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Essay

Benjamin L. Liebman*

Ordinary Tort Litigation in China: Law versus Practical Justice?

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Pei Guosong died when he drove his Dayun-48 light motorcycle into the back of a farm tractor parked on the side of a road in rural Hubei province on the afternoon of October 1, 2010.¹ A police inspection found that Pei was primarily responsible for the accident because he had been drunk, failed to wear a helmet, and was riding without a license at the time of his death. Nevertheless, the police also found Liu Chuanbin, the owner of the tractor, to be secondarily at fault because he had blocked traffic when he temporarily parked his tractor. Liu had done so to help a third person, Liu Yi, load rice that Liu Yi had been drying on the road.

Pei's wife and two grown sons brought suit against Liu Chuanbin, Liu Yi, and the transportation and road safety offices of the local county government. Although the police report on the accident did not assign responsibility to either Liu Yi or to the local government, the court imposed liability on all of the defendants other than the local transportation department. The court assessed total damages at 371,358 yuan (roughly \$55,000). It ordered Liu Yi and Liu Chuanbin jointly to pay 15% of the damages, or 55,703 yuan, plus 4500 yuan in emotional compensation to the plaintiffs. The court found that the rice farmer, Liu Yi, was liable because he had acted illegally in drying rice on the road.² The court also ordered the local road safety office to pay 10% of damages, or 37,135 yuan, plus

¹ 2011-137. Numerical year and number citations in this essay refer to court judgments in Court A in the years specified. All cases facts in this essay are drawn from court opinions.

² The court also found that Liu Yi was liable under a Supreme People's Court interpretation that holds that a person who is the beneficiary of assistance without compensation from a negligent party shall be joint and severally liable (被帮工人).

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3000 yuan in emotional compensation. The court rejected the road safety office's claim that that it should not be responsible because it was the police, not the road safety office, that was in charge of keeping roads clear. The court stated that "As the government department in charge of the road, the road safety office has a duty to monitor and manage the road. It failed to do so."

Pei was just one of the tens of thousands of people who die on China's roads each year. Estimates range from an official number of roughly 60,000³ to a WHO estimate of more than 250,000 road fatalities.⁴ Many of these deaths result in litigation. There were 888,000 traffic accident cases heard in Chinese courts in 2015, approximately 10% of all civil cases.⁵ Pei Guosong's case appeared routine, but it also reflected key values that characterize tort adjudication in China: the court went out of its way to guarantee that surviving family members received compensation in an accident in which the decedent appeared to be mostly responsible; the court was willing to impose liability on two parties not found responsible by the police, despite the fact that the only evidence submitted in the case was the police report; the court ignored or stretched legal rules by imposing

3 China's State Statistics Bureau reported 58,523 deaths from traffic accidents in 2014, 58,539 in 2013, 59,997 in 2012, 62,387 in 2011, and 65,225 in 2010. Jiaotong Shigu Siwang Renshu (交通事故死亡人数) [Number of Road Traffic Deaths], Guojia Shuju (国家数据) [National Data], <http://data.stats.gov.cn/easyquery.htm?cn=C01&zb=AOS0D02&sj=201> (last visited Jul. 18, 2018).

4 Road Traffic Deaths Data by Country, World Health Organization, <http://apps.who.int/gho/data/node.main.A997> (last updated May 16, 2018).

5 The number of cases marked a significant increase over prior years. Although official reports are difficult to find, one media account reported 744,570 traffic accident cases in China's courts in 2011. One Shandong study estimated that 20% of civil cases result from traffic accidents. Feng Jian (冯建) & Li Zhaoxia (李朝霞), *Guanyu Jidongche Jiaotong Shigu Zeren Jiufen Anjian De Diaoyan Baogao* (关于机动车交通事故责任纠纷案件的调研报告) [Research Report on Motor Vehicle Accident Liability Cases], Shandong Shenpan (山东审判) [Shandong Trial], 2013, vol. 6, at 39. The Supreme People's Court's 2016 work report reported that in 2015 34% of tort cases and 8% of all civil cases were traffic accident cases. Zuigao Renmin Fayuan Yanjiushi (最高人民法院研究室), *2015 Nian Quanguo Fayuan Shenpan Zhixing Qingkuang* (2015年全国法院审判执行情况) [2015 National Courts Trial and Enforcement Situation], Renmin Fayuan Bao (人民法院报) [People's Court Daily], Mar. 18, 2016, at 4. <http://www.chinacourt.org/article/detail/2016/03/id/1824191.shtml>.

liability on the local government in order to ensure compensation to the plaintiffs;⁶ and the court decision ensured that no single defendant (in particular not farmer Liu Chuanbin) bore an excessive financial burden for compensating the victim's dependents. The court's decision likely also reflected concerns about its ability to enforce a judgment. Neither Liu Yi nor Liu Chuanbin had insurance, was represented by a lawyer, or appeared in court.

This essay examines the roles courts play in tort litigation in China, in particular in litigation resulting from death and injury on China's roads. At first glance traffic accident litigation in China appears to be an area in which courts play minor roles. The police, not courts, are the primary fact-finders. China's mandatory automobile insurance system has clear guidelines for compensation levels and imposes nearly strict liability in most traffic accident cases. Courts' roles are, at least in law, largely relegated to calculating damages. Chinese law provides

⁶ Chinese law provides no basis for imposing liability on government actors in such situations. Traffic regulations in Hubei Province impose an obligation on local authorities to inspect roads regularly and promptly to address any hidden dangers. The regulations do not provide a basis for civil liability on the government for failure to do so and do not mention any obligation to remove parked vehicles. The national Road Safety Law imposes civil or administrative liability on parties that block the road or create a hazard but includes no mention of a duty on government actors to prevent such harm or liability on the government for accidents that result from failure to do so. *Zhongghua Renmin Gongheguo Daolu Jiaotong Anquan Fa* (中华人民共和国道路交通安全法) [Road Traffic Safety Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 29, 2007, effective May 1, 2008), 2008 *STANDING COMM. NAT'L PEOPLE'S CONG. GAZ.* 1, at 32. The court instead relied on the SPC's interpretation regarding the trial of personal injury cases, which states that when a defect in the construction, maintenance or management of a road causes injury, the party responsible for managing the road shall be liable. *Zuigao Renmin Fayuan Guanyu Shenli Renshen Sunhai Peichang Anjian Shiyong Falü Ruogan Wenti de Jieshi* (最高人民法院关于审理人身损害赔偿案件适用法律若干问题的解释) [Interpretation of the Supreme People's Court of Some Issues concerning the Application of Law for the Trial of Cases on Compensation for Person Injury] (promulgated by the Sup. People's Ct., Dec. 26, 2003, effective May 1, 2004), art. 16, 2004 *SUP. PEOPLE'S CT. GAZ.* 2, at 3. Yet the court did not identify a defect; it stated that because the county road safety office had been careless in managing the road it was responsible for the accident. The transportation bureau was not liable because it was not directly responsible for road safety. The court also relied on the general provision in article 6 of China's Tort Liability Law, which provides that a negligent actor shall be responsible for the consequences of such action. *Zhongghua Renmin Gongheguo Qinquan Zeren Fa* (中华人民共和国侵权责任法) [Tort Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Dec 26, 2009, effective July 1, 2010), art. 6, 2010 *STANDING COMM. NAT'L PEOPLE'S CONG. GAZ.* 1, at 4. Although the Road Safety Law was subsequently amended in 2011, those amendments did not have any effect on Pei Guosong's case. In this essay I cite to laws and regulations in effect at the time the cases discussed were decided. I mention subsequent amendments only if such amendments would have affected case outcomes.

schedules for assessing damages based on average local income levels, and thus outcomes in theory are highly predictable.

Tort litigation might also seem to be an area where there is no strong reason for court practice in China to differ from practice elsewhere: tort cases are common and appear far removed from core stability concerns of the Chinese Party-state. There is little to suggest that an authoritarian legal system should view routine private law litigation as politically sensitive. Examining tort cases, however, suggests how difficult it is to separate out the role courts play in tort cases in China from those played in areas officially deemed sensitive.⁷ Courts adjudicating routine cases seek to eliminate not just the possibility of unrest but also of litigant dissatisfaction. The result is that much of what occurs in traffic accident litigation in China appears unusual when placed in comparative perspective.

Courts hearing tort cases in China serve as problem solvers for society, and for the Party-state. Plaintiffs receive some compensation in virtually all tort cases. Courts focus not on determining the truth of what happened but on ensuring that compensation is paid, in particular in cases in which plaintiffs (accident victims or their surviving dependents) face significant hardship. To do so courts ignore legal rules or innovate in the interstices of unclear law in ways that ensure that weak or aggrieved parties receive compensation, losses are shared among those able to pay, and the risk of unrest is mitigated. Chinese tort law is well-developed and relatively clear. Yet many cases do not follow the written law.

