

Chapter 1 Introduction

Little is known about women judges in China. This book aims to go some way to filling this gap. The book reports on unique research, undertaken directly with female judges, and thus the book makes an important contribution to the international literature on women in the judiciary, gender and judging, and gender equality in contemporary China.

Women in Contemporary China

In the Western, developed world, the social, cultural and economic position of women, as a social group, has improved significantly since the 1960s, following the women's movement which drew attention to entrenched structural injustice. The women's movement, as Clarice Feinman (1994: 22) argued, is 'generally perceived as attempting to establish the legal right of all persons, regardless of sex, to an equal opportunity in all aspects of life: work, family, and community'. This principle runs counter to many of the roles traditionally ascribed to women in these places. Therefore, the women's movement may be seen as a threat to the established gender order and gender norms.

During a similar period of time in China – an oriental country in the south of the 'global village' (Aas, 2007), the women's movement underwent a rather different route: it was primarily directed by the Chinese Communist Party (the CCP, or 'the Party'). Needless to say, Chinese women have gained profound autonomy since the founding of the People's Republic of China (the PRC) in 1949 (Attané, 2012; Bailey, 2012; Kaku, 2015; Shen & Winlow, 2013; Tao, 2004).

In fact, to talk about women's social position in China is not without complexity. It is true that the Party endorsed equality for women from its early days (Shen & Winlow, 2013). Ever since women's social status continued to rise through the traditional socialist advocacy of women's liberation (Kaku, 2015). In the 1960s, Mao Zedong – then the highest authority in the



country – praised women for being ‘an important force in production, who holding up half the sky’ (Tao, 2004: xxvi). Since then, ‘half the sky’ is widely used in official, media and academic discourses to represent women as a gender group. Consequently, women’s liberation and empowerment was significantly advanced under Mao’s socialism. However, it was gradually overshadowed by the broader political struggles. During the Cultural Revolution (1966-1976), Mao’s radical feminism was promoted, and women were rendered to be self-conscious political subjects, who ‘heroically overcame their gender’ and became the ‘parodic figure’ needed in socialist production (Rofel, 1999: 97). As a result, femininity of women was suppressed, and thus Maoist feminism did not bring Chinese women the gender equality which they needed, but made gender equality more complicated in China (Mitter, 2008). At the same time, certain traditional values and the gender norm are institutionally preserved by the Party-state. The Confucian definition of feminine virtue, including chastity, filiality and motherhood (Dai, 2013; Mou, 2004), even survived the Cultural Revolution (Bailey, 2012; Shen, 2015).

In the post-Mao economic reform era, which started in the late 1970s, priorities are given to economic growth and the increase of social conflicts immediately associated with it. Consequently, feminised subalterns were marginalised in state politics (Rofel, 1999), women’s freedoms have been curtailed (Fincher, 2014), and the gender equality which Chinese women gained in the socialist era appeared to be fading (Kaku, 2015). Where there is a labour surplus, women are usually the first to be sent home (White, 1999), and in high public offices, the number of women is decreasing (Bailey, 2012). In the job markets, gender gaps have widened significantly over the past two decades (Fincher, 2014). Therefore, Attané (2012: 8) argues that ‘the economic reforms on the whole have been harmful to women’ by exposing them to economic insecurity as well as discriminating them in the labour market. Consequently, women are a ‘permanent minority’ group within Chinese society.



It should be noted that gender equality for women is consistently proclaimed as China's basic national policy (Tao, 2004; The State Council of China, 2015). *People's Daily* (2015) – the largest newspaper group in China and an official voice of the CCP – stresses the importance to place gender equality in the mainstream decision-making process. It may be said that in China, women do enjoy a broad range of social and professional opportunities. It is reported that more than 70 per cent of Chinese women are in the workforce, about the same as the United States (*Los Angeles Times*, 2016). Women are particularly active in private production (Goodman, 2004). Dong Mingzhu – President of Gree Electric – is an example: under her leadership, the air conditioner manufacturer generated sales of 22.5 billion US dollars (approximately, £17.7 billion) in 2014. China now has more female billionaires than any other country (CNBC, 2016; *Fortune*, 2015). In the public sector, women represent over 40 per cent of the overall population of civil servants (*CPC News*, 2008).

