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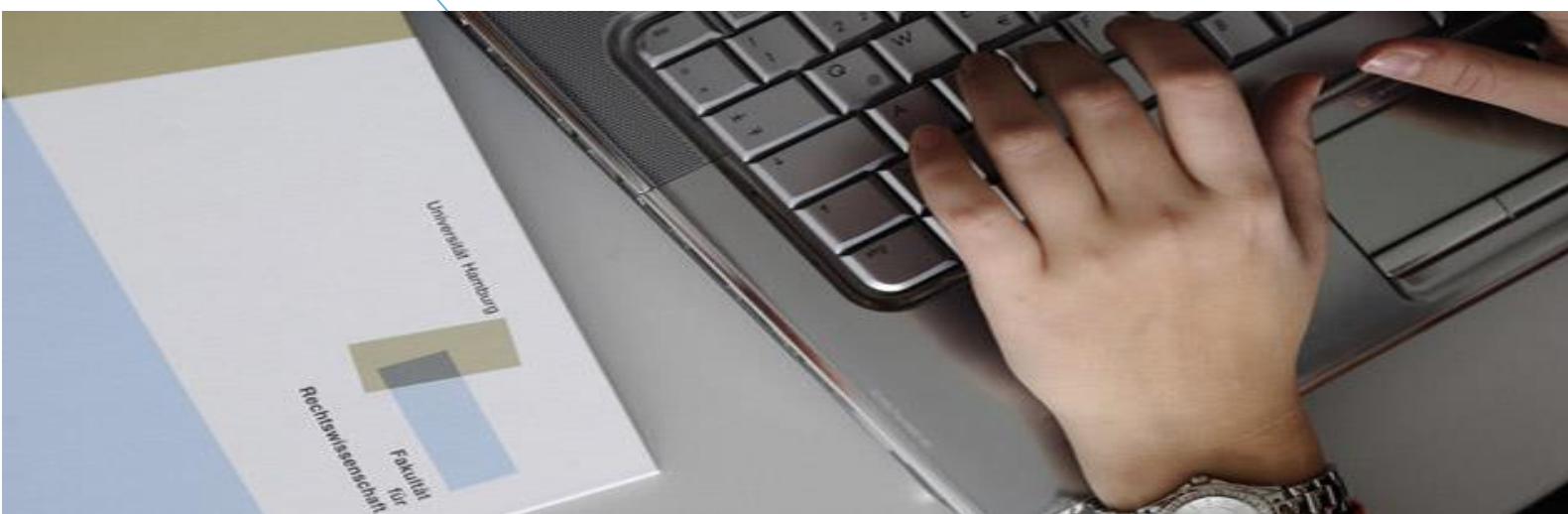
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Courts as Monitoring Agents: The Case of China

April 28, 2020

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Abstract:

This paper shows that courts are not only a crucial part of the rule of law in the conventional sense but that they can also serve an important function in revealing information regarding the performance of lower level governments to the central government, and thereby improve their performance. After having developed a general argument in that vein, the recent reforms to the Chinese court system are partially interpreted as an attempt to make the courts monitoring agents of the central government. Based on primary data from more than 1,000 Chinese local courts, the argument is tested empirically and its hypotheses are largely confirmed.

Keywords: Court system of China; court reforms; courts-as-information-providers; courts as monitoring agents.

JEL Codes: H11; H77; K40; N45; P21; P37.

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1. Introduction

To implement their goals, all central governments crucially depend on the cooperation of lower level governments and bureaucrats. To know whether these agents are doing a good job, governments somehow need to collect reliable information regarding their performance. In this paper, we argue that central governments (beyond relying on monitoring mechanisms within the executive branch) might also rely on the judiciary to collect valuable information.

The provision of reliable information is a particularly sensitive issue in autocracies. Autocracies rarely allow free elections, and the media are unable to criticize government freely. Hence, two important sources of information available in democracies are excluded by design in autocracies. Autocrats also face what has been coined the “dictator’s dilemma”². In other words, an autocratic government (the dictator) would like to know how popular it is, but the more repressive it becomes, the more people will hesitate to reveal their true attitudes³.

After developing our argument that courts might be set up as agents that provide information to the central government, we ask to what degree the recent court reforms initiated by the Chinese central government can be interpreted in this light. China seems to be a particularly interesting case for a number of reasons. First, it is one of the largest countries in the world, both in terms of land area and population, making the information dilemma of the central government more acute than in many smaller countries. Second, China has a federal structure with five different levels of government, increasing the likelihood that lower levels of government will drift away from policies and policy goals established by the central government. Third, the central government

² RONALD WINTROBE, *THE POLITICAL ECONOMY OF DICTATORSHIP* (1998).

³ TIMUR KURAN, *PRIVATE TRUTHS, PUBLIC LIES: THE SOCIAL CONSEQUENCES OF PREFERENCE FALSIFICATION* (1997).

has repeatedly declared that fighting corruption is one of its primary goals.⁴ Confronting corruption can only be successful if information regarding bribe-accepting government agencies is reliably revealed.

We analyze the recent reforms of the Chinese court system in light of our courts-as-monitoring-agents theory. Before the reforms, local courts essentially depended on local governments that were responsible for promotions and court budgets. This created an environment where local judges had few incentives to adjudicate against local governments. In addition, local courts were in charge of their own docket. Local courts could refuse the admission of cases, and by controlling their caseload could ensure that politically sensitive cases never came to trial. This implies that the local courts produced little information to the central government that was valuable. Neither the types of cases, nor the court's decisions could serve as valuable or reliable information regarding the performance of local government.

The reforms that began in 2014 led to two important changes: Both the appointment and the promotion of judges and the passing of the annual court budget is now a competence of a higher government level. In addition, it has become more difficult for local courts to refuse the admission of cases. The improved access to and independence of local courts established by the court reforms, leads us to hypothesize that: a higher number of cases will be filed, there will be lower withdrawal rates from plaintiffs and a higher ratio of cases (particularly in administrative law) will be won by the plaintiff. All of these factors should serve the ultimate goal of collecting valuable information from the populace on the behavior of local governments.

⁴ See e.g., Fanfu Juexin You Duoqiang? Xi Jinping Duoci Zheyang Shuo [反腐决心有多强? 习近平多次这样说; How strong is the determination to fight corruption? Xi Jinping said so many times], China Central Television, 17th Oct 2016.

Based on hand-collected data from more than 1,000 local courts, we find these hypotheses confirmed to a large extent. In particular, administrative law cases sharply increased after the reforms were implemented, with a corresponding sharp increase in the number of resolved administrative. We also find that fewer plaintiffs choose to withdraw during the trial procedure. The ratio of cases won by the plaintiff, however, has not increased significantly. The reforms can be seen as a success not only from the point of view of the citizens, who now have a means of redress against local governments and their agencies, but also for the central government that now receives valuable and more reliable information about the performance of local governments.

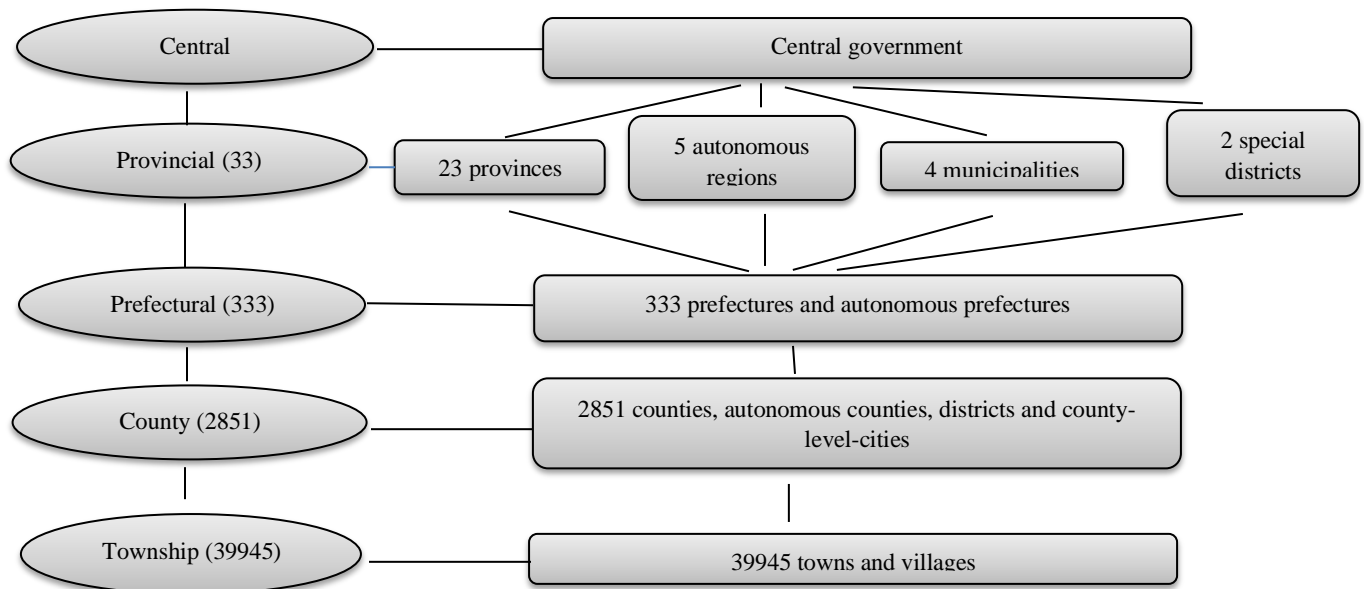
Besides the fairly detailed analysis of the reforms of the Chinese court system, the main contribution of this paper is to introduce a hitherto frequently overlooked function of courts: Namely, as information provider for the central government. The rest of the paper is structured as follows: Section 2 describes traditional mechanisms used by central governments to monitor local governments and proceeds to explain why central governments might rely on courts as monitoring agents. Section 3 endeavors to familiarize the reader with the Chinese court system. It describes its organization before the reform, the ensuing problems and the policy measures taken to mitigate these problems. In Section 4, we analyze the effects of the reforms. We examine three indicators in our analysis: a change in the number of filed cases, a change in the courts' resolution rates, and the likelihood that a citizen wins a case against an administrative agency. Section 5 concludes and spells out a number of follow-up questions.

2. Monitoring Local Government Officials

For the implementation of its goals, every government depends on the cooperation of local government officials and bureaucrats. In the case of the Chinese government, this dependency is particularly acute: with more than 1.4 billion inhabitants, China is the most populous country on

earth. Covering almost 10 million square kilometers, it is the third largest country in terms of area. To run such a vast and populous country, the reliable cooperation of hundreds of thousands of local government officials and bureaucrats needs to be secured. More precisely, China consists of 33 provinces, 333 prefectures, 2,851 counties and almost 40,000 townships. Figure 1 illustrates the structure of Chinese government. To ensure that all these people act in accordance with the goals of the central government, the central government needs to set up some sort of monitoring mechanism. In autocracies, setting up such monitoring devices is particularly challenging as general elections with an open competition between parties are generally excluded. Since media freedom is regularly heavily curtailed in autocracies, the press drops out as an entity revealing important information. In this section, we first describe a number of monitoring mechanisms that rely on conventional administrative tools before we move on to describe how the judiciary can be used as an additional monitoring body.

Figure 1: The structure of Chinese government



Source: China Statistical Yearbook 2019

2.1. The Administrative Monitoring Channel

Although China is organized around a single party (the Chinese Communist Party; CPP), it is also organized as a federation and relies heavily on delegating tasks to various local subsidiaries⁵. As is shown in Figure 1, China is administered by five layers of governments, and many political and economic policy decisions are delegated to local governments layer by layer. As of 2016, there were 7.19 million civil servants in China.⁶ Each of the various layers of government set certain quantitative performance targets with different priorities for the government layer immediately below them. For example, family planning and social order are high priority targets set on the national level (Edin 2003). The performance of local governments is then evaluated at the end of each year according to the respective performance targets. Officials who accomplish these targets receive a monetary bonus and a higher chance of being promoted.⁷⁸

As policies are formulated at higher levels of government and implemented by governments on lower levels, the principal-agent problem inevitably looms large. As agents (lower level governments) command better knowledge about their own ability and the state of their local environment than the principal (higher level government), the agents are able to take actions that are to their own benefit rather than the principal's. Lower level officials might engage in corruption and other malfeasance and such actions may, in turn, impede the political career of higher level officials. Higher level governments thus have a strong incentive to monitor the actions of lower

⁵ Gabriella Montinola, Yingyi Qian & Barry R. Weingast, *Federalism, Chinese Style: The Political Basis for Economic Success in China* 48, *WORLD POLITICS* 50–81 (1995).

