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The Role of Chinese Administrative Courts in Mediating Interregional Inequality

This paper evaluates the relationship between local administrative courts and regional development in China from the 1990s onwards. Development in China differs by region, with higher economic markers measured in southern and eastern regions. Explanations for these variations include differences in history, culture, infrastructure, geography, and resource concentration. Some regions have benefitted from the growth of specialized industries and investments that contributed to development, without extensive government intervention. Policies utilized by the Chinese central government to stimulate development include deregulation, regional development plans, and decentralization of economic decisions. Responding to inequality between regional development, particularly the gap between rural and urban development, the Chinese government has promulgated several development plans focusing on central and western regions.

One factor that has been studied for its role in strengthening institutions and governance at the regional level is administrative courts. While current literature reviews the role of administrative law and administrative litigation and its effect on corruption, rule of law, and administrative reform, there are fewer measurements between the role of administrative litigation and administrative oversight on economic development. Evidence indicates that the efficacy of administrative courts differ by the wealth in a region; regions with a higher GDP correlate with a higher level of judicial independence and greater responsiveness to administrative lawsuits. This paper describes how administrative courts function, how they may correlate with economic growth, and broader reflections on institutional capacity in China.

I. An Overview of Chinese Development

A. Regional Inequality in China

There is a higher level of development in China's eastern and southern regions than the western and central regions, both in gross domestic product, and in Human Development indices that capture measures of life expectancy and education, in addition to per capita income.¹ This gap is a result of market advantages and historical and geographic circumstances.

The uneven regional development has been attributed to preferential economic treatment during the initial era of market liberalization, and specialized markets that predated centralized economic planning.² China permitted non-state enterprises and foreign investments in specially exempted zones during the 1970s and 1980s along the Eastern coast. When additional economic regions in western and central China were liberalized after this period, they lagged in investment, especially since lucrative industries were already established in other regions.

Historical development factors also played a role in the present day inequality in regional development. Coastal regions benefitted from their proximity to rivers and the ease of transporting goods along these natural routes. During the 1960s local economies had specialized

¹ Fang Yang, Dingzhong Zhang, Chuanwang Sun, *China's Regional Balanced Development Based on the Investment in Power Grid Infrastructure*, 53 RENEWABLE AND SUSTAINABLE ENERGY REVIEWS, 1551 (Nov 2015), <https://www.sciencedirect.com/science/article/pii/S1364032115010369>.

² Demurger et. al, *The Relative Contributions of Location and Preferential Policies in China's Regional Development: Being in the Right Place and Having the Right Incentives*, 13 China Economic Review, 447 (2002), <http://faculty.econ.ucdavis.edu/faculty/woo/Demurger-Sachs-Woo-Bao-Chang.LocationVsPolicy.CER.pdf>.

and established exchanges, creating local trade markets.³ These “macro-clusters” of markets along the South and Eastern Regions had specialized industries, such as footwear in Wenzhou.⁴ These regions were competitive regionally and among state supported enterprises. The diversity of niche markets within local economies continued as the Chinese government implemented centralized development plans.

While the Eastern and Southern regions developed goods competitive within markets, the western and central regions of China remained agrarian economies. Though the GDP of the entire country grew, it was predominantly due to the manufacturing industry boom in the eastern and southern regions at the turn of the century; the rural central and western region lagged. In 2009 the Central Party implemented “The Rise of Central China Plan,” emphasizing the growth of agricultural grain exports, energy mineral mining, manufacturing, and technology.⁵ The plan included incentives for foreign investors, including tax exemptions, preferential land use policies, and priority status for infrastructure projects. For Western China, the Central Party implemented development plan focused on tax incentives, including tax holidays for enterprises.⁶

B. Chinese Economic Growth and the Growth of Local Governance

In the World Economic Forum’s 2017 Report, China was ranked 28 of 138 for competitiveness.⁷ The report surveyed executives who stated the largest obstacle to conducting business was access to financing, more than political instability, or inefficient government bureaucracy. The World Bank has ranked China as 78th in the world for doing business in overall. This was a higher ranking that followed improvements that made it easier to start a business, and pay taxes.⁸ China continues to aggressively pursue economic growth, with economists and government officials expressing apprehension over the “middle income trap.” Yet officials recognize that rate of GDP growth is not sustainable and is focusing on focusing on equalizing regional development, and increased investments in untapped markets.⁹

³ Hilda C. Eitzen, *Dilemmas of Diversification: Regional Economic Development And Business Industrial Clusters in China and Kazakhstan*, 4 JOURNAL OF EMERGING KNOWLEDGE ON EMERGING MARKETS, 11 (Nov 2012), <https://digitalcommons.kennesaw.edu/cgi/viewcontent.cgi?referer=https://duckduckgo.com/&httpsredir=1&article=1087&context=jekem>.

