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RESEARCH ARTICLE

The Rise of the Chinese Judiciary and Its Limits: Administrative Litigation in the Reform Period

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Abstract

This article analyses the performance of the Chinese judiciary in administrative ligation during the recent period of reform using a dataset of over 1.6 million judicial documents. Contrary to conventional wisdom, we find compelling evidence that the judiciary has become increasingly significant in checking the power of the government. Courts accepted 79 per cent more cases from 2014 to 2020, and plaintiffs' win rate against the government rose from 33.2 per cent to 42.2 per cent. This increase is even more pronounced in cases with a strong impact on local government, such as those reviewing land expropriations and police penalties. Judicial authority has improved, with chief government officials attending more than 50 per cent of trials as defendants. Our findings illustrate a judiciary that is on the rise, but there are fundamental limits to its ascent. Courts remain silent on citizens' political rights. Judges are reluctant to conduct substantive reviews of government actions beyond procedural matters. These findings support a tripartite theory for understanding the rule of law in China, where the law and the judiciary are instrumental in routine and even hard cases, but their power rapidly wanes in the face of politics.

摘要

本文以行政诉讼为视角，探讨了中国司法系统在最近一轮司法改革中的表现。通过分析 160 多万份裁判文书，我们发现，司法机关在制衡行政权力方面的作用日渐突出。 2014 年至 2020 年间，法院每年受理行政案件数量增长了79%；原告诉政府的胜率从33.2%上升至 42.2 %，而这一上升在对于地方政府而言尤为重要的案件中(如行政征收和治安处罚案件)更加明显。与此同时，政府主要负责人作为被告出庭应诉的比例超过了50%，体现了司法权威性的提升。而从另一方面看，虽然司法权力有所增强，但其仍然受到根本性约束 – 行政诉讼鲜有涉及公民政治权利的案件，而法官在裁判中倾向于回避对政府行政行为实体部分的审查。基于以上发现， 我们提出了行政诉讼三分理论，将行政诉讼案件分为日常、重要和政治性三类。可以看到，在这一轮司法改革中，中国司法系统在日常和重要案件中均发挥了更大的作用，而对政治性案件保持了回避和审慎。

Keywords: administrative litigation; checks and balances; judiciary; legal reform; political rights

关键词: 行政诉讼; 权力制衡; 司法系统; 司法改革; 政治权利

Administrative litigation has long been considered a fundamental instrument of constraint on administrative power. In this article, we examine whether the judiciary in China has become more capable of constraining the executive government. We quantitatively assess the performance of the Chinese judiciary in administrative litigation (i.e. judicial review of government actions) in the reform period from 2014 to 2020. Scholars have cited low case volumes and the low plaintiffs' win rate as evidence of a lack of judicial independence in China.[1] While prior research, to the best of our

1 Cui 2017.

knowledge, examined limited areas of administrative litigation,[2] mostly using qualitative[3] or limited quantitative evidence,[4] our study uses the most comprehensive data available and is the first to cover almost all areas of administrative cases.

We find that courts have become more willing to accommodate citizens' challenges to the government, taking on 79 per cent more administrative lawsuits from 2014 to 2020. The proportion of decisions in favour of plaintiffs against the government rose from 33.2 per cent to 42.2 per cent in the same period. In disputes that concern local governments' core interests (including cases challenging government expropriations of land and police penalties), the increase is even larger – from 25.5 per cent to 38.4 per cent, a more than 50 per cent increase from the baseline. Chief government officials attended more than 50 per cent of trials in person – a rare phenomenon before 2014. Judges also provided more detailed reasoning in judgments. The increase in transparency presumably exposes governments' misbehaviour to the public and thereby reinforces government accountability.

Our findings portray an ascending judiciary, but one whose limits are fundamental to understanding the relationship between law and politics in China. Our evidence indicates that courts consistently steer clear of cases that are related to sensitive political rights. The actions of the Chinese Communist Party and its subsidiaries are never reviewed, although we were intrigued to discover that they are mentioned in many instances. In cases concerning freedom of speech, freedom of assembly, and procession and demonstration, courts rarely overturn government decisions. Courts also show a preference for decisions based on procedural review rather than substantive examination of government actions. They restrict themselves to the roles of legal and legalistic decision makers, seeking to avoid being perceived as policymakers and political actors.

What we found can be theorized as a tripartite understanding of the rule of law and of the role of the judiciary in China. In matters that pertain to routine administrative services, such as the registration of real estate ownership, public management and market supervision, China's governance has increasingly adhered to the law, with the judiciary routinely overseeing and correcting government misconduct. In cases involving the crucial interests of local governments ("hard cases" in the Chinese context), such as land use and eminent domain (concerning local fiscal revenue) and public security issues (concerning police authority and local stability), the law and the courts have assumed greater importance. The judiciary is now tasked with monitoring and restraining the powers of local government, serving as a more effective check against governmental abuse and overreach. However, in political matters that involve the Party and citizens' political rights, the role of law and the judiciary remain severely reduced, if not eliminated.

Background: Reforms of Administrative Litigation

A judiciary that can effectively review government actions forms the bedrock of the rule of law. In China, judicial review is conducted through administrative litigation, where citizens sue the government when they believe that governmental action has infringed upon their rights. The adoption of the Administrative Litigation Law (ALL) in 1990 is widely regarded as a milestone in the development of the rule of law in China. This new law brought all state agencies under the jurisdiction of the courts and provides legal resources for protecting citizens' rights against the government's illegal actions. Some commentators consider the law to have established a Chinese style of separation of powers, providing intra-state administrative and judicial checks and balances.[5] Nevertheless, ALL's effectiveness has been debated since its promulgation. As many scholars have pointed out,

2 Cui and Wang 2017; Li 2014; Lu et al. 2022.
3 He, Haibo 2018; Yang and Li 2018.
4 Chen, Ruihua 2018; He, Xin 2014.
5 Keith 1994, 83.

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the judiciary has traditionally been in a politically vulnerable position.[6] Owing to its nature as a weak political actor relative to the administrative branch of government, the judiciary faces a range of long-standing problems in administrative litigation. When citizens seek to challenge the government, they encounter what is known as the "three difficulties": difficulty in having their cases accepted by the courts, difficulty in the adjudication process and difficulty in enforcing court rulings. Functioning under the political and fiscal influence of the local party-state, local courts often hesitate to take on sensitive cases that could impact local interests and can be swayed by various government bodies in their decision-making processes. Even if a court's ruling goes against the government, securing voluntary compliance can be a daunting task. Essentially, historically, courts have faced obstacles in reviewing governmental actions and holding governments accountable for misconduct.

Under Xi Jinping 习近平, however, the Party has taken deliberate steps to strengthen the judiciary. In 2014, a significant amendment was enacted to the ALL. The Fourth Plenum of the 18th Central Committee also recognized the persistent issues in administrative litigation in its "Decision on major issues pertaining to comprehensively promoting the rule of law" during the same year. This marked the first instance in which a central committee plenary session directly addressed the concept of the rule of law (*yifa zhiguo* 依法治国), indicating a heightened emphasis on legal reform at a remarkably elevated political level.[7] This decision set the stage for new reforms that swiftly enhanced the judiciary's institutional standing and capabilities. Among the major reforms are i) a new case registration system (*li'an dengjizhi gaige* 立案登记制改革) that requires courts to accept all administrative claims without declining case registration or dodging responsibility; ii) the centralization of the fiscal and facility management of local courts at the provincial level (*rencaiwu tongguan* 人财物统管) to boost courts' personnel and financial independence from local governents; iii) a transregional jurisdiction system of administrative litigation (*xingzheng anjian jizhong guanxia* 行政案件集中管辖) to relocate local governments' litigating venue and temper their interference; iv) the expansion of the scope of judicial review (*sifa shencha fanwei kuoda* 司法审查范围扩大) to include many cases that had previously fallen outside the scope of judicial scrutiny; and v) the reform of response in administrative litigation (*xingzheng yingsu gaige* 行政应诉改革) to improve the legal awareness of administrative organs and to promote "administration according to the law," with a demand that chief government officials attend trials in person.

