficulties in Enforcement and Solutions*], FAXUE YANJIU [CHINESE J.L.], no. 5, at 124 (2000); Chen Hangping (陈杭平), Bijiao Fa Shiye xia de Zhixing Quan Peizhi Moshi Yanjiu (比较法视野下的执行权配置模式研究) [Models of Civil Judgment Enforcement in Comparative Perspective], FAXUE JIA [JURIST], no. 2, at 73 (2018).

14. Clarke, *supra* note 6, at 34–81.

15. Jianfu Chen, *Mission Impossible: Judicial Efforts to Enforce Civil Judgments and Rulings*, in IMPLEMENTATION OF LAW IN THE PEOPLE'S REPUBLIC OF CHINA 85 (Jianfu Chen et al. eds., 2002).

16. Xin He, *Enforcing Commercial Judgments in the Pearl River Delta of China*, 57 AM. J. COMP. L. 419 (2009); Xin He, *Debt Collection in the Less Developed Regions of China: An Empirical Study from a Basic-Level Court in Shaanxi Province*, 206 CHINA Q. 253 (2011); Xin He, *A Tale of Two Chinese Courts: Economic Development and Contract Enforcement*, 39 J.L. & SOC'Y 384 (2012).

external obstacles, the enforcement of civil judgments has long been a social problem. But more importantly, “difficulties in enforcement” has become an official, academic, and public discourse, which masks and downplays regional disparity.¹⁷ Unsurprisingly, a legal reform as ambitious as Xi’s attempted to solve this problem once and for all. The side effects of the measures might have easily slipped out of sight.

II. AN OVERVIEW OF ZHANG’S CASE, POLITICAL PRESSURE, AND LEGAL FORMALISM

Zhang Jianguo,¹⁸ an ordinary Chinese man in his seventies, received an enforcement ruling from a trial court in May 2018. A dispute that he *never heard of* resulted in a compensation of around \$50,000, and he was held jointly liable. Such an amount meant that he had to sell his only house.¹⁹

The ruling brought Zhang back to 1999 when he had purchased a tiny coal mine (Mine X) and registered it as an individual business (*duzi qiye*) in his province (Province Z).²⁰ Merely four years later, Zhang sold the mine to an acquaintance because of business difficulties.²¹ Zhang and the transferee should have cooperated in replacing the certificates and licenses of Mine X, including its business license (*yingye zhizhao*);²² however, this work could not

17. See *supra* notes 12–16 and accompanying text.

18. In anthropological research, the “default position” is to “safeguard our interlocutors’ anonymity.” Martijn de Koning et al., *Guidelines for Anthropological Research: Data Management, Ethics, and Integrity*, 20(2) ETHNOGRAPHY 170, 171 (2019). In the interest of privacy, all of the names of persons and locations in this article are pseudonyms. This Article concerns eight persons with pseudonyms: Zhang Jianguo (the protagonist), Xu Liangjian (the legal representative of the Creditor), Wei Wei and Gong Runze (two enforcing judges in charge of Zhang’s case), Huang Ruixuan (an enforcing judge and colleague of Wei and Gong), Sun Yue (Zhang’s lawyer), Wang Zhiyuan (a local businessman), and Li Shan (Zhang’s friend).

19. Field notes, May 21, 2018. The copy of the ruling is on file with the author.

20. A one-member company with limited liability was not an option then because China created this type of enterprise as late as in 2005. For an introduction of one-member companies, including the legislative background, see Chen Jianlin, *Clash of Corporate Personality Theories: A Comparative Study of One-Member Companies in Singapore and China*, 38 H.K. L.J. 425, 425–30, 434–35 (2008).

21. In the 1990s, Chinese legislation on mining safety was scarce, but after 2000, the number of relevant laws sky-rocketed. I conduct a title search of “coal mine” and “safety” in the database Chinalawinfo, the most authoritative database of Chinese law. Between 1990 and 1999, the central government only promulgated twenty-two laws on mining safety. However, between 2000 and 2003, the central government issued one hundred and thirty pieces. Tightened regulation meant a sharp rise in safety investment, which partly explains Zhang’s business difficulty.

22. Geren Duzi Qiye Dengji Guanli Banfa (个人独资企业登记管理办法)

proceed at that time. To change the business license, they had to first replace the mining certificate (*caikuang xukezheng*) of Mine X,²³ but this procedure had been suspended province-wide due to the high incidence of mine disasters at that time.²⁴ As a result, the business license of Mine X still documented Zhang as the sole investor.

The transferee sold Mine X quickly. In the next ten years, the ownership of Mine X passed on from one to another, but no transferee responded to Zhang's request for changing the business license.²⁵ In 2013, a local company (Company R) purchased Mine X and initiated the procedure to change the *mining certificate*. Zhang assisted Company R; however, the *business license* was still unchangeable for reasons out of Zhang's control.²⁶

In 2014, Mine X purchased a machine. The machine vendor (Creditor) sued Mine X in 2016 for nonpayment. Since Mine X did not honor the court's judgment, the case entered into the stage of enforcement.²⁷ An enforcing judge, Wei Wei, found Mine X insolvent and advised the Creditor to hold Zhang jointly liable.²⁸ This tactic was based on a rule specified by the Supreme Court, *i.e.*, the investor of an individual business is responsible for all debts of the

[Administrative Regulations on the Registration of Individual Businesses] (promulgated by the St. Admin. for Industry and Commerce, Jan. 13, 2000, effective Jan. 13, 2000), arts. 13–17, CLI.4.26629 (Chinalawinfo).

23. A coal mining business in China should always hold a proper mining certificate. If not, the competent energy administration can order the business to cease mining, confiscate its products and revenue, and impose a fine. *Kuangchan Ziyuan Fa* (矿产资源法) [Mineral Resources Law] (promulgated by the Standing Comm. Nat'l People's Cong., Mar. 19, 1986, effective Oct. 1, 1986), art. 39, CLI.1.2730 (Chinalawinfo).

24. Zhang mentioned this several times when meeting the enforcing judges and his lawyer. Wang Zhiyuan also confirmed that in 2003, the transfer of coal mines was suspended by the Energy Administration of Province Z due to mine disasters. In practice, people continued to transfer coal mines without registering transactions with government agencies. Interview with Wang Zhiyuan, Coal Bus. (May 28, 2019).

25. The price of coal was stable between 1999 and 2003, but it began to soar in 2004. Wuyuan Peng, *Coal Sector Reform and its Implications for the Power Sector in China*, 36 RESOURCES POL'Y 60, 68–70 (2011). The rising price explains why Mine X was transferred many times. *Id.* The transferees might have treated the purchase and sale of Mine X as a financial investment.

26. See discussion *infra* Section III.A.

27. Zhang did not obtain the copy of this judgment when he received the enforcement ruling. Upon Zhang's request, the enforcing judge Wei Wei showed Zhang the original file. Zhang and I read the judgment in the court. Field notes, May 24, 2018.

28. In the meeting dated July 19, 2018 among Zhang, Wang Zhiyuan (the businessman), and Xu Liangjian (the legal representative of the Creditor), Xu mentioned that it was Wei Wei who advised him to hold Zhang liable. After the meeting, Zhang called me and told me about this. Field notes, July 19, 2018. In this meeting, Xu agreed to release Zhang from liability. See *infra* note 104 and accompanying text.

business (Individual Business Rule).²⁹

Company R issued an official statement to the court, admitting that the transaction between Mine X and the Creditor never involved Zhang, and that Company R ran Mine X from decision-making to daily operation.³⁰ The Creditor also acknowledged that it believed Company R to be the shareholder and controller of Mine X.³¹ Against their own sense of justice,³² the enforcing judges still ordered Zhang to pay the full amount of \$50,000. With the help of a sympathetic businessman, Zhang reached an out-of-court settlement of \$25,000 with the Creditor.³³

“How can the law be like this?” Zhang sighed.³⁴

I have known Zhang for a long time. In this case, he invited me to give him advice since he had little experience with judges or lawyers. I assisted for free and regularly discussed the case with him. When he met enforcing judges, I also participated. Many discussions in this Article originate from my personal experience and observation of Zhang’s case. After the closure of this case, I interviewed Sun Yue (Zhang’s lawyer), Wang Zhiyuan (the businessman who facilitated Zhang’s out-of-court settlement), and Li Shan (Zhang’s friend who participated in the case). I was unable to interview the enforcing judges in charge of this case, but I managed to interview Huang Ruixuan, an enforcing judge in the same court, and asked him to introduce the daily work of enforcing judges in a general manner. All interviews took place in Province Z, at times and places chosen by the interviewees. In brief, the data of this study come from participant observation and subsequent interviews. My position as an informal advisor enables me to access voluminous details of the case, while my interviews give me a

29. Guanyu Minshi Zhixing zhong Biangeng, Zhuijia Dangshiren Ruogan Wenti de Guiding (关于民事执行中变更、追加当事人若干问题的规定) [Provisions on Several Issues Concerning the Modification and Addition of Parties in Civil Judgment Enforcement] (promulgated by the Sup. People’s Ct., Nov. 7, 2016, effective Dec. 1, 2016) art. 13, CLI.3.283879 (Chinalawinfo). Its Article 13 reads, “When an individual business that is subject to enforcement is unable to pay up its debt as set out by an effective legal document, if the person who petitions for enforcement requests to change the debtor [from the business] to the investor [of the business] or add the investor as an additional debtor, the people’s court should support such a request.” *Id.*

30. Field notes, July 12, 2018. The copy of the statement is on file with the author.

31. In the meeting dated June 4, 2018 between Zhang and Wang Zhiyuan (the businessman), Wang called Xu Liangjian (the legal representative of the Creditor) to understand the situation. Xu was surprised to hear that his case involved a person that he never heard of. Xu also admitted that he believed Company R to be the shareholder and controller of Mine X. After the meeting, Zhang called me and told me about this. Field notes, June 4, 2018.

32. This is not a speculation. The enforcing judges spoke it out with their own words. See discussion *infra* Section III.B and C.

33. See discussion *infra* Section III.B and C.

34. After this case was closed, Zhang complained to me about the injustice he felt. He ended with this query. Field notes, Aug. 9, 2018.

chance to listen to different parties with a critical distance.

Indeed, Zhang's case could have ended differently. However, political pressure, a force invisible to Zhang, altered the enforcing judges' motives and choices, and constrained their discretion in decision-making. Consequently, the enforcing judges stuck to the Individual Business Rule and made a decision against their own sense of justice.³⁵

I viewed political pressure in regards to Zhang's case as meaning pressure from the politicization of mandatory enforcement rates and lifelong judicial accountability, two mechanisms created during Xi's legal reform. As part of the legal reform, the Chinese Communist Party emphasized the importance of improving enforcement, following which the Supreme Court initiated a campaign expecting to resolve this issue within two to three years and, in 2018, turned the campaign into retroactive and mandatory enforcement rates.³⁶ The Communist Party also broached the issue of lifelong judicial accountability, following which the Supreme Court established a formal mechanism to hold judges accountable for a lifetime.³⁷ Province Z further politicized and tightened mandatory enforcement rates and lifelong judicial accountability.³⁸ When political pressure trickled down from the central and provincial level to the trial court, it exerted tremendous pressure on enforcing judges and, through altering their motives and choices, induced enforcing judges to adopt a rigid version of legal formalism.

It is not a proper place to discuss legal formalism in general.³⁹ Although scholars often demonize formalism and use it to refer vaguely to whatever they disagree with,⁴⁰ the core of legal formalism is adjudication based on rules.⁴¹ In the context of legal interpretation, formalism emphasizes textual reading of rules.⁴²

35. See discussion *infra* Section IV.B.

36. See *infra* notes 115–118, 120 and accompanying text.

37. See *infra* notes 134–138 and accompanying text.

38. See *infra* notes 124, 131–132, 139 and accompanying text.

39. Frederick Schauer, Martin Stone, and Duncan Kennedy have each provided a comprehensive and critical literature review of the usage of formalism. Frederick Schauer, *Formalism*, 97 YALE L.J. 509 (1988); Martin Stone, *Formalism*, in THE OXFORD HANDBOOK OF JURISPRUDENCE AND PHILOSOPHY OF LAW 166 (Jules Coleman & Scott Shapiro eds., 2004); Duncan Kennedy, *Legal Formalism*, in INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL & BEHAVIORAL SCIENCES 8634 (Neil J. Smelser & Paul B. Baltes Pergamon eds., 2001).

