Mapping the Political Terrain of Justice Reform in China

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Abstract: This article argues that it is the national imperative of ‘social stability’ and not the yearning to establish a socialist version of the ‘rule of law’, that has been the main catalyst for reforms to the system of law and justice in China. The author argues that some of the current instability has been triggered by the Central Party’s own economic policies, which has forced the local governments to become economically self-reliant. Consequently, the local governments have allowed the private and state-owned industries to plunder farming land and residential areas, leading to the dispossession of land by local owners. In the wake of widespread civic protests in the 2000s, the courts often acquiesced to local elites rather than redress citizens’ grievances, which would necessitate reforms in the justice system for achieving social order and stability. The article recommends that to facilitate harmonious social progress and stability in China the system as a whole needs to address the engrained deficiencies in the administration of justice.

Introduction
At the start of each new decade-long central leadership term in China, it is traditional for the Chinese Communist Party’s new leaders to announce their main reform platform for the years ahead through the auspices of the Party Congress’s ‘Third Plenum’. So it was the case on 12 November 2013 when President Xi Jinping and colleagues announced a swath of economic, governance and judicial reform intentions through the highly anticipated ‘Resolution of the Third Plenum of the 18th Party Congress’. Touted as the most ambitious reform plan for decades, this document signals the reform path that China will take over the next ten years. The Resolution declares a number of measures that will be taken to strengthen China’s justice system and ultimately its rule of law. However the rule of law envisaged in this document is not to limit the role of the Party in justice affairs, but to sustain it so as to make the administration of justice fairer and more efficient. The Party’s justice system reform initiatives clearly indicate Xi Jinping’s intention to forge a much more Beijing-centric and Party-centric governance path for the nation in order to diminish opportunities for local government and judicial

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actors to abuse their power. These intended reforms can be understood as ‘recalibrating’ vertical and horizontal power relations, or more specifically, putting in place better mechanisms to control politico-legal practices at the local level, and to prevent local protectionism, and corruption and abuse of power, all which are activities that produce social instability, unrest and discontent.

This article explores the role of the Chinese Communist Party in China’s justice system using current and past reform announcements as the context for discussion. We examine what the Party means by justice system reform in the context of a political and constitutional system in which criminal justice agendas are not conceptually separated from Party policies that are aimed at protecting the stability of China and realizing its modernization agenda. These are policies aimed at protecting the Party’s monopoly on power, largely by improving the fiduciary status of justice agencies in the eyes of citizens and by improving the credibility of courts and other justice agencies as a means of preventing political and social instability. We do so in the first part of this paper by examining a set of announcements 35 years ago, at another Third Plenum in 1978 that set off China’s modernization drive in the wake of the disastrous Cultural Revolution era. This 1978 Third Plenum marked a significant shift in political and legal change that would take China from the ruins of the Cultural Revolution to an era of open reform. In the second part of the paper we reflect on the current relationship between politics and justice system reform in the context of two recent reform announcements; the 2008 and the 2013 Third Plenum reforms. The main argument of this paper is that the Party’s obsession with and responses to the social impact of rapid levels of economic growth—and not any predetermined blueprint for a socialist rule of law – is the main catalyst for justice system rationale and reform in China today.

**Fairness and Efficiency as Reform Goals**

Various media outlets in China have called the 2013 Third Plenum Resolution ‘historic’ in ambition and scope. Indeed the Third Plenum Resolution is ambitious if we are to accept that the Party is attempting to severely limit the scope for government and judicial corruption in local areas across the nation. Phrases that have caught the attention of Chinese law experts in China and beyond include ambitions such as, ‘improving public credibility’ of justice organs, ‘to ensure lawful, independent and fair use of its judicial and procuratorial authority’ in order to guarantee ‘unified and accurate law implementation’. These phrases have caught the attention of scholars because enhancing public credibility and ensuring independence is directly related to the issue of rampant political and judicial corruption that has dogged reform efforts for years. Here corruption and abuse of power is directly related the ‘localization’ (difanghua) of court agendas over the last two decades or more which has seen local government abuse of power and influence over decisions relating to land, labor, and
environmental disputes that favor the coffers of local government rather than the citizens affected by crony capitalism.\(^3\) Local political interference has diminished public trust in courts and has improperly influenced the work of individual judges in these types of cases. Courts obtain their revenue from local governments and are therefore in many ways beholden to local government. Systemic entrenchment of local power relations—which particularly since courts and judges rely on local governments for their resources and remuneration—has made developing judicial fairness difficult to achieve, particularly in cases such as land and environmental disputes where the local government itself has a vested interest in the outcome.

