Workload, Legal Doctrine, and Judicial Review of Expropriation in China

Chaoqun Zhan

Sun Yat-Sen University Lingnan College

Shitong Qiao (corresponding author)

Duke University School of Law

Contact:

Shitong Qiao

Professor of Law and Ken Young-Gak Yun and Jinah Park Yun Research Scholar

Duke Law School, 210 Science Dr., Durham, NC 27708; Email: qiao@law.duke.edu

Chaoqun Zhan

Assistant Professor of Economics

Lingnan College, Sun Yat-Sen University

No. 135 Xingang Xi Road, Haizhu District, Guangzhou, Guangdong, P. R. China

510275; Email: zhanchq@mail.sysu.edu.cn.

Abstract: This research offers a first-of-its-kind examination of the impact of judicial overload on administrative litigation. We examined how the Chinese courts, faced with an explosive increase in workload caused by a legal reform in 2015, adjudicated expropriation disputes between the government and property rights holders. We used the variation of changes in the administrative case workload brought about by the 2015 reform across the courts to identify the causal effect of workload on the adjudication of expropriation cases. Employing a difference-in-differences method, we found an increased judicial workload to improve property rights holders' chances of winning their case against the government. We explored the mechanism of judicial decision-making to understand this counterintuitive result and discovered that judges' use of hard-edged legal doctrine—administrative procedures, in particular—to save time constrained judicial discretion, which is prone to arbitrary political influence in authoritarian regimes. We also examined the limits of the constraining power of legal doctrine.

Introduction

Judicial protection against government expropriation is widely considered essential to the security of property rights (Voigt & Gutmann 2013) and is arguably important to economic development (Chen & Yeh 2020). However, judiciaries around the world face a variety of challenges, including a lack of—or threats to—judicial independence and

resource constraints, judicial overload in particular. Both judicial non-independence and judicial overload can discourage, if not outright prevent, courts from protecting property rights against government expropriation. Unfortunately, no study to date has examined how courts adjudicate expropriation disputes in the face of either threats to judicial independence or resource constraints, or both. In fact, scholars have produced only scant quantitative empirical research on how the courts in developing countries adjudicate expropriation disputes between the government and property rights holders, and scholarly attention to such disputes in authoritarian countries is even sparser, if it exists at all (Mao & Qiao 2021).

In the U.S., which features an independent judiciary (at least in principle), scholars have studied the presumptive "workload crisis" in court settings (e.g., Menell & Vacca 2020) and investigated its impact on judicial decision-making (Epstein, Landes & Posner 2011). Huang (2011), for example, found federal circuit courts that were flooded with cases to be less likely to overrule district court decisions compared with their less-busy counterparts. Iverson (2018) investigated whether bankruptcy courts in the U.S. adjudicated cases differently in response to the explosive increase in their workload resulting from the reform of bankruptcy law in 2005. Yang (2015) explored how resource constraints affected the U.S. criminal justice system by utilizing data on judicial vacancies

rather than caseload expansion. To date, however, there have been no empirical studies on the impact of workload on administrative litigation, expropriation litigation included.

Scholars of developing legal systems contend that judicial overload damages judicial functioning and argue that a decreased workload improves judicial protection of contract rights, leading to positive economic outcomes. For example, scholars of the Indian legal system have long maintained that an excessive workload has hindered the Indian Supreme Court from conducting meaningful judicial review (e.g., Khaitan 2020) and, further, that the lighter workload of the lower courts in India has inspired more effective contract enforcement and greater investment (Visaria 2009; Chemin 2012). A recent study showed that judges in South Africa suffer stress from their inordinately heavy workload (Rossouw & Rothmann 2020). Focusing on Brazil, Ponticelli and Alencar (2016) found that less congested courts are better at enforcing bankruptcy law to protect creditors' rights. The findings of all of these studies are consistent with the broad finding that overwork diminishes output quality (Coviello, Ichinio & Persico 2014).

Making matters worse, courts in developing countries often lack independence or are prone to government or political influence. Autocrats have, for example, intentionally increased the workload of constitutional courts in Turkey and Hungary to bury judges in tedious and insignificant cases to keep them from sufficiently scrutinizing the behavior of government actors and their potential constitutional encroachments (Scheppele 2018:

551–2). At the same time, scholars have also pointed to the increasing importance of the courts in authoritarian governance (e.g., Ginsburg & Moustafa 2008), which may lead to an increased court workload in authoritarian regimes. Whichever view is correct, scholars have yet to conduct an empirical investigation of how judges in authoritarian regimes respond to an increased workload.

This paper examines the impact of judicial workload on the judicial review of governments' expropriation decisions. Chinese courts are not independent, funded as they are by the party-state and with appointments devoid of judicial tenure, and judicial overload is a widely recognized issue within the Chinese judiciary (Supreme People's Court 2021). Given the dual constraints of authoritarian control and judicial overload, it is not surprising that scholars and China observers have argued that the notion that a Chinese court would protect private property against the state is "more likely a cruel joke than an effective strategy" (e.g., Upham 2015).

We created a first-of-its-kind dataset of expropriation litigation in China by hand-coding all judicial decisions on expropriation issued by the high people's courts (HPCs) from 2014 to 2017. We then used the dataset to examine how Chinese courts adjudicated expropriation disputes between the governments and property rights holders during that period in the face of a massively expanded workload.

The revision of the Administration Litigation Law of the People's Republic of China (ALL) took effect on May 1, 2015, and made it a default rule that a court should file a case upon request. This reform significantly reduced the barriers to filing an administrative case and led to an explosive increase in the administrative case workload. We collected monthly data on the total number of administrative cases and of judges at each court and used the change in the average number of administrative cases that each judge adjudicated per month between the pre- and post-reform periods to capture the effects of the legal reform on the workloads of courts across the country.

We used the variation of changes in the administrative case workload brought about by the ALL revision across the courts to identify the causal effect of workload on the adjudication of expropriation cases. Expropriation cases belong to the category of administrative cases in China and are adjudicated by judges in the administrative litigation division in each court. However, expropriation cases accounted for only 7.35% of all administrative cases in our dataset. Therefore, the number of administrative cases as a whole better measures the actual workload of judges than does the number of expropriation cases alone. More importantly, owing to the small proportion of expropriation cases, the variation in the number of administrative cases arose primarily from variations in the number of administrative cases other than expropriation cases. Accordingly, when judges adjudicated expropriation cases, their workload pressure

stemmed primarily from other administrative litigation, which was not directly correlated with characteristics or shocks specific to expropriation cases. Therefore, we were able to identify the causal effect of judicial workload on the adjudication of expropriation cases. We also controlled for a battery of case characteristics and provincial characteristics.

We examined the difference between the changes in the judicial outcomes of expropriation disputes over the sample period in courts with a larger workload increase (the treated group) and the corresponding changes in courts with a smaller increase (the control group). We found that property rights holders' chances of winning their case increased significantly after the reform in the former relative to the latter. A parallel pre-trends test confirmed both this baseline finding and our identification strategy.

To reiterate: an increase in judicial workload increases property rights holders' chances of winning against the government in China. How can we explain such a seemingly counterintuitive result? The extant empirical research examines the impact of judicial overload on judicial outcomes, but has neglected the process connecting judicial workload and judicial outcomes, i.e., the judicial process. Judges may alter their decision-making process to save time. In other words, they may adapt to the situation at hand. Judges in authoritarian regimes are more likely to take proactive adaptative measures to handle an increase in workload than their counterparts in liberal democracies, who are more isolated from immediate pressure and thus better able to decide how much work to

do (Taha 2004) or to procrastinate (de Figueiredo, Lahav & Siegelman 2020) without facing the consequences that judges in authoritarian regimes are likely to endure.

