

Out from the Shadows: Party Documents in Chinese Courts

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The Communist Party's influence over the Chinese legal system is generally assumed to be behind the scenes, largely invisible to outside observers. Since General Secretary Xi Jinping came to power in 2012, there has been renewed attention within and outside of China to the relationship between the Communist Party and the legal system. Much of this recent writing has emphasized the degree to which Xi's efforts to affirm Party superiority and break down barriers between the Party and the State reflects a profound shift in governance and a reversal of a decades-long effort to distinguish between Party roles and those of State actors, including the courts.

In this Article, we add to this literature on the relationship between the law and the Communist Party in Xi's China by examining two debates within China about the definition and form of law. We begin with actual court practice, examining whether and when Chinese courts cite Party-issued documents in their decisions. For much of the reform era, the dominant narrative among legal scholars was that courts should not cite Party regulations or documents in their decisions. Party influence should remain in the shadows. Our analysis of actual court practice between 2014 and 2018 tells a different story: courts rely on Party documents as a legal basis for their decisions in a wide range of cases. We identify

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and analyze approximately 5,000 cases from a database of 42 million court judgments. Chinese courts' reliance on Party documents is striking given the near-consensus within legal academia in China that Party documents should not be the legal basis of a court's holding. The cases suggest that courts turn to Party documents for a mixture of reasons: resolution of historical disputes, gap-filling and necessity, shifting of responsibility for decisions to Party entities, and alignment with Party policies. Yet much of the Party regulation we observe through the lens of court practice is routine or mundane. Despite the recent focus on shifts in Party oversight of courts, our findings suggest that courts have been treating Party documents as law all along.

We then turn to a recent theoretical debate among legal scholars in China about the legal status of Party documents in the Chinese legal system. Over the past decade, a group of prominent scholars has begun to argue both for increased study of Party regulations and for recognizing Party documents as law. This line of argument marks a break from the longstanding mainstream view that Party documents are not law. This new academic conversation suggests that the idea of law in China is being destabilized. Yet the debate has also inspired pushback from those who believe that maintaining separation between the Party's internal rules and the legal system is vital to the rule of law.

The debates we track in this Article provide two windows into a foundational question: What is the definition and role of law in contemporary China? Examining court decisions demonstrates the need for scholars to focus in greater depth on the actual norms that Chinese courts apply. Excessive attention to whether courts follow the law obscures the question of what counts as law, as well as actual practice. Theoretical debates provide a window into a different but related question: What are the aspirations for law in China? The fact that the definition of law remains a contested fault line reveals unresolved tensions over the role of law in China's authoritarian system, despite nearly five decades of legal construction. Our findings regarding both actual practice and academic debates suggest a strong likelihood that Party documents will play a growing role in court adjudication in the future, as well as likely increased Party regulation of routine or mundane matters. How these debates play out, and their effect on actual practice, will inform understandings of the role of law in China and of authoritarian law and governance more generally.

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INTRODUCTION

The Communist Party's role in the Chinese legal system is widely known but rarely seen. Although scholars debate the frequency with which Party officials intervene directly in cases and the degree of autonomy that courts possess,¹ it is well-known that the Party has multiple levers of influence on the legal system. And because the Party's influence is generally assumed to be behind the scenes, most scholarship examining the Party's role in the legal system, especially by scholars outside of China, focuses on people and institutions rather than written rules, such as the role played by Party groups within courts.² Efforts to reduce Party influence are often equated with moves toward legality: Scholars inside and outside of China have viewed the separation of Party and State functions as a key aspect of China's legal development.

Since General Secretary Xi Jinping came to power in 2012, there has been renewed attention to the relationship between the Communist Party and the legal system.³ Xi's call to "uphold the unity of governing the country by law and the

1. Randall Peerenboom, *Judicial Independence in China: Common Myths and Unfounded Assumptions*, in JUDICIAL INDEPENDENCE IN CHINA: LESSONS FOR GLOBAL RULE OF LAW PROMOTION 69, 78 (Randall Peerenboom ed., 2009); Xin He, *Pressures on Chinese Judges under Xi*, 85 CHINA J. 49, 61–68 (2021); Taisu Zhang & Tom Ginsburg, *China's Turn Toward Law*, 59 VA J. INT'L L. 306, 323–24 (2019); Benjamin L. Liebman, *Ordinary Tort Litigation in China: Law versus Practical Justice?*, 13 J. TORT L. 197, 200 n.7 (2020); Hualing Fu, *Duality and China's Struggle for Legal Autonomy*, 116 CHINA PERSP. 3, 8 (2019).

2. On the Party and the legal system more generally, see Ling Li, *Political-Legal Order and the Curious Double Character of China's Courts*, 6 ASIAN J. L. & SOC'Y 19 (2019); Ling Li, "Rule of Law" in a Party-State: A Conceptual Interpretive Framework of the Constitutional Reality of China, ASIAN J. L. & SOC'Y (2015). As Ling Li notes, legal scholarship has often overlooked even these informal, behind-the-scenes tools of control. Li, "Rule of Law" in a Party-State (noting that the Party's "above-the-law privileged status" is obscured, and often neglected by legal scholars). Scholarship that examines written rules within the courts has looked at how Party norms or goals are reflected in court performance incentives. See Carl F. Minzner, *Judicial Disciplinary Systems for Incorrectly Decided Cases: The Imperial Chinese Heritage Lives on*, 39 N.M. L. REV. 63, 67 (2009); see also Susan Finder, *The Supreme People's Court of the People's Republic of China*, 7 J. CHINESE L. 145, 151 (1993).

3. Rogier J. E. H. Creemers & Susan Trevaskes, *Ideology and Organisation in Chinese Law*, in LAW AND THE PARTY IN CHINA: IDEOLOGY AND ORGANISATION 1, 1–28 (Rogier J.E.H. Creemers & Susan Trevaskes eds., 2020), <https://doi.org/10.1017/9781108864596>; Samuli Seppänen, *Disorientation for the New Era*, in LAW AND THE PARTY IN CHINA: IDEOLOGY AND ORGANISATION

Party according to regulations”⁴ has been mirrored by increased attention to legal compliance both in the Party and the government. In the English language scholarship on Chinese law, a debate has erupted about the degree to which Xi’s vocal commitment to law reflects the ascendancy of legality,⁵ or is a continuation of longstanding practices.⁶ There has also been renewed attention to the Party’s own rules, both formal and informal, from scholars outside of China.⁷ At the same time, Xi’s efforts to fuse the Party and the State⁸ have reverberated in the legal

1, 1–28 (Rogier J.E.H. Creemers & Susan Trevaskes eds., 2020), <https://doi.org/10.1017/9781108864596>; Jamie P. Horsley, *Party Leadership and Rule of Law in the Xi Jinping Era*, BROOKINGS (Sept. 2019), <https://www.brookings.edu/research/party-leadership-and-rule-of-law-in-the-xi-jinping-era/> (last visited June 23, 2020).

4. Quanmian Yifa Zhiguo Xi Jinping Zong Shuji Zhaxie Lunshu Zhidi Yousheng (全面依法治国, 习近平总书记这些论述掷地有声) [Governing The Country In Accordance With The Law, Chairman Xi Jinping’s Expositions Are Eloquent], Qiushi Wang (求是网) [qstheory.cn], http://www.qstheory.cn/zhuanqu/2021-02/28/c_1127150666.htm [https://perma.cc/6UGY-TM7D] (Feb. 28, 2021, 10:23 PM).

5. Zhang & Ginsburg, *supra* note 1.

6. Xin He, *supra* note 1.

7. Samuli Seppänen, *Interrogating Illiberalism Through Chinese Communist Party Regulations*, 52 CORNELL INT’L L. J. 267 (2019); Ewan Smith, *On the Informal Rules of the Chinese Communist Party*, 248 THE CHINA Q. 141 (2021); Holly Snape, *Party Regulations: Changing the Rules of the Game?*, 51 CHINESE L. & GOV’T 255, 255–59 (2019) (noting that “there is an increasingly sophisticated system” of Party regulations, and that there is also growing attention to the relationship between Party rules and State law); Holly Snape, *Party Leadership and Legislating: Party Documents Through a Party-State Relationship Lens*, 2019 CHINESE L. & GOV’T 299, 299–314 (2019) (noting Party efforts to build “a regulated system of Party documents”); Jiang Feng, *Party Regulations and State Laws in China: A Disappearing Boundary and Growing Tensions*, 51 CHINESE L. & GOV’T 260–76 (2019) (noting growing tension between State law and Party regulations and that Party regulations now regulate an expanding range of subject areas). Professor Seppänen notes that the existence of rules does not necessarily mean they follow the rules: “‘the Party’ may be above the law, but is ‘it’ also above its own regulations?” Seppänen, *supra* note 4, at 271. As Ling Li has noted, the fact that the Party often ignores its own rules adds complexity to any attempt to understand the role of Party rules. Ling Li, *Appeal of Strategic Ambiguity on Party Centre—Reading the Party Directive on the Operation of the Central Committee (Part I)*, THE CHINA COLLECTION, <https://thechinacollection.org/appeal-strategic-ambiguity-party-centre-reading-party-directive-operation-central-committee/> [https://perma.cc/VBE6-BBKQ].

Court leadership has made clear that Party leadership means that courts must follow the law as well as Party regulations. Zhou Qiang (周强), *Zai Xi Jinping Fazhi Sixiang Zhiyin Xia, Yanzhe Zhongguo Tese Shehui Zhuyi Fazhi Daolu Fenyong Qianjin* (在习近平法治思想指引下 沿着中国特色社会主义法治道路奋勇前进) [*Under the Guidance of Xi Jinping’s Thought on the Rule of Law, March Forward Courageously Along the Road of Socialist Rule of Law with Chinese Characteristics*], QIUSHI WANG (求是网) (Mar. 1, 2021) [https://perma.cc/63DX-UNC7] (last visited Mar. 30, 2021) (Supreme People’s Court President stating that “ensuring fair and clean justice requires the people’s courts to always adhere to the strict, comprehensive governance of the Party and maintain a reverence for the constitution, laws, and party rules and discipline”).

8. As Professors Snape and Wang note, reforms initiated in 2018 seek to deepen Party-State integration, shifting roles from State entities to Party entities, “enabling Party bodies to swallow up entirely, develop parts of, or penetrate certain State agencies and take over some core functions.” Holly Snape & Weinan Wang, *Finding a Place for the Party: Debunking the “Party-state”: and Rethinking the State-Society Relationship in China’s One-Party System*, 5 J. CHINESE GOVERNANCE 477, 486 (2020); see also Horsley, *supra* note 3, at 5 (Sept. 2019) (discussing the 2018 merging of a range of State and party institutions to expand regulation by Party entities as well as other steps taken since Xi came to power that enable “the Party to take more direct charge in important areas through establishing

system, in particular since the 2018 amendments to the PRC Constitution, which both created new Party-lead supervision commissions to fight corruption and added the phrase “Leadership by the Communist Party of China is the defining feature of socialism with Chinese characteristics” to Article 1 of the Constitution.⁹ The result has been renewed scholarly focus on a range of issues, from the use of Party-dictated morality to guide court decisions,¹⁰ to efforts to separate “ordinary” or “routine” cases from more sensitive cases,¹¹ to newly-created Party-led institutions, including supervision commissions,¹² the Party’s National Security Commission,¹³ and the Party-led Commission on Comprehensive Governance According to Law.¹⁴ Much of this recent writing has emphasized the degree to which Xi’s efforts to affirm Party superiority and break down barriers between the Party and the State reflect a profound shift in governance and a reversal of a decades-long effort to distinguish between Party roles and those of State actors, including the courts.¹⁵

In this Article, we add to this literature on the relationship between the law and the Communist Party in Xi’s China by examining two debates within China about the definition and form of law. Together, these two debates shed light on a fundamental but often unexamined question: What separates law from other tools of Communist Party governance in China, and how does the line between law and

new institutions); Susan Finder, *The Long March to Professionalizing Judicial Discipline in China*, in DISCIPLINING JUDGES: CONTEMPORARY CHALLENGES AND CONTROVERSIES 78, 105 (Richard Devlin & Sheila Wildeman eds., 2021) (discussing “the expansion of Party control over government officials, with an emphasis on greater political discipline and ideological conformity” since 2012); Snape, *Party Leadership and Legislating: Party Documents Through a Party–State Relationship Lens*, *supra* note 7, at 300 (noting that recent efforts to strengthen Party regulations reflect “a concrete rejection of all theorizing towards managing the Party primarily by legal statutes that limit its power”).

9. XIANFA art. 1 (1982) (China). The Constitution had previously referenced Party leadership only in the preamble.

10. Susan Finder, *Integrating Socialist Core Values into Court Judgments*, SUP. PEOPLE’S CT. MONITOR, Mar. 25, 2021, <https://supremepeoplescourtmonitor.com/category/socialist-core-values/> [<https://perma.cc/499F-V2GX>]; Delia Lin & Susan Trevaskes, *Creating a Virtuous Leviathan: The Party, Law, and Socialist Core Values*, 6 ASIAN J. L. & SOC’Y 41–66 (2019); *see also* Finder, *supra* note 8, at 86 (noting increased emphasis on “political values” alongside greater emphasis on professionalization under Xi Jinping).

11. Zhang & Ginsburg, *supra* note 1, at 344; Fu, *supra* note 1, at 7; He, *supra* note 1, at 67.

12. Seppänen, *supra* note 7, at 272 (discussing establishment of Supervision Commissions and expansion of Party anti-corruption efforts).

13. Horsley, *supra* note 3, at 6 (noting that these new Party-led institutions “lie outside the reach of state criminal and administrative law”).

14. Ling Li, *A Quick Guide to the New Commission on Comprehensive Governance According to Law*, THE CHINA COLLECTION (Jan. 16, 2020), <https://thechinacollection.org/quick-guide-newly-established-central-party-commission-rule-law/> [<https://perma.cc/KW75-RVPG>].

15. On efforts to separate out the State and Party systems, see Ling Li, “Rule of Law” in a Party-State,” *supra* note 2, at 107 (“The two systems are each self-contained but also constantly overlap”). Li notes how delegation of routine regulatory matters to the State permits the Party to focus on more significant policy matters.

politics shift over time? We begin with actual court practice, examining whether and when Chinese courts cite Party-issued documents in their decisions. For much of the reform era, the dominant narrative among legal scholars was that courts should not cite Party regulations or documents in their decisions.¹⁶ To the degree that courts did so, such citations reflected a residual practice that was gradually declining in favor of citing formal laws, reflecting efforts to separate Party functions from those of the State.¹⁷ Party influence should remain in the shadows. Our analysis of actual court practice between 2014 and 2018 tells a different story: Courts rely on Party documents as a legal basis for their decisions in a wide range of cases. The total number of cases is not large. We identify and analyze approximately 5,000 cases from a database of 42 million court judgments. Nevertheless, Chinese courts' reliance on Party documents is striking given the near-consensus within legal academia in China that Party documents should not be the legal basis of a court's holding.¹⁸ Our data do not permit us to observe trends over time, but the cases we can see suggest that courts turn to Party documents for a mixture of reasons: resolution of historical disputes, gap-filling and necessity where there is no binding law, shifting of responsibility for decisions to Party entities, and alignment with Party policies. Yet much of the Party regulation we observe through the lens of court practice is routine or mundane. For all of the recent focus on increasing Party oversight of courts, our findings suggest that courts have been treating Party documents as law all along. Our findings show the routine use of Party documents even before Xi's re-emphasis on Party rule and challenge the assumption that the Party regulates only core areas of political concern, leaving the rest to legal rules.

We then turn to a recent theoretical debate among legal scholars in China about the legal status of Party documents. Over the past decade, a group of prominent scholars has begun to argue both for increased study of Party regulations and for recognizing Party documents as law. This line of argument marks a break from the longstanding mainstream view that Party documents are not law. This new call to fuse Party rules and formal law is controversial and highly theoretical, with virtually no examination of what courts do in practice. The debate signals how rapidly, at least some in legal academia, have shifted the scholarly conversation to reflect ideological trends. This new academic conversation also suggests that the idea of law in China is being destabilized even

16. See *infra* note 18 (discussing the view that courts should not cite to Party documents).

17. See also Randall Peerenboom, CHINA'S LONG MARCH TOWARD RULE OF LAW 233 (2002) ("The greater reliance on laws, rather than CCP policy, is widely acknowledged to be one of the hallmarks of the Post-Mao era").

18. Numerous scholars we talked to about this project stated that it is "impossible" that Chinese courts would rely solely on Party documents for their holdings. See *infra* notes 56–58. As discussed further below, this consensus is particularly clear with regard to documents issued only by a Party entity. Some scholars acknowledge that documents jointly-issued by a Party entity and a State entity may provide a stronger legal basis for a court decision. Yet even such jointly-issued documents have murky legal status in the Chinese legal system. Cf. Snape & Wang, *supra* note 8, at 495 ("Care is needed to avoid overlooking the complexity of the 'pre-Xi era' relationship when stressing changes being observed today").

as it is debated: Longstanding assumptions about the form of law and its relation to Party governance are being disrupted. Yet the debate has also inspired pushback from those who believe that maintaining separation between the Party's internal rules and the legal system is vital to the rule of law.

The debates we track in this Article provide two windows into a foundational question: What is the definition and role of law in contemporary China? Examining court decisions demonstrates the need for scholars to focus in greater depth on the actual norms that Chinese courts apply, rather than on a binary question of whether courts do or do not follow the law.¹⁹ Excessive attention to whether courts follow the law obscures the question of what counts as law, as well as actual practice. Theoretical debates provide a window into a different but related question: what are the aspirations for law in China, and can and should law be a restraint on State power or merely an instrument of State authority? The fact that the definition of law remains a contested fault line in China reveals unresolved tensions over the role of law in China's authoritarian system, despite nearly five decades of legal construction.

Examining how and when courts apply Party norms to resolve legal disputes also sheds light on the boundary between law and politics. Although Party influence is a constant in the Chinese legal system, one implication of this Article is that the degree of influence can shift over time. We also show how actors in this system—in this case, judges and academics—can play roles in shifting these boundaries. Court practice in the years leading up to 2018 also provides clues as to likely practice going forward in an era of more direct Party regulation of Chinese society and continued efforts to break down the separation between the Party and the State. Our findings regarding both actual practice and academic debates suggest a strong likelihood that Party documents will play a growing role in court adjudication in the future, as well as likely increased Party regulation of routine or mundane matters.²⁰ How these debates play out, and their effect on actual practice, will inform understanding both of the role of law in China and of authoritarian law and governance more generally.

19. For other recent work that has similarly sought to examine actual court practice to understand the norms that courts apply, see Rachel Stern, Benjamin Liebman, Wenwa Gao, and Xiaohan Wu, *Liability Beyond Law: Conceptions of Fairness in Chinese Tort Cases*, 8 *ASIAN J. L. & SOC'Y* 1, 1–24 (2024).

20. In so doing we are, to a degree, responding to recent calls for scholarship that examines the Party not just in terms of the Party-State but “examines it in relation to [the] state *and* society.” Holly Snape & Weinan Wang, *Finding a Place for the Party: Debunking the “Party-State”: and Rethinking the State-Society Relationship in China’s One-Party System*, 5 *J. CHINESE GOVERNANCE* 477, 479 (2020).

I. BACKGROUND: PARTY RULES AND DOCUMENTS

No law or Communist Party document states or suggests that Party regulations or other Party-issued normative documents should be treated as formal law. Foundational Chinese laws, including the PRC Constitution and the Law on Legislation, refer to Party leadership but make no mention of Party rules and regulations.²¹ Although official statements declare that Party leadership is an integral part of the Chinese legal system, such arguments remain at the theoretical level and do not address the formal role of Party documents. Party regulations make clear that the Party and its members must operate in line with national laws and the PRC Constitution,²² although Party regulations also state that a central goal of the regulations is to ensure continued Party leadership.²³ Yet vague language abounds in both Party documents and formal legal documents, providing ample space for arguments that Party regulations should have broader binding force.

Party rules, regulations, and other normative documents cover an extensive range of topics, from internal Party procedures and the conduct of Party members, to policies on land, property takings, reform of State-owned enterprises (SOEs) and the impact of SOE reform on employees, retirement benefits for State employees, criminal procedures for State officials, and economic and business activities of Party officials and entities.²⁴ In many respects, the structure of Party rules parallels that of the State legal system. At the top is the Party Constitution (also known in English as the Party Charter), which sets out the Party's governing principles. Other regulatory documents are issued under the Party Constitution and are divided into two categories: (1) intra-party regulations (党内法规), and (2) other normative documents (规范性文件).²⁵

21. See XIANFA art. 1 (1982) (China); see also *Zhonghua Renmin Gongheguo Lifa Fa* (中华人民共和国立法法) [Legislation Law of the People's Republic of China] (amended by the National People's Congress, Mar. 15, 2015), art. 3, http://www.npc.gov.cn/zgrdw/npc/dbdhhyl/12_3/2015-03/18/content_1930713.htm.

22. *Zhongguo Gongchandang Dangnei Fagui Zhiding Tiaoli* (中国共产党党内法规制定条例) [Regulation on the Formulation of Internal Party Laws and Rules of the Chinese Communist Party] (promulgated by the central office of the Central Committee of the Communist Party of China, Aug. 30, 2019), art. 7, <http://en.pkulaw.cn/display.aspx?cgid=5bba805ad7aace78bdfb&lib=law> [<https://perma.cc/ZRJ4-UW94>].

23. See *id.* art. 2.

24. This list is drawn from the cases we reviewed. Examining the first 100 Party documents listed in a search of a leading online database, PKUlaw, in July 2020 suggests an even broader range of subjects: COVID-19 reopening, safe production of hazardous materials; education reform; the campaign to build law-based governance in the countryside; leadership changes in the People's Liberation Army; improving the protection of intellectual property rights; how to cope with an aging society; promoting ethnic unity; promoting a civilized society in the countryside; natural land protection in parks; and local governments issuing bonds.

25. See Regulation on the Formulation of Internal Party Laws and Rules of the Chinese Communist Party, *supra* note 22; see also *Zhongguo Gongchandang Dangnei Fagui He Guifanxing Wenjian Bei'an Shencha Guiding* (中国共产党党内法规和规范性文件备案审查规定) [Provisions of the Communist Party of China on Filing and Review of Intra-Party Regulations and Regulatory Documents] (promulgated by the Central Office of the Central Committee of the Communist Party of

Party regulations may only be issued by Party committees at the provincial level or above, cover only specifically enumerated subject areas,²⁶ and must be issued in specified forms.²⁷ In 2021, the Law and Regulations Bureau of the Central Office of the Communist Party stated that there were 3,615 Party regulations, covering four substantive categories: regulations relating to Party organization; regulations relating to Party leadership; regulations relating to Party's self-construction; and regulations relating to supervision.²⁸ In contrast, other "normative documents" refer to any other regulatory document issued by any Chinese Communist Party (CCP) branch or organization.²⁹ Party regulations require that both Party regulations and other normative documents be submitted to the next higher-level Party organization for recording and review.³⁰ Such review includes checking for conflicts with Party theory, Party policy, and the Party Constitution; evaluating for conflicts with the State Constitution or laws; as well as checking for conflicts with other Party regulations or normative documents.³¹ Party regulations also set forth a clear hierarchy of norms and state

China, Aug. 30, 2019), <http://en.pkulaw.cn/display.aspx?cgid=8b4581abcefc3dbdfb&lib=law> [<https://perma.cc/RB2H-2HFP>] (last visited Mar. 25, 2021). For provisions distinguishing between intra-party regulations and other normative documents, compare Articles 4–5 of the Regulation on the Formulation of Internal Party Laws and Rules of the Chinese Communist Party, with Article 2 of the Provisions of the Communist Party of China on Filing and Review of Intra-Party Regulations and Regulatory Documents.

26. Article 4 of the Regulation on the Formulation of Internal Party Laws and Rules of the Chinese Communist Party, *supra* note 22, states that the drafting of Party regulations shall "primarily" cover the following subjects: the formation, composition, power and responsibility of each level of Party organizations; the system, mechanism, methods, and requirements of Party leadership and Party construction; the supervision, evaluation, rewarding and sanctioning, and protection of Party organization work, activities, and member behavior; and the selection, education, management, and supervision of Party cadres.

27. These are 准则, 条例, 规定, 办法, 规则, or 细则.

28. Zhongguo Gongchandang Dangnei Fagui Tixi (中国共产党党内法规体系) [Internal Regulatory System of the Communist Party of China], People's Daily (Aug. 4, 2021, 7:16 AM), https://www.ccdi.gov.cn/toutiao/202108/t20210804_247639.html [<https://perma.cc/FH9R-JHVV>]. The report stated that 211 of these were central Party regulations; 163 were regulations issued by the Party's Central Discipline Inspection Committee or other central Party organizations, and 3,241 were issued by provincial-level Party committees.

29. CCP regulations define such documents broadly as any document "created by any Party organization during the performance of its duties, which is generally binding and remains applicable for a certain period of time." See Provisions of the Communist Party of China on Filing and Review of Intra-Party Regulations and Regulatory Documents, *infra* note 30, art. 2.

30. Zhongguo Gongchandang Dangnei Fagui he Guifanxing Wenjian Beian Shencha Guiding (中国共产党党内法规和规范性文件备案审查规定) [Regulations on the Recording and Review of Party Regulations and Normative Documents] (promulgated by The Gen. Off. of the CCP Cent. Comm., June 4, 2012, effective July 1, 2012; reviewed by the Politburo of the CCP, Aug. 30, 2019), art. 5, http://www.gov.cn/zhengce/2019-09/15/content_5430030.htm [<https://perma.cc/CC96-YC3E>]. Certain categories of documents, including leaders' speeches, work summaries, personnel decisions, and meeting notices and minutes are not subject to the review requirement. *Id.* art. 2.

