

## ASPIRING TO STATE AUTHORITY: THE AUTONOMY OF ARBITRATION INSTITUTIONS IN CHINA

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*Kai-Shen Huang\**

*Drawing on fourteen months of ethnographic fieldwork, this article examines the widespread process of officialization in China's arbitration institutions, aiming to understand the motivations for this approach that diverges from market norms. Despite legislation from the central government advocating for greater autonomy, the reliance of many arbitration institutions on the state's formal system remains entrenched. The article argues that this dependence is largely attributable to the aspiration of Chinese arbitral officials to be recognized as part of the state's ruling regime. Self-realization in contemporary China is not limited merely to the pursuit of self-responsibility and independence, nor is the state's role in enabling or constraining these forms of freedom always consistent. The article highlights the negotiation between individual autonomy and state guardianship as a crucial feature of Chinese subjecthood that shapes outcomes in engaging with legal provisions.*

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### INTRODUCTION

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\* Research Fellow, Research Institute for Democracy, Society and Emerging Technology (DSET) in Taiwan; Research Associate of the "China, Law, and Development" project funded by the European Research Council at the University of Oxford China Centre. He holds a D.Phil. in Anthropology from the University of Oxford. He currently serves as the Lead of the Emerging Technologies and Democracy Research Unit at DSET. The author expresses gratitude to Matthew S. Erie and Jean Christopher Mittelstaedt for their feedback on some of the earlier drafts of this article. Special thanks are also extended to many experts and organizations that facilitated the author's fieldwork in China for this article. Any remaining errors are the author's.

The strong presence of China in the global arena has led to speculation that the world is now entering a “Chinese century” in which the Chinese state is restructuring the global order in unprecedented ways.<sup>1</sup> However, this “specter of global China”<sup>2</sup> has also prompted a considerable degree of skepticism in some about China’s commitment to the rule of law, which appears to be frequently undermined by Chinese extra-legal institutions and norms.<sup>3</sup> A deeper issue at stake is that there may be something peculiar about how Chinese actors consider and act upon formal legal requirements, especially those in the form of state law, policy instructions, or international treaties. This article explores this critical issue by using the autonomy of arbitral institutions in China as a case study. Specifically, it focuses on how Chinese arbitral bureaucrats and local officials perceive and enforce the explicit legal mandate of institutional independence, which was formally introduced by China’s current 1994 arbitration reform aimed at replacing its previous Soviet-style arbitration system.

This article has two main objectives. First, it presents Chinese arbitral institutions on a continuum. At the one end are institutions that operate in a corporate-like manner, maintaining organizational and financial independence from government controls. At the other end are those closely tied to the state’s bureaucratic administration. This article argues that corporate-like arbitral institutions in China are rare. Despite the reform mandating independence, many of them continue to rely on government subsidies and show little organizational distinction from other public entities operated by local governments. Second, this article provides an explanatory account of the major regulatory, political, and ethical factors that lead to the prevalence of such an inclination toward the state administrative system.

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<sup>1</sup> Frank N. Pieke, *Anthropology, China, and the Chinese Century*, 43 ANN. REV. ANTHROPOLOGY 123, 123 (2014).

<sup>2</sup> See generally CHING KWAN LEE, *THE SPECTER OF GLOBAL CHINA: POLITICS, LABOR, AND FOREIGN INVESTMENT IN AFRICA* (2017).

<sup>3</sup> See, e.g., Carl Minzner, *China’s Turn Against Law*, 59 AM. J. COMPAR. 935, 935-84 (2011); cf. Taisu Zhang & Tom Ginsburg, *China’s Turn Toward Law*, 59 VA. J. INT’L L. 306, 306-89 (2019).

The findings and data will further differentiate between two types of arbitral bodies within those reliant on the state. The first group is closely controlled by local governments through outright coercion. The second group operates where local authorities comply with the letter of China's arbitration law by explicitly refraining from intervention. In the former case, the tight link with the local state can be viewed as resulting from China's authoritarian political tradition, which tends to monopolize dispute settlement and leaves little space for private legal institutions to flourish.<sup>4</sup> The lack of independence in these arbitral bodies may simply stem from the state's top-down coerced domination. By contrast, the orientation toward the state's bureaucratic system in the latter circumstance is mainly driven by grassroots initiatives. This alignment is highly voluntary and reflective, and it is in sharp contrast to the top-down control observed in the first group.

“Officialization,” a term I encountered during my fieldwork, refers to the practice of voluntarily submitting to bureaucratic authority. This phenomenon constitutes a pivotal inquiry for two reasons. First, it challenges the legal imperatives of the arbitration reform, which explicitly advocates for autonomy and self-responsibility as core values.<sup>5</sup> Second, it calls into question the extent to which the reform effectively permeates local arbitral institutions, revealing a stark contrast between prescriptive legal standards and actual grassroots responses.<sup>6</sup> Therefore, the prevalence of officialization not only problematizes the universal applicability of liberal legal principles but also invites a deeper examination of the political and ethical dimensions that shape legal processes in China.

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<sup>4</sup> Donald Clarke, *Legislating for a Market Economy in China*, 191 CHINA Q. 567, 584 (2007).

<sup>5</sup> See, e.g., The Central People's Government of the People's Republic of China, *China's Arbitration System*, April 30, 2006, [http://big5.www.gov.cn/gate/big5/www.gov.cn/govweb/test/2006-04/30/content\\_271831.htm](http://big5.www.gov.cn/gate/big5/www.gov.cn/govweb/test/2006-04/30/content_271831.htm) (China).

<sup>6</sup> Studies of Chinese legal reforms often point to a disparity between official mandates and on-the-ground practices. This gap between the law as written and as implemented appears to be a recurring feature in China's legal landscape. See, e.g., See KWAI HANG NG & XIN HE, EMBEDDED COURTS: JUDICIAL DECISION-MAKING IN CHINA 3 (2017).

This article suggests that this organizational inclination toward the state's formal system is often underpinned by a specific pattern of reflection among Chinese frontline arbitral actors. In this mode of deliberation, the pursuit of state authority and its recognition heavily influences how these actors exercise discretion over compliance or other forms of engagement with formal legal norms. The peculiarity of this aspiration lies in its decisively overriding nature. Rather than factoring into a balance of deliberation, this "exclusionary" resolution of conflict operates in a highly discriminatory manner,<sup>7</sup> often superseding and pushing out other normative considerations (e.g., legal imperatives) from the decision-making process.

An additional question that this article seeks to address is how this strong desire for state authority has emerged and sustained itself against the backdrop of China's more than four decades of market reform. This orientation appears to be neither a mere fulfillment of the country's long-standing socialist legacy nor simply an expression of resistance to the neoliberal emphasis on self-reliance that the reform demands. Among the arbitral officials observed, this drive might be more deeply rooted in their ideal of being successful. Their self-confinement to the state regime is less about passive obedience and more about a proactive enactment of a larger self-formation project wherein a consistent virtuous self is realized through political empowerment and loyalty to the state.

The theoretical contributions of this article are twofold. First, the emergence of this virtuous disposition provides crucial insights into the contested nature of subjecthood amid China's broader societal transition. Self-realization in post-reform China is not necessarily limited to pursuits of self-enterprise and independence, nor is the state's role in constraining these forms of freedom always consistent. Through the promulgation of the 1994 arbitration reform, the state has acted as an enabler of such freedom. As the varying degrees of autonomy across Chinese arbitral bodies reveal, the formation of

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<sup>7</sup> JOSEPH RAZ, PRACTICAL REASON AND NORMS 35-48 (1975).

professional personhood can often be caught in a struggle between fostering individualistic self-reliance and seeking state guardianship.

Second, this study enriches law and society scholarship by illustrating the necessity of giving closer attention to the interplay between the dynamics of self-cultivation and legal mandates. It offers an analysis of the complex process through which local actors consider their sense of the self to calibrate their engagement with legal requirements. This approach contrasts with a dominant trend in socio-legal studies to sidestep the significance of ethical self-constitution in molding legal practices. This oversight is especially striking in an examination of legal phenomena in non-Western and illiberal settings, such as China. As shown in the next section, much of the existing research into legal outcomes in such contexts has largely concentrated on the workings of domination and resistance or on the decisive role of social conventions. This article, however, illuminates the cultivation of a virtuous self and its consequential impact on legal reasoning and deliberation, thereby furnishing a case study for further research into the nexus between law and ethics within China as well as beyond.

This article proceeds as follows. First, it offers a detailed review of prevailing research that examines China's legal processes as a result of either legal pluralism or its unique authoritarian power relations. This section identifies a notable gap in current law and society studies, which have yet to adequately recognize the dynamic of self-formation projects and their relationship with law. Next, this article outlines the ethnographic data and methods used in the study. It then ventures into the ambiguities inherent in the current arbitration reform, clearly highlighting its conflicts with China's own broader domestic legal framework. As the article advances, it provides an ethnographic account to contrast a corporate-like arbitral institution with an arbitral institution closely tied to the state administration, highlighting their differing approaches to negotiating autonomy with local governments. This is followed by an in-depth analysis of the widespread practice of officialization, with a specific

focus on the underlying rationale that prompts arbitral officials to seek close alignment with state authority.