Tort litigation in China also highlights the strategic use of courts by individuals, institutions, and the state, with unusual results. Despite highly predictable outcomes and a court system that encourages mediation of civil disputes; insurance companies in Hubei rarely settle traffic accident cases that enter the courts, even when doing so might reduce payouts. Instead, insurance companies use litigation to delay payment on policies and to reduce the possibility of fraud by their own personnel. Litigants sue even when there appears to be little chance that a defendant will be able to pay a judgment. Litigants use litigation not just to obtain compensation from defendants but also to obtain payments from the state, regardless of whether the state has a legal obligation to pay compensation. Local

7 Scholars of Chinese law have long debated whether courts are becoming more independent in their handling of routine cases. See, for example, Randall Peerenboom, *Judicial Independence in China: Common Myths and Unfounded Assumptions*, in *Judicial Independence in China: Lessons for Global Rule of Law Promotion* (Randall Peerenboom, ed., Cambridge University Press, New York 2010); Benjamin L. Liebman, *China's Courts: Restricted Reform*, 191 CHINA Q. 620 (2007). More recently Professors Zhang and Ginsburg have argued that since Xi Jinping came to power in 2012, China has “turned towards law” and that there are only a “small minority of socially or politically charged cases where the courts are under significant outside pressure to reach specific outcomes.” Taisu Zhang & Tom Ginsburg, *China's Turn Toward Law*, 59 Va. J. Int'l L. 279, 295, 316 (2019).

governments rely on courts to identify those in need and assign liability to parties with deep pockets in order to reduce the potential financial burden of the state in a system with very limited social insurance. Courts hearing tort cases in China must respond to these varied uses and litigant goals; doing so requires doing more than resolving legal or factual issues.

Tort litigation provides insight into the values influencing the resolution of routine civil cases in China: concerns about fairness and social stability; high levels of deference to other state actors; and a desire by judges to avoid responsibility. Popular and scholarly descriptions of Chinese courts often suggest that courts that fail to follow the law do so because of political interference or corruption. Tort cases suggest another possibility: courts ignore the law when they view it as unfair or unable to provide a practical solution to a dispute. Tort litigation thus also raises questions relevant to increased public discussion of the importance of consistency in the Chinese legal system: what does it mean to be consistent in a system where court concerns about fairness, equity, and enforceability may be as important as adherence to legal rules?

1 Background and Law

This essay examines 336 personal injury cases from one county court in Hubei Province, covering the years 2009–2013. I refer to the court as Court A and to the county in which it is located as County A. Hubei, in central China, has a population of approximately 60 million and ranks 14th in GDP per capital of China's 31 provincial-level jurisdictions. Judges at the court collected and provided the cases, which they stated cases represented all personal injury cases heard in the court during those years. It does not appear that the court intentionally withheld any categories of cases. Like all datasets of Chinese cases, this dataset is imperfect and almost certainly incomplete.⁸ Nevertheless, the data provide a base for examining the roles courts play in handling one type of litigation that has become routine in China in recent years, and that exists largely away from the headlines. The ability of individuals to use the legal system to recover for misfortune also provides insight into how ordinary people experience the legal system in practice.

⁸ For example, a small number of tort cases from Court A from the same time period are available online that were not included in the court-provided dataset. Yet most of the cases in the court-provided dataset are not available online. Although the SPC began requiring courts to post their decisions online in 2014, after the period covered in this study, on average only roughly 60% of cases are posted online. This means that the dataset on which this paper is based likely provides a more complete view of one court's handling of traffic cases than would data obtained from the SPC's online database.

Of the 336 cases, 280 involved traffic accidents. The remaining tort suits were spread across a range of areas, with 19 cases related to injuries arising in informal labor situations, thirteen cases arising out of fights, 12 traffic accident-related insurance contract cases,⁹ two medical malpractice cases, and ten other tort cases. I supplement this data with a separate dataset of 309 cases from a different county in Hubei, County B, from the years 2005 to 2010. Although the datasets are not directly comparable, they provide similar insights into the dynamics of tort litigation.¹⁰ I also conducted interviews with judges, lawyers, and insurance company officials in a range of jurisdictions in Hubei, including County A and County B.

The legal framework governing compensation for injuries suffered in traffic accidents in China combines strict liability – liability without fault – with assessment of damages based on the relative fault of the parties. All owners of motorized vehicles (other than farm vehicles) must purchase mandatory automobile insurance. National regulations specify coverage amounts:¹¹ since 2008 mandatory automobile insurance (MAI) has covered a maximum of 10,000 yuan for medical expenses, 110,000 yuan liability for death or disability compensation, and 2000 liability for property damage.¹² MAI provides compensation to accident victims regardless of whether an insured driver is at fault. If a driver is found partially or wholly at fault the driver's insurer is liable up to the maximum allowable for each category of damages regardless of the driver's share of responsibility for the accident. If a driver is found to be entirely without fault the insurer's liability is capped at approximately 10% of the maximum for each

9 The insurance contract cases generally arose in situations in which a defendant had already paid damages to an accident victim and then brought a separate action against the insurer. The court classified these cases as tort cases and thus I do the same.

10 I also located thirty-two decisions in online databases from the intermediate court with jurisdiction over Court A that were appeals of tort cases from Court A during the timeframe of this study. The small sample size and the fact that most appellate decisions turned on technical issues concerning calculation of damages make drawing conclusions regarding appellate court conduct difficult. Nevertheless, the appellate cases did not suggest a difference in approach between the intermediate court and the trial court. In interviews intermediate court judges likewise did not suggest a fundamental difference in approach to how they handle tort cases.

11 Zhongguo Baojianhui Guanyu Tiaozheng Jiaoqiangxian Zeren Xian'e de Gonggao (中国保监会关于调整交强险责任限额的公告) [Announcement of China Insurance Regulatory Commission on Adjusting the Liability Limits for Mandatory Liability Insurance for Traffic Accidents of Motor Vehicles] (promulgated by China Ins. Regulatory Comm'n, Jan. 11, 2008, effective Feb. 1, 2008), CLL4.101184(EN) (Chinalawinfo).

12 Jidongche Jiaotong Shigu Zeren Qiangzhi Baoxian Tiaoli (机动车交通事故责任强制保险条例) [Regulation on Compulsory Traffic Accident Liability Insurance for Motor Vehicles] (promulgated by the St. Council, Mar. 21, 2006, effective Jul. 1, 2006), 2006 ST. COUNCIL GAZ. 13, at 38.

category of damages.¹³ In practice, however, the police and courts almost never find a driver to be entirely without fault, and thus strict liability applies up to the MAI maximums.

Mandatory insurance covers third-parties, not the driver or passengers in the insured vehicle. If two parties are at fault, they may recover against each other's mandatory automobile insurance policies. Damages against those who fail to purchase insurance are assigned as if the defendant had purchased insurance, meaning that uninsured defendants are strictly liable up to the maximum amount payable under the MAI provisions. It is common for plaintiffs to recover the maximum recoverable under the MAI regulations even when a plaintiff was primarily at fault for injuries and had failed to purchase insurance or obtain a license.

Mandatory insurance provides only limited coverage in most cases of serious injury. Medical expenses, for example, are capped at 10,000 yuan (less than \$2000) under mandatory insurance – an amount that is easily exceeded in any case involving serious harm. The amounts payable for death or disability under the MAI are in most provinces far lower than the amounts allowed under Chinese tort law.¹⁴ For damages exceeding the amounts covered by mandatory insurance the Road Safety Law provides for damages to be assessed based on the percentage fault of the parties, with the driver's liability increased modestly if the accident involved a pedestrian or non-motorized vehicle. Many drivers in China purchase

¹³ See Road Safety Law, art. 76.

¹⁴ The exception is in provinces with low average rural income levels, including Hubei in the first year or two of the cases in this study. Compensation for death is calculated at twenty times average income, with different standards applying for urban and rural residents in each province. The result is a wide range of possible awards depending on the year, whether the victim is classified as an urban or rural resident, and the location of the accident. Standards are adjusted annually. For example, average rural income in Hubei in 2009 was 4656 yuan, meaning the death compensation was 93,120 yuan for rural residents. In contrast, average urban income was 13,153 yuan, meaning that death compensation for urban residents was 263,060 yuan. By 2014 average urban income had increased to 22,906 yuan, meaning that urban death compensation was 458,120 yuan. Amounts are significantly higher in more developed regions: the 2014 figure for Shanghai was roughly double that for Hubei. 2009 Niandu “Hubeisheng Daolu Jiaotong Shigu Sunhai Peichang Biaozhun” (2009年度《湖北省道路交通事故损害赔偿标准》) [2009 Hubei Traffic Accident Compensation Standards], <http://jgj.wuhan.gov.cn/wjtsjg/40521.jhtml> (last visited Jul. 23, 2018); 2014 Niandu Hubeisheng Daolu Jiaotong Shigu Sunhai Peichang Biaozhun (2014年度湖北省道路交通事故损害赔偿标准) [2014 Hubei Traffic Accident Compensation Standards] <http://jgj.wuhan.gov.cn/wjtsjg/40528.jhtml> (last visited Jul. 23, 2018); 2015 Nian Shanghai Jiaotong Shigu Peichang Biaozhun (2015年上海市道路交通事故赔偿标准) [2015 Shanghai Traffic Accident Compensation Standards], <https://wenku.baidu.com/view/3ff367c4f121dd36a22d8256.html> (last visited April 25, 2020). Other factors can also contribute to a wide variation in damage awards. For example, family members of a pedestrian killed received only 29,000 yuan in compensation in one 2011 case because the victim was elderly and thus had a limited life expectancy.

supplemental insurance, referred to as “commercial insurance,” in addition to mandatory insurance. Commercial insurance policies generally pay damages to third parties in excess of the amounts covered by MAI based on the percentage fault of the defendant, minus a deductible. Liability insurance outside the context of automobile insurance is rare. Major insurance companies are almost all state-owned, and MAI is viewed by insurers as not being profitable. Insurance companies participate in the market because they must do so, although they also use MAI to sell commercial insurance.

