


Popular Contention and Progressive Legal Repression in China

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Abstract

How do state authorities cope with popular contention under authoritarian legality? Based on ethnographic fieldwork and legal repression cases in China, this article highlights that conflicting rules and signals regarding contention management can impose considerable pressure on governments and motivate them to respond cautiously, even though the prevailing rhetoric of law-based governance provides a convenient basis on which authorities can legitimize their coercive actions. This study further theorizes a discreet pattern of government reaction under authoritarian legality – progressive legal repression – that rests on bureaucratic processing to overcome political uncertainty and lower potential risks before formally employing criminal sanctions to achieve domination. Instead of directly using criminal penalties to deter unruly protesters and potential dissenters, the preferred state action is to induce them to engage in available legal-bureaucratic procedures. By reconceptualizing protesters' claims and behaviour as unreasonable and signalling fulfilment of responsibilities, bureaucratic practices help officials to reduce the risks of damaging their political image and receiving disciplinary action, encouraging them to deploy legal repression. This study reveals more complicated dynamics of state repression under authoritarian legality and emphasizes the important effects of procedural practices on governmental responses and the regime's stability.

Keywords: petition; popular contention; political ambiguity; bureaucratic processing; legal repression; authoritarian legality

Authoritarian rulers are known to be more sensitive to popular contention and tend to crack down on protest activities they perceive to be threatening, especially regimes with high-level coercive capacity.¹ Recent literature on authoritarian politics emphasizes the sophistication and resourcefulness of authoritarian domination and suggests that laws and legal means can be used to exercise political and social control over a contentious society and render state repression more

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1 Goldstone and Tilly 2001.



legitimate.² Some scholars therefore imply that authoritarian governments can shift to more consolidated repression under the guise of legal approaches, leaving limited political space for contentious activities.³

This study attempts to provide a more complicated picture of the dynamics of state repression under authoritarian legality by examining how local governments cope with popular contention under the legal governance campaign in Xi Jinping's 习近平 China. Drawing on ethnographic fieldwork in Guangdong province, legal repression cases and government documents and reports, this article highlights that the conflicting rules and signals surrounding contention governance can impose considerable pressure on state authorities and motivate them to be cautious in any response they take, although the laws, regulations and prevailing rhetoric of law-based governance provide a convenient basis upon which authorities can legitimize their coercive actions. This study further theorizes a discreet pattern of government reaction under authoritarian legality – progressive legal repression – that rests on bureaucratic processing to overcome political uncertainty and lower potential risks before formally employing criminal sanctions to achieve domination. Instead of applying criminal penalties to defuse threatening contentious actions and frighten unruly protesters and potential dissenters once illegal protest activities occur, the authorities prefer to induce protestors to engage in available legal-bureaucratic procedures. By reconceptualizing protesters' claims and behaviour as unreasonable and signalling the fulfilment of their responsibilities, state officials can use legal-bureaucratic practices to reduce the risks of damaging their political image and facing disciplinary action. This encourages officials to deploy legal repression to suppress unruly aggrieved citizens. Progressive legal repression suggests more complicated dynamics of state repression under authoritarian legality, contrasting with the simplified conception of intensified and arbitrary repression under the cloak of law in authoritarian contexts.

Resembling other forms of repression, such as “selective repression” or “fragmented repression,” progressive legal repression also suggests a differentiated state response in protest control – the non-use of legal repression before bureaucratic processing and the use of legal repression after bureaucratic processing. Selective repression emphasizes the state's different reactions to various protest groups, and some scholars elucidate on the mode of state response to the threat perceived by officials that relies on protest attributes, including the participant's role in protest activities,⁴ the type of protest demand,⁵ the scale of participation,⁶ the level of organization,⁷ and the level of violence.⁸ Other studies suggest that state reactions depend on aggrieved citizens' ability to exploit political

2 Earl 2006; Ginsburg and Tamir 2008; Shen-Bayh 2018.

3 Franceschini and Nesossi 2018; Fu and Distelhorst 2018.

4 Cai 2008a.

5 Lorentzen 2013; Yang and Chen 2019.

6 O'Brien and Li 2006; Lorentzen 2013.

7 Cai 2008b; 2010; King, Pan and Roberts 2013.

8 Cai 2010.

opportunities and enhance the power of the protest. These studies thus explore how protesters seeking support from high-level authorities and forming alliances with state agents,⁹ engaging in “troublemaking” actions¹⁰ and capturing attention from the media and the public can lead to differentiated government responses.¹¹ Additionally, fragmented repression highlights separate agencies’ distinct attitudes and strategies towards activists within the political system and suggests that bureaucratic divisions and their preferences and interests lead to a divergence of response strategies across various agencies.¹² Unlike these two patterns of repression, progressive legal repression underscores the government’s differentiated responses at different stages of bureaucratic processing and focuses on the importance of bureaucratic practices in changing the political constraints faced by state authorities and in shaping government reactions. This differs from the demobilization effect of bureaucratic procedures captured by the current literature on bureaucratic absorption;¹³ it also offers a theoretical explanation for authorities’ differentiated responses when protest attributes and strategies are similar. While some previous studies highlight that the use of repression is based on the ineffectiveness of other measures and the cumulative effect¹⁴ and might risk assuming that state officials can freely choose response strategies according to their needs, progressive legal repression underlines the political constraints faced by state officials and emphasizes how bureaucratic processes can help them to overcome constraints and motivate them to move towards applying criminal punishments.