To explore how Chinese judges adapted during the adjudication process, we hand-coded not only judicial outcomes, but also variables of the judicial process, particularly the way in which judges adjudicated different arguments raised by property rights holders. We discovered that in the wake of the reform, busier Chinese courts were more likely than their less busy counterparts to support claims based on hard-edged rules—administrative procedures, in particular—than in the pre-reform period. From this finding, we infer that judges' incentive to use time-saving rules to adjudicate cases constrains judicial discretion, which, under an authoritarian regime, is prone to arbitrary political influence (particularly from the local level).

With the foregoing literature review and summary of our findings as a backdrop, Section 1 of this paper explores theoretically how judges may respond to their workload through strategic choices of legal doctrine. Section 2 then lays out the institutional background, and Section 3 explains our dataset. Section 4 presents our identification strategy and variables, and Section 5 our empirical results. Section 6 concludes.

1. Theory: Workload, Authoritarianism, and Legal Doctrine

Judges are agents of the principal. In a liberal democracy, the ultimate principal is the public, whose opinions judges care about at both the individual and collective level

(Epstein, Landes & Posner 2013). In an authoritarian regime, the state, often the central government or leader, is the ultimate principal, and judges lack the protection of tenure and face regular, and often immediate, promotion and evaluation pressure. As noted, judges in authoritarian regimes are more likely to take proactive adaptative measures to handle an increase in workload compared to their counterparts in liberal democracies, who are more isolated from immediate pressure and thus better able to decide how much work to do (Taha 2004) or to procrastinate (de Figueiredo, Lahav & Siegelman 2020) without facing the consequences that judges in authoritarian regimes are likely to endure.[1]

Existing empirical research has failed to recognize that judges can adapt to an increasing workload. Although Epstein, Landes, and Posner (2013, 38-9) have theorized judges to employ various adaptation strategies, including adopting hard-edged categorical rules to save time in decision-making, such strategies have not been systematically examined in empirical studies.[2] In the broader literature on workload and decision-making, scholars have found that busy workers subject to decision fatigue tend to revert

[1] The U.S. government has tried to use soft measures to promote judicial efficiency. *See* de Figueiredo, Lahav and Siegelman (2020).

[2] Coan (2012) explores how judicial caseload has shaped the course of American constitutional law and created strong pressure to adopt hard-edged categorical rules and defer to the political process in a qualitative paper.

to the "default" option, or to whichever option involves relatively little mental effort (Baer & Schnall 2021).

Judicial review is a central concern for both legal scholars and political scientists. Nevertheless, as Lax (2011) has pointed out, legal scholars and political scientists have not sufficiently engaged with one another on this important topic, and the latter have been encouraged to take the role of legal doctrine in judicial review more seriously. Political scientists have too often looked past doctrine, assuming the details of law to be superfluous and the role of law epiphenomenal. For these scholars, what matters is the political, social, and institutional context of the litigation in question.

Rather than merely serving as a cloak for the political and social considerations of courts and judges, however, doctrines impose constraints on judicial choices and define the scope of judicial discretion (Lax 2011). Although the choice and interpretation of legal doctrine is, of course, structured by institutional settings and influenced by political and social concerns, researchers must take it seriously to understand the landscape of judicial review. The critical question is this: What *form* of legal doctrine matters in judicial review? Legal theorists have revealed that different doctrines, particularly determinate rule-like doctrines as opposed to indeterminate standard-like doctrines, score differently in judicial review (Jacobi & Tiller 2007; Coan 2019).

In this paper, we extend the study of workload and judicial decision-making to a comparative and authoritarian context and focus on workload and the judicial choice of legal doctrines. Determinate rule-like doctrines can save time and impose hard constraints on judicial decision-making. On the one hand, a judge's urgent need to save time through the application of hard-edged categorical rules might constrain the arbitrary influence of government officials on judicial decision-making, which is an inherent feature of authoritarian regimes. On the other hand, authoritarian regimes might also be interested in using the law to discipline local agents and even judges (Ginsburg & Moustafa 2008; Zhang & Ginsburg 2019; Mao & Qiao 2021). It might also be easier to monitor local agents and judges through hard-edged rules than ambiguous standards. In this sense, judges' use of hard-edged rules to constrain arbitrary political influence (particularly from the local level) ultimately serves the interests of the regime.

2. Institutional Background

This section introduces the 2015 legal reform that led to the explosive increase in the workload of administrative judges and examines three legal doctrines that judges can choose in reviewing a local government's expropriation decision: public interest, fair compensation,[3] and due process.

2.1 Explosive Increase in Workload

[3] It is equivalent to just compensation in the U.S. context.

The ALL revision in 2015 (ALL Articles 51 and 52) made it a default rule that a court should file a case upon request and specified remedies for potential plaintiffs should the courts fail to make a decision within a certain timeframe, including disciplinary measures against the judicial personnel involved.[4] This move was part of the Chinese Communist Party's (CCP) efforts to make the courts "the last resort" for dispute resolution, shifting the pressure from the government to the courts (Gao 2015).

The Small Leading Group of Deepening Reform of the CCP Central Committee, under the direct leadership of Xi Jinping, passed a resolution on April 1, 2015, which took effect on May 1, 2015, the same day as the 2015 ALL entered into effect, abolishing informal practices that rejected cases at the filing stage (SPC 2015). Supreme People's Court ("SPC"), the highest court of China, disclosed in a news release that the law was rigorously implemented by courts all over the country, resulting in an explosive increase

[4] Before the revision, ALL contained a brief article (Article 42) on case filing without specifying the appropriate remedies should a court not file a case upon receiving a citizen's request. The Chinese courts were notorious for failing to file cases for a variety of reasons, including both workload and political concerns. Making matters worse, the process was neither rule-based nor transparent, and the courts often gave no explanation for their decisions or inaction, leaving potential plaintiffs in despair (Wu & Hu 2015).

in the workload of the Chinese courts. Our data on the number of administrative litigation decisions in the 2014–2017 period verifies that explosive increase.[5]

2.2 Three Legal Doctrines Used in the Judicial Review of Expropriation Decisions

There are three doctrines for the Chinese courts to review local governments' expropriation decisions: public interest, fair compensation, and due process.[6] Individual property rights holders can raise a claim based on any of the three doctrines to challenge a local government's expropriation decision, and the courts can uphold any one of them—or a combination thereof—to adjudicate on a property rights holder's behalf against the government.[7] The final doctrine (due process) is a hard-edged and categorized rule, whereas the former two are ambiguous standards.

[5] *See* Figure 2 in Section 4.1.

[6] Article 10 of the Chinese Constitution requires that the expropriation of land be in the "public interest" and calls for compensation to be paid. Article 13 institutes the same two requirements for the expropriation of privately owned houses. Article 42 of the Property Law stipulates that real estate expropriation be conducted "in accordance with the scope of power and procedures provided by laws." The Land Administration Law, which applies to rural land expropriation, and the 2011 Regulations of Expropriation of Houses on State-Owned Urban Land, which govern expropriation in the urban context, provide the specific administrative procedures that local governments must follow (Qiao & Upham 2017).

[7] *See* Section 4.2 for the distribution of raised and upheld arguments.

Due process in the Chinese context means the government should follow administrative procedures in making and implementing its expropriation decisions. There are two types of procedural control in the context of real estate expropriation in China: internal procedures that local governments must follow to obtain approval for expropriation from upper-level governments and external procedures that enfranchise those implicated in the decision-making process regarding condemnation. In China, different levels of government are afforded different powers of expropriation according to the category and total area of the land concerned. By simply comparing the total area of land condemned with the upper limit of a government's authority, we can tell whether that government has exceeded its authority in condemning land. Moreover, a government must hold proper documents, generally approvals from upper-level governments, to issue an expropriation decision; the absence of such approval documents warrants the conclusion that the government lacked the authority to make that decision. The types of external procedures concerned are those conventionally associated with procedural due process in the Western context, including the presence of a proper legal basis for the expropriation decision, the right to notice, and the right to a public hearing (State Council 2011, Articles 10, 11, and 13). These are all hard-edged, categorical procedural rules.

