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**Administrative Conflicts in China: Initiation,
Escalation and Resolution**

Presenter

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Administrative Conflicts in China: Initiation, Escalation and Resolution

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This paper draws on a collaborative project on the Institutionalization of Legal Reforms in China between Profs. Shen Mingming, Yang Ming (Research Center for the Study of Contemporary China (RCCC), at Peking University), Yanqi Tong (University of Utah), Wenfang Tang (University of Pittsburg), Jinyun Liu (University of Michigan), and myself. We are all indebted to the RCCC staff for their outstanding work, particularly Yan Jie and Chai Jingjing. Financial support of the Ford Foundation, Peking University and Yale University is gratefully acknowledged.

Since authoritarian regimes—by definition—stifle (or ban) electoral competition and limit contestation, few of their citizens are willing to bear the high transaction costs of challenging unfavorable decisions made by government agencies. If they have grievances, fear may deter victims from taking any action, and if they are brave enough to challenge the authorities, we would anticipate that they would first turn to other dispute resolution mechanisms. Confronting the government in court is likely to be hazardous.

The case of China during the reform era presents us with a remarkable anomaly among authoritarian regimes: although it remains authoritarian, the government appears to have made credible commitments to reform its legal institutions, and move closer to the received notion of the rule of law. (Cohen and Hsu 2003; Ho 2004; Keith 1994; Li et al. 1985; Lubman 1996; Lubman 1999; Mansfield Center for Pacific Affairs. 2000; Peerenboom 2002; Potter 2003; Sãoma and Huang 2000; Shi 2000; Turner-Gottschang, Feinerman, and Guy 2000; United States Congressional-Executive Commission on China 2002; United States. Congressional-Executive Commission on China. 2003; United States. Congressional-Executive Commission on China. 2004; Wang 2002; Wang 2000)

Though Chinese society is by no means as litigious as the United States, more than five million cases are filed in Chinese courts annually. Furthermore, the Chinese state's commitment to legal reforms is not simply a matter of strengthening the legal architecture in which disputes among ordinary citizens are resolved; it has gone much further by introducing important laws and regulations that allow an increasing number of citizens to challenge government decisions directly. Specifically, the Administrative

Litigation Law of 1989 (A.L.L.) allows Chinese citizens to challenge government decisions in court.¹

In authoritarian regimes, strategies of accommodation have the advantage of signaling loyalty. If ‘exit’ is precluded and ‘voice’ repressed, victims have powerful incentives to extract concessions by demonstrating their loyalty to existing institutions (Hirschmann, 1970). Working ‘within the system’ avoids the risk that confronting a specific decision may be misinterpreted as a challenge to the political system as a whole, and result in retaliation, or worse. Accommodating strategies also have lower information costs. Since they are accepted, and may even be encouraged, potential users can infer the odds of success by observing whether and how fellow citizens make use of it.

Rare and untested strategies of confrontation are risky, because victims know little *ex ante* about the way officials are likely to react if they are used. The payoffs may be large, but risk-averse individuals are unlikely to choose them. Solving the collective action problem is difficult, even more so under dictatorship, although we know empirically that popular protests are possible (Almeida 2003; Lohmann 1994; Lohmann 1997). Protests can sometimes take the form of violent resistance, including in China (Strand, 1990; Ho 2004; Tanner 2004; Zhao 2004). But we also know that revolutions are rare events, because collective action is difficult to organize (Olson, 1966), resistance is

¹ *Xingzheng Susong Fa* (行政诉讼法). Article 2 of the 1989 Law (in force since 1990) states that “If a citizen, a legal person or any other organization considers that his or its lawful rights and interests have been infringed upon by a specific administrative act of an administrative organ or its personnel, he or it shall have the right to bring a suit before a people's court in accordance with this Law.” In addition, a number of related regulations have been put in place, including “The Regulations on Administrative Reconsideration”, the “State Indemnity Law”, which stipulates that “where a government agency or its personnel invades the legitimate rights and interests of a citizen, legal person or other organization, resulting in injury while performing its functions, the sufferer shall be entitled to obtain state indemnity according to this Law”, as well as the “The Law on Administrative Punishments”. See: Wang (2000).

costly and most grievances do not escalate to the point of presenting a severe challenge to the authorities. (Li and O'Brien 1996; O'Brien 1996)

Between passivity and revolution, the range of feasible alternatives available to citizens depends on the willingness of the government to supply—or at least tolerate—mechanisms of dispute resolution. These can be as formal as establishing a civil, administrative and criminal courts, but they may also entail more informal mechanisms such as the ‘Comrades’ Courts’ of Socialist Yugoslavia (Hayden, 1985), or mediation in Maoist China (Lubman, 1969).

In this paper, I address how conflicts between the Chinese state and its citizens emerge, escalate, and are resolved. The emergence of a body of administrative law offers us a very important benchmark against which to evaluate the depth and breadth of China’s political evolution. Even in democratic systems, taking the government to court is inherently political. It is even more so in authoritarian regimes: If citizens can successfully sue their dictator, the dictator no longer enforces his decisions with certainty, which undermines the very foundations of dictatorship in the first place. Even though such a regime may not have the attributes of a Schumpeterian democracy in which incumbents lose contested elections (Przeworski, 2000), authoritarian regimes in which the hands of decision makers may be tied by contrarian legal decisions are qualitatively different from capricious dictatorships in which all decisions are presumably enforceable all the time, with no judicial oversight.

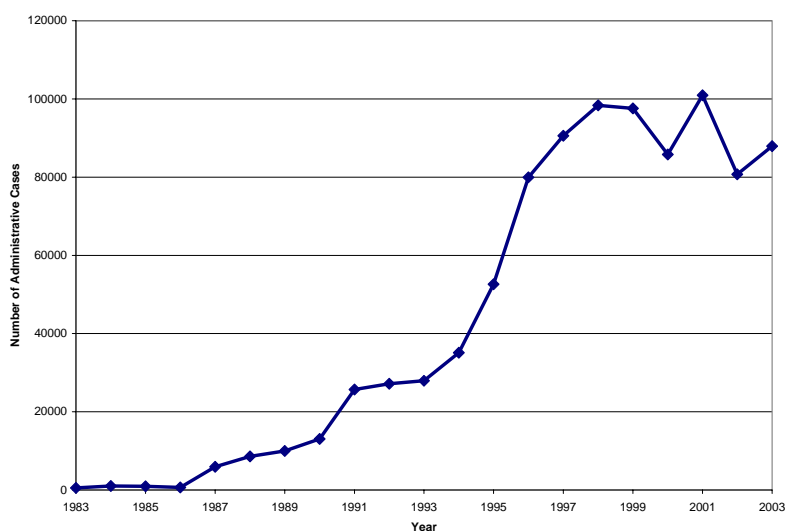
I do not assume that laws matter simply because they are printed. It is empirically grounded in the daily reality of ordinary Chinese citizens, some of whom have grievances against the state, who—given their economic, political, and social constraints and the set

of alternatives that is offered to them—choose to pursue particular strategies in order to solve their conflicts. The ‘success’ or ‘failure’ of legal reforms is not measured by the degree of institutional innovation, such as the promulgation of the A.L.L. Instead, the standard is whether the actual end-users of these new institutions end up more satisfied with the substantive outcomes than their peers who select other mechanisms of conflict resolution.

This paper proceeds in four steps. I first outline how the innovation of administrative litigation has affected the Chinese legal system since the 1990s. I then use survey data drawn from a national sample of Chinese adults to show how disputes that pit citizens against government agencies tend to emerge (Section 2); to show who is more likely to choose to escalate these disputes (Section 3); and to show which strategies of conflict resolution are more effective in the eyes of the victims (Section 4).

