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**Article**

## THE DUAL TALES OF MORALIZING COURTS: EXAMINING PARTY-RELATED MORALIZING KEYWORDS IN CIVIL JUDGMENTS

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*Combining Rule of Virtue with Rule of Law, a policy initiative in China that could be traced back to the governance of President Jiang Zemin,<sup>2</sup> has drawn widespread attention from Western scholarship over the past few years. But how is this initiative carried out in everyday judicial decisions? The first part of this article tries to answer this question by searching for a group of 18 morality-related and Party-sanctioned keywords in publicly issued civil cases between 2001 and 2018. Here, we found judicial decisions incorporating extra-legal moralizing passages across a wide range of locations, court levels, subject matters, and individual judges. These judicial opinions include moralizing lectures on various topics and in various styles; and we further analyze their rhetoric and function through a close reading of over 1,500 sample cases. The second part of this article then examines whether this judicial practice accurately reflects the top-down policy initiative and seeks to explain the identified gaps by offering a second, bottom-up motivation for judicial moralizing. In conclusion, we posit that Chinese judges include Party-sanctioned moralizing language in their opinions to serve dual purposes: both to satisfy a political mission imposed from the top, and to win over populist trust and support on their own accord. We end with an analysis of*

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<sup>2</sup> All references to Chinese names in this article are presented with the family name (last name) first, followed by the given name.

*the legal and structural implications of such practices, and a cautionary note about their potential impact on the legitimacy of the Chinese judicial system.*

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## INTRODUCTION

Consider the following three passages:

1. Chinese traditional culture has ancient and rich roots. Over the past five thousand years, we have created an illustrious civilization and produced an eminent cluster of moral principles, a complete set of etiquettes and norms, as well as a system of outstanding Traditional Virtues. This is how we developed the well-earned reputation of being “a venerable and long-standing civilization known for its virtues and etiquettes.” As required by Xunzi<sup>3</sup> in *Xunzi on Self-Cultivating*, “no person shall survive without practicing Li (礼), no matter shall succeed without following Li, and no nation shall be at peace without promoting Li.” Today, Li is also required by the Core Socialist Values. In the old days, Kong Rong always saved the choicest portion of pears for others, and he was extolled for his respect and love of the elders; Yue Fei observed courtesy and etiquette towards everyone he encountered, and he was rewarded with victory in military combat assessment and the right to fight for his country;<sup>4</sup> out of respect for his future teacher, Yang Shi was willing to stand in the snow for a whole night while waiting for the teacher to wake up, and he became the exalted model of an aspiring student.<sup>5</sup> It’s only because people valued the importance of Li that such celebrated stories came into being. For fellow-villagers who share a bloodline, when disputes arise, why not be the generous one, and back up

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<sup>3</sup> Authors’ Note: Xunzi was a prominent Confucian living approximately 250 years after Confucius. Xunzi’s teachings were collected into Xunzi (荀子). All translations are our own unless otherwise noted.

<sup>4</sup> Authors’ Note: Yue Fei was a legendary military commander and patriot in the Southern Song Dynasty. According to *The Complete Stories of Yue Fei* (说岳全传), a novel written in the Qing Dynasty based on oral traditions and folklores about Yue Fei, when Yue Fei was young, he set out to attend the national combat assessment together with a fellow countryman, Niu Gao. While Yue Fei was resting in a hotel, Niu Gao tried to get ahead of his companion and went in search of the assessment center alone. He lost his way and had to ask for directions from an elderly passer-by. He approached the passer-by rudely, who was offended and refused to tell him the way. Niu Gao therefore remained lost for a long time, and he was late for the assessment. Yue Fei, setting out after Niu Gao, later encountered the same passer-by on his way. Because Yue Fei treated the elder with courtesy and respect, the elder was pleased to give him detailed directions. Yue Fei then arrived at the assessment in time, was selected for his combat skills, and hence began his illustrious military career. Qian Cai (钱彩), *Shuo Yue Quan Zhuan* (说岳全传) [The Complete Stories of Yue Fei].

<sup>5</sup> Author’s Note: The pursued teachers were Cheng Hao (程颢) and Cheng Yi (程颐), two Confucian philosophers in the Song Dynasty who were also brothers. Zhu Xi (朱熹), a prominent developer of Neo-Confucianism, was their student and follower. The well-known story of Yang Shi was recorded in a number of Confucian texts, including by Zhu Xi in *Thematic Discourses* (朱子语录).

three feet?<sup>6</sup> A moral culture enlightens the people, and a people that practices virtue attain the kind and the good. A society where people are tolerant and generous towards each other is bound to be harmonious and happy.

2. Honesty is an integral part of Core Socialist Values. It is further a Traditional Virtue of the Chinese People, and a basic norm of Civic Morality. As such, honesty is not only a personal virtue, but also our ethical responsibility. Promises, once made, must be fulfilled; and profits belonging to others, no matter how great, shall not be coveted.
3. Blood is always thicker than water, and the Huang brothers are blood relatives of the closest type. To see them fall out over trivial matters in family life without mutual understanding or generosity and face each other in open court like enemies—this is truly a tragic sight! On top of that, it is also at odds with what needs to be practiced in our country as we strive towards the construction of a harmonious socialist society. The Traditional Virtues of the Chinese People call for loving parents and filial children; in view of this, we would like everyone to forgive and forbear towards each other. Specifically, parents should appreciate the difficulties faced by their children in their daily lives, and children should be grateful for the care and toils of their parents in bringing them up. Going forward, the Huang brothers should let bygones be bygones, help and promote each other in their quest for fortune, and together pay the proper respects to and provide support for their elderly mother, so that she lives out her days peacefully.

The above three passages might not have looked out of place if found in a thesis on traditional Chinese moral philosophy, or an official

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<sup>6</sup> Author's Note: According to traditional folklore, during the Qing Dynasty, there was a scholar and bureaucrat called Zhang Ying, who was famous and lived in the capital city. Back in his hometown, his family got into a dispute about the wall dividing their property from their neighbor's. They wrote to Zhang Ying for instructions and support, hoping that he could exert his influence to help his family win the litigation. Zhang Ying's reply letter composed only of a poem: "千里修书只为墙，让他三尺又何妨？万里长城今犹在，不见当年秦始皇。" Roughly translated, the poem goes: "A letter sent across a thousand miles for no more than a wall. Would retreating three feet have mattered at all? Ten-thousand miles of the Great Wall still persevere; though no one sees Qin Shi Huang of yesteryear." As in, even if you win the property dispute and keep the wall where you want it, you won't be around forever to enjoy its benefits. Feeling properly reprimanded, Zhang Ying's family took down their wall and rebuilt it three feet away from the disputed borderline. This in turn shamed the disputing neighbor, who did the same thing with their wall, resulting in a public pathway of six feet between the adjacent properties. This story came to symbolize neighborly sentiments and friendly compromise—especially in property disputes—and is typically evoked by the phrases of "让他三尺" (a concession of three feet) or "六尺巷" (six-foot alleyway).

Party publication on the Core Socialist Values and the Thoughts of Xi, or even a reality show about in-person disputes and reconciliation. The reality, however, is that all three are verbatim translations of passages from civil judgments in China, decided at various court levels and published on “China Court Judgments.”

In the first example, where the court extolled the values of tolerance and generosity, one villager in Guizhou sued another for defamation, and the quoted passage appears at the start of the legal reasoning section of the judgment, as a lead-in to the legal analysis that followed.<sup>7</sup> The trial court ordered the defendant to publicly apologize, but denied the plaintiff’s request for monetary compensation.

The second example, where the court lectured on the importance of honesty and fulfilling one’s promises, was a property dispute in Suzhou surrounding the validity of the transfer of real estate.<sup>8</sup> The plaintiff purchased it from defendants’ testator some years ago and has lived in it ever since, though the property transfer was never registered with the government. The testator passed away a few years after the plaintiff moved in. Then, the defendants refused to cooperate in registering the property transfer. The court first held that the contract had been substantially performed through the plaintiff’s payment for and possession of the property, and that an oversight in the bureaucratic task of registration does not affect the transfer of legal rights. It then wrapped up the legal reasoning section with the above-quoted passage to comment on the defendants’ conduct from a moral perspective.

The third case, in which the high court in Hubei urged those involved to resolve familial disputes amongst themselves, as opposed to resorting to legal proceedings, was a dispute between a few siblings over a gift of farmland from their parents.<sup>9</sup> After reviewing the lower court’s

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<sup>7</sup> Wang Delin Yu Wang Dehuai Mingyu Quan Jiufen Yishen Minshi Panjueshu (王德林与王德槐名誉权纠纷一案一审民事判决书) [Trial Judgment in Wang Delin v. Wang Dehuai Rights of Reputation Dispute], 黔 0381 民初 904 号, (Chishui City People's Ct. of Guizhou 2018) (China).

<sup>8</sup> Zhou Hongxing Yu Xu Zhenqin, Li Jinxiu Deng Fangwu Maimai Hetong Jiufen Yishen Minshi Panjueshu (周红星与胥珍琴、李金秀等房屋买卖合同纠纷一审民事判决书) [Trial Judgment in Zhou Hongxing v. Xu Zhenqin, Li Jinxiu, et al. Real Property Purchase Agreement Dispute], 苏 0903 民初 2488 号, (Chishui City People's Ct. of Guizhou 2018) (China).

<sup>9</sup> Xiang Zechun Yu Huang Xingzhi Nongcun Tudi Chengbao Hetong Jiufen Zaishen Fucha Yu Shenpan Jiandu Minshi Caiding Shu (向泽春与黄兴芝农村土地承包合同纠纷再审复查与审判监督民事裁定书) [Re-Trial Judgment in Xiang Zechun v. Huang Xingzhi Contracted Management of Rural Land Dispute], 鄂民申 1973 号, (Hubei High People's Ct. 2016) (China).

decision on the parties' legal duties, the high court concluded with a bonus ethics lecture for the parties to ponder upon after this lawsuit.

These three cases are snapshots of a broader phenomenon observed in Chinese courts between 2001 to 2018. Drawing upon a dataset of 490,030 civil cases published online, and using a combination of statistical and textual analysis, we found moralizing passages of varying lengths among decisions across a wide range of subject matters, geographical locations, and court levels. But the common thread is clear: courts in China are comfortable with taking on a morally pedagogical role that expands beyond legal adjudication of the current dispute. This occurs in the form of moralizing rhetoric infused with Party-state ideologies that is often superfluous to the legal issues before the court. The final judgments thereby render both moral evaluations and legal adjudication, usually conflated together or in parallel.

While such a digressive approach and moralizing tone might shock an audience who are used to reading Western-styled judicial decisions, students of Chinese politics and courts in the era of President Xi Jinping are likely not surprised. In recent years, scholars have begun to notice the surfacing of a moralistic theme in a number of Chinese Communist Party ("CCP") ideologies, and among the most notable of these was the promotion of Core Socialist Values and its integration with the Rule of Law.<sup>10</sup> In 2016, the CCP Central Committee explicitly called for the comprehensive assimilation of Core Socialist Values into everyday judicial practice,<sup>11</sup> and the Supreme People's Court ("SPC") promptly fell in line by rolling out a series of guidelines and model opinions for the benefit of the lower courts.<sup>12</sup>

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<sup>10</sup> See, e.g., Delia Lin & Susan Trevaske, *Creating a Virtuous Leviathan: The Party, Law, and Socialist Core Values*, 6 *Asian J.L. Soc'y*. 41 (2019).

<sup>11</sup> *Guanyu Jinyibu Ba Shehui Zhuyi Hexin Jiazhi guan Rongru Fazhi Jianshe de Zhidao Yijian* (关于进一步把社会主义核心价值观融入法治建设的指导意见) [Guiding Opinions on Further Integrating Core Socialist Values into Construction of the Rule of Law] (Jointly promulgated by General Office of the CCP Central Committee and General Office of the State Council, Dec. 25, 2016, effective Dec. 25, 2016), available at [http://www.gov.cn/gongbao/content/2017/content\\_5160214.htm](http://www.gov.cn/gongbao/content/2017/content_5160214.htm).

<sup>12</sup> *Zuigao Renmin Fayuan Gongbu Shiqi Hongyang Shehui Zhuyi Hexin Jiazhi guan Dianxing Anli* (最高人民法院公布 10 起弘扬社会主义核心价值观典型案例) [Ten Model Cases regarding Upholding the Core Socialist Values Issued by the Supreme People's Court] (promulgated by the Sup. People's Ct., Mar. 8, 2016, effective Mar. 8, 2016); *Zuigao Renmin Fayuan Fabu Shiqi Guanyu Hongyang Shehui Zhuyi Hexin Jiazhi guan Dianxing Anli* (最高人民法院发布十起关于弘扬社会主义核心价值观典型案例) [Ten Model Cases regarding Upholding the Core Socialist Values Issued by the Supreme People's Court] (promulgated by Sup. People's Ct., Aug. 22, 2016, effective Aug. 22, 2016); *Renmin Fayuan Dalu Hongyang Shehui Zhuyi Hexin Jiazhi guan Shida Dianxing Minshi Anli* (人民法院大力弘扬社会主义核心价值观十大典型民事案例) [Ten Model Civil Cases of Vigorously Carrying forward Core Socialist Values by the People's Courts] (promulgated

At the policy level, scholars have examined in detail how the idea of a morality-law amalgam evolved and matured under Xi, and how it serves to legitimize and strengthen the CCP's omnipotent leadership as a political strategy and governing philosophy.<sup>13</sup> Lin and Treveskes have dubbed such propaganda “pan-moralism”<sup>14</sup> and argued that it represents the next level of authoritarian ruling that is ostensibly law-based—a form of governance which they call “the virtuous Leviathan.”<sup>15</sup>

Our article uses this high-level policy analysis as a starting point, but we flip its perspective to examine how the top-down initiative turned out in ground-level practice. Drawing upon a broad set of civil decisions published between 2001 and 2018, this article presents a picture of what judicial moralizing looks like in everyday civil cases and asks two questions: (1) how do lower courts in China implement the official imperative of integrating Party-sanctioned morality into law; and (2) to the extent there is any discrepancy between policy and practice, what alternative motive or theory could help us further understand the incentives behind judicial moralizing. While we did not exclude SPC or high-profile decisions from our review, the overwhelming majority of cases in this study are mundane, routine opinions that do not make the headlines of newspapers

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by Sup. People's Ct., May 13, 2020, effective May 13, 2020); Guanyu Shenru Tuijin Shehui Zhuyi Hexin Jiazhi Guan Rongru Caipan Wenshu Shifa Shuoli de Zhidao Yijian (关于深入推进社会主义核心价值观融入裁判文书释法说理的指导意见) [Guiding Opinions on In-Depth Promotion of Integration of the Core Socialist Values into Interpretation of Law and Reasoning in Judicial Rulings and Judgments] (promulgated by Sup. People's Ct., Jan. 19, 2021, effective Mar. 1, 2021); Zuigao Renmin Fayuan Fabu Dierpi Renmin Fayuan Dali Hongyang Shehui Zhuyi Hexin Jiazhi Guan Dianxing Minshi Anli (最高人民法院发布第二批人民法院大力弘扬社会主义核心价值观典型民事案例) [Second Batch of Model Civil Cases of Vigorously Carrying forward Core Socialist Values by the People's Courts Issued by the Supreme People's Court] (promulgated by Sup. People's Ct., Feb. 23, 2022, effective Feb. 23, 2022).

<sup>13</sup> Lin & Treveskes, *Creating a Virtuous Leviathan*, 6 *Asian J.L. Soc'y.* 41 (describing generally Xi's push to integrate moral values into law and arguing that it can be understood as a form of “pan-moralism”).

<sup>14</sup> Lin and Treveskes were not the first scholars to connect Chinese political culture with pan-moralism. Chinese scholars have applied the term in a variety of studies of laws and society in traditional China and, more frequently, when debating rules in specific areas of law. See Zhang Deqiang (张德强), *Fandaode Zhuyi, Feidaode Hua Yu Falv Wenhua* (泛道德主义、非道德化与法律文化) [Pan-Moralism, Anti-Moralism, and Legal Culture], [1995] 6 *Falv Kexue* (法律科学) [Journal of Legal Science] 28; Jiang Ge (蒋舸), *Guanyu Jingzheng Xingwei Zhengdangxing Pingpan Fandaode Hua Zhi Fansi* (关于竞争行为正当性评判泛道德化之反思) [Introspection on the Moral Criteria in Evaluating Competitive Conducts], 35 *Xiandai Faxue* (现代法学) [Journal of Modern Law] 85 (2013). But Lin and Treveskes were the first scholars in English literature to apply the term to the overall governance structure under Xi in modern China.

<sup>15</sup> Lin & Treveskes, *supra* note 10 (arguing that Xi's “moralizing governance” depends upon the dual features of integrating law and morality and the supremacy of the CCP's leadership, and that it can be understood as a “virtuous Leviathan”).



or propaganda articles. We argue that this approach offers valuable insight into the functions and mentality of moralizing courts in their daily operation, provides one indicator of whether the Party-state ideologies are carried out in practice, and enhances our understanding of what happens when a top-down initiative is adapted into the day-to-day operation of local agents—in this scenario, the courts.

Our article contributes to the existing body of literature in three ways. First, it is the first critical study focusing on the way the CCP's moralizing campaigns are carried out in individual cases and judgments. To our knowledge, no previous English-language study has looked at how moralizing language is employed in lower courts' decisions on a large scale;<sup>16</sup> and while Chinese-language studies on this subject abound, they are mostly limited to a descriptive account and do not engage in critical analysis of the underlying motivation and policy.

This study also enriches our current understanding of the drive under Xi to combine Rule of Law (*yifa zhiguo*) and Rule of Virtue (*yide zhiguo*), which explicitly calls for the integration of Party-sanctioned morality into the everyday practice of law.<sup>17</sup> But we also supplement this view in an important way. In addition to lower courts acting as the agent of a top-down ideological imperative, we suggest a second, pre-existing motive for individual judges to engage in moralizing. By tracking literature discussions and semi-official publications over time, we tell the story of how moralizing courts started as a grassroots effort responding to a legitimacy crisis and was later integrated into and harnessed by the larger governmental campaign. In doing so, we join a broader, growing body of legal and political literature recognizing that, to understand the complex dynamics driving any particular mode of judicial behavior, we can only get a complete picture by studying judicial behaviors from both the bottom-up

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<sup>16</sup> But see Björn Ahl, *Why Do Judges Cite the Party? References to Party Ideology in Chinese Court Decisions*, 18 *China: An Int'l J.* 175 (2020) (identifying several hundred cases by searching for 5 keywords: Core Socialist Values, Human Rights Protection, Socialist Rule of Law, Rule by Law, and Socialist Harmonious Society). While the article touches upon phrases with moral import, it is focused on the employment of Party ideologies in cases, and not directly on the integration between morality and law. Apart from this article, we are not aware of any other attempt in the English literature that studies the integration of law and society by analyzing the texts of lower court decisions.

<sup>17</sup> Xi Jinping: *Jianchi Yifa Zhiguo He Yide Zhiguo Xiangjiehe* (习近平：坚持依法治国和以德治国相结合) [Xi Jinping: Persist in Combining Rule of Law and Rule of Virtue], *PEOPLE'S DAILY* (Dec. 11, 2016, 8:01 AM), available at <http://cpc.people.com.cn/n1/2016/1211/c64094-28940092.html> (last visited on Jun. 30, 2024).

as well as the top-down directions.<sup>18</sup> The prevalent use of moralizing language and tones in everyday civil judgment is just one more example of this complex dynamic. As our study shows, judicial moralizing is neither a simple top-down imperative nor just a bottom-up movement, but a result of these two forces converging together.

Lastly, we echo existing literature when we argue that embracing moralizing language, whether spontaneously or to conform to higher-level Party policy, would in the long term weaken the legitimacy of the courts as legal institutions and feed a vicious loop of public expectation of extra-legal justification for even the most routine judicial decisions.<sup>19</sup> In other words, in the courts' pursuit of public acceptance and popularity, a moralizing tone might end up being the poison that aggravates the thirst it set out to quench.

We begin the analysis with a brief survey of the policy context of our study, followed by a description of our methodology and findings.

## **I. Policy Background: Moralizing Governance and Tightening Control**

As scholars today point out, moralizing governance as a political strategy has flourished under Xi; but he did not invent it. In the post-Mao era, the CCP's practice of issuing moral mandates for the masses traces back to two decades ago.

### **A. Before Xi**

In 2001, under the leadership of General Secretary Jiang Zemin, the Central Committee of the CCP published "Outline for the Building of Civic Morality" (the "Civic Morality Outline").<sup>20</sup> It was addressed to Party organs throughout the government and stated that constructing a socialist

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<sup>18</sup> Jieun Kim et al., Closing Open Government: Grassroots Policy Conversion of China's Open Government Information Regulation and Its Aftermath, 55 *Compar. Pol. Stud.* 319 (2021) (describing a state-society feedback loop that characterizes gradual institutional change under authoritarianism).

<sup>19</sup> Ji Weidong, The Judicial Reform in China: The Status Quo and Future Directions, 20 *Ind. J. Glob. Legal Stud.* 185 (2013) (criticizing Chinese courts' turn to mediation and settlements as "extra-judicial" mechanism of dispute resolution and arguing that this will ultimately destroy judicial authority and lead to legal nihilism).

<sup>20</sup> Gongmin Daode Jianshe Shishi Gangyao (公民道德建设实施纲要) [Outline for the Building of Civic Morality] (promulgated by the CCP CENT. COMM., Sept. 20, 2001, effective Sept. 20, 2001), CLI.16.37796 (PKUlaw) (China), available at [https://www.gov.cn/gongbao/content/2001/content\\_61136.htm](https://www.gov.cn/gongbao/content/2001/content_61136.htm); see also Tichu "Yide Zhiguo" de Linian (提出“以德治国”的理念) [Proposing the Concept of "Rule of Virtue"], available at <http://cpc.people.com.cn/GB/33837/2535095.html> (last visited Mar. 13, 2023) (China).

civic morality was an important aspect of achieving the CCP's Second Represent — the representation of the progressive course of China's advanced culture.<sup>21</sup> It therefore served as a link between two ideological campaigns newly promulgated under Jiang: Rule of Virtue and the Three Represents. The core of the Civic Morality Outline can be condensed into twenty words that list ten specific moral values: patriotism, abiding by the law, civility, honesty, solidarity, friendliness, frugality, self-improvement, dedication to one's work, and service (“*aiguo shoufa, mingli chengxin, tuanjie youshan, qinjian ziqiang, jingye fengxian*”), designed to target three aspects of citizen behaviors in their private lives: the social life, the professional life, and the family life (*shehui gongde, zhiye daode, jiating meide*).<sup>22</sup> True to the title, the Civic Morality Outline declares these virtues to be what every model citizen, i.e., Party member, should strive to possess, and the Party-state is posed as the “builder” of a citizenship that incorporates the promulgated values.

For several years, the Civic Morality Outline frequently appeared in official media and Party documents. Under Jiang's successor, Hu Jintao, however, the idea of civic morality, emphasizing individuals' obligations in private lives, slowly lost traction as the ideological campaign shifted its rhetoric to Harmonious Society (“*hexie shehui*”).<sup>23</sup> Compared to the Civic Morality Outline, Hu's ideology of Harmonious Society consists of broad statements about the relationship between the state, the Party, and society; and it emphasized the socio-economic obligations of the Party-state to the people.<sup>24</sup> Interpretations of Harmonious Society included, from time to

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> To be sure, the buzzwords from Hu's era also included Eight Honors and Eight Shames (barong bachi), which preached, among others, the Honor of being industrious, diligent, and trustworthy, and the Shame of being indolent, lawless, and indulgent. Shenme Shi Barong Bachi? (什么是八荣八耻?) [What are the Eight Honors and Eight Shames?], available at <http://cpc.people.com.cn/GB/64156/64157/4544006.html> (last visited on Jun. 30, 2024). But the Eight Honors and Eight Shames, a “short-lived effort” as it was, was primarily promulgated as a “new moral yardstick” for CCP officials, and never morphed into a clear mandate for civil morality like Jiang's Civic Morality Outline. John Dotson, The Confucian Revival in the Propaganda Narratives of the Chinese Government, U.S.-China Economic and Security Review Commission Staff Research Report (July 20, 2011) at 11, available at [https://www.uscc.gov/sites/default/files/Research/Confucian\\_Revival\\_Paper.pdf](https://www.uscc.gov/sites/default/files/Research/Confucian_Revival_Paper.pdf) (last visited June 30, 2024) (collecting official CCP sources about Eight Honors and Eight Shames, and discussing how they were “propaganda efforts to depict [CCP's] officials, and particularly the top leadership, as aggressive corruption fighters who adhere to the Confucian values of propriety”).

<sup>24</sup> Larry Catá Backer, Party, People, Government and State: On Constitutional Values and the Legitimacy of the Chinese State-Party Rule of Law System, 30 B.U. Int'l L.J. 331 (2012) (defending China's constitutionalist governance system, which he defines as a system of collected values that, expressed through the form of Party ideologies, both limits states power and provides the basis for

time, the duties of individuals to contribute by behaving in a peaceful and harmonious way that reduces social conflict, sometimes harkening back to Confucian texts; but overall, the focus was on constructing the welfare of the state as a whole, and the role of the individuals was addressed by extension.<sup>25</sup> Unlike the Civic Morality Outline, Harmonious Society did not directly speak to individuals in concrete terms about what their moral duties to society and to each other entailed.<sup>26</sup> The overarching theme was there, but the details were left to the imagination.

### B. Under Xi

Under Xi, however, the tactics shifted again, and the emphasis on personal virtue came back with renewed stamina. The flagship campaign, Core Socialist Values, made its debut at the same time as Xi himself, during the 18th Party Congress in 2012 that appointed Xi as the leader of the CCP. This time it had twelve keywords, divided into three groups: for the nation – prosperous, democratic, civil, and harmonious (*fuqiang, minzhu, wenming, hexie*); for the society – free, equal, just, and ruled by law (*ziyou, pingdeng, gongzheng, fazhi*); and for the individuals – patriotic, hardworking, honest, and friendly (*aiguo, jingye, chengxin, youshan*).<sup>27</sup> It became the central

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applying that power). See also Jiang Shigong, Chinese-Style Constitutionalism: On Backer's Chinese Party-State Constitutionalism, 40 Mod. China 133 (2014) (arguing that the constitutional legitimacy of CCP rule is not based on election or a written constitution, but based on the substantive values it represents – the Marxist principles, Mao Thought, Deng Theory, Three Represents, and Scientific Development).

<sup>25</sup> See Norman P. Ho, The Legal Philosophy of Zhu Xi (1130-1200) and Neo-Confucianism's Possible Contributions to Modern Chinese Legal Reform, 3 Tsinghua China L. Rev. 167 (2011) (Pointing out that Jiang stresses morality and traditional values, and Hu stresses harmony and loyalty). This article also passingly argues that intertwining morals with law empowers the force of law, increases its accessibility, and encourages citizens to participate in the involvement of law.

<sup>26</sup> But see Leila Choukroune, Global Harmonious Society and the Law: China's Legal Vision in Perspective, 13 German L.J. 497 (2012), for a detailed survey of what Harmonious Society and its related slogans entailed and the conspicuous absence of personal rights in the Harmonious Society narrative.

<sup>27</sup> A couple of scholars have commented on the three-tiered structure of the twelve Core Socialist Values and analyzed its implications. Gow has highlighted the labeling of freedom and justice as “societal values” instead of “individual values,” which implies that Xi understands them as collective attributes belonging to the society, as opposed to individual rights that can be enforced on their own. See Michael Gow, The Core Socialist Values of the Chinese Dream: Towards a Chinese Integral State, 49 Critical Asian Stud. 92 (2017). Lin and Trevaskes argued that the juxtaposition of individual values (which all require individual citizens to dedicate themselves in a certain way) side by side with the societal and national values (which all describe a collective goal that is to be achieved), reflect the Confucian assumption that personal refinement is the precondition for social transformation and national prosperity. See Lin & Trevaskes, *supra* note 10. Both articles have observed that by presenting personal ethics and national aspirations in one light, the Core Socialist Values seek to build a new consensus between the ruler and the ruled in a “unitary construct,” each in their own place in a dialectical relationship.

ideology around which every Party initiative under Xi evolved, and subsequent documents that expanded and applied the terms are numerous.<sup>28</sup>

For our purpose here, the Core Socialist Values campaign is significant for two reasons. The first is the way it directly addresses and instructs private individuals in their everyday lives. Core Socialist Values is unequivocally about shaping the moral beliefs and standards of individual citizens, and it does not shy away from proclaiming that such moral teachings extend into multiple aspects of people's private lives. Nowhere is this point more clearly made than when, in 2019, the Xi administration brought back Jiang's Civic Morality Outline in an updated format, called "The Outline for Constructing Civil Morality in a New Era" (the "New Era Civic Morality Outline").<sup>29</sup>

Despite carrying almost the same title, the New Era Civic Morality Outline was a complete overhaul of the Civic Morality Outline in both scope and depth. It no longer mentions the Three Represents, and it addresses a much broader audience than Party organizations—directly calling on, among others, various governmental departments and social organizations to join the mission. To build a new civic morality is to be guided by Core Socialist Values; and under this guidance, the New Era Civic Morality Outline prescribes a much more detailed and rigorous code of behavior for individual citizens compared with Jiang's old initiative. In addition to covering social life, work life, and family life, the New Era Civic Morality Outline added a fourth dimension that is "individual life." It also took the ten keywords enumerated in Jiang's Civic Morality Outline and expanded them into 80 words representing 20 values. To be a good citizen in social life under the New Era Civic Morality Outline is to be polite, to be helpful, to take care of public property, to protect the environment, and to abide by the law. To be a good worker in one's professional life is to love one's job, to be honest and trustworthy, to act fairly, to serve others zealously, and to dedicate oneself to society. To be a good member of one's family and immediate community is to respect the old and cherish the young, to effectuate gender equality, to get along with one's spouse, to be frugal, and to be helpful to one's neighbors. And to be a virtuous person in private life

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<sup>28</sup> For a more detailed account of the issuance and development of Core Socialist Values through CCP documents, see Lin & Trevaskes, *supra* note 10.

<sup>29</sup> *Xinshidai Gongmin Daode Jianshe Shishi Gangyao* (新时代公民道德建设实施纲要) [The Outline for Constructing Civil Morality in a New Era] (promulgated by the CCP CENT. COMM., Oct. 27, 2019, effective Oct. 27, 2019), available at [http://www.gov.cn/zhengce/2019-10/27/content\\_5445556.htm](http://www.gov.cn/zhengce/2019-10/27/content_5445556.htm).

is to be patriotic and dedicative, to abide by social etiquette, to be kind and hardworking, to be generous and upright, and to be self-disciplined.

By reviving a theme previously developed under Jiang, the New Era Civic Morality Outline recalibrates the roles of the government and citizens *vis-a-vis* Core Socialist Values. Before, under documents issued by the CCP Central Committee, the Core Socialist Values were to be *implemented by the government* in its administration of the country's affairs; now, under the New Era Civic Morality Outline, Core Socialist Values have arguably become something to be *practiced by the people* in their individual and private lives.

This recalibrated theme was echoed in other smaller sub-campaigns. “Positive Vibes” and “Negative Vibes” (literally translated as “Positive Energy” and “Negative Energy”), for example, are a pair of contrasting terms coined by Xi Jinping and Wang Qishan.<sup>30</sup> From 2012 to 2014, propaganda materials prominently made use of the catch-phrase.<sup>31</sup> The articles usually linked Positive Vibes with Core Socialist Values and described speeches or conducts that conformed to them as “positive and responsible,” implying that the undesirable Negative Vibes were counterproductive to realizing whatever national priority is emphasized on the day.<sup>32</sup> Compared with the enumerated virtues in the New Era Civic Morality Outline, phrases like Positive and Negative Vibes have the advantage of being highly malleable in meaning and universal in application: Negative Vibes could emanate from something as grand as a hostile gesture on the part of the U.S. in its diplomatic relationship,<sup>33</sup> or as

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<sup>30</sup> Wang was a member of the CCP Politburo Standing Committee and the Secretary of the CCP Central Commission for Discipline Inspection from 2012 to 2017 before assuming the role of China's Vice President from 2018 to 2023.

<sup>31</sup> For examples of propaganda using Positive/Negative Vibes, see Zou Dongtao (邹东涛), Ruhe Shifang Duoyuan Shehui Sichao De Zhengnengliang (如何释放多元社会思潮的正能量) [How to Release the Positive Vibes in a Pluralistic Society] (Oct. 23, 2014, 10:08 AM), available at <http://theory.people.com.cn/BIG5/n/2014/1023/c112848-25895594.html> (last visited on Mar. 13, 2023); Xi Jinping: Huiju Qi Quanmian Shenhua Gaige De Qiangda Zhengnengliang (习近平: 汇聚起全面深化改革的强大正能量) [Xi Jinping: Converging the Strong Positive Vibes for the Comprehensive and Deepened Reform] (Nov. 28, 2013, 6:47 PM), available at <http://cpc.people.com.cn/n/2013/1128/c64094-23688498.html> (last visited on Mar. 13, 2023).

<sup>32</sup> See Yong Hexin Jiazhiguan Huiju Zhengnengliang (用核心价值观汇聚正能量) [Using Core Socialist Values to Help Converge Positive Vibes], PEOPLE.COM.CN (Feb. 17, 2014, 5:20 AM), available at <http://cpc.people.com.cn/n/2014/0217/c87228-24374013.html> (last visited Mar. 13, 2023).

<sup>33</sup> Lu Yang (陆杨), Xi Jinping, Wang Qishan Changdao de “Zhengnengliang” Shi Shenme? (习近平、王岐山倡导的‘正能量’是什么?) [What is the “Positive Vibe” Promulgated by Xi Jinping and

minor as what a primary school student writes in her homework essay.<sup>34</sup> Both are seen as counter-productive to the national task of building Socialism with Chinese Characteristics for a New Era, and therefore, in a certain sense, equally blameworthy.

Xi's flagship campaigns, be it Core Socialist Values, New Civic Morality, or Positive and Negative Vibes, fundamentally differ from those of his predecessors. Xi's campaigns instruct the people as well as the Party, sometimes speaking more to the former than to the latter. In contrast, Maoism, Deng Xiaoping Theory, the Three Represents, the Scientific Outlook on Development, and to a lesser extent, Harmonious Society, all addressed the intra-relationship between the Party and the government, serving to define the boundaries of appropriate governance. In other words, pre-Xi ideologies provided political values and norms by which the Party-state was judged, and in this sense, they are "constitutional" in nature under Backer's theory.<sup>35</sup> By switching focus from political values to personal morals, Xi's ideology deviates from this approach, concentrating instead on the private sphere. In broadening the audiences from Party members and government officials to the masses, it becomes qualitatively different from previous intra-Party moral campaigns which aimed to construct an ethical culture within the governing party. Xi's ideology expands scrutiny from the governing to the governed and from the Party-people relationship to private daily associations of individual citizens. This shift obscures the constitutional framework envisioned by Backer, ushering in a new form of governance that is less about self-restraint but more about what the Party is entitled to from the people. Scholars in recent years have noted a shift from institutional compliance to individual obedience in Xi's discourse about

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Wang Qishan?], VOA CHINESE (Dec. 21, 2012), available at <https://www.voachinese.com/a/xi-jinping-wang-qishan-20121220/1568796.html> (last visited Mar. 13, 2023).

<sup>34</sup> For a critical view about how the Positive/Negative Vibe serves to repress diverse thoughts and expression in China and is used as a proxy for brainwashing and media control, see Changping (长平), Changping Guancha: Cong Zhuxuanlü Dao Zhengnengliang—Sixiang Mousha de Jinhua (长平观察: 从主旋律到正能量——思想谋杀的进化) [Changping Observation: From the "Main Theme" to the "Positive Vibe"—An Evolution of Thought Murdering], DEUTSCHE WELLE (June 18, 2020), available at <https://p.dw.com/p/3dxqx> (last visited Mar. 13, 2023).

