

RESEARCH ARTICLE



## Politics, law, and administrative discretion: the case of work safety regulation in China

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### ABSTRACT

Achieving a proper balance between administrative discretion, which promotes efficient and effective governance, and oversight of that discretion to ensure political responsiveness has been a classic and enduring issue in public-administration literature. This study joins the dialogue by examining the question in the context of China, where power is highly concentrated and there are not many checks and balances. By examining administrative discretion in work safety regulation, this study argues that in China's context, the tension between efficiency and responsiveness is less explicit among the legislature, executive and judiciary powers, but more explicit between central and local powers. In other words, if local bureaucracies have considerable discretionary power, they may use this power to achieve local interests at the expense of national goals. To improve local bureaucracies' political responsiveness, the Chinese leaders have adopted both legal and managerial measures. On the one hand, administrative discretion has been increasingly curbed through elaborate legislation. On the other hand, management reforms play a crucial role in bringing local leaders' goals in line with national ones. China's efforts to balance administrative efficiency and political responsiveness suggest that each country must choose solutions in keeping with its own context and problems.

**Abbreviations:** CCP: Chinese communist party; OSH: occupational safety and health; OSHA: occupational safety and health administration; SAWS: state administration of work safety; WSL: work safety law

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## 1. Introduction

The issue of administrative discretion is at the core of a major debate in the public administration literature that asks whether there is a tension between democracy and bureaucracy, and if yes, how to reconcile this tension.<sup>1</sup> On the one hand, it is argued that bureaucratic discretion is not only an inevitable characteristic of government, but a positive, desirable precondition for efficient and effective governance. As Woodrow Wilson<sup>2</sup> says, great power and unhampered discretion are considered indispensable

conditions for responsibility and democracy. On the other hand, criticisms contend that there is formidable coercive power associated with, and expanded by, government's discretion in carrying out its work. The critics say that without proper control, excessive bureaucratic discretionary power endangers political accountability and undermines the basis of democratic governance. Law that stipulates clear and specific goals and procedures must be used to constrain bureaucratic power and to prevent its abuse.<sup>3</sup>

There is a rich literature on how and to what extent the tension between discretion and control can be resolved, especially by politicians.<sup>4</sup> These studies proposed a number of ex ante and ex post measures that a legislative body and chief executive could use to resolve the tension. However, these studies examine cases in democratic systems with a separation of executive, legislative, and judicial powers. For example, in the United States, at least two systems create tension between democracy and bureaucracy: one is a merit-based, politically neutral civil service system functioning as the cornerstone of the separation of politics and administration. It aims to prevent partisan politics from interfering with the day-to-day work of the government. The second system is the rule of law, which is supported by legislatures and independent judiciaries. Legislatures may use laws to limit the procedures and substance of government actions, but executive agencies retain the power to make rules as a form of supplementary legislation.<sup>5</sup>

These mechanisms, however, are largely absent in authoritarian countries like China. In the 1990s, China's civil service system reform abandoned the idea of separating the power of the Chinese Communist Party (CCP) from that of the state from the start. The CCP leaders have never endorsed the Western notion of political neutrality, although meritocracy has been increasingly emphasized over the years. Although the CCP leaders have emphasized the importance of rule of law, the judicial system has never been independent from political control. China's legislatures (the people's congresses at various levels) function primarily as a rubber stamp in the political system, establishing and approving laws in accordance with the wishes of the CCP.<sup>6</sup>

How does the tension between bureaucratic efficiency and political responsiveness apply in the case of administrative discretion in China? How does a high degree of concentrated power affect the scope and use of administrative discretion? Can a weak legislature effectively curb excessive governmental discretionary power? If not, what are the alternatives? This study aims to address these questions by examining administrative discretion in the area of work safety regulation. At present, there are not enough studies of administrative discretion in China; the few studies<sup>7</sup> there are address the issue from a legal perspective, with little discussion on the relationship between administrative discretion and rule of law. This study fills that gap.

This study argues that in China, where power is highly concentrated, the tension between efficiency and responsiveness still applies, but it is expressed in a different way. The tension is less explicit among the three powers than it is in the United States, but greater between central and local powers. When such tension arises, Chinese bureaucracy is expected first to be responsive and accountable to the CCP's policy demands and make a trade-off between political demands and bureaucrats' professional judgments. Political responsiveness is realized through a combination of politicized bureaucracy, result-oriented performance management, and legislation that clarifies the use of administrative discretionary power. This study shows that when

rule of law is weak, legislation alone is not sufficient to improve bureaucrats' political responsiveness. Measures must also be taken to address the problems underlying their lack of responsiveness, and China's experience shows that management reforms may play a very important role in achieving that goal. To strike a proper balance between efficiency and responsiveness, each country must seek solutions in keeping with its own context and problems.

## 2. A review of the debate on administrative discretion

Administrative discretion is considered one of the many 'necessary evils' of modern bureaucracy in the context of the rise of the administrative state. Advocates argue that bureaucratic discretion is indispensable for a well-functioning government for a number of reasons. John Locke<sup>8</sup> provides probably one of the best justifications for the importance of administrative discretion: 'in some Governments the Lawmaking Power is not always in being, and is usually too numerous, and so too slow, for the dispatch requisite to Execution; and because also it is impossible to foresee, and so by laws to provide for, all Accidents and Necessities, that may concern the publick; or to make such Laws, as will do no harm, if they are Executed with an inflexible rigour, on all occasions, and upon all Persons, that may come in their way, therefore there is a latitude left to the Executive power, to do many things of choice, which the Laws do not prescribe.' In other words, administrative discretion lets government act with greater agility, speed, and nuance.

