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EXPLAINING COMPARATIVE ADMINISTRATIVE LAW:
THE STANDING OF POSITIVE POLITICAL THEORY

Benjamin Minhao Chen† & Zhiyu Li†

Abstract: The principal-agent model of administrative law sees bureaucrats as imperfectly supervised agents of their political principals and courts as a tool used by the latter to monitor and check the former. This paper compares how the class of plaintiffs authorized to bring suit against governmental bodies has been defined in three countries where one should expect to find significant barriers to administrative litigation—Japan, Singapore, and the People’s Republic of China. Although these three Asian countries have traditionally been one-party dominated states, we do observe substantial differences in how legislatures and courts have addressed the issue of standing over time. It is possible to explain these variations by examining three factors. First, the local governments are, in some countries, sub-entities or agents of the national government. Thus, administrative law might be used to regulate the acts of local governments in addition to agencies, leading to broader notions of standing. Second, the level of political competition could influence the doctrine of standing by incentivizing political incumbents to secure alternative avenues for challenging the policies of their successors. Third, the legal process is not the only mechanism available for monitoring the behavior of agents. For example, the Administrative Management Agency, xinfang system, and “Meet the People Sessions” offer channels for non-judicial resolution of administrative disputes in Japan, China, and Singapore respectively. Yet courts and other monitoring mechanisms are not perfect substitutes; the different quality and quantity of the information collected, the creation of legal rules binding future decisions, and transaction costs of overriding judicial outcomes distinguish between them. This last factor is, in general, not easily resolved in one direction or another. The larger conclusion drawn is that Positive Political Theory, while insightful, may not always give an elegant structure to comparative studies in administrative law.

I. INTRODUCTION

Does Positive Political Theory (PPT) explain doctrinal developments in administrative law? This perspective on administrative law, also referred to as “rational choice”¹ or “political economy,”² challenges the conventional emphasis in legal scholarship on the values of procedural and administrative

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fairness. It does so by characterizing legislative and judicial outcomes as the product of choices by individual or group actors seeking to maximize their interests in a strategic environment. In recent years, however, the PPT account of administrative law in the United States has been called into question by its performance in comparative contexts. After a review of the relevant law in the United States, United Kingdom, France, and Germany, some scholars, such as M. Elizabeth Magill and Daniel Ortiz, have concluded that “something other than constitutional design best explains the existence and shape of judicial review of administrative action”—judicial culture. In contrast, other scholars, such as Nuno Garoupa and Jud Mathews, have presented a model that takes into account the relative control that politicians have over government bureaucracy and courts. By factoring in judicial autonomy, their model “explain[s] differences within legal families in a way that previous political economy models could not.” In particular, they argue that differences between American, British, French, and German administrative law conform to PPT predictions.

But administrative law is not applied exclusively to agencies. It may sometimes be used to contest the decisions of local governments. In addition, courts are not the only means for legislatures to ensure that their instructions are being faithfully executed. For example, legislatures have instituted ombudsman offices as another tool used to monitor compliance and rein in agency discretion. These institutional details influence the development of administrative law and should be included in a PPT framework. To illustrate this, this paper will explore the elements required for plaintiffs to have standing to initiate judicial review of administrative action in three jurisdictions: Japan, Singapore, and the People’s Republic of China (China).

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3 See, e.g., M. Elizabeth Magill & Daniel R. Ortiz, Comparative Positive Political Theory, in COMPARATIVE ADMINISTRATIVE LAW 134, 134 (Susan Rose-Akerman & Peter L. Lindseth eds., 2011) (stating that “[l]ittle in the last thirty years has so changed thinking about American administrative law as Positive Political Theory (PPT)” [hereinafter Magill & Ortiz].

4 Id. at 145.

5 See generally Garoupa & Mathews, supra note 2.

6 Id. at 31.

7 The ombudsman is a governmental office that investigates public complaints of administrative abuse or inefficiency. It does not exercise a judicial function and instead resolves disputes through recommendations and/or mediation. In the United Kingdom, for example, both the findings and the recommendations of Ombudsmen are non-binding on the government. See generally Bradley v. Work and Pensions Secretary [2008] EWCA (Civ) 36 (Eng.). But the Ombudsman may bring to the attention of Parliament instances of maladministration or injustice in the form of special reports. See Parliamentary Commissioner Act 1967 (Eng.).
There are several considerations informing the selection of our case studies. First, while Magill and Ortiz limit their attention to judicial review for administrative reasonableness, this article focuses on standing. This is because narrow standing restricts the use of courts as an avenue for politically marginalized interests that seek to challenge official policy. The legal obstacle posed by standing also chills the interpretative development of the law by judicial actors. If the judge who decides a case thereby participates in the “authoritative reconstruction of the law-maker’s law,” preventing administrative disputes from being heard reduces the extent to which the judiciary shares in the legislature’s power.

Second, these three countries are, or were for a major part of their recent history, stable, party-dominated states. It is therefore unlikely that electoral competition explains disparities between Chinese and Singaporean administrative law. On the other hand, the relatively recent emergence of political turnover in Japan provides a source of variation that is both relevant and interesting for PPT analysis.

Third, citizens in these three countries share similar cultural attitudes towards litigation. There is a substantial body of scholarship that suggests that the Japanese cherish harmony and prefer informal mechanisms of dispute resolution over formal, adversarial procedures. Under the influence of Confucianism, the Chinese have traditionally preferred to settle disputes in private rather than in a courtroom. In Singapore, the

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8 Martin Shapiro & Alec Stone Sweet, On Law, Politics and Judicialization 69 (2002). This would seem to be true only of common law countries, but judicial lawmaking has been taking place in civil law countries as well. See, e.g., Edward A. Tomlinson, Tort Liability in France For The Act of Things: A Study of Judicial Lawmaking, 48 LA. L. REV. 1299 (1988).

9 This is not to say that courts may not find a way around the obstacle. See Manoj Mate, Public Interest Litigation and the Transformation of the Supreme Court of India, in CONSEQUENTIAL COURTS: JUDICIAL ROLES IN GLOBAL PERSPECTIVE 262, 272 (Diana Kapiszewski, Gordon Silverstein, & Robert A. Kagan eds., 2013) ("The Court’s decision in the Judges’ Case was thus a classic Marbury move: the Court expanded its own jurisdiction by endorsing standing for [public interest litigation], but gave the government what it wanted by deferring to the supremacy of the Executive in transfers and appointments."). (emphasis added).

10 The Liberal Democratic Party (LDP) has governed Japan from 1955 to the present, except for brief interruptions between 1993 and 1994 and between 2009 and 2012. The Chinese Communist Party (CCP) has ruled China since 1949. In Singapore, the People’s Action Party (PAP) has been in power since independence from Malaysia in 1965.

11 See, e.g., Takeyoshi Kawashima, Dispute Resolution in Contemporary Japan, in LAW IN JAPAN: THE LEGAL ORDER IN A CHANGING SOCIETY 41, 44 (Arthur von Mehren ed., 1963). Kawashima asserts that the social rules of respectful obedience or kyōjun and authority or ken-i undergird most relationships in Japan. Hence, resorting to law is incompatible with the implied hierarchy of Japanese society.

government has articulated an ideology that legal scholar Eugene Tan has summarized as “civility over contentiousness,” and “responsibilities over rights.” Thus, our comparative analysis controls for legal consciousness as a significant explanatory factor.

In dominant-party states where control of the legislative chamber coincides with the exercise of executive power, one should find that the judiciary has a marginal role to play in policing the conduct of administrative agencies. Thus, one should also expect the class of persons permitted to sue for relief in administrative cases to be carefully circumscribed. Yet, the law of standing has diverged in these three jurisdictions. By attempting to explain these and other differences, this paper hopes to demonstrate both the extent and the limits of PPT as a model for understanding administrative law.

Section II offers a quick primer on the principal-agent model that is at the core of PPT. The goal is not to conduct an exhaustive survey but to introduce the type of reasoning that has been applied in recent work on comparative administrative law. Section III summarizes some of the jurisdictional elements for judicial review of administrative action in each of the three countries through a review of statutory and case law. Section IV compares the variation and evolution in standing doctrines and analyzes them through the PPT framework. Section V discusses the range of institutional designs that the legislature could use to monitor and discipline those to whom it has delegated policymaking functions.

II. THE PRINCIPAL-AGENT MODEL

The classic principal-agent paradigm posits bureaucrats as servants of the legislature tasked with implementing the legislative intent as expressed through statutes. Its “central premise” is that “bureaucratic institutions and legislative-bureaucratic interaction . . . [should be interpreted] as promoting the interests of the principal to the greatest extent possible.” The

13 Eugene Tan KB, _Harmony as Ideology, Culture, and Control: Alternative Dispute Resolution in Singapore_, 9 AUSTL. J. ASIAN L. 120 (2007). The 1991 White Paper distinguished between “Asian societies” that “emphasize the interests of the community” and “Western societies” that “stress the rights of the individual.” For Singapore, “an emphasis on the interests of the community” is a “key survival value” to be “preserve[d]” and “strengthen[ed].”

14 See, e.g., Sean Gailmard, _Accountability and Principal-Agent Theory_, in _THE OXFORD HANDBOOK OF PUBLIC ACCOUNTABILITY_ 90, 95 (Mark Bovens, et al., eds., 2014) (“One of the earliest, and still most robust, principal-agent literatures in political science takes bureaucrats as agents of some constellations of political principals – most often Congress, the president or executive actors, and/or courts.”).

15 Id. at 96.
legislature might prescribe a mission for an agency without specifying in detail how it is to be accomplished or the rules that have to be followed in reaching a determination. In such situations, the legislature delegates broad authority to the agency. Alternatively, the legislature might seek to constrain agency discretion either by narrowly defining the scope of its mandate or by setting up procedural requirements such as notice-and-comment or cost-benefit analysis. The choice is influenced by, among other things, the level of trust in the bureaucratic agent, in particular whether the agent will faithfully apply his or her expertise to respond to unique circumstances rather than pursue his or her own political agenda and preferences. It is also shaped by the possibility of monitoring the agent and correcting his or her excesses.

Not always having the resources to monitor the activities of the bureaucracy, legislatures often empower judicial actors to supervise agency activity in a number of ways. For example, legislatures sometimes grant courts the authority to review administrative decisions. In addition, legislatures can create a private right of action, allowing private citizens and interest groups to check agencies that might otherwise be tempted to stray from legislative preferences. In doing so, the legislature uses judges not as policemen who actively “patrol” for infractions, but as “fire alarms” that attract the attention of lawmakers to ongoing violations. In addition, legislators themselves may look to courts as an instrument for preserving their political gains after they leave office. In the context of the United States, for example, Mathew McCubbins, et al., argue that “the primary explanation for the failure of administrative reform proposals before World War II but their success later was the desire of New Democrats to ‘hard wire’ the policies of the New Deal against an expected Republican, anti-New Deal political tide in the late 1940s.”

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New Deal did not promulgate administrative procedure to realize the ideal of due process that had hitherto been pursued in an uneven fashion by courts. Rather, they acted to create a forum for scrutinizing agency conduct if and when they came under the command of a politically unfriendly President.