Numerous media reports in China have cited these changes in administrative litigation as evidence of a positive move towards a greater emphasis on the rule of law. Scholars have also found evidence that the reforms are not just empty promises. For example, some observe that it is much easier to accept cases in administrative litigation under the case registration system reform and that the number of administrative cases has increased substantially,[8] particularly those that involve higher judicial costs such as administrative penalties and eminent domain.[9] In addition, the plaintiffs' win rate has risen slightly relative to the first decades of the 2000s, reflecting greater judicial impartiality.[10] The centralization of fiscal and facility management, along with the implementation of a transregional jurisdiction system for administrative litigation, has been credited with contributing to this improvement.[11] Notably, many earlier studies have relied on anecdotal evidence, small-scale studies or survey data, which typically fall short in depicting a complete landscape. The overall impact of the reforms has yet to be assessed using more rigorous methods.

6 Minzner 2011; Peerenboom 2002; Wang and Minzner 2015.
7 Peerenboom 2015.
8 He, Haibo 2018.
9 Meng and Li 2022.
10 He, Haibo 2018.
11 Cao, Liu and Zhou 2023; Ma, Zheng and He 2021.

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Table 1. Three Categories of Administrative Cases

	Interests Involved	Specific Types of Disputes
Routine cases	Local governments' routine duties; government's peripheral interests	Real estate ownership registration;
		Labour rights;
		Public/urban management;
		Market supervision;
		Marriage registration;
		Traffic penalties
Hard cases	Related to local economic development and social stability; local governments' core interests	Eminent domain;
		Police penalties
Political cases	The Party and the central government's interests	Party decisions;
		Citizens' political rights

A Tripartite Framework of Administrative Litigation

To streamline our discussion, we have grouped administrative cases into three categories: routine, hard and political (see Table 1).[12]

Routine cases

Not all administrative cases are politically sensitive. Many are routine cases that originate from daily administrative services that are performed by the government. Such cases involve government interests only marginally. In addition, a significant number of cases labelled as administrative litigation are essentially civil disputes in which the government's interests are not directly implicated.[13]

This does not imply, however, that administrative interference is absent in routine cases. Instead, it merely indicates that the majority of interests that are entangled in these cases are relatively trivial and do not warrant interference from a rational government defendant. In simpler terms, routine cases only maintain their routine nature to a certain extent. Some routine cases can escalate to become matters of concern for local governments, which have the means to influence these cases.

We identify six types of routine cases: *real estate ownership registration* cases are disputes that arise from land and housing rights certificates issued by government agencies; *labour rights* cases consist of litigation against local labour and human resource departments over decisions on matters such as work injury recognition, social insurance, medical insurance, pensions or seniority certification; *public management* cases are disputes concerning administrative penalties on urban management, pollution, environment conservation, illegal construction and land planning; *market supervision* cases concern corporate registration, business permits, food and drug regulation, product quality and consumer complaints; *traffic* cases concern disputes over traffic tickets issued by the police; and in *marriage registration* cases, plaintiffs sue the government over disputes in marriage or divorce registrations.

Hard cases

Hard cases stem from government expropriation and police administrative penalties, especially detention. These cases pertain to both local fiscal revenue and social stability – "the purse and the sword" – which are fundamental concerns for local governments. *Expropriation* (eminent domain)

12 We provide examples of each type of case in online Appendix A1.

13 Liebman et al. 2020.

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is the process of transforming agricultural or urban land into urban real estate. Local governments show a keen interest in converting agricultural land for urban purposes or for replacing dilapidated urban blocks with new real estate ventures. The sale of urban land provides immediate fiscal revenue, while real estate development promotes short-term GDP growth, contributing to long-term tax income. However, rural collectives and landholders who hold ownership and usage rights to agricultural land often receive insufficient compensation in these transactions. This lack of fair compensation is arguably the most significant source of rural and suburban social unrest in China. The loss of an expropriation case can result in severe repercussions for a local government, such as the suspension of real estate development plans and the imposition of massive compensation payments. *Public security* cases involve disputes that are related to a wide range of police penalties, including fines and detentions. The police have a crucial role to play in maintaining local order and stability and are tasked with handling sensitive and challenging issues such as dispersing assemblies, censoring speech and resolving street-level disputes to prevent social unrest. Nonetheless, the courts are a weaker actor than the police. Therefore, ruling against police power is a challenging task.[14]

Political cases

The final category, political cases, concerns Party decisions and citizens' political rights. These issues relate to the legitimacy of the political system and usually extend beyond the jurisdiction of the courts. The ambiguity surrounding what constitutes a political case has long been an open question within the judiciary. However, at present, the boundaries appear to be clearer. Below, we illustrate how these boundaries are established in practice. In a way, political cases do not pose a significant challenge to the courts, as they typically prefer not to interfere. The most effective strategy for them is to categorically decline decision making and thus evade responsibility.

Increase in Administrative Cases and Plaintiffs' Win Rate

Number of cases accepted in general

We use judicial decision data to gauge changes in judicial performance in administrative litigation. Our data are from *China Judgements Online*.[15] For this study, we collected 1.64 million administrative judicial documents from 2014 to 2020, including adjudications (*panjue* 判决), rulings (*caiding* 裁定), and other minor documents.[16] To the best of our knowledge, this is the most comprehensive dataset concerning administrative ligation in China to date. Using these data, we estimated the total number of first-instance administrative cases that were accepted by Chinese courts during the same period.[17] From 2014 to 2020, the annual number of cases nearly doubled, increasing from 140,352 to 251,294, reaching a peak in 2019 (Figure 1). This increase should be seen against the backdrop of an explosion of litigation in China – the number of civil cases soared from 5.2 million to 13.3 million over the same period, resulting both in citizens' heightened legal consciousness and the country's socio-economic transitions.[18]

A sharp increase occurred in first-instance administrative cases in 2015, when the ALL amendment, which reformed the case registration system and at the same time expanded the scope of

14 He, Xin 2013.

15 *China Judgements Online* (https://wenshu.court.gov.cn/) is the official online platform for judicial documents disclosure operated by the Supreme People's Court (SPC).

16 Other types of documents include notifications, decisions, etc., which make up a small portion of the total dataset.

17 Please refer to online Appendix A2 for the estimation method. We have also compared our estimated figures with the number of cases reported by the SPC in its work reports, which account for closed cases. The figures from the two sources are similar.

18 Data are from the work reports of the SPC from 2014 to 2020.

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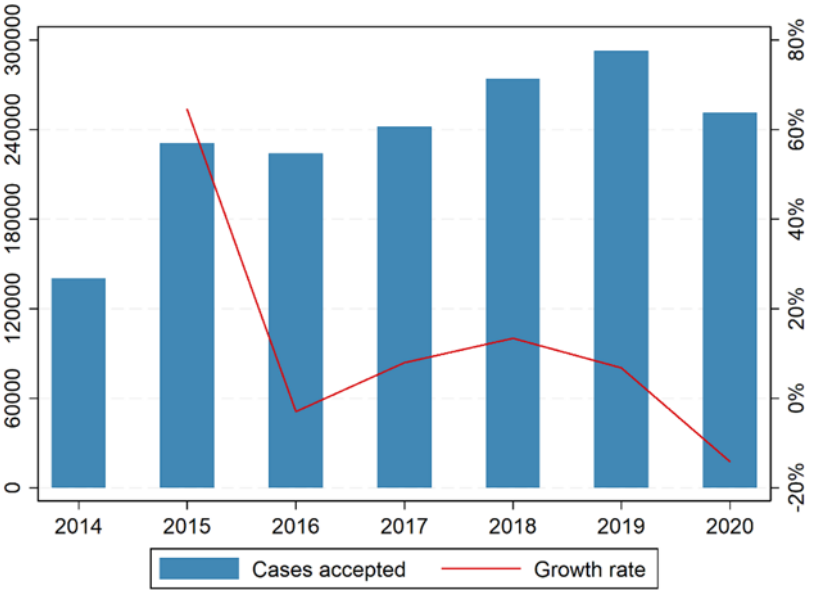

Figure 1. First-instance Administrative Cases, 2014–2020

judicial review, took effect. There were 65 per cent more cases filed in 2015 than in 2014.[19] Under the ALL, courts are obliged to accept all administrative cases that are filed by plaintiffs. According to our interviews with judges, while courts still refused to accept some cases (for example, those involving mass incidents and protests), cases were less likely to be interfered with by the administrative defendants in acceptance. This opened the floodgates for lawsuits.