Section 1: The Rise of Administrative Litigation in China

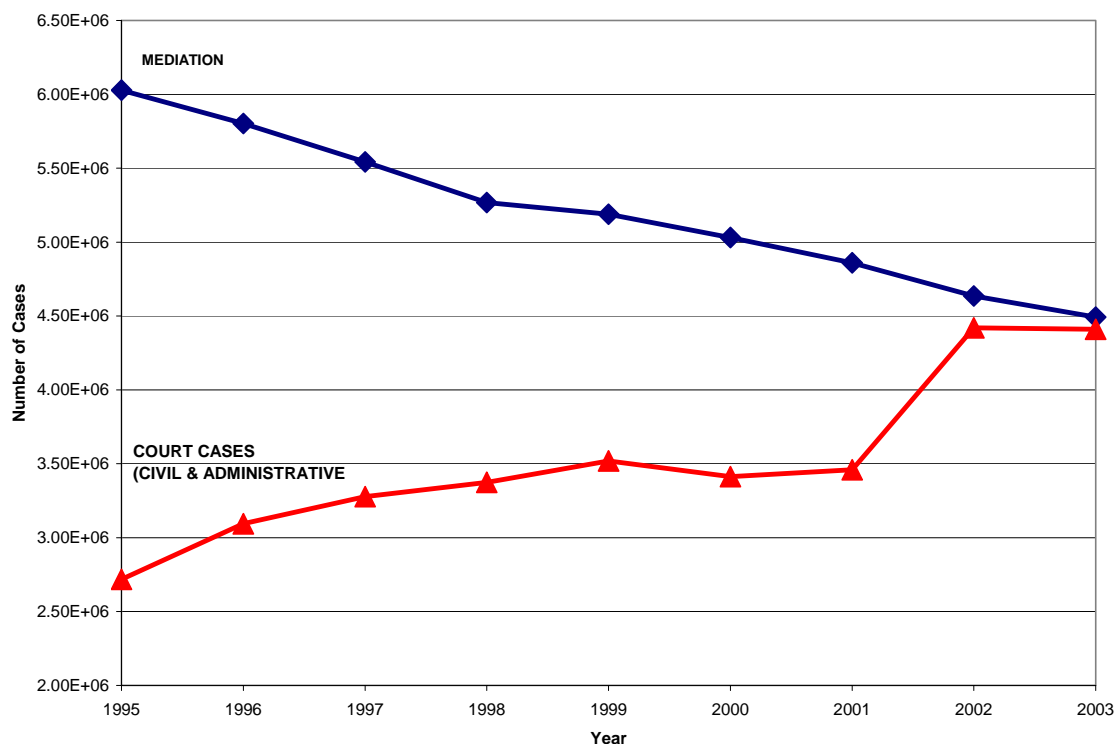
Chinese legal reforms in the post-Mao era have produced a vastly more formal infrastructure. In very short order, countless laws have been promulgated, a sophisticated corps of legal professionals has been trained, courts established, and by most accounts, reliance of formal legal institutions is rising. {Wang, 2002 #6045; US Congressional-Executive Commission on China, 2002 #5875; Wang, 2000 #6675; Shi, 2000 #5604; {Lubman, 1999 #5167; Lubman, 1996 #175} In 2003, Chinese courts processed more than five million cases, more than a tenfold increase compared to 1978. (Table 1)

Figure 1: Number of Administrative Law Cases in Chinese Courts (1983-2003)

Source: China Statistical Yearbook, 2002, 2004.

Table 1: Evolution of Criminal, Civil and Administrative cases in China, 1978-2003

Year	Total	Criminal Cases	Civil Cases	Economic disputes	Administrative Case	Maritime Cases
1978	447755	146968	300787	.	.	.
1979	513789	123846	389943	.	.	.
1980	763535	197856	565679	.	.	.
1981	906051	232125	673926	.	.	.
1982	1024160	245219	778941	.	.	.
1983	1343164	542648	756436	43553	527	.
1984	1355460	431357	838307	84813	983	.
1985	1319741	246655	846391	225541	916	238
1986	1611282	299720	989409	321220	632	301
1987	1875229	289614	1213219	366110	5940	346
1988	2290624	313306	1455130	513046	8573	569
1989	2913515	392564	1815385	694907	9934	725
1990	2916774	459656	1851897	591462	13006	753
1991	2901685	427840	1880635	566592	25667	951
1992	3051157	422991	1948786	650601	27125	1654
1993	3414845	403267	2089257	892580	27911	1830
1994	3955475	482927	2383764	1051742	35083	1959
1995	4545676	495741	2718533	1275959	52596	2847
1996	5312580	618826	3093995	1515848	79966	3945

Figure 3: Civil Cases: Mediation vs. Court Cases, 1995-2003.

Source: China Statistical Yearbook, multiple issues.

I have not been able to compile the time series specifically for administrative cases, but it is clear that for all types civil disputes combined³, reliance on the courts is eroding the use of mediation, the traditional Chinese dispute resolution mechanism *par excellence*.⁴ In 2003, only 4.5 million disputes were solved through mediation (down from about 6 million in 1995), barely more than the total number of civil disputes

³ The statistical system keeps track of the following categories of disputes: family disputes (婚姻家庭), marriages (婚姻), inheritance (继承), alimony and support (赡养抚养), other family disputes (其他), housing (房屋、宅基地), debts (债务), business (生产经营), neighborhood disputes (邻里), compensation for damages (损害赔偿), and other contractual disputes (其他).

⁴ The historical importance of both mediation and social customs as a means of conflict resolution is contested. Huang's (2001) comparison of legal practices under the Qing and the Kuomintang highlights the importance of the courts' application of the civil codes, how they effectively structured ordinary lives, and that popular customs were not as important as the literature suggests. Diamant's analysis (2000) suggests that adjudication or appeals to political institutions were historically more prevalent than usually assumed. In contrast, specific regional, class and gender cleavages explain why mediation is used in some, but my no means all cases, including in the contemporary period. See also {Liu, 2001(?) #6676; Teng, 2001 #5771; Jiang, 2001 #1987; Mariani, 1996 #5262; Tang, 1994 #5751; Jiang, 1994 #1844; Yu, 1992 #1660; Cen, 1992 #3459; Tan, 1991 #183; Zhejiang Sheng (China). Si fa ting., 1985 #1003; Chang, 1984 #3484; Lubman, 1969 #5168}

handled by the courts 4.4 million). Evidently, individual strategies of conflict resolution are shifting very rapidly.

However, aggregate data can be deceptive, because civil cases, once accepted by the courts, can still be resolved through mediation. Liu Yuenan, the chief judge of the Administrative Division of the Intermediary People's Court of Guangzhou, observes that the lingering impact of the Civil Procedure Law still greatly affects the behavior of the litigants. Even though the A.L.L. states that administrative cases should not—in principle—be mediated, in reality they often are, resulting in an abnormal rate of case withdrawals once the parties have reached a compromise {Liu, 2001(?) #6676}. Just as in the American and European tradition, lawsuits are used strategically to strengthen the bargaining position of one of the parties ahead of a settlement, there is evidence that similar outcomes obtain in China as well. In 2003, 53% of all cases of family cases (mostly divorces) accepted by Beijing courts were ultimately resolved by mediation. If divorces are excluded, 40.2% of the family cases were adjudicated while 30.3% were mediated.⁵ On the other hand, the majority of contractual disputes were adjudicated, overwhelmingly so in matters of real estate development (2338 judgments vs. 312 mediations) as well as in disputes over management contracts (682 vs. 215). Thus, going to court and seeking mediation are not mutually exclusive strategies.

⁵ Presumably, the balance amounts to the cases left unresolved or still under consideration, but no data is provided to account for this discrepancy satisfactorily.