Recent scholarship has emphasized the relevance of political structure for understanding comparative administrative law. Consider the following spatial model of agency regulation under a parliamentary system.21

**Figure 1**

The line above represents a one-dimensional policy space. $P_{\text{parliament}}$ is the legislature’s ideal. The agency starts by making a policy that is observed by all actors. The legislature may then choose to override the agency, but this involves transaction costs. If the agency selects either $P_{\text{lower}}$ or $P_{\text{upper}}$, the legislature is indifferent between overruling and sustaining the agency’s action. Under this set-up, the agency has discretion to select any policy between $P_{\text{lower}}$ and $P_{\text{upper}}$. This is because the legislature finds the benefits of revising any policy in that interval to be smaller than the costs. Hence, in equilibrium, the agency selects $P_{\text{lower}}$ and the legislature allows $P_{\text{lower}}$ to stand.

In contrast, under a presidential system, both the legislature and the executive have to agree to reverse an agency’s policy.

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Figure 2

The agency has greater discretion since it is able to select a policy from a larger interval, \([P_{l, lower}, P_{e, upper}]\).\(^{22}\) Magill and Ortiz, therefore, argue that if PPT holds, judicial review should “be much more limited in domain and less searching in application in a parliamentary than in a presidential system.”\(^{23}\)

They find, however, that this is not borne out by a comparison of reasonableness review in the United States, United Kingdom, France, and Germany. The alternative, they suggest, is the “traditional explanation that administrative law scholars give for the existence and shape of judicial review of administrative action: judicial cultures.”\(^{24}\)

Because judges reviewing agency behavior are themselves agents, political principals must balance the authority delegated to agencies against the discretion exercised by courts.\(^{25}\) Garoupa and Mathews develop this idea by elaborating a typology consisting, on the one hand, of low or high autonomy agencies and, on the other hand, of low or high autonomy courts.\(^{26}\)

According to this model, agencies are considered “low autonomy” if they operate in a parliamentary system or under a unitary form of government and “high autonomy” if they operate in a presidential system or

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\(^{22}\) To see that this is true, notice that if the agency promulgates a policy between \(P_{l, lower}\) and \(P_{e, lower}\), only the executive, not the legislature, has an incentive to initiate change.

\(^{23}\) Magill & Ortiz, *supra* note 3, at 138.

\(^{24}\) *Id.* at 145.

\(^{25}\) See, e.g., Thomas W. Merrill, *Faithful Agent, Integrative, and Welfarist Interpretation*, LEWIS & CLARK L. REV. 1565, 1567 (2010) (“Faithful agent theories adopt a principal-agent model of [statutory] interpretation. The interpreter is cast in the role of subordinate agent, seeking in good faith to carry out the instructions of the lawmaker, who is understood to be the principal.” (citation omitted)).

under a federal form of government, while courts are considered “low autonomy” if they are specialized or if there is a career judiciary and “high autonomy” if they are generalist or if there is a recognition judiciary. The conclusions of a game-theoretic analysis of the interaction between these types are reproduced and summarized in the following figure.27

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<thead>
<tr>
<th></th>
<th>Low autonomy</th>
<th>High autonomy</th>
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<tr>
<td><strong>Courts</strong></td>
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| Low autonomy   | ✓ Broad delegation  
                 | ✓ Narrow scope for judicial review  
                 | ✓ Application of expertise by agencies  
                 | ✓ Judicial review plays marginal role |
| High autonomy  | ✓ Mixed strategies  
                 | ✓ Broad and narrow delegations  
                 | ✓ Agencies sometimes apply expertise and sometimes play safe  
                 | ✓ Courts sometimes review aggressively and sometimes defer to agency |

While the party-dominated states that we have selected do not hew exactly to any of these ideal types, they could, on first pass, be placed in the quadrant of low autonomy agencies and low autonomy courts. Hence, one should anticipate a narrow scope of judicial review and, in particular, limited standing.28 We now turn to the law in these countries.

III. STANDING TO SUE IN JAPAN, SINGAPORE, AND CHINA

A. Japan

The Administrative Case Litigation Law (ACLL) of 1962 provides for four types of named suits. The first is “direct attack suits,” or kōkoku soshō, which encompasses “lawsuits of grievance relating to the exercise of public power by an administrative agency.”29 The second is defined as “party suits,”

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27 Id. at 14, 17, 21, 24, 28.
28 Id. at 17.
or tōjisha sosho, in which administrative actions are challenged collaterally in a civil suit. The third is labeled “public suits,” or minshū sosho. These are corrective actions that may be “instituted by persons qualified to vote without having the qualifications of having any other legal interest.” However, such suits must be explicitly provided for by statute. The fourth type of suit is “agency suits,” or kikan sosho, used to resolve jurisdictional disputes between governmental bodies.

The decision of a public authority is typically challenged through the kōkoku sosho, which has a number of procedural standing requirements. Critically, the plaintiff must suffer an injury to his legal interest; an injury-in-fact is not sufficient for standing. A legal interest is usually “created by provisions vesting an administrative agency with the duty of protecting some personal interest.” The Bathhouse Case is frequently cited as a judicial explanation of this definition. The suit was brought by a bathhouse to contest the issuance of a license to a competitor. Bathhouses were licensed subject to the condition that they be located at least 250 meters apart from each other. This restriction was officially justified on public health

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30 Id.
31 Id.
32 Id.
33 One example is a residents’ suit, which targets financial irregularity or irresponsibility in local governments. Any registered resident of a prefecture, city, town, or village may sue for illegally expended money to be returned by the defendant to the relevant public entity. Between 1983 and 1987, there were 42 such suits filed against prefectural governments and up to 250 against municipalities. See Takehisa Nakagawa, Participatory Administrative Law (unpublished manuscript), http://www.sota.j.u-tokyo.ac.jp/info/Papers/nakagawa.pdf.
35 “Suits for revocation of a disposition and decision (hereinafter referred to as “revocation litigation”) may be filed only by persons having legal interests for seeking the revocation of the said disposition or decision (including persons having legal interests to be recovered by the revocation of a disposition or decision even after the effect of the disposition or decision no longer exists due to the expiration of the period or any other reason).” ACLL, supra note 34, at Art. 9. “In a revocation litigation, no person shall seek a revocation on the grounds of illegality not concerned with his legal interest.” Id. at Art. 10.
grounds. The court found, however, that the constraint was also “intended to prevent undue competition among public bathhouse proprietors” and that a “plaintiff’s business interest should be considered protected by lawful operation of the licensing system.” Therefore, “he may well have standing to ask for the annulment of a third party’s license, because his interest is not a mere reflex, but rather a legal interest . . . .”

A dispute concerning the construction of a shopping center in Etsurigo Village also serves to illustrate the concept of “legal interest.” The Diet passed the Large Scale Retail Stores Law in 1973, superseding the Department Store Law of 1937. Under the previous regulatory regime, department stores could not engage in any business unless they obtained prior administrative clearance. The 1973 law eliminated the registration requirement, but required entrants to keep the Ministry of International Trade and Industry appraised of any proposed activity. Furthermore, the Ministry could require the entrant to negotiate with existing merchants in the area over the terms under which the latter would agree to the opening of a new store. In January 1981, 117 local merchants petitioned for nullification of the Ministry’s recommendation of a plan submitted by the Etsurigo Shopping Centre Cooperative Co. and revised by the Tohoku Large Stores Council. The plaintiffs alleged conflicts of interest and procedural irregularities, but their contentions were summarily rebuffed. The court ruled inter alia that the mention of “enterprise opportunities” in Article 1 of the Large Scale Retail Stores Law did not give rise to anything more than a “reflex” interest on the part of existing businesses.

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39 Ichiro Ogawa, supra note 36, at 1088 n.45.
40 Id.
41 Id.; see also RAMSEYER & NAKAZATO, supra note 36, at 200–01.
43 Id. at 405.
44 Id.
45 Id. See also Jean Heilman Grier, Japan’s Regulation of Large Retail Stores: Political Demands Versus Economic Interests, 22 U. PA. J. INT’L ECON. L. 1 (2001).
46 Upham, supra note 42, at 411 (“Specifically, the local merchants alleged that President Takahashi of the Etsurigo Chamber of Commerce, whose son was the president of the Etsurigo Shopping Center Cooperative, had a direct conflict of interest and had selected members of the Adjustment Board solely on the basis of their pro-shopping center views.”).
47 Id. at 415 (“Had consumers been suing MITI on the ground that the 6.390 square meters allotted to Jusco in the recommendation was too small to serve their interests, the result would have been the same. . . . [T]he only potential plaintiff . . . would be a prospective large retailer dissatisfied with the amount of space given him through the adjustment process.”).
48 Id.
In a more recent example, the Japanese Supreme Court held that residents whose persons and property would be threatened in the event of a natural disaster had standing to challenge the approval of the construction of six golf courses upstream of the River Ozato. The justices were persuaded that the provisions of Article 10-2 of the Forestry Law “should be construed not only at the assurance [sic] of the public interest function of the forest . . . [but also] the protection of the safety of the life and health of the inhabitants living within a certain range of areas adjacent to the area to be developed as a specific interest of the individuals.”

Intimately tied to the question of standing is the doctrine of shobunsei, sometimes translated as “ripeness” or “in the nature of a disposition.” Article 3 of the Administrative Case Litigation Law defines kōkoku soshō as “a litigation of dissatisfaction relating to the exercise of public power by an administrative agency.” For a kōkoku soshō to go forward there must first be a shobun. As articulated by the Supreme Court of Japan in 1955, a shobun is an “official action which forms the rights and duties of the citizens or confirms the scope thereof.” In that case, a notice from the Atami City Agricultural Council to a farmer regarding the boundaries of the latter’s land was found not to be a shobun because it had no legal effect and was not adverse to the farmer’s property rights. The lesson drawn is that “supervisory orders, permissions, approvals, and regulations among agencies or within a single agency cannot be the object of litigation.”