<sup>35</sup> According to Backer (and later to Jiang Shigong), *supra* note 24, the constitutional framework of China consists of the Party as the vanguard and guardian of fundamental substantive values of the political state, Party members as political citizens, and the governmental apparatus as the everyday administrator of the Party's political power. The fundamental organizing values developed by CCP leaders serve as the operating constitutional principles in China, because they, rather than the written constitution, prescribe when political power is legitimate and how it should be used. *Id.* at 338 ("[M]odern constitutionalism is . . . a values system that both limits states power and provides the basis for applying that power.").

Rule of Law;<sup>36</sup> the brief discussion above shows that a parallel shift is also taking place in the Party's rhetoric about Rule of Virtue.

The second salient feature of Xi's moralist campaigns is the requirement for their integration with law. The idea of combining Rule of Law with Rule of Virtue originated under Jiang; but in Jiang's time, it remained abstract and ill-defined. Under Xi, however, the integration of law and virtue was no longer a mere slogan; it has become a governing policy with concrete measures, steps, and plans, embedded within multiple branches of the political-legal system (*zhengfa xitong*). We will see concrete examples of such implementing rules momentarily when we look at the SPC documents on Core Socialist Values.

Together, Xi's moralizing campaigns form consecutive links in a logical chain. The fundamental goal of the state is to continue on the path of Socialism with Chinese Characteristics.<sup>37</sup> Integral to practicing Socialism with Chinese Characteristics is the construction of a society with moral citizens and Positive Vibes. The CCP, representing the will of the people and leading the country, has the responsibility, legitimacy, and authority to define civic morality. Therefore, the CCP's moral mandates are to be implemented across all aspects of the Party-state, the political-legal system being no exception. The theory has been legitimized and developed; what remains to be seen is how it will manifest on the ground in everyday judicial opinions.

### C. SPC Guidance

Our focus is on the everyday practice of China's lower courts. But to put such practice into context, it is helpful to first look at the internal guidance issued by a higher judicial body, the SPC. In this juxtaposition, one needs to bear in mind the role of the SPC as a policymaker: what it promulgates reflects what is *desired*, which might not necessarily correspond with what is being actually *practiced*.

So far, the SPC's guidance to the lower courts on the implementation of Core Socialist Values consists of four batches of model cases and two guiding opinions. In China, SPC-issued model cases and

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<sup>36</sup> See Delia Lin & Susan Trevaskes, Law–Morality Ideology in the Xi Jinping Era, in *Law and the Party in China* 121 (Rogier J. E. H. Creemers & Susan Trevaskes ed., 2021) (by 2014, the rule of law came to be recast as a theory of individual obedience to the Party-state, rather than a theory of how Party power could be rectified through institutions, standards, and procedure).

<sup>37</sup> See Constitution of the People's Republic of China, Mar. 11, 2018, pmbl.



guiding opinions are not binding sources of law but are to be accorded persuasive value in subsequent judicial decisions.<sup>38</sup>

### *Model Cases*

Between 2016 and 2022, the SPC issued four batches of model cases to promote Core Socialist Values, with nine or ten cases in each batch, totaling 39 cases.<sup>39</sup> These are judgments from the lower courts, publicly commended by the SPC for their exemplary effect in advancing Core Socialist Values. Each model case is presented as a one-paragraph summary of the facts, a one-paragraph summary of the legal holding, a one-paragraph commentary by the SPC on how the ruling upheld Core Socialist Values, and one or two key phrases through which the SPC encapsulates the case's morality teachings.

Notably, in publishing the model cases, the SPC did not directly quote any text from the original judgments. The summaries, commentaries, and keywords reflected the SPC's interpretation alone. The SPC also did not provide the identifying case number (*anhao*) for any of the model cases. Some cases might nonetheless be identified through the occasional inclusion of the case title (in the form of plaintiff name + defendant name +

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<sup>38</sup> According to Art. 2 of *Guanyu Caipan Wenshu Yinyong Falv Fagui deng Guifanxing Falv Wenjian de Guiding* (关于裁判文书引用法律、法规等规范性文件的规定) [Provisions on Citations of Laws, Regulations, and Other Normative Legal Documents in Judicial Opinions] (promulgated by Sup. People's Ct., Oct. 26, 2009, effective Nov. 4, 2009), only duly promulgated laws, regulations, and the SPC's judicial interpretations are sources of law binding upon judicial courts. See also Art. 119 of *Lifa Fa* (立法法) [Law of Legislation] (effective July 1, 2000) (the SPC has the power to issue binding judicial interpretations). "Guiding Opinions" issued by the SPC are not considered a form of judicial interpretation and are not binding, but are generally accorded great referential value in practice by courts. See Art. 6 of *Guanyu Sifa Jieshi Gongzuo de Guiding* (关于司法解释工作的规定) [Provisions on Judicial Interpretations] (promulgated by Sup. People's Ct., Dec. 11, 2006, amended June 8, 2021, effective June 16, 2021) (binding judicial interpretations will be entitled "Interpretations," "Provisions," "Rules," "Replies," and "Decisions"); see also Peng Zhongli (彭中礼), *Zuigao Renmin Fayuan Sifa Jieshi Xingzhi Wenjian de Falv Diwei Tanjiu* (最高人民法院司法解释性质文件的法律地位探究) [On the Legal Status of Documents with Judicial-Interpretation Characteristics Issued by the Supreme People's Court], 14 *Falv Kexue* (法律科学) [Journal of Legal Science], no. 6 (2018) (explaining that "Opinions" (*yijian*) or "Guiding Opinions" (*zhidaoxing yijian*) issued by the SPC are not binding judicial interpretations but widely cited in practice). As for model cases, they are also to be used as a guiding reference (*canzhao*) in cases with similar facts and application of law. See Art. 9 of *Guanyu Anli Zhidao Gongzuo de Guiding Shishi Xize* (关于案例指导工作的规定实施细则) [Detailed Rules for the Implementation of Provisions on Model Cases] (promulgated by Sup. People's Ct., May 13, 2015, effective May 13, 2015). For a helpful introductory account of model cases published by the SPC, see Du Guodong & Meng Yu, *How China's Guiding Case System Works*, *China Justice Observer* (Oct. 24, 2020), available at <https://www.chinajusticeobserver.com/a/how-chinas-guiding-case-system-works>. For a discussion of such cases' semi-precedential status in everyday judicial practice, see *Chinese Common Law: Guiding Cases and Judicial Reform*, 129 *Harv. L. Rev.* 2213 (2016).

<sup>39</sup> See *supra* note 12.

cause of action) and the name of the specific court that rendered the judgment; but such identifying information was not consistently revealed.<sup>40</sup>

Among the twelve words of Core Socialist Values, only a handful of them have been promoted through the SPC model cases. So far, each batch has included one or two cases on Civility (*wenming*), one or two cases on Friendliness (*youshan*), and four or five cases on Honesty and Trustworthiness (*chengxin*). Each batch has also included one or two cases about filial piety (*xiaojing*). The remaining cases cover a wide variety of subjects and morals, broadly described as promoting Traditional Virtue (*chuantong meide*), Social Atmosphere (*shehui fengqi*), or Social Ethics (*shehui gongde*). There were two cases in total on Equality (*pingdeng*), though they were ascribed generally under Social Ethics (*shehui gongde*) and Civility (*wenming*). More than half of the Core Socialist Values: Freedom (*ziyou*), Fairness (*gongzheng*), Rule of Law (*fazhi*), Prosperity (*fuqiang*), Democracy (*minzhu*), Patriotism (*aiguo*), and Dedication (*jingye*) have yet to make an appearance.

### *Guiding Opinions*

Ever since the CCP Central Committee required Core Socialist Values to be integrated into law, there have been numerous documents from the SPC with the words “Core Socialist Values” stamped onto them.<sup>41</sup> But up until early 2021, few of these documents concretely instructed the lower courts on how to incorporate Core Socialist Values into everyday judicial decisions. The two documents that came closest were issued in 2015 and 2018.

In 2015, the SPC issued the Opinion on Cultivating and Practicing the Core Socialist Values (the “2015 SPC Opinion”), explaining how Core Socialist Values should be reflected in every aspect of the justice system, from the interpretation of specific laws and regulations to the enforcement of judgments and the education of judicial personnel. But it does not specifically explain how Core Socialist Values should be reflected in published judicial opinions, except by reiterating the standard requirements

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<sup>40</sup> As of March 2023, when searching on PKULaw with the case titles from SPC’s model cases, none of the 39 titles yields any published cases that correspond with the model cases as described. This might be because the judgments of these cases were not publicly disclosed or, more likely, because the SPC did not give the case title as reported and also used a summary of their own.

<sup>41</sup> As of March 2023, searching on PKULaw for “Core Socialist Values” in the full text of SPC-issued documents yields 197 results.

that all opinions must be uniform in format and have ample legal reasoning in law.<sup>42</sup>

In 2018, the SPC issued the Guiding Opinions on Strengthening and Standardizing the Analysis and Reasoning in Adjudicative Instruments (the “2018 SPC Opinion”).<sup>43</sup> The opening section mandates that the legal reasoning of each judicial opinion must center around the purpose and spirit of promoting Core Socialist Values, but it stops at this high-level directive without further elaborating on how this goal should be carried out.<sup>44</sup> In the same year, the SPC also rolled out a five-year plan, setting ambitious goals and high-level strategies for the full incorporation of Core Socialist Values into all aspects of judicial interpretation by 2023.<sup>45</sup> But since issuing judicial interpretations is solely the SPC’s mandate, this five-year plan does not directly address the lower courts.<sup>46</sup>

As far as the lower courts are concerned, a more detailed and structured guidance on how to apply Core Socialist Values in the legal reasoning of judicial judgments was not issued until January 2021.<sup>47</sup> The cases examined in this article were decided in 2018 or earlier, which means they were set against a somewhat ambivalent policy background, when courts had to interpret what was expected of them from nothing but the model cases and high-level directives. As such, for a time, Chinese lower

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<sup>42</sup> Guanyu Zai Renmin Fayuan Gongzuo zhong Peiyu He Jianxing Shehui Zhuyi Hexin Jiazhi guan De Ruogan Yijian (关于在人民法院工作中培育和践行社会主义核心价值观的若干意见) [Several Opinions on the Cultivation and Implementation of Core Socialist Values in the Work of People’s Courts] (promulgated by Sup. People’s Ct., Oct. 12, 2015, effective Oct. 12, 2015), available at <http://gongbao.court.gov.cn/Details/541634cafcfb20b3f00028c53ba289.html>.

<sup>43</sup> Guanyu Jiaqiang He Guifan Caipan Wenshu Shifa Shuoli de Zhidao Yijian (关于加强和规范裁判文书释法说理的指导意见) [Guiding Opinions on Strengthening and Standardizing the Analysis and Reasoning in Adjudicative Instruments] (promulgated by Sup. People’s Ct., June 1, 2018, effective June 13, 2018), available at <https://www.court.gov.cn/zixun-xiangqing-101552.html>.

<sup>44</sup> *Id.*

<sup>45</sup> Zuigao Renmin Fayuan Guanyu Zai Sifa Jieshi Zhong Qunmian Guanche Shehui Zhuyi Hexin Jiazhi guan De Gongzuo Guihua (2018-2023) (最高人民法院关于在司法解释中全面贯彻社会主义核心价值观的工作规划 (2018-2023)) [Work Planning About Comprehensively Implementing Core Socialist Values in Judicial Interpretation (2018-2023)] (promulgated by Sup. People’s Ct., Sept. 18, 2018). For a review of this document, see Lin & Trevaske, *supra* note 10.

<sup>46</sup> Art. 119 of Lifa Fa (立法法) [Law of Legislation] (effective July 1, 2000) (the SPC is the only court that has the power to issue binding judicial interpretations pertaining to specific applications of law); but see *id.* at Art. 48 (the National People’s Congress has the final authority of interpretation of law).

<sup>47</sup> Guiding Opinions on In-Depth Promotion of Integration of the Core Socialist Values into Interpretation of Law and Reasoning in Judicial Rulings and Judgments, *supra* note 12.

courts enjoyed a certain degree of discretion to decide how to combine Core Socialist Values with legal reasoning in their everyday caseload. The results are what the next section will focus on.

## II. How do Courts Moralize?

### A. Our Methodology

One can think of a number of ways to observe the effects of moralizing governance in everyday courts. The most direct methods might include live observation of court procedures in China or interviews with litigants, lawyers, and judges. However, we choose to utilize published judicial judgments, a medium that is readily accessible and relatively conducive to textual analysis. We focus solely on civil cases, for two reasons.

The first reason is that among the three major types of litigation in China—civil, criminal, and administrative—civil litigation has received by far the most official attention in terms of combining the Rule of Virtue with the Rule of Law. In the four batches of model cases published by the SPC, civil cases took up the majority of the first two batches and the entirety of the last two.<sup>48</sup>

Second, focusing on the use of moralizing language in civil cases also raises interesting questions about the institutional role of courts. Mainstream legal theory in China follows a classic Marxist legal dichotomy: all law can be divided into public law and private law based on the state's function in a hypothetical dispute.<sup>49</sup> Public law includes criminal law and administrative law, where the state is not only the adjudicator and enforcer of the rules but also a party to the lawsuit with its own interests at

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<sup>48</sup> See *supra* note 12.

<sup>49</sup> A substantial body of Chinese scholarship has addressed the dichotomy between public law and private law, including its origin in Roman law, see, e.g., Chen Jingyuan (陈静媛), *Gongfa, Sifa De Huafen Jiqi Yiyi* (公法、私法的划分及其意义) [The Dichotomy Between Public and Private Law and Its Significance], 24 *Xiandai Faxue* (现代法学) [Journal of Modern Law], no. 2 (1999). For recent writings on this topic, see Jiang Bixin (江必新), *Falv Xingwei Xiaoli: Gongfa Yu Sifa Zhi Yitong* (法律行为效力：公法与私法之异同) [Legal Effects of Conducts: Similarities and Differences Between Public Law and Private Law], 3 *Falv Shiyong* (法律试用) [Legal Application], no. 3 (2019); Zhang Shufang (张淑芳), *Sifa Shenru Gongfa De Biran Yu Bianjie* (私法渗入公法的必然与边界) [Inevitability and Limits of the Permeation of Private Law Into Public Law], 84 *Zhongguo Faxue* (中国法学) [China Journal of Law], no. 4 (2019).

stake. Private law includes civil law and family law.<sup>50</sup> There, the state, through the courts, is only a neutral arbiter between private parties. Given this image of a neutral civil adjudicator who ostensibly has no personal stake in the underlying dispute, it is especially interesting and informative to look at when and how courts, in adjudicating civil cases, turn to moral authorities alongside the legal rules which they are asked to apply in the first place.

Our dataset contains 26 million civil cases released by Chinese courts on China Judgments Online. Launched in 2013, this website represented one of the largest official endeavors toward judicial transparency in the world. Though these efforts have been partially clawed back in recent years.<sup>51</sup> We downloaded our cases for quantitative and qualitative analysis in 2019, covering cases from 2001 to 2018, with the majority falling in between 2013 and 2017.

We developed our search keywords through an iterative process. To start, we selected keywords from Party catch-phrases with moral implications used in both pre-Xi and Xi eras, as well as from the SPC-summarized morality key phrases in published model cases.<sup>52</sup> Before querying these keywords in our general dataset, we conducted a test run on

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<sup>50</sup> In China, the cause of action (*anyou*) system divides all cases into civil cases, criminal cases, administrative law cases, intellectual property cases, enforcement cases, and national compensation cases. Civil cases broadly encompass personal rights disputes, marital and inheritance law disputes, property rights disputes, contracts and torts disputes, as well as other private disputes involving labor rights; shares, securities, derivatives; and corporations and trusts. See Guanyu Yinfa Xiugai Houde Minshi Anjian Anyou Guiding De Tongzhi (最高人民法院关于印发修改后的《民事案件案由规定》的通知) [Notice by the Supreme People's Court of Issuing the Amended Provisions on the Causes of Action for Civil Cases] (promulgated by Sup. People's Ct., Dec. 29, 2020, effective Jan. 1, 2021), available at <https://www.court.gov.cn/shenpan-xiangqing-282031.html>. The broad range and diverse nature of civil cases in China is reflected in our discussion below.

<sup>51</sup> Beginning in 2019, a number of commentators and observers have noticed a trend to scale back disclosure of judicial decisions through China Judgments Online. See, e.g., Jiajun Luo & Thomas Kellogg, Verdicts from China's Courts Used to Be Accessible Online. Now They're Disappearing, *China File* (Feb. 1, 2022), available at <https://www.chinafile.com/reporting-opinion/viewpoint/verdicts-chinas-courts-used-be-accessible-online-now-theyre-disappearing> (last visited on Mar. 13, 2023). Because we downloaded our cases in 2019, this recent trend does not impact our analysis of the cases, but the general nature of the missingness of data published through China Judgment Online, even before the recently-noticed claw-back, should always be borne in mind. See Benjamin L. Liebman et al., Mass Digitization of Chinese Court Decisions: How to Use Text as Data in the Field of Chinese Law, 8 *J. L. & Courts* 177 (2020), available at: [https://scholarship.law.columbia.edu/faculty\\_scholarship/2039](https://scholarship.law.columbia.edu/faculty_scholarship/2039) (defining the “missingness problem” of cases published by Chinese courts online and discussing pitfalls of and suggestions for using Chinese cases published online for quantitative and qualitative analysis); see also Benjamin L. Liebman et al., Rolling Back Transparency in China's Courts, 123 *Colum. L. Rev.* 2407 (2023).

<sup>52</sup> As noted above, the SPC promotes some Core Socialist Values more than others in the model cases, and we tailor our selection of keywords accordingly.

a commercial database of Chinese cases—PKULaw—and read a random sample of search results, totaling 500 cases. Reading these cases helped us gain a general understanding of how moral language appears in reasoning, allowing us to refine the keyword selection.<sup>53</sup> Through this iterative process, we arrived at a final list of 18 keywords, as listed in Appendix 1. For comparison, a list of all SPC-published model cases and their associated morality phrases are shown in Appendix 2.

Among all civil cases published on China Judgments Online as of 2019, we identified 490,030 unique cases citing at least one of our moralizing keywords in the legal reasoning section. For each keyword, we

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<sup>53</sup> We made three changes to our initial keywords during this iterative process. First, we looked for synonyms that should be included alongside the official catchphrases to make sure substantively similar expressions are caught. For example, “filial piety towards parents” (xiaoqing fumu) in Chinese is often used interchangeably with “filial piety towards your elder” (xiaoqing zhangbei/xiaoqing laoren). As another example, Moral Norms (daode guifan), a phrase used by the SPC, could also be expressed as Moral Principles (daode yuanze) or Moral Standards (daode zhunze). Second, reading the sample cases revealed a number of traditional Chinese sayings and proverbs that are conceptually closely linked to the Party-sanctioned morality and frequently invoked hand-in-hand with the official catchphrases. We added the most frequently appearing ones to our keywords to capture cases where courts preach the Party-sanctioned virtues in a slightly more subtle way than the others. These include “a good neighbor close by is better than a relative far away” (yuanqin buru jinlin), “blood is thicker than water” (xuenong yushui), and related others. Lastly, reading the sample cases enabled us to remove certain keywords that generated too much white noise in unmeaningful cites. One big decision was to exclude Honesty (chengxin, or chengshi shouxin) from our keywords, and hence an unknown size of contract cases from our results. The reason is that Honesty, before becoming one of the Core Socialist Values, was already a legal term of art under Chinese contract law, incorporated into General Provisions of Civil Law and Contract Law, and later into the Civil Codes. Article 6, *Zhonghua Renmin Gonghe Guo Hetong Fa* (中华人民共和国合同法) [Contract Law of the People’s Republic of China] (promulgated by the Standing Comm. Nat’l People’s Cong., Mar. 15, 1999, effective Oct. 1, 1999 until Jan. 1, 2022), available at [http://www.npc.gov.cn/zgrdw/wxzl/wxzl/2000-12/06/content\\_4732.htm](http://www.npc.gov.cn/zgrdw/wxzl/wxzl/2000-12/06/content_4732.htm) (“Contracting parties shall follow the principle of honesty and creditworthiness when exercising contractual rights and fulfilling contractual duties.”); Book One, Chapter I, Article 7, *Zhonghua Renmin Gonghe Guo Minfa Dian* (中华人民共和国民法典) [Civil Code of the People’s Republic of China] (promulgated by the Standing Comm. Nat’l People’s Cong., May 28, 2020, effective Jan. 1, 2022), available at <http://www.npc.gov.cn/npc/c30834/202006/75ba6483b8344591abd07917e1d25cc8.shtml> (“When civil parties conduct civil activities, they shall follow the principle of trustworthiness, uphold honesty, and honor promises.”). In judicial and scholarly interpretations, it has come to mean the rough equivalent of the good faith and fair dealing doctrine under Western common law. Larry A. Dimatteo, *Rule of Law in China: the Interaction of Freedom of Contract and Good Faith with Cultural Norms* (June 28, 2017), available at <http://dx.doi.org/10.2139/ssrn.2994344> (discussing the expansive use of “good faith” doctrine in Chinese contract law). The legal implications of “honesty” in civil cases are long-established and are inextricably intertwined with its underlying moral import. See Chen Nianbing (陈年冰), *Shilun Hetong Fa Zhongde Chengshi Xinyong Yuanze—Cong Guifan De Jiaodu Jinxing Fenxi* (试论合同法中的诚实信用原则——从规范的角度进行分析) [On the Bona Fide Doctrine in the Contract Law—An Analysis from a Normative Perspective], 49 *Falv Kexue* (法律科学) [Journal of Legal Science], no. 6 (2003) (explaining the central and essential status of the principle of Honesty in Chinese contract law). To track down whether, and how much, the word’s meaning changed in daily legal use after it was incorporated into the CCP’s moralist campaign, and to separate out passages that use it as a legal principle from those that invoke it as a morality catchword, is beyond the capacity of this article. Our search using other terms still turned up a fair number of cases that also discuss Honesty as a morality principle and as a Core Socialist Value.

read a sample of 100 cases citing it, or all cases citing a keyword if the keyword turned up in fewer than 100 cases. Because some cases invoked multiple keywords, we read a total of 1,717 unique cases. Among these, 1,562 cases used the moralizing keywords substantively, as opposed to using a keyword in procedural or factual descriptions.

## B. What We See

### *i. Under-inclusive*

While the total moralizing cases we found take up a relatively small percentage of the total civil cases available online as of 2019 (around 2%), we believe this is nonetheless a notable phenomenon worthy of our attention. We know that the moralizing cases we've found are by nature under-inclusive, both because of the cherry-picking nature of our keywords and because of the inherent "missingness" of our dataset.<sup>54</sup> Data published on China Judgments Online has multiple baked-in limits in its consistency and transparency, and it is hard to gauge the magnitude of deficiency of this data.<sup>55</sup> But one reference point, albeit imperfect, is the SPC's own statistics on Core Socialist Values and court judgments.

On February 23, 2022, along with the latest batch of model cases, the SPC released a brief performance review of lower courts' work in incorporating Core Socialist Values into law.<sup>56</sup> It claimed that between 2017 and 2021, the total number of civil cases applying Core Socialist Values grew by a yearly average rate of 24.31%, climbing to 314,365 cases in 2021 alone. It also claims that in terms of the number of civil cases dedicated to each specific Core Socialist Value, there was a perfect three-way balance among the three groups of values (national, social, and private). However, it does not state its basis for counting the total number of cases, nor does it explain its method of designating which case promoted which values. The SPC's table is reproduced in Chart 1.

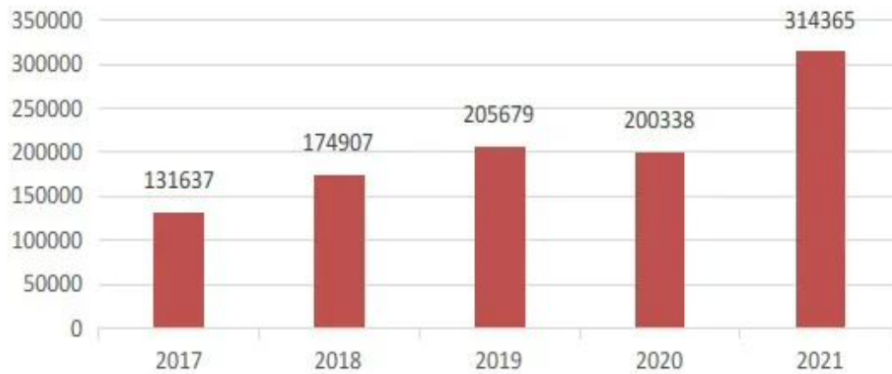
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<sup>54</sup> See *supra* note 50; see also Xiaohan Wu et al., *Augmenting Serialized Bureaucratic Data: The Case of Chinese Courts*, 21st Century China Center Research Paper No. 2022-11, available at <http://dx.doi.org/10.2139/ssrn.4124433> (further discussing the patterns of missing data in China Judgments Online).

<sup>55</sup> *Id.*

<sup>56</sup> *Second Batch of Model Civil Cases of Vigorously Carrying forward Core Socialist Values by the People's Courts Issued by the Supreme People's Court*, *supra* note 12.

**Chart 1 Number of Cases Applying Core Socialist Values by Year According to SPC<sup>57</sup>**



As a reference point to our data, the only two comparable years are 2017 and 2018. For 2017, the SPC identified 131,637 cases applying Core Socialist Values; but we’ve only found 41,498 cases citing one of our moralizing keywords, less than one third of the SPC number. The gap was even larger in 2018, when the SPC found 174,907 cases applying Core Socialist Values, whereas our search only turned up 9,610 cases.

Our search therefore could not be the basis for frequency claims of moralizing behaviors of Chinese judges. However, this data provides a qualitative, panoramic view of how our moralizing phrases have been invoked in civil cases between 2001–2018. We use three keywords to describe what we see: *widespread*, *diverse*, and *relationship-based*.

*ii. Widespread Distribution*

The first thing to note of the 490,030 cases we identified is their widespread distribution over time, location, and level of cases and courts. Opinions that invoke at least one of our moralizing keywords are not concentrated by any specific parameter; rather, the practice can be commonly observed wherever one turns.

*Widespread Distribution – by Judge-Court Combination*

The widespread nature of judicial moralizing is most clearly revealed by its distribution among individual judges. We use a “judge-court

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<sup>57</sup> *Id.*



combination” indicator to identify judges in our database,<sup>58</sup> ensuring that two judges in two different courts who happen to have the same name are recognized as two unique judges.<sup>59</sup> We map out the number of moralizing cases corresponding with each judge, first combined, and then in terms of each moralizing keyword; the results are demonstrated in Chart 2 (aggregated) and Appendices 3.1-3.18 (by keyword).

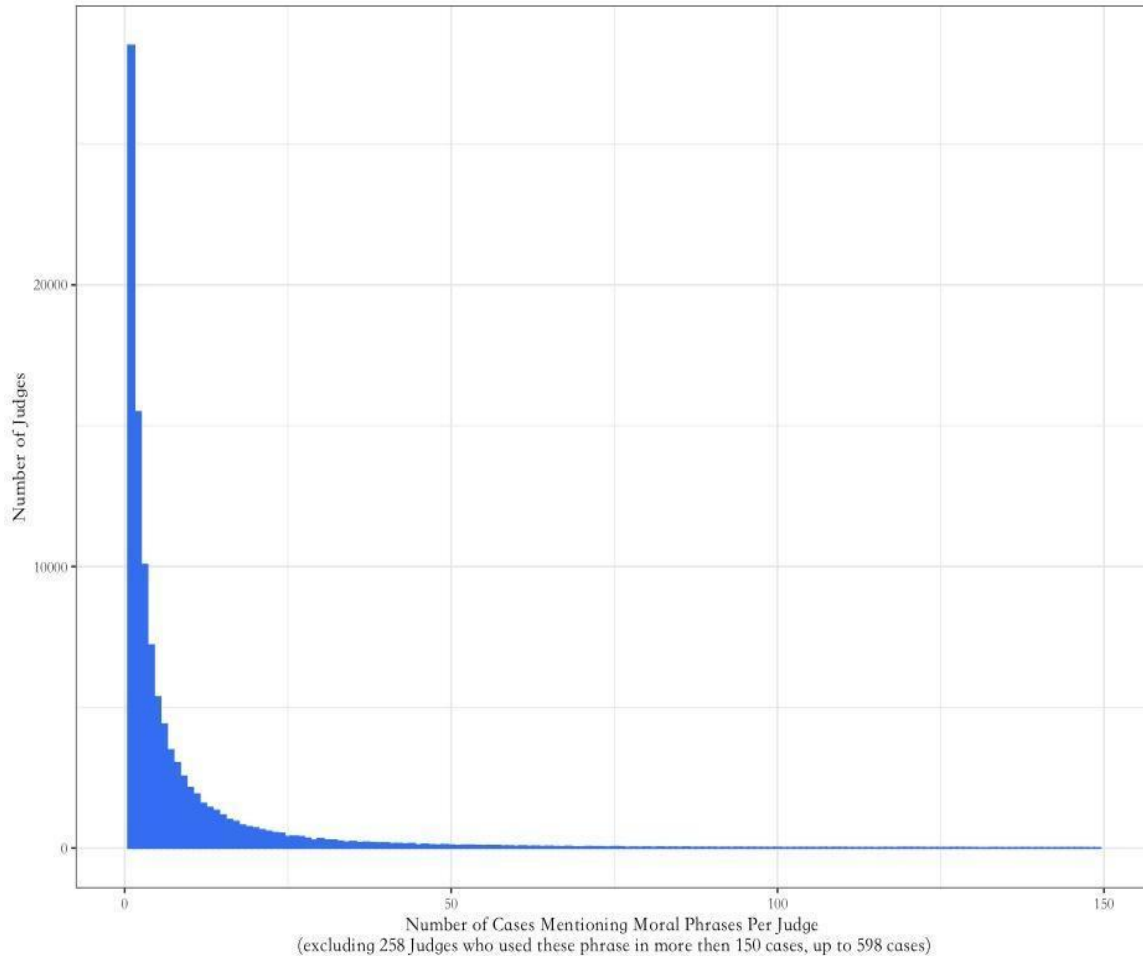
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<sup>58</sup> Please note that our method for analyzing the judge-court combination treats each People’s Assessor (renmin peishenyuan) as an individual judge. Dating back to the 1950s, People’s Assessors are lay citizens who sit with judges to form judicial panels in some civil cases in China. For a general overview of the lay assessor system and the percentage of cases with their participation in recent years, see Xin He, *Double Whammy: Lay Assessors as Lackeys in Chinese Courts*, 50 *Law & Soc’y Rev.* 733 (2016).

<sup>59</sup> We have not attempted to track the career movement of each individual judge throughout the judicial system. As such, it is possible that the same judge, sitting at different court levels or in different locations, might have been counted twice as two different judges.

## Chart 2 Moralizing Opinions by Judge-Court Combination (All Keywords Combined)

Distribution of Number of Cases Mentioning Moral Phrases (All Keywords Combined) Per Judge



On each chart, the X-axis shows the number of moralizing cases decided by a single unique judge, and the Y-axis shows the number of judges with the corresponding number of moralizing cases. For example, in Appendix 3.5, which shows cases mentioning the phrase *Virtuous Traditions of Chinese People*, the first column has 1 on the X-axis and around 8,000 on the Y-axis, while the second column has 2 on the X-axis and around 2,000 on the Y-axis. That means in our database, roughly 8,000 unique judges have each made one reference to this keyword, and roughly 2,000 judges have made two references.

Looking at Appendices 3.1 through 3.18, the first thing that strikes the eye is how similar they all look. Each begins with a very tall column on the far left, gradually dwindling towards the right end of the X-axis. The similarity in patterns across these graphs suggests that references to each of our moralizing keywords, at least when it comes to individual judges, are

distributed in a similar way. This common distribution pattern has the following three features:

The *first* is the overwhelming number of judges, shown on the Y-axis, who have used a moralizing phrase at least once. This is demonstrated by the very tall column on the left side of each chart. As Chart 2 shows, over 30,000 judges in China referred to one or more of the 18 keywords selected by us once. Over 15,000 judges have done this twice, and roughly 1,000 judges have used them in 20 cases or more. Altogether, we have 135,720 unique judges citing at least one of our moralizing keywords. That represents more than half of the total number of judges right before the judicial reform in 2017.<sup>60</sup>

The *second* observation, looking at the X-axis on each graph, is that there are outlier judges who tend to cite one morality phrase more frequently than their colleagues. In each chart, the far end of the X-axis represents the highest frequency a single judge has ever used that specific morality phrase. The further the X-axis extends to, the more times this “most frequent user” has referred to this moralizing keyword in their judgments. In order to properly present the scale of each chart, we have excluded the most “frequent” users as outliers, as annotated at the bottom of each chart. Chart 2, for example, does not include 258 judges who each used these moral phrases more than 150 times, but the X-axis still shows hundreds of judges who each cited our moralizing keywords in more than 50 decisions in our database. There would have been no visible columns for the outlier judges in Chart 2, because the number of judges using moralizing keywords is too small compared to the scale of the Y-axis (more than 30,000 in this chart).

The *third* feature is the distribution of the area size of columns on each chart, which takes both Y-axis and X-axis into account. The area size of each column—X (the frequency of a morality phrase being cited) times Y (the number of judges who have cited that phrase at that frequency) shows the total number of cases that column represents. Combined, the area size of all columns on the same chart equals the total number of moralizing cases citing that particular keyword. For example, because the first column on the left of the chart of Traditional Virtue, in Appendix 3.6, has 1 on the X-

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<sup>60</sup> According to a SPC report in 2017, before the judicial reform, China had 211,990 judges; since 2017, that number has been reduced to 120,128. See Zuigao Renmin Fayuan Guanyu Renmin Fayuan Quanmian Shenhua Sifa Gaige Qingkuang De Baogao (最高人民法院关于人民法院全面深化司法改革情况的报告) [Report on Further Deepening Judicial Reform in People's Courts] (promulgated by Sup. People's Ct., Nov. 1, 2017), available at [http://www.npc.gov.cn/zgrdw/npc/xinwen/2017-11/01/content\\_2030821.htm](http://www.npc.gov.cn/zgrdw/npc/xinwen/2017-11/01/content_2030821.htm).

axis, and around 8,000 on the Y-axis, we know that around  $1 \times 8,000 = 8,000$  cases were cited by around 8,000 judges, each once. This takes up 65.9% of all cases ever citing Traditional Virtue, which means that among all judicial references to this phrase, to the extent published in our database, about two-thirds are evenly distributed throughout a large body of individual judges. The same is true for every moralizing keyword: in each chart, the number of cases represented by the first one or two columns on the left account for the vast majority of all cases citing that phrase. This means that the total number of moralizing cases we have is not an anomaly caused by a handful of outlier judges with a distinctive moralizing bent; rather, it is the result of ubiquitous contribution among a significant number of adjudicators.