The 2013 justice reform intentions can be encapsulated in two keywords: enhancing ‘fairness’ and ‘efficiency’. The 2013 Third Plenum announced a number of impressive reforms that if properly implemented, will greatly improve the carriage of justice and indeed will enhance fairness and efficiency. Highlights include:

- Reforming the management of human resources in courts and procuratorates by moving funding from the local to the provincial level;
- Improving the system of personnel recruitment to increase professionalism in justice agencies;
- Improving the system of supervision over courts to prevent judicial corruption by ‘optimizing’ the allocation of judicial powers, that is, strengthening the mutual coordination and mutual restraint of judicial powers (between and among the three arms of justice);
- Reforming the system of judicial decision-making over big and complex cases to diminish the power of trial committees within courts;
- Improving judicial transparency by encouraging open trials and open prosecutions, recording the court procedures improving judicial reasoning in court judgments and promoting access to court documents;
- Providing national standards for the system of punishment commutation, parole and medical bail procedures, and strengthen supervision systems in these areas;
- Standardizing judicial procedures for detention, custody, asset freezing and dealing with assets involved in cases;
- Improving mechanisms to prevent and correct misjudged cases, including the prohibition of the practice of extorting confession through torture;
- Progressively reducing the number of offences which carry the death penalty;
- Abolishing the re-education through labor system.

After these reforms were announced on 12 November 2013, Western media attention focused on the last reform item listed above, the proposed abolition of the notorious re-education through labor system which is a system of administrative
punishment run by the police which detains around three to four million petty thieves, prostitutes, drug addicts, and political nuisances each year for up to four years imprisonment without trial. This is indeed a major reform. But other reforms listed above which signal intentions to make courts more independent, are arguably equally groundbreaking when we consider that this could affect many more millions of citizens every year whose legal disputes over civil decisions made by local governments and courts have adversely affected their lives and livelihoods. These changes will also affect the carriage of justice for over a million other citizens each year whose criminal cases are handled through the Chinese criminal trial system. The signaled intention to move the funding of local courts from the local level to the provincial level particularly stands out as potentially groundbreaking. The Resolution anticipates that this move will enable the court system to become ‘relatively separate’ from the local government. This intention to ‘unify management’ of justice agencies at the provincial level signals a commitment to thwarting local protectionism and to guarantee independence of court and prosecution decision-making from local government interference. The Resolution also signals the Party’s intention to ‘reform’ internal trial committees as a way of making presiding judges more independent. These are committees in every court in China comprising senior judges from all court divisions who decide on difficult or complex cases even though they do not preside over these cases in person.

However seemingly promising, these catch cries such as ‘ensuring independence’ do not signal any intention to separate another, more pervasive political entity—the Communist Party itself—from the policy input into court, prosecution and public security work. It is clear then that the Party does not equate the idea of making judges more independent with the idea of a court which is fully independent from all external power, that is, the Party’s own power. Indeed, judges are expected to remain ‘activist’ in the sense that the Party expects them to judge cases on the basis of judicial and political policy which is supplied from Party central via the Party’s politico-legal committees at all levels of government and internal party committees in all justice agencies. The Party, not the Supreme People’s Court or the Supreme People’s Procuratorate or the Ministry of Justice in Beijing, supervises the overall path of development and enforcement of justice in China. These new reforms are an attempt by the Party to provide enforcement teeth to enable values of ‘fairness’ and ‘efficiency’ to be infused into justice practice without providing for the independence of the courts.

Each of these reforms relate in one way or another to the goals of improving ‘fairness’ and/or ‘efficiency’, goals that have dominated justice reform plans not only in this latest round of reform announcements, but for many years in China. Fairness might seem incongruous and inapplicable to an authoritarian system in which one-Party rule presides. Indeed it invites questions about what the conditions might be to make judicial fairness achievable in a state where the Communist Party rules over justice reform and practice. A typically Western-liberal response to this question would be to argue that
fairness can only be achieved with some form of separation of powers as a prerequisite; the withdrawal of politics in general and the Communist Party in particular, from the operations of politico-legal organs. According to this train of thinking, improvements in the system to move justice organs away from the politically-activist approach of justice towards something that resembles a Western-liberal rule of law would see the absence of Party involvement in the system as an essential sign of success. But what if the Party has no intention of withdrawing itself from the justice arena: what if, in fact the Party is an integral part of the apparatus of the state, not merely a political ‘actor’ in its affairs but rather an internal part of the institutional furniture of government, and ‘the holder of political citizenship’? What then would be the conditions necessary to begin to make these values of judicial fairness and efficiency a reality? These conjectures bring to the fore the issue of the law-politics relationship in China. This relationship has vexed many scholars of Chinese law for decades. Below we explore this law-politics relationship and scholarly interpretations of it, within the context of 2013 Plenum’s most influential predecessor; the historic reform agenda of the Third Plenum of the 11th Party Congress in 1978 which ushered in a new era of modernization in China and which has driven the direction of the justice system reform agenda for over three decades.