⁶ 2016 Niandu Renli Ziyuan He Shehui baozhang Shiye Fazhan Tongji Gongbao [2016 年度人力资源和社会保障事业发展统计公报; Statistical Communiqué on the Development of Human Resources and Social Security in 2016]. Available at <http://www.mohrss.gov.cn/SYrlzyhshbzb/zwgk/szrs/tjgb/201805/W020180521567132619037.pdf> (in Chinese) . Last visited 08 March 2020.

⁷ Liu H. Lin W, *Gong'an Jiguan Yingdui Quntixing Shijian Shiwu Yu Celue (Practical Affairs and Strategy of the Response of the Public Security Organs to Mass Incidents)*, BEIJING: ZHONGGUO RENMIN GONG'AN DAXUE CHUBANSHE (2008).

⁸ Maria Edin, *State Capacity and Local Agent Control in China: CCP Cadre Management from a Township Perspective* 173, *THE CHINA QUARTERLY* 35–52 (2003).

level governments, yet governments at all levels face information disadvantages when trying to assess the performance of governments on lower levels. To mitigate the principal-agent problem, rulers need instruments to reduce the information asymmetry and monitor the behavior of agents, as well as discipline those who do not follow the rules. In principle, one can distinguish between information gathering accomplished within the administrative system and information revealed by actors outside the administrative system. In their paper on how legislatures can elicit information, McCubbins and Schwartz would have called within-system information gathering “police patrol” devices⁹. According to them, a “police” is constantly on patrol looking out for instances in which local agents are not complying with the rules set by the central government. As an alternative to police patrol, they describe “fire alarm” devices. Here, anybody being aware of a fire can call for the fire fighters. This device promises to be less costly than police patrol as no permanent police presence is required.

Information gathered for governments from within the administrative system (i.e., “police patrol”) can rely on the auditing and statistical offices and the self-reports of lower governments. These reports not only contain information on whether performance targets were met, but also include information on the percentage of staff misconduct¹⁰. According to the cadre management system, points are assigned to different dimensions of performance, and the final score becomes a criterion influencing the officer’s career path. In addition, there are also certain “veto” targets, such as maintaining social stability, the violation of which jeopardizes the evaluation even if the performance is strong in other aspects¹¹. Thus, local governments have an incentive to boast about

⁹ Mathew D. McCubbins & Thomas Schwartz, *Congressional Oversight Overlooked: Police Patrols Versus Fire Alarms* 28, AMERICAN JOURNAL OF POLITICAL SCIENCE 165 (1984).

¹⁰ John P. Burns & Zhou Zhiren, *Performance Management in the Government of the People's Republic of China* 10, OECD JOURNAL ON BUDGETING 1–28 (2010).

¹¹ Jennifer Pan & Kaping Chen, *Concealing Corruption: How Chinese Officials Distort Upward Reporting of Online Grievances* 112, AMERICAN POLITICAL SCIENCE REVIEW 602–20 (2018).

their achievements while concealing information about the targets they did not reach. This explains, for example, the discrepancy of GDP statistics reported by central government and various local governments over the past few decades¹².

Governments on different levels have also set up a number of internal agencies to maintain bureaucratic control, for example, the General Office, the Supervision Committee, or the Discipline Inspection Commission. The General Office (办公厅; *Bangong Ting*) is a department set up by the Party at central and provincial levels and is in charge of secretarial and administrative management matters.¹³ This department is run by government agencies that assist the heads of governments in handling the day-to-day work of the officers and is in charge of secretarial and administrative management matters.¹⁴ Besides the routine work such as drafting documents on top provincial leaders' behalf, the General Office is responsible for "supplying accurate and up-to-date information to the central general offices"¹⁵. Supervision Committees (监察委员会; *Jiancha Weiyuanhui*) exist at all levels and supervise all public officials, investigate job violations and crimes, carry out anti-corruption work and maintain the dignity of the constitution and the law.¹⁶ The Supervision Committee at each level falls under the leadership of government agents operating at the same level, as well as the Supervision Committee of the next higher level. The Discipline Inspection Commission (纪律监察委员会; *Jilu Jiancha Weiyuanhui*) is not a government

¹² Burns and Zhiren, *Performance Management in the Government of the People's Republic of China*, *supra* note 10.

¹³ Certain capital cities of provinces or even ordinary prefectures also upgrade their own offices into General Offices.

¹⁴ See e.g., *Zhongguo Gongchandang Gongzuo Jiguan Tiaoli* [中国共产党工作机关条例; Regulations of the Working Organs of the Chinese Communist party], 2017. For the description of the tasks of the provincial general offices, see *Zhonghua Remin Gongheguo Sheng, Zizhiqu, Zhixiashi Dangzhengqun Jiguan Zuzhi Jigou Gaiyao* [中华人民共和国省, 自治区, 直辖市党政群组织机构概要; Outline of Party, Government, mass organizations of Provinces, Autonomous Regions and Municipalities in the People's Republic of China], 1989.

¹⁵ Veron M.-Y. Hung, *China's WTO Commitment on Independent Judicial Review: Impact on Legal and Political Reform* 52, *THE AMERICAN JOURNAL OF COMPARATIVE LAW* 77 (2004).

¹⁶ Article 3 of Supervision Law of the People's Republic of China, 2018.

department, but receives its authority from the Communist Party. Discipline Inspection Commissions exist at all levels and supervise the exercise of power by party members and leading cadres, as well as handle violations of party regulations.¹⁷ Each Discipline Inspection Commission falls under the leadership of the Party Committee¹⁸ on the same administrative level, as well as the respective Discipline Inspection Commission of the next higher level.

These agencies enjoy a high degree of discretion: what is reported and what is not, the way that information is reported, whether to hide any bad news and focus more on good news, all depends on the agencies themselves. Although the law states that these agencies perform their role of monitoring officials independently and are not subject to interference by administrative organs, social groups and individuals,¹⁹ the inherent bureaucratic problems persist. Because these agencies are an arm of the various layers of government, the reporting of the agencies is, indeed, still the self-monitoring of the government and the party committee. Thus, the motivation of the agencies to perform their monitoring functions is limited, since the government and the agencies possess shared interests.²⁰ In addition, the General Office and the Supervision Committee are subordinate to the government, and the Discipline Inspection Commission is subordinate to the Party Committee. The heads of these agencies have a lower administrative rank than the head of government on the same level. The heads of various bureaus are appointed by the government on the same level, instead of by the agency one level up; their budgets are also determined by the

¹⁷ Chapter 8 of Constitution of the Communist Party of China, 2017.

¹⁸ The Party Committee, on behalf of the party, is responsible for the formulation of policies and the government is responsible for daily execution. The head of the Party committee, namely the Party Committee secretary (*Dangwei Shuji*) is the de facto highest political officer of an administrative region, while the head of the government is the de jure highest and de facto second highest political officer of an administrative region.

¹⁹ For example, Article 4 of Supervision Law of the People's Republic of China, 2018.

²⁰ *Id.*

²¹ Edin, *State Capacity and Local Agent Control in China: CCP Cadre Management from a Township Perspective*, *supra* note 8.

government on the same level.²²²³ As ‘killing the messenger’ is a phenomenon that occurs everywhere, the monitoring agencies are loath to report the misbehavior of local government.

Gathering information on the behavior and performance of local government officials via monitoring bodies located within the machinery of government is, therefore, severely restricted. An alternative to police patrol are “fire alarm” mechanisms. Here, the central government can rely on information providers outside of government, i.e., primarily citizens. Unlike government authorities, citizens have little incentive to collude with the government.²⁴²⁵ O’Brien and Li even maintain that the performance of local officials cannot be precisely assessed unless local inhabitants participate.²⁶ In democracies, competitive elections are probably the most important tool to make the government accountable, yet in China elections are only held on the village and neighborhood level. Social protests are another frequently used tool to express dissatisfaction with the way government is running. It has been argued that protest is used to a certain extent by the Chinese government to gather information on the performance of local governments.²⁷²⁸ However, protests are also considered a source of social instability²⁹ and social protests are, hence, heavily restricted in China.³⁰

²² *Id.*

²³ Susan H. Whiting, *The Cadre Evaluation System at the Grass Roots: The Paradox of Party Rule*, in *HOLDING CHINA TOGETHER: DIVERSITY AND NATIONAL INTEGRATION IN THE POST-DENG ERA* / EDITED BY BARRY J. NAUGHTON, DALI L. YANG (Barry Naughton & Dali L. Yang eds., 2004).

²⁴ Martin K. Dimitrov, *What the Party Wanted to Know* 28, *EAST EUROPEAN POLITICS AND SOCIETIES: AND CULTURES* 271–95 (2014).

²⁵ Martin K. Dimitrov, *Internal Government Assessments of the Quality of Governance in China* 50, *STUDIES IN COMPARATIVE INTERNATIONAL DEVELOPMENT* 50–72 (2015).

²⁶ Kevin J. O’Brien & Lianjiang Li, *Selective Policy Implementation in Rural China*, in *CRITICAL READINGS ON THE CHINESE COMMUNIST PARTY* (Kjeld Erik Brødsgaard ed., 2017).

²⁷ Peter L. Lorentzen, *Regularizing Rioting: Permitting Public Protest in an Authoritarian Regime* 8, *QUARTERLY JOURNAL OF POLITICAL SCIENCE* 127–58 (2013).

²⁸ XI CHEN, *SOCIAL PROTEST AND CONTENTIOUS AUTHORITARIANISM IN CHINA* (2012).

²⁹ Lin W, *Gong’an jiguan yingdui quntixing shijian shiwu yu celüe* (*Practical affairs and strategy of the response of the public security organs to mass incidents*), *supra* note 7.

³⁰ Yonghe Zhang & Wie Zhang, *Lintong Xinfang: Zhongguo Jiceng Xinfang Wenti Yanjiu Baogao* (*Letters and Visits in Lintong: Research Report on Grassroots Letters and Visits in China*), BEIJING: RENMIN CHUBANSHE (2009).

Information posted by citizens on various social media platforms and government websites is, in principle, yet another important source of information for government. The Chinese constitution nominally provides for freedom of the press, but at the same time entitles the state to control the press as a means of maintaining public order and suppressing counter-revolutionary activities.³¹³² In practice, it has been argued that grievances regarding low-level politicians are tolerated in order to keep local political officials in check and reduce discontent among citizens. Even though local officials have no control of the media, they are held accountable for the problems that the media expose.³³³⁴³⁵³⁶³⁷³⁸ Yet evidence also shows that public grievance and complaints do not always make their way to upper level governments because lower level governments actively conceal information as a counter measure.³⁹

³¹ Betty H. Winfield, Takeya Mizuno & Christopher E. Beaudoin, *Confucianism, Collectivism and Constitutions: Press Systems in China and Japan* 5, COMMUNICATION LAW AND POLICY 323–47 (2000).

³² Chapter 2, Article 35 broadly provides for freedom of expression: “Citizens of the People's Republic of China have freedom to express, publish, assemble, associate, march, and demonstrate.” Yet it is made clear that the state plays a strong role in controlling public expression. Chapter 1, Article 22 states that “The state develops literary and artistic undertakings that serve the people, socialism, news, broadcasting and television, publishing and distribution, libraries, museums, cultural centers and other cultural undertakings, and conducts mass cultural activities.” Chapter 1, Article 28 states that “The state maintains social order, suppresses treason and other criminal activities that endanger national security, sanctions activities that endanger public security, undermine the socialist economy and other crimes, and punishes and reforms criminals.” What also needs to be noticed is that in China, the constitution is not allowed to be introduced into judicial proceedings. See Zhaoxiang Wu, *Guanyu Caipan Wenshu Yinyong Falü, Fagui Deng Guifanxing Falü Wenjian De Guiding De Lijie Yu Shiyong* [关于裁判文书引用法律, 法规等规范性文件法律文件规定的理解与使用; Explanation and Application of the Regulations on the Citation of Laws, Regulations and Other Normative Legal Documents in Judgments], *Renmin sifa* (People's Judicature), No. 23 (2009), p. 30.

³³ There is a government department that is in charge of monitoring citizen complaints, namely the propaganda department (宣传部; *Xuanchuan Bu*). Propaganda departments at each level gather information on public sentiment and report such information upward to the propaganda department at the next higher level. However, as already discussed, these departments face the same hurdle as other monitoring agencies.

³⁴ Yongshun Cai & Titie Zhou, *Social Protest, State Response, and Regime Legitimacy in China*, in SOCIAL DEVELOPMENT AND SOCIAL POLICY: INTERNATIONAL EXPERIENCES AND CHINA'S REFORM (Dongtao Qi & Reikun Yō eds., 2017).