## I. LEGAL PLURALISM AND AUTHORITARIAN TRADITION

Since China initiated its reform and opening-up policies in the late 1970s, its commitment to the rule of law has been a subject of intense debate.<sup>8</sup> Though opinions remain sharply divided,<sup>9</sup> it is generally recognized that there can be a substantial discrepancy between formal rules and their practical application in China.<sup>10</sup> This prevalent perception has led to a common characterization of Chinese legal practices as flexible rather than as overly reliant on the rigidity of official rules. For example, in rural areas, state laws may not always serve as the primary mechanism for maintaining order.<sup>11</sup> Local communities often view these formal rules as lacking in legitimacy and relevance.<sup>12</sup> Therefore, localities will often exhibit customs and practices that do not necessarily comply with state directives from the top. In China, local customs and social norms often compete with or operate alongside official state laws. These alternative sources of social order are highly diverse and deeply ingrained in various cultural values and social institutions. Such forces include “reason” (*heh*), religious norms, and power distribution as well as relationships (*guanxi*) that draw upon factors like kinship, family, and political alliances.<sup>13</sup>

<sup>8</sup> See NEIL J. DIAMANT ET AL. ENGAGING THE LAW IN CHINA: STATE, SOCIETY, AND POSSIBILITIES FOR JUSTICE (2005); STANLEY LUBMAN, BIRD IN A CAGE: LEGAL REFORM IN CHINA AFTER MAO (2000).

<sup>9</sup> See, e.g., Albert H.Y. Chen, *China's Long March towards Rule of Law or China's Turn against Law?* 4 CHINESE J. COMPAR. L. 1, 1-35 (2016).

<sup>10</sup> See NG & HE, *supra* note 6, at 3.

<sup>11</sup> See SULI ZHU, SENDING LAW TO THE COUNTRYSIDE: RESEARCH ON CHINA'S BASIC-LEVEL JUDICIAL SYSTEM (2016).

<sup>12</sup> Andrea E. Pia, “We Follow Reason, Not the Law:” *Disavowing the Law in Rural China*, 39 POLAR. 276, 282-86 (2016).

<sup>13</sup> See, e.g., Matthew S. Erie, *Muslim Mandarins in Chinese Courts: Dispute Resolution, Islamic Law, and the Secular State in Northwest China*, 40 LAW & SOC. INQUIRY 1001, 1001-30 (2015); See generally Tom Ginsburg, *Does Law Matter for Economic Development? Evidence From East Asia*, 34 LAW & SOC'Y REV. 829, 829-56 (2000); See e.g., Xin He, *Why Do They Not Comply with the Law? Illegality and Semi-Legality among Rural-Urban Migrant Entrepreneurs in Beijing*, 39 LAW & SOC'Y REV. 527, 527-62 (2005); Man Yee Karen Lee, *The Role of Law in Addressing the Good Samaritan's Dilemma: A Chinese Model?* 2 ASIAN J.L. & SOC'Y 55, 55-92 (2015); Ling Li, *Performing Bribery in China: Guanxi-Practice, Corruption with a Human Face*, 20 J. CONTEMP. CHINA 1, 1-20 (2011); Ke Li, *Relational Embeddedness and Socially Motivated Case Screening in the Practice of Law in Rural China*, 50 LAW & SOC'Y REV. 920, 920-52 (2016); Ji Li, *The Power Logic of Justice in China*, 65 AM. J. COMPAR. L.

Such a negotiated process between state laws and extra-legal ordering is not necessarily limited to Chinese society. This situation reflects a broader phenomenon known in law and society scholarship as “legal pluralism,” which recognizes that in many societies, including China, multiple systems of rules and norms coexist and interact.<sup>14</sup> Even in a Western society like the United States, abundant examples demonstrate that informal norms and local understandings of the law can likewise supersede the state’s legal system to regulate various sociopolitical arenas.<sup>15</sup> The local push against the monopoly of formal laws in China may thus simply illustrate an outcome of a common conflict arising between official and unofficial normative systems widely identified in modern society.

The preference for non-state norms in China is further complicated by the emergence of transnational legal spheres. Described by anthropologist Sally Engle Merry as “vernacularization,”<sup>16</sup> plural legal orders in local struggles indicate that the grassroots-level implementation of global legal concepts and instruments is seldom a straightforward process of transplantation or imposition. As seen in the example of human rights,<sup>17</sup> local responses to the introduction of global legal concepts can instead take various forms, ranging from replication and adaptation to even outright rejection, that are highly

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95, 95-144 (2017); Qian Liu, *Legal Consciousness of the Leftover Woman: Law and Qing in Chinese Family Relations*, 5 *ASIAN J.L. & SOC’Y* 7, 7-27 (2018); Qian Liu, *Relational Legal Consciousness in the One-child Nation*, 57 *LAW & SOC’Y REV.* 214, 214-33 (2023); Pitman B. Potter, *Guanshi and the PRC Legal System: From Contradiction to Complementarity*, in *SOCIAL CONNECTIONS IN CHINA: INSTITUTIONS, CULTURE, AND THE CHANGING NATURE OF GUANXI* 179, 179-95 (Thomas Gold et al. eds., 2002); Juan Wang & Sida Liu, *Ordering Power under the Party: A Relational Approach to Law and Politics in China*, 6 *ASIAN J.L. & SOC’Y* 1, 1-18 (2019).

<sup>14</sup> Sally Engle Merry, *Legal Pluralism*, 22 *LAW & SOC’Y REV.* 869, 872-74 (1988); see also Carol J. Greenhouse, *Legal Pluralism and Cultural Difference; What Is the Difference? A Response to Professor Woodman*, 42 *J. LEGAL PLURALISM & UNOFFICIAL L.* 61, 61-72 (1998); John Griffiths, *What Is Legal Pluralism?* 24 *J. LEGAL PLURALISM & UNOFFICIAL L.* 1, 1-55 (1986).

<sup>15</sup> See, e.g., Carol J. Greenhouse, *Nature Is to Culture as Praying Is to Suing: Legal Pluralism in an American Suburb*, 20 *J. LEGAL PLURALISM & UNOFFICIAL L.* 17, 28-31 (1982); Sally Engle Merry, *Everyday Understandings of the Law in Working-Class America*, 13 *AM. ETHNOLOGIST* 253, 253-59 (1986); Sally Falk Moore, *Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study*, 7 *LAW & SOC’Y REV.* 719, 724-29 (1973).

<sup>16</sup> Sally Engle Merry, *Transnational Human Rights and Local Activism: Mapping the Middle*, 108 *AM. ANTHROPOLOGIST* 38, 39-40 (2006).

<sup>17</sup> See MARK GOODALE, *SURRENDERING TO UTOPIA: AN ANTHROPOLOGY OF HUMAN RIGHTS* (2009); Richard A. Wilson, *Reconciliation and Revenge in Post-Apartheid South Africa*, 41 *CURRENT ANTHROPOLOGY* 75, 75 (2000).

susceptible to local meanings and power relations. Similar processes are identified by the legal scholar Pittman Potter, who suggested that China's engagement with foreign legal norms typically entails a process of selective assimilation in which external institutional practices and organizational structures are filtered through local norms.<sup>18</sup> Sometimes phrased as the "Chinese model" of legal reforms, this approach is characterized by the Chinese authority's emphasis on "adapt[ing] international practices to local circumstances."<sup>19</sup>

The immediate role of China's authoritarian tradition in determining legal outcomes is also explicit in these accounts. According to this paradigm, the negotiated process of Chinese legal reforms appears to result from a much deeper conflict of values arising between autocracy and liberal democracy.<sup>20</sup> This structured dynamic has also been termed "adaptive authoritarianism,"<sup>21</sup> within which the state maintains stringent control over society while simultaneously adapting to emerging challenges to fortify its stability and authority. Reflected in the legal sphere is a similar trajectory: China demonstrates a substantial and innovative commitment to legal reforms related to economic performance but exhibits less tolerance for reforms that might endanger regime survival or encroach upon the state's exercise of power.<sup>22</sup> As various studies have illustrated,<sup>23</sup> this adaptability may have led to the prevalence of "legal instrumentalism" in China, in which the law may

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<sup>18</sup> Pittman B. Potter, *Legal Reform in China: Institutions, Culture, and Selective Adaptation*, 29 LAW & SOC. INQUIRY 465, 478 (2004).

<sup>19</sup> Randall Peerenboom, *Between Global Norms and Domestic Realities: Judicial Reforms in China*, in LAW AND DEVELOPMENT AND THE GLOBAL DISCOURSES OF LEGAL TRANSPLANTS 181, 187 (John Gillespie & Pip Nicholson eds., 2012).

<sup>20</sup> See also Weitseng Chen & Hualing Fu, *Authoritarian Legality, the Rule of Law, and Democracy*, in AUTHORITARIAN LEGALITY IN ASIA 1, 1-14 (Weitseng Chen & Hualing Fu eds., 2020); Benjamin L. Liebman, *Authoritarian Justice in China: Is There a "Chinese Model"?* in THE BEIJING CONSENSUS? 225, 225-48 (edited by Weitseng Chen ed., 2017).