⁴ *Id.*

⁵ Nancy Huang, Joie Ma, Kyle Sullivan, *Economic Development Policies for Central and Western China*, CHINA BUSINESS REVIEW, (Nov. 2010) <https://www.chinabusinessreview.com/economic-development-policies-for-central-and-western-china>.

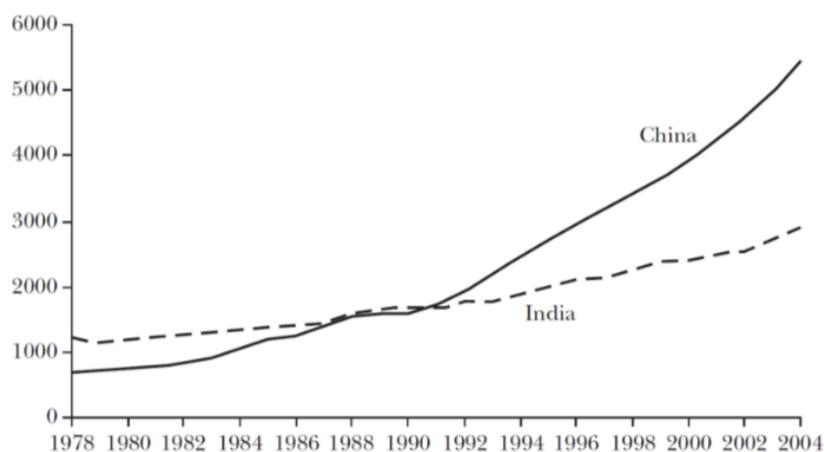
⁶ *Id.*

⁷ Klaus Schwab *The Global Competitiveness Report 2016-2017*, WORLD ECONOMIC FORUM, 146 (2016), http://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017_FINAL.pdf.

⁸ World Bank Group, *Doing Business 2018: Reforming to Create Jobs Economy Profile China*, WORLD BANK (2018), [http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Profiles/Country/CHN.pdf](http://www.doingbusiness.org/~/media/WBG/DoingBusiness/Documents/Profiles/Country/CHN.pdf).

⁹ *Supra* note 1.

Figure 1
GDP per Capita
 (constant 2000 international purchasing power parity dollars)



Source: World Bank's 2006 *World Development Indicators*. This purchasing power parity measure of GDP standardizes for differences in the prices of common products across countries and over time.

Concurrent with China's economic growth and development plans are changes in Chinese law, specifically the decentralization of the judiciary and growth of local decision-making.¹⁰ Regional governance is a key element of supervising regional development, and in determining the allocation of resources and land.¹¹ As economic activity increases within a region, there is less capacity for the central state to continue top-down control in regulating businesses, thus businesses increasingly rely local government for enforcement of business deals. As regional economies grow, local governments and local judicial bodies play a larger role in facilitating and regulating economic activity.¹²

II. Components of the Chinese Judicial and Administrative State

A. Growing Judicial Independence in China

The Chinese judicial system is the government body that upholds national law and adjudicates complaints, and Chinese courts and administrative courts determine dispute outcomes with independent reasoning.¹³ Despite the government's statement of judiciary independence the Chinese judiciary has deferred to other state actors; in a 1994 survey a third of judges found "it is inappropriate for the court to offend administrative departments," signaling

¹⁰ Donald Clarke, Peter Murrell, Susan Whiting, "The Role of Law in China's Economic Development," in *The Roles of Law and Politics in China's Development*, 378 Guanghua Yu, Eds. (Springer, 2014), <http://econweb.umd.edu/~murrell/articles/ChinaInstitutions.pdf>.

¹¹ Chenggang Xu, *Chinese Reforms and Chinese Regional Decentralization*, POLICYDIALOGUE.ORG, 2 (Nov.2006), http://policydialogue.org/files/events/Xu_Chinese_Reform_and_Chinese_Regional_Decentralization.pdf

¹² *Id.*

¹³ Xin He, *Judicial Innovation and Local Politics: Judicialization of Administrative Governance in East China*, THE CHINA JOURNAL, no 69, 20 (2013), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2026304.

their reluctance to challenge government agencies despite their role in adjudicating complaints.¹⁴ As the Chinese judiciary has developed, independence from other state actors has grown. This is in part due to structural changes; previously courts were funded by the local party through the local government, and party officials appointed court officials.¹⁵ However after the past decade of judicial reforms, funding is no longer from the local government and instead is sourced from the national budget. This change has been linked to fewer preferential decisions to the businesses that contribute the most in taxes to local governments.¹⁶

The Chinese judicial branch has been growing in its autonomy beyond these structural rearrangements. Randall Peerenboom notes that even in authoritarian contexts, courts “may enjoy considerable independence,” particularly in commercial law if not political and civil matters.¹⁷ Literature on court behavior indicates that while courts do not act entirely independent of party interests, they are also not controlled or dominated by party interests.¹⁸ The result of this relationship is rather than being subservient to the ruling party, courts are political actors that act strategically to accrue power within the broader government system.¹⁹ The judiciary attempts to create increase its authority, just as any other political actor does.²⁰

According to scholar Xin He, the orthodox view of Chinese courts as passive agents no longer reflects the role they play, particularly when translating law into local contexts.²¹ There are hundreds of courts, from the China Supreme People’s Court to the provincial level. However courts must balance the public and political perception as an independent government branch that serves the people, while appearing to be “in harmony” with the other elements of the government and the Central Party.