A second justification of administrative discretion lies in the quality of a merit-based civil service, in which civil servants deploy expertise and professionalism to serve the public good, as posited in a Weberian-type bureaucracy. In the United States, orthodox theories and the recent New Public Management movement take this viewpoint.<sup>9</sup> The belief is that 'the federal government is filled with good people trapped in bad systems' and 'the problem is not lazy or incompetent people; it is red tape and regulation so suffocating that they stifle every ounce of creativity'.<sup>10</sup>

A third justification is that there is a growing conflict between the expanding scope of administrative agencies and the limited resources they are provided. In such circumstances, administrative discretion is useful because it permits distributing and redistributing resources so as to balance competing policy goals. In contemporary public administration systems, it is hard to imagine a bureaucracy without discretionary power. Whether the bureaucrats are high-level political appointees, middle-level managers, or street-level bureaucrats, they all shoulder important tasks that benefit from discretionary power—though to varying degrees and with varying focuses—not only for resource allocation, but also for filling in the details of laws that are often vaguely defined or may even have competing objectives.<sup>11</sup>

Critics of administrative discretion argue that whatever administrative discretion accomplishes is better accomplished through the rule of law. Discretion grants government officials the power and authority to make judgment calls in performing public services, and this constitutes the basis for creating a government by men. By comparison, under a rule-of-law system, laws should be 'clear and specific, prospective and not retroactive, applicable to all persons who fall within the categories specified, and

enforced in a nondiscretionary manner'.<sup>12</sup> Only in this way can a government of laws and not of men be achieved.

Another critique of administrative discretion is that administrative agencies that have broadly delegated powers but no clear guidance on substantive provision are likely to be vulnerable to interest-group politics when they have to reconcile conflicting goals.<sup>13</sup> In that regard, delegation of authority and power from legislative entities (principals) to administrative agents can be risky because the agents may have different goals from the principals, and information asymmetry is inevitable. Indeed, differing goals and information asymmetry are the two major reasons for the agents' moral-hazard problems.<sup>14</sup> Even though the legislature may have deliberately invested the administrators with broad authority, the situation can evolve to the point where bureaucratic decision making rivals and even supersedes legislative policy making, and works against the policy making.<sup>15</sup>

If administrative discretion is inevitable and possibly even desirable and beneficial, the natural question is then how to reach a proper balance between granting discretion to agencies and ensuring their responsiveness and accountability to the legislators and general public. That balance is certainly not easy to find. Opinions on where it should lie are divided. Many scholars, who represent the majority view in the literature, argue that administrative discretion can be controlled if certain conditions are met. For example, there could be *ex ante* control by procedure and substantive legislation<sup>16</sup> and *ex post* control by the chief executive or legislature.<sup>17</sup> In a word, politicians can control the power delegated to bureaucrats.

A second viewpoint is that whether discretion can or should be controlled depends on the type of administrative discretion. Studies have found significant variations with regard to the nature, mechanisms, and outcomes of different types of discretion.<sup>18</sup> For example, Bryner<sup>19</sup> argues that the legislative-like discretion given to agencies to issue rules, regulations, and standards deserves particular attention, since it is through such powers that administrative agencies make important policy decisions and judgments, and then make these decisions legally binding on those within their jurisdictions. By comparison, agencies should be permitted the authority to decide how general policies are applied in specific cases (e.g. to waive compliance requirements or grant exceptions to administrative rules or policies). The exercise of such power is by nature discretionary, since the concern is usually one of flexibility or adaptability to the situations which were not or could not be foreseen or that should be treated individually.

A third viewpoint is that administrative discretion, once granted, is hard to control effectively. For example, Spence<sup>20</sup> contends that many theories are too optimistic about the capacity of politicians to control the policy-making authority delegated to agencies. Effective *ex ante* control requires politicians to foresee problems in advance, while in reality outcomes are always unpredictable. As for *ex post* controls, the legislature and the chief executive may not have preferences regarding the policy issues facing the agency at the time a policy choice is made, and even if they do, they are limited in exercising veto power due to collective-choice problems. Furthermore, it is not possible for politicians to acquire the agency's expertise and professional knowledge, and therefore their ability to understand and act upon agency policy choices is

far more limited than is implied by positive theory models. These positive theorists 'model away' the delegation problem, but in reality, it remains.

### 3. Administrative discretion in Chinese bureaucracy: the case of work safety regulation

This paper examines the use of discretion by China's work safety regulatory agencies to understand how the tension between discretion and political control plays out in China's context. There are two reasons for focusing on work safety agencies. First, while administrative discretion is common to all bureaucracies, the problems it raises are particularly pronounced in regulatory agencies. The way in which regulatory agencies have exercised the discretion given them has provoked the most widespread criticism by those who support more regulatory protection and by those who oppose government interventions.<sup>21</sup> A study of work safety regulatory agencies in China may shed light on the administrative-discretion problems in bureaucracies across the board. Second, work safety management has been at the top of Chinese national leaders' policy agenda since the early 2000s. A staggeringly high number of work-related accidents, deaths, and injuries triggered a series of responses from the Chinese leaders to improve the situation, with both legal and management measures put in the place beginning in 2002–2003. These important reforms offer a window on the changing scope of administrative discretion in work safety regulatory agencies and can help us understand the tension between efficiency and responsiveness.