Criminal Justice Reform and Practice in the Deng Xiaoping Era
The symbiotic relationship between politics and law has been an enduring theme in China’s justice system from the Third Plenum of the 11th Central Party Congress in 1978 to the Third Plenum of November 2013. This relationship was forged decades before the establishment of the People’s Republic of China (PRC) in 1949. The revolutionary code of justice that was brought to Beijing from the Communist Party’s revolutionary struggle in the regions of Jingganshan, Ruijin and later Yan’an in the 1930s, became the foundation of a new system of law based on class struggle and revolutionary justice. In pre-1949 times and in the Maoist period until 1978, Party leaders maintained that law must not be separated from politics. Politics and law were combined into the term ‘politico-legal’ (zhengfa). Justice organs became known as zhengfa organs; law colleges became zhengfa colleges; and the Party established sub-committees called zhengfa committees across the nation to enforce Party policy in law and justice work. In China’s new era of open reform in 1978, Deng Xiaoping’s call to install a socialist rule of law did not see the law-politics amalgam fade into rhetorical or institutional obscurity; zhengfa—continues today to stress the political role of courts, police, prosecution offices, prisons, detention centres and security agencies in protecting social order.

For decades, zhengfa’s dominance in both rhetoric and practice has muddied the analytical waters for scholars, practitioners and human rights advocates who have sought to explain the developmental path of rule of law in China. Nearly thirty years after the founding of the PRC, after the atrocious failures of the Maoist reforms and the
The Cultural Revolution, courts, prosecution agencies and police embarked on another revolution of sorts; modernizing the organization and operation of justice in response to the Party’s 1978 Third Plenum call for a new approach to socialist legality. The Communique of the Third Plenum of the 11th Central Congress of the Communist Party in 1978 stated:

In order to safeguard the people’s democracy, it is imperative to strengthen the socialist legal system so that democracy is systematized and written into law in such a way as to ensure the stability, continuity and full authority of this democratic system and these laws; there must be laws for the people to follow, these laws must be observed, their enforcement must be strict and law breakers must be dealt with. From now on, legislative work should have an important place on the agenda of the National People’s Congress and its Standing Committee. Procuratorial and judicial organizations must maintain their independence as is appropriate; they must faithfully abide by the laws, rules and regulations, serve the people’s interests, keep to the facts, guarantee the equality of all peoples before the people’s laws and deny anyone the privilege of being above the law.

The reforms signaled by the Third Plenum in late 1978 were indeed intended to engineer a significant shift in the justice system’s approach to justice administration in the wake of wide-scale political, economic and social changes announced by Deng Xiaoping. Changes to justice practice and organization were intended to be multifaceted. In 1979, the decision was made to formally recognize a shift in focus from closed trials to public trials; new criminal and civil divisions were set up in courts to specifically deal with appellate cases; and courts throughout the country opened discussions on trial procedure. But all of these developments occurred at a time when the local courts had not yet even been given the funding to build their own courtrooms and at a time when the majority of judges had a level of education and training far inferior to their Western counterparts. Some had only a secondary school education while others, mainly ex-servicemen, had only a primary school education. Moreover, these developments were beginning at a time when crime was becoming an increasing concern for Communist authorities who had only just recently emerged from the decade of revolutionary struggle and instability of the Cultural Revolution.

In the first months after the implementation of the PRC’s first comprehensive criminal codes on 1 January 1980, court and prosecution legal training commenced across the nation; the courts began redressing cases from the Cultural Revolution; a Maoist-style anti-crime campaign went into full swing; the courts conducted mass sentencing rallies to frighten criminals and educate the masses; and the practice of allowing Party Committee members external to the court to review and decide on the outcome of individual cases was abandoned. This is a mixed and incongruous
assortment of activities which is difficult to reconcile with any one model of justice system reform, socialist or otherwise. Their incongruity also makes the task of framing analysis of justice reform difficult to achieve.

In the early 1980s, the rationales that underpinned justice reform favored an aspirational approach to the Party’s new reform agenda. Justice organs were to aspire to developing a rule of law but the development of professionalism and legitimacy in judicial institutions was not to be complicated by detailed legalese.² Deng Xiaoping declared that laws would need to be digested rapidly by a legally untrained judiciary. Deng favored a ‘fast-track’ approach to legal development in which the Party-state set lofty aspirations without the detailed procedural safeguards in place to deliver what was necessary to realize these aspirations. Procedural laws and government regulations were established but mechanisms to properly enforce them were not forthcoming. This fast-track approach was summed up in Deng’s dictum that ‘[some] law is better than no law, faster [law-making] is better than slower [law-making]’.³ The idea here was to advance a rule of law through the proxy of aspirational goal-making rather than to take the slower and more tedious path to a rule of law by building into the system, detailed and enforceable guarantees of due process. Procedural due process and guarantees for the protection of citizen’s rights was not the type of ‘guarantee’ that was a focus of the Party’s attention in the Deng era of the 1980s. Rather, it was the political aspiration to guarantee social stability as a precondition for economic prosperity that the Party privileged above all goals. In many ways, carefully crafted and enforceable rule-making that privileged procedural propriety and due process was seen as a bulwark rather than an accompaniment to this social stability guarantee. Social stability rather than rule of law was the locus of justice reform intent.