Chinese courts establish their interlinked yet independent stance in a variety of ways. Judgments made in favor of plaintiffs indicate favorable outcomes for individual citizens, so in order to appear non-aligned with the plaintiffs or avoid the appearance of advancing the cause of discrete interests groups, courts have increased the level of mediation and settlements between parties.²² Courts may guide mediation towards a desired outcome agreed upon by the two parties, rather than determining the outcome by law on their own authority. This practice of mediation and dispute resolution helps courts isolate themselves from political actors who look for favorable court rulings through court decrees.²³

The political power of the judges within the party structure also affects the level of interference in court’s independent judicial decision making; judges with higher rankings in the party experiencing less external interference in the judgments. Additionally, the number of

¹⁴ Kevin J. O’Brien and Lianjing Li, *Suing the Local State: Administrative Litigation in Rural China*, 51 THE CHINA JOURNAL, 81 (Jan. 2004), <https://www.journals.uchicago.edu/doi/abs/10.2307/3182147?journalCode=tj>.

¹⁵ *Supra* note 13 at 25.

¹⁶ *Id.*

¹⁷ *Judicial Independence in China: Lessons for Global Rule of Law Promotion*, CAMBRIDGE UNIVERSITY PRESS, 3 (2010), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1543003.

¹⁸ *Supra* note 13 at 25, “there is room for courts to maneuver in the current political structure.”

¹⁹ *Id.*

²⁰ Xiaohong Yu, “Rise of Local Courts in China: Judicial Hierarchy, Institutional Adaptation and Regime Resilience”, paper presented at the conference “China’s Changing Courts”, Columbia University Law School, 2009, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2026304.

²¹ *Supra* note 13 at 20.

²² *Id.* at 25.

²³ Ji Li, *Suing the Leviathan-An Empirical Analysis of the Changing Rate of Administrative Litigation in China*, J. OF EMPIRICAL STUDIES, Vol 10 Issue 4, 825 (Dec. 2013) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2102369.

judges in all courts has increased, from 60,000 in 1981, to over 190,000 in 2004, providing greater judicial capacity to hear disputes.²⁴ The professionalization of Chinese judges has also been standardized; in 1987 only 17% of judges had junior college degrees, but as of 2000 it was a requirement in order to serve as a judge. Notably, provinces that have more judges with higher legal education have more legal hearings.

B. The Chinese Administrative State and Oversight

The Chinese administrative system, and judicial system more broadly, adheres to a code-based regime.²⁵ Unlike common law, code law is a comprehensive list of law and enforcement, which may lead to less need for judicial arbitration and interpretation. The second characteristic of the Chinese administrative system is its comprehensive scope. The Chinese administrative state intersects with almost every element of a citizen and corporation's existence. One of the salient characteristics of administrative states within developing countries is that they act as the primary nexus between the private citizen and the state. As noted by Tom Ginsburg, a number of essential rights are determined by the administrative state, rather than through constitutions.²⁶ In China separate administrative courts function in 31 regions.

Accompanying this large authority is a variety of checks and instances for review of an administrative agency's actions. The first is legislative supervision; the National People's Committee ("NPC") provides the budget for administrative agencies, appoints and removes officials, and investigates the agency's actions.²⁷ The NPC also has direct oversight over the substance of an agency's actions by issuing their own interpretations of legislation as guidelines for agencies, and by reviewing local rules for consistency with those interpretations. The Discipline Committee system, established in 1993, oversees administrative officials in rulemaking and in particular acts executed by an agency.²⁸ The Discipline Committee has the authority to investigate, conduct discovery, and punish agency officials. Despite these official capacities, the Discipline Committee's actions are still far from providing robust oversight authority, the committee requires approval for major acts, and has been noted to lack in funding and staff to fully carry out its mandate.²⁹

The Ministry of Supervision has the role to oversee and prevent agency excess and abuses.³⁰ However, like the Discipline Committee it is understaffed, and focuses on high-ranking party officials. Finally the Procuratorate, the investigatory and prosecutor arm of the

²⁴ Yuhua Wang, *When Do Authoritarian Rules Tie Their Hands: The Rise of Limited Rule of Law in Sub-National China*, PhD dissertation, University of Michigan, 15 (2011), https://deepblue.lib.umich.edu/bitstream/handle/2027.42/86417/wangyh_1.pdf;sequence=1.