<sup>21</sup> See, e.g., Titus C. Chen, *China's Reaction to the Color Revolutions: Adaptive Authoritarianism in Full Swing*, 34 ASIAN PERSP. 5, 5-51 (2010); See, e.g., Tom Ginsburg, *Authoritarian International Law?*, 114 AM. J. INT'L L. 221, 241 (2020); Andrew J. Nathan, *China's Changing of the Guard: Authoritarian Resilience*, 14 J. DEMOCRACY 6, 6-17 (2003).

<sup>22</sup> Pittman B. Potter, *Globalization and Economic Regulation in China: Selective Adaptation of Globalized Norms and Practices*, 119 WASH. U. GLOB. STUD. L. REV. 119, 124-25 (2003); Pittman B. Potter, *The Chinese Legal System: Continuing Commitment to the Primacy of State Power*, 159 CHINA Q. 673, 673-83 (1999).

<sup>23</sup> Jacques deLisle, *Law in the China Model 2.0: Legality, Developmentalism and Leninism under Xi Jinping*, 26 J. CONTEMP. CHINA 68, 68-84 (2017); Ling Li, *The "Production" of Corruption in China's Courts: Judicial Politics and Decision Making in a One-Party State*, 37 LAW & SOC. INQUIRY 848, 848-77 (2012); Shucheng Wang, *Authoritarian Legality and Legal Instrumentalism in China*, 10 CHINESE J. COMPAR. L. 154, 154-62 (2022).

not be seen as an immutable set of principles but as a flexible tool that can be compromised according to the needs of the state.

To be sure, an exploration of the interplay between law and hegemonic power has long been an integral part of research within the broader field of law and society studies.<sup>24</sup> In legal anthropology, the late twentieth-century turn to “power” in social theory has led to extensive work examining the ways in which legal practices intertwine with various forms of hegemony and power asymmetries.<sup>25</sup> This shift in focus toward the interaction between law and power marked a significant departure from earlier functionalist paradigms that were mainly rule-centered and processual.<sup>26</sup> In this regard, the emphasis on authoritarianism in shaping Chinese legal processes can be seen as a theoretical engagement with this power-focused approach.

Despite its well-established theoretical footing in contemporary law and society scholarship, the power-centered framework often narrows its focus to explicit forms of domination and resistance.<sup>27</sup> This limitation is particularly evident in studies of legal processes in illiberal societies. To paraphrase the claims of Lynette Chua, when the law under authoritarianism is not facilitating resistance, it frequently functions either as an elusive means of confining dissent and opposition or is negated by the oppressor through overt forms of control, such as violence, imprisonment, disciplinary sanctions, and bureaucratic sabotage.<sup>28</sup>

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<sup>24</sup> See Susan S. Silbey, *After Legal Consciousness*, 1 ANN. REV. L. & SOC. SCI. 323, 328-35 (2005).

<sup>25</sup> See, e.g., SALLY ENGLE MERRY, COLONIZING HAWAII: THE CULTURAL POWER OF LAW 9-10 (2000); Laura Nader, *Controlling Processes Tracing the Dynamic Components of Power*, 38 CURRENT ANTHROPOLOGY 711, 711-38 (1997); HARMONY IDEOLOGY: JUSTICE AND CONTROL IN A ZAPOTEC MOUNTAIN VILLAGE (Stanford University Press 1990); HISTORY AND POWER IN THE STUDY OF LAW: NEW DIRECTIONS IN LEGAL ANTHROPOLOGY 3 (June Starr & Jane F. Collier eds., 1989); THE POWER OF LAW IN A TRANS-NATIONAL WORLD 1-23 (Franz von Benda-Beckmann et al. eds, 2009).

<sup>26</sup> See JOHN COMAROFF & SIMON ROBERTS, RULES AND PROCESSES: THE LOGIC OF DISPUTE IN AN AFRICAN CONTEXT (University of Chicago Press 1981); Peter Just, *History, Power, Ideology, and Culture: Current Directions in the Anthropology of Law*, 26 LAW & SOC'Y REV. 373, 375-79 (1992).

<sup>27</sup> See Sally E. Merry & Matthew C. Canfield, *Law: Anthropological Aspects*, in 13 INT'L ENCY. SOC. & BEHAV. SCI. 535, 537-38 (James D. Wright ed., 2nd ed. 2015).

<sup>28</sup> See Lynette J. Chua, *Legal Mobilization and Authoritarianism*, 15 ANN. REV. L. & SOC. SCI. 355, 361-63 (2019).

These power-centered accounts expose an analytical challenge similar to Mahmood's seminal critique of feminist interpretations of agency in non-liberal settings.<sup>29</sup> The accounts seem to be deeply influenced by a liberal progressive presupposition that frames individual freedom and agency as a universal tendency to seek liberation from authority within a rigid, agonistic relationship wherein the individual is often cast as the oppressed subject of a repressive state. Consequently, in cases that do not concern mere obedience to legal provisions or social norms, legal processes in authoritarian regimes like China appear, to Western observers, to be largely overwhelmed by the workings of coercion or resistance to the country's pervasive party-state system.<sup>30</sup>

Given the prevalent perception of China as the "illiberal other" juxtaposed against Western liberal democracy, the appeal of this power-centered paradigm is understandable. In a society often characterized as authoritarian, the state indeed wields substantial power and maintains significant control over aspects of social life. From a liberal perspective, it is widely assumed that individuals would strive to extricate themselves from such conditions, exerting their agency to break free from state control. However, a paradox emerges in the Chinese arbitral institutions under examination: individuals actively seek the state's involvement and influence, even when laws bestowing autonomy are in place. The challenge of explaining this proactive submission to authority, as observed in anthropology,<sup>31</sup> might be attributed to the limited attention paid to the investigation of freedom and its diverse manifestations in different cultural contexts. Although legal anthropology has

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<sup>29</sup> SABA MAHMOOD, *POLITICS OF PIETY: THE ISLAMIC REVIVAL AND THE FEMINIST SUBJECT* 10 (2011).

<sup>30</sup> For similar critiques, see FERNANDA PIRIE, *THE ANTHROPOLOGY OF LAW* 63-67, 107-113 (2013); Suli Zhu, *The Party and the Courts*, in *JUDICIAL INDEPENDENCE IN CHINA: LESSONS FOR GLOBAL RULE OF LAW PROMOTIONS* 52, 52-68 (Randall Peerenboom ed., 2009).

<sup>31</sup> See James Laidlaw, *For an Anthropology of Ethics and Freedom*, 8 *J. ROYAL ANTHROPOLOGICAL INST.* 311, 311-32 (2002); *THE SUBJECT OF VIRTUE: AN ANTHROPOLOGY OF ETHICS AND FREEDOM* 1-46 (2014); MICHAEL LAMBEK, *THE ETHICAL CONDITION: ESSAYS ON ACTION, PERSON, AND VALUE* 1-39 (2015); Saba Mahmood, *Feminist Theory, Embodiment, and the Docile Agent: Some Reflections on the Egyptian Islamic Revival*, 16 *CULTURAL ANTHROPOLOGY* 202, 203-36 (2001).

started to address these limitations,<sup>32</sup> law and society studies still harbor only limited engagement with this issue and its implications for understanding the interactions between freedom and legal mandates.

This article is positioned to explore such an under-examined domain by analyzing the widespread predisposition among Chinese arbitral officials toward deference to the state authority, even though the law in question requires otherwise. The article moves beyond a narrow understanding of legal processes as mere passive reflections of power dynamics or social norms. Instead, it aims to elucidate how projects of self-formation and professional identity affect the interpretation and implementation of legal requirements. In doing so, this article contests prevailing notions of freedom and autonomy that are primarily rooted in the liberal understanding of agency as liberation from the state,<sup>33</sup> thereby offering a distinct perspective on the complex interaction between freedom, state authority, and legal processes in an authoritarian setting such as China.

## II. DATA AND METHODS

The data analyzed in this study originated from a mixed-method approach, which consists of both participant observation and semi-structured interviews. The study spanned a fourteen-month immersive fieldwork period from 2017 to 2018 and was supplemented by follow-up visits in 2022 and 2023. It was conducted in two arbitral institutions located in China's top-tier cities and a Beijing-based law firm. This multi-sited fieldwork was designed to probe varying degrees of autonomy within Chinese arbitral institutions through three specific lines of inquiry: 1) the influence exerted by local governments on the organization, staffing, and financing of arbitral institutions; 2) the ways in which frontline arbitral bureaucrats interpret and implement

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<sup>32</sup> See generally Morgan Clarke, *The Judge as Tragic Hero: Judicial Ethics in Lebanon's Shari'a Courts*, 39 AM. ETHNOLOGIST 106, 106-21 (2012); MORGAN CLARKE & EMILY CORRAN, RULES AND ETHICS: PERSPECTIVES FROM ANTHROPOLOGY AND HISTORY (2021).

<sup>33</sup> C.f. LI ZHANG & AIHWA ONG, PRIVATIZING CHINA: POWERS OF THE SELF, SOCIALISM FROM AFAR 1-22, 171-72 (2008).

the demand for autonomy prescribed in China's arbitration law; and 3) the potential factors affecting such engagement.

It should be noted that this article recognizes inherent limitations in the methodologies employed. Participant observation, while offering rich, nuanced insights, may be influenced by the observer's interpretative perspective. Semi-structured interviews, although providing depth and personal perspectives, depend on the respondents' willingness and ability to articulate their experiences. The study's temporal and geographic scope, while extensive, cannot capture every nuance of the arbitral landscape in China. Thus, the data should be viewed as a detailed snapshot rather than an exhaustive depiction. Readers are encouraged to consider these constraints when interpreting the findings, acknowledging that they represent a significant, yet not all-encompassing, picture of autonomy within Chinese arbitral institutions.