Table 2: Contractual disputes cases filed in Beijing courts (2003)

a) Civil Disputes	Cases Received	Cases Resolved	# Adjudication	# Mediation
Total	84999	84337	31606	18785
Purchases and Sales Contracts	23409	23309	7167	6638
Development Real Estate Contracts	4064	3948	2338	312
Public Utilities	11239	11240	2077	2821
Debt Contracts	10811	10756	5068	2789
Lease out Contracts	11240	11096	5174	1819
Construction Project Contracts	2570	2506	1035	504
Undertakers Contracts	3979	3936	1349	932
Transportation Contracts	755	749	244	227
Management Contracts	1458	1439	682	215
Contract with Rural	943	942	371	147
Labor Disputes	3931	3908	1978	334
Others	10600	10508	4123	2047

Source: Beijing Statistical Yearbook, 2004.

b) Family Disputes	Cases Received	Cases Resolved	# Adjudication	# Mediation
Total	38381	38290	8479	20490
Marriage and Family Disputes				
Divorce	30837	30774	5451	18207
Separation from concubinage	348	346	210	37
Alimony	1101	1101	241	606
Child Support	1418	1421	544	457
Support	1706	1702	716	507
Household splitting of assets	738	740	351	142
Others	980	977	349	300
Inheritance Disputes				
Legally regulated inheritance	637	621	316	122
Inheritance by will	69	74	35	20
Inheritance disputes	53	59	30	9
Others	494	475	236	83

Source: Beijing Statistical Yearbook, 2004.

That said, the apparent substitution effect between adjudication and mediation demands further explanation. First, we need to establish whether it also holds in the case

of administrative disputes. The transaction costs of taking one's neighbor to court are likely to be lower than those of challenging a government agency. All else being equal, we should observe a lower rate of administrative disputes resolved by the courts, in comparison with ordinary civil disputes. The time-series is still short, but it does indicate that the surge in administrative cases was arrested after 1998. Since then, the number of cases has hovered around 90,000 per annum.

Furthermore, aggregate statistical data cannot tell us which strategies are effective, since they do not provide any information about the plaintiffs, or their rates of success. Though it is reasonable to infer that administrative litigation increased in the 1990s because courts provide more effective remedies than other institutions, this increase could also reflect the appeal of novelty, rather than efficacy. If, in the long run courts systematically favor the government in their decisions, the surge will turn into a temporary spike as citizens learn (by direct experience or observation of others) that other strategies are more effective.

The Survey and the Data

Although there is already a considerable literature on legal reforms and dispute resolution in China, cumulative knowledge in this field is based almost exclusively on casual observations, case studies, interviews with government officials, or documentary analysis. Diamant's (2000:524-27) critique of the literature on Chinese mediation shows that little attention to the issue of selection bias induced by these methodological choices. The critique, in my view, extends to other areas of research on legal reforms and legal institutions.

Legal disputes do not occur randomly. By the time they reach the stage of mediation, arbitration, or adjudication, the parties involved have already made a series of decisions that are likely to shape the final stages of the game. Earlier choices may condition later ones systematically. Thus, drawing our conclusions solely on the way disputes are resolved biases our judgment toward the narrow group of people who engage legal institutions. We know very little about the “dogs that don’t bark”, namely the victims who accept their fate and take no further action, or the victims who—faced with the choice of resolving their disputes within or outside the legal system—select unusual extra-systemic strategies that are difficult to observe. In short, we cannot evaluate the efficacy of legal institutions if we only observe the sub-population for which they are presumably efficacious.

The data that I use in subsequent sections allows us to make unbiased inferences and produce generalizable propositions about the behavior of ‘ordinary’ Chinese citizens. First, it is based on a truly *national* sample of adults, which draws on every province, centrally administered municipality, or autonomous region of the Chinese mainland. Second, considerable care was taken to ensure that each respondent was selected with equal probability.⁶ Thus, direct comparisons across regions, gender, class, or any other variable of interest are possible and meaningful. Unlike national samples that have been drawn so far, we were also able to include the internal migrants (流动人口) who are traditionally excluded from survey research.⁷ Third, the survey instrument was specifically designed to capture the details the full array of disputes, their initiation,

⁶ In a few instances, equal probability could not be maintained, but it was known. As a result, the statistical analysis probability weights in order do account for these minor discrepancies.

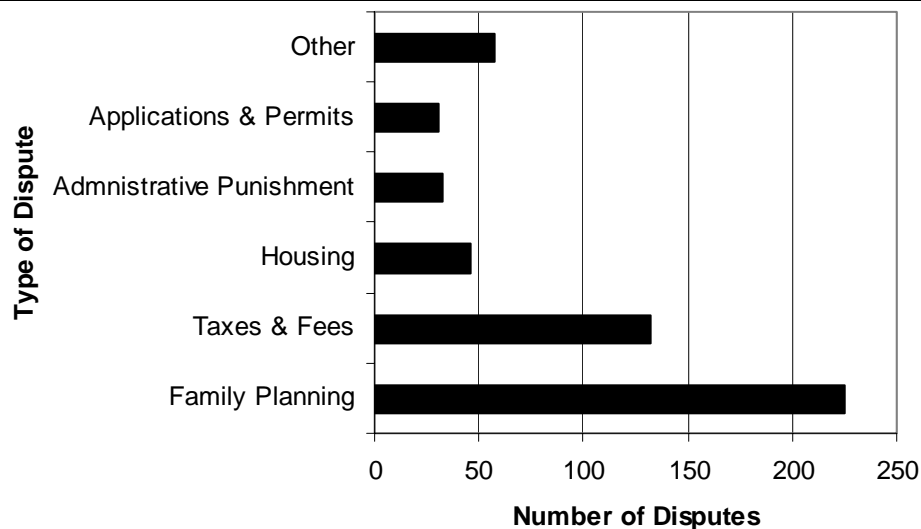
⁷ The methodological details are too complex to be fully presented here. For a general preview of the spatial sampling methodology that we applied, see Landry & Shen (2005, forthcoming).

escalation and resolution at the individual level. My analysis in the following sections is limited to a subset of the variables that were incorporated in the survey, namely disputes between citizens and government agencies, though I occasionally draw on other kinds of disputes in my explication of the findings.

Section 2: Getting into a dispute with the government

481 respondents (or 6.0% of the sample, accounting for the survey design), reported having been involved in a dispute with a government unit in the past 20 years, which is only slightly lower than economic (6.2%) or civil (7.8%) disputes. The nature of the disputes reflects the contentious policy issues of the reform era (O'Brien & Li, Bernstein & Lu). Arguments about family planning clearly dominate, followed by those over taxes and fees. An overwhelming majority of family planning disputes involve farmers: although they represent 69% of the respondents, they make up 92% of the cases. Farmers also dominate tax and fee disputes (84%).⁸

Figure 4: Distribution of Administrative Disputes.



Total: 481

⁸ The category 'farmer' is itself heterogeneous. Out of 7714 respondents, 3630 are/were engaged full-time in traditional agriculture. 1052 have or did seek off-farm employment (*dagong*), while 640 work (or own) small shops or manage rural enterprise in addition to their farming duties.

The occurrence of disputes with government agencies is not random. Since the existing literature makes the case that conflict and modes of conflict resolution is gendered, geographically specific, and varies with class (Diamant, 2000), I test a simple probit model of conflict initiation that incorporates these key variables.

- ***Independent variables and expectations about their effect***

Political capital: Party membership and government employment⁹ are both factors that are likely to reduce the risk of conflict with the authorities. Not only do political and administrative networks provide privileged information that can be used to avoid conflict in the first place, but CCP members and bureaucrats are also more likely to display loyalty by not openly challenging the policy decisions of their peers. All else being equal, workers of the state sector¹⁰ tend to have more political capital than others. Open conflict with authorities are less likely to erupt, because of the dense network of party organizations, the official Trade Union and the strong nexus between state enterprises and government agencies (Walder, 1986; Walder, 1989). These workers are contrasted with the other sectors of the economy.