*Widespread Distribution – by Other Parameters*

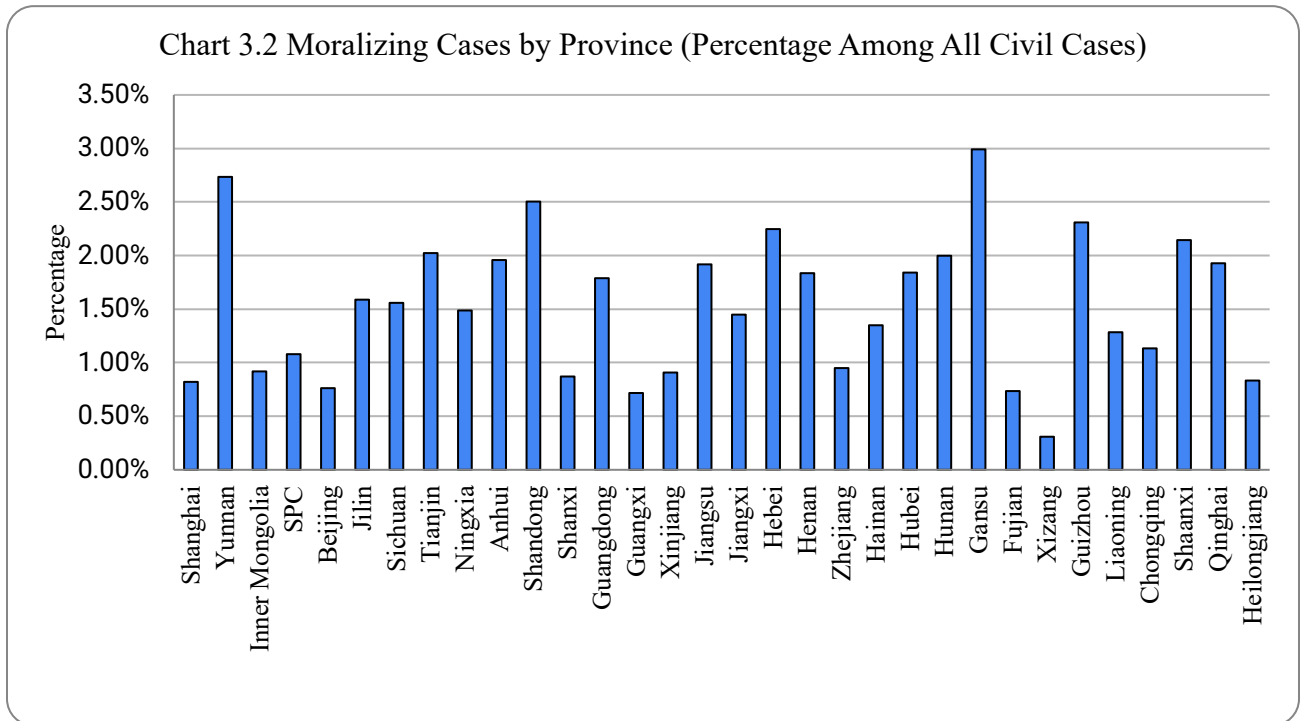
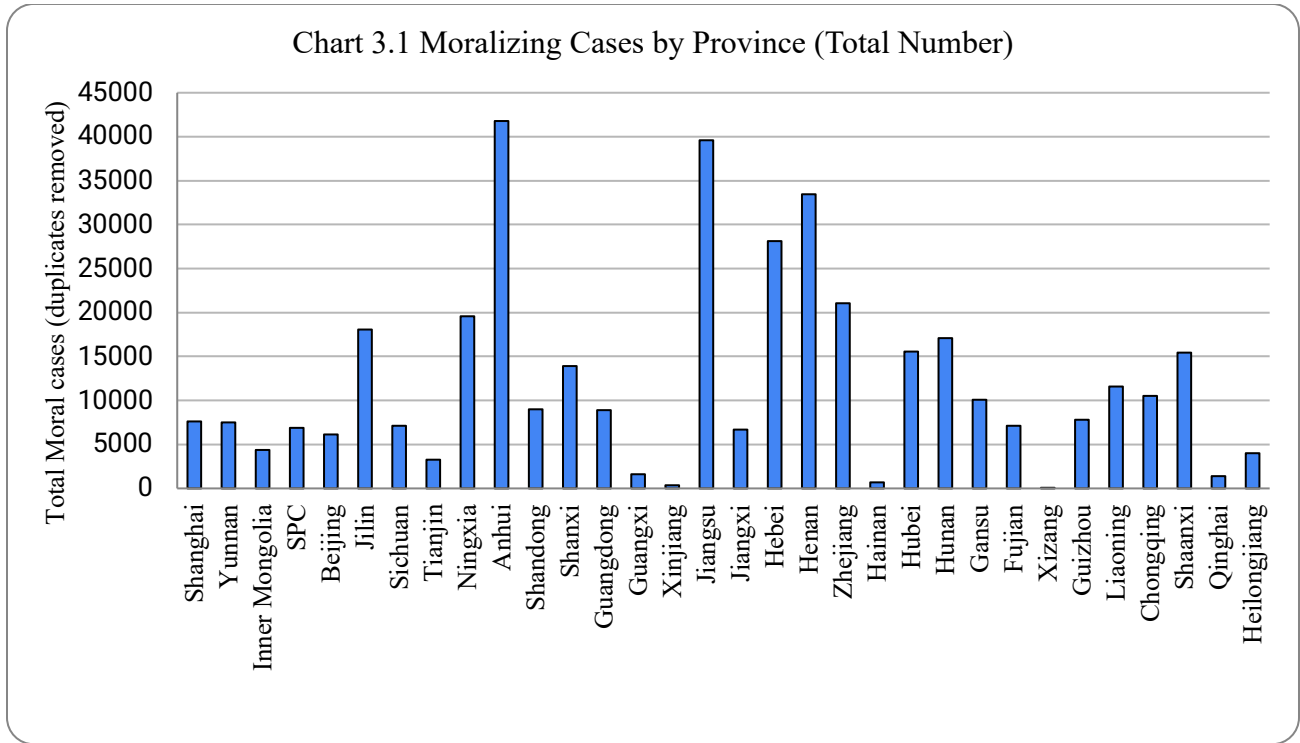
The common pattern observed in Appendices 3.1 through 3.18 shows that moralizing is a widespread and prevalent practice among judges. This distribution can be further confirmed across a number of different demographic parameters. The following tables and charts provide a breakdown of cases by time, by province, and by court/case level. Due to the missingness of our data, we do not purport to make any quantitative claim regarding the frequency and distribution pattern of moralizing cases along those parameters. Rather, the point here is that moralizing is not monopolized by judges from any particular province, at any particular court/case level, or in any particular year.

<b>2001</b>	18	
<b>2002</b>	60	
<b>2003</b>	56	
<b>2004</b>	78	
<b>2005</b>	82	
<b>2006</b>	110	
<b>2007</b>	241	
<b>2008</b>	360	3.58%
<b>2009</b>	662	0.73%
<b>2010</b>	3,275	2.18%
<b>2011</b>	2,893	1.91%
<b>2012</b>	7,181	2.50%
<b>2013</b>	32,150	2.61%
<b>2014</b>	110,070	2.63%
<b>2015</b>	127,319	2.19%
<b>2016</b>	92,217	1.51%
<b>2017</b>	41,498	0.73%
<b>2018</b>	9,610	0.63%

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<sup>61</sup> A small number of cases in our database do not have proper identification of year, which is why the total count of numbers in this table is slightly lower than 490,030, the total count of unique cases.

**Charts 3.1 & 3.2 Distribution of Moralizing Cases by Province**



Case Type	Percentage
Civil Decisions at Trial Level ( <i>minchu</i> )	2.49%
Civil Decisions at Appellate Level ( <i>minzhong</i> )	1.73%
Civil Decisions upon Retrial ( <i>minzai</i> )	2.10%

Level	Percentage
Supreme People's Court ( <i>zuigao renmin fayuan</i> )	0.95%
High People's Courts ( <i>gaoji renmin fayuan</i> )	0.59%
Intermediate People's Courts ( <i>zhongji renmin fayuan</i> )	1.03%
Basic People's Courts ( <i>jiceng renmin fayuan</i> )	1.83%

*iii. Diverse Individual Practices*

Switching to a closer view, what do these moralizing opinions actually look like? The one-word answer would be diverse. In the random sample of 1,562 cases we reviewed where the moralizing keywords were used substantively, the particular length, style, and sources of moralizing rhetoric present a dazzlingly varied array. Nonetheless, a common theme lies beneath the seemingly diverse exteriors: judges use the moralizing keywords promoted by the Party-state as the yardstick to measure the ethics

of individuals' behaviors, and to urge the parties to avoid disputes, to obey the elders, and to think about the collective good. The diversity is skin-deep, and the varied rhetoric all work to serve the same common cores: peaceful mediation, personal virtues, and deference to the elders, the community, and the society at large.

*Diverse Individual Practices – Length*

To start, the sample cases fall on a wide spectrum in terms of how long or intensive the moralizing is. From one opinion to another, it ranges from a sprawling essay with extensive quotes, to a group of two or three sentences, and to a nodding mention of one or two catchphrases in passing. The second kind is the most common, but examples abound at both extremes.

The most concise form of moralizing typically occurs at the beginning or end of legal reasoning, either leading or concluding an otherwise complete section of legal analysis. But “concise” does not mean “precise”: such invocations of Party catchphrases are usually highly generic. For example, as an introduction to the legal reasoning about elderly support, the court may say “[t]o care for your elders is both the requirement of the Traditional Virtue of the Chinese People and a vital manifestation of the Core Socialist Values.”<sup>62</sup> To conclude a similar case, another court may say “[t]he behaviors of these six Defendants run contrary to not only the provisions of the law, but also the basic requirements of socialist morality norms.”<sup>63</sup> Building upon the same catchphrases, most opinions would elaborate to varying extents, and an example along the same lines might go: “To respect the old and cherish the young is a Traditional Virtue of the Chinese People; filial piety towards your parents is not only a child’s responsibility and duty, but also the touchstone of his/her virtue. Your conscience will only be at peace when you have supported your parents

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<sup>62</sup> Huang Mou Yu Wang Mou, Xiang Mou Shanyang Jiufen Yishen Minshi Panjueshu (黄某与王某、向某赡养纠纷一审民事判决书) [Trial Judgment in Huang v. Wang and Xiang Duty to Support Parents Dispute], 鄂 0581 民初 1065 号, (Yidu People's Ct. of Hubei 2016) (China).

<sup>63</sup> Wang Qiaoyun Yu Beigao Zhou Dacun, Zhou Xuejin, Zhou Xuesheng, Zhou Xicun, Zhou Xueqi, Zhou Xueguang Shan Yang Jiufen Yishen Minshi Panjueshu (王巧云与被告周大存、周学金、周学生、周喜存、周学启、周学光赡养纠纷一审民事判决书) [Trial Judgment in Wang Qiaoyun v. Zhou Dacun, et al. Duty to Support Parents Dispute], 鲁 1722 民初 2806 号, (Shan Cnty. People's Ct. of Shandong 2016) (China).



while they are alive; it will be too late to regret when they have passed away and you have missed the chance.”<sup>64</sup>

At the other end of the spectrum, some sample moralizing cases would present a passage that could, in length at least, eclipse an academic discourse on individual ethics. Given that most judicial opinions in China do not contain detailed legal reasoning, moralizing passages of this kind often take up more than half of the legal analysis section.<sup>65</sup> But again, lengthy moralizing should not be confounded with in-depth moralizing: resorting to moralizing language does not mean Chinese judges are attempting to engage in sophisticated discussions of moral dilemmas. Rather, even in the cases with the longest moral discourse, the moralizing passages are usually one-sided, straightforward, and lacking in nuance.

In one personal injury claim in Shanghai brought by a son against his father, the factual background section of the opinion records a long and complex relationship between the parties, fraught with violence and retaliations on both sides, and with roots in both financial difficulties and alleged domestic violence.<sup>66</sup> The specific legal issue in this case is relatively straightforward, concerning whether the defendant father was properly conducting self-defense against the plaintiff son. The court could have ruled on it without getting into the parties' history and its accompanying ethical complications. But the court could not resist taking a moral stance, addressing the following written lecture to the son:

As the ancient teachings go, “of all the actions of man there is none greater than filial piety,”<sup>67</sup> and “the highest virtue out

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64 Zhu Songyun Yu Zhong Jinmei Deng Shanyang Fei Jiufen An (朱松云与钟金梅等赡养费纠纷案) [Trial Judgment in Zhu Songyun v. Zhong Jinmei, et al. Duty to Support Parents Dispute], 湘3130民初396号, (Longshan Cnty. People's Ct. of Hunan 2016) (China).

65 Chinese scholarship abounds in discussions about the length and depth of judicial reasoning. For an empirical study that finds the average length of legal reasoning at trial court level in civil cases to be 798 Chinese characters—or about two single-sided pages—see Xia Keqin (夏克勤), *Minshi Caipan Wenshu Shuoli Shizheng Diaocha—Jiyu 900 Pian Minshi Caipan Wenshu De Fenxi* (民事裁判文书说理实证调查——基于900篇民事裁判文书的分析) [Investigations Into Legal Interpretations in Civil Judicial Decisions—An Analysis Based on 900 Decisions], 30 *Zhongguo Yingyong Faxue* (中国应用法学) [China Journal of Legal Application], no. 2 (2018).

66 Fan Zhenyu Su Fan Hongde Jian Kang Quan Jiufen An (范振宇诉范洪德健康权纠纷案) [Trial Judgment in Fan Zhenyu v. Fan Hongde Personal Injury Dispute], 浦民一(民)初字第27636号, (Shanghai Pudong New Area People's Ct. 2014) (China).

67 Authors' Note: From *孝经* (The Classic of Filial Piety), a Confucian classic treatise written in the 4th century B.C. Translation by the Chinese Text Project, available at <https://ctext.org/xiao-jing/ens>.

of a hundred is filial piety.” To be pious and take care of your parents, besides being what is only right and natural, is also required by the Traditional Virtue of the Chinese People, as well as by the PRC’s Law on the Protection of the Rights and Interests of the Elderly. Children shall try their very best to serve their parents: “In their general conduct to parents, they shall manifest the utmost reverence; in their nourishing of parents, they shall endeavor to give them the utmost pleasure; when parents are ill, they shall feel the greatest anxiety.”<sup>68</sup> But the actions of Fan Zhenyu, the Plaintiff in this case, have been nothing but the opposite. He is past forty years old now, and himself a father; all this should have opened his eyes to the virtue of filial piety, but instead he has fallen out with his parents over trivial quarrels in recent years, and he has now allowed the family squabbles to amount to a physical scuffle. This is a transgression of both the natural laws and the normative rules of this country, and a shocking spectacle to behold. In this case, even if the Defendant had done the Plaintiff wrong, and no matter how outrageously he had hurt the Plaintiff’s feelings, the Plaintiff, as the Defendant’s son, still should have tried to resolve the dispute peacefully using legitimate means, either through mutual compromise or through the mediation of a third party. None of what happened justified the Plaintiff in getting into a physical altercation with his own parent or in escalating the situation into a formal lawsuit, where parents and children face each other off like enemies. The Plaintiff really should not have allowed this to happen, and this court hereby registers our strictest reprimand ... “Like water dripping down from the eaves, every parent’s actions will invariably be passed down to their children.” The Plaintiff shall reflect on the morals of this idiom, and consider how he would feel himself if, in the future, his own children end up treating him in the same way that he is treating his parents. Legal rights are litigable, but family bonds are priceless. Easier to heal the son’s physical wounds, but harder to fix the parents’ broken hearts. “The parents might have passed away by the time the son is finally ready to serve

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<sup>68</sup> *Id.*

them;” there is no sadder regret in life than that. We shall take this opportunity to exhort the Plaintiff that from now on, he shall reflect on his own behaviors, revert from his erroneous ways, learn to practice filial piety, respect and take care of his parents, and be the pious son for his parents and the virtuous father for his children, as he should have been all along.

Buried in the middle of this moralizing passage, the court concluded that legally, because the plaintiff himself instigated the quarrel, the defendant has acted with legal excuse and is not required to pay compensation to the plaintiff. Notably, the court did not address any moralizing towards the defendant father, even though he was the one who had caused the personal injuries that had necessitated this lawsuit, and even though the court quoted a saying that acknowledged that parents’ behaviors inevitably impact their children’s.

One type of cases where such one-sided moralizing passages frequently appear is divorce lawsuits. Scholars like Ke Li vividly portray the political and cultural obstacles that women in China face in divorce litigation;<sup>69</sup> in the form of written judgments, such struggles could appear as particularly lengthy and wishful moral sermons, such as the following one:

The correct way for spouses to get along is through mutual forgiveness and forbearance; caring and understanding are the strongest bonds between a couple. As the idioms go, “it takes a hundred years of praying for the chance of crossing over the river with someone in the same boat, and a thousand years of praying for the blessing of spending the night with him/her in the same bed.” “Staying true to how you started is the only way to attain the end.” The parties in this case, having been able to reach the stage of marriage, must presumably have started their relationship with the fluttering of hearts and the tenderness of feelings; as they entered into the mundane of everyday life, it is only natural that they should quarrel occasionally. Both of them have to work to earn their bread, and a young child needs feeding and

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<sup>69</sup> Ke Li, “What He Did Was Lawful”: Divorce Litigation and Gender Inequality in China, 37 *Law & Policy* 153 (2015); see also generally Ke Li, *Marriage Unbound: State Law, Power, and Inequality in Contemporary China* (2022).

caretaking every day; to have squabbles over such things is to be expected ... Blood is thicker than water, and flesh and bones could never be completely broken off. We thereby judge that the relationship between the couple may yet be fixed, and they have not reached the place where divorce is inevitable. A happy family is hard-won and could only come from the nurturing of mutual love and commitment from both parties over time. It is far from wise to allow the trivialities of life to blind your path to happiness; the road is yet long ahead. Why travel it with bitterness in your heart and sadness on your face, when you could do it with mutual respect and mutual love? Plaintiff's request for divorce is hereby denied. Going forward, we hope that both parties could unload the burdens of their minds, share in the joys of life and partake of its sorrows, and learn to cherish the people whom you are blessed with in your life.<sup>70</sup>

*Diverse Individual Practices – Sources*

Apart from varying in length, the moralizing rhetoric is also highly diverse in terms of style and tone, as well as which sources the courts turn to in order to back up their moralizing assertions. Different courts making the same ethical arguments based on the same Party-propagated keyword could resort to a variety of different rhetorical approaches, depending on which best suits their purpose.

As scholars have noted, Xi's moralistic campaigns are consciously resurrecting and exploiting traditional Chinese culture, most notably Confucianism.<sup>71</sup> This is echoed in a great number of the sample cases we read. In one extreme example, where the dispute concerned the validity of

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<sup>70</sup> Wang Moumou Su Ye Moumou Lihun Jiufen Yishen Minshi Panjueshu (王某某诉叶某某离婚纠纷一案一审民事判决书) [Trial Judgment in Wang v. Ye Divorce Dispute], 深龙法鹏民初字第 254 号, (Longgang Dist. People's Ct. of Shenzhen City Guangdong 2015) (China).

<sup>71</sup> Sarah Quan, How China's Socialist Core Value Propaganda Portrays China as a Serious Society, *Palouse Rev.* (May 1, 2018), available at <https://palousereview.wsu.edu/spring-2018-edition/tracing-the-confucian-values-in-the-shaping-of-core-socialist-values/>; Delia Lin, Morality Politics under Xi Jinping, *East Asia F.* (Aug. 1, 2019), available at <https://www.eastasiaforum.org/2019/08/01/morality-politics-under-xi-jinping/> (discussing the "Confucianization of law" in Thoughts of Xi); Benjamin L. Liebman, Authoritarian Justice in China: Is There a Chinese Model?, in *The Beijing Consensus? How China Has Changed The Western Ideas Of Law And Economic Development* (Chen Weisteng ed., 2017) (identifying continued leaning upon Confucianism and imperialist moral traditions as one of the unique features of Chinese legal system); Larry A. DiMatteo, Rule of Law in China: The Confrontation of Formal Law with Cultural Norms, 51 *Cornell Int'l L.J.* 391 (2018) (rule of law in China under Xi is undermined by cultural norms including socialism and Confucianism).

a property transfer contract between an adult son and his elderly mother, the court quoted in the final judgment, *verbatim*, an entire chapter of *Di Zi Gui*.<sup>72</sup>

Most moralizing passages would invoke classical texts and Party catchphrases side-by-side, including the first excerpted case in this article.<sup>73</sup> But some judges go further than others, and their moralizing distinctly speaks the language of the Party-state. In one retrial on two neighbors' dispute over the scope of reasonable use of adjacent property, the court reprimanded the parties for their failure to mediate, explaining in detail the ways in which they failed to be model citizens in Chinese society:

To properly handle neighborly relationships based on the principles of mutual concession, forgiveness, helpfulness and harmony, is not only a thousand-year-old Traditional Virtue of the Chinese People, but also in keeping with humane considerations, communal ethics, as well as the Positive Vibe promulgated generally in society. The appellant Li Yuxian and the appellee Kong Anxi, as adjacent owners of real property, have been engaged in disputes since 2007 ... Looking at their history of five separate litigations, it is apparent that the parties have failed to proactively carry out the agreements reached through People's Mediation. They have further failed to accord their action with the principles of socialist moralities and civilities, which, as part of the New Socialist Civil Trend, call for the love of your country, your home, your family, and your neighbors, as well as everyone's contribution to the joint efforts of building and sharing a better and kinder society. They failed to sincerely understand that friendly neighborhoods are the important building blocks of a developing nation, an advancing people, and a harmonious society. Their failure is, in addition, the failing of the requirement for citizen

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<sup>72</sup> Zhang Degui Yu Li Jinlan Queren Hetong Youxiao Jiufen Yishen Minshi Panjueshu (张德贵与李金兰确认合同有效纠纷一审民事判决书) [Trial Judgment in Zhang Degui v. Li Jinlan Validity of Contract Dispute], 历民初字第 2018 号, (Lixia Dist. People's Ct. of Jinan City Shandong 2013) (China). *Di Zi Gui*, meaning Guidelines for Being a Good Child and Student, is a morality tract for children written in poetry form during the Qing Dynasty.

<sup>73</sup> Wang Delin Yu Wang Dehuai Mingyu Quan Jiufen Yishen Minshi Panjueshu (王德林与王德槐名誉权纠纷一审民事判决书) [Trial Judgment in Wang Delin v. Wang Dehuai Rights of Reputation Dispute], 黔 0381 民初 904 号, (Chishui City People's Ct. of Guizhou 2018) (China).

participation in the construction of a harmonious and civilized society, as well as of the Positive Vibe generally promoted—these are not only the demands of our Socialist Rule of Law with Chinese Characteristics, which combines Rule of Virtue and Rule of Law, but are also hallmarks of civic responsibility, commitment, and model of conduct. The court hereby registers our disapproval.<sup>74</sup>

In examples like this, the ideological slogans of the Party-state are invoked in a way similar to legal doctrines. The parties' failure to mediate was not a factual or legal issue directly before the court, but the judge turned to Party-sanctioned moral norms, treated them as the generally applicable behavioral standard, and applied them to illustrate how the parties' conduct failed to measure up.

Another common way of moralizing is citing proverbs and folk legends—less stylish, but more down to earth:

What we need to further point out is that the Chinese people have a long-standing tradition of treating neighborly relationships with care; that's how sayings like “a neighbor close by is better than a relative far away” came to be. Our ancestors have left us such virtuous examples as “the six-foot alleyway” and “Luo Wei feeding the calf,”<sup>75</sup> passed down through the generations until today; as their descendants, as we reflect upon these stories, we could not but feel ashamed of our own behaviors. A harmonious neighborhood not only provides the basis for a happy life of everyone, but also helps clear up the social climate overall. We elaborate on this now, in the hope that both parties, going forward in their life, could learn to act with a generous mind, a virtuous style, and lofty moral principles; put yourselves into each other's shoes

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<sup>74</sup> Li Yuxian, Kong Enxi Qinquan Zeren Jiuifen Zaishen Minshi Panjueshu (李玉先、孔恩喜侵权责任纠纷再审民事判决书) [Re-trial Judgment in Li Yuxian v. Kong Enxi Civil Dispute], 豫 1104 民再 3 号, (Zhaoling Dist. People's Ct. of Luohe City Henan 2016) (China).

<sup>75</sup> Authors' Note: This story comes from the Imperial Reader (太平御览), an official encyclopedic compilation of existing documents and stories, written in the Song Dynasty. As the story goes, in the Han Dynasty, a villager named Luo Wei had a neighbor whose calf frequently wandered over to Luo Wei's properties and fed on his crops. Instead of arguing with his neighbor or getting his temper worked up, Luo Wei reasoned that the issue only arose because the calf was not being properly fed. Luo Wei therefore rose early every day to gather fresh grass for the neighbor's calf; when the neighbor discovered this, he felt ashamed of his own neglect, and never once again allowed his calf to stray over.

in everything, as this is the only way to maintain a harmonious neighborhood.<sup>76</sup>

Yet another approach is to write in a conversational yet paternalistic tone, assuming the pedagogical role in a tender-hearted way. Here we see invocations of a range of popular sources, from song lyrics to quotes from celebrities:

As Leung Kai Cheung<sup>77</sup> said in a letter to his son, “family members only get to accompany each other in this one life. We’ve only got this long to be with each other; let us both cherish it. In our next life, no matter how much love there has been between us, we will not be united.” Blood is thicker than water; this court truly hopes that all parties could cherish their family bonds, let bygones be bygones, work together to make each other’s life easier, resolve any dispute peacefully, and live out their life beyond regrets.<sup>78</sup>

The lyrics of ‘*Father*’ say it all: “everyone says bringing up a son is the best way to ensure you are looked after when you are old.” When children are young, parents tighten their own belts on food and expenses, and pay every possible attention to the comforts of their children; they are constantly worried whether their children have enough food in their stomachs and enough clothes on their backs, and they spend night and day looking forward to the time when they could grow up and stand upon their own ... Appellant Yue Songhui, please spend some time pondering the lyrics of the two songs *Father* and *Mother*. They will teach you the basics of being

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<sup>76</sup> Wang Jinhua Deng Yu Song Yuequan Deng Paichu Fanghai Jiufen Yishen Minshi Panjueshu (王金华等与宋月全等排除妨害纠纷一审民事判决书) [Trial Judgment in Wang Jinhua, et al. v. Song Yuequan, et al. Infringement Upon Land Dispute], 顺民初字第 19579 号, (Beijing Shunyi Dist. People's Ct. 2015) (China).

<sup>77</sup> Authors’ Note: Leung Kai Cheung is a radio host of popular variety shows in Hong Kong.

<sup>78</sup> Cao Mou Jia Su Tao Mou Jia Fuyang Fei Jiufen Yishen Minshi Panjueshu (曹某甲诉陶某甲抚养费纠纷一审民事判决书) [Trial Judgment in Cao v. Tao Child Support Dispute], 长少民初字第 146 号, (Shanghai Changning Dist. People's Ct. 2015) (China).

a decent individual, and make you understand why you should observe filial piety.<sup>79</sup>

The many ways in which different courts elaborate upon the same Party catchphrase or moralistic idea might be an opportunity for individual adjudicators to express their personality and show off their learning; some judges appear to actually enjoy the process. One judge in the High Court of Quzhou, Zhejiang, for example, wrote the following passage with multiple quotes:

Contractual freedom is not absolute in nature; instead, it should be viewed in conjunction with contractual justice and contractual intent. Litigation is the legal vehicle by which modern civilized society solves its disputes. Howbeit,<sup>80</sup> our country applies the Socialist Rule of Law with Chinese Characteristics, which combines the Rule of Law and the Rule of Virtue. To view the issue from the perspective of cultural confidence, let's look at a number of old Chinese sayings. *Master Zhu's Maxims for Managing the Home*<sup>81</sup> says: "A respectable family avoids lawsuit;"<sup>82</sup> *Di Zi Gui* says: "If the conditions are not auspicious, do not lightly make promises;" *Doctrine of the Mean*<sup>83</sup> says: "Benevolence is the characteristic element of humanity, and the great exercise of it is in loving relatives; righteousness is the accordance of actions with what is right, and the great

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<sup>79</sup> Yang Yuanxiu, Yue Songhui Shanyang Jiufen Ershen Minshi Panjueshu (杨元秀、岳宋辉赡养纠纷二审民事判决书) [Judgment on Appeal in Yang Yuanxiu v. Yue Songhui Duty to Support Parents Dispute], 川 19 民终 836 号, (Bazhong City Interm. People's Ct. of Sichuan 2017) (China).

<sup>80</sup> Authors' Note: The Chinese expression used by the court ("然") is an extremely archaic one, and this translation aims to reflect that.

<sup>81</sup> Authors' Note: A classical morality tract written by Zhu Bolu (朱柏庐), a rural scholar living at the end of Ming and the start of Qing.

<sup>82</sup> Authors' Note: This translation is taken from the University of California, San Diego's China-Related Resources for Students and Teachers, by Professor David K. Jordan, available at <https://pages.ucsd.edu/~dkjordan/chin/chtxts/JuBorlu.html> (Mar. 27, 2021) (last visited Dec. 28, 2024).

<sup>83</sup> Authors' Note: 中庸 is one of the four classic books of Confucianism selected by Zhu Xi. Authorship was attributed to a grandson of Confucius at the time of its publication in 1190, but later became disputed.



exercise of it is in honoring the worthy;”<sup>84</sup> and Lin Zexu<sup>85</sup> says: “If my descendants are worthy of me, what is the point in leaving them money? To overload the wise with wealth is to weaken their will. If my descendants are unworthy of me, what is the point in leaving them money? To supply the foolish with funds is to facilitate their follies.” These sayings from times of old still provide contemporary and beneficial guidance for us today. Since the appellees did not agree to the proposed settlement, the People’s Court shall now render a legal judgment accordingly.<sup>86</sup>

The underlying case is a complicated investment dispute, presenting a mix of legal issues involving share transfer agreements, loan contracts, and guarantee obligations, with more than one million RMB (around \$150,000 USD) at stake. The court conducted detailed analysis under corporate law and contract law, but it added the above-quoted passage at the end to comment on the parties’ failure to mediate. The entire passage seemed superfluous in light of the otherwise complete legal analysis; and some of the quotes—such as the ones from *Di Zi Gui* and by Lin Zexu—were hardly relevant.

Personalities aside, however, the apparently varied moralizing opinions are highly homogeneous in content. Behind the diverse exterior, the different types of rhetoric all share the same core. Long or short, rich or dry, the moralizing passages always assess the parties’ actions against an officially promulgated moral standard, presenting an ethical verdict side-by-side with the application of the laws and regulations, such that the final judgment emanates from a mix of moral and legal points of view.

As diverse as the styles and tones are, the substance of what these voices preach revolves around a handful of familiar tunes. Everywhere one turns, the parties are urged to reconcile and get along, to commit to their

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<sup>84</sup> Authors’ Note: This translation is taken from James Legge, *The Chinese Classics: With a Translation, Critical and Exegetical Notes, Prolegomena, and Copious Indexes* (SMC Publishing Incorporated, 2000).

<sup>85</sup> Authors’ Note: Lin Zexu was a scholar and official during the Qing dynasty. Lin took a hard stand against the opium trade and advocated for self-confidence and self-strengthening of the Chinese nation. Lin is to this day regarded as a national hero.

<sup>86</sup> Chen Lifan Yu Xu Jianming, Lin Fangmei *Minjian Jiedai Jiufen Ershen Minshi Panjueshu* (陈栎帆与徐建明、林芳梅民间借贷纠纷二审民事判决书) [Judgment on Appeal in Chen Lifan v. Xu Jianming and Lin Fangmei Private Loan Dispute], 浙 08 民终 686 号, (Quzhou Interm. People’s Ct. of Zhejiang 2016) (China).

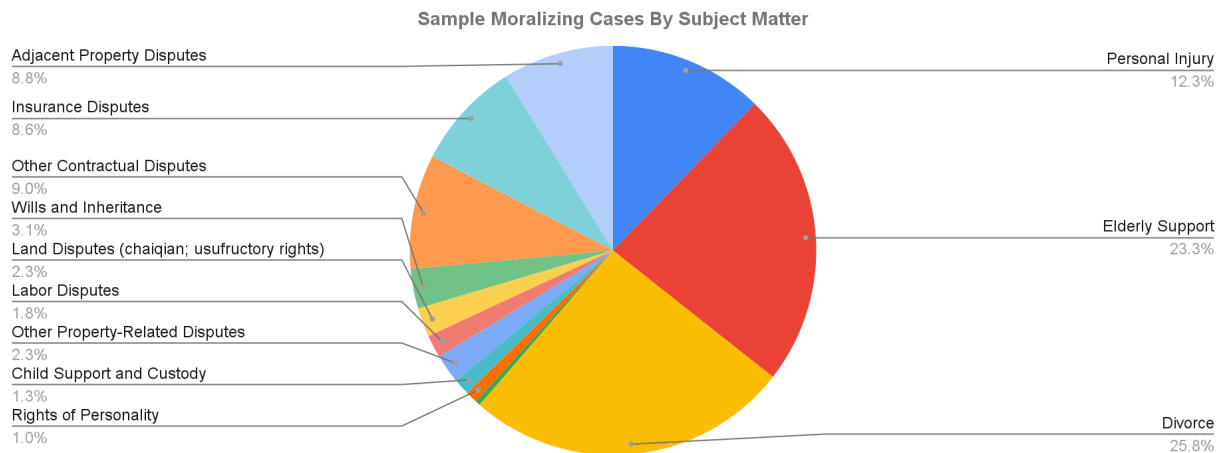
nucleus family, and to stop hindering the construction of the society's collective happiness. The sources may be classical or new; but the themes are centuries-old. Collectively, the diverse styles of moralizing rhetoric in courts are serving as a gateway for encouraging mediation and addressing stability concerns. These have been the focus of the Party-state policy for decades;<sup>87</sup> but the above examples demonstrate that such efforts are no longer restricted to extra-judicial venues or hidden behind the scenes in closed-door settlement discussions. They appear in published judicial opinions, under the mantle of law, and available to see for not only the litigants and lawyers, but the public in general.

*iv. Relationship-Based*

Are some types of cases more susceptible to judicial moralizing than others? To answer this question, we manually labeled the 1,562 sample cases by two indicators: the subject matter of the lawsuit and the nature of any pre-existing relationship between the litigants. The results are presented in Chart 4 and Chart 5. Overall, we found the nature of litigant relationships to be the more reliable trigger for judicial moralizing. In more than eighty percent of sample moralizing cases, litigants who come before the court have known each other personally before the underlying dispute arose, and the content of judicial moralizing is typically tailored to such relationships accordingly. And, as the discussion below will reveal, relationship-based moralizing appears to be a central feature and function of moralizing courts. Drawing upon pre-existing personal relationships among the underlying litigants gives the courts the opening they need to educate the parties on the ethics of their private lives, advocate extra-judicial mediation over court proceedings, and urge the parties to yield their personal litigation interests to the peaceful pursuit of the collective common good.

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<sup>87</sup> For an examination of judicial mediations in China, see Kwai Hang Ng & Xin He, *Internal Contradictions of Judicial Mediation in China*, 39 *Law & Soc. Inquiry* 285 (2014); for stability concerns in Chinese legal reform, see Benjamin L. Liebman, *China's Law-Stability Paradox*, in *CHINA'S CHALLENGES: THE ROAD AHEAD* (Avery Goldstein & Jacques Delisle, eds.) (Center for the Study of Contemporary China, University of Pennsylvania 2015).

**Chart 4 Sample Morality Cases by Subject Matter of Dispute**

Looking first at the subject matter of the lawsuits, shown in Chart 4, it is apparent that judicial moralizing appears in a wide variety of subject matters. Several categories of family law disputes—divorce, elderly support, inheritance, and child support and custody—together make up half of all sample moralizing cases. But the other half are much more varied in scope, ranging from contractual disputes involving investment, insurance, and employment; property disputes regarding sale and purchase, possessory and non-possessory interests, and state compensation for property demolition and occupant relocation (*chaiqian*); torts arising out of personal injury or property damage; and rights of personality actions such as privacy and defamation. The variety should not be surprising if one considers the Party-related keywords drawn from official documents: most of them are highly generic in nature and could be flexibly adapted to encompass almost any subject matter at hand.