However, women occupy a diversity of social positions and status's in China. At one end, women of the marginalised social groups struggle to make ends meet (Shen, 2015), and in the eyes of urban citizens, rural migrant women are 'merely the object of civilising process, voiceless, inarticulate and reassuringly pre-modern' (Sun, 2004); at the other end, for example, we watched the £20-million worth wedding of Angelababy, which made the 26-year old Chinese actress a superstar, with 58 million followers on social media (*The Telegraph*, 2015). Of course, between these two extremes there is much messy complexity, with gender being only one dimension of inequality that produces these inequities. Indeed, social class shapes how women position themselves in society, as Chodorow (2006: 82) puts: 'in any given society, feminine personality comes to define itself in relation and connection to other people than masculine personality'. It should be noted here that women judges do not represent *all* women in China. The women's issue is complicated with a combination of issues associated with not



only gender, class and generation (and race and ethnicity), but also politics, economy and social change.

Therefore, despite the fact that China seems to make every effort to promote gender equality (Attané, 2012) and that women's overall status is rising, their gendered problems remain (Zheng, 2000). Ms. Wu Yi – former State Councillor in China – remarked that ‘Women's involvement in politics is still constrained’, and ‘they are still discriminated in the workplace’ (*Xinhua News*, 2002). It is also acknowledged that women are generally undereducated in impoverished rural regions, where women's rights in family may be seriously violated (Li, 2015; *Xinhua News*, 2002). The Government recognises that there is ‘a long way to go and there are arduous tasks to tackle women's problems and finally achieve gender equality’ (The Permanent Mission of the PRC, 2016).

While by and large Chinese women enjoy great liberty and mobility, strikingly, they are still expected to, and many do, observe the traditional gender norm, and ‘behind the public celebration of gender equality in the Communist workplace, women continued to shoulder the heave burdens of childcare, housework and cooking at home’ (Fincher, 2014: 37). Even young women of the new generation are following their mothers' footsteps: while seeking freedom and autonomy, they also conform to the mainstream code of womanhood. How do we make sense of the complexities and contradictions as regards Chinese women's social status?

As aforementioned, the women's liberation movement in China is mainly a top-down process led by the Party-state. Accordingly, its scope, nature and manner are centrally defined, and there may be gaps between gender equality taken by the policymakers and that meets women's needs (Kaku, 2015). Relatedly, *feminism* and the *feminist movement*, originated in the West, seem to have a negative connotation in China (Hsiung, 2001). Therefore, feminist activism, or the radical rights movement – campaigning for women's rights through public protests led by the grassroots, usually feminist intellectuals – is unlikely to receive official

approval, and indeed gains little public support (*The Guardian*, 2015d). As a result, feminism is further considered controversial, if not politically sensitive (Kaiman, 2016).

During my fieldwork at the Chinese courts, I was cautiously introduced as a scholar who ‘research women from women’s perspectives’ (nü-xing-xue-xue-zhe), rather than a ‘feminist (nü-quan-zhu-yi)’ scholar. *Nü-quan* (feminism), which literally means ‘women’s rights’, was deliberately avoided. It may sound bizarre to a Western reader, but we shall be less puzzled at the end of the book.

This section elaborates the social reality, in which Chinese women are living. How does it shape women’s role and position in public offices, family and society? How do they live their lives in it? What do they do to react the world surrounding them? It is my hope to use the research into Chinese women in the judiciary as a case study to reflect on women’s social position in Chinese society.

Women and the Judiciary

There is a rich body of international literature on women in the judiciary, which is formed by two broad, interrelated lines of research. The first line of inquiries pays attention to equality and fairness for women. It examines women’s representation (or lack of) in the judiciary – traditionally, and cultural, sex-typed as a male profession (Thornton, 1996; Rackley, 2002; Roach Anleu & Mack, 2014). In many places in the world, men and women are not equally represented on the bench (International Commission of Jurists, 2013).