#### 3.1. A brief context for work safety regulation in China

Work safety has become an increasingly serious concern for Chinese leaders since the late 1970s when China started its economic transition. In the early 2000s, the work safety situation became so severe that it was made a top priority in the national leaders' policy agenda. China's official statistics show that from 1999 to 2002, a total of 495,448 deaths were caused in work-related accidents—on average 123,862 deaths per year and 339 deaths per day for four years in a row. Road transportation accidents—accidents that cause injuries, deaths or property loss due to the mistakes and negligence of vehicles driving on road—accounted for the majority of the deaths. In 1999–2002, these accidents took 392,693 lives, around 80% of the total work-related fatalities.<sup>22</sup>

The high death toll indicates the weakness and ineffectiveness of the work safety regulatory system before 2003. At that time, work safety was managed and supervised by individual professional departments in each industry. That segmented regulatory system created a series of problems in practice, such as shirking of responsibilities when job functions overlapped in different supervisory departments and when there was a need for coordination.<sup>23</sup> Nevertheless, the Chinese government promulgated a number of laws and regulations from 1979 to 1999. Eighteen laws pertaining to specific industry such as marine transportation (1983), mines (1992), labour (1994), fire (1998), railway (1990), civil aviation transportation (1995), road transportation (1997), and construction (1997) were passed. Additionally, the State Council passed 59

administrative regulations regarding work safety, and its component departments also released 189 regulations on specific work safety matters.<sup>24</sup> However, these efforts did not effectively reduce work-related deaths.

The years 2002–2003 were a turning point in China’s work safety regulation reforms. The Chinese leaders adopted a variety of measures. First and foremost, in March 2003, the Work Safety Commission of the State Council was established, with the then first vice-premier Huang Ju as its head. The commission was housed in the State Bureau of Work Safety, which was elevated to a ministerial-level department, and in 2005 it was renamed the State Administration of Work Safety (SAWS). Down the hierarchy, work safety bureaus were established as component departments of local governments at various local levels. This institutional arrangement shows that the CCP had decided to establish a more integrated and coherent system to supervise and regulate work safety affairs.

The CCP leaders also took additional measures to improve work safety. Through a legislative process that took nearly ten years, work safety regulatory agencies—which replaced the individual professional departments of the pre-2003 system—were granted considerable discretionary power to use their professional judgment to carry out their work. Performance measures were used to align the goals of local leaders and work safety agencies with those of the national leaders and the legislators.

### 3.2. The legislation

There are several milestone efforts in the legislation process that started in the early 2000s. In 2002, China’s Work Safety Law (WSL) was passed by the National People’s Congress. Two amendments were passed in 2009 and 2014. The promulgation of WSL was a timely response to the severe work safety situation of the early 2000s. The WSL stipulates that local departments responsible for supervising and managing work safety affairs have the authority to monitor and investigate production units and to order them to correct violations of work safety regulations. The supervisory departments also have the authority to apply administrative penalties to the production units according to relevant laws and regulations.<sup>25</sup> The 2009 and 2014 amendments add more specific regulations regarding the legal responsibilities of production units and work safety regulatory agencies. For example, Article 92 in the 2014 WSL stipulates that work safety regulatory agencies can apply penalties to production units if work-related accidents are caused by the leaders’ failure to exercise their responsibilities to manage work safety. The fines are to amount to 30–80 percent of the annual incomes of the production units, depending on the severity of the accidents, as measured by the numbers of deaths.<sup>26</sup>

In 2003, right after its establishment, the SAWS promulgated *The Measures on Administrative Penalties for Illegal Acts Concerning Work Safety*, with one amendment in 2007 (hereafter the Penalty Measures). Following the 1996 *Administrative Penalty Law of the People’s Republic of China*, the Penalty Measures listed eight types of penalties, namely, warnings; fines; confiscation of legal proceeds, assets, and products; order to cease business, production, and construction; keeping or revoking production licenses and permits and cancelling or revoking professional certificates; closure; administrative

detention; and other types of penalties by other relevant laws and regulations. In Chapter 4 (Application of Administrative Penalty), the Penalty Measures (with the 2007 amendment) provides thirteen articles that taken in total explained in much more clarity and detail the circumstances under which administrative penalties would be handed down. For example, if a production unit did not guarantee investments in work safety, the work safety regulatory agencies could order it to make the necessary investment and impose a fine of anywhere from RMB10,000 to RMB300,000, with production unit leaders being subject to an additional fine of RMB5,000 to RMB10,000.<sup>27</sup>

The WSL and the Penalty Measures and their amendments established the basic framework for the administrative discretion of work safety bureaus. In addition, the legislative efforts included two important components. First, there were laws and regulations in eight specific areas, namely, mines, road transportation, construction, dangerous chemicals, civil explosives, occupational health and protection, fire, electricity, and special equipment.<sup>28</sup> Second, local work safety bureaus also promulgated numerous work safety regulations of their own. Altogether, these laws and regulations constitute a huge and complex legal apparatus for work safety regulation. The system requires work safety officials to be very familiar with every specific law and regulation so that they can properly apply them when administering penalties. Very often, work safety officials need to use more than one law or regulation to give a reasonable penalty.

