As shown in this chapter, China’s judicial system is anything but simple. Even translating the word “judiciary” proves problematic. Further, China’s court system has a number of unusual features, including separate filing and enforcement tribunals as well as a form of people’s jurors. Contrary to what other researchers have found, the many judges we interviewed displayed almost brutal honesty in openly discussing problems such as judicial independence. Although many judges remain cynical, a few found hope in the judicial experiments, described in detail below, being carried out in China.

A. Court System

China’s Sense of the Judiciary

The term “judiciary” here refers to the courts of China. However, this title may not be entirely accurate as the PRC Constitution defines courts as “the adjudicating organ of the State.” Though Chinese courts are often translated into English as “judicial organ” or “judiciary,” such English terms cannot be simply applied to any specific state organ of China. Judiciary can be translated into Chinese as Sifa. But the term Sifa appears in the Constitution in connection with the agencies under the Ministry of Justice, which is responsible for the management and supervision of lawyers, notary publics, prisons, and has almost nothing to do with courts. The courts are also not called “judiciary” or “judicial organ” in the Organic Law of People’s Courts.

However, when a person talks about “judicial organs,” listeners will understand that the term refers to “the courts of China,” or sometimes “the
courts and the procuratorates (prosecutors),” or occasionally “the courts, procuratorates, and the public security agencies (police).” In no way will a listener understand “judicial organs” as referring to the Ministry of Justice and its corresponding agencies at local levels, which are normally called by a very interesting name: “judicial administrative organs.” It would be a misunderstanding if the Ministry of Justice and its corresponding agencies at local levels, which never represent the government in any cases, are believed to be equal to the Department of Justice in the United States.

The procuratorate, including the Supreme People's Procuratorate and the procuratorates at various local levels, is not an agency under the administrative branch. Instead, it is a separate state organ under the Constitution and has a footing that is equal to that of the courts. The chief procurator of the Supreme People’s Procuratorate has the same status as the chief judge of the Supreme People's Court (SPC), and both of them must make annual reports to the National People’s Congress (NPC), together with other “state organs” that are responsible for the NPC including the National People’s Congress Standing Committee (NPCSC) and the State Council. As an independent “law supervision organ” the procuratorate is sometimes regarded as a Sifa organ.

The PRC Constitution makes it clear that the NPC and its Standing Committee constitute the country’s legislature and that the State Council is the top administrative organ of the country. However, there is no separate section on the judiciary, or Sifa. The omission of the judiciary seems to have been done intentionally to avoid “separation of powers” or “checks and balances.”

Throughout its history as an empire and before the emergence of the Republic of China in 1912, China had no Western-type judiciary. However, that does not mean that China did not have a judicial function under its governments. The difference is that the judicial function was inseparable from the other functions. The chief local officials undertook the judicial functions. They acted as prosecutors, arbitrators, and judges as well as agriculture and commerce administrators, morality tutors, calligraphers, and poets.

The Constitution of China authorizes the courts to “exercise adjudicating power independently, in accordance with the provisions of the law.” However, the mechanism and culture of unification of all powers under a certain level of decision maker, whether a single person or a committee, which still pervades China’s current political system, make it difficult for its judiciary to act independently.

Further, this structure makes it difficult to build in “checks and balances.” The Constitution states that the courts “are not subject to interference by any administrative organ, public organization or individual”