This approach meant that from the beginning of China’s reform era in 1980, justice authorities were predisposed to relying heavily on Party policies in their decision-making that linked China’s economic success to the ability of justice agencies to maintain the social stability required to implement economic reform. The Party-state sought a path to legitimacy through the dual promises of maintaining stability and promoting economic development.⁴ Legitimacy was tied to stability-maintenance rather than to the development of robust and authoritative institutions that could properly supervise and oversee local government and judicial decisions.

The Party and justice system reform in post-Mao China

Within this context described above, there developed a definite expectation that justice system reform would provide institutional and technical solutions both to the immediate social problems of crime and the long-term regulation of social and economic order. But the rapid economic and social changes initiated by open door reform were accompanied by an equally expeditious growth in crime rates in the years following the
Cultural Revolution. The social upheaval induced by ambitious economic reform plans to move from a command to a market economy brought on an increase in unemployment rates, increased labor mobility and burgeoning inflation. This placed the issue of social instability at the forefront of Party political priorities. The political rhetoric and agenda of crime control in China had shifted to one in which authorities promised to administer justice in a professional—not revolutionary—manner which would be executed within the confines of a socialist ‘rule of law’. But while authorities announced ‘rule of law’ as an aspiration to work towards, it did not follow any well-established model of a rule of law which sought separation of the Party-state from the operation of law in court. Authorities, rather, relied on the organizational and discursive framework of a socialist zhengfa culture of justice that had been the mainstay of China’s criminal justice for decades.

A number of western studies of Chinese law in the 1980s attempted to evaluate reform intentions in post-1978 China on the basis of assumptions they held about a particular manifestation of a rule of law that China intended to develop. They analyzed the relationship between law and politics in China by positing a dualism between a ‘societal’ model of law (favored by Mao) and a ‘jural’ model of law (favored in the brief ‘constitutional’ period in the mid-1950s). The conclusions they reached were that although statutory and procedural regularity marked an impressive return to a jural model of law, and while official views stressed the importance of a socialist rule of law, there remained impediments to the full implementation of a jural rule of law. Impediments included shortages of trained personnel, an indifferent attitude towards law held by the general public as well as government officials, and the general political limitations of socialist law. Other remaining impediments assumed here, also included general political limitations such as the continued prevalence of Party politics as the guiding ideology of legal development and the continued dominance of Party principles. The underlying (but unstated) assumption in these western analyses of China’s reform path was that both the advancements and regressions in the justice system could be measured along a continuum, with a 1950s-style bureaucratic socialist model representing one end and a Maoist model at the other end. In other words, scholars were attempting to evaluate one end of a conceptual continuum (the political and ideological nature of Chinese law) from the viewpoint of the opposite end of the continuum (1950s-jural style rule of law replete with due process values and so on). In this sense, the jural rule of law was assumed, in their work, as a benchmark from which the realities of justice practices could be contrasted.

But as time marched on into the 1990s, it became increasingly apparent that focusing on the prospect for a diminution of Party power as a benchmark of success in judging reform efforts was an unsound method of evaluating the nature of justice system reform. Party leaders had indeed originally sought to procure a very gradual separation of powers between Party and state in the 1980s, freeing up the Party to focus
on policy issues and enabling administrators and legislators to deal with routine governance matters without constant Party interference. But with the 1989 Tiananmen incident and the collapse of the Soviet Union, the Party abandoned this aspiration of gradual separation, instead reasserting direct control over legislative and governmental organs.\textsuperscript{13} In order to avert the risk of political collapse similar to the Soviet Union’s fate, Party authorities began a significant rethinking of governance in the early 1990s, one that coupled more efficient political control over public policy with the continued commitment to economic development. Re-embedding the Party into government and legislative affairs involved strengthening political influence over justice and security organs through the mechanism of the Party’s politico-legal committees at each administrative level.\textsuperscript{14} Placing these committees in each level of governance down to the county level meant that the Party could secure control over the policy agendas of courts, prosecution and public security agencies. The Central Politico-legal Commission of the CCP (\textit{Zhonggong Zhongyang zhengfa weiyuanhui}) in Beijing was reinstated in 1991. It governs these committees and sets the policy agenda for the nation’s courts prosecution and police. Its subnational committees at province, municipal and county level implement the Commission’s policies.\textsuperscript{15}

Here, it is clear that the Party was not seeking to build legitimacy by removing itself from the state, but the very opposite; by embedding itself further into state apparatuses. This configuration of power enabled the Party to direct justice reform plans to consolidate and institutionalise its leadership within institutions, ideologically as well as pragmatically.

