

The Recent Decline in Economic Caseloads in Chinese Courts: Exploration of a Surprising Puzzle*

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ABSTRACT This article explores why the economic caseloads in China have declined in recent years. Based on data collected at the national, provincial and local levels, it evaluates four possible explanations – structural changes in dispute resolution, economic development, social transformation and dysfunctional courts. It suggests that all four hypotheses are plausible to a certain extent but none provides a single, straightforward and adequate solution, and the degree of each factor’s impact varies across time and region. The cause for decline must lie either in the total volume of disputes generated in society or in the unwillingness of potential litigants to use the courts. The difficulty of locating an overarching explanation in a way suggests that China’s case might have imposed a challenge on the relationship between caseload change and socio-economic conditions which has conventionally been regarded as a settled issue.

While little systematic research has been conducted on China’s economic caseloads – the number of cases received by the court – it is commonly assumed that the number has been ever increasing in the reform era.¹ This unwarranted impression is partly derived from the national data on caseload numbers up until the mid or, at best, the late 1990s. Until this time, although the caseloads had stopped increasing, a trend of stabilization and decline was hardly noticeable. The unwarranted perception of ever-increasing caseloads has been further reinforced by seemingly plausible but rarely corroborated assertions. First, the country’s rapid and sustained economic development seemed to generate a

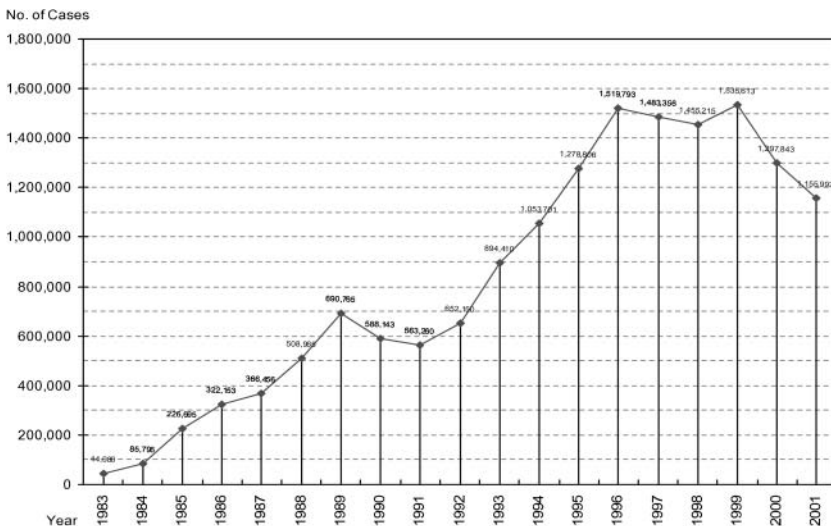
* This study was supported by City University of Hong Kong’s research project “Civil caseload changes in China courts.” The author would like to thank the judges and plaintiffs whom he interviewed in Courts G and H, his research assistant Song Cheng and his colleague Charles Qu.

1 Hualing Fu puts forward some preliminary accounts on the sharp increase of the civil and economic caseloads. See “Putting China’s judiciary into perspective: is it independent, competent, and fair?” in Erik Jenson and Thomas Heller (eds.), *Beyond Common Knowledge* (Stanford: Stanford University Press, 2003), pp. 193–219, at 199. Stanley Lubman, carefully listing the caseloads and the percentages of some subcategories from 1990 to 1997, briefly mentions their increase. See Lubman, *Bird in a Cage* (Stanford: Stanford University Press, 1999), pp. 254–55. Some Chinese publications try to describe and explain the caseload change, but none takes the stabilization and decline seriously. See e.g. Jingfu Ran, “Shehui jingji fazhan dui susonglu bianqian de yingxiang” (“The impact of socio-economic development on litigation rates”), in Xinghua Guo and Yilong Lu (eds.), *Fali yu shehui (Law and Society)* (Beijing: Zhongguo renmin daxue chubanshe, 2004), pp. 239–45.

soaring number of commercial transactions, and a corresponding growth in cases in major economic areas, such as debt collection. Secondly, Chinese people are believed to have become more assertive and aware of their rights, and a director of the Supreme People's Court (SPC) even claims that Chinese society has become more litigious, leading to more cases in the courts.² Thirdly, the state has made tremendous efforts to establish a rule of law in which the role of the courts in settling private litigation is promoted.³ Numerous laws, regulations and other legal directives have been put into effect, greatly expanding the jurisdiction of the courts. The numbers of judges, lawyers and law schools have noticeably increased, providing necessary manpower to facilitate the judicial process. There are just too many reasons to believe that the economic caseloads in the courts should have increased.

Yet this impression is clearly negated by national data between 1978 and 2002, and particularly data collected between 1998 and 2002 (see Figure 1). It is true that from 1978 to 1996, economic cases increased sharply. But after that, case numbers stabilized and even started decreasing: from 1996 to 2001, for example, they decreased 25 per cent. This is perhaps too short a period to be useful in drawing any meaningful pattern, but five years of stabilization followed by

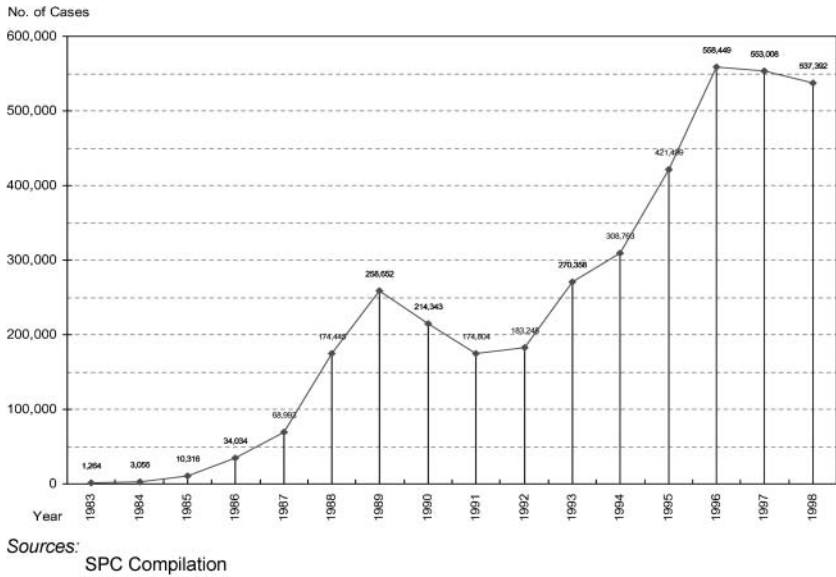
Figure 1: **First Instance Economic Cases, 1978–2001**



Sources:
SPC Compilation

- 2 The former vice-president of the Supreme People's Court, for example, said: "There is a tendency that the litigation right has been abused. For just a minor issue, people will not make compromise; instead, they file lawsuits." As a result, according to him, courts are overburdened by the increasing lawsuits. See "E zhi lanyong shushong qunxiang" ("Constraining the tendency to litigation right abuse"), speech by Liu Jiashen, *Renmin fayuan bao (The People's Court News)*, 13 July 2002.
- 3 Note, "Class action litigation in China," *Harvard Law Review*, No. 111 (1998), pp. 1523–41.