Courts handling traffic disputes do so against the backdrop of a chaotic and weak regulatory system for vehicles. Data on the percentage of vehicles that are insured do not appear to be publicly available. In County A most cars and trucks carry MAI, but most motorcycles are uninsured. Many motorcycles (and their drivers) are also unlicensed. Electric bicycles and electric motorcycles are not licensed and thus are not eligible to be covered by MAI – but are frequently involved in accidents.

Both the Road Safety Law and the MAI regulations reflect a desire to ensure that victims receive some compensation even when the victim is entirely responsible for the accident. The Road Safety Law states that a driver who is not responsible for an accident shall be liable for no more than 10% of damages suffered by the victim if the victim was 100% at fault (a defendant is held to be entirely not liable only when a plaintiff intentionally caused the accident).¹⁵ If neither party is at fault, however, the driver of a motorized vehicle is held fully liable if the other party to the accident was a pedestrian or non-motorized vehicle.

China’s 2009 Tort Liability Law provides additional support for courts to award damages even when a defendant is not found to have been negligent (and where strict liability is not applicable). Article 24 of the Tort Law states that in a situation in which an actor and a victim both are without fault for an injury, courts may order “both parties to bear the cost according to the actual circumstances.”¹⁶ Based on a provision in the 1986 General Principles of the Civil Law,¹⁷ this provision is generally referred to as providing for “equitable liability.” No court judgment from Court A or Court B relied on this provision, instead always finding negligence and

¹⁵ Road Safety Law, art. 76. The MAI regulations include a similar provision.

¹⁶ Tort Liability Law, art 24.

¹⁷ Zhonghua Renmin Gongheguo Minfa Tongze (中华人民共和国民法通则) [General Principles of the Civil Law of the People’s Republic of China] (promulgated by the Sup. People’s Ct., Apr. 12, 1986, effective Jan. 1, 1987), art. 132, 1986 SUP. PEOPLE’S CT. GAZ. 2, at 15.

relying on the more specific provisions of the Road Safety Law. Nevertheless, the legal provisions calling for equitable liability in situations involving loss without negligence may provide courts with support for practical allocations of liability.¹⁸

Following an accident police are required to issue an accident verification report that summarizes the facts of the accident and assigns a level of responsibility to each party.¹⁹ The verification report does not determine damages. The Road Safety Law provides that if there is a disagreement concerning appropriate compensation parties may seek mediation by the traffic police or may bring a lawsuit.²⁰ Parties who disagree with the police determinations of fault may also seek administrative review by a higher-level police department, although doing so is rare and almost never effective.²¹

Provincial regulations provide added guidance to the police and the courts. Hubei's measures on implementing the Road Safety Law instruct the police to

18 Chinese scholarship on the provision generally uses the term 公平责任, equitable liability, to describe the principle that parties may be liable without fault. Chenglin Liu contests this term, arguing that the provision should be better understood as “socialized liability” – because there is nothing equitable about imposing liability on someone who has acted without fault. Chenglin Liu, *Socialized Liability in Chinese Tort Law*, 59 HARV. INT'L L. J. 16 (2018). Professor Liu also notes that the state is also a prime beneficiary of such decisions, because such awards help to maintain social stability. In practice, the provision is used to impose liability on non-actors, including bystanders to accidents, as well as on those whose non-negligent actions contribute to an accident.

19 Road Safety Law, art. 73.

20 Road Safety Law, art. 74; Zhonghua Renmin Gongheguo Daolu Jiaotong Anquan Fa Shishi Tiaoli (中华人民共和国道路交通安全法实施条例) [Regulation on the Implementation of the Road Traffic Safety Law of the People's Republic of China] (promulgated by the St. Council, Apr. 30, 2004, effective May 1, 2004), arts. 94 & 95, 2004 ST. COUNCIL GAZ. 19, at 4. The implementing regulations state that mediation must be requested within 10 days of the initial police report, except in cases involving death, disability, or property damage, in which case the ten-day requirement runs from the funeral, conclusion of treatment, or date of verification of damages. The police are required to complete or terminate mediation within 10 days.

21 See Zuigao Renmin Fayuan Guanyu Shenli Daolu Jiaotong Shigu Sunhai Peichang Anjian Shiyong Falü Ruogan Wenti de Jieshi (最高人民法院关于审理道路交通事故损害赔偿案件适用法律若干问题的解释) [Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases on Compensation for Damage in Road Traffic Accidents] (promulgated by the Sup. People's Ct., Nov. 27, 2012, effective Dec. 21, 2012), art. 27, 2013 SUP. PEOPLE'S CT. GAZ. 3, at 7; Interview 2015-26. Challenges to the police liability determination must be made within just 3 days of receipt of the report; this short time frame makes administrative appeals difficult. Traffic police reports may not be challenged through administrative litigation.

divide each party's fault into one of five categories: wholly responsible, primarily responsible, equally responsible, secondarily responsible, or not responsible.²² The measures assign specific numerical guidelines that translate these police determinations into fault percentages for the purposes of assigning compensation in excess of the amounts payable through mandatory insurance. Special rules apply in accidents between motorized vehicles and non-motorized vehicles and pedestrians, with drivers of motorized vehicles bearing a modestly higher percentage of liability.²³

The Road Safety Law and the MAI regulations²⁴ aim to provide clear rules to police and the courts on how to handle traffic disputes. Numerous issues are left unresolved; however, including the types of vehicles categorized as motorized vehicles, how damages should be divided in cases with multiple victims or multiple insurance policies, and the evidentiary weight courts should give to police verification reports. It was not until 2012, for example, that the Supreme People's Court (SPC) issued an interpretation stating that courts should follow the police liability determination unless there is conflicting evidence.²⁵ The SPC interpretations did not state what level of deference courts should give police reports in situations where evidence was contested, or what would count as conflicting evidence. Courts also have significant leeway regarding how to calculate certain types of damages, most notably emotional harm.²⁶

Cases generally move quickly through the Chinese legal system and are resolved after a single hearing. Cases are normally resolved in the year in which they are filed. Although courts impose litigation fees based on a percentage of the

22 Hubeisheng Shishi "Zhonghua Renmin Gongheguo Daolu Jiaotong Anquan Fa" Banfa (湖北省实施《中华人民共和国道路交通安全法》办法) [Implementing Provisions of Hubei Province for the Road Traffic Safety Law of the People's Republic of China] (promulgated by the Standing Comm. Hubei People's Cong., Jul. 25, 2008, effective Oct. 1, 2008), art. 47, CLL.10.271619 (China-lawinfo).

23 For example, a motorized driver found to be equally at fault with a pedestrian or driver of a non-motorized vehicle is required to bear 60% of the damages instead of the 50% share required in an accident involving two motorized vehicles. See Hubei Implementing Provisions, art. 48. The Road Safety Law provides no specific numerical guidelines for categories of fault and includes no provision increasing the liability of a driver in accidents involving pedestrians except when both parties are entirely without fault.

24 Regulation on Compulsory Traffic Accident Liability Insurance for Motor Vehicles.

25 Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases on Compensation for Damage in Road Traffic Accidents, art. 27.

26 Zuigao Renmin Fayuan Guanyu Queding Minshi Qinquan Jingshen Sunhai Peichang Zeren Ruogan Wenti de Jieshi (最高人民法院关于确定民事侵权精神损害赔偿责任若干问题的解释) [Interpretation of the Supreme People's Court on Problems regarding the Ascertainment of Compensation Liability for Emotional Damages in Civil Torts] (promulgated by the Sup. People's Ct., Mar. 8, 2001, effective Mar. 10, 2001), art. 10, 2001 SUP. PEOPLE'S CT. GAZ. 2, at 51.

amount in controversy, courts often wait until the end of a case to collect such fees. Many lawyers handle traffic accident cases at least partially on a contingent fee basis and many plaintiffs proceed in court without representation by a lawyer. The combination of speedy adjudication, modest court fees, and low legal fees means that the cost of proceeding with a case in court is generally low.

Most tort plaintiffs in County A had some form of legal representation in court, but few were represented by lawyers. Twenty-two percent of the plaintiffs were represented by lawyers; 72% were represented by para-professional basic level legal workers. The remaining plaintiffs were represented by family members or by no one. Lack of legal representation was far more common among defendants: 265 of the 858 total defendants were not represented by a lawyer or legal worker. Many of these, 153 defendants, or 18%, did not appear in court.

Court opinions in tort cases follow a standard form, with statements of the facts, descriptions of parties' arguments and evidence, followed by court statements of findings and a ruling in the case. Many cases are short, three to four pages, although some run to eight to ten pages, usually in cases in which evidence is contested. Enforcement of civil judgments remains a large problem in China. Court judgments provide no indication of whether plaintiffs actually receive the amounts awarded. Many uninsured defendants are unlikely to have the resources to pay the large damage awards that result in cases involving death or serious disability.