The chosen field sites and methods are conducive to an examination of the questions posed. First, the two arbitral institutions under study, henceforth referred to as Commission A and Commission B, represent two distinct scenarios in the pursuit of autonomy. Commission A has effectively transitioned to an enterprise-like structure, distancing itself from the local state's bureaucratic operation. By contrast, Commission B remains closely tied to the local government's functional system, and has a much lower degree of autonomy than does Commission A. This stark contrast facilitates a comparative analysis that offers deeper insights into how different institutional practices and strategies can determine the levels of independence from the state.

Second, the multi-sited nature of this fieldwork, which spans arbitral institutions and a law firm, provides an expansive view beyond the ethnographic contexts of Commissions A and B. In particular, my position at the law firm expanded the scope of the study, affording me the opportunity to engage with several cases administered by other Chinese arbitral institutions. During the four months of my fieldwork at the law firm alone, I participated in twelve arbitral cases under the auspices of arbitral houses located in Beijing, Hong Kong, Shanghai, and Singapore. Nine of them were disputes involving

overseas parties. This broader engagement fostered a more diversified interaction with a wide array of participants, including arbitrators from different jurisdictions, lawyers with distinct specializations, and clients with varied interests. Working with these participants allowed me to capture the heterogeneity inherent in the experiences and views of those involved, especially the multiple ways they interact with, interpret, and are influenced by the state authority and the explicit requirements of the arbitration laws both within and outside of China.

This article's methodology was carefully designed to include Commission A and Commission B for its analysis. These institutions offer contrasting models of autonomy that illuminate broader patterns within the wider circle of arbitral institutions in China. Commission A exemplifies the potential for arbitral bodies to evolve towards market-oriented operations, while Commission B reflects the enduring influence of the local state apparatus. The inclusion of a law firm further enriches the analysis by incorporating the perspectives of legal practitioners directly engaged with these commissions. This study, therefore, provides a focused examination of the variances in institutional autonomy, which, in conjunction with existing literature and data, contributes to a more nuanced understanding of general trends in China's arbitration landscape. The reader is invited to view the findings as case studies that, while specific, shed light on the wider dynamics at play in the field of Chinese commercial arbitration.

The data to be discussed in this article are mainly derived from observations among two distinct groups of participants: arbitral bureaucrats and local officials. Arbitral bureaucrats include individuals who served in various roles within the arbitral institutions, ranging from case managers (or in local terms, "secretaries") to higher-ranking supervisors with titles such as directors, deputy directors, and division chiefs. Local officials refer to those holding positions in local governments, particularly in law-related departments or sectors such as judicial bureaus. These officials are responsible for overseeing or administering activities related to arbitration.

Among the arbitral bureaucrats, the primary method of data collection was participant observation, complemented by in-depth interviews. These interviews were selectively initiated in contexts requiring additional clarification, such as policy-related decisions or interactions with local officials. My role as a full time residential fellow in Commissions A and B routinized these engagements. During my eight-month fieldwork at Commission A, I collaborated in an office with a team of five staff members responsible for international cases. My duties entailed case file organization, deadline monitoring, and logistical coordination for arbitral hearings. A comparable research approach was adopted at Commission B. This close collaboration with frontline staff enabled me to acquire an insider's perspective that revealed not just their stated positions but also their actual dealings with local governments, thereby laying the groundwork for the research scope and depth of this study.

Among the local officials, my approach mainly relied on semi-structured interviews, supplemented by observations during their on-site visits to the arbitral institutions. The interviews were largely focused on understanding their views on the autonomy of arbitration institutions, their roles in managing and overseeing arbitration-related activities, and their interpretation of China's 1994 arbitration reform. Observations were made during selected events, such as training sessions or policy discussions, providing contextual insights that enriched the information obtained from the interviews.

As required by my host institutions, the data discussed herein have been carefully handled to ensure confidentiality. The identities of the arbitral institutions, law firm, and individuals involved have been anonymized. Each interview quoted in this article was conducted with prior consent, and all participants were informed of their rights to withdraw or decline to answer any questions at any point during the process.

### III. CHINA'S 1994 ARBITRATION REFORM

Commercial arbitration is a distinctive method of dispute resolution that is an alternative to court litigation due to its flexibility and cross-border enforceability. The arbitration process allows clients to choose arbitrators to adjudicate their disputes, and if the 1958 New York Convention applies, the arbitral awards rendered can be recognized and enforced across different countries. The business community often finds arbitration attractive due to its highly private and autonomous nature.<sup>34</sup> It is primarily governed by non-state arbitration rules and international standards, and parties are given broad powers to decide the location, timing, and process of the proceedings as well as the applicable sources of law. National arbitration laws and state courts only interfere with the process in a limited and minimal manner. This privacy enables multinational parties to avoid local favoritism and nationalist prejudice by seeking neutral decision makers, particularly those unaffiliated with national courts, state agencies, or the cultural predispositions of either side.<sup>35</sup>

The development of arbitration in China has followed a trajectory distinct from that of its Western counterparts. It emerged as a top-down strategy within the framework of the government's opening-up reforms, which were initiated in the late 1970s to transition toward a market economy. Enacted in 1994, China's current Arbitration Law<sup>36</sup> serves as a central legislative component in this transformation. The law incorporated several key tenets of Western arbitration, including provisions for arbitration agreements (Article 4), freedom of the parties to select arbitrators and constitute tribunals (Articles 6 and 31), and the finality of arbitral awards (Article 9). Most significantly, the reform reclassified Chinese arbitration institutions as autonomous legal entities, a departure from their prior status as subdivisions of the local government, thereby mandating their operational independence from the executive branch of the state.

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<sup>34</sup> See J. D. M. Lew, *Achieving the Dream: Autonomous Arbitration*, 22 *ARBIT. INT'L* 179, 181-82 (2006).

<sup>35</sup> GARY BORN, *INTERNATIONAL COMMERCIAL ARBITRATION: COMMENTARY AND MATERIALS* 2 (2001).

<sup>36</sup> ARBITRATION LAW OF THE PEOPLE'S REPUBLIC OF CHINA, [http://www.npc.gov.cn/zgrdw/english-npc/Law/2007-12/12/content\\_1383756.htm](http://www.npc.gov.cn/zgrdw/english-npc/Law/2007-12/12/content_1383756.htm) (China).

This push for institutional independence was a radical move, and the central state took it very seriously. For example, Jingyu Yang, who was then the deputy of the State Council's legal affairs bureau, supported the reform in writing. He urged his peers "not to simply put old wine in new bottles" but to honor the spirit of the new law by establishing arbitration institutions free from the state's administrative oversight entities.<sup>37</sup> This perspective found resonance in China's central legislature, the National People's Congress, which acknowledged the autonomy of arbitral institutions as a key element of the reform. The legislature emphasized the importance of differentiating commercial arbitration from administrative adjudication to uphold the principle of arbitration independence.<sup>38</sup> This shift was formalized in the current arbitration law, which stipulates that arbitration commissions must operate independently of executive organs (Article 14). These initiatives collectively sought to diminish state control over arbitration institutions, thus aligning them more closely with the Western model of nongovernmental entities.

Nearly three decades after the 1994 reform, China's commercial arbitration landscape has been dramatically transformed. The proliferation of arbitration commissions to over 270 houses reflects not only China's robust economic growth but also the growing need for specialized mechanisms to handle cross-border commercial disputes.<sup>39</sup> However, questions surrounding the neutrality and independence of these institutions persist.<sup>40</sup> For instance, Fuyong Chen characterized the reform as an "unfinished transformation," noting the continued affiliations of these institutions with local administrative

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<sup>37</sup> STANDING COMM. NAT'L PEOPLE'S CONG., THE BOOK OF PEOPLE'S REPUBLIC OF CHINA ARBITRATION LAW 4 (1995).

<sup>38</sup> *Id.* at 19.

<sup>39</sup> MINISTRY JUST. CHINA, NATIONAL ARBITRATION CASE HANDLING SITUATION IN 2019 (2020); *See also* Weixia Gu, *China's Belt and Road Development and A New International Commercial Arbitration Initiative in Asia*, 51 VAND. J. TRANSNAT'L L. 1305, 1311-23 (2018); Huanfang Du, *New "Arbitration Rules" Contribute "Chinese Wisdom" and "Chinese Solutions" to the Development of International Commercial Arbitration*, LEGAL DAILY (Oct. 30, 2023, 03:44 PM), [[http://www.legaldaily.com.cn/newzt/content/2023-10/30/content\\_8918319.html](http://www.legaldaily.com.cn/newzt/content/2023-10/30/content_8918319.html)].

<sup>40</sup> *See*, Jeremy A. Cohen, *Settling International Business Disputes with China: Then and Now*, 47 CORNELL INT'L L.J. 555, 555-68 (2014).

bodies, particularly in financing, staffing, and organization.<sup>41</sup> These observations raise a set of critical questions: Why have the reform's explicit mandates not been fully implemented? What barriers prevent the complete realization of the law's objectives, and what underlying factors contribute to this incongruity? One plausible explanation, as this article will suggest, lies in the reform's ambiguous language itself and its misalignment with the current legal framework, a subject to which I now turn.