**The centrality of social stability to justice reform**

Since the early 1990s, China’s rapid economic growth has depended on a willingness by the Party to allow for a vastly uneven spread of economic development to occur in order for a trickle-down effect to eventually bring about a ‘moderate prosperous society’ (\textit{xiaokang shehui}) for the majority of citizens. Over the last two decades since the mid-1990s, this unprecedented rate of economic growth has been enabled by a certain mode of developing industries and enterprises that in many places could be described as crony capitalism. The speed and scope development has been unimpeded by strong labour and environmental oversight protections since strong oversight would have placed at risk the pace of economic success. But while this path to prosperity through eight to ten percent annual growth rates had been successful in raw GDP terms, it became increasingly apparent in the late 1990s that it carried a high social and political cost. This developmental mode precipitated high levels of social dissatisfaction especially in areas where forced land acquisitions were rampant, and where lax labour regulations and environmental regulation were the norm. While the Party-state had indeed developed laws intended to regulate economic development, their strict
enforcement was not encouraged in sub-national jurisdictions where local government revenues depended on land sale and development. These governments had a vested interest in protecting state and privately owned capital development. So rather than to strictly enforce regulation that could potentially slow down the momentum for economic growth, local governments allowed development to occur in a socially and environmentally unsustainable way. This situation enabled state and privately owned enterprises to prosper at the expense of citizens who lacked the capacity to protect themselves from deregulated market forces.

The plundering of farm land has required land-taking and property demolition deals which have typically been enabled through compensation packages to residents and farmers which severely underestimate the value of the land and property. Around sixty-five per cent of China’s collective protests each year relate to the unfair deals that have come about through forced appropriation of agricultural land. The Chinese Academy of Social Sciences estimates that fifty million farmers had their land seized in 2010, with that figure increasing annually at a rate of three million. This fast-track economic growth was enabled by weak oversight and regulatory mechanisms which could have otherwise protected citizens against rampant crony capitalism. High-speed development occurred but at the expense of citizens whose land and property was requisitioned and who laboured for low wages without recourse to robust contractual regulation of wages. Moreover, local residents have had to endure the environmental fallout of the growth of manufacturing industries, power plants and factories whose profits were unhindered by robust enforcement of environmental regulation.

Unprecedented rates of social protests grew in parallel with GDP growth. Social unrest, protests against injustices and dissatisfaction with the unequal distribution of wealth brought about what the Party deemed an increasingly ‘unstable’ society. By the early 2000s, the Party began characterising high levels of instability in terms of the number of petitions (xinfang, that is, ‘letters and visits’ to courts and government offices by aggrieved individuals) and ‘mass incidents’ (qunti shijian, that is, public protests) in local areas. Since the late 1990s, many protestors and petitioners have been unable to find justice in their local courts since courts are dependent on local governments for their income. Local governments have put pressure on courts to rule on cases in favour of local developers and local government. Most individual and collective protests concern civil disputes, mainly government decisions or court decisions about land, labour or environmental issues.

By the mid-2000s, the number of mass incidents (organised social protests with the number of protestors ranging from dozens to over one hundred thousand) had reached approximately 80,000 per year. And by 2007, the annual number had reached over a hundred thousand collective protests annually. The number and scale of protest propelled ‘social instability’ to become the primary socio-political concern of the Party-state by the early 2000s. This preoccupation with stability reshaped the Party-state’s
approaches to justice, to government decision-making practices and to security arrangements. The overriding concern became the containment of potential or realised unrest and dissent at the local level so that a social problem or dispute does not escalate to become unmanageable. Local courts and governments become increasingly ‘activist’ in their decision-making in response to the escalating number of people who use the mode of petitioning outside court and government agencies to seek justice. In short, the Party’s response to the petitioning and mass incident phenomenon was to produce a strategy of ‘localising grievances while insulating the Centre’. One aspect of this strategy involves policing protests financed through a ‘Stability Maintenance’ budget that now runs to over 700 billion yuan (approximately US$120 billion) annually. Another crucial aspect involved the court’s refusal of civil cases for litigation and increased emphasis on mediation.

Mediation involves the aggrieved party voluntarily accepting the outcomes, which means that the parties involved are unlikely to appeal, petition, or complain. It is attractive to local authorities because by the time the complainants have agreed to the terms of a mediation agreement, they are no longer able to legitimately complain through appeal against a decision that (in theory at least) they participated in making. Policy-makers encourage mediation as the main approach to resolving these types of disputes because it allows the dispute to be dealt with in a way that discourages or even disallows the affected party to appeal or petition in Beijing against the court’s decision. This mode of dispute resolution may seem, in the short-term, a positive way of preventing unrest, but mediation does not necessarily offer a guarantee of stability. Nevertheless, Beijing’s pressuring of local courts to deal with disputes before they reach higher levels, has created a logistical problem for local authorities. Mediation practices also crept into the criminal justice arena aimed at diffusing the potentially social destabilising effects of minor crime incidents such as minor assault and negligence in car accidents. Mediation enabled parties in these cases to practice ‘restorative justice’ by the offender offering financial compensation to the victim.