Figure 2: **First Instance Money Lending Contract (*jiekuan hetong*), 1983–1998**



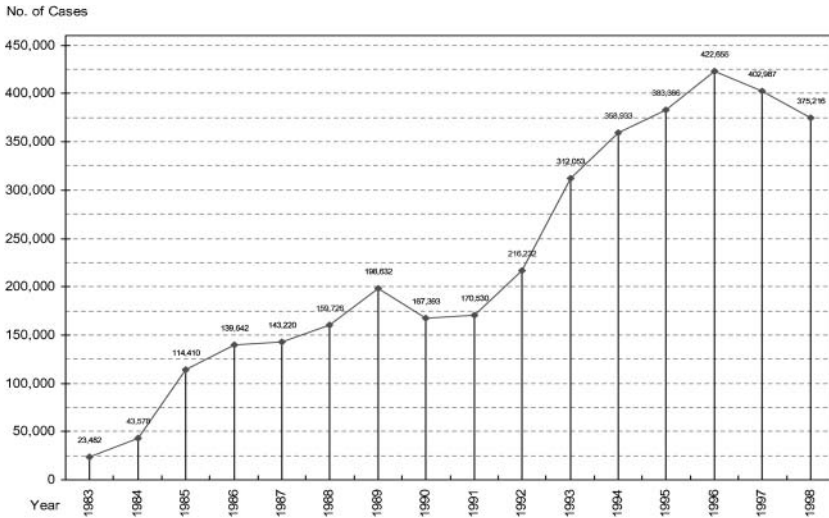
decline within a 23-year period is not completely insignificant, and certainly not when the national data in 2002, 2003, 2004 and 2005 seem further to corroborate this observation.⁴

In addition, this pattern of stabilization followed by downward curve exists not only in the general trend of economic caseloads but also in many major subcategories which are, allegedly, closely associated with economic development (see Figures 2, 3, 4). Money lending (*jiekuan* 借款) cases, for instance, decreased 9 per cent from 1999 to 2001. A similar change is also found in some provinces with steady economic development, although the turning point of their decline did not exactly match that of the national curve. Furthermore, the phenomenon is not confined to the economic caseloads: the civil (*minshi* 民事) caseloads which share the same litigation procedure as economic caseloads have also stabilized since 1999.⁵ With its depth and width, this phenomenon seems

4 In the official statistics, the original classification of civil and economic cases was changed to civil and commercial cases in 2003. Under the new classification, civil cases with economic content, such as debt, are placed in the category of commercial cases. But the total numbers of civil and commercial cases for years 2002, 2003, 2004 and 2005 are not higher than the sum of economic and civil cases in 2001, which indicates that overall civil and economic cases at least stop increasing sharply.

5 Before 2003, civil litigation was a separate category from economic litigation in China’s official statistics, even though the boundary between the two was not very clear. Generally, civil litigation refers to marriage and family, housing, succession, debt, intellectual property and personal rights; economic litigation includes economic contract, economic tort (*jingji qingquan*), bankruptcy, transportation and so on. See Stanley Lubman, “Dispute resolution in China after Deng Xiaoping: ‘Mao and mediation’ revisited,” *Columbia Journal of Asian Law*, Vol. 11, No. 2 (1997), pp. 229–391, at 283. In practice,

Figure 3: First Instance Purchase and Sale Contract Cases (*gouxiao hetong*), 1983–1998



Sources:
SPC Compilation

unlikely to be merely the result of some temporary policies of the SPC, which are believed to have short-term impact at best.⁶

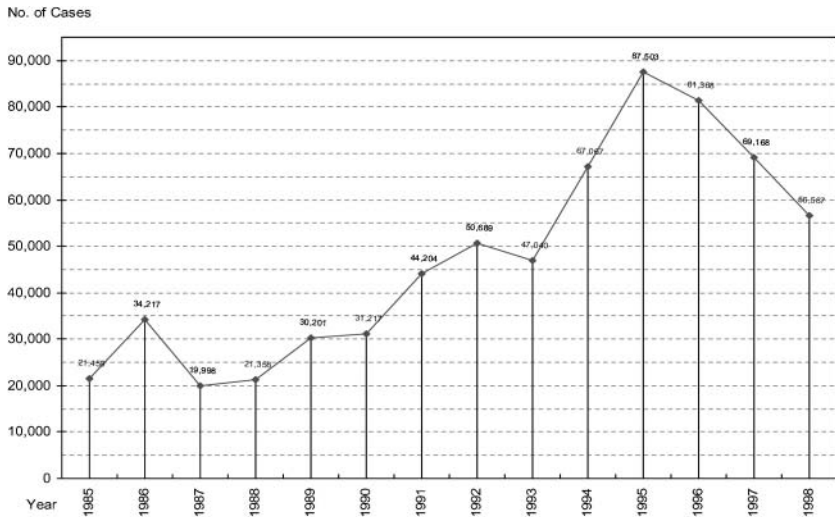
There are important theoretical and practical implications of decreasing caseloads. Theoretically, the existence of stabilization and decline, if true, will challenge the popular “ever-increasing” impression of economic caseloads and call for plausible explanation. As demonstrated by previous studies in Western countries, certain patterns do emerge in aggregate caseloads over time and such patterns seem capable of explanation. These kinds of studies stand on their own as an important perspective on the relationship between the courts and the socio-economic environment. As Willard Hurst put it convincingly, the data on the cases handled by courts tell stories “not only to the history of the legal system itself, but also to the story of the law’s living relation to general values and processes of the society.”⁷ But to what extent are these studies in the Western world applicable to China, given the huge differences in the legal system, culture and socio-economic context? On the policy level, decreasing

footnote continued

economic cases focus more on litigation in which institutions are involved, while that between individuals usually belongs to civil litigation. This is particularly true as between debt cases (*zhaiwu*) and money lending cases (*jiakuan*). The former belongs to civil litigation simply because it occurs between individuals.

6 For example, there was an expansion and subsequent retraction in the range of litigation chambers. (*shenpang ting*) in the mid–1990s.

7 J. Willard Hurst, “Introduction,” in Francis W. Laurent, *The Business of a State Trial Court* (Madison: University of Wisconsin Press, 1959).

Figure 4: **Contract-out Cases in Rural Areas (*nongcun chengbao hetong*), 1985–1998**

Sources:
SPC Compilation

caseloads directly question the commonly held view that Chinese courts have been overburdened with work. It also raises questions as to whether the judicial reform towards formalization and modernization is conducive to the overall functioning of the courts; whether litigants' confidence towards the courts has been affected; and ultimately, whether the courts are capable of solving economic disputes in a country experiencing significant social and economic transformation.

Economic cases are chosen for two main reasons. First, they are one of the most common types of litigation the courts handle, and they have the closest link to economic activities and thus the socio-economic environment more generally. They therefore provide an important and appropriate window into the relationship between the courts and society. Secondly, although economic caseloads are not the only category that has stabilized and decreased over the period, a more comprehensive discussion of all civil caseloads – including *minshi* and *jingji* (经济) cases – would unnecessarily complicate the issue. It is true that civil cases (excluding *jingji* cases) show a similar pattern, but their change may be affected by very different reasons from those affecting economic cases. For example, under the current institutional arrangement, marriage and family cases, taking up roughly 40 per cent of civil caseloads, seem significantly affected by people's attitudes to marriage, which has only an indirect relation to socio-economic environment and probably little to do with the actual functioning of the courts.

To study the economic caseload changes in reform China is difficult, but not impossible. On the national level, apart from the well-known sources such as *China Law Yearbook* and *China Statistical Yearbook*, detailed statistics have become available in a new book edited by the SPC (*SPC Compilation*).⁸ This records not only the total case numbers, but also the detailed subcategories of economic cases received, adjudicated, mediated, appealed and executed by the courts from 1949 to 1998. In addition to the national data, caseloads at the provincial levels may be found in province annals (*nianjian* 年鉴), usually edited by the provincial governments. Most of these show the total number of civil and economic cases in a column labelled “the adjudicating work” (*shenpan gongzhuo* 审判工作).