31. Regulation on the Formulation of Internal Party Laws and Rules of the Chinese Communist Party, *supra* note 22, art. 27; Regulations on the Recording and Review of Party Regulations and

that the Party's Central Office shall be responsible for resolving any conflicts in regulations from equal-level Party entities.³² The Central Party has also issued rules on the interpretation of Party documents, which largely state that the Party entity issuing the document shall be in charge of interpretation.³³ The drafting process for Party documents broadly parallels that for State laws and regulations, with rules calling for consultation with other relevant departments as well as soliciting public input.³⁴

There is debate within China on the distinction between intra-Party regulations and other types of Party documents. Yet commentators also at times discuss these together. In the cases we reviewed, courts did not appear to draw distinctions between Party regulations and other normative documents issued by Party departments or entities.³⁵ In the discussion that follows, we refer to Party regulations and other normative documents collectively as "Party documents." The Party document system has become increasingly standardized in recent years, with new rules governing their form, how they are made, and rules of interpretation, as well as repeated efforts to review and revoke no-longer-applicable documents.³⁶ Beginning with the 18th Party Congress in 2012, the Party has also published a legislative plan for Party documents, running parallel

Normative Documents, *supra* note 30, art. 11; Snape, *Party Leadership and Legislating*, *supra* note 7, at 306–07 (noting that "the review system is a burgeoning, digitized system for checking and keeping on file important, substantive Party documents from the bottom to the top of the system").

32. Regulation on the Formulation of Internal Party Laws and Rules of the Chinese Communist Party, *supra* note 22, arts. 31–32. Article 31 of the Regulation on the Formulation of Internal Party Laws and Rules of the Chinese Communist Party states that the Party Constitution has the highest level of effectiveness, followed by central Party regulations, followed by regulations issued by the Party's Central Discipline Commission or other central Party organizations, followed by Party regulations issued by provincial-level Party committees. *Id.*

33. Zhongguo Gongchandang Dangnei Fagui Jieshi Gongzuo Guiding (中国共产党党内法规解释工作规定) [Provisions of the Communist Party of China on the Interpretation of Intra-Party Regulations] (promulgated by The Gen. Off. of the CCP Cent. Comm., July 6, 2015, effective July 6, 2015), art. 3, CLI.16.5016573 (Chinalawinfo); Regulation on the Formulation of Internal Party Laws and Rules of the Chinese Communist Party, *supra* note 22, art. 34. The one exception is that Party Regulations issued by the Central Communist Party may be interpreted either by the Central Communist Party or by a department or committee authorized to do so by the Central Party. Central Party departments and provincial Party committees are not permitted to delegate interpretations to other entities. The rules also state that any such interpretation shall have the same effectiveness as the original document. All such interpretations must be reported to the Central Party Office.

34. Regulation on the Formulation of Internal Party Laws and Rules of the Chinese Communist Party, *supra* note 22, art. 25.

35. The question of whether there are differences in court practice regarding citation to Party regulations versus other normative documents is intriguing. Although we did not observe differences in practice, the topic nevertheless is an important one for further study.

36. See Seppänen, *supra* note 7, at 300. For further discussion of the Party's legalization efforts, see Horsley, *supra* note 3. A 2021 *People's Daily* report on Party documents stated that a total of more than 32,000 intra-Party regulations and normative documents filed by local governments and departments with the Party Central Committee have been reviewed, with more than 1,400 "problem documents" discovered and handled. Internal Regulatory System of the Communist Party of China, *supra* note 28.

to the five-year plans issued by the National People's Congress.³⁷ Party documents have become greater in volume and have expanded to cover a widening range of subjects.³⁸ As Professor Seppänen notes, in recent years the Party has sought to boost the rationality of Party rules and regulations, including by seeking to establish rules to resolve conflicts between different levels of Party documents and ensuring that regulations are consistent with higher-level Party documents and the law.³⁹ Yet many Party documents remain vague and aspirational, particularly when compared to State laws and regulations.⁴⁰

In theory, Party documents and State law set forth dual, largely non-overlapping systems. Party documents govern internal Party procedures and Party member conduct, while State law governs society more generally. In reality, Party documents often set policies for and regulate a wide range of public life.⁴¹ Although Party regulations are formally limited in scope to Party affairs,⁴² such affairs necessarily influence the governance of society more generally.⁴³ No specific provisions exist regarding the form or content of “other normative

37. See *Zhonggong Zhongyang Dangnei Fagui Zhiding Gongzuo Wunian Guihua Gangyao (2013–2017)* (中共中央党内法规制定工作五年规划纲要 (2013–2017)) [Outline of the Five-Year Plan for the Formulation of Intra-Party Regulations by the Central Committee of the Communist Party of China] (issued by the Central Committee of the Communist Party of China, Nov. 2013), <https://news.12371.cn/2015/03/12/ARTI1426160913004386.shtml> [https://perma.cc/8Z2C-QW66] (last visited May 8, 2022); see also *Zhonggong Zhongyang Dangnei Fagui Zhiding Gongzuo Di'erge Wunian Guihua (2018–2022)* (中共中央党内法规制定工作第二个五年规划 (2018–2022年)) [The Second Five-Year Plan for the Formulation of Intra-Party Regulations by the Central Committee of the Communist Party of China (2018–2022)] (issued by the Central Committee of the Communist Party of China, Feb. 2018) <https://news.12371.cn/2018/02/23/ARTI1519381870199500.shtml> [https://perma.cc/XG3Q-2QS7] (last visited May 8, 2022).

38. Ye Haibo (叶海波), *Zhongguo Gongchandang Yigui Zhidang De Fazhi Jiyin Jiqi Bainian Lishi Yanjin* (中国共产党依规治党的法治基因及其百年历史演进) [The Rule-of-Law Gene of the Chinese Communist Party's Governing the Party According to Regulations and Its Century-Old Historical Evolution], 74 WUHAN DAXUE XUEBAO (ZHEXUE SHEHUI KEXUE BAN) (武汉大学学报(哲学社会科学版)) [Wuhan U. J. (Phil. & Soc. Sci.)] 23 (2021).

39. Seppänen, *supra* note 7, at 286–87. The form of such Party regulations has become increasingly law-like as well. *Id.*

40. Ke Huaqing (柯华庆), Yang Mingyu (杨明宇), *Dang Gui Xue* (党规学) [Studies On Party Regulations] 47 (2018) (noting that Party documents generally are often vague, but arguing that greater standardization is also making them more law-like).

41. Cf. Zhong Zhang, *Ruling the Country without Law: The Insoluble Dilemma of Transforming China into a Law-Governed Country*, 17 ASIAN J. COMP. L. 198, 204 (noting that “the Party can legislate on anything by itself, and its legislative power is unlimited under state laws or even by Party regulations”).

42. See Regulation on the Formulation of Internal Party Laws and Rules of the Chinese Communist Party, *supra* note 22, arts. 3–4. Article 3 also states that Party regulations “reflect the unified will of the Party,” which could be read to include the Party’s views of how the State and society should be ordered.

43. For example, Article 5 of the Regulation on the Formulation of Internal Party Law and Rules states that Party regulations may include provisions on “the important relationship in a field or important work in an aspect of the Party,” a broad statement that can include areas ranging from economic policy to national defense. *Id.* art. 5.

documents.” Party regulations state that “other normative documents” include any document created by any Party organization “during the performance of its duties.”⁴⁴

Party entities frequently issue normative documents together with State entities. Thus, the Party’s Central Office often issues important national policy documents jointly with the State Council’s Work Office. The Party’s Organization Department issues documents together with the Ministry of Personnel or Ministry of Human Resources and Social Security.⁴⁵ The Party’s Central Political-Legal Committee will at times issue documents together with the Supreme People’s Court and Supreme People’s Procuratorate. The practice remains common,⁴⁶ although scholars in China have repeatedly criticized the practice for creating confusion⁴⁷ or attempting to insulate official action from review for compliance

44. See Regulation on the Formulation of Internal Party Laws and Rules of the Chinese Communist Party, *supra* note 22. As Seppänen notes, some Party regulations do have binding effects on non-Party members. Seppänen, *supra* note 8, at 285.

45. These are the same ministry, reflecting a 2008 reorganization and name change.

46. Two articles have stated that fourteen percent of Party documents are jointly-issued with State entities and related to “matters outside the Party,” but the basis of such calculation is unclear. Ou Aimin (欧爱民), Li Dan (李丹), *Hunhexing Danggui De Zhengdangxing Zhengcheng Yu Shiyong Fanwei* (混合性党规的正当性证成与适用范围) [*The Justification and Application Scope of Mixed Party Regulations*], 1 ZHONGNAN DAXUE XUEBAO (中南大学学报) [J. CENT. SOUTH U.] 87, 87 (2020); Wang Jianqin (王建芹), Fazhi Shiye Xia de Dangnei Fagui Tixi Jianshe (法治视野下的党内法规体系建设) [Constructing a System of Party Regulations from a Legal Perspective], 3 ZHONGGONG ZHEJIANGSHENGWEI DANGXIAO XUEBAO (中共浙江省委党校学报) [J. PARTY SCH. ZHEJIANG PROVINCIAL COMMUNIST PARTY COMM.] 34, 38 (2017); see also Snape, *Party Leadership and Legislating*, *supra* note 7, at 310–11 (noting the “explosive growth” in jointly-issued documents, resulting in “a weakening of checks and constraints” that exist on State action).

47. Most scholars who examine jointly-issued documents conclude that the legal status of such documents is unclear. Some commentators explicitly state that the main purpose behind such documents is to expand the scope of Party regulations beyond just regulating the Party itself. See, e.g., Teng Teng (滕腾), *Dangnei Fagui Yu Guojia Falü Xianjie Xietiao Jizhi Yanjiu* (党内法规与国家法律衔接协调机制研究) [Research on the Connecting and Coordination of Intra-Party Regulations and State Laws], 5 Heilongjiang Shehui Kexue (黑龙江社会科学) [Heilongjiang Social Sciences] 115 (2019); see also Wang Xiaoxing (王晓星), *Shilun Dangnei Fagui Yu Guojia Falü De Xianjie Yu Xietiao* (试论党内法规与国家法律的衔接与协调) [*Discussion on the Connecting and Coordination of Intra-Party Regulations and State Laws*], 10 Fazhi Bolan (法制博览) [Broad Views on Legal Systems] 212 (2020); see also Ni Chunna (倪春纳), *Lun Wanshan Dangnei Fagui Tixi Jianshe De Lujing Xuanze* (论完善党内法规体系建设的路径选择) [Research on the Choice of Paths to Improve the Intra-Party Regulations System], 3 Kexue Shehui Zhuyi (科学社会主义) [Scientific Socialism] 69 (2019); see also Guo Shijie (郭世杰), *Dangnei Fagui Yu Guojia Falü Xianjie he Xietiao de Baozhang Jizhi* (党内法规与国家法律衔接和协调的保障机制) [The Guarantee Mechanism for the Connecting and Coordination of Intra-Party Regulations and State Law], 2 Dangnei Fagui Lilun Yanjiu (党内法规理论研究) [Intra-Party Regulation Theories Study] 69 (2019). Numerous scholars note that there is confusion about the legal status of such documents. See Tan Bo (谭波), *Dangnei Fagui Yu Guojia Falü De Xianjie He Xietiao Leixing Yanjiu – Jiyu Bufen Dangnei Fagui Yu Guojia Falü De Fenxi* (党内法规与国家法律的衔接和协调类型研究——基于部分党内法规与国家法律的分析) [Research on the Cohesion and Coordination between Intra-Party Regulations and State Laws – Based on the Analysis of Certain Intra-Party Regulations and State Laws], 2 Jiangnan Xueshu (江汉学术) [Jiangnan Academy] 52 (2019); see also Wang Hao (王浩) Tang Meiling (唐梅玲), *Lun Dangnei Fagui De Jieshi Zhuti* (论党内法规的解释主体) [On the Entity for Interpreting Party Regulations Interpretations], 5 Heilongjiang Shehui Kexue (黑龙江社会科学) [Heilongjiang Social Sciences] 110 (2019); Chen Zhiying (陈志英), *Dangnei Fagui Jieshi Tizhi Yanjiu* (党内法规解释体

with the law or the Constitution.⁴⁸ Some scholars, however, have defended the practice as emblematic of China's unique approach to legal development.⁴⁹ The legal status of such documents is debated, with most scholars who have examined the issue suggesting that such jointly-issued documents should be treated as Party documents.⁵⁰ Scholars have noted that such documents cannot be considered to

制研究) [*Research on the Interpretation System of Intra-Party Regulation*], 2 *Dangnei Fagui Lilun Yanjiu* (党内法规理论研究) [*Research on Intra-Party Regulation Theories*] 71 (2019); see also Liu Yichun (刘一纯), *Lun Dangnei Fagui Zhiding Tizhi De Wanshan – Yi Lifafa Wei Jiejian* (论党内法规制定体制的完善——以《立法法》为借鉴) [*On the Perfection of the Intra-Party Regulation System—Referring to The Law On Legislation*], 4 *Zhongguo Kuangye Daxue Xuebao* (中国矿业大学学报) [*J. CHINA U. MINING & TECH.*] 34 (2018).

48. Chen Hongmei (陈红梅), *Dangnei Fagui Yu Guojia Falü Guanxi De Jiedu – Yi Erjie Guan찰理论为视角* [*Interpretation of the Relationship Between Intra-Party Regulations and National Laws - From the Perspective of Second-order Observation Theory*], 5 *XIANGJIANG QINGNIAN FAXUE* (湘江青年法学) [*J. XIANGJIANG YOUTH*] 179 (2020); see also Zhang Hongsong (张洪松), *Dangzheng Jigou Gaige Beijing Xia de Dangnei Fagui yu Guojia Falü Xianjie Yanjiu* (党政机构改革背景下的党内法规与国家法律衔接研究) [*Research on the Fusion of Party Regulations and State Laws in the Context of Party and State Institutional Reform*], 4 *J. SW. MINZU U. (HUMAN. & SOC. SCI.)* 124, 127 (2021).

49. A few scholars have praised the practice, arguing that jointly-issued documents are an embodiment of “socialism with special Chinese characteristics.” One article argued that the practice is “a good product of China's legal construction under the leadership of the Communist Party.” Ou Aimin & Li Da, *supra* note 46, at 87. Yet most such praise of the practice does little more than describe the documents as emblematic of a uniquely Chinese approach. See, e.g., Zhang Zhiyuan (章志远), *Dangnei Fagui Xue Xueke Jianshe Sanlun* (党内法规学学科建设三论) [*Three Views on the Establishment of Intra-Party Regulation Studies*], 4 *SHANGHAI ZHENGFA XUEYUAN XUEBAO* (上海政法学院学报) [*J. SHANGHAI U. POL. SCI. & L.*] 99 (2019); see also Zhang Zhiyuan (章志远), *Dangnei Fagui Zai Gonggong Weisheng Fazhi Tixi Zhong De Zuoyong Lunxi* (党内法规在公共卫生法治体系中的作用论析) [*An Analysis of the Role of Intra-Party Regulations in the Public Health Legal System*], 3 *Fazhi Yanjiu* (法治研究) [*Research On The Rule Of Law*] 15 (2020) (stating that jointly-issued documents “provide a normative basis for a Party-State responsibility system with special Chinese characteristics”); Wang Yaoyu (王隽宇), *Xinshidai Dangnei Fagui Tong Guojia Falü Xianjie He Xietiao De Shixian Lujing* (新时代党内法规同国家法律衔接和协调的实现路径) [*The Way to Realize the Connection and Coordination between the Intra-Party Regulations and the National Laws in the New Era*], 5 *Xuexi Luntan* (学习论坛) [*Study Forum*] 89 (2019) (stating that the practice “realizes the organic integration and unity” of Party regulations and State law).

50. Ou Aimin (欧爱民), Li Dan (李丹), *supra* note 46 (summarizing the literature and stating that joint documents are Party documents and arguing that there can be no third category of documents beyond Party documents and legal documents); Xu Xiang (徐翔), *Dangnei Fagui De Ruanfa Dingwei Yu Ruanfa Zhizhi De Youhua Zhidao* (党内法规的软法定位与软法之治的优化之道) [*The Soft Law Position of the Party's Regulations and the Way to Optimize the Soft Law Governance*], 3 *Zhili Xiandaihua Yanjiu* (治理现代化研究) [*Governance Modernization Research*] 25 (2020) (stating that although jointly-issued documents have some features of law, they remain in essence Party documents); Ou Aimin (欧爱民), Zhao Xiaofang (赵筱芳), *Lun Dangnei Fagui De Shibie Biaozhun* (论党内法规的识别标准) [*On the Identification Standards of the Party's Regulations*], 3 *HUNAN KEJI DAXUE XUEBAO* (湖南科技大学学报) [*J. HUNAN U. SCI. & TECH.*] 35 (2019) (stating that jointly-issued documents should be categorized as Party documents); Ji Yaping (姬亚平), Zhi Hanjian (支蒯箴), *Lun Dangnei Fagui Yu Guojia Falü De Xietiao He Xianjie* (论党内法规与国家法律的协调和衔接) [*On the Coordination and Connection of Intra-Party Regulations and State Laws*], 1 *Hebei Faxue* (河北法学) [*Hebei Study Of Law*] 30 (2018). Prior to 2019, some of the criticism of the practice focused on the fact that there was no basis for jointly-issuing documents in the Regulation on the

be law because they are enacted without following the procedures set forth in law.⁵¹ Others, however, contend that jointly-issued documents can be understood as being binding in ways that purely Party-issued documents are not, as either

Formulation of Internal Party Laws and Rules of the Chinese Communist Party. As amended in 2019, however, the Rules now include explicit authorization of the practice. *See* Regulation on the Formulation of Internal Party Laws and Rules of the Chinese Communist Party, *supra* note 22, art. 3; *see also* Feng Zhuo (奉卓) & Yu Zhurui (禹竹蕊), Lun Dangzheng Lianhe Fawen de Dangnei Fagui de Shuxing Jiqi Xiaoli (论党政联合发文的党内法规的属性及其效力) [Discussing the Effectiveness and Attributes of Party Regulations Jointly-Issued by the Party and the Government] (2022), JUECE YU XINXI (决策与信息) [DECISION-MAKING AND INFORMATION] (noting that documents can be classified as Party-issued or State-issued depending on the document number).

51. Tu Kai (屠凯), *Dangnei Fagui De Er Zhong Shuxing: Falü Yu Zhengce* (党内法规的二重属性:法律与政策) [*The Dual Nature of Internal Party Regulations: Law and Policy*], 5 ZHONGGONG ZHEJIANG SHENGWEI DANGXIAO XUEBAO (中共浙江省委党校学报) [J. ZHEJIANG PROVINCIAL PARTY SCH. CCP] 52 (2015); *see also* Qin Qianhong (秦前红), Su Shaolong (苏绍龙), *Dangnei Fagui Yu Guojia Falü Xianjie He Xietiao De Jizhun Yu Lujing* (党内法规与国家法律衔接和协调的基准与路径) [*The Benchmarks and Paths for the Convergence and Coordination of Intra-Party Regulations and State Laws*], 5 Falü Kexue (法律科学) [Legal Science] 21 (2016).

formal law or as both Party policy and law.⁵² Still others argue that such documents should be understood as having a dual nature.⁵³

52. Jin Guokun (金国坤), *Dangzheng Jigou Tongchou Gaige Yu Xingzhengfa Lilun De Fazhan* (党政机构统筹改革与行政法理论的发展) [*The Overall Reform of Party and Government Institutions and the Development of Administrative Law Theory*], 5 Xingzheng Faxue Yanjiu (行政法学研究) [Administrative Law Research] 3 (2018) (noting that in practice such documents often provide many of the substantive rules needed to resolve administrative law disputes); Wang Lifeng (王立峰), *Fa Zhengzhi Xue Shiyu Xia Dangnei Fagui He Guojia Falü De Xianjie Yu Xietiao* (法政治学视域下党内法规和国家法律的衔接与协调) [*The Connection and Coordination of the Inner Party Regulations and National Laws from the Perspective of Law and Politics*], 3 Jilin Daxue Shehui Kexue Xuebao (吉林大学社会科学学报) [J. SOC. SCI. JILIN U.] 12 (2019) (stating that jointly-issued documents are both Party documents and law); Guo Chunzhen (郭春镇), Zeng Yucheng (曾钰诚), *Danggui Zhongde Fali Siwei* (党规中的法理思维) [*Legal Thinking in Party Regulations*], 1 Lilun Tansuo (理论探索) [Theoretical Exploration] 26 (2019) (stating that such documents are neither Party documents nor administrative regulations, but should be considered to be binding normative documents).

A few scholars look to the written form and document number of such documents to determine if they should be treated as Party documents or State regulations, or look to whether the documents are published in collections of Party documents. Chen Haisong (陈海嵩), *Huanbao Ducha Zhidu Fazhihua: Dingwei, Kunjing Jiqi Chulu* (环保督察制度法治化：定位、困境及其出路) [*Legalization of Environmental Protection Inspection System: Positioning, Dilemma and Way Out*], 3 Faxue Pinglun (法学评论) [Legal Comments] 176 (2017); Chen Zhiying (陈志英), *Lun Dangnei Tiaoli Tixi Jianshe De Wanshan* (论党内条例体系建设的完善) [*On the Improvement of the Construction of the Party's Regulation System*], 4 Zhongguo Kuangye Daxue Xuebao (中国矿业大学学报) [J. CHINA U. MINING & TECH.] 23 (2018); Ou Aimin (欧爱民), Zhao Xiaofang (赵筱芳), *Lun Dangnei Fagui Qingli De Gongneng, Kunjing Yu Chulu* (论党内法规清理的功能、困境与出路) [*On the Function, Predicament and Outlet of the Clean-up of Party Regulations*], 3 Shanghai Zhengfa Xueyuan Xuebao (上海政法学院学报) [J. SHANGHAI U. POL. SCI. & L.] 123 (2019). We follow this approach in our discussion below. Others look to whether such documents have been included in Party official publications of selected party documents, using such publication to contend that such documents should be understood to be Party documents. See also Ou Aimin (欧爱民), Zhao Xiaofang (赵筱芳), *Lun Dangnei Fagui De Shibie Biaozhun* (论党内法规的识别标准) [*On the Identification Standards of the Party's Regulations*], 3 Hunan Keji Daxue Xuebao (湖南科技大学学报) [J. HUNAN U. SCI. & TECH.] 35 (2019).

There is a related debate about the appropriate role of “state policy” (国家政策) in court decisions. Article 6 of the 1986 General Principles of the Civil Code states that civil actions must respect law, and in the absence of legal regulations must respect State policy. The provision was eliminated when the General Principles were replaced by the General Provisions of the Civil Law (民法总则) in 2017. For a discussion of the history behind the revision and an argument that the article reflected the historical period and lack of a full legal framework at the time of adoption, see Liu Guixiang (刘贵祥), *Minfadian Shishi De Ruogan Lilun Yu Shijian Wenti* (民法典实施的若干理论与实践问题) [*Several Theoretical and Practical Issues Concerning the Implementation of the Civil Code*], 15 Falü Shiyong (法律适用) [Application Of Law] 3 (2020). Numerous other laws likewise refer to State policy. Yang Tongtong (杨铜铜), *Lun Tixi Jieshi Guize De Yingyong Zhankai* (论体系解释规则的应用展开) [*On the Application of Systematic Interpretation Rules*], 2 Falü Fangfa (法律方法) [Legal Method] 190 (2020). Some scholars have contended that “state policy” only includes documents issued by the State, or jointly-issued documents and not Party documents alone. Li Min (李敏), *Minfa Shang Guojia Zhengce Zhi Fansi* (民法上国家政策之反思) [*Introspection of State Policy in Civil Law*], 3 Falü Kexue (法律科学) [Legal Science] 96 (2015). But there has been little study of actual court practice.

53. See e.g., Xu Xingui (徐信贵), *Dangzheng Lianhe Fawen de Beian Shencha Wenti* (党政联合发文的备案审查问题) [*On Filing and Reviewing the Documents Issued Jointly by the Party and*

Whether or not courts are formally permitted to cite to Party documents is unclear. Court rules set forth the types of documents that courts may cite in issuing decisions. These rules state that in issuing decisions courts may only rely on legal normative documents (or normative documents of a legal nature) (法律性规范性文件), seeming to suggest that only State laws and regulations may form the basis of court judgments. Yet a 2009 Supreme People's Court interpretation also states that "as the need arises" courts may cite "other normative documents,"⁵⁴ perhaps opening the door to formal reliance on Party documents, or at least to jointly-issued documents.⁵⁵

The question of whether courts may cite Party documents in their decisions has received little detailed study. Although no rules explicitly ban citation to Party documents, it has been widely assumed that it is improper for courts to cite Party documents in court judgments and that, in practice, courts do not do so.⁵⁶ We

the Government], 3 Lilun yu Gaige (理论与改革) [Theory and Reform] 87 (2020); *see also* Tu Kai, *supra* note 51.

54. Zuigao Renmin Fayuan Guanyu Caipan Wenshu Yinyong Fagui Deng Guifan Xing Falü Wenjian De Guiding (最高人民法院关于裁判文书引用法律、法规等规范性文件的规定) [Provisions of the Supreme People's Court on the Citation of Normative Legal Documents such as Laws and Regulations in Judicial Decisions] (July 13, 2009), [https://perma.cc/68BM-KXTT] (last visited Feb. 7, 2024).

55. The National People's Congress has suggested that its own definition of "other normative documents" includes Party documents. *See Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui Fazhi Gongzuo Weiyuanhui Guanyu 2019 Nian Bei'an Shenchu Gongzuo Qingkuang De Baogao* (全国人大常委会常务委员会法制工作委员会关于2019年备案审查工作情况的报告) [Report of the Legislative Affairs Committee of the Standing Committee of the National People's Congress on the Work of Filing and Review in 2019], Quanguo Renmin Daibiao Dahui (全国人民代表大会) [NPC.gov.cn] (Dec. 31, 2019) [https://perma.cc/8W9M-3BE8] ("Our country has established a comprehensive review system composed of the Party, the NPC, the government, and the army, whose scope of review covers all normative documents ... The general framework is as follows ... Central and local party agencies are responsible for reviewing and filing party regulations and other normative party documents"). But the NPC has not stated that this definition applies to the courts.