#### IV. THE AMBIGUITY OF LAW

Within Chinese arbitration circles, it is unlikely that any informed practitioners would overlook the Western origins of the reform. They often refer to it as an "imported good" that is frequently compromised by China's entrenched domestic practices, norms, and political tradition. My participants generally described the gap between the reform's vision and its local reception as characteristic of the Chinese government's eclectic and selective approach to legal transplantation. In local terms, this discrepancy tends to be perceived as a cultural conflict within a China–West dichotomy in which Western legal standards and practices are often subjected to localization (*ben-tuhua*), shaped by what the local community describes as the "socialist legal culture" of China. However, from a pragmatic perspective, an equally prevalent view attributes this incongruity to complex power dynamics, control, and resistance between China's central and local governments. This central–local tension clearly illustrates the paradigm of "fragmented authoritarianism" in China, a political system in which a theoretically unified chain of command becomes divided and stratified in practice.<sup>42</sup> In this context, the gap between the reform's explicit requirement and its local reception may simply reflect a

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<sup>41</sup> FUYONG CHEN, *THE UNFINISHED TRANSFORMATION: AN EMPIRICAL STUDY OF THE CURRENT STATUS AND FUTURE TRENDS OF CHINA'S ARBITRATION INSTITUTIONS* (2010).

<sup>42</sup> Andrew Mertha, "Fragmented Authoritarianism 2.0: Political Pluralization in the Chinese Policy Process," 200 *CHINA Q.* 995-1012 (2009); *See also* KENNETH LIEBERTHAL & MICHEL OKSENBERG, *POLICY MAKING IN CHINA: LEADERS, STRUCTURES, AND PROCESSES* 139 (1988).

common phenomenon: The enforcement of central laws in China often fluctuates according to the goals and interests of local social and political groups.<sup>43</sup>

A more immediate explanation may stem from the challenging nature of law enforcement on the front lines of state administration itself. Law enforcement is not simply a mechanical process of rule following, nor is it simply a function of a hierarchical chain of command in which policy directives are rigidly implemented from the top down.<sup>44</sup> It instead requires front-line bureaucrats to exercise a high degree of decision making and discretion.<sup>45</sup> This process of reflection could be prompted by several factors. For example, in the context of American equal opportunity law, Edelman observed that street-level bureaucrats often grapple with conflicting goals and values handed down to them, such as the tension between administrative efficiency and steadfast adherence to the rule of law.<sup>46</sup> Moreover, the constrained resources allocated to street-level bureaucrats generally dictate prioritization between these objectives, and might not always align with standardized procedures.<sup>47</sup> These challenges are further compounded by uncertainty, especially when relying on soft evidence or ambiguous statutes. In such instances, the reflective process of law enforcement becomes far more complex, as the frontline actors must weigh competing demands and navigate through areas that the law in question may not clearly address.

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<sup>43</sup> Frank N. Pieke, *Contours of an Anthropology of the Chinese State: Political Structure, Agency and Economic Development in Rural China*, 10 J. ROYAL ANTHROPOLOGICAL INST. 517, 525-26 (2004).

<sup>44</sup> See BERNARDO ZACKA, WHEN THE STATE MEETS THE STREET: PUBLIC SERVICE AND MORAL AGENCY 48-62 (2017).

<sup>45</sup> *Id.*

<sup>46</sup> See generally Edelman, *Legal Ambiguity and Symbolic Structures: Organizational Mediation of Civil Rights Law*, 97 AM. J. SOCIO 1531, 1531-76 (1992).

<sup>47</sup> Edelman's research on organizational responses to legal mandates offers a relevant parallel. She found that when laws are ambiguous, procedurally complex, or poorly enforced, organizations have considerable leeway in interpreting what compliance means. In the Chinese context, we see a similar dynamic: bureaucrats, faced with limited resources, must prioritize which state directives to follow more closely. This selective implementation allows them to shape the practical meaning of compliance based on local conditions and constraints. See *id.*

Among the challenges encountered, legal ambiguity emerged as a particularly salient issue during my fieldwork. Sometimes termed the indeterminate nature of law, Chinese practitioners commonly understood legal ambiguity to represent a typical “interpretative problem of law” (*jalu jieshi wenti*).<sup>48</sup> While the primary source of this practical challenge is unclear wording in the law, it can also arise from conflicts between the law under consideration and other established mandates or when applying a particular set of rules leads to outcomes that are viewed as politically or morally problematic. In these circumstances, frontline law workers often contend with uncertainties about the law’s precise intention or the appropriate course of action to take. It is not as simple as it may appear to follow the rules at the street level of public provisions, even if the intent is to do so in a mechanical manner.

In China’s current arbitration law, these challenges are exemplified by the stipulation for the independence of arbitration institutions. The law prescribes that such institutions must operate independently of executive organs and not retain any subordinate relationship to them (Article 14). But there is a lack of further guidance on how this requirement should be enforced in practice. Adding to the confusion, the law itself appears to be inconsistent on this matter. While the law aims to separate arbitration institutions from state bureaucracy, it confines their establishment to municipal and provincial governments (Article 10), and thus, they cannot be established by private entities. Up to this point, China still does not have a clear legal framework that accommodates state-established independent institutions, other than categorizing them as state-sponsored public institutions.<sup>49</sup>

This peculiar approach has perplexed even China’s top experts in arbitration law, sparking long-standing debates on how best to explore and resolve these ambiguities.<sup>50</sup> These debates oscillate between ideological and

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<sup>48</sup> See, e.g., Colin Hawes, *How Chinese Judges Deal with Ambiguity in Corporate Law: Suggestions for Improving the Chinese Case Precedent System*, 19 AUSTL. J. ASIAN L. 1, Aug. 2018, 4-6 (2018).

<sup>49</sup> See Weixia Gu, *Piercing the Veil of Arbitration Reform in China: Promises, Pitfalls, Patterns, Prognoses, and Prospects*, 65 AM. J. COMPAR. L. 799, 808-12 (2017).

<sup>50</sup> Fuyong Chen, *An Empirical Analysis of Chinese Arbitration Institutions*, 2 CHINESE J. L. 81, 81-97 (2009).

practical concerns. Starting with a foundational ideological issue, many participants, particularly legal officials in local governments, question whether the legislature's vision of independence necessitates the full privatization of arbitral institutions. Questions also arise regarding the extent of autonomy that arbitration institutions can have over their finances, organization, and staffing within China's broader legal framework. Central to all these discussions is how to determine the appropriate relationship between the local state system and the arbitral institutions it facilitates.

These are all issues that strike at the very core of the daily operations of Chinese arbitral institutions, yet the arbitration reform itself remains silent on them. Many of my participants, particularly during instances of prolonged engagement or reflective conversation, would go as far as to describe the reform as half-baked or even superficial. As it stands, the reform often leaves arbitral bureaucrats facing several difficult dilemmas. Consider the experience of my colleague, Mr. Lu, an arbitral bureaucrat at a Chinese arbitration center I will refer to as Commission A. He is primarily tasked with fostering international cooperation for the commission. In his interactions with foreign partners and potential clients, a recurring skepticism arises: "Aren't all Chinese arbitral institutions established by the government?" Such concerns about the government-affiliated nature of Chinese arbitral institutions often make these partners hesitant to deepen cooperation or entrust the commission with their disputes. As he once complained to me, "I often feel the urge to defend our positions, but addressing these misconceptions and explaining the reform's peculiar government-established design is challenging, as I myself don't have a clear answer."

Further complicating matters, the attitudes of local governments tend to mirror the ambiguity of the reform itself. In many cases, local officials lean conservative, showing reluctance or even resistance to most attempts by arbitral institutions to expand beyond the explicit wording of the reform. Drawing on his 15-year experience negotiating with local officials, Lu lamented, "I'm often torn between the commission's aspiration for broader

autonomy and the passive responses from the local government. [...] It feels like we're in a typical tug-of-war, and to be honest, I'm frequently at a loss."

The challenges Lu expressed are not unique to him or Commission A. His sentiments are shared across various arbitral institutions in China,<sup>51</sup> highlighting a notable disjunction between the reform's high-minded objectives and the tangible tools and guidelines provided for their implementation. To conclude, frontline arbitral bureaucrats confront more than just the task of rule application; they must also tackle the ambiguities embedded within legal texts, often juxtaposing and reconciling several—at times discordant—normative considerations and political demands. Within this complex terrain of street-level bureaucracy, Chinese arbitral institutions have exhibited a diverse range of responses. While some have innovatively crafted their own strategies to address these ambiguities, others have adhered to an obedient approach, either due to coercion from the local state or from their own voluntary alignment, even in instances in which local governments have explicitly refrained from exerting control. A detailed analysis of these tactics and their underlying rationale will be discussed in the subsequent two sections.