Prior to the enactment of the ACLL in 1962, it was generally understood that plaintiffs could not file a “preventive” suit. While many hoped that the ACLL would lead to a broader notion of shobun, subsequent developments indicated that the traditional understanding had not been displaced. The outcome of Edogawa Ward v. Minister of Transportation is especially instructive in this regard. In 1972, the Minister of

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50 Id.
51 See e.g. RAMSEYER & NAKAZATO, supra note 36, at 196.
53 ACLL, supra note 34, at Art. 3.
55 Id.
56 Id.; see also Dziubla, supra note 52, at 45.
57 Dziubla, supra note 52, at 53.
58 Ichiro Ogawa, supra note 36, at 1083.
Transportation published plans for a railway line linking Tokyo to Narita and signed off on its construction by the contractor, Japan Railway Construction Corporation. Residents within a designated area of 200 meters from the proposed tracks sought judicial relief. The Tokyo High Court dismissed the claim:

At the stage of the approval of a Construction Implementation Plan, it has not necessarily been concretely confirmed who will in the future become an interested party when the Plan is executed. In that sense, a Construction Implementation Plan and its official approval must be considered as abstract in nature. In other words, that approval is unlike a concrete disposition directed at a specified individual. Furthermore, there is no provision that requires its publication, and it itself has no effect whatsoever on citizens’ rights and duties.60

The implication is that any potential claim must be deferred pending actual implementation of the policy.61 However, this means that sunk costs and irreversibility of damage could eventually militate against judicial invalidation of the administrative act.62

Restrictive construction of shobun also facilitates the use of administrative guidance, a form of regulation whereby an authority invites the relevant parties to voluntarily adhere to its guidelines.63 As the advice has no legal effect until it is actually enforced, it has historically not been considered a reviewable action. For example, in Okamura v. Japan, the Ministry of Foreign Affairs requested that 345 political activists not apply

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61 See, e.g., id. at 238; Dziubla, supra note 52, at 47; GOODMAN, supra note 37, at 514.
62 See, e.g., Sapporo Chihō Saibansho [Sapporo Dist. Ct.] Mar 27, 1997, 1598 HANREI JIHÔ 33, 39 (Japan), translated in 38 INT’L LEGAL MATERIALS 397, 428-29 (1999). (“Nibutani dam has already been completed with an enormous expenditure of tens of billions of yen and is filling with water… we are [thus] forced to recognize the extraordinary harm to the public interest that would arise from reversing the Confiscatory Administrative Rulings. Additionally, we find that the Poromoy Chashi has already been destroyed and the Pe-ure-pukka and Kankanrekeke Chinomishir have each been demolished by the dam construction. Even if the Confiscatory Administrative Rulings are reversed, these sites cannot be restored.”). The expropriation of Ainu lands was declared illegal but the dam was permitted to continue operation.
for passports to attend a festival in Moscow.64 This request was not considered to be a reviewable disposition.65 Since there was no formal application, there could not have been any refusal, and hence shobun, by the Ministry of Foreign Affairs. While it is natural that consent should act as a bar to remedy, informality can take on coercive overtones when the time horizon of interactions is long and the powers of the governmental agency are broad.66

Despite traditionally narrow rules of standing and shobun, judicial interpretations and legislative reforms have gradually opened the door to a more generous application of these principles. In 2001, the Justice System Reform Council expressed a vision: to “transform the excessive advance-control/adjustment type society to an after-the-fact review/remedy type society.”67 Amendments to the ACLL in 2004 codified evolving case law,68 and provide for standing if the plaintiff has a right protected by a statute or ordinance that is relevant to the administrative action being reviewed.69 This shift is exemplified by Izuka v. Director of Kanto Regional Development Bureau (“Odakyū Railroad Case”).70 There, the Supreme Court of Japan partially reversed the judgment of the lower court, ruling that residents

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64 Tokyo Kōtō Saibansho [Tokyo App. Ct.] 1962, 8 SHÔMÛ GEPPÔ 1836 (Japan). See also Young, supra note 63, at 954.
65 Tokyo Kōtō Saibansho [Tokyo App. Ct.] 1962, 8 SHÔMÛ GEPPÔ 1836 (Japan). See also Young, supra note 63, at 954.
66 See Takehisa Nakagawa, supra note 63 (explaining that the concept of informality in the United States refers to the absence of either concrete rules or adversarial procedures whereas informality in the Japanese context implicates either extra-statutory policy-making or the employment of extra-statutory methods).
69 Gyōsei jiken Soshō No Ichibu Wo Kaiseisuru Hōritsu [Act for Partial Revision of the Administrative Case Litigation Law], Law No. 84 of 2004 (Japan) (“[T]he court shall also make reference to the purport and purpose of any relevant laws and regulations that share the purpose with the governing laws and regulations, and when considering the contents and nature of the interest, the court shall take into account the contents and nature of the interest that is likely to be injured if the disposition is made in violation of the governing laws and regulations as well as how and to what extent that it is likely to be injured.”).
whose property would not be directly affected by an approved over-ground rail line were nevertheless eligible to sue because they had a protected legal interest.71 Their legal interest issued from city ordinances that were enacted to safeguard the welfare of neighboring residents, in particular from damage to their health and living environment from noise and vibration.72 The doctrine of legal interest was further elaborated in a 2008 decision, Nakamura v. Hamamatsu City.73 In that case, the court reasoned that the promulgation of a plan for land readjustment immediately foreclosed the options of individual landowners.74 It became “necessary to obtain permission from the prefectural governor in order to carry out, within the implementation zone, activities such as changing the shape or nature of the land or constructing, remodeling or extending buildings or other structures, which are likely to hinder the implementation of the land readjustment project . . . .”75 The effect was therefore not “general or abstract.”76

The definition of a shobun has also been interpreted more broadly by Japanese courts. In Nakamura, the Grand Bench recognized that any revocation of the disposition of land substitution at a later stage “would cause serious confusion to the project as a whole” and be injurious to the public interest.77 It therefore announced that “it is reasonable to allow the filing of a suit to seek revocation of a decision to adopt a project plan at the stage when the decision is made.”78 Further, in a 2004 case, the Supreme Court held that a written notice of violation served on an importer by the director of the quarantine station was a shobun.79 The judgment of the Tokyo High Court, finding the notification to be “practical guidance” to the appellant and not legally binding on the Director-General of Customs, was
quashed.\textsuperscript{80} The next year, the Supreme Court of Japan heard \textit{Takano v. Governor of Toyama}, an appeal from the Nagoya High Court.\textsuperscript{81} The plaintiff in \textit{Takano} had declined a “recommendation” made under the Medical Service Law.\textsuperscript{82} The 1987 Notification from the Director of Insurance Bureau had cautioned that:

If despite the recommendation made by the prefectural governor under Article 30–7 of the Medical Service Law because of particular necessity for facilitating the achievement of the medical scheme, the hospital has been established and an application has been filed for designation of the hospital as an insurance medical institution, the hospital shall be regarded as “extremely inappropriate” as provided in Article 43–3(2) of the Health Insurance Law, and the prefectural governor shall consult with the regional social insurance council for refusal to grant designation.\textsuperscript{83}

In light of the “considerable certainty” of the “consequences,” the document sent to the applicant qualified as a disposition within the meaning of Article 3(2) of the ACLL.\textsuperscript{84}

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<td><strong>Japan Pre-2004</strong></td>
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Between 1990 and 2007, there has been a gradual rise in the number of

\textsuperscript{80} Id.
\textsuperscript{82} Id.
\textsuperscript{83} Id.
\textsuperscript{84} Id.
administrative cases litigated before the courts. Yet, it was estimated in 1997 that approximately twenty-five percent of all such suits were still being dismissed for lack of standing, or shobun. Although there has been movement in the direction of liberalization in the years leading up to 2004, its impact on governance and regulation in Japan still awaits detailed study.

B. Singapore

A colony of the British Empire from 1819 to 1963, the Singapore legal system has traditionally been influenced by legal developments in England. Of the 1,383 cases cited as authorities in the 527 decisions of the High Court of Singapore reported between 1965 and 1985, 23.8% of them were local, whereas 66.7% were English. It is therefore no surprise that the framework for judicial review of administrative acts in Singapore is similar to that of the United Kingdom. Indeed, in a lecture on the subject delivered in 2010 to students at the Singapore Management University, Chief Justice Chan Sek Keong commented that the “courts [of Singapore and the U.K.] apply the same principles because we inherited the same system of law.” The law of standing inherited from English law derives from the rules of court that restrict standing to parties having a sufficient interest and is reinforced by the common law distinction between private and public law.

The first hurdle to be cleared before a suit may proceed is that the matter being contested has to be susceptible to review by the courts. Amongst other things, the issue has to be one of public law. In Council of Civil Service Unions v. Minister for the Civil Service, Lord Diplock emphasized the importance of the source of the decision-making authority, which “is nearly always nowadays a statute or subordinate legislation made

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85 Narufumi Kadomatsu, supra note 68, at 147.
86 HIROYUKI HATA & GO NAKAGAWA, CONSTITUTIONAL LAW OF JAPAN 164 (1997).
90 Jeyaretnam Kenneth Andrew v. Attorney-General [2012] SGCH 210 (“Leave to apply for prerogative orders will not be granted unless the court is satisfied as to the following: (a) The subject matter of the complaint is susceptible to judicial review; (b) The material before the court discloses an arguable case or a prima facie case of reasonable suspicion in favour of granting the remedies sought by the applicant; and (c) The applicant has sufficient interest in the matter.”).
under the statute.” 91 A later judgment, rendered in *R. v. Panel on Take-overs and Mergers, ex parte Datafin plc*, found the Panel on Take-overs and Mergers, an unincorporated, informal, and self-regulating body, to be nevertheless subject to judicial review. 92 The critical factor there was the nature of the power being exercised. By “devising, promulgating, amending and interpreting the City Code on Take-overs and Mergers,” the Panel could indirectly alter the legal status of persons. 93 In the words of Lord Justice Lloyd, “[i]t has a giant’s strength.” 94 Thus, the *Datafin* test considers both the source and the nature of the power being exercised. This precedent was absorbed into Singapore law through *Public Service Commission v. Lai Swee Lin Linda*, 95 and reaffirmed in *UDL Marine (Singapore) Pte. Ltd. v. Jurong Town Corp.* 96 The former concerned the dismissal of an employee, while the latter involved a lease renewal. In both cases, the court noted that the action of the statutory agency, though ultimately having some basis in statute, came under contract law. On the other hand, the public reprimand of the director of a corporation listed on the Singapore Exchange, an investment holding company, contained a public element and could therefore be reviewed. 97 The court noted, among other things, that the Singapore Exchange “is an approved exchange under [Section] 16 of the [Securities and Futures Act],” 98 and that “reprimand of directors of a listed company by . . . a front-line securities regulator, carries financial and business implications.” 99 These facts made the reprimand power a public function “susceptible to judicial review for minimum compliance with the standards of ‘legality, rationality and procedural propriety.’” 100

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91 Council of Civil Service Unions v. Minister for the Civil Service, [1985] 1 AC 374 (HL) 409 (Lord Diplock) (appeal taken from Eng.) (UK)
93 *See R v. Panel on Take-overs and Mergers*, supra note 92 at 826.
94 *Id.* (Lord Lloyd) at 845.
95 *Linda Lai Swee v. Public Service Commission* [2000] SGHC 162 (although the court eventually concluded that the dismissal of a Land Office employee was undertaken pursuant to contract, it recognized the validity of the source test applied in *Datafin*).
97 See *Yeap Wai Kong v. Singapore Exchange Securities Trading Ltd*; see also Manjit Singh s/o Kirpal Singh v. Attorney-General, [2013] SGCA 22. The curious reader may wonder about the status of administrative guidelines under Singapore law. See, e.g., *Lines International Holding Pte Ltd v. Singapore Tourist Promotion Board and Port of Singapore Authority*, [1997] 2 SLR 584 (rejecting the argument that guidelines have to be officially promulgated to be enforceable); Thio Li-Ann, supra note 92, at 172–173.
98 *Yeap Wai Kong v. Singapore Exchange Securities Trading Ltd*, supra note 97, at [21].
99 *Id.* at [25].
100 *Id.* at [28].
The second obstacle is that the plaintiff must have a sufficient interest in the case. Section 31(3) of the United Kingdom’s Senior Courts Act of 1981 provides that leave for judicial review shall not be granted unless “the applicant has a sufficient interest in the matter to which the application relates.”101 This rule was duly applied in the seminal case of *R. v. Inland Revenue Commissioners ex parte National Federation of Self-Employed and Small Business Ltd.*102 The plaintiff, an association of taxpayers, alleged that the grant of amnesty to a group of casual employees was illegal. The Court of Appeals discerned a “genuine grievance,” but the House of Lords unanimously reversed.103 In so doing, their Lordships articulated a two-stage test.104 Leave would be refused at the first stage to “busybodies” who possess no genuine interest whatsoever.105 To succeed at the second stage, the applicant then has to demonstrate a strong case on the merits, balanced by the degree of his or her concern.106 For Lord Scarman, the Federation had failed to adduce any evidence for the breach of a statutory duty and therefore lacked “sufficient interest.”107 Lord Wilberforce, in particular, asserted that “one taxpayer has no sufficient interest in asking the court to investigate the tax affairs of another taxpayer or to complain that the latter has been under-assessed.”108 In his view, “an aggregate of individuals each of whom has no interest cannot of itself have an interest.”109 This narrow reading drew a lament from Lord Diplock, who regretted the “grave lacuna” in public law.110 For him, “outdated technical rules” should not obstruct “[vindication of] the rule of law.”111