To complement the data at the macro level, this article also relies on data collected by the author showing economic case numbers from two trial courts, one in the Pearl (Zhu) River Delta of Guangdong province (Court G) and the other in the south-west of hinterland Hunan province (Court H).⁹ Because the statistics from China’s judiciary are widely viewed as unreliable, case numbers were collected from two sources.¹⁰ One is the annual report of the courts submitted to local People’s Congresses, and the other is the case docket on file (*anjuan guidang bu* 案卷归档簿) from which I counted the numbers directly. It turns out that the numbers for Court G from the two sources are basically consistent, while there are great discrepancies among the numbers for Court H.¹¹ Part of the reasons for the consistency of Court G numbers may be that the total number of cases was very high, and the court already enjoyed a sufficient budget from the local department. Thus there was not much need to exaggerate the numbers, at least not in order to increase its financial resources. By contrast,

8 Supreme People’s Court (SPC) Research Department (ed.), *Quanguo renmin fayuan sifa tongji lishi ziliao huibian, 1949–1998, minshi bufen* (*Collected Historical Judicial Statistics Relating to People’s Courts Nationwide, 1949–1998, Civil Part*) (Beijing : Renmin fayuan chubanshe, 2000). The numbers in this book are consistent with those in *China Law Yearbook*. They are also, in large measure, consistent with those of *China Statistical Yearbook*. Some minor discrepancies were found, but these do not affect the general pattern of caseloads.

9 I conducted fieldtrips in the summer and autumn of 2004. These were arranged by my classmates, who were working for the courts as mid-level adjudicating staff. The two courts were chosen specifically to show the regional variations as a result of the huge developmental levels across the country. I made clear to them in advance that my purpose was purely academic and I would not disclose their specific locations. I explicitly said that I would not be interested in criminal case numbers, which are still regarded as very sensitive by China’s judiciary.

10 Clarke maintains that it could be risky to draw conclusions from caseload numbers because both the courts and adjudicating staff have incentives to overstate case numbers to enhance their performance. More specifically, since the courts have traditionally relied on litigation fees as one of their primary funding sources, they have incentives to seek cases that could bring higher fees, such as economic cases: Donald C. Clarke, “Empirical research into the Chinese judicial system,” in E. Jensen and T. Heller (eds.), *Beyond Common Knowledge* (Stanford: Stanford University Press, 2003), pp. 164–92. These practices will surely affect the accuracy of the court statistics. But since they have persisted during the whole reform period, they may not significantly affect the general trend of caseloads, especially in the long term.

11 The degree of discrepancy between numbers from different sources is astonishing, as seen in Figure 6. The head of the case filing chamber (*li’an ting*) and the vice-director of the court nevertheless confirmed that the numbers collected from the case docket were real. This discrepancy is not confined to economic cases and similar exaggeration exists in civil cases. Some statisticians working with me said bluntly that the numbers in the official reports were not reliable, or were even faked.

the number of cases received in Court H was very low. More importantly, its official budget was only half of what it needed to operate. This court thus needed favourable numbers to show that it had done some work and then applied for more money. As a result, I have two sets of case numbers of Court H. One is official but not reliable; the other is reliable but informal and incomplete. Nevertheless, according to all these numbers, the economic caseloads of these two randomly selected courts display some similarities to the national trend. I hope an examination of their changes could at least provide some refined hypotheses on the overall decline across the country.

To examine litigants’ perceptions of the courts, I also conducted a questionnaire investigation into the attitudes of plaintiffs before and after their court experience. While a comprehensive report on these questionnaires is beyond the scope of this article, relevant findings will be used to evaluate some hypotheses. It is believed that a combination of macro and micro, quantitative and qualitative approaches could help in understanding this surprising decline.¹²

The rest of this article will largely draw upon these data, and propose and evaluate four possible explanations – structural changes in dispute resolution, economic development, social transformation and dysfunctional courts. It suggests that all four hypotheses are plausible to a certain extent, but none provides a single, straightforward and adequate solution to this puzzle.

An Overview of Economic Caseload Change

Until 2002 the cases processed by Chinese courts had been categorized in national documents as criminal, administrative, civil and economic. Thereafter, civil and economic cases were combined as civil-commercial cases (*minshang anjian* 民商案件). Despite these clear classifications at the national level, there exists considerable variation at the basic court level. It is common for some basic courts not to have the full array of litigation chambers, which means that classification into the categories above may not be clear at the grassroots level. Nevertheless, according to the national data, civil and economic cases had been dominating the cases filed at the courts. Table 1 shows the distribution of first

Table 1: **First Instance Cases Filed, 2001**

Types of cases	Number of cases	% of total cases
Civil	3,459,025	64.71
Economic	1,155,992	21.63
Administrative	100,921	1.89
Criminal	628,996	11.77
Total	5,344,934	100.00

Source:

China Law Yearbook, 2002, p. 1238.

12 The discussion of the combination of quantitative and qualitative methodology can be seen at Joe Sanders, “The interplay of micro and macro processes in the longitudinal study of courts: beyond the Durkheimian tradition,” *Law & Society Review*, No. 24 (1990), pp. 241–56.

instance cases in 2001, when civil cases were the largest category at almost 65 per cent, while economic cases accounted for over 20 per cent.

Economic cases were further divided into contracts, economic torts, economic ownership, bankruptcy, transportation and others. But it is sometimes hard to tell the differences among these mini-categories. For example, Court H's docket lists more than 20 litigation causes of action under the general category of economic cases, and even the statistician and archivist were not clear on how they should be grouped.¹³ Needless to say, the grouping standards show great variation across different courts, and the accuracy of the national data must have been affected to some extent. Generally speaking, however, economic contracts comprise more than 90 per cent of the economic cases, both in the national data and at the two basic courts, over the entire reform period.¹⁴ At the same time, other subcategories of economic cases do not have much say in the general trend. It thus makes more sense to study the major mini-categories of economic contracts. As Table 2 shows, in 1998 three major mini-categories – purchase and sale, money lending and contract out (*chengbao* 承包) in rural areas – made up more than 65 per cent of all economic cases.¹⁵

Despite many inconsistencies in the statistics, the national data, which seem likely to be the only information available at this level, convey some very interesting messages. As already mentioned, the first instance economic caseloads did not simply increase steadily over the reform period, but in fact increased sharply during the initial 20 years of the reform. As seen in Figure 1, they soared some 35-fold from 44,080 in 1983 to 1,535,613 in 1999, but after 1999 the numbers slumped. Indeed, the curve flattened from 1996 to 1999, and in 2001 the number fell back to the 1994 level. Since the 2002 and 2003 data did not

Table 2: Three Major Subcategories of First Instance Economic Cases Filed, 1998

Types of economic contract cases	Number of cases	% of total economic cases
Money lending	537,392	36.93
Purchase and sale	375,216	25.78
Contract-out in rural area	56,587	3.89
Total	1,455,215	100.00

Source:

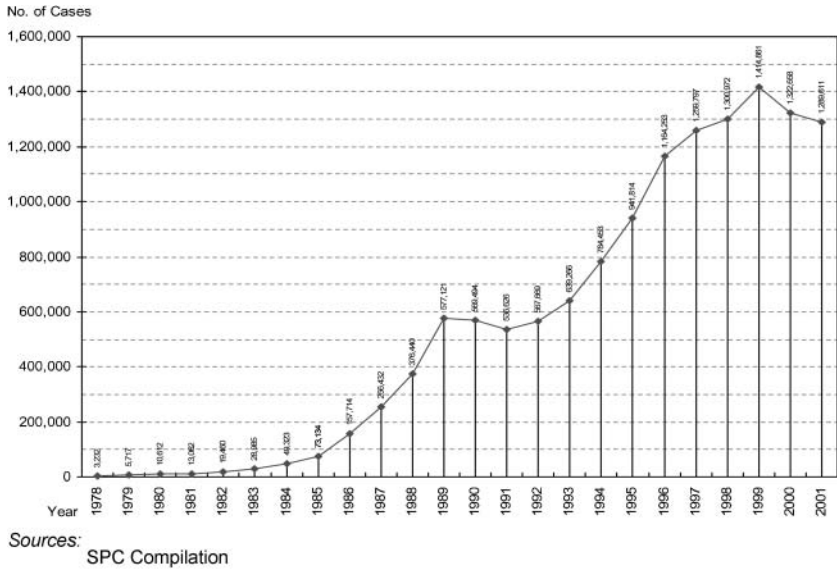
SPC Compilation, pp. 330–33.