In the common law world, Kenney (2013a) advocates for the appointment of more women judges on the bench in the US, and argues that women should make up at least 50 per cent of judiciary appointments. The socio-demographic profile of British judiciary gives rise to debate on gender diversity in the judiciary. In Britain, judges are typically Oxbridge-educated, white, middle-class men, and so far, only *one* – Lady Hale – out of 12 Supreme Court judges is a woman. Clearly, underrepresentation of women in judiciary is unfair (Bindman &



Monaghan, 2014; Cahill-O’Callaghan, 2015; Hale, 2005; Hunter, McGlynn & Rackley, 2010; Rackley, 2013). Outside the common law world, the judiciary is typically dominated by men in traditional patriarchal societies. For example, in Syria, women make up only 14 per cent of the judiciary, which consists of judges and public prosecutors (Cardinal, 2013).

As did in the common law countries, the civil law jurisdictions once excluded women from the legal world until the 1990s (Ludewig & LaLlave, 2013), but now adopt the judicial appointment policy which enables more women to enter into the judiciary. In the Netherlands, for example, women outnumbered men in 2008 and have become the majority of the overall judicial population (Dijksterhuis, 2013). Likewise, France is also one of the most feminised civil law countries (Boigeol, 2013). However, research shows open or hidden barriers in these systems, which prevent women from reaching their full potentials in the judicial profession. Questions raised include why there are so few women in the senior judiciary, and what can be done institutionally to help female judges to achieve full equality to men in court (Schultz & Shaw, 2013b).

According to Schultz and Shaw (2003; 2013b), the dominating international academic debates around women in court include gender aspects of judicial education, training and selection, judicial career advancement, and female leadership in judiciary. Over the years, feminist scholars have been campaigning for women’s appointment, promotion and better working conditions in the gender-insensitive, ‘imagined community’ of legal profession, and judiciary in particular, which has long been defined by ‘hegemonic masculinity’ (Hunter, 2003). Significant progresses have been made internationally as a result. However, certain gendered obstacles for women judges are observed across jurisdictions in the world.

The other line of inquiries into women judges looks at how women perform judicial functions in court and examines the role of gender in the application of justice: gender and



judging. That is, simply, how women perceive the facts of the case, interpret and apply the law and finally, make judicial decisions.

A voluminous body of literature debates about whether women judge cases differently from men, and if so, in what way. Effort, thus, has been made to look for women's 'different' or 'other' voice (Gilligan, 1982), or uniqueness, as opposed to men's, in terms of the standpoint, perspectives and values, which they bring to the adjudicative process (see, Belleau & John, 2008; Boyd, Epstein & Martin, 2010; Choi *et al*, 2011; Cook, 1981; Kohen, 2008; Martin, 1990, 1993; Martin & Pyle, 2002; Peresie, 2005; Wilson, 1990). Attention has been paid to women's particular methods, styles and approaches to determining cases in front of them (Bartolomei, 2013; Boigeol, 2013; Martin, 2013; Röwekamp, 2013; Schultz, 2013). However, very little consistent empirical evidence is found 'for an *essential* women's difference in judging' (Kenney, 2013a: 162; Kritzer & Uhlman, 1977; Roach Anlue & Mack, 2009), nor do women judges' own anecdotal experiences suggest that judicial decisions made by women differ from those made by men (see, for example, Sloviter, 2005).

That being said, men and women are different. Judges' perspectives are shaped by their experiences – professional and personal, which may be gendered, and influence judicial decision-making (Boyd *et al*, 2010; Conley & Rauscher, 2013; Glynn & Sen, 2015; Ludwig & LaLlave, 2013; Peresie, 2005). Men and women may have different behaviour and attitudes in judging (see, for example, Abrahamson, 1998; Bartolomei, 2013; Hale, 2005; Martin, 2013; Schultz, 2013; Wald, 2005). It seems to be accepted that gender, along with other variables, is relevant to judging, as it shapes how judges know about the world, and how the things they know translates into activities of judges (Graycar, 2008). However, despite some differences between men and women, as to their gendered views and their approach to judicial operation, sex differences do not necessarily lead to different judgments (Kenney, 2008).