Court opinions only capture part of the process of resolving tort disputes in China. Cases that are mediated prior to reaching court are not covered, and few data exist on how often cases are settled through mediation by the police. The vast majority of traffic accidents resulting in minor damage or injury are resolved by the traffic police; only cases with serious injuries or death are likely to end up in court. This mediation is unlikely to be entirely voluntary. Traffic police are under pressure to resolve cases quickly, and accident victims are rarely represented by lawyers in mediation. Stories of drivers being told by the police that they have the option of settling the case on the spot or having their vehicles impounded as evidence indefinitely are common. Cases mediated by the court that result in mediation agreements instead of court decisions also are not included in the dataset; mediation agreements are rarely made public.²⁷ The presence of insurance

27 The dataset does include a few mediated cases, but these are exceptions to the general rule.

companies as defendants in many traffic accident cases makes mediated outcomes less likely.²⁸

2 Compensation Courts

The most striking characteristic of tort litigation in Court A was that plaintiffs prevailed in virtually all of the cases. Plaintiffs received some compensation in all but three of the 336 cases in the dataset. Plaintiffs received at least half of the amount sought in 256 cases, or 81%,²⁹ and 75% of the amount demanded in 203 of the cases. Plaintiffs received more than they sought in 6 cases, while they received less than 25% of their claim in just 13 cases and zero in three cases. Plaintiffs were found more responsible than defendants in 52 of the cases, or 15.5%, but nevertheless recovered all or most of their damages under the MAI provisions in such cases. The finding that plaintiffs virtually always receive compensation in Court A is supported by the findings from Court B, which likewise showed tort plaintiffs virtually always receiving some compensation.

Chinese law partially explains why plaintiffs win: most plaintiffs have already received a police accident verification report before bringing suit, meaning that the factual question of who was responsible for the accident has been resolved. In a typical situation involving two vehicles and one decedent, police reports always assign some responsibility to the defendant surviving driver.³⁰ The police will virtually never impose full responsibility on an injured party, in particularly one who suffers death or disability.³¹

Yet Court A did not simply award damages based on police findings. The court routinely took additional steps to ensure compensation for accident victims. In some cases doing so involved decisions within the court's discretion or innovating in the face of unclear law. Examples included increasing the percentage fault

28 One study of traffic accidents in China likewise found that once traffic accident disputes go to court they are less likely to be settled through court-supervised mediation than are other civil cases. Fang Wenzhi (房文治), *Jidongche Jiaotong Shigu Zeren Jiufen Suqian Tiaojie Yanjiu* (机动车交通事故责任纠纷诉前调解研究) [Research on Pre-trial Settlements in Motor Vehicle Accident Liability Cases], *Hubei Jingguan Xueyuan Bao* (湖北警官学院学报) [Journal of Hubei Police College], 2013, vol. 3, at 83.

29 Court decisions provided information on the amount sought in 315 of the 336 cases. The percentages given here are of the cases that specify both amount sought and amount awarded.

30 Interview 2015-16. Two hundred forty-seven of the cases mentioned police determinations of responsibility. The police reports found plaintiffs not responsible for the accident in 136 cases; secondarily responsible in 38 cases; equally responsible in 26 cases; primarily responsible in 43 cases; and fully responsible in just 4 cases.

31 Interview 2015-20.

assigned to the defendants, refusing to accept insurance company claims that insurance contracts did not cover the accident in question, or using emotional damages to supplement awards. In other cases, however, the court took steps that lacked legal basis. In one case the court shifted the burden of proof to the defendant in a case in which a defendant claimed to have not been involved in the accident.³² Court A also at times added new defendants, despite lacking a legal ground for imposing liability on the new defendants.

Court A denied recovery in only three cases; in all three it appeared to do so because it suspected a fraudulent claim. Defendant Wang Huaqiang, for example, was found not liable based on a finding that there was no evidence of an accident between his vehicle and that of the plaintiff.³³ The police report determined that Wang had pulled over to let plaintiff's truck pass. Nevertheless, the police found Wang fifty percent responsible for the accident because he fled the scene. The court said that Wang could be fined for driving without a license but could not be held liable for damages to plaintiff's vehicle absent evidence of an accident. Lawyers in Hubei say that such findings are rare and that the police sometimes assign liability to drivers not involved in accidents to ensure that compensation is paid to accident victims.

Cases in which Court A made factual determinations because of the lack of a police report likewise demonstrate a focus on compensation. Court A imposed some liability on defendants in all forty cases in which no police report existed. In one such case the court found the decedent primarily responsible for an accident because he failed to maintain a safe distance from the vehicle in front of him, failed to react when flashed by an oncoming car, and drove while drunk. Nevertheless, the court imposed 20% of the liability for the accident on the defendant. The result of the determination was that the defendant's insurance company covered up to the maximum of mandatory insurance.³⁴

Court A routinely ignored the law in order to ensure compensation for accident victims. Decedent Hu was killed while riding an unregistered and uninsured motorcycle.³⁵ The police report found that both Hu and the truck driver with whom he collided were equally responsible for the accident. The truck driver did not drive

³² 2012-349.

³³ 2010-784. In a second case the police report was inconclusive, stating that because there had been no witnesses the police were unable to determine the cause of the accident. 2012-67. In the third case, a non-traffic case, an individual who had bought personal accident insurance died after returning home from the hospital. Surviving family members sought compensation under the policy. The court found for the defendant insurance company, ruling that plaintiffs had failed to provide any evidence that an accident had occurred. 2013-0369.

³⁴ 2010-15.

³⁵ 2011-1071.

safely, while Hu failed to yield to oncoming traffic when making a turn. The court followed the MAI regulations in awarding recovery in full up to the maximum covered by MAI – in this case nearly 227,000 yuan because both the cab and the truck had separate MAI policies, as was required at the time. The court also followed the law when it awarded an additional 71,000 yuan in residual damages to decedent's family, reflecting 50% of the damages not covered by mandatory insurance. Yet the court ignored the law when it assessed damages against the motorcycle driver for property harm suffered by the truck. The motorcycle driver was uninsured. Instead of awarding damages up to the full amount permissible under the MAI, as Hubei regulations require,³⁶ the court discounted damages payable to the truck and driver by 50%, the percentage fault of the decedent. The result was that the decedent's survivors received a larger recovery than they would have received had the court followed the law.³⁷

Court A's focus on compensation was apparent in a range of other cases that appeared to involve creating novel grounds for liability. In a case in which a decedent purchased a rotary tiller from the defendant and then was promptly killed while riding on the tiller with defendant, the court avoided resolving the central factual question in the case: whether the defendant or the decedent had been driving at the time of the accident. Instead the court ensured compensation for the decedent's family by finding the defendant negligent on other grounds. The court ruled that defendant seller was primarily liable because he failed to tell police about the accident after it happened, thus making a police investigation more difficult; failed to check that the buyer had a license; and did not speak up

36 Hubei Implementing Provisions, art. 47; Road Safety Law, art. 75; Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases on Compensation for Damage in Road Traffic Accidents, art. 19. The Hubei Regulations were effective throughout the timeframe of the cases in this study; the SPC interpretation applied the rule nationally in 2012. The Road Safety Law did not explicitly state that an uninsured motorist should pay according to the MAI standards; instead it stated that victims of uninsured drivers or those who fled after an accident could recover against a traffic accident social assistance fund, and that the fund could recover from the responsible driver. None of the cases made reference to an assistance fund, and lawyers in County A say that in practice the fund plays little role in resolving cases.

37 In a similar case in which the court ignored the MAI rules, 2011-218, an uninsured car collided with defendant's truck resulting in the death of the car driver and two others. The police report found the parties equally responsible. The truck lacked MAI but did carry commercial insurance. The court followed the MAI regulations for the claims against the truck, making the driver pay based on the MAI standards and then awarding 50% of the residual damages against the commercial insurance policy. In assessing a counter-claim by the truck owner for property damage, however, the court ignored the MAI cap of 2000 yuan in property damage and instead ordered the decedent driver's estate to pay the full value of the claim, 3295 yuan. The court neglected to discount damages in excess of the MAI cap by the percentage fault of the decedent.

when he rode on the tiller with the decedent despite knowing that the machine was designed only to carry the driver.³⁸

In four cases the court awarded plaintiffs more than they had requested in compensation, perhaps reflecting the court's recognition that litigants, especially those not represented by lawyers, may not be aware of their legal rights. Doing so violates the Civil Procedure Law, but the court did not address the legal basis for awarding more than claimed.³⁹ In other cases Court A rejected settlement agreements reached prior to litigation as being too low.⁴⁰ Plaintiff Ao was injured when he was hit by a truck while driving his unlicensed motorized tricycle. The traffic police found that Ao was partially at fault and mediated a settlement in which the truck driver paid Ao 12,000 yuan. Ao later sued both the driver and the local health clinic that had treated him, arguing negligence and medical malpractice. The court rejected the original settlement, saying that it reflected a "major misunderstanding" of the scope of Ao's injuries. The court ordered the defendant driver to pay an additional 302,000 yuan in damages.⁴¹ Yet Court A took the opposite approach in a case in which the defendant agreed to pay more than legally required.⁴² The traffic police had mediated a payment from the driver and owner of the truck to the family of the deceased motorcyclist. The court found that the mediated amount exceeded the amount plaintiffs were entitled to under law, but nevertheless ordered the owner of the vehicle to pay the full difference between the amount payable by his insurance company and the mediated amount.

The small number of non-traffic accident tort cases Court A decided likewise reflected court concerns about ensuring compensation. In one,⁴³ plaintiffs' disabled son disappeared while working for defendant. Although the court found no evidence of negligence on the part of defendant, it nevertheless ordered the defendant to pay plaintiffs 20,000 yuan as compensation for the loss of their son. Likewise, in all 19 cases brought by workers injured while working in informal labor situations, the court imposed liability on all contractors and subcontractors

38 2011-419.

39 Instead Court A calculated the damages and awarded the amount that resulted from the calculation. In only one case did the court refuse to give the higher amount on the grounds that under the Civil Procedure Law the plaintiff could not receive more than the amount claimed.