Class. In contrast, some groups are severely disadvantaged and at risk of conflict with the local state.¹¹ These include outsiders (*waidiren* / 外地人), many of whom are not officially registered in the locality in which they live or have changed their household registration recently. The latter's right of residency is not contested, but their social

⁹ Including party departments (党政机关).

¹⁰ These include traditional state owned enterprises (SOEs) and restructured shareholding companies than remain under state control.

¹¹ See, among others, Bakken, (1998), Banister et.al. (1993), Clark (1995), Davin (1999), Day & Xia (1994), Gaetano (2004), Guldin, (2001), Li, (2003), Qian, (1996), Scharping (1997), Solinger (1999), Wei et al. (2002), West & Zhao (2000), Xiang, (2004), Yong (2001), Zhang (2001) and Zhang (2003).

networks are less dense than longer-term residents. They amount to 5.5% of the sample.¹² In addition, I account for full-time farmers and respondents who have an agricultural household registration (*nongye hukou*/ 农业户口); they often actively resist key government policies, such as population control, migration and taxation (Li and O'Brien 1996; O'Brien 1996) (Bernstein and Lu 2003). In order capture the economically mobile rural respondents better, I separate full-time farmers from farmers who also hold commercial jobs, or manage shops and small firms (Farmer with Commercial job or firms) who are likely to encounter difficulties with the authorities about permits and taxation). I also segregate those farmers who take up off-farm jobs to supplement their income and migrate frequently to towns and urban areas (Farmer with off-farm jobs). Although they are current residents with a proper household registration at the time of the interview, past employment outside their locality suggests a higher likelihood of conflict with the urban authorities.

Table 3: Sector of Employment.

	Estimated Mean ⁽ⁱ⁾	95% Confidence Interval		Design Effect
Party and Government	1.7%	1.1%	2.4%	5.2
SOE & Restructures SOE	5.2%	3.8%	6.7%	8.5
Urban Collective	1.2%	0.7	1.7%	4.1
Other Shareholding	0.3%	0%	0.6%	6.0
Private Firms	2.86%	2.0%	3.7%	4.9
Foreign Enterprises ⁽ⁱⁱ⁾	0.02%	0%	0.4%	2.5
Full Time Farmer	42.8%	38.4%	47.2%	15.6
Farmer with off-farm work	12.7%	11.0%	14.5%	5.5

¹² The 95% confidence interval ranges from 3.9% to 7.2%.

Farmer-entrepreneur ^(III)	7.4%	6.3%	8.4%	3.0
(I) The column does not add up to 100%, since other occupations, unemployed and inactive respondents are not presented here. (II) This category is dropped out of the probit model, because it is perfectly collinear with the dependent variable (no case of conflict with the government reported) (III) These refer to farmers who work in small shop, commerce, rural enterprises, including the owners of these firms				

Financial Resources, like political and human capital, are expected to shield those who have them from conflict with authorities, in no small part because wealth allows that at risk of conflict with government officials to preempt them by offering side payments, or even bribes (Kwong, 1997; Manion, 1998; Dickson, 2000; Wedeman, 2000; Lü, 2002).

Human Capital is measured as the total number of years of schooling. It varies from 0 to 23. The sample mean is 7.8 years, which corresponds to having completed primary education.¹³ I expect human capital to be negatively correlated with conflict, because education gives access to better information about the way the government operates.

Gender and Ethnicity In addition to gender (1= female), I also control for the ethnicity (Han nationality) of the respondent.

Regional Variations Finally, I estimate the fixed-effect of all 31 provinces¹⁴. This serves two purposes: first, if conflict and conflict resolution are indeed unevenly distributed in space, the fixed effect ought to capture these differences. They also alleviate the problem of unobserved heterogeneity. As a comparison, I also present the same model, but without fixed effects (and a constant term).

- ***Results***

Party and government employees are, indeed, decisively protected from conflict with the state. More surprising is the finding that most other groups, who face higher

¹³ The 95% confidence interval ranges from 6.6 to 7.2 years of schooling.

¹⁴ Therefore, the constant term is dropped for identification

risks, hardly differ from each other. The odds of conflict, however, do not increase monotonically with age: instead, they peak for the respondents who are in their mid-forties, or slightly older than the sample mean. This finding is in part an artifact of the survey design. We asked a cross-section of respondents whether they experienced conflict in the past twenty years (1983-2003). By construction, our younger respondents reached adulthood after 1983. They are less likely to answer that they did, not because they face inherently lower odds, but simply because they are less experienced. The converse is not true on the right of the distribution: a lower rate of conflict among older respondents—many of whom are retirees—is consistent with the hypothesis that administrative disputes are a recent phenomenon among the working age population.

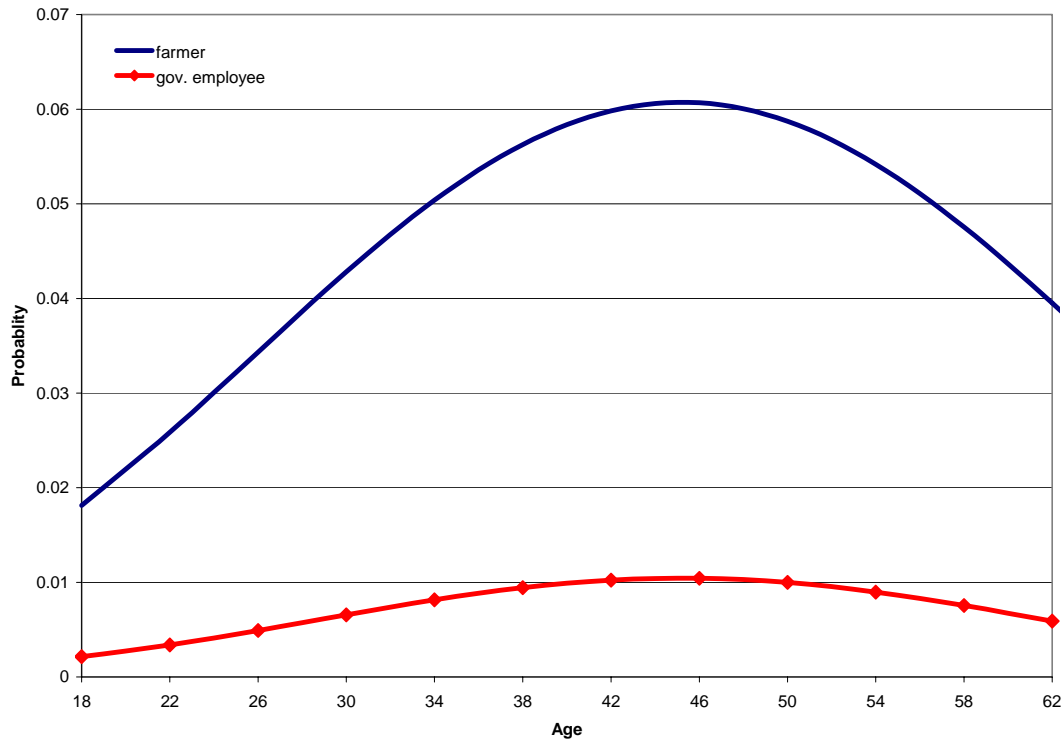
Rural citizens who engage in commercial activity are also more likely to have a dispute with the authorities. In the model that does not account for provinces, outsiders are as predicted, more prone to having disputes, as well as the farmers who take temporary jobs, often—though not exclusively— in urban areas.