The public interest requirement limits the agency cost of expropriation by delineating the scope of power. However, it is too broad to effectively constrain local government decisions. The requirement is thus in fundamental tension with the land expropriation-based model of economic development followed by most Chinese local governments (Qiao 2017; Pritchett & Qiao 2018).

Fair compensation doctrine could theoretically limit the agency cost and abuse of expropriation power by forcing local governments to internalize the financial costs of expropriation. Fair compensation is, however, an indeterminate standard, and Chinese local governments always profit from expropriation. In the context of rural land, farmers' compensation is based on the value of the parcel in question as arable land, whereas their land is sold after expropriation as urban construction land, meaning that the new value of the parcel can be fifty times greater (or more) than its original agricultural value. In the context of urban renewal, rezoning always makes for a much bigger pie: what is at dispute on the ground is how to allocate the surplus value (Qiao & Upham 2017). Condemnees are rarely satisfied with compensation equal to the original value of their property and always bargain for more, including through litigation (He 2014). Compensation is thus widely considered the key issue in expropriation disputes precisely because of the unclear standard for awarding it (Geng & Yin 2019; Zhu et al. 2006: 805–06).

3. **Dataset**

We extracted all administrative litigation decisions, including expropriation decisions, issued by provincial-level HPCs between 2014 and 2017 from China Judgements Online (CJO), which the SPC launched on July 1, 2013 and which constitutes the most authoritative and comprehensive source of data on the Chinese courts. We used the change in the average number of administrative cases—7.35% of which were expropriation cases—that each judge adjudicated per month between the pre- and post-reform periods to capture the effects of the ALL revision on the workloads of courts across the country. We further hand-coded all expropriation decisions to understand the judicial process.

3.1 Data Source: CJO

As of January 1, 2014, the SPC has required that effective judgments, verdicts, and conciliation agreements at all levels of the people's courts be published on CJO, which serves as a mass digitalization initiative to standardize the disclosure of Chinese judicial decisions. Prior to CJO's launch, several local courts had launched their own websites with differing standards and formats. The Central Committee of the CCP has mandated efforts to promote judicial transparency, and the SPC issued several related opinions in 2013 and 2016. By the end of 2016, CJO had accumulated more than 26 million judicial documents. It receives a daily average of 20 million views, with total views exceeding 5.2

billion as of January 19, 2017 (Liu 2017). CJO had become the world's largest online court record database by the end of 2016 (Xinhua News Agency 2016). The SPC (2016) places particular emphasis on the completeness of the database.[8]

A caveat is necessary, however: the online publication of Chinese judicial decisions remains a work in progress, and it is difficult to gauge the amount of missing data. The challenge is particularly acute for courts at the intermediate and basic levels, whose decisions constitute the majority of cases adjudicated by the Chinese courts as a whole.

Quantitative analysis of Chinese court data is by no means scarce, with rigorous studies having appeared in leading law and social science journals (He & Lin 2017; He & Su 2013; Li 2013; Long & Wang 2015; Liebman 2006, 2013). However, CJO provides the largest and most authoritative dataset ever made available by the Chinese judiciary (Liebman et al. 2017). We must also stress that the CJO dataset's usefulness depends on the issue being considered and that a careful research design is necessary to verify the data under consideration and avoid systemic bias. That being said, we have no reason to believe that judges would upload one category of decisions to CJO, but not others, based on their choice of legal doctrines in specific decisions.

[8] The SPC has laid out exemptions for the online release of judgments. These exemptions include: (1) state secrets; (2) crimes involving juveniles; (3) personal privacy; (4) other unsuitable cases; and (5) cases settled by mediation.

3.2 Data Collection Strategy

3.2.1 High People's Courts

In China, expropriation is implemented by city and county governments or their agencies. Our research focuses on the HPCs, which are the highest judicial authority in each province and are therefore not under the direct control or influence of the city or county governments that exercise expropriation power. The SPC requires the HPCs to "take the lead" in both constraining local governments' expropriation power and supervising and supporting local courts to protect them from local intervention and interference in judicial review. Although the Chinese courts at various levels differ from one another, examining how the HPCs adjudicate expropriation disputes constitutes a first step toward understanding the role of the courts in curbing expropriation power in China. Figure 1 illustrates the overall structure of the Chinese judiciary.

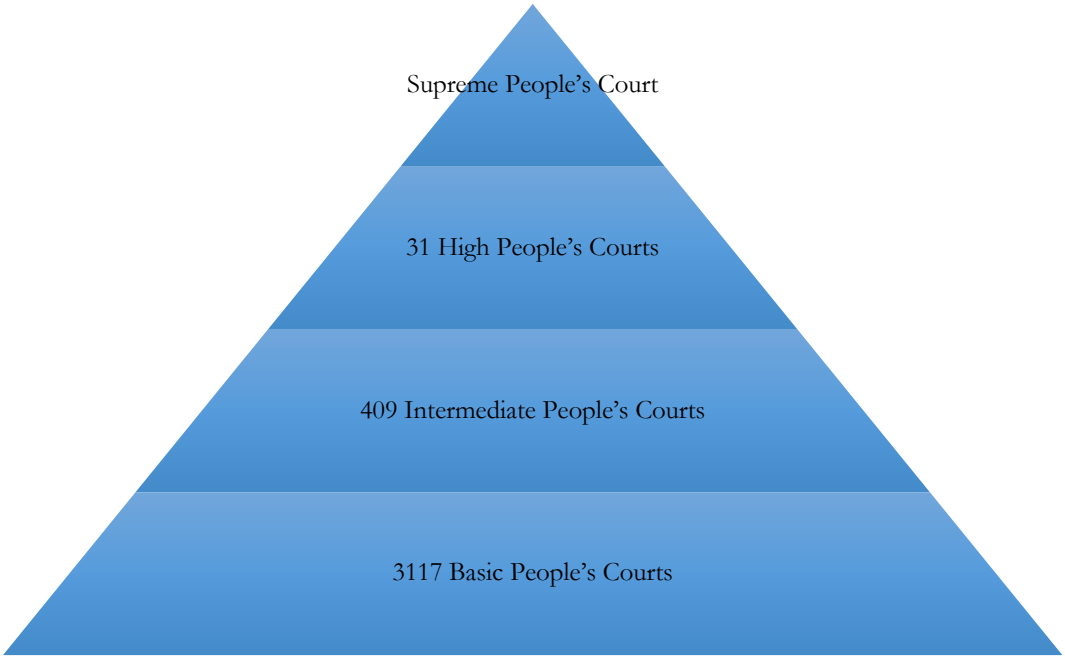

Figure 1. Structure of the Chinese judiciary

The HPCs are also the main implementers of the SPC's decision to publicize judicial decisions, and they are, on average, more transparent than lower-level courts (Ma et al. 2016). The HPCs are also more rule-oriented and subject to closer monitoring than lower-level courts, largely because they enjoy a much lighter caseload and greater proximity to the SPC. According to the Institute of Legal Studies of the Chinese Academy of Social Sciences (CASS), which was contracted by the SPC to conduct a comprehensive review of the Chinese courts' performance in uploading their judicial decisions to CJO, the HPCs perform better overall in this respect than do the lower courts (CASS 2019: 44–47).

As confirmed by both the CASS report and our interviews with HPC judges, a handling judge's secretary uploads case files once a case is closed. There is a unified system within the courts, and since the SPC's launch of CJO, the default rule has been for judges' secretaries to also upload judicial decisions. If a decision is not uploaded, the judge concerned needs to tick one of the boxes at the bottom of the webpage indicating which exception applies,[9] and his or her decision must then be reviewed and approved by a more senior judge. The HPCs have established regular procedures for such approval

[9] One of the authors was shown such a webpage by an HPC judge.

(CASS 2019: 52), and most unpublished decisions fall into specific legal exemptions (CASS 2019: 51).