56. *See, e.g.,* Liu Changqiu (刘长秋), *Dangnei Fagui Yu Guojiafa: Guanlian, Qubie Jiqi Guanxi Zhi Xietiao* (党内法规与国家法：关联、区别及其关系之协调) [Intra-Party Regulations and State Laws: Relations, Differences and Coordination of Relationship], 3 Zhili Xiandaihua Yanjiu (治理现代化研究) [Research on Governance Modernization] 19 (2020) ("party documents cannot be the basis for administrative action, prosecutorial action, or judicial decisions; no matter inside or outside the party"); Ji Yaping (姬亚平), *Falü Duoyuan Zhuyi Shijiao Zhongde Dangnei Fagui* (法律多元主义视角中的党内法规) [Intra-Party Regulations from the Perspective of Legal Pluralism], 6 Shanghai Zhengfa Xueyuan Xuebao (上海政法学院学报) [J. SHANGHAI U. POL. SCI. & L.] 124 (2019) ("party documents belong to a system parallel to the judiciary: they are not reviewed, applied, or enforced by the courts"); Zhi Zhenfeng (支振锋), *Dangnei Fagui De Zhengzhi Luoji* (党内法规的政治逻辑) [The Political Logic of Party Regulations], 3 Zhongguo Falü Pinglun (中国法律评论) [CHINA L. REV.] 42 (2016) ("the character '内' in 党内法规 means that such rules are only carried out within the party, and not in courts"); Wang Chunye (王春业), *Hexianxing Shenchu Zhidu Goujian Lungang* (合宪性审查制度构建论纲) [On the Establishment of the Constitutional Review System], 1 Fujian Xingzheng Xueyuan Xuebao (福建行政学院学报) [J. FUJIAN SCH. ADMIN.] 29 (2018) ("party documents are not legal sources upon which courts may base a judgment, and the logic follows that courts do not get to review them for legality"); Jiang Feng, *supra* note 7 (stating that Party regulations "cannot be directly used as the basis for handling specific cases by the judicial organs of the state. . . [s]hould this happen, the certainty of the law would be shaken" but noting that courts may follow Party regulations without formally citing to them); Zhang, *supra* note 41, at 204 (noting that "only related state laws but not Party documents would be cited as the legal grounds for judicial punishment").

found only two scholarly articles that explicitly stated that Party documents may be cited by courts, although one of the articles argues that only certain documents that have the status of being “applicable” may be cited.⁵⁷ Some scholars have suggested that it is permissible for courts to cite jointly-issued documents in administrative litigation.⁵⁸ Likewise, there is virtually no existing academic analysis of actual practice. We located only four articles, one in English and three in Chinese, that discuss the actual practice of courts citing Party documents, both of which examine a relatively small number of cases.⁵⁹

57. Fan Yang, The Role of CCP Regulations in Chinese Judicial Decisions, 19 CHINA REV. no. 2, 69 (2019); Guo Shijie (郭世杰), *Lun Dangnei Fagui Xiang Guojia Falü Zhuanhua De Juti Lujing* (论党内法规向国家法律转化的具体路径) [*On the Specific Path of Transformation of Inner Party Regulations to National Law*], 1 Zhonggong Fujian Shengwei Dangxiao Xuebao (中共福建省委党校学报) [J. COMMUNIST PARTY SCH. FUJIAN PROVINCIAL COMMITTEE], 40 (2018). The article stated that most Party documents do not qualify as “quasi-legal rules” but noted that courts do at times cite to a range of Party documents. The article notes that certain Party documents may be applicable, using the Chinese term 准用性规则.

58. Jin Guokun (金国坤), *Dangzheng Jigou Tongchou Gaige Yu Xingzhengfa Lilun De Fazhan* (党政机构统筹改革与行政法理论的发展) [The Overall Reform of Party and Government Institutions and the Development of Administrative Law Theory], 5 Xingzheng Faxue Yanjiu (行政法学研究) [Admin. L. Res.] 3 (2018) (discussing a number of jointly-issued documents that set forth specific duties and responsibilities for government officials and arguing that such documents should serve as legal basis in administrative litigation).

59. To our knowledge, only three articles in Chinese have examined court practice regarding citation of Party documents. See Guo Shijie (郭世杰), *Lun Dangnei Fagui Xiang Guojia Falü Zhuanhua De Juti Lujing* (论党内法规向国家法律转化的具体路径) [*On the Specific Path of Transformation of Inner Party Regulations to National Law*], 1 Zhonggong Fujian Shengwei Dangxiao Xuebao (中共福建省委党校学报) [J. COMMUNIST PARTY SCH. FUJIAN PROVINCIAL COMMUNIST PARTY COMMITTEE], 40 (2018); Zhang Song (张松), *Sifa Caipan Zhong Dangnei Fagui de Shiyong Yanjiu: Jiyu 304 Fen Caipan Wenshu de Fenxi* (司法裁判中党内法规的适用研究——基于304份裁判文书的分析) [*Study on the Application of Intraparty Rules and Regulations in Judicial Judgments*], 2 Dangnei Fagui Yanjiu (党内法规研究) [Research on Intraparty Regulations] 79 (2023); Luo Luyao (罗露瑶), *Caipan Wenshu Yuanyin Dangnei Fagui he Guifanxing Wenjian de Leixinghua Yanjiu: Jiyu Falü Lunzheng de Shijiao* (裁判文书援引党内法规和规范性文件的类型化研究——基于法律论证的视角) [*On the Typology of Citation of Intraparty Rules and Regulations and Normative Documents in Adjudication Documents: From the Perspective of Legal Argumentation*], 2 Dangnei Fagui Yanjiu (党内法规研究) [Research on Intraparty and Regulations] 90 (2023). The term search used in one of the articles resulted mostly in cases in which Party documents were identified in the facts section of the opinion, not the holding. This is because the author looked for the terms “party regulation” 党内法规和 “party document” 党的文书, not the titles of specific documents. Guo Shijie, *supra*. A second, more-recent, article examined 304 cases and focused on how courts responded to claims by litigants that Party documents should be applied. Zhang Song, *supra*. The third article analyzed 822 cases citing intraparty regulations and normative documents, categorizing these citations into three main types. It also discussed the challenges of using intraparty regulations and normative documents in Chinese judicial rulings. Luo Luyao, *supra*. One prior article in English examines court practice in citing Party documents but limits its analysis to counting cases by type. See Fan Yang, *supra* note 57.

Scholars of Chinese law outside of China have, until recently,⁶⁰ devoted little attention to rules and other normative documents issued by the Communist Party. In part, this was because obtaining access to such documents has often been difficult. Over the past twenty years, however, Party rules have become not just more detailed but also more readily available. Today Party rules call for most such documents to be made publicly available, and major legal databases include thousands⁶¹ of documents issued by the central office of the Party, central Party departments, or local Party committees or entities. Although scholars recognize the Party's influence on the legal system, the few scholars to address the issue state that Party documents are not law.⁶² A few scholars have noted that courts do, at times, cite Party documents or joint documents, in particular, to fill in the gaps in unclear law.⁶³ One article that examines court practice of citing Party documents notes that courts are permitted to cite "other normative documents" and thus concludes that citations to Party documents are permitted.⁶⁴ We believe the answer remains ambiguous. In practice, however, courts do cite Party documents in a wide range of situations. In the discussion that follows, we shift the focus to actual court practice.

60. Exceptions include Seppänen, *Interrogating Illiberalism Through Chinese Communist Party Regulations*, *supra* note 7; Seppänen, *Disorientation for the New Era*, *supra* note 3; Smith, *supra* note 7; and Finder, *supra* note 2, at 151.

61. The pkulaw.cn (北大法宝) database includes more than 6,000 documents that it classifies as Party rules and regulations, virtually all of which are documents issued by the Central Party or Central Party organizations. We know that this collection is not complete, because numerous documents cited in the court cases we examined are not available in the database.

62. For example, Albert Chen states that Party policy documents should not be considered part of Chinese law, although he acknowledges that such documents at times are "followed and applied by the courts." Albert H. Y. Chen, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PRC 113–155 (2019). In separate work, Professor Chen states that Party documents are not "enforceable before the courts of law." Albert H. Y. Chen, Book Review, The Reform and Renewal of China's Constitutional System (Zhongguo xianzhi zhi weixin 中国宪制之维新), 16 INT'L. J. CONST. L. 728, 729 (2018). Perry Keller, in his classic work on lawmaking in China, argues that Party documents are not formal law, but notes that such documents influence the interpretation of Chinese law. See Perry Keller, *Sources of Order in Chinese Law*, 42 AM. J. COMP. L. 711, 711–59 (1994); see also George G. Chen & Matthias Stepan, *Ruling the Country by Red-letterhead Documents?*, ASIA DIALOGUE (2017), <https://theasiadialogue.com/2017/09/19/ruling-the-country-by-red-letterhead-documents/> (last visited June 23, 2020) (stating that Party documents are "not legally-binding rules of the country in the sense of a 'law' or 'regulation' although they are helpful for interpreting the law and for identifying legislative trends"); Matthew S. Erie, *Anticorruption as Transnational Law: The Foreign Corrupt Practices Act, PRC Law, and Party Rules in China*, 67 AM. J. COMP. L. 233, 251 (2019) (characterizing Party rules as "extralegal"). Xiaodan Zhang notes that the legal status of Party regulations is unclear, observing that in the anti-corruption context Party regulations are at times stricter than State law. See Xiaodan Zhang, *Rule of Law Within the Chinese Party-State and Its Recent Tendencies*, 9 HAGUE J. RULE L. 373, 394 (2017).

63. Horsley, *supra* note 3; Shucheng Wang, *The Judicial Document as Informal State Law: Judicial Lawmaking in China's Courts*, CITY U. HONG KONG CTR. FOR CHINESE COMPAR. L. RSCH. PAPER SERIAL NO. 2020010 (2020) 36, <https://papers.ssrn.com/abstract=3607021>.

64. Fan Yang, *supra* note 57. Writing in 1999, Margaret Woo likewise noted that courts may turn to Party policy when "there is no applicable law or when the Party's policy is better fitted to the case." Margaret Woo, *Law and Discretion in the Contemporary Chinese Courts*, 8 PAC. RIM L. POL'Y J. 581, 592 (1999).

II. PARTY DOCUMENTS IN THE COURTS

Given the uncertain legal status of Party documents, what do Chinese courts do in practice? When do Chinese courts cite and rely on Party documents in their decisions, and how do they use citations to Party documents to support their judgments? Although many have assumed that courts avoid citing Party documents, actual practice tells a different story. Courts cite Party documents to resolve a range of disputes, from the contentious to the mundane. Some cases reflect historical legacies as courts struggle to resolve decades-long disputes. Others reflect contemporary social issues. Often courts rely on Party documents as the sole or primary legal basis for deciding a case. Yet courts are not uniform in their approach. While some courts treat the application of Party documents as routine, others explicitly reject doing so, arguing that Party documents cannot be treated as legally binding.

A. Methodology

To identify cases citing Party documents, we extracted a list of all such documents cited in the holding section⁶⁵ of court opinions in our database of 42 million court judgments, covering cases made public between January 1, 2014, and September 2, 2018.⁶⁶ We did this by searching for the terms “party” (党) or “Communist Party” (中共) within double quotation marks (书名号).⁶⁷ This

65. Chinese court judgments follow a standardized format, with the decision first summarizing each party’s arguments and then the court presenting its own analysis of the holding, followed by a declaration of the outcome. Courts cite laws both in the holding section and in the portion of the decision that states the outcome. The holding (sometimes referred to as the “reasoning” section) portion of a judicial decision begins with “In this court’s opinion (本院认为)” and ends before “according to . . . law, the court decides as follows (根据某法, 判决如下).”

Although Chinese scholars sometimes distinguish between the legal reasoning for a decision (裁判说理) and the legal basis (裁判依据) for a decision, with the latter being used to describe laws cited just before the court declares the outcome of a case, we treat the concepts together here because in many cases the Party document cited in the legal reasoning section of the case is the only or primary basis of the court’s decision.

66. We discuss the database in more detail elsewhere. See Benjamin L. Liebman, Rachel Stern, Xiaohan Wu & Margaret Roberts, *Rolling Back Transparency in China’s Courts*, 123 COLUM. L. REV. 2407, 2440–42 (2023); Rachel E. Stern, Benjamin L. Liebman, Margaret E. Roberts & Alice Z. Wang, *Automating Fairness? Artificial Intelligence in the Chinese Courts*, 59 COLUM. J. TRANSNAT’L L., 515, 535–36 (2021); Benjamin Liebman, Margaret Roberts, Rachel Stern & Alice Wang, *Mass Digitization of Chinese Court Decisions: How to Use Text as Data in the Field of Chinese Law*, 8 J. L. & CTS. 177 (2020); Xiaohan Wu, Margaret E. Roberts, Rachel E. Stern, Benjamin L. Liebman, Amarnath Gupta & Luke Sanford, *Addressing Missingness in Serialized Bureaucratic Data: The Case of Chinese Courts* 4–5 (21st Century China Ctr., Working Paper No. 2022-11, 2022), <https://ssrn.com/abstract=4124433> [<https://perma.cc/3KAHDUFY>].

67. We ran three separate searches. One was for the term “Party (党),” which yielded a mixture of national Party documents and sub-national Party documents. The second search was for the term “China Central Communist (中共中央),” which is a commonly-used short-form of “China Central Communist Party,” and mostly yielded national Party documents. The third search was for the term

reflects the fact that when courts rely on Party documents in their holdings, they cite to them in the same format as they cite to laws. Through this initial search, we identified 1,496 different cited Party documents.⁶⁸ Our dataset includes 5,241 cases that cite at least one of these documents. We believe this search captures the majority of Party documents cited by courts because the standard title of a Party document virtually always includes one or both of these keywords.⁶⁹ We then categorized the documents as national Party documents issued by a national-level Party entity, local Party documents, Party meeting records,⁷⁰ and other documents that reference the Party but which were not Party documents.⁷¹

We read 1,966 cases citing Party documents. Of these, 1,486 cases cited national Party documents, 448 cases cited local Party documents, and 32 cases cited Party meeting records. We set forth our methodology in more detail in Appendix C.⁷²

Our data cannot tell us how often courts rely on Party documents. Courts may base their decisions on Party documents without citing them in decisions. Likewise, we cannot estimate how often courts include citations to Party documents in court judgments because our data are incomplete. Courts placed

“China Communist (中共)” without the term “central (中央),” which yielded mostly sub-national Party documents. Because document titles often vary slightly, we manually reviewed all document titles and combined those that in fact cite to the same document. The figure of 1498 total documents refers to distinct documents. Checking all variations of every document’s title in 42 million cases is extremely time-consuming. We narrowed our search of cases down to a dataset of 166,552 cases where “Party (党),” “China Central Communist (中共中央),” or “State Council (国务院)” appeared in the holding portion of the dataset. We included “State Council 国务院” in this dataset because the term commonly appears in jointly-issued documents; in some cases courts use abbreviated forms of Party document titles that may omit the terms “Party” or “China Central Communist.” After identifying all cited documents, we manually reviewed all such documents to combine citations to the same document, as courts often use slightly different citation formats or document titles in referring to the documents.

68. We believe that our database includes all cases made public on the Chinese courts’ official platform, *wenshu.court.gov.cn*, from January 1, 2014 through September 2, 2018.

69. It is possible that, when referring to a Party document, a court only uses an abbreviated name that omits the reference to “党” or “中共中央.” For example, instead of saying “Opinions of the CCP Central Committee and the State Council on Creating a Better Development Environment for Private Enterprises,” the court might refer to the document as “Opinion on Creating a Better Development Environment for Private Enterprises.” Because we search for all unique document titles as long as they were cited once in any decision, however, this caveat only applies to Party documents that have only been cited in an abbreviated form. It is thus possible that courts cite to more Party documents than just those we located. Additionally, because our search captures titles of documents by looking for double quotation marks, it is possible that some inadvertent references to Party documents without using the standard form of double quotes are omitted.

70. Sixty-two of the cited cases, appearing in 127 cases, were to national or sub-national Party meeting records – notes from Party meetings that are often released after a meeting. As noted below, these were virtually always mentioned in non-substantive ways that did not affect the outcome of the case.

71. These other documents include documents such as references to the Falungong’s “Nine Criticisms of the Communist Party (九评共产党)” or documents that Parties to a case fabricated. Our dataset includes 446 such documents.

72. Our appendices are available online at <http://tinyurl.com/yfh3shhj>.

roughly 49 percent⁷³ of cases online in the period covered by our data. Nevertheless, our data do offer insights into other questions: In what types of cases do courts choose to make their reliance on Party documents public? How do courts use Party documents to support their decisions?

A. Findings

Close reading of nearly 1,500 cases revealed four broad categories of cases in which courts cite Party documents. First, courts rely on Party documents to resolve historical disputes, in particular disputes concerning land, and property. Second, courts rely on Party documents to resolve a wide range of routine or mundane disputes or questions: personnel disputes, disputes regarding business licenses, or the appropriate party in a contract case. These cases reveal both the reach of Party rules and regulations, and that much regulation occurs far from issues that English language scholarship most commonly identifies as political. Third, courts cite Party documents to mirror Party policies and align outcomes with current Party policy goals, or to resolve hot-button social issues, most notably land takings. Fourth, a small number of courts explicitly refuse to apply Party documents, arguing either that Party documents are not law or that courts lack jurisdiction over such matters. Although such cases are rare, they suggest that there is at least some pushback to the use of Party documents in deciding cases. We discuss each of these categories of cases below.

We also coded the cases based on how courts used the cited Party document: as the primary legal basis for the decision, as a supplemental legal basis for a decision, to reject jurisdiction or refuse to apply a Party document,⁷⁴ or in a non-substantive fashion such as mentioning a document in the procedural or factual history.⁷⁵ Appendix A, covering national Party documents, and Appendix B,

73. This estimate is based on the total number of files we have in our data from 2014 to 2017 divided by the total number of cases filed in the same period according to 全国法院司法统计公报 (National Court Judicial Statistics Bulletin).

74. Cases in which courts deny jurisdiction or refuse to treat a Party document as law are marked separately in the Appendices. In our discussion below we discuss these cases together, as there are very few cases in which courts explicitly state that Party documents are not law.

75. Most often mentions of Party documents arose because one litigant had cited the document, but the court did not rely on the document to resolve the case. Although this group of cases is large, one-third of them arose from two large case strings involving a single Party document. We use “case string” to describe cases brought by different plaintiffs against the same defendant over the same factual dispute. Liebman et al., *Mass Digitization*, *supra* note 66. In practice, Chinese courts do not join such actions together but record them as separate cases with different case IDs. Such cases essentially concern the same factual circumstances, are heard by the same panel of judges, receive exactly the same disposition, and result in judicial opinions with identical text. Usually, the case identifying numbers are sequential in such cases.

In a series of actions in Beijing in 2015, more than 90 individual plaintiffs sued a company in a labor contract dispute. *See, e.g.*, Yan v. Beijing Jing Mei Group Co., Ltd. (闫某诉北京京煤集团有限责任公司), Beijing Mentougou Dist. People’s Ct. (北京市门头沟区人民法院), (2015) 门民初字第828号, Mar. 19, 2015 (China); Chang v. Beijing Jing Mei Group Co., Ltd. (常某诉北京京煤集团有限责任公司

detailing local Party documents, list the number of cases we read and the role the Party document plays in court decisions for each document.⁷⁶ Table 1 shows the breakdown of how courts relied on Party documents and also distinguishes between court reliance on documents issued by Party entities alone and documents jointly-issued by Party and State entities.⁷⁷

公司), Beijing Mentougou Dist. People's Ct (北京市门头沟区人民法院), (2015) 门民初字第957号, Apr. 20, 2015 (China); Li v. Beijing Jing Mei Group Co., Ltd. (李某诉北京京煤集团有限责任公司), Beijing Mentougou Dist. People's Ct (北京市门头沟区人民法院), (2015) 门民初字第1204号, Apr. 14, 2015 (China)(2015) 门民初字第1204号 ((2015) Men Min Chu Zi No. 1204). These cases resulted in 163 judgments from the two courts that were identical except for the plaintiffs' names. Each of these decisions mentioned the same Party document as part of the factual backdrop to the case. See *Zhonggong Zhongyang Bangongting, Guowuyuan Bangongting Guanyu Jinyibu Zuohao Ziyuan Kujie Kuangshan Guanbi Pochan Gongzuo De Tongzhi* (中共中央办公厅、国务院办公厅关于进一步做好资源枯竭矿山关闭破产工作的通知) [Notice of the General Office of the Central Committee of the Communist Party of China and the General Office of the State Council on Furthering the Closure and Bankruptcy of Resource-Exhausted Mines], [https://perma.cc/74F4-9T8W] (last visited Apr. 1, 2021). The remaining 302 cases in this category are spread relatively evenly among the other 87 national documents. Supreme People's Court regulations state that the names of individuals involved in litigation should be redacted. In some cases in our database, court decisions include full names, not just redacted names. In citing to these cases, we redact these given names to comply with regulations.

76. Both appendices are online at <http://tinyurl.com/yfh3shhj>. Appendices A and B also show whether a document was issued solely by a Party entity or was jointly-issued with a government department.

Of the national documents, 26 were issued solely by the Party. The remaining 60 documents were jointly-issued documents. Most official documents in China carry a document number that indicates the entity that issued the documents and the year. Of the jointly-issued documents, 51 carried a document number that indicated that it was a Party document and 3 carried a government document number. We were unable to locate a document number for 6 national Party documents. Of the local documents, 16 were issued solely by the Party. The remaining 160 were jointly-issued documents. Of these, 9 carried a document number that indicated it was a Party document. Seven jointly-issued documents carried a document number that indicated it was a government document. We were unable to locate a document number for 144 documents, usually because we could not find the original document online.

There is no official public source for Party documents and no consistent practice of making such documents public. The official Communist Party Member's Website includes a page for Party regulations and documents, although it is not comprehensive. As of January 2024, the site only went back to 2012, and included 156 party regulations and 454 other normative documents. <https://www.12371.cn/special/dnfg/>; <https://perma.cc/2AZ2-K7WC>. Many of the cited national documents can be located within the 北大法宝 (pkulaw.cn) database, although in some cases the versions in the database do not include document numbers that would indicate which entity issued the document. In many cases, we relied on internet searches to locate Party documents. At times such documents can be found on local government websites, personal blogs, or sources such as 百度百科 (Baidu Baike) and 百度文库 (Baidu Wenku).

77. More work remains to be done to understand why some documents are issued solely by the Party, and others are jointly-issued. We include the distinction because some scholars have suggested that it is less surprising—or more permissible—for courts to treat a jointly-issued document as legally binding. We are less convinced that this distinction matters, though future scholarship may want to examine whether courts themselves differentiate between solo and jointly-issued Party documents. We would also be interested to see if the volume of jointly-issued documents increases as a result of the continued fusion of Party norms with legal rules.

Table 1: Court Citations to Party Documents by Type of Citation

		Primary / Sole Legal Basis	Supplemental Legal Basis	No Jurisdiction / Not Law	Non- substantive
National Party Documents	Solely Issued by a Party Entity	33 cases (15%)	95 cases (45%)	27 cases (13%)	58 cases (27%)
	Jointly- Issued with Party Document Number	433 cases (36%)	323 cases (27%)	58 cases (5%)	376 cases (32%)
	Jointly- Issued with Government Document Number	23 cases (70%)	4 cases (12%)	4 cases (12%)	2 cases (6%)
	Primary Issuing Agency Not Determined	17 cases (34%)	21 cases (42%)	11 cases (22%)	1 case (2%)
	Total 1486 Cases	506 cases (34%)	443 cases (30%)	100 cases (7%)	437 cases (29%)
Local Party Documents	Solely Issued by a Party Entity	7 cases (18%)	8 cases (21%)	2 cases (5%)	21 cases (55%)
	Jointly- Issued with Party Document Number	0 cases (0%)	5 cases (11%)	5 cases (11%)	35 cases (78%)
	Jointly- Issued with Government Document Number	5 cases (16%)	15 cases (48%)	0 cases (0%)	11 cases (36%)
	Primary Issuing Agency Not Determined	38 cases (11%)	87 cases (26%)	18 cases (5%)	191 cases (57%)
	Total 448 Cases	50 cases (11%)	115 cases (26%)	25 cases (6%)	258 cases (58%)

Our finding that one-third of court decisions relying on national party documents use them as the sole or primary legal basis for a court decision is striking, given the mainstream academic view that this practice should not and

does not exist.⁷⁸ Also striking is the prevalence of citations to jointly-issued documents that are designated as coming from a Party entity compared to citations to jointly-issued documents with State document numbers.⁷⁹ Clearly, the fact many jointly-issued documents carries a Party document number does not inhibit courts from citing to them.

Courts occasionally were explicit in their reasoning for applying Party documents, commenting that in the absence of relevant law, they “implemented the spirit of central [Party] documents.”⁸⁰ In most cases, however, courts simply applied norms from Party documents without further comment. Similarly, our finding that a small number of courts refuse to apply Party documents is notable, suggesting that how courts handle such issues has the potential to become an important fault line in an era of renewed Party oversight of the courts.

The incompleteness of our data does not permit us to determine whether the practice of citing Party documents has increased over time. But it is clear that the practice has persisted, despite efforts to fill in the gaps of State law. It is also clear that the practice does not happen by accident: it appears in all levels of courts and in a geographically wide range of courts. Although most cases we examined were at the trial level, many other cases were decisions on appeal or rehearing. Some cases went through all three levels of litigation, with the three courts each citing and relying on the same Party document.⁸¹

78. Most court decisions also include a separate “laws cited” section at the end of the decision, which lists all laws relied on in the decision. Even when courts do rely on Party documents as the sole or primary basis for their decisions, they do not list them in the “laws cited” portion of their decisions – perhaps suggesting some lingering discomfort with formally classifying Party documents as law.

79. It is possible that most jointly-issued documents carry Party document numbers; if so, this would reflect the fact that Party entities are generally more influential than State entities.

