An Empirical Study of Administrative Appeal in Taiwan: A Cautionary Tale

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ABSTRACT

Few in-depth empirical studies on administrative appeal systems in developed countries are available. It is unclear whether the requirement to exhaust administrative remedies achieves its main purposes: which is to allow agencies to correct their own mistakes and to exercise discretion, and ultimately to relieve the burdens on courts. In the United States, the administrative appeal system was found to serve the agency's interest. Whether a more carefully designed system can be an impartial forum for reviewing the agency decision *de novo* is yet to be studied.

Using data on Taiwan's administrative appeal cases between 2005 and 2012 in logit regression models, other statistical tests, and descriptive analysis, this Article tests whether Taiwan's administrative appeal system has lived up to its institutional purposes, and examines whether Taiwan's unique design, under which each case is reviewed by a large committee of which a majority are law professors, has produced positive effects.

The major findings are that the administrative appeal system in Taiwan corrects most of the mistakes that are made by administrative agencies either through review committees or administrative courts. When the resolution of a case requires "non-legal expertise," the appeal reviewers have focused only on procedural defects, leaving substantial matters unattended. Merit reviews of agency decisions appear to be rare. The revocation rate (appeal rate) does not increase (decrease) with the relative number of law professors in review committees. Overall, the inclusion of a number of law professors in Administrative Appeal Review Committees does not appear to have the observable effects expected by the legislature and within legal literature.

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The author would like to thank Li-Fu Chen, Thomas Chen, Ted Eisenberg, Tom Ginsburg, Valerie Hans, Dan Ho, Shu-Perng Hwang, Kuo-Chang Huang, David Law, Chien-Liang Lee, Ming-Hsin Lin, San-Chin Lin, Shwu-Fann Liou, J.J. Prescott, Susan Rose-Ackerman, Henry Smith, Te-chih Sun, Dennis Te-Chung Tang, Li-Wen Tsai, Pi-Fang Wang, Jui-Hung Weng, Yueh-Sheng Weng, Chi-Yuen Lasars-Wu, Jui-Te Yu, and participants at the 2010 Conference on Empirical Legal Studies held at Yale Law School for helpful comments, and Yi-sin Chen, Ying-chu Chen, Yu-chih Chen and Yi-Shien King for coding, data analysis, and other research assistance. Funding by Academia Sinica is greatly appreciated.

I. INTRODUCTION

In terms of statutory interpretation, *Chevron U.S.A., Inc. v. National Resources Defense Council, Inc.*[1] and its progeny expanded the judicial doctrine of deference to the administrative agency. *Chevron* does not always tie the hands of the Supreme Court itself;[2] yet it is the most cited case in federal courts in the history of American public law.[3] Additionally, an empirical study has found that the lower courts indeed became more

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[1] 467 U.S. 837 (1984).

[2] *See* Thomas Merrill, *Judicial Deference to Executive Precedent*, 101 YALE L.J. 969 (1992); William N. Eskridge Jr. & Lauren E. Baer, *The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations from Chevron to Hamdan*, 96 GEO. L.J. 1083 (2008); Connor N. Raso & William N. Eskridge Jr., *Chevron as a Canon, Not a Precedent: An Empirical Study of What Motivates Justices in Agency Deference Cases*, 110 COLUM. L. REV. 1727 (2010).

[3] *See* STEPHEN G. BREYER ET AL., ADMINISTRATIVE LAW AND REGULATORY POLICY: PROBLEMS, TEXT, AND CASES 247 (6th ed. 2006).

deferential after *Chevron*,[4] though other courts have only found minimal effect of *Chevron*.[5] In any case, all these studies would agree that at least since *Chevron,* courts do not always review decisions made by administrative agencies. Administrative agencies, however, must still be monitored in order to increase adjudication accuracy. The President and his office cannot spare the effort to inquire into even a handful of adjudications or rules made by the administrative agencies. The mundane work of giving the agency decisions a second look then falls within internal administrative review procedures.

Given the vast amount of reviews administrative agencies conduct on a daily basis, it is somewhat surprising to find that "Administrative Appeal" is an exotic term in U.S. Administrative Law.[6] Administrative Law textbooks lightly treat this legal regime under the heading of "exhaustion of administrative remedies."[7] Moreover, there are neither books nor articles comprehensively chronicling the various available administrative remedies in the United States.[8] Very few American scholars appear to be interested in understanding whether the internal administrative reviewers are good agents of the law (correcting interpretive errors made by the administrative agencies), captives of the regulated industry, or protectors of the agency's own interests.

Furthermore, while empirical legal studies as a research approach thrived in the United States and not so much elsewhere, empirical studies on

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[4] *See* Peter H. Schuck & E. Donald Elliott, *To the Chevron Station: An Empirical Study of Federal Administrative Law*, 1990 DUKE L.J. 984 (1990).