40. See Schauer, *supra* note 39, at 509–10; see also Stone, *supra* note 39, at 166–73.

41. According to Schauer, “At the heart of the word ‘formalism,’ in many of its numerous uses, lies the concept of decisionmaking according to rule.” Schauer, *supra* note 39, at 510 (emphasis omitted). Stone argues that two questions are central to formalism: “(1) the desirability and (2) the very possibility of judicial adherence to rules.” Stone, *supra* note 39, at 167.

42. Stone argues that “References to ‘deduction’ and ‘logic’ are legion in the literature on formalism.” Stone, *supra* note 39, at 167. According to Kennedy, in the context of legal interpretation, formalism refers to “a range of techniques

The Chinese government associates formalistic interpretation of the law with justice.⁴³ But legal formalism in China is *not* equal to textual interpretation.⁴⁴ Chinese civil lawyers share the consensus that textual reading comes first. However, when textual interpretation yields multiple answers, other approaches — such as examining the purpose of the law — should be used to decide the most appropriate interpretation.⁴⁵ A leading Chinese scholar even claims that “value judgment is the core of civil adjudication.”⁴⁶ This mainstream understanding of legal formalism in China, in

of legal interpretation based on the meaning of norms... and refusing reference to the norms' purposes, the general policies underlying the legal order, or the extrajuristic preferences of the interpreter.” Kennedy, *supra* note 39, at 8634.

43. Pitman B. Potter, *Riding the Tiger: Legitimacy and Legal Culture in Post-Mao China*, 138 CHINA Q. 325, 338–41 (1994); Pitman B. Potter, *Equality and Justice in Official and Popular Views about Civil Obligations: China and Taiwan*, in THE LIMITS OF THE RULE OF LAW IN CHINA 196, 209–11 (Karen G. Turner et al. eds., 2000). In an intriguing article on anti-formalism in Chinese legal thought and adjudication theory, Samuli Seppänen notices the coexistence of formalism and anti-formalism. Samuli Seppänen, *Anti-Formalism and the Pre-Ordained Birth of Chinese Jurisprudence*, 4 CHINA PERSP. 31 (2018). In Chinese legal thought, although anti-formalism manifests itself in various forms, formalism was the “mainstream.” *Id.* at 33–34. In Chinese theory of adjudication, anti-formalism means that adjudication should serve the Communist Party’s and the state’s “overall” interests, *Id.* at 35; but formalism is also endorsed to preserve “internal rationality and autonomy of the legal system,” and “[e]mphasis on formal legal rules is a viable governance strategy for the Party.” *Id.* This juxtaposition of anti-formalism and formalism in the theory of adjudication suggests that “the relationship between the Party and the law” is “an unsettled and highly politicised matter.” *Id.* at 36. Seppänen’s observation echoes Fu & Peerenboom’s distinction among political cases, politically sensitive cases, and routine cases. Fu & Peerenboom, *infra* note 54, at 95–101, 125–27. Seppänen and Fu & Peerenboom might agree that for political or politically sensitive cases, legal formalism would be suspended to serve the Communist Party’s and the state’s interests, but for a routine case like Zhang’s, legal formalism, as agreed by Chinese civil lawyers, would apply.

44. Legal formalism is used in divergent contexts with different meanings. Kennedy, *supra* note 39, at 8634. In my article, I only consider formalism in the context of legal interpretation.

45. Liang Huixing (梁慧星), *Minfa Jieshi xue (民法解释学)* [Interpretation of Civil Law] 213–46 (1995); Wang Liming (王利明), *Introduction to Legal Interpretation: Take Example of Civil Law (法律解释学导论：以民法为视角)* 195–411 (2009). Chinese scholars’ common approach is similar to Schauer’s “presumptive formalism[:] there would be a presumption in favor of the result generated by the literal and largely acontextual interpretation of the most locally applicable rule.” Schauer, *supra* note 39, at 547. “Yet that result would be presumptive only, subject to defeasibility when less locally applicable norms... offered especially exigent reasons for avoiding the result generated by the presumptively applicable norm.” *Id.*

46. Wang Yi (王轶), *Minfa Jiazhi Panduan Wenti de Shiti xing Lunzheng Guize: Yi Zhongguo Minfa Xue de Xueshu Shijian wei Beijing (民法价值判断问题的实体性论证规则——以中国民法学的学术实践为背景)* [Substantive Reasoning Methods for Value Judgment in Civil Law: In the Context of Academic Study on Civil Law in China] ZHONGGUO SHEHUI KEXUE (中国社会科学) [SOC. SCI. CHINA], no. 6, at 104, 104 (2004).

actuality, allows judicial discretion within the limit permitted by legal texts. Even in an elaborate text, like the Individual Business Rule, a judge can identify ambiguous points and let other approaches of interpretation kick in. For instance, the connotation of investor in the Individual Business Rule — the “investor” of an individual business is responsible for all debts of the business — is not without doubt. Does it refer to an investor recorded in the business license? What about a *de facto* investor? What about an investor appearing in another license or certificate? If the enforcing judges in Zhang’s case had been willing to ponder these questions, they might have reached a different answer.

Nevertheless, legal interpretation is essentially a problem of power.⁴⁷ With the unfolding of Zhang’s case, we will see that the enforcing judges, under the impact of political pressure, gave supreme importance to the text of the Individual Business Rule without considering its relationship with other rules or principles and without caring about its appropriateness in Zhang’s predicament.⁴⁸ In this process, political pressure rigidified legal formalism and covertly redistributed rights, obligations, and responsibilities among case parties.

Political pressure rigidified legal formalism via three paths. First, it compelled enforcing judges to prioritize self-protection, to stick to the most concrete rule, and to allege that the rule by itself determined *the* answer.⁴⁹ Second, political pressure weakened the functioning of *guanxi* (social connections), an avenue to overcome rigid legal formalism.⁵⁰ Third, political pressure downplayed enforcing judges’ sense of justice, gatekeeper for the appropriate implementation of a rule in a concrete case.⁵¹

Rigid formalism provided feedback to political pressure via two paths. First, it concealed the existence of political pressure by the language of legal inexorability.⁵² Second, it reconciled enforcing judges’ intuitive sense of justice based on experience, faith, or whatever by distinguishing between legal and intuitive justice, and accordingly, enforcing judges had no incentive to blame political pressure.⁵³

The following diagram visualizes the relationship between political pressure and legal formalism:

47. Schauer writes, “Even in cases as extreme as these, formalism is only superficially about rigidity and absurdity. More fundamentally, it is about power and its allocation.” Schauer, *supra* note 39, at 543.

48. See discussion *infra* Section III.B and C.

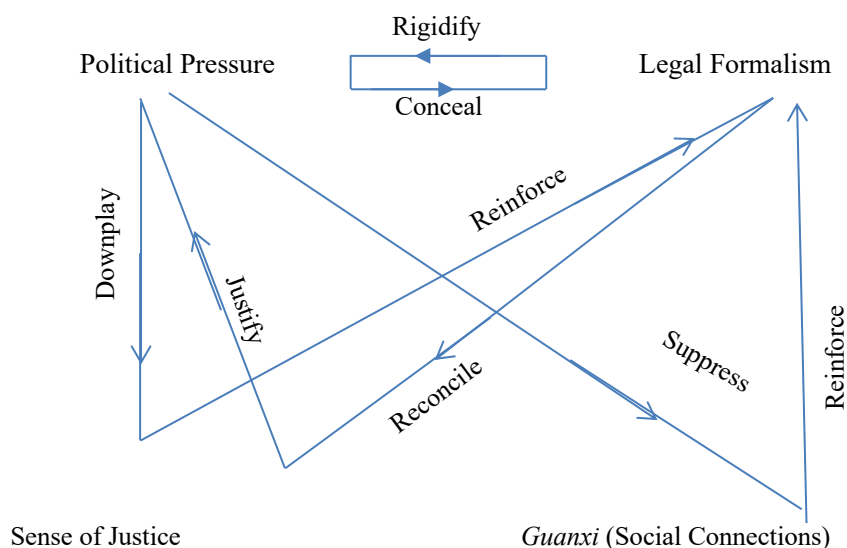
49. See discussion *infra* Section IV.B and C.

50. See discussion *infra* Section IV.B.

51. See discussion *infra* Section IV.B and C.

52. See discussion *infra* Section IV.D

53. *Id.*



The main body of this Article is devoted to explaining this diagram by a close reading of Zhang's tragic experience. This study goes beyond an individual case. The way that political pressure functioned in Zhang's case applies potentially to other routine and non-politically sensitive cases.⁵⁴ Furthermore, contrary to current literature, which suggests that enforcement campaigns have no

54. In discussing judicial independence in China, Fu Yulin and Randall Peerenboom categorize Chinese court cases into political cases, politically sensitive cases, and routine cases. Fu Yulin & Randall Peerenboom, *A New Analytic Framework for Understanding and Promoting Judicial Independence in China*, in *JUDICIAL INDEPENDENCE IN CHINA: LESSONS FOR GLOBAL RULE OF LAW PROMOTION* 95, 95–101, 125–27 (Randall Peerenboom ed., 2010). Political cases are determined by the Communist Party and governments; politically sensitive cases are subject to intense pressure from the Communist Party, governments, and higher-level courts. *Id.* *Routine cases face different kinds of interventions*, such as local protectionism, illegal interference by persons with a stake, and so on. *Id.* Fu & Peerenboom's classification echoes Ling Li's finding that the Communist Party intervened selectively in individual cases and that these cases were decided arbitrarily and not according to the law. Ling Li, *The Chinese Communist Party and People's Courts: Judicial Dependence in China*, 64 *AM. J. COMP. L.* 37, 66–72 (2016). Zhang's case is useful for understanding how routine enforcement works, but not for political cases or politically sensitive cases.

long-lasting effects,⁵⁵ I argue that political pressure created during Xi's enforcement campaign is likely to extend its influence into the future. Thus, we must pay adequate attention to the cost of the achievements that resulted from Xi's legal reform.

Below I first provide a "thick description"⁵⁶ of Zhang's engagement with the court and then analyze how political pressure rigidified legal formalism in the context of Xi's legal reform. The coda briefly reviews the future of enforcement campaigns.

III. A THICK DESCRIPTION OF ZHANG'S ENGAGEMENT WITH THE COURT

A. *The Transaction Between Zhang and Company R*

In 2011, Company R was incorporated with registered capital of around \$15,000,000.⁵⁷ In 2018, the year that Zhang was held liable, three of Company R's mines were in regular operation, and the other four had been shut down without canceling their business licenses, including Mine X (shut down in 2015).⁵⁸ According to the enforcing judge in charge of Zhang's case, Wei Wei, Company R had been sued by various vendors, and its outstanding unenforceable debts amounted to more than \$3,000,000. Further, although Company R controlled several mines, the business licenses of Company R and these mines did not confirm their affiliation.⁵⁹

In 2013, the year that Company R acquired Mine X, the general manager of Company R called Zhang about transferring the mining certificate. While Zhang provided assistance, he still failed to successfully change the business license.⁶⁰ In 2013, an ordinary individual business could change its investor, but a coal mine in the form of an individual business could not.⁶¹ The background to this obstacle was the nationwide merger and restructuring of coal enterprises guided by the central government.⁶² The

55. See *infra* note 198 and accompanying text.

56. This term is from Geertz's classic work. CLIFFORD GEERTZ, *THE INTERPRETATION OF CULTURES* 3–30 (1973).

57. This information can be obtained by searching the name of Company R at www.gsxt.gov.cn [perma.cc/AN9J-KX5T], the National Enterprise Credit Information Publicity System of China.

58. When Zhang, Xu Liangjian (the legal representative of the Creditor), and I met with Wei Wei (the enforcing judge) in the court on July 23, 2018, Wei pronounced this fact. Field notes, July 23, 2018.

59. *Id.* See also *infra* note 105 and accompanying text.

60. Zhang and I had the first meeting with Sun Yue (Zhang's lawyer) on May 27, 2018. During the meeting, Zhang articulated his engagement with Mine X. Field notes, May 27, 2018.