²⁵ Albert H. Y. Chen, *Reflections on Administrative Law in China: A Hong Kong Perspective*, UNIVERSITY OF HONG KONG, (Sept 2009), <http://ssrn.com/abstract=1474739>.

²⁶ Tom Ginsburg, "The Judicialization of Administrative Governance: Causes, Consequences and Limits," in *Administrative Law and Governance in Asia: Comparative Perspectives*, Tom Ginsburg & Albert H.Y. Chen eds. (Routledge, 2008) https://deepblue.lib.umich.edu/bitstream/handle/2027.42/86417/wangyh_1.pdf;sequence=1.

²⁷ Randall Peerenboom, *Globalization, Path Dependency, and the Limits of Law*, 161 Berkeley, J. Int'l L, 228 (Apr. 2001), <https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?referer=https://duckduckgo.com/&httpsredir=1&article=1200&context=bjil>.

²⁸ *Id.* at 230.

²⁹ *Id.*

³⁰ Ji Li, *Dare You to Sue the Tax Collector-An Empirical Study of Administrative Lawsuits against Tax Agencies in China*, PAC. RIM L. & POL'Y 57, 65 (2014).

government, is deputized to take on an oversight role of all agencies. Findings against agencies are difficult to substantiate since agency officials may cite their discretion in any actions the agency pursues, and additional pressure from the legislature or other party officials are necessary in order to bring a case to investigation.³¹

Individuals and entities may challenge administrative decisions directly through administrative reconsideration, a zero-cost process by which individuals challenge an agency through a designated entity authorized to provide reconsideration decisions. But reconsideration agencies are a part of the larger administrative state, and are not sufficiently independent from the agency under review to provide unbiased reviews of an agency's actions. There is also no requirement for reconsideration entities to conduct a hearing, and the rights of the party making a complaint like reviewing the evidence provided by the defending administrative agency, are rarely enforced.³² Despite it being free and faster than administrative litigation, individuals are less likely to prevail in administrative reconsideration cases, so it is a less used supervisory check over agencies.

Finally, in an attempt to increase participation in administrative rule making in December 2017, the State Council of China passed rules allowing for public input into rulemaking. In addition to proposals that may be submitted to agencies, agencies must provide forums for the public to comment on new rules.³³ However the requirement to solicit public comments does not necessitate the agencies will take them into account in forming their final rules, particularly because there is no comment period required for agencies to respond to the public.

C. Administrative Courts

While it has been argued that the weak position of the judiciary relative to the other political actors in China means there is little role for courts in development, in reality the courts, and specifically administrative courts, are becoming more significant actors at the regional level.³⁴ As a part of the expansive administrative state, administrative courts act as both interpretive and enforcing regimes over a wide variety of issues; they have jurisdiction over administrative litigation cases involving labor disputes, worker's rights, land disputes, environmental claims.³⁵ Given the tepid success of administrative oversight agencies discussed above, there has been an expansion in and growth of administration litigation.

1. Administrative Litigation

The Administrative Litigation Law, also known as the Administrative Procedure Law, was passed in 1990 and allows for review of the legality of an administrative act and agency rules.³⁶ Article 11 of the Administrative Litigation Law specifies the procedure, jurisdiction, and

³¹ *Id.*

³² *Supra* note 27.

³³ Shen Kui, *Participatory Rulemaking in China Needs Even More Effort*, THE REGULATORY REVIEW (Apr. 9, 2018) <https://www.theregreview.org/2018/04/09/shen-participatory-rulemaking-china/>.

³⁴ *Supra* note 10 at 401.

³⁵ Randall Peerenboom, *More Law, Less Courts, Legalized Governance Judicialization and Dejudicialization in China*, 7, (Sept. 2008), <http://ssrn.com/abstract=1265147>.

³⁶ *Supra* note 30 at 67.

judge's role in adjudicating administrative laws in China.³⁷ Under the law, administrative agencies may be challenged in court, and the number of administrative cases has increased ten times between its passage in 1990 to 2009.³⁸

Following the Administrative Litigation Law, other administrative statutes were passed to regulate state compensation, administrative appeals, licensing, and rulemaking.³⁹ Sector specific statutes were also passed to regulate environmental protection, land use, taxes, banking, and securities.⁴⁰ In addition to laws curtailing administrative discretion, two State Council directives were issued requiring administrative decisions to align with statutes, further limiting agency discretion.⁴¹ However in 2007, the Central Party's Administrative Department issued a statement encouraging administrative disputes to be settled, which Xin He argues is contrary to the intent behind the passage of the Administrative Litigation Law, and would result in less administrative litigation and challenges of administrative agencies.⁴²