[5] *See* John F. Belcaster, *The D.C. Circuit's Use of the Chevron Test: Constructing a Positive Theory of Judicial Obedience and Disobedience*, 44 ADMIN. L. REV. 745 (1992); Sidney A. Shapiro & Richard E. Levy, *Judicial Incentives and Indeterminacy in Substantive Review of Administrative Decisions*, 44 DUKE L.J. 1051 (1995).

[6] By contrast, civil law countries stipulate detailed requirements of administrative appeals in statutes. In addition, Administrative Law scholars in civil law countries discuss and debate the designs and merits of the administrative appeals system in conferences, journals, and books.

[7] *See, e.g.*, BREYER ET AL., *supra* note 3, at 917–32; RICHARD J. PIERCE JR. ET AL., ADMINISTRATIVE LAW AND PROCESS 194–200 (4th ed. 2004); JERRY L. MASHAW ET AL., ADMINISTRATIVE LAW, THE AMERICAN PUBLIC LAW SYSTEM: CASES AND MATERIALS 978–93 (5th ed. 2003).

[8] For an overview of the U.S. system, *see* PETER CANE, ADMINISTRATIVE TRIBUNALS AND ADJUDICATION 72–82 (2009). For comparison of the administrative appeal systems in Australia, the U.K., the U.S., and France, *see* Peter Cane, *Judicial Review and Merits Review: Comparing Administrative Adjudication by Courts and Tribunals*, *in* COMPARATIVE ADMINISTRATIVE LAW 426–45 (Susan Rose-Ackerman & Peter L. Lindseth eds., 2010). For administrative appeal regime within the social security system, *see* JERRY L. MASHAW, BUREAUCRATIC JUSTICE: MANAGING SOCIAL SECURITY DISABILITY CLAIMS (1983). Discussions of the exhaustion doctrine in the U.K. are also few, *see* HENRY WADE, WILLIAM RAWSON & CHRISTOPHER F. FORSYTH, ADMINISTRATIVE LAW 602–09 (10th ed. 2009). Cowan and Halliday's qualitative study examines the internal reviews of local authority decision-making relating to homelessness in two sites in England, DAVID COWAN & SIMON HALLIDAY, THE APPEAL OF INTERNAL REVIEW: LAW, ADMINISTRATIVE JUSTICE, AND THE (NON-) EMERGENCE OF DISPUTES (2003).

the exhaustion of administrative remedies in the United States are scant.[9] At the same time, scholars in civil law countries such as China, Germany, and Japan have conducted empirical (albeit rudimentary) studies on their administrative appeal systems.[10] None of these studies, however, is in English. Thus, this Article, using data on Taiwan's administrative appeal system, will be the first to conduct in-depth empirical legal studies on an

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[9] Boyd and Driscoll empirically examine the administrative appeal system in the U.S. Department of Agriculture. Christina L. Boyd & Amanda Driscoll, *Adjudicatory Oversight and Judicial Decision Making in Executive Branch Agencies*, AM. POL. RES., (forthcoming). Benitez-Silva et al.'s empirical work on the social security disability application touches on administrative appeals. *See* Hugo Benitez-Silva et al., *An Empirical Analysis of the Social Security Disability Application, Appeal, and Award Process*, 6 LAB. ECO. 147 (1999). Guthrie et al.'s empirical study on administrative law judges is distantly related. Chris Guthrie et al., *The "Hidden Judiciary": An Empirical Examination of Executive Branch Justice*, 58 DUKE L.J. 1477 (2009).