Take labor disputes as an example of flexible application of a generic Party-related keyword. One case in Anhui concerned the proper interpretation of a labor contract without a fixed term.<sup>88</sup> The plaintiff used to work as the cleaner in a cold storage warehouse of the defendant, a dairy product company. In 2017, the plaintiff went through a heart stent surgery and could no longer work in the same post. The parties disputed whether

<sup>88</sup> Wang Benhao Yu Anhui Yiyi Ru Ye You Xian Gong Si Lao Dong Zhengyi Yishen Minshi Panjueshu (王本好与安徽益益乳业有限公司劳动争议一审民事判决书) [Trial Judgment in Wang Benhao v. Anhui Yiyi Dairy Limited Company Labor Dispute], 皖 0402 民初 200 号, (Datong Dist. People's Court of Huainan City Anhui 2018) (China).

the plaintiff's health condition gave the defendant proper cause to terminate his contract. Ruling in favor of the plaintiff, the court essentially held that the labor contract only asked the plaintiff to work for the defendant, but did not specify which kind of work was required; accordingly, the defendant was obligated to continue employing the plaintiff by finding him a suitable new post. The court concluded its reasoning by placing its legal findings in the context of the Core Socialist Values and declared:

Employers and laborers, as all other members of the society, are also practitioners, defenders, and beneficiaries of the Core Socialist Values. Accordingly, the Yiyi Dairy Company should endeavor to facilitate the performance of the labor contract, and Wang Benhao should reflect upon his own behaviors and put himself in the shoes of the company in fully carrying out his required labor duties. Only in this way could the labor contract be performed smoothly.<sup>89</sup>

As another example, the Core Socialist Values of Honesty and Trustworthiness are panaceas that apply in essentially all contract-based disputes. For example, courts adopted similar language invoking these values in the following two unrelated disputes, both regarding the sale and supply of construction concrete: “To observe the principles of honesty and good faith is not only required by the millennium-old Traditional Virtue of the Chinese People and the Positive Vibe that the society encourages, but is also a basic demand by the Rule of Virtue and the Rule of Law;”<sup>90</sup> and “Honesty and Trustworthiness are Traditional Virtues of the Chinese People that are also the basic principles of Civic Morality. Once a promise is made, it shall be abided by and followed through.”<sup>91</sup>

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<sup>89</sup> *Id.*

<sup>90</sup> Luohe Shi Jincheng Hunningtu Youxian Gongsi Yu Xuchang Guaungli Gongcheng Jianshe Youxian Zeren Gongsi Maimai Hetong Jiufen Yishen Minshi Panjueshu (漯河市锦程混凝土有限公司与许昌广莅公路工程建设有限责任公司买卖合同纠纷一审民事判决书) [Trial Judgment in Jincheng Concrete Ltd. Co. of Luohe City v. Xuchang Guanglin Road Construction LLC Purchase Agreement Dispute], 豫 1104 民初 1718 号, (Zhaoling Dist. People's Ct. of Luohe City Henan 2017) (China).

<sup>91</sup> Yuangao Libin Yu Beigao Yuncheng Shi Xinhuida Hunningtu Youxian Gongsi Maimai Hetong Jiufen Yi An Minshi Panjueshu (原告李斌与被告运城市鑫辉达混凝土有限公司买卖合同纠纷一案民事判决书) [Trial Judgment in Li Bin v. Xinhuida Concrete Ltd. Co. of Yuncheng City Purchase Agreement Dispute], 晋 0802 民初 1500 号, (Yanhu Dist. People's Ct. of Yuncheng City Shanxi 2017) (China).

There is a general consensus in the study of the Chinese legal system that contract and economics law are most likely to remain unaffected by Party influence as compared to other areas of law.<sup>92</sup> However, the preceding examples show this assessment is not invariably true, and could well be a conscious policy design. The SPC, in its 2022 performance review of the Core Socialist Values in courts, applauded the incorporation of the Core Socialist Values into as many as 132 types of civil action; the four batches of its model cases also cover a wide range of subjects.<sup>93</sup> The variety of disputes in our sample of moralizing cases confirms that, at least in terms of widely incorporating Core Socialist Values in judicial decisions, practice is in line with policy. The campaign to incorporate ideologies into judicial decisions is designed to—and in fact does—reach a broad array of subjects. There does not seem to be any reserved corners of the law where judicial moralizing would be considered inappropriate. At least rhetoric-wise, Party ideologies could as easily permeate judicial opinions in the most routine or complex commercial disputes as any other type of lawsuit.

When all other means fail, courts can always introduce moralizing catchphrases to chide parties for failing to settle or commend those who are willing to make a compromise. We see this frequently in insurance claims based on traffic accidents, which take up 8.6% of our sample cases. In the words of one trial court in Henan:

After the traffic accident, the Defendants—Qi Jiwei, Lü Weigang, and The Earth Insurance Company—did not proactively offer to make an advance payment for the medical expenses of the Plaintiff Zhang Guang. This is contrary to the requirements of humane considerations, the Traditional Virtues, and the Positive Vibe that the society encourages. It also violates the notion of the Core Socialist Values, for which this court hereby registers our disapproval ... The parties did not try to resolve their dispute by engaging in mediations or settlement negotiations outside the litigation process, which could have saved judicial resources. This failure contradicts the basic requirements of New Socialist Civil Trends and Socialist Rule of Law with

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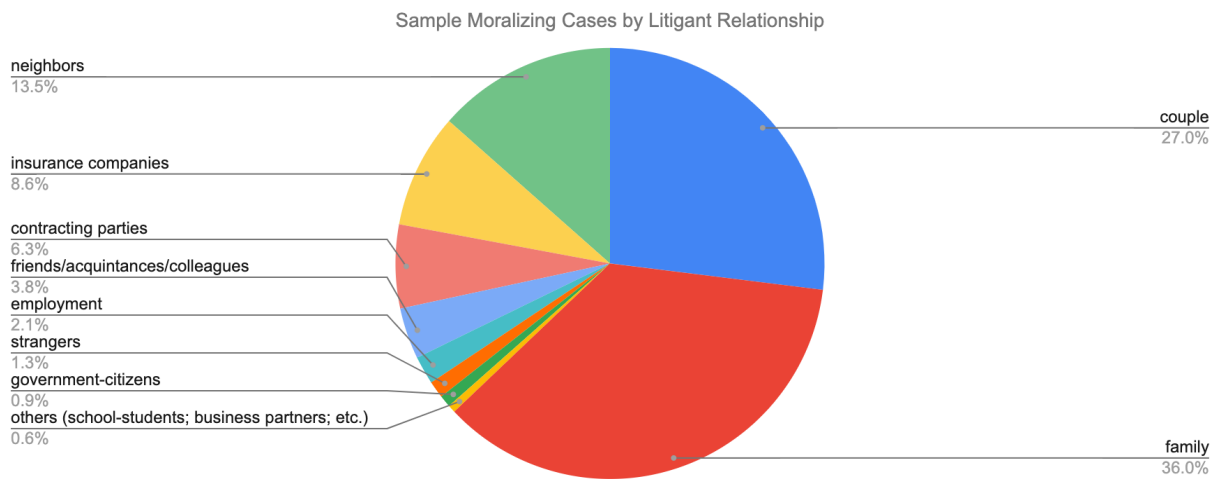
<sup>92</sup> For a general discussion about the influence of Party and traditional norms in commercial law, see Benjamin Gregg, *Law in China: The Tug of Tradition, the Push of Capitalism*, 21 *Rev. Cent. & E. Eur. L.* 65 (1995).

<sup>93</sup> See *supra* note 12.

Chinese Characteristics ... and this court hereby registers our disapproval.<sup>94</sup>

That said, however, sorting moralizing cases by subject matter of the dispute only tells part of the story. While family law cases only take up half of the sample cases, the presence of familial or similar relationships between litigants among moralizing cases is much more prevalent than this figure suggests. Chart 5 shows the result of mapping out the sample cases by the nature of pre-existing relationships between the litigants.

**Chart 5 Sample Morality Cases by Relationship Between Litigants**



In more than 60% of our sample cases, the litigants were either currently or previously married, or otherwise related as kin. Another 20% of cases had litigants who were already neighbors, friends, acquaintances (*shuren*), colleagues, or employers and employees. Only four slices on the chart above represent cases in which the litigants are unlikely to have shared a previous relationship before the events underlying the dispute: “insurance companies,” “government and citizens,” “contracting parties,” and “strangers” together make up only 16.8% of all sample moralizing cases. This means that in around 83% of all moralizing cases in our sample set,

<sup>94</sup> Zhang Guangzhen Yu Qi Jiwei, Lü Weigang Jidongche Jiaotong Shigu Zeren Jiufen Yishen Minshi Panjueshu (张广针与齐纪伟、吕卫刚机动车交通事故责任纠纷一审民事判决书) [Trial Judgment in Zhang Guangzhen v. Qi Jiwei and Lü Weigang Automobile Traffic Accident Responsibility Dispute], 豫 1104 民初 538 号, (Zhaoling Dist. People's Ct. of Luohe City Henan 2018) (China).

the litigants had already known each other in a family or social context before they faced each other in court.

This point also bears out upon a closer comparison of Charts 4 and 5. Among the 1,562 sample moralizing cases, only 20 cases—mostly tort cases—featured litigants who were total strangers. In contrast, the sample moralizing cases included 192 personal injury cases and 36 tort cases based on property damage. Similarly, general contract disputes (excluding insurance claims and labor disputes) accounted for 141 cases, but only in 98 cases was the relationship between the parties purely contractual. The discrepancy could be explained by one of two hypotheses: either people in China are generally more likely to sue someone they already know when an accident occurs or a contract goes wrong, or, all else being equal, courts are more prone to moralize where the litigants have already been on intimate terms with each other before the lawsuit.

The second supposition has at least one support from our observations. Within the same type of lawsuit, the pre-existing relationship between litigants is usually the more reliable indicator about the content and style of moralizing, rather than the specific cause of action or the nature of the dispute. Courts in an ordinary contract case would resort to the stock phrase about “Honesty being a Core Socialist Value,” as we have seen in the examples above; but when the parties are also family members or friends, focusing on the nature of this relationship opens the gate to another, more voluble vein of judicial moralizing.

One set of examples involves land-related contracts in the context of state demolition and compensation. Prior to government-ordered demolition, it is common practice for the local government to seek out the owners of the property and enter into an agreement with them for compensation and relocation. A number of sample cases originate from such agreements, either because a contract was signed collectively by the family but was ambiguous on what each family member was entitled to, or because there were conflicting agreements signed with different members of the same family. In one such case in Hubei,<sup>95</sup> an elderly couple and their six children together entered into an agreement with the local village committee regarding the demolition of and compensation for two family houses. Later, some of the children tried to contest the distribution of

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<sup>95</sup> Zhang Shiqing, Zhang Yongde Gongyou Jiufen Ershen Minshi Panjueshu (张世清、张永德共有纠纷二审民事判决书) [Judgment on Appeal in Zhang Shiqing v. Zhang Yongde Co-Ownership Dispute], 鄂 05 民终 1562 号, (Yichang Interm. People's Ct. of Hubei 2018) (China).

proceeds in court by bringing a lawsuit against their father. On appeal, the intermediary court reviewed and upheld the trial court's contract interpretation. After a legal (*fali*) analysis, the court declared that it was ready to analyze the issue from a moral (*qingli*) point of view:

From the moral perspective, teachings like “with loving fathers, pious sons, friendly elder brothers, and respectful younger brothers, all imaginable good luck would duly come to you” have been handed down from one generation to another through the centuries, and morals like “respect your elders and love the young, and maintain a harmonious relationship with your spouse; an amicable family induces prosperity in everything” resound even today. A father's love could move a mountain; the Defendant, Mr. Zhang Shiqing, now at the advanced age of 91, has devoted his life to hard work, and raised six sons. From babies in swaddles to youngsters in schools, and finally to the adults that they are today with their own family and career, the six sons had been standing upon the shoulder of their devoted and toiling father every step along the way. “For all sons it is this rule: In winter, to warm the bed for their parents, and to cool it in summer; in the evening, to adjust everything for their repose, and to inquire about their health in the morning; and when with their companions, not to quarrel.” Even if they could not attain this ideal, the least the sons could do is to be devoted to their parents and act cordially among themselves. Alas, now, however, an elder of more than 80 years old who should be enjoying a quiet and happy life in his last days receives from his oldest son none other than a litigation complaint. It is in the sons' legal rights to pursue their own interests; but any dispute within the family should be resolved by mediation on the principles of mutual cherishing, gratitude, forgiveness, and forbearances, not to mention that children owe their parents a debt as weighty as a mountain for giving them life and raising them. Blood is thicker than water, and family bonds are more precious than gold; as sons, the Plaintiffs owe their very own bodies to their parents. Among them, the eldest son especially has the moral duty to act as a righteous example to his younger siblings. In this case, Zhang Shiqing and his wife had labored hard to purchase the disputed property before



selflessly doling it out to their sons as co-owners. The Plaintiffs, in suing their elderly father for the meager sum of several thousand in compensation payment, have broken their father's heart, damaged the feelings among brothers, and seriously violated the moral order between fathers and sons, among siblings, and generally within families. We hope that the Plaintiffs could find it in themselves to reconcile with their family, be grateful to the graces of their father and mindful of the bonds with their brothers, open their hearts fully and honestly, and together secure a happy late life for their father.

In a similar case in Zhejiang, two sons brought suit against their mother, who allegedly reached a settlement with the government in her favor without the knowledge or agreement of her adult children, who co-owned the property.<sup>96</sup> The court concluded that the mother had the authority to bind all family members in this contract and reprimanded the sons from an ethical point of view:

As Confucius had said, "benevolence is the characteristic element of humanity, and the great exercise of it is in loving relatives." The highest virtue out of a hundred is filial piety. These are the Traditional Virtues of the Chinese People, and such fundamental values of our nation that they cannot be disregarded even in today's economically-centered environment. Even if [Defendant] Liang Guijuan is demanding a relatively high portion, as children, the Plaintiffs still should have appreciated her manifold sacrifices in bringing them up. As their mother approaches her old age, and further since she has lost her spouse, what the Plaintiffs should have focused on was bringing her delight and support and fulfilling their duty of filial piety; instead, they had sued her in court over a minor disagreement. They were indulged in trivial calculations, with eyes only for economic interests while being blind to familial harmony. This cannot be reconciled with the

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<sup>96</sup> Shi Mou 2, Shi Mou 1 Deng Yu Liang Guijuan Deng Queren Hetong Xiaoli Jiufen Yishen Minshi Panjueshu (史某 2、史某 1 等与梁桂娟等确认合同效力纠纷一审民事判决书) [Trial Judgment in Shi et al. v. Liang Guijuan et al. Contract Validity Dispute], 浙 0683 民初 6515 号, (Shengzhou People's Ct. of Zhejiang 2017) (China).

requirement of ethical duty and runs contrary to our social order.<sup>97</sup>

In cases like these, as in torts, courts view otherwise ordinary contractual disputes through the lens of private relationships, leading to lengthy, moralizing sermons. In quarrels between strangers, courts' typical method of moralizing is pointing out that one or both parties had "failed to deal with the dispute in accordance with the requirements of Civility and Mutual Forbearance,"<sup>98</sup> or reminding parties that "Harmonious Society calls upon all of us to forgive and forbear towards each other."<sup>99</sup> But a dispute between neighbors or acquaintances would invite moralizing passages of a lengthier and more targeted kind:

This court wants to further point out that the Plaintiff and Defendant in this lawsuit were neighbors. As the idiom goes, "a neighbor close by is better than a relative far away." They should have gotten along harmoniously with mutual forgiveness, forbearance, solidarity, and assistance, and try to be of use to each other in their work and life. But now they are engaged in a dispute over a trivial matter; this not only mars the harmonious aspect of the neighborhood, but has also necessarily affected the ordinary courses of their family lives. No matter what judgment this court renders, there is no winner in this lawsuit. Rather, both parties shall profoundly reflect upon their own behaviors and learn to think of other people as well as their own interests. We hope that, in the future, they shall act in the spirit of the ethics discussed above and together deal with neighborly relationships properly and build a Harmonious Society.<sup>100</sup>

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<sup>97</sup> *Id.*

<sup>98</sup> Wang Lianju Yu Liu Jinlong, Li Hongmei Shengming Quan, Jiankang Quan, Shenti Quan Jiufen Yishen Minshi Panjueshu (王连菊与刘金龙、李洪梅生命权、健康权、身体权纠纷一案民事判决书) [Trial Judgment in Wang Lianju v. Liu Jinlong and Li Hongmei Personal Injury Dispute], 津 0117 民初 4202 号, (Tianjin Ninghe Cnty People's Ct. 2016) (China) (fist fight between strangers over who could occupy the more advantageous booth in a fair).

<sup>99</sup> Wu Qinghua Yu Jiang Yonghua Shenti Quan Jiufen Yi An Minshi Panjueshu (吴清华与姜永华身体权纠纷一案民事判决书) [Trial Judgment in Wu Qinghua v. Jiang Yonghua Personal Injury Dispute], 辽 0682 民初 2102 号, (Fengcheng City People's Ct. of Liaoning 2016) (China) (the defendant accidentally damaged the plaintiff's property in a crowded street; the quarrel later escalated to a fight).

<sup>100</sup> Ma Chunyou Yu Gu Hong'e Shengming Quan, Jiankang Quan, Shenti Quan Jiufen Yishen Minshi Panjueshu (马春友与谷洪娥生命权、健康权、身体权纠纷一案民事判决书) [Trial Judgment in Ma Chunyou v. Gu Hong'e Personal Injury Dispute], 皖 1221 民初 6965 号, (Linquan Cnty. People's Ct. of Anhui 2017) (China) (fist fight between neighbors that resulted in the plaintiff suffering from

The Plaintiff and the Defendant live in the same village and therefore should have practiced mutual solidarity and assistance with friendliness and cordiality. Whenever disputes arise, as they inevitably will between close neighbors due to either clashes of interests or personal frictions, they should be resolved in time with forbearance and forgiveness. All sides to such disputes must adopt an attitude of peace, generosity, and humility, so that major issues are smoothed into minor ones, and minor ones into nothing at all.<sup>101</sup>

Much of the moralizing rhetoric in the context of generic business or civil disputes, therefore, consists of pointed lectures addressing the underlying personal relationships of the litigants. This often goes beyond the narrow scope of the underlying dispute. In one labor dispute in Henan, for example, the plaintiff was the driver of a bus company.<sup>102</sup> He was accused of openly conducting extra-marital affairs using his room in the company dormitory, and was terminated as a result.<sup>103</sup> The court found that the company's employee handbook had a general moral clause that justified the termination, and that should have been the end of the legal analysis.<sup>104</sup> But, on appeal, the intermediate court added on their own moral verdict as well:

Zhang Wanshuai [the appellant-employee], as a member of the society, should take it upon himself to carry out the social duty of disseminating good morals and passing on the Positive Vibe, carefully abide by the law, and be true to his job duties. Otherwise, he departs from the rules and

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scratched wounds on the face and a concussion; the judgment was ambiguous on what gave rise to the dispute in the first place, saying no more than "trivial matters").

<sup>101</sup> Wang Yuqing Yu Feng Changwang Shengming Quan, Jiankang Quan, Shenti Quan Jiufen Yishen Minshi Panjueshu (王玉清与丰长旺生命权、健康权、身体权纠纷一审民事判决书) [Trial Judgment in Wang Yuqing v. Feng Changwang Personal Injury Dispute], 聊东民初字第 3054 号, (Dongchangfu Dist. People's Ct. of Liaocheng City Shandong 2014) (China) (plaintiff and defendant are villagers whose families had a long history of unsettled grudges. This particular dispute arose when the plaintiff accused the defendant of line-cutting in the watering of their farmland and retaliated by smashing the electricity supply switch of the defendant's home. The situation later escalated to a fist fight.).

<sup>102</sup> Zhang Wanshuai, Zhengzhou Yutong Keche Gufen Youxian Gongsi Laodong Zhengyi Ershen Minshi Panjueshu (张万帅、郑州宇通客车股份有限公司劳动争议二审民事判决书) [Judgment on Appeal in Zhang Wanshuai v. Zhengzhou Yutong Bus Operation Public Ltd. Co. Labor Dispute], 豫 01 民终 10518 号, (Zhengzhou Interm. People's Ct. of Henan 2017) (China).

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

regulations of this society, and is sure to be punished by them ... Even if Zhang Wanshuai did not breach the explicit rules of the company, he cannot be allowed to act unbridled and unrestrained beyond limits. Every family has its own commands and every industry has its own rules. A superior man should model themselves on the earth and have ample virtue. Zhang Wanshuai shall have to watch his own behavior.<sup>105</sup>

In conclusion, while judicial moralizing occurs in a wide variety of civil lawsuits, it is the underlying private relationship between the parties that courts tend to focus on. Throughout their ubiquitous distribution across time, courts, location, and subject matter, this relationship-based “judicial gaze” from the standpoint of the greater collective good is the common thread that ties much of the corpus of moralizing cases together.

### III. Current Wisdom: Judicial Moralizing as a Top-Down Initiative

#### A. Moralizing Governance Through Courts

Having looked at both the top-level policy and the ground-level practice, we now have answers to the first of the two research questions posed at the beginning of this article—whether and how lower courts in China participate in the Party-state’s ideological campaign of combining Rule by Virtue and Rule by Law. Combining Rule by Virtue and Rule by Law is not an empty or conceptual ideological slogan; Chinese judges carry out this imperative in practice. One way they do so is by directly citing and preaching Party-sanctioned moralizing keywords in civil judgments. In some way, when published judicial opinions embrace Party-infused morality language, courts are taking on an additional function on top of being neutral adjudicators of law. They become another mouthpiece for Party-sanctioned values in the CCP’s comprehensive propaganda push for moralizing governance.

The three features identified in the moralizing cases could all be seen through this light. First, the wide-spread nature of this practice speaks to the permeation of Party-state influence in everyday judicial infrastructure. Second, the outsized focus on private relationships is a reflection of the Party-state’s broader efforts to assert moral authority over every aspect of

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<sup>105</sup> *Id.*

citizens' lives, tapping into canonical Confucian traditions that heavily emphasize relationship-based behavioral codes.<sup>106</sup> Third, the diverse colors and tones of the moralizing passages demonstrate the multi-faceted ways in which a small group of centrally crafted, monolithic moral ideas can be expanded upon and invoked in various particularized circumstances.

It is not surprising that the Party-state enlisted the courts to disseminate state-sanctioned civic morality. Courts as an institution have unique advantages in this propaganda effort, because they are frontliners in handling individual social conflicts and are therefore ideally situated to deal out the most targeted moral lectures.<sup>107</sup> Viewed collectively, judicial moralizing as a top-down initiative presents itself as a tactic that may prove particularly conducive to a moralizing governance strategy.

One recurring theme in the examples above is the making of explicit connections between the private action and the public good, something courts are perfectly situated to do as they adjudicate private disputes. Most of the CCP's moralist catchphrases are rooted in the pursuit of a collective goal, whether it is the social construct of Civic Morality with Positive Vibes or the ultimate aim of building a socialist nation with Chinese characteristics and core values. When these concepts are invoked in judicial opinions against specific individuals and actions, the courts are re-casting private disputes in the light of communal struggles; and through this process, even the most private conflicts become social problems worthy of a higher order of concern.<sup>108</sup> Recall the examples above, where an employer was exhorted to adhere to a labor contract because doing so meant practicing and defending Core Socialist Values;<sup>109</sup> parties involved in traffic accidents

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<sup>106</sup> Quan, *supra* note 70 (arguing that the emphasis on personal virtues in family life teaches an individual to know their place and imposes a complex system of relational behavior rules by implying that subservience to the authoritative figure would result in rewards in life. Virtuous personal relationships therefore symbolize a larger social order with nuanced rules about how an individual should behave, in private life as well as in society.)

<sup>107</sup> For a discussion that justifies the integration of Core Socialist Values into judicial decisions along the same vein, see Lin Wenxue (林文学) & Zhang Wei (张伟), *Yi Sifa Fangshi Jiaqiang Shehui Zhuyi Hexin Jiazhiguan Jianshe De Fangfalun* (以司法方式加强社会主义核心价值观建设的方法论) [A Methodology of Strengthening the Construction of Core Socialist Values Through Judicial Means], *Falv Shiyong* (法律适用) [Journal of Legal Application], no. 19 (2018), at 34.

<sup>108</sup> Notably, the same inclination has also been observed in other socialist courts. Markovits pointed out that in East Germany, families are closely scrutinized because they perform social functions better than public institutions, without being a counterweight to the collective—as a result, families are a useful medium for social regulation, and family morals become civil morals. Inga Markovits, *The Road from I to We: Family Law in the Communitarian State*, 1996 Utah L. Rev. 487 (1996).

<sup>109</sup> See *supra* note 88.

were encouraged to advance the other side's medical costs out of concerns for Civic Morality;<sup>110</sup> and neighbors were told they must get along with each other, lest they contaminate the Positive Vibes in society.<sup>111</sup> Likewise, in disputes among relatives, courts would often reason that families are the nation's "basic units" and "cells," and use that as the starting point for moral analysis from a collective perspective.<sup>112</sup> This elevation of private matters onto the public sphere serves to justify the use of generalized moralizing speeches in otherwise straightforward legal contexts. By extension, it also legitimizes the Party-state in its omnipresent reach over all aspects of its citizens' lives.

At the heart of almost every CCP ideological campaign has been its need to maintain social stability and control. Judicial opinions, necessarily resolving disputes between parties, are excellent vehicles for the government to remind the parties of their social responsibilities to order and stability. In many passages of judicial moralizing, this concern is foregrounded conspicuously.<sup>113</sup> For example, in one lawsuit between a father and his estranged son regarding the statute of limitations on a dated loan agreement, the court reprimanded both for escalating an intra-family dispute and asked them to "let go of their prejudices, base their actions on the bonds of family, and keep their eyes on the long perspective, so that they together help preserve a harmonious and stable atmosphere in society."<sup>114</sup> In a particularly heart-breaking case, a husband sued for divorce after his wife dropped their one-month-old son into a well, killing the infant.<sup>115</sup> The

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<sup>110</sup> See *supra* note 94.

<sup>111</sup> See, e.g., *supra* note 74.

<sup>112</sup> See, e.g., Song Moumou Yu Yang Moumou Lihun Jiufen Yishen Minshi Panjueshu (宋某某与杨某某离婚纠纷一案民事判决书) [Trial Judgment in Song v. Yang Divorce Dispute], 川 1524 民初 49 号, (Changning Cnty. People's Ct. of Sichuan 2016) (China) (denying divorce request); Yuangao Zhang Mou Jia Yu Beigao Zhang Mou Yi Lihun Jiufen Yi An Yishen Minshi Panjueshu (原告张某甲与被告张某某乙离婚纠纷一案一审民事判决书) [Trial Judgment in Zhang v. Zhang Divorce Dispute], 闻民一初字第 417 号, (Wenxi Cnty. People's Ct. of Shanxi 2015) (China) (same).

<sup>113</sup> Lin & Trevaskes, *supra* note 10 at 42; see also Liebman, *supra* note 86.

<sup>114</sup> Shangsuo Ren Kang Wenjie, Shansuo Ren Kang Xueli Yin Yu Yuanshen Beigao Liu Zhenhua Hetong Jiufen Yi An Ershen Minshi Panjueshu (上诉人康文杰, 上诉人康雪立因与原被告刘振华合同纠纷一案二审民事判决书) [Judgment on Appeal in Kang Wenjie and Kang Xueli v. Liu Zhenhua Contract Dispute], 商民二终字第 517 号, (Shangqiu Interm. People's Ct. of Henan 2014) (China).

<sup>115</sup> Zhang Moumou Su Yang Moumou Lihun Jiufen Yishen Minshi Panjueshu (张某某诉杨某某离婚纠纷一案民事判决书) [Trial Judgment in Zhang v. Yang Divorce Dispute], 临民初字第 02008 号 (Lintong Dist. People's Ct. of Xi'an City Shaanxi 2012) (China).

wife had long suffered from mental illness, which was kept hidden from the husband prior to their arranged marriage. The court denied divorce request, reasoning that it was “underlining the moral superiority of socialist marital relationships in this new age” and “promoting the stability and harmony of society.”

Viewed as a top-down initiative, judicial moralizing also makes sense because it rests upon courts’ unique role and legitimacy as an institution that administers justice by distinguishing right from wrong. By enlisting courts to enforce not only laws but also morality, the Party-state is signaling that the government is not only in the business of defining right and wrong through duly enacted laws and regulations, but also via vaguely defined and broadly applicable civic morality promulgated by Party-state. Even cases with the most succinct form of moralizing serve a strategic purpose: when faced with an insurmountable caseload on the one hand and the political task of promoting Party-state ideologies on the other, one practical solution is to simply throw in brief but persistent references to a few Party-related catchphrases, no matter how detached or superfluous they seem within the context of legal analysis. Such moralizing might not be as effective or impressive as more thoughtful or tailored passages; but where ideological propaganda is concerned, repetition itself can be valuable. The simple gesture of placing Party-sanctioned moral ideas and applicable legal rules side by side is making a statement. Violating a contract provision or a civil law duty is no longer just deviating from a set of formalistic rules, but also condemnable for betraying the spirit of citizenship as defined by a centralized authority. Law is thus intricately linked with morals, legal duty takes on the hue of moral obligations, and courts, by appealing to both systems, are the foremost pioneer in this ideological push blending the boundary between the two. The Party-state dominates popular behavior as both the lawmaker and the conscience-ruler, and the courts are charged with enforcing both.

#### B. An Incomplete Picture

In many ways, therefore, judicial moralizing serves and reflects a broader, top-down CCP initiative to spread and cultivate Party-sanctioned moral values and to blur the lines between law and morality. But, on its own, this view does not account for all that we have observed in the distribution of moralizing opinions and the close reading of the sample moralizing cases. If judicial moralizing exists solely as a top-down initiative writ-large, then it is a flawed practice in many respects and inexplicable in others.

The gaps start showing upon looking at official documents and examining the extent to which the practice aligns with what has been called for. As mentioned above, in 2019, when we downloaded the moralizing cases in our database, there were limited official instructions on how Core Socialist Values should appear in the final judgments. The 2013 Central Committee document required that “Core Socialist Values ... must be implemented into every aspect of the making, enforcing, adjudicating, and education of law as well as governance by law, so that legal authority could help boost a sense of initiative among people in the cultivation and promotion of Core Socialist Values. We must advance law-based governance, adhere to strict law enforcement, and ensure fair adjudication.”<sup>116</sup> The 2015 SPC Opinion called upon the judiciary to “make people feel the justice and fairness in each case” through adjudicatory documents that are “fair in result, legal in procedure, substantial in reasoning, and standard in format.”<sup>117</sup> The 2018 SPC Opinion stated that the purpose of legal reasoning is to promote Core Socialist Values, the spirit of which the final result must be consistent with.<sup>118</sup> That the Party-state wants courts to implement Core Socialist Values is clear; but for a trial judge required to turn policy into practice, the instructions are not overly helpful. Note that none of the above documents have explicitly asked courts to *cite* Party-promoted moralizing keywords in judgments; judges must ensure the opinions reflect and promote them, but they are not told the specific ways to do so.

Some resources that lower courts could have turned to for guidance are the model cases published by the SPC, but the SPC also expresses ambivalence on whether moralizing language should become an explicit part of the judgments. As mentioned above, all model cases are summarized and interpreted by the SPC, but the original judgments are not quoted or attached. In the final official publications, aside from a couple of exceptions, morality language only appears in the SPC’s commentary and is not found in the summary of facts or holding. As such, for the cases commended as model cases, it is unclear whether the original judgments

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<sup>116</sup> Guanyu Peiyu He Jianxing Shehui Zhuyi Hexin Jiazhi Guan De Yijian (关于培育和践行社会主义核心价值观的意见) [Opinions on the Cultivation and Implementation of Core Socialist Values] (promulgated by the CCP CENT. COMM., Dec. 23, 2013), available at [http://www.gov.cn/zhengce/2013-12/23/content\\_5407875.htm](http://www.gov.cn/zhengce/2013-12/23/content_5407875.htm).

<sup>117</sup> Several Opinions on the Cultivation and Implementation of Core Socialist Values in the Work of People’s Courts, *supra* note 42.

<sup>118</sup> Guiding Opinions on Strengthening and Standardizing the Analysis and Reasoning in Adjudicative Instruments, *supra* note 43.



made their moral implications explicit or if they are merely implicit in the legal holdings. The SPC is ostensibly silent on this point, but the way its commentary distills the Core Socialist Values from the social effects of the legal holdings, and the absence of any direct moralizing quotes from any of the model cases, could at least be argued to suggest a preference for the latter.

In our sample cases, only a handful of moralizing cases heed the SPC's call to apply moral analysis in a substantive way, as a tool of statutory interpretation when the law is vague or when there is room for discretion.<sup>119</sup> For example, in one property dispute in Shanghai, the defendant-appellant was the plaintiff-appellee's sister-in-law, who, with her husband, had moved into a public housing unit leased under the plaintiff's name.<sup>120</sup> The defendant lived there for 18 years, helping take care of both her father-in-law, who lived in the same unit, and temporarily the plaintiff himself, who did not have full mental capacity. After those 18 years, both the defendant's husband and her father-in-law had passed away, the plaintiff had been moved into a special care facility, and the defendant lived alone in the apartment. The plaintiff was assigned a new legal representative, who sued the defendant to recover sole possession of the unit.<sup>121</sup> On appeal, the intermediate court pointed out that the right to live in a public housing unit could arise from long-term possession, and by living in the unit for more than 18 years, the defendant had satisfied that requirement.<sup>122</sup> It then grounded this legal holding in a moral commendation of the defendant's contributions towards the family:

In the opinion of this court, the focal point of the dispute in this case is whether the appellant enjoys, under the law, the right of occupancy for the property in dispute. ... "Right of occupancy" is not precisely defined by the laws in force in our country ... The law is nothing but a collection of humane principles. The traditional Chinese virtues of the female call

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<sup>119</sup> Several Opinions on the Cultivation and Implementation of Core Socialist Values in the Work of People's Courts, *supra* note 42.

<sup>120</sup> Gong Yueyu Su Huang Shibin Yongyi Wuquan Jiufen Yi An Ershen Minshi Panjueshu (龚月玉诉黄时贲用益物权纠纷一案二审民事判决书) [Judgment on Appeal in Gong Yueyu v. Huang Shibin Use of Property Dispute], 沪一中民二(民)终字第677号, (Shanghai First Interm. People's Ct. 2015) (China)

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

for gentleness in personal manners, filial piety towards their in-laws, and thrifty housekeeping in their everyday life; the same virtues shall be respected and protected by law. The appellant only came to live in the disputed property because of her marriage; she then became a lawful occupant by way of physical possession and acted morally by looking after her father-in-law in his last days, sticking with her husband through thick and thin, and taking care of her brother-in-law in his everyday life. *As morality is on her side, so would the law be in her legal rights.* Though the appellee is the listed tenant for the property in dispute, he has no basis in law to deny the appellant her right to occupy the property, no justification in morality to turn his back on someone he had been living together with and should be grateful to, and no ground in common sense to try to drive the appellant out of her only place to live.<sup>123</sup>

Moral assessment and legal basis are inseparably blended and intertwined in this reasoning, and the court effectively balanced the plaintiff's and defendant's rights to occupy the unit by comparing the strength of their moral claims.

But this example is not representative of the other cases we have examined. Most cases invoke moralizing keywords in a far less nuanced way, and moralizing language typically appears as a parallel to an otherwise complete section of legal reasoning or as an afterthought, often going beyond the scope of the legal dispute. Many focus on encouraging settlement or reconciliation, as in a number of examples we have seen above.<sup>124</sup> Some go further to also address other apparently tangentially related topics.

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<sup>123</sup> *Id.* (emphasis added).