³⁵ Gary King, Jennifer Pan & Margaret E. Roberts, *Political Science. Reverse-Engineering Censorship in China: Randomized Experimentation and Participant Observation* 345, SCIENCE (NEW YORK, N.Y.) 1251722 (2014).

³⁶ Gary King, Jennifer Pan & Margaret E. Roberts, *How the Chinese Government Fabricates Social Media Posts for Strategic Distraction, Not Engaged Argument* 111, AMERICAN POLITICAL SCIENCE REVIEW 484–501 (2017).

³⁷ Peter Lorentzen, *China's Strategic Censorship* 58, AMERICAN JOURNAL OF POLITICAL SCIENCE 402–14 (2014).

³⁸ Sergei Guriev & Konstantin Sonin, *Dictators and Oligarchs: A Dynamic Theory of Contested Property Rights* 93, JOURNAL OF PUBLIC ECONOMICS 1–13 (2009).

³⁹ Pan and Chen, *Concealing Corruption: How Chinese Officials Distort Upward Reporting of Online Grievances*, *supra* note 11.

In sum, although competitive grassroots elections, protests and media reports can transmit information to higher level governments, they are also considered to have a potentially destabilizing effect on the authoritarian regime. As such, they cannot function as the main channel to transmit information in China. This is probably why China heavily relies on an official channel for citizens to express their opinions, namely its petition system. Petitions (信访; *Xinfang*), or letters-and-visits, refer to the use of letters, e-mails, faxes, telephone calls, and visits by citizens, legal persons, or other organizations⁴⁰ to report the situation to the local authorities at or above the county level, and make suggestions, comments, or requests for complaints.^{41, 42} The petition system has the function of gathering first-hand information for governments about problems confronted by citizens. Thus, higher level governments are capable of supervising subordinate governments. The petition system has always been an important source of information for the Chinese government, and is also one of the most important ways for the government to maintain social

⁴⁰ Other organizations include: (1) privately-owned enterprises and partnership organizations that have registered and obtained business licenses in accordance with law; (2) partnership-type associates that have obtained business licenses in accordance with the law; (3) Chinese-foreign cooperative enterprises and foreign-funded enterprises with business licenses; (4) social organizations registered and approved by the civil affairs department for social organization registration certificates; (5) branches established by legal persons which obtain business licenses; (6) various branches of People's Bank of China and specialized banks in various locations; (7) branches of People's Insurance Company of China in various locations; (8) Township, street, and village-run enterprises that have been approved to register and obtain business licenses. See Article 40 of Opinions on Several Issues concerning the Application of the Civil Procedure Law (*Guanyu Shiyong Minshi Susongfa Ruogan Wenti De Yijian*).

⁴¹ See *Zhonghua Renmin Gongheguo Xinfang Tiaoli* [中华人民共和国信访条例; Regulations on Letters and Visits of the People's Republic of China], 2014.

⁴² State authorities set up special departments to deal with the letters and visits from citizens. The government, People's Court, the Prosecutor's Office, and other related authorities can all set up their own petition offices. Upon receiving the complaints from the citizens, the letters-and-visits office registers the concern and forwards it to the corresponding authorities. Problems from the citizens will be reviewed by a board consisting of relevant authorities organized by the letters-and-visits office.

stability.⁴³⁴⁴⁴⁵ Higher level governments use this information to reward the good performance of local officers and punish their malpractice.⁴⁶ The degree to which local governments are able to reduce the number of letters and visits and to deal with the complaints efficiently has become a criterion in assessing the performance of local governments.⁴⁷⁴⁸⁴⁹⁵⁰ It has been maintained that local governments have been trying to obstruct the use of the petition system and prevent petitioners from appealing to higher level government by intercepting and abducting petitioners and imposing punishment measures.⁵¹⁵² International non-governmental organizations have also reported the efforts of Chinese local governments and even the national government to prevent petitioners from filing a case, both non-violently and violently.⁵³ In addition, before the promulgation of "Measures of the State Bureau of Letters and Calls on Further Regulating the Procedures for Accepting Petitions and Guiding Visitors to Petition Step by Step According to Law",⁵⁴ overstepping petitions

⁴³ For example, on the 8th National Petition Work Conference in 2017, Chairman Xi Jinping mentioned that petition work played an important role in maintaining the overall situation of reform, development, and stability. The conference also stressed that petition work should continue to help maintain social harmony and stability. See e.g., <http://www.gjxfj.gov.cn/gjxfj/news/zyxw/ttxw/webinfo/2017/07/1534098843535104.htm> (in Chinese). In a systematic discourse on petition work, the chairman stated that petition work is an important part of the Party's mass work, which concerns the vital interests of the masses and social harmony and stability. See <http://www.12371.cn/2018/12/03/ART11543793318734860.shtml> (in Chinese, last viewed March, 8 2020).

⁴⁴ Dimitrov, *Internal Government Assessments of the Quality of Governance in China*, *supra* note 25.

⁴⁵ Xujun Gao & Jie Long, *On the Petition System in China* 12, UNIVERSITY OF ST. THOMAS LAW JOURNAL 34 (2015), at <https://heinonline.org/HOL/Page?handle=hein.journals/usthomlj12&id=34&div=4&collection=journals>.

⁴⁶ JING CHEN, *USEFUL COMPLAINTS: HOW PETITIONS ASSIST DECENTRALIZED AUTHORITARIANISM IN CHINA* (2016).

⁴⁷ Edin, *State Capacity and Local Agent Control in China: CCP Cadre Management from a Township Perspective*, *supra* note 8.

⁴⁸ Burns and Zhiren, *Performance Management in the Government of the People's Republic of China*, *supra* note 10.

⁴⁹ Whiting, *The Cadre Evaluation System at the Grass Roots: The Paradox of Party Rule*, *supra* note 23.

⁵⁰ For example, Pan and Chen (2018) read through the internal government documents and find that managing petitions is a subcategory of the "social stability" target, which, as we stated earlier, is a "veto" target.

⁵¹ Gao and Long, *On the Petition System in China*, *supra* note 45.

⁵² Dimitrov, *Internal Government Assessments of the Quality of Governance in China*, *supra* note 25.

⁵³ It is documented that "many (petitioners) are ambushed by groups of plainclothes security officers on the street, beaten, kidnapped, and taken back to their home provinces, where some are imprisoned and even tortured". See Human Rights Watch, *We Could Disappear At Any Time*, available at <https://www.hrw.org/reports/2005/china1205/china1205wcover.pdf>. (last visited March 8, 2020).

The Fujian provincial government considers "efficiency in dealing with complaints and visits" as a performance indicator. See Burns and Zhiren (2010).

⁵⁴ *Guojia Xinfangju Guanyu Jinyibu Guifan Xinfang Shixiang Shouli Banli Chengxu Yindao Laifang Renyuan Yifa Zhuji Zoufang de Banfa* [国家信访局关于进一步规范信访事项受理办理程序引导来访人依法逐级走访的办法];

(越级上访; *Yueji Shangfang*), namely petitions sent directly to the upper level of the petition office instead of the corresponding level, were allowed. Although the system was based on the principle that "each level of government shall assume responsibility for its own work"⁵⁵ and petitioners were directed by regulations to file complaints at the lowest level of government, they hardly got satisfactory results from local governments. Petitioners thus often sought to skip the lower level of governments. However, since promulgating the new Measure in 2014, overstepping petitions have been forbidden. Petitioners can thus only confront the officers who created the problem in the first place. It has been argued that, as a consequence of this change, the number of petitions will be lower (Bruckner, 2008). Finally, a fundamental problem with the petition system is that its main job is to forward the complaints to relevant government authorities. The opinions of petition offices are in no way binding. Solving the problem is beyond the capacity of the Petition Office and is the sole responsibility of the relevant government authority. Gao and Long claim that citizens, in fact, treat petition offices as their opponents.⁵⁶

2.2. Monitoring through courts

Our previous discussion shows that information revelation via administrative channels suffers from serious limitations, and information revelation via citizen complaints is often seriously constrained in autocracies and, therefore, not a viable alternative. We now discuss the possibility that courts might serve to not only settle disputes, but also to reveal important information. We maintain that courts can be particularly valuable in providing information if government is constructed as a multi-

Measures of the State Petition Bureau on Further Regulating the Procedures for Acceptance of Letters and Calls and Guiding Visitors to Visit in Steps According to Law], State Petition Bureau, (2014) No.4

⁵⁵ Gao and Long, *On the Petition System in China*, *supra* note 45.

⁵⁶ *Id.*

tiered system, as is the case in China. But we also argue that a number of conditions must be satisfied if the court system is to reveal such information.

An immediate question comes to mind: Why would a government that is unwilling to grant other actors (such as the media) independence, grant independence to the courts? One answer is that the vast majority of disputes in front of courts are irrelevant for the stability or the legitimacy of the respective regime. Beyond solving disputes between private law subjects, courts have been attributed a number of additional functions. One pertinent problem for any actor with a considerable degree of power (i.e., most governments) is that it is difficult for them to make credible promises. In this case, their strength turns out to be a weakness. Delegating power to an independent judiciary can help mitigate this problem. For example, a potential foreign investor attracted by governmental promises, but doubtful that the government can be trusted, is more likely to invest if there is the possibility of having independent courts that have the authority to determine whether the government has complied with its promises. If courts can serve as commitment devices, governments have incentives to establish them. But to serve that function, courts need to be independent from government.

Courts in China perform their role as information providers primarily through the administration litigation system. The filing of an administrative lawsuit is based on Administrative Law against an administrative act imposed in general or Public Security Management Punishment Law (治安管理处罚法; *Zhi'an Guanli Chufa Fa*)/ Administrative Penalty Law (中华人民共和国行政处罚法; *Zhonghua Renmin Gongheguo Xingzheng Chufa Fa*) against a public security penalty imposed. If citizens believe that public agencies wrongfully deny them something (like a building permit) or wrongfully put some duties on them (like reducing some emissions), they can challenge these decisions by challenging the underlying administrative act in front of an

(administrative) court.⁵⁷ One relevant concept here is the so-called ‘administrative penalty’, which consists mostly of a public security penalty. In China, administrative penalties have become quasi-criminal sanctions in the sense that on top of common penalties such as fines, suspension of license or demerit points, authorities are granted the power to detain citizens for as long as 15 days,⁵⁸ and in the past even to put them in a labor camp for as long as 4 years.⁵⁹ These sanctions do not require

⁵⁷ Before 2014, Article 11 of Administrative litigation law explicitly put 8 types of cases under the jurisdiction of the People’s Courts. Parties not convinced by the concrete administrative action can litigate the case in court under the following circumstances: 1) when they are not convinced of administrative penalties such as detention, fines, revocation of permit and licenses, order to suspend production and business, and confiscation of property; 2) when they are dissatisfied with administrative enforcement measures such as restrictions on personal freedom or the seizure and freezing of property; 3) when it is considered that the administrative organ violates the management rights stipulated by law; 4) when it is considered that the administrative authority should issue a permit and license in accordance with the statutory conditions, and the administrative organ refuses to issue or refuse to reply; 5) when the party applies to an administrative agency to perform the statutory duties of protecting personal rights and property rights, and the administrative organ refuses to perform or refuses to reply; 6) when it is considered that the administrative organ has not issued a pension according to law; 7) when the administrative organ requires the party to perform obligations that are in violation of law; 8) when the party believes that the administrative agency infringes on other personal rights and property rights. In addition to the 8 types of cases, the People’s Courts accept other administrative cases that can be sued according to laws and regulations. This leaves some space for the expansion of the scope of ALL. In 2014, ALL was amended for the first time and this range was modified and slightly extend.

On the other hand, it is also stated in ALL that the People’s Courts shall not accept cases that are relevant to: 1) national defense and foreign relations; 2) administrative regulations, rules, or generally binding decisions and orders formulated and issued by administrative agencies; 3) decisions of the administrative organ on the rewards and punishments, appointments and dismissals of the staff of the administrative organs; 4) unreviewable decisions by administrative organs that as stipulated by law are final. It is also stated in ALL that the law only covers concrete administrative acts, so that abstract administrative acts are not included.