13 The detailed litigation causes of action include e.g. land ownership disputes, passenger vehicle lease disputes, reputation infringements, pre-emptive rights in mortgages, and other less common causes.

14 *SPC Compilation*, pp. 330–33.

15 To certain extent, the three major mini-categories of economic cases reveal some organizing principles and policy priorities of the courts and the governments. Some cases which do not necessarily belong to a mini-category may be included because the institutions want to show these as disputes in their regions. This means that political forces could also be a factor, though not necessarily a significant one, affecting the caseload change.

Figure 5: **First Instance Debt Collection Cases, 1978–2001**



differentiate between economic and civil cases, we do not have their counterparts to the original statistical classifications. We know, however, that civil-commercial cases in 2002 totalled 4,420,123,¹⁶ 5 per cent lower than the 2001 figure of 4,615,017.¹⁷ In addition, all the mini-categories of economic contract cases display a similar curvilinear trend to the first instance economic caseloads.¹⁸

One could argue that this may simply be the result of re-classification between economic and civil cases. For example, the line between money lending, which belongs to economic cases, and debt, which belongs to civil cases, could have been blurred. But debt caseloads, which make up one of the largest subcategories in civil cases, have also declined since the mid-1990s (see Figure 5).¹⁹ It therefore seems likely that the general pattern holds for most major subcategories and mini-categories of cases,²⁰ which largely eliminates the seemingly obvious explanation that the decline in caseloads reflects the changing subject matter or classification of cases.²¹

16 *Zhongguo tongji nianjian (China Statistical Yearbook)*, 2003, p. 1319.

17 The sum is calculated from p. 1238. *China Statistical Yearbook*, 2002.

18 Unfortunately, the numbers of these mini-subcategories since 1998 were not available because the *SPC Compilation* only covers till 1998.

19 See *China Law Yearbook* or the *SPC Compilation*.

20 Some subcategories are omitted because their number is very small, and thus marginal in the general trend. For example, the bankruptcy cases in 1998 reached only 7,746. See the *SPC Compilation*.

21 During the whole reform period, the Chinese population increased slightly from 962.59 million in 1978 to 1,276.27 million in 2001, with an annual natural growth rate ranging from 0.7 to 1.6%. See *China Statistical Yearbook*, 2002, p. 93. Population thus seems unlikely to be a factor affecting the caseload fluctuation.

Hypotheses

The above data suggest that the stabilization and decline are real. Now we return to where we began: how to explain the sharp increase at the start, and particularly the later stabilization and decline. It is well accepted that only after a series of complicated processes will disputes proceed to litigation,²² with many solved by channels alternative to the judiciary.²³ There must be numerous factors, inside and outside the courts, affecting the caseload change.²⁴ It is certainly not the goal of this article to assess all these factors. The remainder of the article will evaluate four hypotheses which seem to be quite plausible in China's context.

Structural changes in dispute resolution

One hypothesis to explain the decline is institutional supply in dispute resolution, that is, the structural changes.²⁵ When alternative methods of dispute resolution become more readily available, courts should have less litigation.²⁶ This approach, however, does not seem to help in explaining the decline of the economic caseloads, mainly because the Chinese courts have almost exclusive jurisdiction over economic disputes, and their position has remained largely unaffected by changes in civil dispute resolution.

As many have observed, the PMCs, the most important extra-judicial method of dispute resolution in China, have declined significantly over the period.²⁷ This decline, no matter what caused it, could hardly explain the change of the economic caseloads. This is because the PMCs basically have no jurisdiction over economic disputes. Even if the line between civil and economic cases is unclear, it is still difficult to explain the simultaneous decline of *both* the PMC and economic caseloads. Similarly, while the Town and Village Legal Service Offices (TVLSOs (*xiangzhen sifa suo* 乡镇司法所)), run by the department of justice at the township level, have dealt with between 1 and 1.3 million disputes each year since the mid-1980s,²⁸ their dominant function is to mediate minor civil disputes and to provide legal services (and, no doubt, to make a profit from rural parties who have little legal knowledge) if a party decides to file a lawsuit. It seems unlikely that they have diverted many economic disputes or contributed much to the declining trend.

22 William Felstiner, Richard Abel *et al.*, "The emergence and transformation of disputes: naming, blaming, claiming," *Law & Society Review*, Vol. 15, Nos. 3-4 (1980-81), pp. 631-54.

23 Lawrence M. Friedman, "Litigation and society," *Annual Review of Sociology*, No. 15 (1989), pp. 17-29.

24 Marc Galanter, "The vanishing trial: an examination of trials and related matters in federal and state courts," *Journal of Empirical Legal Studies*, Vol. 1, No. 3, pp. 459-570, in particular 515-22.

25 This section will only deal with the institutional aspects of the supply side. Other aspects, such as resources and capabilities of the courts, will be discussed in a later section.

26 See e.g. John Haley's classic explanation on the reluctant litigants in Japan, *Authority without Power: Law and the Japanese Paradox* (New York: Oxford University Press, 1991). See also Erhard Blankenburg, "The infrastructure for avoiding civil litigation: comparing cultures of legal behavior in the Netherlands and West Germany," *Law & Society Review*, No. 29, pp. 789-807.

27 Lubman, "Dispute resolution in China after Deng Xiaoping," pp. 297-98.

28 *Zhongguo sifa xingzheng nianjian* (China's Judicial Administration Yearbook), 1995-2003.

In response to the decline of the PMCs, the Justice Ministry has recently established 148 hotline dispute resolution centres (*yaosifa* (要司法), meaning “judicial help in need”) across the country, mobilizing the resources of local Party committees, governments, letters and appeals, birth control committees, public security agencies and so on. Again, because their goal is to replace the PMCs, it remains doubtful to what extent they have become an alternative to the courts in economic cases. While the total number of cases resolved by these hotline centres remains unclear,²⁹ there are indicators that they do not do much work.³⁰ It thus seems unlikely that they have changed the original landscape of economic dispute resolution to any great extent.

A more plausible alternative is commercial arbitration, which does have exclusive jurisdiction over disputes arising out of economic contracts. Since the 1995 Arbitration Law came into effect, more than 160 arbitration centres have been established across the country. Although the number of cases taken by these centres has increased rapidly, it is still marginal when compared to those solved by the courts. For example, 12,127 cases were received by the various arbitration institutions in 2001,³¹ but in the same year, the courts received more than one million economic cases.

Since not all disputes would be transformed into litigation,³² another possibility is that the courts might not include all of them in their statistics, especially when judicial mediation is successful. After all, disputes solved between work units may not even appear on the judicial dockets, and some might be too minor to be recorded. But this is more likely to occur in simpler civil disputes, because economic disputes are generally more serious, more formal, and involve greater economic value. Further, this phenomenon would be expected to occur more often in earlier stages of the reform than in later years, when formalization requiring detailed case recording was implemented across the country. This possibility therefore does not seem particularly useful in explaining the decline.

Another related phenomenon, usually referred to as “black cases” (*hei'an* 黑案), involves disputes solved by court staff in private, but in the name of the courts. This happens when one disputant, usually the potential plaintiff, solicits a member of the court staff for help, and promises to pay after the deal is done. In other words, the member of staff reaches an agreement with one of the potential litigants to use public force to “get things done” privately, in exchange for payment. As a result, these cases never appear on the court dockets. In a similar development, while China’s government prohibits any type of

29 Yu Fan, “Dangdai Zhongguo fei shushong jiefeng jieju jizhi de wanshan yu fazha” (“The perfection and development of ADR in contemporary China”), *Xuehai* (*The Ocean of Knowledge*), No. 1 (2003).