The latter position has come to be embraced by English judges. In *R. v. Her Majesty’s Treasury, ex parte Smedley*,112 a taxpayer was permitted to

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102 See R v. Inland Revenue Commissioners, Ex Parte National Federation of Self-employed and Small Businesses Ltd., [1982] AC 617 (HL) (appeal taken from Eng.) (UK) [hereinafter R v. Inland Revenue Commissioners].
104 R v. Inland Revenue Commissioners, supra note 102 (per Lord Wilberforce. Lords Diplock and Scarman agreed. Lord Fraser disagreed.).
105 Id. at 646.
107 See R v. Inland Revenue Commissioners, supra note 102, at 653–55 (Lord Scarman).
108 Id. at 633 (Lord Wilberforce).
109 Id. (Lord Wilberforce).
110 Id. at 644 (Lord Diplock).
111 Id. (Lord Diplock).
challenge the government’s payment of certain sums to the European Community and in *R. v. Secretary of State for Foreign Affairs ex parte World Development Movement Ltd.*, a pressure group was held to have sufficient interest to challenge the disbursement of aid funds for the Pergau Dam in Malaysia. The courts in Singapore appear to have adopted the “sufficient interest” test, with applicants having to produce a “*prima facie* case of reasonable suspicion.” However, the Chief Justice has suggested extra-judicially that this “is not, in my view, also to say that our courts will apply the [sufficient interest] test with the same rigour as the U.K. courts.”

Additionally, the case law in both Singapore and Malaysia has introduced a distinction between public and private rights. In *Tan Eng Hong v. Attorney-General*, the appellant sought to have a statute invalidated on constitutional grounds. The Singapore Court of Appeal clarified that “a public right is one which is held and vindicated by public authorities, whereas a private right is one which is held and vindicated by a private individual.” The applicant who wishes to enforce a public right has to establish a violation via an injury that is also personal. This doctrine made an appearance in *Jeyaretnam Kenneth Andrew v. Attorney-General*. Jeyaretnam was a member of an opposition party who had sued for prerogative orders and declarations against a 4 billion USD contingent loan extended by the Monetary Authority of Singapore to the International Monetary Fund. The Singapore Supreme Court ruled, incidentally, that as Jeyaretnam was unable to prove any damage particular to himself, he did not have *locus standi*.

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114 A pressure group is similar to a lobby or interest group.


117 *See Government of Malaysia v. Lim Kit Siang* [1988] 2 M.L.J. 12 (the Malaysian Supreme Court declined to follow the liberal approach of English cases, attributing it to the new wording of the English Rules of the Supreme Court).


119 *Id.* at para. 69.

120 *See id.*


122 *Id.* (Jeyaretnam contended that the concurrence of the President had not been manifested, contrary to article 144 of the Singapore Constitution).

123 The Supreme Court of Singapore has two divisions; the higher one is the Court of Appeal and the lower one is the High Court.
Table 3: Summary of Singapore

<table>
<thead>
<tr>
<th>Interest</th>
<th>Cases</th>
</tr>
</thead>
</table>
| Sufficient interest  
At the first stage, applicant must have genuine interest  
At the second stage, applicant has to make out "prima facie case of reasonable suspicion"  
Injury has to be personal | Lai Swee Lin Linda (adopts the sufficient interest test)  
Jeyaretnam Kenneth Andrew (applicant seeking to enforce public right also has to demonstrate special injury) |

<table>
<thead>
<tr>
<th>Action/Entity</th>
<th>Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public nature of the power being exercised</td>
<td>Yeap Wai Kong (reprimand of a company by the stock exchange is a public function)</td>
</tr>
</tbody>
</table>

Between 1957 and 2009, there were 79 judicial review cases reported, or an average of 1.5 cases per year. Although the citizenry has grown increasingly conscious and assertive of its rights, the practice and discourse has generally been partial to a non-adversarial relationship between the executive and the judiciary, with the latter supporting the former in the mission of good governance. There has not been a move towards a relaxation of locus standi rules.

C. China

The rise of administrative litigation in China coincided with the legal and economic reforms of the early 1980s, as the new proprietors of privately-held corporations acquired both the incentives and the wherewithal to seek judicial reversal of unfavorable administrative decisions. Since the passage of the Administrative Procedure Law of the People’s Republic of China of 1989 (more accurately translated as the Administrative Litigation Law, or ALL), the last two decades have witnessed a steady increase in the number of administrative cases filed by Chinese citizens.
The results of a survey conducted in 2010 show that administrative cases commenced between 1987 and 2010 may be classified into four main categories: those involving public security, issues related to urban construction, land disputes, and labor disputes. The concentration of lawsuits within these subject matters not only reveals the most salient interests and concerns of ordinary people, but also reflects the influence of “standing to sue” as articulated in Article 2, Article 11, and Article 12 of the ALL. To bring suit against an administrative agency, a prospective plaintiff must establish that: 1) the challenged administrative action directly affected the rights and duties of particular individuals, corporations, or other organizations; 2) the plaintiff suffered an injury-in-fact that infringed upon a lawful right and interest; and 3) the administrative agency was susceptible to suit.

Administrative Procedure Law, supra note 128, at Art. 2 (“A Citizen, A legal person or other organizations have the right to litigate a lawsuit to the people's courts in accordance with this Law once they consider that a concrete administrative action by administrative organs or personnells infringe their lawful rights and interests.”).

Id. at Art. 11 (“The people's courts shall accept suits brought by citizens, legal persons or other organizations against any of the following specific administrative acts: (1) an administrative sanction, such as detention, fine, rescission of a license or permit, order to suspend production or business or confiscation of property, which one refuses to accept; (2) a compulsory administrative measure, such as restricting freedom of the person or the sealing up, seizing or freezing of property, which one refuses to accept; (3) infringement upon one's managerial decision-making powers, which is considered to have been perpetrated by an administrative organ; (4) refusal by an administrative organ to issue a permit or license, which one considers oneself legal qualified to apply for, or its failure to respond to the application; (5) refusal by an administrative organ to perform its statutory duty of protecting one's rights of the person and of property, as one has applied for, or its failure to respond to the application; (6) cases where an administrative organ is considered to have failed to issue a pension according to law; (7) cases where an administrative organ is considered to have illegally demanded the performance of duties; and (8) cases where an administrative organ is considered to have infringed upon other rights of the person and of property. Apart from the provisions set forth in the preceding paragraphs, the people's courts shall accept other administrative suits which may be brought in accordance with the provisions of relevant laws and regulations.”).

Id. at Art. 12 (“The people's courts shall not accept suits brought by citizens, legal persons or other organizations against any of the following matters: (1) acts of the state in areas like national defence and foreign affairs; (2) administrative rules and regulations, regulations, or decisions and orders with general binding force formulated and announced by administrative organs; (3) decisions of an administrative organ on awards or punishments for its personnel or on the appointment or relief of duties of its personnel; (4) specific administrative acts that shall, as provided for by law, be finally decided by an administrative organ.”).

First, the challenged administrative acts must directly affect the rights and duties of particular individuals, corporations, or other organizations.  

In other words, a prospective plaintiff is entitled to commence an administrative suit only when the action in question implicates a specific person or situation. The term is emphasized in Article 2 of the ALL in contradistinction to internal administrative acts and abstract administrative acts, both of which are immune from judicial oversight.

In 2000, the Chinese Supreme Court promulgated “The Interpretation of Several Problems Referring to the Implementation of ‘Administrative Procedure Law of the People’s Republic of China,’” to clarify the definition of administrative acts not subject to legal challenge as stated in Article 12 of ALL. Administrative acts not subject to legal challenges include internal administrative acts, abstract administrative acts, administrative guidance, and certain official certificates.

Internal administrative acts are defined as the decisions of an administrative organ regarding awards, punishments, appointments, or relief of duty applicable solely to its own personnel. A case involving the People’s Bank of China (PBOC) provides a suitable illustration. On November 20, 1988, PBOC dissolved its Jiangxi branch and replaced it with the newly-founded Wuhan branch. The Wuhan branch resolved to change the name of the Cadre School of People’s Bank of Jiangxi Province and to

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136 Article 12 of ALL states that “[t]he people's courts shall not accept suits brought by citizens, legal persons or other organizations against . . . decisions of an administrative organ on awards or punishments for its personnel or on the appointment or relief of duties of its personnel.” Administrative Procedure Law, supra note 128, at Art. 12.

137 Id. (“The people's courts shall not accept suits brought by citizens, legal persons or other organizations against . . . administrative rules and regulations, regulations, or decisions and orders with general binding force formulated and announced by administrative organs.”).


140 Id. at Art. 3–5; Administrative Procedure Law, supra note 126, at Art. 7 (“The people's courts shall not accept suits brought by citizens, legal persons or other organizations against . . . decisions of an administrative organ on awards or punishments for its personnel or on the appointment or relief of duties of its personnel.”); see also He Haibo, supra note 133, at 40.