<sup>124</sup> See, e.g., Zhang Guangzhen Yu Qi Jiwei, Lü Weigang Jidongche Jiaotong Shigu Zeren Jiufen Yishen Minshi Panjueshu (张广针与齐纪伟、吕卫刚机动车交通事故责任纠纷一案民事判决书) [Trial Judgment in Zhang Guangzhen v. Qi Jiwei and Lü Weigang Automobile Traffic Accident Responsibility Dispute], 豫 1104 民初 538 号, (Zhaoling Dist. People's Ct. of Luohe City Henan 2018) (China); Zhang Shiqing, Zhang Yongde Gongyou Jiufen Ershen Minshi Panjueshu (张世清、张永德共有纠纷二审民事判决书) [Judgment on Appeal in Zhang Shiqing v. Zhang Yongde Co-Ownership Dispute], 鄂 05 民终 1562 号, (Yichang Interm. People's Ct. of Hubei 2018) (China); Wang Yuqing Yu Feng Changwang Shengming Quan, Jiankang Quan, Shenti Quan Jiufen Yishen Minshi Panjueshu (王玉清与丰长旺生命权、健康权、身体权纠纷一案民事判决书) [Trial Judgment in Wang Yuqing v. Feng Changwang Personal Injury Dispute], 聊东民初字第 3054 号, (Dongchangfu Dist. People's Ct. of Liaocheng City Shandong 2014) (China).

In one child support payment case in Beijing, for example, a mother brought suit in the name of her adolescent son as his legal representative, seeking to raise the amount of his birth father's monthly child support payment.<sup>125</sup> After looking at the settlement agreement from the time of divorce and finding no change in circumstances, the court devoted a special paragraph to the plaintiff himself on his school life:

This court wants to emphasize to the Plaintiff that, as someone in his teenage years, the development of worthy hobbies, while important, could never be his first priority. As the Plaintiff himself acknowledges, he is about to enter the last year of high school and will soon face the National College Entrance Examination. This is not the time to neglect your studies for a hobby or for fun. Do not listen to anyone who tries to diminish the importance of education; while knowledge does not necessarily change one's fortune, it enriches one's life. Compared with many others, the Plaintiff is from a relatively well-off family and is consequently fortunate enough to be receiving a high-quality education. But objective conditions could only take you so far; to make progress and achieve success, what the Plaintiff really needs is his own diligence and hard work.<sup>126</sup>

Occasionally, in extreme cases, moralizing superseded legal analysis. In a land dispute over whether a piece of farmland had been legally contracted to a sister or her brother, the intermediate court summarily concluded that the lower court's decision was correct in both factual and legal findings and thus denied the appeal.<sup>127</sup> This one sentence constituted the entirety of the legal reasoning in the published opinion. The court mentioned in passing, though, that it "extensively explained the legal requirements to the parties," apparently in separate conversations which the court did not bother writing down in the published judgment. Instead, it

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<sup>125</sup> Wang x1 Yu Wang x2 Fuyang Fei Jiufen An Yishen Minshi Panjueshu (王×1 与王×2 抚养费纠纷案一审民事判决书) [Trial Judgment in Wang v. Wang Child Support Dispute], 朝民初字第 40687 号, (Beijing Chaoyang Dist. People's Ct. 2014) (China).

<sup>126</sup> *Id.*

<sup>127</sup> Chen Jincai, Huang Guoying Fanhuan Yuan Wu Jiufen Ershen Minshi Panjueshu (陈进才、黄国英返还原物纠纷二审民事判决书) [Judgment on Appeal in Chen Jincai v. Huang Guoying Restitution Dispute], 黔 03 民终 4758 号, (Zunyi Interm. People's Ct. of Guizhou 2017) (China).

took quite some time to exhort the parties on their moral duties beyond the law:

Blood is always thicker than water; family bonds will persist despite apparent fissures. As the idiom goes, every family has a skeleton in the cupboard. Members of the same family might develop different views on a matter, and this disagreement sometimes escalates to open quarrels. Unless resolved timely and properly, such quarrels inevitably grow into thorny disputes, the satisfactory resolution of which demands all members of the family to act with forbearance, humility, and mutual forgiveness towards each other, keeping in mind the common goal of preserving a harmonious family. We have extensively explained the legal requirements to the parties; now, we further hope that everyone concerned could find it in themselves to reconcile, out of their consideration for their family and their mutual love.<sup>128</sup>

However, when the SPC issued the most concrete guidance on applying Core Socialist Values in 2021, through the SPC's Guiding Opinion on In-Depth Promotion of Integration of the Core Socialist Values Into Interpretation of Law and Reasoning in Judicial Rulings and Judgments (the "2021 SPC Opinion"), it unequivocally voiced a preference for substantive and detailed application of Core Socialist Values in judicial opinions.<sup>129</sup> Incorporating Core Socialist Values into legal reasoning, as envisioned in the 2021 SPC Opinion, means that these values are to serve as an aid for statutory interpretation, to steer the direction in the courts' exercise of discretion, and to help break ties in close legal questions.<sup>130</sup> In an official Q&A about the 2021 SPC Opinion, the SPC also reiterated that "the introduction of Core Socialist Values into judicial opinions must be grounded in specific legal rules and regulations."<sup>131</sup> There are two clear

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<sup>128</sup> *Id.*

<sup>129</sup> Guiding Opinions on In-Depth Promotion of Integration of the Core Socialist Values into Interpretation of Law and Reasoning in Judicial Rulings and Judgments, *supra* note 12.

<sup>130</sup> *Id.*

<sup>131</sup> Shenru Tuijin Shehui Zhuyi Hexin Jiazhiguan Rongru Caipan Wenshu Shifa Shuoli Yi Gongzheng Caipan Yinling Shehui Fengshang—Zuigao Renmin Fayuan Sigaiban Fuzeren Da Jizhe Wen (深入推进社会主义核心价值观融入裁判文书释法说理以公正裁判引领社会风尚——最高人民法院司改办负责人答记者问) [Deepening the Integration of Core Socialist Values into the Legal Reasoning of Judiciary Opinions, Leading the Social Trends with Fair Judgments—A Q&A

takeaways for lower courts: (1) judicial moralizing could and should be a substantive tool for legal reasoning (such as serving as a tie-breaker in statutory interpretation), instead of being added as a rhetorical embellishment to otherwise sufficiently supported legal holdings; and (2) effective application of Core Socialist Values should be grounded in specific legal rules and regulations applicable to the case at hand, instead of veering off into tangential topics. This has also been the mainstream interpretation in Chinese scholarship on this point.<sup>132</sup>

Assuming the SPC has been aware of what was happening in lower courts, the 2021 SPC Opinion could indicate a targeted response to existing practices, signaling the desire for a shift. The 2021 SPC Opinion validates what was just one possible interpretation of previous official documents and model cases: it is entirely feasible, and probably preferable, to promote Core Socialist Values by embedding them in substantive legal reasoning.<sup>133</sup>

If the more “blunt” form of judicial moralizing that we have described, where judges comment on morality in dicta to bolster clear legal outcomes<sup>134</sup> or to discuss something completely unrelated to the dispute at

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with the Supreme People’s Court’s Spokesperson on Judiciary Reform] (Feb. 18, 2021), available at <https://www.court.gov.cn/zixun-xiangqing-287221.html> (last visited on Mar. 13, 2023).

<sup>132</sup> Party scholars like Xu Xianming, for example, point out that the traditional Confucian ideal emphasizes the image of a virtuous leader, and that political legitimacy derives from the leader’s moral supremacy. Rule by virtue, therefore, means rule by leaders who are virtuous. In accordance with this theory, the way for courts to do their part in moralizing governance is to issue legally and morally correct decision-making, thereby setting up the Party-state as a good virtuous model. Xu Xianming (徐显明), *Jianchi Yifa Zhiguo He Yide Zhiguo Xiangjiehe* (坚持依法治国和以德治国相结合) [Persisting in Combining Rule of Law and Rule of Virtue] (Mar. 20, 2017), available at <http://dangjian.people.com.cn/n1/2017/0320/c117092-29155906.html> (last visited on Mar. 13, 2023).

<sup>133</sup> Guiding Opinions on In-Depth Promotion of Integration of the Core Socialist Values into Interpretation of Law and Reasoning in Judicial Rulings and Judgments, *supra* note 12.

<sup>134</sup> See Wang Delin Yu Wang Dehuai Mingyu Quan Jiufen Yishen Minshi Panjueshu (王德林与王德槐名誉权纠纷一审民事判决书) [Trial Judgment in Wang Delin v. Wang Dehuai Rights of Reputation Dispute], 黔 0381 民初 904 号, (Chishui City People’s Ct. of Guizhou 2018) (China); Zhou Hongxing Yu Xu Zhenqin, Li Jinxiu Deng Fangwu Maimai Hetong Jiufen Yishen Minshi Panjueshu (周红星与胥珍琴、李金秀等房屋买卖合同纠纷一审民事判决书) [Trial Judgment in Zhou Hongxing v. Xu Zhenqin, Li Jinxiu, et al. Real Property Purchase Agreement Dispute], 苏 0903 民初 2488 号, (Chishui City People’s Ct. of Guizhou 2018) (China); Xiang Zechun Yu Huang Xingzhi Nongcun Tudi Chengbao Hetong Jiufen Zaishen Fucha Yu Shenpan Jiandu Minshi Caiding Shu (向泽春与黄兴芝农村土地承包合同纠纷再审复查与审判监督民事裁定书) [Re-Trial Judgment in Xiang Zechun v. Huang Xingzhi Contracted Management of Rural Land Dispute], 鄂民申 1973 号, (Hubei High People’s Ct. 2016) (China).

hand,<sup>135</sup> arose solely in response to the moralizing governance campaign under Xi, then this mismatch between policy and practice points to no more than the usual agency problem resulting in gaps between what the Party-state wants and what courts are actually able to deliver. However, our data shows this is not the case. This imperfect form of judicial moralizing established its roots before any of Xi's campaigns or SPC instructions.

As mentioned above, courts were not explicitly asked to participate in the Party-state's moralistic campaigns until Xi's tenure. Before 2012, Rule by Law and Rule by Virtue were vague concepts, not yet materialized in SPC instructions or model cases. The only Party document specifically devoted to morality construction—Jiang's Civic Morality Outline—did not mention courts at all.<sup>136</sup> The first CCP document directly calling for Core Socialist Values to be incorporated into the judicial process was issued in 2013;<sup>137</sup> the first SPC guidance focusing on Core Socialist Values and judicial judgments was promulgated in 2015;<sup>138</sup> and the first batch of model opinions was not released until 2016.<sup>139</sup>

But one can spot moralizing catchphrases in judicial opinions before any of these documents were circulated. As Table 1 shows, we found moralizing in cases from every year before 2012 and dating back to 2001, which is as far back as our data goes. Although the total instances of moralizing is dwarfed by that of the later years, this could be partially attributed to deficiencies of the database itself. As mentioned earlier, China Judgment Online was officially launched only in 2013. Therefore, when we downloaded our data in 2019, the total number of published cases decided before 2013 was low.<sup>140</sup> The surge in the overall number of moralizing cases we have found from 2012 to 2013 is thus inconclusive,

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<sup>135</sup> See Wang x1 Yu Wang x2 Fuyang Fei Jiufen An Yishen Minshi Panjueshu (王×1 与王×2 抚养费纠纷案一审民事判决书) [Trial Judgment in Wang v. Wang Child Support Dispute], 朝民初字第 40687 号, (Beijing Chaoyang Dist. People's Ct. 2014) (China).

<sup>136</sup> Outline for the Building of Civic Morality, *supra* note 20.

<sup>137</sup> Opinions on the Cultivation and Implementation of Core Socialist Values, *supra* note 116.

<sup>138</sup> Several Opinions on the Cultivation and Implementation of Core Socialist Values in the Work of People's Courts, *supra* note 42.

<sup>139</sup> Zuigao Renmin Fayuan Fabu Shiqi Guanyu Hongyang Shehui Zhuyi Hexin Jiazhi Guan Dianxing Anli (最高人民法院发布十起关于弘扬社会主义核心价值观典型案例) [Ten Model Cases regarding Upholding the Core Socialist Values Issued by the Supreme People's Court] (promulgated by Sup. People's Ct., Aug. 22, 2016, effective Aug. 22, 2016).

<sup>140</sup> E.g., our database includes 287,308 civil cases dated in 2012, and 1,229,616 civil cases dated in 2013.

since it corresponds to, and could simply have been a reflection of, coordinated efforts to increase case publication rate at that time. Our data, therefore, provides some supporting but inconclusive evidence that the use of moralizing cases increased under Xi. What it does conclusively show, however, is that moralizing existed long before Xi.

Equally important as the *existence* of moralizing cases before Xi, moreover, is the fact that moralizing *operated in the same way* as in cases from Xi's era. As shown above, juxtaposing moral norms with legal requirements and viewing private relationships through a Party-sanctioned moral lens has been a common technique observed in family-related disputes under Xi. It is also what the SPC explicitly commended in numerous model cases that incorporated Core Socialist Values. However, the cases we found before 2012 show that the practice predates both Xi and the SPC guidance. The vocabulary has evolved since then: some of the Xi-related keywords had not been coined yet. Still, substitute Core Socialist Values for Civic Morality and Positive Vibes for Traditional Virtues of the Chinese People (a phrase used both under Jiang and Xi), then the handful of moralizing cases found before 2012 were essentially indistinguishable from those during Xi's tenure. Without being asked by the Party-state to do so, courts felt the need to resort to moralistic rhetoric in rendering judgment, even though the opinions could well have stood on legal reasoning alone.<sup>141</sup>

The existence and style of judicial moralizing before 2012 suggest that, so far, we have been looking at an incomplete picture. Judicial moralizing after 2012 was encouraged and directed by a top-down initiative under Xi, but some other pre-existing motive is needed to account for the spontaneous moralizing that occurred before Xi's time. This analysis leads us to our second research question, which looks at alternative incentives for incorporating Party-sanctioned moral values into published opinions. Here, we turn to Chinese media reports and scholarly publications to help us

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<sup>141</sup> For example, Jiang's Civic Morality Outline explicitly resorted to Traditional Virtues of the Chinese People, and this was echoed in some judgments. When denying a divorce request in 2010, a court noted that the parties' main ground for filing divorce was the wife's inability to get along with her mother-in-law and reasoned that the couple could still reconcile as long as the wife "properly deals with the relationship with her mother-in-law (*poxi guanxi*), in observance and pursuance of the Traditional Virtues of the Chinese People that ask [her] to respect the elders and cherish the young." Liu Mou Jia Yu Tao Muo Lihun Jiufen Yishen Minshi Panjueshu (刘某甲与陶某离婚纠纷一案一审民事判决书) [Trial Judgment in Liu v. Tao Divorce Dispute], 湖长泗民初字第30号, (Changxing Cnty. People's Ct. of Zhejiang 2010) (China). Like in the cases decided under Xi, the moral reference here is superfluous; simply noting the possibility for reconciliation would be enough legal ground to deny the divorce. But the court worked in the language anyway, even though the proverb "respecting the elders and cherishing the young" fits the situation only by half measures.

understand the pattern and underlying logic of judicial practices in an era when published cases were scarce.

#### IV. An Alternative Story from History: A Populist Crisis

##### A. Judge's Afterword: The Early Practice

Judicial moralizing only came to the attention of English-speaking scholars in recent years, as Xi elevated the related ideological campaigns to an unprecedented level. But there have long been relevant discussions on this topic in Chinese scholarly literature, evolving simultaneously with the judicial practice itself.

The earliest commentaries we found about moralizing courts date back to the early 2000s, referring to a practice that originated even earlier. According to multiple news blogs and journal articles, in June 1996, an intermediary court in Shanghai first started experimenting with including “Judge’s Afterwords” (*faguan houyu*) as an additional section at the end of the judgment, following the usual sections on legal reasoning, adjudicatory disposal, and legal citations.<sup>142</sup> It was intended to supplement the standardized judicial opinion and help parties understand the court’s rulings from ethical, social, or other extra-legal perspectives not covered in the judgment.<sup>143</sup>

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<sup>142</sup> Office of Research of the 2nd Interm. Ct. of Shanghai (上海市第二中级人民法院研究室), *Caipan Wenshu Fushe “Faguan Houyu” De Sikao—Woguo Caipan Wenshu Geshi He Fengge De Yanxu Yu Chuangxin* (裁决文书附设“法官后语”的思考——我国裁判文书格式和风格的延续与创新) [Thoughts on Attaching “Judge’s Afterwords” to Judicial Judgments—The Continuation and Innovation of the Style and Form of the Judicial Judgments in Our Country], *Falv Shiyong* (法律适用) [Journal of Legal Application], no. 7 (2002), at 29; Zhou Daoluan (周道鸾), *Qing Yu Fa De Jiaorong—Caipan Wenshu Gaige De Xinde Changshi* (情与法的交融——裁判文书改革的新的尝试) [Blending Sentiments With Law—An Experiment in the Reform of Judicial Judgments], *Falv Shiyong* (法律适用) [Journal of Legal Application], no. 7 (2002), at 32; Wang Yaming (王亚明), “Faguan Houyu” Yu Panjue De Renxing Hua, (“法官后语”与判决的人性化) [“Judge’s Afterword” and the Humanization of Judicial Opinions] (Feb. 13, 2003), available at <https://www.chinacourt.org/article/detail/2003/02/id/37521.shtml> (last visited on Mar. 13, 2023); Zhang Jiancheng (张建成), “Faguan Houyu” Lun—Jianyu Shanghai Shi Di’er Zhongji Renmin Fayuan Yanjiushi Shangque, (“法官后语”论——兼与上海市第二中级人民法院研究室商榷) [Commenting on “Judge’s Afterwords”—A Debate With the Office of Research of the 2nd Immediate Court of Shanghai], *Henan Sheng Zhengfa Guanli Ganbu Xueyuan Xuebao* (河南省政法管理干部学院学报) [Journal of Political Science and Administration Academy for Cadre of Henan Province], no. 3 (2006), at 100; Wu Xue’an (吴学安), “Faguan Houyu” De Li Yu Bi (“法官后语”的利与弊) [The Advantages and Disadvantages of “Judge’s Afterword”], (originally published on Jan. 18, 2003, at [www.people.com.cn](http://www.people.com.cn); last visited on Dec. 26, 2019) (PDF on file with author).

<sup>143</sup> Thoughts on Attaching “Judge’s Afterwords” to Judicial Judgments—The Continuation and Innovation of the Style and Form of the Judicial Judgments in Our Country, *supra* note 142.



The innovation gradually became known to and was imitated by other courts in China and came to the attention of a number of commentators in around 2002.<sup>144</sup> Most of the original judgments that purportedly included a “Judge’s Afterword” could no longer be found,<sup>145</sup> but some discussions have included quotes and examples. One piece on People.com.cn (*renming wang*, the online portal for People’s Daily, an official newspaper published by the CCP) discussed an inheritance case in Luoyang, which included the following as a “Judge’s Afterword”:

The deceased’s premature death left the Plaintiff father-less at a young age and the Defendant a widow in her prime; this is truly a tragedy for both parties, and we cannot but sympathize with their misfortunes. But the way they fell into disputes over the inheritance only aggravates the circumstances by adding salt to each other’s wounds, and we truly regret that it has come to this. While law strives to treat inheritance disputes with fairness, no amount of money could take the place of familial love. We sincerely hope that both parties could let bygones be bygones, treat each other with mutual respect and love, and together mend their broken bonds. A happy family leads to prosperity in everything—wouldn’t that be ideal!<sup>146</sup>

Another article, written by the Office of Research (*yanjiushi*) of the Shanghai court that first came up with “Judge’s Afterword,” contained multiple examples.<sup>147</sup> One was a dispute between a widow and her parents-in-law over proceeds from the deceased’s life insurance; the “Judge’s Afterword” quoted from this case was largely identical to the Luoyang case

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<sup>144</sup> *Id.*

<sup>145</sup> Searching on PKULaw with “faguan houyu” only results in 209 cases in total, with two in 2002, two in 2005 and 2006, and three in 2007. The rest are evenly spread out in the 2010s. Because we only searched for moralizing keywords within the “legal reasoning” section of the cases in our database, the cases that came up during our search do not include any moralizing in a “faguan houyu” section.

<sup>146</sup> Cheng Dongning (程东宁), “Faguan Houyu” Zhangyang Qingli He Fali (“法官后语”张扬情理和法理), (originally published on Nov. 18, 2002, at dffyw.com; last visited on Dec. 26, 2019) (PDF on file with author).

<sup>147</sup> Thoughts on Attaching “Judge’s Afterwords” to Judicial Judgments—The Continuation and Innovation of the Style and Form of the Judicial Judgments in Our Country, *supra* note 142.

above.<sup>148</sup> Because no judgment dates were provided, it is unclear which court borrowed from which.<sup>149</sup>

Another example given in the same article was a torts case, where a vocational school hosted a labor skills class for a middle school's field trip, during the course of which a student was accidentally injured.<sup>150</sup> The court dismissed the compensation claims brought against the vocational school, noting that in arranging the outing, they had asked everyone to waive potential tort liabilities incurred on their premises.<sup>151</sup> The "Judge's Afterword" section then states:

While the Changbai Vocational School is legally exempt in this case, they are not morally irreproachable. As an educational institute, when a student was injured, their teachers neglected to send an adult to accompany the student to hospital; nor did they notify anyone of the injury. They just sat idly after the incident occurred. This is contrary to their vocational ethics and a blemish to their professionalism; it goes against the common social ethics.<sup>152</sup>

The parallels between this early moralizing practice and that from two decades later are obvious. Both comment on conduct beyond that undergirding the legal dispute, and both purport to do so from a moral perspective. But the parallels stop there. Three fundamental features distinguish a "Judge's Afterword" from the judicial moralizing we have seen:

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<sup>148</sup> *Id.* The full quote goes: "The deceased's death deprived the Plaintiffs of a son in their old age, the Defendant of a spouse in her prime, and his son a father in his boyhood. This is truly a tragedy for all parties, and we cannot but sympathize with their misfortunes. But the way they fell into disputes over the insurance proceeds only aggravates the circumstances by adding salt to each other's wounds, and we truly regret that it has come to this. While we understand that the Plaintiffs feel the need to vindicate their legal rights, they have failed to properly appreciate the needs of their daughter-in-law and grandson, who also suffered a severe loss and are facing a hard life ahead. While law strives to treat inheritance disputes with fairness, no amount of money could take the place of familial love. We sincerely hope that both parties could let bygones be bygones, treat each other with sincerity and mutual assistance, respect the old and cherish the young, and together mend their broken bonds. This is what everyone involved must ponder upon and strive towards in the future."

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

The *first* is their structural placement. While “Judge’s Afterword” appears as an attachment following and separate from all the usual sections required in a standardized judgment, the moralizing language we have examined in this article are incorporated into the legal reasoning section. In our sample cases, the degree of substantive integration with the legal analysis varies; but even the most logically detached moralizing passages are presented as an integral part of the legal reasoning.

The *second* is their origin. Judicial moralizing today is encouraged and coordinated by official policy and guidance, but “Judge’s Afterword” was a sporadic and spontaneous grassroots-level innovation effort from an intermediary court, only one level above the courts of first instance and two levels below the SPC.

Related to the second feature, the *third* distinguishing point is the lack of an apparent tendency to invoke Party-related language in “Judge’s Afterwords.” In cases such as the inheritance and insurance disputes quoted above, references could easily have been made to Civic Morality or Traditional Virtues of the Chinese People, both morality catchphrases associated with Jiang when the cases were decided. But in the handful of examples we have seen, the courts made no efforts to allude to them.

Even more revealing than the examples themselves, which are scarce in number and hard to generalize, is the reception of “Judge’s Afterword” as an innovative experiment by media and literature, which shows that at least the first two of the three distinguishing features described above were deemed to be defining characteristics of “Judge’s Afterword,” setting it conceptually apart from the judicial moralizing under Xi.

To start, the placement of “Judge’s Afterword” is a thoughtful choice reflecting how the judges understood the nature of this practice. In the words of the intermediary court that started the practice, “Judge’s Afterword” is fundamentally different from the rest of the judgment, because it is not intended to have an adjudicative effect.<sup>153</sup> It is written in the name of individual judges, not in the voice of the judicial authority of the court.<sup>154</sup> As such, it should only deal with issues that are beyond the underlying dispute and should not be mixed with the legal reasoning of the

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<sup>153</sup> Thoughts on Attaching “Judge’s Afterwords” to Judicial Judgments—The Continuation and Innovation of the Style and Form of the Judicial Judgments in Our Country, *supra* note 142.

<sup>154</sup> *Id.*

case.<sup>155</sup> A short comment published alongside an essay by the intermediary court, written by the then secretary-general of the advisory committee of the SPC, agreed.<sup>156</sup> This is a far cry from the official campaign two decades later, which emphasizes that Core Socialist Values must be an integral part of legal reasoning.

That the practice was spontaneous and not officially sanctioned is also obvious from official and semi-official publications commenting on the practice. Spotlight on this practice in the early 2000s triggered a debate among commentators, where most reactions were critical. Some of the harshest criticism came from contemporary judges. One short essay published in 2002 in *People's Judicature* (*renmin sifa*) was written by a judge in the High Court of Sichuan. The title alone—"Judiciary Opinions Should Not Be Speech Scripts"—made the author's position abundantly clear.<sup>157</sup> In it, the judge questioned the persuasive effects of giving extra-legal advice after judgments and pointed out that they might lead to additional controversy beyond the subject matter of the case.<sup>158</sup> He quoted Xiao Yang, then president of the SPC, on the prevalence of low quality legal reasoning in judicial opinions and argued that writing "Judge's Afterword" instead of focusing on legal analysis was putting the cart before the horse.<sup>159</sup> Another article published in the same journal in 2005 was jointly written by an SPC judge and a Basic People's Court judge from Jiangsu. The two authors explicitly argued that "Judge's Afterwords" were inappropriate in nature and should not be allowed, as courts should focus on legal analysis alone and it was not a judge's place to render moral assessments.<sup>160</sup>

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<sup>155</sup> *Id.*

<sup>156</sup> Zhou Daoluan (周道鸾), *Qing Yu Fa De Jiaorong—Caipan Wenshu Gaige De Xinde Changshi* (情与法的交融——裁判文书改革的新的尝试) [Blending Sentiments with Law—An Experiment in the Reform of Judicial Judgments], 32 *Falv Shiyong* (法律适用) [Journal of Legal Application], no. 7 (2002).

<sup>157</sup> Luo Shuping (罗书平), *Caipan Wenshu Bushi Yanjianggao* (裁判文书不是演讲稿) [Judiciary Opinions Should Not Be Speech Scripts], 8 *Renmin Sifa* (人民司法) [Journal of People's Judiciary], no. 1 (2003).

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> He Xiaosong (贺小荣) & Wang Song (王松), *Minshi Caipan Wenshu Zhizuo Ruogan Wenti Tanxi* (民事裁判文书制作若干问题探析) [Analysis of Several Questions in the Making of Civil Judicial Opinions], 12 *Renmin Sifa* (人民司法) [Journal of People's Judiciary], no. 4 (2005).

Comments with more favorable views pointed to instances where the heartfelt discourse in “Judge’s Afterword” reportedly moved the litigating parties to reconciliation and praised it as an innovative effort to communicate with parties who might find ordinary legal language hard to comprehend.<sup>161</sup> But even here, the praises were tempered with a cautionary tone.<sup>162</sup> A series of essays on People.com.cn and the SPC’s official website (*zhongguo fayuanwang*) between 2002 and 2003, for example, warned that judges should carefully assess whether “Judge’s Afterword” is necessary and appropriate in the given case to make sure they are not overused and claimed “the current consensus” to be that they should only appear in the most difficult cases.<sup>163</sup>

### B. Debate and Shift: A Populist Threat

As a judicial experiment, therefore, “Judge’s Afterword” was met with skepticism from both official channels and civil society, and it did not become a widespread practice. But it energized discussions about the relationship between judicial opinions and moral sentiments, and it paved the way for future efforts to merge the two. The decade that followed turned out to be a time when such reflections were especially relevant to courts, as growing media scrutiny over court rulings in morally ambiguous cases on the one hand, and the Party-state’s increased pressure on the courts to minimize petitioning and protests on the other, together put Chinese courts in a hard-pressed position to respond and adapt to populist opinions.<sup>164</sup>

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<sup>161</sup> Cheng Dongning (程东宁), Huashuo “Faguan Houyu” (话说“法官后语”) [Talking About “Judge’s Afterword”], originally published on Dec. 25, 2002, at www.people.com.cn; last visited on Dec. 26, 2019) (PDF on file with author).

<sup>162</sup> For an outlier that argued for Judge’s Afterwords to be integrated into the legal reasoning of the judgment and for the practice to be more widely adopted, see Zhang Jiancheng, Commenting on “Judge’s Afterwords”—A Debate With the Office of Research of the 2nd Intermediate Court of Shanghai, *supra* note 142.

<sup>163</sup> Cheng Dongning, Talking About “Judge’s Afterword,” *supra* note 161; Wu Xue’an, The Advantages and Disadvantages of “Judge’s Afterword,” *supra* note 142; Wang Yaming, “Judge’s Afterword” and the Humanization of Judicial Opinions, *supra* note 142.

<sup>164</sup> Liebman in 2011 pointed out that, in the previous decade, Chinese courts have been marked with a perception of growing populist pressure, and that Chinese courts as an institution is uniquely positioned to be sensitive to perceived populist opinions, whether in the form of Party-related media reports, or the threat of petitions and protests. He also pointed out that multiple reforms by the SPC to respond to the populist threats, such as Judiciary for the People (*sifa weimin*) (2003) and Let the Matter End with the Dispute (*anjie shiliao*) (2007), were aimed simultaneously at meeting the broader state goal about social stability and increasing the courts’ own legitimacy at the same time. Benjamin L. Liebman, A Populist Threat to China’s Courts?, in *CHINESE JUSTICE: CIVIL DISPUTE RESOLUTION IN POST-REFORM CHINA* (Mary Gallagher & Margaret Woo, eds.) (Cambridge University Press 2011).

From within the court system, a number of SPC-led initiatives pushed the courts to pre-emptively deal with any potential threats to social stability that might stem from litigations. The emphasis on *anjie shiliao* (the dispute should end with the disposition of the case), for example, requested courts to not only settle the legal issues, but to also resolve the larger underlying conflicts.<sup>165</sup> Courts were openly encouraged to look beyond strict legal procedures and resort to more flexible methods to deal with disputes in order to keep the rate of petitioning and appeals down.<sup>166</sup>

From the outside, cases like Peng Yu's, regarding whether the plaintiff had frivolously sued a good Samaritan who came to her aid for compensation,<sup>167</sup> and Huang Yongbin's, regarding whether an illicit lover of the deceased could lawfully inherit from his will,<sup>168</sup> attracted intensive public criticism over morally controversial rulings, fanned by heightened media attention. The moral issues underlying these and other similar cases,<sup>169</sup> concerning topics like the public trust crisis and the sanctity of

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<sup>165</sup> Wan E'xiang: "Tiaopan Jiehe" Zuizhuyao Qiangdiao "Anjie Shiliao" (万鄂湘：“调判结合”最主要强调“案结事了”) [Wan Exiang: Most Important Aspect of “Combining Trial with Mediation” Is the Emphasis on “Let the Matter End With the Dispute”] (Mar. 7, 2017), available at <http://news.sina.com.cn/c/2007-03-07/101112452959.shtml> (last visited on Mar. 13, 2023).

<sup>166</sup> See Liebman, *supra* note 164, at 295.

<sup>167</sup> A 2006 tort case in Nanjing where the plaintiff, an elderly lady, claimed that the defendant clashed with her in the street and knocked her to the ground. The defendant countered that the plaintiff was already injured when he arrived on the scene, and he was only acting as a good Samaritan in coming to the plaintiff and inquiring whether she needed help. According to the defendant, the plaintiff only sued him to get her hands on some compensation, since the original culprit had left the scene. Despite witness testimony corresponding with the defendant's account, as well as widespread public sympathies with the defendant, the judge eventually ruled that because the defendant was the one who accompanied the plaintiff to the hospital and advanced part of the medical costs, he had likely caused the plaintiff's injury, and the court ordered him to pay a portion of the plaintiff's claims. The decision was widely denounced and blamed for setting off a public trust crisis in the entire Chinese society. See Shu Rui (舒锐), *Shinian Qian Pengyu An De Zhenxiang Shi Shenme?* (十年前彭宇案的真相是什么?) [What Was the Truth in the Pengyu Case from Ten Years Ago?] (June 15, 2017), available at <http://opinion.people.com.cn/n1/2017/0615/c1003-29340731.html> (last visited on Mar. 13, 2023).

<sup>168</sup> A 2001 inheritance case in Luzhou, where a widow tried to contest the will made by her late husband that left a substantial amount of his estate to his extramarital lover. For a discussion focused on this case, see Shi Bifan (石毕凡), "Luzhou Yizeng An" De Liyi Hengliang Fangfa Toushi ("泸州遗赠案"的利益衡量方法透视) [Examining the Interest-Balancing Test in the "Luzhou Inheritance Case"], 18 *Henan Shehui Kexue* (河南社会科学) [Henan Journal of Social Science], no. 4 (2016); He Haibao (何海波), *Heyi Fefa?—Dui "Er'nai Jicheng An" De Zhuiwen* (何以合法? ——对“二奶继承案”的追问) [How Is This Lawful?—Questioning the “Extra-Marital Inheritance Case?”], 438 *Zhongwai Faxue* (中外法学) [Journal of Chinese and Foreign law], no. 3 (2009).

<sup>169</sup> In one case in 2009, a 59-year-old woman selling bean cakes found 1,700 RMB (about \$250 USD) in cash on the street. She went to great lengths to identify the owner, who claimed that the actual amount lost was 8,200 RMB (about \$1,200 USD) and sued her for the rest. The case drew widespread attention and was dubbed “a second case of Peng Yu.” Encouraged by the court, the parties eventually settled the case, and the plaintiff withdrew the lawsuit. See Xiao Yuhen (肖余恨

marriage struck a nerve of the masses in a rapidly changing, post-reform society. It is debatable whether it should have been the courts' job to solve these moral dilemmas in any given situation, especially since China doesn't have a jury system; regardless, as the only faces and names associated a controversial judgment, individual judges inevitably became easy targets in the crossfire of public cries.<sup>170</sup>

Together, the pressure from inside and out placed Chinese courts in an unprecedented populist crisis. They needed to not only placate individual litigants to minimize resurrection of disputes, thus fulfilling their responsibility within the system, but also do so in a way that resonated with public sentiments, so as to shield themselves from populist criticism from without. The reform measures adopted through the official channels were insufficient. Mediation cannot make all cases go away, and overhauls in trial and management procedures can only do so much to impress the result-focused masses.<sup>171</sup> Courts are left on their own to come up with pragmatic solutions to respond to the populist pressure and to maintain their institutional authority in a political regime that has always looked to populism for its legitimacy.<sup>172</sup>

Against this backdrop, discussions about employing moralistic rhetoric in judicial opinions continued on into the early 2010s, even as "Judge's Afterword" as a practice faded from the spotlight. Over time, the debate underwent a subtle shift.

There has always been a rich body of Chinese literature on the relationship between morality and law. It is a favorite topic among legal historians in China to trace the historical development and interaction of *fa*

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), Zhenxiang Ruo Bumeng, Daode Zhineng Bei Wushang (真相若不明, 道德只能被误伤) [If Truth Is Obscured, Morality Will Be the Collateral Damage] (Dec. 2, 2009), available at [http://views.ce.cn/view/society/200912/02/t20091202\\_20539709.shtml](http://views.ce.cn/view/society/200912/02/t20091202_20539709.shtml) (last visited on Mar. 13, 2023).

<sup>170</sup> The judge in the Peng Yu case was reprimanded and eventually demoted to a bureaucratic position not even within the judiciary. Nanjing Pengyu An Zai Diaocha: Laotai Qushi, Yuan Faguan Diaoren Jiedaoban (南京彭宇案再调查: 老太去世 原法官调任街道办) [A Second Look Into the Pengyu Case in Nanjing: Victim Passed Away; the Presiding Judge Transferred to a Neighborhood Office] (Nov. 8, 2011), available at <https://news.sina.cn/sa/2011-11-08/detail-ikftssap4219884.d.html> (last visited on Mar. 13, 2023).