30 While the hotline in District G received 2,292 inquiries, it solved only six cases in 2001 through the legal aid project, according to its annals (p. 76).

31 See *China Law Yearbook*, 2002, p. 247. Some other sources provide different and bigger numbers, for example, China News Agency, “2000 nian zhongguo zhongcai shouan jiang tupuo wuwan jian” (“The case received by arbitration institutions will increase to more than 50,000 in 2000”), 12 December 2002.

32 See n. 22.

debt-collection agencies, public or private, some recent studies suggest that these are emerging.³³ While it is hard to measure the spread of this phenomenon, it does not seem wide enough to affect the overall economic caseload change. After all, since both “black cases” and debt-collection are serious criminal offences, not many court staff or plaintiffs would have the courage, or opportunity, to take the risk.

In summary, it seems doubtful that any of the institutional alternatives adequately explain the recent decline in economic cases. More plausible explanations are likely to lie in the “demand” side of the disputes, that is, that the decline occurred either in the total volume of economic disputes, or in the willingness of potential litigants to take cases to the courts.

Economic development

This section focuses on the extent to which economic development has contributed to the total volume of economic caseloads. It is readily assumed by most people, laymen and professionals, that economic development explains caseload change and this is not totally groundless. It seems obvious that as the scale of the economy expands, the flow of capital, products and technology will accelerate, which is likely to result in more disputes.³⁴ During certain periods, economic caseloads do conform nicely to the output of GDP, the number of enterprises and the living condition of residents. The overall curve, as shown in Figure 1, matches economic development before 1996 quite well. Indeed, a small peak of the national curve in 1989 makes the argument more plausible in that the overall number of cases had stopped rising until 1992, when Deng Xiaoping called for further economic development in his famous “southern tour” speech. Until 1996, the curve conforms not only to the overheated economy before 1989, but also to the subsequent shrunken economy after the state decided to rectify and regulate it.

However such a correlation is less clear over the whole reform period. The most conspicuous paradox is that the Chinese economy continued to grow at an annual rate of 7 to 8 per cent after 1996, but the caseloads began to stabilize and have declined since then. At the time of writing, this paradox has been evident for six to seven years. At the provincial level, there are many provinces with double-digit economic development but declining economic caseloads.³⁵ In addition, two mini-subcategories of economic contract caseloads, money lending and purchase and sale, which long have been believed to be associated with economic development, display an obvious decline.

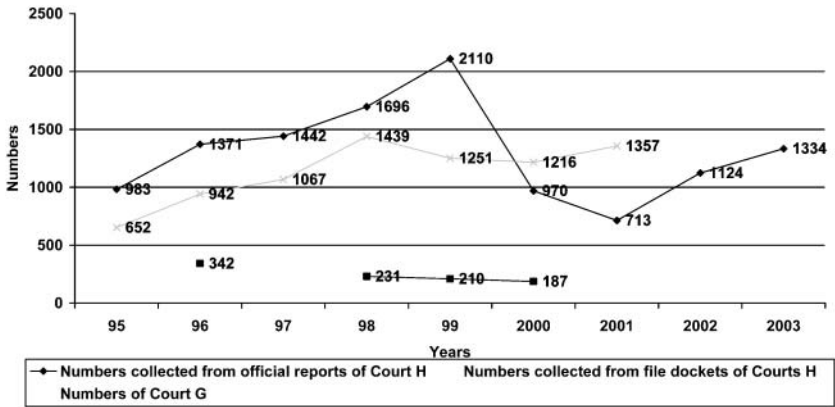
If one looks at the situation where the two basic courts G and H are located, the state of local economic development does not appear to correspond to

33 Xin Xu, *Lun sili jiuji (On Private Remedies)* (Beijing: Zhongguo zhengfa daxue chubanshe, 2005). Due to the illegal nature of the underground debt-collection agencies, the study was based mainly on anecdotal evidence.

34 Jingfu Ran, “The impact of socio-economic development on litigation rates,” pp. 240–41.

35 According to their respective provincial annals, at least Xinjiang, Shandong, Guizhou and Heilongjiang have shown this pattern.

Figure 6: **Economic Caseloads of Courts G and H**



respective economic caseloads during the whole reform period. The economy of Court G’s district has increased by 11 per cent annually since the late 1980s, but its economic caseloads have changed at a very different pace. As illustrated in Figure 6, the number jumps from 1,067 in 1997 to 1,429 in 1998, with an annual increase rate of 40 per cent. But after that, the caseloads dropped slightly even though economic development continued. The situation in Court H is very different and more complicated. The official case numbers have been declining significantly since 1999, while the local economy has remained around 3,000 yuan during this period. The numbers obtained from the docket, which make more sense for this study, basically tell a similar story. The number in 2000 is much lower than that in 1996, 1997 and 1998.

All these data seem to provide compelling arguments against a simple linear correlation between economic development and economic caseloads. Economic development might have affected some factors closely associated with caseload change, but the real situation is far more complex. In other words, there must be other factors which have had a decisive impact.

Social transformation

This section will evaluate another hypothesis on the “demand” side: whether social transformation constitutes a driver for the changing economic caseloads. Social transformation, basically industrialization and urbanization, has been widely accepted as a major factor for the increase and subsequent decline of civil caseloads in Western countries.³⁶ According to these studies, it enhances the

36 See Jose Juan Toharia, *Cambia Social Y Vida Juridica en Espana, Madrid: Edicusa* (1974), quoted in Lawrence M. Friedman and Robert Percival, “A tale of two courts: litigation in Alameda and San Benito counties,” *Law & Society Review*, No. 10 (1974), pp. 267–301. See also Wayne M. McIntosh, “150 years of litigation and dispute settlement: a court tale,” *Law & Society Review*, No. 15 (1980–81), p. 823. Stephen Daniels, “Continuity and change in patterns of case handling: a case study of two rural counties,” *Law & Society Review*, No. 19 (1985), pp. 381–420. Lawrence M. Friedman, “Opening the time capsule: a progress report on studies of courts over time,” *Law & Society Review*, No. 24 (1990), p. 229.

complexity of social and economic interactions, producing greater communal needs for a consistent system of legal relationships and legally defined rights.³⁷ As the complexity, differentiation and scale of the society increase, reliance on courts also increases, which usually leads to an increase in litigation. Furthermore, a rise of social anomie in the more industrialized society would reduce inhibitions against appealing to third persons for adjudication, thus contributing to judicial confrontation. But after reaching a further threshold where the social demand for courts has been released, more balanced utilization of courts is expected.³⁸ Thus it is not surprising to see fewer lawsuits after a drastic social upheaval: a developed and well-regulated society should eschew litigation, which interferes with a vigorous, ongoing economic life.³⁹

This theory might well apply to China, since it has been undergoing tremendous social transformation. Apart from industrialization and urbanization, China is also experiencing significant transformation from a planned economy to a market one, with aspects of privatization, marketization and unprecedented population mobility. As I shall demonstrate, however, this hypothesis could explain more the increase than the decline of the economic caseloads, largely because China's transformation is far from over.

Privatization for instance, one of the most important phenomena in China's reform, seems to provide a plausible explanation for the increase and part of the decline of the economic caseloads. Privatization at first generates a huge number of economic units. At the beginning of the reforms, for instance, there were 4.575 million brigades and around 40,000 people's communes.⁴⁰ Once the household contract responsibility system was fully in place, the people's commune system collapsed, and the brigades were disassembled and contracted out to individual households. Each rural household became an economic unit, with the total reaching 0.23678 billion in 1998.⁴¹ Statistics also indicate that the number of industrial companies reached one billion in 1994, and village enterprises alone amounted to 23.363 million in 1996. Various new types of entities have emerged, such as private firms and foreign invested firms.⁴² This has led to more economic transactions and therefore potentially more disputes. In the agricultural production process, for example, each household is now responsible for acquiring its own materials and selling its products, whereas before the heads of brigades took care of these matters for all those in the brigade.