The dramatic shift in case volumes could also be attributed to an increase in administrative disputes. For instance, an increase in police detentions would naturally lead to a surge in challenges to these administrative decisions. To rule this possibility out somewhat, we have gathered data on the number of public security cases handled by the police nationwide, and the work injury recognitions processed by human resource departments from 2014 to 2020, sourced from the National Bureau of Statistics database. Tables 2 and 3 indicate that the number of administrative actions associated with public security declined from 2014 to 2020, while the number of administrative actions related to work injury recognition remained consistent. By contrast, the number of administrative lawsuits linked to these two types of administrative action saw a dramatic increase in 2015. It is worth noting that both of these types of administrative actions were subject to lawsuits both before and after the amendment of the ALL, implying that the rise in case numbers was not driven by the broadening scope of judicial review due to the revision of the ALL. Taken together, these findings suggest that the drastic increase in case volume in 2015 was most likely prompted by the reform of the case registration system rather than solely by increased numbers of administrative disputes.

Another factor contributing to the rise in the number of cases is the expansion of the scope of cases that are eligible for judicial review. Starting in 2015, a large range of types of expropriation-related cases, such as those involving compensation agreements, incidental restrictions on personal freedom, and the issuance of informal government documents in expropriation procedures, have become subject to legal action. By 2020, the count of expropriation cases had surged by 154 per

19 The most likely reason for the decrease in administrative cases in 2020 is the impact of the COVID-19 pandemic, which slowed the filing of cases.

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Table 2. Public Security Administrative Actions Being Contested

	Administrative Actions (public security cases)	Administrative Lawsuits (public security cases)	Proportion of Administrative Actions Being Sued
2014	11,202,216	20,349	0.18%
2015	10,971,620	39,781	0.36%
2016	10,652,132	36,430	0.34%
2017	9,609,333	33,195	0.35%
2018	8,845,576	37,116	0.42%
2019	8,718,816	34,831	0.40%
2020	7,723,930	28,897	0.37%

Table 3. Work Injury Recognition Administrative Actions Being Contested

	Administrative Actions (work injury recognitions)	Administrative Lawsuits (work injury cases)	Proportion of Administrative Actions Being Sued
2014	1,982,000	28,790	1.45%
2015	2,019,000	39,357	1.95%
2016	1,960,000	36,042	1.84%
2017	1,928,000	35,245	1.83%
2018	1,985,000	41,930	2.11%
2019	1,944,000	45,573	2.34%
2020	1,876,000	37,132	1.98%

Table 4. Administrative Cases Related to Expropriation, 2014–2020

	2014	2015	2016	2017	2018	2019	2020
No. of cases related to expropriation	31,949	57,597	60,186	72,239	81,550	88,104	81,145
% in all administrative cases	22.8%	24.9%	26.9%	29.9%	29.8%	30.1%	32.3%

cent relative to 2014, amounting to 32.3 per cent of all first-instance administrative cases (as shown in Table 4).

Plaintiffs' win rate

Given the immense administrative power and the close financial and personnel ties linking local administrative bodies and local courts, it is challenging for courts to rule against government defendants. According to a nationwide survey conducted in 2012, of 1,074 judges working in courts' administrative divisions, 54.4 per cent explicitly stated that they would take into account the sentiments of local government authorities when making their judicial decisions.[20]

To assess the effectiveness with which local courts can hold local government accountable, we analyse plaintiffs' win rate in first-instance administrative cases. Our sample is confined to suits against governments below the provincial level. In other words, we exclude litigation against the central and provincial governments. Cases against the central government are mainly directed at the intellectual property bureaus, disputing their decisions regarding patent and trademark applications, examinations and validity determinations. Because provincial governments rarely make specific

20 Lin and Song 2013, 56.

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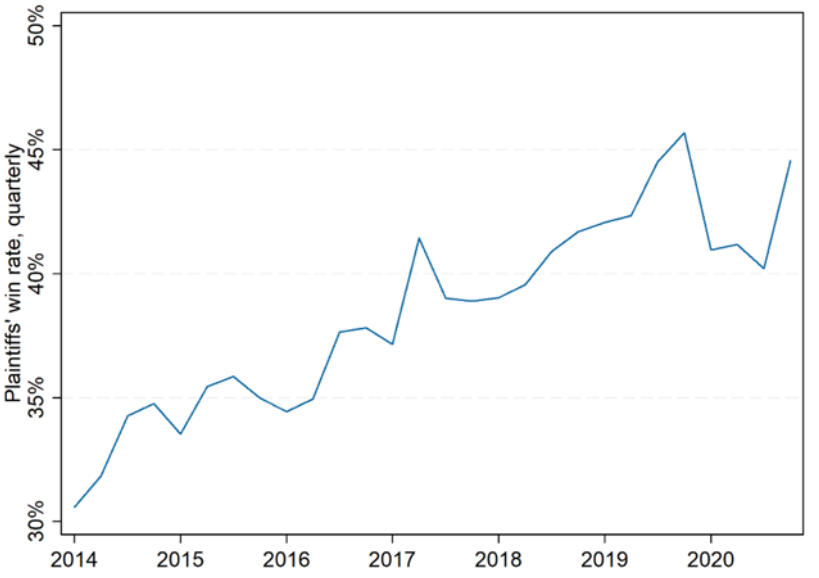

Figure 2. Plaintiffs' Win Rate, 2014–2020
Notes: Here, and below, the date of a case is identified by the date of judgment.

administrative decisions, the cases against them usually concern their reconsiderations of lower-level governments' decisions, which overlap with other first-instance decisions. We do not include cases that are closed with rulings, as rulings generally concern procedural rather than substantive issues. Our sample for the analysis of plaintiffs' win rate includes 237,751 first-instance administrative adjudications. To be precise, our measurement of the win rate is based on fully adjudicated cases. Cases of suits against a central or provincial government and cases that ended with rulings were excluded.

An immediate question is how to define winning a case in administrative litigation. When judges consider an administrative action to be unlawful, they can rule in one of four ways: they can require the government defendant to amend its action; revoke the administrative action; order the government defendant to take a certain action; or declare that the administrative action was illegal or invalid. In most cases, it is easy to determine whether a case was won or lost by examining whether the judge made any of the above four decisions. However, in some instances, the plaintiff may have multiple complaints, and the court may only support some of them. In these cases, we follow the previous literature and consider the plaintiff to have the victory if the court supports at least one claim.[21] We make this determination because any claim supported by the court compels the defendant to take remedial action, making a victory for the plaintiff. This is also how the government internally determines whether a case was lost. Every level of government assesses its departments and lower-level governments' performance in upholding the rule of law as part of the officials' performance evaluations (*fazhi zhengfu pingfen* 法治政府评分). Losing any claim in an administrative lawsuit is considered a loss and leads to a reduction in the assessment score.

We found that, during the reform period, courts were significantly more willing to decide against the government. Overall, plaintiffs' win rate rose steadily from 33.2 per cent in 2014 to 42.2 per cent in 2020. As shown in Figure 2, plaintiffs' overall win rate was 30.6 per cent in the first quarter of 2014 and reached 44.6 per cent by the end of 2020. During the fourth quarter of 2019, the win rate

21 Cao, Liu and Zhou 2023; Zhou et al. 2021.

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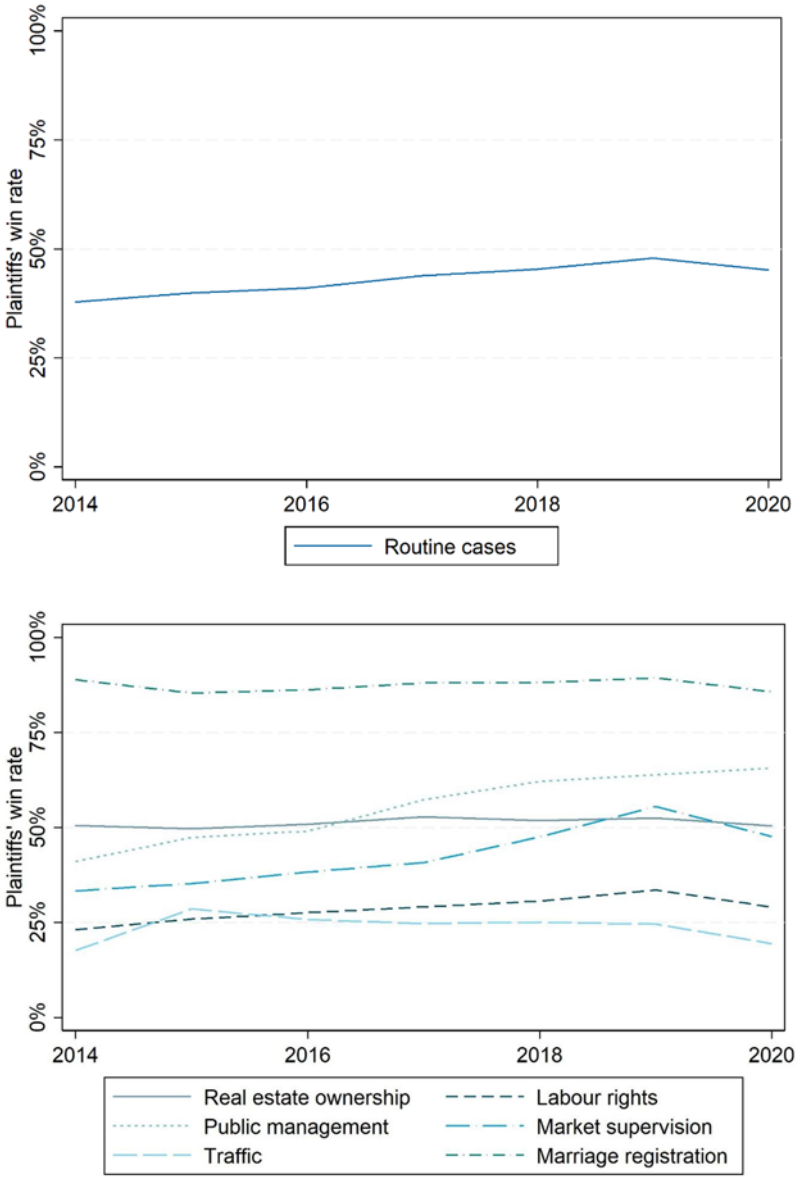