As should be clear, this progressive mode might fit better with the formal form of hard repression, which requires coordinated collective actions across various agencies, such as legal repression. Unlike soft forms of repression that rely on psychological and emotional pressures,¹⁵ self-censorship¹⁶ and material benefits,¹⁷ legal repression employs physical coercion and needs violent actions. Informal repression uses third-party violence to achieve citizen compliance and allows local authorities to evade responsibility,¹⁸ whereas legal repression officially resorts to force. In contrast to administrative punishment enforced by the police department, legal repression employs various administrative and judicial agencies to launch a series of legal procedures to complete the criminalization process. These characteristics make legal repression more public and responsible; consequently, governments need to exercise more careful consideration when using criminal penalties to suppress popular contention, especially given the

- 9 O’Brien and Li 2006; Shi and Cai 2006; Chen 2012.
- 10 Chen 2009.
- 11 Cai 2010.
- 12 Mertha 2008; Fu 2017.
- 13 Lee and Zhang 2013.
- 14 Chen 2012, 116.
- 15 Deng and O’Brien 2013; O’Brien and Deng 2017; Hou 2020.
- 16 Stern and O’Brien 2012.
- 17 Lee and Zhang 2013.
- 18 Ong 2018.

political ambiguity in the realm of contention governance. By comparison, other forms of hard repression, such as informal repression and administrative punishment, can be used by local authorities at every stage of bureaucratic processing. Moreover, progressive legal repression may be more suitable when state authorities are challenged with boundary-pushing contentious activities in which protesters use the rhetoric and commitments of the state to make “rightful” claims and adopt “troublemaking” but not-quite-unlawful tactics.¹⁹ It is not uncommon for self-restrained protesters to avoid touching the “bottom line” and stop short of political demands and violent activities.²⁰ Compared with forceful contentious activities using violence or collective violence, boundary-pushing protests do not seriously damage the social order and do not distinctly challenge criminal law. However, these protest actions can still easily violate related laws and government regulations.²¹ More importantly, protesters often intentionally shame the government in public, persistently attempt to reveal local misconduct to higher-level governments and continuously create social instability, and thus can pose a significant threat to the local government. Boundary-pushing protesters might be legally suppressed with criminal charges after local governments use legal-bureaucratic practices to lower any potential risks.

Progressive legal repression largely results from a vague political environment filled with conflicting rules, principles and signals regarding contention governance. Given a lack of clear enforcement criteria, local agents who are responsible for protest control will also feel confused and pressured and are likely to tread cautiously to avoid incurring any potential blame, especially when aggrieved citizens use the rhetoric and commitments of the state to make “rightful” claims and attempt to seek the support and intervention of higher authorities. Additionally, progressive legal repression most probably emerges when information asymmetry occurs within government hierarchies and bureaucratic practices matter for the lower-level government’s discourse domination and the higher-level government’s scrutiny. When higher-level governments shift the main responsibility of contention management to lower-level authorities and depend heavily on local officials’ reports for knowledge at the ground level, legal-bureaucratic practices enable local authorities to insulate themselves from legitimacy and political pressures by reconstructing protesters’ claims and actions as unreasonable and by signaling the fulfilment of their responsibilities. Moreover, screening protest cases through bureaucratic processing serves as a low-cost strategy for higher-level rulers to balance political control and regime stability in the absence of sufficient willingness and capacity to fill the information gap. Therefore, upper governments are less likely to open political opportunities for veteran cases that have

19 O’Brien and Li 2006; Chen 2009.

20 O’Brien and Li 2006.

21 See “Guanyu gongan jiguan chuzhi xinfang huodong zhong weifa fanzui xingwei shiyong falü de zhidao yijian” (Guiding opinions on the application of laws and regulations for public security departments in dealing with illegal petition activities). www.gov.cn, 2013, http://www.afx.gov.cn/xxgk/bmxxgk/xxfj/zcfg_1089/201804/t20180403_700809.htm.

been addressed by some bureaucratic practices, thus providing convenient bases that allow local authorities to reduce political pressure after bureaucratic processing.

To further illustrate the practice of progressive legal repression, the remainder of this article proceeds as follows. After presenting the methodology, I trace the rise of the legal governance campaign in Xi's era. Then, drawing on ethnographic observations, interview data and government documents, I describe how the political ambiguity in contention governance motivates local governments to be cautious in their response and I explore how and why bureaucratic processing allows them to reduce the potential risks of formally using criminal sanctions. To further examine the generality of the theory and to better consider other competing explanations, I rely on legal repression cases collected from *China Judgments Online* to conduct a sequential comparison and statistical analysis. I conclude by discussing the contribution of this research.

Data, Methods and Analysis Strategies

To explore how local governments deal with unruly protesters under the legal government campaign, I spent three months in 2014 conducting ethnographic fieldwork in W City, Guangdong. The fieldwork was conducted right after the official launch of the campaign in November 2013, which, as I discuss below, proved to be a crucial turning point as the rhetoric of legal governance promptly spread throughout the propaganda system from 2014 to 2015. I gained access to a county-level bureau for letters and visits (*xinfangju* 信访局, BLV hereafter) in W City through personal connections. I chose a county-level BLV to conduct fieldwork because it is where protest issues are commonly contested and resolved, whereas higher-level BLVs mainly return petition cases to county-level BLVs after receiving complaints. During the fieldwork, I was allowed to observe officials as they received complainants and handled petition cases. I observed approximately 60 cases of contention. The time-limited observation did not allow me to observe the entire trajectory of the government response in these cases, as the resolution of protest cases following bureaucratic procedures can often take years and sometimes even more than a decade. However, the different levels of bureaucratic processing in these cases gave me the opportunity to gain insights into how local officials understand the role of bureaucratic processing in protest control and how they manage contentious activities before and after some bureaucratic practices. I conducted unstructured, informal interviews with six officials working in the BLV and typically asked them to provide more details after the observations. To examine whether local agents behave differently in more legally developed regions, I also conducted semi-structured interviews with five local officials working in district and subdistrict governments in Guangzhou between 2014 and 2015.

To examine the generality of my observations and to gather more empirical evidence for the theoretical explanation, I use legal repression cases collected

from *China Judgments Online* to conduct sequential and statistical analyses. The collection includes 5,474 cases from across 30 provinces that were tried between 2014 and 2019. I trace the sequences of various events that unfold over time to explore how and when local authorities resort to criminal prosecutions across different cases. I also use some comparable cases as examples to conduct a statistical analysis to further examine the effect of bureaucratic processing on the choice of legal repression.

Employing both qualitative and quantitative data to conduct analysis helps to unpack the causal link between bureaucratic processing and government reaction in a politically ambiguous context and also maximizes the validity and generalization of the observations and explanations. The analysis is based on cases which did not go through the judicial process (qualitative data) as well as cases that did enter the judicial process (published court judgments) in order to reduce selection bias.

