Dependent Judiciary and Unaccountable Judges: Judicial Corruption in Contemporary China

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Abstract
This article examines a particular form of corruption — judicial corruption. It goes beyond the attribution of generalized behavioural pitfalls in corruption analysis to identify the main institutional and organizational constraints shaping the corrupt conduct of judiciary agents. Judicial corruption, in both political and personal forms, is closely associated with two major characteristics of China’s judicial institutions — political dependence and lack of accountability. The structural dependence of the judiciary increases the incidence of political corruption, as judicial officials surrender legal standards and professional integrity to external political or economic pressure. Meanwhile, the internal structure of the judiciary is such that it permits judicial officials to undertake individual corrupt activities, as they are usually not held strictly accountable for what they do. Because judicial rulings concern the distribution of wealth and power, a structurally deficient judiciary means more opportunities for corruption and a venal judiciary leads to
impunity for corrupt activities of all sorts. This explains the rampancy of corruption in the judicial institutions themselves and in society at large in China.

Corruption, despite being age-old, grows in sophistication and complexity in a fast-changing environment. In China, therefore, it is not surprising to see new outbreaks of corruption emerging during rapid market-driven economic transformation. While many see the incomplete liberalization of the economy as a cause of this surge of corruption,\(^1\) scant attention has been paid to the institutional context in which Chinese officialdom operates. This article examines a particular form of corruption — judicial corruption — and argues that corruption is not simply an extended consequence of China’s hybrid economic system; rather, it is a systemic malady with roots and modes running deep beneath certain institutional conditions.

Judicial corruption refers to the misuse and abuse of legal power by judicial personnel for personal or cliquish gains. Relatively unknown in the early years of the People’s Republic, judicial corruption has been growing rapidly in China today. Numerous corruption cases pertaining to judicial officials have been reported in the media, ranging from illegal contact with litigants, bribe-taking and extortion, use of coercive measures, excessive fees and charges, and forgery, to the leaking of confidential legal information. The influence of power, *guanxi* (”relationships”), and money over court judgments has become so prevalent that certain cases have been referred to as “power cases” (*quanli an*), “relationship cases” (*guanxi an*), and “money cases” (*jinqian an*). This terminology reflects public resentment against judicial corruption and indicates the inability of the courts to function impartially and honestly. Some commentators believe that judicial power, as a public power, is being privatized, personalized, and localized in China.\(^2\)

The rampancy of judicial corruption raises a number of questions. How could corruption have become so rampant in the judiciary, an institution that is supposed to be strictly law-abiding, morally upright, and politically impartial to any special interests? What has driven judges, who are expected to exert strength of character and who, as legal experts, fully understand the consequences of judicial misconduct, to engage in corruption on a massive scale? How have corrupt judges been able to act illegally while performing legal adjudication?

This article attempts to address these questions from a new