Because of the default rule and the extra work involved in not uploading a case to CJO, judges must be strongly inclined to apply for an exception. Unlike their counterparts in lower-level courts, HPC judges have no personal interest in expropriation cases, and nor do their leaders. The best strategy for judges, an HPC judge informed one of the authors, is to follow the law and make the final result of a case publicly available.

3.2.2 Expropriation Decisions

We investigated the mechanism by which cases are released to CJO and interviewed judges who specialize in expropriation administrative litigation to gauge whether any systemic practice is involved in certain kinds of expropriation decisions not being uploaded. We interviewed one judge from the Guangdong HPC and one from the Shanghai HPC, and both confirmed that they have uploaded all of their expropriation cases to date. We also interviewed an SPC judge and an official from the CCP Central Committee's Bureau of Legal Affairs who worked at both an intermediate court and the Supreme People's Procuratorate before assuming his current position. In these interviews, we focused on how judges upload their decisions to the court system, what motivates them not to upload a decision, and what approval is needed if they decide not to upload a case. All three judges and the party official rejected the view that

expropriation cases are too sensitive to upload. Although their denial does not constitute conclusive evidence of the completeness of our data, considering that our primary concern is judges' choice of legal doctrines, it does suggest that there is no reason to believe that the Chinese courts are biased against one doctrine or another in deciding whether or not to upload a decision.

Our study focused on judgments awarded between January 1, 2014 and December 31, 2017. The SPC (2013) has promulgated technical and format rules on publishing judicial decisions on CJO, including a rule for naming cases. According to this rule, a case in which an individual property owner challenges an expropriation decision should be named according to the following format: "X Sues Y Government Expropriation/Demolition Administrative Adjudication No. 123." We therefore extracted all administrative adjudication judgments whose titles contained the word "demolition" or "expropriation." Another way to identify expropriation cases is through the phrase "cause of the case" (案由), which CJO provides as a search term. We searched that phrase and added cases not captured in our name search. Our final sample contained 2,724 expropriation decisions issued by the HPCs in the 2014–2017 period.

4. Identification Strategy and Variables

4.1 Identification Strategy

We utilized the exogenous shock to courts' administrative workload effected by the ALL revision for identification. More specifically, defining courts with a larger workload increase as the treated group and the rest as the control group, we employed a difference-in-differences method to explore the causal impacts of workload on the judicial protection of property rights. We examined the differences in adjudication outcomes and processes between courts with larger and smaller workload increases.

First of all, the ALL revision increased the number of administrative cases significantly. Figure 2 plots the total number of administrative lawsuits each month during the 2014–2017 period. The red line corresponds to the month of the revision's enactment (i.e., May 2015). The number of cases remained quite stable in the period before the reform, but increased rapidly thereafter. Figure 2 supports the conclusion that the courts experienced an explosive increase in workload after the reform, as measured by the total amount of administrative litigation, only 7.35% of which was expropriation litigation.

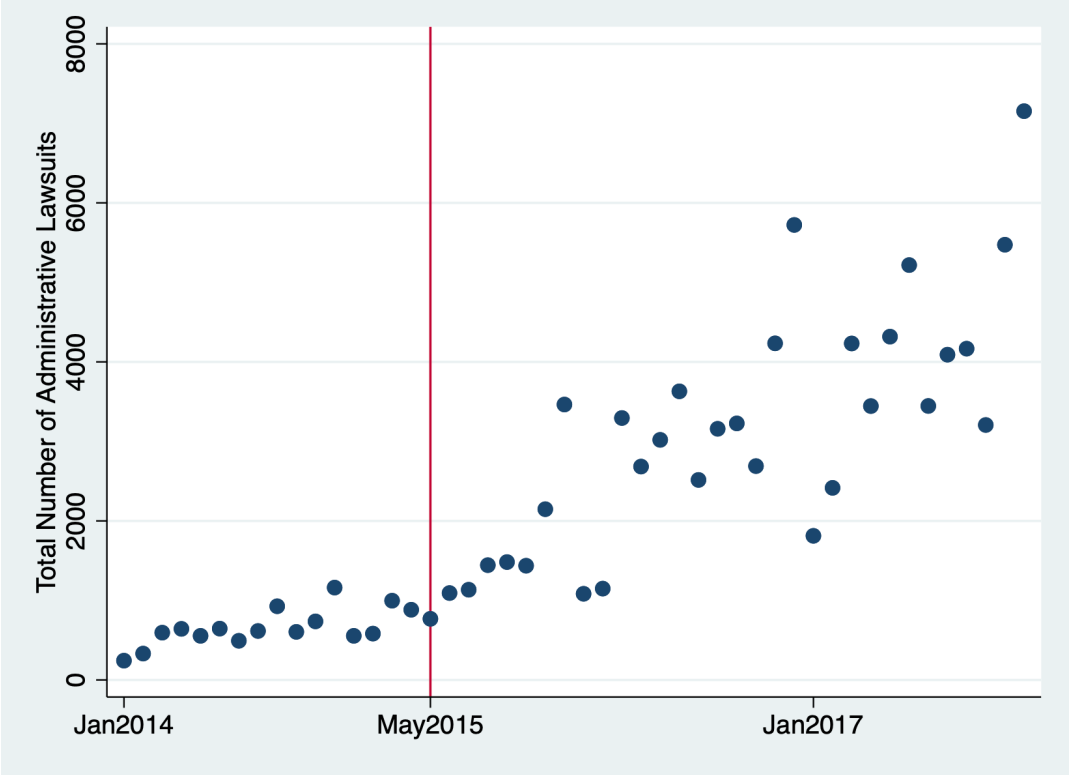

Figure 2. Total number of administrative lawsuits per month, 2014–2017

We used the change in the average number of administrative cases that each judge adjudicated per month between the pre- and post-reform periods to capture the extent of the law revision's effects on the workloads of different courts. Therefore, workload is defined as the number of administrative cases per judge per month in each court in this paper.

Using workload defined by administrative cases rather than expropriation cases presents two advantages. First, this measure better captures judges' increase in workload. Judges dealing with expropriation cases also adjudicate other administrative cases, and thus an increase in administrative cases as a whole influences the resources judges have available to devote to expropriation cases, which, in turn, affects both the adjudication

process and result. Thus, using the overall increase in administrative cases better captures each judge's workload increase. Second, the measure suffers less from the endogeneity issue. As noted, expropriation cases accounted for only 7.35% of all administrative cases from 2014 to 2017. The measure's variation thus stems primarily from the variation in other administrative cases rather than from that in expropriation cases. Hence, when judges adjudicate expropriation cases, their workload pressure arises primarily from other administrative litigation, which is not directly correlated with characteristics or shocks specific to expropriation cases.[10]

However, one potential concern is the selection problem of courts in the pre-reform period. After the reform, the courts were forced to accept all administrative cases according to a unified criterion, and hence there should be no significant differences in case characteristics in the post-reform period. If there is any concern about the endogenous selection of different cases by the courts, then it should arise from the potentially different pre-reform rules the courts used to screen administrative cases.

[10] The number of cases adjudicated is a good proxy for workload, even when evaluated by the number of cases filed. As the number of administrative cases filed by each province is available only on an annual basis, we collapse our data to the province-year level. We regress the number of cases filed on the number of cases adjudicated for each province in each year, with province and year fixed effects controlled. We find them to be highly positively correlated at a 1% level of significance, and, after controlling for the two fixed effects, the variations in the number of cases adjudicated can explain 93.2% of the variations in the number of filings. Therefore, we believe that our measure based on the number of cases adjudicated is a good proxy for workload in that it reflects both the number of case filings and amount of adjudication.

However, as expropriation cases account for only a small share of administrative cases, the screening rules, if any, were unlikely to be determined by the characteristics of expropriation cases, which therefore are unlikely to have confounded our identification. Nevertheless, to account for possible selection bias, we controlled for a battery of covariates covering case characteristics and the characteristics of various plaintiffs, defendants, properties, and projects that may affect the adjudication process of expropriation cases.[11] If case selection was due to these characteristics or related case features, they would be well controlled for, and our sample could be regarded as randomly chosen conditional on these covariates.