The Rise of the Legal Governance Campaign

Since 2013, the Chinese state has increasingly turned to legal approaches to sustain its rule. Although previous studies have explored how the Chinese government uses legal measures to suppress civil society organizations and activists,²² little research has examined how such an approach is used in routine contention governance practice. In November 2013, the Chinese Communist Party (CCP) suggested that the government should “resolve social conflicts in line with the thought and approaches of law-based governance”²³ and launched a campaign to manage popular contention in accordance with law. In line with the party-state rhetoric, the petition system (*xinfang* 信访), which functions as the official channel through which citizens can make claims, initiated a new reform in 2013. This reform stressed “petition in accordance with law” (*fazhi xinfang* 法治信访) and required local authorities to use legal means to suppress petition activities that violated law and order.

Under the campaign for law-based governance, legal repression has increasingly been used to deal with social protests. Legal repression is a repressive strategy that uses the criminal justice system to suppress protesters who “violate the law.”²⁴ As Yongshun Cai points out, it is easy for aggrieved citizens to breach regulations and laws when staging protest activities; moreover, whether or not they have crossed the line mainly depends on the local government’s interpretation of that line. Protesters might receive criminal penalties even if they did not cause serious damage.²⁵ Although local authorities suppress protest activities

22 Franceschini and Nesossi 2018; Fu and Distelhorst 2018.

23 See “Zhonggong zhongyang guanyu quanmian shenhua gaige ruogan zhongda wenti de jueyi” (The CCP’s decisions on some major issues about comprehensively deepening the reform). www.gov.cn, 12 November 2013, http://www.gov.cn/jrzq/2013-11/15/content_2528179.htm.

24 Balbus 1973.

25 Cai 2008a, 32.

by claiming that protestors are breaking the law, legal repression is a collectively coordinated action by the local government rather than a single act carried out by a law enforcement agency. The decision to use criminal law to target protestors is usually made by local government leaders before the launch of criminal justice procedures. For example, in a legal repression case in Henan, leaders of the Committee of Political and Legal Affairs at the county government called a special meeting with various related agencies to discuss a petition case and decided to deploy legal repression. After the decision, the protester was arrested by the police, prosecuted by the people's procuratorate and was eventually convicted by a court.²⁶ Another court decision in a legal repression case in Hubei follows the same line.²⁷ Once protestors are prosecuted, it is rare, if not impossible, for them to successfully defend themselves and be declared not guilty in the court.²⁸

The use of legal repression to manage unruly protestors is not unique to the Xi era; however, compared with previous leaderships, such practices have fundamentally changed under Xi's rule. Whereas acts of legally suppressing protest activities were mainly sporadic under previous administrations, this legal governance campaign has been waged nationwide by the CCP, from top to bottom. Legal repression has increasingly become a crucial measure in the local government's toolkit for dealing with social protests. Figure 1 shows that the number of newspapers publishing articles containing discourse "attacking illegal petitions" significantly increased in 2014 and 2015.²⁹ These changes demonstrate that legal control has become an abiding principle by which state agents handle state–society contention in the Xi era; this is in stark contrast to the practice of "constructing [a] harmonious society" under the Hu–Wen administration.

Political Ambiguity in Contention Governance and Cautious Government Reactions

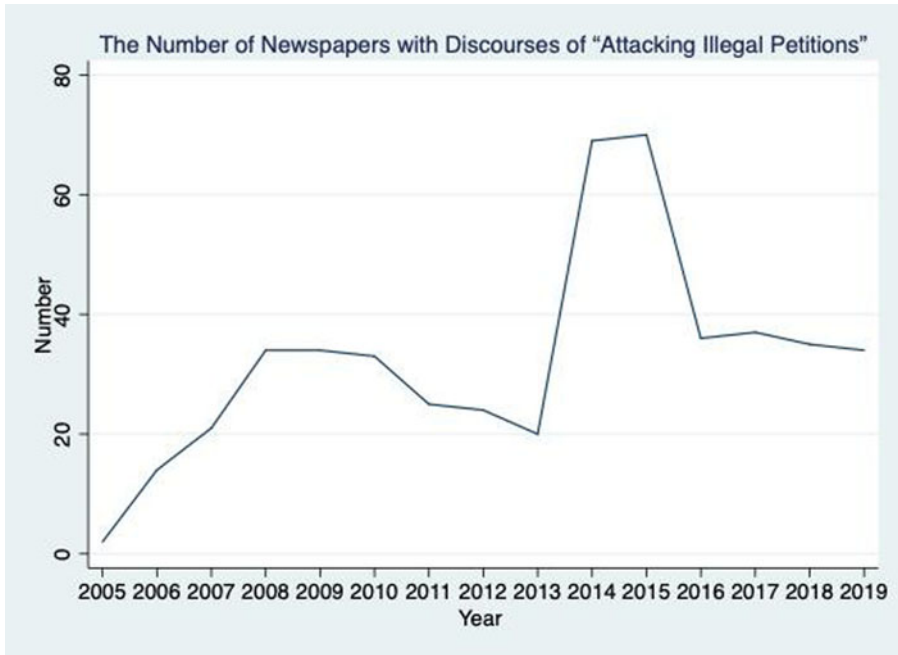
While the existing literature suggests that legal approaches enable state officials to deploy a more consolidated form of repression, this study reveals the political constraints faced by state authorities when legally suppressing popular contention and the consequent cautious reactions of local governments. Ambiguous principles, norms and signals regarding contention governance can impose considerable pressure on local authorities and prevent them from employing arbitrary repressive methods, even though the laws and regulations and the prevailing

26 "Lesuo zhengfu de fangmin" (The petitioner who blackmailed the government). *Caixin zhoukan*, 16 February 2015, <https://weekly.caixin.com/m/2015-02-13/100783977.html>.

27 See "Cheng Xiping qiaozha lesuo yishen xingshi panjueshu" (The initial verdict on Cheng Xiping's blackmail). *China Judgments Online*, 23 March 2020, <https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXS4/index.html?docId=948d4929d1e94c84a593abab00a09894>.

28 Cai 2008a, 30.

29 I searched the China Core Newspapers Full-text Database for newspapers containing phrases "attacking illegal petitions" (*daji* 打击 or *chuzhi* 处置 or *chuli* 处理 + *feifa* 非法 or *weifa* 违法 + *shangfang* 上访 or *xinfang* 信访). The database is available at <https://oversea.cnki.net/kns?dbcode=CCND>.

Figure 1. **Number of Newspapers Containing Discourse “Attacking Illegal Petitions”**

rhetoric of law-based governance provide a convenient basis upon which authorities can legitimize their coercive actions. The literature on contentious politics has underscored that ambivalent signals sent by the authoritarian state can contain activists’ resistance by encouraging self-censorship.³⁰ However, this study argues that ambivalent norms and signals exist not only in the protester’s struggle with the state but also in the state’s management of popular contention.