141 Interpretation of Several Problems referring to the Implementation of Administrative Procedure Law, supra note 139, at Art. 6.
appoint Jiangxi Financial College to manage the school’s employees, funds, and fixed assets. The Cadre School of People’s Bank of Jiangxi Province then initiated an administrative suit against the “Notice Related to the Matters of the Former Cadre School of People’s Bank of Jiangxi Province” issued by Wuhan Branch of the PBOC.\footnote{Jiangxi Sheng Renmin Yinhang Banhu Xuexiao Su Zhongguo Renmin Yinhang Wuhan Fenhgang Jinron Jigou Tiaozheng Xinzong Chuli Jueding An (江西省人民银行干部学校诉中国人民银行武汉分行金融机构调整行政处理决定案) [The Cadre School of People’s Bank of Jiangxi Province v. Wuhan Branch of People’s Bank of China], Dec. 12, 2005 NANCHANG INTERM. PEOPLE’S CT., http://hubeig.chinacourt.org/public/detail.php?id=4110.} The Intermediate Court of Jiangxi Province found the reorganization undertaken by the Wuhan branch to be an internal administrative action and accordingly dismissed the appeal.\footnote{Id.}

As defined by the Supreme People’s Court, abstract administrative acts are rules, regulations, decisions, and orders that are rules of general applicability that are formulated and announced by administrative organs.\footnote{Interpretation of Several Problems Referring to the Implementation of Administrative Procedure Law, supra note 139, at Art. 3.} The courts may never review abstract administrative acts. One common example is “red-titled documents,” or *hongtou wenjian*.\footnote{See Hongtou Wenjian Pingdian (红头文件评点) [The Notes of Red-Titled Document], (人民日报《民主政制周刊》) [People’s Daily: Democratic Politics Weekly] (Jan. 2, 2008), http://politics.people.com.cn/GB/8198/114987/ (explaining that “red-titled documents” are so named because they usually bear red titles and stamps; these documents are issued by both central and local administrative agencies to regulate the duties and rights of citizens under their jurisdiction); see also Hongtou Wenjian Shiyu Nanbei Chao de Xiwei Shiqi (红头文件始于南北朝的西魏时期) [Red-titled Documents Originated from Wei Western Period of Nanbei Dynasty], (人民日报《民主政治》周刊) [People’s Daily: Democratic Politics Weekly] (Jan. 2, 2008), http://history.people.com.cn/n/2014/0715/c372330-25283205.html.} These are directives of departments subordinate to the state council, local people’s governments at or above the county level and their respective departments, or town administrations. They are not included in the body of statutes, administrative regulations, and rules. Xinhua reported that in 2005, sixty-eight “red-titled documents” issued by eleven cities and eighteen administrative agencies of Heilongjiang Province were contrary to law.\footnote{Zengshuang Gao, Rang Hongtou Wenjian Yuanli “Bawang Tiaokuan” [Making “Red-titled Document” Stay Away from “Inequality Clauses”], XINHUA NEWS AGENCY, July 11, 2005, http://www.hlj.xinhuanet.com/xw/2005-07/11/content_4613159.htm.} In addition, a study conducted in Anhui Province found that as of 2004, sixty percent of the 110 provincial-level “red-titled documents” were inconsistent...
with applicable laws and regulations. Although contrary to law, these abstract administrative acts were not reviewed by courts.

There are a few other matters besides abstract and internal administrative acts that cannot be reviewed by the courts. For example, the decision of governmental bodies to grant funding for the support of certain local corporations, often classified as administrative guidance, does not qualify as a specific administrative act because it is not binding and has no direct legal consequences. In addition, an official certificate pronouncing the recognized cause of and liability for a fire is not subject to review because it does not alter the existing rights and duties of the involved parties.

The injury-in-fact has to infringe upon a plaintiff’s “lawful right and interest” for the plaintiff to have standing to sue in China. Article 11 further limits the range of “lawful rights and interests”: the court should only accept an administrative case if “an administrative organ is considered to have infringed upon rights of the person and of property.” Thus, other rights, such as those associated with environmental damage and degradation may not be litigated under the ALL. In 2001, two professors from Southeast China University alleged that a viewing tower built on the peak of Purple Mountain was inimical to the preservation of natural and historical sites and

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147 E.g., The Industrial and Commercial Bureau of Anhui (ICB) promulgated a red-titled document that required businesses engaged in advertising to be certified as “credible organizations” so as to avoid a presumption of false advertising. This was found by the Legal Affairs Office of Anhui to be illegal because it bypassed the legislative process to impose additional obligations on local businesses. Keqiang Tao, *Remm in Shipping: Haiyou Duoshao “Hongtou Wenjian” De Weifa Tiaokuan Meiyou Jiuzheng* [How Many the Illegal Provisions of “Red Tapes” Have Not Been Corrected?], PEOPLE’S DAILY, Nov. 17, 2004, http://www.people.com.cn/GB/guandian/1033/2995065.html.

148 See Interpretation of Several Problems Referring to the Implementation of Administrative Procedure Law, supra note 139.


150 Id.


152 Administrative Procedure Law, supra note 128, at Art. 6.
harmed the environmental benefits of the public.\textsuperscript{153} They sued the Nanjing Planning Bureau for failing to respect their lawful property rights based on the argument that they bought an annual tour ticket for Purple Mountain.\textsuperscript{154} However, the Nanjing Municipal Intermediate Court did not accept the suit, citing insufficient injury-in-fact.\textsuperscript{155} This rejection exemplifies two common hurdles to establish the infringement of a “lawful right and interest”: the non-recognition of political and social rights, and the burden of demonstrating that a plaintiff was directly affected by the administrative action.

As a general matter, personal and property rights in Chinese law do not encompass political and social rights, even those ostensibly guaranteed by the Constitution.\textsuperscript{156} The withholding of approval for the establishment of a social organization, cancellation of organizational registration, and restrictions on demonstrations are generally not grievances that may be brought into the courtroom.\textsuperscript{157}

\footnotesize
\begin{itemize}
\item \textsuperscript{153} Wu Weixing, \textit{Lun Huanjingquan De Sifa Baozhang [Judicial Guarantee of Environmental Rights], THE RESEARCH INSTITUTE OF ENVIRONMENTAL LAW WUHAN UNIVERSITY (June 29, 2003), http://www.riel.whu.edu.cn/article.asp?id=25509.}
\item \textsuperscript{154} Id.
\item \textsuperscript{155} Id.
\item \textsuperscript{156} See also Shi Jianhui, Gu Dasong Su Nanjingshi Guihuaju Weifa Xingzheng An (The Case of Shi Jianhui, Gu Dasong v. Nanjing Planning Bureau Against Illegal Administrative Acts) (Nov. 16, 2004), RESEARCH INSTITUTE OF ENVIRONMENTAL LAW, WUHAN UNIVERSITY, http://www.riel.whu.edu.cn/article.asp?id=26404.
\item \textsuperscript{157} There is no constitutional court in China. Although the Chinese Constitution is accorded deference both publicly and officially, in practice, it is an exhortatory document that is not applied or interpreted. The origin of this phenomenon can be traced back to a official reply from the Supreme People’s Court in 1955, which stated that the “the Constitution is the fundamental law of the state and has supreme legal authority. . . . It does not include the regulation on how to convict and punish in the field of criminal law. Thus, we agree with the judicial decision made by your court, the Constitution shall not be applied as the legal basis of conviction and punishment in the criminal cases.” Zuigao Renmin Fayuan Guanyu Zai Xingshi Panjue Zhong Buyi Yuanyin Xianfa Zuo Lunzui Kexing De Yiju De Fuhan \textit{[The Official Reply of Supreme Court Regarding to the Statement that Constitution Shall Not be Applied to Be the Legal Basis of Conviction and Punishment in the Criminal Cases] (promulgated by Sup. People’s Ct. July 20, 1955, effective July 20, 1955), http://www.chinacourt.org/law/detail/1955/07/id/142.shtml. The Chinese Constitution has only been applied to interpret a case in two instances, and has subsequently disappeared from all other written judgments. See Qi Yuling Su Chen Xiaoqi Maoming Dingti Dao Luqi Qide Zhongzhuan Xueziao Juju Qinfan Xingmingqian Shoujiaoyu De Quanli Sunhai Peichang An (齐玉苓诉陈晓琪冒名顶替录取学校的法律问题) [Qi Yuling v. Chen Xiaoqi], (Shandong High People’s Ct., Aug. 23, 2001), CIL.C.21952 (EN) (PKULaw), http://www.pkulaw.cn/fulltext_form.aspx?Db=pfnl&Gid=117462464&keywrod=齐玉苓 &Search_Mode=accurate; Yuandong Xie (谢跃东) Shi Yuequan Haishi Hufa ZhongziGuansi De Yiwai Zhanfang (是否授权还是护法种子官司的意外绽放) [The Analysis of Zhong Zi Case: Overstepping Authority or Protecting Law], (DAILY PEOPLE’S DAILY, (Nov. 26, 2003), http://www.people.com.cn/GB/14576/14528/2213325.html.
\end{itemize}
or social rights, standing may be granted only if specifically authorized by statute. For instance, Article 33 of the “Regulation of the People's Republic of China on the Disclosure of Government Information” authorizes courts to hear citizen requests for information based on the violation of a political right without having to inquire into the existence of a direct harm. In 2008, municipal-level governments handled 683 petitions for administrative reconsideration of Open Government Information (OGI) requests.

It is also important to note that Article 12 of the “Interpretation of Several Problems Referring to the Implementation of ‘Administrative Procedure Law of the People’s Republic of China’” further requires that the purported infringement directly affect a litigant's personal and property rights. Thus, citizens may not question governmental expenditures through administrative litigation on the theory that they are taxpayers. For instance, in 2006, a farmer sued Changning Municipal Financial Bureau for purchasing two unbudgeted cars. The Changning Municipal Intermediate Court declined to receive the lawsuit on the basis that the act in question did not directly concern the plaintiff.

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158 Id.
161 Interpretation of Several Problems Referring to the Implementation of Administrative Procedure Law, supra note 139, at Art. 7.
163 Id.
Third, the authority complained of must be susceptible to suit. The “Interpretation of Several Problems Referring to the Implementation of ‘Administrative Procedure Law of the People’s Republic of China’” classifies all organizations exercising an administrative power delegated in accordance with the law as administrative organs. In 1997, Chen Jianeng sued the Organization Department of Sichuan Province after he had been reassigned by his employer, the Sichuan Petroleum Administration, as a result of the defendant’s action. The Supreme People’s Court dismissed Chen’s appeal on standing grounds. Even though the Organization Department of Sichuan Province’s decision would probably have been unreviewable as an internal administrative act, the court did not reach that question, basing its verdict on the definition of administrative organs. The Organization Department of Sichuan Province is apparently not an organization legally vested with administrative power. The cases also suggest that Chinese courts would exempt some forms of public associations.

165 Although the ALL does not explicitly qualify the right of action against administrative acts of the CCP, these cases rarely gain standing as a matter of practice. The Chinese State Council, as the highest administrative organ, possesses a unique legal status, distinctive from other administrative bodies, and is only rarely vulnerable to administrative litigation. Article XIV of Administrative Reconsideration Law of the People’s Republic of China authorizes the State Council to function as a court of law and to render a final ruling on administrative reconsideration appeals. “The applicant who refuses to accept the administrative reconsideration decision may bring a suit before a people’s court; or apply to the State Council for a ruling, and the State Council shall make a final ruling according to the provisions of this Law.” Zhonghua Renmin Gongheguo Xingzheng Fuyi Fa (2009 Xiuzheng) (中华人民共和国行政复议法 (2009年修正)) [Administrative Reconsideration Law of the People’s Republic of China (2009 Amendment)] ( promulgated by Standing Committee of the National People’s Congress, Aug. 27, 2009, effective Aug. 27, 2009) Art. 14, http://en.pkulaw.cn/display.aspx?cgid=16711&lib=law. To some extent, this prevented the Chinese State Council from being named as a defendant in an administrative suit. See He Haibo, supra note 133, at 40–41.

166 Article 1 states that, “a citizen, a legal person or other organizations have the right to litigate a lawsuit to the people’s courts once they consider that a concert administrative action by administrative organs or other organizations that exercise administrative power.” Interpretation of Several Problems Referring to the Implementation of Administrative Procedure Law, supra note 137, at Art. 1.