80. *See, e.g.*, *Liang v. Liang et al.* (梁某某诉梁某某等人), Hunan Baojing Cnty. People’s Ct. (湖南省保靖县人民法院), (2017) 湘3125民初87号, Aug. 10, 2017 (China); *Yang et al. v. Wuwei City Liangzhou Dist. People’s Gov’t, Third Party Deng, Wuwei City Liangzhou Dist. Wunan Town Zhanglin Village Second Villagers Group* (杨某某等诉武威市凉州区人民政府、第三人邓某, 武威市凉州区武南镇张林村第二村民小组), Gansu Jinchang Interm. People’s Ct. (甘肃省金昌市中级人民法院), (2016) 甘03行初41号, Aug. 8, 2016 (China); *Zhang v. Gushi Cnty. Guantang Township People’s Gov’t, Gushi Cnty. Guantang Township Sub Dist. Office* (张某某诉固始县观堂乡人民政府, 固始县观堂乡街道), Hunan Huaibin Cnty. People’s Ct. (河南省淮滨县人民法院), (2014) 淮行初字第046号, Feb. 3, 2015 (China); *Chen v. Liu & Chen* (陈某某诉刘某某、陈某某), Guangdong Xingning City People’s Ct. (广东省兴宁市人民法院), (2015) 梅兴法坭民初字第247号, Oct. 19, 2015 (China).

81. *See, e.g.*, *Qianguoerluosi Mongolian Autonomous Cnty. Human Resources and Soc. Security Bureau v. Sui* (前郭尔罗斯蒙古族自治县人力资源和社会保障局诉隋某某), Jilin Qianguoerluosi Mongolian Autonomous Cnty. People’s Ct. (吉林省前郭尔罗斯蒙古族自治县人民法院), (2015) 前行初字第39号, May 23, 2016 (China); *Qianguoerluosi Mongolian Autonomous Cnty. Human Resources and Soc. Security Bureau v. Sui* (前郭尔罗斯蒙古族自治县人力资源和社会保障局诉隋某某), Jilin Province High People’s Ct. (吉林省高级人民法院), (2017) 吉行申401号, June 15, 2017 (China).

1. *Litigating History*

Courts often relied on Party documents to resolve historical land disputes. In most of these cases, courts appeared to turn to Party documents out of necessity. Either there were no other legal grounds for deciding a case, or the key policies had been promulgated through Party or jointly-issued normative documents. This reflects the fact that the Party has often determined key land policies and has promulgated such policies through Party documents or jointly-issued documents. Examples of land dispute cases include disputes about collectively owned mountain land, disputes arising from collectivization in the 1950s and 1960s, and takings disputes.

The most cited documents in our data relate to the duration of rural land contracts. The 1997 joint document, “Notice of the General Office of the Central Committee of the Communist Party of China and the General Office of the State Council on Effectively Protecting Rural Women’s Rights and Interests in Contracting Land,”⁸² and the 1998 Party document, “Decision of the Central Committee of the Communist Party of China on Several Major Issues Concerning Agriculture and Rural Work,”⁸³ both stated that rural land contracts should last for 30 years if not otherwise specified. The same documents also defined other legal aspects of rural land contracts, such as the quorum vote needed in a village committee to adjust a previous land contract, or which level of government can properly issue land certificates. Courts routinely cited the rule on 30-year land contracts,⁸⁴ as well as the additional procedural requirements set forth in the

82. Zhonggong Zhongyang Bangongting Guowuyuan Bangongting Guanyu Qieshi Weihu Nongcun Funü Tudi Chengbao Quanyi De Tongzhi (中共中央办公厅、国务院办公厅关于切实维护农村妇女土地承包权益的通知) [Notice of the General Office of the Central Committee of the Communist Party of China and the General Office of the State Council on Effectively Safeguarding the Land Contracting Rights and Interests of Rural Women] (May 2001), <https://perma.cc/TY8R-ZDTV> [hereinafter Notice on Land Rights and Interests of Rural Women]

83. Zhonggong Zhongyang Guanyu Nongye He Nongcun Gongzuo Ruogan Zhongda Wenti De Jueding (中共中央关于农业和农村工作若干重大问题的决定) [Decision of the Central Committee of the Communist Party of China on Several Major Issues Concerning Agriculture and Rural Work] (Oct. 14, 1998), <https://perma.cc/BT6Z-GVEH>.

84. See, e.g., *Chen v. Shangshiqiao Town Gaopeng Village Tangjiao Villagers Group* (陈某某诉上石桥镇高棚村塘角村民组), Henan Shangcheng Cnty. People’s Ct. (河南省商城县人民法院), (2014)商民初字第00758号, Nov. 7, 2014 (China); *Foshan City Gaoming Dist. Hecheng Sub Dist. New Village Economic Cooperation of Luoxi Village Committee v. Li & Li*, (佛山市高明区荷城街道罗西村民委员会新村经济合作社诉李某某、李某某), Guangdong Foshan City Interm. People’s Ct. (广东省佛山市中级人民法院), (2015)佛中法民三终字第1261号, Apr. 12, 2016 (China); *Wang v. Huai’an City Huaiyin Dist. People’s Gov’t* (王某某诉淮安市淮阴区人民政府), Jiangsu Huai’an City Interm. People’s Ct. (江苏省淮安市中级人民法院), (2017)苏08行初153号, Mar. 23, 2018 (China); *Zhang v. Fuping Cnty. Gov’t & Ji* (张某某诉富平县政府、纪某某), Shaanxi Weinan City Interm. People’s Ct. (陕西省渭南市中级人民法院), (2014)渭中法行终字第00002号, Mar. 4, 2014 (China); *Xie v. Xie* (谢某某诉谢某某), Guangdong Yangjiang Yangdong Dist. People’s Ct. (广东省阳江市阳东区人民法院), (2014)阳东法塘民初字第210号, Jun.29, 2016 (China).

document.⁸⁵ In a 2017 case from Jiangsu,⁸⁶ for example, a court cited the 1998 Party Decision to hold that land granted to a third party in 2000 was valid for 30 years. The holder of the land use right in this case did not farm the land because he left the village, and the village gave the plaintiff the right to farm the land. When the original land grantee returned, the plaintiff sued, seeking a determination that she held the right to farm the land. Citing the 1998 Party Decision, the court held that the original grant was still valid and thus rejected the plaintiff's claim. In similar cases, courts cited both the Party's 1998 decision and the 1997 jointly-issued document, or the 1997 joint document alone.⁸⁷ In these cases, the Party documents are the primary legal basis for courts' determination of land rights.

Courts likewise relied on Party documents as the primary source for resolving historical disputes arising from the collectivization of land in the 1950s and 1960s, in particular disputes between individuals and village production teams, the groups into which farmers were organized within communes. Prominent in this group of cases were citations to the "Instruction of the Central Committee of the Communist Party of China on Changing the Basic Accounting Units of Rural People's Communes," issued in 1962,⁸⁸ and a 1963 Communist Party Central Committee notice concerning ownership of homestead rights.⁸⁹

85. Wang v. Jiange Cnty. Agric. Bureau et al. (王某某诉剑阁县农业局等), Sichuan Guangyuan City Interim. People's Ct. (四川省广元市中级人民法院), (2016) 川08民终1040号, Dec. 29, 2016 (China); Li v. Wang et al. (李某某诉王某某等), Hebei Hengshui City Interim. People's Ct. (河北省衡水市中级人民法院), (2017) 冀11民终728号, Jun. 7, 2017 (China); Ding v. Yu et al. (丁某某诉余某某等), Guizhou Province High People's Ct. (贵州省高级人民法院), (2017) 黔行申210号, Dec. 14, 2017 (China).

86. Wang v. Huai'an City Huaiyin Dist. People's Gov't (王某某诉淮安市淮阴区人民政府), Jiangsu Huai'an City Interim. People's Ct. (江苏省淮安市中级人民法院), (2017) 苏08行初153号, Mar. 23, 2018 (China).

87. In a case typical of such disputes, a village originally granted land-use rights to the defendant, who subsequently permitted the plaintiff to use the land. In a subsequent round of land grants in 1998, the village granted the same land to the plaintiff. In 2001 the village mediated a resolution of the dispute and the plaintiff returned the land to the defendant. But the plaintiff later sued, seeking the land back under the 1998 land grant, which remained on the books. Two levels of courts relied on both the 1997 joint document and the 1998 Party document to hold that the original grant was for thirty years. The court cited language from both documents stating that the grant of land should be conducted in the spirit of "stability first," and should not change the ownership under previous land grants without consent from the original grantee.

88. Zhonggong Zhongyang Guanyu Gaibian Nongcun Renmin Gongshe Jiben Hesuan Danwei Wenti De Zhishi (中共中央关于改变农村人民公社基本核算单位问题的指示) [The Central Committee of the Communist Party of China's Directive on Changing the Basic Accounting Unit Issue of Rural People's Communes], Feb. 13, 1962, <https://perma.cc/HM4T-Y3HA>; see, e.g.,

Shen v. Jinhua City Land & Res. Bureau (沈某某诉金华市国土资源局), Zhejiang Jinhua Jindong Dist. People's Ct. (金华市金东区人民法院), (2013) 金东行初字第12号 (Jan. 13, 2014) (China); Tianyang Cnty. Tianzhou Town Villager Grp. 22 of Fengma Vill. v. Tianyang Cnty. Gov't (田阳县田州镇凤马村第22村民小组诉田阳县政府), Guangxi Bose City Interim. People's Ct. (广西壮族自治区百色市中级人民法院), (2013) 百中行终字第38号 (Nov. 8, 2013) (China).

89. Zhonggong Zhongyang Guanyu Gedi Dui Sheyuan Zhaijidi Wenti Zuo Yixie Buchong Guiding De Tongzhi (中共中央关于各地对社员宅基地问题作一些补充规定的通知) [The Central Committee of the Communist Party of China's Notice Regarding Supplementary Regulations in

While courts generally cited these Party documents to uphold longstanding rights, this was not always the case. In a 2013 case reflecting the legacy of collectivization,⁹⁰ plaintiffs claimed homestead rights—the right to construct property on collectively-owned land—based on a certificate issued in 1952. Defendants argued that the plaintiffs’ land, on which a brickyard was built by the plaintiffs’ grandfather, had been under public-private joint operation since 1954 and was collectivized and handed over to the production brigade in 1956. Defendants also argued that the plaintiffs’ land certificate in 1952 was revoked by the public-private joint operation. The court held that even if the land had gone through a process of collectivization after the public-private joint operation, the plaintiffs should still prevail. The court based this decision on the 1963 Party document, which asserted that members of people’s communes retained their homestead rights even after collectivization.⁹¹ The court determined that the original land certificate issued to the plaintiffs in 1952 remained valid, despite the fact the land had for decades been used as a brickyard. The court thus used a fifty-year-old Party document to resolve a contemporary dispute—and to overturn what appeared to be long-standing land arrangements and rights. The court specifically noted that plaintiffs’ homestead use rights predated the Land Management Law and the Property Law, stating that the protection of the prior rights was “in accordance with the spirit of the policy.”⁹²

In land disputes, courts often referred to Party documents as “policy,” avoiding the question of whether such documents are legally binding. But in many such cases, courts nevertheless relied on the Party document as the sole or primary basis for their decisions.⁹³ It is not surprising that courts forced to decide vexing

Various Regions Concerning Members’ Homestead Land Issues], Mar. 8, 1963, <https://perma.cc/3Z54-M5BH>; see e.g., *Ke et al. v. Zheng et al.* (柯某某等诉郑某某等), Fujian Jinjiang City People’s Ct. (福建省晋江市人民法院), (2013) 晋民初字第4440号 (Feb. 13, 2014) (China); *Duan & Hu v. Wu* (段某某、胡某某诉吴某某), Henan Biyang Cnty. People’s Ct. (河南省泌阳县人民法院), (2013) 泌民初字第1690号 (June 11, 2014) (China); *Wang v. Wang* (王某1诉王某2), Jiangsu Jiangyin City People’s Ct. (江苏省江阴市人民法院), (2014) 澄滨民初字第0695号 (Mar. 2, 2015) (China); *Yang et al. v. Jianhe Cnty. People’s Gov’t* (杨某某等诉剑河县人民政府), Guizhou Province High People’s Ct. (贵州省高级人民法院), (2017) 黔行终585号, (Aug. 25, 2017) (China).

90. *Ke et al. v. Zheng et al.* (柯某某等诉郑某某等), Fujian Jinjiang City People’s Ct. (福建省晋江市人民法院), (2013) 晋民初字第4440号 (Feb. 13, 2014) (China).

91. *Id.* The court reviewed historical records and found that there was no evidence proving that the government had approved the public-private joint operation of the brickyard on the land in question.

92. *Id.*

93. In one case from Gansu, *Yang et al. v. Wuwei City Liangzhou Dist. People’s Gov’t, Third Party Deng, Wuwei City Liangzhou Dist. Wunan Town Zhanglin Vill. Second Villagers Grp.* (杨某某等诉武威市凉州区人民政府、第三人邓某, 武威市凉州区武南镇张林村第二村民小组), Gansu Jinchang City Interm. People’s Ct. (甘肃省金昌市中级人民法院), (2016) 甘03行初41号 (Aug. 8, 2016) (China), plaintiffs had entered into a contract with a neighbor in the early 1980s allowing the neighbor to farm plaintiffs’ land for an unspecified period. The plaintiffs moved to work in a city. When plaintiffs returned to the village in 2016 they found that the local government had

issues involving decades-long disputes concerning land rights turn to Party guidance and policy to decide cases. Courts are often doing so due to necessity, relying on the only authoritative documents that address the issues. But the fact courts do so in an often-legalistic way is notable, as courts frequently make no distinction between citations to Party normative documents and laws or legal regulations.

2. *Regulating the Routine*

Land disputes are a well-known source of social grievance and conflict. Courts also relied on Party documents to resolve a range of more routine and mundane cases. These included personnel and commercial disputes concerning the legality of Party entities engaging in business, the validity of contracts entered into by government-backed companies, and labor disputes involving officials. Many such disputes involved government entities or Party personnel, but the legal impact of the courts' decisions and consequently of the Party documents often extended to non-Party-State actors as well.

Numerous courts used Party documents to determine the proper defendant in commercial disputes involving Party entities. Courts applied a 1986 Party document⁹⁴ that prohibits any Party entity, government department, or official from running a business. The Party regulation also states that if such behavior causes damages, the supervisory organization in charge of approving such a venture should bear joint and several liability for any harm caused.⁹⁵ Courts cited this document to show it was illegal for a defendant to create a partnership or

registered the land in the name of their neighbors. They sued. The court found for plaintiffs, citing a document jointly-issued by the Party's Central Committee Work Office and the State Council's General Office for the principle that a local government should not change the land ownership under registration unless presented with written evidence. *See Zhonggong Zhongyang Bangongting Guowuyuan Bangongting Guanyu Jinyibu Wending He Wanshan Nongcun Tudi Chengbao Guanxi De Tongzhi* (中共中央办公厅、国务院办公厅关于进一步稳定和完善的农村土地承包关系的通知) [Notice from the Genl. Off. of the Cent. Comm. of the Communist Party of China and the Gen. Off. of the St. Council on Further Stabilizing and Improving Rural Land Contracting Relationships] Aug. 20, 1997, [https://perma.cc/4G22-JVXN] (last visited Jan. 12, 2024). The court then looked at the evidentiary record of this case and concluded that the local government failed to comply with the requirements in the document, which the court called "the policy at the time." Because of this, and the fact that the government's action was against the document's general spirit of "stabilizing and perfecting" land allocation by extending the term of such contracts to thirty years, the government's change of registration was illegal. The court did not cite any other legal authority, except for a general provision in the Administrative Litigation Law stating that government action must have a legal basis.

94. *See* Guanyu Jinyibu Zhizhi Dangzheng Jiguan he Dangzheng Ganbu Jingshang, Ban Qiye de Guiding (关于进一步制止党政机关和党政干部经商、办企业的规定) [Provisions on Further Preventing Party and Government Organs and Party and Government Cadres from Operating Businesses and Starting Enterprises], promulgated by the Central Committee of the Communist Party of China and the State Council, effective Feb. 4, 1986, [https://perma.cc/A6Q8-7G9H].

95. *Id.* at art. 6.

corporation,⁹⁶ and to hold superior organizations jointly-labile for damages.⁹⁷ In many of these cases, courts cited the Party regulation as the primary basis for imposing liability on a government (not a Party) entity. In a case from Zhejiang,⁹⁸ for example, the plaintiff loaned money to a third party to open a swimming pool and gym. The local government sports bureau failed to liquidate the debts of the business as required by Party rules ordering government and Party entities to terminate the operation of businesses. Instead, the local sports bureau stated that the entity had no debts.⁹⁹ The plaintiff sued, seeking repayment of debts owed to it by the business. Relying on the Party regulation, the court found that the sports bureau was the supervisory department of the gym and bore joint liability for its debts because it had failed to follow the required procedures prior to closing the business. Sometimes courts cited Party regulation in tandem with other Party documents.¹⁰⁰ In most cases, however, courts cited only the Party regulation as the authority for its holding. Courts likewise relied on Party documents to resolve a range of other issues arising when Party or State entities entered into commercial transactions.¹⁰¹

96. See, e.g., *Xu v. Xinfeng Cnty. Xiniu Town People's Gov't.* (徐某某诉信丰县西牛镇人民政府), Jiangxi Ganzhou City Interim. People's Ct. (江西省赣州市中级人民法院), (2016) 赣07民终875号, (May 20, 2016) (China); *Bankruptcy Liquidation Administrator of Henan Sanbao Pharmaceutical Co. v. Lingbao Jimpeng Real Estate Co.* (河南三宝药业股份有限公司破产清算管理人诉灵宝市金鹏房地产置业有限责任公司), Henan Lingbao City People's Ct. (河南省灵宝市人民法院), (2017) 豫1282民初3173号, (Dec. 14, 2017) (China).

97. See, e.g., *Weihai Pub. Sec. Border Def. Dept. v. Liu et al.* (威海市公安局边防支队诉刘某某等), Shandong Weihai City Interim. People's Ct. (山东省威海市中级人民法院), (2014) 威民三终字第130号 (Aug. 5, 2014) (China); e.g., *Zhao v. Zhao Cnty. Educ. Bureau & Zhao Cnty. Yucai Educ. Servs. Co.* (赵某某诉赵县教育局、赵县育才教育服务有限公司), Hebei Zhao Cnty. People's Ct. (河北省赵县人民法院), (2015) 赵民二初字第00195号 (Nov. 30, 2015) (China).

98. *Yu v. Shaoxing City Sports Bureau* (虞某某诉绍兴市体育局), Zhejiang Shaoxing Yuecheng Dist. People's Ct. (浙江省绍兴市越城区人民法院), (2014) 绍越商初字第2607号 (Dec. 29, 2014) (China).

99. *Id.*

100. In some cases, for example, courts cited to Zhonggong Zhongyang Guowuyuan Guanyu Yanjin Dangzheng Jiguan He Dangzheng Ganbu Jingshang Ban Qiye De Jueding (中共中央、国务院关于严禁党政机关和党政干部经商、办企业的决定) [The Decision of the Central Committee of the Communist Party of China and the State Council on Strictly Prohibiting Party and Government Organs and Party and Government Officials from Engaging in Business and Running Enterprises], promulgated by the Central Committee of the Communist Party of China and the State Council, effective Dec. 3, 1984, [<https://perma.cc/ZT4L-DUJ2>] (last visited Jan. 15, 2024).

101. In a leasing dispute, for example, a court cited a Party regulation from 2013, the "Regulations on Party and Government Organs Strictly Enforcing Thrift and Fighting Waste." *Fuzhou City Zhiyou Motor Vehicle Driving Training Ctr. v. Traffic Police Dep't of Fuzhou City Pub. Sec. Bureau* (抚州市挚友机动车驾驶培训中心诉抚州市公安局交通警察支队), Jiangxi Fuzhou City Interim. People's Ct. (江西省抚州市中级人民法院), (2016) 赣10民初44号 (Oct. 16, 2017) (China); Zhonggong Zhongyang Guowuyuan Guanyu Yinfa Dangzheng Jiguan Lixing Jieyue Fandui Langfei Tiaoli De Tongzhi (中共中央、国务院关于印发《党政机关厉行节约反对浪费条例》的通知) [Notice of the Central Committee of the Communist Party of China and the State Council on Issuing the "Regulations on Frugality and Anti-Waste in Party and Government Organs"], promulgated by the Central Committee of the Communist Party of China and the State Council, effective Nov. 18, 2013,

Courts similarly relied on Party documents to resolve contract disputes. This is striking given the well-developed status of Chinese contract law. In a series of cases, courts relied on a document titled “Party and Government Agencies and Cadres Cannot Run Enterprises Through Fundraising or Other Forms”¹⁰² to invalidate existing contracts. After a local government established a private company to produce and sell medicine, for example, a local real estate company invested in the business by contributing land.¹⁰³ The venture later failed. The real estate company argued that the original contract according to which it contributed the land was illegal, and thus the land should be returned to the company, not used to settle debts with creditors. Citing the Party document, the court agreed. The court found that because the Party document banned such enterprises, the contract

[<https://perma.cc/4UHR-YV7L>] (last visited Jan. 15, 2024). The document prohibited Party branches from leasing office space to the public but provided that that prohibition should not prevent the Party branches from performing contracts that had already been entered into before the regulation came into force. The court relied on the document to hold that the parties to the lease should continue honoring their lease, and thus refused to grant plaintiffs’ request to nullify the contract. In other cases, courts cited a Party document to determine how interest should be distributed when a private business was converted into public-private joint management. *See, e.g.,* Lü & Lü v. Liupanshui City Hous. and Urb.-Rural Dev. Bureau (吕某1、吕某2诉六盘水市住房和城乡建设局), Guizhou Shuicheng Cnty. People’s Ct. (贵州省水城县人民法院), (2015) 黔水行初字第90号 (Nov. 23, 2015) (China) (citing Zhonggong Zhongyang Tongzhan Bu Shangye Bu Yinfa Guanyu Suoyao Qiangzhan Yuan Gongsi Heying Qiye Hezuo Shangdian Yingye Yongfang Wenti De Chuli Yijian (中共中央统战部、商业部印发《关于索要、强占原公私合营企业、合作商店营业用房问题的处理意见》的通知) [Notice of the United Front Work Dep’t of the Cent. Comm. of the Communist Party of China and the Ministry of Commerce on the Issuance of the “Opinions on Dealing with the Issue of Demanding and Appropriating Premises of Original Public-Private Joint Ventures and Cooperative Shops”], promulgated by the United Front Work Department of the CPC Central Committee and the Ministry of Commerce, effective Feb. 25, 1983, [<https://perma.cc/YKC4-6RV2>] (last visited Jan. 15, 2024).

Courts similarly cited Party documents restricting government entities from participating in business as a basis for imposing liability on supervisory entities for wages due after the businesses failed. In one example, Weihai Pub. Sec. Border Def. Dep’t. v. Liu et al. (威海市公安局边防支队诉刘某某等), Shandong Weihai City Interim. People’s Ct. (山东省威海市中级人民法院), (2014) 威民三终字第130号 (Aug. 5, 2014) (China), a local police station started a business that provided maritime security services. The plaintiffs worked for the business. Plaintiffs lost their jobs after the local branch of the State Administration of Industry and Commerce closed the business for violating the ban on Party or government entities engaging in business. In a lawsuit for back wages, the court relied on the Party document to impose liability for back wages on both the local police station that had started the business and its supervisory higher-level police station.

102. Provisions of the Central Committee of the Communist Party of China and the State Council on Further Preventing Party and Government Organs and Party and Government Cadres from Operating Businesses and Starting Enterprises, *supra* note 94.

103. Bankruptcy Liquidation Administrator of Henan Sanbao Pharmaceutical Co. v. Lingbao Jinpeng Real Estate Co. (河南三宝药业股份有限公司破产清算管理人诉灵宝市金鹏房地产置业有限责任公司), Henan Lingbao City People’s Ct. (河南省灵宝市人民法院), (2017) 豫1282民初3173号 (Dec. 14, 2017) (China). In a case that similarly invalidated a contract, a court cited a joint Party-State regulation to invalidate a settlement agreement pursuant to which a cooperative had agreed to return property obtained during collectivization in the 1960s to its original owner. The court cited a document jointly-issued by the Party’s Central Office and the State Council to invalidate the agreement because it had not been approved by a vote of the membership of the cooperative. Wang et al. v. Wenzhou City Longquan Dist. Yongchang Supply and Mktg. Coop. (王某某等诉温州市龙湾区永昌供销合作社), Zhejiang Wenzhou Longwan Dist. People’s Ct. (浙江省温州市龙湾区人民法院), (2013) 温龙民重字第1号 (Mar. 11, 2014) (China).

had no effect and the land had never been part of the company's assets. The decision was striking because it appeared to introduce a ground for invalidating a contract not covered by Article 52 of the Contract Law, which states that contracts may be invalidated if they conflict with compulsory rules in "laws or legal regulations."¹⁰⁴ The court relied on the Party document as the sole legal basis for invalidating the contract.

Numerous other routine cases arose out of labor disputes, generally those involving public officials. In one case, the Jilin High People's Court relied on a 1991 document jointly-issued by the Party Organization Department and the Ministry of Personnel¹⁰⁵ to decide that a dispute between a local government employee and a local enterprise should be resolved through mediation or arbitration by the government, not through the courts.¹⁰⁶ In a series of cases, courts applied a draft opinion issued by the Party's Central Organization Department Veterans Committee¹⁰⁷ to decide how the seniority of a retired civil servant should be calculated in cases concerning plaintiffs' retirement benefits.¹⁰⁸ Numerous other decisions relied on a jointly-issued Party-State document¹⁰⁹ to determine what compensation, if any, criminal defendants who were civil servants were entitled to from their previous employer when awaiting trial in detention.¹¹⁰

104. *Zhonghua Remin Gongheguo Hetong Fa* (中华人民共和国合同法) [Contract Law of the People's Republic of China], promulgated by the National People's Congress, Mar. 15, 1999, effective Oct. 1, 1999, art. 52, SUP. PEOPLE'S CT. GAZ., Mar. 15, 1999, <http://gongbao.court.gov.cn/Details/21954058e6efbf695ec1f2e3c60ad.html>, <https://perma.cc/9KQR-NKPB> (China).

105. *See* *Dang Zheng Jiguan He Ganbu Buneng Yi Jizi Huo Qita Xingshi Ban Qiye* (全民所有制企业聘用制干部管理暂行规定) [Interim Provisions on the Management of the Employment System of Cadres in Enterprises Owned by the Whole People], promulgated Oct. 12, 1991, [<https://perma.cc/KZ2V-8UBM>] (last visited Apr. 1, 2021).