Political ambiguity in contention governance under authoritarian legality exists for several reasons. Partly, it is caused by the tension between populist rule and law and order. Although President Xi has launched legal governance campaigns since he took office, he has not detracted from populist rule, and he significantly highlighted the importance of the “mass line” when he provided instructions on handling petitions:

Party committees, governments and officials at all levels should insist on considering petition work as an important task for them to understand the people’s situation, pool their wisdom, safeguard their interests, and rally their support, and do everything possible to help them solve problems ... truly take the process of solving petition problems as a process of implementing the Party’s mass line and doing the mass work well.³¹

30 Stern and O’Brien 2012.

31 “Pingyu jinren – Xi Jinping tan xinfang gongzuo” (Xi Jinping’s instructions for petition work). *Xinhuanet*, 20 July 2017, http://www.xinhuanet.com/politics/2017-07/20/c_1121349234.htm.

Populist rule emphasizes that authorities should be responsive to public opinion, grievances and resistance, whereas law and order suggests that officials need to regulate protest activities through formal rationality and punish unlawful actions to protect the legal authority.³² This inherent tension created ambiguity around the enforcement criteria used by local officials to handle protest activities. For instance, at the central conference on political and legal work held on 7 January 2014, President Xi underlined the importance of the “three satisfactions and one disposal” (*san daowei yi chuli* 三到位一处理) in dealing with petition activities: satisfactorily solve problems in legal and reasonable cases, satisfactorily carry out thought work in unreasonable cases, satisfactorily offer assistance in cases related to life difficulties, and punish lawbreaking cases in line with the law. This guidance was promptly adopted within the petition system.³³

Political ambiguity is also a result of the ruling elites’ dilemma of how to balance political control and regime stability. In a regime with multiple hierarchies, one of the most important tasks for top leaders is to achieve effective political control over lower-level agents.³⁴ Thus, the Chinese central government has a very ambivalent attitude towards petitioning activities. On the one hand, the central government expects local authorities to control petitioning to Beijing to some extent and requires them to legally suppress unruly petitioners. This is because the centre does not directly handle those petition cases and fears that a wave of petitions to Beijing would affect political stability.³⁵ On the other hand, the central government hopes to learn about local conditions and achieve political control over local agents by receiving aggrieved citizens’ complaints.³⁶ Thus, the central government also emphasizes “resolutely putting an end to all wrong practices of interpreting normal petition activities and of restricting petitioners’ personal freedom.”³⁷

These ambiguous norms and signals have placed local authorities under considerable legitimacy and political pressures and so they tend to respond cautiously to avoid potential risks, even though protest activities may break the law and affect stability. During my fieldwork in January 2014, for example, approximately 20 ex-soldiers were unhappy about their resettlement arrangements and so staged a collective sit-in and petitioned in front of the county government for several days. They unrolled a huge banner in front of the government gate declaring, “Once we were the most respectable people, but now we are the most miserable people.” Rather than dispatching police to dispel these petitioners, local government officials in the BLV attempted to persuade them to go

32 Minzner 2011; Liebman 2014.

33 See “Ba qunzhong heli hefa de liyi suqiu jiejuhao” (Satisfactorily addressing people’s reasonable and legal demands). *Renmin ribao*, 5 March 2014.

34 Cai 2010; Li, Liu and O’Brien 2012.

35 Li, Liu and O’Brien 2012.

36 Lorentzen 2013.

37 See “Guanyu yifa chuli shefa shesu xinfang wenti de yijian” (Opinions on handling petition issues related to the law and the litigation in accordance with the law). *Guojia xinfang ju menhu wangzhan*, 2014, <https://www.gjxf.gov.cn/gjxfj/xxgk/gwj/flfg/webinfo/2014/03/1541706493248706.htm>.

down the regular petition routes: “If you have any complaints or grievances, you can select not more than five representatives and come to the BLV to make claims. If your problems are reasonable, the government will try its best to solve your problems,” an official in the BLV told them. The veterans responded by demanding to meet the county leaders: “let the leaders come out and meet us!” Instead, the petition officials attempted to persuade the veterans to follow normal petition procedures: “Of course, you can meet the leaders. You just need to elect five representatives and then go in and meet the leaders.” However, the veterans did not accept this response and insisted that the county leaders come to meet them. After three days of sit-in protests, the local authority eventually compromised. A local government leader in charge of veteran affairs came to persuade the veterans face to face. This leader first emphasized that the veterans’ actions were indeed against the law, but he also promised to address their problems. After the face-to-face communication, the veterans agreed to end their sit-in and follow the normal petition procedures to resolve their grievances.

A similar episode also occurred with a small-scale petition case over a land dispute. During a meeting of the county people’s congress, four villagers unfurled a banner in front of the meeting hall to draw attention to the land dispute. After being informed of this accident, the BLV leader and some officials quickly went to the site and took the villagers back to the office. The leader did not accuse these complainants of violating the regulations and rules; instead, he politely explained to them that they should follow the normal procedures. At the same time, the leader promised to try to resolve their problem and called the village cadres and relevant parties in for negotiations.

The prevailing populist rule makes the local government believe that the publicness of troublemaking activities may stain its political image and cause public distrust and discontent, damaging its legitimacy. As an official in the BLV in W City explained:

We cannot just let them keep doing that in front of the government; it has a bad effect (*ying-xiang buhao* 影响不好). We are a government for the people, and the masses are watching. What do other people think about this if they see it? They will believe that the government has not done well and has not listened to people’s complaints. It is not good.³⁸

When I pressed this official on why the local government did not use the law to punish and prevent petitioners’ activities, he responded:

Punishing them is not as easy as you think. For one, their behaviour is not too disruptive. If they truly attack the county government, that is another story. Another thing is . . . it would still provoke an adverse reaction. We are afraid that things are going to get worse. If we do not handle them properly and something more serious happens, no one could bear responsibility. We thus need to manage them very carefully.³⁹

A local official in Guangzhou also acknowledged the pressures on the local government’s legitimacy: “It is not easy for us [to handle popular resistance]. We