⁵⁸ Administrative detention (行政拘留; Xingzheng Juliu), or public security detention (治安拘留; Zhi’an juliu), refers to a punishment measure imposed by public security organs to place a temporary restriction on the personal freedom of citizens who violate administrative laws and regulations. The period of restriction can be from 1 day to no more than 15 days. Administrative detention is a punishment that restricts the personal freedom of citizens, and it is also one of the most severe punishments among administrative punishments. The place of detention is a security detention facility (拘留所; Juliu Suo). According to Article 2 of Public Security Management Punishment Law (治安管理处罚法; Zhi’an Guanli Chufa Fa), If someone “disrupts public order, hinders public safety, infringes on personal and property rights, or interferes with social management, is socially harmful, and constitutes a crime in accordance with the provisions of the Criminal Law of the People’s Republic of China, criminal responsibility shall be investigated according to law. If the actions is not severe enough as to receive criminal punishment, a public security organ shall assign a public security management penalty according to this law.”

⁵⁹ Reeducation through labor (劳动教养; Laodong Jiaoyang) used to be the most severe type of administrative penalty in China, existing between year 1957 and 2013. China’s reeducation through labor system is based on the "Decision on Re-education through Labor (关于劳动教养问题的决定; Guanyu Laodong Jiaoyang Wenti de Jueding)" approved and promulgated by the 78th meeting of the Standing Committee of the National People’s Congress on August 1, 1957, where it stipulates the goal of re-education through labor as “In order to transform labor force who are idle, violating laws and regulations, and unemployed into new self-reliant people; in order to further maintain public order, and to facilitate socialist construction”. A time limit of 4 years was only added in 1979. On December 28, 2013, the Standing Committee of the Twelfth National People’s Congress passed the "Decision on Repealing Relevant Laws and Regulations on Re-education through Labor (关于废止有关劳动教养法律规定的决定; Gaunyu Feizhi Youguan Laodong Jiaoyang Falv Guiding de Jueding)", and the system of re-education through labor was officially abolished. Although in recently years, there have been voices saying that the Xinjiang Vocational Education and Training Center (新疆职业教育培训中心; Xinjiang Zhiye Jiaoyu Peixun Zhongxin) is a new type of labor camp.

a trial procedure. That is to say, administrative penalties in China, unlike in other countries, are more vulnerable to power abuse and may trigger more conflicts.⁶⁰ It is stipulated by law that citizens who don't agree with the administrative decision or penalty shall file an administrative lawsuit with the courts on the corresponding level.

According to Ginsburg and Moustafa, courts in authoritarian regimes play five primary roles, and one of them is to strengthen administrative compliance.⁶¹ Simply by counting the sheer number of cases initiated by private law subjects against the local administration, the central government can gather valuable information regarding the (perceived) performance of its local agents. This information promises to be more reliable than information revealed via comparable channels within the executive, such as an ombudsman or petition office, because complaining with the latter is virtually costless whereas initiating a court case is costly in terms of both time and money. Relying on an ombudsman or petition office is, therefore, likely to produce much noise, whereas relying on cases filed with the courts produces more valuable information because those who file a case demonstrate their commitment to the case by incurring costs. The number of cases filed against local agents will, however, only reveal valuable information if the admission of cases is not too restrictive, and local agents do not have an influence on the cases accepted by court.

By comparing how many cases are filed in different regions of the country, the central government already gets an impression of the differences in performance across regions. By comparing the number of cases filed over time, it gets an impression of changes in the performance of its local agents over time. Analyzing the decisions produced by the courts will reveal even more

⁶⁰ For abuses of the administrative penalty, see e.g., <http://news.sohu.com/20140514/n399554771.shtml> (in Chinese) dealing with an internet user detained for saying bad things about a police officer, and <https://zhuanlan.zhihu.com/p/28742211> (in Chinese) on citizens detained for criticizing the local government.

⁶¹ TOM GINSBURG & TAMIR MOUSTAFA, *RULE BY LAW: THE POLITICS OF COURTS IN AUTHORITARIAN REGIMES* / EDITED BY TOM GINSBURG, TAMIR MOUSTAFA (2008).

information regarding the specific problems of its local agents. These can, e.g., refer to substantively wrong decisions, mistakes in procedure, simply taking too long before coming up with a decision, or uncovering bribes in exchange for favorable decisions from the local agents. To reveal valuable information, it is crucial that the local judges are completely independent from the local agencies. If local agencies have the authority to make promotions or determine the budget of the local court, judges are unlikely to be impartial.

3. The Chinese Court System

Before describing how China re-organized its court system to make the courts monitoring agents of the central government, we will describe the main features of the Chinese court system before the reforms were implemented, as well as some of the major problems attributed to that way of organizing things.

3.1. The Court System Before the Reforms

The Chinese court system is organized along a pyramid-style structure⁶² in the sense that there are many first instance courts, but only one Supreme Court that acts under the supervision of the Political-Legal Committee (*Zhengfa Weiyuan Hui*) of the Communist Party.⁶³ The architecture of the Chinese court system is displayed in Figure 2 below. The Supreme People's Court (SPC) is the highest court in the country and the court of final appeal, and is under the direct supervision of the highest level of government, namely the National People's Congress.⁶⁴ Local courts are

⁶² Voigt (2012) compares a pyramid-style court system with a Greek temple style (consisting of a number of major columns each representing one high court).

⁶³ Political-Legal Committee is a party organization that exercises leadership over judicial institutions at all levels in China. The main task of the Political-Legal Committee is to guide, coordinate, supervise and inspect the judicial organs, prosecutorial organs, public security organs, state security organs, judicial administrative organs and other departments to carry out their work and maintain social stability.

⁶⁴ See Article 132 and 133 of the Constitution, 2018 and Article 8 and Article 9 of *Zhonghua Renmin Gongheguo Fayuan Zuzhi Fa* [中华人民共和国法院组织法; the Organic Law of the People's Court of the People's Republic of China].

apportioned on the basis of administrative divisions. Correspondingly, the highest local court level is the Higher People's Court (HPC) at the provincial level, and below that the Intermediate People's Court (IPC) at the prefectural level. The Basic People's Courts (BPC) act at the county level and are the lowest level courts.⁶⁵ There are also a number of special courts in China, including military courts, railway courts, intellectual property courts and marine courts. Regarding the trial of cases, the SPC and local courts follow a two-instance system. The BPCs try first-instance cases, except for those cases stipulated otherwise by law or decree. Most first-instance cases are heard by BPCs, while IPCs, HPCs, and the SPC only handle first-instance cases that are major and complex, or are transferred from lower level courts under their jurisdiction.⁶⁶

A court usually consists of three branches. The first branch is composed of several administrative organs that deal with non-judicial tasks like propaganda.⁶⁷ The second branch consists of trial-related departments handling case filing, enforcement and trial supervision. The third branch is the main trial body handling the trial proper. Usually, a case is tried by a collegiate panel consisting of three professional judges or of two judges and one lay judge (called people's assessor in China).⁶⁸

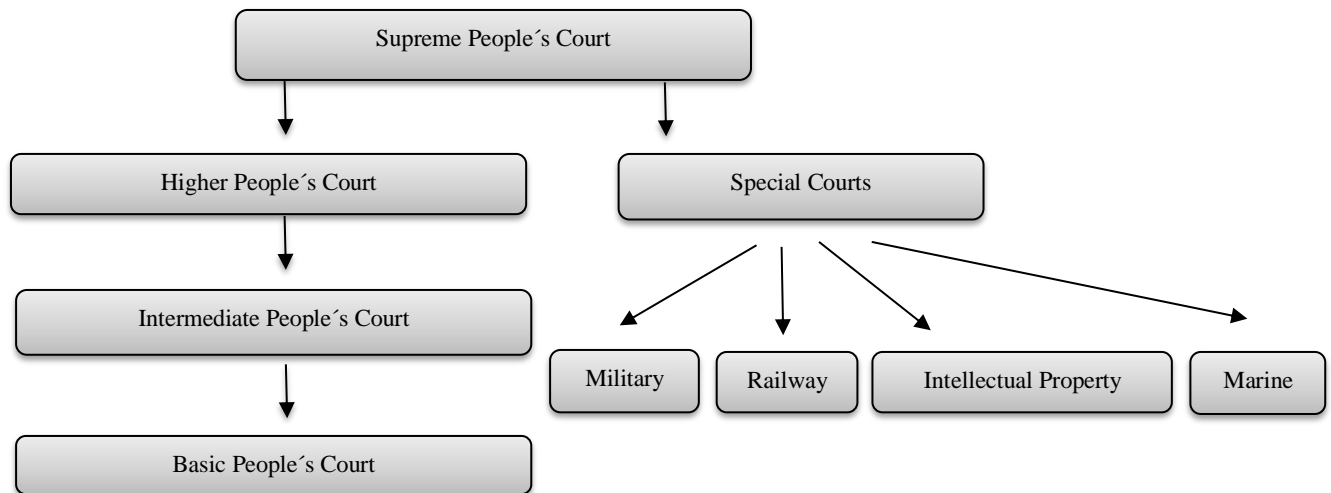
⁶⁵ The BPCs can also send out dispatched tribunals to townships depending on the specific (regional, population and litigation) situation within its jurisdiction. Such tribunals are not a separate level of courts but rather subordinates to the BPCs.

⁶⁶ For more details, see *Zhonghua Renmin Gongheguo Fayuan Zuzhi Fa* [中华人民共和国法院组织法; the Organic Law of the People's Courts of the People's Republic of China]. This does not mean that courts can actively delegate cases to courts placed hierarchically above them. Court usually transfers cases to higher level court when the defendant is the court itself or its employees, or when it finds the case major and complex so that it is not capable of dealing with the case efficiently and impartially.

⁶⁷ See e.g., *Zuohao Rong Meiti Shidai Xia de Sifa Xuanchuan Gongzuo* [做好融媒体时代下的司法宣传工作; Do a Good Job of Judicial Propaganda in the Age of Media Integration]. Available at: <https://www.chinacourt.org/article/detail/2019/12/id/4743270.shtml> (in Chinese). Last visited 08 March 2020.

⁶⁸ *Zhonghua Renmin Gongheguo Fayuan Zuzhi Fa* [中华人民共和国法院组织法; the Organic Law of the People's Courts of the People's Republic of China].

Figure 2: Structure of Chinese court system



Cases tried in courts generally fall into one of four law areas: criminal, civil, administrative, and enforcement cases.⁶⁹ In addition, there is a special type of case that falls under the category of enforcement case, namely non-litigation administrative enforcement cases that also deal with conflicts between citizens and state bureaus. In contrast with administrative cases where litigants sue against state bureaus, state bureaus may file a non-litigation administrative enforcement suit against citizens in order to ensure its administrative actions are executed.⁷⁰⁷¹

The history of administrative litigation is not long in China. The first Administrative litigation law (ALL) was promulgated only in 1989. The first provisions referring to administrative procedures and the right to sue the government were included in the 1982 Constitution.⁷² The

⁶⁹ Establishment of an enforcement suit stems from the failed execution process of the court judgments. In general, when a court passes judgments, verdicts or mediations for civil suits, criminal suits or administrative suits that have payment contents, the execution of such judgments is not automatically guaranteed. Once the litigant fails to comply with such judgments, the other party can file a new enforcement suit at the court in order to force payment. There is no individual law for enforcement cases, for more details see Civil Procedure Law, Criminal Procedure Law and Administrative Litigation Law.

⁷⁰ More specifically, when defendants do not file an administrative lawsuit against the act nor comply with the act after the act is made by the public agency, the public agency can apply for forcible execution by the court.

⁷¹ Regulations on non-litigation administrative enforcement suit are included in Administrative Litigation Law.

⁷² Before the passage of ALL, the legal basis for administrative litigation was Article 3 of the Civil Procedure Law promulgated in 1982. More specifically, it is stated in Article 3 that "...this law applies to administrative litigation cases which are legally stipulated to be tried in People's Court."

administrative reform created a “thin version” of the rule of law in China in the sense of “a law-abiding government with defined legal procedures and mechanisms of accountability and redress”.⁷³ The aim of ALL is to ensure that the People’s Courts hear administrative cases in a fair and timely manner, resolve administrative disputes, protect the legitimate rights and interests of citizens, legal persons and other organizations, and supervise the administrative organs to exercise their functions and powers according to the law. Most administrative cases are heard by BPCs, while major and complex cases are heard by courts at higher levels of jurisdiction. Administrative cases can only be heard by a collegiate bench consisting of at least three judges or two judges and a lay judge. This is different from civil cases where minor cases can go through a summary procedure heard by a single judge. This indicates that administrative cases are seen as more sensitive.