No agency law may be challenged before the rule is put into place as a specific application of a law must be challenged.⁴³ Citizens may now challenge an administrative court for not "protecting one's rights of the person and of property," widening the scope of potential administrative litigation cases.⁴⁴ Second, the Administrative Litigation Law puts the burden of proof on the defendant, thereby making the government responsible for proving the administrative procedures taken before the court.⁴⁵ The Administrative Litigation Law allows citizens to petition for administrative review of an agency's actions.⁴⁶ Under Article 65 of the Administrative Litigation Law, citizens may take government officials to court to challenge how an administrative agency behaves, and courts may issue non-binding judicial suggestions.⁴⁷

Judicial suggestions are informal communications between the court and government organizations. These suggestions set time limits for responses, after which agencies must inform the court what steps they have taken to fulfill the recommendations. Courts may choose to report agency officials to the Party Disciplinary Department, which has the power to terminate an official's role. Through this chain, despite acting as a non-binding recommendation, courts still exert indirect authority over the careers of individual bureaucrats if they fail to respond to the court's rulings. Beyond disciplining agencies, judicial suggestions are recommendations and guidelines; by issuing them, courts act in an advisory role.⁴⁸ Article 65 of the Administrative Litigation Law allows administrative courts to automatically transfer funds from the administrative agency if they refuse to pay the amount levied from a decision, ensuring enforcement of financial penalties.⁴⁹

Administrative courts may require an agency chief to appear in court when summoned; in some regions, agency chiefs who miss two administrative court summons are dismissed from

³⁷ Bixin Jiang, *Review of Administrative Decisions of Government by Chinese Courts*, SUPREME PEOPLE'S COURT OF PEOPLE'S REPUBLIC OF CHINA, 2, <http://www.aihja.org/images/users/1/files/china.en.0.pdf>.

³⁸ *Supra* note 13 at 20.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Supra* note 13 at 24..

⁴² *Supra* note 23 at 832.

⁴³ *Supra* note 33.

⁴⁴ *Supra* note 37.

⁴⁵ *Id.*

⁴⁶ Article 37, P.R.C. Administrative Litigation Law, http://www.gov.cn/flfg/2006-10/29/content_1499268.htm.

⁴⁷ *Supra* note 13 at 66.

⁴⁸ *Id.* at 41.

⁴⁹ *Supra* note 37 at 2.

their position.⁵⁰ Some of these appearances are also broadcasted on regional and national television stations. In Nantong, there was a forty percent increase in agency officials appearing in court after broadcasting began.⁵¹ The increase in public visibility of administrative officials may contribute to greater accountability and better administration.

The inclusion of agency officials in the courtroom, judicial suggestions, and media coverage of administrative court proceedings and statements by agency representatives, elevates the perception of the court's importance and authority.⁵² The combined usage of these actions allows courts to coax agencies to behave according to the court's wishes, without outwardly compelling them to do so.

2. Features of Administrative Courts and Plaintiffs

The composition and features of judges in administrative courts also determine the relative power they have in enforcing compliance from administrative agencies. Unlike the civil courts that have a backlog of pending cases, there are sufficient administrative courts to provide timely administrative court hearings and the addition of judges does not resolve any underlying issue in terms of a lack of capacity to take on cases.⁵³ However, only 22.5% of administrative court cases had an attorney represent the plaintiff; only 3.1% of attorneys conduct administrative litigation work. So while there are sufficient administrative judges for each case, there may be a lack of attorneys familiar with administrative litigation available to represent clients in cases.⁵⁴

One factor related to the professionalization of judges is an increased sympathies expressed for disadvantaged plaintiffs, which is may be expressed through more favorable rulings for individuals who challenge agencies.⁵⁵ Second, regions in China with greater economic development have more judges with advanced degrees, and a higher level of sophistication in advancing innovative approaches to judicial opinions that encourage agencies to comport with the court's rulings.

Administrative court oversight may also be more specialized, like the China Securities Regulation Commission, which enforces regulations through administrative court hearings.⁵⁶ Administrative decisions were relied upon in part because there was a lack of expertise for civil courts to hear these cases. The use of administrative courts has allowed for "firm-specific" solutions in complicated cases.⁵⁷

There is a measurable difference in agencies able successfully defend themselves in courts based on their power. Two agencies rarely lose to plaintiffs, the tax bureau, and the Public Security Bureau, the nation's police agency.⁵⁸ In 2008 the Public Security Bureau, responsible for all national police forces, did not lose a single case brought before the administrative courts.⁵⁹

⁵⁰ *Supra* note 13 at 29.

⁵¹ *Supra* note 13 at 29.

⁵² *Supra* note 13 at 17.

⁵³ *Supra* note 23 at 825.

⁵⁴ *Id.* at 827.

⁵⁵ *Supra* note 13 at 34.