Simply put it, the legislation gives work safety agencies considerable discretion in applying administrative penalties because expertise and professionalism are very important in the application of these laws and regulations. According to Zhang and Gu,<sup>29</sup> work safety officials' discretion can be categorized into three types:

First, there is the discretion to decide whether or not to apply an administrative penalty. For example, Clause 22 of Article 55 in the Penalty Measures stipulates that 'administrative penalty can be waived if the violation behavior is slight, corrected in a timely manner, and no serious consequences are caused by the violation.' It is left to the work safety regulatory agencies to decide whether violations are serious enough to deserve a penalty.

Second, there is the discretion to concretize the vagueness of the legal terms. As noted above, it is up to the work safety bureaus to decide whether a violation is slight, relatively slight, serious, or very serious, etc. The work safety bureaus have plenty of room in which to use their discretionary power.

Third, there is the discretion to determine the penalties within given categories and fine ranges. Work safety bureaus can choose one or a combination of several penalties from among the eight types of penalties. They also can decide the number of fines, within the legal range, that a production unit found in violation should pay.

### **3.3. The politics in work safety regulation**

Although the legislation since 2002 granted considerable discretion to work safety regulatory agencies, compared to what existed before, the changes also helped greatly to clarify and consequently to constrain the discretion of the agencies as well. However, this discretion is vulnerable to political intervention under China's political



system—especially intervention from local leaders. First, China’s civil service is highly politicized. There is no clear boundary between politicians and bureaucrats, and civil servants are expected to comply with the CCP’s orders and directives and faithfully implement its policies. Civil servants are recruited and promoted not simply for their capabilities, expertise, and work performance, but more importantly, for their political credentials. In other words, bureaucrats are expected to use their expertise and professional knowledge to serve the CCP’s goals and objectives. If there is a tension between the two, bureaucrats need to make a trade-off. For example, there is abundant evidence that local Chinese statistical officials would distort economic statistics to make it appear that local leaders had met their economic growth targets.<sup>30</sup>

Second, China’s authoritarian system is paradoxically characterized by a high degree of decentralization.<sup>31</sup> It is not unusual for the goals of the central government and those of local leaders to diverge. In the case of work safety, the national leaders and legislators may want to improve the work safety situation and maintain social stability, whilst local officials may sabotage this task if they judge the illegal and unsafe production enterprises to be necessary for local economic growth. Work safety agencies, as component departments of local government, are susceptible to local leaders’ influence because their personnel, establishment posts, and budget are all allocated by the local government, not by the faraway central leaders. In other words, local leaders’ attitude regarding the importance of work safety plays a significant role in whether the work safety agencies are able to do their job properly.

Decentralization per se does not necessarily lead to goal divergence between central and local regulators. Bradbury<sup>32</sup> finds that in the United States, decentralization of the Occupational Safety and Health Act (OSH Act) is characterized by ‘regulatory federalism.’ The OSH Act gives states the option to either regulate workplace safety according to the federal regulations on their own or to delegate this responsibility to the federal Occupational Safety and Health Administration (OHSa). During 1981–1995, states that fully governed their own occupational health and safety programs experienced fewer fatalities than states that delegated this responsibility to the OHSa. This is because decentralization created interjurisdiction competition among states that chose to regulate their own safety programs and thus stronger incentives for more efficient regulation. Inefficient regulation of work safety would risk losing citizens’ votes in (re)election and losing industries and workers to other states. That concern is less prominent in states that delegated the responsibility to the OHSa.

By comparison, Chinese local leaders do not face the same political-economic concerns as their counterparts in the United States. Before 2004, the link between local leaders’ performance on work safety regulation and their career advancement was rather weak, if not entirely absent. The GDP-centered development mode incentivized local leaders to compete mainly on their performance in developing local economies, and as a result, decentralization had more negative consequences for work safety at the local level. A recent study of Jia and Nie<sup>33</sup> finds that decentralization of the management of key state coal mines during 1995–2005 reduced the transaction cost of collusion between local regulators and coal mines and resulted in higher death rates. More specifically, decentralization with a local safety regulator increased the death rates by about three deaths per one million tons of coal produced. This shows that



local regulators tolerated firms' choice of unsafe but profitable production technologies.

Therefore, it is clear that in China, legislation alone is not enough to ensure work safety agencies can accomplish their goal of improving the safety situation—precisely because they have so much discretion, and that discretion can be misused under the influence of the local leaders. In the area of mine safety, Wang Shaoguang<sup>34</sup> describes China's work safety agencies as 'toothless tigers' that are unable to achieve their stated goals because of the low level of punishment they impose upon noncompliant mines. When mine owners or managers were found to be operating their mines in violation of certain safety standards, they might be fined as little as RMB5.00, clearly below the lowest amount stipulated by law. Similarly, Tim Wright<sup>35</sup> found that the central government's campaign to close unsafe small mines encountered huge resistance at local levels, with one of the most important reasons being that local governments were dependent on the revenue from those small mines to balance their books. Local authorities were reluctant to order the revenue-generating illegal mines to stop operation and even gave licenses to mines that did not meet safety standards.

### **3.4. Enhancing political responsiveness**

The central leaders were well aware of the problems with the pre-2003 work safety regulatory system. Hence, in 2003, alongside the legislative process, they simultaneously initiated a target-based, result-oriented performance measurement system to evaluate local governments' work on reducing work-related fatalities. The system, known as a 'fatality quota' or 'fatality ceiling' system, was officially implemented in 2004 and is still in effect in the present day.