106. *Hu v. Siping City Tiedong Dist. Emp. Bureau* (胡某某诉四平铁东区就业局), Jilin Province High People's Ct. (吉林省高级人民法院), (2016) 吉民申656号 (July 6, 2016) (China).

107. *Zhonggong Zhongyang Zuzhi Bu Laoganbu Ju Guanyu Guanche Zhixing Guowuyuan Guanyu Anzhi Lao Ruo Bing Can Ganbu De Zanxing Banfa De Ruogan Juti Wenti De Chuli Yijian* (Caoan) (中共中央组织部老干部管理局关于贯彻执行《国务院关于安置老弱病残干部的暂行办法》的若干具体问题的处理意见(草案)) [Draft Opinions of the Veterans Administration of the Organization Department of the Central Committee of the Communist Party of China on Certain Specific Issues Regarding Implementation of the 'State Council Measures on Arrangements for Old, Weak, Sick and Disabled Cadres'], promulgated by the State Council, Jul. 11, 1978, [<https://perma.cc/S4BV-9E9J>] (last visited Jan. 15, 2024).

108. *Chen v. Hubei Dep't of Hum. Res. and Soc. Sec.* (陈某某诉湖北省人力资源和社会保障厅), Hubei Wuhan Wuchang Dist. People's Ct. (湖北省武汉市武昌区人民法院), (2015) 鄂武昌行初字第00050号 (July 27, 2015) (China).

109. *See* *Guanyu Gongwuyuan Bei Caiqu Qiangzhi Cuoshi He Shou Xingzheng Xingshi Chufa Gongzi Daiyu Chuli Youguan Wenti De Tongzhi* (关于公务员被采取强制措施和受行政刑事处罚工资待遇处理有关问题的通知) [Notice on Issues Concerning the Wages and Compensation of Civil Servants Under Compulsory Measures and Administrative Criminal Penalties], promulgated July 26, 2019, [<https://perma.cc/9STG-PHQH>] (last visited Apr. 1, 2021).

110. *See, e.g.,* *Dalian Pulandian Dist. Pricing Bureau v. Cui* (大连市普兰店区物价局诉崔某某), Liaoning Dalian Pulandian Dist. People's Ct. (辽宁省大连市普兰店区人民法院), (2016) 辽0214

Other courts relied on a joint Party-State document¹¹¹ to decide the amount or procedure for granting pension benefits to families of deceased cadres.¹¹² Many cases were administrative lawsuits in which the government action affected compensation.¹¹³ In some respects these cases are not surprising: the Party sets

民初2924号(July 26, 2017) (China); Tianjin Binhai New Dist. Tanggu Fisheries Bureau v. Tian (天津市滨海新区塘沽水产局诉田某某), Tianjin Binhai New Dist. People's Ct. (天津市滨海新区人民法院), (2017) 津0116民初34796号(Feb. 27, 2018) (China); Sanmen Cnty. Environmental Inspection Brigade v. Cai (三门县环境监察大队诉蔡某某), Zhejiang Taizhou City Interm. People's Ct. (浙江省台州市中级人民法院), (2017) 浙10民终2754号(Dec. 26, 2017) (China); Hu v. Xiao Cnty. Hum. Res. and Soc. Sec. Bureau (胡某诉萧县人力资源和社会保障局), Anhui Suzhou City Interm. People's Ct. (安徽省宿州市中级人民法院), (2018) 皖13行终25号(Mar. 27, 2018) (China).

111. See Zhonggong Zhongyang Zuzhi Bu Renli Ziyuan He Shehui Baozhang Bu, Jiancha Bu Guanyu Shiye Danwei Gongzuo Renyuan He Jiguan Gongren Bei Caiqu Qiangzhi Cuoshi He Shou Xingzheng Xingshi Chufa Gonzi Daiyu Youguan Wenti De Tongzhi (中共中央组织部、人力资源社会保障部、监察部关于事业单位工作人员和机关工人被采取强制措施和受行政刑事处罚工资待遇处理有关问题的通知) [Notice of the Central Organization Department of the Communist Party of China, the Ministry of Human Resources and Social Security, and the Supervision Department on Issues Concerning Wages and Treatments of Institutional Workers and Agency Workers Under Compulsory Measures and Administrative Criminal Punishment], promulgated Nov. 7, 2012, [https://perma.cc/MER9-DB74] (last visited Jan. 16, 2024).

112. Liu v. Xuchang Branch of China United Network Comm. Co., Ltd. (刘某某诉中国联合网络通讯有限公司许昌市分公司), Henan Xuchang Weidu Dist. People's Ct. (河南省许昌市魏都区人民法院), (2016) 豫1002民初2607号(Nov. 26, 2016) (China); Lu v. Inner Mongolia Autonomous Region Dep't of Fin. (卢某某诉内蒙古自治区财政厅), Inner Mongolia Hohhot City Interm. People's Ct. (内蒙古自治区呼和浩特市中级人民法院), (2016) 内01行终39号, (Apr. 7, 2016) (China); Guo v. Linqu Cnty. Soc. Ins. Admin. Ctr. (郭某某诉临朐县社会保险事业管理中心), Shangdong Linqu Cnty. People's Ct. (山东省临朐县人民法院), (2016) 鲁0724行初4号(May 26, 2017) (China); Zhang v. Xinxiang City Hongqi Dist. People's Gov't (张某某诉新乡市红旗区人民政府), Henan Province High People's Ct. (河南省高级人民法院), (2017) 豫行终2108号(Dec. 20, 2017) (China).

113. For example, courts cited the "Notice on Stopping and Correcting Issues Related to Handling Enterprise Employees' Early Retirement in Violation of State Regulations," Zhonggong Zhongyang Zuzhi Bu Renli Ziyuan Shehui Baozhang Ju Guanyu Qiye He Shiye Danwei Lixiu Ganbu Binggu Yicixing Fuxujin Youguan Wenti De Tongzhi (关于制止和纠正违反国家规定办理企业职工提前退休有关问题的通知) [Notice on Stopping and Correcting Issues Related to Handling Enterprise Employees' Early Retirement in Violation of State Regulations], promulgated Mar. 9, 1999, [https://perma.cc/7XKE-LLCS] (last visited Apr. 1, 2021) to decide whether the government correctly registered or revised the plaintiffs' residence permits (户口) or other personnel files. See, e.g., Xu v. Guangdong Soc. Ins. Fund Mgmt. Bureau (许某某诉广东省社会保险基金管理局), Guangdong Guangzhou First Ry. Transp. Ct. (广东省广州铁路运输第一法院), (2016) 粤7101行初2500号, (Dec. 20, 2016) (China); Yan v. Heilongjiang Dep't of Hum. Res. and Soc. Sec. (颜某某诉黑龙江省人力资源和社会保障厅), Heilongjiang Province High People's Ct. (黑龙江省高级人民法院), (2017) 黑行申386号, (Sept. 21, 2017) (China); Zhang v. Xinyang Transportation Group Co., Ltd. (张某某诉信阳市运输集团有限公司), Henan Xinyang Shihe Dist. People's Ct. (河南省信阳市浉河区人民法院), (2015) 信浉民初字第2243号, (Nov. 2, 2015) (China). Numerous courts similarly relied on the "Notice on Conscientiously Managing the Date of Birth of Cadres" to make similar determinations. Zhonggong Zhongyang Zuzhi Bu Renshi Bu Gonggan Bu Guanyu Renzhen Zuohao Ganbu Chusheng Riqi Guanli Gongzuo De Tongzhi (中共中央组织部、人事部、公安部关于认真做好干部出生日期管理工作的通知) [Notice of the Central Committee of the Communist Party of China, the Ministry of Human Resources, and the Ministry of Public Security on the Diligent Management of Cadres' Birthdates] promulgated Oct. 15, 2006, [https://perma.cc/56V6-FQ9Y] (last visited Jan. 15, 2024). See, e.g., Sui v. Qianguoerluosi Mongolian Autonomous Cnty. Hum. Res. and Soc. Sec. Bureau (隋某某诉前郭尔罗斯蒙古族自治县人力资源和社会保障局), Jilin Qianguoerluosi Mongolian Autonomous Cnty. People's Ct. (吉林省前郭尔罗斯蒙古族自治县人民法院), (2015) 前行初字第39号, (May 23, 2016) (China); Yu v. Liaoning Dep't of Hum. Res.

key policy on the conduct of Party and State entities and personnel. Courts cite these documents out of necessity. But the range and routineness of such citations demonstrate how pervasive Party regulation is. In many cases, the effects are not limited to Party-State actors.

3. Policy Mirroring

Although routine and historical disputes predominate in our dataset, courts also relied on Party documents to resolve cases touching on contemporary hot-button issues, notably corruption cases and land takings. Three courts cited the Party Central Political Legal Committee's "Opinions on Strictly Regulating Sentence Reduction, Parole, and Temporary Enforcement of Sentences Outside Prison in Order to Effectively Prevent Judicial Corruption."¹¹⁴ The document was issued in 2014 as part of the Party's anti-corruption campaign and provided detailed guidance to courts for handling sentence reduction or parole determinations for prisoners who had committed crimes relating to their official positions. The Political-Legal Committee Opinion stated that its goal was to address the widely-recognized problem of those with power or money using their influence to reduce their sentences after conviction.¹¹⁵ The document set forth specific factors that a court should look to before granting parole, and included

and Soc. Sec. (于某某诉辽宁省人力资源和社会保障厅), Liaoning Province High People's Ct. (辽宁省高级人民法院), (2015) 辽行监字第00459号, (Mar. 2, 2017) (China); Liu v. Quzhou Qujiang Dist. Hum. Res. and Soc. Sec. Bureau (刘某某诉衢州市衢江区人力资源和社会保障局), Zhejiang Quzhou Kecheng Dist. People's Ct. (浙江省衢州市柯城区人民法院), (2016) 浙0802行初4号, (July 11, 2016) (China); Bao v. Qingdao Hum. Res. and Soc. Sec. Bureau (包某某诉青岛市人力资源和社会保障局), Shandong Province High People's Ct. (山东省高级人民法院), (2016) 鲁行申253号, (June 29, 2016) (China); Some documents, such as the Notice on Conscientiously Managing the Date of Birth of Cadres (关于认真做好干部出生日期管理工作的通知), serve as the legal basis of court decisions in both civil and administrative litigation. Compare Jilin Oilfield General Hospital v. Wu (吉林油田总医院诉吴某某), Jilin Songyuan City Interim. People's Ct. (吉林省松原市中级人民法院), (2016) 吉07民终183号, (Mar. 17, 2016) (China) & Wu v. Fuyu City Education Bureau (武某诉扶余市教育局), Jilin Songyuan City Interim. People's Ct. (吉林省松原市中级人民法院), (2018) 吉07行终3号, (Jan. 31, 2018) (China).

114. See Zhonggong Zhongyang Zhengfawei Guanyu Yangge Guifan Jianxing, Jiashi, Zanyu Jianwai Zhixing Qieshi Fangzhi Sifa Fubai De Yijian (中共中央政法委员会关于严格规范减刑、假释、暂予监外执行切实防止司法腐败的意见) [Opinions of the Political and Legal Committee of the Central Committee of the Communist Party of China on Strictly Regulating Sentence Reduction, Parole, and Temporary Enforcement of Sentences Outside Prison in Order to Effectively Prevent Judicial Corruption], promulgated Jan. 24, 2014, [https://perma.cc/H76F-HXPM] (last visited Apr. 1, 2021). For examples of courts citing the document, see Ruling on the Amendment of Lin's Bribery Sentence (林某某受贿罪刑罚变更), Jiangsu Lianyungang City Interim. People's Ct. (江苏省连云港市中级人民法院), (2014) 连刑执字第00868号, (Sept. 23, 2014) (China); Ruling on the Amendment of Lin's Corruption Sentence (王某犯贪污罪刑罚变更), Hubei Hanjiang City Interim. People's Ct. (湖北省汉江中级人民法院), (2015) 鄂汉江中刑执字第00532号, (Sept. 16, 2015) (China).

115. The Political-Legal Committee opinion applies to three types of criminal cases: (1) crimes by public officials, (2) crimes of undermining the order of financial management and financial fraud, and (3) organized crime-related crimes. The cases we located all involved either bribery or corruption of public officials.

detailed formulas on how sentence reduction is to be calculated.¹¹⁶ None of the judgments we read that relied on this Document provided other legal sources for their parole decision or sentence calculations. The document itself is not unusual—the Central Political Committee is known to issue such guidance routinely. What is unusual is the explicit reference to the document in public court decisions.

In one corruption case, from Tibet, defendant Pubu was prosecuted for bribery while she worked at a State-owned company.¹¹⁷ She was first disciplined by Party discipline authorities and then prosecuted criminally. At trial, Pubu raised several procedural objections to the trial. One was that it was improper for a procurator to participate in the Party discipline inspection investigation and to act as a procurator in her case. In rejecting the claim, the court cited the “Opinions on Strengthening Cooperation and Coordination in Investigating Cases of Suspected Violations of Discipline and Law by Party Members and State Functionaries,”¹¹⁸ issued by the CCP’s Central Office, which provided that procurators are permitted and encouraged to participate in the Party disciplinary process. The court thus relied on the Party document to determine the outcome of the defendant’s procedural challenge to her prosecution.

Policy mirroring likewise appears in a range of land disputes involving women’s rights to land. In a series of cases, courts relied on a jointly-issued document, the “Notice on Effectively Protecting Rural Women’s Rights and Interests in Contracting Land,”¹¹⁹ to hold that women enjoy the same rights regarding rural land contracts as men, and retain such rights if they are not married, marry out of the village, or are divorced.¹²⁰ In one such case, plaintiff

116. Zhonggong Zhongyang Zhengfawei Guanyu Yang Guifan Jianxing, Jiashi, Zanyu Jianwan Zhixing Qieshi Fangzhi Sifa Fubai De Yijian (中共中央政法委员会关于严格规范减刑、假释、暂予监外执行切实防止司法腐败的意见) [Opinions of the Political and Legal Committee of the Central Committee of the Communist Party of China on Strictly Regulating Commutation, Parole, and Temporary Execution Outside Prison, Effectively Prevent Judicial Corruption], promulgated by the Central Committee of the Communist Party of China, Jan. 21, 2014, [<https://perma.cc/S6UF-Q4FK>] (last visited Mar. 31, 2021).

117. Tibet Autonomous Region Luozha Cnty. People’s Proc. v. Pubu (西藏自治区洛扎县人民法院诉普布某), Tibet Luozha Cnty. People’s Ct. (西藏自治区洛扎县人民法院), (2017) 藏0527 刑初2号, (Sept. 29, 2017) (China).

118. The document does not appear to be publicly available, although it is cited in court decisions. See Yunnan Sheng Jiwei (云南省纪委) (Yunnan Province Disciplinary Commission) [ynjjc.gov.cn] (Apr. 7, 2015) [<https://perma.cc/B98D-H652>] (last visited Jan. 22, 2024) (referencing Zhonggong Zhongyang Bangongting Yinfa Guanyu Zai Chaban Dangyuan He Guojia Gongzuo Renyuan Shexian Weiji Weifa Fanzui Anjian Zhong Jiaqiang Xiezuo Peihe De Yijian De Tongzhi (中共中央办公厅印发《关于在查办党员和国家工作人员涉嫌违纪违法案件中加强协作配合的意见》的通知) [Notice Issued by the General Office of the Central Committee of the Communist Party of China on Strengthening Collaboration and Cooperation in the Investigation and Handling of Party Members and State Personnel Suspected of Violating Discipline and Committing Crimes] (2015)).

119. Notice on Land Rights and Interests of Rural Women, *supra* note 82.

120. Wei v. Suzhou City Yongqiao Dist. Dazexiang Town People’s Gov’t (位某诉宿州市埇桥区大泽镇人民政府), Anhui Suzhou City Interm. People’s Ct. (安徽省宿州市中级人民法院), (2017) 皖13行终86号, Aug. 1, 2017 (China); Han v. Xiaoliujiachuan Village Committee (韩某某诉小刘家川村委), Shanxi Zezhou Cnty. People’s Ct. (山西省泽州县人民法院), (2014) 泽民初字第440号, (July 1, 2014) (China). A similar issue arose in a series of cases from Guangdong in which

Wei moved to her husband's county after marriage, but her residence permit remained in her home village. In 2013, the government in the plaintiff's hometown started a large mining project and arranged for all residents whose residence permits were in the affected area to receive compensation for the land taking. The government refused to include the plaintiff in the compensation arrangement, arguing that she had married out of the village despite her residence permit listing the village as her residence. The court ruled for plaintiff Wei, citing the jointly-issued notice for the principle that a woman enjoys the same rights as men regardless of her marital status and that such rights extend to all the economic benefits associated with land. The notice was the only document or regulation that the court cited for its holding.

Courts also looked to Party documents for guidance in handling contentious land takings. In a 2017 case from Henan,¹²¹ plaintiff Yin sued the local police after they refused his request for "personal protection." Yin had sought help after getting into physical altercations with government staff seeking to take his land. In rejecting Yin's claim under the Administration Litigation Law that the police had neglected to perform their duties, the court looked to a Party document,¹²² issued by the Party Committee of the Ministry of Public Security, to determine that the police were correct to refuse the request for assistance. The court cited the document as stating that police were forbidden from engaging in non-police work such as land takings and demolition. The court declared that the protection the plaintiff sought was outside the police's official responsibilities and thus was not a legal basis for administrative litigation. The court thus used a Party document to determine the scope of required government action, and whether a government defendant could be sued. Yet not all contentious land-related cases resulted in findings against plaintiffs. Courts also relied on Party documents to find that

plaintiffs successfully argued that female shareholders in a rural cooperative have the same rights as men and that the articles of association of the cooperative were invalid. The courts cited to 中共广东省委办公厅、广东省人民政府办公厅转发《省委农办、省妇联、省信访局关于切实维护农村妇女土地承包和集体收益分配权益的意见》(The General Office of the Guangdong Provincial Committee of the Communist Party of China and the General Office of the Guangdong Provincial People's Government forwarded the "Opinions of the Provincial Party Committee Agriculture Office, the Provincial Women's Federation, and the Provincial Letters and Complaints Bureau on Effectively Safeguarding the Rights and Interests of Rural Women in Land Contracting and Collective Income Distribution") to support the principle that men and women should have equal rights in village groups.

121. Yin v. Xincui Cnty. Police Bureau (尹某某诉新蔡县公安局), Henan Zhengzhou Ry. Transp. Ct. (河南省郑州铁路运输法院), (2017)豫7101行初257号, (Dec. 18, 2017) (China).

122. The court's reference to the Party document is unclear, as there are numerous documents with similar titles. But the document appears to be a 2011 notice that is not public, although it is referenced in news reports. See Zhongguo Zhengfu Wang (中国政府网) [gov.cn] (Mar. 3, 2011) [https://perma.cc/6AME-RKT9] (last visited Jan. 22, 2024), discussing 公安机关党风廉政建设和反腐败工作意见 [Opinions on the Construction of Clean Party and Government and Anti-Corruption Work in Public Security Organs].

villagers were entitled to extra compensation when their land was taken because they had previously earned an honor certificate for having only one child.¹²³

Open government information cases have become another frequent source of social conflict and escalation in recent years. In nearly twenty cases, courts used a Party document to help define which information qualifies as government information. For example, in one OGI case a court looked to a Party document¹²⁴ to determine that audit reports do not qualify as information that can be obtained through OGI requests.¹²⁵ The court reasoned that the Party document demonstrated that the reports are ordered by the Party organization department, and thus are not subject to the OGI regulations, which govern only government information. In other cases, courts relied on Party documents to determine whether certain government – not Party – information should be made public.¹²⁶

Courts engaged in a different form of policy mirroring when they relied on Party documents as a supplemental basis for decisions. In these cases, courts had a State law or regulation as a legal basis for their decisions and did not need to cite to the Party document. But they did so nevertheless, signaling that the cases were not only legally correct but also in line with Party policy. In a case from Shaanxi, plaintiff Liu sued the local government after it refused to make pension payments after her husband died. Her husband had been a government employee before his death. The court found for the government, stating that the family was not entitled to pension benefits because they had buried the deceased, instead of

123. Shi & Zhu v. Susong Cnty. Fuyu Town Hanling Vill. Shiwu Vill. Committee (石某某、朱某某诉宿松县孚玉镇韩岭村石屋村民组), Anhui Susong Cnty. People's Ct. (安徽省宿松县人民法院), (2015) 松民一初字第00987号, (June 30, 2015) (China), relying on 《中共宿松县委、宿松县人民政府关于进一步完善人口和计划生育利益导向政策体系的决定》(Decision of the Susong County Committee of the Communist Party of China and the People's Government of Susong County on Further Improving the Policy System for Population and Birth Planning Benefits).

124. See Guanyu Renzhen Zuohao Ganbu Chusheng Riqi Guanli Gongzuo De Tongzhi (党政主要领导干部和国有企业领导人员经济责任审计规定) [Provisions on Auditing the Economic Responsibilities of Major Party and Government Leaders and State-owned Enterprise Leaders] (July 15, 2019), [https://perma.cc/Y8SM-NA9U] (last visited Apr. 1, 2021).

125. Wu v. Pi Cnty. Audit Bureau (吴某某诉郫县审计局), Sichuan Chengdu Xindu Dist. People's Ct. (四川省成都市新都区人民法院), (2014) 新都行初字第211号, Oct. 21, 2014 (China).

126. Fu & Fu v. Jiangdong Sub. Dist. of Yiwu City People's Gov't & Yiwu City People's Gov't (傅某某、傅某某诉义乌市人民政府江东街道办事处、义乌市人民政府政府), Zhejiang Yiwu City People's Ct. (浙江省义乌市人民法院), (2015) 金义行初字第171号, (Dec. 17, 2015) (China); Su v. Zhengzhou Zhongyuan Dist. People's Gov't (苏某某诉郑州市中原区人民政府), Henan Zhengzhou Ry. Transp. Interm. Ct. (河南省郑州运输中级法院), (2015) 郑铁中行初字第190号, (Dec. 2, 2015) (China).

In a series of similar cases from Wuhan, courts relied on a joint document to determine that the plaintiff had sued the incorrect defendant when it sought a pension from a former employer. The joint document clarified that the named defendant was a Party entity, and thus was not subject to administrative litigation. 中共武汉市委武汉市人民政府关于印发《江汉区人民政府机构改革方案》的通知 (Notice of the Wuhan Municipal Committee of the Communist Party of China and the Wuhan Municipal People's Government on Printing and Distributing the "Institutional Reform Plan of the People's Government of Jianghan District"); Peng v. Wuhan Jiangnan Dist. Pub. Institution Registration Admin. Bureau (彭某某诉武汉市江汉区事业单位登记管理局), Hubei Wuhan City Interm. People's Ct. (湖北省武汉市中级人民法院), (2014) 鄂武汉中立行终字第000018号, (Dec. 23, 2014) (China).

following the official policy of cremation.¹²⁷ The court relied on a municipal legal regulation that reflected the national policy,¹²⁸ but also added a citation to a document jointly-issued by the Central Party Office and the State Council's Work Office.¹²⁹ In these cases, courts appeared to be using citations to Party documents to strengthen the persuasiveness of their decisions – and perhaps to protect the court from criticism.

In other cases, courts signaled alignment with Party policy through general citations to Party policy documents. Fifty-two decisions cited to the Party's Fourth Plenum Decision, in 2014. In forty-nine such cases, the courts used similar language, generally referring to the spirit of the decision while citing other legal provisions as well.¹³⁰

127. Baoji Fengjiashan Reservoir Mgmt. Bureau v. Liu (宝鸡市冯家山水库管理局诉刘某某), Shaanxi Baoji Interim. People's Ct. (陕西省宝鸡市中级人民法院), (2017) 陕03民终393号, (Apr. 10, 2017) (China).

128. The citations were to 陕西省殡葬管理办法 (Measures for the Administration of Funeral and Interment in Shaanxi Province), and 宝鸡市殡葬管理实施办法 (Implementation Measures for the Administration of Funeral and Interment in Baoji City), a local measure. Both were adopted following the announcement of the national policy.

129. Zhonggong Zhongyang Bangongting Guowuyuan Bangongting Yinfa Guanyu Dangyuan Ganbu Daitou Tuidong Binzang Gaige De Yijian De Tongzhi (中共中央办公厅国务院办公厅印发《关于党员干部带头推动殡葬改革的意见》的通知) [Notice of the General Office of the Central Committee of the Communist Party of China and the General Office of the State Council on the Issuance of the "Opinions on Party Members and Cadres Taking the Lead in Promoting Funeral Reform"], Dec. 10, 2013, [https://perma.cc/JR3G-2N9Z] (last visited Jan. 15, 2024).

In another example, a court held that the demolition of a building was illegal under the Land Management Law and the Administrative Compulsion Law, but also cited a Party document to bolster the argument that the procedures were unlawful. Nie v. Xuzhou Tongshan Dist. People's Gov't et al. (聂某某诉徐州市铜山区人民政府等), Jiangsu Xuzhou City Interim. People's Ct. (江苏省徐州市中级人民法院), (2016) 苏03行初653号, (June 27, 2017) (China), citing 中共中央纪委办公厅、监察部办公厅关于加强监督检查进一步规范征地拆迁行为的通知 (Notice of the General Office of the CCP Central Commission for Discipline Inspection and the General Office of the Ministry of Supervision on Strengthening Supervision and Inspection and Further Regulating Land Acquisition and Demolition).