## V. NEGOTIATING AUTONOMY IN LOCAL STATE

Chinese arbitration institutions are often categorized by the local community along a continuum that spans two poles: *minjian* (autonomous type) and *xingzheng* (administrative type). This categorization is based on how closely an institution aligns with a private enterprise model or a bureaucratic government structure. At the *minjian* end, institutions typically maintain significant financial independence from state fiscal control and are characterized by a corporate-like management and governance structure. In contrast, *xingzheng* institutions often rely on government subsidies for their operations and show little organizational distinction from the executive branch of the

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<sup>51</sup> See generally CHEN, *supra* note 41.

local state. It is common in such institutions for staff members to concurrently hold positions within local governments. Yet, in practice, the distinction between *minjian* and *xingzheng* is not always stark. Many Chinese arbitration institutions occupy a space somewhere between these two defined poles.<sup>52</sup> Amidst this spectrum of institutional types, the *minjian*-style arbitration institutions exemplify a quest for autonomy, presenting a diverse array of strategies for achieving independence while navigating the limitations set by China's governance structure.

For a *minjian*-type arbitration institution to exist, a progressive style of leadership that embraces entrepreneurship and international standards is essential. Commission A is a textbook example of this. Founded by the city government immediately after the 1994 arbitration reform, Commission A reached financial self-sufficiency in a mere three years, eliminating the need for governmental subsidies. This achievement was facilitated by its move away from the stringent financial controls of the local state, which granted the institution significant autonomy in its budgetary and expenditure decisions. Another hallmark of Commission A's *minjian* identity is its corporate-style approach to personnel management. In contrast to the prevalent seniority system in most Chinese public sectors, which bases employee benefits and rights on tenure, Commission A adopts a meritocratic ethos. Factors such as academic achievements, work experience, and individual performance are prioritized over personal connections or political affiliations. This is evident in their hiring policies: graduates from elite law schools like Peking and Tsinghua Universities often find themselves in an advantageous position compared to civil servants transitioning from governmental sectors.

It should be noted that the "chair," who serves as the functional head of Commission A, is appointed by the municipality. This role, akin to an executive position, is typically tasked with overarching administrative oversight. Yet, aside from this singular municipal appointment, Commission A operates

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<sup>52</sup> See also *id.* at 33, 52.

without engaging civil servants in capacities similar to those within the local government. Such an organizational structure underscores its distinct operational identity, differentiating it from the local state apparatus and demonstrating that municipal involvement does not necessarily negate autonomous governance.

My colleagues have emphasized that the autonomy<sup>53</sup> of Commission A was not simply granted by the government; instead, it was “earned” (*zhengqu*) through the proactive efforts of the commission’s leadership. Central to this achievement was Hong, who acted as the secretary general from 1995 until her retirement in the early 2010s. A staunch proponent of the “*minjian* route” ideal, Hong interpreted the legal mandate for independence as a call for a nongovernmental and privatized (*minjianhua*) arbitral system, a direct move away from the old Soviet arbitration model that was not in line with the state’s evolving market reforms. Though the law stipulates that only local governments have the authority to set up arbitration institutions, Hong did not see this as a contradiction. Instead, she perceived it as a calculated step by the government to ensure they would play a guiding role in steering arbitration entities toward adopting *minjian* characteristics. In her view, the core tenet of the 1994 arbitration reform was the promotion of arbitration’s *minjian* essence (*zhongcai minjianxing*), which is deeply rooted in values like self-restraint (*xiwo yueshu*), self-motivation (*xiwo jili*), and self-development (*xiwo fazhan*).

Hong’s progressive views were further institutionalized by Dan, the current deputy secretary general of Commission A. Recruited and promoted by Hong to his senior executive role in which he is responsible for overseeing the commission’s operations and strategy, Dan is often referred to as Hong’s loyal successor or even as her disciple. However, it is likely that Dan himself holds a strong stance on *minjian* autonomy in arbitration. With a doctoral

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<sup>53</sup> By autonomy, this article refers to the extent to which an arbitral institution is free to govern itself independently from external control or influence by the state. This includes setting its own policies, making decisions based on its own criteria, managing its own operations, and having the authority to allocate its resources without direct oversight from higher bodies or external entities. For different conceptions of autonomy, see, e.g., Lew, *supra* note 34, at 181-82, who regards autonomy in arbitration as an autonomous sphere of transnational normative order that operates independently from national legal systems.

degree in law and extensive knowledge of international arbitration, Dan is highly regarded for both his academic achievements and practical experience. For him, *minjian* autonomy is more than just a localized legal stipulation. As he has voiced in multiple public discussions, Dan believes that *minjian* autonomy signifies a broader, global commitment, “symbolizing the gold standard in commercial arbitration practices internationally.” According to him, the emphasis on institutional independence laid out in the 1994 arbitration reform is not an innovative directive; it simply reaffirms standards that have worldwide acceptance.

Nevertheless, Dan’s efforts to attain further autonomy have been met with a lack of support from the local government. Although Commission A is commonly characterized as a *minjian*-style institution, this label might not encapsulate its full essence. Originating from a government initiative, Commission A intrinsically remains a “public-sector institution” (*shiyè danwèi*), largely echoing the state administration’s imprint and distinct from private entities—a differentiation that has not gone unnoticed among local experts. This official categorization brings its own set of challenges. At times, the commission becomes a target of skepticism and faces charges of local favoritism, particularly from foreign partners and clients. Its autonomy is also precariously tied to the disposition of the local authorities.

For the better part of the past three decades, the municipal leadership has exhibited a degree of goodwill by permitting ground-up initiatives and showing restraint from micromanaging Commission A’s daily operations and self-regulatory mechanisms. As a colleague remarked, however, “given China’s political environment, the current latitude from the local government is as favorable as we could hope,” and there is a ceiling to these concessions. The local government has not shown any intent to pioneer further measures that might supersede the present legislative framework. As relayed to me by another senior associate there, since the arbitration reform’s wording does not directly correlate independence with outright privatization, expecting the

municipality to grant the commission a corporate-like private entity status is perhaps an overreach.

The case of Commission A's pursuit of a more individualized form of autonomy offers a unique lens into China's evolution as a post-socialist nation. This struggle to adopt neoliberal values, such as self-enterprise and self-governance, comes into tension with the constraints imposed by national sovereignty.<sup>54</sup> While the quest for autonomy within Commission A may initially seem to encapsulate a broader societal challenge to state control, this interpretation becomes less tenable when extending the analysis to other arbitral institutions. As Dan proudly stated to me, "We are exceptional!" A majority of Chinese arbitration institutions remain closely tied to local bureaucratic structures. Given China's illiberal approach to politics, it might be tempting to ascribe this alignment to the overt control of local governments. But this explanation becomes less convincing when many local authorities deliberately opt for a *laissez-faire* approach to the day-to-day operations of arbitral institutions under their purview. This complexity will be further explored in the next section.

## VI. COERCION AND OFFICIALIZATION

Administrative-type arbitral institutions in China are defined by their deep integration within the local bureaucratic framework. The path of this integration manifests in two different ways. On the one end are institutions that operate under explicit coercion from local governments. This is apparent from the very beginning of their establishment, with key indicators that include governing members who concurrently hold positions in local administrations and a staffing scheme largely drawn from those with prior governmental roles. In contrast, another pathway emerges in which the affiliation with the state is initiated by frontline arbitral bureaucrats themselves. Driven

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<sup>54</sup> See ZHANG & ONG, *supra* note 33, at 1-4.

perhaps by pragmatism or perceived advantage, these bureaucrats often actively seek closer alignment with the state's formal system, even when local authorities maintain a more distant stance.

Consider the example of Commission B, an arbitral institution located in one of China's prosperous coastal cities. The commission's high profile in cross-border cases and longstanding partnerships with overseas arbitral hubs render its external prominence immediately evident. At first glance, Commission B's premises might be mistaken for a prestigious Western law firm: Polished marble floors glisten beneath the feet, soaring ceilings in the conference rooms amplify whispered conversations, and walls adorned with wooden paneling are punctuated by antique lamps casting a warm, inviting glow—or as Mr. Zhang, the case manager who facilitated my visit, put it: “It's the high-end atmosphere we aim to present to our clients.”

Beneath its polished exterior, however, it is hard to conceal the indications that Commission B is a state-affiliated organ. To begin with, when I raised what I believed to be benign introductory questions about its organization, staffing quota, and recruitment policy, Mr. Zhang brushed them aside, terming them “inconvenient.” Such reluctance starkly contrasts with Commission A, which openly shares this kind of information on their website. This guarded position may reflect a deep-seated bureaucratic mindset. An illustrative example can also be drawn from Commission B's approach to international reach, particularly in the context of China's Belt and Road Initiatives starting in 2013. I recalled what Mr. Chen, a distinguished arbitrator with more than twenty years of experience collaborating with Commission B, said to me:

Regardless of how expansive our international reach becomes, it's the safeguarding of our national interests that illuminates our path. [...] Turning Commission B into an offshore arbitral institution like those in Singapore or Hong Kong was never our plan. Our primary goal is still to focus on cross-border cases involving China, meaning we intend to bring them onshore.