40 2012-1306, 2011-849.

41 2011-849. The court also ordered the health clinic to pay an additional 169,000 yuan.

42 2012-2483.

43 2013-136.

listed as defendants, regardless of whether they were in a direct employment relationship with the victim. In many cases the court also made the property owner pay compensation.⁴⁴

Court A also went out of its way to find liability on the part of defendants not involved in the immediate accident, not found responsible by the police accident report, and not in an employment relationship with the tortfeasor, in particular local government actors. Plaintiffs succeeded in three of four cases in which they sought to impose a portion of the liability on the local government.⁴⁵ The effect of the court's decision in these cases was to provide additional compensation to the plaintiffs, and perhaps to lessen the burden on individual defendants who might be unable to pay a large damage award against them. Pei Guosong's case, discussed at the beginning of this essay, is one example. Another is the case of Mao Hui and Zhou Hongling, who suffered minor disabilities after a motorcycle crash.⁴⁶ Mao and Zhou were injured while riding on a motorcycle driven by Zhou Lianbo;⁴⁷ Zhou drove the motorcycle into a tractor parked on the side of the road. The driver of the tractor had been drying rice on the road. The police report found Zhou and the tractor driver equally responsible – Zhou for speeding and driving without a license and the tractor driver for illegal parking and inappropriate use of the road. Yet rather than relying entirely on the police report, the court reduced Zhang's liability, finding him 30% responsible. At the request of the plaintiffs, the court added a new defendant, the local road authority. The court found the road authority to be negligent because it had failed to remove an obstacle from the road. The court also found that plaintiffs were 10% at fault because they knew they were riding on an overloaded motorcycle and they knew Zhou lacked a license. The

44 Where the injured worker was found to be helping a property owner at the time of the injury – and thus presumably not being compensated – the property owner was always held liable. Where the court found that the injured worker was employed by a contractor or sub-contractor, however, the employer and not the property owner was held liable. 2010-1363; 2010-1237.

45 2011-137, 2011-1833, 2012-170. The one case in which Court A rejected such an argument nevertheless resulted in the addition of a new defendant to the dispute. The court rejected a claim against the local government by a woman injured when her husband drove a motorcycle on which she was a passenger into a road sign. Instead, the court ensured compensation by imposing 30% liability on the state-owned company that had erected the sign.

46 2012-170.

47 2012-170.

result was a reduced burden on the tractor driver, a farmer, and an increased likelihood that plaintiffs would receive compensation.⁴⁸

3 Ensuring Insurance

Court A's main strategy for ensuring that victims received compensation was to maximize insurance company payouts. The guiding principle in cases in which an insurance company was a defendant was clear: Court A made the insurance company pay. Court A nearly always rejected insurance company claims that their insurance contract did not cover the harm in question and at times required insurance companies to pay more than required under the terms of insurance contracts or the law.

The observation that most cases in which insurance companies were defendants resulted in judgments against the insurer is not surprising given the existence of strict liability within the scope of mandatory insurance. In numerous cases, however, Court A went further, making insurance companies pay damages on commercial insurance policies covering amounts in excess of MAI even where the insurer appeared to have a strong claim that it should not bear the full cost of an accident. In one example,⁴⁹ the court ordered a local branch of the China People's Property Insurance Company to pay the full value of damages not covered by mandatory insurance, despite a finding that the plaintiff was partially at fault. The decision was directly contrary to the Road Safety Law, which states that residual loss not covered by mandatory insurance shall be assessed based on proportional

48 In another case in which a police report made no mention of government liability, the court assigned 40% of responsibility for an accident to the local government for allowing farmers to burn crops on the roadside. 2011-1833. Plaintiff had been injured after she fell into a fire burning on the side of the road following a motorcycle crash. Although most of plaintiff's recovery came against the other motorcyclist, who was uninsured, the court's decision ensured that plaintiff was able to recover 70% of her residual damages not covered by the MAI award against the other motorcyclist.

49 2011-1836. Road Safety Law, art. 76, clause 1. In a similar case, the court awarded a plaintiff the full value of harm against a commercial insurance policy, only applying a comparative fault analysis to harm not covered by MAI or by commercial insurance. It did so despite the fact that the Road Safety Law makes clear that comparative fault applies to amounts in excess of MAI. 2011-2040.

fault. In another case the court announced a principle of having insurance companies pay with priority over other possible defendants,⁵⁰ despite a lack of legal basis for doing so.⁵¹

In other cases the court imposed liability on insurance companies not by ignoring the law but by using its broad discretion. The court rejected a range of insurance company arguments that specific plaintiff conduct was not covered by insurance or that certain types of damages were excluded from the insurance contract. The court always found that these contract provisions were invalid because the insurer had not presented evidence that it specifically pointed out such provisions to the insured, as required by the Insurance Law.⁵² For example, the court rejected an insurance company argument that it was not liable because the insurance contract explicitly denied coverage to an unlicensed driver, stating that the driver had not signed the contract and was not made specifically aware of the exclusion.⁵³ Other similar cases involved rejection of arguments that insurance companies should not be required to pay for medications not covered by health insurance because the insurance contract explicitly excluded such coverage,⁵⁴ that an insurer should not be liable when the insured fled the scene of an accident and did not notify the insurer,⁵⁵ and cases in which insurance companies argued

50 2010-1242.

51 2010-1242. The finding was also not necessary in order to impose the full costs of the accident on the defendant insurance companies. The companies had claimed that an insured motorcyclist should have paid for a portion of the harm to the victim, who was a passenger on the motorcycle, according to the MAI standards. Because MAI coverage only applies to third parties not in or on the insured vehicle, the court correctly rejected the argument. But the court went further, basing its argument on a general principle that insurers should pay with priority and then seek indemnification from other parties.

52 *Zhonghua Renmin Gongheguo Baoxian Fa (中华人民共和国保险法)* [Insurance Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Feb. 28, 2009, effective Oct. 1, 2009), art. 17, 2009 *STANDING COMM. NAT'L PEOPLE'S CONG. GAZ.* 2, at 197. The only cases in which the court accepted insurance company arguments related to whether emotional harm was covered under commercial insurance. The issue had little practical effect because Court A generally required that emotional harm be covered under MAI.

53 2012-3329. In a similar case the court explicitly stated that accepting insurance company arguments would undermine the principles behind the mandatory insurance system. 2012-778.

54 2012-0001 (rehearing).

55 2012-521; 2011-926. The principle in these cases appeared to be that insurance exists for the benefit of victims, not the insured.

that the insurance policy did not cover situations when the insured was not at fault.⁵⁶ Insurance company officials confirm that such arguments virtually never succeed.⁵⁷ In a number of cases the court explicitly stated that insurance contracts should be interpreted in ways “most beneficial to the insured.” In one such case,⁵⁸ the court allowed the family of a deceased truck driver to recover against his own mandatory insurance policy, despite the fact that MAI coverage is third-party only. The court stated that the driver had been outside the truck when he was hit by a second truck, and thus that he had become a third party with regard to his own vehicle.⁵⁹ Court A likewise rejected insurer arguments that they had not insured the vehicle involved in the accident – usually without citing any evidence to support the finding.⁶⁰

In some cases Court A appeared to seek to mediate outcomes in ways that result in large payouts by insurance companies. In one such case the court reported that it had mediated an agreement by which an insurer paid 270,000 yuan to the family of a motorcycle driver who died after running into a parked truck. Although the police report had suggested that the truck was only secondarily liable, which should have limited the recovery to the MAI maximum plus 30 or 40% of the residual damages, the effect of the mediated outcome was to shift the majority of the residual damages to the insurer.⁶¹

56 2011-613. In another case the court rejected an insurer’s argument that liability for certain disabilities was not covered by the insurance contract. The court stated that following the insurance industry standard, which was referenced in the insurance contract, did not fit with common understandings and “was unfair.” 2011-6.

57 Interview 2015-11.

58 2012-330.

59 The court apparently took this position in order to ensure that other injured plaintiffs who were not parties to the case could recover against the MAI of the second truck. Insurance company defendants also frequently argued that they should not be required to pay for inspection fees commonly awarded in tort cases or for court fees. Court A always rejected the argument regarding inspection fees and usually ordered insurance companies to pay a significant portion of the court fees. Articles 64 and 66 of the Insurance Law make clear that insurers may be liable for litigation-related costs. It is unclear why insurance defendants repeatedly raised the argument.

60 2013-67; 2011-34 (rejecting argument by an insurer that it had insured only the cab of a truck, not the trailer as well; the court awarded damages against two insurance policies without citing any evidence). The court likewise rejected an insurance company argument that it was not liable for indirect harm in a case in which the plaintiff power company was claiming harm to itself and its customers after a traffic accident damaged an electrical transformer. The court declared that all of the damages, including to the customers, were direct and thus the insurer should pay. 2012-2844. The Court likewise rejected an insurer’s argument that it was not responsible for paying out on a MAI policy where an accident did not occur on the road. 2009-167.

61 2012-785.

Judges, lawyers, and insurance company employees in Hubei confirm that courts look to insurers to pay out as much as possible, and often more than required under the MAI regulations and insurance contracts. As one judge explained, the basic principle guiding traffic cases is to “make the insurance company pay” and then put the burden of seeking compensation from any other defendants, including the insured driver, on the insurance company (something judges acknowledge is likely impossible).⁶² The police likewise will look to place responsibility for accidents on parties with insurance in order to ensure that cases are resolved.⁶³ Judges explain such steps as necessary given the risk of unrest if victims go uncompensated. As one judge explained, “we need to make someone pay.”⁶⁴ Courts know that insurance companies will not protest decisions against them. Court A’s approach to insurance companies also reflects a more general view that insurance companies are an arm of the state and thus have obligations beyond paying out on their insurance contracts.