38 Interview with petition official H, W City, 22 January 2014.

39 Ibid.

need to be cautious. Ordinary citizens will not consider these [protest activities] as protesters' responsibilities or faults. They do not think in that way. They would point the finger at the government and blame the government."⁴⁰ Similarly, in a Yingshan 英山 county (Hubei) petition working report, the deputy director of the BLV noted "the contradiction between the pressure of public opinion and the lack of legal punishment." He suggested that the local authority had substantial concerns and fears that punishing troublemakers would draw the attention of the public and stir up new social conflicts.⁴¹

Given the higher-level government's ambivalent attitude towards petitioning activities, the political pressure on local governments is also a crucial factor that shapes their calculations when dealing with popular resistance. Under the "delegated" model, local states have considerable autonomy in how they deal with popular contention yet still come under political pressure from higher-level governments.⁴² Once protesters take their claims directly to the higher authorities, or threaten to do so through petition channels, local authorities will worry that the protest events will attract attention from above and invite political intervention. The divisions and differentiations within the political system as well as the higher-level power holders' need to monitor lower-level agents create a space for aggrieved citizens to gain support from higher-level governments.⁴³ Additional political pressure stems from the assessment requirements imposed on local officials under the cadre responsibility system. Local state officials' performance in stability maintenance, especially in controlling the amount of "non-normal petitioning" to higher-level governments, functions as a "hard target" in cadre evaluations.⁴⁴

In my ethnographic research in W City, I witnessed a case that illustrates how political pressure leads local governments to buy stability and how such compromises encourage further troublemaking behaviour. In 2010, some farmland in a village was flooded to make way for a dam project. Three villagers made claims for damages to the local authority. Initially, the county government gave them more than 10,000 yuan in compensation, and the villagers signed a "letter of assurance" (*xifang basu baozhengshu* 息访罢诉保证书) promising not to lodge any further petitions on this issue. However, the villagers lodged a second round of petitions on the same issue in 2012. The local government was furious with these villagers and refused their demands. During the standoff, the villagers filed a complaint with the provincial government, which transferred the case back to the local government and demanded that it deal with the problem. Finally, the local authority gave the villagers another 7,000 yuan in compensation. A petition official acknowledged that the pressure from the higher-level government forced

40 Interview with local official M, Guangzhou, 19 October 2014.

41 She and Du 2015.

42 Cai 2008b; 2010.

43 O'Brien and Li 2006; Cai 2010; Chen 2012.

44 Li, Liu and O'Brien 2012.

the local authority to compromise with the villagers and offer them more compensation:

They came [to the BLV] many times and asked the government for money. On this issue, the government should also bear some responsibility. [The villagers] always came to the BLV to make a claim and lodged petitions with the provincial government. The government was under so much pressure that we had no choice but to give them the money twice. We required them to sign the letter of assurance, and they promised not to lodge any more petitions.⁴⁵

However, the story does not end there. The villagers lodged a petition for a third time in late 2013. The local government was fed up with these villagers and refused to compensate them again. Seeing this, the villagers repeated their previous tactics. They continued to make claims to the BLV and threatened to lodge a petition with the provincial government again and even to take their petition to the central government in Beijing. An official in the BLV recognized that such persistent petition activities were incentivized by the local authority's strategy of buying stability, as he told me: "They promised that they would stop petitioning after compensation and signed the letter of assurance, but they are coming again. Now that they know they can get money from the government, they treat the government as a cash cow and come to petition once they have no money left to spend."⁴⁶ Even if these petitioners continued to break the rules, this local official acknowledged that there was nothing the local government could do: "There is nothing we can do if they come to petition; we just ignore them and let them sit here."⁴⁷

Bureaucratic Processing, Insulation from Pressure and Progressive Legal Repression

Although the prevailing rhetoric of law-based governance provides a basis from which local governments can legitimize their coercive actions, owing to the political ambiguity in the realm of contention governance, they are regularly cautious in their management of and response to contention and engage in progressive legal repression. This section further illustrates the elements of progressive legal repression and analyses how and why bureaucratic processing allows local officials to overcome political uncertainty and reduces the risks of formally using the criminal law to prosecute protestors in a vague political environment.

Generally, there are three main elements to progressive legal repression: inducing unruly protestors to engage with available bureaucratic procedures, utilizing bureaucratic procedures to reconceptualize protestors' claims and behaviour as unreasonable and signal the fulfilment of government responsibilities, and applying criminal sanctions to suppress protestors after legitimacy and political concerns are partly dealt with. Local governments do not tend to initially apply criminal proceedings against protestors when illegal petition events occur unless

45 Interview with petition official Z, W City, 28 January 2014.

46 Ibid.

47 Ibid.

the protesters' behaviour is very disruptive and violent. Local officials are more likely to use soft tactics to placate protesters and encourage them to engage with the available legal-bureaucratic procedures to resolve their issues. As an official in the BLV in W City mentioned:

When dealing with these incidents, the first step normally is to persuade them to come in through normal procedures. They just want to get their problems solved, and they will agree if we try a few more times. Once they are willing to come in through normal procedures, everything goes well. We can find out what they want, and related government departments can investigate what happened and find the problem. Then, we can make a decision and give them feedback. If the issue is complicated, we can also carry out a negotiation or hold a hearing meeting. There are some procedures we can do, and the things can be solved.⁴⁸

Previous literature has noted that the Chinese state uses various legal-bureaucratic institutions and procedures to absorb popular resistance.⁴⁹ There are official procedures within the *xinfang* system that enable local governments to deal with citizen complaints, including investigation, resolution, mediation, public hearings, re-examination and review, and termination, although there are various different types of petitions and protests, and specific practices might vary. Once complainants decide to go down the official route, the legal-bureaucratic game begins. As Ching Kwan Lee and Yonghong Zhang find, aggrieved citizens are willing to participate in the game not only because of the legitimacy implied by bureaucratic rules and procedures but also because there is a real chance of winning the game.⁵⁰ If complainants were unable to follow the official procedures, petition officials would attempt to guide them through the entire bureaucratic process. During my fieldwork, I became familiar with a case regarding a pension problem, which gave me an insight into the guidance offered by local officials. The petitioner was the employee of a construction company in W City. He felt unhappy about the local government's response to his complaint and so lodged petitions with the BLV several times. The head of the BLV advised the officials in the reception area: "you can ask him to apply for a re-examination and review and try to guide him go through the whole process. The procedures of re-examination and review are prescribed in the petition regulations. If you guide them to complete all these procedures, our responsibility is fulfilled. When he comes here next time, it will not be our responsibility."⁵¹