Table 4: Probit model of administrative dispute initiation

		Model with provincial fixed effects		Model without provincial fixed effects		
7639 Observations		F(49,121)=249.5		F(18,152)=3.93		
31 Strata (provinces)		Probability=.000		Probability=.000		
200 PSU (townships)						
Dependent Variable: Existence of an administrative dispute						
	Mean	β	S.E	β	S.E	
Political Capital						
CCP member	(dummy)	-0.13	0.13	-0.15	0.14	
Party and Government employee	(dummy)	-0.76	0.31	**	-0.85	0.32 ***
SOE employee	(dummy)	-0.16	0.20		-0.23	0.22
Class & Work						
Outsider	(dummy)	0.22	0.16		0.29	0.15 **
Agricultural <i>Hukou</i>	(dummy)	0.00	0.13		-0.08	0.13
Private Sector Employee	(dummy)	0.03	0.22		-0.02	0.24
Farmer with Commercial job or firms	(dummy)	0.27	0.09	***	0.25	0.08 ***

Full-time Farmer	(dummy)	-0.04	0.09		0.07	0.08	
Farmer with off-farm jobs	(dummy)	0.06	0.09		0.16	0.09	*
Urban Collective Employee	(dummy)	0.23	0.36		0.10	0.34	
Shareholding Employee	(dummy)	-0.18	0.47		-0.27	0.41	
Economic Resources							
Household income (log)		6.77	0.01	0.01		0.01	0.01 *
Human Capital							
Education		6.89	-0.01	0.02		-0.01	0.02
Education Squared		47.47	0.00	0.00		0.00	0.00
Demographics							
Age		41	0.06	0.02	***	0.06	0.02 ***
Age Squared		1681	0.00	0.00	***	0.00	0.00 ***
Han nationality	(dummy)		-0.16	0.14		-0.21	0.11 *
Female	(dummy)		-0.09	0.05		-0.10	0.05 **
Constant	(provincial dummies not presented)					-2.70	0.42 ***
Probit model for complex survey design, accounting for stratification, probability weights, and clustering of observations by PSU (township).							

Figure 5: Fitted odds of conflict with the government: government employee vs. farmer, by age.



Note: Other continuous variables held at their mean. Assumes a Han male from Hebei province. Based on the model with fixed effects

Section 3: Escalation: To Act or Not to Act?

What do people do when an administrative dispute actually occurs? The literature on dispute resolution in general strongly suggests that strategies of accommodation—specifically mediation—are pervasive in China. But when administrative disputes occur, evasion—not mediation—is overwhelmingly chosen. Raw numbers suggest that there is considerable resistance to the idea of taking any action in governmental disputes: most of the time (308 cases), the government took the next step, placing them at a strategic

disadvantage.¹⁵ Controlling for design effects, we estimate that 60% of the victims take no action, in contrast with civil cases where they take action 90% of the time (Table 5).

Table 5 : The Decision to take Action: civil vs. Administrative Disputes

	Mean Estimate	StandardE rror	95% Confidence Interval	Design Effect	N of PSUs	N of Obs
Act in Adm. Disputes	.40	.03	.34—.47	2.15	154	481
Act in Civil Disputes	.90	.02	.86—.93	1.78	174	629

When the stakes are high, such as a conflict with a government agency, victims are even less likely to choose confrontation.

The decision to take on the government depends on the social, economic and political recourses at one's disposal. The model of dispute escalation includes the same set of independent variables as the escalation model. I also present it in two flavors, with and without fixed effects.¹⁶ However, the hypothesized effect of the variables that capture the social, economic and political resources of the victims is reversed: once a conflict has occurred, victims who are favorably endowed are more likely to try to resolve the matter than those who have fewer or no capital to mobilize. I do not imply that they will confront the State openly (see the next section), but they are more likely to commit resources in a variety of ways in order to mitigate the consequences of an adverse decision.

¹⁵ However, this discrepancy narrows considerably when corrections for design effect are introduced: by this benchmark, 3.6% of all cases (or 59.7% of those who had a dispute did nothing, against 2.4% (or 40.3% of disputes).

¹⁶ A model of escalation that does not account for the process by which disputes arise in the first place may be biased. I tested for this possibility by estimating the bivariate probit with a Heckman selection process. Since the results indicated that these two equations are in fact independent from each other (ρ is not statistically significant), I present each step to the process (initiation, escalation, and in section 4 resolution) as separate equations.

Table 6: Probit Model: The Decision to Act

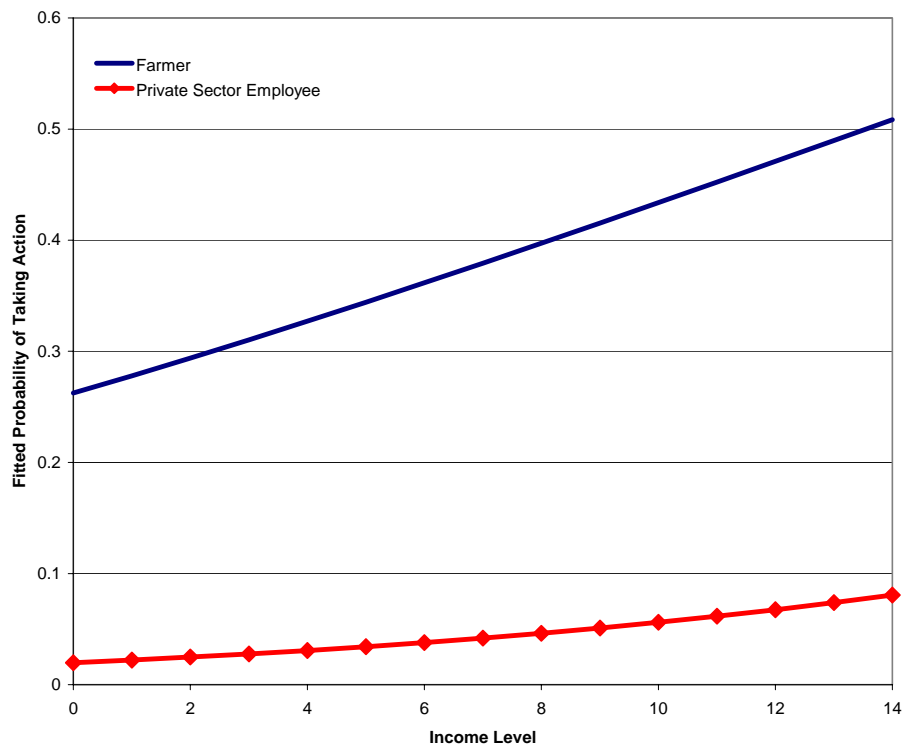
Dependent Variable: Escalation of an administrative dispute						
	Mean		β	S.E	β	S.E
Political Capital						
CCP member	(dummy)		-0.05	0.39	0.00	0.35
Party and Government employee	(dummy)		-0.74	0.78	-0.38	0.80
SOE employee	(dummy)		0.40	0.53	0.67	0.46
Class & Work						
Outsider	(dummy)		0.14	0.29	-0.01	0.30
Agricultural <i>Hukou</i>	(dummy)		-0.36	0.41	-0.35	0.36
Private Sector Employee	(dummy)		-1.51	0.54 ***	-1.17	0.51 **
Farmer with Commercial job or firms	(dummy)		0.07	0.21	0.14	0.20
Full-time Farmer	(dummy)		-0.25	0.28	-0.16	0.26
Farmer with off-farm jobs	(dummy)		-0.30	0.28	-0.09	0.26
Urban Collective Employee	(dummy)		0.01	0.77	0.34	0.82
Shareholding Employee	(dummy)		-0.98	0.89	-0.64	0.98
Economic Resources						
Household income (log)	6.77		0.04	0.02 *	0.02	0.02
Human Capital						
Education	6.89		0.02	0.06	0.02	0.06
Education Squared	47.47		0.00	0.00	0.00	0.00
Demographics						
Age	41		-0.02	0.05	-0.06	0.05
Age Squared	1681		0.00	0.00	0.00	0.00
Han nationality	(dummy)		-0.11	0.25	0.17	0.23
Female	(dummy)		-0.10	0.17	-0.15	0.17
Constant	(provincial dummies not presented)				0.57	1.19

Probit model for complex survey design, accounting for stratification, probability weights, and clustering of observations by PSU (township).