61. *Id.* See also *infra* note 63 and accompanying text.

62. The central government initiated this project in 2010. Guanyu Jiakuai Tuijin Meikuang Qiye Jianbing Chongzu Ruogan Yijian (关于加快推进煤矿企业兼并重组若干意见) [Several Opinions on Accelerating and Promoting Merger

Administration for Industry and Commerce (AIC) of Province Z set out a rule that when an enterprise acquired an individual coal business, it should dissolve the target and set up a branch to take over the business.⁶³ The general manager told Zhang that Company R planned to shut down Mine X within two to three years and that he wanted no trouble.⁶⁴

Two questions are in order. Why did Company R purchase Mine X at all? Why did Company R initiate the transfer of the mining certificate, if it did not intend to change the business license? The provincial policies for merging and restructuring coal enterprises provide the key. Province Z intended to promote the industrial concentration of coal mines, so its policies set out that, if an enterprise desired to increase its productivity by acquiring or expanding production capacity, it had to reduce coal production in other ways — either by shutting down some of its own mines or by purchasing one or several mines for a shutdown.⁶⁵ So Company R might have acquired Mine X not for production but compliance. During the process of merger and restructuring, an important distinction emerged. Once the *mining certificate* was transferred, the Energy Administration, which administered the merger and restructuring of coal mines, could treat Mine X as a subsidiary of Company R. Then Company R could shut down Mine X in exchange for increasing productivity.⁶⁶ Since the *business license* was irrelevant to this process, Company R might have had no incentive to go through the AIC formalities. Without Company R's cooperation, Zhang could not establish a branch for Company R, and he was unable to dissolve Mine X even as its nominal investor.⁶⁷ Therefore, Zhang's failure to vacate and transfer his position as investor was mainly due to provincial policies and Company R's noncooperation.

B. Arguing with Enforcing Judges

When Mine X failed to pay the bills for having purchased the machine, the Creditor sued Mine X in 2016, and dragged Zhang into the case at the enforcement stage based on the Individual Business

and Acquisition of Coal Enterprises] (promulgated by the Dev. & Reform Comm'n, Oct. 16, 2010, effective Oct. 16, 2010) CLI.2.139333 (Chinalawinfo).

63. To protect the identity of Province Z, I do not provide a citation here. I will do the same below when I explain local rules.

64. Field notes, May 27, 2018.

65. To safeguard the anonymity of Province Z, I do not provide a citation here.

66. Interview with Wang Zhiyuan, Coal Bus. (May 28, 2019). Note that this distinction was a practical issue, not a prescription by the local laws. *Id.*

67. Liquidation was a precondition for dissolution, but Zhang knew nothing about the business of Mine X in the previous decades. Besides, Zhang did not control materials necessary for dissolution, such as certificates, licenses, company seals, etc.

Rule.

In the trial court where Zhang's case took place, the enforcement department comprised two divisions responsible for carrying out enforcement and reviewing oppositions to enforcement, respectively. Zhang's case started in the first division, then moved to the second, and finally returned to the first division.⁶⁸

Zhang received the enforcement ruling on May 21, 2018, which demanded a payment of \$50,000 within three days upon the receipt of the ruling.⁶⁹ At the same time, all of Zhang's bank accounts were frozen.⁷⁰ The next morning, Zhang went to Company R together with his friend, Li Shan, a retired government official who once worked at the local Energy Administration. The general manager proclaimed that the debt had nothing to do with Zhang and that Company R was willing to take responsibility.⁷¹

On May 24, an employee of Company R accompanied Zhang to the court. Zhang briefed the enforcing judge, Wei Wei, with his story. When the employee asked whether the court could add Company R as an additional debtor to solve Zhang's problem, Judge Wei seemed annoyed: "What for? Your company has no business in this case! If you are willing to pay, bring cash to the court! You already owe a large amount here!" Judge Wei did not talk much to Zhang. He only asked Zhang to collect evidence for his story and come back to him again. Before leaving, Zhang begged Judge Wei to grant a grace period for the payment, but Judge Wei kept silent.⁷²

Zhang thought this meeting inauspicious and hired a lawyer, Sun Yue.⁷³ On May 30, Zhang presented all the evidence prepared by Sun to the court. Judge Wei told Zhang that he understood his situation, but "the law is the law." Since Zhang was documented on the business license, he was the investor. Additionally, Judge Wei gave a generic explanation about the importance of a business license: it helped parties to enter into an informed transaction. After listening to this lecture, Zhang raised a question. The mining certificate, instead of the business license, was the "heart" of a coal mine. Zhang did not understand why only the business license mattered. Judge Wei did not reply and asked Zhang to file a formal opposition to enforcement.⁷⁴

Zhang was frustrated with Judge Wei's reaction. He wanted to talk to the management of Company R again, but they refused to meet him.⁷⁵ It was unclear why Company R had changed its

68. Observation, May 30 and June 18, 2018.

69. *See supra* note 19.

70. On May 27, 2018, Sun Yue (Zhang's lawyer) reminded Zhang of checking the status of his bank accounts, and Zhang found that his accounts had already been frozen. Field notes, May 27, 2018.

71. Field notes, May 22, 2018.

72. Field notes, May 24, 2018.

73. Field notes, May 27, 2018.

74. Field notes, May 30, 2018.

75. Field notes, June 3, 2018.

attitude. One possibility is that after assessing Judge Wei's reaction, the management decided that they had little risk of being held liable in this case.

Via a common friend, Zhang visited Wang Zhiyuan, a famous local coal businessman. Wang called the legal representative of the Creditor, Xu Liangjian. Xu was surprised: He had negotiated and carried out the contract with the staff of Company R and never intended to get Zhang in trouble.⁷⁶

Hearing about Zhang's journeys, Zhang's lawyer, Sun Yue, asked straightforwardly: "Do you have strong *guanxi*?"⁷⁷ As will be discussed later, *guanxi* in the judicial context refers to social connections mobilized by case parties to influence a court's decision.⁷⁸ Sun knew Judge Wei personally, but he thought his own *guanxi* too weak to have an impact. "Nowadays, if your *guanxi* is not particularly strong, it's useless. Judges are subject to lifelong responsibility for their cases. They are scared."⁷⁹

It turned out that Zhang's friend, Li Shan, was close to a leader of the trial court.⁸⁰ Zhang and Li met the leader on June 8. The leader told Li that it was improper for him to intervene in such a case and that he normally declined similar requests. However, he understood that it was not Zhang's fault, so he would ask the enforcing judge in charge of opposition to enforcement to pay attention to this case.⁸¹ On June 18, Zhang met another enforcing judge, Gong Runze, who reviewed his opposition.⁸²

Sun tried his best to challenge the Individual Business Rule (*i.e.*, the investor of an individual business is responsible for all debts of the business). First, Zhang failed in his attempt to resign from Mine X's investor position due to policy reasons, so he should not be held liable. Gong replied that if this argument were to stand, a written statement from the AIC was a must, which should state that Mine X was unable to change its investor from 2003 to 2018 consecutively.⁸³ Sun gave up this argument immediately.⁸⁴ He later explained to Zhang that the AIC never issued this kind of statement for an individual; further, he did not know whether "consecutively" could apply in this case.⁸⁵

76. After the meeting dated June 4, 2018, Zhang called me and told me about this. Field notes, June 4, 2018. *See supra* note 31 for other information related to this meeting.

77. Field notes, June 5, 2018.

78. *See infra* notes 157–161 and accompanying text.

79. Field notes, June 5, 2018.

80. To protect the identity of the leader to the greatest degree, his position is withheld.

81. After the meeting dated June 8, 2018, Zhang called me and told me about this. Field notes, June 8, 2018.

82. Field notes, June 18, 2018.

83. *Id.*

84. Observation, June 18, 2018.

85. Field notes, June 18, 2018.

Sun also argued that the transfer of the mining certificate was approved by the Energy Administration and was accessible on the Internet. If a business license facilitated an informed decision, the Internet-accessible information about a mining certificate was as significant as, if not more important than, the business license of a coal enterprise. Every reasonable business person knew that the mining certificate was the soul of a coal mine. Without this, an enterprise could not engage in the mining business even though it held a business license. Gong admitted that Sun's argument made some sense, but he commented that the law only held the investor of the individual business liable, not the holder of the mining certificate.⁸⁶

Sun's third argument relied on unauthorized agency: If Zhang was to be deemed as the sole investor of Mine X, the transaction between Mine X and the Creditor required Zhang's authorization. However, it was Company R that negotiated and carried out the contract on behalf of Mine X. Company R constituted an unauthorized agent and should undertake contractual responsibility.⁸⁷ Gong commented that he could not support Sun because the rule of unauthorized agency only mentioned the remedy for a bona fide counterparty to the transaction—Zhang was not the counterparty.⁸⁸

Annoyed, Sun threw out his last weapon: the principle of good faith.⁸⁹ This principle requires that parties enter into a transaction with good faith; in case of a novel situation not covered by any rule, a judge can make a decision directly based on this principle.⁹⁰ According to Sun, because Company R had no authorization, and because the Creditor relied on Company R, not Mine X, neither of them was innocent. The Individual Business Rule did not cover Zhang's situation, and the principle of good faith should release Zhang from joint liability. Judge Gong replied that he understood

86. *Id.*

87. *Id.* This argument has a leap in logic. A complete argument is like this: If a contract is signed by an unauthorized person, the effect of the contract depends on whether the counterparty believes reasonably that the person holds a proper authorization. If the counterparty provides persuasive evidence to prove belief, the contract will bind the principal; otherwise, the contract will only bind the unauthorized person. Hetong Fa (合同法) [The Contract Law] (promulgated by Nat'l People's Cong., Mar. 15, 1999, effective Oct. 1, 1999), arts. 48 & 49, CLI.1.21651 (Chinalawinfo). In Zhang's case, if the business license of Mine X was sufficient to prove that Zhang was the sole investor of Mine X, the Creditor could not have reasonably believed that Company R was authorized by Mine X without a power of attorney from Zhang.

88. Field notes, June 18, 2018. Article 48 of the Contract Law stipulates that when an unauthorized person, in the name of a principal, enters into a contract with a bona fide counterparty, the counterparty has the right to cancel the contract. The Contract Law, art. 48.

89. Observation, June 18, 2018.

90. Liang Huixing (梁慧星), Minfa Zonglun (民法总论) [General Introduction to Civil Law] 48–50 (2011).

Sun's argument; however, as an enforcing judge, it was inappropriate for him to activate the principle of good faith.⁹¹ Even during litigation, judges seldom invoked this principle.⁹²

After the legal battle, Judge Gong asked Zhang to return alone the next day.⁹³ On June 19, Judge Gong told Zhang that he sympathized with Zhang's situation; however, he could not support Zhang. Procedurally, he advised Zhang to withdraw the opposition. If not, he had to make a formal decision against Zhang, which would be delivered to both Zhang and Company R. Such a decision was likely to cause more trouble for Zhang. Substantively, Judge Gong suggested that Zhang press Company R to issue a written statement or provide a testimony about the facts of the case.⁹⁴

C. One Drama After Another

In the next weeks, Zhang and his friend, Li Shan, tried their best to compel Company R to issue a statement. Per Zhang's request, Judge Gong also called Company R several times. No progress was made. The management of Company R refused to cooperate. This was the most challenging time Zhang experienced in this case.⁹⁵ After one month's struggle, Zhang finally managed to have Company R deliver a written statement to the court through mobilizing other *guanxi*.⁹⁶ The statement specified that: (a) Company R purchased Mine X from a third party and later obtained the mining certificate from Zhang, (b) the failure to change the business license was due to the AIC policy, (c) Company R managed the daily operation of Mine X, and (d) the transaction between Mine X and the Creditor had been handled by Company R and Zhang did not have any knowledge of it.⁹⁷

On July 16, Zhang withdrew the opposition to enforcement. However, Judge Wei was irritated about this move because he awaited a ruling from Judge Gong to instruct him how to proceed. Zhang presented Company R's statement to Judge Wei. However, Judge Wei thought the statement useless and that he was unable to release Zhang of his liability.⁹⁸

When Zhang asked for possible alternatives, Judge Wei offered an idea that "everybody would have known," in Zhang's words. That

91. Field notes, June 18, 2018.

92. Scholars generally agree that the principle of good faith should be applied narrowly. If no rule fits in a particular case, a judge should exhaust all kinds of legal interpretation before resorting to the principle of good faith. LIANG, *supra* note 45, at 310–14.