While the extant literature focuses on how bureaucratic institutions, rules and procedures demobilize popular resistance by channelling contentious activities and consuming protesters' time, money and energy,⁵² progressive legal repression emphasizes the role of bureaucratic processing in overcoming the constraints faced by state officials and shaping government reactions. Local governments are regularly required to satisfactorily address petitioners' problems in legal and reasonable cases. However, as discussed above, owing to the political

48 Interview with petition official L, W City, 24 January 2014.

49 Lee and Zhang 2013.

50 Ibid.

51 Fieldnotes, 5 March 2014.

52 Lee and Zhang 2013.

ambiguity in contention management, the tension between populist rule and law and order, and the state's balancing act between political control and regime stability, the lines between the legal and the illegal and between the reasonable and the unreasonable become blurred. Bureaucratic processing helps state officials to overcome such political uncertainty and lowers the potential risks of formally applying criminal proceedings through two mechanisms. First, once the petition cases have been through the legal-bureaucratic route, the procedure serves as a crucial institutional platform which helps local governments reinforce their discursive power by allowing officials to reconceptualize protesters' claims and behaviour as unreasonable. Local governments can use the knowledge they have gained from passing the details of the complaint through the bureaucratic procedures to frame convincing and reasonable depictions, explanations and arguments for or against the complaint. As a result, local authorities have a dominant role in interpreting the meanings of protesters' demands and behaviour and the roots of social conflicts. Complainants' persistent contentious activities are often described as "illegal petitioning," "unreasonable petitioning" or "disruptive petitioning," and the causes of the contention may be reframed to show the protesters as at fault. By following this course, local authorities not only delegitimize petitioners' protest activities but also legitimize further disciplinary steps taken against protesters. Second, by performing these bureaucratic practices, local governments can demonstrate that they are fulfilling their responsibilities by correctly following official procedures. All bureaucratic procedures are regulated and authorized by the state. When faced with inspections by the public and higher authorities, the performance of bureaucratic practices and the ensuing paperwork also can demonstrate the government's responsiveness to complainants – "we have made a strong effort to resolve petitioners' demands" – no matter whether local authorities have substantively satisfied protesters' demands or have merely paid lip service to procedures for evaluation purposes or to present an image of good management.

Such reconceptualization and signalling practices can help to insulate state officials, at least to some extent, from the legitimacy and political pressures that they face and so encourage them to use legal repression. During my fieldwork, I observed a laid-off state worker who continued to come to the BLV even after his case had been re-examined and reviewed. The following dialogue between the petitioner and the BLV official highlights the effects of bureaucratic processing:

The official: It is useless for you to come here. Your case has been dealt with by us in many rounds.

The petitioner, threateningly: You [the government] should care for me and help me solve my problems. If you do not do so, I will come here every day and stay here. Do not push me to take further actions.

The official, angrily: You have already applied for review and re-examination with the upper authorities, and we have also replied to you. Your case was terminated, and the procedures

ended. It is not our responsibility. It is your problem. You are disrupting the order of petition working now. If you continue doing this, we can call the police.⁵³

Bureaucratic practices can effectively help to overcome the political constraints faced by local authorities when information asymmetry occurs within government hierarchies and bureaucratic practices matter for the lower-level government's discourse domination and the higher-level government's scrutiny. In China, given the principle of "territorial jurisdiction" (*shudi guanli* 属地管理), higher-level governments shift the main responsibility of contention management to lower-level authorities and rely heavily on local officials' reports for knowledge of local conditions. However, local state officials tend to protect their positions and, thus, do not tell the whole truth to their superior authorities, leaving higher-level power holders ignorant of the problems and realities at the lower level.⁵⁴ Although higher-level governments sometimes conduct field investigations into petition cases at the local level, these investigations are highly selective and usually conducted within a campaign. According to public announcements on the website of the State Bureau for Letters and Visits (*guojia xinfangju* 国家信访局, SBLV hereafter), 414 petition cases, which is just a fraction of the total number of national cases, were investigated by the central agencies from December 2014 to November 2019.⁵⁵ Therefore, local authorities play a dominant role when interpreting the meanings of protesters' demands and behaviour after bureaucratic processing.

If protesters can obtain support from the upper authorities, local governments might still be faced with the possibility of disciplinary action, despite framing complainants' claims and behaviour as unreasonable and signalling that they have done their duty. However, the higher-level governments' selective scrutiny strategy provides an opening for local authorities to decrease political pressure after bureaucratic processing. When information asymmetry occurs and upper authorities have limited capacity to fill this information gap, screening protest cases through bureaucratic processing and then adopting a differentiated attitude become a low-cost strategy for higher-level rulers to balance political control and regime stability. More specifically, higher-level governments still present opportunities for protest events that have yet to go through legal-bureaucratic procedures but are less likely to support veteran cases that have been processed and terminated by some bureaucratic practices. This selective and differentiated attitude and strategy can be traced to the central government's significant effort to emphasize the termination of petition cases. The Xi administration has further highlighted closing the window for veteran petitioners. In late 2013, the SBLV further clarified the petition termination procedures and underlined that petition bureaus should no longer accept petition cases that have been concluded.⁵⁶

53 Fieldnote, 25 March 2014.

54 Spires 2011, 19; Chen 2012, 104–05.

55 See the public announcements on http://www.gjxfj.gov.cn/gjxfj/xfgj/dcsx/A090504index_1.htm.

56 See "Guanyu wanshan xinfang shixiang fucha fuhe gongzuo de yijian" (Opinions on improving the

Further Analysis Based on Legal Repression Cases

To examine the generality of the theory derived from the fieldwork and to better consider other competing explanations of the government's response, this section uses legal repression cases collected from *China Judgments Online* to conduct a sequential comparison and statistical analysis.