130. Twelve such citations arose in OGI cases. The remainder were spread across a broad range of subject matters (contracts, SOE restructuring, land). In one example, the plaintiffs filed an Open Government Information request seeking information about the seizure of the family's home during the Cultural Revolution. The government argued that historical real estate disputes were not within the jurisdiction of the courts. Although the court agreed, it nevertheless stated that "in accordance with the spirit of the Fourth Plenum Decision's emphasis on protecting litigant rights," it would hear the case seeking information under China's open government information rules. In other words, it heard the OGI case—even though the ultimate goal of the plaintiff was to address the issue of property ownership changes during the Cultural Revolution period, for which the court lacked jurisdiction. The court proceeded to decide the OGI case on the merits, finding the local government had failed to provide a sufficient response to the plaintiffs explaining the legal reasons for denying the request. The court compelled the government to provide a new response within fifteen days. In the end, the Plaintiffs' claims still failed, but the court relied on the language from the plenum document to require the local government to better explain why the claim failed. Hu v. Wuhan Hous. Sec. and Hous. Mgmt. Bureau (胡某某诉武汉市住房保障和房屋管理局), Hubei Wuhan Jiang'an Dist. People's Ct. (湖北省武汉市江岸区人民法院), (2015) 鄂江岸行初字第00030号, Apr. 3, 2015 (China).

Courts similarly cited general phrases in Party documents for principles such as the goal of encouraging agricultural production (in a dispute about the proper recipient of agricultural subsidies),¹³¹ or that SOE reform is a key element of building a socialist market economy.¹³² In one case on appeal to an intermediate court in Henan,¹³³ the court cited a jointly-issued document from the Party's Central Office and the State Council to chide a local government for reneging on a promise to provide tax benefits to local investors. The court cited¹³⁴ the principle that "we should build a government ruled by law and operated upon trust and honesty," and went on to state that it supported the principle that local governments are bound by their policies, which are not subject to changes in local leadership. The court found that the local government's policy change did not annul the prior promise.

In other cases, courts relied on Party documents to support extralegal solutions to cases. In a series of cases from Shaanxi, local courts cited a document jointly issued by the municipal Party Political-Legal Committee, intermediate court, and civil affairs bureau to support payments by the local government to plaintiffs who were unable to enforce court judgments. In one case, for example, plaintiffs were the family members of a murder victim. The court that tried the case awarded 98,676 yuan in compensation in the original decision, but the defendant never paid and subsequently died.¹³⁵ The court cited the document¹³⁶ to support the payment of 50,000 yuan out of a judicial assistance fund to the plaintiffs.

4. *Contestation and Resistance: Rejecting Party Documents*

A small number of court decisions pushed back against the idea that Party documents may provide the legal basis of a decision. Courts did this in two ways, either by citing Party documents in decisions in which they determine that they

131. Tang v. Tang & Li (唐某某诉唐某某、李某某), Shaanxi Fuping Cnty. People's Ct. (陕西省富平县人民法院), (2014) 富平民初字第02437号, Jan. 6, 2015 (China).

132. Cheng v. Zhang et al. (程某某诉张某某等), Hubei Wuhan Wuchang Dist. People's Ct. (湖北省武汉市武昌区人民法院), (2017) 鄂0106民初8749号, Dec. 12, 2017 (China).

133. Shangshui Cnty. Fin. Bureau v. Shangshui Yuansheng Real Estate Dev. Co., Ltd. (商水县财政局诉商水源盛房地产开发有限公司), Henan Zhoukou City Inter People's Ct. (河南省周口市中级人民法院), (2017) 豫16行终39号, Feb. 24, 2017 (China).

134. See *Zhonggong Zhongyang Guowuyuan Guanyu Wanshan Chanquan Baohu Zhidu Yifa Baohu Chanquan De Yijian* (中共中央、国务院关于完善产权保护制度依法保护产权的意见) [Opinions of the Central Committee of the Communist Party of China and the State Council on Improving the Property Rights Protection System and Protecting Property Rights in Accordance with the Law] (Nov. 4, 2016), [<https://perma.cc/PG44-RL56>] (last visited Jan. 16, 2024).

135. Dong v. Chen (董某某诉陈某某), Shaanxi Hanzhong Hantai Dist. People's Ct. (陕西省汉中市汉台区人民法院), (2015) 汉台执字第00038号, Jan. 12, 2015 (China).

136. 《中共汉中市政法委、汉中市中级人民法院、汉中市财政局、汉中市民政局关于对执行案件特困申请人实施救助暂行办法》(The Hanzhong Municipal and Legal Committee of the Communist Party of China, the Hanzhong Intermediate People's Court, the Hanzhong Municipal Finance Bureau, and the Hanzhong Civil Affairs Bureau on the Implementation of the Interim Measures for the Assistance of Indigent Applicants in Enforcement Cases).

lack jurisdiction over a case, or by explicitly stating that the Party documents at issue are not law. These cases are rare, but suggest differences of opinion within the courts about the appropriateness of reliance on Party documents.

Ninety-six court decisions refused to apply Party documents by finding that the court lacked jurisdiction over the case because it involved Party policy. Some decisions rejecting jurisdiction are unsurprising. Two courts held that the granting or revoking of Party membership is outside the scope of labor disputes, citing the Party Constitution and other Party documents.¹³⁷ Likewise, courts ruled they had no jurisdiction over claims brought pursuant to the Party's discipline procedures.¹³⁸ In one such case, a plaintiff had argued that the local authorities failed to follow the discipline regulations.¹³⁹

Some courts decided that they lacked jurisdiction in claims nearly identical to those decided by other courts based on Party documents. A few courts decided that they lacked jurisdiction to address contract or land disputes arising from the conversion of private businesses into public-private joint management, under the "Opinions on Dealing with the Issue of Demanding and Appropriating Premises of Original Public-Private Joint Ventures and Cooperative Shops,"¹⁴⁰ which three courts refer to as "a policy document."¹⁴¹ Other courts cited the same document as a legal basis for their decisions.¹⁴² Two courts held that the compensation of

137. Peng v. Beijing Huairou Tanghekou Town People's Gov't (彭某某诉北京市怀柔区汤河口镇人民政府), Beijing Huairou Dist. People's Ct. (北京市怀柔区人民法院), (2015) 怀民初字第06361号, Jan. 18, 2016 (China); Hu v. Jiangsu Television Station (胡某某诉江苏电视台), Jiangsu Nanjing Ry. Transp. Ct. (江苏省南京铁路运输法院), (2016) 苏8602行初618号, July 22, 2016 (China).

138. See *Zhongguo Gongchandang Jilü Jiancha Jiguan Anjian Jiancha Gongzuo Tiaoli* (中国共产党纪律检查机关案件检查工作条例) [Regulations of the Communist Party of China on the Work of Case Inspection by Disciplinary Inspection Organs] (promulgated Mar. 25, 1994), <https://perma.cc/N8CA-5Q5X> (last visited Apr. 1, 2021).

139. Feng v. Shijiazhuang City Police Dep't (冯某诉石家庄市公安局), Hebei Shijiazhuang City Interm. People's Ct. (河北省石家庄市中级人民法院), (2016) 冀01行终212号, May 19, 2016 (China).

140. See *Opinions on Dealing with the Issue of Demanding and Appropriating Premises of Original Public-Private Joint Ventures and Cooperative Shops*, *supra* note 101.

141. Compare Lai v. Huazhou City People's Gov't (赖某某诉化州市人民政府), Guangdong Province High People's Ct. (广东省高级人民法院), (2017) 粤行终1723号, Mar. 23, 2018 (China), with Li v. Wuhan Ceramic Co. (李某某诉武汉市陶瓷公司), Hubei Wuhan Qiaokou Dist. People's Ct. (湖北省武汉市硚口区人民法院), (2014) 鄂硚口立初字第00001号, Dec. 30, 2013 (China), and Shi v. Henan Zhongnuo Pharm. Co., Ltd. (石某诉河南省中诺医药有限公司), Henan Fengqiu Cnty. People's Ct. (河南省封丘县人民法院), (2016) 豫0727民初2007号, Dec. 12, 2016 (China).

142. See discussion *supra* note 101. Likewise, one court decided that it lacked jurisdiction to decide a compensation dispute between a public official and the government, referring to the "Opinions on Actively Promoting the Work of Socialized Management Services for Retired Employees" as "a policy document." Yang v. Foshan Jiahua Elec. Tech. Co., Ltd. (杨某某诉佛山市佳华电气科技有限公司), Guangdong Foshan City Interm. People's Ct. (广东省佛山市中级人民法院), (2017) 粤06民终10927号, Nov. 14, 2017 (China), citing *Guanyu Jiji Tuijin Qiye Tuixiu Renyuan Shehuihua Guanli Fuwu Gongzuo de Yijian* (关于积极推进企业退休人员社会化管理服务工作的意见) [Opinions on Actively Promoting the Work of Socialized Management Services for Retired

Party members who are criminally charged and in detention before trial, the subject matter regulated by the “Notice on Issues Concerning Wages and Treatments of Institutional Workers and Agency Workers Under Compulsory Measures and Administrative Criminal Punishment,”¹⁴³ was outside the court’s jurisdiction.¹⁴⁴ Other courts applied the same document in nearly identical disputes.¹⁴⁵

Courts that declined jurisdiction by citing a Party document rarely offered much reasoning for their decisions. A few courts stated that the issues raised in the cited Party documents are “policy statements” or “policy documents.” Courts that stated that an issue is one of policy virtually always declined to resolve the issue before them. Yet courts did not explain what distinguishes a policy issue from a legal issue, and there do not appear to be any formal rules that state that courts should decline to decide policy issues.¹⁴⁶

A small number of decisions went further by explicitly refusing to apply Party documents because they are not law. Some courts refused to apply the “Provisions on Further Preventing Party and Government Organs and Party and Government Cadres from Operating Business Enterprises,”¹⁴⁷ which prohibits Party branches or Party members from starting private businesses. One court was explicit in its rationale, declaring that a Party document is not law: “the Party document [cited by plaintiff] might lead to disciplinary actions within the Party, but does not prevent such contractual relationships from being recognized by law.”¹⁴⁸ This is the reverse of what most courts that confronted the issue decided.

Some courts likewise refused to apply Party documents to resolve land disputes. One court refused to apply the “Notice on Strengthening Supervision and Inspection to Further Regulate Land Acquisition and Demolition”¹⁴⁹ in an

Employees] (promulgated June 6, 2003), <https://perma.cc/L5U3-R9NT> (last visited Apr. 1, 2021). The same document was cited as a basis for decisions by courts in several cases discussed above.

143. See Notice Concerning Wages and Treatments of Institutional Workers and Agency Workers Under Compulsory Measures and Administrative Criminal Punishment, *supra* note 111.

144. Chen v. Guiding Cnty. Meteorological Bureau (陈某诉贵定县气象局), Guizhou Longli Cnty. People’s Ct. (贵州省龙里县人民法院), (2017) 黔2730行初146号, Oct. 11, 2017 (China).

145. See sources cited *supra* notes 111–112.

146. We are also currently examining when courts use the term “policy” in the holding section of judgments.

147. See Provisions on Further Preventing Party and Government Organs and Party and Government Cadres from Operating Businesses and Starting Enterprises, *supra* note 94.

148. Luo v. Luo (罗某某诉罗某某), Jiangxi Shangyou Cnty. People’s Ct. (江西省上犹县人民法院), (2015) 上民二初字第220号, Dec. 22, 2015 (China); Zhengzhou Ruhe Road Sub-district Office v. Henan Qinghua Property Development Co., Ltd. (郑州市中原区汝河路街道办事处诉河南清华物业发展有限公司), Henan Province High People’s Ct. (河南省高级人民法院), (2015) 豫法民二终字第199号, Dec. 29, 2015 (China); Wuchang City Changbao Township Nianjia Vill. Comm. v. Qi (五常市常堡乡廿家村民委员会诉齐凤桐), Heilongjiang Harbin City Interm. People’s Ct. (黑龙江省哈尔滨市中级人民法院), (2018) 黑01民终4651号, May 28, 2018; Zhang v. Liu (张某某诉刘某某), Shaanxi Xi’an Yanta Dist. People’s Ct. (陕西省西安市雁塔区人民法院), (2015) 雁民初字第03246号, Oct. 17, 2015 (China).

149. See Zhongyang Jiwei Bangongting Jianchabu Bangongting Guanyu Jiaqiang Jiandu Jiancha Jinyibu Guifan Zhengdi Chaqian Xingwei de Tongzhi (中共中央纪委办公厅、监察部办公厅关于

administrative litigation case involving the government's expropriation of land, stating that "[the Party Document cited by the defendant] is merely a publication by the Party and does not constitute a law, regulation, or administrative rule, and for that reason cannot be applied in this case."¹⁵⁰ The court then went on to decide the case based on a State Council regulation¹⁵¹ and a Supreme People's Court Notice.¹⁵²

Other courts are more cautious, instead refusing to apply Party documents because of the date of the Party document and the subsequent development of law. One court refused to apply a Communist Party Central Committee Notice¹⁵³ to resolve a land dispute between a villager and the production team, remarking that the Party notice was issued in 1986, before the NPC passed the Land Administration Law in 1987 and amended it in 2004.¹⁵⁴ This, the court explained,

加强监督检查进一步规范征地拆迁行为的通知) [Notice of the General Office of the Central Commission for Discipline Inspection of the Communist Party of China and the General Office of the Supervision Department on Strengthening Supervision and Inspection to Further Regulate Land Acquisition and Demolition] (promulgated Mar. 17, 2011), <https://perma.cc/K4QX-2FUU> (last visited Jan. 16, 2024).

150. Chen et al. v. Ningde City Jiaocheng Dist. People's Gov't (陈某某等诉宁德市蕉城区人民政府), Fujian Ningde City Interim. People's Ct. (福建省宁德市中级人民法院), (2014) 宁行初字第1号, Sept. 5, 2014 (China).

151. See Guoyou Tudi Shang Fangwu Zhengshou Buchang Tiaoli (国有土地上房屋征收补偿条例) [Regulations on Compensation for Expropriation of Houses on State-Owned Land] (promulgated Jan. 21, 2011), <https://perma.cc/VTX4-HJ6D> (last visited Apr. 1, 2021).

152. See Zuigao Renmin Fayuan Guanyu Shenli Sheji Nongcun Jiti Tudi Xingzheng Anjian Ruogan Wenti de Guiding (最高人民法院关于审理涉及农村集体土地行政案件若干问题的规定) [Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Administrative Cases Involving Rural Collective Land] (promulgated May 9, 2011), <https://perma.cc/623G-JQMQ> (last visited Apr. 1, 2021). In another case involving a rural land contract dispute, the court stated that the Party Document cited by the plaintiff was "not a legal authority, and cannot serve as a basis for deciding this case." Yihu Village Huangnian Village Committee v. Lujiang Cnty. Lucheng Town Yihu Community Residents' Committee et al. (移湖村黄碾村民组诉庐江县庐城镇移湖社区居委会), Anhui Lujiang Cnty. People's Ct. (安徽省庐江县人民法院), (2015) 庐江民二初字第00245号, May 18, 2015 (China). As noted above, numerous other cases applied the same two documents to resolve similar disputes. See Notice on Further Stabilizing and Improving Rural Land Contracting Relationship, *supra* note 93.

153. See Notice of the Central Committee of the Communist Party of China on Some Supplementary Provisions Regarding the Issue of Resident Land, *supra* note 89.

154. Chen v. Zhenghe Cnty. Xiongshan Sub. Dist. Jiefang Vill. Comm. (陈某诉政和县熊山街道解放村村民委员会), Fujian Nanping City Interim. People's Ct. (福建省南平市中级人民法院), (2017) 闽07民终1133号, Sept. 15, 2017 (China). Plaintiff cited the document to argue that the collectivization movement did not affect his rights to the land originally granted to the plaintiff in the early 1950s but then seized later in the decade. The court acknowledged that the cited party document indeed had the language that the plaintiff relied on. But the court cited to laws enacted later, including the 1982 Constitution, which states that all land belongs to the State except when otherwise provided in the law, and the 1987 Land Management Law, which says that the right to use homestead rights should be granted by the local government. Based on these sources, the court decided that the plaintiff had lost his original right. Yet the Land Management Law did not specifically address the status of homestead rights issued prior to collectivization, and thus it could be argued the Party document does

means that “the law of this country meant to manage the relationship between villagers and production teams has been updated,” replacing the now-outdated Party document. At the time the decision was issued, however, the cited Party Document was still in force, and at least one other court decided a case in the same year based on the same Party document.¹⁵⁵ In other cases, courts do not explicitly reject a Party document’s applicability, but pass it over in a manner that suggests an unwillingness to use it as a legal basis.¹⁵⁶

The small number of cases in which courts refused to apply Party documents makes generalization difficult. But more than half of the cases (16 of 28), came from appellate courts. Are intermediate (and higher) courts more cautious in appealing to Party norms, or at least more aware that the legal status of Party documents is potentially contentious? Is the explicit rejection of applying Party norms due to local court policy, or the actions of individual judges? Although the answers to these questions are unclear, it is significant that some courts have been willing explicitly to reject treating Party documents as binding on the courts—and to make such decisions public.

Differences of opinion, if any, about the legal status of Party documents may be less about courts’ obligations to follow Party directives than about the appropriateness of relying on such documents in the holding section of a case. The use of Party documents across a wide range of cases strongly indicates that Party documents have ontological status in the hierarchy of legal norms in China. Courts rely on Party documents to resolve a wide range of cases. Sometimes this is out of necessity; sometimes this may be by strategic design to persuade litigants to accept a decision. Yet it also appears that when courts do cite to Party documents, they most often do so without much reflection on the scholarly debate on the legal status of Party rules.

not conflict with any provisions of the new Land Management Law – a determination apparently made by those courts that decided similar cases in favor of rights holders by citing to the Party document.

155. Yang et al. v. Jianhe Cnty. People’s Gov’t (杨某某等诉剑河县人民政府), Guizhou Province High People’s Ct. (贵州省高级人民法院), (2017) 黔行终585号, Aug. 25, 2017 (China).

156. For example, in one case on appeal regarding the determination of retirement benefits, the appellate court upheld the lower court’s holding but corrected the trial court’s citation to the jointly-issued “Notice on the Issue of Determining the Date of Birth when Handling the Formalities of Retiring (Leaving) Officials.” Zhang v. Haiyan Cnty. Aquatic Tech. Extension Station (张某某诉海盐县水产技术推广站), Zhejiang Jiaxing City Interm. People’s Ct. (浙江省嘉兴市中级人民法院), (2009) 浙嘉民终字第8号, Feb. 4, 2009 (China), citing *Zhonggong Zhongyang Zuzhi Bu Renshi Bu Gongan Bu Guanyu Banli Ganbu Tui (Li) Xiu Deng Shouxu Shi Rending Chusheng Riqi Wenti De Tongzhi* (中共中央组织部、人事部、公安部关于办理干部退(离)休等手续时认定出生日期问题的通知) [Notice of the Central Organization Department of the Communist Party of China, the Ministry of Human Resources, and the Ministry of Public Security on the Issue of Determining the Date of Birth When Handling the Formalities of Retiring (Leaving) Officials] (Aug. 30, 1990), [<https://perma.cc/QWS7-FRTN>] (last visited Jan. 16, 2024). The appellate court conducted a legal analysis that arrived at the same legal conclusion as the lower court but signaled that the lower court’s reliance on the Party document was inappropriate.

III. ACADEMIC DEBATE: EMBRACING THE PARTY

Court decisions suggest that basing decisions on Party documents is an ongoing practice, one that existed before Xi Jinping brought renewed attention to Party oversight and to Party regulations. Party documents have likely always been a necessary base of decisions in some cases and provide rhetorical support in others. Yet Xi's emphasis on Party oversight of the legal system has had a direct effect on a separate legal debate, about whether Party rules and regulations should be considered part of the Chinese legal system or categorized as law. Although occurring almost entirely among academics and Party theorists, the debate offers insights into the Party's relationship to the legal system, and to the meaning and role of law in China. The debate makes clear that treating Party documents as law is increasingly normalized. The debate is notable both because of arguments made in favor of including Party documents within the definition of formal law, and for the willingness of some to reject such arguments, despite increased emphasis on ideological conformity within legal academia.

Prior to the 2000s, the legal status of Party documents received virtually no scholarly attention.¹⁵⁷ In 2006, Jiang Ming'an and Luo Haocai, two leading scholars in constitutional and administrative law, proposed a concept of "soft law" to account for all norms and standards that are not legally binding but that are nonetheless influential in regulating individual and corporate activities in a modern State.¹⁵⁸ They identified Party documents as one of the prime examples of "soft law," alongside other sources such as corporate bylaws, societal rules, and international norms not yet incorporated into domestic law. According to Jiang and Luo, these various forms of soft law are to be distinguished from legal rules, which are universally binding and enforced through the legal system.¹⁵⁹ Party rules are enforced through intra-Party discipline, not the coercive power of

157. Some English language scholarship from the 1990s recognized the issue. *See, e.g.*, Keller, *Sources of Order*, *supra* note 62, at 719, 722.

158. Jiang Ming'an (姜明安), *Ruanfa De Xingqi Yu Ruanfa Zhizhi* (软法的兴起与软法之治) [*The Rise of Soft Law and the Governance of Soft Law*], 2 *Zhongguo Faxue* (中国法学) [Chinese Legal Studies] 25 (2006).

159. Jiang Ming'an (姜明安), *Lun Dangnei Fagui Zai Yifa Zhiguo Zhongde Zuoyong* (论党内法规在依法治国中的作用) [*On the Role of Intra-Party Regulations in Administering the Country According to Law*], 2 *Zhonggong Zhongyang Dangxiao Xuebao* (中共中央党校学报) [J. CENT. PARTY SCH. COMMUNIST PARTY CHINA] 73, 75 (2017) (soft laws are rules that are binding upon the society as a whole, but not made or enforced by the State); Luo Haocai (罗豪才), Song Gongde (宋功德) *Renzhen Duidai Ruanfa – Gongyu Ruanfa De Yiban Lilun Jiqi Zhongguo Shijian* (认真对待软法——公域软法的一般理论及其中国实践) [*Take Soft Law Seriously—The General Theory of Public Domain Soft Law and Its Practice in China*], 2 *Zhongguo Faxue* (中国法学) [Chinese Legal Studies] 3 (2006) (stating that one of the central features for soft law is its lack of reliance upon the judicial system (非司法中心主义)). Professors Luo and Song argued that in practice soft law can appear in judgments either as a "legal fact" or by being adopted by courts. But their discussion focused on common law systems, and made no reference to how this might happen in China or to the role of Party documents in such a process. *Id.* at 4–7.

the State.¹⁶⁰ For example, no criminal sanction can follow from the violation of Party rules.¹⁶¹ This view went largely unchallenged for almost a decade, with few scholars addressing the issue.¹⁶² Those who did discuss Party documents noted that Party documents were internal to the Party, and thus were not a source of law for the courts.¹⁶³ Some scholars, notably Peking University Professor Chang Peng'ao, also examined the effect of Party documents in specific substantive areas, particularly property law, arguing for a distinction between Party policy and the documents themselves. Given the fact that many major land rules (both historic and at present) derive from Party policy, such rules can be a source of property law and a basis for court judgments, even if the Party documents themselves do not have legal force because they are not technically classified as law.¹⁶⁴ In general, however, legal scholarship largely avoided the issue.¹⁶⁵

After years of limited attention from scholars within China, the legal status of Party documents has received renewed attention since Xi Jinping came to power in 2012. In the resolution adopted by the CCP's eighteenth National Party Congress in 2012, Xi declared that the "CCP's Intra-Party Regulations (党内法规) are not only the cornerstone of CCP's self-regulation but also a strong foundation in building a country with socialist rule of law."¹⁶⁶ Official media and political theorists quickly picked up on the theme of Party regulations being part of the Chinese legal system, with some arguing for a more prominent role for Party documents. Most notably, Peking University Professor Jiang Shigong,

160. Jiang Min'an (姜明安), *Lun Dangnei Fagui Zai Yifa Zhiguo Zhongde Zuoyong* (论党内法规在依法治国中的作用) [On the Role of Intra-Party Regulations in Administering the Country According to Law], 2 *Zhonggong Zhongyang Dangxiao Xuebao* (中共中央党校学报) [J. CENT. PARTY SCH. COMMUNIST PARTY CHINA] 73 (2017).

161. *Id.*

162. Pang Yufan (庞宇凡) *Dangnei Fagui Yu Guojiafa Guanxi Yanjiu* (党内法规与国家法关系研究) [*Research on the Relationship between the Party's Regulations and State Laws*], 8 *Fazhi Yu Shehui* (法制与社会) [Legal System and Society] 7 (2016) (noting that the theory represented the mainstream view); Ao Jing (敖靖) *Dangzheng Heshu Gaige Shiyu Xia Dangnei Fagui Zuoyong Xilun* (党政合署改革视阈下党内法规作用析论) [*Analysis on the Role of Intra-Party Regulations in the Perspective of the Reform of the Party and Government Office*], 3 *Guangzhou Shehui Zhuyi Xueyuan Xuebao* (广州社会主义学院学报) [J. GUANGZHOU INST. SOCIALISM] 64 (2019) (same).

163. See, e.g., Zhi Zhenfeng, *supra* note 56.. Such arguments were often based on a strict understanding as laws being only those norms issued by State legal entities.

164. Chang Peng'ao (常鹏翱) *Duoyuan De Wuquan Fayuan Jiqi Shiyong Guilü* (多元的物权法源及其适用规律) [*Multiple Sources of Property Law and its Rules of Application*], 4 *Faxue Yanjiu* (法学研究) [Legal Research] 114 (2014).

165. See Zhi Zhenfeng, *supra* note 56 (stating that both legal scholars and Party scholars avoided the issue, in part due to the fact that many documents were secret or politically sensitive).