<sup>171</sup> For a general discussion of judicial reforms in the 2000s, see Benjamin L. Liebman, China's Courts: Restricted Reform, 21 *J. Asian L.* 1 (2007).

<sup>172</sup> See Benjamin L. Liebman, Watchdog or Demagogue? The Media in the Chinese Legal System, 105 *Colum. L. Rev.* 1 (2005) (discussing populist threats upon the courts' legitimacy, partially realized through media access).

and *li*—the dual doctrines each representing law and morality, which together framed much of China’s state institutions and social norms before 1949.<sup>173</sup> The issue was also highly relevant in the late 1990s and the early 2000s, as China strived to build a new legal system that catered to the needs of a post-reform era.<sup>174</sup> Scholars heatedly debated whether judges should bend the law to reach decisions that reflect the morality of the community (often identified as “judicial activism”),<sup>175</sup> and whether it is theoretically desirable or practically possible to enact laws that perfectly comport with mainstream ethical standards.<sup>176</sup> But in the late 2000s and early 2010s, the discussion gradually extended beyond theoretical debate about the line between legal doctrines and social ethics. A growing number of commentators began seriously contemplating how judicial opinions, in addition to conducting legal analysis, might explicitly tap into and address public sentiments more directly.

Incorporation of moralizing language into judgments thus came to be viewed as a viable solution to the courts’ practical problems. When

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<sup>173</sup> See, e.g., Zhang Weiren (张伟仁), *Zhongguo Fa Wenhua De Qiyuan, Fazhan He Tedian* (中国法文化的起源、发展和特点) [The Origin, Development, and Characteristics of Chinese Legal Culture], 805 *Zhongwai Faxue* (中外法学) [Journal of Chinese and Foreign Law], no. 6 (2010); Yang Guoqing (杨国庆), *Zhongguo Chuantong Falv Wenhua De Duoqi Luoqi Jiqi Xiandai Yihan* (中国传统法律文化的多值逻辑及其现代意涵) [Multi-Folded Logic and Modern Meaning Behind Traditional Chinese Legal Culture], 145 *Xueshu Jiaoliu* (学术交流) [Journal of Academic Exchange], no. 1 (2016); Hu Xusheng (胡旭晟), *Shilun Zhongguo Chuantong Susong Wenhua De Tezhi* (试论中国传统诉讼文化的特质) [A Discussion of the Characteristics of Traditional Chinese Litigation Culture], 112 *Nanjing Daxue Falv Pinglun* (南京大学法律评论) [Nanjing University Law Review], no. 1 (1999); Chen Jingliang (陈景良), *Songxue, Songshi Yu Shidaifu* (讼学、讼师与士大夫——宋代司法传统的转型及其意义) [The Art of Litigation, the Litigators, and the Scholars—the Reorientation of the Judicial Tradition in Song Dynasty and its Implications], 58 *Henan Sheng Zhengfa Guanli Ganbu Xueyuan Xuebao* (河南省政法管理干部学院学报) [Journal of Political Science and Administration Academy for Cadre of Henan Province], no.1 (2002). Yang Guoqing (杨国庆), *Zhongguo Chuantong Falv De Zongjiaoxing Tezheng* (中国传统法律的宗教性特征) [Religious Nature of Traditional Chinese Law], 159 *Huadong Zhengfa Daxue Xuebao* (华东政法大学学报) [Journal of Huadong Political Science University], no. 2 (2018).

<sup>174</sup> Chen Jinzhao (陈金钊), “Nengdong Sifa” Ji Fazhi Lun Zhe De Jiaolv (“能动司法”及法治论者的焦虑) [“Judicial Activism” and the Anxiety of Rule-of-Law Believers], 107 *Qinghua Faxue* (清华法学) [Qinghua Law Review], no. 3 (2011).

<sup>175</sup> Su Li (苏力), *Guanyu Nengdong Sifa* (关于能动司法) [About Judicial Activism], 5 *Falv Shiyong* (法律适用) [Journal of Legal Application], no. 3 (2010).

<sup>176</sup> Zhang Deqiang (张德强), *Fandaode Zhuyi, Feidaode Hua Yu Falv Wenhua* (泛道德主义、非道德化与法律文化) [Pan-Moralism, Anti-Moralism, and Legal Culture], 28 *Falv Kexue* (法律科学) [Journal of Legal Science], no. 6 (1986); Liu Zuoxiang (刘作翔), *Falv Yu Daode: Zhongguo Fazhi Jincheng Zhongde Nanjie Zhiti* (法律与道德：中国法治进程中的难解之题) [Law and Morality: A Hard Problem for China’s Progress in Rule of Law], 1 *Fazhi Yu Shehui Fazhan* (法制与社会发展) [Journal of Legal System and Social Development], no. 1 (1998).



judicial moralizing first appeared in the form of “Judge’s Afterword,” it had been criticized for being out of place in court-issued documents and inappropriate even as an attachment to a judgment. A decade later, the front line had shifted, and the mainstream debate revolved around whether it should be fully embraced in the *main text* of the legal reasoning sections. Supporters for moralizing rhetoric viewed it as a communicative tool with the general public, growing out of a deep-rooted tradition of Chinese courts connecting with the masses.<sup>177</sup> Opponents responded that courts as an institution are innately ill-suited to gauge and define public ethics, and that attempts to engage in a moralizing discourse would only lead to backlashes, or, at best, a dead-end.<sup>178</sup> But no one disputes what the quest is about. Underlying the arguments is a consensus that courts need to do a better job ensuring their judgments are generally accepted in society as legitimate and persuasive.<sup>179</sup> The disagreement is just as to how.

In 2013, one Basic People’s Court judge in Shandong wrote an article titled “What to Consider for Judicial Judgments—A Perspective Based on the Reception of Judgments in Public Opinions.”<sup>180</sup> The article posited that the legitimacy of judicial judgments has three pillars: justice in law (*zhengdang xing*), fairness in equity (*tuodang xing*), and the degree to which the judgement is accepted (*ke jieshou xing*).<sup>181</sup> Importantly, the last pillar refers not so much to the reaction of the litigating parties, but rather to that of the general public. The reason is that because litigants are personally interested in the lawsuit, they are understandably unable to evaluate the results in an objective way. Popular opinions (*minyì*), on the

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<sup>177</sup> Tan Lili (谭丽丽), *Zuwei Yizhong Minjian Ziyuan De Qingli* (作为一种民间资源的情理) [Moral Sentiments as a Populist Resource], 77 *Gansu Zhengfa Xueyuan Xuebao* (甘肃政法学院学报) [Journal of Gansu Political Science Academy], no. 3 (2009) (discussion about Ma Xiwu and mass mediation).

<sup>178</sup> Wu Yingzi (吴英姿), *Sifa De Xiandu: Zai Sifa Nengdong Yu Sifa Kezhi Zhijian* (司法的限度: 在司法能动与司法克制之间) [The Limits of Judicial Power: Between Judicial Activism and Judicial Restraint], 111 *Faxue Yanjiu* (法学研究) [Journal of Legal Study], no. 5 (2009).

<sup>179</sup> For a general discussion about the need of the judiciary to ensure populist acceptance of its judgments, see Fang Le (方乐), *Sifa Ruhe Miandui Daode* (司法如何面对道德) [When Judiciary Confronts Morality], 182 *Zhongwai Faxue* (中外法学) [Journal of Chinese and Foreign Law], no. 2 (2010).

<sup>180</sup> Chen Huaifeng (陈怀峰), *Sifa Caipan De Kaoliang Yinsu—Yi Minyi De Ke Jieshou Xing Wei Shijiao* (司法裁判的考量因素——以民意的可接受性为视角) (What to Consider for Judicial Judgments—A Perspective Based on the Reception of Judgments in Public Opinions), 148 *Jiangxi Shehui Kexue* (江西社会科学) [Jiangxi Journal of Social Science], no. 7 (2013).

<sup>181</sup> *Id.*

other hand, represent a source of natural justice that should always be considered. The article concludes by explicitly arguing that morality and social customs resonate with the general public more than legal rules do, and as long as doing so does not contradict the spirit of the law, adjudicators need to incorporate them into their decisions to make sure the final judgments are well received by society.

Many scholars have advanced a similar argument, though in a more cautious way. One article in 2012 stated that conducting analysis based not just on the law but also on morality (*daode lunzheng*) during a period of change when the law is in development, populist opinions are in flux, and individual virtues are at a loss, is an unavoidable task of the judiciary.<sup>182</sup> But the author warned that the undertaking must be navigated with care, lest empty or unsuitable rhetoric end up hurting the judicial legitimacy.<sup>183</sup> Another article in 2013 argued that the audience of judicial opinions include not only the litigants but also the general public, and posited that employing moralizing language in legal reasoning can be an important tool in addressing the latter audience.<sup>184</sup> But the author also cautioned that moralizing language could only supplement an analysis that is otherwise complete, not replace legal authority.<sup>185</sup> Some scholarly discussions also took notice of “Judge’s Afterword” as a pre-existing practice and commended it as a good meet-in-the-middle solution to balance the courts’ need to address both moral concerns and law.<sup>186</sup> The dominant view on judicial moralizing as a practice had unmistakably shifted, and what was once a controversial experiment is now a moderate compromise.

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<sup>182</sup> Xu Juan (许娟), *Sifa Panjue Guocheng Zhongde Daode Lunzheng* (司法判决过程中的道德论证) [The Moral Argument in the Process of Judicial Decisions], 27 *Faxue Luntan* (法学论坛) [Legal Forum], no. 2 (2012), at 64.

<sup>183</sup> *Id.*

<sup>184</sup> Lü Xiaotong (吕晓彤), *Panjue Shu Zhong De Daode Huayu Yanjiu* (判决书中的道德话语研究) [An Analysis of Moralizing Language in Judicial Opinions], 13 *Falv Fangfa* (法律方法) [Journal of Legal Methods] 329 (2013).

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*; Liu Xing (刘星), *Panjue Shu “Fudai”*: Yi Zhongguo Jiceng Sifa “Faguan Houyu” Shijian Wei Zhuxian (判决书“附带”: 以中国基层司法“法官后语”实践为主线) [“Attached” to the Judgment: Following the Practice of “Judge’s Afterwords” in Trial Level Courts in China], 144 *Zhongguo Faxue* (中国法学) [China Journal of Law], no. 1 (2013); Zhu Ting (祝婷) & Bai Bing (白冰), *Sifa Lunzheng De Yunzuo Diaoyan* (司法论证的运作调研) [An Investigation Into the Operation of Judicial Reasoning], 281 *Falv Fangfa* (法律方法) [Journal of Legal Methods], no 10 (2010).

The judicial moralizing before Xi, as we have identified above, took place during this period. We found these cases by searching for Party-sanctioned catchphrases, such as Civic Morality under Jiang, and Harmonic Society under Hu; but as far as the literature discussion showed, referencing Party language was not yet a defining feature of the practice. Up until 2013, when the CCP Central Committee asked the judiciary to incorporate Core Socialist Values into the adjudication process, judicial moralizing was a spontaneous, grass-root effort among lower Chinese courts that were seeking resonance with the masses by mixing moral references into legal reasoning and hoping to boost the legitimacy of their judgments by presenting them as morally righteous and correct.

### C. The Era of Xi: Bottom-Up Movement Merges with Official Policy

Then came Core Socialist Values, along with Xi's full-blown campaign of integrating Rule by Law and Rule by Virtue. As one official document after another reiterated the importance of incorporating Core Socialist Values into every aspect of the justice system, it quickly became clear that the Party-state picked a side in the debate about moralizing courts.

This resulted in another shift in the literature. A booming number of articles enthusiastically praised the practice of doling out moral instructions alongside legal dispositions,<sup>187</sup> with many arguing that courts should proactively take on a morally pedagogical role (*jiaohua*) in addition to conducting the usual legal analysis.<sup>188</sup> One particularly radical author

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<sup>187</sup> See, e.g., Du Jianrong (杜建荣), *Lun Daode Huayu Zai Sifa Panjue Zhong De Gongneng Jiqi Shixian* (论道德话语在司法判决中的功能及其实现) [Understanding and Recognizing the Function of Moralizing Language in Judicial Judgments], 275 *Falv Fangfa* (法律方法) [Journal of Legal Methods], no. 23 (2018); Zhang Yiqing (张义清) & Fu Mengting (付梦婷), *Shehui Zhuyi Hexin Jiazhiguan Rongru Fazhi Jianshe De Wenhua Jiegou Fenxi* (社会主义核心价值观融入法治建设的文化结构分析) [A Cultural-Structural Analysis of Integrating Core Socialist Values into Rule of Law Construction], 4 *Fazhi Xiandaihua Yanjiu* (法治现代化研究) [Research Journal on the Modernization of Law], no. 45 (2019); and Wang Kun (王坤), *Sifa Caipan De Lunli Xiuci Jinlu Yu Biaoda* (司法裁判的伦理修辞进路与表达) [The Approach and Expression of Ethical Rhetorics in Judicial Judgments], 103 *Renmin Sifa* (Yingyong) (人民司法(应用)) [Journal of People's Judiciary (Applied)], no. 25 (2019). For discussions focusing on family law issues, see also Li Shuai (李帅) & Huang Ying (黄颖), *Qingli Zai Falv Caipan Zhongde Yundong—Yi Jiashi Caipan Weili* (情理在法律裁判中的运用—以家事裁判为例) [Using Moral Sentiments in Legal Judgments—Using Family Law as an Example], 304 *Falv Fangfa* (法律方法) [Journal of Legal Methods], no. 2 (2017); Sun Yue (孙跃), *Daode Lunzheng Ruhe Jinru Caipan Liyou* (道德论证如何进入裁判理由) [How Moral Arguments Integrate in Judicial Reasoning], 313 *Falv Fangfa* (法律方法) [Journal of Legal Methods], no. 1 (2018).

<sup>188</sup> Yuan Bo (袁博), *Caipan Wenshu Lunlihua De Baoliu Yu Changdao* (裁判文书伦理化的保留与倡导) [Preserving and Encouraging the Ethicalization of Judicial Opinions], 29 *Shanghai Zhengfa Xueyuan Xuebao* (上海政法学院学报) [Journal of Shanghai Political Science Academy] 144, 145 (2014) (“In the current context of judicial concepts, ‘the mass line,’ ‘judiciary for the people,’

argued that all judicial opinions should engage in an “ethical translation” (*lunlihua zhuan yi*) by converting each legal dispute into a question of moral standards and treating them as such.<sup>189</sup> The judiciary is justified in this approach, the author argued, because it has the responsibility to propagate and improve mainstream morality, which in China is the equivalent of a nationally-shared ideology.<sup>190</sup> Most authors did not embrace moralizing courts in the same unreserved way; often, they advocated for a certain level of restraint, cautioned against completely losing sight of the law, and also spoke about the difficulties in accurately summarizing populist morality on given issues.<sup>191</sup> But none questioned the premise of the practice or criticized its existence.

Has the official initiative completely absorbed what had originally been a ground-level innovation, such that the judicial moralizing today is best described as a purely top-down process? We think not. On the

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‘practical solutions,’ ‘judicial openness,’ and ‘judicial transparency’ have all become keywords of the future direction of adjudicatory reform ... Under this background, ‘ethicalization’ of judicial opinions means enlightening the parties with ethics and morality, correcting any mistaken sentiments of the parties, and awakening their humane consciousness.” (“在当下司法理念的语境下，“群众路线”、“审判为民”、“解决问题”、“司法公开”、“司法透明”等关键词成为审判改革的未来走向 ... 在此背景下，裁判文书伦理化就是要在判决书中对当事人施以伦理道德教化、矫正当事人的错误理念，唤醒人性的良知”); Wang Cong (王聪), *Woguo Sifa Panjue Shuoli Xiuci Fengge De Suzao Jiqi Xiandu* (我国司法判决说理修辞风格的塑造及其限度) [Shaping the Rhetorical Style of Judicial Reasoning and Its Limits], 3 *Fazhi Yu Shehui Fazhan* (法制与社会发展) [Journal of Legal System and Social Development] 89, 95 (2019) (“Once we examine this new style of judicial judgments from the perspective of what the audiences need to hear, we will readily find this to be a positive development ... From the ‘emotional rendering’ to the ‘ethical enlightenment,’ all indicates an enriched tool of social governance and enhanced content of social caring.”) (“从听众的需求理论审视我国司法判决所呈现的新风格，可以发现，新风格总体而言是积极的 ... 无论是“情感渲染”，还是“伦理教化”，都展现了丰富的社会治理及社会关爱内容”).

<sup>189</sup> Jiang Guohua (江国华), *Lun Sifa De Daode Nengli* (论司法的道德能力) [A Discussion of the Moral Potentials of Judiciary], 72 *Wuhan Daxue Xuebao* (Zhaxue Shehui Kexue Ban) (武汉大学学报 (哲学社会科学版)) [Journal of Wuhan University (Philosophy and Social Science Edition)] 127, 135-37 (2019).

<sup>190</sup> *Id.* at 127-31 (arguing generally that the “moral orthodox” (“道统”) is the ideology of the nation, which is the judiciary’s duty to preserve, and that the judiciary has the responsibilities of aiding the society and its people in their pursuit of moral advancement and of supervising the people in carrying out their moral duties.)

<sup>191</sup> Liu Hui (刘辉), *Fazhi Yunzuo Xina Daode Yinsu De Jishu Jinlu* (法治运作吸纳道德因素的技术进路) [A Technical Approach of Incorporating Moral Elements into Legal Operations], 5 *Xibu Faxue Pinglun* (西部法学评论) [Western Law Review] 48 (2017); Li Yanshun (李延舜), *Sifa Tisheng Daode De Xiandu Ji Yuanze* (司法提升道德的限度及原则) [Limits and Principles of Improving Judiciary with Morality], 4 *Henan Caijing Zhengfa Daxue Xuebao* (河南财经政法大学学报) [Journal of Henan University of Economics and Law] 19 (2015); Li Shumin (李树民), *Caipan Zhize De Yuandian: Yiyuan Lun Haishi Eryuan Lun* (裁判职责的元点：一元论还是二元论) [The Origin Point of Judicial Role: Monism or Dualism], 4 *Huadong Zhengfa Daxue Xuebao* (华东政法大学学报) [Journal of Huadong Political Science University] 118 (2019).

contrary, the undercurrent of the legitimacy crisis in the judicial process is far from irrelevant today. Even among the overwhelming amount of propaganda pieces echoing and advocating the ideological campaigns under Xi, the concern about the public perception of courts and the hope that citations to Party-state keywords could help boost the courts' institutional legitimacy still underline much of the discussion.

In 2016, in a conference summary published in People's Adjudication, judges and law professors from across the country spoke about how courts should conduct legal reasoning in judgments.<sup>192</sup> Many touched upon the need to incorporate the main moral values of society into judicial opinions.<sup>193</sup> One intermediary judge from Shandong advocated using Confucian doctrines to interpret the law.<sup>194</sup> But the most direct case for judicial moralizing was made by a professor from Renmin University, who explained that the general public would always assess judicial judgments from "a rough sense of natural justice," importing extra-legal considerations, such as ethics, into the equation.<sup>195</sup> He pointed out that adjudicators "do not live in a vacuum" and cannot afford to indulge in self-admiration in an isolated sphere (*gufang zishang*).<sup>196</sup> The solution is to invite cultural confidence into adjudication, so that sources like the Core Socialist Values and Traditional Virtues of the Chinese People can be invoked to "smooth the hard knot in the hearts (*jielai xinjie*) of the litigants as well as the general public."<sup>197</sup>

In 2018, an article written by two SPC judges argued that one of the top six key aspects of incorporating Core Socialist Values into law is that courts must learn to properly read and respond to public sentiments, especially in "hotspot" cases. It urged courts to "adjust the defensive mindset about populist opinions and adapt to the public spotlight surrounding adjudicatory work" by proactively using Core Socialist Values

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<sup>192</sup> Zhou Qinghua (周庆华), "Caipan Wenshu Shuoli De Jiaoqiao Yu Guize" Yantaohui Fayanzhideng ("裁判文书说理的技巧与规则"研讨会发言摘登) [Excerpts of Speeches at the Seminar of "Techniques and Rules for Judicial Reasoning in Opinions"], 25 Renmin Sifa (Yingyong) (人民司法(应用)) [Journal of People's Judiciary (Applied)] 90 (2016).

<sup>193</sup> See generally, *id.*

<sup>194</sup> See *id.* at 94.

<sup>195</sup> *Id.* at 92.

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

to align judgments with public morality.<sup>198</sup> An 2021 article written by a Yunnan High Court judge focused on how filial piety could be invoked in family-related disputes, but it also argued more generally that judicial opinions, more than just delivering a legal disposition to the parties, provide a window for the public to learn about the nature of adjudication.<sup>199</sup> Therefore, references in the judgment to morality and ethics (*lunli daode*) are important tools to build social credibility of courts (*gongxin li*) and improve the reception of judicial opinions in society (*ke jieshou du*).<sup>200</sup>

More recently, in 2022, two Basic People's Court judges in Fujian published a study on incorporating Core Socialist Values into civil judgments, in which they advocated for a "responsive form of adjudication" (*huiyingxing xifa*) that prioritizes establishing public empathy with adjudicatory results.<sup>201</sup> They criticized the "utilitarian view still held by a number of judges" that sacrifices the "appropriateness of legal reasoning for

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<sup>198</sup> Lin Wenxue (林文学) & Zhang Wei (张伟), *Yi Sifa Fangshi Jiaqiang Shehui Zhuyi Hexin Jiazhi Guan Jianshe De Fangfalun* (以司法方式加强社会主义核心价值观建设的方法论) [A Methodology of Strengthening the Construction of Core Socialist Values Through Judicial Means], 34 *Falv Shiyong* (法律适用) [Journal of Legal Application], no. 19 (2018) ("To change the current the mindset against populist opinions and adjust to a system of judicial operations under [the] supervision [of the public], the judiciary has to get better at scientifically responding to the attention [given to adjudicatory work] in the public discourse" ("要改变抵触舆论的心态、适应在监督下进行司法审判, 就必须善于科学地回应舆论关切。"))

<sup>199</sup> Kuang Jiming (况继明), "Defa Rongguan" Zhi Gouzao Luoji Yu Guifan Biaoda—Yi "Xiaodao" Zai Panjue Shuoli Zhong De Yunyong Wei Shijiao ("德法融贯"之构造逻辑与规范表达——以"孝道"在判决说理中的运用为视角) [Structural Logic and Model Expression in "Integration of Morality and Law"—A Perspective From Utilizing "Filial Piety" in Judicial Reasoning], 124 *Shandong Faguan Peixun Xueyuan Xuebao* (山东法官培训学院学报) [Journal of Shandong Judges' Training Academy], no. 2 (2021).

<sup>200</sup> *Id.*

<sup>201</sup> Wang Xing'an (王兴安) & Lin Sijie (林思婕), *Shehui Zhuyi Hexin Jiazhi Guan Jianjinshi Rongru Minshi Caipan Shuoli De Sange Weidu* (社会主义核心价值观渐进式融入民事裁判说理的三个维度) [Three Dimensions in the Progressive Application of Core Socialist Values into Civil Judicial Reasoning], 38 *Shandong Faguan Peixun Xueyuan Xuebao* (山东法官培训学院学报) [Journal of Shandong Judges' Training Academy], no. 1 (2022) ("A 'Responsive Judiciary' must necessarily seek the resonance of the public by resorting, as much as possible, to rhetoric acceptable by the public in the judicial opinions. The Core Values, as an established ground of common sentiments among the public, has the natural advantage in helping close the gap between the general public and abstract legal principles ... In reality, quite a number of judges still hold on to the utilitarian view that sacrifices the appropriateness of legal reasoning for its legal correctness ... That's how the audience of judicial reasoning quietly changed from the general public to the legal bar, the rhetoric turned opaque, abstract, and hard-to-understand, and consequently, naturally diverging from public sentiments.") ("回应型司法应有之义就是在文书中尽可能用使社会公众接受的法律修辞共情于民意。核心价值观作为民众认可的公共理性地带, 具备消弭民众与抽象法理之间隔阂的天然优势 ... 在实然层面上, 不少法官仍秉持牺牲说理的妥适性换取说理合法性的裁判功利观 ... 于是裁判说理的对象悄然由普罗大众转化为法律业内人士, 裁判修辞变得晦涩抽象, 自然跟民意走向疏离。")

its legal correctness.”<sup>202</sup> When judges only care about whether they will be legally upheld on appeal, they argued, the judgments will necessarily deviate from the popular sentiments and courts will become estranged from the general public.<sup>203</sup> The best way to counter this is through the application of Core Socialist Values, which are representative of the general masses’ shared beliefs.<sup>204</sup> They proposed a number of practical measures, including establishing a Core Socialist Value rhetoric database containing pre-written passages sourced from other judges as well as scholars and students from multiple disciplines.<sup>205</sup>

It appears, therefore, that the perception of a populist threat, which animated judicial moralizing in the previous decade, has persisted. And it is harnessed by and integrated with the top-down official initiative. Not only do the two motives co-exist, but each serves to legitimize and reinforce the other: the integration of Rule by Law and Rule by Virtue necessarily requires courts to step closer to populist morality and take into account potential public feedback in rendering a judgment. Conversely, the need for populist resonance further drives the courts to resort to and rely upon Party-sanctioned moral values, which purport to represent the highest form of the people’s collective will.

To a certain extent, the merging of a bottom-up drive and a top-down initiative is only natural. After all, both are born out of the same set of social conditions: the soil that produced a populist threat to judicial legitimacy and that helped justify Xi’s moralizing governance campaign is one and the same.

When Xi came to power, the timing for the CCP to roll out a morality campaign was prime; many commentators have described the “moral vacuum” in China that accumulated and expanded post-Mao as a result of fast and intensive economic growth unaccompanied by corresponding advancement of culture and ideology.<sup>206</sup> The society was yet

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<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> For examples of some such accounts, see Andrea E. Pia, *We Follow Reason, Not the Law: Disavowing the Law in Rural China*, 39 *PoLAR* 276 (2016); Yunxiang Yan, *The Good Samaritan’s New Trouble: A Study of the Changing Moral Landscape in Contemporary China*, 17 *Soc. Anthropology* 9 (2009); and William A. Callahan, *Identity and Security in China: the Negative Soft Power of the China Dream*, 35 *Pol.* 216 (2015).

to develop a competent system of moral infrastructure to cope with the unprecedented change in everyday life, and Core Socialist Values and Xi's New Civic Morality stepped in with a ready replacement. When Jiang's Three Represents and Hu's Harmonious Society came forth, the masses invented homophonic jokes to mock them and bring the abstract concepts down to earth.<sup>207</sup> By 2023, more than ten years after the Core Socialist Values were introduced, however, similar word play has yet to emerge. This silence is ambiguous in itself; either the masses are now more susceptible to a top-down ideological guidance telling them how to be good citizens, or the CCP's control over Chinese media and literature has reached an unprecedented high. It is impossible to say conclusively which is closer to the truth, but judging from the discussion above, at least some judges are taking it to mean the first and they are acting on it.

#### D. The Dual Tales of Moralizing Courts

So far, this article has portrayed two images of moralizing courts: one a politically vulnerable institution trying to respond to a self-perceived populist crisis, the second a state agent carrying out a top-down mandate in an all-encompassing Party strategy. We have tried to establish that both of them are true, and together they form a complete picture of why Chinese courts moralize in the first place and why they continue doing so in the manner we have examined.

These dual motives can be further demonstrated by one more close look at the SPC documents about incorporating Core Socialist Values into law, where we can identify two types of rhetoric: one expounding on the political imperative of following the lead and carrying out a Party-state initiative, and the other addressing a popularity concern and highlighting the need to connect with public sentiments. Rhetoric focusing on the first concentrates on Party language; recurring phrases signaling the second concern include social credibility of courts (*sifa gongxinli*), the degree of reception of judgments by the general public (*gongzhong jieshou du*), and the degree to which the masses are satisfied with the judiciary's work (*gongzhong manyi du*). Both types of rhetoric are weaved together in the SPC's exhortation to the lower courts.

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<sup>207</sup> See Perry Link, *An Anatomy of Chinese: Rhythm, Metaphor, Politics* (2013), at 288-89, for a discussion of “三个戴表” (transliteration of Three Represents (*sange daibiao*); literally meaning “wearing three watches,” it is a criticism of perceived official corruption of the era) and “河蟹” (transliteration of Harmonious Society (*hexie*); literally means “river crab”).



In the 2015 SPC Opinion, which was the first SPC document about incorporating Core Socialist Values into the judiciary, the opening statement reiterates the usual Party-state rhetoric: “To cultivate and practice Core Socialist Values through People’s Courts is to hold high the great banner of Socialism with Chinese Characteristics, and to always persist in the leadership of the Party. The Party’s leadership is the most essential feature and the most basic political bedrock of Socialist Rule of Law with Chinese Characteristics, as well as the fundamental guarantee of successfully cultivating and practicing Core Socialist Values through courts.”<sup>208</sup> It then went on to make the second point, which was about “Judiciary for the People (*sifa weimin*),” a term introduced by the SPC during the judiciary reform in 2003.<sup>209</sup> It said that “the general masses are the direct beneficiaries and the ultimate referees on the quality, efficiency, and effects of the work of People’s Courts; and the credibility, dignity, and authority of the judiciary all depend, at the end of the day, upon the public reputation of courts by word-of-mouth.”<sup>210</sup>

Likewise, the 2018 SPC Opinion about strengthening and standardizing legal reasoning stated twice that legal analysis must be conducted in the spirit of Core Socialist Values. However, it also stressed that judgments should harmonize law, sentiments, and ethics (*fa qing li*) and “be consistent with the mainstream value judgments in society (*shehui zhuliu jiazhi*guan).”<sup>211</sup> It mentioned twice that courts should improve the reception of judgments in society and stated that the purpose of strengthening and standardizing the legal reasoning section of the judgments is to enhance the “public credibility and authority” of courts.<sup>212</sup>

Consider also the most recent 2021 SPC Opinion, which opens by providing three basic principles in integrating Core Socialist Values into law.<sup>213</sup> The first emphasized implementing Xi’s Rule of Law ideology by

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<sup>208</sup> Several Opinions on the Cultivation and Implementation of Core Socialist Values in the Work of People’s Courts, *supra* note 42.

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> Guiding Opinions on Strengthening and Standardizing the Analysis and Reasoning in Adjudicative Instruments, *supra* note 43.

<sup>212</sup> *Id.*

<sup>213</sup> Guiding Opinions on In-Depth Promotion of Integration of the Core Socialist Values into Interpretation of Law and Reasoning in Judicial Rulings and Judgments, *supra* note 12.

“organically integrating legal assessment with moral evaluation.”<sup>214</sup> The second and third mentioned the needs to increase the degree of public satisfaction with judicial judgments and to make sure people could identify (*rentong*) with the courts.<sup>215</sup> And among the six categories of cases where courts should take special care to bolster legal reasoning with Core Socialist Values, the first three are defined by whether the cases are likely to attract widespread attention (*shehui guangfan guanzhu*) or trigger a public discussion on the relevant moral implications (*shehui daode pingjia*).<sup>216</sup> The Official Q&A on the 2021 SPC Opinion further explained that part of the background for introducing the mandate to incorporate Core Socialist Values into legal reasoning is that in recent years, some “mechanical judgments” have negatively affected the reputation of judicial opinions within the popular masses.<sup>217</sup> The Q&A twice reiterated that proper references to Core Socialist Values in judgments would help enhance the credibility and authority of courts and ensure the public are receptive of and satisfied with the judgments.<sup>218</sup>

The dual imperatives simultaneously advanced by the SPC documents—political mandate and populist appeal—pinpoint the two intertwining motives for moralizing courts. Judicial moralizing is being pursued both as a political decree and as a pragmatic solution for the long-existing legitimacy crisis of courts in China. They also indicate that the SPC, with its double identity as a state institution under Party leadership and the highest court in the judicial hierarchy, probably had both agendas in mind in advancing the Core Socialist Values propaganda within the judicial system.

The practice of judicial moralizing between 2001 and 2018, as we have described it, could only be fully understood when both the top-down and bottom-up perspectives are employed. The top-down initiative explains the heavy reliance on Party language and Party-related keywords, even when such references are brief and ill-connected with the rest of the

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<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> Deepening the Integration of Core Socialist Values into the Legal Reasoning of Judiciary Opinions, Leading the Social Trends with Fair Judgments—A Q&A with the Supreme People’s Court’s Spokesperson on Judiciary Reform, *supra* note 131.

<sup>218</sup> *Id.*

reasoning section. The bottom-up efforts help explain why courts focus so much on peace and reconciliation—not just about the underlying dispute, but about the entire relationship between the parties in the days to come. Even before the ideological campaigns were extended to courts, judges have turned to similar moralizing rhetoric to placate the parties and win over public sympathies. The subsequent official initiative helped them fine-tune which moral values they should adopt.

The dual perspectives also explain the diverse styles, tones, and methods of judicial moralizing, as the double motives underlying the practice have also given it more than one targeted audience. Depending on the disputes and the parties, moralizing could be primarily used to carry out a political mandate, to check the boxes for points in a political hierarchy, to justify the legal ruling to the general public, or to serve as an inspiration for bickering parties. Judges who engage in the same practice, or the same judge in different cases, might adjust the language depending on the priority of the intended audience. And most judicial moralizing manages to achieve multiple goals. For example, even without much detailed analysis, having phrases like “Core Socialist Values” and “Traditional Virtue of Chinese People” in a judgment both score political points and boost the legitimacy of the judgment by highlighting the moral ground upon which it stands.

## V. What Are the Implications of Moralizing Courts?

### A. Courts as a Moralizing Tool in a Pedagogical State

Our study has described a particular practice observed in routine civil judgments in Chinese courts: the prevalent invocation of Party-sanctioned moralizing keywords in judicial assessments of the parties’ behaviors, embedded in the legal judgments. We have suggested that this practice is best understood through a set of double lenses; likewise, its resulting implications must also be considered from both perspectives.

As a tool implementing a top-down initiative, the incorporation of Party-state keywords in civil judicial opinions yields important insights on the law-morality integration campaign of the CCP as a whole. As we have argued above, Xi’s ideological campaigns have indicated a shift from institutional compliance to individual obedience, not just in rule of law but also in rule of virtue.<sup>219</sup> The implementation by courts reflects and confirms

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<sup>219</sup> See *supra* Section I.A–B.

this policy shift. While traditional Confucian governance philosophy emphasized ruling by virtue, the core of that focus is really the requirement of a virtuous *leader*, whose legitimacy comes from their own supreme ethics.<sup>220</sup> But now, both through the official documents and the individual judgments, it's the *people's private virtue* that is being defined and examined. Rule of virtue now means not so much as ruled by a virtuous leader, but *ruling by requiring people to be virtuous*. In other words, the archetypally ideal Confucian leader is obligated to rule by setting a moralist example out of their own behaviors; but the Party-state's leadership considers itself imbued with the power to rule by directly telling its people how they should behave morally in their private roles.

There has been increased attention on the deepening of Party-state integration under Xi, and here our study is also relevant. Most discussion so far focuses on the ways in which Party entities expand control over state entities or take over their functions. What we observe here suggests that state entities might start to sound more like Party entities too.

Whether the propaganda actually works on the individual case level might be dubious. Nothing the courts say in their moralizing passages is anything Chinese people did not know before the litigants decided to bring their disputes. In a relationship-based and litigation-adverse society like China,<sup>221</sup> more than likely the litigants have already had social pressures to overcome, unsympathetic rumors to endure, and their own moral scruples to get past. Having nonetheless litigated their private disputes to a public forum, and by the time they finally receive a ruling from the court, are they interested in righteous and moralizing lectures?