So far, the existing evidence has not directed us to conclude that what gender differences exactly are in judicial production. It is argued that research should move beyond the question of whether women decide cases differently from men, as scholarship on women judges, which turns towards an essentialist view of women and gender differences, leads to assuming, rather than discovering, essential sex differences, and therefore is ‘not helpful for understanding judicial behaviour’ (Kenney, 2008: 107). Instead, emphasis should be placed on the inclusion of varied perspectives and experiences, including gender, in judicial decision-making, to make for a better judiciary (Hunter *et al*, 2010; Kenney, 2013a; Rackley, 2013).

Rather than comparing men and women in the judiciary, previous research has placed emphasis especially on women, by looking at ‘feminist judging’ (Hunter & Fitzpatrick, 2012), ‘feminist judgments’ (Hunter, 2008; 2013; 2015; Hunter *et al*, 2010), ‘feminist style of reasoning’ (Sherry, 1986), ‘feminist approach to legal reasons’ (O’Connor, 1991), or ‘feminist methods’ (Baines, 2009a; Bartlett, 1990; Mossman, 1986). One important purpose of these studies, along with others (Farhang & Wawro, 2004; Dijksterhuis, 2013; Gilligan, 1982; Martin, 2013; Peresie, 2005; Röwekamp, 2013) is to explore women’s unique contributions to the judicial process.

The existing research has generated many positive findings about female judges and their judicial performance at both national and international levels. However, there are still gaps in research (Schultz & Shaw, 2013b). Therefore, women’s gendered experience in judging requires further academic inquiry, to help advance a theory of gender (Kenney, 2013a), enable a better understanding of judging, and also informs policy and practice, to ensure equality in the judicial profession.

Despite that the horizon of the scholarship on gender and judging has increasingly widened, women judges are under-researched in some geographical regions, in which China is one: it was not included in the project on women in the world’s legal professions, involving



scholars from 17 countries (Schulze & Shaw, 2003); nor was it part of a similar scale international study on gender and judging, including research papers from 19 countries, among which Asian countries are Cambodia, India, Japan, and the Philippines (Schulze & Shaw, 2013a). Schultz (2003a) explained that failure to recruit contributors from broader geographical contexts was possibly due to the absence of relevant data, and called for more to be done to close the information gap. The present study on women judges in China is a direct response to this call.

Research into Women in the Chinese Judiciary

English language publications on the Chinese legal system are rapidly expanding (see, for example, Cao, 2014a; Clarke, 1996; Li, 2014; Liang, 2008; Liu, 2006; Peerenboom, 2002; 2007; Potter, 2013). However, with a few exceptions, little empirical research has been done to focus on women in the legal world.

Wei and Xin (2013) investigated Chinese women judges' performance in divorce mediation, who, through contrasting the mainstream media depiction and women's judicial practice in reality, concluded that the women judges rejected the stereotypical female characteristics as factors contributing to the settlement of divorce mediations; rather, the female judges had a clear understanding of what they could do to solve marital disputes. Michelson (2009; 2013) looked at women lawyers in China. It reveals that compared with their male colleagues, women's careers were less successful, in terms of income and partner status. The research also indicates significant career longevity gaps between male and female lawyers, and hence gender inequalities in the legal profession. Recently, Sida Liu studied feminisation of judges in China, and suggests that the number of women judges has been rising; the judicial profession might have limited the entry of women to higher-level positions in its hierarchy, but women do not seem to want to occupy these positions in the first place (Venkatesa, 2015).



However, the article details the findings of the study (Zheng, Ai & Liu, 2017), due to be published in March 2017, was not available at the time of writing.