In addition, we also controlled for two important provincial time-varying variables to help to alleviate potential selection concerns. The first was economic development level proxied by the provincial GDP for each year. If provinces developed rapidly, they would potentially have more urban renewal projects, which would in turn increase the potential supply of expropriation cases, inducing cross-province variations in such cases. Although our use of administrative rather than expropriation cases to measure workload circumvented this problem, we still included provincial GDP per year to control for the supply of expropriation disputes. The second important variable was the province-level Legal Environment Index (LEI) produced by the National Economic Research Institute

[11] *See* details in Section 5.1.

(NERI) of China, which measures the efficiency of the legal system in different provinces in resolving legal disputes.[12] A higher LEI indicates a more complete and better formed legal environment. The behaviors of both potential plaintiffs and judges can be shaped by the legal environment of the province, which could in turn influence the selection problem, if any. For example, the screening criteria in the pre-reform period, if any, of courts in provinces with a higher LEI might have been clearer and more transparent and formal than those in provinces with a lower LEI. Therefore, we also controlled for the yearly provincial LEI in our regression. If selection was due to these provincial and case characteristics, then they would be well controlled for, and our sample could be regarded as randomly chosen conditional on these covariates.

Given all of the aforementioned efforts, we believe that most sources of the potential selection problem have been taken into consideration. However, it could still be argued that other possible selection problems existed in the pre-reform period owing to unobservables. If so, then cases might differ across courts, leading to different patterns

[12] The LEI is one of the important indexes posted by NERI for measuring the marketization level of different provinces in China. The index contains estimations of four levels of the legal environment: the level of market intermediaries (including the percentage of lawyers and certified public accountants in the local population), level of producer production (including the number of economic lawsuits and concluded cases), level of intellectual property protection, and level of consumer protection.

in the adjudication results. If this were the case, then we would expect to see non-comparable trends across the treated and control groups in the pre-reform period. To ascertain whether it was indeed the case, we tested the pre-trends on property right holders' win rates across courts with different workload increases. After controlling for all variables, we found the two groups to have parallel trends in the pre-reform period.[13] In other words, the win rates of property rights holders were statistically the same in the treated and control groups. Therefore, we are confident that conditional on all of the aforementioned covariates, the division of our treated and control groups was orthogonal with the error term.[14]

4.2 Variables

Workload Change

We downloaded all 37,038 administrative cases adjudicated by the HPCs from 2014 to 2017. As the names of all judges involved in each case are recorded in these data, we were able to identify all judges in court in any given period. We then extracted the number of administrative cases and number of judges for each court in each month. By

[13] The results are reported in Figure 5 and discussed in Section 5.

[14] Another concern is that plaintiffs may have strategically filed cases after the reform. However, owing to the barrier removal feature of the ALL, all cases can be assumed to have been filed non-strategically in the post-reform period as long as the plaintiffs believed the potential benefits to exceed the filing costs. We also show that there is no evidence of plaintiffs strategically raising different arguments in response to the workload change. See Section 4.2 for details.

averaging across the pre- and post-periods, we were able to calculate the average number of administrative cases and judges for each period. Dividing the former by the latter, we obtained our measure of judicial workload, i.e., the average number of administrative cases per judge per month in each period. An increase in workload was calculated as the difference in workload between the post- and pre-reform periods. If a court's increase in workload exceeded the median increase, we assigned that court to the treated group, with all courts whose increase fell below the median assigned to the control group. The workload of the courts in the treated group was heavily affected by the ALL revision, with that of those in the control group affected to a lesser degree. Figure 3 shows the distribution of the treated and control groups. The treated group includes both developed coastal provinces such as Guangdong, Jiangsu, and Zhejiang and less developed ones such as Ningxia in western China and Heilongjiang and Jilin in northeastern China. The control group also includes both developed and less developed provinces.

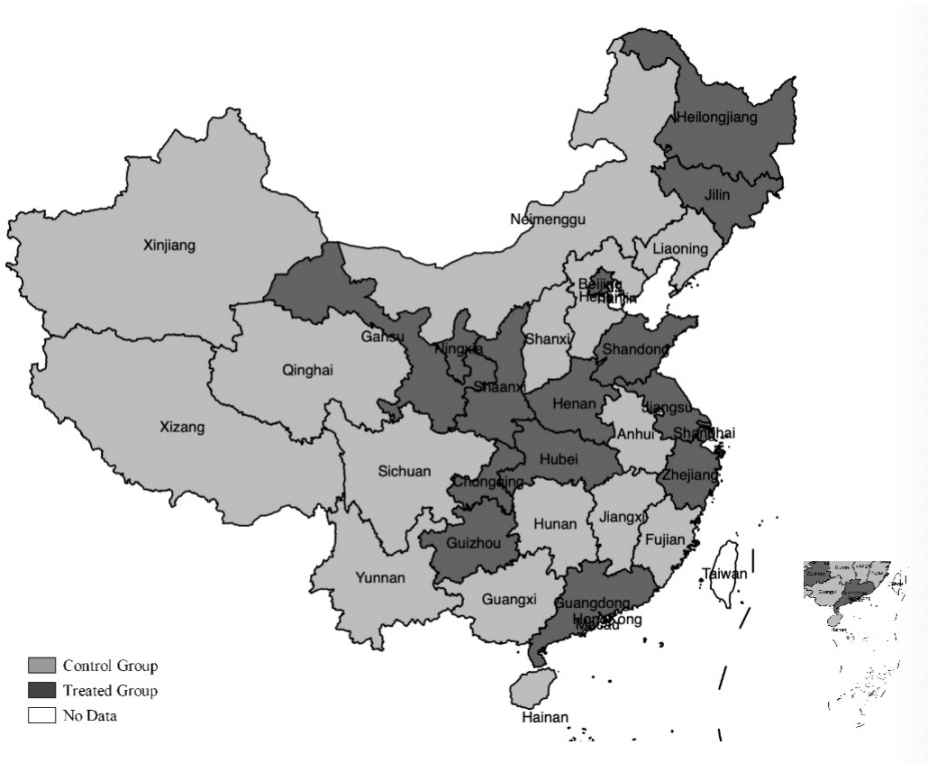

Figure 3. Distribution of the treated and control groups

Arguments

There are three types of arguments that a plaintiff can present in expropriation litigation against the government: (1) the government's decision has procedural mistakes; (2) the expropriation project does not fulfill the public interest requirement; and (3) the compensation is unfair. We dub the first type of argument *Procedural Mistakes* (PM), the second type *Public Interest* (PI), and the third type *Fair Compensation* (FC), and it should be noted that a plaintiff can raise one, two, or all three of these arguments. The court can decide to uphold or overrule a particular argument, and can uphold any of the three—or

a combination thereof—in adjudicating for property rights holders against the government.[15]

Table 1 shows the distribution of arguments *raised* in both the pre- and post-reform periods. It is evident that in both periods, *PM was raised as an argument in almost all cases. Hence, plaintiffs did not strategically raise PM as an argument more often after the reform*. In the post-reform period, FC arguments were also raised more often than they had been in the pre-reform period. However, FC was rarely upheld by the courts, even in the post-reform period, as shown in Figure 4, which presents both the distribution of raised arguments and how courts ruled on them. In addition, if we look at the total number of arguments upheld by the courts, PM was also dominant in both periods and especially in the post-reform period.

Table 1. Distribution of raised arguments

	Cases Raising PM		Cases Raising PI		Cases Raising FC	
POST	Number	Ratio	Number	Ratio	Number	Ratio
Pre-reform Period	303	0.9409938	155	0.4813665	58	0.1801242
Post-reform Period	2324	0.967527	746	0.3105745	967	0.4025812

[15] In our dataset, upholding PI, FC, or PM leads to a winning probability of 100%, 100%, and 96.27%, respectively.