93. Field notes, June 18, 2018.

94. Field notes, June 19, 2018.

95. Field notes, June 22 and 28, 2018.

96. Field notes, July 4, 6, 9, 10, and 12, 2018.

97. Field notes, July 12, 2018. The copy of the statement is on file with the author.

98. Field notes, July 16, 2018.

idea was for Zhang, Company R, and the Creditor to sign a tripartite agreement, stating that (a) Company R took the responsibility voluntarily, (b) the Creditor agreed to switch the debtor, and (c) the Creditor agreed not to hold Zhang liable anymore. The formalities were strict. Company R and the Creditor should send authorized employees to the court to sign the agreement, witnessed by Judge Wei. Also, Company R should send an employee, ideally the general manager, to the court to record a testimony. Zhang almost cried out when he heard this “mission impossible.” Judge Wei stressed relentlessly that these were mandatory procedural requirements.⁹⁹

Zhang also asked whether the court could make Company R an additional debtor based on the statement, since holding Company R liable could help him to negotiate with the Creditor. Judge Wei rejected it. The statement admitted that Company R caused the debt without expressing an intention to join the debt. Thus, there was no legal basis to have Company R as an additional debtor. A tripartite agreement was a must.¹⁰⁰

Hearing about this, Sun Yue, Zhang’s lawyer, sighed that several years ago, Judge Wei was not so rigid. Sun saw no legal difference between “this is my debt” and “I will take responsibility for my debt.”¹⁰¹ Sun also criticized Judge Wei for his motive. Usually, a court relied on a contract to add a debtor, but Company R and the Creditor had no contractual relation, which rendered Zhang’s case atypical. Judge Wei did not want to expose himself to *any* risk and tried to transform a particular case into a routine one through a tripartite agreement.¹⁰² Sun, via his own *guanxi*, visited a leader of the trial court and presented Company R’s statement to him. The leader agreed with Sun that the statement was sufficient evidence to have Company R as an additional debtor.¹⁰³ Receiving the leader’s call, Judge Wei submitted.

Seeing that Company R was held jointly liable, the Creditor agreed to release Zhang from liability.¹⁰⁴ On July 23, the legal representative of the Creditor, Xu Liangjian, expressed this intention to the court. Unexpectedly, Judge Wei made a cruel comment. “I must tell you that the shareholding structure between Company R and its subsidiaries is ambiguous. Company R is

99. *Id.*

100. *Id.*

101. Sun Yue was not able to go to the court with Zhang and I on July 16; however, we had a teleconference in the evening. Sun made these comments via phone. *Id.* During the interview, Sun repeated these points. Interview with Sun Yue, Lawyer (May 24, 2019).

102. Interview with Sun Yue, Lawyer (May 24, 2019).

103. Field notes, July 18, 2018. Sun did this voluntarily because he was sympathetic to Zhang. He did not ask for extra compensation from Zhang. Interview with Sun Yue, Lawyer (May 24, 2019).

104. After the meeting dated July 19, 2018, Zhang called me and told me about this. Field notes, July 19, 2018. *See supra* note 28 for other information related to this meeting.

perhaps a shell company. Its outstanding unenforceable debts in this court amount to around \$3,000,000. You decide yourself.” Xu suddenly changed his mind.¹⁰⁵

One week later, Zhang’s contact and coal mine businessman Wang Zhiyuan mediated between Zhang and Xu. With a chivarious spirit, Wang asked Xu to make a concession, and he would give more business to Xu in the future.¹⁰⁶ Then Zhang and Xu reached a written agreement. Zhang paid half of the amount to Xu (about \$25,000), and Xu petitioned to drop the claim on Zhang. For the rest of the amount, Xu continued to hold Mine X and Company R liable.¹⁰⁷ Judge Wei approved their settlement.¹⁰⁸

On August 9, Zhang’s case came to an end, and Judge Wei walked Zhang out of the court. To Zhang’s surprise, Wei made a sincere apology. Zhang was innocent. It was an unfortunate accident. New cases were coming to the court against Mine X, but he would try his best not to hold Zhang liable. He did not articulate how, and Zhang did not ask.¹⁰⁹ Theoretically, Judge Wei could instruct other enforcing judges not to advise creditors to involve Zhang; when a creditor filed a petition, he could persuade the creditor to withdraw. However, if a creditor insisted, Judge Wei had no way to stop her.

Judge Wei’s last words underlined the warning from Zhang’s lawyer: If Zhang lost this case, his liabilities were endless because no one knew how many potential debts of Mine X were outstanding.¹¹⁰ Sun advised Zhang to divorce his wife as soon as possible and ascribe all the properties to her.¹¹¹ Judge Wei’s words became the last straw. Zhang ended his near fifty-year marriage. Both Zhang and his wife were extremely upset about this double penalty.¹¹²

105. Field notes, July 23, 2018.

106. Field notes, July 29, 2018.

107. *Id.*

108. Field notes, July 30, 2018.

109. After Judge Wei proved the settlement, Zhang went to the court several times to fulfil procedural formalities. On August 9, 2018, Zhang completed these works and gave me an update. Field notes, Aug. 9, 2018. *See also supra* note 34 and accompanying text.

110. Since Mine X continued to exist with a valid business license, theoretically, Company R could still use Mine X to sign business contracts. No one could guarantee that Zhang would not be involved in future disputes, if any. However, if without any enforceable assets, Zhang would not need to worry about whether Mine X entered into other contracts or incurred more debts. Interview with Sun Yue, Lawyer (May 24, 2019)

111. Sun recommended that Zhang divorce his wife in the first meeting. Field notes, May 27, 2018. When this case was approaching the end, Sun raised this issue again. Field notes, Aug. 9, 2018.

112. Zhang hired Sun Yue again for divorce. In September, Zhang divorced his wife, registered the family house under his wife’s name, and ascribed all of the bank deposits to her. Field notes, September 15, 2018.

IV. HOW POLITICAL PRESSURE RIGIDIFIED LEGAL FORMALISM

A. *The Politicization of Enforcement Rates and Judicial Accountability*

Zhang was unaware of how his case was impacted by political pressure.¹¹³ But as this section will show, the invisible force of political pressure had rigidified legal interpretation on the part of the enforcing judges, and in this case led to its unreasonable outcome. According to my interview with Huang Ruixuan, a colleague of Judge Wei who did not participate in Zhang's case, the enforcing judges in the trial court felt intense pressure coming from two sources: mandatory enforcement rates and lifelong judicial accountability.¹¹⁴

Difficulties in enforcement have plagued Chinese courts for a long time. In 2014, the Fourth Plenary Session of the Eighteenth Central Committee of the Communist Party announced Major Issues Concerning Comprehensively Promoting the Rule of Law, signifying the high-water mark of Xi's legal reform.¹¹⁵ The Plenum identified the difficulties in enforcing civil judgments as an important problem and pinpointed several measures to tackle it, such as refining enforcement procedures, establishing a social credit system, and requiring government agencies to respect court decisions.¹¹⁶ In 2016, the Supreme Court launched a campaign to "basically resolve the difficulties in enforcement" within two to three years.¹¹⁷ In 2018, the Supreme Court further quantified these goals in five guidelines known as "four 'ninety percent' and one 'eighty percent'": (1) for cases where debtors had enforceable

113. *See supra* note 34 and accompanying text.

114. Interview with Huang Ruixuan, Enforcing Judge, Trial Court (June 2, 2019).

115. Zhonggong Zhongyang Guanyu Quanmian Tuijin Yifa Zhiguo Ruogan Zhongda Wenti de Jueding (中共中央关于全面推进依法治国若干重大问题的决定) [Decision of the Central Committee of the Communist Party of China on Major Issues Concerning Comprehensively Promoting the Rule of Law] (promulgated by the Cent. Comm. of the Chinese Communist Party, Oct. 23, 2014, effective Oct. 23, 2014) CLI.16.237344 (Chinalawinfo). For an overview of Xi's legal reform, *see* sources cited *supra* note 1. For an overview of the reform related to civil judgment enforcement, *see* JUDICIAL REFORM OF CHINESE COURTS (2013–2018), *supra* note 1, at 119–25; *see also* WANG & CHEN, *supra* note 11, at 254–56.

116. Major Issues Concerning Comprehensively Promoting the Rule of Law, arts. 4(2) & 4(5).

117. Guanyu Luoshi "Yong Liang dao San Nian Shijian Jiben Jiejue Zhixing Nan Wenti" de Gongzuo Gangyao (关于落实“用两到三年时间基本解决执行难问题”的工作纲要) [Work Outline for Basically Solving the Problem of the Difficulties in Enforcement Within Two to Three Years] (promulgated by the Sup. People's Ct., Apr. 29, 2016, effective Apr. 29, 2016) CLI.3.269800 (Chinalawinfo).

assets,¹¹⁸ the enforcement rate should be above ninety percent, (2) for cases where debtors had no enforceable assets, more than ninety percent should be suspended in line with the procedure set by the law, (3) for cases of “letters and visits,”¹¹⁹ more than ninety percent should be concluded or settled, (4) the average enforcement rate between 2016 and 2018 should be above eighty percent, and (5) at least ninety percent of Chinese courts should reach the above goals.¹²⁰ Although these indicators were put forward in the last year of the enforcement campaign with retroactive effects, they were not an unexpected shock. As early as in January 2016, before the campaign, the Supreme Court had set the Shenzhen Intermediate People’s Court as a model because its enforcement rate approximated ninety percent.¹²¹ Also, some provinces had proposed similar goals in the first year of the campaign.¹²²

“Four ‘ninety percent’ and one ‘eighty percent’” represent extremely high standards—back in 1999, an enforcement rate of seventy percent was good enough to qualify as a *model* court.¹²³

118. Some types of debtor’s assets are unenforceable, such as life necessities. For the list of unenforceable assets, see Guanyu Renmin Fayuan Minshi Zhixing zhong Chafeng, Kouya, Dongjie Caichan de Guiding (关于人民法院民事执行中查封、扣押、冻结财产的规定) [Provisions for the People’s Courts to Seal up, Distrain, and Freeze Properties in Civil Enforcement] (promulgated by the Sup. People’s Ct., Dec. 16, 2008, effective Dec. 31, 2008), art. 5, CLI.3.219030 (Chinalawinfo).

119. “Letters and visits” (*xinfang*) is a Party system to handle petitions and appeals, which is irrelevant to the enforcement of civil judgments. For a comprehensive discussion of this system, see XI CHEN, SOCIAL PROTEST AND CONTENTIOUS AUTHORITARIANISM IN CHINA 87–131 (2012).

120. Zuigao Renmin Fayuan Guanyu Renmin Fayuan Jiejue “Zhixing Nan” Gongzuo Qingkuang de Baogao (最高人民法院关于人民法院解决“执行难”工作情况的报告) [Report of the Supreme People’s Court on the Work Progress of People’s Courts on Resolving the “Difficulties in Enforcement”] (promulgated by the Sup. People’s Ct., Oct. 24, 2018, effective Oct. 24, 2018) CLI.3.324373 (Chinalawinfo). For the timing that the goals were broached, see *Zuigao Fa: Mingque Jiben Jiejue Zhixing Nan Sige Hexin Mubiao* (最高法：明确基本解决执行难四个核心目标) [The Supreme People’s Court: Four Core Goals for Basically Resolving the Difficulties in Enforcement] www.m.news.cctv.com/2018/06/22/ARTID08RJAeku60PbOz2lv77180622.shtml [perma.cc/AYZ4-YZXH] (last visited July 30, 2020).

121. Li Yakun (李亚坤), *Shenzhen Zhongyuan Weihe Neng Jiben Jiejue Zhixing Nan* (深圳中院为何能基本解决执行难) [Why Could the Shenzhen Intermediate Court Basically Resolve the Difficulties in Enforcement], NANFANG DUSHI BAO (南方都市报) [S. METROPOLIS DAILY], Jan. 7, 2016, at AA01.