In 2014, ALL was amended for the first time.⁷⁵ The scope of cases that can be filed was extended from 8 to 12 types. Before 2014, only concrete administrative acts⁷⁶ were covered by ALL. After the amendment, both concrete and abstract administrative⁷⁷ acts are now covered by

⁷³ Fu Hualing, *Challenging Authoritarianism Through Law: Potentials and Limits* 6, NATIONAL TAIWAN UNIVERSITY LAW REVIEW 339–66 (2011).

⁷⁴ For more on the delineation between a thin and a thick version of the rule of law, see e.g., Peerenboom (2001), Møller and Skaaning (2012).

⁷⁵ For more on the background of the amendment see e.g., <http://www.calaw.cn/article/default.asp?id=12733> (in Chinese).

⁷⁶ A concrete administrative act is defined as an act where the administrative body exercises its powers in state administrative activities, and makes unilateral acts concerning the rights and obligations of the administrative counterparts on specific matters for specific administrative counterparts. See *Shenme shi Juti Xingzheng Xingwei* [什么是具体行政行为; what is a concrete administrative act] from the website of China’s National People’s Congress. <http://www.npc.gov.cn/npc/c2282/200012/2aacfaafec56429ca3f019b3e229de4e.shtml> (in Chinese). Last visited March 8, 2020.

⁷⁷ An abstract administrative act refers to administrative acts that are not against specific people or things, but are generally binding. It includes administrative legislations and regulations formulated by relevant government organizations and institutions. See *Shenme shi Chouxiang xingzheng Xingwei* [什么是抽象行政行为; What is abstract administrative act] from the website of China’s National People’s Congress. http://www.npc.gov.cn/zgrdw/npc/flsyywd/flwd/2002-04/18/content_293208.htm (in Chinese). Last visited March 8, 2020.

ALL, although parties still have to sue against concrete administrative acts first and only then against the corresponding abstract administrative acts. In other words, there is no new type of cases filed against abstract administrative acts.

3.2. Problems with the Unreformed Court System

Although courts in China are formally granted the right to decide lawsuits against the government, an important issue is whether courts enjoy enough autonomy and independence to actually do so. It has been observed that courts in authoritarian regimes may gain autonomy to some extent, but they are recused from dealing with cases that matter to the regime.⁷⁸⁷⁹ China was no exception in that regard.⁸⁰ The Chinese court system was rebuilt after the Cultural Revolution. Since then, China has been placing more and more attention on the construction of its judicial system, and the legal system has been subject to a number of reforms. During its accession negotiations with the WTO in the early 1990s, the Chinese court system was scrutinized by a number of WTO members. The WTO urged China to become more transparent with regard to the rule of law in trade-related areas by making trade-related legislations public and easily accessible, to establish WTO inquiry points⁸¹ and to make itself subject to a transitional review mechanism monitoring the progress. China passed legislation to conform with its commitments given to the WTO,⁸² and also promised judicial independence to the extent of ensuring that judges deciding trade-related cases are exempted from

⁷⁸ William G. Wagner, *Tsarist Legal Policies at the End of the Nineteenth Century: A Study in Inconsistencies* 54, THE SLAVONIC AND EAST EUROPEAN REVIEW 371–94 (1976).

⁷⁹ PETER H. SOLOMON, REFORMING JUSTICE IN RUSSIA, 1864-1996: POWER, CULTURE, AND THE LIMITS OF LEGAL ORDER / EDITED BY PETER H. SOLOMON, JR (2015).

⁸⁰ See e.g., Liebman, B.L., 2017. China's courts: Restricted reform, *Law and Society in East Asia* (pp. 237-280).

⁸¹ An official or office of a member government designated to deal with enquiries from other WTO members and the public on subjects such as technical barriers to trade or sanitary/phytosanitary measures.

⁸² YUKA KOBAYASHI, THE IMPACT OF THE WORLD TRADE ORGANIZATION ON THE CHINESE LEGAL SYSTEM (2007).

political influence.^{83 84} Yet this progress proved to be limited, and courts remained one of the state bureaucracies with the power to resolve disputes, but without oversight power over other state actors. Judges still could not play an independent role in resolving cases, and political intervention still prevailed.⁸⁵

The functioning of courts may be affected by various factors, such as local protectionism, social connection (*Guanxi*), or corruption. A major reason contributing to the weak position of judges is the fact that courts used to be under the supervision of local governments. Direct political interference was a typical problem caused by the important role of local governments in managing court operations. Judges were appointed, paid and removed by local government, and court budgets, judges' salaries and other benefits were approved and granted by local government on the same administrative level. The activities of courts were ultimately controlled by the Political-Legal Committees on the same level.⁸⁶⁸⁷⁸⁸ In addition, there was no tenure system for judges in China. Although the Constitution provided for independent judicial power and stated that trial procedures of courts shall not be interfered with by other public organs, public organizations or individuals,⁸⁹ reality was quite different. Given the fact that they could determine the composition of judges and the size of the local court's budget, local officials might force the courts to reject accepting certain cases relevant to them. If a case had already been accepted, officials often tried very hard -

⁸³ Julia Y. Qin, *The Impact of WTO Accession on China's Legal System: Trade, Investment and Beyond*, SSRN ELECTRONIC JOURNAL (2007).

⁸⁴ China's accession terms are contained in a WTO Report The Working Party on the Accession of China, WT/ACC/HN/49/Add.2 (Oct. 1, 2001), and in WTO, Accession of the People's Republic of China, WT/L/432 (Nov. 10, 2001),

⁸⁵ Benjamin L. Liebman, *China's Courts: Restricted Reform*, THE CHINA QUARTERLY 620–38 (2007).

⁸⁶ R. P. PEERENBOOM, CHINA'S LONG MARCH TOWARD RULE OF LAW (2002).

⁸⁷ Hung, *China's WTO Commitment on Independent Judicial Review: Impact on Legal and Political Reform*, *supra* note 15.

⁸⁸ Tom Ginsburg, *Judicial Independence in East Asia: Implications for China*, CHICAGO, PUBLIC LAW WORKING PAPER NO. 295 (2009).

⁸⁹ Article 126, Chapter 7 of the Constitution.

sometimes even drawing on unlawful means - to encourage plaintiffs to drop the action, or else they would pressure the judges to procrastinate, hoping that a long delay would induce some plaintiffs to drop the case. Also, officials could pressure the judges to interpret the law in their favor.⁹⁰ It has been argued that interference by administrative agencies with the trial procedure was the main obstacle for China's administrative litigation,⁹² and the toughest thing most litigants faced was to get their cases accepted by the court.⁹³ According to a survey of 632 petitioners who went to Beijing to petition the central government, 63.4% of them claimed to have tried to file a lawsuit at local courts before petitioning. Among them, 42.9% were rejected by local courts (Yu, 2004). Sometimes, courts were ordered by higher authorities to not accept certain cases. For example, the SPC in 2001 issued an opinion that temporarily rejected disputes of class tort lawsuits caused by misrepresentation in securities trading.⁹⁴ In a response to the Zhejiang HPC in 2005, the SPC stated that the courts should not take disputes on housing demolition compensation as civil litigation.⁹⁵ He argues that this 'non-taking' behavior can be explained by the inferior position of the courts with respect to superior political powers. Facing the obstacle of external interference, judges either played an inactive role by rejecting cases to be filed, prolonging the trial procedure

⁹⁰ Kevin J. O'Brien & Lianjiang Li, *Suing the Local State: Administrative Litigation in Rural China* 51, THE CHINA JOURNAL 75-96 (2004).

⁹¹ PEERENBOOM, CHINA'S LONG MARCH TOWARD RULE OF LAW, *supra* note 86.

⁹² Mei Y. Gechlik, *Judicial Reform in China: Lessons from Shanghai* 19, COLUMBIA JOURNAL OF ASIAN LAW 97-137 (2005).

⁹³ O'Brien and Li, *Suing the Local State: Administrative Litigation in Rural China*, *supra* note 90.

⁹⁴ See *Guangyu She Zhengquan Minshi Peichang Anjian Zanbu Shouli De Tongzhi* [关于涉证券民事赔偿案件暂不受理的通知; *The Notice on Not to Take Securities-Related Civil Compensation Lawsuits*], Supreme People's Court, Sep. 2001.

⁹⁵ See *Guangyu Dangshiren Da Bucheng Chaqian Buchang Anzhi Xieyi Jiu Buchang Anzhi Zhengyi Tiqi Minshi Susong Renmin Fayuang Yingfo Shouli Wenti De Pifu* [关于当事人达不成拆迁补偿安置协议就补偿安置争议提起民事诉讼人民法院应否受理问题的批复; *The Response to Whether the People's Courts Shall Take the Disputes on Housing Demolition Compensation Which Filed through Civil Procedure*], Supreme People's Court, 2005.

hoping the plaintiffs would withdraw, or interpreting the law and judging the case in favor of the local government.⁹⁶

3.3.Reforming the Court System

If courts are not able to adjudicate cases without the influence of local governments, they cannot function as local government monitors. A crucial condition for courts to successfully fulfill that function is their independence from those whose behavior they are to monitor. In 2014, the Communist Party claimed legal reform to be the focus of their annual plenum.⁹⁷ In the same year, the Central Leading Group for Judicial Reform was established under the supervision of the Central Comprehensively Deepening Reforms Commission⁹⁸ with the task of starting a new round of legal reforms under the new president Xi. Among various reform measures, two are of particular interest here.

The first reform measure concerns the case filing process, which was uniformly implemented in May 2015. In April 2015, the Supreme People's Court of China issued "*Opinions on the Reform of the People's Courts to Implement the Registration System*".⁹⁹ In this note, the court lists the aims of this measure as follows: "*In order to fully protect the parties' right of action, effectively solve the problem of difficulties in filing a case which the people are concerned about, (the judicial system will) reform the case acceptance system of the courts, and change the case*

⁹⁶ Jianrong Yu, *Zhongguo Xinfang Zhidu Pipan* ("Criticism of the Petition System in China"), *Zhongguo Gaige* (China Reform), ZHONGGUO QINGNIAN BAO No. 2 (2005), 26–28 (8 December 2004).

⁹⁷ See *Zhonggong Zhongyang Guanyu Quanmian Shenhua Gaige Ruogan Zhongda Wenti de Jueding* [中共中央关于全面深化改革若干重大问题的决定; Decision of the Central Committee of the Communist Party of China on Several Major Issues Concerning Comprehensively Deepening Reform] Available at http://www.gov.cn/jrzq/2013-11/15/content_2528179.htm. Last visited 08 March 2020.

⁹⁸ A committee established in 2013 in charge of comprehensively deepening reforms. Its main task is to decide policy guidelines for reforms in all aspects.

⁹⁹ See *Guanyu Remin Fayuan Tuixing Li'an Dengjizhi Gaige De Yijian* [关于人民法院推行立案登记制改革的意见; Opinions on the reform of the people's courts to implement the registration system], Supreme People's Court, 2015. Available at <http://www.court.gov.cn/shenpan-xiangqing-14151.html>. Last visited March 8, 2020.

review system into a case registration system”, and goes on to describe the reform. Before the reform, the courts employed a conventional review system, wherein a court received requests from litigants for filing cases. Upon reviewing the request, the court decided whether it was admissible and if the decision was positive accepted the case for trial. Regarding the performance of this system, the Supreme Court observed that “...*The current litigation system sets a high threshold for filing a case. The court will not accept the lawsuit on the grounds that it does not meet the conditions for filing the case, considering the pressure of handling the case, resolving the dispute, and operating the mechanism.*”¹⁰⁰ This is why a Registration System for Case Docket (RSCD) was introduced. Its purpose was to reduce the role of courts as gate keepers, moving away from accepting cases that “the court” wants to try, to cases that “people” want to try. In essence, the new registration system implies that the court now establishes a case immediately after it has been filed by an individual; the case no longer goes through a review process as a pre-requisite to trial. The RSCD allows requests to be filed online; as of 2015, the Supreme Court has asserted that almost 95 percent of the petitions filed were accepted for trial at local courts without the litigant having to come to court more than once during the process of submitting documents.¹⁰¹ In the first month after the reform was uniformly implemented, it was reported that the number of newly filed cases increased by 29% compared to the previous year.¹⁰²

The second reform measure concerns court management and was implemented stepwise beginning in 2014. In its description of the reforms, the Supreme People’s Court is crystal-clear: “*Judicial power belongs to the Central Government. The local courts are not courts belonging to*

¹⁰⁰ See Li`an Shenchazhi Biangeng Wei Li`an Dengjizhi Yiyi Shenyuan [立案审查制变更为立案登记制意义深远; the change of the filing review system to the registration system has far-reaching significance], Xinhua Net, 2015. Available at http://www.xinhuanet.com/politics/2015-04/15/c_127693970.htm. Last visited 08 March 2020.