4 Practical Equity

Compensation for victims was not the only value influencing Court A’s decisions. Court A also demonstrated concern with equity, in particular with avoiding awards that might impose an excessive burden on poor defendants and thus prove unenforceable. The clearest examples came in the inconsistent manner in which the court applied the legal rule that uninsured defendants are required to pay damages as if they had purchased MAI, meaning they are strictly liable up to the maximum amounts payable under MAI. The court frequently ignored this provision, instead assessing liability based on the percentage fault of the parties. Thus, for example, in a case involving an accident between a motorcycle and a three-wheeled motorcycle the court ordered the parties to split the damages⁶⁵ rather than having the motorcycle owner pay according to the MAI provisions.⁶⁶ In another case the court mediated an outcome that resulted in a plaintiff receiving significantly less

⁶² Interview 2015-20.

⁶³ 2015-16; 2015-26.

⁶⁴ 2015-23.

⁶⁵ 2011-1853.

⁶⁶ In one case the court rejected application of the MAI standards and stated that because the plaintiff had been speeding, was not wearing a helmet, and failed to keep a safe distance the plaintiff should bear 40% of the loss. 2012-18.

than would have been available under the MAI provisions.⁶⁷ Court A appeared concerned both about the perceived unfairness of making one party pay out of pocket when only partially liable and the possibility that large awards against poor rural residents would go unenforced.

Sixty-five cases in the dataset involved defendants who had not purchased MAI. The court awarded damages according to the MAI standards in only 16 of these cases. There were 11 cases in which the court clearly should have used the MAI standards (because the defendant's vehicle was a truck, automobile, or motorcycle) but did not do so. The remaining cases were mediated, settled, or involved farm vehicles, where MAI was not required.⁶⁸ Faced with an uninsured defendant, Court A often split damages between the two parties.

The court never made its reasons for ignoring the law explicit. In one such case the decedent died after he crashed into his drinking buddy while trying to avoid an oncoming car. Although there was no police determination of liability, the court found that both motorcyclists had been drunk.⁶⁹ The court found full damages to be 146,000 yuan. Instead of awarding up to the MAI maximum of 110,912 yuan, the court ordered that defendant motorcyclist pay just 20% of the damages, or 29,000 yuan.⁷⁰ In interviews judges explain that such actions are guided by practical realities: they do not want to be left with unenforceable judgments.⁷¹ As one judge explained, "we should follow the law, but there is no way to make [defendants] pay."⁷²

The focus on equitable outcomes is in line with emphasis in China's courts over the past decade on ensuring that cases are resolved in ways that minimize

⁶⁷ 2011-1835. The reduced award may have been due to a counterclaim for property damage of unspecified value, but it seems unlikely that the counterclaim explains the discrepancy between the 68,000 yuan the plaintiff would have recovered under the MAI and the mediated amount of 42,500 yuan. In another case the court took the same approach: instead of first awarding damages according to the MAI regulations against a defendant who failed to buy MAI, the court awarded 70% of the damages (the defendant's share of the responsibility) against the defendant's commercial insurance. The result was a lower overall recovery for plaintiff. 2012-169.

⁶⁸ The MAI regulations explicitly exclude farm vehicles, and the Court noted that because tractors cannot be licensed they are ineligible for MAI. In two cases, however, the Court nevertheless imposed MAI liability on farm vehicles. 2011-1297; 2012-4178.

⁶⁹ 2010-474.

⁷⁰ The court also ordered defendant to pay an additional 3000 yuan in emotional compensation.

⁷¹ Interview 2015-18. One judge noted that he sometimes takes plaintiffs with him to visit defendants, to show them the economic difficulties defendants face.

⁷² Interview 2015-17.

litigant dissatisfaction and thus petitioning or unrest.⁷³ The willingness to ignore the law appears to stem from a view that the law is unfair and from concern that following the law may result in protests either from defendants arguing that awards are excessive or from plaintiffs upset about unenforceable decisions. Such outcomes also reflect the reality of China's weak rural social safety network and courts' desire to avoid excessive hardship to both accident victims and defendants.

Equitable outcomes are also in line with Chinese law: China's General Principles of the Civil Law and Tort Liability Law both provide an explicit basis for courts to take account of equitable considerations in deciding cases in situations where a defendant is not at fault.⁷⁴ Yet Court A never relied on these legal provisions authorizing equity-based decisions. This presents a puzzle: why do courts avoid using a legal provision that could provide support for their decision? One answer may be that the court is not focused on justifying its decision legally. Another is that judges perceive that explicitly basing their judgments on equitable liability may make them more susceptible to appeal and reversal. Ignoring the issue is the safer option.

5 Emotional Damages

Court A's concern with fairness, ensuring full compensation, and minimizing dissatisfaction was also apparent in court awards of emotional damages. Emotional damages served two primary purposes: to compensate surviving family members for the loss of a family member, in particular a child, and to punish a defendant for egregious conduct.⁷⁵ Emotional damage awards ranged from 3000 to 5000 yuan for disabling injuries to 20,000 yuan for death of a family member. Court A never stated the reasons it awarded compensation for emotional harm, but most cases involved death or serious disability to a victim.

⁷³ The police likely share these concerns: all of the court decisions that noted that litigants had filed administrative appeals of police verification reports with the police reported that the police had changed their reports on appeal. It is possible that court opinions only note police reconsideration proceedings when they lead to a change in the police report. But it is also likely that the police attempt to mollify claimants by at least modestly adjusting their initial findings.

⁷⁴ General Principles of the Civil Law, art. 132; Tort Law, art. 24.

⁷⁵ The reverse was also true; the court refused emotional damages when defendants had acted meritoriously, such as rushing a victim to the hospital, or where the court found no major negligence on the part of the defendant. 2012-1306.

The SPC has made clear that emotional damages may serve to punish a defendant,⁷⁶ and many of the cases in which Court A awarded emotional damages appeared to be based at least in part on egregious conduct by a defendant. The focus on punishment is also reflected in the fact that emotional damages may not be awarded against defendants charged with a crime. This is because being subject to criminal sanction is deemed to be sufficient punishment. But the rule against such awards also reflects the reality that enforcing such awards is nearly impossible. The rule can produce strange results, with Court A stretching to award emotional damages against parties not primarily liable for the accident. In one such case, a driver killed a decedent through negligent driving and received a suspended criminal sentence. The driver thus was not responsible for paying emotional damages. A second driver who arrived at the scene after the accident and ran over decedent's covered corpse was required to pay emotional compensation for harm to the body.⁷⁷ Judges confirm the mixed goals of emotional harm, noting that they look both to the degree of wrongfulness of defendant's conduct and the harm to the family structure of the victims.⁷⁸ Court A repeatedly used emotional damages to compensate plaintiffs facing severe economic hardship, with large awards in particular for the death of a child.⁷⁹ The focus on

76 Interpretation of the Supreme People's Court on Problems regarding the Ascertainment of Compensation Liability for Emotional Damages in Civil Torts, art. 10. Four of the six factors that the SPC instructed courts to consider in awarding emotional damages concern the behavior or resources of the defendant: the degree of the defendant's fault, the manner and circumstances of the tortious conduct, the defendant's gains from the tortious conduct, and the financial situation of the defendant. Only one focused on the actual emotional harm suffered by the plaintiff: the SPC interpretation also instructs courts to consider the consequences of the conduct (the sixth factor is the living standard of the locality in which the tort occurred). In a separate reply the SPC also made clear the punitive nature of emotional damage awards when it stated that emotional damages are not available in cases in which criminal charges have been brought against a defendant in a tort case. See Zuigao Renmin Fayuan Guanyu Renmin Fayuan Shifou Shouli Xingshi Anjian Beihairen Tiqi Jingshen Sunhai Peichang Minshi Susong Wenti de Pifu (最高人民法院关于人民法院是否受理刑事案件被害人提起精神损害赔偿民事诉讼问题的批复) [Official Reply of the Supreme People's Court of the People's Republic of China on Whether the People's Courts Shall Accept Civil Suits for Mental Injury Compensation Brought by the Victims in Criminal Cases] (promulgated by the Sup. People's Ct., Jul. 15, 2002, effective Jul. 20, 2002), 2002 SUP. PEOPLE'S CT. GAZ. 4, at 130.

77 2011-342. For another case in which the court rejected awarding emotional damages because a driver had been prosecuted see 2012-1502.

78 Interview 2015-11. Judges also confirm, however, that most emotional damage awards are small, and that large damage awards are reserved for injuries involving death or permanent complete disability. Interview 2015-20.