Secondly, privatization, in calling for more legally defined rights, fundamentally alters the behavioural pattern of business entities. Originally, most

37 Emile Durkheim, *The Division of Labour in Society* (London: Macmillan, 1984).

38 See Austin Sarat and Joel B. Grossman, "Courts and conflict resolution: problems in the mobilization of adjudication," *American Political Science Review*, Vol. 69, No. 4 (1975), pp. 1200–17.

39 See Stewart Macaulay, "Non-contractual relations in business: a preliminary study," *American Sociological Review*, No. 28 (1963), pp. 55–67.

40 *China Statistical Yearbook*, 1984, p. 131.

41 *China Statistical Yearbook*, 1997, p. 381.

42 *Ibid.* p. 411.

economic activities were regulated and co-ordinated by supervising administrative institutions. Nowadays a large proportion of public or collectively owned enterprises have been contracted out to individuals or the management who are supposed to be responsible for performance. These reformed entities have started engaging in market transactions, most of which take place through price mechanism. Even though local governments are still heavily involved in the affairs of local enterprises,⁴³ they also expect the enterprises to earn profits. The competitive market environment has forced enterprises to care more about profit and, with their greater autonomy in operational decisions, to take court action if necessary to settle a dispute.⁴⁴

That privatization leads to some increase of caseloads can be seen from the fluctuation of contract-out cases in rural area. These had been increasing since the implementation of the household contract responsibility system at the beginning of the reform, until 1997, when most land or other collective assets were contracted out for 30 years (see Figure 4). It seems quite likely that their increase during that time correlates with those privatization processes.

The hypothesis of social transformation can also be of some use in explaining the subsequent decline of the economic cases. For example, the privatization process in rural areas is largely completed, and the multiplication of economic units in the rural areas has paused. In urban areas, with the deepening of marketization, a profit incentive mechanism rather than the instruction of supervising bureaucrats has gradually become dominant. A significant amount of state owned enterprises (SOEs) have already been contracted out, or transformed into privately controlled firms. Since the mid-1990s, the number of industrial enterprises has not increased. Indeed, the numbers of SOEs and collective enterprises declined drastically in 1997–98.⁴⁵ Contract, debt and money lending cases, which are closely associated with privatization processes, have noticeably declined.⁴⁶ This is not to say that the process of privatization has been finished; the point instead is that after the initial transformation from a planned to a market economy it could be quite difficult for the case numbers to keep up the momentum and pace of persistent increase.

43 Lan Cao, "Chinese privatization between plan and market," *Law & Contemporary Problems*, Vol. 63, No. 4 (2000), pp. 13–62; Jean-Francois Huchet and Xavier Richet, "Between bureaucracy and market: Chinese industrial groups in search of new forms of corporate governance," *Post-Communist Economies*, Vol. 14, No. 2 (2002), pp. 169–201.

44 Victor Nee, "A theory of market transition: from redistribution to markets in state socialism," *American Sociology Review*, No. 54 (1989), pp. 663–81. Andrew Walder, "Local governments as industrial firms: an organizational analysis of China's transitional economy," *American Sociology Review*, No. 101 (1995), pp. 263–301. Doug Guthrie, "Between markets and politics: organizational responses to reform in China," *American Journal of Sociology*, No. 102 (1997), pp. 1258–1304. Jean Oi, *Rural China Takes Off* (Berkeley: University of California Press, 1999). Jean Oi and Andrew Walder, "Property rights in the Chinese economy: contours of the process of change," in Oi and Walder (eds.), *Property Rights and Economic Reform in China* (Stanford: Stanford University Press, 1999), pp. 1–26.

45 Yongshun Cai, "Relaxing the constraints from above: politics of privatizing public enterprises in China," *Asian Journal of Political Science*, Vol. 10, No. 2 (2002), pp. 94–121, at 105–06.

46 In some areas where privatization is still going on, for example, the urban housing privatization and conveyance caseload is expected to increase. The small percentage of these subcategories, however, may not make a difference to the general trend of civil and economic caseloads.

Many parts of privatization still under way, such as the reform of SOEs, have not generated many economic cases. The national statistics do not indicate many cases in enterprise bankruptcy, company re-organization, merger or acquisition. In the two courts that I visited, there were for many years only a few such cases, despite the fact that the district where Court G is located had as many as 759 SOEs in 2000. An obvious explanation is that relevant disputes rarely entered the court. Its economic case docket was dominated by economic contract cases such as money lending and purchase and sale.

However, the hypothesis does run into difficulties in explaining the decline side of caseloads. In Western countries, the idea of social transformation makes sense in that when civil cases began to decline, the processes of urbanization and industrialization have largely been completed and the business environment has become well-regulated.⁴⁷ This is, however, far from true in China: no part of the urbanization, industrialization, privatization or marketization process is complete and its business environment has been poorly regulated. There are few effective rules governing business transactions, and business people are likely to take a “one shot” approach, using whatever methods are available, even though disputes could incur as a result. A telling example is the rampancy of counterfeit products which one would expect to cause a lot of disputes.⁴⁸ The Chinese government has made some efforts to deal with this business environment but the effectiveness of these efforts remains unclear, so that they merely reveal just how far from “well regulated” business is.⁴⁹ Hence the social and business environment of China today is not the same as that of Spain in the 1970s or Wisconsin in the 1960s when researchers first detected the theory of social transformation.

On the micro level, County H is less fully transformed, but its economic caseloads still show a similar trend in decline to the national trend. In contrast, a far more developed and transformed District G displays only a “flat” curve. Of course the situation of two counties can only be of slight use in explaining the national trend, but it does serve as a reminder that the hypothesis of social transformation offers at best an incomplete explanation for the surprising decline in China’s economic case numbers.

Dysfunctional courts

All the previous hypotheses are based on changes outside the courts, but changes inside the courts could surely affect the caseload change. Obviously, if the courts

47 See n. 36.

48 See e.g. Shaoguang Wang, “The problem of state weakness,” in *Journal of Democracy*, Vol. 14, No. 1 (2003), pp. 36–42.

49 It is reported that with strengthened administrative institutions and personnel and stricter regulations, the regulatory agencies have become more assertive, conducting more searches and giving out stiffer penalties to violators. In spring 2001, the central government initiated a national drive to clean up irregularities in the economic order. See “China to continue to improve market, economic order,” *Xinhua Newswire*, 24 January 2002.

are not functioning well, potential litigants would be deterred from suing.⁵⁰ Study of the internal functioning of the courts thus has been a fundamental part of research into caseload change and trial rates.⁵¹ Dysfunctional courts could be relevant to China's first increased and then declining economic case numbers. It is well known that China's government has promoted the use of law and the courts during the reform period.⁵² Potential litigants who have little experience of the law may first be attracted to use the courts, which would lead to an increase in caseloads. But if they find that courts are incompetent, dysfunctional, corrupt or unfair, they will have second thoughts about suing the next time they are caught in a dispute, and may also discourage others from going to courts. A popular film has shown how this could happen. In the film, *Qiuqu Goes to Court* (*Qiuqu da guansi* 秋菊打官司), all the heroine wanted was an apology, but her lawsuit resulted in the imprisonment of the village head.⁵³

While anecdotal evidence like *Qiuqu* is helpful, it can never take the place of systematic empirical studies. A recent empirical analysis suggested that court judgments have become more just over time, partly because the appeal rate in civil cases can be seen to have declined.⁵⁴ That conclusion seems unconvincing because the research was based on several unwarranted assumptions.⁵⁵ A better-designed survey suggests that the situations vary across rural, urban and penumbra (between rural and urban) areas.⁵⁶ But this latter survey did not precisely touch on litigants' attitudes towards the courts, or why they had changed.