122. *E.g.*, in 2016, the Higher People’s Court of Guangxi Province set the goal of enforcement rates at ninety-five percent for cases where debtors had enforceable assets and one hundred percent for cases where debtors had no enforceable assets. *Guangxi Zhiding Jiejue “Zhixing Nan” Shijianbiao* (广西制定解决“执行难”时间表) [Guangxi Province Set a Timetable for Resolving the “Difficulties in Enforcement”], www.sohu.com/a/73954326_119665 [perma.cc/88H6-EN7L] (last visited July 30, 2020).

123. Zuigao Renmin Fayuan Guanyu Kaizhan “Zhengchuang Renmin Manyi de Hao Fayuan Zhengdang Renmin Manyi de Hao Faguan” Huodong de

Worse still, the Higher People's Court of Province Z further heightened the standards for indicators (1–3) to three ninety-five percent for enforcement rates across types of cases and for indicator (5) to one-hundred percent of the courts in Province Z. Except for (4), all other standards were increased.¹²⁴ These were the numbers that Judge Huang hated:

It is difficult to suspend a case [if the debtor has no enforceable assets]. Its procedure is too complex. If the [enforcement] applicant objects violently, you cannot suspend it. We need to form a collegiate panel and solicit the signature from the court president. But it is difficult to go through these formalities when the applicant resorts to violence. For cases with [enforceable] assets, some people act shamelessly and try to hide assets; some create troubles intentionally for you. These are annoying. Moreover, some cases are located in the grey area. If you treat them as cases with [enforceable] assets, you cannot proceed, but if you want to categorize them as cases without [enforceable] assets, the applicant will object.¹²⁵

As articulated by Huang, cases are not black or white. Consider Company R. According to Judge Wei, its outstanding debts amounted to about \$3,000,000, but it still operated three coal mines as usual.¹²⁶ How Mine X appeared on the balance sheet of Company R was unknown.¹²⁷ At least Company R held the mining certificate of Mine X, and the mining right was an intangible asset according to the accounting principles of China.¹²⁸ As to the other six mines, it is unclear whether they were recorded as long-term equity investments or intangible assets.¹²⁹ In short, Company R had assets, but its assets lacked liquidity. The case of Company R was a paradoxical combination of “unenforceability” and “enforceable

Tongzhi (最高人民法院关于开展“争创人民满意的好法院争当人民满意的好法官”活动的通知) [Notice of the Supreme People's Court on Launching a Movement of “Striving to Be Good Courts and Good Judges Satisfactory to the People”] (promulgated by the Sup. People's Ct., Mar. 12, 1999, effective Mar. 12, 1999) CLI.3.22111 (Chinalawinfo).

124. To protect the identity of Province Z, I do not provide a citation here.

125. Interview with Huang Ruixuan, Enforcing Judge, Trial Court (June 2, 2019).

126. See *supra* notes 58, 59, and 105 and accompanying text.

127. According to the accounting principles of China, if an investor exercises control of or has a significant impact on the investee, the investor should record the investee as a long-term equity investment on the investor's balance sheet. Qiye Kuaiji Zhunze Di-2 Hao—Changqi Guquan Touzi (企业会计准则第2号—长期股权投资) [Accounting Principles for Enterprises, No. 2—Long-Term Equity Investment] (promulgated by the Ministry of Fin., Mar. 13, 2014, effective July 1, 2014), art. 2, CLI.4.221264 (Chinalawinfo). However, since I have no access to Company R's balance sheet, it is unknown whether Company R duly recorded Mine X as a long-term equity investment.

128. Qiye Tankuang Quan Caikuang Quan Kuaiji Chuli Guiding (企业探矿权采矿权会计处理规定) [Regulations on the Accounting of Exploration Right and Mining Right of Enterprises] (promulgated by the Ministry of Fin., Nov. 11, 1999, effective Nov. 11, 1999), art. 2, CLI.4.84400 (Chinalawinfo).

129. See discussion *supra* notes 127–28.

assets.”

Li Shan, Zhang’s friend, made some sharp observations. Company R was a large coal company. Due to the poor economic performance of the town in recent years, the local government could not afford to bankrupt Company R.¹³⁰ Li also satirized the heightened standards in Province Z. After Xi assumed power, several officials from Province Z were promoted to the central government, which made other officials ambitious.¹³¹ Thus, establishing heightened standards might not have aimed at judicial achievements but political track records. “You know, five percent from ninety to ninety-five can kill.”¹³² Li was correct. As Judge Huang mentioned, there were hard cases in the grey area. An additional five percent meant that the court had to resolve or conclude some tough cases by 2018.¹³³

As for lifelong judicial accountability, it first appeared in a 2013 regulation of the Central Political and Legal Affairs Commission (PLAC) of the Communist Party on the prevention of wrongful convictions.¹³⁴ Since Xi’s legal reform newly stressed the judicial independence of individual judges, lifelong judicial accountability soon gained an innovative meaning associated with judicial independence: it was believed that a judge under lifelong judicial accountability was more likely to resist undue influence.¹³⁵

130. Interview with Li Shan, Retired Official (Mar. 30, 2019). Local protectionism has been the most mentioned factor for the difficulties in enforcement. Clarke, *supra* note 6, at 41–49. Theoretically, whether or not to accept a creditor’s application for bankruptcy is at the sole discretion of the court; however, it is not unusual that the government intervenes, especially if the debtor is a big company. *Id.* at 42–44.

131. Xi’s network in Province Z is strong, which is a crucial factor for the promotion of provincial cadres. See VICTOR C. SHIH, *FACTIONS AND FINANCE IN CHINA: ELITE CONFLICT AND INFLATION* 47–54, 64–74 (2007).

132. Interview with Li Shan, Retired Official (Mar. 30, 2019).

133. See *supra* notes 125–29 and accompanying text.

134. Zhongyang Zhengfawei Guanyu Qieshi Fangzhi Yuanjia Cuoan de Guiding (中央政法委关于切实防止冤假错案的规定) [Regulation of the Central Political and Legal Affairs Commission on Firmly Preventing Wrongful Convictions] (promulgated by the Cent. Pol. & Legal Aff. Comm’n., Aug. 13, 2013, effective Aug. 13, 2013), art. 12, CLI.16.213325 (Chinalawinfo). Although *lifelong* judicial accountability first appeared in this 2013 regulation, judicial accountability can be traced back to the Law on Judges of 1995. As to the history of judicial accountability in the PRC, see Carl Minzner, *Judicial Disciplinary Systems for Incorrectly Decided Cases: The Imperial Chinese Heritage Lives on*, 39 N.M. L. Rev. 63, 64–66 (2009). Since 2005, due to a series of outrageous cases, the Chinese government launched a movement to prevent wrongful convictions. The movement deepened after 2010. Many regulations were promulgated during the movement, among which this 2013 regulation was the first systematic guideline. As to the history of the movement to prevent wrongful convictions, see NA JIANG, *WRONGFUL CONVICTIONS IN CHINA: COMPARATIVE AND EMPIRICAL PERSPECTIVES* 145–174 (2016).

135. Zhonggong Zhongyang Guanyu Quanmian Shenhua Gaige Ruogan Zhongda Wenti de Jueding (中共中央关于全面深化改革若干重大问题的决定) [Decision of the Central Committee of the Communist Party of China on Major

The Plenum of 2014 integrated lifelong judicial accountability into the scheme of the legal reform and associated it with preventing wrongful convictions as well as promoting judicial independence.¹³⁶ In September 2015, the Supreme Court promulgated Several Opinions on Improving the Judicial Accountability System of People's Courts, according to which, if a judge violated a law intentionally or made a wrongful judgment due to gross negligence and caused material consequences, she was to be held liable.¹³⁷ Several Opinions also enumerated seven types of violations and formulated a procedure for tracing liabilities.¹³⁸ However, Several Opinions only stipulated the process *after* a judge was suspected of judicial liability without establishing an institution to *identify* wrongdoers.

Enforcing judges, like other types of judges, were subject to lifelong judicial accountability for the cases they handled. Although no new institution was set up to identify liability, the intensity of spot checks increased. For a trial court in Province Z, many existing institutions could initiate spot checks on case quality, including the Intermediate People's Court, the Higher People's Court, and the PLACs at various levels. Sometimes a higher court required two trial courts in different jurisdictions to conduct cross-checks. Before lifelong judicial accountability was instituted, the frequency of spot check was usually once a year, but after, and especially after 2016, the frequency quadrupled to once or several times every quarter. The number of cases to be checked varied: sometimes just a handful, but sometimes hundreds. The randomness of spot checks was like the sword of Damocles, making judges extremely nervous.¹³⁹

Issues Concerning Comprehensively Deepening the Reform] (promulgated by the Cent. Comm. of the Communist Party of China, Nov. 12, 2013, effective Nov. 12, 2013), art. 33, CLI.16.213067 (Chinalawinfo). As mentioned in *supra* note 2, before Xi's reform, China used to stress judicial independence of courts, not of individual judges.

136. Zhonggong Zhongyang Guanyu Quanmian Tuijin Yifa Zhiguo Ruogan Zhongda Wenti de Jueding (中共中央关于全面推进依法治国若干重大问题的决定) [Decision of the Central Committee of the Communist Party of China on Major Issues Concerning Comprehensively Promoting the Rule of Law] (promulgated by the Cent. Comm. of the Chinese Communist Party, Oct. 23, 2014, effective Oct. 23, 2014), arts. 4(1)-4(3), CLI.16.237344 (Chinalawinfo).

137. Guanyu Wanshan Renmin Fayuan Sifa Zeren Zhi de Ruogan Yijian (关于完善人民法院司法责任制的若干意见) [Several Opinions on Improving the Judicial Accountability System of People's Courts] (promulgated by the Sup. People's Ct., Sept. 21, 2015, effective Sept. 21, 2015), art. 25, CLI.3.257300 (Chinalawinfo).

138. *Id.* arts. 26, 34–37.

139. Interview with Huang Ruixuan, Enforcing Judge, Trial Court (June 2, 2019). Wang's empirical research also finds that lifelong judicial accountability makes some judges feel more responsibility and causes anxiety. Wang, *supra* note 4, at 754, 756–58.

B. *The Functioning of Political Pressure*

The politicization of the above two mechanisms — mandatory enforcement rates and lifelong judicial accountability — heavily impacted the motives and choices of the enforcing judges and the discretion they were able to use in deciding Zhang’s case. I analyze the perspectives of Judge Wei in chronological order and then discuss Judge Gong in brief.

A detail that triggered Zhang’s case is intriguing. Judge Wei had advised the Creditor to include Zhang as a joint debtor, but he was *not legally required* to do so. Mine X had been sued many times,¹⁴⁰ but Zhang had not been involved until this particular case. Holding an investor jointly liable means double work for enforcing judges since they have to make investigations and take actions against two subjects. Judge Wei’s advice to the Creditor shows that, under the stress of mandatory enforcement rates, he grasped at every straw even if it meant extra workload.

Though Judge Wei soon realized Zhang’s innocence, he did not hesitate in moving against Zhang as evidence of the political pressure he faced. Judge Wei *made no effort* to work out a solution to help Zhang; instead, he tried to persuade Zhang to comply through a rigid interpretation of the Individual Business Rule.¹⁴¹ From a cynical point of view, Zhang’s full payment to the Creditor was the easiest and quickest way to solve this case and improve enforcement rates. Further, Judge Wei’s literal reading of the rule meant he had no risk of judicial liability. No one could assert that he had violated the rule intentionally or negligently. Although criticism of inappropriateness was possible, inappropriateness did not lead to judicial liability.¹⁴² As explained by Sun Yue, “If Wei sticks to this law [Individual Business Rule], at most he would be criticized for inflexibility. Then he could say ‘I will improve my knowledge in the future’ . . . You don’t know who will challenge you and why.”¹⁴³ Hence, mandatory enforcement rates and lifelong judicial accountability worked hand in hand and explain Judge Wei’s rigid interpretation of the rule and his effort to persuade Zhang to repay the Creditor.

After Zhang withdrew his opposition, Judge Wei suggested using a tripartite agreement with strict formalities, not taking the acknowledgment by Company R that “this is my debt” to also mean “I will take responsibility for my debt.”¹⁴⁴ As mentioned, Sun commented that Judge Wei had not been such a rigid person before

140. Mine X has a history of being sued. Google the name of Mine X, and one can find many suits against Mine X, some even in provinces other than Province Z. However, Zhang had not been involved in those suits.