Upon closer examination of Commission B's operations, Chen's state-centric position becomes even more explicit. During my participation in several open-door events organized by Commission B, the emphasis on state alignment was unmistakable. Collaborations or bids for government projects as well as government-endorsed training programs were often showcased as its major achievements. While the extent to which Commission B has genuinely received such support remains a mystery to those not directly involved, including myself, the pride in these collaborations was visible in each presentation and discussion. Perhaps the clearest indication of its allegiance emerged when it was faced with a transformative choice. When offered an opportunity by the local government to transition into a nonprofit organization through a tailored local regulation, Commission B chose to stand its ground, preserving its status as a public institution, or as it was locally termed, "remaining within the state system" (*bianszhi*). As Chen explained to me:

A couple of years after we followed the [1994] arbitration law to set up Commission B, the city government reached out to us. They said we had two options to consider. The first was to step out of the current arrangement and enjoy greater independence, but that meant we would have to look after our own budget and make sure we could cover our costs ourselves. The second option was to stick with how things were, staying within the current structure where we hand over our revenues but also have our expenses taken care of by the government. [...] All of us at Commission B were folks who had transferred over from government positions, so going off on our own wasn't really in line with the general vibe at that time.

Commission B's tendency to lean on the state is often characterized by my participants as part of the broader "*guakao*" practice in China. This practice, sometimes glossed locally as officialization (*guanfanghua*), refers to the tendency among certain groups of frontline state employees to associate themselves with the state's formal system, especially by seeking government subsidies, official titles, and personnel resources. *Guakao* is particularly prevalent among those classified as public-sector institutions (*shiyedanwei*). These institutions, which are established by the state to provide public services such

as social welfare, education, and dispute resolution, are predominantly overseen by the government.<sup>55</sup> However, they are not formally incorporated into the state's governmental regime. Consequently, while their staff members are state-recruited, they are not typically recognized as a standard class of civil servants (*gongwuyuan*). Instead, they are perceived as situated somewhere between the state and civil society.

The practices of *guakao* have thus sparked a contentious debate among Chinese arbitration practitioners about the institutional identity of arbitral organizations in China. For frontline officials like Dan and Hong, who equate privatization with the ideal of institutional independence, *guakao* is seen as both politically and legally problematic as it goes against China's general policy of marketization and the legal requirement for arbitral institutions to transform into self-supporting institutions. But there is also a widespread opposing view that the formal demand for institutional independence should not be automatically linked to privatization. Zhang, for example, a case manager at Commission B whom I interviewed, holds an alternative perspective. While he acknowledged and even admired Commission A's commitment to pushing for privatization, he was quick to point out that "that isn't necessarily the only path ahead."

For those familiar with China's market transition from high socialism over the past four decades, the choice of Commission B to embrace officialization can be puzzling. Where the local government exerts strong control over the arbitration commission within its jurisdiction, the officialization of the arbitral institution might be easily interpreted as forced submission to the local authority's demands. In such contexts, the tendency toward officialization seems to echo the general perception of the Chinese "legal culture" as being inherently authoritarian and patrimonial: The state is inclined to prioritize its own power over imported norms that might restrict it.<sup>56</sup> However,

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<sup>55</sup> See generally Christine Wong, *Rebuilding Government for the 21st Century: Can China Incrementally Reform the Public Sector?*, 200 CHINA Q. 929, 929-52 (2009).

<sup>56</sup> Potter, *supra* note 18, at 477.

this explanation falls short in situations like that of Commission B, where local authorities explicitly advise against the practices of officialization. In such circumstances, the local appeal to state authority proves so compelling that it not only supersedes the mandate for independence established by the 1994 arbitration reform but also contradicts the apparent discouragement from the local supervisory authority itself.

Given that *guakao* is an attempt to create close connections with the formal state system, this practice strongly resembles China's long-standing nationalization policy in the era of high socialism. As demonstrated by several ethnographic studies,<sup>57</sup> such attempts to challenge the state's push for marketization are ubiquitous during post-socialist transitions. Shifts induced by market reforms frequently coexist with elements of socialist continuity. It thus leads to a natural speculation that the drift to the state, as illustrated in the case of Commission B, might be simply an ideological enactment of the previous socialist legacy, which is in itself a form of resistance to reformative changes.

Such a view has its foundations in the actions and consequences observed during and following the 1994 arbitration reform—a regulatory adjustment that purportedly led to the dissolution of over 4,000 arbitral organs and the displacement of around 20,000 personnel.<sup>58</sup> As a result of experiencing this radical transition, many arbitral officials have sought to restore the previously established practices prevalent in the socialist era. This observation is echoed by some of the early criticism of *guakao* within the Chinese arbitration community. For instance, Hongsong Wang, the former chairwoman of the Beijing International Arbitration Center, framed it as a regressive measure that contradicts the core principle of the 1994 reform, which

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<sup>57</sup> See, e.g., STEPHEN J. COLLIER, *POST-SOVIET SOCIAL: NEOLIBERALISM, SOCIAL MODERNITY, BIOPOLITICS* (2011); Chris Hann et al., *Postsocialism as A Topic of Anthropological Investigation*, in *POSTSOCIALISM: IDEALS, IDEOLOGIES AND PRACTICES IN EURASIA* 1, 10-13 (Chris Hann et al. eds., 2002).

<sup>58</sup> HONGSONG WANG, *BUILDING CREDIBILITY: A COLLECTION OF ESSAYS* 63 (2011).

was aimed at severing the ties between arbitration institutions and administrative organs of the state.<sup>59</sup>

However, among most of the participants with whom I engaged, *guakao* was sometimes described not as a revival of socialist tradition but as a pragmatic maneuver devised to address the immediate tangible concerns of arbitration institutions: sustaining financial viability and maintaining their political influence within the state system. This strategy involves closely aligning with the local state's budgetary provisions to secure continued governmental subsidies.<sup>60</sup> Being "within the system" (*tizhinei*) facilitates not only a niche within the state's governance architecture but also the cultivation of relationships with influential state officials. Consequently, it grants them a decisive say in policy decisions pertaining to arbitration and other related spheres of dispute resolution. In this light, *guakao* materializes less as a reflection of socialist remnants and more as an adaptive strategy grounded in well-calculated rationality. It emerges as a tailored response to the market-oriented dictates set by the 1994 arbitration reform, a stance further characterized as a counter to the state's advocacy for budgetary restraint and self-reliance epitomized in the current arbitral legislation.

Nonetheless, nearly three decades after the inception of the 1994 arbitration reform, it does not seem entirely convincing to posit *guakao* as a phenomenon solely steeped in self-interest. This period saw China accede to the 1958 New York Convention in 1987,<sup>61</sup> a scant seven years before promulgating a legislative blueprint for arbitration based on Western paradigms. New arbitral organs found themselves inevitably relying on government subsidies to offset budget deficits resulting from a limited number of arbitral cases. Yet, when examining the economic factors at play in the present day, it raises doubts about the rationale behind the *guakao* strategy. China's rapid

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<sup>59</sup> *Id.* at 14-15, 21-32.

<sup>60</sup> See Gu, *supra* note 49, at 837.

<sup>61</sup> China International Commercial Court, Notice of the Supreme People's Court of the Implementation of the "Convention on the Recognition and Enforcement of Foreign Arbitral Awards" Acceded to by China, (Dec. 2, 1986), <https://cicc.court.gov.cn/html/1/219/199/411/698.html>.

economic growth since opening-up reforms of the 1980s has transformed arbitration into a thriving and highly profitable sector. In 2019 alone, a year before the COVID-19 pandemic, Chinese arbitral institutions commanded adjudication of cases valued at an impressive 759.8 billion Chinese Yuan.<sup>62</sup> The practice of *guakao*, which necessitates a substantial relinquishment of revenues back to state control, ostensibly operates counter to the tenets of economic logic. Therefore, it becomes imperative to reevaluate the undergirding motivations that foster perseverance with *guakao* and venture beyond the seemingly simplistic rationale of economic self-interest, to which this article will turn in the next section.

## VII. ASPIRING TO STATE AUTHORITY

Most arbitral officials with whom I conducted fieldwork expressed a keen awareness of the professional gravity endowed by close affiliations with the state. My observation is that this propensity to firmly anchor oneself in the state system appears not merely as a pragmatic choice but as a deeply ingrained aspiration for success. It is driven by a robust desire to foster an image steeped in state-endowed authority—a professional identity characterized by potent political relevance. Many of my informants were open about their desire for this identity-building, frequently making statements such as “I have connections in the city government” and “I have to follow the policy guidance instructed *directly* by the relevant authority.” In this regard, *guakao* can be seen as an integral part of a larger project of self-formation through which arbitral officials evolve into a distinctive category of technocrats closely affiliated with state authority and perceived as politically powerful by the public.

The 1994 arbitration reform’s push to privatize arbitral institutions thus conflicts with this project of self-constitution. For arbitral officials who im-

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<sup>62</sup> MINISTRY JUST. CHINA, *supra* note 39, at 1.

agine themselves as China's proper class of bureaucrats, the reform's equating of institutional autonomy with the denial of any connection to the state is problematic. Based on fieldwork observations, these officials seem to view this approach as unusual or surprising, with some even characterizing it as "bizarre." These officials are particularly uncomfortable with the reform's assumption that the state poses an immediate threat to the integrity of arbitral institutions. Explicit in such a view is a deep resentment against the reform's hostile stance toward the state. This strong sense of disapproval stems largely from the reform's incompatibility with the identity these officials aspire to cultivate as state bureaucrats in a situation in which loyalty to the state may be an indispensable component. As a senior arbitral official exclaimed to me—or perhaps even lashed out—during the fieldwork:

Institutional independence? It's a misplaced concept in the context of the nurturing and protective umbrella that the state has historically provided to these institutions. You see, it feels almost like a betrayal—this sudden suggestion that we should distance ourselves from the very entity that facilitated our growth and stood as a guardian. [...] The government has always been our ally, a guiding force, rather than an adversary. Cutting the tie overlooks the symbiotic relationship we have cultivated over the years. We are not merely a social organization. We are a part of the state system working towards the common goal of justice and societal harmony.