In an effort to obtain a more accurate picture, I tried to examine whether the two basic courts G and H are in any way dysfunctional; how litigants' perceptions of the courts may change; and finally, how case numbers are affected. Of course it is impossible to conclude that the situations of these two courts are representative of other areas, but findings from them should at least serve as a reference or provide more refined hypotheses to aid in understanding the national trend.

The two courts contrast starkly with each other in terms of the developmental level in their respective locations. Court H lies in a south-western county of Hunan province, central China. The county's economy has been dominated by agriculture, which supported 49 per cent of the GDP in 2000. Its industry has been shrinking over the last few years, largely due to severe competition from

50 See Friedman and Percival, "A tale of two courts."

51 See Shari Seidman Diamond and Jessica Bina, "Puzzles about supply-side explanations for vanishing trials: a new look at fundamentals," *Journal of Empirical Legal Studies*, Vol. 1, No. 3 (2004), pp. 637–58.

52 See e.g. "Class action litigation in China," p. 1523.

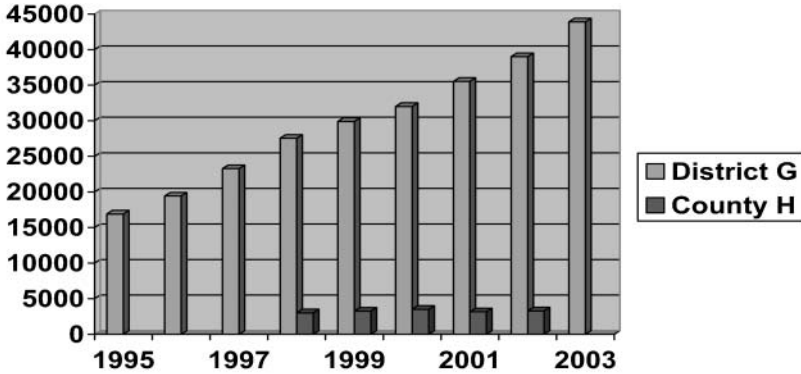
53 The case involved in the film is not economic, and there is no corruption. It is nevertheless enlightening in indicating the problem caused by modern laws in contemporary China.

54 See Su Li, *Song fa xia xiang* (*Delivering Law to the Countryside*) (Beijing: China University of Law and Politics Press, 2000).

55 See e.g. Yi Yanyou, "Zouxiang duli yu gongzheng de sifa" ("Towards an independent and just judiciary"), *Zhongwai faxu* (*Peking University Law Journal*), No. 6 (2000), p. 751.

56 Hongjun Gao and Ethan Michelson, "Shichang jingji, jiufeng jie jue he lixing fa" ("Market economy, dispute resolution and rational law"), *Gongfa yanjiu* (*Public Law Review*), No. 2 (2000), pp. 168–87.

Figure 7: The Economic Development of District G and County H (yuan)



Sources:

District G's Annals, various years; County H's Statistical Annals, various years.

enterprises of the more developed coastal areas. Nevertheless, the official statistics indicate that its GDP maintained a stable curve and reached 3,000 yuan in 2000.⁵⁷ By contrast, County G lies on the eastern coast of China, with a very high level of industrialization and urbanization. Its GDP per capita reached USD 5,000 in 2003 (Figure 7).

It is not surprising that the funding for the two courts varies greatly. In 2003, the annual budget for Court H, which had 130 staff members (35 adjudicating, 95 non-adjudicating) was only 1.3 million yuan. Court G, with 219 staff (104 adjudicating, 115 non-adjudicating), had an annual budget of roughly 70 million yuan in the same year, some 55 times higher than that of Court H.

Both courts have made efforts towards formalization (*zhenggui hua* 正规化) since the mid-1990s and particularly after the 1999 “Five year court reform outline” (*renmin fayuan wunian gaige de gangyao* 人民法院五年改革的纲要). They both implemented the civil adjudicating procedure reform (*shenpan fangshi gaige* 审判方式改革), separating adjudication from case filing and execution (*lishen fengli he shenzhi fengli* 立审分离和审执分离), and each set up an independent execution bureau (*zhixing ju* 执行局) headed by a vice-director.

In Court H, most of the economic cases come from money lending, in which local banks or credit unions are involved. The cause of action of these cases is predominantly “bad loan.” Overall, both the official and informal case numbers indicate a slight decline between 1996 and 2000. Several factors seem to contribute to the internal functioning of Court H which, in turn, affects the decline in case numbers. First, the 1.3 million yuan annual budget constitutes less than half what is needed for normal operation, which is 2.7 million. The

57 All the numbers here are from County H Statistical Annals, 1999, 2000, 2001, 2002, edited by the Statistical Bureau of County H.

court has to make up the gap through its litigation fee and the criminal monetary penalty (*fajing* 罰金), and this task has become so pressing that it becomes routine for every judge. Under such pressure, some judges have to persuade or even cajole potential litigants to file lawsuits. They are, in their own words, “looking for rice to cook” (*zhaomi xiaguo* 找米下鍋). It is not surprising that some litigation fees taken in this court are five times higher than the standard stipulated by the SPC.⁵⁸ To gain extra income, more and more monetary penalties are imposed in minor criminal cases instead of imprisonment which, according to the law, should be imposed. For the sake of the litigation fee, the court has to maintain good relationships with institutional litigants, such as local banks. Naturally, in relevant cases, these repeat players are favoured.⁵⁹

Secondly, the movement towards formalization further aggravates the situation. To a large extent, formalization increases the functioning cost of the court. After adjudication was separated from case filing and execution, for example, one case had to be examined twice or three times by different divisions of the court. Formalization also increases the complexity and the cost of the adjudicating procedures, which used to be conducted in an informal, but convenient and economical way. Unfortunately, the increased complexity makes the already difficult execution of the judgments more difficult, at least in the view of some judges. Originally when both the adjudication and execution were conducted by the same judge, judges would make an effort to award a judgment that was easy to enforce. After all, they themselves had to take care of the execution. Since the separation, however, the judge who awards the judgment has not been responsible for its enforcement and is likely to focus instead on whether it strictly conforms to the formal requirements of the law, which has become an important criterion to assess judges’ performance.

The increased litigation cost and difficulty in enforcing court decisions presumably deters potential litigants from using the court. Enterprises have begun to adopt self-protection measures in their transactions. Some, for instance, only conduct business with familiar clients who have a good credit history. Others have even reverted to bartering goods. Some creditors have hired underground debt collectors to recover their money. Loss of potential litigants makes the court rely more heavily on local banks to make up the budget “gap.” Fortunately for the court, the banks have to sue their default borrowers anyway, even though they are acutely aware that they could hardly get a penny back. This is because for these “commercial” banks with very deep bureaucratic backgrounds, suing in the court is only to show that they have exhausted all avenues to chase the bad loan. As the Court H docket shows, while purchase and

58 A similar situation occurs in another county court of central Hunan province, where the litigation fees taken are 12.5 times higher than the SPC standard. See Yong’an Liao and Shenggang Li, “Woguo minshi susong feiyong zhidu zi yunxing xianzhuang,” (“The current operational status of the system of civil litigation fees in China”), *Zhongwai faxu* (*Peking University Law Journal*), No. 3 (2005), pp. 304–27, at 307.

59 Marc Galanter, “Why the ‘haves’ come out ahead: speculations on the limits of legal change,” *Law & Society Review*, Vol. 9, No. 1 (1974), pp. 95–126.

sale contract cases declined from 11 in 1996 to one in 2000, there were still 149 money lending cases in 2000.