While English literature on female judges in China is sparse, Chinese language literature does seem to have wider coverage of women in court. Publications in official, media and academic discourses can be broadly divided into several categories. The first category of articles aims to promote women as an important gender group in court. The articles frequently praise outstanding women judges as role models for integrity, hard work and cleanliness in judicial practices (see, for example, Chen, 2008; Dong, 2007; Li, 2013; Ma, 2009; Song, 2009; Zhang, 2007; Zhong, 1997). Secondly, there is a bulk of publications, which attempt to describe the current circumstances of women judges, identify their problems in professional development, and offer recommendations to women judicial officers and the court system (see, for example, Huiyang Basic People's Court, 2014; Liu, 2012; Liu & Huang, 2011; Yang, 2015; Zhao, 2014). The third category of publications tends to highlight women's unique role in handling family and neighbourhood disputes, and caring for women and children in need in the judicial process. Usually, female characteristics, such as patience, empathy and attentiveness, are emphasised (see, for example, Bao & An, 2007; Chen, 2009; *Legal Daily*, 2007; Qin, 2014). In addition, the activities of the China Women Judges' Association (nü-fa-guan-xie-hui) (CWJA), are from time to time reported to underscore its primary role in helping women judges with their career advancement (see, for example, Editor, 1994, 2009; Editor, 1999; Sun, 2015; Wang, 2010).

There are two major problems with the Chinese publications. First, these articles typically provide normative statements, which are descriptive and rarely empirically grounded. This is not unusual, given that China does not have a tradition of empirical research, and official statistics about the courts and the judiciary are largely unavailable (Cohen, 1970; Curran, 2014;



Liu & Jiang, 2011; Shen, 2015). Scholarly studies are therefore constrained by sparsity, or absence, of empirical data, which limits the scope and depth of critical analysis.

The second problem is that the publications, including those exposing women's gender-related problems, are hardly discussed from a feminist or gender perspective. This is because China, as a socialist state, seeks to create the image of women's liberation. In this context, critically discussing women's problems may lead to criticism against public policy, which may be regarded as counter to the national interest. Also, as aforementioned, feminism seems to be distortedly construed in China, and accordingly, the international feminist activism is labelled as the 'bourgeois feminist movement' (Hsiung, 2001). Consequently, feminism receives little, if any, official endorsement. Since the Chinese academic society does not support controversies (Cao, 2014b; 2016; *China News*, 2015), feminism is not commonly accepted as a theoretical underpinning, and a way of seeing the world. Whilst there are female scholars in China, who research into the women's issues, and are recognised as 'feminist scholars' (Hsiung, 2001; Rofel, 2007), they are a minority and not widely known.

The reality is that no accurate official statistics are available to show the number of judges in China (*Legal Daily*, 2013), let alone the sex ratio in the judiciary. While rough estimates suggest that women make over a quarter of the overall judicial population, as we shall see in Chapter 3, the anecdotal evidence indicates that women have made up around half of the total number of 'frontline judges' (yi-xian-fa-guan), who handle cases on a daily basis. This is striking because it shows that we do not even know the very basics about women judges in China – a country with more than 1.3 billion population. This group of women certainly deserves academic attention.

Saying that women judges in China are worth venturing to gain knowledge about them is not merely because China is the most populous country in the world, so that scholarship



about women in the judiciary is incomplete without the experiences and perspectives of Chinese women judges. More importantly, China is a unique context for research.

As we shall see in this book, culturally, China differs fundamentally from the Western societies in many respects. Politically, as an authoritarian country, it is led dominantly by one Party – the CCP, and the courts are agencies of the Party-state. According to Zhou Qiang, President of the SPC, there are no such concepts, such as ‘separation of power’ and ‘judicial independence, in Chinese politics (the *New York Times*, 2017). Accordingly, Chinese judges, have certain unique professional characteristics, which differentiate Chinese women judges from their counterparts in other countries. In addition, China is undergoing rapid social changes, which inevitably impact on everyone in society, including women, to who female judges belong. Thus, given its unique contextual setting, this study on women judges in China may lead us to different findings from those in the existing literature on women in the judiciary, gender and judging, and women’s emancipation in the twenty-first century, and to enrich it.

Aims of Study, Research Questions, and the Organisation of the Book

In light of the discussions above, the primary aim of this study is to provide an up to date empirical knowledge of women judges in China, to start to fill in the knowledge gaps. Secondly, based on the first hand data, it aims to draw attention to gender and the women’s issue in the judicial profession. Thirdly, using female judges as a case study, it seeks to help accomplish a deeper understanding of women’s social status in contemporary China, so as to inform policy and practice, and create a climate for change.