By 2007, party authorities had begun to acknowledge the potentially destabilising effects of their own social stability initiatives. While there was no intention at this stage to reform stability maintenance practices such as ‘aggressive meditation’, the instability problem nevertheless occasioned a new approach to justice system reform, one which would support stable maintenance operations while at the same time attempting to diffuse its negative social and political effects. It was apparent by 2008 that stronger central Party input to offset corruption and interference in court matters was imperative in diffusing the explosive social stability problem.
The 2008 Plan

Heightened Party presence in the formulation of reform plans is nowhere more apparent than in a 2008 Justice System reform initiative comprising 60 reforms devised by the Central Party Committee’s (CPC) Politico-legal Commission, the finer details of which were never made public.\textsuperscript{23} That the Party itself—not the National People’s Congress or the Supreme People’s Court or the People’s Procuratorate or the Ministry of Justice—authored this document indicates that in the 21st century, like in the 1990s, the Party continues to play a central role in all terrains under its immediate scope of influence: policy-making, policy delivery through sentencing practices, and arrangement of power relations within the system to supervise and prevent potential abuse of discretionary power.

The Party’s main engine of leadership, the Politburo, called for and oversaw this 2008 reform plan, presumably recognizing that the Party’s own obsession with social stability had seriously damaged the public credibility of courts and other justice agencies. The Politburo also recognized that enhanced credibility and institutional authority would require a complex mix of reforms that dealt with the structural deficiencies at the local level. As noted above, courts and other justice agencies are beholden to local governments since their income is sourced locally. The localization of court agendas has meant that at each level (county, municipal, province) they can be heavily influenced by local government interference in fulfilling adjudication and judicial mediation tasks, particularly in some locally sensitive cases such as land, labor and environmental disputes. Systemic entrenchment of these power relations has made developing judicial fairness and judicial authority a difficult task.

Recognizing the fractured relations between the Party-state and its citizens, the 2008 Party Plan stated that its key aim was to develop institutional capacity to enable judicial organs to operate more fairly and effectively in performing their central task, which is to regulate social relations through law. According to the 2008 reform document, reform would be achieved by strengthening the oversight or ‘supervision’ functions of key political and politico-legal actors: procuratorates overseeing court decisions and people’s congresses overseeing court and procuratorates at the local level, along with superior courts and superior Party committees overseeing their inferior agencies.

The general intentions of the 2008 Party Plan for system-wide reform was announced publicly in the People’s Daily but specific details were withheld.\textsuperscript{24} In an interview with Legal System News reporters, Deputy Secretary of the CPC Politico-legal Commission, Mr. Wang Qijiang, stated that the 2008 Party Plan is a major strategy set out under the auspices of the 17th Party Congress report in 2007. The Politburo gave the CPC Politico-legal Commission the responsibility of coordinating, supervising and assessing the reforms.\textsuperscript{25} The document centered on how to effect improvements in fairness and efficiency. The Plan claimed to closely ‘hold on to the key goals of
improving judicial fairness and efficiency’ in order to ensure that courts and procuratorates ‘exercise their powers independently and impartially according to the law.’ The four key goals of the 2008 Party Plan were:

- to optimize the distribution of oversight functions and appropriate allocation of powers that mutually restrict judicial authority;
- to implement the policy of ‘balancing leniency and severity’ [in sentencing];
- to strengthen the contingents of the political-legal ranks [by re-training ex-servicemen as judges in remote regions]
- to strengthen guarantees of funding for political-legal organs [by moving court funding sources from local to provincial or central level].

Balancing power relations required finessing two main sets of power relationships—vertical and horizontal—through renegotiation with existing power holders. For the vertical, Central Party authorities sought to reassert control over local justice agencies by ‘optimizing’ the center’s authority over the periphery, recognizing that citizens could be protected from corrupt and potentially corrupt practices at the local level only by the Party having and exercising greater oversight powers through stronger checks and balances. For the horizontal, power balances were to be renegotiated among and between the police, procuratorate and courts as the three institutional arms of justice. Superior bodies were to reassert power over inferior bodies in politico-legal committees and superior courts to reassert their power over inferior courts.

The ambitious fourth task of the 2008 Party Plan listed above was to provide guarantees for the funding of court budgets and to that end, it signaled that at some time in the future, the Party would be prepared to move a large portion of the all-important source of court funding from local government to the central Ministry of Finance. The sheer size of budgetary implications had been the main barrier to this move up until this point in time. China has over 3,300 local courts excluding military and railway courts. Shifting court funding from local government to the central level would require over 40 billion yuan each year from the central authorities. It would have been a crucial breakthrough but for monetary reasons, it was not realized in the period from 2008 to 2012.