166. See *Zhonggong Zhongyang Guanyu Quanmian Tuijin Yifa Zhiguo Ruogan Zhongda Wenti De Jueding* (中共中央关于全面推进依法治国若干重大问题的决定) [Decision of the CCP Central Committee on Major Issues Pertaining to Comprehensively Promoting the Rule of Law] (promulgated by Departments and Institutions of the CCP Central Committee, Central Committee of the Communist Party of China, Oct. 24, 2014), http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=8e624467ca77636dbdfb&keyword=%e4%be%9d%e6%b3%95%e6%b2%bb%e5%9b%bd&EncodingName=&Search_Mode=accurate&Search_IsTitle=0 [https://perma.cc/Z5MR-49AF] (last visited Mar. 26, 2021).

widely regarded as a leading leftist political and legal theorist,¹⁶⁷ published a series of influential essays arguing that Party documents, including the Party Constitution and other Party documents, should be treated as an important component of the Chinese legal system. In one such essay, Professor Jiang writes,

“Viewed from the narrow, nationalist concept of law, the policies and guiding principles established by the Party are not part of the law, because they are not made by the state . . . But, to take a diversified view of the law, the policies of the Party play a substantial role in the normative system of Chinese society and definitely composes a part of the legal system in China. The inclusion of Party documents in the rule of law in China in the Fourth Plenum of the Eighth Party Congress is a manifestation of this view.”¹⁶⁸

Official media and political theorists quickly picked up on the theme.¹⁶⁹ As Professor Fu Hualing notes, “within less than five years, the position that party

167. Commentators describe Jiang as providing theoretical content to support many of Xi Jinping’s theories. David Ownby, *Jiang Shigong, “Empire and World Order,”* Reading the Chinese Dream, <https://www.readingthechinadream.com/jiang-shigong-empire-and-world-order.html>; David Ownby, *Chinese thinkers debate their country’s future*, LE MONDE DIPLOMATIQUE, (Jan. 2023), <https://mondediplo.com/2023/01/09china>; Vincent Gartyon, *Jiang Shigong’s Chinese World Order*, PALLADIUM, (Feb. 5, 2020), <https://www.palladiummag.com/2020/02/05/jiang-shigongs-vision-of-a-new-chinese-world-order/> (describing Jiang as “one of the foremost Chinese critics of liberalism”).

168. For essays published in official and semi-official media, see Jiang Shigong (强世功), *Yao Lijie Zhongguo Fazhi, Bixu Xianfa Dangzhang Yiqi Kan* (要理解中国法治，必须宪法党章一起看) [*To Understand The Rule Of Law In China, One Must Look At The Constitution And Party Constitution Together*], Aisixiang (爱思想) [aisixiang.com] (Oct. 28, 2014) [<https://perma.cc/6RY5-8B6A>] (last visited Mar. 30, 2021); see also Jiang Shigong (强世功), *Kaipi Zhongguo Fazhi De Xinchuantong* (开辟中国法治的新传统) [*Open up a new tradition of Chinese rule of law*], Zhongguo Gongchandang Xinwen Wang (中国共产党新闻网) [CHINESE COMMUNIST PARTY NEWS WEB] (Dec. 25, 2014) [<https://perma.cc/G4KY-BYCT>] (last visited Mar. 30, 2021); Jiang Shigong (强世功), *Dangzhang Yu Xianfa: Duoyuan Yiti Fazhi Gongheguo De Jiangou* (党章与宪法：多元一体法治共和国的建构) [*Party Constitution and Constitution: The Construction of a Pluralistic and Unifying Rule of Law Republic*], Xinlang Wang (新浪网) [history.sina.com.cn] (Aug. 4, 2015) [<https://perma.cc/2MR3-H9VB>] (last visited Mar. 30, 2021). For articles published in academic journals, see Jiang Shigong (强世功) *Cong Xingzhengfa Zhiguo Dao Zhengdangfa Zhiguo* (从行政法治到政党法治) [*From A Country Governed By Administrative Law To A Country Governed By Political Party Law*], 3 Zhongguo Falü Pinglun (中国法律评论) [China L. Rev.] 35 (2016); see also Jiang Shigong (强世功), *Zhongguo Fazhi Dao lu Yu Fazhi Moshi – Quanguo Shiye Yu Zhongguo Jingyan* (中国法治道路与法治模式——全球视野与中国经验) [*China’s Road to Rule of Law and Model of Rule of Law: Global Perspective and Chinese Experience*], Zhonggong Zhongyang Dangxiao (中共中央党校) [ccps.gov.cn] (Sep. 23, 2019) [<https://perma.cc/2CHB-TQFV>] (last visited Mar. 30, 2021).

169. For scholars agreeing with and developing Jiang’s view, see Zhou Wang (周望) *Lun Dangnei Fagui Yu Guojia Falü De Guanxi* (论党内法规与国家法律的关系) [*On the Relationship between the Party’s Regulations and State Laws*], 1 Lilun Tansuo (理论探索) [Theoretical Exploration] 22 (2018) (“taking into account of the practical norms of China, the best theoretical route is to categorize party documents as law; this view helps us better understand the relationship between the party and the law”); see also Tu Kai, *supra* note 51, at 52 (arguing that “Party documents have the dual nature of policy and law. In comparison with other social norms, Party documents are better categorized as law”); see also, Ji Yaping (姬亚平), *Falü Duoyuan Zhuyi Shijiao Zhongde Dangnei Fagui* (法律多元主义视角中的党内法规) [*Intra-Party Regulations from the Perspective of Legal Pluralism*], 6 Shanghai Zhengfa Xueyuan Xuebao (上海政法学院学报) [J. SHANGHAI U. POL. SCI.

law is part of China's rule of law has evolved from heresy to mainstream viewpoint.”¹⁷⁰ One source discusses numerous new research institutes on Party regulations and describes the study of Party rules as “a new academic hotspot.”¹⁷¹ One of the earlier book length treatments of the topic, published in 2018, argues that “the regulatory effectiveness of Party regulations manifests the isomorphism and integration of Party regulations and law” and that “the only way . . . of comprehensively advancing the rule of law is to adopt an integration of inner-party regulations, Party-led rule of law, and national law.”¹⁷² Many of these discussions appear to equate greater lawlike regulation within the Party—“ruling the Party by regulation”—with treating Party rules as an integral part of the legal system as a whole.¹⁷³ In his July 2021 speech celebrating the hundredth anniversary of the establishment of the Communist Party, General Secretary Xi Jinping declared that upholding “ruling the Party by regulation” and “constructing a comparatively complete system of internal Party laws and regulations” were key elements of the Party's success in building a legal system.¹⁷⁴ Scholars have

& L.] 124 (2019) (arguing that Party documents are more than just soft law, partly because they are made by the CCP which represents the interests of all people in China, and partly because it necessarily extends to affairs not strictly within the party).

170. Hualing Fu, *Editorial. Touching the Proverbial Elephant: The Multiple Shades of Chinese Law*, 2019 CHINA PERSPECTIVES 3–9, 5 (2019).

171. Wang Weiguo (王伟国) *Guojia Zhili Tixi Shijiao Xia Dangnei Fagui Yanjiu De Jichu Gainian Bianxi* (国家治理体系视角下党内法规研究的基础概念辨析) [Differentiation and Analysis of Basic Concepts in the Study of Inner Party Laws and Regulations], 2 *Zhongguo Faxue* (中国法学) [Chinese Legal Studies] 269 (2018); (“In this new era, as the Party continues to build a new and modern China . . . party documents have increasingly become the new hotspot of academic fields of law, party study, and politics, and we have seen a proliferation of new research institutes focusing on the study of party documents.”); see also Zhang Zhiyuan (章志远), *Dangnei Fagui Yanjiu Fangfa Lun Tanxi* (党内法规研究方法论探析) [A Probe into the Research Methodology of the Party's Regulations], 4 *Faxue Luntan* (法学论坛) [Legal Forum] 90 (2019) (noting that the “theoretical nature of Party documents” has begun to receive greater attention among scholars since the 18th Party Congress); Liu Changqiu (刘长秋), *Dangnei Fagui Yu Guojiafa: Guanlian, Qubie Jiqi Guanxi Xietiao* (党内法规与国家法：关联、区别及其关系之协调) [Internal Party Regulations and State Laws: Relations, Differences and Coordination of the Relationship], 3 *Zhili Xiandaihua Yanjiu* (治理现代化研究) [Governance Modernization Research] 19 (2020) (same); Lian Rui (廉睿), Gao Penghui (高鹏怀), *Dangnei Fagui Yanjiu: Shinian Huigu Yu Weilai Zhanwang* (党内法规研究：十年回顾与未来展望) [Research on Inner Party Laws: A Review of Ten Years and Prospects for the Future], 5 *Zhengzhou Hangkong Gongye Guanli Xueyuan Xuebao* (郑州航空工业管理学院学报) [J. ZHENGZHOU INST. AERONAUTICAL INDUSTRY MGMT.] 100 (2018) (same).

172. Ke & Yang, *supra* note 40, at 219–20.

173. See, e.g., Tu Kai (屠凯), *Dangnei Fagui Yu Guojia Falü Gongchu Zhong De Liangge Wenti* (党内法规与国家法律共处中的两个问题) [Two Problems in the Coexistence of Intra-Party Regulations and State Laws], 3 *Zhongguo Falü Pinglun* (中国法律评论) [China L. Rev.] 47 (2016); *Zhonggong Zhongyang Yinfa Guanyu Jiaqiang Dangnei Fagui Zhidu Jianshe De Yijian* (中共中央印发《关于加强党内法规制度建设的意见》) [The Central Committee of the Communist Party of China issued the “Opinions on Strengthening the Construction of the Party's Regulations and Systems”] (promulgated by the Central Committee of the Communist Party of China, June 25, 2017), [https://perma.cc/L45N-H92B] (last visited Mar. 31, 2021) (stating that “building a comprehensive system of party documents . . . is an important part of building socialist rule of law with special Chinese characteristics”).

174. Mou Licheng (牟利成) & Xiao Jinming (肖金明), *Cong Xingzhi “Eryuan” Dao Xitong Guanlian: Dangnei Fagui yu Guojia Falü Guanxi Yanjiu de Fanshi Zhuanhuan* (从性质“二元”到系

mirrored this argument with numerous articles declaring that Party documents are now a core element of China's efforts to construct law-based governance,¹⁷⁵ and *People's Daily* subsequently published an overview of Party documents authored by the Law and Regulations Bureau of the Central Party Work Office.¹⁷⁶ The report argued that "Ruling the nation according to law" and "Governing the Party according to regulations" are unified, and that accurately grasping the relationship between the two requires connection and coordination, so that Party rules and national laws complement, promote, and protect each other.¹⁷⁷ Yet despite this renewed focus, few scholars explain what practical effects would follow from recharacterizing Party documents as law, or what to do if Party rules and legal rules conflict.

Major academic databases in China show a dramatic increase in articles devoted to the study of Party regulations since the Fourth Plenum of the eighteenth Party Congress in 2014. On the pkulaw.cn (北大法宝) database, as of early 2024, 197 of the 218 articles with Party regulations in their titles were published in 2018 or later. On CNKI (知网), there are 5,489 articles with Party regulations as the theme, most published since 2014. The website's built-in analysis tool likewise shows a dramatic increase in academic discussion of the topic:¹⁷⁸

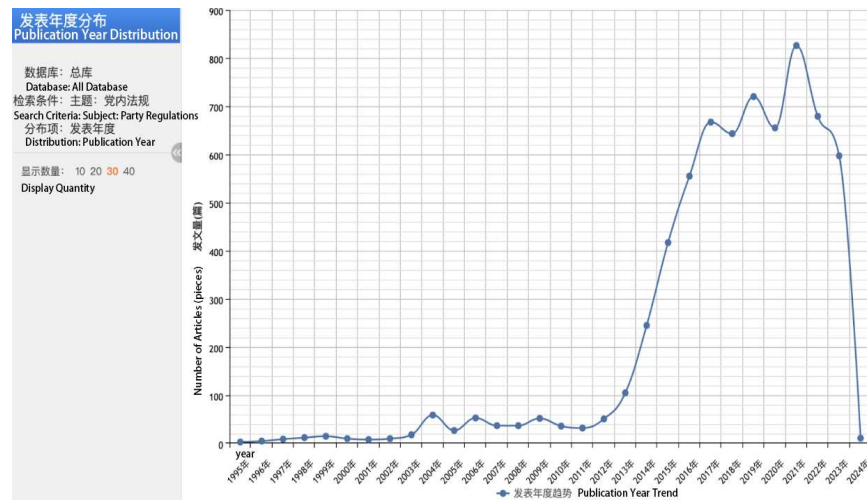
统关联：党内法规与国家法律关系研究的范式转换) [Paradigm Shift in the Study of the Relationship between Inner Party Regulations and Laws], 2 *Dangdai Shijie Shehui Zhuyi Wenti* (当代世界社会主义问题) [Issues of Contemp. World Socialism] 62 (2021).

175. See, e.g., Duan Zhanchao (段占朝) & Pan Mutian (潘牧天), *Fazhixing: Dangnei Fagui de Xingshi Shuxing – Jianlun Fazhi Guidao Shang Dangnei Fagui yu Falü de Guanxi* (法治性：党内法规的形式属性——兼论法治轨道上党内法规与法律的关系) [Rule of Law: Formal Attributes of Party Regulations – and the Relationship Between Party Regulations and Law on the Path to Rule of Law], 2 *Tequ Lilun yu Shijian* (特区理论与实践) [Prac. and Theory of Special Zones] 75 (2021); Mou & Xiao, *supra* note 174 (calling for integration of the Party documents system with the legal system).

176. *Zhongguo Gongchandang Dangnei Fagui Tixi*, *supra* note 33.

177. *Id.*

178. Our search results for “党内法规,” China Academic Journals 中国期刊全文数据库 (CAJ) are saved here: <https://perma.cc/Q9KG-AT5V>.



The increased volume of writing on the topic reflects an ongoing and contentious debate among scholars in China as to whether Party documents are, essentially, another form of law. The traditional view that Party documents lack the coercive power of the State continues to be common.¹⁷⁹ However, an increasing number of scholars have challenged this view by arguing for a fusing of Party rules and State law. Supporters reason that it is an outdated, Western-centered view to think that only State-made law could be law, and instead urge a “diversified” definition of law (多元主义法律) that better accommodates the reality of the political system in China.¹⁸⁰ These scholars often use the idea of “legal pluralism” to argue for a broad view of law, one that includes Party rules and other Party documents. Professor Huang Wenyi argues for a “new legal pluralism” that considers Party documents to be law because they form a complete system, are similar in form to legal rules, are legitimate, and can be feasibly

179. For recent examples, see Wang Xiaoxing (王晓星), *Shilun Dangnei Fagui Yu Guojia Falü De Xianjie Yu Xietiao* (试论党内法规与国家法律的衔接与协调) [Research on the Connecting and Coordination of Intra-Party Regulations and State Laws], 10 *Fazhi Bolan* (法制博览) [Broad Views on Legal Systems] 212 (2020); Xiong Ying (熊瑛), *Dangnei Fagui Yu Guojia Falü: Yingran Yu Shiran De Chongtu Yu Xietiao* (党内法规与国家法律: 应然与实然的冲突与协调) [Intra-Party Regulations and State Laws: Conflict and Coordination between What It Should Be and What It Is], 2 *Chongqing Ligong Daxue Xuebao* (重庆理工大学学报) [J. CHONGQING U. TECH.] 96 (2019); Chen Yanmei (陈艳梅), *Lun Dangnei Fagui Yu Guojia Falü De Guanxi* (论党内法规与国家法律的关系) [On the Relationship between the Party's Regulations and State Laws], 4 *Fazhi Yu Shehui* (法制与社会) [Law And Society] 124 (2019). At least some scholars imply that the goal of separation is not to protect the autonomy of the legal system, but rather the autonomy of the Party: for Party rules to be enforced in the legal system would be to bring the Party under legal regulation. Jin Lantao (靳澜涛), *Lun Dangnei Fagui Yu Guojia Falü De Xietiao Xianjie* (论党内法规与国家法律的协调衔接) [On the Coordination and Connection of Intra-Party Regulations and State Law], 5 *Lilun Yanjiu* (理论研究) [Theoretical Research] 39 (2017).

180. Ji Yaping (姬亚平), *Falü Duoyuan Zhuyi Shijiao Zhongde Dangnei Fagui* (法律多元主义视角中的党内法规) [Intra-Party Regulations from the Perspective of Legal Pluralism], 6 *Shanghai Zhengfa Xueyuan Xuebao* (上海政法学院学报) [J. SHANGHAI U. POL. SCI. & L.] 124 (2019).

applied.¹⁸¹ Others acknowledge that Party regulations apply outside the Party not through the coercive power of the State, but through “customary compliance” (习惯性遵从),¹⁸² yet argue that the two systems should be brought together by placing the principle of “Party regulations leading state law” into the Constitution.¹⁸³ Under this framework, Party regulations have an effect on society by regulating organization and decision-making within the Party.¹⁸⁴ Still others argue for combining the enforcement powers of Party organizations with those of legal institutions,¹⁸⁵ or that the goal should be “organic unity.”¹⁸⁶

Other scholars have taken a descriptive approach, acknowledging that in practice, Party documents regulate both Party and State affairs. Thus, they apply both to Party entities and members and also to non-Party members.¹⁸⁷ One scholar referred to this phenomenon as “the spillover effect (溢出效应)” of Party documents.¹⁸⁸ Another separates internal Party documents from “laws and regulations led by the Party” (党导法规), which refer to Party normative documents that regulate the relationship between the Party and non-Party

181. Huang Wenyi (黄文艺), Zhang Xu (张旭), *Lun Danggui De Fa Shuxing Jiyu Xin Falü Duoyuan Zhuyi De Kaocha* (论党规的“法”属性——基于新法律多元主义的考察) [On the “Legal” Nature of Party Rules - An Examination Based on New Legal Pluralism], 4 *Bijiao Fa Yanjiu* (比较法研究) [Comparative Law Research] 116 (2022).

182. Ke & Yang, *supra* note 40, at 219–20 (arguing for the unification of people’s sovereignty and Party leadership in the Constitution).

183. *Id.* at 50.

184. *Id.* at 170.

185. Wei Yan (魏艳), Yang Jun (杨军), *Danggui Guofa Xietong Zhixing Jizhi De Luncheng Ji Goujian* (党规国法协同执行机制的证成及构建) [Evidence and Construction of the Mechanism for the Coordinated Implementation of Party Rules and National Laws], 4 *Lianzheng Wenhua Yanjiu* (廉政文化研究) [Anti-corruption and Integrity Culture Studies] 42 (2022).

186. Deng Bin (邓斌), Wu Qian (伍茜), *Xin Shidai Dangnei Fagui Yu Guojia Falü Youji Xianjie Jizhi Jiangou* (新时代党内法规与国家法律有机衔接机制建构) [Construction of the Mechanism for the Organic Integration of Party Regulations and National Laws in the New Era], 4 *Xinan Zhengfa Daxue Xuebao* (西南政法大学学报) [J. SOUTHWEST U. POL. SCI. & L.] 80 (2022).

187. Zhang Liwei (张立伟), *Zhongguo Gongchandang Dangnei Fagui De Zhengdangxing Lunzheng* (中国共产党党内法规的正当性论证) [Demonstration of the Legitimacy of the Chinese Communist Party’s Internal Laws and regulations], 1 *Zhongguo Falü Pinglun* (中国法律评论) [China Legal Rev.] 119 (2018).

188. Xu Xiang (徐翔), *Dangnei Fagui De Ruanfa Dingwei Yu Ruanfa Zhizhi De Youhua Zhidao* (党内法规的软法定位与软法之治的优化之道) [The Soft Law Position of the Party’s Regulations and the Way to Optimize the Soft Law Governance], 3 *Zhili Xiandaihua Yanjiu* (治理现代化研究) [Governance Modernization Research] 25 (2020); *see also* Ou Aimin (欧爱民), Zhao Xiaofang (赵筱芳), *Lun Dangnei Fagui Qingli De Gongneng, Kunjing Yu Chulu* (论党内法规清理的功能、困境与出路) [On the Function, Predicament and Outlet of the Clean-up of Party Regulations], 3 *Shanghai Zhengfa Xueyuan Xuebao* (上海政法学院学报) [J. SHANGHAI U. POL. SCI. & L.] 123 (2019) (arguing that Party documents can be divided into three categories: pure Party documents, mixed Party documents, and spillover documents that regulate relationships outside the Party).

entities.¹⁸⁹ Others, such as Guan Hua, argue that, given actual practice, “it cannot be assumed that Party documents would not regulate” matters such as the rights and duties of citizens or the organizations and duties of the State.¹⁹⁰

Yet, there has also been significant pushback to such arguments, with some legal scholars criticizing the attempt to bring Party documents into the legal system. Scholars argue that to grant Party documents equal force as laws and regulations defies the definition of Party documents, and jeopardizes the rule of law in China.¹⁹¹ Wenzhou University Professor Liu Changqiu, for example, argues that treating Party regulations as law would sow confusion because Party regulations are often stricter than State law and because laws are “rights-oriented” while Party regulations focus on obligations.¹⁹² Further, laws impose formal requirements while Party regulations govern via an emphasis on morality. But, he also argues that blending Party regulations into law would pose a risk to Party regulation by permitting State law to seep into, and thus weaken, the stricter Party system.¹⁹³ Others argue that Party regulations and State law belong to two different systems; Party regulations “have no relation” to judicial institutions, and thus cannot be enforced by courts.¹⁹⁴ Some on the political left have implicitly

189. Ke & Yang, *supra* note 40, at 426. Examples include major economic policy documents, regulations on the selection of leaders to Party and government bodies, and United Front documents that govern the relationship between the Communist Party and other political parties. *Id.* at 455.

190. Guan Hua (管华), *Dangnei Fagui Zhiding Jishu Guifan Lungang* (党内法规制定技术规范论纲) [An Outline Of Technical Norms For The Formulation Of Laws And Regulations Within The Party], 1 *Zhongguo Faxue* (中国法学) [Chinese Legal Studies] (2019); Wei Yan (魏艳), *Duan Mingxue* (段明学), *Lun Dangnei Fagui Tong Guojia Falü De Xianjie He Xietiao* (论党内法规同国家法律的衔接和协调) [On the Connection and Coordination of Inner Party Regulations and National Laws], 3 *Fazhi Jianshe* (法治建设) [Rule of Law], 24 (2019).

191. *See* Liu Changqiu (刘长秋), *Dangnei Fagui Xingzhi De Zaitantao* (党内法规性质的再探讨) [Re-Discussion On The Nature Of Laws And Regulations Within The Party], 6 *Shanghai Zhengfa Xueyuan Xuebao* (上海政法学院学报) [J. SHANGHAI U. POL. SCI. & L.], 132 (2019); Liu Changqiu (刘长秋), *Dangnei Fagui Gainian De Lishi Kaocha* (党内法规概念的历史考察) [A Historical Investigation of the Concept of Regulations in the Party], 1 *Shanghai Zhengfa Xueyuan Xuebao* (上海政法学院学报) [J. SHANGHAI U. POL. SCI. & L.], 127 (2019); Liu Changqiu (刘长秋), *Dangnei Fagui De Gainian Yu Shuxing* (论党内法规的概念与属性) [On the Concept and Attributes of the Laws and Regulations in the Party], 10 *Makesi Zhuyi Yanjiu* (马克思主义研究) [Marxist Studies], 134 (2017).

192. *See* Liu, *Dangnei Fagui Xingzhi De Zaitantao* (党内法规性质的再探讨) [Re-Discussion on the Nature of Laws and Regulations Within the Party], at 137–38.

193. *Id.* at 138–39.

194. Ji Yaping (姬亚平), *Falü Duoyuan Zhuyi Shijiao Zhongde Dangnei Fagui* (法律多元主义视角中的党内法规) [Intra-Party Regulations from the Perspective of Legal Pluralism], 6 *Shanghai Zhengfa Xueyuan Xuebao* (上海政法学院学报) [J. SHANGHAI U. POL. SCI. & L.] 124 (2019); *see also* Si Chunyan (司春燕), *Yifa Zhizheng: Dangnei Fagui Yu Guojia Falü Xietiao Fazhan De Luoji Jiedian* (依法执政:党内法规与国家法律协调发展的逻辑节点) [Governing In Accordance With The Law: A Logical Node For The Coordinated Development Of Intra-Party Regulations And State Laws], 6 *Pan Deng* (攀登) [Climbing], 81 (2019) (arguing that Party documents can only be enforced by administrative agencies or judicial bodies if they have been adopted by the National People’s Congress or government agencies). Another scholar contends that referring to Party documents as law would “raise unanswerable questions” concerning whether Party documents can form a source of court judgments, and thus would lead to confusion. Xie Yu (谢宇), *Xianfa Guanli Yu Zizhi Guifan De Eryuan Jiefen – Lun Dangnei Fagui Zai Woguo Fazhi Tixi Zhong De Dingwei* (宪法惯例与自治规

criticized the legalization of Party documents by arguing that the political nature of Party documents must always take priority over the legal character of Party documents.¹⁹⁵

This debate has largely occurred at an abstract level, with little attention to whether courts can, should, or do apply Party norms to cases.¹⁹⁶ Those who argue for a fusing of Party regulations and law generally do not discuss the practical implications of such views, although it is implied that such Party rules should be legally binding beyond the Party.¹⁹⁷ Some scholars have called for greater emphasis on role differentiation and avoiding conflicts between Party documents and legal rules,¹⁹⁸ and have argued that reliance on Party documents should not be used to shield administrative actions from litigation in the courts.¹⁹⁹ A few scholars state that courts cannot enforce Party documents,²⁰⁰ others simply

范的二元界分——论党内法规在我国法治体系中的定位) [The Binary Boundary of Constitutional Convention and Autonomous Norms—On the Position of Intra-Party Laws and Regulations in Chinese Legal System], 11 *Xueshu Zhengming* (学术争鸣) [Academic Controversy], 72 (2017).

195. Hua Yong (花勇), *Lun Dangnei Fagui Zhengzhi Shuxing He Falü Shuxing De Guanxi* (论党内法规政治属性和法律属性的关系) [On the Relationship Between the Political Attributes and Legal Attributes of Intra-Party Regulations], 9 *Sixiang Lilun Jiaoyu* (思想理论教育) [Ideological & Theoretical Education] 76, 78–79 (2021).

196. We located only one article explicitly stating that Party documents are enforceable; the article provided little rationale for this position. Zeng Zhe (曾哲), Zhou Zezhong (周泽中), *Xinshidai Dangnei Fagui De Zhidu Jichu Yu Fazhan Luoji* (新时代党内法规的制度基础与发展逻辑) [The System Foundation and Development Logic of Inner Party Laws in the New Era], 1 *Zhonggong Fujian Shengwei Dangxiao* (中共福建省委党校) [Fujian Provincial Party School of the Communist Party of China], 78 (2020). Although we found discussions of whether courts may cite to academic scholarship, trade association reports, cases, and legislative materials, we found none addressing the question of whether courts may cite to Party documents.