The fatality quota system is a set of fatality figures and ratios that determine the permissible number of deaths caused by work-related accidents overall and in each specific industry.<sup>36</sup> The fatality quota system contains two types of indicators. The first are absolute indicators that measure the absolute reduction of fatalities caused by work accidents. For example, in 2010, the national target was to control the total fatalities in China to within 75,572 people (1,973 in mine accidents, 62,387 in road transportation accidents, etc.). The second are relative fatality ratios that measure the death-economy intensity. For example, in 2010, the fatality rate per 100 million yuan GDP was 0.173 and 0.564 per million tons of coal produced.<sup>37</sup> Table 1 presents the major national fatality quotas in 2007.

By prioritizing the fatality indicators in local officials' performance evaluation, the fatality quota system holds the local leaders as well as work safety officials responsible for predetermined, clear, quantifiable results. The system plays a crucial role in reducing the principal-agent problems in work safety regulation. It adopts two mechanisms to achieve that end. First, all fatality targets and indicators are expressed in extremely precise numbers, which are established according to a 'scientific' mathematic formula developed by the national leaders. The indicators are established at the national level and then allocated down the administrative hierarchy. Each locality receives precise fatality indicators above which deaths may not rise that year. The precision of the numbers and the manner in which they are assigned to each locality greatly reduces

**Table 1.** Fatality quotas (ceilings) at the national level in 2007

Absolute fatalities (Unit: Person)	Fatality-economy ratios
Total fatalities: 111,355	Per 1 million tons of coals produced: 1.923
Industrial, mining, commercial and trade enterprises: 14,094	Per 100 million yuan GDP produced: 0.51
Road transportation: 88,382	Per 10,000 vehicles on road: 5.7
Fire: 1,517	Per 100,000 people employed by industrial, mining, commercial and trade enterprises: 3.13
Water transportation: 372	Serious Accidents <sup>a</sup> to Be Controlled
Railway transportation: 5,636	Major accidents: 2,286 (coal mine: 230)
Agricultural machinery: 882	Serious and very serious accidents: 92 (coal mine: 37)
Fishing vessels: 399	

<sup>a</sup>Serious accidents: major accidents are those that cause 3–10 fatalities, or 10–50 heavy injuries, or direct economic loss of 10–50 million yuan in one accident; serious accidents are those that cause 10–30 fatalities, 50–100 heavy injuries, or direct economic loss of 50–100 million yuan in one accident; very serious accidents are those that cause more than 30 fatalities, or more than 100 heavy injuries, or direct economic loss greater than 100 million yuan in one accident.

Source: SAWS, Yearbook on Work Safety in China, 2008.

the room for local leaders to negotiate with the authorities at upper levels to bypass the targets.

Second, staying within the limits of the fatality targets is prioritized as one of the most important elements in local officials' performance assessment. Success in this area may or may not enhance local leaders' promotion chances, but failure is likely to hurt their career prospects, especially if there are negative social impacts associated with serious work accidents that took many lives. If serious work accidents occur, local leaders and work safety officials will be held accountable. Depending on the severity of the accidents, officials at different levels will receive different types of penalties.<sup>38</sup> The fatality quota system thus establishes a clear link between work performance and political accountability.

Since the implementation of the system, everyone has become aware that local officials will be held accountable for work accidents. A recent study by Xing and Wang examines 41 very serious work accidents (*teda shigu*, which means one accident that causes over 30 deaths, over 100 serious injuries, or direct economic loss over 100 million) during 2004–2015 and finds that a total of 894 officials were held accountable, including 162 officials at or above the deputy bureau level.<sup>39</sup>

As such, the implementation of the fatality quota provides high-powered incentives for local leaders to treat work safety more seriously. The study of Shi and Xi<sup>40</sup> finds that the link between local leaders' performance in controlling coal mine fatalities and their career advancement creates a positive neighborhood effect, that is, local government's performance in controlling coal mine deaths is associated with the performance of their neighbors, who are competing with them under the same centrally imposed performance evaluation system. Using data drawn from 164 major coal-producing cities from 2001 to 2011, the study shows that the level of coal mine death in a city is positively associated with those in politically neighboring cities, defined as other coal-producing cities in the same province (but not with those of their geographical neighbors from other provinces). They also found that cities lagging behind on coal mine safety react more strongly to neighbors' safety performance, while city leaders with a local birthplace are associated with weaker neighborhood effects on



Figure 1. Changes in work-related fatalities during 1999–2014. Source: SAWS, *Yearbook of Work Safety in China*, various years.

coal mine deaths. Put together, the findings suggest that neighborhood effects are more acute when coal mine safety matters more for the evaluation of local leaders.

Unfortunately, there is a lack of publicly available statistics on whether or how the implementation of the result-oriented performance management system has changed the actual use of administrative discretion in work safety regulations. Except for a few widely covered individual cases, it is unclear how statistics on administrative penalties are collected, by whom, and whether local governments take stock of that information, which makes historical comparison close to impossible. Nevertheless, there are good reasons to believe that the fatality quota system has effectively prioritized the reduction of work-related deaths and that it will reduce the political obstacles that cause work safety agencies to misuse their discretionary power for political ends. Statistics do show that since the implementation of the fatality quota system, the total number of work-related fatalities has been consistently decreasing, from 136,025 in 2004 to 68,061 in 2014. The fatality per 100 million GDP also dropped, from 1.00 in 2004 to 0.107 in 2014, a significant improvement.<sup>41</sup> Figure 1 summarizes the changes in work-related deaths before and after the reform window in 2002–2003.