167 Because the People’s Republic of China is a party-dominated state, the Organization Department has an enormous amount of control over personnel within the PRC. The Organization Department is indispensible to the CPC’s power, and the key to its hold over personnel throughout every level of government and industry. It is one of the key agencies of the Central Committee, along with the Central Propaganda Department and International Liaison Department. See SICHUAN ZU GONG WANG (四川组工网) [ORGANIZATION DEPARTMENT OF SICHUAN], http://www.gcdr.gov.cn/info/ (last visited Nov. 24, 2014).


169 Id.

170 Id.

171 Id.
from review. For example, in Changchun Yatai v. Chinese Football Council, the Beijing Municipal Second Intermediate Court concluded that the plaintiff could not contest the decisions of a “self-regulating organization.”¹⁷² This is despite the fact that the Council discharges an administrative function under the “Law of the People’s Republic of China on Physical Culture and Sports.”¹⁷³

The number of administrative cases handled by the Chinese courts has grown in the twenty-six years following the introduction of the ALL in 1989. Despite this, they make up only a minor fraction of the caseload of Chinese courts. Between 1998 and 2002, there were only 463,328 administrative cases, accounting for a mere 1.73% of all cases decided by the Chinese judiciary in these five years.¹⁷⁴ The three elements summarized below partially reflect the relatively narrow standing granted to plaintiffs under Chinese administrative law.


¹⁷³ The State practices classified administration of sports competitions at different levels. Comprehensive national games shall be administered by the administrative department for physical culture and sports under the State Council or by the administrative department for physical culture and sports under the State Council in conjunction with other relevant organizations. National competition of an individual sport shall be administered by the national association of the said sport. Measures for the administration of local comprehensive sports games and local individual sport competitions shall be formulated by the local people's governments. See Zhongguo Renmin Gongheguo Tiyufa (中华人民共和国体育法) (Law of the People’s Republic of China on Physical Culture and Sports) (promulgated by Standing Comm. of the Nat'l People’s Cong., Aug. 29, 1995, effective Oct. 1, 1995) (China), http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=12674&keyword=体育法&EncodingName=&Search_Mode=accurate.

Table 4: Summary of China

<table>
<thead>
<tr>
<th>Interest</th>
<th>China (Pre-2014)</th>
<th>China (Post-2014)</th>
</tr>
</thead>
<tbody>
<tr>
<td>➢ Lawful right and interest</td>
<td></td>
<td>➢ Includes open information, social</td>
</tr>
<tr>
<td>➢ Limited to person and property</td>
<td></td>
<td>security, and educational rights</td>
</tr>
<tr>
<td>➢ Direct harm, i.e. no interest as a taxpayer</td>
<td></td>
<td></td>
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<tr>
<td>➢ Other political rights as authorized by statute</td>
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<td></td>
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<tr>
<td>➢ Other political rights as authorized by statute</td>
<td></td>
<td></td>
</tr>
<tr>
<td>➢ Includes open information, social security, and educational rights</td>
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<tr>
<td>Action</td>
<td></td>
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<tr>
<td>➢ Specific administrative acts</td>
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<tr>
<td>➢ Excludes internal or abstract administrative acts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>➢ Leaves out administrative guidance</td>
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<td>➢ Number of enumerated categories of cases increased from 8 to 12</td>
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<td>➢ Organizations exercising an administrative power delegated by law</td>
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The National People’s Congress (NPC) has recently promulgated amendments to the ALL, effective May 1, 2015, that formally relax some of these standing requirements.\(^{175}\) The rights that may be vindicated through administrative litigation are no longer restricted to those implicating persons or property and now include open information, social security, and educational rights.\(^{176}\) Also, administrative acts taken by an organization empowered by a law, regulation, or rule may now be the subject of suit.\(^{177}\) In addition, citizens challenging an administrative action may simultaneously file a request for review of the relevant regulation.\(^{178}\) Finally, even though the types of reviewable administrative cases are defined through enumeration rather than exclusion, the listed categories have


\(^{176}\) Ying Songnian, Xingzheng Susong Fa Xiugai De Liangdian Yu Qidai (《行政诉讼法》修改的亮点与期待) [The Insights and Prospective of the Amendment of Administrative Litigation Law], LEGAL DAILY, Jan. 28, 2015; see also Tian Yong su Beijing Keji Daxue (田永诉北京科技大学) [Tian Yong v Beijing Univ. of Sci. and Tech.], Sup. People’s Ct. Judicial Comm., Guidance Case No. 38 (Sup. People’s Ct. 1999) (protecting claimants’ educational rights; decided in February 1999 and selected to be a Guiding Case on January 7, 2015), http://www.chinacourt.org/article/detail/2014/12/id/1524355.shtml.

\(^{177}\) Administrative Litigation Law, supra note 175, at Art. 2 (“The term ‘administrative action’ as mentioned in the preceding paragraph includes administrative actions taken by an organization empowered by a law, regulation, or rule.”). See also Tian Yong su Beijing Keji Daxue (田永诉北京科技大学) [Tian Yong v Beijing Univ. of Sci. and Tech.], Sup. People’s Ct. Judicial Comm., Guidance Case No. 38 (Sup. People’s Ct. 1999), http://www.chinacourt.org/article/detail/2014/12/id/1524355.shtml (confirming higher education institutes can be sued as defendants in administrative litigations; decided February 1999 and selected to be a Guiding Case on January 7, 2015).

\(^{178}\) Administrative Litigation Law, supra note 175, at Art. 53 (this only applies to the regulations of a department of the State Council or by a local people’s government or department).
expanded from eight\textsuperscript{179} to twelve.\textsuperscript{180} In April 2015, the Supreme People’s Court issued a judicial interpretation to guide courts in applying the 2014 amendments.\textsuperscript{181} For example, a court should accept a case if it is otherwise unable to come to a decision in seven days.\textsuperscript{182} The document further suggests that courts give appropriate advice to organizations responsible for illegal “red-titled documents” and to apprise a supervising body, such as the local government or the administrative agency at the next level of government, of its recommendations.\textsuperscript{183} While these changes are intended to encourage administrative litigation, it is still too early to assess their practical impact.

IV. COMPARISON OF SYSTEMS AND THE POLITICAL ECONOMY ANALYSIS

The scope of this paper has compelled us to paint in broad strokes, but looking to both the state of the law of standing as well as trends in each case study country, there are a few salient observations. It is probably fair to say that for much of the last decade, prior to the 2014 amendment to the ALL, administrative litigation standing was broader in Japan than in China. First, only specific administrative acts were reviewable in Chinese courts under the 1989 statute. In particular, non-binding decisions are not subject to suit. The doctrinal equivalent in Japan is that of shobunsei. However, Takano, decided in 2004, suggests that administrative guidance in Japan may no longer be as insulated from judicial review as it once was.\textsuperscript{184} Second, Japanese law has gradually come to embrace a broader conception of “legal interest.” As codified in the 2004 amendments to the ACLL and illustrated by the Odakyū Railroad Case, one may now sue on the basis of a legal

\textsuperscript{179} Administrative Procedure Law, supra note 128, at Art. 11.
\textsuperscript{180} Administrative Litigation Law, supra note 175, at Art. 12. For example, decisions on expropriation or requisition or decisions on compensation for expropriation or requisition can be challenged in courts. See Xuan Yi Cheng Deng Su Zhejiang Sheng Quzhou Shi Guotu Ziyuan Ju (宣義成等诉浙江省衢州市国土资源局) [Xuan Yi Cheng v. Quzhou City Land Res. Bureau], Sup. People’s Ct. Judicial Comm., Guidance Case No. 38 (Sup. People’s Ct. 2003), http://www.chinacourt.org/article/detail/2014/12/id/1524380.shtml, (holding that the administrative decision about the right to use a land was illegal; judgment made in August 2003 and selected to be a Guiding Case on December 25, 2014).
\textsuperscript{182} Id. at Art. 1.
\textsuperscript{183} Id. at Art. 2, 20–21.
interest that is protected by laws and regulations relevant to the ones governing the administration disposition. The court not only has to consider the language of the statute, but also its overall “purport and purpose.” In contrast, the lawful interests that may form the basis for an administrative case in China must involve persons or property (unless special dispensation had been granted by legislative fiat). Third, the Japanese ACLL recognizes a category of “public suits,” or minshū soshō, that dispenses with subjective legal interest as a requirement for standing. The statutory availability of such suits has exposed the operational information and finances of local governments to citizen scrutiny. Although Chinese law has also dispensed with some of the elements of standing when it comes to OGI, taxpayers may not sue local authorities for restitution of misused public funds.

The comparison with Singapore is more challenging. There are no legal constraints on the type of injury that must be suffered for a complaint to be validly heard in Singapore, save that it be personal to the complainant. Furthermore, as laid down in Public Service Commission v. Lai Swee Lin Linda, the courts in Singapore utilize the nature test in addition to the source test to determine which bodies are subject to judicial review. But the Singapore Parliament has never authorized freedom of information statutes or taxpayer suits. It is also clear that such cases would be rejected in the Singapore courts for want of standing, as demonstrated by Jeyaretnam Kenneth Andrew v. Attorney-General. While the sufficient interest test ("prima facie case of reasonable suspicion") obliges the judge to reach the merits before ascertaining locus standi, precedent in this area of Singapore law is, unfortunately, sparse. However, the Chief Justice’s extra-judicial comments hint at the possibility of a stricter standard than that applied by the English courts. In the absence of well-developed case law in this common law jurisdiction, one can only hazard a guess that the legal barriers to standing are as imposing in Singapore as they are in China.

The previous observations juxtaposed the state of the law in each of the three countries’ systems. However, it is also instructive to adopt a dynamic rather than static perspective. This approach looks at how the law has evolved in each of the countries studied. The literature reveals that

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185 Narufumi Kadomatsu, supra note 68 at 156. See also Yuichero Tsuji, supra note 70, at 354.
186 Administrative Procedure Law, supra note 128.
189 Id. at paras. 10–11.
Japan’s standing requirements have experienced significant liberalization over the last decade. In China, very recent amendments to the ALL promise to subject a broader class of administrative conduct to judicial review. In contrast, Singapore administrative law has not moved in a similar direction and has generally remained static.

The question then is whether the rational choice tradition explains the differences over time between countries. We observe, first, that the executive and the legislature tend to be politically unified in one-party dominated states regardless of governmental structure. In Japan, the Prime Minister is the head of government, appointed from members of the bicameral Diet. Because he has to command the confidence of the House of Representatives, the Prime Minister usually belongs to the majority party. The same is true in Singapore, which inherited the U.K.’s Westminster model of parliamentary democracy. Although the “executive authority of Singapore” is vested in the President, the Cabinet is tasked with “general direction and control of the Government.” The Prime Minister presides over the Cabinet and appoints its members. Since independence in 1965, the Prime Minister of Singapore has always been a member of the ruling People’s Action Party (PAP). In China, the Constitution describes the NPC as the “highest organ of state power,” overseeing the State Council, the State Central Military Commission, the Supreme People’s Court, and the Supreme People’s Procuratorate. Although there are formally eight other political parties that are nominally represented in the NPC, many see the legislature as little more than a rubber-stamp for national policy decisions taken by the Politburo Standing Committee (PSC) of the Chinese Communist Party (CCP).