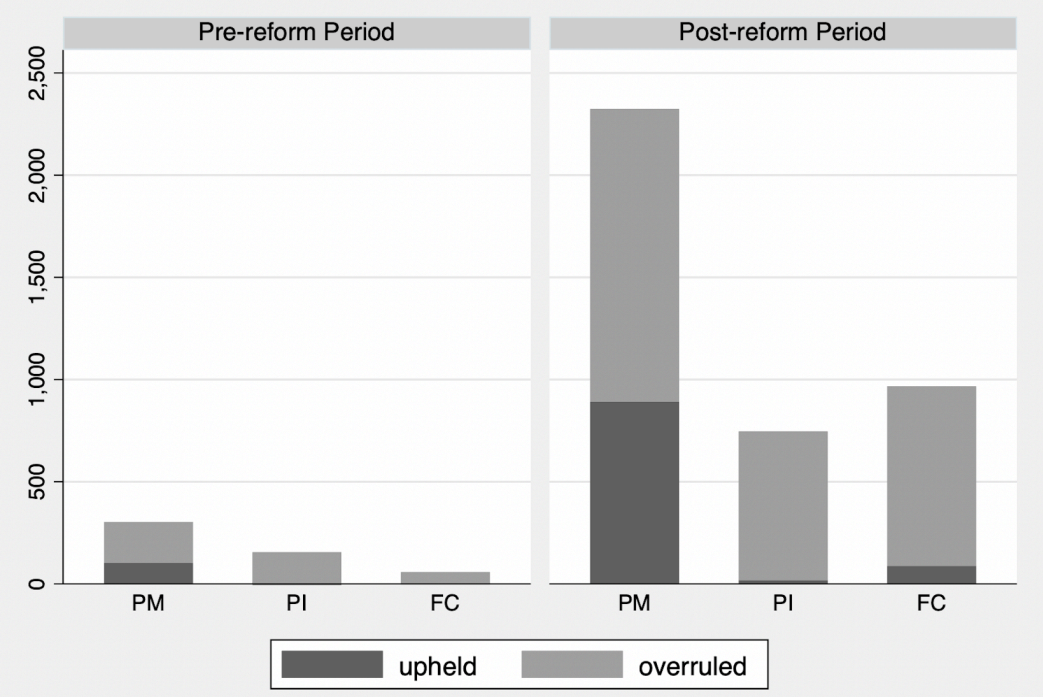

Figure 4. Distribution of arguments

We assigned the dummy variable *up_PM* to indicate whether a court upheld the PM argument. If PM was upheld by the court, then *up_PM* = 1; otherwise, *up_PM* = 0. The variables *up_PI* and *up_FC* were defined in an analogous manner.

Adjudication Results

Property rights holders win the suit when the court determines that the administrative act should be repealed or confirms the illegality of the expropriation decision or the government voluntarily withdraws that decision. Property rights holders lose the suit when the court sustains the administrative act in question. We constructed the dummy variable Win_{ct} as an indicator of whether the property rights holder won case c in year t: $Win_{ct} = 1$ if the property rights holder won the case; $Win_{ct} = 0$ if the property rights holder lost the case.

Reform

The ALL revision took effect on May 1, 2015. Therefore, we constructed the dummy variable *POST* to index the post-reform period: *POST* = 1 if the adjudication took place later than April 30, 2015; otherwise, *POST* = 0.

Other Attributes

Although the arguments presented by the plaintiff are the crucial determinant of the final court adjudication in a given case, we also considered other potentially influential factors. Thus, we included plaintiff characteristics, government characteristics, property characteristics, and other characteristics as control variables.

Table 2. Overall characteristics of expropriation cases

	Number of cases	Percent
Government Characteristics		
Level of government		
County level or below	2,257	82.86
Above county level	467	17.14
Legal representative for government?		
No	714	26.21
Yes	2,010	73.79
Plaintiff Characteristics		
Identity of the plaintiff		
Rural resident	900	33.04
Non-rural resident[1]	1,824	66.96
Number of plaintiffs		
= 1	2,295	84.25

>1	429	15.75
Legal representative for plaintiff?		
No	1,164	42.73
Yes	1,560	57.27
Property Characteristics		
Land ownership		
Collectively owned land	889	32.64
State-owned land	1,835	67.36
Illegal construction of property?		
Yes	237	8.73
No	2,477	91.27
Previous use of land		
Non-residential[2]	589	21.62
Residential	2,135	78.38
Project Characteristics		
Project level		
County level or below	2182	80.10
Above county level	542	19.90
Project objective		
Not specified	329	12.08
Pure public interest	554	20.34
Urban renewal	1,359	49.89
Economic development zone	169	6.2
General use	301	11.05
Housing project for low-income residents	12	0.44
Others		
Taking agreement signed by majority?		
No	1,875	68.83
Yes	849	31.17

Presence of administrative head?		
No	2,429	89.17
Yes	295	10.83
Experienced administrative reconsideration?		
No	1,979	72.65
Yes	745	27.35

Note. 1. *Non-rural* includes urban residents (63.9%) and others (2.6%), such as private firms, collective firms, and religious entities. 2. *Non-residential* includes commercial, industrial, and agricultural use.

From the data in Table 2 we can see that 82.86% of defendants were county-level governments or below, which is consistent with our understanding that, in China, real estate expropriation is driven by local governments. In 73.79% of the cases in our sample, the defendant government hired an external lawyer, whereas the percentage of plaintiffs (i.e., property rights holders) who did so was 57.27%.

Project level differs from the level of the defendant government. Many projects are implemented by one government but require advance approval from a higher-level government. For example, a plan to expropriate land to build a high-speed railway may require approval from the central government, whereas specific expropriation decisions can be issued by a county-level government in a particular locality.

Administrative reconsideration occurred in 27.35% of cases, meaning that the expropriation decision in question was reconsidered by an upper-level government agency upon the request of the property rights holder before being litigated in court. The head of the administrative agency that issued the expropriation decision was present

during court proceedings in only 10.83% of cases; in most instances, administrative heads authorized their employees to attend court on their behalf.

5. Empirical Results

This section tests the impact of workload on property rights holders' win rates, investigates the mechanism of that impact with a focus on judges' choice of legal doctrine in arriving at their decisions, and examines the limits of our findings.

5.1 Baseline Results

We tested the causal effect of workload on the adjudication results using the following empirical specification:

$$Win_{ct} = \beta_1 \cdot H_c \times POST_t + \beta_2 \cdot POST_t + \boldsymbol{X'_{ct}\Theta} + \lambda_c + \varepsilon_{ct}$$

, where $H_c = 1$ if the case belongs to the treated group, i.e., the group whose courts experienced large increases in workload; $\mathbf{X_{ct}}$ are other case and provincial attributes that may have affected the adjudication result, including all of the variables in Table 2, provincial GDP, and LEI; λ_c is a court fixed effect to control for all of the time-invariant characteristics of each court; ε_{ct} is the robust standard error; and $\beta_1$is the difference between the change in the win rate in courts with larger workload increases and the corresponding change in courts with smaller such increases. Therefore, β_1 captures the effect of workload on the win rates of property rights holders.

Table 3. Workload and adjudication results

Dep Var:	Win_{ct}	
	(1)	(2)
$H_c \times POST_t$	0.1229**	0.1922***
	(0.0542)	(0.0553)
$POST_t$	-0.0069	-0.2449***
	(0.0417)	(0.0507)
Court Fixed Effect	Yes	Yes
Controls	No	Yes
N	2724	2724

Note. We omit all of the results on the controls to save space. Robust standard errors are in parentheses. * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Column (1) of Table 3 reports results with only the court fixed effect included. It is evident from the column that, following the reform, property rights holders were more likely to win their case in courts with a larger workload increase than in those with a smaller workload increase. Column (2) presents the results with all covariates controlled for. The estimated coefficient before $H_c \times POST_t$ remains significantly positive, indicating that it was the increased workload that led to the higher win rate for property right holders.