After collecting 5,474 cases from *China Judgments Online*, I used 3,102 cases to conduct sequential analysis.⁵⁷ This study distinguishes two patterns of legal repression: direct legal repression (“protest event → legal repression”) and progressive legal repression (“protest event → bureaucratic processing → protest event → legal repression” or “protest event → bureaucratic processing → legal repression”). Table 1 examines how the attributes of protest events (before the bureaucratic processing) affect whether a case enters the bureaucratic process or experiences direct legal repression. As Table 1 demonstrates, the pattern of progressive legal repression is more suitable when local authorities deal with boundary-pushing protest activities. Progressive legal repression was used in almost all of the 2,569 cases of troublemaking protests targeted at lower-level and higher-level governments. In contrast, among the 83 cases with violence or collective violence, only 9 cases were legally repressed after bureaucratic processing. Interestingly, even if protesters stage collective resistance against higher-level governments, they might not be directly repressed by local authorities through criminal proceedings. Among 78 cases of collective petitions at high-level governments, 55 cases fit the mode of progressive legal repression. Of the 372 cases of collective actions at the local level, progressive legal repression was employed in 149 cases.

To further examine the effect of bureaucratic processing on local governments' responses, I selected some cases of troublemaking petitions lodged in Beijing as examples to conduct statistical analysis. The reasons for this selection and the criteria for including a case can be found in Appendix B (online). I used 351 cases for analysis. The immediate employment of legal repression after some bureaucratic practices can indicate the effect of bureaucratic processing, given that the theory suggests that bureaucratic practices can help local authorities to reduce potential risks and encourage them to bring criminal charges against the protesters. I used logistic regression to examine whether the level of bureaucratic processing and other factors affect the likelihood of local governments employing immediate legal repression following the bureaucratic process. If local governments are more likely to deploy prompt legal repression after the bureaucratic

footnote continued

re-examination and review of petition matters). *Guojia xinfang ju menhu wangzhan*, 2013, <http://www.gjxfj.gov.cn/gjxfj/xxgk/ywyz/dcdbgz/webinfo/2016/03/1460416223098444.htm>.

57 Please refer to Appendix A in the online supplementary material for the search steps and the criteria for inclusion.

Table 1. **Protest Attributes and the Pattern of Legal Repression**

| Level of Government Targeted by Citizen Protest | Characteristics of Protest Actions | | |
|---|--|--|---|
| | <i>Troublemaking</i> | <i>Collective</i> | <i>Violent or collectively violent</i> |
| Higher-level | Direct legal repression (6); Progressive legal repression (1,684) | Direct legal repression (23); Progressive legal repression (55) | Direct legal repression (2); Progressive legal repression (1) |
| Lower-level | Direct legal repression (5); Progressive legal repression (874) | Direct legal repression (223); Progressive legal repression (149) | Direct legal repression (72); Progressive legal repression (8) |

Notes:

Cases involving more than five people were considered collective resistance, and cases mentioning property damage and injury were coded as violent resistance. Higher-level governments refer to provincial governments and the central government.

process has been sufficiently exhausted, relative to limited processing, this can provide empirical evidence for the theory.

The dependent variable is a dummy indicating whether local governments deploy immediate legal repression after bureaucratic procedures. It is to be noted that not all of the cases experienced prompt legal repression after some bureaucratic procedures, and variations exist in how immediately the local government employed legal repression after bureaucratic processing.⁵⁸ In model 1, a protest case was coded “1” if (1) protesters staged *non-normal* petitions in Beijing several times before the final bureaucratic procedure, and (2) protesters only staged *non-normal* or *normal* petitioning in Beijing 0–1 time after the last bureaucratic procedure and then experienced immediate legal repression. Other cases were coded as “0.” In all, 129 cases (36.8 per cent) were recorded as “1.”⁵⁹ This measurement of the dependent variable might run the risk of overlooking the effect of a protestor verbally threatening to lodge a petition in Beijing and those actual but unsuccessful petitions to Beijing which are intercepted by the local authorities. To reduce the impact of this problem, an alternative measurement of dependent variable is used in model 2. In addition to meeting the two criteria mentioned above, only those cases in which local governments deployed legal repression within 95 days after the final bureaucratic process were coded as “1” (the mean time interval of all immediate legal repression cases in model 1 is 190 days). The independent variable is the level of bureaucratic processing, which was coded into three categories: limited processing, sufficient processing and terminated processing. The control variables include the type of demand, period of time, government concession, the nature of the crime, protest intensity and region. Please refer to Appendix C (online) for the detailed measurement of the independent variable and control variables.

Table 2 presents the results of the logistic regression analysis on the local government’s choice of legal repression. In model 1, the findings show the positive effect of the level of bureaucratic processing on the use of legal repression, which provides empirical support for the main argument in this study. More specifically, after controlling for other variables, for cases with sufficient processing, the odds of immediately deploying legal repression following bureaucratic procedures are 288 per cent higher than for cases with limited processing. For cases with terminated processing, the likelihood of immediately using legal repression after bureaucratic procedures is 328 per cent higher than for cases with limited processing. The results also show that the decision on legal repression is shaped

58 Such variation might indicate that there is not an accurate time point for predicting the deployment of legal repression, although bureaucratic practices can help local authorities reduce potential risks and encourage them to turn to legal repression. There is still an unclear political space for protesters to use troublemaking tactics to test the boundaries of state tolerance and maximize their interests after bureaucratic processing. This variation requires further research in the future.

59 More detailed information about the cases being recorded as experiencing immediate legal repression can be found in Appendix C in the online supplementary material.

Table 2. **Effects of Bureaucratic Processing on Immediate Legal Repression**

| | Immediate Legal Repression after Bureaucratic Practices | |
|---|---|------------------------------------|
| | Model 1 All | Model 2 Time Interval < 95 days |
| Level of bureaucratic processing (ref. limited processing) | | |
| - sufficient processing | 1.358*** | 1.217** |
| - terminated processing | 1.454*** | 1.290* |
| <i>Controls</i> | | |
| Demand (ref. civil dispute) | | |
| - land requisition and demolition | 0.0250 | -0.472 |
| - villager–village cadre conflict | 0.217 | 0.317 |
| - social welfare and policy benefit | 0.0138 | -0.719 |
| - citizen–government conflict | 1.007** | 0.159 |
| Government concession | 0.131 | -0.283 |
| Year (ref. 2014) | | |
| 2015 | 1.241* | 0.336 |
| 2016 | 1.384** | 0.814 |
| 2017 | 2.203*** | 1.750** |
| 2018 | 2.932*** | 2.626*** |
| 2019 | 3.816*** | 4.229*** |
| The nature of the crime: | | |
| - non-normal petitioning in Beijing | 15.57 | 14.71 |
| - beating | 1.594 | 1.508 |
| - insulting | -0.411 | -1.158 |
| - blackmailing | 0.263 | 0.298 |
| - causing chaos | -14.65 | -13.30 |
| Protest intensity: | -0.0173 | -0.00709 |
| the number of previous petitions in Beijing | | |
| Region | | |
| - provinces with numerous petitions in Beijing | 0.187 | 0.166 |
| - eastern coastal provinces | -0.177 | 0.373 |
| Constant | -4.447*** | -5.093*** |
| Observations | 351 | 351 |