[10] For China's system, Gao found that the revocation rate for administrative appeal cases regarding public safety cases between 2000 and 2003 was on average 18.6 percent, Xuwen Gao, *1991–2003 Nián Guánguó Xìng Gōngān Xíngzhèng Fùyì, Xíngzhèng Sùsòng Tǒngjì Fēnxī* [*Statistical Analysis of Administrative Reconsideration Cases and Administrative Litigation Cases Regarding Public Safety, 1991–2003*], *in* XÍNGZHÈNG FÙYÌ SĪFǍHUÀ-LǏLÙN, SHÍJIÀN YǓ GǍIGÉ [Administrative Law and Administrative Litigation Law.] 198, 198–209 (Han-huá Zhou ed., 2005). Fang found that revocation rates for all administrative appeal cases in China were 18 percent, 16.5 percent, and 14.8 percent in 2000, 2001, and 2003, respectively. Jun Fang, *Wǒguó Xíngzhèng Fùyì Zhìdù de Shíshī Xiànzhuàng yǔ Wèntí* [*The Practice and Problem of China's Administrative Reconsideration Law*], *in* XÍNGZHÈNG FÙYÌ SĪFǍHUÀ-LǏLÙN, SHÍJIÀN YǓ GǍIGÉ [ADMINISTRATIVE LAW AND ADMINISTRATIVE LITIGATION LAW] 129, 129–138 (Han-huá Zhou ed., 2005). Lu found that between 2003 and 2007, the revocation rate for all administrative appeal cases was on average 16.4 percent, and after administrative appeal, only 22.8 percent of the appellants brought their cases to court, which dismissed 60 percent of the suits. Xiwei Lu, *Xíngzhèng Fùyì Zhìdù de Shíshī yǔ Zhǎnwàng* [*The Implementation and Prospect of China's Administrative Reconsideration Law*], *in* XÍNGZHÈNG DIÀOCHÁ ZHĪ JIÀNZHÌ YǓ RÉNQUÁN BǍOZHÀNG–XÍNGZHÈNG SÙSÒNG ZHĪ QIÁNZHÌ JIÙJÌ FĀNGFǍ YǓ CHÉNGXÙ [THE ESTABLISHMENT OF ADMINISTRATIVE INVESTIGATION AND THE PROTECTION OF HUMAN RIGHTS: ADMINISTRATIVE APPEAL PROCEDURES] 340–41 (Taiwan Admin. L. Ass'n ed., 2008). For Germany's system, Oerder found that the Administrative Appeal system settles 80 percent of the appeal cases; that is, only 20 percent of the appellants go to court. *See* MICHAEL OERDER, DAS WIDERSPRUCHSVERFAHREN DER VERWALTUNGSGERICHTSORDNUNG 56 (1989). Schwabe found that the Administrative Appeal system settles 90 percent of the appeal cases. *See* JUERGEN SCHWABE, VERWALTUNGSPROZESSRECHT 46 (4th ed. 1996). For a review of the recent empirical studies in Germany, see Chiyuen Wu, *Déguó Gèng Fèi Sùyuàn Xiānxíng Chéngshì zhī Qūshì* [*The Trend of Germany's Reform of Widerspruch*], *in* XÍNGZHÈNG SÙSÒNG ZHÌDÙ XIĀNGGUĀN LÙNWÉN HUÌBIĀN [COLLECTED ARTICLES ON ADMINISTRATIVE LITIGATION] 279, 279–313 (Judicial Yuan ed., 2009). For Japan's system, Takahashi observed that administrative appeals seldom lead to revocation decisions. *See* Shigeru Takahashi, *Rìběn Xíngzhèng Bùfú Shěnchá Zhìdù zhī Gǎigé jí qí Tèzhēng* [*The Characteristics and Reform of Japan's Administrative Appeal System*], *in* XÍNGZHÈNG DIÀOCHÁ ZHĪ JIÀNZHÌ YǓ RÉNQUÁN BǍOZHÀNG–XÍNGZHÈNG SÙSÒNG ZHĪ QIÁNZHÌ JIÙJÌ FĀNGFǍ YǓ CHÉNGXÙ [THE ESTABLISHMENT OF ADMINISTRATIVE INVESTIGATION AND THE PROTECTION OF HUMAN RIGHTS: ADMINISTRATIVE APPEAL PROCEDURES] 320 (Taiwan Admin. L. Ass'n ed., 2008); Lin found that the winning rate in administrative appeals is around 10 percent. *See* Sue-fong Lin, *Rìběn Xíngzhèng Bùfú Shēngmíng Zhìdù zhī Biànqiān yǔ Zhǎnwàng* [*The Administrative Review System in Japan*], *in* XIÀNFǍ TǏZHÌ YǓ FǍZHÌ XÍNGZHÈNG–CHÉNG ZHÒNGMÓ JIÀOSHÒU LIÙZHÌ HUÁDÀN ZHÙSHÒU LÙNWÉNJÍ [ON CONSTITUTIONALISM AND RULE OF LAW: FESTCHRIFT IN HONOR OF PROF. DR. CHUNG-MO CHENG'S 60TH BIRTHDAY] 418 (Editing Comm. for Prof. Cheng's Festchrift ed., 1998).

administrative appeal system in a civil-law jurisdiction. This Article can also shed light on whether internal administrative reviewers can be good agents of the law, thus justifying more judicial deference to agencies' statutory interpretation.