¹⁰¹ See Progress of China’s judicial reform in 2015, Supreme People’s Court, 2015. Available at http://english.court.gov.cn/2016-03/21/content_23999270.htm. Last visited 08 March 2020.

¹⁰² see e.g., <http://www.court.gov.cn/shenpan-xiangqing-14648.html>

local governments ...”¹⁰³ To ensure that this is also the case in practice, the reforms changed both the appointment as well as the administration procedure of all courts below the Supreme Court, by authorizing only provincial governments to appoint new judges and decide on court budgets. In a sense, this is an attempt to consolidate judicial power with the central government, and guarantee the “independence” or “autonomy” of local courts from local government. In addition to centralizing court management, the reform “*created a separate judicial track within the civil service*” and “*established a relatively fixed adjudication team consisting of judges, judge assistants, court clerks and other necessary support personnel.*”¹⁰⁴ The court system’s salary and promotion structure is different from that found in the general civil service. This structure is applied to improve and stabilize the morale of the judicial staff. The ideological incentives predominantly used before the reforms were complemented by higher salaries for court employees to provide them with additional incentives. All public officers in China work in an administrative ranking system, and the judges are no exception. Most judges work in BPCs, and the administrative ranking of BPCs is relatively low. With such a low ranking, BPC judges had a limited probability of being promoted and receiving financial compensation. Therefore, the current reform separates salaries from the judges’ rank, so that even without being at a high administrative rank, judges can still receive an increment in salary.¹⁰⁵ In addition, the court staff is restructured by appointing highly qualified judges to be “quota judges” and reallocating the remaining ones into judicial support personnel. In the end, all courts should have a relatively uniform allocation of judicial staff, with less than 40% of its staff being judges. During the implementation of this reform, overall staff size has remained

¹⁰³ See Judicial Reform of Chinese Courts, Supreme People’s Court, 2016. Available at http://english.court.gov.cn/2016-03/03/content_23724636_4.htm. Last visited 08 March 2020.

¹⁰⁴ See Judicial Reform of Chinese Courts, Supreme People’s Court, 2016. Available at http://english.court.gov.cn/2016-03/03/content_23724636_6.htm. Last visited March 8, 2020.

¹⁰⁵ Fu Hualing, *Building Judicial Integrity in China* 36, HASTINGS INTERNATIONAL AND COMPARATIVE LAW REVIEW 167–82 (2016).

constant, but its composition has changed. In June 2014, the first 7 provinces started implementing this piece of reform, with 11 provinces in the following year and 13 provinces in 2016.¹⁰⁶

The new case registration system takes the gate-keeping role away from courts and allocates them a rather passive role in accepting cases. The introduction of the RSCD prevents courts from actively rejecting cases and local governments from interfering during case filing procedure when the cases are politically sensitive. The legal reform also takes a bold step in separating local courts from local governments and centralizing appointment and budget decisions to the central level. As the management of court personnel and court budgets now no longer relies on local government, government officials lose their weapon for pressuring judges to make any decision during the trial procedure. Also, judges do not have to reject cases according to the order from local government. As a result, both reforms improve the accessibility of local courts to private parties and the independence of local courts vis-à-vis the local government. Given that it is the central government that now determines promotions, salary increases and the court's budget, judges are likely to become loyal agents of the central government instead of the local government. Reduced loyalty to the local government could imply reduced anxiety of adjudicating against the local government. The central government, which has re-established itself as the principal of the courts, can now count on the courts as a more reliable source of information about the behavior of local governments. Our analysis leads to the following hypotheses:

¹⁰⁶ The reason for staggered implementation of legal reform, as explained by the Head of the Central Judicial Reform Office, is to be *"in accordance with the requirements of the central government for pilot projects on major reform issues, and to consider the imbalanced economic and social development in various regions."* For example, the first 7 provinces (officially 6, yet province Guizhou started together with the pilot provinces) are chosen from eastern, central and western regions. More specifically, Shanghai represents a municipality; Guangdong and Hainan represent south-eastern regions; Qinghai represents a western region, Jilin represents north-eastern region and Hubei represents a central region. The second 11 provinces are chosen based on the expansion of the first group. See People's Daily (*Renmin Ribao*), 16th June 2014 and Beijing News (*Xinjing Bao*), January 17, 2015. Available at <http://politics.people.com.cn/n/2014/0616/c1001-25151030.html> and <http://www.chinanews.com/gn/2015/01-17/6977780.shtml> (in Chinese). Last visited March 8, 2020.

- (1) after implementation of the reform, the number of registered administrative lawsuits increases significantly faster than other types of lawsuits;
- (2) after the reform, the number of administrative lawsuits resolved increases;
- (3) the withdrawal rate from plaintiffs drops as they hold more confidence in courts judging impartially; and
- (4) the rate of local administrative organs losing increases as courts are independent from their pressure.

4. Effects of the Reform

In this section, we analyze whether the predicted reform effects have actually been realized. In the following paragraphs, we describe the hypotheses just posited in more detail, and then examine them based on the empirical evidence.

4.1. Effects on the Number of Registered Cases

The first hypothesis posits that the reform will lead to an increase in the number of registered administrative lawsuits. Do the data confirm this hypothesis? Before taking a case to court, potential litigants compare the costs of private mediation, official mediation,¹⁰⁷ and arbitration with litigation. For administrative cases, private parties can also go through an administrative review process¹⁰⁸ or use the letters-and-visits system as described in Section 2.1. An important part of the costs to be taken into account are litigation costs caused by the local court system. These include transportation costs, court fees etc.¹⁰⁹ Yet another important cost element are costs due to court

¹⁰⁷ Which is usually conducted by the Committee for People's Mediation at the instruction of local government and local court. For more details, see the Law of People's Mediation, 2010.

¹⁰⁸ Administrative review offers the chance to review the justifiability of an administrative decision from the administrative organ at a higher level. Any concrete administrative decision can be reviewed as long as a party perceives that his or her legitimate right is infringed on.

¹⁰⁹ Court fees in China for administrative lawsuits is 100 CNY involving trademark, patent and ocean affairs, and 50 CNY for the rest. See Court Fee Payment Method, available at http://www.gov.cn/zwgk/2006-12/29/content_483407.htm (in Chinese).

delay, including waiting time for cases to be established, and the subsequent pendency. These costs lower the litigants' expected utility - even if (s)he wins the case. The introduction of the RSCD system improves the accessibility of local courts by shortening the waiting time for plaintiffs, and by saving them time and money for travel because the RSCD system can be used online. As such, this should drive up the number of cases filed with local courts. In addition, the centralization of court personnel and budget management makes local courts to a large extent immune from the interference of local government officials. As the plaintiff's propensity to litigate depends on his or her perception of winning the case, such centralization contributes positively to their belief of winning an administrative case. Thus, the centralization of court management will now encourage marginal plaintiffs to file a lawsuit, as the expected utility from suing is likely to have increased as a consequence of the reform. On the other hand, if more cases are now accepted for trial and court capacity is not extended accordingly, then court delays might well increase after the reforms. It has been argued that higher court delays increase the overall costs of court use and that it should, hence, reduce demand for court services.¹¹⁰¹¹¹

In principle, changes in court capacity could also contribute to a change in the number of cases filed after the reform. Before the reform, courts might have rejected cases not only for political reasons, but also because they were unable to deal with the ensuing caseload. Instead of accepting an ever-growing caseload, they might simply have rejected the admission of newly filed cases. In assessing the effects of the reform, changes in court capacity need, hence, to be controlled for. Also, judges could simply be shirking. As the salary of judges is fixed, judges might restrict the number of filed cases to keep their workload low. In addition, the scope of ALL was extended

¹¹⁰ George L. Priest, *Private Litigants and the Court Congestion Problem* 69, BOSTON UNIVERSITY LAW REVIEW 527 (1989).

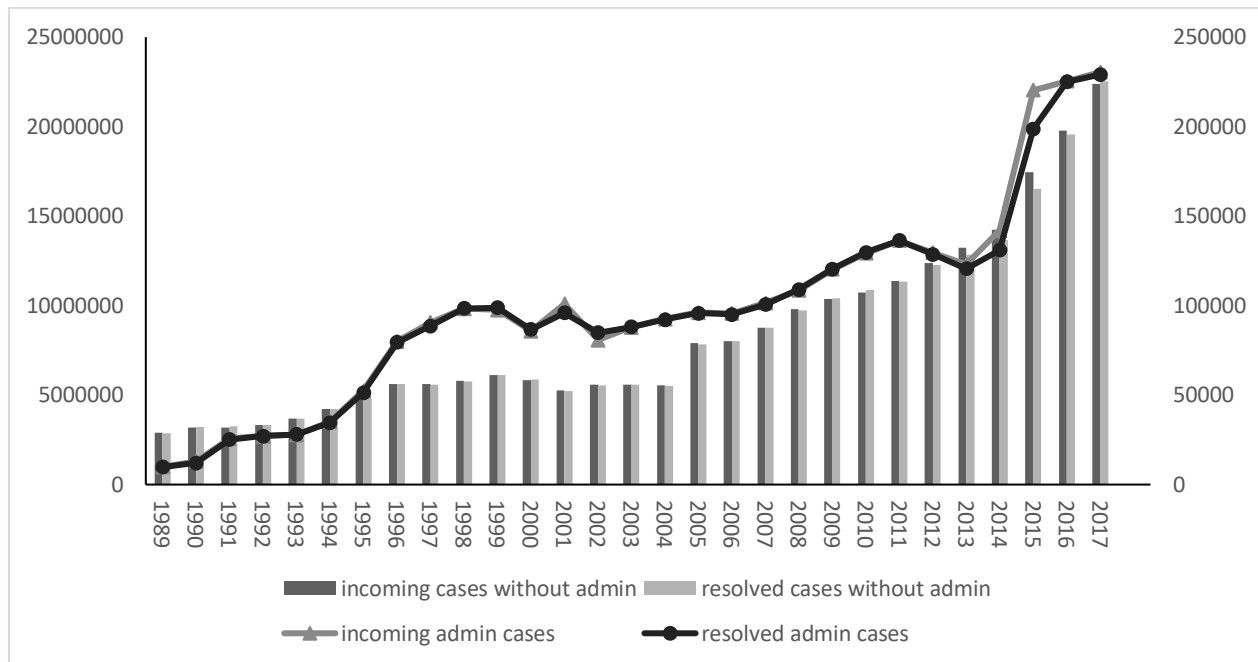
¹¹¹ Lode Vereeck & Manuela Mühl, *An Economic Theory of Court Delay* 10, EUROPEAN JOURNAL OF LAW AND ECONOMICS 243-68 (2000).

in 2014. As four more types of cases are included in ALL, the number of cases filed at local courts is likely to have increased as a consequence of that, too.

The court capacity and court shirking factors apply to all types of cases. If the judges are too occupied or too lazy, they will reject any type of case. Yet, the reforms are expected to have a more pronounced effect on both the accessibility of the courts and the expectation of winning a case in administrative law cases as administrative law cases are the ones that local governments actually care most about. If the number of administrative cases develops differently than the total number of cases, we assume the difference is due to the improvement of court accessibility and the increased scope of litigation.

Figure 3 displays the trend in the number of incoming administrative litigation cases together with other types of cases with national data. The data on first instance administrative litigations as well as the total number of cases were hand-collected from all courts in China (including all BPCs, IPCs, HPCs and SPC). As can be seen in Figure 3, the number of incoming cases has increased quite steadily ever since the 1980s and both numbers jumped in 2015. Whereas administrative litigation increased by 55% (expanding from 141,880 to 220,398 cases), all other cases only increased by 22.8% (from 14,380,226 to 17,659,861).

Figure 3: The Number of Incoming Cases and Resolved Cases Nationwide



Source: China Law Yearbook.

Prima facie evidence, hence, supports the hypothesis that the introduction of the RSCD system is behind the huge jump in 2015 of both the number of incoming administrative cases (Hypothesis 1), as well as the number of resolved administrative cases (Hypothesis 2). To measure more explicitly to what extent the number of cases accepted by local courts changed after the reform, we conduct an econometric analysis.