Figure 3. Plaintiffs' Win Rate in Routine Cases, 2014–2020

reached 45.7 per cent, suggesting that courts were ruling against the government in 45.7 per cent of cases. An overall upward trend was seen throughout the reform period, with minor fluctuations. The increase in win rate should also be considered against the backdrop that the total number of cases increased sharply in the same period, further suggesting that the judiciary has become more effective in checking the actions of local governments.

Notably, as shown in Figures 3 and 4, most types of cases have seen an increase in plaintiffs' win rate. This includes cases related to expropriation (discussed below), which were influenced by the expansion of the scope of cases for judicial review, as well as most other cases that were not under the same influence.

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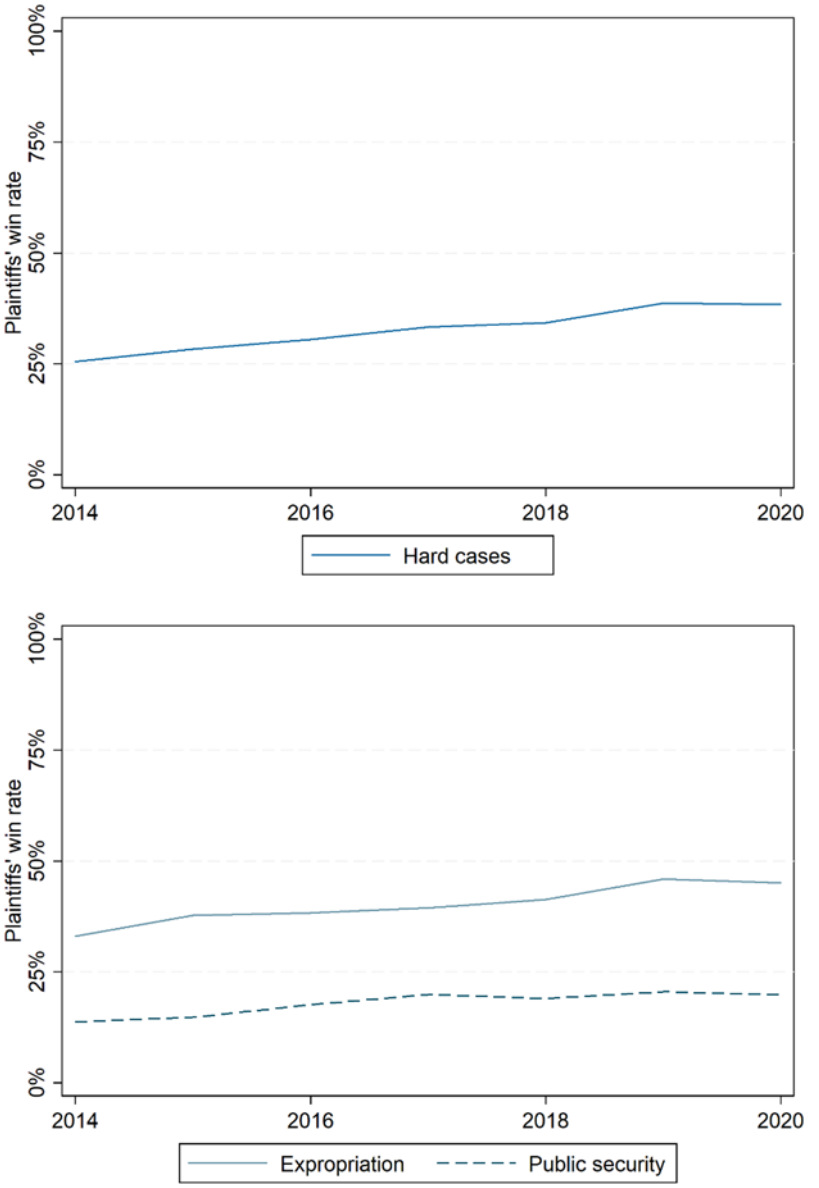

Figure 4. Plaintiffs' Win Rate in Hard Cases, 2014–2020

Plaintiffs' win rate sorted by routine and hard cases

We sorted the cases into routine and hard cases to analyse their trends separately. For routine cases, plaintiffs' win rate increased from 37.8 per cent to 45.1 per cent (Figure 3). This increase was largely driven by cases concerning labour rights, public management and market supervision issues. For cases concerning real estate ownership registration, traffic penalties and marriage registration, the overall win rate of the plaintiffs remained steady from 2014 to 2020.

In hard cases, plaintiffs' overall win rate rose from 25.5 per cent to 38.4 per cent, an increase of 12.9 percentage points, or a 51 per cent increase from the baseline (Figure 4). In expropriation cases, the plaintiffs' win rate reached 45.1 per cent in 2020, roughly equal to the win rate in routine

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cases. In public security cases where the police are the defendant – they are considered the most challenging defendants in administrative litigation – the win rate rose from 13.7 per cent to 19.8 per cent. These increases should be considered in light of the fact that the new ALL expanded the scope of cases eligible for judicial review, and the case registration reform brought more cases into the courtroom.

Examples of hard cases: compensation for land expropriation and challenging police detention

The increase in plaintiffs' win rate in hard cases suggests a strengthening of judicial checks and balances. We give two examples to illustrate this finding. The first involves an analysis of whether judges are more likely to support plaintiffs' claims and *directly* order compensation in eminent domain cases. Seeking compensation for demolition and land expropriation is presumably the hardest part of expropriation cases. In expropriation, the government is obliged to provide the property owner with "just compensation" (*heli buchang* 合理补偿). However, the standard of "just" compensation is elusive. Property prices fluctuate, and the factors that influence pricing vary. Judges tend to defer to the government's evaluation of prices. Even in cases where judges believe that the price offered was significantly unfair, they tend to order the government to adjust the compensation rather than directly award a specific compensation amount. This trend has altered since the beginning of the reform period, and judges are generally becoming more confident in determining compensation themselves. In 2014, judges ruled in favour of 2.8 per cent of claims where the plaintiffs requested a specific amount of compensation. This percentage rose to 7.7 per cent by 2020. While this absolute proportion remains small, the increase is significant relative to the baseline (Figure 5). It should be considered against the context that judges may sometimes be less capable than the government at determining the amounts of compensation, given that administrative agencies handle expropriation compensations on a daily basis and have significant informational advantages. Furthermore, judges' proactive role in awarding compensation has real effects on plaintiffs' decisions to litigate; more plaintiffs came to court with compensation claims. In 2014, plaintiffs claimed compensation in 24.7 per cent of expropriation cases. This percentage increased to 41.4 per cent in 2020 (Figure 5).

The second example concerns whether courts are more likely to overrule police detention decisions. Police detention, which is formally known as administrative detention, is arguably the most severe administrative penalty that the government can directly issue. It is a convenient tool that the police can use to punish misdemeanours, discipline non-compliant individuals and suppress potential social unrest. For a long time, courts have deferred to public security bureaus and have been hesitant to review police decisions. Even when such a review was made, courts were careful to avoid damaging their relationship with the police. Correcting police decisions can be perceived as a challenge to police power and can potentially undermine the local government's ability to maintain social stability. Further, a judicial review that overturns administrative detention leads to state compensation for the plaintiff's loss, which is usually sourced from the public security bureau's fiscal budget.