The 2008 Reform plan met many of its goals most notably infusing the criminal justice policy of ‘balancing leniency and severity’ into both minor and serious criminal cases, as a means of rationalizing the now widespread practice of offenders offering financial compensation to victims in exchange for a reduced sentence. However, attempts to move the source of court funding from local to provincial level was not realized in the period from 2008 to 2012 because it competed directly with the political imperative to keep ‘stability maintenance’ operations alive and well at the local level.
Put simply, local control of court agendas by local government remained intact because the number of individual petitions and collective protests continued to climb.

After December 2012 the new party leadership headed by President Xi Jinping began to make changes to the state’s response to social instability.28 The new leadership began realigning the country’s politico-legal agenda by pulling away from its hard stance on ‘Stability Maintenance’ that was eroding public confidence in the law, and pushing back to an emphasis on building rule of law. Loss of public trust in the law was central to the retreat of hardline Stability Maintenance into rhetorical obscurity and the decision to revamp rule of law rhetoric.

The 2013 Third Plenum Justice Reform Plan
The 1978 Third Plenum is now touted in the media as Reform 1.0 while the 2013 Third Plenum is seen as Reform 2.0. One of the enduring effects of Deng Xiaoping’s ‘fast track’ approach to reform is that the Party failed to factor in the inevitable consequences of weak governance and ineffective oversight mechanisms at the local level. Thirty-five years after the 1978 Third Plenum, we see the consequences of Deng Xiaoping’s ‘fast track’ approach to law and justice reform that continues to privilege aspirational goal-making while delivering only in limited ways, the legal and structural scaffolding that would be essential to realizing these aspirations.

The 2008 justice reforms attempted but ultimately failed to deliver reforms to address oversight problems of local government abuse of judicial power. It was clear that these reforms needed the imprimatur of a major, once in a generation, Party Resolution to gain the collective political pulling power to see this reform intention realized. After Xi Jinping came to power in late 2012, the new Party leadership quickly began realigning the politico-legal agenda promoting socialist rule of law rhetoric. In late 2012 and early 2013, an immediate upsurge in Party references to rule of law signaled intentions within the Party to move in a decisive way to rebalance power relations within and among the judicial and security organs to make them more conducive to ‘supervision’ and the ‘mutual restraint’ of authority and ultimately long-term regime resilience.29 In November 2013, the Party Congress published an outline of a new justice system reform plan that it touted as important to the realization of China’s national rejuvenation and the China Dream. It includes the following key reforms:

(1) Guaranteeing that judicial powers and prosecutorial powers are exercised according to the law, independently and fairly by reforming judicial management systems;
(2) Promoting the unified management of human resources in courts and procuratorates at the provincial level and lower;
(3) Exploring the establishment of judicial jurisdiction systems that are suitably separated from administrative areas, guarantee the uniform and correct implementation of state laws.

(4) Establishing judicial personnel management systems that conforms to professional characteristics, complete mechanisms for the uniform recruitment of personnel

(5) Optimizing the allocation of judicial powers, including strengthening the mutual coordination and mutual restraint of judicial powers (between and among the three arms of justice), to standardize both legal and social supervision over judicial activities.

(6) Reforming the system of internal trial committees within courts so that those officers who preside over cases that the officers who are responsible for case decision-making.

(7) Improving transparency by encouraging open trials and open prosecutions, recording the court procedures improving judicial reasoning in court judgments and promoting access to court documents.

(8) Standardizing the system of punishment commutation, parole and medical bail procedures, and strengthen supervision systems in these areas.

(9) Standardizing judicial procedures for detention, custody, asset freezing and dealing with assets involved in cases.

(10) Perfecting mechanisms to prevent and correct misjudged cases, including the strictly prohibition of the practice of extorting confession through torture,

(11) Progressively reducing the number of offences which carry the death penalty.

(12) Abolishing the re-education through labor system.30

Again we see that central Party authorities are intending to build into the Party’s ‘rule of law with Chinese characteristics’ ideology lasting solutions to the complex problem of interference, corruption and other disruptive issues, along with intentions to ‘standardize’ practice across the nation. Head of the Party’s Politico-legal Commission Meng Jianzhu stated two weeks after the Resolution announcement, that these reforms are related to the Party’s determination to halt the social instability that characterized Chinese politics in the first decade of the 21st century.31 Here Party authorities are seeking to ‘infuse’ these structural solutions with the values of ‘fairness’ and ‘efficiency’ by standardizing justice practice across the nation with the Party at the helm. The Party is attempting to proactively embed these socialist rule of law values into the state apparatuses that administer and enforce the law. This ‘more not less’ Party influence in building rule of law may seem anomalous. But we need to recognize the elemental place of the Party, not simply as an actor in the affairs of the state but as an organization integrated within state apparatuses. In this respect, the Party’s efforts to separate
'politics' from the operation of legal institutions at the local level are not an attempt to separate Party from state power, but to relocate power into a less venal configuration. The illegitimate political interference under the reform lens here is not the ‘Party’ per se but specific local government (and local Party actors) who use their political position illegally to serve their own interests by influencing case outcomes.