Party and Government employees who are protected from disputes are just as likely as everyone else to take action once a dispute has actually emerged. This contrasts with the behavior of private sector employees, who are often self-employed: If we

compare farmers to private sector employees, a shift in household income over the range of observed values in the sample has the effect of doubling the odds that a victim will choose to act, but among private sector employees, financial resources have almost no effect: at the highest level of income, the probability of escalation does not exceed 0.1.

Figure 6: Fitted odds of taking action in a conflict with the government: private sector employee vs. farmer, by income level.



Note: Income level refers to the $\log(\text{household income})$, ranging from 0 to 13.76 within the sample.

These findings differ from the literature on conflict resolution, but they not necessarily contradict existing knowledge. Taking action makes sense in situations where power asymmetries are small enough that each party can reasonably expect a favorable outcome. Mediation of conflicts between (former) spouses or neighbors fall into this category. However, taking on a state with a notoriously weak legal system and

precarious institutions of administrative litigation in which government bureaucrats retain considerable discretion {Liu, 2001(?) #6676; Yang, 2001 #2443} requires accepting a very high degree of uncertainty at potentially debilitating costs. Mobilizing resources for a strategy of confrontation makes sense when the stakes are large, and when strategies of accommodation are demonstrably ineffective.

Section 4: Strategies of conflict Resolution

Outcomes

We asked respondents to assess the outcomes of their disputes with the government. Our findings show that success against the Party-State is rare. Citizens who passively wait for the government's next move hardly ever win (14%, or 42 times out of 308 cases of passive response). They either accept their loss or allow the dispute to remain unresolved. Outcomes among victims who acted are mixed. Only 35 disputants stated that they clearly won, though in combination with those who compromised, a plurality (N=68) can claim some success.

Table 7: Administrative Dispute Outcomes

	No action taken	Action taken
Win	11	35
Compromise	34	33
Lose	130	34
No results	68	30
Other	40	12
Refused to answer	24	12

The outcomes are rather ambiguous when they are combined with measures of satisfaction. Some winners were dissatisfied, which suggests that victories are partial or that some respondents question the validity of the process itself. We also asked the disputants whether they would use the same method if a similar case occurred in the

future: those who won (or compromised) would: 90% if they complained, 81% if they negotiated directly, 77% if they used mediation, and 62% if they went to court.¹⁷

Table 8: Satisfaction with the outcome of Administrative Disputes

Results	Degree of Satisfaction with Dispute Outcome				Total
	Very Satisfied	Satisfied	Dissatisfied	Very Dissatisfied	
Win	5	20	7	3	35
Compromise	3	18	10	0	31
Lose	1	4	14	14	33
Total	9	42	31	17	99

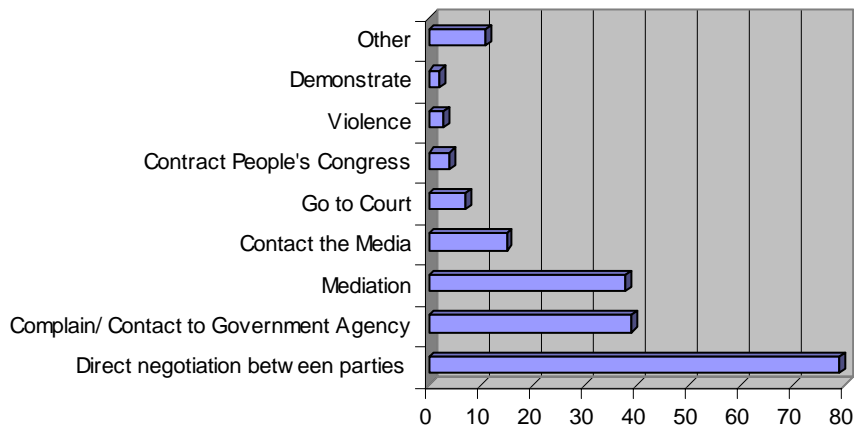
Pearson $\chi^2_{(6)} = 34.93$ Probability = 0.000

Strategies

- *Non-legal strategies*

Extra-legal resistance is impossible, and virtually nobody admitted engaging in demonstrations (2 cases) or resorting to violence (3 cases) against the government. The rare souls who did always lost.

Figure 7: Response to administrative disputes



¹⁷ If they lost, 46% would complain again, 28% would negotiate directly, 36% would try mediation, and 11% would go to court.

More surprising is the prevalence of disputes in which plaintiffs either sought the assistance of their representative of the (local) People's Congress (4 cases), or attempted to mobilize the media (15 cases). Unlike demonstrations and violence, these strategies are in keeping with the law, but they are just as ineffective.¹⁸ All respondents who contacted a congressman also stated that they lost, and among those who appealed to the media did not fare much better: Fifteen respondents tried, but only two reported eventually winning their case.

Table 9: Impact of contacting the media on the outcome of administrative disputes.

	Failure	Success
Did not contact the media	.49	.40
Contacted the media	.08	.03

Key: cell proportions
 Pearson: Uncorrected $\chi^2_{(1)}=2.67$ Design-based $F(1, 99)=1.01$ Probability=0.32

- *Courts*

Clear mechanisms to challenge government decisions are relatively recent. The A.L.L. significantly opened up the possibility of adjudication, but the use of the courts remain rare in practice. To some extent, the survey understates the appeal of adjudication: The respondents were asked to reflect on their experience of 'the past 20 years', but older ones who experience disputes with a government agency between 1983 and 1990 had few prospects of going to court, whether they wished to or not.¹⁹

¹⁸ For a nuanced view of the people's congresses, see O'Brien (1994).

¹⁹ Admittedly, administrative litigation predates the promulgation of the A.L.L. See Huang (1991), Luo (1989), Sun et.al. (1988), Xu (1990), Yang et.al. (1990), Yu (1994), Zhang (1989), Zhang & Shi (1990), and Zhao et.al. (1990). Administrative litigation was apparently rather frequent in the area of land policy and land management. See Ge et.al. (1993), Pei et.al. (1991), and Wang & Xiao (1990). However, the A.L.L. represented a vast qualitative improvement by specifically allowing individuals to challenge some government decisions. See "Xian xing xing zheng su song fa yu guo jia pei chang fa si fa jie shi bian xie

Nevertheless, reliance on the courts is even rarer than appealing to the media. This is not due to the lack of knowledge about their suitability: among those who actually acted upon their dispute with the authorities, only three respondents—when prompted the interviewer—mentioned that they overlooked the court as feasible choice. Instead, those who avoided the courts blamed the expense and complexity of the system: High transactions costs, not the lack of information, deterred them.

Table 10: Stated reasons for not going to court in administrative disputes

Reason Given	N
Costs too much	16
Not in keeping with local tradition	7
It's ruthless	3
Courts are corrupt	7
Not the court's responsibility	11
Procedures are too complicated	15
Too time consuming	6
Unaware of this method	3

- *Mediation*

The dilemma noted by judge Liu in Guangzhou holds nationwide: even though legal innovations of the 1990s intended to reduce the importance of mediation in administrative cases, it remains a very popular approach. The modal view is that mediation is the traditional and proper way to handle such problems, is easy to use, and saves everybody's face (Table 11).

For the risk-averse, mediation is a reasonably safe strategy. It is also efficacious, in the sense that fewer disputants reported losing and that fewer disputes were left unresolved than when other methods were used. The drawback is of course, that the nature of the process favors compromise, not a clear victory. Even among losers,

zu" (2002), Quanguo Renmin daibiao dahui changwu weiyuanhui bangongting (2000), Hu et.al. (1999), Jin (1996), Sheng & Bo (2002), Xu et.al. (1999), Yu (1994).

mediation has a high level of support: 53% are ready to use it again in a future dispute, compared to only 16% of disputants who lost their case in court.