The aims of study are to be achieved through answering the following questions:

1. Who are Chinese women judges and what do they do in court?
2. How do women get into the courts? What are their career paths once they are in?
3. What are women’s position in, and relation with, the courts? What are their gendered concerns in the judiciary?

4. What are women's experiences in judging?
5. How do female judges perceive female law-breaking? What are their opinion on sentencing female offenders?
6. What are women judges' role and position in the domestic sphere?

The first question enables a gendered construction of the judiciary and the relevant nature of judicial work to be explored, which helps define women judges in China. It is primarily dealt with in Chapter 3. The second and third questions focus on women in the judiciary, which are explored in Chapter 4. The fourth question is about gender and judging, which is mainly discussed in Chapter 5. The last question offers an opportunity to examine, in Chapter 6, women judges' gender role and gender position as ordinary women in China.

Correspondingly, the book is organised in seven chapters. Chapter 1 is the introduction, which provides the contextual background of the study, on which the book is based. It also outlines the aims of study and organisation of the book. Chapter 2 details several key methodological issues, including research access, methods and data, the limitations of the methodology, and finally, a concise reflection on the research process.

Chapters 3 – 6 present the empirical findings around different themes. Chapter 3 offers an empirically grounded description of the professional setting, in which women judges situate. It answers two major questions: first, who are women judges in China? and second, what do they do? It serves as a noter-up to the existing knowledge about the Chinese judicial system and practice, and offers a contextual background for discussions in the following chapters.

Chapter 4 focuses primarily on women judges and their position in, and relation with, the judiciary. It consists of two parts: 4.1 investigates how women get into the judiciary and, once they are in, their training, career paths and journey to the positions of power in court; 4.2 examines women's roles and position in the judicial profession, their gendered problems, as



well as job satisfaction. This chapter aims to provide a detailed account of women's qualitative experiences in judicial offices.

Chapter 5 is about women's experience in judging. The findings are also presented in two parts: 5.1 examines female judges' experiences as to what they do to go about judicial decision-making as a judicial officer, as well as a woman in judicial practices; 5.2 explores women's views on female offending and their attitudes towards punishing women offenders. This chapter seeks to gain insights into women's judicial behaviour, and their contributions to judicial production.

Chapter 6 turns to look at women judges' private life outside court. Following a section on female judges' family roles and the conflict with women's professional roles and their social responsibilities, it elaborates the difficulties facing young mothers in striking the work-life balance, and the impact of motherhood on women in the judiciary. Further, it presents the female judges' views on several private matters. Finally, it looks at gender identity of women judges.

Chapter 7 concludes the book with a short reiteration of the key findings and the major arguments made in previous chapters. It also offers several implications for policy and practice.

Given that China is a cultural context, with which an English speaking audience is not typically familiar, the book takes a comparative approach: where appropriate and possible, the findings in this study are compared with those available in the existing English language literature, which is largely based on the experiences and perspectives of women in the Western, developed world. It is believed that a comparative analysis not only helps the reader to better understand the empirical findings from a social setting which considerably differs from that of their own, but also sheds new light on the evolving scholarship, by provoking new debates and argumentation.



Based on original work, the book addresses a range of issues in relation to women judges in China, and therefore broadens and advances the existing literature. Specifically, it helps a better understanding of women in the opportunity structure in the judicial setting, the gendered nature of judging, and women's emancipation and empowerment in wider international contexts. The book, as an empirically grounded social scientific analysis, makes an important contribution to the global study on gender and judging and women in contemporary China.

This research monograph is envisaged for use by international scholars in the areas of judicial diversity, gender politics and gender equality. It can be of use also to upper-level undergraduate and postgraduate students, who are engaging in sociology of law, social policy, gender, cultural, and China studies, and any other related courses. More broadly, it is for anyone who is interested in gender equality for women, the judiciary, the Chinese legal system, the women's movements in China, and China in the post-reform era. Accordingly, the book is presented in a reader-friendly manner to suit a wide international audience.