### 3.5. The cost of enhancing political responsiveness

Apparently, the declining work-related death tolls in a decade’s time suggest that the Chinese leaders have found a way to balance managerial discretion and political responsiveness in the context of underdeveloped rule-of-law. But this ‘balance’ comes with a cost. The negative consequence of implementing the fatality quota system is that it incentivizes local officials—sometimes in collusion with the management of the production units—to cover up, underreport or misreport the actual fatalities if honest reporting of the fatality numbers would exceed their assigned quotas. For example, in 2011, only in one month in April, the SAWS disclosed five dishonest reporting cases in coal mine accidents in Hebei, Yunnan and Heilongjiang provinces. In all the five cases, mine owners covered up or underreported the fatalities, and in two cases, even concealed the corpses to destroy evidence.<sup>42</sup> An investigation of one case in Jixi City of Heilongjiang Province, which killed nine miners, found that coal miners bought off local officials and the victims’ families to silence them and bury the accident.<sup>43</sup> Despite a lack of official statistics on dishonest reporting at a nationwide scale, from

the cases that are disclosed by the SAWS from now and then, it is not an exaggeration to say that such behavior is not random or rare at local levels.

In addition, local officials may adopt the strategy of categorizing work-related accidents as non-work-related accidents. As a general law, the WSL leaves a certain grey area when it comes to determining what is a work-related accident and what is a non-work-related accident and which level of government should get involved in making such a decision. For accidents that cause less than 10 deaths, it is the local government rather than the SAWS that investigates and decides the nature of the accident. Hence, local officials may categorize an accident as non-work-related if they are under pressure to control work-related fatalities within the required quotas. And such dishonest reporting does not violate any legal regulations.

A report of the China Labour Bulletin found that in the first half of 2017 in Shanghai, a food delivery driver is either badly injured or dies in a traffic incident every 2.5 day on average. In Nanjing, there are 18 accidents involving delivery drivers every day. However, many of these accidents were not included in official statistics. Local authorities and food delivery companies claimed that these drivers were independent contractors, and therefore such cases could not be classified as work accidents or covered by work-related accident insurance.<sup>44</sup> In such cases, workers' safety is not necessarily improved, but local authorities successfully meet their quotas by outsourcing work-related accidents and deaths.

#### 4. Discussion and conclusions

This study joins a major discussion in public administration studies on whether tension between bureaucratic efficiency and political responsiveness exists, and if so, how to strike a proper balance between them. It contributes to this rich literature by examining these two questions in the context of China, where the sources of this potential tension in Western democracies—separation of powers, checks and balances—are largely absent. This study finds that in an authoritarian and unitary state such as China's, there is still a tension between efficiency and responsiveness, but it plays out between central and local powers instead of among the powers of the legislature, executive and judiciary as in the United States. In China's decentralized political system, local agencies are often susceptible to the political intervention of local leaders. Consequently, if local regulatory agencies are granted considerable discretionary power, they may use this power in ways contrary to the original legal intention set by the national leaders. Although as a whole entity they are still responsive to the political orders of the party.

One lesson we learnt from China's case is that the tension between administrative discretion and political delegation must be understood within its political context. In a democracy, where there is a separation of powers and checks and balances, the executive branch requests administrative discretion on the grounds that bureaucratic expertise and professionalism are important for efficiency and effectiveness. The legislature responds to such requests by permitting administrative discretion but constraining its exercise to ensure political accountability. The court then corrects the wrongs that are either created or neglected by the other two powers. The tension is rooted in

power separation and viewed as important and necessary for realizing the democratic values.

By comparison, in China, where power is highly concentrated, to limit administrative discretion is to curb the power of the party-state itself. As the Chinese legal scholar Ji Weidong<sup>45</sup> explains, administrative discretion is bred naturally into a power structure that unifies the party and the state bureaucracy, especially given that the people's congresses or people's courts and procuratorates are weak in checking the power of the party-state. Under this circumstance, the party—rather than a power struggle between the legislative and the executive branches, as in democracies—plays the most important role in defining, adjusting, and reining in the administrative power of its own bureaucracy. Although China's work safety regulation reforms aim to keep a proper balance between professionalism, efficiency, and expertise on the one hand and political responsiveness and accountability on the other, the latter has clearly been given greater weight in this scale.

Put in this light, to China's national leaders, the question is not just whether, why or how discretion should be limited, but more importantly, how to ensure that power is not misused in ways contrary to the legal intention. This study shows that the central leaders have adopted both legal and managerial measures to achieve this goal. On the one hand, legislation is important to constrain and clarify the scope of the administrative discretion permitted local work safety agencies. More legislation has resulted in greater clarity regarding what kind of discretion these agencies have, how they may use it, and under what circumstances. This is important to constrain local political intervention on work safety agencies' professional work. Nevertheless, when rule-of-law is still developing, legislation alone is not sufficient to ensure political responsiveness. China's leaders have adopted a results-oriented performance evaluation system to address this problem and to align the goals of local leaders and work safety agencies with those of the national leaders and legislators.