⁵⁶ Katharina Pistor and Chenggang Xu, *Governing Emerging Stock Markets: Legal v. Administrative Governance*, CORPORATE GOVERNANCE, Volume 13, no 1, 8 (Jan. 2005) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=645423.

⁵⁷ *Id.* at 9.

⁵⁸ *Supra* note 23 at 825, citing Nantong Intermediate Court where the Public Security Bureau did not lose once in 2008; *Supra* note 30 at 70.

⁵⁹ *Supra* note 13 at 34.

A similar trend exists in the willingness of plaintiffs to bring cases against powerful agencies. Citizens are more reluctant to sue major agencies like the tax bureaus, assuming either a likelihood of failure, or an inability to have the opinion enforced.⁶⁰ Additionally, repeat interactions with an administrative agency deters entities from wanting to counter the agency. If a citizen or business expects a long relationship with an agency they are less likely to bring an administrative suit.⁶¹

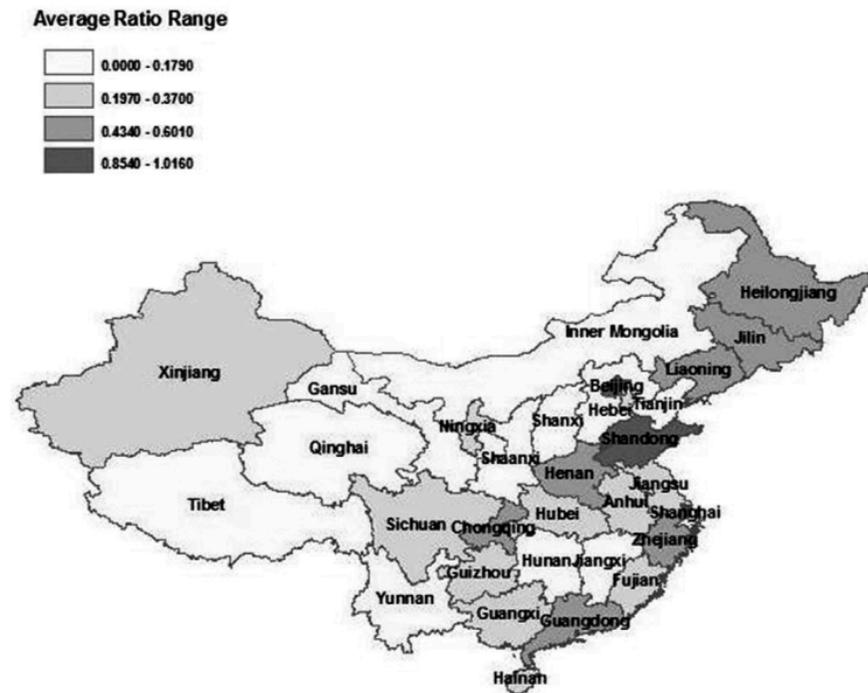
III. Administrative Litigation and Regional Development

Administrative cases have increased from 12,000 cases in 1990 to over 120,000 cases per year in 2009.⁶² However, researchers note that the number of cases brought before administrative law courts may not capture the full number of administrative battles, as many are mediated and settled out of court.⁶³ The number of cases brought forth generally correlated with the level of economic development in the region.

A. Administrative Litigation by Region

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Figure 2: Average ratio of administrative lawsuits per 10,000 people (2003 to 2009) by province.



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⁶⁰ *Supra* note 30 at 58.

⁶¹ *Supra* note 30 at 84.

⁶² *Supra* note 13 at 24.

⁶³ *Supra* note 23 at 832, citing Tom Ginsburg and Glenn Hoetker, *The Unreluctant Litigant? An Empirical Analysis of Japan's Turn to Litigation*, 35 J. OF LEGAL STUDIES, 55 (Jan. 2006), <http://home.uchicago.edu/~tginsburg/pdf/articles/TheUnreluctantLitigant.pdf>.

⁶⁴ *Supra* note 30 at 84.

The number of attorneys per capital in Beijing is double that of other provinces who have a similar GDP.⁶⁵ There are a disproportionate number of attorneys who participate in administrative law cases compared to other provinces – though the number of attorneys in Beijing is proportional to the number of national administrative agencies located in the region.

In the 2006 City of Nantong in the Eastern region of Jiangsu, chief officials who failed to appear before the court began to be censured in their party performance assessment. The censure created an incentive to comply with administrative court summons, thereby securing more authority of courts over administrative parties.⁶⁶ All 126 judicial suggestions that have been issued by the Nantong courts have received positive feedback, or have been implemented.⁶⁷ By 2009, in half the administrative law cases in the province, the plaintiffs either prevailed or settled with the government.