197. For example, Professors Ke and Yang write that some Party documents, those categorized as “laws and regulations led by the Party,” apply outside the Party, and thus should not be viewed as “under national law” but rather should be understood as regulating alongside State law. Ke & Yang, *supra* note 40, at 39, 230–31; *see id.* at 220 (arguing that Party documents regulate people and entities outside the Party).

198. Wang Lifeng (王立峰) & Li Hongchuan (李洪川), *Dangnei Fagui Tong Guojia Falü Xianjie He Xietiao Zhong de Zhuti Dingwei ji Zhize Wanshan* (党内法规同国家法律衔接和协调中的主体定位及其职责完善) [The Role Positioning and Improvement Responsibilities of the Subject in the Cohesion and Coordination Between Regulations Within Party and State Laws], 4 *Tansuo* (探索) [PROBE] 96, 96–98 (2021); Zhang Hongsong, *supra* note 48, at 128.

199. Zhang Hongsong, *supra* note 48, at 129 (arguing that in the case of a document jointly-issued by Party and State entities, the State entity should still be subject to administrative litigation).

200. Ji Yaping (姬亚平), *Falü Duoyuan Zhuyi Shijiao Zhongde Dangnei Fagui* (法律多元主义视角中的党内法规) [Intra-Party Regulations from the Perspective of Legal Pluralism], 6 *Shanghai Zhengfa Xueyuan Xuebao* (上海政法学院学报) [J. SHANGHAI U. POL. SCI. & L.] 124 (2019) (stating that Party regulations “are not enforced by judicial organs”); *see also* Si Chunyan, *supra* note 194, at 50 (stating that Party regulations are only enforceable in the courts if they are adopted as laws or State regulations); Lu Yanan (卢亚男), *Lun Dangnei Fagui Yu Guojia Falü De Xianjie* (论党内法规与国家法律的衔接) [On The Connection Between the Party’s Regulations and State Law], 2 *Zhonggong Qingdao Shiwei Dangxiao Qingdao Xingzheng Xueyuan Xuebao* (中共青岛市委党校青岛行政学院学报) [J. PARTY SCH. QINGDAO MUNICIPAL COMMUNIST PARTY COMM.], 111 (2017) (discussing the

note that courts cannot review the legality of Party documents, without discussing whether courts may directly apply Party documents in adjudication. Recently, a small number of scholars have begun to attempt to design a framework for addressing and understanding how courts should apply Party documents when deciding cases.²⁰¹

Although disconnected from actual practice, the scholarly debate over the legal status of Party documents highlights an ideological shift within the legal community, with increasing numbers of scholars arguing for breaking down the formal separation between the Party and the legal system. The debate also suggests the potential for a growing reliance by courts on Party documents. As the Party continues to collapse boundaries between the Party and the State, and between formal law and Party rules, it appears likely that Party documents will play an expanding role in regulating Chinese society and a growing role in court adjudication.

IV. IMPLICATIONS

Is the court practice of citing Party documents significant? On the one hand, finding thousands of cases in which courts explicitly rely on Party documents is surprising given the long-standing norm that courts should not explicitly rely on Party documents. On the other hand, we located fewer than 6,000 cases in which courts cite Party documents, out of a database of 42 million cases. Perhaps what we are observing are errors – bugs, not features. We believe that discounting this practice as insignificant would be a mistake for three reasons. First, the existence and influence of the Party regulatory system have long been noted but rarely studied granularly; viewing the range of subject areas in which courts apply Party regulations provides insight into when the Party influences the legal system. Second, even if courts cite Party documents in a small percentage of cases, these cases provide insight into how Party norms influence outcomes in cases in which the Party norms operate in the background, without explicit citation. We believe that the fact that so many of the cases involve mundane matters is a sign not of error but of the routine and deep-seated nature of court reliance on Party norms. Explicit reliance on Party documents may be rare, but such reliance is also routine.²⁰² Third, understanding the court practice of citing Party documents between 2014 and 2018 provides a baseline for examining future

role of Party documents in administrative litigation and arguing that Party documents may serve only as evidence, not as a legal basis).

201. Zhang Song, *supra* note 59 (proposing a model to determine which Party regulations are applicable in the legal system); Luo Luyao, *supra* note 59 (arguing that Party regulations are not laws but that courts can use them to provide an external justification for their decisions).

202. As noted above, it is also likely that our search failed to detect additional citations to Party documents that do not make explicitly reference to the Party in the document name. *See* discussion, *supra* note 69.

shifts that may result from tightening Party oversight of the legal system, raising the role of Party regulations, and efforts to integrate Party rules with law.²⁰³

A. Court Roles: Practical Problem Solving

Why do courts rely on Party documents in their decisions, given what appear to be strong norms against doing so? Our findings demonstrate that the reasons may vary depending on the subject matter in dispute. In many cases, notably land cases, courts are driven by practical necessity: the Party documents are the only rules available. Citing Party documents may be an example of the practical problem-solving approach that Chinese judges take in a wide range of cases.²⁰⁴ This rationale appears most likely in cases involving routine matters – such as benefits decisions and contract disputes involving Party-run enterprises – as well as in historical disputes where there are no other binding norms. In addition, in an era of greater emphasis on professionalization, including pressure on judges to provide support for their holdings,²⁰⁵ citing a Party document is likely preferable to having no legal basis for a decision.

In other cases, notably those in which courts rely on Party documents as supplemental reasoning, the citation may be used to add rhetorical and persuasive force to a court judgment, and thus to insulate judges from possible criticism for the decision. In these cases, citations to Party documents may be akin to court references to moral principles, fairness, social stability, or even the Chinese Constitution, serving to add to the persuasive power of a decision and to insulate judges from responsibility for the decision by signaling that the court is following Party policy. Likewise, policy mirroring may be the safest outcome for a judge handling potentially contentious cases involving land takings or corruption. In other cases, courts may rely on Party documents to provide support for decisions already made.

Yet the range of contexts in which courts apply Party documents, and the disagreement among some courts about the appropriateness of doing so, also remind us of the diversity of court practice among China's more than 3,000 courts. For all the talk of top-down control and reforms designed to ensure standardized outcomes,²⁰⁶ court practice also suggests that judges may differ significantly in

203. Recent rollbacks to court transparency policies, however, suggest that it may be increasingly difficult to track such cases in the future. Liebman et al., *Rolling Back Transparency in China's Courts*, *supra* note 71, at 2421 (describing “a dramatic reduction in the volume of cases being made public”).

204. For other examples, see Liebman, *supra* note 1; Stern et al., *Automating Fairness?*, *supra* note 66.

205. Cf. Zuigao Renmin Fayuan Guanyu Jiaqiang He Guifan Caipan Wenshu Shifa Shuoli De Zhidao Yijian (最高人民法院关于加强和规范裁判文书释法说理的指导意见) [Supreme People's Court's Guiding Opinions on Strengthening and Standardizing the Explanation of Legal Reasoning in Judgments and Rulings] (June 1, 2018), [<https://perma.cc/3ZS5-AH88>] (last visited Jan. 29, 2024) (calling on judges to strengthen legal reasoning, and to specifically address any disputes over the applicable legal standards).

206. See Stern et al., *Automating Fairness?*, *supra* note 66.

how they conceptualize their own roles, in the strategies they take to resolving the rising tide of cases they face, and even in what rules they understand to impose binding norms. Cases in which courts push back against treating Party documents as binding norms should perhaps not be read as pushback against the Party, but rather as reflecting a difference of views regarding how to resolve particular legal issues as well as what norms should be cited in doing so. Judges who explicitly reject the application of Party documents may also be understood to be judicial mavericks or may simply be making an error when they directly reject Party norms.

The primary takeaway from studying court practice is that reliance on Party documents has been normalized. On this point, the incidental citations in decisions – what we refer to as the non-substantive mention of Party documents – are also informative. Regardless of the formal status of Party documents, litigants and their lawyers also rely on Party documents in their arguments, suggesting that they also treat, or seek to have courts treat, Party rules as binding norms in actual practice, or to rely on them to bolster other legal arguments.²⁰⁷ Party norms are part of the routine exercise of judicial power and legal argument in a wide range of cases.

B. Contesting Law

Chinese-language scholarship on the fusing of Party rules and State law suggests that academic writing may be catching up with realities on the ground, rather than reflecting a fundamental shift. Even if not formally classified as law under the Law on Legislation, or considered to be legally binding in academic writing on the sources of law in Chinese or English before 2015, Party norms have constrained the courts. There is little doubt that judges have always been expected to follow Party guidance, be it informal or expressed through formal rules. Although Party rules were not within the definition of “law,” they were intended to be followed and part of the binding norms on society, including the courts.²⁰⁸ Academic writing that sought to explain Party norms as soft law or historical legacies did not appear to impact court practice.

Yet recent debate within China signals a dramatic shift in the dominant academic narratives about the role of law and the Party in the legal system and also that the definition of law is a site of contestation. Within the mainstream academic debate, Party rules and regulations have shifted from being perceived as a historical legacy to being a core feature of the Chinese legal system. For most of the reform era, academic literature within China portrayed Party rules as a necessity as China continued to build its legal system – hence the analogies to soft

207. Professor Matthew Erie has similarly noted that in providing compliance advice, Chinese lawyers consider Party rules as one source of norms, alongside law. Matthew Erie, *Anticorruption as Transnational Law: The Foreign Corrupt Practices Act, PRC Law, and Party Rules in China*, 67 AM. J. COMP. L. 233, 269 (2019).

208. Cf. Chen, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PRC, *supra* note 62, at 95–96 (noting that Party documents have often been treated as binding, but arguing that such documents nevertheless should be deemed policy documents, not law); Zhang, *supra* note 41, at 208 (arguing that Party documents “do not qualify as ‘law’”).

law, or the discussion of Party rules as informal binding rules.²⁰⁹ Recent writing suggests that the fusion of Party rules and State law is no longer something that needs to be rationalized or defended. The role of the Party in the legal system is now affirmatively embraced.

The shift may reflect how quickly academic discourse can adjust to reflect ideological trends and Party-State research goals and funding. Yet, this change also suggests a shift in the ambition of law in China. For most of the reform era, legal reforms could be understood as moving China toward a more rule-based system, one in which rights were gradually expanding even as the legal system served the interests of Party-State control. Law became a tool for top-down oversight, constraining State action, creating rules for economic activity, and protecting individuals. China was not transitioning to a liberal legal order, but liberal understandings of law were nevertheless accepted as aspirational goals. The embrace of Party norms as law reflects a new era, one in which State interests and Party control are ascendant, and the idea of separating the Party from the State or the legal system is explicitly rejected.²¹⁰ Legal reforms continued during the period we study in this article, most notably efforts to fight corruption, strengthen the professionalization of judges, and reduce forms of influence on the courts that the Party deems to be illegitimate. But the dual goals of expanding rights and serving State interests have shifted in the direction of top-down control. Concepts long thought settled – including the formal definition of law – are being reexamined.

The recent debate over the definition of law remains almost entirely theoretical, but it also shows that the idea of law is being destabilized even as it is reaffirmed as central to Party-State legitimacy. The 2000 Law on Legislation appeared to resolve the formal definition of the law's scope. Although judges likely viewed Party regulations as binding and valid, there was nevertheless an increasingly clear divide between law and Party policy. Law was distinguished from policy both by the procedures followed in the drafting process and by the substance of regulation.²¹¹ Today, this formal definition is questioned both by making Party regulations more law-like²¹² and by formal legal instructions

209. Albert Chen summed up the predominant view when he wrote that the Chinese legal system was in the process of shifting from a dualist system in which Party policy and legal norms coexisted “to a ‘monist’ system in which authoritative norms governing social behavior are all provided for in law.” Chen, *AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PRC*, *supra* note 62, at 95.

210. For example, People's Daily has called the question of whether the Party or the law is higher a “trap” and a “false proposition.” 习近平论法制：“党大还是法大”是伪命题，是政治陷阱 [Xi Jinping Discusses Rule of Law: “Is the Party or the Law Higher” is a False Proposition, Is a Political Trap,] 中国共产党新闻网 [CCPnews.cn], May 11, 2015, [<https://perma.cc/9JK9-K8YV>].

211. See Chen, *AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PRC*, *supra* note 62, at 95 (arguing that one distinction between Party norms and law was that there were formal procedures governing the creation of legal norms).

212. As Professor Seppänen has recently noted, the Party has made “rules-based formalism” a central aspect of its own system of oversight, reflected both in greater attention to how and what Party regulations are formulated and also in more specific norms. Samuli Seppänen, *Formalism and Anti-*

compelling the courts to consider what had, at least until recently, been considered to be non-legal factors in their decisions. For example, although courts in China have long been expected to consider values such as social stability or “serving the overall situation,” the Supreme People’s Court has also recently made clear that following “socialist core values” is not just a general principle but is also an interpretative tool to be used in court adjudication.²¹³ This is being done just as the Party emphasizes that “ruling the country according to law” is central to Party leadership, and to Xi Jinping’s Thought on Governance. The result is that a fundamental question – what is law in the Chinese system – has become a renewed subject of debate.

Whether and how this destabilization of the idea of law affects court practice remains to be seen. Nevertheless, the shift in academic debate is significant on multiple levels. The debate is a proxy for what is and is not politically possible in the Chinese legal system. Understanding trends in Chinese legal scholarship helps to highlight shifts on the ideological spectrum and also in the political imagination of what is possible and desirable for the Chinese legal system. The idea of separation between Party norms and formal law served to legitimize and support those working within the system for gradual reform toward a more law-based system. By undermining longstanding norms of separation, the debate may also open up new routes for shaping court decisions in line with Party views and, potentially, for more frequent and explicit recognition of Party norms as legally binding in the courts.²¹⁴

Shifts in legal discourse concerning Party documents also raise the question of whether legal academia is increasingly becoming an example of what

Formalist in the Chinese Communist Party’s Governance Project, 10 *Global Constitutionalism* 290 (2021), at 298. Professor Seppänen discusses a different type of destabilization, in which the Party destabilizes the autonomy of the legal system and the separation of law from politics. Samuli Seppänen, *IDEOLOGICAL CONFLICT AND THE RULE OF LAW IN CONTEMPORARY CHINA: USEFUL PARADOXES* 87-91 (2016).

213. The Supreme People’s Court’s Opinion on Socialist Core Values lays out specific interpretative steps that courts should take in adjudicating cases according to “socialist core values.” In cases in which a specific legal provision applies, courts are to first “explain” the relevant provision and are then to use socialist core values to further clarify the meaning of the law and its legislative purpose. Guanyu Shenru Tuijin Shehui Zhuyi Hexin Jiazhiguan 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 Deepening the Integration of Core Socialist Values Into the Analysis and Reasoning of Judgments] (promulgated by Sup. People’s Ct., Jan. 19, 2021, effective Mar. 1, 2021), art. 5, <https://perma.cc/EV8Y-RNC4>. In civil and commercial cases in which there is no applicable legal provision that directly applies, courts should follow custom and “be guided by” socialist core values and apply the most similar relevant legal provision. Courts should also “make full use of socialist core values” in explaining their reasoning. *Id.* art. 6. The opinion also sets forth guidance to courts on how to choose among multiple socialist core values when a case involves conflicting values. *Id.* art. 7; Finder, *Integrating Socialist Core Values into Court Judgments*, *supra* note 10; Zeming Liu, Note, *Integrating the “Socialist Core Values” Into Legal Judgments: China’s New Model of Authoritarian Legality*, 62 *COLUM. J. TRANSN’L LAW* 215 (2023).

214. As Professor Seppänen has noted, “Party leaders and ideologues should be seen to oscillate between formalist attempts to establish rule-based constraints within the political sphere and anti-formalist attempts to reject such constraints.” Seppänen, *supra* note 7, at 306. The destabilization of the idea of law suggests that the same tension may persist, and perhaps deepen, in the formal legal system and the courts as well.

Elizabeth Perry refers to as “educated acquiescence.”²¹⁵ Many of the factors that Perry identifies, most notably State funding for key research priorities, help to explain the change in legal discourse about Party documents over the past decade.²¹⁶ Scholars should be careful not to overstate the change: there has long been a debate between liberals and leftists within Chinese legal academia, most notably in areas such as constitutional theory,²¹⁷ and recent research suggests residual support for liberal values may be more widespread in China than commonly assumed, particularly among the well-educated.²¹⁸ The fact that there has been significant pushback to the reclassification of Party norms as law also suggests that some within the legal community sees this as an issue worth contesting. Nevertheless, the change in the academic conversation regarding the Party’s role in the legal system may signal a more fundamental change, one in which at least some legal academics shift from being advocates of reform to buttressing efforts to fuse the Party and the State. For many decades, Chinese legal academics – particularly, but not exclusively, in Beijing – have served a “state-adjacent role”²¹⁹ where they serve as trusted partners in governance and help steer the direction of legal reforms. Although Chinese legal academia was never monolithic, the tone of the conversation was typically moderate and reform-oriented, aimed at making practical suggestions about how best to improve the legal system under the CCP’s leadership and shift it in the direction of compliance with international practice. Some in academia continue to play this role, working within the system for gradual change and pushing back against the undoing of legal reforms.²²⁰ In contrast, the voices calling for a tighter fusion of Party and State are pushing the legal system in a different direction, and may even be out ahead of the Party itself in re-conceptualizing the boundary between law and politics.²²¹

215. Elizabeth Perry, *Educated Acquiescence: How Academia Sustains Authoritarianism in China*, 49 THEORY & SOC’Y 1, 1 (2020).

216. Numerous universities have in recent years established new research institutes dedicated to studying Party regulations or Xi Jinping Rule of Law Theory.

217. Keith Hand, *Resolving Constitutional Disputes in Contemporary China*, 7 E. ASIA L. REV. 51 (2011).

218. Ilaria Mazzocco & Scott Kennedy, Public Opinion in China: A Liberal Silent Majority?, CSIS (Feb. 9, 2022), <https://www.csis.org/features/public-opinion-china-liberal-silent-majority>; see also Lao Dongyan (<https://perma.cc/QZ76-3GZ8>): (criticizing “the emptiness and cynicism that held within” contemporary legal scholarship).

219. Lawrence J. Liu & Rachel E. Stern, *State-adjacent Professionals: How Chinese Lawyers Participate in Political Life*, CHINA Q. 1, 1–21 (2020).

220. The recent academic pushback against the Supreme People’s Court’s decision to stop placing most cases online is one recent example.

221. Nevertheless, the pushback from some in the courts and in academia suggests that pushback is possible, and also that some in academia see the debate over the meaning of law as a debate worth having.

C. Dynamic Authoritarian Law

A line of English-language scholarship over the past twenty years has argued that the range and volume of cases in which Chinese courts are subject to external pressure has been shrinking. The result is a widening range of substantive areas in which courts decide cases on legal principles, free from Party (or other forms of) interference. According to such arguments, routine cases are thus more likely than ever to be resolved according to legal rules.²²² This shift is due to necessity, as it is impossible for the Party directly to monitor the more than forty million cases resolved in Chinese courts each year. But the shift also reflects a greater Party commitment to allowing courts to adjudicate based on law, the Party's embrace of legality as a source of legitimacy, and an emphasis on greater professionalization of the courts.²²³

The role of Party documents in court adjudication and the academic debate over the legal status of Party documents challenge this narrative of growing separation. Our findings highlight how China has been moving in the opposite direction, toward cementing the role of the Party in adjudication. Party oversight and control have always been present, but the recent formalization of this integration suggests the likelihood that such integration will become deeper in the future. Conceptualizing the Party's relationship to the legal system in terms of separation risks overlooking how the political-legal system actually functions.

Our findings are also a reminder of the range of norms that continue to influence court decision-making in China and serve as legitimate bases for court decisions. Other recent work has highlighted the role of principles of fairness, the desire of courts to ensure compensation to those who have suffered an injury, as well as a heightened emphasis on morality in court adjudication.²²⁴ The central insight is that although the makeup of such norms may change over time, Chinese courts have a consistent practice of appealing to non-legal norms to decide cases in ways that stretch, alter, or fill gaps in written law.

222. For examples, see Fu Yulin & Randall Peerenboom, *A New Analytic Framework for Understanding and Promoting Judicial Independence in China*, in JUDICIAL INDEPENDENCE IN CHINA: LESSONS FOR GLOBAL RULE OF LAW PROMOTION, *supra* note 1 (discussing a decline in local protectionism in China's courts); Zhang & Ginsburg, *supra* note 1, at 332 (discussing "the judiciary's growing political independence"); Hualing Fu & Michael Dowdle, *The Concept of Authoritarian Legality: The Chinese Case*, in AUTHORITARIAN LEGALITY IN ASIA: FORMATION, DEVELOPMENT AND TRANSITION 63–89, 85, 88 (Weitseng Chen & Hualing Fu eds., 2020) (acknowledging the potential for even routine labor cases to become politicized, but arguing that "the party has largely left legal issues in the expansive social and economic spheres to legal institutions for a rules-based resolution").

223. Some recent writing draws on Frankel's theory of the dual State, developed to describe Germany under Nazi rule. The argument has not been universally accepted, but this idea of the possibility of separation, between the routine and the exceptional, or between the political and the non-sensitive, has become a central narrative in scholarship on Chinese law. Xin He, *supra* note 1; Fu, *supra* note 1; Eva Pils, *China's Dual State Revival Under Xi Jinping*, 46 *Fordham Int'l L. J.* 339 (2023). Donald Clarke argues that the Dual State model does not apply to the contemporary Chinese legal system. Donald C. Clarke, *Is China a Dual State*, GWU Legal Studies Research Paper No. 2022-74, Jan. 4, 2023, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4317.

224. See Liebman, *supra* note 1; Stern et al., *supra* note 19; Zeming Liu, *supra* note 213.

Unearthing court practice of citing Party documents also demonstrates how all-encompassing Party influence can be. Prior scholarship suggests that authoritarian regimes lack the capacity or intent to regulate routine matters, reserving their authority for issues touching on their core interests.²²⁵ Yet our findings on the range of Party documents suggest that, at least in China, the Party feels the need to continue to regulate a significant range of mundane matters. In an era of increased Party leadership and greater emphasis on the role of Party norms, we can expect the regulatory role of Party documents in routine matters to expand. The fact that so much of what the Party regulates is commonplace is a sign of the pervasiveness of Party interests and regulation, not its irrelevance. Much recent writing on authoritarian law overlooks how the State can come to regulate a wide area of life, focusing instead on how authoritarian rulers use law to advance particular policy goals. Our findings also reinforce the observation that there is no clear line between public and private law in China – all areas of law are potentially areas of State concern.²²⁶

Viewing court practice of citing Party documents alongside the backdrop of academic debate regarding the fusing of Party rules with State law raises questions for future scholarship. If Party regulation shifts from being extra-legal to formally within the legal, what does this mean for court practice and for conceptions of authoritarian law in China? Will courts feel more comfortable or even compelled to cite to Party documents? Similar shifts are underway in other areas, such as the expansion of the definition of law to include a wide range of social management strategies and the re-emphasis on the goal of mediating as many cases as possible. Future scholarships will want to examine any changes in court practice of citing Party documents. Scholars may also wish to examine in more detail the differences between how and when courts cite Party-issued documents and jointly-issued documents and also between citations to Party regulations and other Party-issued normative documents to further understand whether courts draw distinctions among such documents. Doing so may help to develop a more nuanced understanding of the effect of Party documents on Chinese society. Future scholarship will also need to consider whether bringing Party rules within the formal legal system leads back to an earlier period in which law was not a constraint and courts chose from a range of norms, or toward a new model in which courts confront increasingly detailed rules that come from multiple sources.

For most of the past twenty years, literature on authoritarian States has focused on the question of why authoritarian States invest in law or grant power to courts. The role of Party documents in China suggests different questions. How

225. Cf. Xin He, *supra* note 1, at 70 (“How to separate the politically sensitive cases from the mundane is a chronic problem facing authoritarian regimes. They cannot afford not to control the former, while they lack the capacity to scrutinize the latter.”).

226. Cf. Liebman, *supra* note 1 (describing State intervention in traffic accident litigation); see also INGA MARKOVITZ, *JUSTICE IN LURITZ: EXPERIENCING SOCIALIST LAW IN EAST GERMANY* (2010).

does the nature of law itself change under authoritarian rule? Why and when does authoritarian law change over time? When and how do non-legal texts come to be binding? Why do authoritarian States see value in repackaging formal political guidance as law? Focusing both on academic discourse and on on-the-ground practice are two methods for observing such changes over time. Indeed, our argument is that scholars of Chinese law should take both what courts are doing and what academics are writing seriously to understand both changes in legal practice and in the authoritarian marketplace of ideas. Amid the global rise of authoritarianism and authoritarian law, the questions that arise and lessons learned from studying the role of Party documents in China are likely to be applicable elsewhere as well.

CONCLUSION

Party influence is a constant in the Chinese legal system. Yet the role of and debate over Party documents in the legal system demonstrates how the Party's role can shift over time, and how participants in the legal system can play roles in shaping the boundaries between the Party and law. The fact that the definition of law and the appropriate role of the Party in the legal system are both contested is a reminder of how the boundary between politics and law remains a site of contestation and can shift over time.

The debate over the role of Party documents in China highlights a central paradox in the Chinese political-legal system. The rise of Party documents in practice and in scholarly debate reflects expanded Party regulation of society. Increased emphasis on regularizing and standardizing Party documents also reflects the fact that the Party sees the utility of using generalizable and increasingly clear rules to manage society and that the Party views labeling such shifts as law as useful to its legitimacy. Yet doing so also carries risks, for the stability of the legal system and for attempts to base the Party's legitimacy on the law.

The Chinese legal system has always operated in the shadow of the Communist Party. The mass release of millions of court opinions allows us to view a part of the shadow. Our findings suggest that continuing to observe court practice of citing Party documents may be one indicator of how Xi Jinping's efforts to fuse the Party and the State play out in practice, both within legal discourse and in the courts. Will academic debate spill over into the courts, resulting in greater explicit reliance on Party norms? Observing court practice and academic debate going forward may provide a window into the effect of ideological shifts on the everyday practice of law, as well as into areas in which Party oversight and regulation are resurgent.