But from a broader perspective, perhaps asking whether moralizing courts would make an impact in individual cases is beside the point. The policy design cares not so much about what happens in individual cases; rather, what matters is that the courts, as a state apparatus, are asserting moral authority over individuals. To claim such authority is itself sending

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<sup>220</sup> See Caleb Wan, Confucianism and Higher Law Thinking in Ancient China, 10 Regent J. Int'l L. 77, 86 (2013) (discussing how, under Confucianism, "the foundation of [the] state would rest wholly on moral force," and "[t]he ruling class is the focal point" of this "moral force.").

<sup>221</sup> Yunxiang Yan, The Good Samaritan's New Trouble: A Study of the Changing Moral Landscape in Contemporary China, 17 Soc. Anthropology 9, 19 (2009) (citing Fei Xiaotong for the view that traditional Chinese society is organized through a differentiated mode of association where individuals are positioned in a hierarchy of various relations); see also Kwai Hang Ng & Xin He, Internal Contradictions of Judicial Mediation in China, 39 Law & Soc. Inquiry 285 (2014) (discussing the role of complex social relationships within the context of mediation).

a message to everyone involved. What is important is not whether the listeners appreciate or agree with the message, but rather that they notice who is speaking.

### B. The Legitimacy Crisis and the Morality Trap

For the courts themselves as an institution, however, the outlook seems much bleaker. In 2013, Ji Weidong warned that encouraging judges to turn to extra-judicial remedies to resolve disputes will end up hurting the institutional legitimacy of courts in the long run.<sup>222</sup> The same analysis applies to what we observed here.

By embracing moralizing language in judgments, courts are inherently acknowledging the insufficiency of relying on their legal authority alone. Moralizing in published judgments in turn feeds the public expectation of extra-legal justification for court decisions, which forms a vicious cycle. Therefore, by seeking more power and taking on an expanded pedagogical role, the courts are in fact weakening their own institutional legitimacy as a *legal* institution.

Already, in the efforts to encourage reconciliation and promote settlement in judicial opinions, we are seeing the paradox of courts publicly denouncing litigation. Recall the Zhejiang appellate judgment in a commercial dispute, where the court advocates to the litigating parties in the words of Zhu Xi, “a respectable family avoids lawsuit.”<sup>223</sup> Similar rhetoric could always be found in media comments and are presumably frequently spoken in mediation sessions. But now, they are penned by the judges themselves, included in the very instrument resolving litigation and published for the world to see. Recall also the Guizhou appellate judgment, where the court summarily stated that they had explained the law orally to the parties and devoted the written judgment to a moralizing lecture on the importance of family bonds.<sup>224</sup> It is indeed a curious situation, inviting some serious pondering of how the court perceives its own role in society when it puts morality in the center of the publicly-available judgment, but considers the law to not be worthy of the ink.

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<sup>222</sup> Ji Weidong, *The Judicial Reform in China: The Status Quo and Future Directions*, 20 *Ind. J. Global Legal Stud.* 185 (2013); see also Carl F. Minzner, *China's Turn against Law*, 59 *Am. J. Comp. L.* 935 (2011).

<sup>223</sup> Judgment on Appeal in *Chen Lifan v. Xu Jianming and Lin Fangmei Private Loan Dispute*, *supra* note 86.

<sup>224</sup> Judgment on Appeal in *Chen Jincai v. Huang Guoying Restitution Dispute*, *supra* note 127.

Is there a way for courts to break out of this legitimacy trap? It might be hard if the moralizing cases we have examined grow to be the mainstream style. And top-down reforms do not seem to be the ready answer, despite the SPC's ostensible efforts to make judicial citations to Core Socialist Values more substantive and concrete.<sup>225</sup> As scholars have noted, much of the problem undermining courts' popular legitimacy crisis in the 2000s was caused by the overall institutional structure and the courts' relatively weak political position.<sup>226</sup> As long as courts resolve disputes and help maintain social stability, the Party-state is not incentivized to increase the power of the courts as an institution vis-a-vis other branches of the government.

But within the judiciary, signs are appearing that indicate self-awareness of the legitimacy problem brought on by the use of extra-legal reasoning in adjudication. The 2021 SPC Opinion, by requiring the substantive integration of Core Socialist Values in the legal analysis, might be interpreted as discouraging the direct preaching of moral values parallel to conducting legal analysis.<sup>227</sup> Many Chinese scholars are also stressing that interpreting statutes in accordance with Core Socialist Values does not mean a deviation from law;<sup>228</sup> although in practice, the line between interpretation and deviation might be easily blurred. Zhang Qi, a professor from Peking University, has written two articles in the past two years regarding Core Socialist Values and judicial opinions, in which he echoed the call to apply Core Socialist Values, but also warned that they should not be confused with general moral sentiments or the mainstream popular thinking as reported by the media.<sup>229</sup> Whether such warnings would be

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<sup>225</sup> See, e.g., Guiding Opinions on In-Depth Promotion of Integration of the Core Socialist Values into Interpretation of Law and Reasoning in Judicial Rulings and Judgments, *supra* note 129.

<sup>226</sup> Minzner, *supra* note 222 (discussing a vicious cycle in China where courts started out as the weakest political institution when compared to the Party and the government and became further weakened by the shifting reform policies).

<sup>227</sup> See Guiding Opinions on In-Depth Promotion of Integration of the Core Socialist Values into Interpretation of Law and Reasoning in Judicial Rulings and Judgments, *supra* note 129.

<sup>228</sup> See, e.g., Sun Haibo (孙海波), *Caipan Yunyong Shehui Gonggong Daode Shifa Shuoli De Fangfalun* (裁判运用社会公共道德释法说理的方法论) [Methodology for Using Public Moral Principles in the Interpretation of Law], 71 *Zhongguo Yingyong Faxue* (中国应用法学) [China Journal of Legal Application], no. 2 (2022) (judges should only use Core Socialist Values when they are necessary to interpret the law and should avoid unnecessary moralist rhetorics).

<sup>229</sup> Zhang Qi (张骐), *Sifa Tuili Jiazhi Panduan De Guannian Yu Tizhi Fenxi* (司法推理价值判断的观念与体制分析) [An Analysis of the Concept and System of Value Judgments in Judicial Reasoning], 31 *Zhejiang Shehui Kexue* (浙江社会科学) [Zhejiang Journal of Social Science], no. 2 (2021); Zhang Qi (张骐), *Lun Caipan Wenshu De Duihuaxing* (论裁判文书的对话性) [The

heeded, and to what extent will the new SPC instructions be reflected in practice, remains to be seen.

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Dialogue Nature of Judicial Opinions], 49 *Zhongguo Yingyong Faxue* (中国应用法学) [China Journal of Legal Application], no. 1 (2022).

## APPENDIX

*Appendix 1 Our Morality Keywords*

<b>Keyword</b>	<b>Source</b>	<b>Number of Cases</b>
Civic Morality ( <i>gongmin daode</i> )	Gongmin Daode Jianshe Shishi Gangyao (公民道德建设实施纲要) [Outline for the Building of Civic Morality] (promulgated by the CCP Central Committee, Sept. 20, 2001, effective Sept. 20, 2001), available at <a href="https://www.gov.cn/gongbao/content/2001/content_61136.htm">https://www.gov.cn/gongbao/content/2001/content_61136.htm</a> .  Xinshidai Gongmin Daode Jianshe Shishi Gangyao (新时代公民道德建设实施纲要) [The Outline for Constructing Civil Morality in a New Era] (promulgated by the CCP Central Committee, Oct. 27, 2019, effective Oct. 27, 2019), available at <a href="http://www.gov.cn/zhengce/2019-10/27/content_5445556.htm">http://www.gov.cn/zhengce/2019-10/27/content_5445556.htm</a> .	48
Rule of Virtue ( <i>yide zhiguo</i> )	Tichu “Yide Zhiguo” De Linian, (提出”以德治国”的理念) [Bringing Forth the Conception of “Rule of Virtue”], available at <a href="http://cpc.people.com.cn/GB/33837/2535095.html">http://cpc.people.com.cn/GB/33837/2535095.html</a> (last visited on Mar. 13, 2023).	69
Harmonic Society ( <i>hexie shehui/shehui hexie</i> )	Zhonggong Di Shiliujie Zhongyang Weiyuanhui Disici Quanti Huiyi Gongbao Quanwen (中共第十六届中央委员会第四次全体会议公报全文) [Full Text of the Report on the Fourth Plenary Session of the 16th CCP Central Committee] (Sept. 19, 2004), available at <a href="http://www.chinanews.com.cn/news/2004/2004-09-19/26/485734.shtml">http://www.chinanews.com.cn/news/2004/2004-09-19/26/485734.shtml</a> .	13,073
Positive Vibe/Negative	Xi Jinping: Huiju Qi Quanmian Shenhua Gaige De Qiangda Zhengnengliang (习近平：汇聚起全面深化改革的强大正能量) [Xi Jinping:	451



<p>Vibe <i>(zheng nengliang/fu nengliang)</i></p>	<p>Converging the Strong Positive Vibes for the Comprehensive and Deepened Reform] (Nov. 28, 2013), available at <a href="http://cpc.people.com.cn/n/2013/1128/c64094-23688498.html">http://cpc.people.com.cn/n/2013/1128/c64094-23688498.html</a> (last visited on Mar. 13, 2023).</p>	
<p>Virtuous Traditions of Chinese People <i>(zhonghua minzu youliang chuantong)</i></p>	<p>Guanyu Peiyu He Jianxing Shehui Zhuyi Hexin Jiazhi Guan De Yijian (关于培育和践行社会主义核心价值观的意见) [Opinions on the Cultivation and Implementation of Socialist Core Values] (promulgated by the CCP Central Committee, Dec. 23, 2013), available at <a href="http://www.gov.cn/zhengce/2013-12/23/content_5407875.htm">http://www.gov.cn/zhengce/2013-12/23/content_5407875.htm</a>.</p>	13,117
<p>Traditional Virtue <i>(chuantong meide)</i></p>	<p>Xinshidai Gongmin Daode Jianshe Shishi Gangyao (新时代公民道德建设实施纲要) [The Outline for Constructing Civil Morality in a New Era] (promulgated by the CCP Central Committee, Oct. 27, 2019, effective Oct. 27, 2019), available at <a href="http://www.gov.cn/zhengce/2019-10/27/content_5445556.htm">http://www.gov.cn/zhengce/2019-10/27/content_5445556.htm</a>.</p>	12,136
<p>Core Socialist Values <i>(hexin jiazhi guan)</i></p>	<p>Guanyu Peiyu He Jianxing Shehui Zhuyi Hexin Jiazhi Guan De Yijian (关于培育和践行社会主义核心价值观的意见) [Opinions on the Cultivation and Implementation of Socialist Core Values] (promulgated by the CCP Central Committee, Dec. 23, 2013), available at <a href="http://www.gov.cn/zhengce/2013-12/23/content_5407875.htm">http://www.gov.cn/zhengce/2013-12/23/content_5407875.htm</a>.</p> <p>Guanyu Jinyibu Ba Shehui Zhuyi Hexin Jiazhi Guan Rongru Fazhi Jianshe De Zhidao Yijian (关于进一步把社会主义核心价值观融入法治建设的指导意见) [Guiding Opinions on Further Integrating Core Socialist Values into Construction of the Rule of Law] (Jointly promulgated by General Office of the CCP Central Committee and General Office of the State Council, Dec. 25, 2016, effective Dec. 25, 2016), available at</p>	546

	<a href="http://www.gov.cn/gongbao/content/2017/content_5160214.htm">http://www.gov.cn/gongbao/content/2017/content_5160214.htm</a> .	
<p>Mutual Forbearance/ Forgiveness</p> <p><i>(huliang hurang; lirang; qianrang; qianhe; heweigui)</i></p>	<p>Guanyu Peiyu He Jianxing Shehui Zhuyi Hexin Jiazhi Guan De Yijian (关于培育和践行社会主义核心价值观的意见) [Opinions on the Cultivation and Implementation of Socialist Core Values] (promulgated by the CCP Central Committee, Dec. 23, 2013), available at <a href="http://www.gov.cn/zhengce/2013-12/23/content_5407875.htm">http://www.gov.cn/zhengce/2013-12/23/content_5407875.htm</a>.</p>	205,112
<p>Civility</p> <p><i>(wenming limao)</i></p>	<p>Zuigao Renmin Fayuan Gongbu Shiqi Hongyang Shehui Zhuyi Hexin Jiazhi Guan Dianxing Anli (最高人民法院公布 10 起弘扬社会主义核心价值观典型案例) [Ten Model Cases regarding Upholding the Socialist Core Values Issued by the Supreme People's Court] (promulgated by Sup. People's Ct., Mar. 8, 2016, effective Mar. 8, 2016), available at <a href="https://www.court.gov.cn/zixun-xiangqing-17612.html">https://www.court.gov.cn/zixun-xiangqing-17612.html</a>.</p> <p>Renmin Fayuan Dali Hongyang Shehui Zhuyi Hexin Jiazhi Guan Shida Dianxing Minshi Anli (人民法院大力弘扬社会主义核心价值观十大典型案例) [Ten Model Civil Cases of Vigorously Carrying forward Core Socialist Values by the People's Courts] (promulgated by Sup. People's Ct., May 13, 2020, effective May 13, 2020), available at <a href="https://www.court.gov.cn/zixun-xiangqing-229041.html">https://www.court.gov.cn/zixun-xiangqing-229041.html</a>.</p> <p>Dierpi Renmin Fayuan Dali Hongyang Shehui Zhuyi Hexin Jiazhi Guan Dianxing Minshi Anli (最高人民法院发布第二批人民法院大力弘扬社会主义核心价值观典型案例) [Second Batch of Model Civil Cases of Vigorously Carrying forward Core Socialist Values by the People's</p>	79,471

	Courts] (promulgated by Sup. People's Ct., Feb. 23, 2022, effective Feb. 23, 2022), available at <a href="https://www.court.gov.cn/zixun-xiangqing-346671.html">https://www.court.gov.cn/zixun-xiangqing-346671.html</a> .	
Friendliness ( <i>youshan</i> )	<p>Zuigao Renmin Fayuan Gongbu Shiqi Hongyang Shehui Zhuyi Hexin Jiazhiguan Dianxing Anli (最高人民法院公布 10 起弘扬社会主义核心价值观典型案例) [Ten Model Cases regarding Upholding the Socialist Core Values Issued by the Supreme People's Court] (promulgated by Sup. People's Ct., Mar. 8, 2016, effective Mar. 8, 2016), available at <a href="https://www.court.gov.cn/zixun-xiangqing-17612.html">https://www.court.gov.cn/zixun-xiangqing-17612.html</a>.</p> <p>Zuigao Renmin Fayuan Fabu Shiqi Guanyu Hongyang Shehui Zhuyi Hexin Jiazhiguan Dianxing Anli (最高人民法院发布十起关于弘扬社会主义核心价值观典型案例) [Ten Model Cases regarding Upholding the Socialist Core Values Issued by the Supreme People's Court] (promulgated by Sup. People's Ct., Aug. 22, 2016, effective Aug. 22, 2016), available at <a href="https://www.court.gov.cn/zixun-xiangqing-24931.html">https://www.court.gov.cn/zixun-xiangqing-24931.html</a>.</p> <p>Renmin Fayuan Dali Hongyang Shehui Zhuyi Hexin Jiazhiguan Shida Dianxing Minshi Anli (人民法院大力弘扬社会主义核心价值观十大典型民事案例) [Ten Model Civil Cases of Vigorously Carrying forward Core Socialist Values by the People's Courts] (promulgated by Sup. People's Ct., May 13, 2020, effective May 13, 2020), available at <a href="https://www.court.gov.cn/zixun-xiangqing-229041.html">https://www.court.gov.cn/zixun-xiangqing-229041.html</a>.</p>	1,283
Filial Piety towards Parents/Elders	Zuigao Renmin Fayuan Fabu Shiqi Guanyu Hongyang Shehui Zhuyi Hexin Jiazhiguan Dianxing Anli (最高人民法院发布十起关于弘扬	1,772

<p>(<i>xiaojing fumu/xiaojing zhangbei/xiaojing laoren</i>)</p>	<p>社会主义核心价值观典型案例) [Ten Model Cases regarding Upholding the Socialist Core Values Issued by the Supreme People's Court] (promulgated by Sup. People's Ct., Aug. 22, 2016, effective Aug. 22, 2016), available at <a href="https://www.court.gov.cn/zixun-xiangqing-24931.html">https://www.court.gov.cn/zixun-xiangqing-24931.html</a>.</p> <p>Renmin Fayuan Dali Hongyang Shehui Zhuyi Hexin Jiazhiguan Shida Dianxing Minshi Anli (人民法院大力弘扬社会主义核心价值观十大典型民事案例) [Ten Model Civil Cases of Vigorously Carrying forward Core Socialist Values by the People's Courts] (promulgated by Sup. People's Ct., May 13, 2020, effective May 13, 2020), available at <a href="https://www.court.gov.cn/zixun-xiangqing-229041.html">https://www.court.gov.cn/zixun-xiangqing-229041.html</a>.</p> <p>Dierpi Renmin Fayuan Dali Hongyang Shehui Zhuyi Hexin Jiazhiguan Dianxing Minshi Anli (最高人民法院发布第二批人民法院大力弘扬社会主义核心价值观典型案例) [Second Batch of Model Civil Cases of Vigorously Carrying forward Core Socialist Values by the People's Courts] (promulgated by Sup. People's Ct., Feb. 23, 2022, effective Feb. 23, 2022), available at <a href="https://www.court.gov.cn/zixun-xiangqing-346671.html">https://www.court.gov.cn/zixun-xiangqing-346671.html</a>.</p>	
<p>Social Ethics (<i>shehui fengqi</i>)</p>	<p>Shenru Tuijin Shehui Zhuyi Hexin Jiazhiguan Rongru Caipan Wenshu Shifa Shuoli Yi Gongzheng Caipan Yinling Shehui Fengshang—Zuigao Renmin Fayuan Sigaiban Fuzeren Da Jizhe Wen (深入推进社会主义核心价值观融入裁判文书释法说理以公正裁判引领社会风尚——最高人民法院司改办负责人答记者问) [Deepening the Integration of Core Socialist Values into the Legal Reasoning of Judiciary Opinions, Leading the Social Trends with Fair Judgments—A Q&amp;A with the Supreme People's Court's Spokesperson on Judiciary Reform] (Feb. 18, 2021), available at</p>	<p>676</p>

	<p><a href="https://www.court.gov.cn/zixun-xiangqing-287221.html">https://www.court.gov.cn/zixun-xiangqing-287221.html</a> (last visited on Mar. 13, 2023).</p> <p>Dierpi Renmin Fayuan Dali Hongyang Shehui Zhuyi Hexin Jiazhiguan Dianxing Minshi Anli (最高人民法院发布第二批人民法院大力弘扬社会主义核心价值观典型案例) [Second Batch of Model Civil Cases of Vigorously Carrying forward Core Socialist Values by the People's Courts] (promulgated by Sup. People's Ct., Feb. 23, 2022, effective Feb. 23, 2022), available at <a href="https://www.court.gov.cn/zixun-xiangqing-346671.html">https://www.court.gov.cn/zixun-xiangqing-346671.html</a>.</p>	
<p>Moral Norms/ Principles/ Standards</p> <p>(<i>daode yuanze/daode zhunze/daode biao zhun</i>)</p>	<p>Zuigao Renmin Fayuan Gongbu Shiqi Hongyang Shehui Zhuyi Hexin Jiazhiguan Dianxing Anli (最高人民法院公布 10 起弘扬社会主义核心价值观典型案例) [Ten Model Cases regarding Upholding the Socialist Core Values Issued by the Supreme People's Court] (promulgated by Sup. People's Ct., Mar. 8, 2016, effective Mar. 8, 2016), available at <a href="https://www.court.gov.cn/zixun-xiangqing-17612.html">https://www.court.gov.cn/zixun-xiangqing-17612.html</a>.</p> <p>Renmin Fayuan Dali Hongyang Shehui Zhuyi Hexin Jiazhiguan Shida Dianxing Minshi Anli (人民法院大力弘扬社会主义核心价值观十大典型案例) [Ten Model Civil Cases of Vigorously Carrying forward Core Socialist Values by the People's Courts] (promulgated by Sup. People's Ct., May 13, 2020, effective May 13, 2020), available at <a href="https://www.court.gov.cn/zixun-xiangqing-229041.html">https://www.court.gov.cn/zixun-xiangqing-229041.html</a>.</p>	1,140
<p>Getting Along Harmoniously</p> <p>(<i>hemu xiangchu</i>)</p>	<p>Xinshidai Gongmin Daode Jianshe Shishi Gangyao (新时代公民道德建设实施纲要) [The Outline for Constructing Civil Morality in a New Era] (promulgated by the CCP Central Committee, Oct. 27, 2019, effective Oct. 27, 2019), available</p>	47,484

	at <a href="http://www.gov.cn/zhengce/2019-10/27/content_5445556.htm">http://www.gov.cn/zhengce/2019-10/27/content_5445556.htm</a> .	
Respecting the Old and Cherishing the Young ( <i>zunlao aiyou</i> )	Xinshidai Gongmin Daode Jianshe Shishi Gangyao (新时代公民道德建设实施纲要) [The Outline for Constructing Civil Morality in a New Era] (promulgated by the CCP Central Committee, Oct. 27, 2019, effective Oct. 27, 2019), available at <a href="http://www.gov.cn/zhengce/2019-10/27/content_5445556.htm">http://www.gov.cn/zhengce/2019-10/27/content_5445556.htm</a> .	2,306
Good Neighbor Close By is Better Than a Relative Far Away ( <i>yuanqin buru jinlin</i> )	Frequently associated with Friendliness/Getting Along Harmoniously	498
Blood is Thicker Than Water ( <i>xuening yushui</i> )	Frequently associated with Filial Piety/Civility/Friendliness	347
Other Family-Related Proverbs <sup>230</sup>	Frequently associated with Filial Piety/Friendliness	3,756

<sup>230</sup> The full list includes: “happy family means prosperity (*jiahe wanshixing*); “the highest virtue out of a hundred is filial piety” (*baishan xiaoweixian*); “loving fathers and pious sons” (*fuci zixiao*); “friendly elder brothers and respectful younger brothers” (*xiongyou digong*); and “be grateful to the grace of those who raised you” (*yangyu zhien*).

## Appendix 2 SPC Model Cases and Morality Keywords

	Model Case	SPC Keyword
First Batch, March 8, 2016  Zuigao Renmin Fayuan Gongbu Shiqi Hongyang Shehui Zhuyi Hexin Jiazhiguan Dianxing Anli (最 高人民法院公布 10起弘扬社会主 义核心价值 观典型案例) [Ten Model Cases regarding Upholding the Socialist Core Values Issued by the Supreme People's Court] (promulgated by Sup. People's Ct., Mar. 8, 2016, effective Mar. 8, 2016), available at <a href="https://www.court.gov.cn/zixun-xiangqing-17612.html">https://www.court.gov.cn/zixun-xiangqing-17612.html</a> .	Right of possession dispute between family members (civil)	Filial Piety
	No right to have a disputed name registered as legal name (administrative)	Public Ethics
	Suit against police station for failing to deal with noise caused by recreational dancing in public place (administrative)	Civility
	Inheritance dispute where property was left to a neighbor who took care of the deceased (civil)	Friendliness
	Contract of adhesion in insurance context (civil)	Honesty
	Tort dispute arising under Food Safety law (civil)	Honesty
	Fraudulent litigation where plaintiff and defendant colluded with fabricated evidence (civil)	Honesty
	Perjury in another person's criminal trial (criminal)	Honesty
	Expulsion of college student due to cheating in exam (administrative)	Honesty
	Public interest litigation for pollution of river (civil)	Environmental Protection

	Model Case	SPC Keyword
Second Batch, August 22, 2016  Zuigao Renmin Fayuan Fabu Shiqi Guanyu Hongyang Shehui Zhuyi Hexin Jiazhiguan Dianxing Anli (最高 人民法院发布十起关于弘 扬社会主义核心价值 观典型案例) [Ten Model Cases regarding Upholding the Socialist Core Values Issued by the Supreme People's Court] (promulgated by Sup. People's Ct., Aug. 22, 2016, effective Aug. 22, 2016), available at <a href="https://www.court.gov.cn/zixun-xiangqing-24931.html">https://www.court.gov.cn/zixun-xiangqing-24931.html</a> .	Unlawful occupation of property subject to demolition (civil)	Honesty and Abiding by Law
	Labor dispute in the absence of a written employment contract (civil)	Honesty
	Fraud with forged business license (criminal)	Honesty
	Fraud with sale of goods with forged trademark (criminal)	Honesty
	Trademark dispute for use of logo without permission, and forged evidence during course of litigation (civil)	Honesty
	Enforcement of civil judgment requiring defendant to vacate the hospital bed belonging to plaintiff (enforcement)	Public Order
	Contract dispute based on property management (civil)	Honesty
	Family dispute for failure to support elderly parents (civil)	Filial Piety
	Gender discrimination in employment (civil)	Social Ethics
	Judicial aid arising out of personal injury dispute (civil & judicial aid)	Friendliness



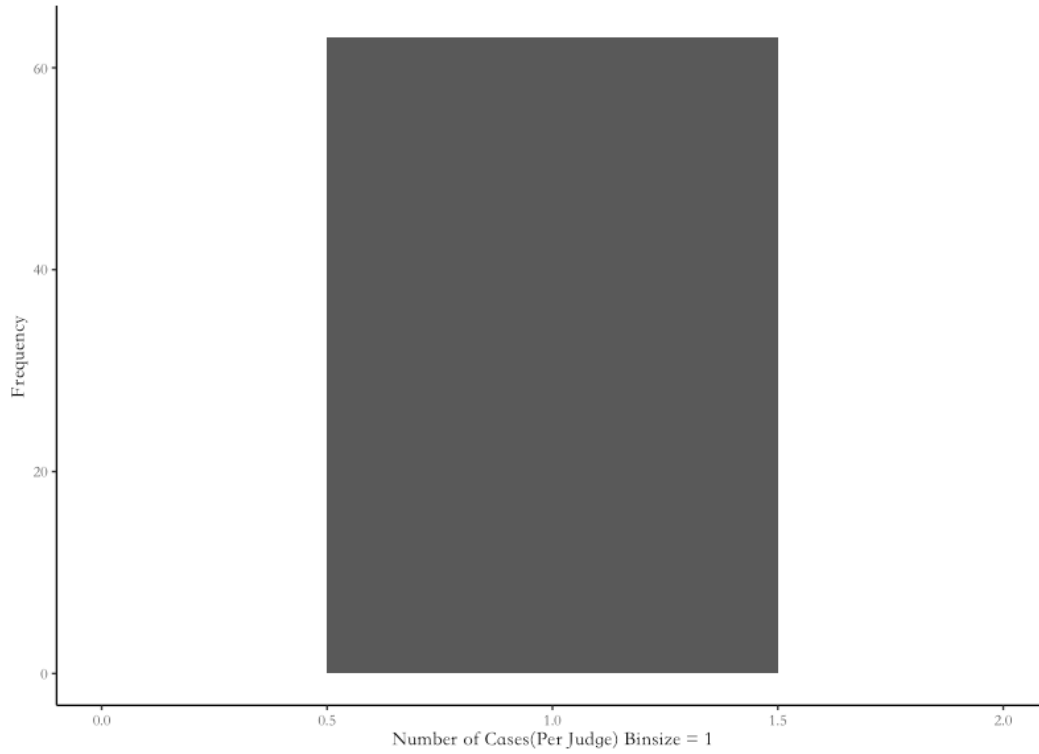
	Model Case	SPC Keyword
<p>Third Batch, May 13, 2020 (all civil)</p> <p>Renmin Fayuan Dali Hongyang Shehui Zhuyi Hexin Jiazhiquan Shida Dianxing Minshi Anli (人 民法院大力弘扬 社会主义核心价 值观十大典型民 事案例) [Ten Model Civil Cases of Vigorously Carrying forward Core Socialist Values by the People's Courts] (promulgated by Sup. People's Ct., May 13, 2020, effective May 13, 2020), available at <a href="https://www.court.gov.cn/zixun-xiangqing-229041.html">https://www.cour t.gov.cn/zixun- xiangqing- 229041.html</a>.</p>	Defamation suit regarding soldiers who died fighting for the People's Liberation Army	Protection of Martyrs of Revolution <i>(geming yinglie baohu)</i>
	Defamation suit regarding a firefighter who passed away in a mission	Protection of Martyrs of Today <i>(dangdai yinglie baohu)</i>
	Personal injury incurred due to trespass on public property	Civility and Public Order
	Failure to render proper aid after traffic accident	Friendliness
	Defamation suit based on group chat history	Civility and Social Ethics
	Contracts for forging records of internet traffic flow are invalid	Honesty on the Internet
	Real estate seller is not allowed to escape contract liability and take advantage of increased market price by citing own license failure	Honesty
	Personal injury incurred after eating at a restaurant without intending to pay	Honesty
	Validity of will that is written through an agent	Filial Piety as Traditional Virtue of the Chinese People; Mutual Forgiveness/Forbearance
	Designation of legal guardian for an orphan	Protection of the Youth

	Model Case	SPC Keyword
<p>Fourth Batch, February 23, 2022 (all civil)</p> <p>Dierpi Renmin Fayuan Dali Hongyang Shehui Zhuyi Hexin Jiazhiguan Dianxing Minshi Anli (最高人民法院发布第二批人民法院大力弘扬社会主义核心价值观典型案例) [Second Batch of Model Civil Cases of Vigorously Carrying forward Core Socialist Values by the People's Courts] (promulgated by Sup. People's Ct., Feb. 23, 2022, effective Feb. 23, 2022), available at <a href="https://www.court.gov.cn/zixun-xiangqing-346671.html">https://www.court.gov.cn/zixun-xiangqing-346671.html</a>.</p>	Right of possession dispute among family members	Harmony in Family; Filial Piety
	Parents' right to evict adult son who did not share right of possession	Civility in Home Life
	Failure to make support payments for elderly parents	Civility in Country Life
	Employment discrimination based on province of origin	Civility in Workplace; Equality in Employment
	Dispute among apartment owners regarding installation of elevator in building	Civility Among Neighbors Mutual Forbearance/Forgiveness
	Breach of term contract with college for service after graduation	Honesty
	Personal injury due to wet floors in hospital	Civility in Community
	Defamation dispute regarding media exposure on the hygienic issues of pickle factory	Honesty
	Driver in road accident has reduced responsibility towards passengers who were gratuitous guests	Good Faith Assistance; Traditional Virtue of Chinese People

Appendix 3

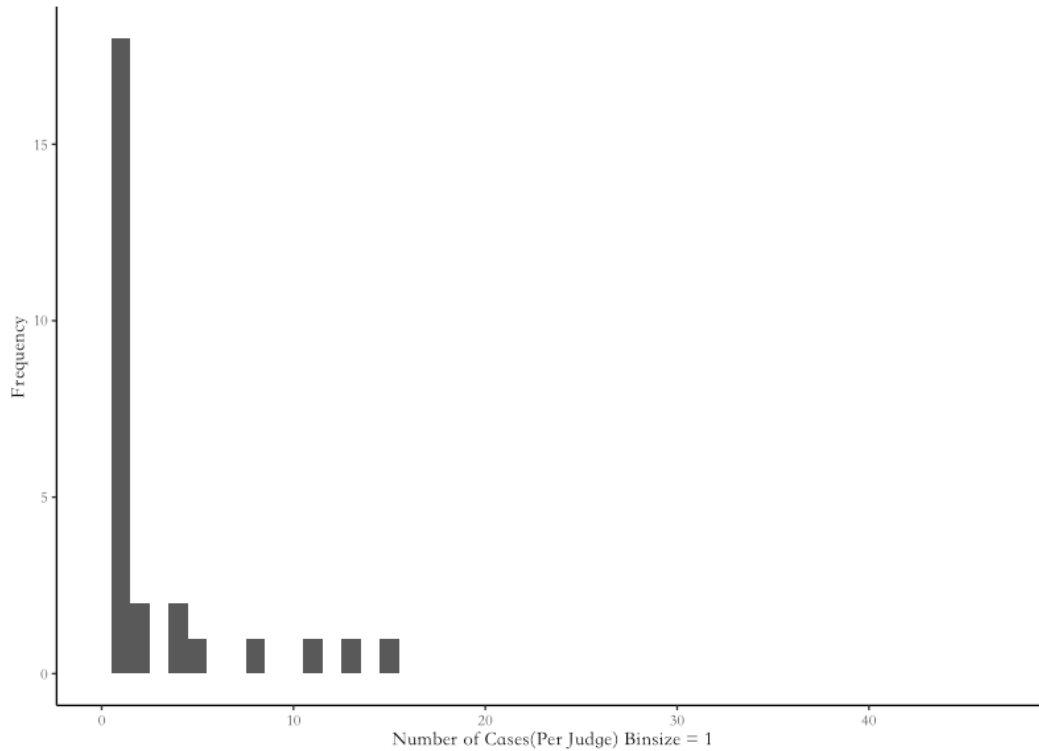
Appendix 3.1 Civic Morality

Histogram of Number of Cases Mentioning 公民道德 Per Judge



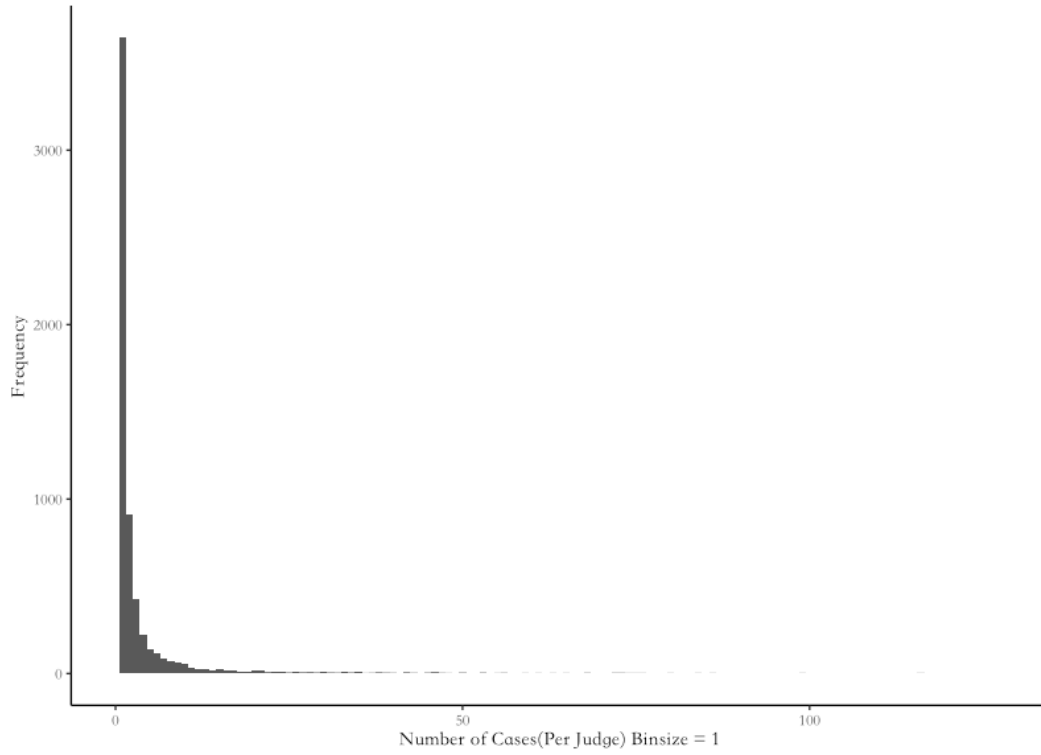
Appendix 3.2 Rule of Virtue

Histogram of Number of Cases Mentioning 以德治国 Per Judge



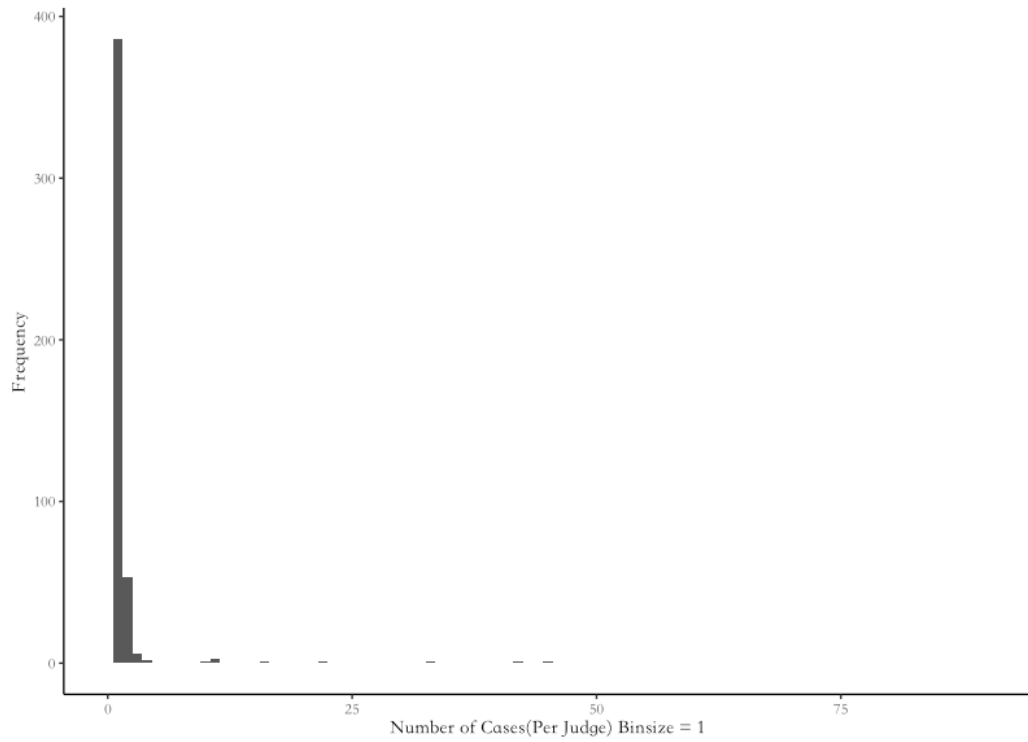
*Appendix 3.3 Harmonic Society*

Histogram of Number of Cases Mentioning 和谐社会 | 社会和谐 Per Judge



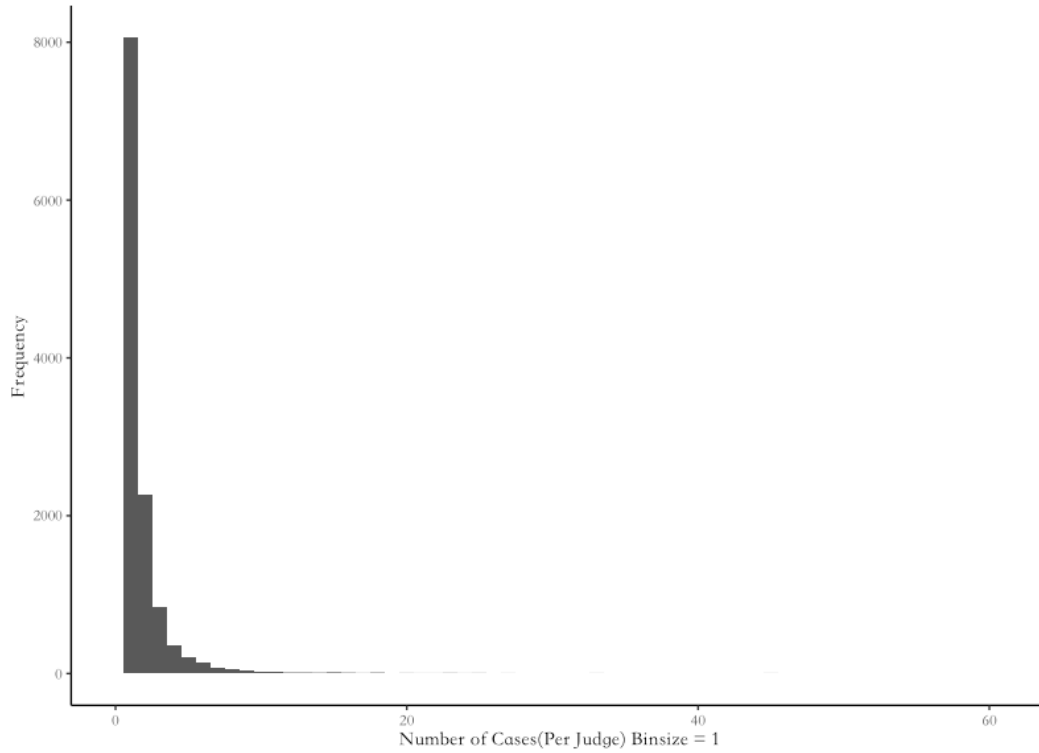
*Appendix 3.4 Positive Vibe Negative Vibe*