By contrast, Henan, a province in central China, has a history of administrative agencies discouraging rural villagers from filing administrative complaints. In one account a resident was detained by Security forces for advertising information about tax policy that he had read in the newspaper.⁶⁸ In administrative tax litigation there was only an 11.7% success rate for plaintiffs.⁶⁹

One element involved in the Henan province tax litigation is the relative wealth of those with claims against tax collectors; low-income citizens have little of their income taxed, and few reasons to make appeals before the court.⁷⁰ Due to fees leveraged by tax assessors, corporations have a larger incentive to challenge tax agencies in court. A feature of tax cases in the Henan is that the state will hire lawyers as their attorneys to defend the tax bureau's decisions. These same administrative lawyers later appear as attorneys for corporate plaintiffs. The repeat actor in administrative tax cases is not the corporation challenging the tax assessment, but the attorneys representing their interests. As a result, these attorneys are more likely to encourage their corporate clients to settle or enter mediation with the tax bureau with whom attorneys have a relationship, capturing favorable settlements for their client.⁷¹

B. How Regional Development Affects Administrative Litigation

The economic development, dominance of an industry, and control by bureaucrats of administrative matters determine the responsiveness of administrative courts to administrative litigation. The frequency of administrative litigation in turn, reflects the existing development within a region and the judicial independence of the courts from administrative agencies.

In an empirical sampling of administrative court complaints from the Legal Affairs Office, there was a higher ratio of administrative lawsuits per 10,000 people along the entire East

⁶⁵ *Id.*

⁶⁶ *Supra* note 13 at 22.

⁶⁷ *Id.* at 34; one response by the Industry and Commerce Bureau read in part, “Later this month, we will further launch a city-wide review of legal enforcement practices, and rectify problematic practices within the time limits.”

⁶⁸ *Supra* note 14 at 78.

⁶⁹ *Supra* note 30 at 68.

⁷⁰ *Supra* note 30 at 84.

⁷¹ *Supra* note 30 at 108; “With state agencies being their major clients, administrative law attorneys, when representing the plaintiffs, cannot constantly be zealous guards of their client's legal interests, and may persuade the plaintiffs to settle even when a trial would be more beneficial.”

coast of China's border, with the highest number in Shandong Province.⁷² This indicates that administrative litigation, like business litigation, increases with GDP.

According to Xin He, the less developed a region, the less administrative law will be utilized as a means of resolving disputes. This is because of a lack of resources available to commit to ensuring an independent judicial process, rather than courts that may dismiss claims.⁷³ Second, when a category of cases intersects with the sector of the economy driving development in a region, the administrative courts are less likely to hear those cases. For instance, in areas in which real estate is driving local growth, the administrative courts are less likely to accept real estate cases for judicial hearings.⁷⁴

It is easier for bureaucrats to retaliate against plaintiffs for bringing administrative lawsuits in rural provinces, since there are fewer administrative agents with broader control, who more easily communicate with other administrative departments about litigants. Retaliation against individuals is more difficult for administrative agents in urban areas as they have limited authority since they are one of numerous agents, making them less likely to interact with the same individuals on a repeat basis.⁷⁵ Unlike rural administrators, urban administrators have less authority and have experience more oversight over their actions, and thereby have less discretion to abuse their power. This may play a factor in the willingness of individuals to bring complaints against administrators by creating an expectation that bureaucrats and administrative agencies will be held accountable for their actions.

Overall there is a correlation between urban areas and higher levels of administrative litigation. It has not been determined whether administrative courts have created more responsive state agencies, leading to higher GDP growth and development, or if a state with a high GDP has led to a stronger administrative courts and agencies. Likely both of these relationships are occurring simultaneously. Further emphasis by the Central Party on regional development will demonstrate whether administrative agencies treat all actors equally and follow established judicial reasoning, and determine the quality of development when bolstered by institutional capacity of administrative agencies and responsive judiciaries.

There is little effect seen between the presence of foreign investments and administrative litigation. It may be that foreign companies are less likely to violate or challenge administrative laws.⁷⁶ However external investors may dictate the level of administrative court activity without directly bringing administrative cases. When investors rely on contract enforcement, local officials are more likely to comply with administrative court hearings. Yuhua Wang argues that investors have formed a new constituent group that courts serve, and that when administrative court decisions intersect with business interests, agencies are more deferential to court decisions.⁷⁷ Based on these trends, it is likely there will be an increase in administrative decisions as urbanization occurs in rural areas; businesses will pursue favorable rulings through administrative litigation.

A final important component in understanding the rise of administrative lawsuits is that institutional changes take time; it will take time to adjust the culture sufficient for individuals to

⁷² *Supra* note 23 at 827.

⁷³ *Supra* note 13 at 34.

⁷⁴ *Id.* at 34.