To some extent, the performance evaluation system has also helped to address the information asymmetry between the principals (the legislators and administrative rule-makers at the national level) and agents (local governments and agencies), as the agents are required to report their work performance regularly—not just fatality figures, but also what they have done to prevent work accidents from happening (for example, training safety inspectors). Nonetheless, other principal-agent problems, such as goal displacement and moral hazard on the side of the agents, are still prominent under such a management system, as shown in the misreporting cases. In the long term, work safety improvement needs more substantial reforms such as allowing a bigger role for China's trade unions in defending workers' interests and more strict law enforcement in penalizing unsafe production and dishonest reporting.

This research also finds that China's reform approach has brought a new challenge: a new tension between continuous legislation to curb discretion on the one hand and the increasingly high performance demands to achieve political tasks on the other is likely to intensify in the near future. In recent years, the SAWS has issued several regulations to further specify local agencies' discretion in applying administrative penalties, including, for example, the *Application Regulations on Discretion in Applying Administrative Penalties in Work Safety* (Trial Run) in 2010.<sup>46</sup> Under the guidance of this

document, in the past few years, local work safety bureaus in many localities have begun to establish their own regulations with much more detail on the exercise of discretionary power. For example, in 2017, the Jiangsu Provincial Work Safety Bureau promulgated a 395-page implementation document detailing how to use discretion in applying administrative penalties for violations of work safety standards. It even developed standard mathematic formulas to calculate fines for violations, an absolute reduction of the agencies' discretion.<sup>47</sup> Such details are curtailing the discretion that local work safety officials have. Interestingly, these efforts have not come from the legislature, but are efforts at self-restraint on the part of the work safety bureaucracy itself.

Meanwhile, the CCP has increased the accountability of local leaders for the accomplishment of work safety targets and objectives. In April 2018, the Central Party and the State Council jointly promulgated the *Regulations on Local Party and State Leaders' Responsibilities in Work Safety*.<sup>48</sup> This regulation clearly stipulates that work safety must be prioritized in local party and state leaders' performance evaluation and that it will be considered an important factor in the appointment and selection of local leaders. If local leaders fail to accomplish work safety targets, they will be barred from receiving any performance rewards and will be ineligible for promotion or transfer to positions on the same level as their current one. Additionally, the regulation stipulates seven ways to hold local officials accountable: notification, admonishment, suspension awaiting investigation, adjustment of positions, asking for a resignation, dismissal, and disposition. This is the first 'Party Law' on work safety in the history of the People's Republic of China.<sup>49</sup>

This paper leaves many interesting issues unaddressed, and it probably raises more questions than it answers. For example, how can local officials accomplish their ever-growing performance targets when their discretion has been strictly curbed? Would new reforms instigate more misreporting or other type of gaming behaviors on the part of local officials? Would too little discretion also undermine political responsiveness? What would the Chinese leaders do to resolve the new tension in the area of work safety regulation? Moreover, this study does not probe into the technicalities of the legislation (such as whether there is a conflict among laws and regulations issued by different authorities and how that affects the use of discretion) or the judicial review process (such as the discretion of the judges in administrative litigation cases and how cases are adjudicated), although both are crucial for understanding administrative discretion in actual implementation of the rule of law. Furthermore, Chinese work safety agencies have serious problems of understaffing and underqualified personnel.<sup>50</sup> Studies show that delegation of discretionary power to incapable bureaucrats can be disastrous—it not only leads to low efficiency, but also makes the bureaucrats harder to control because their incompetence diminishes their incentives to implement the policies politicians describe in legislation.<sup>51</sup> Lastly, a caveat must be made that while this paper focuses on how the interaction among law, politics and management affects bureaucratic discretion, it does not examine many other factors that also play an important role in the use of discretionary power, such as the type of sector, professional norms, institutional settings, and the like. Future studies may explore these important issues in China's context. Given President Xi Jinping's

unprecedented emphasis on the rule of law as a key theme in the deepening of China's reforms, there is probably no better time than now to continue this discussion.

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## Notes

1. Gaus, White and Dimock, *The Frontiers of Public Administration*; Waldo, *The Administrative State*; Kaufman, "Emerging Conflicts in the Doctrines of Public Administration," 1057–1075; McCubbins, Noll and Weingast, "Administrative Procedures as Instruments of Political Control," 243–277; Huber and Shipan, *Deliberate Discretion?*
2. Wilson, "The Study of Administration," 197–222.
3. Bryner, *Bureaucratic Discretion*.
4. McCubbins, Noll and Weingast, "Administrative Procedures as Instruments of Political Control," 243–277; Bawn, "Political Control versus Agency Expertise," 62–73. Epstein and O'Halloran, "Administrative Procedures, Information and Agency Discretion," 697–722; Huber and Shipan, *Deliberate Discretion?*
5. Rosenbloom, "Have an Administrative Rx?" 503–507.
6. Guo, *Chinese Politics and Government*.
7. Chan, "Judicial Review and Control over Administrative Discretion in the People's Republic of China," 135–163; Zhang, "On the Discretion in Applying Administrative Penalty in Work Safety"; Zhang and Gu, "A Study on Regulating the Discretion in Applying Administrative Penalties in Work Safety," 116–118; Lin, "A Study on the Issue Regarding Administrative Penalties in Work Safety."
8. Locke, *Two Treatises of Government*, 375.
9. Wilson, "The Study of Administration," 197–222; Goodnow, *Politics and Administration*; Gulick and Urwick, *Papers on the Science of Administration*; Gore, *From Red Tape to Results*.
10. Gore, *From Red Tape to Results*.
11. Gulick and Urwick, *Papers on the Science of Administration*; Lipsky, *Street-Level Bureaucracy*; Morgan, et al. "What Middle Managers Do in Local Governments," 359–366.
12. Bryner, *Bureaucratic Discretion*, 8.
13. Kochtcheeva, "Administrative Discretion and Environmental Regulation," 241–265.