This situation has, however, gradually improved. From 2014 to 2020, the plaintiffs' win rate in detention cases rose from 9.6 per cent to 14.9 per cent (Figure 6). While a 14.9 per cent success rate in challenging police detention may not seem like a sufficient protection of citizens' rights against police abuse, the degree of improvement is significant: the chance of winning increased by 55 per cent from the baseline. Moreover, the increase in the win rate in detention cases is more noticeable than the increase in other cases concerning public security, most of which involve less severe administrative penalties, such as fines (Figure 6), suggesting that the improvement in judicial power is more substantial than it might initially appear.

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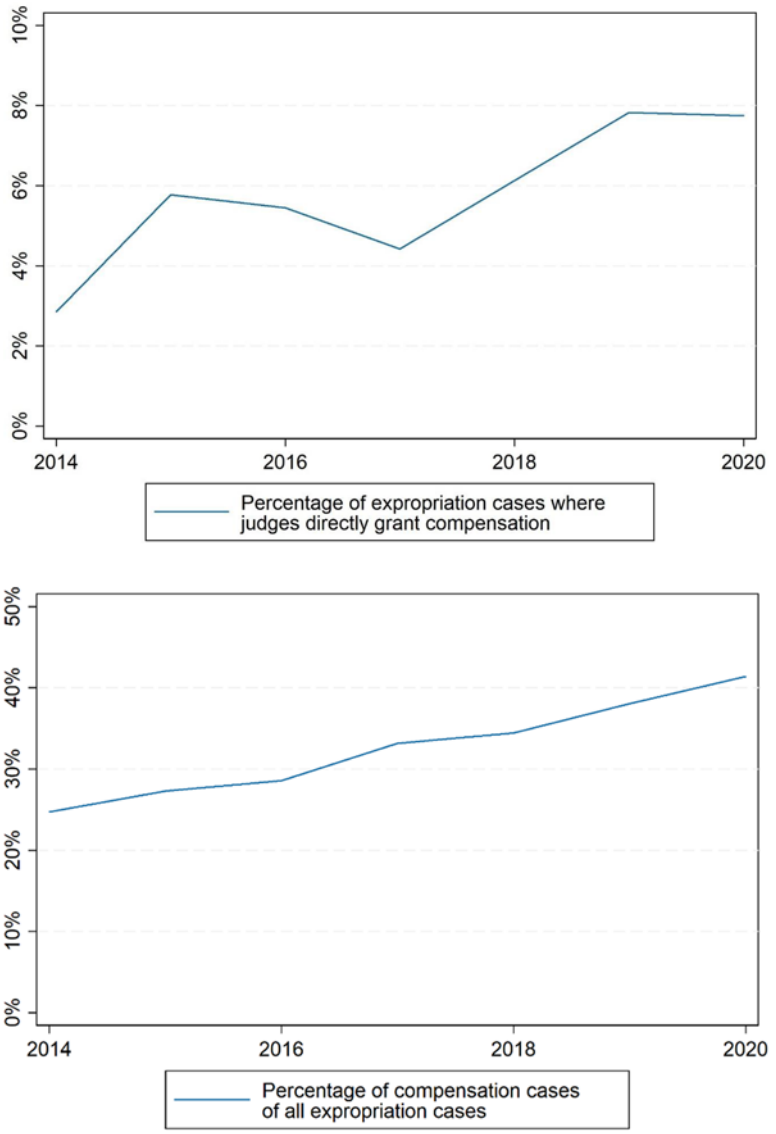

Figure 5. Expropriation Compensation Cases

Interpreting the rise in plaintiffs' win rate

How do we interpret the increase in both the number of cases and in plaintiffs' win rate? One explanation is, of course, that the judiciary, empowered by the administrative law reform and many other judicial reforms in the same period, may be more willing and able to protect citizens' rights against the government. Alternatively, one may suspect that the growth stems from increased wrongdoing on the part of local governments, leading to more lawsuits and more losses. These accounts can be grouped under the headings of the "stronger judiciary" interpretation and the "worse government behaviour" interpretation. A closer analysis suggests that the former is much more probable.

We track data on public attitudes towards local governments, finding that public satisfaction with local governments and local officials substantially increased during the study period – evidence that

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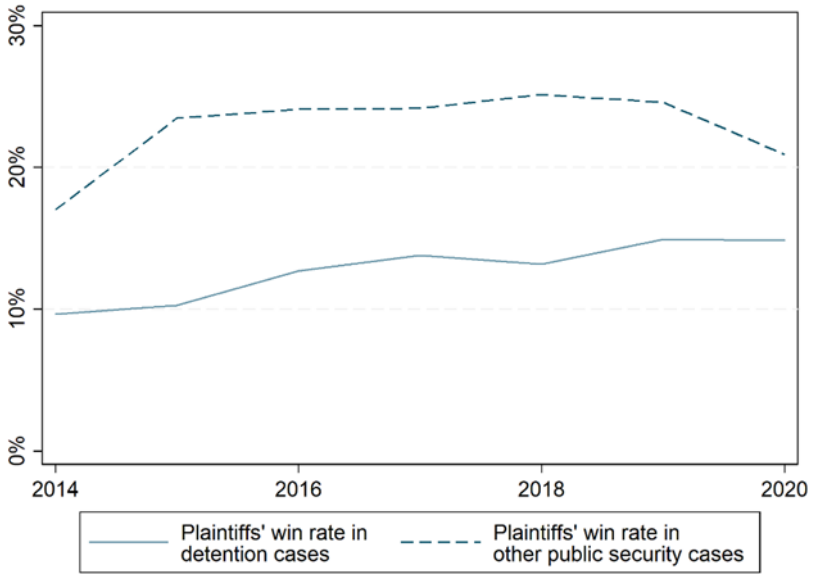

Figure 6. Plaintiffs' Win Rate in Detention Cases vs Other Public Security Cases

is difficult to reconcile with the interpretation that government performance has deteriorated. Our data are drawn from the China Family Panel Studies (CFPS), a nationwide longitudinal social survey.[22] During our study period, four rounds of CFPS surveys were conducted, in 2014, 2016, 2018 and 2020. In these surveys, the same respondents were asked about their belief in the credibility of their county-level local government officials and the performance of their county-level local government. The average score given by the respondents (on a scale of 0–10) on the credibility of their local government officials increased from 4.98 in 2014 to 5.65 in 2020, a 13 per cent rise (Figure 7). For the performance of their county-level local government, the average score (on a scale of 1–5) also grew, from 2.55 in 2014 to 3.63 in 2020, a 42 per cent increase (Figure 7). These results indicate a substantial improvement in public trust in local governments and local cadres.

While the concurrent increase in the courts' capacity to review government actions and the rise in public trust in the government does not necessarily establish a causal relationship, it does offer suggestive evidence against the argument that the increased win rate for plaintiffs in administrative litigation is the result of growing government misbehaviour.

A note on disclosure of judgment

Our study is based on data drawn from the *China Judgements Online* website. Despite the requirement of the Supreme People's Court (SPC) that all courts disclose all judgments from 2014 to 2020, many studies have found that not all judgments are made public.[23] In addition, some studies have found that courts are selective in the judgments that they choose to disclose.[24] This selectiveness may pose challenges for research.[25] One central concern is that courts, seeking to preserve the government's reputation, may selectively disclose judgments, possibly disclosing fewer judgments in which the government lost.

22 Online Appendix A3 provides a brief introduction to the CFPS.
23 Liebman et al. 2020; Tang and Liu 2019.
24 Liu et al. 2022.
25 We discuss a related issue, data retraction after 2021, in online Appendix A4.