In more analytical terms, this affinity for the state system can be succinctly described as a particular way of decision making that is distinct in both substantive and operational terms. This mode of reasoning is characterized by a strong inclination toward state authority, and it shapes the manner in which frontline officials consider their engagement with state laws and policy directives. The desire to be acknowledged as a part of the state's ruling regime is the main driving force behind this deliberation process and often works as a presumptively decisive constraint on their thinking. It is not a matter of weighing different norms and legal requirements; rather, it overwhelmingly dictates the decision-making process. This aspiration toward state authority can thus be seen as a type of "exclusionary reason" that presumptively limits

the range of practical considerations that, according to the observed participants, must be taken into account when deliberating over their engagement with legal provisions.

The prevalence of such a mode of reflection is distinct from the common strategy of “double agent” that was identified by Dezalay and Garth in the arbitration practices of emerging economies.<sup>63</sup> According to the authors, legal institutions, such as arbitral organs, in these jurisdictions are generally more vulnerable to political risks and local power relations, and the roles of law and lawyers are not highly valued. Therefore, to establish themselves in the field, practitioners often serve as intermediaries negotiating between the clientelist guardianship of the powerful and the professional image of legitimacy by distancing themselves from the ruling regime.<sup>64</sup> In this complex intersection between “the world of law and that of social power,”<sup>65</sup> the practitioners observed by Dezalay and Garth predominantly leaned on the autonomy of Western legal norms and standards for their source of legitimacy. By contrast, as the practice of officialization illustrates in this article, it seems to be the close tie to the state, even if it is just superficial, that provides frontline arbitral officials with not only empowerment but also a strong sense of legitimacy.

Given that officialization is closely associated with visible benefits, such as enhanced status and promising career prospects, it might be reasonably suspected that the aspiration to state authority as identified here is driven more by the shallow pursuit of personal interests than by a deeper form of self-formation. This observation also seems consistent with what some anthropologists have described as the emergence of the “powers of the self” in post-socialist China,<sup>66</sup> where market competition and social mobility have led

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<sup>63</sup> YVES DEZALAY & BRYANT G. GARTH, DEALING IN VIRTUE: INTERNATIONAL COMMERCIAL ARBITRATION AND THE CONSTRUCTION OF A TRANSNATIONAL LEGAL ORDER 281-310 (1996).

<sup>64</sup> *Id.* at 283-93.

<sup>65</sup> *Id.* at 282, 284.

<sup>66</sup> ZHANG & ONG, *supra* note 33, at 1.

to the rise of proactive, entrepreneurial individuals. Crucially in these neoliberal accounts, self-fashioning and the meaning of success in post-socialist Chinese society are not necessarily apolitical.<sup>67</sup> As a result, the local preference for state authority at the expense of legal provisions remains a calculated choice aimed at achieving optimal outcomes within an authoritarian setting.

This does not rule out that the aspiration to state authority presented in this article can only be understood in such functionalist terms. A critical factor in this regard is the self-identification of Chinese arbitration officials as bureaucrats as opposed to the more autonomous liberal category of legal professionals, such as judges and lawyers. The vocational project of self-formation that appeals to frontline arbitration officials may differ from the liberal tradition in which legal professionals often view the state as a threat to the rule of law or a constraint on freedom that must be resisted. In contrast, the frontline arbitration officials who were observed regarded the state as an important source of self-enterprise, which they found appealing from both functional and ideological perspectives.

This type of subjecthood seems similar to the “docile agent” identified by the anthropologist Saba Mahmood in the context of Egyptian “Islamic revival,” where women across different socioeconomic backgrounds engage in mutual education in Islamic scripture, societal norms, and physical demeanor (such as wearing the veil).<sup>68</sup> According to Mahmood, this piety movement marks the opening of scholarly religious discourse and theological study to Egyptian Muslim women, a realm that was traditionally reserved for male theologians.<sup>69</sup> She posits that the fervor shown by women in the movement is somewhat at odds with feminist analysis because those same women appear to willingly embrace the very patriarchal norms that govern them.<sup>70</sup> Drawing on Foucault’s concept of ethical self-formation from his *History of*

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<sup>67</sup> See generally Yan Xiaojun, ‘To Get Rich Is Not Only Glorious’: Economic Reform and the New Entrepreneurial Party Secretaries, 210 CHINA Q. 335 (2012).

<sup>68</sup> Mahmood, *supra* note 31, at 202.

<sup>69</sup> *Id.* at 203.

<sup>70</sup> *Id.* at 205.

*Sexuality*,<sup>71</sup> Mahmood suggests that this dedication to Islam is an enactment of religious obligations through which women pursue a broader project of ethical self-formation.<sup>72</sup> In these situations, adhering to religious rules is less a matter of social coercion and more a manifestation of autonomy, serving as a pathway for women to achieve their own vision of ethical identity.<sup>73</sup> As Morgan Clarke points out, Mahmood's perspective illustrates a novel way of considering the use of rules in the context of Islam's legalism: following rules can become a means of self-crafting, that is, a "technology of the self" that allows for the sculpting of one's own subjecthood.<sup>74</sup>

The parallel one can draw between the orientation of women towards Islamic legalism and Chinese arbitral officials toward state authority is that both exhibit "illiberal" approaches to power not strictly imposed by dominant forces or motivated by economic interests. Their obedience to the authority is instead an active part of cultivating personal virtue. However, one should note a distinction: the Islamic adherence to rules identified by Mahmood and Clarke is a personal developmental strategy, while for Chinese officials, such rules can be viewed as obstructive to their ideal of what it means to be a successful bureaucrat. Despite this difference, in both contexts, the individual's self-conception significantly shapes their ways of engaging with legal mandates.

## CONCLUSION

While acknowledging the neoliberal perspective that sees the retreat of the Chinese state as conducive to the rise of individual autonomy, this article questions the sufficiency of such a binary understanding of the relationship between the state and the individual in contemporary China. The voluntary

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<sup>71</sup> See generally MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY: VOLUME 2, THE USE OF PLEASURE* (1990); *THE HISTORY OF SEXUALITY: VOLUME 3, THE CARE OF THE SELF* (1992).

<sup>72</sup> See MAHMOOD, *supra* note 29, 118-128.

<sup>73</sup> *Id.*

<sup>74</sup> Morgan Clarke, *Legalism and the Care of the Self: Shari'ah Discourse in Contemporary Lebanon*, in *LEGALISM: RULES AND CATEGORIES* 231, 232 (Paul Dresch & Judith Scheele eds., 2015).

submission to state power observed among Chinese arbitral officials challenges mainstream neoliberal accounts of post-socialist Chinese society. Self-realization in this context is not confined solely to the pursuit of self-responsibility and autonomy. The varying degrees of autonomy exhibited by Chinese arbitration institutions underscore the ongoing struggle to negotiate both independence and the state's patronage—features that are crucial to understanding Chinese post-reform subjecthood.

In more theoretical terms, this article enriches socio-legal studies by illustrating how ethical considerations can intersect with legal processes. It shows that the prevalence of officialization among Chinese arbitral institutions is often underpinned by a reflective choice. This choice cannot be crudely reduced to either the direct outcome of Chinese society's proclaimed preference for informal norms or a coerced submission to state powers. In doing so, the article provides an analytical alternative to the current paradigms of legal pluralism and power relations that prevail in understanding the legal processes in non-Western illiberal contexts. This article thus paves the way for further inquiry into the broader conditions under which different forms of subjecthood that inform legal processes emerge and become sustained, not only in China but also beyond.

Promulgated nearly three decades ago, China's current 1994 arbitration legislation is now in pressing need of updates and comprehensive reforms. As this article has illustrated, a significant area of concern is the independence of Chinese arbitral institutions. This issue is particularly salient given the dominance of institutional arbitration in China, wherein arbitral organs centralize the administration of proceedings.<sup>75</sup> Recognizing the gravity of this issue, the Chinese government introduced a proposal for arbitration law amendments in 2021. Article 12 of the proposal specifies arbitral institutions

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<sup>75</sup> Gu, *supra* note 49, at 836-37.

as nonprofit legal entities.<sup>76</sup> This legislative initiative has the potential to redress longstanding uncertainties that have been criticized by scholars and that stem from the absence of robust official legislative support.<sup>77</sup> Nonetheless, the journey toward reform remains fraught with challenges. The much-anticipated amendment to the arbitration law has been postponed, and differing opinions persist among China's policymakers about the institutional nature of arbitral institutions. Even if the amendment is realized in the future, clarifying the identity of these institutions as nonprofit entities and their relationship to state organs will still be a subject of debate and uncertainty.

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<sup>76</sup> Fredrik Opsjon Lindmark, *China's Draft Amended Arbitration Law: Does It Go Far Enough?*, 14 *TSINGHUA CHINA L. REV.* 173, 191 (2021).

<sup>77</sup> Gu, *supra* note 49, at 839.