Table 11: Stated reasons why mediation was used

Reason Given	N
Tradition	24
Ease of use	23
Face-saving	20
Save Money	14
Flexibility for both sides	13
Save Time	8
Unaware of this method	6
Other	10

Table 12: Impact of using mediation on the outcome of administrative disputes.

	Did not use mediation	Used mediation	Total
Win	14.10	8.33	22.44
Compromise	7.05	14.10	21.15
Lose	12.18	9.62	21.79
Other	5.13	2.56	7.69
Still unresolved	11.54	7.69	19.23
Refused to answer	2.56	5.13	7.69

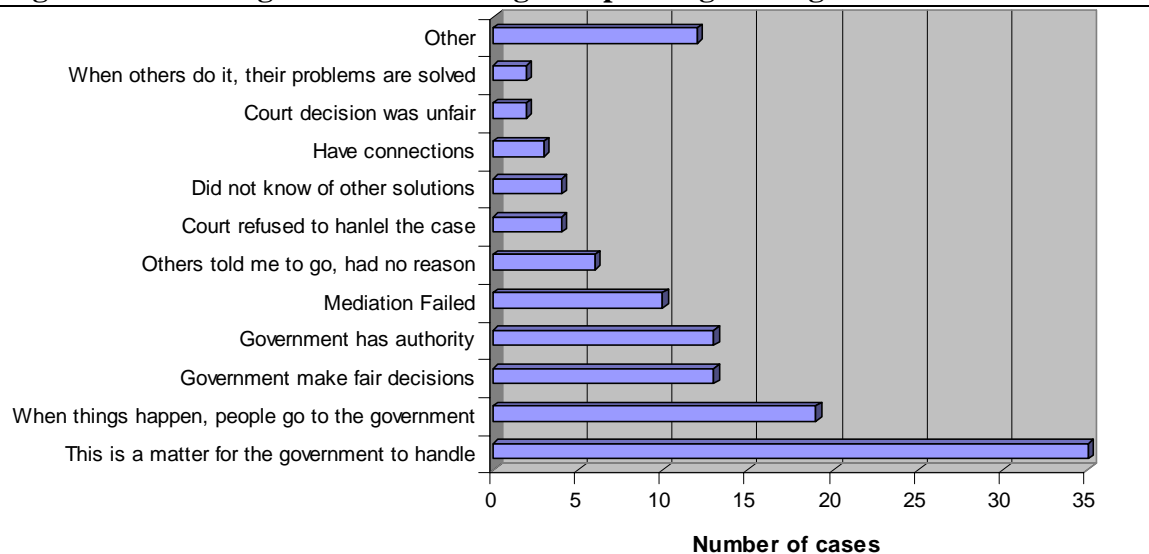
Pearson $\chi^2_{(5)} = 9.9341$ Probability= 0.08

- *Complaints and visits to government bureaus*

Complaints and mediation have been used in almost equal proportions. Complaints are not always easy to distinguish from visits. A complaint can be lodged with formal complaints bureaus (8 disputants did so), but a visit to a government bureau (other than a direct negotiation with the offending unit) also offers a chance to complain, albeit not always formally. (O'Brien and Li 1995) This option is the dominant for way of making contact with the government (78 cases). In addition, five disputants also launched 'administrative procedures'.

These visits were rarely motivated by pure instrumentalism. The respondents went to these offices because it was the proper way to act under the circumstances, especially since they see the government as fair and authoritative. Besides these general motives, in 10 cases (out of 173), the visits followed the failure of mediation. Six visits were motivated by the disputant's dissatisfaction with the performance of the courts, four times because of their refusal to accept the case, and twice because the victim, having gone to court, thought that the judicial decision was unfair.

Figure 8: Reasons given for contacting /complaining to the government.



Note: multiple choices were allowed. (N=173)

- ***Direct Negotiation***

The dominant strategy is to negotiate with the opponent directly. Many respondents mentioned that it was the most convenient, inexpensive and speedy way of handling the dispute. At face value, this approach works quite well: when used, it evens the odds of success and failure, while other measures fail 69% of the time. (Table 13)

Table 13: Impact of direct negotiations between parties on the outcome of administrative disputes.

	No Direct Negotiation	Direct Negotiation	Total
No Success	69.23	7.90	77.13
Success	16.22	6.65	22.87
Total	85.45	14.55	100.00

Pearson chi2(1) = 24.2391 Probability= 0.000
Likelihood-ratio chi2(1) = 21.3169 Probability = 0.000

Mixed Strategies

Disputes can be complex, drawn out affairs. Disputants may first try one strategy, find it inadequate, and later turn to another method, as was apparent in the case of failed mediations and unresponsive courts. The complexity of disputes is difficult to capture in a single interview. As many of 31% of administrative disputes in which the respondents acted were not clearly resolved, in the sense that they could not say clearly whether they had won, lost or comprised. Some unresolved disputes may indeed never be settled, but it is entirely possible that few will in the future.

Victims are seldom single minded in their strategic choices. Rather than placing all their eggs in a single basket, one obvious approach is to combine a variety of options in order to maximize the odds of success. Direct negotiations may be the preferred choice, but talk alone is cheap. To overcome this problem, many disputants signal to the government agency their capability to mobilize third parties, which bolsters their credibility in eyes of the agency.²⁰

²⁰ Out of 173 cases of disputes with the government in which the victim chose to take action, the respondents only made of the legalistic choices 85 times, namely: direct negotiation only: 22; mediation only: 26; court only: 6; complain only: 31.

Table 14: Mixed Strategies

	Legalist Strategies				Extra-legal Strategies			
	Gov.	Med.	Court	Neg.	Media	Demo.	Viol.	Congr.
Gov. Complaint	1.00							
Mediation	0.35	1.00						
Court	0.20	0.25	1.00					
Direct Negotiation	0.28	0.40	0.21	1.00				
Media	0.17	0.30	0.48	0.20	1.00			
Demonstrate	0.06	-0.03	-0.02	-0.03	-0.01	1.00		
Violence	0.03	0.04	0.02	0.03	0.01	0.01	1.00	
Congressman	0.08	0.08	0.28	0.03	0.25	-0.01	-0.01	1.00

Disputants use mixed strategies 52% of the time. Table 14 shows how they are combined in practice, using a simple correlation matrix of all possible options. The grey area denotes combinations of extra-legal strategies that are not of great interest here, since the frequencies are very small. Combining mediation with direct negotiation is the most popular choice (corr=.40), although the latter is also used in combination complaints with government agencies (corr=.35). Interestingly, disputants who go to court are very likely to mobilize the media as well (corr=.48).

Which strategies are most likely to work? In table 15, I map disputes outcomes to strategies, focusing three choices of interest in the legal reform literature: mediation, going to court, and visits/complaints.

Most of the time, mixed strategies seem to produce better results than a single-minded approach, but given the low frequencies of some combinations, some of these differences may be due to chance. The only pure strategy that tends to work just as well alone as in combination, is mediation. If we define success as either a clear win or compromise, combining visits and complaints do not improve the odds of success.

In table 17, I present the more stringent test of impact of various strategies, used alone or in combination, controlling for the same individual characteristics that I

introduced in the models of dispute initiation and dispute escalation. Due to the small number of usable cases (168), I limit the number of interaction terms to the subset of pair-wise combinations of legalist strategies (mediate, visit, court). Fixed effects by province could not be estimated, since too many small provincial clusters were completely determined. Instead, I contrast a simpler fixed-effect by larger region to an ordinary model with a simple constant term.