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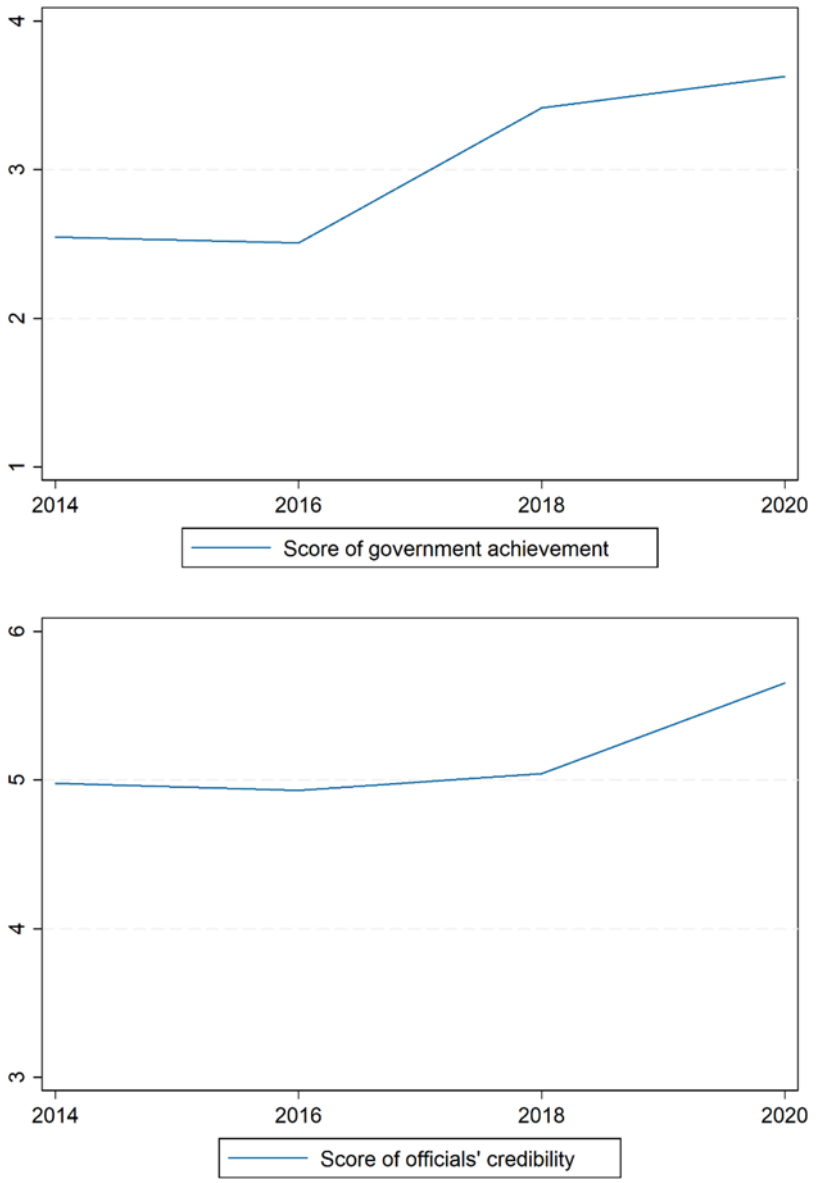

Figure 7. Public Attitude towards Local Governments and Officials

Of course, if courts are disclosing fewer judgments in which the government lost, this could mean that our research underestimates the plaintiff's win rate. In other words, the plaintiffs' actual win rate may be even higher than our estimate. Furthermore, because our goal was to longitudinally compare the plaintiffs' win rate over time, as long as the court's selective disclosure has remained generally consistent over the years, our longitudinal comparison remains valid. There is, at present, no evidence suggesting that courts have become increasingly biased in their disclosure practices during our study period.[26]

26 Ibid.

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While potential issues of selective disclosure do not alter our main conclusions, we have made efforts to address this concern in a detailed analysis of the available data. Our primary approach involved estimating the judgment disclosure rate across various regions (cities) throughout the country. We then examined the correlation between the disclosure rate of judgments and the plaintiffs' win rate in administrative cases in each region. If the courts did indeed selectively disclose fewer judgments of cases where the government lost, we would expect to observe a positive correlation in the data between the judgment disclosure rate and the plaintiffs' win rate.

However, our analysis did not reveal any such correlation. Figure A1 in the online Appendix depicts the relationship between the judgment disclosure rate and the plaintiffs' win rate in administrative cases across 252 cities from 2014 to 2020. We further conducted correlation and regression analyses (controlling for city and time fixed effects, as well as factors such as the city's economic development and population). We found no evidence of this issue. This finding implies that the courts did not suppress judgments in which the plaintiff won and the government lost. Therefore, our estimated win rate is likely to be a reliable reflection of the actual win rate in the population of administrative cases.

Chief Government Officials' Attendance in Courts

There is also evidence to suggest a notable increase in the attendance of chief government officials at trials, which was a rare event before the reform period. Following the amended ALL, chief officials became legally obligated to personally attend trials where their agencies were being sued. For instance, if a local public security department is sued, the department head or deputy head should be present to represent the department in court. The immediate impact of this new law was significant. According to our data, in 2014 and early 2015, officials personally attended only 6 per cent of trials. However, by the end of 2015, this rate had risen to approximately 20 per cent. By the end of 2020, chief officials personally attended over half of the trials conducted nationwide (Figure 8).

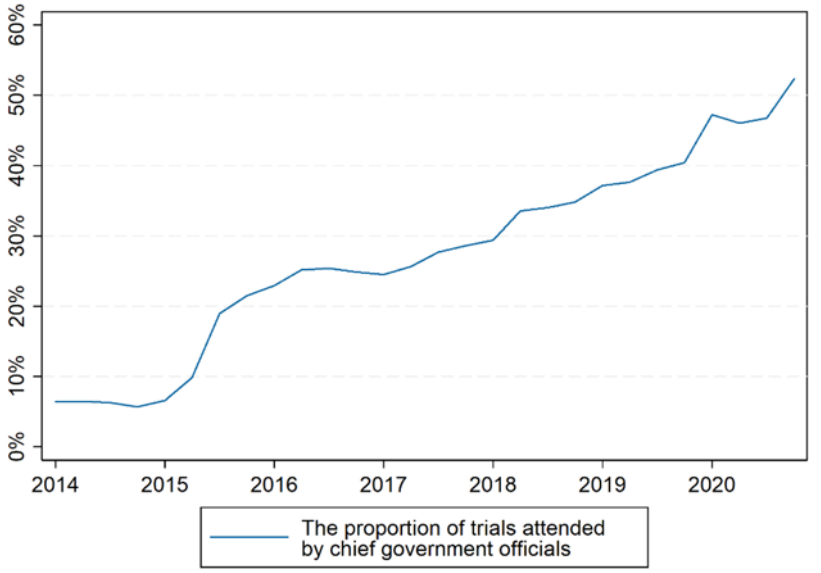

Figure 8. Proportion of Trials Attended by Chief Government Officials

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This significant shift can be traced back to a series of specific policy requirements implemented by the Party and the central government during the reform period. In August 2016, the SPC issued a notice that detailed how the government should respond to administrative litigation. It specified that a court could publicize, or even penalize, a local government official's refusal to attend a trial. While it is doubtful any court would actually exert this authority, it symbolizes the central government's intent to bolster judicial authority. In 2018, the SPC's interpretation of the ALL stipulated that the chief officials of the defendant's agency must obtain approval from their agency or a superior agency to justify their absence from court. In 2020, the SPC issued additional provisions that empowered courts to review an official's justification for absence. If the justification was deemed unreasonable, courts could issue judicial suggestions to supervisory authorities and the defendant's superior government body. Furthermore, courts were directed to disclose any official's absence to the public and report statistics, analyses and evaluations of attendance to the local people's congress. In response to these changes, some local governments introduced detailed rules to encourage court attendance – some even added court attendance to government officials' annual performance evaluations.

Forcing government officials to sit in the defendant's seat is perhaps the most effective way to humble them before the judiciary and the law. However, the effect of their attendance goes beyond symbolism. Chief officials have substantial discretionary power and can thus make immediate decisions; their presence at a trial can enable settlements to be reached and court decisions to be enforced. Because enforcement has long been a major issue in administrative litigation, the impact of chief officials' attendance cannot be underestimated.

Improvement in Reasoning while Avoiding Substantive Review

Over time, we have observed improvements in the quality of judges' reasoning. We evaluate this using two proxies: the length of the reasoning section in a judgment and the number of legal reasons cited. While these proxies do not capture all elements and are not perfect measures of the quality of a decision, they do provide useful insights. Typically, judges invest more time and effort in constructing longer and more detailed explanations. Our analysis from 2014 to 2020 presents an increase in the average length of the reasoning section in judgments from 620 to 689 Chinese characters. This trend suggests that judges are providing more detailed and comprehensive explanations for their decisions. This increase is consistent across cases plaintiffs' win or lose (Figure 9). Judges tend to provide more reasoning in their decisions when going against the plaintiffs, with the reasoning section being an average of 46 words (or 7.5 per cent) longer. This difference is statistically significant and consistent throughout the period we study.