Notes:

*** p<0.001, ** p<0.01, * p<0.05

by the type of demand. All other factors being equal, local officials are more likely to immediately carry out legal repression in citizen–government conflict cases, relative to civil conflict cases. This finding is consistent with the cost-benefit explanation in previous studies.⁶⁰ In addition, local governments increasingly deploy immediate legal repression after bureaucratic processing over time. For example, the odds of immediately using legal repression after bureaucratic processing in cases in which the last bureaucratic procedure was performed in

60 Cai 2008b.

2018 is 1,776 per cent higher than for cases in which the last bureaucratic procedure was performed in 2014. In model 2, even if an alternative measurement of the dependent variable is used, the positive effect of the level of bureaucratic processing is still statistically significant.

Limitations

One limitation of this study has been the difficulty in assessing whether the cases used for the analysis are representative of the overall legal repression practices in China. The court decisions collected from *China Judgments Online* do not represent the actual number of legal repression cases, and how judicial agencies release court decisions remains unclear. In the sequential and statistical analyses, a large number of cases were deleted owing to the strict standards for including a case for analysis.⁶¹ Additionally, since court decisions are documented by the local authorities, there exists the possibility that some information might be selectively recorded and that some potential confounders may be ignored in the empirical analysis. Despite these limitations, this study offers findings to aid in understanding the dynamics of state repression under the legal governance campaign in China. The decision on legal repression is too complicated to be explained solely by one factor. This study does not intend to deny the roles of alternative factors in explaining the government response. Rather, this article primarily focuses on the effect of bureaucratic processing on the employment of legal repression and demonstrates the conditions and mechanisms of such an effect. Further comparative research is expected in the future.

Conclusion

Drawing on ethnographic fieldwork in Guangdong, legal repression cases and government documents, this article examines how local governments cope with popular contention under the legal governance campaign in Xi Jinping's China. This study reveals a novel dynamic of state repression under authoritarian legality, namely, progressive legal repression. Instead of promptly issuing criminal proceedings to defuse threatening popular contention, the preferred state action is to induce aggrieved citizens to engage in available legal-bureaucratic procedures and then rely on bureaucratic practices to overcome political uncertainty and reduce the potential risks before officially resorting to criminal prosecution. This study further explores the conditions under which such progressive legal repression emerges and the mechanisms through which bureaucratic processing helps state agents to reduce risk.

61 I discuss this sampling problem and conduct some robustness tests in Appendix E in the online supplementary material. The T-test confirms that the average sentence for the two groups of cases (deleted cases and included cases) is not statistically different. It indicates that the sampling may not cause bias to the analysis.

This study contributes to several strands of the literature. First, it offers a more complicated picture of the dynamics of state–society contention under authoritarian legality. Even though the legal governance campaign provides a convenient basis on which authorities can legitimize their coercive actions, political ambiguity in contention management can impose considerable pressure on governments and prevent them from employing arbitrary suppression. Local governments still need to consider the political risks of deploying legal repression and tend to rely on bureaucratic practices to reduce the potential risks before officially resorting to legal repression. Aggrieved citizens sometimes can gain the upper hand and succeed with their claims to some extent.

Second, the findings also deepen our understanding of the regime’s resilience in China. On the one hand, conflicting rules and signals act as political constraints and can prevent local authorities from excessive repression and thus avoid the radicalization of popular resistance to some extent. On the other hand, the higher-level governments screen protest cases through bureaucratic processing and choose to close opportunities for protracted cases. Such a differentiated strategy helps to prevent escalation of the contention and balances political control and regime stability.

Finally, this article further adds to the literature on state responses in China by emphasizing the role of procedural practices for government behaviour. Whereas the existing literature highlights the importance of protest attributes and strategies deployed by protesters in shaping the government’s response, this paper explores how bureaucratic practices help to relax political constraints faced by state authorities, eventually leading to differentiated government reactions. This process of relaxing constraints departs from the demobilizing effect captured by the “bureaucratic absorption” framework, revealing a different role for bureaucratic processing in contention management. Although this article focuses on government reactions to popular contention, the findings can provide insights into state authorities’ behaviour and policy implementation in other fields when they face citizens’ contentious and non-contentious bargaining.

The implications for state–society relations under the legal governance campaign in China await more observations. The findings show that the government response generally fits the pattern of progressive legal repression, but it remains to be seen whether progressive legal repression will be gradually replaced by direct legal repression over time. Moreover, the effectiveness of legal repression seems uncertain. Protesters might consider criminal prosecution as a political reprisal and a breach of political commitments, leading to backlash. Some petitioners may continue to use troublemaking and even disruptive strategies in struggles with the state authorities, despite recognizing the risks and receiving criminal sanctions. Further research on the legal governance campaign is expected in the future.

Supplementary material

Supplementary material is available online at <https://doi.org/10.1017/S0305741022001497>

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Conflicts of interest

None.

Biographical note

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摘要: 本文探讨中国地方政府在依法治国背景下如何处置非法的社会抗议。本研究基于田野调查、公开的裁判文书以及政府文件等多种资料发现，虽然盛行的法治修辞为地方政府合法化其压制行为提供了便利，但是国家在社会冲突治理方面相互冲突的话语、规则和信号也给地方政府带来了明显的压力，进而导致地方政府对于非法抗议活动的谨慎应对。相比于直接采取刑事手段去威慑抗议者，地方政府更通常的策略是引导抗议者遵循即有的解决社会冲突的官僚程序。通过借助官僚程序重新构建抗议者的诉求和行为 and 展示政府责任的完成，地方政府在降低损害其政治形象和遭受问责的风险之后再转向刑事惩罚。本研究揭示了依法治国背景下更为复杂的国家压制图景和强调了程序性实践对于政府应对行为和社会稳定的重要影响。

关键词: 上访; 社会抗议; 政治不确定性; 官僚程序; 法律压制

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