79 2012-2483; 2013-1007; 2012-3767; 2011-54.

compensating victims was also apparent in the fact that courts rarely discounted emotional harm awards due to the comparative negligence of a decedent.⁸⁰

6 Responsibility Avoidance: Deference to the Police

Court A's decisions reflected extreme deference to determinations made by the traffic police. Court decisions referenced police reports in 248 cases. Court A allocated fault percentages to the parties in 208 of these cases.⁸¹ In 192 of the 208 cases, the court's award was in line with the police report; the court made adjustments from the police report in 16 cases. In 12 of these 16 cases the court made adjustments in favor of defendants, generally reducing liability because of some fault of the plaintiff. Yet the court made these adjustments without second-guessing the police report. Instead, the court altered liability determinations by adding factors not considered by the police report, such as a victim's failure to wear a helmet.⁸² As one lawyer explained, the traffic police report should in principle be just one part of the evidence before the court. In practice, 99% of the time it is the basis of the court's decision.⁸³

Court A's deference to the police was the result both of the legal standard and of practical considerations. The SPC has instructed courts to be deferential to police determinations, stating that courts shall confirm police reports except when there is opposing evidence to overturn the police reports.⁸⁴ In many cases the only piece of evidence is the police report. Yet Court A went further, treating police reports as determinative in virtually all cases. For the courts this extreme deference

80 Emotional damages were also used in cases where defendants had apparently been under-compensated for other injuries. In one such case a plaintiff received emotional damages for harm to her face in a case in which she had not received any compensation for physical injuries because she was not found to have suffered a permanent disability. 2012-147. A second plaintiff in the case received compensation for more serious physical injuries, and thus no compensation for emotional harm.

81 The remaining cases were either mediated or relied entirely on MAI and thus did not require a fault allocation.

82 2012-18; 2012-3478. For example, the court accepted the police report but then adjusted the liability percentages based on a finding that the plaintiff had knowingly ridden on a motorcycle with a drunk driver. 2011-27.

83 Interview 2015-25.

84 Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases on Compensation for Damage in Road Traffic Accidents, art. 27.

has direct benefits: courts avoid taking on responsibility for factual determinations and thus shield courts from litigant discontent.⁸⁵

This deference to the police also reflects the fact that the police are more powerful actors in the Chinese legal system. There is little benefit to courts in overturning police liability determinations. As one judge explained, given the relative power of the courts and the police it is impossible for a court – in particular a county court – to alter a police determination of liability.⁸⁶ Court deference to the police in tort cases highlights a trend that has largely been ignored in recent writing on Chinese courts: the reluctance of courts to play roles as fact-finders even in routine disputes.

7 Litigant Behavior

Court A was not the only actor engaging in strategic behavior. Cases from Court A and interviews with participants in the system demonstrate that insurance companies, plaintiffs, and the government all use tort litigation in creative ways, not just to resolve individual disputes.

7.1 Insurance Companies: The Puzzle of Non-Settlement

Insurance payouts in traffic accidents are relatively predictable given the MAI regulations and fixed percentages of liability based on police fault determinations. Predictability is particularly high for MAI policies in cases involving a death, when payouts almost always reach the maximum covered by mandatory insurance. The Chinese legal system also emphasizes mediation of civil disputes, with courts often adopting targets for mediating a high percentage of cases. Despite this, insurance company officials report that they almost never settle cases that enter litigation without a court verdict. At times insurers appeared to be going through the motions in court, knowing they will end up paying significant damages.

⁸⁵ Evidence from Court B confirms the findings from Court A regarding court deference to police factual determinations. Court B almost never reversed traffic police determinations. In 2009 and 2010, the court rejected the police inspection report in just one of 212 cases. In that case the court appeared to go out of its way to ensure that the family of an accident victim received some compensation. The decedent died while riding a motorcycle while drunk. The police inspection found the decedent 100% responsible for the accident. The court instead placed liability on the local village committee and transport bureau for failing to discharge their duty to provide proper warnings about a mound in the road. B2010-751.

⁸⁶ Interview 2015-11; Interview 2015-15.

This aversion to settlement contrasts sharply with patterns elsewhere in the world, in particular in the U.S. and Japan, where the overwhelming majority of traffic accident disputes settle. There are multiple explanations for the reluctance of Chinese insurers to settle. Even if insurance company arguments virtually always fail, litigating payouts in traffic cases has other benefits. Litigation is relatively low-cost for insurance companies; waiting for the outcome of court cases also allows insurers to delay payment on claims. More importantly, relying on court decisions allows insurers to address principal-agent problems within their own companies. Insurance officials report that they do not trust local company employees to settle cases; they are worried about local ties and collusion resulting in excessive payments. Insurance company officials also note that they confront an environment in which fraud, by claimants and by their own staff, is common and which they lack ability to detect fraud. Relying on court decisions allows insurance companies to out-source verification and investigation. Insurance companies in China rarely conduct their own investigations of accidents. Instead, insurance companies contest even relatively small claims, presumably both lowering potential damage awards and encouraging courts to check claims carefully. Individual insurance company employees likewise view litigation as a way to avoid personal responsibility for their handling of a case.

Insurance companies in China are largely state-owned. In areas such as MAI they are not market actors; they are compelled by the state to provide MAI at a fixed rate. Insurance companies may have reduced incentives to minimize costs, and increased incentives to assist with state goals of resolving disputes. Insurance companies may not trust courts to provide fair outcomes, but court decisions provide a mechanism for resolving and ending disputes that pose little financial risk to insurance companies.

7.2 Individual Litigants: Pursuing Unenforceable Judgments

Court A's judgments do not provide information on the difficulties litigants may face in enforcing judgments. But judges and lawyers confirm that it is likely many, if not most, uninsured defendants will have little ability to pay judgments against them.⁸⁷ Yet the lack of assets, and likely difficulty of enforcing a judgment, appeared to have little effect on plaintiffs' decisions to sue. Judges note that a significant percentage of unenforced judgments result from cases in which defendants lack assets. Why do litigants sue when there is little chance of recovery? Judges and lawyers note multiple explanations. Litigation is relatively low cost;

⁸⁷ Litigants do not appear to have problems collecting judgments against insurance companies.

there is little downside to pursuing a claim. Information about defendants' assets is also difficult to obtain; even if litigants are unable to enforce a claim today they may be able to do so in the future. Most importantly, however, obtaining a judgment provides a basis for making a claim against the state if the judgment is not enforced.

Litigants routinely petition when judgments are not enforced. Court assistance funds provide compensation to plaintiffs with unenforceable judgments. Judges and lawyers report that local authorities will rarely pay the full value of an unenforced judgment, but that litigants who petition frequently receive some benefit.

7.3 State Interests

The unenforceability of tort judgments sometimes shifts disputes from being claims between private parties into claims against the state. Yet the emphasis on compensation and equity also reduces state financial burdens. Placing liability on insurance companies or others with the ability to pay helps to reduce pressure on local governments, serving as a short-cut to compensation in the absence of robust social insurance. Courts serve as a forum for determining who needs assistance and also for deciding who is best able to bear the burden of paying compensation. In some cases courts impose liability on government actors, but in many others private parties shoulder these costs.

8 Understanding Chinese Courts through Routine Litigation

Tort cases in China demonstrate that Chinese courts are flexible problem-solvers, influenced by a range of norms and values that also influence how they handle higher-profile cases.⁸⁸ Neutral adjudication yields to social stability and equity concerns. Courts handling tort cases serve as compensation bodies, determining both the fair and realistic sums to be paid for a loss. The goal is not just to resolve the factual and legal issues before the court: the aim is to decide the dispute in a way that resolves the dispute and reduces the risk of escalation. The burden of compensation is shared not through legal rules that place liability on the party best able to avoid the accident or best able to spread costs. Instead, costs are spread by

⁸⁸ Of course, other factors, including corruption and direct pressure from officials, higher-ranking judges, and well-connected litigants, also influence judges but are not perceptible in court decisions.

ignoring or expanding existing law and by focusing on which defendants are able to pay in a particular case.

Placed in comparative perspective, aspects of Chinese tort litigation appear unusual. Most significantly, evidence from cases and interviewees in Courts A and B confirms that plaintiffs win the overwhelming majority of cases. Comparing win rates in China to other jurisdictions risks over-simplification. The data in this essay provide limited insight into settlement dynamics prior to cases going to court; comparison with scholarship on other jurisdictions (and in particular scholarship on the Priest–Klein hypothesis and the selection of cases for litigation⁸⁹) is thus difficult. Nevertheless, China's experience contrasts with both theory and empirical research on tort litigation elsewhere that predicts roughly 50–50 plaintiff and defendant win rates.⁹⁰ Traffic accident litigation in China also appears unusual (at least when compared to the U.S. or Japan) for the frequency with which cases are litigated to conclusion, not settled. In China cases that end up in court do not appear to be the product of a selection effect. Instead, the default is for cases not settled by the police to go through the litigation process. Insurance companies may be able to predict outcomes, but they appear to have little interest in seeking to buy-off plaintiffs prior to a court decision.

The infrequency of settlement and high plaintiff success rates result not from plaintiffs' and defendants' differing views of the likely value of a claim, but rather from litigants having divergent uses of tort litigation. Tort plaintiffs use litigation to seek compensation from defendants, but they also use litigation to lay the groundwork for a claim against the state if their claim is unenforceable. Insurers use tort litigation to delay payment and to address agency problems within their own companies. Maintaining strong state ties appears more important to insurance companies than minimizing payouts. Defendants, especially those with limited

89 George L. Priest & Benjamin Klein, *The Selection of Disputes for Litigation*, 13, no. 1 J. LEGAL STUD. 1, 1–55 (1984).