Here we are given some hints as to what is the ‘end game’ in these reforms. Improving judicial fairness and efficiency helps to standardize and unify justice operations that will advance the political cause of social stability, and which in the long run, will enable the systemization of a socialist rule of law, according to the head of the Party’s Politico-Legal Commission.32 Clearly the social stability imperative remains the bedrock of China’s justice reform intentions.

Conclusion
This paper has argued that it is the importance attributed to the national imperative of ‘social stability’ and not any predetermined blueprint for a socialist rule of law that has been the main catalyst for justice system rationale and reform in China. As we have argued in the main body of this paper the problems of instability originate with the Party’s own economic policies. For well over two decades, Central Party authorities have maintained China’s high-speed economic growth by forcing local governments to continuously produce their own revenue. This revenue raising has been enabled by weak oversight mechanisms and under-regulation of economic development. Local governments for decades have invited private and state-owned industries to plunder farming land and residential areas to build enterprises to source their revenue. Citizens in rural areas do not have the right to own land but are apportioned land to use to make a living. Hundreds of millions of people have been adversely affected by questionable land-taking decisions and by labour and environmental fallout of development that favoured private profits over the enforcement of legal regulations. Robust oversight and enforcement of forced land acquisition and other development-related decisions might have slowed down this economic development; in short, fast-track development relied on slow and weak enforcement. This situation produced an era of widespread social unrest in the decade of the 2000s which saw millions of people take to the streets in collective protest and millions of other individuals using the avenue of formal petition to higher authorities to hear their cases of alleged abuse of power. During this time, courts often acquiesced to local powers-that-be rather than to take the side of citizens in disputes, particularly disputes that involved land-taking to develop money-making enterprises that local governments relied on for their income.

It is clear from these reform initiatives listed above that the Party in 2013 continues sees justice reform as a way of achieving social order and stability in China by strengthening the authority and public credibility of local courts and by standardizing
practices across the nation. The Party is attempting to overcome some significant institutional and ideological barriers to procedural fairness and institutional efficiency and to maneuver out of some longstanding problems in institutional management, arbitrary justice and in the punitive culture of justice administration. We find that this new reform path has less to do with a process of creating the conditions for diminishing Party presence in governance and judicial matters and more to do with generating the conditions for greater standardization, uniformity and professionalism in justice practice. We observe, then, that the Party now sees that the desired reform of justice administration can be achieved only if the system as a whole is reformed in unison. Since the Party is going nowhere and its remains at the center of the political stage in China, the only way to achieve this is through the Party ultimately steering the justice reform ship. The Party sees its strong oversight over reform as crucial at this stage of developing a fair system of justice and most importantly for the Party, a more socially stable society.

NOTES

1 A longer version of this paper will be published in a forthcoming study of the nature of justice in China.


4 Susan Trevaskes, ‘Political ideology, the party, and politicking: Justice reform in China’, Modern China, 37:3 (2011), pp.315-44.


9 Ibid.

10 Trevaskes, Courts and criminal justice in contemporary China.

11 Ibid.

12 Examples of this approach include Leng and Chiu (1985) and Lo (1995).


15 Zhongliang Lin, Geji danwei zhengfa wei de zhineng ji hongguan zhengfa gongzuo (The functions and macroscopic tasks of the politico-legal affairs work of politico-legal affairs committees at all levels of government), (Beijing: Changan chubanshe, 2004) pp. 23-24.


17 Ibid.


20 Ibid.


22 Fu, ‘Politicized challenges, depoliticized responses’.


25 Chunying Sun and Li Chai, ‘Zhuoli tuijin sifa tizhi he gongzuo jizhi gaige’ (Direct all efforts into promoting justice system reform and reform to work mechanisms), Fazhi ribao, 2 January 2009.

26 CPC Opinion, ‘Zhongyang zhengfa weiyuanhui guanyu shenhua sifa tizhi he gongzuo jizhi gaige ruogan wenti de yijian’ (Opinion by the CPC politico-legal affairs committee on certain issues relating to optimising reform to the justice system and its work mechanisms), approved and transmitted by the Politburo in the document titled, ”Zhongyang zhengfa weiyuanhui guanyu shenhua sifa tizhi he gongzuo jizhi gaige ruogan wenti de yijian’ de tongzhi: Zhengfa 2008-19 hao (Politburo notice approving the ‘opinion by the cpc politico-legal affairs committee on certain issues relating to optimizing reform to the justice system and its work mechanism’),” Politico-legal document no.19 (2008).


28 Trevaskes and Nesossi, 2013, op.cit.

29 Ibid.

30 CCP, ‘CCP central committee resolution concerning some major issues in comprehensively deepening reform’.


32 Ibid.