14. Wilson, "The Rise of Bureaucratic State," 77–103; Beetham and Weir, *Political Power and Democratic Control in Britain*; Lanffont and Martimort, *The Theory of Incentives*.
15. Dodd, *Congress and the Administrative State*; Kochtcheeva, "Administrative Discretion and Environmental Regulation," 241–265.
16. McCubbins, Noll and Weingast, "Administrative Procedures as Instruments of Political Control," 243–277; Macey, "Organizational Design and the Political Control of Administrative Agencies," 93–110. Bawn, "Political Control versus Agency Expertise," 62–73.
17. Ferejohn, "The Structure of Agency Decision Process," 441–461; Lupia and McCubbins, "Learning from Oversight," 96–125; Wooley, "Conflict among Regulators and the Hypothesis of Congressional Dominance," 92–114.
18. Bardach and Kagan, *Going by the Book*; Shumavon and Hibbeln, *Administrative Discretion and Public Policy Implementation*; Wood and Waterman, *Bureaucratic Dynamics*; Sparrow, *The Regulatory Craft*; Huber and McCarty, "Bureaucratic Capacity, Delegation, and Political Reform," 481–494.
19. Bryner, *Bureaucratic Discretion*.
20. Spence, "Agency Policy Making and Political Control," 199–219.
21. Crandall and Lave, *The Scientific Basis of Health and Safety Regulation*; Melnick, *Regulation and the Courts*; Kochtcheeva, "Administrative Discretion and Environmental Regulation," 241–265.
22. State Administration of Work Safety (SAWS), *Yearbook on Work Safety in China, 1999, 2000–2001, 2002*.
23. Wang, "Regulating Deaths at Coalmines," 1–30.
24. SAWS, *Yearbook on Work Safety in China, 1979–1999*.
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26. *Ibid*, 2014.
27. SAWS, *Yearbook on Work Safety in China, 2003, 2007*.
28. Lin, "A Study on the Issues Regarding Administrative Penalties in Work Safety."
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30. Rawski, "What Is Happening to China's GDP Statistics?" 347–354; Wallace, "Juking the Stats?" 11–29.
31. Landry, *Decentralized Authoritarianism in China*.
32. Bradbury, "Regulatory Federalism and Workplace Safety," 211–224.
33. Jia and Nie, "Decentralization, Collusion, and Coal Mine Deaths," 105–118.
34. Wang, "Regulating Deaths at Coalmines," 22.
35. Wright, "The Political Economy of Coal Mine Disasters in China," 629–646.
36. Chan and Gao, "Death versus GDP!" 355–377.
37. SAWS, *Yearbook on Work Safety in China, 2011*.
38. Chan and Gao, "Death versus GDP!" 372.
39. Xing and Wang, "A Study on Rational Accountability," 50.
40. Shi and Xi, "Race to Safety," 79–95.
41. SAWS, *Yearbook on Work Safety in China, various years*.
42. On 1 April, a coal mine in Tangshan City of Hebei Province had a water intrusion accident and killed seven people. The mine owner did not report the case. On 3 April, a coal mine in Xuanwei City of Yunnan Province had a gas explosion and six miners died. The case was also covered up. Two weeks later on 15 April, a similar accident occurred in another coal mine in Xuanwei City of Yunnan Province. Twelve people died and three were seriously injured. The authorities concealed four corpses, falsified the records and underreported the fatalities. On 24 April, a water intrusion accident in Shuangyashan City of Heilongjiang Province killed four people and injured two. The case was reported as required. After two days, on 26 April, a gas explosion accident in a coal mine in Jixi City of Heilongjiang Province killed nine people. The coal miners did not report the fatalities, concealed all the corpses, and fled. See SAWS, "The General Office of the Work Safety Commission under the

State Council Disclosed Six Coverups, Dishonest Reporting and Delayed-Reporting Cases, Including the 4.26 Guifa Coal Mine Incident in Didao District, Jixi City, Heilongjiang Province.”

43. Fenghuangwang, “Investigation of the Jixi Coal Mine Accident: Local Government and Policemen Are Involved in Falsification of Records.”
44. China Labour Bulletin, “Work Safety.”
45. Ji, “The Principle of Rule of Law and Administrative Discretion.”
46. SAWS, “The Application Regulations on Discretion in Applying Administrative Penalties in Work Safety (Trial Run).”
47. Work Safety Bureau of Jiangsu Province, “Implementation Details on the Discretion in Applying Administrative Penalties in Work Safety in Jiangsu Province.”
48. Central Party and State Council, “Regulations on Local Party and State Leaders’ Responsibilities in Work Safety.”
49. Xinhua, “Promulgation of Regulations on Local Party and State Leaders’ Responsibilities in Work Safety.”
50. Wang, “Regulating Deaths at Coalmines,” 1–30; Lin, “A Study on the Issues Regarding Administrative Penalties in Work Safety.”
51. Huber and McCarty, “Bureaucratic Capacity, Delegation, and Political Reform,” 481–494.

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