Data availability has always been an obstacle when trying to conduct empirical research on China. In fact, the transparency of the Chinese legal system has been improving in recent years, particularly as courts started to set up their own websites and publish relevant information there. In 2009, the SPC published Six Provisions on Judicial Openness, in which it states that “*People's courts at all levels should gradually establish and improve Internet sites and other information disclosure platforms. . . (publicly disclose) non-confidential judicial statistics and analysis reports in a timely and effective manner.*” The current legal reform also sets judicial transparency as one

of its main goals.¹¹² Local courts gradually publish statistics of their cases, and present an annual working report to local People's Congress at the end of the year, or a short summary of the report. Some provinces, such as Zhejiang¹¹³ and Guangxi,¹¹⁴ set up special websites disclosing judicial statistics. Such information is also sometimes contained in their annual budget balance sheet. In addition, some local People's Congresses and local governments also started publishing relevant information.

In 2014, the biggest internet company in China, Baidu, launched a joint project together with the SPC, namely the Chinese Court map, which aims to offer basic information on all Chinese courts. We went through all relevant information sources and collected information on the number of incoming cases, resolved cases, the withdrawal rate and the number of cases lost. A summary of our data is shown in Table 1. The data on case filings is an unbalanced dataset originating from 1,271 BPCs between 2008 and 2017, nearly half of the total 2851 local courts. Our main dependent variable of interest in this section is the number of newly filed administrative cases (*Admin*). For comparison, we also include the number of all newly filed cases (*NewlyFiled*) and non-litigation administrative cases (*Adminwo*). The idea behind including non-litigation administrative cases as a comparison group is that if administrative organs are acting as plaintiffs, they will not be deterred from filing cases because of any external pressure and, thus, the reform should not have a noticeable impact on this type of case. We thus include it as a comparison group. We also control for GDP per capita (*log_GDP*) and population size (*log_Pop*) on the county level. Information for both

¹¹² See Judicial Reform of Chinese Courts, Supreme People's Court, 2016. Available at: http://english.court.gov.cn/2016-03/03/content_23724636_7.htm (in Chinese). Last visited 08 March 2020.

¹¹³ <http://www.zjsfgkw.cn/col/col420/index.html> (in Chinese). Last visited 08 March 2020.

¹¹⁴ <http://yggx.gxcourt.gov.cn/spry.jsp?wbtreeid=1147> (in Chinese). Last visited 08 March 2020.

variables is available in the yearbook of each county published on the respective government website.

Table 1: Descriptive Statistics of Main Variables

Variable	Mean	Std.Dev.	Min	Max	Observations
NewlyFiled	8725.708	10401.93	48	147338	N = 3813
Admin	81.31742	132.7028	0	1661	N = 1068
Adminwo	224.0221	279.283	0	2147	N = 816
log_GDP	1.234651	.891433	-6.378788	4.697247	N = 7234
log_Pop	4.072209	1.590796	.5187938	14.06239	N = 9537
CasesResolved	7505.596	9346.169	24	147145	N = 5008
AdminResolved	86.17165	152.8127	0	2408	N = 2074
Staff	101.8016	63.4825	8	905	N = 4638
WithdrawRate	39.78486	22.48071	0	100	N = 240
LoseRate	13.91354	11.85913	0	93.33333	N = 487

Controlling for time-fixed as well as court-fixed effects, changes in the number of non-litigation administrative cases should be due to court capacity and/or court shirking. We also include a dummy variable *post_reform*, which equals one as soon as the second piece of reform is implemented in a county in a certain year. This dummy variable is equal to 1 for 7 provinces in 2014, for 18 provinces in 2015 and for all provinces in 2016. The dependent variable and both control variables are depicted in log form, and the base year is 2014. We estimate the following equation:

$$\ln(Admin)_{it} = \beta_0 + \theta Z_{it} + d_t + \alpha_i + u_{it}$$

(1)

In Eq. (1), $i=1, 2, \dots, n$ identifies the court and $t=1, 2, \dots$ identifies the year. Z_{it} represents a vector of explanatory variables, which includes the dummy variable for legal reform, GDP per

capita and size of population. d_t represents a year dummy to control for year fixed effects. u_{it} denotes the error term, and is assumed to be uncorrelated with our explanatory variables. The court-specific, time-invariant component of the error term is α_i , which may be correlated with the explanatory variables. In estimating equation (1), we rely on cluster-robust standard errors clustered at the individual court level. The results of our estimation is shown in Table 2.

Table 2: Determinants for Incoming Cases by Category

	(1) log_NewlyFiled	(2) log_Admin	(3) log_Adminwo
post_reform	-0.00640 (0.021)	-0.202 (0.295)	0.322 (0.468)
log_GDP	-0.0213 (0.023)	0.425 (0.379)	0.197 (0.337)
log_Pop	-0.000738 (0.044)	0.657 (0.911)	-0.183 (1.222)
2008.year	-0.494*** (0.038)	-0.0218 (0.281)	-0.0761 (0.257)
2009.year	-0.398*** (0.036)	0.0534 (0.263)	0.0640 (0.225)
2010.year	-0.343*** (0.027)	-0.0687 (0.201)	-0.0806 (0.164)
2011.year	-0.272*** (0.022)	-0.112 (0.148)	-0.197 (0.125)
2012.year	-0.164*** (0.016)	-0.268* (0.109)	-0.142 (0.103)
2013.year	-0.0618*** (0.012)	-0.256* (0.099)	-0.0115 (0.087)
2015.year	0.200*** (0.016)	0.982*** (0.284)	-0.347 (0.460)
2016.year	0.306*** (0.026)	0.805* (0.329)	-0.372 (0.483)
2017.year	0.355*** (0.027)	1.822+ (0.993)	-0.694 (1.356)
_cons	8.675*** (0.206)	0.128 (4.003)	5.201 (4.987)
N	2009	663	571
R^2	0.640	0.321	0.032
adj. R^2	0.638	0.308	0.011

Cluster robust standard errors in parentheses

+ $p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

As shown in Table 2, the variable *post_reform* and two control variables remain insignificant across three model specifications. The first piece of RSCD reform, which was uniformly implemented in 2015 rather than step by step, is more relevant in our estimation and should be captured by the year effects dummy. Because of this idiosyncrasy, it is plausible that *post_reform*, which captures the stepwise implementation of the second piece of reform, is not playing a significant role here. The total number of newly filed cases increased by 22% in 2015 compared to 2014. Although there is a long-term trend of increasing case numbers, this increase in 2015 is much larger than that of previous years. When using 2014 as the benchmark comparison, the number of cases continues to increase until 2017. By 2017, the total number of newly filed cases increased by 42%. On the other hand, and as hypothesized, the number of non-litigation administrative cases did not experience changes in 2015, nor in the following years. In fact, the number of non-litigation administrative cases has remained quite constant throughout the examination period. The most significant change occurred in administrative litigation. Before 2015, the number of incoming administrative cases stayed quite stable, with a drop in 2012 and 2013. In 2015, the number was 167% higher than that of 2014. As of 2017, the number was even more than 5 times higher than that of 2014. This increase is significantly higher than that of the total number of newly filed cases and non-litigation administrative cases. The evidence provides clear support for Hypothesis 1.

After implementing the RSCD, it is more difficult for courts to reject cases. Therefore, the increase in the number of administrative cases filed after 2015 can be seen as reflecting the level of grievance among citizens. Our results suggest that the gap between the number of cases citizens would like to bring to court and the actual number of cases that they do bring has decreased with the expansion of the scope of ALL and the implied improvement of the accessibility of local courts. Another factor influencing the number of cases that citizens bring to court might also be due to

plaintiffs' perception that their probability of winning a case has improved. On another note, the numbers are likely to underestimate the effect of the reform as local governments, knowing that local courts will no longer collude with them, have incentives to modify their behavior and better comply with the law.

4.2. Effects on the Number of Resolved Cases

An increase in the number of filed cases does not automatically translate into an increase in the number of resolved cases in local courts. Local governments might still try to pressure judges to procrastinate the trial procedure hoping that a long delay will induce plaintiffs to drop the case. In addition, a significant increase in the number of filed cases might well exceed the actual capacity of local courts. The reform includes measures to mitigate this problem, including: centralizing the management of court personnel and the court budget; improving the financial situation of judicial teams; and restructuring the judicial team into a more efficient structure. Our second hypothesis, which states that the number of resolved administrative law cases will increase after implementation of the reform, is worded to determine if the issue of capacity or if local governments still influence the resolution of cases.

To ascertain whether the reforms have changed the number of resolved cases, we rely on the number of administrative cases resolved as the dependent variable (*AdminResolved*). Figure 3 (see page 23) presents the number of resolved administrative litigations since the 1980s. It can be seen that the trend of resolved cases is closely aligned with the number of incoming cases. Again, there is a huge jump in 2015, with administrative cases increasing 52% (from 130,964 to 198,772) and other types of cases increasing only by 21% (from 13,796,525 to 16,713,793). In addition, the number of administrative cases resolved is clearly lower than that of newly filed cases at the beginning of the legal reform, with the difference roughly disappearing in 2017. To some extent,

this shows the speed of court reaction to the increase of administrative caseloads. We conduct OLS regressions again to better identify the trend. As a comparison, we include the number of total cases resolved (*CasesResolved*). We control for court-fixed as well as year-fixed effects, and the dummy variable *post_reform* serves as our main explanatory variable. What we also include are the number of incoming cases (*TotalWorkload* for the total number of incoming cases and *AdminT* for incoming administrative cases) and the number of total staff (*Staff*). Because the number of staff dealing exclusively with administrative cases is unknown, we rely on total staff size for both dependent variables. Again, both dependent and independent variables are used in log form and the base year is 2014. We estimate the following equation:

$$\ln(AdminResolved)_{it} = \beta_0 + \theta * Z_{it} + d_t + \alpha_i + u_{it} \quad (2)$$

The notation is the same as the one used above and the results are shown in Table 3.

Table 3: Determinants of Resolved Cases by Category

	(1) log_CasesResolved	(2) log_AdminResolve
post_reform	0.0103 (0.007)	0.128+ (0.072)
log_TotalWorkload	0.957*** (0.014)	
log_adminT		1.063*** (0.042)
log_Staff	0.0234 (0.035)	-0.0579 (0.576)
2008.year	0.0141 (0.027)	-0.215 (0.196)
2009.year	0.0429* (0.019)	0.0563 (0.101)
2010.year	0.0409*** (0.012)	0.107 (0.113)
2011.year	0.0230* (0.010)	0.123 (0.090)
2012.year	0.0335*** (0.007)	0.0859 (0.113)
2013.year	0.0279*** (0.006)	0.0874 (0.055)
2015.year	-0.0294*** (0.006)	-0.121+ (0.068)
2016.year	-0.0261** (0.009)	-0.200* (0.099)
2017.year	0.00321 (0.010)	-0.280* (0.125)
_cons	0.138 (0.197)	-0.0800 (2.640)
N	1939	410
R2	0.960	0.925
adj. R2	0.960	0.923

Cluster robust standard errors in parentheses

+ $p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

As can be seen from Table 3, the number of total incoming cases (*Total Workload*) is significantly correlated with the respective dependent variable, while staff size is not. More importantly, when the number of total cases resolved is used as dependent variable, *post_reform* is insignificant, while it is positive and weakly significant when the number of administrative cases resolved is considered. On average, the implementation of the legal reform improves the number of administrative cases resolved by 13.6%. As administrative cases are the only category heavily affected by the external interference from local government, and the improvement of court capacity

applies to all case categories, the significance of *post_reform* with regard to administrative cases indicates that the courts' improved ability to solve more administrative cases is totally due to the removal of external pressure. The year dummy is negative for both scenarios. Although the resolution rate (measured by the share of total workload resolved), decreases after the reform, the absolute number of cases resolved increase sharply as the reform is pursued, which indicates an improved ability of courts to resolve cases. These findings are, hence, in line with our second hypothesis which posits that the number of resolved administrative cases would increase after implementation of the reform.

4.3. Effects on the Trial Result

Not all lawsuits will actually go through full legal procedure. Plaintiffs can, for example, withdraw during the trial procedure. Indeed, the withdrawal rate of administrative cases is relatively high. More than one third of all administrative cases are usually withdrawn and sometimes this number reaches 60%.¹¹⁵ Some argue that plaintiffs withdraw because they anticipate a low probability of winning against state agencies, and some argue that plaintiffs are coerced.¹¹⁶¹¹⁷ A successful legal reform should improve the plaintiff's confidence in finishing the trial procedure as local courts are

¹¹⁵ He Haibo, *Litigations Without a Ruling: The Predicament of Administrative Law in China* 3, TSINGHUA CHINA L. REV (2010).

¹¹⁶ Minxin Pei, *Citizens V. Mandarins: Administrative Litigation in China* 152, THE CHINA QUARTERLY 832 (1997).