191 Id. at Art 24.
192 Id. at Art 28.
A second factor that fades in importance in party-dominated states is the distinction between common and civil law institutions. It is said that common law judges, being further removed from the administrative arm of the state, tend to enjoy more freedom than civil law judges. However, judicial actors in the countries we have selected tend to be reluctant to deviate from the preferences of the political elite. There is some empirical evidence supporting the assertion that Japanese judges who antagonized the government were penalized by being rotated to less prestigious positions. In addition, it has been suggested that this internal reluctance to dabble in contrarian politics developed as a mechanism to preserve judiciary independence. In Singapore, a common law jurisdiction, courts display a similar passivity when it comes to challenging the State. A number of commentators have noted that the judiciary adheres to a thin conception of rule of law, a position induced by co-option and internalization of the

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196 See, e.g., Garoupa & Mathews, supra note 2, at 12.
199 A thin conception of the rule of law sees rule of law as being procedural in nature; there is rule of law if laws are properly enacted, not retroactive, etc. In contrast, a thick conception of the rule of law sees rule of law as having a substantive component such as limitations on the powers of the state vis-à-vis the individual.
ruling party’s communitarian ideology.\textsuperscript{200} In China, as previously recounted, the judiciary is formally subordinate to the legislature. The president of the Supreme People’s Court presents a report to the Politburo Standing Committee of the NPC every year.\textsuperscript{201} The Supreme People’s Court’s 2009 advice to lower courts to reject any case involving government-initiated demolition and relocation is further evidence of politics prevailing over law.\textsuperscript{202} Thus, one should expect that in these countries, the reach of administrative law will be more or less confined to the limits imposed by the political leadership, sharpening the salience of PPT for administrative law.

There are, however, differences between Japan, Singapore, and China that could account for variation in how the classes of eligible plaintiffs in administrative cases are defined. First, although the Liberal Democratic Party (LDP) in Japan was reelected in every national election from 1955 to 1990, it has traditionally been, at least by some accounts, a highly factionalized unit.\textsuperscript{203} The defection from the party ranks in the summer of 1993 dealt the LDP a blow from which it has yet to fully recover. A no-confidence vote in the lower house was followed by a reversal in the ensuing elections which saw the LDP lose its majority in the House of Representatives for the first time. While the LDP later restored its majority in the House of Representatives after the 2005 General Election, it was decisively routed in the 2009 House elections by the Democratic Party of Japan (DPJ). In short, by the mid-1990s the specter of electoral competition and defeat hung over the LDP. Conversely, there has been no such pressure in Singapore or China. Although the PAP in Singapore saw its share of the popular vote decline between the 2001 and 2006 Parliamentary Elections, and again in 2011, there has not been a genuine challenge to its position as


\textsuperscript{201} HE WEIFANG, supra note 194.

\textsuperscript{202} Id.

\textsuperscript{203} See, e.g., MARK J. RAMSEYER & FRANCES MCCALL ROSENBLUTH, JAPAN’S POLITICAL MARKETPLACE 59 (1993); BRADLEY M. RICHARDSON, JAPANESE DEMOCRACY: POWER, COORDINATION, AND PERFORMANCE 74 (1997).
the government party. The position of the CCP in China has also not been meaningfully or realistically threatened.

There are two theoretical possibilities here. The first relies on the concept of zones of tolerance. The rivalry within the LDP, as well as its subsequent failure to retain its majority in the House of Representatives, may have raised the transaction costs of disciplining an assertive judiciary and presented reform-minded judges with an opportunity for judicial lawmaking. The second, encountered earlier, is the idea that politicians use the judiciary as a form of insurance against electoral turnover. The heightened political uncertainty, especially after the splintering of the LDP, might have recommended such a move to risk-averse legislators. It thus seems as if the courts in Japan should have played a more active role in reviewing administrative action than in Singapore or China, and even more so in the recent decade. Although one cannot be confident in saying that it was easier to bring an administrative case in Japan than in Singapore or China before 1993, restrictions on standing under Japanese law have been gradually eroded over the last ten years.

However, whether political fragmentation is the genuine reason for this development may be disputed. The bureaucrats in Japan loom large in state affairs, leading some to wonder who actually governs the country. In this vein, commentators on Japanese law have surmised that the shift in the legal landscape could be driven by politicians attempting to rein in the civil service. For example, Hitoshi Ushijima, a professor of law at Chuo University, speculates that “the LDP, partly supported by the opposition JDP, has been trying to challenge the traditionally strong bureaucracy through administrative, regulatory, and judicial reforms, and producing administrative law-conscious lawyers.” The erosion of public trust in the

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207 GOODMAN, supra note 37, at 462 (observing that “[t]here has been a drive for regulatory reform in Japan with emphasis on reducing the power of the bureaucracy.”).

208 HITOSHI USHIJIMA, supra note 68, at 88; see Katsuya Uga, Development of the Concepts of Transparency and Accountability in Japanese Administrative Law, in LAW IN JAPAN: A TURNING POINT 276, 294 (Daniel H. Foote ed., 2007) (“[T]he LDP itself also overcame its strong allergy to information disclosure once it had experienced a period as an opposition party. Through that experience, the LDP
bureaucracy after a series of scandals in the 1990s provided the opportune moment for politicians to seize the initiative.\(^{209}\) However, this is unlikely to be the whole story since the case law had evolved even prior to the 2004 amendments to the Administrative Case Litigation Law.

The second source of variance between Japan, Singapore, and China may be found in the relationship between national and local governments. Singapore is an island country 274.1 square miles in size.\(^{210}\) There are no local governments operating in the city-state. Although each constituency has its own town council, these organizations are headed by the local Member of Parliament (MP) and typically charged with managing the common areas of Housing Development Board estates. Japan, on the other hand, is organized into forty-seven administrative divisions. The constitution guarantees local self-government, and Article 93 provides for the establishment of “deliberative organs,” further specifying that “chief executive officers of all local public entities, the members of their assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities.”\(^{211}\) Article 95 also prohibits the Diet from enacting laws “applicable only to one local public entity . . . without the consent of the majority of voters of the local public entity concerned.”\(^{212}\) The national government may, however, assign functions to local governments for the implementation of national programs. It also exercises influence over local initiatives through the budget. The latter phenomenon is sardonically encapsulated in the phrase san-wari jichi, or “one-third autonomy,” a reference to the percentage of local government revenue generated by local taxes.\(^{213}\)

Similar to Japan, China is organized into thirty-four administrative regions, including twenty-three provinces, five municipal districts, four counties, and two special administrative regions.\(^{214}\) Each division has its own people’s government and congress that fall directly under the Chinese
central government’s authority. Per Article 96 and Article 105 of the Chinese Constitution, “local people’s congresses at various levels are local organs of state power.” The people’s congresses of provinces and municipalities and their corresponding standing committees may adopt local regulations after reporting such regulations to the Standing Committee of the NPC for the record. The Constitution also grants local governors great latitude in managing local affairs and implementing state policy. To contain the influence of local administrators, the Chinese national government forbids citizens from taking up positions of political leadership in their region of origin and limits the term of provincial leaders to five years. In contrast to the situation in Japan and China, the Singapore government does not shoulder the costs associated with having their policy objectives mediated or contradicted by the practices of local governing bodies. These disparities are reflected in each county’s respective standing rules. In China, the central government and the CCP are insulated from judicial review as a matter of both law and practice—it is typically local administrators and bureaucrats who are vulnerable. These currents are also at work in Japan where the law has permitted certain forms of “public suits” against local governments. Indeed, Ramseyer and Nakazato contend that the Japanese courts have been complicit in diluting the discretion of local governors, most of whom were not members of the long-ruling LDP. There is no such dimension to Singapore administrative law.

V. ALTERNATIVE MONITORING MECHANISMS

Nevertheless, there is at least one other decision problem faced by political principals that is not adequately described by existing PPT models. Though it has not been fully theorized in the existing work on comparative

215 “People’s congresses and people's governments are established in provinces, municipalities directly under the Central Government, counties, cities, municipal districts, townships, nationality townships, and towns. The organization of local people’s congresses and local people’s governments at various levels is prescribed by law. Organs of self-government are established in autonomous regions, autonomous prefectures and autonomous counties.” XIANFA art. 95 (1982) (China), http://en.pkulaw.cn/display.aspx?cgid=1457&lib=law.

216 Id. at art. 96 (“Local people's congresses at various levels are local organs of state power. Local people's congresses at and above the county level establish standing committees.”); id. at art. 105 (“Local people's governments at various levels are the executive bodies of local organs of state power as well as the local organs of state administration at the corresponding levels.”).

217 Id. at art. 105 (“Governors, mayors and heads of counties, districts, townships and towns assume overall responsibility for local people's governments at various levels.”).


219 RAMSEYER & NAKAZATO, supra note 36, at 217–18.
administrative law, alternative monitoring mechanisms could substitute or supplement judicial review.

In Japan, the administrative counseling system “provides the opportunity for analyzing public complaints with a view towards improving the performance of administrative agencies”—it is a “link in the chain of administrative remedies available in Japan.” 220 The Administrative Management Agency (AMA) was established in 1955 to receive public complaints about national public administration agencies. Despite the AMA’s apparent independence, its high status in the Japanese government made it appear inaccessible to ordinary citizens. Therefore, in 1961, the government appointed 882 local administrative councilors to be stationed across the country. These councilors, though initially confined to relaying grievances to the Administrative Inspection Bureau of the AMA, were gradually permitted to participate in dispute resolution. For citizens, the dual advantages of the Bureau’s administrative complaint investigations lie in its scope—it could handle cases involving any act of administrative agencies—and its speed. It is also procedurally less daunting than judicial solutions. In addition to having bureaus in the major cities, the AMA operates an exclusive hotline for members of the public to lodge complaints against administrative agencies. As a result, the annual number of cases filed with the AMA surged to almost 200,000 in the years preceding 1987.

In Singapore, the 1996 Wee Chong Jin Constitutional Commission recommended the establishment of an ombudsman to handle complaints against government agencies.221 Parliament, however, rejected this proposal, preferring for disputes to be brought to the attention of MPs or the Feedback Unit. The Meet the People Session (MPS) is an avenue for ordinary citizens to appeal to their MPs for assistance. It is typically a weekly affair, held in the evening for residents in a particular MP’s ward.222 The complainant describes his or her situation to a petition-writer, who prepares a statement to be presented to the MP. The MP then hears the grievance in person before signing off on the drafted letter and delivering it to the relevant ministry or statutory boards.223 Although civil servants are obliged to respond to

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221 Li-Ann Thio, The Passage of a Generation, in EVOLUTION OF A REVOLUTION 7, 37 (Thio Li-ann & Kevin Y.L. Tan eds., 2009).
222 The material that follows draws on the experience of one of the authors who previously volunteered as a petition writer at MPS.
223 Statutory boards are the Singapore equivalent of administrative agencies.
correspondence from MPs, they do not have to revise their initial policy or make an exception, and it is not unusual for a petition to be denied.