141. *See supra* note 74 and accompanying text.

142. Interview with Sun Yue, Lawyer (May 24, 2019).

143. *Id.*

144. *See supra* notes 99–100 and accompanying text.

the enforcement campaign. Judge Wei's Procrustean solution was primarily aimed at eliminating his own risk, regardless of its impracticability. Lifelong judicial liability compelled him to apply the law mechanically.¹⁴⁵

When the Creditor proposed releasing Zhang from liability, Judge Wei announced that Company R had no capacity to repay now or in the future.¹⁴⁶ What Company R lacked was liquidity rather than assets,¹⁴⁷ but Judge Wei did not give this accurate information to the Creditor. Why? Because releasing Zhang from liability had potentially adverse effects for Judge Wei. For Zhang to be let off the hook, Judge Wei would have had to suspend enforcement following a complicated procedure to satisfy mandatory enforcement rates. It was uncertain whether suspension actually would have worked out. If the Creditor had made this difficult, such as rejecting a suspension violently or announcing that Judge Wei had offered misleading advice, then decisions and communications of Judge Wei would be scrutinized, bringing additional risk to him.¹⁴⁸ Again, Judge Wei's startling announcement was driven by an anxiety about enforcement rates and judicial liability.

Above we see that political pressure directly altered Judge Wei's motives and choices. At the end of the story, we realize that political pressure has also suppressed his sense of justice, as he apologized to Zhang and claimed that he would do his best to prevent similar cases from happening again. Indeed, a new case against Mine X entered into enforcement in 2019. In this instance, Judge Wei did not involve Zhang.¹⁴⁹ However, this evident sense of justice had been suppressed when he handled Zhang's case.

Throughout the case, mandatory enforcement rates also functioned covertly by creating a sense of collective responsibility. None of the Communist Party, the Supreme Court, or Province Z mentioned the consequences for failure to satisfy enforcement rates. In particular, Province Z required every single court to reach the goal without specifying a penalty.¹⁵⁰ However, according to Judge Huang, *all* enforcing judges understood the consequences. Failure to achieve the enforcement rate goal was "a serious political problem" for a court.¹⁵¹ Anyone supervising or carrying out enforcement work in the court might lose promotion opportunities or be subject to other invisible disadvantages, although actual

145. *See supra* notes 101–2 and accompanying text.

146. *See supra* note 105 and accompanying text.

147. *See supra* notes 126–29 and accompanying text.

148. *See supra* note 125 and accompanying text.

149. This case can be found by googling the name of Mine X.

150. To protect the identity of Province Z, I do not provide a citation here.

151. Interview with Huang Ruixuan, Enforcing Judge, Trial Court (June 2, 2019).

effects remained contingent.¹⁵² This unwritten norm might have created a collective responsibility for enforcing judges. When dealing with an enforcement case, an enforcing judge might have born the responsibility for the whole court. For this reason, an individual enforcing judge's sense of justice — a force to reject rigid formalism — might have had to be subordinated to the interests of the court.

Political pressure similarly influenced Judge Gong. First, political pressure directly altered his motives and choices. Judge Gong's choice to stick to the text of the Individual Business Rule was a safe option for him. If he ruled in favor of Zhang, the Creditor would obtain no payment. Then, to satisfy mandatory enforcement rates, Judge Wei would have had to suspend the enforcement procedure, which needed an opinion from a collegiate panel and the signature from the court president.¹⁵³ At that stage, Judge Gong's opinion would be further scrutinized. If the panel or the president disagreed with Judge Gong's interpretation, he would find himself in a difficult situation.¹⁵⁴

Second, political pressure suppressed Judge Gong's sense of justice. On the one hand, he had to protect himself from lifelong liability;¹⁵⁵ on the other, his decision also impacted the welfare of other enforcing judges.¹⁵⁶ Thus, an individual sense of justice was unable to counterbalance the option to employ rigid formalism.

Political pressure influenced Judge Gong via an additional mechanism, *i.e.*, weakening Zhang's *guanxi*.¹⁵⁷ In the judicial context, *guanxi* refers to social connections mobilized by case parties to influence a court's decision.¹⁵⁸ The Plenum of 2014

152. *Id.*

153. *See supra* note 125 and accompanying text.

154. *Id.*

155. *See supra* note 139 and accompanying text.

156. *See supra* notes 151–52 and accompanying text.

157. Though scholars share a consensus that *guanxi* refers to relationship, tie, connection, or network, some still prefer it to be left untranslated. Thomas B. Gold, *After Comradeship: Personal Relations in China since the Cultural Revolution*, 104 CHINA Q. 657, 659 (1985). *Guanxi* has two features: "First is that it is 'based implicitly (rather than explicitly) on mutual interest and benefit. Once *guanxi* is recognized between two people, each can ask a favor of the other with the expectation that the debt incurred will be repaid sometime in the future.' The notion of reciprocal obligation and indebtedness is central to the system of *guanxi* in China The other distinctive aspect is the importance of affect or sentiment—*anqing* (*kan-ch'ing*)—in *guanxi* Instrumentalism and sentiment come together in *guanxi*, as cultivating *guanxi* successfully over time creates a basis of trust in a relationship [citation omitted]." Thomas Gold et al., *An Introduction to the Study of Guanxi*, in SOCIAL CONNECTIONS IN CHINA: INSTITUTIONS, CULTURE, AND THE CHANGING NATURE OF GUANXI 3, 7–8 (Thomas Gold et al. eds., 2004) [hereinafter SOCIAL CONNECTIONS IN CHINA].

158. This narrow definition can avoid unnecessary debates. In his article, Pitman B. Potter goes against the "conventional wisdom" and argues that in the PRC legal system, *guanxi* is complementary, instead of opposite, to the formal

demanded the elimination of *guanxi* in this sense.¹⁵⁹ The judicial community also maintains a negative view of *guanxi* because it is opposed to judicial independence.¹⁶⁰

Strong *guanxi* from a supervisor is most likely to impact a judge's use of discretion; even weak *guanxi* from a supervisor influences judicial discretion considerably or moderately.¹⁶¹ In Zhang's case, the relationship between the court leader and Judge Gong was supervisory (strong or weak unknown). Theoretically, the leader had enormous power to exert his influence, but he declared that it was improper for him to do so. He asked Judge Gong to look into this case only because he felt sympathetic to Zhang.¹⁶² Without a specific instruction from the leader, Judge Gong refused to rule in favor of Zhang, although he gave Zhang some advice.¹⁶³

Judge Gong's reaction demonstrates that *guanxi*'s influence on judges was weakened after Xi's legal reform. Remember Sun's comment that *guanxi* was useless now if not unusually strong because judges were afraid of liabilities. The mechanism of lifelong judicial accountability, which was designed, partly, to promote

legal system. Pitman B. Potter, *Guanxi and the PRC Legal System: From Contradiction to Complementarity*, in *SOCIAL CONNECTIONS IN CHINA*, *supra* note 157, at 179–195. However, if one scrutinizes the coverage of his discussion, this argument becomes less striking than it seems to be. Potter includes scenarios like private settlements of disputes, *Id.* at 183–85, amending contractual terms during performance, *Id.* at 185–88, etc. Even as to *guanxi* that influences judges, he emphasizes the situations where the formal law is absent or vague. *Id.* at 189–91. Given Potter's article, I narrow this concept to avoid theoretical confusion.

159. Zhonggong Zhongyang Guanyu Quanmian Tuijin Yifa Zhiguo Ruogan Zhongda Wenti de Jueding (中共中央关于全面推进依法治国若干重大问题的决定) [Decision of the Central Committee of the Communist Party of China on Major Issues Concerning Comprehensively Promoting the Rule of Law] (promulgated by the Cent. Comm. of the Chinese Communist Party, Oct. 23, 2014, effective Oct. 23, 2014), at 4(6), CLI.16.237344 (Chinalawinfo).

160. Xin He & Kwai Hang Ng, "It Must Be Rock Strong!" *Guanxi's Impact on Judicial Decision Making in China*, 65 AM. J. COMP. L. 841, 864 (2017).

161. Scholars study *guanxi* from two approaches: cultural and institutional. Thomas Gold et al., *supra* note 157, at 9–10. In an empirical study on *guanxi*'s influence on Chinese judges, Xin He and Kwai Hang Ng integrate these two perspectives and argue that we must consider: (a) whether *guanxi* is strong or weak (cultural perspective), and (b) whether *guanxi* comes from "a supervisor who has a role in affecting the benefit or the career development of the target judge" (institutional perspective). Xin He & Kwai Hang Ng, *supra* note 160, at 844–49. Based on the axes of strong/weak and supervisory/nonsupervisory, the authors map a typology of *guanxi*'s impact on a judge. *Id.* (1) Supervisory and strong: "enormous impact, a judge's help may go beyond the scope of discretion." (2) Nonsupervisory and strong: "significant impact, judge's help usually within the scope of discretion." (3) Supervisory and weak: "significant to moderate impact, judge's help by exercising discretionary power." (4) Nonsupervisory and weak: "uncertain impact, judge's help, if any, is within the scope of discretion." *Id.* at 844–49.

162. *See supra* note 81 and accompanying text.

163. *See supra* note 94 and accompanying text.

judicial independence, seemed to have achieved its goal.¹⁶⁴ Since *guanxi* was a potential force to make a judge interpret the law discretionarily, the weakening of *guanxi* by political pressure also contributed to the rigidification of legal formalism.

C. Legal Formalism, Rigidified

As mentioned, Chinese civil lawyers agree that textual interpretation is fundamental, but when this approach yields multiple possibilities, one should refer to other factors, such as the purpose of the law, to identify the most appropriate interpretation.¹⁶⁵ Given this common understanding of legal formalism in China, Judges Wei and Gong's interpretation of the Individual Business Rule was a rigid reading, which I will explicate by a close reading of the legal battle between Judge Gong and Sun Yue.

Recall that the Individual Business Rule stipulates that the investor of an individual business is responsible for all debts of the business. As will be shown, Sun's first two arguments tried to interpret "investor," and the next two arguments attempted to introduce additional rules and principles relevant to Zhang's case. Sun's efforts did not go beyond the framework of legal formalism, as agreed by Chinese civil lawyers. However, all of his arguments failed in front of Judge Gong's rigid formalism.

Sun's first argument treated policy reasons that prevented Zhang from changing the business license as force majeure.¹⁶⁶ Since failure to perform civil duties due to force majeure does not result in civil responsibilities,¹⁶⁷ Zhang should not be held jointly liable. In this way, Sun qualified the investor to exclude any person who held the position because of force majeure. Judge Gong could have contacted the AIC via official channels to understand the policies when Zhang transferred Mine X; however, he defeated this argument by requesting the most stringent evidence.¹⁶⁸ A

164. Wang's empirical research also finds that lifelong judicial accountability weakens *guanxi*. Wang, *supra* note 4, at 756–58. Interference from court leaders become less because lifelong accountability falls on an individual judge. *Id.*

165. *See supra* notes 44–46 and accompanying text.

166. As discussed, Sun's first argument was that Zhang should not be held liable because it was policy reasons that prevented Zhang from resigning from Mine X's investor position. *See supra* note 83 and accompanying text. In other words, Sun treated policy reasons as a power to exempt Zhang from civil responsibilities. According to the Contract Law, force majeure is "an objective situation that cannot be foreseen, avoided, or overcome," which can exempt a debtor from civil responsibilities. The Contract Law, art. 117. Thus, Sun's first argument actually treated policy reasons as force majeure.

167. The Contract Law, art. 117.

168. As discussed, Judge Gong requested a written statement from the AIC stating that Mine X was unable to change its investor; however, according to Sun, the AIC never issued this kind of statement for an individual, which means

discussable legal issue was thus transmuted technically into a non-discussible one.