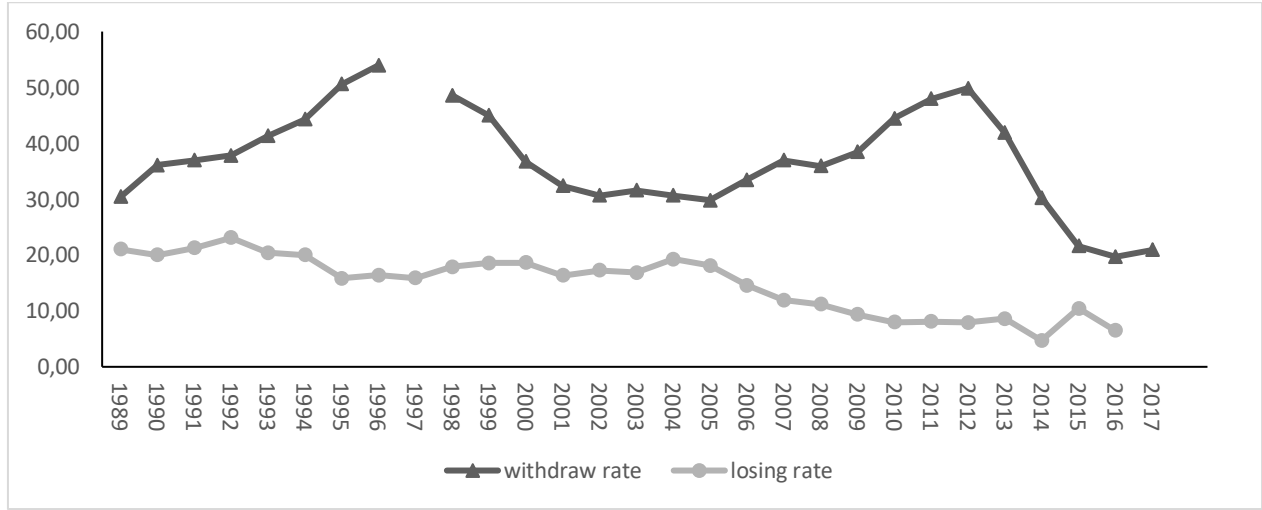
¹¹⁷ Weiyun Wang & Jianbing Wang, Guanyu Jianli Xingzheng Susong Tiaojie Zhidu de Tanta [An Inquiry Concerning the Establishment of the System of Mediation in Administrative Litigation; 关于建立行政诉讼调解制度的探讨], 12th.Oct, 2005. Available at <https://www.chinacourt.org/article/detail/2005/10/id/181747.shtml>. Last visited March 8, 2020.

See also Zhang Shuyi & Tang Yongjin, *Zai Jiannan Zhong Qianjin: Zhonghuo Renmin Gongheguo Xingzheng Susong Fa Shishi Xianzhuang Yu Fazhan Fangxiang Zonghe Fenxi Baogao* [在艰难中前进: 中华人民共和国行政诉讼法实施现状与发展方向综合分析报; Moving Ahead in Face of Challenges: A Comprehensive Analysis Report on the Implementation Status and Development Trend of the Administrative Procedure Law of the People's Republic of China], in *Fazhi de Lixiang yu Xianshi: Zhonghua Renmin Gongheguo xingzheng Susong Fa Shishi Xianzhuang yu Fazhan Fangxiang Diaocha Yanjiu Baogao* [法治的理想与现实: 中华人民共和国行政诉讼法实施现状与发展方向调查研究报告; The Ideal and Reality of the Rule of Law: An Investigation and Research Report on the Implementation Status and Development Trend of the Administrative Procedure Law] (Gong Xiangrui et al. eds. 1993).

For individual cases, see e.g., <http://www.calaw.cn/article/default.asp?id=5822>. Last visited March 8, 2020.

supposed to be more independent and impartial, just as it should improve their confidence in filing the case in the first place. Hence, the inclusion of our third hypothesis that the withdrawal rate drops after implementation of the reform. We first illustrate the trend based on national data.

Figure 4: Withdrawal Rate and Losing Rate of Administrative Cases



Source: China Law Yearbook.

Figure 4 shows a clear and sharp drop of the withdrawal rate during the reform period, which is confirmed by our regression results. We went through the work report from local courts and were able to collect 240 observations from 127 local courts on withdrawal rates (*WithdrawRate*). For this section, we update our data to 2019. We control for court-fixed as well as year-fixed effects, and the dummy variable *post_reform* is included as our main explanatory variable. We estimate the following equation:

$$\ln(WithdrawRate)_{it} = \beta_0 + \theta * post_reform_{it} + d_t + \alpha_i + u_{it} \quad (3)$$

The notation is still unchanged and the results are shown in Table 4.

Table 4: Determinants of Withdrawal and Losing Rates

	(1) WithdrawRate	(2) LoseRate
post_reform	-14.46 ⁺ (8.146)	-2.039 (3.485)
2008.year	-1.041 (7.070)	-1.806 (4.672)
2009.year	1.201 (10.065)	-7.504* (3.459)
2010.year	-9.387 (8.260)	-5.778* (2.690)
2011.year	18.59*** (4.826)	-8.760*** (2.361)
2012.year	-5.878 (7.686)	-5.828* (2.569)
2013.year	1.934 (6.044)	-7.469** (2.291)
2015.year	-3.831 (5.548)	-0.874 (3.225)
2016.year	5.605 (7.556)	-5.803 (5.187)
2017.year	-0.346 (8.507)	-0.477 (3.848)
2018.year	-4.533 (8.113)	-4.768 (3.554)
2019.year	-26.93** (8.113)	-6.168 ⁺ (3.554)
_cons	47.91*** (5.308)	17.66*** (1.524)
<i>N</i>	224	450
<i>R</i> ²	0.202	0.099
adj. <i>R</i> ²	0.157	0.074

Cluster robust standard errors in parentheses

⁺ $p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 4 shows a 14.46% reduction in the rate of withdrawal (at the 10% significance level). This supports the third hypothesis, according to which plaintiffs have fewer incentives to withdraw their case from courts.

Yet, even if plaintiffs now have a higher propensity to go through the full trial procedure, they do not necessarily win. Traditionally, judges might have been pressured to adjudicate cases in favor of the local government. For this reason, we now ask whether administrative agencies lose

relatively more cases after the court reform has been implemented (as posited by our fourth hypothesis), or if they indeed win relatively more cases as judges might try to counteract the reforms that they have been subjected to. Figure 4 depicts a slight downward trend of the losing rate, which disappears during the reform period. In fact, the Chinese government has long been evaluating the performance of courts via a variety of performance measures. In total, there are 31 such measures,¹¹⁸ and the number of cases resolved, as just analyzed, is one of them. Our dependent variable, namely the rate of administrative organs losing (*LoseRate*), does not belong to this metric, yet some courts decided to include such information in their annual work report as an evaluation standard. We were able to collect 487 observations from 254 local courts. We control for court-fixed as well as year-fixed effects, and the dummy variable *post_reform* is included as our main explanatory variable. The equation we estimate is as follows:

$$\ln(AdminLose)_{it} = \beta_0 + \theta * post_reform_{it} + d_t + \alpha_i + u_{it} \quad (4)$$

The results are also shown in Table 4.

We do not find a significant increase in the administration's losing rate after the implementation of the reforms. Two competing explanations lend themselves to make this finding plausible: (1) the reforms did not substantially improve judges' independence, in the sense of adjudicating more impartially; (2) local governments, anticipating less collusion with judges, were quick to modify their own behavior accordingly. It is hard to tell which of the two explanations is more plausible. Evidence in favor of the second explanation would need to be based on a thorough

¹¹⁸ For more details, see *Zuigao Renmin fayuan Guanyu Kaizhan Anjian Zhiliang Pinggu Gongzuo De Zhidao Yijian* [最高人民法院关于开展案件质量评估工作的指导意见; Guiding Opinions of the Supreme People's Court on Carrying Out the Case Quality Evaluation Work], Supreme People's Court, 2011

analysis of potential changes in the administrative acts issued by local governments. Unfortunately, this cannot be done here. If we combine the results of the withdrawal rate and the losing rate, one might conclude that as the cases surviving the withdrawal procedure are the ones that plaintiffs would have lost against administrative organs before the implementation of the legal reform since plaintiffs withdrew knowing that they would not win, the practical losing rate of administrative organs, considering the low withdrawal rate now, is actually increasing.

To sum up, our empirical results suggest that the introduction of the RSCD system and the centralization of court management has improved accessibility to local courts by reducing the waiting time for plaintiffs. As a result, the number of cases filed at BPCs increased dramatically after the implementation of the two pieces of reform. Second, reduced pressure on the courts from the local government to procrastinate the trial process and to judge in the local government's favor, as well as the centralization of the management of court budgets and personnel has increased the number of resolved cases. Finally, the increased confidence of plaintiffs is also reflected in the decrease of the withdrawal rate, although we do not find any evidence that the administration is more likely to lose administrative law cases in the wake of the reforms.

5. Conclusion and Outlook

This study investigates whether a number of recent judicial reforms in China has improved the ability of courts to monitor the behavior of local government. In authoritarian states, the government faces the problem that there is no reliable channel for gathering information on the behavior of local governments. Given this reality, courts could serve as an important channel of information regarding the performance of local governments, but only if they are independent from local government interference. The mere knowledge that their performance is being impartially monitored by an independent court is likely to lead to better governance by local governments.

Private parties approaching the court with individual cases against public servants provides the central government with necessary information about the behavior of local governments.

A solution to the problem of external interference is to strengthen the court system and improve its independence. The legal reforms implemented in China a number of years ago accomplishes this by introducing the RSCD system that gives courts the role of passively accepting cases, and by centralizing the management of court personnel and budgets at the provincial level, thereby freeing court from the interference of local administrative organs. Our empirical results show that the implementation of the reforms lead to a significant increase in the number of filed and resolved administrative cases. Our results also show that fewer plaintiffs choose to withdraw from the trial process, while the percentage of cases lost by administrative organs remains virtually unchanged.

The recent reforms have also induced other changes worthy of investigation. For example, the cancelation of content examination when filing a lawsuit opens up an opportunity for frivolous lawsuits that are a waste of legal resources. It could be that improved court accessibility engendered by the reforms may have created the problem of too many cases being filed. Also, court budgets varied significantly before the reform due to the fact that court budgets were granted by the government on the same administrative level implying that courts in less developed areas might receive budgets insufficient to meet minimum standards for the orderly functioning of courts.¹¹⁹ The centralization of court budgets may lead to a more equal allocation of budgets across the different regions. Although the amendment of ALL and the centralization of court management has improved the conditions of litigants of administrative cases significantly, there is still a long

¹¹⁹ Margaret Woo, *Court Reform with Chinese Characteristics* 27, WASHINGTON INTERNATIONAL LAW JOURNAL 241–72 (2017).

way to go. First of all, because ALL is directed at low level rather than high level administrative agencies¹²⁰, the reforms may free the courts from the interference of local administrative organs, but not interference from high level officials. In addition, the scope of judicial review is limited to infringement of personal or property rights, and excludes other important political rights such the freedom of speech and the freedom to demonstrate. Furthermore, it also excludes cases where the infringement of rights takes the form of indirect or tangential way.¹²¹ Finally, the Chinese Communist Party is still immune from ALL, as there is no provision regarding administrative acts taken by the Party.¹²²

Some voices in China argue that an overly independent judiciary may trigger corruption from the bench.¹²³ Other voices go so far as to suggest that “judicial independence” is a western concept that is not compatible with China’s socialist ideology, and as such should not be pursued.¹²⁴ These dissenting voices exist even though the current reforms advocate only partial judicial independence. It remains to be seen, and is worthy of continued examination and observation, whether this ‘judicial independence with Chinese characteristics’ will continue to exist in the future, or if the voices of dissent will curb the impact of the recent reforms. Lastly, China is continuing to improve the information disclosure platform for all court documents, and it is easier to examine the actual contents of all judgements. This improved transparency allows future researchers to investigate whether there is an improvement in judicial impartiality. Our last hypothesis can thus be further verified with future research.

¹²⁰ GINSBURG & MOUSTAFA, *RULE BY LAW*, *supra* note 61.

¹²¹ PEERENBOOM, *CHINA'S LONG MARCH TOWARD RULE OF LAW*, *supra* note 86.

¹²² Pei, *Citizens v. Mandarins: Administrative Litigation in China*, *supra* note 116.

¹²³ See e.g., <https://www.douban.com/group/topic/32485212/> (in Chinese).

¹²⁴ See e.g., http://www.qstheory.cn/dukan/qs/2018-01/15/c_1122241714.htm (in Chinese).