Judges have faced significantly heavier workloads since the beginning of the reform, as discussed above. Despite this, our findings suggest that judges have delivered a higher number of decisions and provided more in-depth explanations simultaneously.

According to Article 70 of the ALL, judges must cite specific reasons when determining the illegality of an administrative action. These reasons include the insufficiency of primary evidence, the erroneous application of laws and regulations, the violation of statutory procedures, and the overstepping of power, abuse of power and evident inappropriateness. Judges may cite one or more of these reasons to support their decisions. Figure 10 displays the average number of reasons cited by judges. The data indicate that judges are citing more articles than before. The average number of citations increased from 1.48 to 1.51. This increase is primarily driven by increased numbers of citations when ruling against government defendants, where the average number of citations given rose from 1.53 to 1.59.

The two most frequently cited statutory reasons among the six noted in Article 70 are insufficiency of primary evidence and violation of statutory procedures. A violation of statutory procedures refers to a procedural issue, while the other five reasons relate to more substantive matters. Our data show that judges were more likely to rely on procedural rather than substantive reasons when ruling against

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the government (Figure 11). In particular, in all cases in which the government defendant lost, judges cited violation of statutory procedures as a reason in 62.3 per cent in 2014 and in 74.9 per cent in 2020. By contrast, the number of citations of the insufficiency of primary evidence fell from 67.0 per cent to 60.6 per cent. The remaining four reasons were cited in only around 24 per cent of cases.

Courts' preference for citing procedural issues instead of substantive ones can be seen as both a strategic move to leverage their own sources of power and as a sign of caution. On one hand, procedural rules are determinate and therefore are more convenient to use than substantive legal standards. Owing to the increasing caseload and complexity of disputes (as evidenced by the rise in

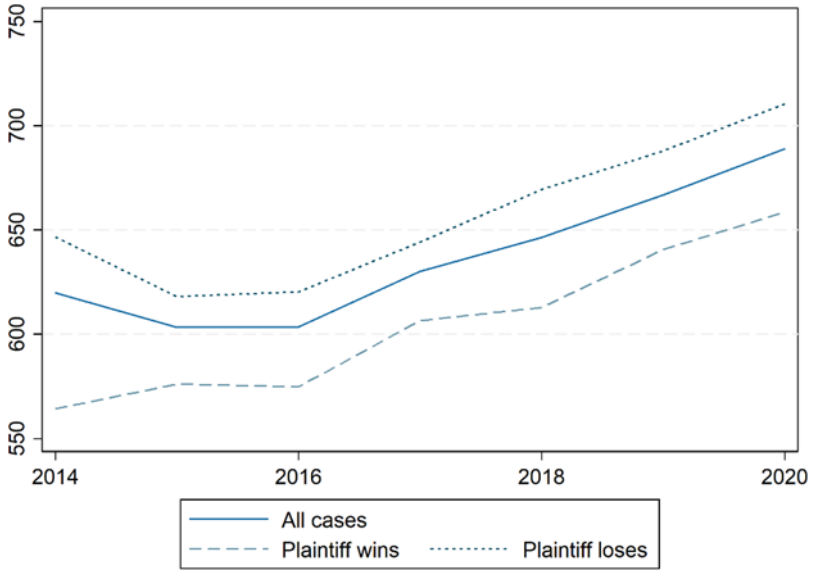

Figure 9. Average Lengths of Judges' Reasoning (words)

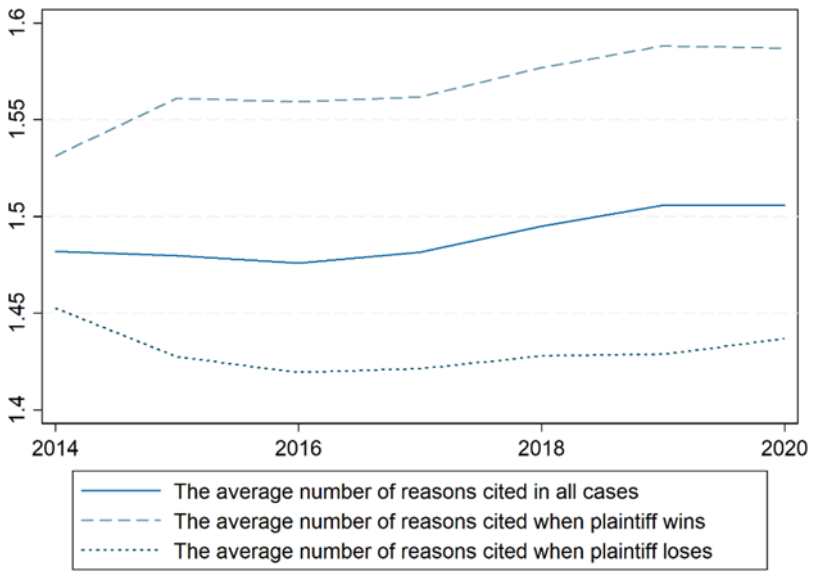

Figure 10. Average Number of Reasons Cited in Reasoning

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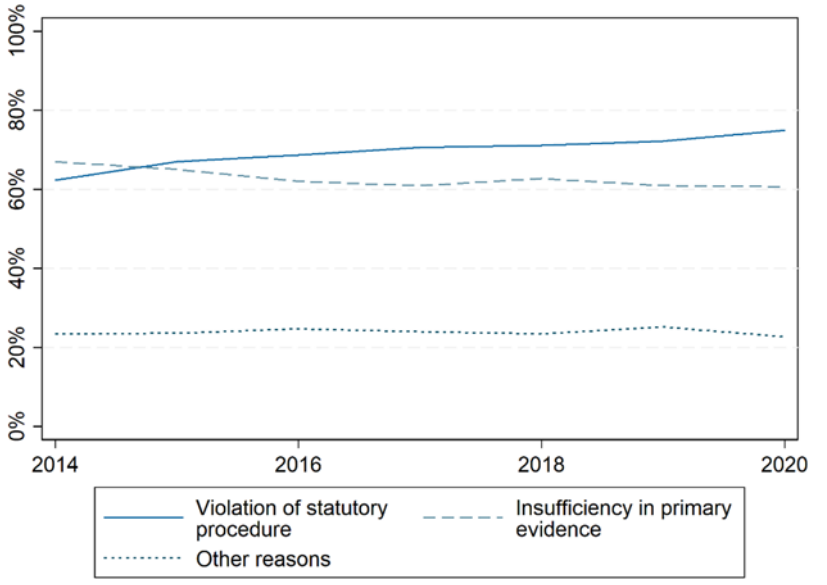

Figure 11. Reasons Cited When Plaintiff Wins

hard cases), Chinese courts tend to favour simple rules over conducting in-depth analyses of factual issues in government actions and discretion.[27] On the other hand, courts are also choosing to focus on procedures to limit their own judicial review power for the sake of self-preservation. While the state grants courts the authority to oversee and regulate local governments, it is crucial that courts do not become overly powerful and risk undermining government authority.[28] An emphasis on procedural bases is not unique to Chinese courts. Procedural decisions are often courts' area of expertise and can depoliticize potentially controversial decisions, even in countries where courts are much more independent than they are in China.[29]

A decline has been seen in the number of citations of insufficiency in primary evidence. Primary evidence refers to the chain of evidence (including the legal basis and factual evidence) in support of the legality and the appropriateness of the administrative action under scrutiny. Decreasing numbers of citations suggest that courts are refraining from reviewing the most basic substantive issues in cases. While this may indeed alleviate the tension between the court and the administrative defendant, it could also compromise the perceived trustworthiness of the judiciary. The simultaneous rise in procedural decisions and decrease in substantive decisions hint at the possibility that courts are favouring low-cost (procedural) remedies and dismissing high-cost (substantive) remedies, and that perhaps the government is itself complicit in this strategy. However, this again suggests that courts retain greater power to scrutinize government actions, although they are doing so with caution.

The Limits of the Rise: The Party's Decisions and Citizens' Political Rights

In spite of the expansion of the courts' power, certain boundaries cannot be crossed. Courts do not have the legal authority to review the decisions or actions of the Party, even when such decisions and actions directly impact individual citizens. Additionally, courts seldom intervene to safeguard

27 Liu and Li 2019.
28 Mao and Qiao 2021.
29 Delaney 2016.

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Table 5. Judicial Decisions Concerning Political Rights

	2014	2015	2016	2017	2018	2019	2020	Total
Freedom of speech	6	6	10	2	14	13	10	61
Freedom of assembly, procession, and demonstration	121	266	232	242	199	163	77	1,300

citizens' political rights, such as freedom of speech, assembly and demonstration. While these boundaries are not surprising, given the legal and political context of China, they remain significant.