To validate this finding, we further employed a more flexible specification to test whether the treated and control groups exhibited comparable trends in the pre-reform period. More specifically, we separated our sample into eight half-year periods and ran the following specification. Using the first half of 2014 as the base period, α_t captures

the change in the difference in the win rates of the treated and control groups in period *t* compared with the difference in the base period.

$$Win_{ct} = \sum_t \alpha_t \cdot H_c \times HalfYear_t + \sum_t \delta_t \cdot HalfYear_t \cdot POST_t + \boldsymbol{X'_{ct}\Theta} + \lambda_c + \varepsilon_{ct}$$

Figure 5 plots the estimated $\widehat{\alpha_t}$, with 201501 and 201502 denoting the first and second halves of 2015, respectively. It is evident that there was no significant between-group difference in the win rates of property rights holders in the pre-reform period. The estimates start to become larger and significantly positive only after the reform, thus supporting our results.

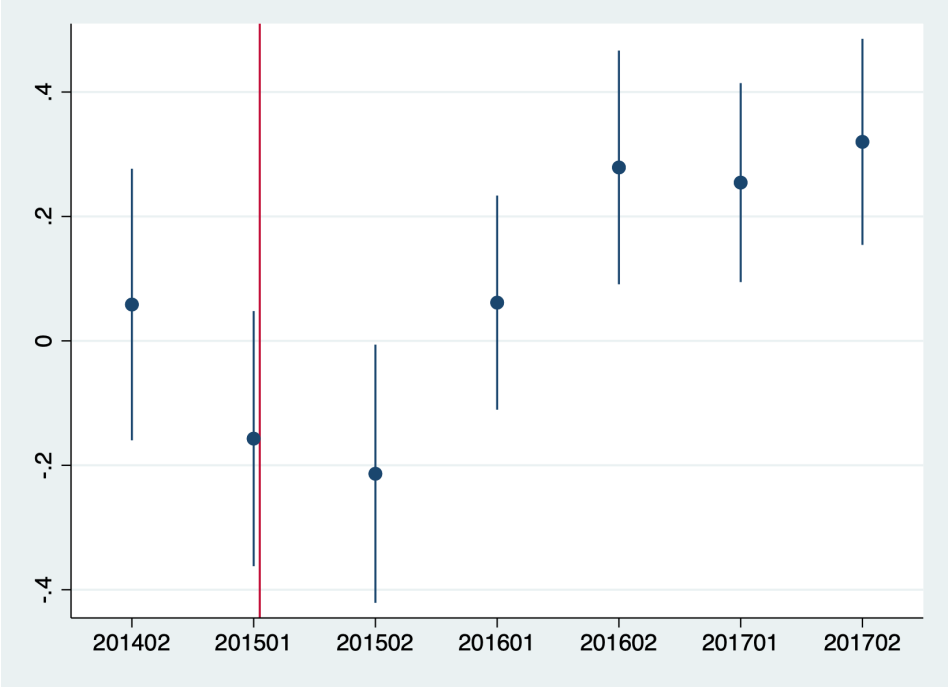

Figure 5. Comparable pre-trends

Note. 201501 and 201502 denote the first and second halves of 2015, respectively. The same naming pattern applies to the other labels.

Overall, these results demonstrate that the increased workload in the post-reform period led to an increasing win rate for property rights holders. In other words, busy

courts were likelier than their less busy counterparts to decide against the state. This result is somewhat counterintuitive, running contrary to what we might expect from an explosive increase in workload. Heretofore, the literature has uniformly demonstrated a negative impact on the delivery of justice upon an increase in workload, with examples including a less rigorous review of lower court decisions by appellate courts (Huang 2010) and the less effective enforcement of contract rights (Ponticelli & Alencar 2016; Visaria 2009; Chemin 2012). Why then did our results show the opposite effect? That is, why were Chinese courts *more* (not less) likely to hold the government accountable in the wake of an increase in their workload? This outcome is even more puzzling given that the Chinese courts are non-independent and generally side with the authoritarian state. How did the courts change their adjudication strategies in response to an explosive increase in workload?

5.2 Mechanism

We have shown that the increased workload of the courts led to an increased win rate for property rights holders. To understand why the increase in workload changed the adjudication results, we further analyzed how the courts arrived at their decisions during the judicial process. As indicated by Judge Richard Posner and his co-authors Lee Epstein and William Landes (2013: 38–9), judges may embrace doctrines that limit the judicial workload, such as harmless error, political questions, and the plain-meaning rule

of statutory interpretation, as well as, of particular importance to this paper, the adoption of rules in lieu of standards. The three aforementioned arguments about expropriation (public interest, fair compensation, and administrative procedures) reflect three different doctrines, the last of which provides clear rules for judges to use in deciding a case, whereas the meaning of public interest and fair compensation are ambiguous and have been the subject of scholarly debate for decades (e.g., Cooter 2000: 288–90).

Clear rules save time in judicial decision-making. Whether a government, in exercising its expropriation power, has made procedural mistakes is a yes-or-no question: property rights holders have either been notified of an expropriation decision or they have not. The same applies for the requirement to hold a public hearing. Thus, when the government does make a procedural mistake, such a misstep provides direct, clear, and undisputed information for judges to use in decision-making. In contrast, judges need to consider various messy arguments about whether an expropriation project is in the public interest and whether compensation is fair, notions that are inherently more subjective. Such decisions usually involve policy considerations and the second-guessing of local government decisions, neither of which judges have the administrative experience or expertise to do. Given that the Chinese courts are non-independent, they may be more reluctant to challenge the government on policy issues than would be their counterparts in a liberal democracy featuring independent (and often powerful) courts

that are willing to elaborate on complex legal doctrines to influence political and social development when sufficiently motivated.

Overall, administrative procedures provide a clear and cost-effective way for non-independent courts to check the abuse of expropriation power by Chinese local governments. Clear rules stipulated by the Chinese central government also define the scope of judicial review and a comfortable zone in which Chinese courts can act. If implementing such clear rules amounts to a decision against the government, that ruling is safe owing to clear guidelines from a common principal: the central government.

Therefore, it could be that the increase in workload changed the courts' focus on different doctrines, as reflected in the three arguments raised by plaintiffs with respect to expropriation decisions. To examine this possibility, we replaced the dependent variable Win_{ct} with dummies for the upholding of each argument and re-ran our baseline model.

Table 4. Workload and Adjudication Process

Dep Var:	(1)Up_PM_{ct}	(2) Up_FC_{ct}	(3) Up_PI_{ct}
$H_c \times POST_t$	0.2756***	0.0120	0.1035***
	(0.0592)	(0.0797)	(0.0282)
$POST_t$	-0.2460***	0.0523	-0.0955***
	(0.0527)	(0.0583)	(0.0347)
Court Fixed Effect	Yes	Yes	Yes
Controls	Yes	Yes	Yes
N	2627	1025	901

Note. We omit all of the results on the controls to save space. Robust standard errors are in parentheses. * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Column (1) of Table 4 presents the results on the effects of an increased workload on courts' decisions to uphold PM, conditional on PM being raised.[16] The coefficient of $H_c \times POST_t$ is significantly positive in Column (1), indicating that courts were more likely to uphold arguments focused on the procedural mistakes of governments when faced with an increase in their workload. It is also important to emphasize, as noted in Section 4.2, that both before and after the reform, *PM was raised as an argument in almost all cases, and therefore plaintiffs did not strategically raise PM more often after the reform*. The number of observations in Column (1) is 2,627, indicating that in 2,627 out of 2,724, or 96%, of cases PM was raised as an argument. Therefore, the coefficient is not driven by plaintiffs strategically raising arguments, but rather captures changes in judges' choice of legal doctrines. In general, once PM was upheld by the court, the government was, on average, 96.27% likely to lose, meaning that the courts' increased reliance on PM led directly to a greater probability of a government loss.