Sun's second argument explored the purpose of a business license. Admitting that the business license made parties enter into an informed transaction, Sun argued that a mining certificate had the same function.¹⁶⁹ In essence, Sun interpreted an investor of an individual business to be a person who was recorded in a publicly-accessible government license or certificate, provided that this license or certificate was as crucial as a business license. Judge Gong refused to deliberate the purpose of a business license.¹⁷⁰

Sun also argued that if the information on a business license was not defeasible, Company R was an unauthorized agent and should take responsibility for its contract with the Creditor.¹⁷¹ Perhaps finding this argument difficult to reject, Judge Gong stuck to the text defining unauthorized agency and emphasized that only the Creditor could make use of this rule.¹⁷² Again, Judge Gong did not look into the rule's rationale. The essence of this rule is to decide who is to be held accountable to the transaction, the unauthorized agent or the principal.¹⁷³ Although the counterparty is authorized to invalidate the transaction, this rule does not prohibit other persons from asserting that the unauthorized agent should take responsibilities.¹⁷⁴ Above all, contract law is not an exhaustive list of what parties are allowed to do. Judge Gong again confined his decision to the text of the rule.

Sun's last argument resorted to the principle of good faith. He reinterpreted the Individual Business Rule by adding a qualification: an investor would be liable if a creditor entered into the transaction based on bona fide reliance on the business license. Gong's explanation was no different from blunt rejection: He did not envisage the possibility of instantiating this rule.¹⁷⁵

In the above legal battle, we see rich details of rigid formalism. Judge Gong cleaved to the literal meaning of the most concrete rules (the Individual Business Rule and the rule of unauthorized agency), refused to look into the rationale behind the rules (unauthorized

that the evidence required by Judge Gong was the most stringent one. *See supra* notes 83–85 and accompanying text.

169. *See supra* note 86 and accompanying text.

170. *Id.*

171. *See supra* note 87 and accompanying text.

172. *See supra* note 88 and accompanying text.

173. *See LIANG, supra* note 90, at 236–37.

174. According to Article 48 of the Contract Law, (a) when an unauthorized agent enters into a contract in the name of a principal, the contract has no binding force on the principle, and the unauthorized agent shall bear the contractual responsibility; and (b) the bona fide counterparty to the contract has the right to cancel the contract. The Contract Law, art. 48. In fact, this Article does not prevent anyone from invoking part (a), *Id.*; however, Judge Gong read these two parts as a whole and claimed that only the counterparty was protected by this Article. *See supra* note 88 and accompanying text.

175. *See supra* notes 91–92 and accompanying text.

agency and business license), and rejected exploring the relationship between concrete rules and general principles (force majeure and good faith).¹⁷⁶ Judge Gong and Sun exchanged ideas with the same language, but Judge Gong's rigid formalism exhausted sincere communication.

D. Feedback Loops

Once legal formalism was rigidified, it redacted evidence of political pressure. First, rigid formalism made political pressure invisible by claiming that there was only one "correct" answer to a legal issue.¹⁷⁷ Disguised by professional jargon, rigid formalism appeared to be neutral and objective, as if the enforcing judges were really deprived of choices.¹⁷⁸ When Zhang asked, "How can the law be like this?" he was in effect accepting the answer provided by Judges Wei and Gong as the only possibility, even though he considered this unjust. Zhang did not realize that there were always competing arguments for a given legal issue¹⁷⁹ and that political pressure played an important role in shaping the court's decisions.¹⁸⁰

Second, through reconciling the enforcing judges' intuitive sense of justice, rigid formalism justified political pressure indirectly. According to the psychological theory of cognitive dissonance, when a person confronts two conflicting beliefs, ideas, or values, she feels mental discomfort until the conflict is resolved in some way.¹⁸¹ The enforcing judges' use of rigid formalism despite an intuitive sense of justice should have caused cognitive dissonance. To address this dissonance, the enforcing judges could persuade themselves to believe that "the law is the law," in Judge Wei's words. That is, their intuitive sense of justice, based on the relevant

176. See *supra* notes 168, 170, 173–75 and accompanying text.

177. The arguments advanced by both enforcing judges pretended that there was only one "correct" answer to Zhang's predicament under the Individual Business Rule. See *supra* notes 74, 166–75 and accompanying text. This generalization is inspired by Duncan Kennedy's "Three Globalization of Law and Legal Thoughts." Duncan Kennedy, *Three Globalizations of Law and Legal Thought: 1850–2000*, in *THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL* 19 (David Trubek & Alvaro Santos eds., 2006). According to Kennedy, in the beginning of the twentieth century, many scholars launched fatal attacks on the dominant legal thoughts of the late nineteenth century. *Id.* at 37. One of the attacks was "the abuse of deduction": while the previous legal thoughts took law as a coherent system capable of generating correct answers by simple deduction and induction, the new generation of scholars treated this as an illusion. *Id.* at 39–40.

178. See Schauer, *supra* note 39, at 511–12.

179. Duncan Kennedy, *A Semiotics of Legal Argument*, 42 SYRACUSE L. REV. 75 (1991).

180. See discussion *supra* Section IV.B.

181. LEON FESTINGER, *A THEORY OF COGNITIVE DISSONANCE* 260–266 (1957).

principles in their daily lives, differed from legal justice dispensed in court.¹⁸²

To maintain such an artificial distinction, the rigidification of legal formalism was a must. As shown by Zhang's case, rigid formalism concentrates on the text of the most concrete rule and looks for a "correct" answer regardless of its appropriateness. This form of interpretation constructs a legal world in which a legal issue is decided by a concrete rule and only corresponds to one answer.¹⁸³ Hence a person's intuitive sense of justice is irrelevant because *the* answer in this self-sufficient legal world is already determined by a rule.

The distinction between intuitive justice and legal justice cannot be achieved in a normal version of legal formalism, which acknowledges that a rule allows for competing interpretations and that in cases of indeterminacy, judges should take into account various factors and find the most appropriate way to interpret the law.¹⁸⁴ This version of legal formalism does not draw a clear-cut line between a real world and a legal world and invalidates the claim that "the law is the law." Consequently, it cannot resolve cognitive dissonance present for enforcing judges subject to political pressure because the legal world is open to critiques from the real world.¹⁸⁵

Thus, only rigid formalism could have reconciled the enforcing judges' intuitive sense of justice.¹⁸⁶ At this stage, the enforcing judges had no reason to blame political pressure for shaping their motives and choices because it would introduce a new cognitive dissonance between their closed legal world and external factors.

V. A REFLECTION ON POLITICAL PRESSURE

Mandatory enforcement rates and lifelong judicial accountability originated from Party policies and then were made into law by the Supreme Court. Enforcement rates became rigid and retroactive numbers, while lifelong judicial accountability left itself open to politicization because the Supreme Court did not specify the

182. Chinese scholars often use *falü siwei* (legal thinking) or *falü ren siwei* (lawyers' thinking) to distinguish legal justice from intuitive sense of justice, for example, Chen Ruihua (陈瑞华), *FALÜ REN DE SIWEI FANGSHI* (法律人的思维方式) [LAWYERS' THINKING] 28–36 (2007); Chen Kun (陈坤), *Falü Tuili zhong de Dute Siwei Qingxiang jiqi Keneng de Wuqu* (法律推理中的独特思维倾向及其可能的误区) [*Unique Thinking Tendencies in Legal Reasoning and their Possible Harms*], *XIANDAI FAXUE* [MODERN L. SCI.], no. 1, at 84, 88–93, 97–101 (2020).

183. See discussion *supra* notes 177–78, 182 and accompanying text.

184. See *supra* notes 44–46 and accompanying text.

185. Chen Kun emphasizes that the "unique thinking tendencies in legal reasoning" were potentially harmful and should be open to the critique of the intuitive sense of justice. Chen Kun, *supra* note 182, at 97–101.

186. To recapitulate, rigid formalism separated legal justice from the intuitive sense of justice. When they became two different and irrelevant issues, there was no conflict, so no cognitive dissonance.

mechanism to identify such liability.¹⁸⁷ When these national policies percolated down, Province Z further politicized them. Mandatory enforcement rates were tightened unreasonably, and lifelong judicial accountability resulted in a drastic increase of spot checks.¹⁸⁸

At the micro-level, political pressure rigidified legal formalism and redistributed rights, obligations, and responsibilities among case parties.¹⁸⁹ As visualized by the diagram before, there were three paths and two feedback loops. First, political pressure directly compelled enforcing judges to adopt a rigid version of legal formalism.¹⁹⁰ Then rigid formalism masked the functioning of political pressure.¹⁹¹ Second, political pressure weakened the functioning of *guanxi*, a possible avenue to overcome rigid formalism.¹⁹² Third, political pressure downplayed enforcing judges' sense of justice, which indirectly reinforced the rigidification of legal formalism.¹⁹³ Rigid formalism, in turn, reconciled enforcing judges' sense of justice by distinguishing between intuitive justice and legal justice. Once reconciled, enforcing judges' sense of justice would not blame political pressure.¹⁹⁴

Political pressure is not negative in a general sense. Different players may hold different views.¹⁹⁵ Practically, it improves enforcement rates¹⁹⁶ and eliminates *guanxi* in many cases.¹⁹⁷ That said, Zhang's case flips the coin and reveals the cost of these achievements. It allows us to reflect critically on the enforcement campaign, and more generally, the legal reform under the Xi administration.

Although overall enforcement rates increased, although *guanxi* is largely eliminated, and although enforcing judges have become more attentive to legal rules, these achievements were accompanied by enforcing judges' mechanical application of the most concrete rules, which may sacrifice justice in hard cases. In other words, political pressure rigidified formalism, the art of legal

187. See discussion *supra* Section IV.A.

188. *Id.*

189. See discussion *supra* Section IV.B-D.

190. See discussion *supra* Section IV.B and C.

191. See discussion *supra* Section IV.D.

192. See discussion *supra* Section IV.C.

193. See discussion *supra* Section IV.B and C.

194. See discussion *supra* Section IV.D.

195. An enforcing judge may think it bad because it increases her workload and compels her to resolve some hard cases in an unreasonable period of time. A creditor may welcome political pressure because it improves enforcement rates. A debtor may hate it because she has less chance to avoid payments. The public may sing high praise for the change because the difficulties in enforcement are so widely perceived as an evil that a proverb warns people not to resort to law—after all, you may “win the battle while losing your money” (*ying le guansi shu le qian*).

196. WANG & CHEN, *supra* note 11, at 256.

197. Wang, *supra* note 4, at 756–58.

interpretation was lost, and a sense of justice was suspended.

At the end of this Article, I turn to a related issue: Will the enforcement measures created during Xi's reform extend influence into the future? More specifically, will political pressure continue to exist?

In his article published in 2002, Jianfu Chen cast doubt on the sustainability of the achievements from enforcement campaigns because the achievements come from two *unsustainable* sources: first, courts' increasing willingness to use coercive measures during the campaigns; second, the intervention of the Communist Party and the corroboration among legislative, judicial, and administrative departments.¹⁹⁸ However, Chen's discussion is limited seriously by the time he was writing. He drew primarily on the enforcement campaign of 1999, which is an exception compared with the later campaigns, as we will see below.