90 The Priest–Klein hypothesis has generated a large amount of literature on the U.S. and on other jurisdictions. See, for example, J. Mark Ramsayer & Minoru Nakazato, *The Rational Litigant: Settlement Amounts and Verdict Rates in Japan*, 18, no. 2 J. LEGAL STUD. 263, 263–90 (1989). My goal here is not to test the model's applicability to China, but rather is the much more modest observation that nearly 100% plaintiff success rates in China suggest a different function for tort litigation compared to other jurisdictions that have received extensive scholarly attention. Of course, the near-100% success rate figure may be misleading if some percentage of such awards go unenforced.

assets and no insurance, use litigation to seek equity-based reductions in claims against them. Local Party-state officials look to the courts to shift the burden of aiding those in need to insurers and private parties.

Chinese courts are not unique in their emphasis on flexible problem solving. Yet Chinese courts are unusual in the focus of their problem-solving. In the U.S., scholarly literature has described how “problem solving courts” develop strategies for addressing the underlying social problems that result in disputes in court.⁹¹ In Japan courts responded to increased traffic accident litigation by creating detailed (but not technically legally binding) guidelines to determine fault and damages in traffic cases, effectively removing most traffic accident disputes from the courts.⁹² In China, in contrast, the problem that courts seek to solve is the existence of disputes, not the underlying problems that give rise to disputes. Dispute termination and elimination thus becomes the central value guiding court adjudication. Judges’ focus on solving problems and avoiding unrest reflects the incentives they face: judges are more likely to be sanctioned for cases that follow the law but result in protest than they are for decisions that lack legal basis but solve practical problems.

Although tort litigation in China is playing an important role in mitigating the costs of accidents in a system with very limited social insurance, there is little evidence that tort litigation is playing a regulatory role in Chinese society. Tort litigation is not serving as a short-cut to an administrative state. Courts resolve cases to resolve problems, for litigants and for courts themselves, not to design regulatory rules or to strengthen the institutional roles of courts. This focus on avoidance of responsibility⁹³ helps to explain why courts have not sought to create detailed rules that streamline resolution of traffic accident cases, as in Japan. Chinese law already provides a high level of standardization in determining compensation levels in tort cases. Yet in practice Chinese courts avoid

⁹¹ For an index of scholarship on problem-solving courts, see Christina Zawisza & Sandra Newcombe, *Problem-Solving Courts: An Annotated Bibliography*, 2 MENTAL HEALTH L. & POL’Y J. 173, 173–232 (2013).

⁹² Daniel H. Foote, *Resolution of Traffic Accident Disputes and Judicial Activism in Japan*, 25 L. IN JAPAN 24-29 (1995); J. Mark Ramseyer, SECOND BEST JUSTICE: THE VIRTUES OF JAPANESE PRIVATE LAW 31–33 (2015).

⁹³ For further discussion of how and why Chinese courts seek to avoid responsibility, see [citation redacted].

standardized outcomes, instead opting for flexible approaches tailored to the individual needs (and ability to pay) of litigants.⁹⁴ Unwritten rules continue to affect even routine forms of adjudication.⁹⁵

Tort litigation also appears to have limited impact on social policy outputs other than the provision of compensation. Despite the large number of cases, there is little sign that the way courts are handling tort cases is shaping legal rules (or business practice) outside of litigation. Chinese courts are not focused on minimizing the risk to society. Instead they prioritize minimizing risk to themselves and to the Party-state. The social policy output goal of tort litigation is compensation (and as a result social stability).⁹⁶

Tort litigation also demonstrates the impossibility of separating routine cases from those involving politically sensitive disputes or key interests of the Chinese Party-state. At first glance tort litigation might appear to be an area where there would be little reason to expect Chinese practice to differ from that elsewhere. Tort cases rarely involve political matters or even well-connected parties. Why should traffic accidents be handled differently in an authoritarian system from a liberal democracy? Scholarship on authoritarian courts has noted the existence of bifurcated legal systems, with routine cases handled fairly according to law while different norms apply in sensitive or political cases. Some have suggested that China is moving in this direction and that the increasing volume of disputes in China's courts means that the scope of non-political cases, in which legal rules are applied fairly, is expanding.⁹⁷

Yet tort litigation demonstrates the same dynamics of responsiveness to litigant demands and Party-state concerns with stability that are evident in higher-

94 For a similar view in the context of the equitable liability provisions of the Tort Law, see Chenglin Liu, *supra* note 18, at 21 (stating that “socialized liability has no well-defined boundaries, and it lacks certainty and predictability”).

95 The fact that courts are supposed to be flexible problem-solvers may also help to explain the modest progress of other standardization efforts, most notably the SPC's adoption of Guiding Cases. Although the SPC has sought to create a limited form of official precedent, *see* Note, *Chinese Common Law? Guiding Cases and Judicial Reform*, 129 HARV. L. REV. 2213 (2016), in practice courts rarely rely on the Guiding Cases. The SPC has also stated that Guiding Cases should have good social and legal outcomes, highlighting that courts should take account of both law and the social consequences of their decisions. *Id.*

96 There are exceptions to this practice, in particular in politically sensitive cases such as those following man-made or natural disasters. In such situations courts often refuse to accept lawsuits, leaving any compensation to be paid directly by local authorities. Liu, *supra* note 18, at 42.

97 For example, Zhang and Ginsburg argue that “[s]cholars who study Chinese courts have generally agreed that, in the vast majority of cases, and specifically in nearly all civil and commercial cases, courts tend to operate in a high professionalized, law-oriented manner.” Zhang & Ginsburg, *supra* note 7, at 316.

profile cases or those involving protest and violence are also manifest in routine litigation. Courts ignore the law in order to ensure parties are compensated and litigants do not appeal or protest. Courts focus on equity, but they do so primarily to prevent unrest and unhappiness, not because of an articulated view of what is fair. Stability and fairness concerns continue to influence outcomes. Judges come up with the best possible solution that generates the fewest possible side effects or problems. Even in an area with developed law and predictable outcomes the norms of the system come to dominate how courts handle routine cases.⁹⁸

Tort litigation is becoming routine, but this comes from ignoring legal norms as well as from following or adopting them. Predictability and the existence of repeat players are not generating private institutions that serve to resolve common claims; instead, private disputes become concerns of the state. Tort litigation plays an ad hoc role in providing social insurance in China; no institutional choice is being made about the role of tort litigation in China society. This is not an observation unique to tort litigation; much in the Chinese legal system has evolved without institutional design. But this observation helps to explain why models for understanding tort litigation elsewhere may not work in explaining court or litigant behavior in China. Recognizing continued tension between efforts to standardize outcomes in accordance with formal law and court concerns about fairness and stability is of particular importance as Chinese courts rush to embrace the promise of algorithm-based

98 Some participants at workshops in China at which I presented the findings in this essay suggested that judicial reforms China launched in 2014 are making civil litigation more law-based. There is as of yet little empirical evidence to support this claim, and at least some evidence to suggest that the reforms have not had a significant effect on how and why courts make decisions. We begin to explore this issue in Benjamin L. Liebman, Rachel Stern, Margaret Roberts, and Xiaohan Wu, “Dodging Decisions: Responsibility Avoidance in Chinese Courts” (unpublished draft of September 16, 2019). In recent work Professors Zhang and Ginsburg argue that China has embraced legality to an unprecedented degree since Xi Jinping came to power in 2012. They define legality as courts operating “in accordance with written law” and argue that the Chinese legal system under Xi is one “in which the letter of the law is enforced more rigorously and afforded greater political respect.” Zhang & Ginsburg, *supra* note, at 282, 288. Zhang and Ginsburg provide an overview of reforms in the courts, but do not include any discussion or analysis of court decisions. The cases analyzed in this essay largely were decided before Xi Jinping came to power in 2012. It is in theory possible that the dynamics described here have changed dramatically since then. This seems unlikely, however, given renewed emphasis on social stability from the central Party leadership. Indeed the SPC issued at least seven documents in 2019 that referenced the “social effects” of court actions alongside “legal effects;” five of these mentioned the phrase “legal effects, political effects and social effects.” My initial analysis of traffic accident cases from across China during the Xi Jinping era shows plaintiffs recovering some compensation in more than 99% of cases. The findings in this essay demonstrate the importance of examining court decisions in determining whether courts are or are not following the law.

adjudication.⁹⁹ Evidence from tort cases in County A shows that standardization according to legal provisions may be in tension with actual practice and may fail to take account of the range of values that influence court decisions.

Literature on Chinese courts has often identified lack of competence, direct interference, or corruption as the primary reasons Chinese courts ignore the law. Tort litigation suggests another reason. Following the law is not the safest choice for judges. Recognizing that court decisions often veer from written law in order to take account of other goals does not mean that courts are failing in their jobs. Judges handling tort litigation in Court A are doing exactly as the unwritten norms of the Chinese legal system dictate: responding flexibly to the disputes before them in ways that advance systemic goals, most notably providing some level of compensation to the aggrieved and maintaining social stability. Chinese judges face risks (in particular in an era in which official policy is to impose “lifetime responsibility” on judges for their decisions) both from ignoring the law and from following it. In County A, and likely elsewhere in China, the consequences of not following the law are less serious than the consequences for judges of failure to resolve disputes. Tort litigation demonstrates there are few areas in which Chinese courts simply apply the law as written. Expecting Chinese judges to do so, however, reflects a fundamental misunderstanding of the role of courts in the Chinese legal and political systems.

⁹⁹ Benjamin L. Liebman, Margaret E. Roberts, Rachel E. Stern, and Alice Z. Wang, *Mass Digitization of Chinese Court Decisions: How to Use Text as Data in the Field of Chinese Law*, J. L. & Courts (forthcoming 2020).