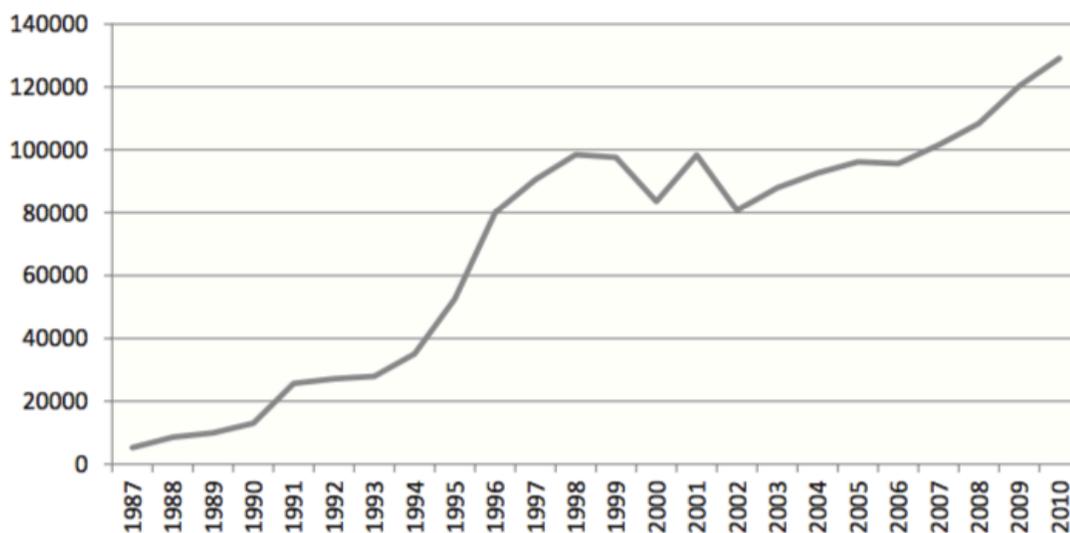
⁷⁵ *Supra* note 23 at 831.

⁷⁶ *Supra* note 23 at 840; "In sum, the regression results cast doubt on the efficacy of the top-down reforms intended to improve the administrative litigation system. Scholars should shift their attention to the power structure at the law-enforcement level to search for means to move China a step closer to the rule of law."

⁷⁷ *Supra* note 24.

feel comfortable suing agencies, rather than assuming agencies are immune to challenges.⁷⁸ Wealth itself is also a factor in creating a more accountable state; as the resources in China grow at an individual and institutional level, more investments can be made to ensure an independent and robust administrative state from internal mechanisms and external challenges.⁷⁹ Better administrative courts may be dependent on greater economic growth, and more economic growth will likely lead to increased administrative litigation.⁸⁰

Figure 1: Growth of administrative lawsuits in China (1987–2010).



NOTE: Data for years between 1987 and 2008 are from He Xin, *Study of Withdrawn Administrative Cases* (2008); data for 2009 and 2010 are from the statistical reports of the SPC, available at its official website. The graph illustrates the long-term growth trajectory of the number of administrative lawsuits.

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⁷⁸ Randall Peerenboom, *What Have We Learned about Law and Development? Describing, Predicting and Assessing Legal Reforms in China*, 27 MICHIGAN JOURNAL OF INTERNATIONAL LAW, 841 (Mar. 2008) [HTTPS://PAPERS.SSRN.COM/SOL3/PAPERS.CFM?ABSTRACT_ID=1099521](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1099521).

⁷⁹ *Id.* at 842.

⁸⁰ *Supra* note 24 at 15.

⁸¹ *Supra* note 23 at 819.

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*Donald Clarke, Peter Murrell, and Susan Whiting*Table 11.2. *Cases accepted by courts of first instance, 1983–2001*

Year	Economic	Civil	Administrative	Criminal
1983	44,080	756,436		
1984	85,796	838,307		
1985	226,695	846,391		
1986	322,153	989,409		299,720
1987	366,456	1,213,219	5,240	289,614
1988	508,965	1,455,130	8,573	313,306
1989	690,765	1,815,385	9,934	392,564
1990	588,143	1,851,897	13,006	459,656
1991	563,260	1,880,635	25,667	427,840
1992	652,150	1,948,786	27,125	422,991
1993	894,410	2,089,257	27,911	403,267
1994	1,053,701	2,383,764	35,083	482,927
1995	1,278,806	2,718,533	52,596	495,741
1996	1,519,793	3,093,995	79,966	618,826
1997	1,483,356	3,277,572	90,557	436,894
1998	1,455,215	3,375,069	98,463	482,164
1999	1,535,613	3,519,244	97,569	540,008
2000	1,297,843	3,412,259	85,760	560,432
2001	1,155,992	3,459,025	100,921	628,996
Average annual growth (%)	18.8	8.3	21.8	4.7

Sources: Judicial Statistics (2000); *Law Yearbook of China* (various years).

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⁸² *Supra* note 10.