The situation in Court G, however, is significantly different. As illustrated in Figure 6, its economic case numbers have remained stable for a few years, but there is no sign of a decline. Although Court G shares some problems with Court H in the move towards formalization, the reason that its economic caseloads have stabilized clearly differs from that of Court H. As mentioned, with 70 million yuan as its annual budget, Court G does not lack funding. The policy of “two lines in income and spending” (*shouzhi liang tiaoxian* 收支两条线) has been well implemented in Court G.⁶⁰ Every year the court spends millions on office equipment, including computers, digital recorders, cameras, cars and execution weaponry, which contrasts starkly with the situation of Court H which had only two desktop computers in 2004! In the words of a division director, Court G has all it wants, “from manpower to gun power.” In fact, to exhaust the allocated budget, Court G provides very good welfare for its staff including very decent tour policies. While Court H is desperate for litigation fees, Court G strictly sticks to the standard of the SPC.

When asked why economic cases have stabilized over the last few years, no judges of Court G that I interviewed were able to offer a straightforward answer. But they were all clear on one point: the court is not big on the numbers; it just has too many. In 2003, total cases received by the court reached 20,359; the economic and political benefit of taking more cases has closed to zero. Indeed, the court has been reluctant to take some cases, or has even tried to prevent difficult cases from coming to court, simply because taking more cases would only increase the workload of its staff. To some extent, this fact may have contributed to the stabilization of the economic case numbers.

To identify whether litigants’ attitudes had changed from before to after they experienced the courts, we interviewed 34 and 24 plaintiffs in District G and County H, respectively.⁶¹ In County H, more than 62 per cent of the litigants contended that their impression towards the court had worsened, for reasons such as corruption (basically in the form of expected kickbacks, gifts, bill reimbursement and banquets), incompetence (lack of execution capabilities), prolonged litigation periods, expensive litigation fees, and so on. A real estate developer who had gone through the court five times emphasized that he would never touch it again. Nevertheless, there were 17 per cent of interviewees who said their impression of the courts had improved. It was found that most

60 This is not to suggest that the policy is not well implanted in Court H, or a better implementation of the policy would improve the situation there.

61 The investigation was conducted by three local correspondents, five lawyers and myself. We used a questionnaire with semi-structured questions such as: “Are you satisfied with the court performance?” “Are you going to use the court again?” “Did you get what you want, are you going to appeal?” We found the plaintiffs through our original working relationships. We often began with the purpose of the interview and then initiated in-depth conversation regarding their litigation processes. Because we approached them through connections, none of them refused to talk to us. They included migrant workers, real estate developers, bankers, government workers, gift suppliers, kindergarten conductors and construction workers.

interviewees in this category were suing on behalf of their institutions, such as local banks, SOEs or government branches. A government official, for example, originally thought poorly of Court H, but found that court staff treated him very well, in part because he was a government official. In other words, the litigation provided an opportunity for him to establish further connections with the court and so improved his impression of it. Some bank staff said that they had been fully aware of the limited capability of the courts in chasing bad loans. No matter how bad the results turned out to be, their impression of the court did not change much. These interviewees said that in the future they would definitely bring similar disputes to the court.

The situation of District G, once again, varies greatly. None of the 34 interviewees said that their impression had become worse, which is extremely surprising. More than 35 per cent contended that their impression of the court had improved, while 65 per cent remained unchanged in their impressions. On whether they would bring similar disputes to the court in the future, most of them answered “it depends.” Some specifically mentioned that although they did not get their money back through the court, the cunning defendants who hoarded their assets were the real “bad guys” to blame. These views, according to the interviewees, largely resulted from the recently improved professionalism in Court G.

These somehow contradictory results regarding the two courts are nevertheless understandable in their contexts. Institutional litigants in County H are well treated by Court H, but average individual litigants there may not be fond of the corruption, bureaucracy and formalism of the court. In contrast, litigants in District G might have held a very negative view towards Court G, but they were impressed by the professionalism which has recently appeared. In addition, one should not read too much into the results, and should not equate these views with the actual situation. After all, subjective impression is by and large a relative concept and the way litigants originally perceived the courts would affect the results. For example, the more liberal news media in the Pearl River Delta, such as the *Southern Weekend* (*Nanfang zhoumo* 南方周末), and the *South Metropolitan Daily* (*Nanfang dushi bao* 南方都市报) have relentlessly depicted the negatives of the judiciary, while the more conservative media in County H have largely stuck to the traditional positive propaganda for their court. Furthermore, the results may be unjustly favourable to Court G, because the questionnaire as designed did not allow for interviews with potential plaintiffs whose cases were not ultimately taken by the court.

Despite all these threads, one thing is sure: funding has made a difference in the functioning of both courts, both of which face similar administrative pressure towards formalization. Court H, where funding is inadequate, will try its best to get more cases, but it would nevertheless deter some cases in the process. At the end of the day, inevitably the overall cases that they can get are limited. In Court G where funding is not an issue, the court has become reluctant to take cases, especially difficult ones. While the results from the two

courts are not consistent, we have found reasons why fewer cases had been received by both. All these reasons are to some extent related to the recent reform of the judiciary towards formalization and modernization. Because the funding of the courts in rural areas is inadequate, the problem is more conspicuous there. As far as these two courts are concerned, these reasons are plausible at least in explaining why their economic caseloads did not increase as fast as in the initial stage of the economic reform. Nevertheless, since it is hard to say that Court G is dysfunctional, we cannot jump to a general conclusion that the hypothesis of dysfunctional courts is the explanation for the caseload decline across the country. But even in Court G there are reasons to prevent more cases from coming to the court, so the hypothesis is certainly worthy of further exploring and verifying in a broader context.

Conclusions

This article has tried to explore why the economic caseloads in China have declined in recent years. It seems that structural changes in dispute resolution are unlikely to offer a plausible explanation. The cause for decline, therefore, must lie either in the total volume of the disputes generated in the society or in the unwillingness of potential litigants to use the courts. Partly because of the complexity of China and the elusiveness of the subject matter, it is hard to locate a simple, straightforward, overarching theory to explaining the puzzle. It seems that economic development, social transformation and court dysfunction all have a role to play, but the degree of each factor's impact varies across time and region. The hypotheses of economic development and social transformation seem to be more plausible in explaining the rise of the caseloads. With obvious limitations, social transformation and especially court dysfunction are more helpful in explaining the fall. Since these two are not necessarily independent or exclusive, it may be that both of them are contributing to the decline. This issue, nevertheless, is far from settled. In a way, China's case has imposed a huge challenge on the relationship between caseload change and socio-economic conditions which has conventionally been regarded as a settled issue.

Of course some unexamined factors could have played a role as so many things are happening in China: industrialization, urbanization, political transformation, judicial reform and more. Needless to say, the irregular statistical standards and practices, and the regional variations across this vast country all make the phenomenon more puzzling.

Without offering a quick answer to the riddle, this article nevertheless provides some preliminary findings. It suggests, for instance, that even though the courts in a more developed area may become reluctant to take more cases, the effort to formalize and streamline the judiciary works better there. Apart from the considerable resistance and complexity already illustrated by Su Li when modern law has been sent to the countryside,⁶² this article suggests that

62 Su Li, *Delivering Law to the Countryside*.

funding is an obvious yet unavoidable question for policy makers. One must reflect upon the suitability of the current top-down policy of judicial reform, and formalization in particular, in rural areas. The unintended reaction of rural courts to judicial reform further illustrates that the dichotomy between rural and urban areas constitutes an important factor to consider when studying the judicial system in China.⁶³

This article also raises many new questions. What impact would the formalization and modernization of the judicial system have on the behaviour of rural and urban courts? To what extent would this endeavour lead to a stronger judicial institution? Would the courts become more accessible for average litigants, or are they more likely to be an instrument for repeat institutional players? Is more money part of the solution or is it also part of the problem? All these questions call for further research. I hope that this study, as preliminary as it is, not only serves to illustrate how little we know about the caseload change and the courts, but also provides at least an initial guide to verification and further research.

63 He Xin, "Ideology or reality? Limited judicial independence in contemporary rural China," *Australian Journal of Asian Law*, Vol. 6, No. 3 (2004), pp. 213–30.