The Party's decisions and actions

The Party's pervasive presence means that its specific decisions and actions, in addition to its policy, can have a significant impact on citizens' interests. However, according to Articles 2 and 12 of the ALL, only administrative actions taken by the administrative agencies or other authorized organizations can be subject to administrative litigation. In official discourse, courts lack a legal mandate to review the Party's actions because the Party is not part of the government *de jure*. This grants the Party immunity from judicial review or monitoring, and, in practice, courts behave with strict adherence to this law. As a result, we have found very few cases concerning the Party in our data, most of which concern government decisions that are issued jointly with the Party.

In reality, the Party's immunity creates a grey area for local governments, leading them to increasingly issue decisions jointly with the Party for the very purpose of avoiding judicial review. The contradiction between the Party's increasing involvement in daily activities and the limited number of judgments concerning these activities suggests that many cases suing over these joint decisions were declined to be heard by the courts.

Overall, as the Party's role in governance continues to expand, the lack of judicial oversight over its activities raises serious concerns about administrative accountability and transparency in local governments.

Political rights

We study two issue areas concerning citizens' political rights in which courts can, in theory, provide remedies: government infringement of freedom of speech, and infringement of the freedom of assembly, procession and demonstration. Our data suggest courts play little if any role in protecting these political rights from the government's administrative actions.[30]

Of the more than one million first-instance administrative cases from 2014 to 2020, we find 72 mentioning the keyword "freedom of speech" (Table 5). Of these, 61 were closed by judgment, and plaintiffs won in only *one* case, in which the judge ruled that the police violated statutory procedure when they summoned the plaintiff for investigation. In other cases, the plaintiffs were punished with administrative detention for 3 to 15 days because of their improper statements on public occasions or in social media; the courts upheld the penalties for the plaintiffs' "disorderly conduct." Put differently, in cases where courts reviewed administrative penalties related to freedom of speech, plaintiffs' win rate was as low as 1.6 per cent, much lower than the win rate in other lawsuits against the police.

To provide some background, Chinese law (for example, Article 35 of the Constitution) stipulates a wide range of basic political rights for the people, including the right to vote and stand for election; freedom of speech; freedom of the press; freedom of assembly, association, procession and demonstration; and freedom of religion. Constitutional rights are not justiciable in China. Judges cannot cite the Constitution in their reasoning as a basis for judgment. Specifically, the freedom of speech,

30 Note that we do not discuss criminal sanctions or criminal litigation.

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Table 6. Plaintiffs' Win Rate in Cases of Assembly vs Cases of Procession and Demonstration

	All	Concerning Abnormal Petitions to Beijing
Assembly cases	7.5% of 415 cases	2.2% of 139 cases
Procession and demonstration cases	10.8% of 1,261 cases	4.7% of 665 cases

although it is mentioned in the Constitution, is not specifically referenced in any other Chinese law. This explains why we find very few cases related to this keyword in our data.

The second type of case is administrative litigation arising from police penalties on illegal assemblies, processions and demonstrations. In addition to the Constitution, two specific laws regulate assembly, procession and demonstration, and according to these laws, all assembly activities need prior approval from the police.[31] Anyone found to be acting without approval will be punished with administrative detention for 10 to 15 days. We found 1,300 cases challenging these police penalties (Table 5).[32] The plaintiffs won 142 (10.9 per cent) of them. However, when assemblies, processions and demonstrations are directed against the central government (and are thus more political), the plaintiffs' win rate becomes substantially lower. Of the 1,300 cases, 694 arise from police detentions for abnormal petition (*feizhengchang xinfang* 非正常信访) to Beijing. In these cases, the plaintiffs took assembly, procession and demonstration actions to petition (*xinfang* 信访) central government agencies and other "highly sensitive" sites in the hope of exerting significant pressure on the local governments. The plaintiffs' win rate in these cases is much lower, at 4.5 per cent (31 out of 694).

The lower win rate seems to have solid grounding not only in politics but also in the letter of the law. Articles 20 and 47 of the "Regulation on petitions" state that petitioners should not gather around national agencies and block traffic; if they do so, they could be detained under the law.[33] Even when court rulings were in the plaintiffs' favour, judges mostly ruled that the police had committed minor violations of statutory procedure or misinterpreted the law in deciding detentions; otherwise, the courts largely deferred to the police's assertions of facts.

We also sort the 1,300 cases into cases related to assembly and those related to procession and demonstration; 376 of these cases concern both (Table 6). We find that plaintiffs are less likely to win in cases of assembly, which presumably place more pressure on the government.

Discussion and Conclusion

A major debate concerning changes in the Chinese political system under Xi's rule pertains to the role of the law in political and social life. Some see China as retreating from legal reform and returning to centralized and unchecked authoritarianism. The law has become increasingly subordinated to the control of Party leaders. Legal enforcement has become more arbitrary and repressive, and the judiciary has been weakened in relation to the administrative government.[34] By contrast, another strand of scholarship argues that Chinese politics has become substantially more law oriented.[35] The

31 Law on Assemblies, Processions, and Demonstrations of the People's Republic of China, 27 August, https://www.gjxfj.gov.cn/2009-08/27/c_139952810.htm. Accessed 29 March 2025; Public Security Administration Punishments Law of the People's Republic of China, 29 August 2005, https://www.gov.cn/zhengce/2005-08/29/content_2602177.htm. Accessed 29 March 2025.

32 We searched all the first-instance administrative litigation documents using keywords including "assembly" (*jihui*), "procession" (*youxing*) and "demonstration" (*shiwei*). To reduce omissions, we also used synonyms of these keywords. Cases that quote the relevant laws but have no substantial content concerning these activities are excluded from the searching algorithm.

33 "State Council regulation on petitions," 24 November 2009, https://www.gjxfj.gov.cn/gjxfj/xxgk/fgwj/xftl/webinfo/2016/03/1460416222479578.htm. Accessed 29 March 2025.

34 Fu 2019; Minzner 2018.

35 Chen, Albert H.Y. 2016; Zhang and Ginsburg 2019.

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Party has indeed consolidated its authoritarian rule, but it has done so through law. Several core legal institutions, especially the judiciary and the Constitution, have become more empowered and more important than at any point in the history of the People's Republic of China.

The debate regarding whether China has turned away from or towards the rule of law has prompted strong research interest. However, very few empirical and especially quantitative studies offer rigorous evidence for either side. This article tackles a core aspect of this debate: the role of the judiciary. It reveals the significant progress of the Chinese courts in monitoring local governments. This growth in the capability of the courts for restraining government abuse of power is evident not only in their supervision of cases related to routine government functions but also, more importantly, in their control over the power of local governments in key areas such as land expropriation and administrative detention. These findings demonstrate an increasingly active role of the judiciary in governance.

Our findings also shed light on the delicate balance among the Party, the state, the law and society in China. The influence of law and judicial institutions in China has expanded, but distinct boundaries persist, particularly as most political issues remain largely unaddressed. Previous studies have noted this dichotomy inherent in the Chinese rule of law, where authoritarian leaders actively govern according to political convenience, leaving ordinary affairs to be managed by established legal norms.[36] Our study offers new insight into where this boundary lies and the forces that have shaped it. The elevation of the courts' role in addressing routine and hard cases reflects the Party's willingness to curb local wrongdoing and strengthen central control by addressing citizens' grievances and monitoring. However, when these grievances and monitoring undermine the Party's legitimacy, citizens' access to legal and formal institutions will be shattered. In political cases, the instinct to preserve authority and stability easily supersedes the need for checks and balances, leading to a collusion between the central and local governments against citizens' rights.

The Party and the central government maintain a watchful stance over the granting of power to the judiciary. This underlines yet again the limitations of the role of the law under an authoritarian system. Over two decades ago, in the Qi Yuling 齐玉苓 case – the first to cite the Constitution – part of the judiciary actively sought constitutional power and authority. Today, this attitude has entirely dissipated. Courts exercise extreme caution when handling political cases and remain apprehensive of overstepping any boundaries that might provoke the Party's mistrust.

Supplementary material. The supplementary material for this article can be found at https://doi.org/10.1017/S0305741025000311.

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