To improve enforcement, the Supreme Court launched four general campaigns (1999, 2006, 2008-2009, and 2016-2018), which aimed at improving the enforcement of civil judgments generally, and four special campaigns (2003, 2011-2012, 2013, and 2017), which aimed at improving the enforcement of a special type of civil case.¹⁹⁹

198. Jianfu Chen, *supra* note 15, at 104–106.

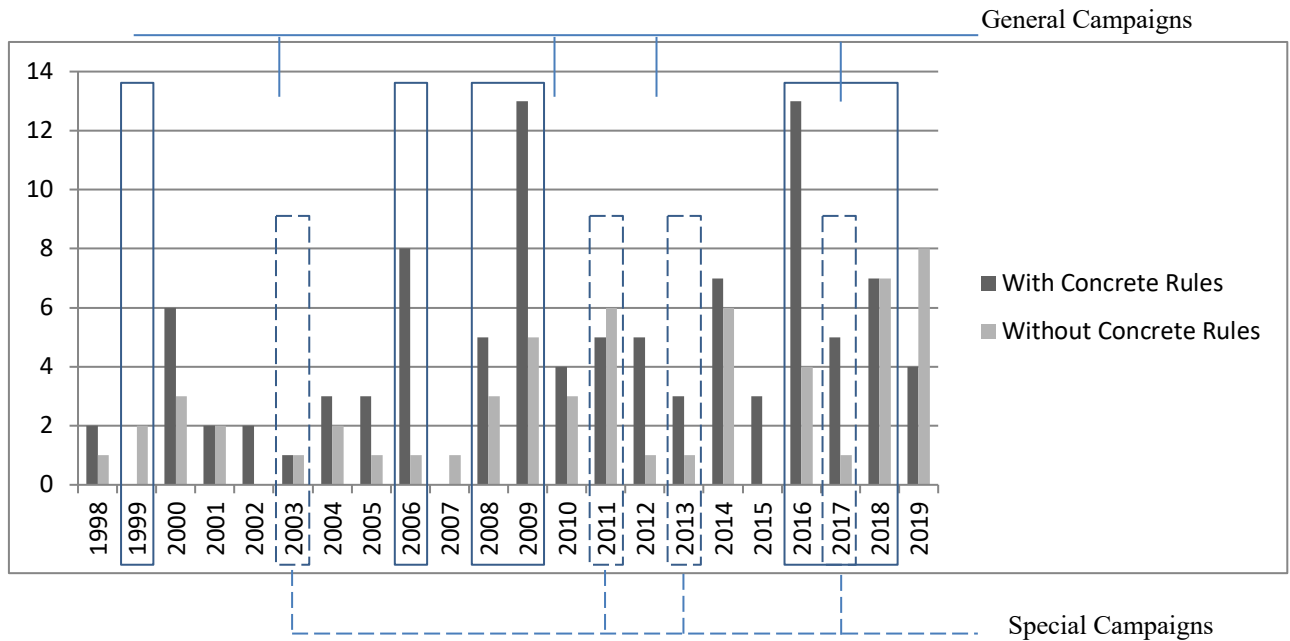
199. The first general campaign was the “enforcement year” of 1999, trying to clear up the backlog of enforcement cases. Ye Zhihao et al. (叶志浩), Goujian Qingji Changxiao Jizhi, Nuli Huajie Zhixing Nan (构建清积长效机制 努力化解执行难) [Create Long-Lasting Mechanisms to Resolve the Difficulties in Enforcement], RENMIN FAYUAN BAO (人民法院报) [PEOPLE'S CT. DAILY], Oct. 21, 2010, at 08. The Supreme Court was so optimistic about the outcome that in 2001, Vice-President of the Supreme Court, Zhu Mingshan, and Vice-Director of the Enforcement Office, Ge Xingjun, openly suggested not mentioning the difficulties in enforcement anymore. Zuigao Renmin Fayuan Zhixing Gongzuo Bangongshi Fuzhuren Ge Xingjun zai Quanguo Fayuan Zhixing Lilun Yantaohui shang de Zongjie (最高人民法院执行工作办公室副主任葛行军在全国法院执行理论研讨会上的总结) [Concluding Remarks of Ge Xingjun, Vice-Director of the Enforcement Office of the Supreme People's Court, at the Seminar on Enforcement Theory Attended by Courts Nationwide] (promulgated by the Sup. People's Ct., Sept. 13, 2001, effective Sept. 13, 2001) CLI.3.127249 (Chinalawinfo). However, backlog came back soon, and the Supreme Court was forced to launch a special campaign in 2003, targeting enforcement cases concerning the restructuring of state-owned enterprises and those with huge social impact. Ye et al., *supra*. General campaigns ensued in 2006 and 2008–2009. *Id.* Between 2016 and 2018 and during Xi's legal reform, the Supreme Court launched the most ambitious campaign to “basically resolve the difficulties in enforcement.” Guanyu Luoshi “Yong Liang dao San Nian Shijian Jiben Jiejue Zhixing Nan Wenti” de Gongzuo Gangyao (关于落实“用两到三年时间基本解决执行难问题”的工作纲要) [Work Outline for Basically Resolving the Problem of the Difficulties in Enforcement Within Two to Three Years] (promulgated by the Sup. People's Ct., Apr. 29, 2016, effective Apr. 29, 2016) CLI.3.269800 (Chinalawinfo). Special campaigns also recurred in 2011 (dealing with diehard debtors who tried to escape enforcement), 2013, and 2017 (both tackling cases bothering people's livelihood). Guanyu Kaizhan Fan Guibi Zhixing Zhuanxiang Huodong de Gongzuo Fang'an (关于开展反规避执行专项活动的工作

The Supreme Court has enacted numerous rules on enforcement issues, which have had an amazing correlation with the rise and fall of *general* campaigns. The following diagram depicts Supreme Court rules on or related to civil judgment enforcement.²⁰⁰ Dark columns indicate Supreme Court rules with concrete measures, and light columns denote those without concrete measures.²⁰¹ The squares with full lines designate general campaigns, while those made by dashed lines refer to special campaigns.

方案) [Work Plan on Launching a Campaign Against Circumventing Enforcement] (promulgated by the Sup. People's Ct., Dec. 31, 2010, effective Dec. 31, 2010) CLI.3.150492 (Chinalawinfo); Guanyu Kaizhan she Minsheng Anjian Zhuangxiang Jizhong Zhixing Huodong de Tongzhi (关于开展涉民生案件专项集中执行活动的通知) [Notice on Launching a Campaign of Focused Enforcement of Cases Bothering People's Livelihoods] (promulgated by the Sup. People's Ct., Dec. 12, 2013, effective Dec. 12, 2013) CLI.3.223794 (Chinalawinfo); Guanyu zai 2017 Yuandan, Chunjie Qijian Kaizhan she Minsheng Anjian Jizhong Zhixing Xingdong de Tongzhi (关于在2017年元旦、春节期间开展涉民生案件集中执行行动的通知) [Notice on Launching a Campaign of Focused Enforcement of Cases Bothering People's Livelihoods During the New Year's Day and the Spring Festival of 2017] (promulgated by the Sup. People's Ct., Dec. 8, 2016, effective Dec. 8, 2016) CLI.3.287095 (Chinalawinfo).

200. The data are collected by the author through title search of "enforcement" and content search of "difficulties in enforcement," "enforcement year," and "clearing up the backlog" in the database of Chinalawinfo. The data exclude Supreme Court rules on administrative enforcement, criminal enforcement, and cross-border enforcement. The data also exclude informal documents without a reference number and the replies of the Supreme Court to the questions raised by lower courts or other government agencies (*dafu*, *fuhan*, or *pifu*).

201. The Supreme Court often promulgates guidelines without concrete measures. For instance, in the first year of Xi's enforcement campaign, the Supreme Court issued Guanyu Yifa Shenli he Zhixing Minshi Shangshi Anjian Baozhang Minjian Touzi Jiankang Fazhan de Tongzhi (关于依法审理和执行民事商事案件保障民间投资健康发展的通知) [Notice on Adjudicating and Enforcing Civil and Commercial Cases According to the Law to Promote the Healthy Development of Private Investments] (promulgated by the Sup. People's Ct., Sept. 2, 2016, effective Sept. 2, 2016) CLI.3.282760 (Chinalawinfo). This Notice, *inter alia*, asks courts to apply the law impartially, protect lawful transactions, and adopt enforcement measures appropriately. *Id.*



Except for the 1999 campaign, every general campaign generated more Supreme Court rules with concrete measures compared with those enacted immediately before and after the campaign. Notably, within six years of general campaigns (2006, 2008-2009, and 2016-2018), the Supreme Court promulgated fifty-one rules with concrete measures, *i.e.*, 8.5 per year, while in the remaining fourteen years (1998, 2000-2005, 2007, and 2010-2015, including years with special campaigns), merely forty-six rules were enacted, roughly 3.3 per year.

Ultimately, the year 1999, the only campaign year that Jianfu Chen discusses, is an outlier. All the later general campaigns were accompanied by the promulgation of voluminous rules with concrete measures that enforcing judges have to observe in the future, as shown by the diagram above. The most striking product is *Instructions on Handling Enforcement Cases* compiled by the Supreme Court in 2017,²⁰² which contains 1,000 articles. This bible consolidates currently effective rules, covers every step of enforcement, and is highly executable.

The years with special campaigns do not necessarily yield more rules than adjacent years. Further, rules without concrete measures do not show an observable regularity. Therefore, the

202. Renmin Fayuan Banli Zhixing Anjian Guifan (人民法院办理执行案件规范) [Instructions on Handling Enforcement Cases by People's Courts] (promulgated by the Sup. People's Ct., 2017, effective 2017) CLI.3.299292 (Chinalawinfo).

Supreme Court probably gave the most attention to general campaigns, and it intentionally enacted many rules with concrete measures to improve enforcement.

As such, although some campaign measures as listed by Chen could not be sustained, it is remiss to dismiss sustainability of the campaign achievements. Recent years' general campaigns have left a legacy, namely, a large number of Supreme Court rules with concrete measures.

After the 2016-2018 campaign to "basically resolve the difficulties in enforcement," the Supreme Court reported to the Standing Committee of the National People's Congress in April 2019 that the goal of the campaign had been achieved.²⁰³ Nevertheless, the Supreme Court emphasized that those measures employed during the campaign should be normalized (*changtai hua*) and institutionalized (*zhidu hua*). As an example, the Supreme Court routinized the requirement of mandatory enforcement rates.²⁰⁴ Interestingly, the Supreme Court report did not mention lifelong judicial accountability, as if this mechanism was irrelevant to enforcement. But regardless, it had already been written into the law during Xi's legal reform.²⁰⁵

Zhang's case is not about the eternal tension between rules and principles.²⁰⁶ It is about how political pressure rigidified legal formalism, which clandestinely redistributed rights, obligations, and responsibilities among case parties. In this case, neither the Creditor nor Company R had intended to hold Zhang liable for Mine X's debts in the beginning,²⁰⁷ but through the operation of political

203. Zuigao Renmin Fayuan Guanyu Yanjiu Chuli dui Jiejue Zhixing Nan Gongzuo Qingkuang Baogao Shenyi Yijian de Baogao (最高人民法院关于研究处理对解决执行难工作情况报告审议意见的报告) [Report of the Supreme People's Court on the Work Progress of People's Courts on Resolving the "Difficulties in Enforcement"] (promulgated by the Sup. People's Ct., Apr. 21, 2019, effective Apr. 21, 2019) CLI.3.331423 (Chinalawinfo).

204. *Id.*

205. *See supra* notes 134–38 and accompanying text.

206. As to the tension between rules and standards, *see* Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685, 1687–713 (1976).

207. As to the Creditor: When the Creditor entered into the machine purchase agreement with Mine X, Xu Liangjian (the legal representative of the Creditor) believed that Company R was the shareholder and controller of Mine X. *See supra* note 31 and accompanying text. It was Judge Wei who advised Xu to hold Zhang liable. *See supra* note 28 and accompanying text. After Judge Wei made Company R an additional debtor, Xu agreed to release Zhang from liability. *See supra* note 104 and accompanying text. All these show that the Creditor had not intended to hold Zhang liable in the beginning. As to Company R: When Zhang and his friend visited Company R for the first time, the general manager proclaimed that the debt had nothing to do with Zhang and that Company R was willing to take responsibility. *See supra* note 71 and accompanying text. The management changed their attitude after the employee of Company R heard of Judge Wei's comments. *See supra* notes 72, 75 and accompanying text. So, Company R should not have intended to hold Zhang

pressure, the enforcing judges stuck to the text of a concrete rule and penalized Zhang against their own sense of justice.²⁰⁸ This way of legal interpretation is an unexpected outcome resulted from, and detrimental to, the reform of civil judgment enforcement. Since this cost is likely to function lastingly,²⁰⁹ it is important to recognize and address it. Also, it might be time to explore whether adjudicating judges have shown the same tendency of rigidifying legal formalism after Xi's legal reform.²¹⁰

liable in the beginning.

208. See discussion *supra* Section III.B and C and Section IV.B.

209. See *supra* notes 198–205 and accompanying text.

210. Although mandatory enforcement rates do not apply to adjudicating judges, lifelong judicial accountability does. See *supra* notes 134–38 and accompanying text. I speculate that the politicization of lifelong judicial accountability may alter the motives and choices of adjudicating judges as well, which may change their interpretation of laws. Further, it is worthy of exploring whether there are other mechanisms resulted from Xi's legal reform that have reshaped these judges' legal interpretation.