

EMBEDDED COURTS

Embedded Courts are laden with tension. Chinese courts are organized as a singular and unified bureaucracy and yet grassroots courts in urban and rural regions differ greatly in the way they use the law and are as diverse as the populations they serve. Based on extensive fieldwork and in-depth interviews, this book offers a penetrating discussion of the operation of Chinese courts. It explains how Chinese judges rule and how the law is not the only script they follow – political, administrative, social and economic factors all influence verdicts. This landmark work will revise our understanding of the role of law in China – one that cannot be easily understood through the standard lens of judicial independence and separation of powers. Ng and He make clear the struggle facing frontline judges as they bridge the gap between a rules-based application of law and an instrumentalist view that prioritizes stability maintenance.

Kwai Hang Ng is Associate Professor of Sociology at the University of California, San Diego. He has written a series of articles (with Xin He) on different aspects of the Chinese grassroots courts, addressing topics including courtroom discourse, mediation, criminal reconciliation, domestic violence, and divorce petitions.

Xin He is Professor and Director of Centre for Chinese and Comparative Law at the School of Law, City University of Hong Kong. He has published more than forty articles in the fields of law and society, comparative law, and the Chinese legal system.

Embedded Courts

JUDICIAL DECISION-MAKING IN CHINA

KWAI HANG NG

University of California, San Diego

XIN HE

City University of Hong Kong



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Preface and Acknowledgments

Embedded Courts represents the fruits of our academic collaboration in the past decade. We came from different but related disciplinary and intellectual backgrounds. Underlying our collaboration is a shared belief that to gain a meaningful understanding of the Chinese legal system, one must study how the courts operate in action. It may help if, from the very beginning, we give up on the ambition to cover everything that can be said about the Chinese courts. There are many books that offer systematic overviews of the Chinese judicial system. This book is shot through with an issue that in our view is most central to understanding the Chinese courts: namely, the intimate, delicate and complex relationships between the courts, the party-state, and the society. The genesis of this book is also owed to a set of puzzles we have grappled with over the years as we have tried to make sense of the Chinese court as a unique bureaucracy within the party-state of China. This book is the result of our joint labors at thinking through the puzzling nature of the Chinese courts that we identify in Chapter 1 – a weak and highly malleable institution that is supposedly bestowed with the authority to carry out some of the most intrusive laws of an authoritarian party-state.

We would like to thank the judges who helped make indispensable arrangements to facilitate our fieldwork at various grassroots courts in China. We would also like to thank the judges and litigants who agreed to be interviewed for the book, without whom we would never have been able to do the research necessary for producing this book. Specifically, Ju Xiaoxiong generously opened the door of a basic level court for Xin He to start the research on Chinese courts. His vision, courage, insights, ideas and suggestions had significantly shaped many studies on which this book is based. Randy Peerenboom always encouraged Xin He to write a book on Chinese courts and he has offered invaluable advice on the book publishing process. Sida Liu also offered useful suggestions. The anonymous reviewers asked incisive questions and offered very practical recommendations.

There are colleagues and friends whose engagement with the arguments made in this book at various stages have pushed us to be attentive to issues that would

otherwise have been overlooked. Their questions prodded us toward greater clarity. Some of them endured the tedium of reading rough early drafts. We would like to thank Bjorn Ahl, Lei Guang, Michelle Hsieh, Hou Meng, Elena Obukhova, Charles Qu, Gwo-Shyong Shieh, Jeffrey Sachs, Yang Su, Ting-hong Wong, Horng-luen Wang and Frank Upham. Xin He is grateful for the help offered by his assistants and doctoral students Jing Feng, Kege Li, Yaqing Wang, Huina Xiao, Yan Ye and Yixian Zhao.

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Much of the analysis in this book is based on new interviews and field works we conducted in the past few years. Given the synthetic nature of our project, it also draws on some of our previous studies. These reports have been substantially rewritten and updated to fit within the broader framework of embeddedness. A different version of Chapter 6 was published as an article entitled "It Must Be Rock Strong! Guanxi's Impact on Judicial Decision-Making in China" in *American Journal of Comparative Law* (2017). The discussion of the adjudication committee in Chapter 4 drew from a study by Xin He ("Black Hole of Responsibility: the Adjudication Committee's Role in a Chinese Court," *Law & Society Review* 46(4):681–712, 2012. Chapter 5 also drew from some of He's previous studies, including "Routinization of Divorce Law Practice in China: Institutional Constraints' Influence on Judicial Behavior," *International Journal of Law, Policy and the Family* 23(1):83–109, 2009, "Judicial Innovation and Local Politics: Judicialization of Administrative Governance in East China," *The China Journal* 69:20–42, 2013, "Maintaining Stability by Law: Protest-Supported Housing Demolition Litigation and Social Change in China," *Law & Social Inquiry* 39(4):849–873, 2014, and "No Malicious Incidents': The Concern for Stability in China's Divorce Law Practice," *Social & Legal Studies* 2017. Chapter 7 reproduces a table (Table 7.4) that first

appeared in “Court Finance and Court Responses to Judicial Reforms: A Tale of Two Chinese Courts,” *Law & Policy* 31(4):463–486, 2009.

Our families have provided us with unwavering support for the work. Kwai Ng dedicates this book to his wife, Ngai Ling. Completion of this book would have been impossible without her quiet and steady support and company. He would also like to thank his sister Chui for hosting him during his visits to China and Hong Kong. Xin He’s father, Xiuxin Tao, always encouraged him to publish a book. His wife Lixin Chen, over the years, consistently shared more family responsibilities, despite the heavy professional demand of her own work. She complained that Xin He had not published a book earlier than did their son Tim He, whose “History of 3B” has been put up on his school website. For this and other reasons, Xin He dedicates this book to her.