Column (2) shows analogous results for FC. The estimated coefficient of $H_c \times POST_t$ is insignificant and quantitatively close to zero, indicating that there was no significant difference in the rates of FC being upheld across the treatment and control groups. Column (3) reports the results on PI. We found workload to have a significantly positive, albeit quantitatively small, effect on the PI upholding rate. However, in only 19

[16] We obtained consistent results when we used the full sample instead of the subsample of cases in which a specific argument was raised.

out of 2,724 cases was PI upheld, indicating that it is unlikely to be a major concern in judges' adjudication process.

In sum, these results show that an increased workload rendered the courts more likely to uphold PM in deciding a case, which led to an increased win rate for property rights holders. The mechanism is shown in Figure 6.

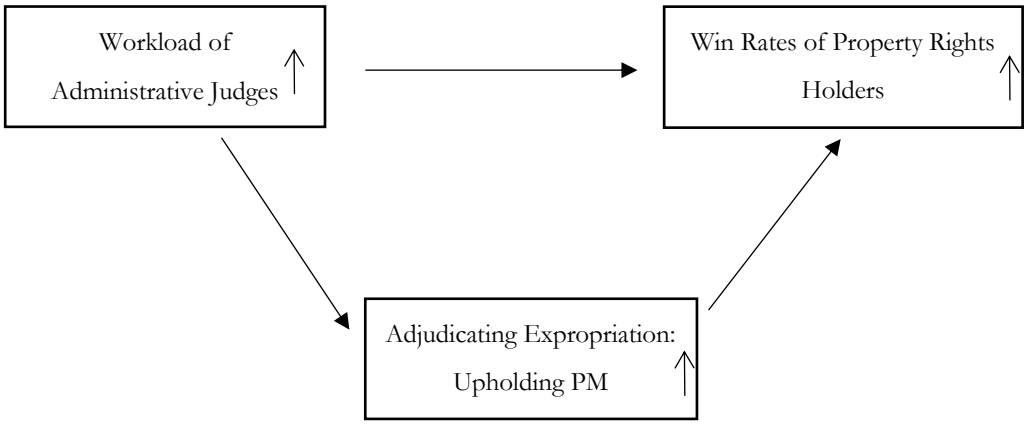

Figure 6. Mechanism

5.3 The Authoritarian Limits of Law

We found that workload's positive impact on property rights holders' chances of winning their case exists only when the defendants are county-level governments or below (83% of cases). In the case of defendants above the county-level, the impact becomes negative. In addition, workload's positive effect on judicial review also exists only when the project level is county or below or when an administrative head is not present during court proceedings. Taken together, these results reveal that, in an authoritarian regime, power (whether of a higher authority or of government insistence

on exercising expropriation power) eventually overrides law, defining the limits of judicial review.

Columns (1)–(2) of Table 5 show the heterogeneous effects across defendant levels where some level of government was the defendant. Courts facing larger workload increases tended to adjudicate for property rights holders against governments at the county level or below, which is consistent with our baseline finding. However, that tendency disappeared when the defendant government was above the county level, meaning that the positive effect of an increase in workload on the win rate of property rights holders was present only in litigation against lower-level governments. Columns (3)–(4) consider the project level and demonstrate that the workload effect was evident only for lower-level projects (i.e., county level or below), turning insignificant for higher-level projects.

The presence of an administrative head in court, which occurred in only 10.83% of cases in our sample, serves as an indicator that the defendant government is particularly engaged in the matter at hand. Columns (5)–(6) of Table 5 indicate heterogeneous effects depending on whether the defendant government's administrative head was present in court. When the head was absent during court proceedings, an increased workload had a significantly positive effect on the win rate of property rights holders. However, that effect was no longer significant when the head was present. These findings demonstrate

the non-independence of the Chinese courts: when faced with a government insistent on its exercise of expropriation power, the judicial control of administrative power through administrative procedures vanishes.

Table 5. Higher and more insistent power: the limits of the judicial control of administrative power in an authoritarian regime

	Defendant Level		Project Level		Presence of Administrative Head	
Dep: Win_{ct}	(1) County or below	(2) Above County	(3) County or below	(4) Above County	(5) No	(6) Yes
$\mathrm{H}_c \times \mathrm{POST}_t$	0.2112***	-0.3141**	0.2292***	0.1261	0.2072***	0.0385
	(0.0635)	(0.1435)	(0.0660)	(0.1345)	(0.0574)	(0.4132)
Controls	Yes	Yes	Yes	Yes	Yes	Yes
N	2257	467	2182	542	2429	295

Note. To save space, we have omitted all results on the controls and *POST*. Robust standard errors are in parentheses. $^{*}p < 0.10$, $^{**}p < 0.05$, $^{***}p < 0.0$

6. Conclusion

The workload crisis is a major problem for courts around the world, with existing research documenting the effects of judicial overload on the delivery of justice, particularly in the domains of criminal justice and the resolution of civil and commercial disputes. This paper is the first of its kind to broaden the inquiry into a consideration of the impact of judicial workload on the delivery of justice within the realm of administrative litigation, which concerns judicial checks on the abuse of administrative power and the protection of individual rights against such abuse. Using hand-coded data from China, where the power of the courts to check authoritarian power is presumptively weak, we found that an increased judicial workload both increases property rights holders' chances of winning their case again the government and prompts judges to support claims based on hard-edged rules, specifically administrative procedures, in deciding expropriation litigation. Judges' incentives to use time-saving rules to adjudicate cases constrains judicial discretion, which is prone to arbitrary political influence (particularly from the local level) in authoritarian regimes. Our study also provides evidence on and refined analysis of the role of the courts in authoritarian regimes.

This study demonstrates that legal doctrines matter (Lax 2011), even in an authoritarian context. Joining Epstein, Landes and Posner (2013: 38–9), we call for

further investigation of the judicial choice of legal doctrines in the face of an increased workload, particularly in the comparative and authoritarian contexts.

7. Appendix

Province	*N* of Admin Cases per Judge, per Month*		Workload Change	Treated Group (= 1)
	Pre	Post		
Chongqing	15.77273	101	85.22727	1
Beijing	51.54386	133.3936	81.84975	1
Jiangsu	20.75	87.72941	66.97941	1
Henan	16.03333	76.10256	60.06923	1
Zhejiang	14.65517	73.16456	58.50938	1
Shandong	18.88235	75.60317	56.72082	1
Shanghai	29.75	83.90909	54.15909	1
Shaanxi	5.941176	59.87805	53.93687	1
Heilongjiang	2	55.1	53.1	1
Hubei	2.8	54.4898	51.6898	1
Guizhou	4.740741	54.89855	50.15781	1
Guangdong	14.82979	64.60215	49.77236	1
Gansu	8.866667	52.74194	43.87527	1
Jilin	5.181818	48.84211	43.66029	1
Ningxia	2.8	38.71429	35.91429	1

Jiangxi	6.4	38.15385	31.75385	0
Sichuan	7.241379	36.67742	29.43604	0
Fujian	11.2963	39.86765	28.57135	0
Shanxi	7.388889	32.32727	24.93839	0
Anhui	8.958333	33.51471	24.55637	0
Hebei	9.066667	31.92982	22.86316	0
Guangxi	4.5	23.63366	19.13366	0
Hainan	9.261905	24.5	15.2381	0
Xinjiang	1.925	14.04054	12.11554	0
Yunnan	7.1875	17.77778	10.59028	0
Neimenggu	10.22222	20.78788	10.56566	0
Hunan	11.125	20.92486	9.799856	0
Qinghai	9.166667	11.66667	2.5	0
Xizang	0.5	1.153846	0.6538461	0
Liaoning	21.06667	18.28916	-2.777512	0

* We use the average number of administrative cases per month divided by the average number of judges per month for each period. Each case has a judge who is primarily responsible, although a decision requires at least three judges to constitute a panel.

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