Table 15: Mixed Strategies and their Outcomes

	Pure Strategies			Mixed Strategies			
	84			50			
	Med.	Court	Visit	Med. Court	Court Visit	Visit Med.	Court Med. Visit
Count	38	7	39	7	5	30	8
Effective Count	32	6	37	7	4	30	5
Win	5	2	10	1	2	6	1
Compromise	11	0	3	1	0	9	1
Lose	7	2	7	0	0	7	1
Unresolved	4	0	12	1	2	6	1
DK/Other	5	2	5	4	0	2	1
Clear success rate (Win)	13%	29%	26%	14%	40%	20%	13%
Loose success rate (Win+Compromise)	50%	29%	33%	29%	40%	50%	40%

Both models produce similar results. Only the strategies of direct negotiation and mediation positively influence the outcome of administrative disputes. Four pair-wise combinations hold up to statistical tests of joint significance: court and mediation (.02

level), court and negotiation (.03 level), visit and negotiation (.08 level) and finally, visit and mediation (.01 level).²¹ Predictably, media mobilization is totally counter-productive.

Confrontational strategies may not work well alone, but they can still improve the odds of success when they supplement the less confrontational negotiated approaches. The effect of going to court is stunningly consistent with judge Liu's description of his experience in Guangzhou: people may sue, but in the end, they often settle out of court. The point that requires emphasis is that disputants who sue and negotiate (or seek mediation) are significantly better off than disputants who do not go to court. In expectation, this strategy yields the highest probability of success. (See Table 16) In this sense, the administrative litigation law is having a positive impact on the capacity of the victims of government decisions to seek effective redress. But unlike the spirit of the law, which plays down mediation, successfully tackling the state presumes a nuanced and complex strategy of dispute resolution of the part of part of the litigant.

However, strategies alone do not explain the variance of the outcomes very well. Class and social status matters: poor farmers (full time farmer and the *dagongzhe* (打工者) who seek temporary off-farm employment are at a systemic disadvantage. This may be due in part to the nature of the disputes that tend to prevail in rural China. Fighting the state over the highly salient issues of family planning and taxation is a behavior that the regime is unlikely to welcome. But once again, a major reform initiative seems to be biased in the favor of the urban population.

More worrisome is the finding that party membership trumps the effect of the specific strategies one may choose to challenge government agencies. As Dickon (2000)

²¹ I test is whether the sum of three coefficients (each simple strategy and their interaction term) is significant different from 0 (2 tailed-test).

has noted, party membership has its privileges, and it appears that these extend to the areas of conflict resolution as well.

Table 16: Expected probabilities of success, conditional upon strategy.

Strategy	Predicted Probability of Success	
	Ordinary citizen	CCP member
Court x Negotiation	0.99	1
Mediation x Court	0.97	1
Mediation x Visit	0.86	1
Direct Negotiation	0.82	1
Visit x Negotiation	0.79	1
Mediation	0.76	0.97
Mediation x Negotiation	0.74	1
Do Nothing	0.49	1
Media Mobilization	0.01	1

Fitted probabilities are computed by setting all continuous values at their mean and dummy variables to 0. Based on the model with regional dummies, thus these values assume Southwest China

Whereas a shift from the worst (media mobilization alone) to the best strategy moves the expected probability of success from .01 to .99, holding all other factors constant and setting the party dummy to one, a party member almost always wins for sure! Only a strategy of mediation yields a non-trivial probability of failure, or 3%! This enormous effect of Communist Party membership would perhaps be attenuated if we could distinguish the effect of ordinary membership from those of holding a government or Party job. We cannot, because the sole government employee in the entire sample of more than 7000 respondents who did have an administrative dispute and acted on it won his case. But since there is no observed variation between this independent variable and the occurrence of success, a separate coefficient cannot be computed. This rare occurrence is itself a compelling indicator that the Chinese state protects his own, or of a powerful norm among bureaucrats that they cannot challenge their employer. Our findings for ordinary party members is yet another sign that Chinese legal reforms are

partial, and that Courts placed ‘under the leadership’ of the Communist Party operate, at the end of the day, as ‘Comrade’s Courts’.

Concluding remarks

It is naïve to assume that introducing new choices in the menu of options that Chinese citizens have at their disposal when they challenge government agencies revolutionized the relationship between the rulers and the ruled, between the Party and the masses. Fifteen years after its introduction, administrative litigation remains a rarity.

The evidence that I have uncovered reveals the following regularities. 1) The majority of the disputes involve farmers, over matters of family planning and taxation. 2) The politically connected (party and government employees) are shielded from conflict with the authorities. 3) Resource constraints affect the propensity to escalate disputes. Most victims do not actively pursue their cases, formally or informally. 4) Political capital, which also prevents the occurrence of conflict, dramatically impacts the odds that administrative disputes will be resolved in the citizen-comrade’s favor. 5) Yet, and here lies the good news, the conflict resolution model strongly suggests that those who are not politically connected can improve their chances of success if they apply mixed strategies of conflict resolution. Negotiating with a government agency while threatening to take it to court is almost as efficacious as a party membership card, assuming one does not give up at earlier stages of the decision tree.

Table 17: Probit estimates of administrative dispute resolution (N=168)

		$\chi^2_{(31)}:80.47$			$\chi^2_{(26)}:59.74$		
Wald χ^2							
Prob > χ^2		0.000			0.000		
Log likelihood =		-80.35			-84.98		
Strategy		β	s.e.		β	s.e.	
Visit/ Complaint to Gov.	(dummy)	0.18	0.39		0.24	0.40	
Go to Court	(dummy)	0.65	0.56		0.63	0.57	
Mediation	(dummy)	0.73	0.42	*	1.00	0.42	**
Direct Negotiation	(dummy)	0.92	0.42	**	1.19	0.40	***
Mediation x Negotiation	(interact)	-0.99	0.56	*	-1.41	0.54	***
Court x Negotiation	(interact)	0.97	0.82		0.25	0.78	
Visit x Negotiation	(interact)	-0.29	0.53		-0.30	0.52	
Mediation x Court	(interact)	0.49	1.23		1.16	1.09	
Visit X Court	(interact)	-0.67	0.74		-0.84	0.74	
Mediation x Visit	(interact)	0.17	0.52		-0.02	0.52	
Media Mobilization	(dummy)	-2.53	0.88	***	-2.57	0.71	***
Political Capital							
CCP member	(dummy)	1.15	0.62	**	1.39	0.56	***
SOE employee	(dummy)	0.05	0.66		-0.12	0.61	
Class & Work							
Outsider	(dummy)	0.10	0.47		0.06	0.46	
Agricultural <i>Hukou</i>	(dummy)	1.13	0.46	***	0.68	0.56	
Private Sector Employee	(dummy)	-0.26	0.89		-0.07	0.80	
Farmer+ comm. job or firms	(dummy)	-0.05	0.42		0.00	0.39	
Full-time Farmer	(dummy)	-1.36	0.38	***	-1.26	0.37	***
Farmer with off-farm jobs	(dummy)	-1.53	0.52	***	-1.28	0.48	***
Economic Resources							
Household income (log)	6.77	-0.05	0.04		-0.06	0.04	
Human Capital							
Education	6.89	-0.07	0.10		-0.03	0.09	
Education Squared	47.47	0.01	0.01		0.01	0.01	
Demographics							
Age	41	0.27	0.09	***	0.26	0.09	***
Age Squared	1681	0.00	0.00	***	0.00	0.00	***
Han nationality	(dummy)	-1.14	0.47	**	-0.96	0.49	**
Female	(dummy)	0.02	0.28		0.16	0.29	
Regions							
North		0.01	0.52		-	-	
Northeast		1.41	0.53	***	-	-	
East		0.14	0.45		-	-	
Central		0.29	0.38		-	-	
South		0.72	0.52		-	-	
Constant		-6.03	1.98	***	-5.65	1.98	***

Notes: Baseline is Southwest China

Government employment predicts success perfectly (1 observation dropped)

Shareholding firm employment predicts success perfectly (1 observation dropped)

Urban collective employment predicts failure perfectly (2 observations dropped)

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