In China, the central government relies on “letters and visits,” or xinfang, to collect public feedback and identify corrupt or disobedient local officials. The xinfang process in China was originally established in 1951 pursuant to “The Decision of State Council Referring to Receive Letters and Visits of People.” It serves “as an alternative to formal legal channels for many citizens seeking to resolve their grievances.” Xinfang offices accept complaints, proposals, and opinions raised by citizens through letters, e-mails, telephone calls, or personal visits. The significance of xinfang is reflected in the numbers. From 1992 to 2004, the total amount of xinfang petitions in China increased by more than ten percent each year, reaching a peak of 13,736,000 in 2004. 10,336,000 xinfang petitions were filed in 2009.

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227 Xinfang Tiaoli (Regulation on Complaint Letters and Visits) (promulgated by State Council, October 1, 2005, effective May 1, 2005), Art. 2 (China), http://en.pkulaw.cn/display.aspx?id=3920&lib=law&SearchKeyword=Regulation%20on%20Complaint%20Letters%20and%20Visits&S&SearchCKey word=# (“The term ‘complaint letters and visits’ as mentioned in the present Regulation refers to the activities that a citizen, legal person or any other organization who, by way of letter, e-mail, telephone or visit, etc., reports facts, submits proposals or opinions, or files a complaint to the people's governments at various levels or working departments of the people's governments at or above the county level, which shall be dealt with by the relevant administrative organs according to law. A citizen, legal person or any other organization who, through any foreseen method, reports facts, submits proposals or opinions, or files a complaint shall be addressed as the complaint maker.”).
228 Minzner, supra note 226, at 105 (“According to the director of the national xinfang bureau, the State Bureau for Letters and Calls, letters and visits to Party and government xinfang bureaus at the county level and higher totaled 8,640,040 for the first nine months of 2002, corresponding with an annual rate of 11.5 million per year.” (citation omitted)).
229 Ma Huaide, Yifang Huajie Shehui Maodun De Zhiben Zhice: Guifan Gongquanli (预防化解社会矛盾的治本之策：规范公权力) [The Strategy of Preventing and Resolving Social Conflicts: Regulating Public Power], 2 ZHONGGUO FAXUE (中国法学) [CHINA LEGAL SCIENCE] 45, 45 (2012).
230 Id. (citing Zhang Enxi, Guanyu Shehui Maodun Huajie De Sikao Yu Shijian (关于社会矛盾化解的思考与实践) [The Contemplation and Practice on Resolving Social Conflicts], 1 BEIJING ZHENGFA NEIKAN (北京政法内参) [BEIJING INTERNAL REFERENCE OF POLITICS AND LAW] (2010)).
There are a number of reasons why Chinese citizens resort to xinfang for administrative disputes. First, judicial review is unreliable. Yu Jianrong, a law professor at Peking University, interviewed 632 xinfang rural petitioners filing complaints in Beijing in 2004. Of these petitioners, 401 had previously tried to pursue legal avenues for redress. Of the 401 petitioners, 172 did not manage to obtain a judicial hearing, 220 were unjustly denied relief, and nine were seeking to have favorable judicial decisions enforced.231 Furthermore, in contrast to the standing requirements for administrative litigation, xinfang bureaus receive a broad range of petitions, including those not based on legal arguments. The administrative acts challenged through xinfang do not need to implicate the petitioners’ personal and property rights. For example, the Discipline Inspection Bureau of Hunan reported that the complaints about “unfair and offensive conduct” made up twenty-five percent of all xinfang petitions in Hunan between 1995 and 1998.232 In addition, the remedies available through xinfang are perceived to be effective when granted. This is because state and local agencies are more likely to follow the directions of their superiors in the governmental hierarchy than to obey a court order.233

However, petitioners visiting xinfang bureaus risk being physically intercepted by agents of local authorities, a phenomenon known as jiefang.234 This tactic, justified by the purported need to suppress potential “mass incidents” and the political strategy of “buying stability,” has restricted the access of aggrieved citizens to xinfang and prevented petitions from being heard by higher-level administrators.235 Under the cover of “maintaining stability,” jiefang has impeded petitioners attempting to contact the state xinfang bureau or even the government at the next level.236 For

232 Zhao Yansen, Xinfang Jubaoliang de Bianhua yu Sikao (The Change and Analysis of the Total Amount of Xinfang Petitions), 4 ZHONGGUO JIANCHA (SUPERVISION IN CHINA) 47, 47 (2000).
233 Liu Renwen, Zhongguo Nongmin Weihe Xin "Fang" Bu Xin "Fa" (Why the Chinese Trust Xinfang Rather than Law), 14 ZHONGGUO XINWEN ZHOUKAN (CHINA NEWSWEEK) 87, 87 (2009). See also Minzner, supra note 226, at 124–129.
235 According to the research conducted by Lee and Zhang, many big cities, such as Beijing and Shenzhen, each district government spent millions of RMB annually as “stability maintenance fund” to hinder resistance and pursue the short-term stability effect. Ching Kwan Lee & Yonghong Zhang, The Power of Instability: Unraveling the Microfoundations of Bargained Authoritarianism in China. 118 AM. J. OF SOC. 1475, 1485 (2013).
example, according to an investigation of several provinces in 2006, including Henan, Liaoning and Shandong, some grassroots organizations, and even local xinfang offices that did not fulfill their responsibilities to resolve petitions, spent a substantial amount of funds on arranging the interception of state xinfang petitioners. Even though the Chinese central government has managed to constrain jiefang and a few perpetrators of jiefang were punished by courts, some local governors are still willing to risk punishment to avoid a blemish on their reputations that may cost them an opportunity for promotion.

These examples demonstrate that courts are not the only means for principals to obtain information on the activity of their agents. Alternatives such as administrative counseling, MPS, or xinfang may be used in lieu of judicial review. The availability of multiple channels of supervision thus raises some interesting questions for PPT. In particular, non-judicial mechanisms and administrative law are not perfect substitutes. First, the quality and quantity of information collected differs. For instance, because lawsuits are generally expensive and time-consuming, they tend to involve administrative actions that have a significant financial, emotional, or symbolic impact on the complainant. In contrast, grievances filed under a less formal process might range from trivial to serious. Second, judicial resolution of an administrative dispute is public and could create precedent in common law jurisdictions. If the principal prefers fluid results to the

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237 Xinfang Haishi Jiefang: Henan, Liaoning, Shandong Zhengzai Zouchu Kunhuo (信访还是依法信访：河南、辽宁、山东正在走出困境) [Xinfang Or Jiefang: Henan, Liaoning and Shandong are Walking out of Confusing Zone], 3 LINGDAO JUECE XINXI [INFORMATION FOR DECIDERS MAGAZINE] 15 (2007).


239 See Wang Mengjie, Chen Feifei, Shining Zaijing Jiefang Zhe Bei Panxing: Shuishi Muhou Zhushi (10名在京访者被判刑：谁是幕后主使) [Ten Interceptors of Xinfang in Beijing Have been Charged: Who is Standing behind], 4 BAOKAN HUICUI 32, 32, 33 (2013).

creation of legal rules, he or she should avoid excessive reliance on legal institutions.

Third, it is less politically costly to change the outcome of a more informal or bureaucratic style of adjudication than it is to change judicial dispositions. This is because ignoring or reversing a court decision risks undermining the stability provided by the larger judicial system. Finally, non-judicial actors typically do not enjoy the same institutional protections as judges and are vulnerable to capture by the agents being supervised or by an incoming political administration. Thus, principals should continue to rely on courts if bureaucrats are influential or if they expect a turn in the political tides.

VI. CONCLUSION

The recent literature has attempted to assess the plausibility of a PPT account of administrative law by applying and evaluating it in a comparative setting. Magill and Ortiz argue that a basic prediction of PPT (presidential systems ought to rely more heavily on judicial review) is contradicted by their findings about reasonable review doctrines in United States, the United Kingdom, France, and Germany. On the other hand, Garoupa and Mathews try to reconcile PPT with a number of case studies by introducing an  

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241 The former might explain the recent trends in Chinese administrative law. In addition to broadening standing, the 2014 amendment grants intermediate people’s courts jurisdiction over cases filed against a department of the State Council or by a people’s government at or above the county level. It also authorizes courts to impose fines and criminal sanctions on the responsible official of the administrative agency. The political principals could have elected to encourage the use of xinfang at the expense of local courts. But the central government cannot always ensure access to the local xinfang bureau because of jiefang.

242 The latter describes the case of Japan.
additional element into the analysis: the principal-agent relationship between
the legislature and the judiciary.

This article compares the class of plaintiffs entitled to seek judicial
review of administrative action in three party-dominated countries, Japan,
Singapore, and China. These countries share similar cultural attitudes
towards the use of law and have low-autonomy courts. From a cursory
examination of each country’s respective codes and case law, it is fair to
conclude that before 2014, standing requirements were more stringent in
China than in Japan. Singapore is a common law jurisdiction that considers
questions of locus standi using the substantial interest test. In particular, the
two-stage test articulated by R. v. Inland Revenue Commissioners ex p
National Federation of Self-Employed and Small Business Ltd. and
seemingly accepted by Singapore courts necessitates a balancing between
the merits of the case and the degree of a plaintiff’s concern. This wrinkle
makes any rough comparison between Singapore and the other two
jurisdictions contestable and highly subjective. Looking across time,
however, it is clear that the class of eligible plaintiffs has expanded in Japan,
particularly over the last decade. In China, there had been intense discussion
about the liberalization of standing that culminated in the 2014 amendments.
There are still no signs of any pronounced push for relaxed standing rules in
Singapore.

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The analysis suggests that some of these differences are adequately
captured by the political economy approach to administrative law. First, the
LDP is factionalized and has experienced strong inter-party political
competition since 1993, whereas the PAP and the CCP have comfortably
retained power until today. The dilution of political power allows the
judiciary more space to maneuver and increases the demand for insurance.
Second, the national government in Japan, as well as China, has to govern
through local authorities. The friction and devolution of power generates
agency costs that courts could help mitigate.
The takeaway is that three factors may be relevant to a PPT account of comparative administrative law. First, local governments, in addition to administrative agencies, are sometimes also agents of the national government. As such, administrative law can help principals regulate the acts of local governments and those of agencies. Second, political turnover may influence the shape of administrative law. For example, incumbent legislators may support judicial review if they know they might be out of power sometime in the future. The availability of courts as a forum for contesting administrative actions is useful for political interests that are not fully represented by the legislatures or executives. Third is the possibility of using monitoring mechanisms other than judicial review. The former and the latter are not perfect substitutes. Hence, the decision to rely on a non-judicial agent, a court, or both, depends on the transaction costs of overriding a judicial decision, the quantity and quality of information desired, and, once again, political turnover. If there is political turnover, judicial review by independent courts might be favored over other mechanisms that are controlled by the executives or legislatures.

In conclusion, some of the differences in standing doctrine observed between Japan, China, and Singapore are adequately captured by the PPT approach to administrative law. However, there is a possibility that the theory might not always generate clear predictions for comparative administrative law. This is because the availability of non-judicial mechanisms for monitoring agent conduct introduces a new dimension into the analysis that has not been taken in account by Magill and Ortiz or Garoupa and Mathews. PPT must be supplemented by research into the choice of monitoring agents and the allocation of power between them.

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243 This is not true of the United States. The system of dual sovereignty and the nondelegation doctrine severely constrain the federal government’s authority over state governments. See New York v. United States, 505 U.S. 144 (1992); Printz v. United States, 521 U.S. 898 (1997).