Histogram of Number of Cases Mentioning 正能量 | 负能量 Per Judge



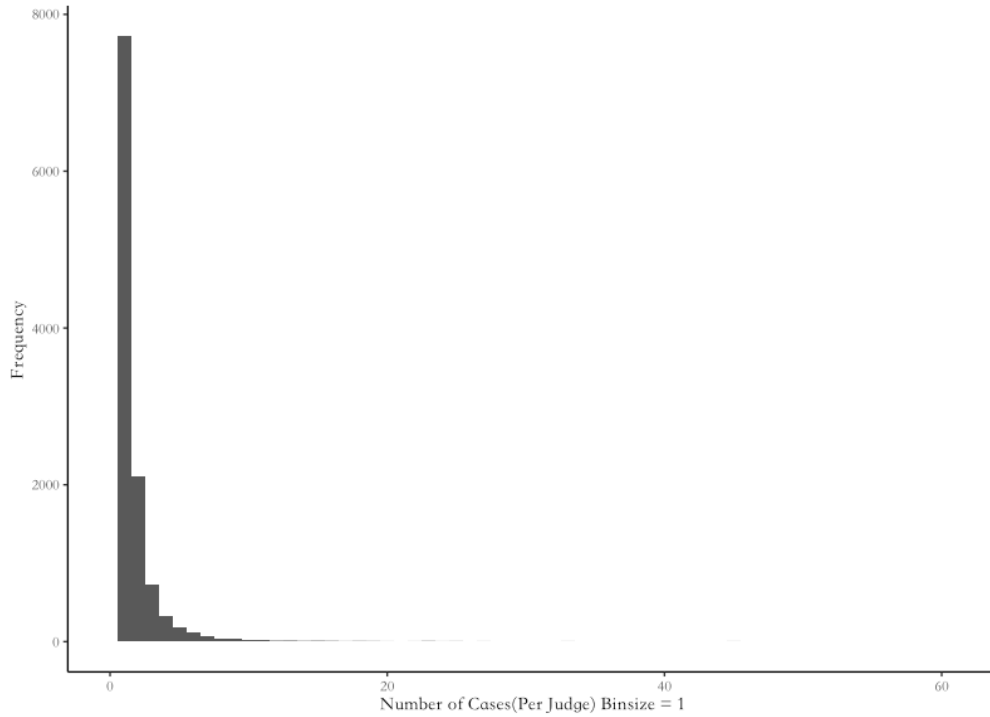
*Appendix 3.5 Virtuous Traditions of Chinese People*

Histogram of Number of Cases Mentioning 中华民族优良传统 Per Judge

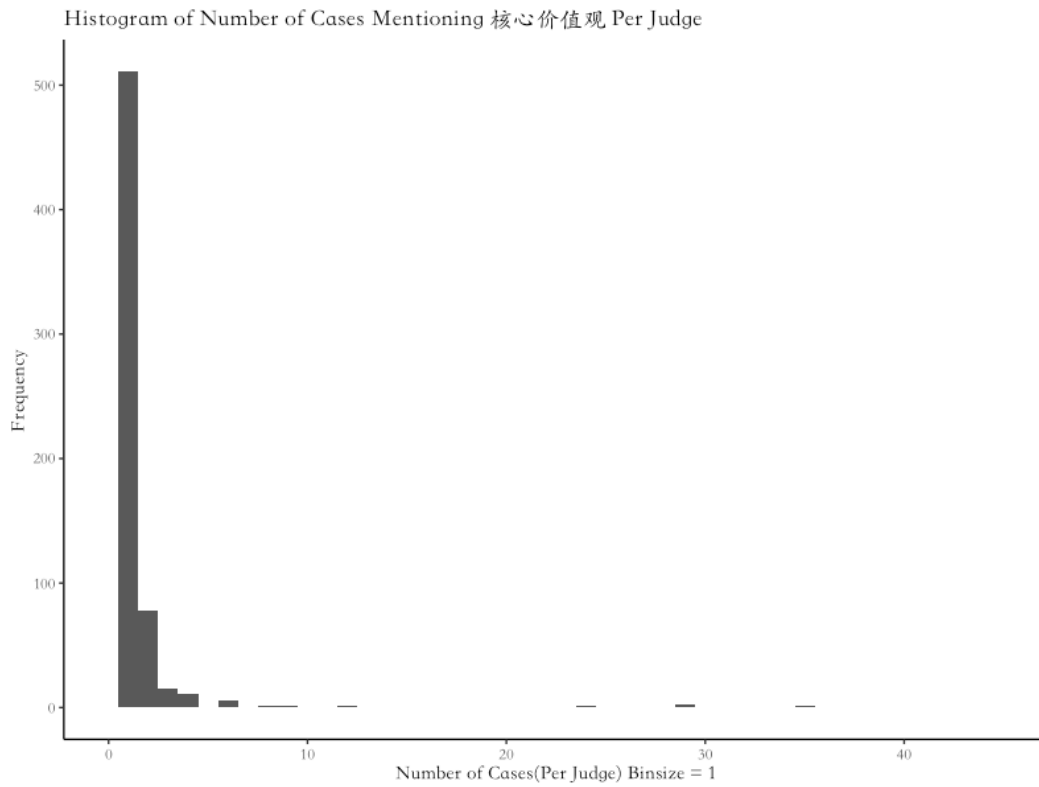


*Appendix 3.6 Traditional Virtue*

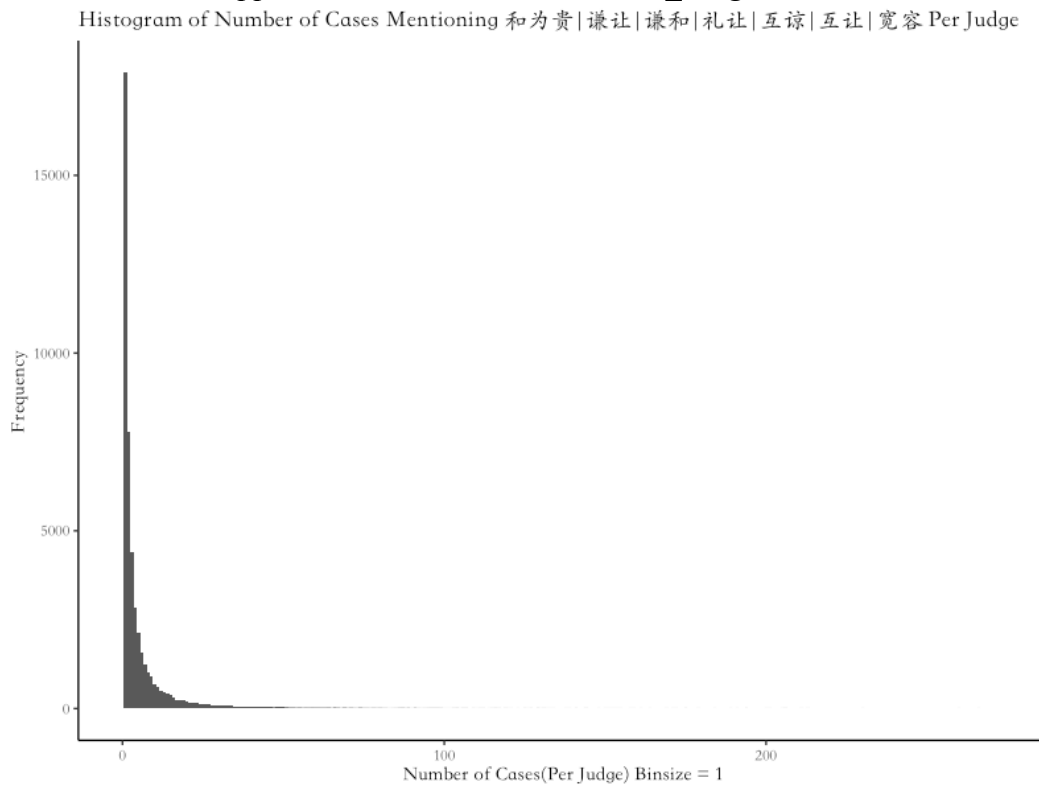
Histogram of Number of Cases Mentioning 传统美德 Per Judge



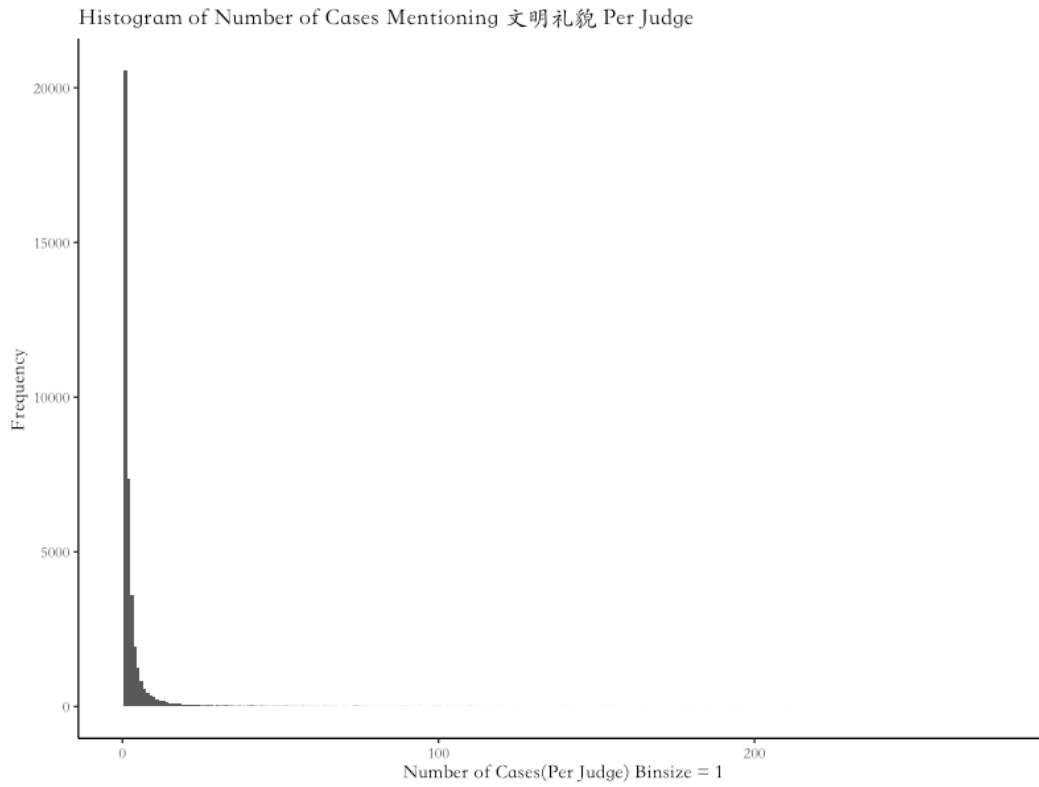
*Appendix 3.7 Core Socialist Values*



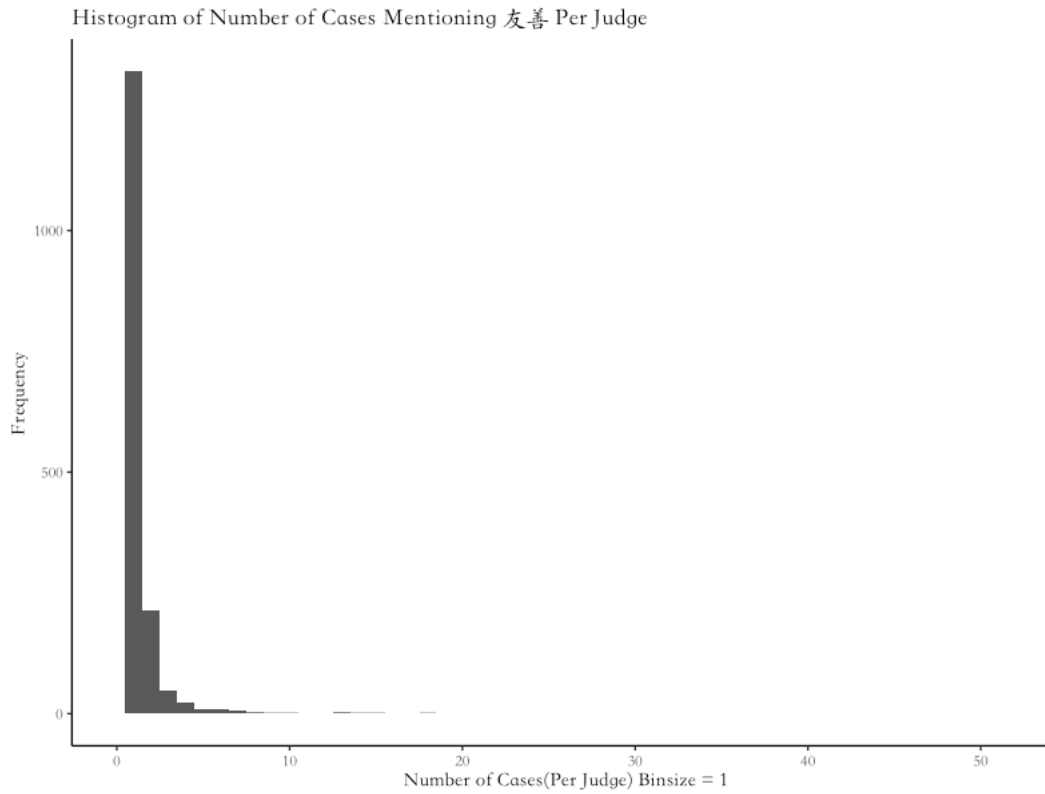
*Appendix 3.8 Mutual Forbearance\_Forgiveness*



*Appendix 3.9 Civility*

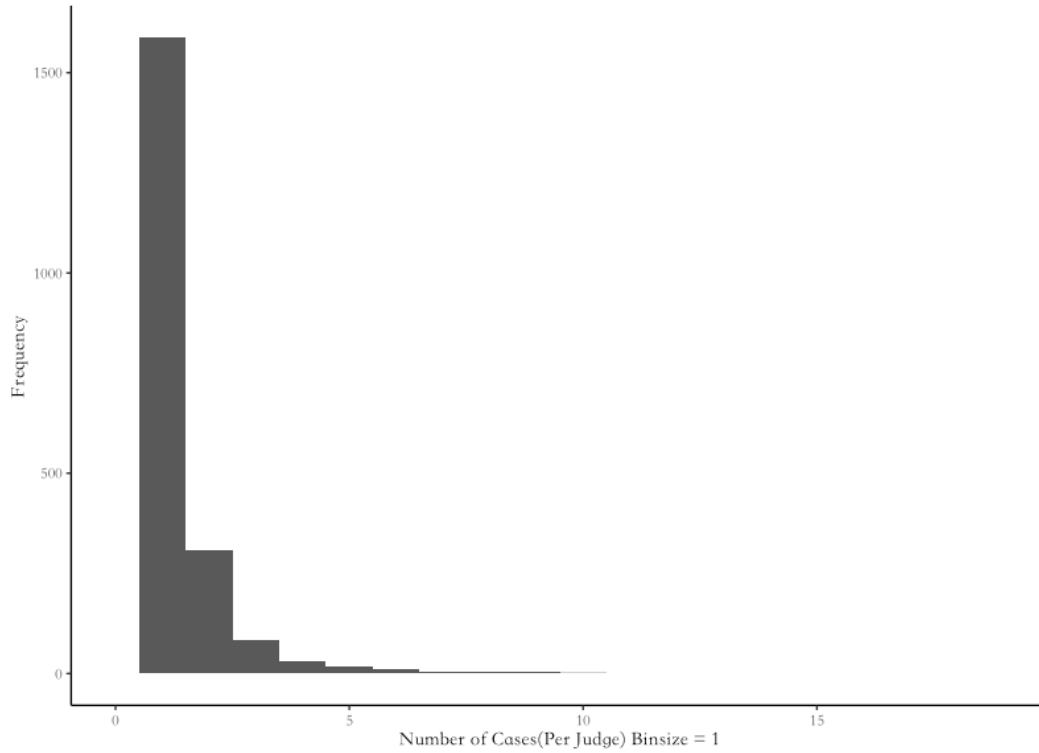


*Appendix 3.10 Friendliness*



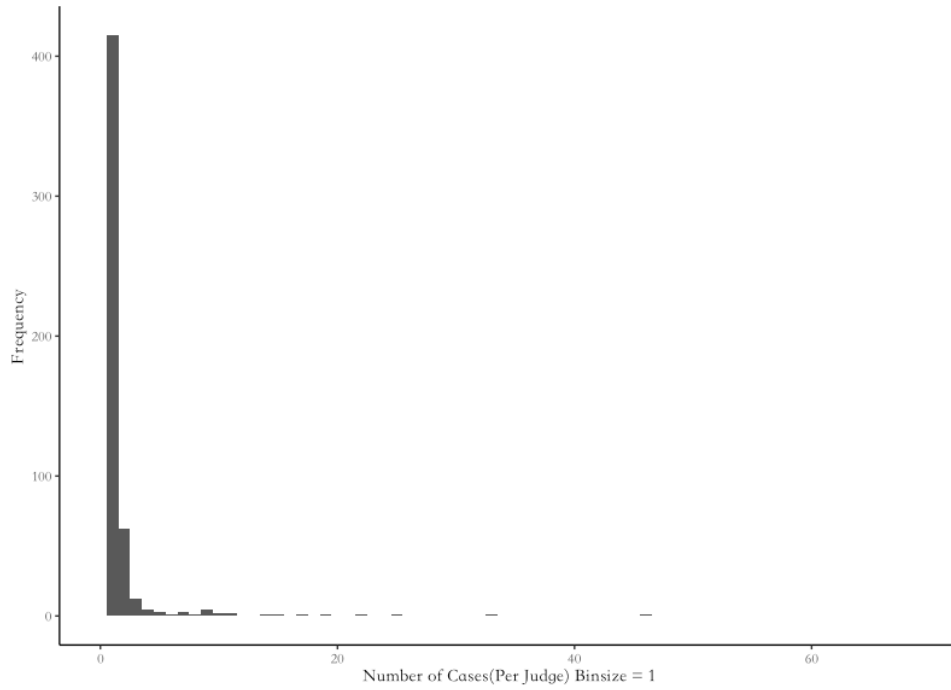
*Appendix 3.11 Filial Piety towards Parents\_Elders*

Histogram of Number of Cases Mentioning 孝敬长辈老人父母 Per Judge



*Appendix 3.12 Social Ethics*

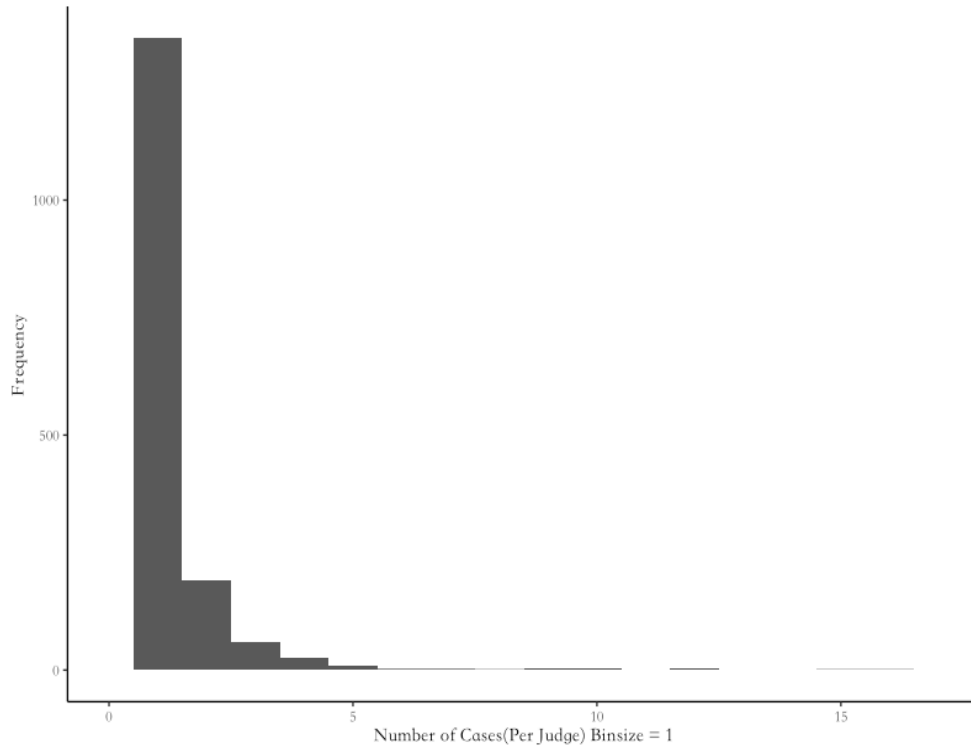
Histogram of Number of Cases Mentioning 社会风气 Per Judge





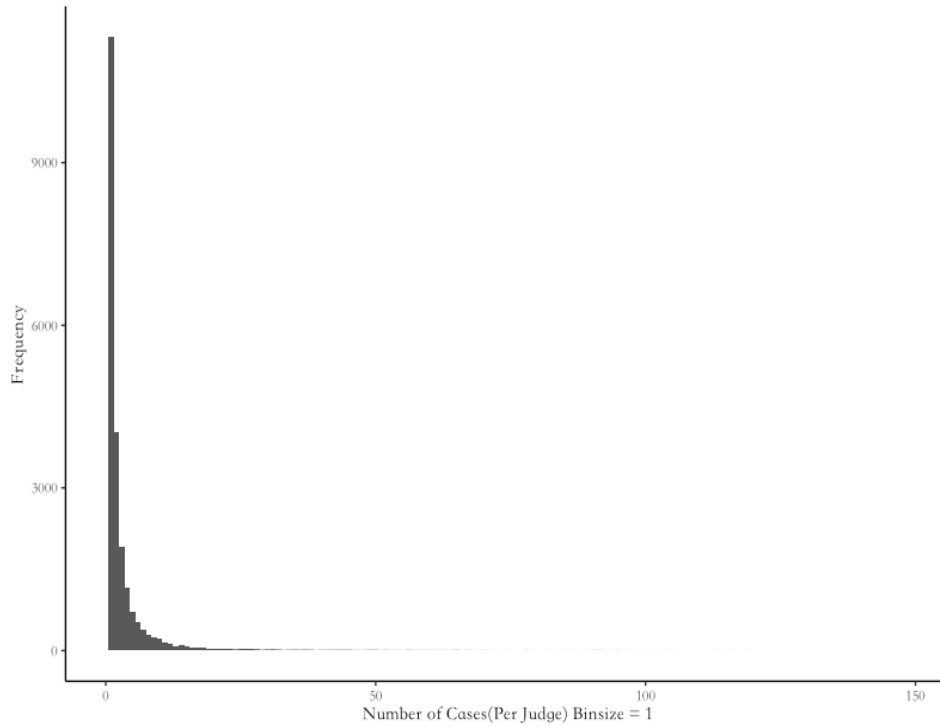
*Appendix 3.13 Moral Norms\_Principles\_Standards*

Histogram of Number of Cases Mentioning 道德准则|道德规范|道德原则|道德水准 Per Judge

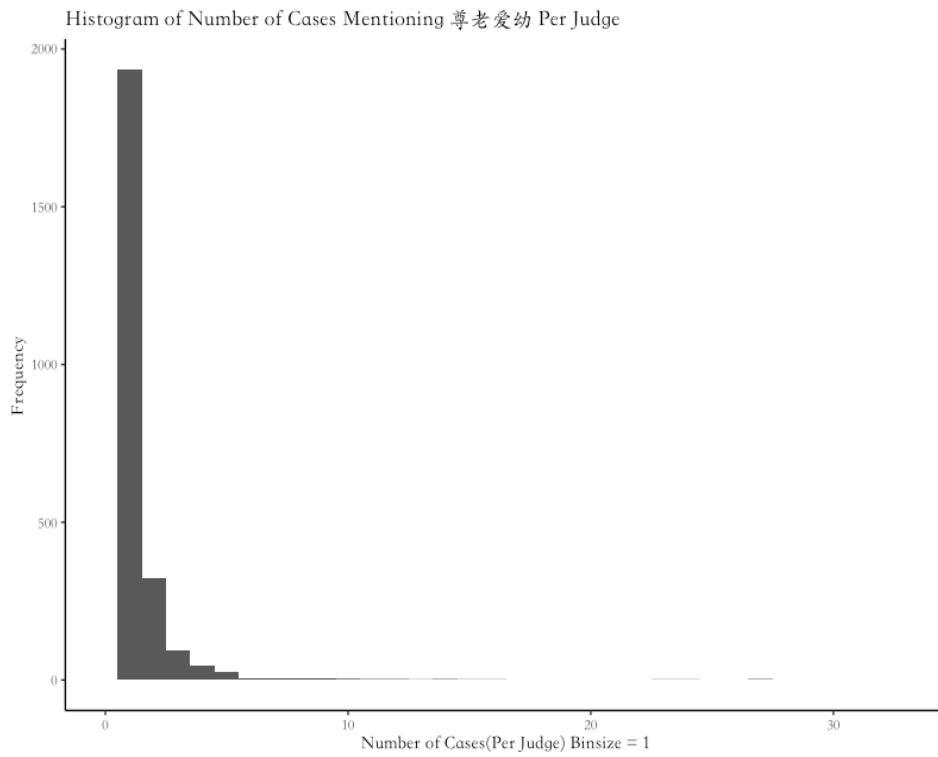


*Appendix 3.14 Getting Along Harmoniously*

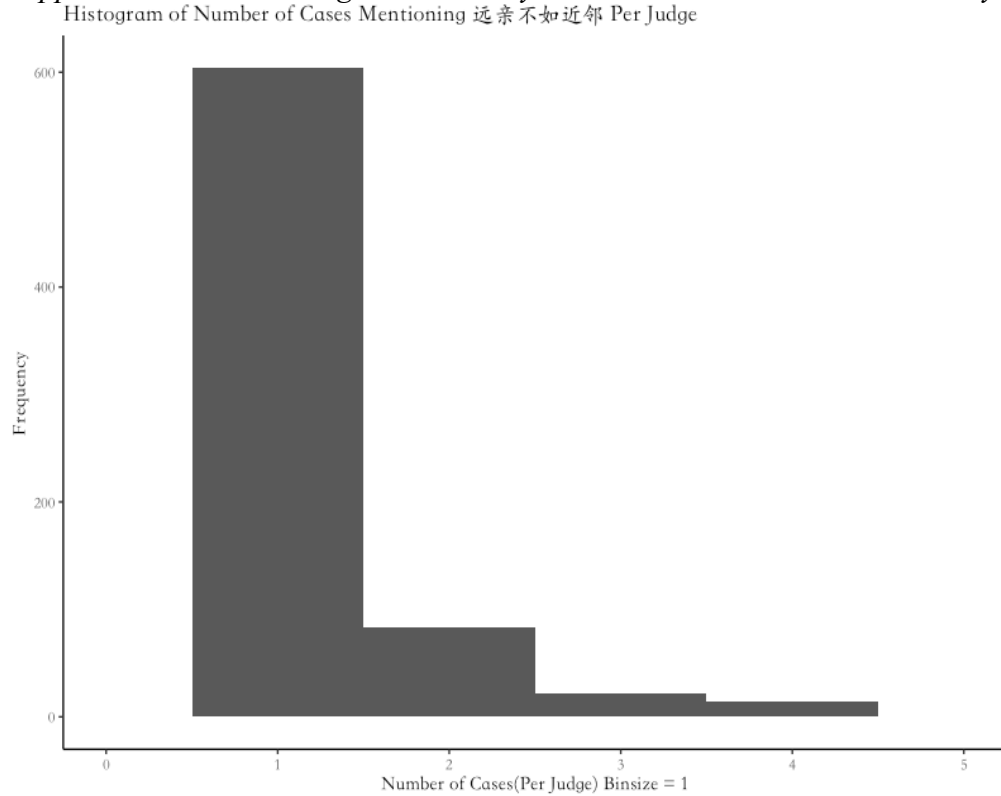
Histogram of Number of Cases Mentioning 和睦相处 Per Judge



*Appendix 3.15 Respecting the Old and Cherishing the Young*

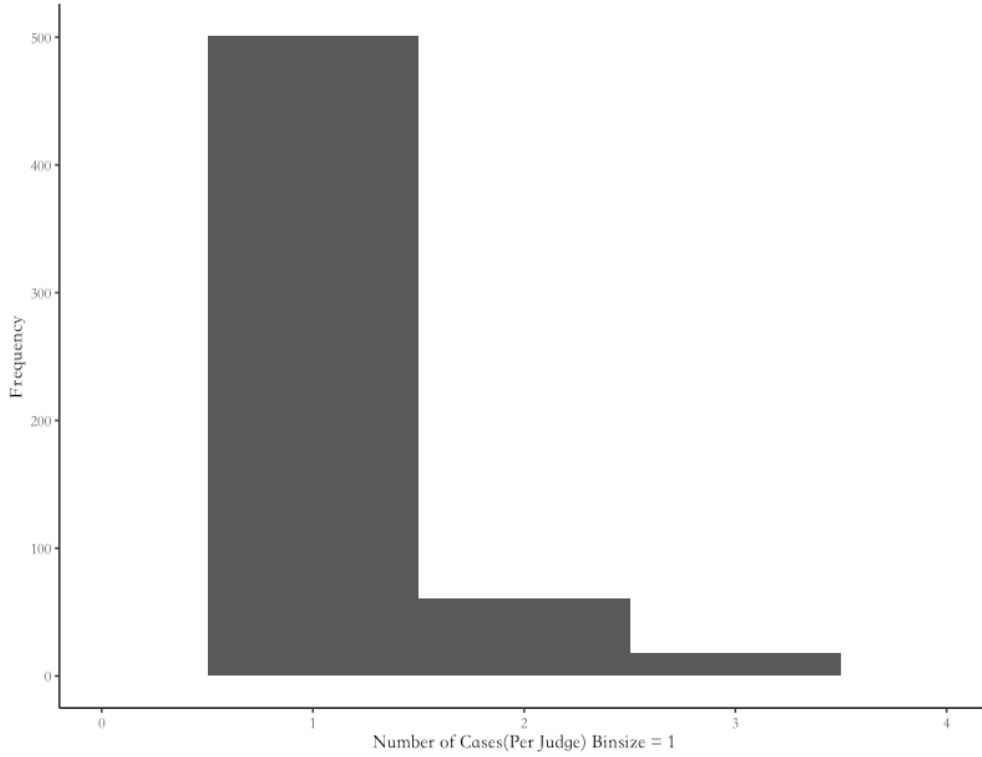


*Appendix 3.16 Good Neighbor Close By is Better Than a Relative Far Away*



*Appendix 3.17 Blood is Thicker Than Water*

Histogram of Number of Cases Mentioning 血浓于水 Per Judge



*Appendix 3.18 Other Morality-Related Proverbs*

Histogram of Number of Cases Mentioning 家和万事兴(etc.) Per Judge