Although detailed designs of administrative appeal systems vary across jurisdictions, the main purposes of administrative appeal systems are similar, if not the same. In a recent U.S. Supreme Court case, *Woodford et al. v. NGO,* [11] the Court, citing *McCarthy v. Madigan*, [12], explains that the exhaustion of administrative remedies doctrine has two goals. First, exhaustion protects "administrative agency authority" by giving agencies an opportunity to correct their own mistakes.[13] Second, exhaustion promotes efficiency because agency proceedings resolve claims more quickly and economically than regular courts.[14] Appellants may settle their claims at the administrative level, thus relieving the burden on the courts.[15] Moreover, an earlier case, *McKart v. United States,* added, "since agency decisions are frequently of a discretionary nature or frequently require expertise, the agency should be given the first chance to exercise that discretion or to apply that expertise."[16] The purposes of an administrative appeal system as elaborated by civil-system lawyers are similar.[17] Civil-system lawyers stress the final point because courts often defer to administrative agencies' decisions where the decisions are based on "non-legal expertise." Because discretion by agencies is not always reviewable, a review or reconsideration of the adjudication by another official or another agency may be an appellant's only chance of getting an improperly determined administrative disposition corrected. Administrative appeal, in these regards, is critical to protecting appellants' rights.[18]

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[11] Woodford et al. v. NGO, 548 U.S. 81, 89 (2006).

[12] 503 U.S. 140 (1992).

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] McKart v. United States, 395 U.S. 185, 194 (1969).

[17] *See, e.g.*, FRIEDHELM HUFEN, VERWALTUNGSPROZESSRECHT 64–65 (7th ed. 2008).

[18] For such arguments in Germany, *see* Ai-er Chen, *Xíngzhèng Sùsòng Xhěnjí Zhìdù de Jiǎntǎo–Jièjìng yú Déguó Xíngzhèng Sùsòng Fǎzhì de Gǎigé* [*A Critique of Taiwan's Administrative Litigation System: Lessons from the Reform of Germany's Administrative Litigation System*], in XÍNGZHÈNG SÙSÒNG ZHÌDÙ XIĀNGGUĀN LÙNWÉN HUÌBIĀN [COLLECTED ARTICLES ON ADMINISTRATIVE LITIGATION] 50, 54 (Judicial Yuan ed., 2007); in China, Weilie Hu, *Xíngzhèng Fùyì Zhìdù* [*Administrative Appeal System*], *in* XÍNGZHÈNGFǍ YǓ XÍNGZHÈNG SÙSÒNGFǍ XUÉ [ADMINISTRATIVE LAW AND ADMINISTRATIVE LITIGATION LAW] 418 (S. Ying ed., 2008); in Korea, Yongsŏp Kim, *Hánguó Xíngzhèng Sùsòng Qián zhī Quánlì Bǎozhàng Fāngfǎ jí Chéngshì* [*Human Rights Protection and its Procedures Before Administrative Litigation in Korea*], *in* XÍNGZHÈNG DIÀOCHÁ ZHĪ JIÀNZHÌ YǓ RÉNQUÁN BǍOZHÀNG–XÍNGZHÈNG SÙSÒNG ZHĪ QIÁNZHÌ JIÙJÌ FĀNGFǍ YǓ CHÉNGXÙ [THE ESTABLISHMENT OF ADMINISTRATIVE INVESTIGATION AND THE PROTECTION OF HUMAN RIGHTS: ADMINISTRATIVE APPEAL PROCEDURES] 215, 216–17 (Taiwan Admin. L. Ass'n ed.,

The preceding traditional, legal account of the administrative appeal process is now being challenged by public choice theorists. In theory, administrative appeal should be a neutral procedure, focusing on the legality and merits of the administrative decisions. Internal reviewers should be good agents of the law, correcting the administrative errors presented before them. In reality, American scholars have argued that agency heads (or their delegates) make administrative appeal decisions in a way that their agencies can "maintain control over policy development and application."[19] The agency heads use this power to "further the interests of [their] agency."[20] Indeed, Boyd and Driscoll's empirical study on administrative appeal decisions by the U.S. Department of Agriculture found that the agency head used this procedure to overturn anti-agency Administrative Law Judge decisions.[21] In other words, administrative appeal, at least in the United States, is not an unbiased regime as advocated by the traditional administrative law theorists. Rather, internal reviewers are effective protectors of their agency's interests.

This Article has several goals, the first of which is to empirically test whether a more impartiality-driven administrative appeal system can produce more neutral and fairer results. For this purpose, this Article examines Taiwan's unique administrative appeal system, in which no less than 50 percent of the members in an "Administrative Appeal Review Committee" (hereinafter "Review Committee") have to be scholars, experts, or "righteous gentlemen in the society."[22] By contrast, in other countries, usually one agency official (or at most a few) handles administrative appeals.[23] Taiwan's mechanism could be more neutral (or at least more likely to favor the appellants) than the administrative appeal systems adopted in other civil-law countries and the United States. This makes it an appropriate research target to examine whether an administrative appeal mechanism run by administrative agencies favors the agencies themselves.

In addition, this Article will empirically test whether an administrative appeal system has lived up to the three major goals of the exhaustion of administrative remedies doctrine, as elaborated above.[24] This Article also

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2008).

[19] Daniel J. Gifford, *Adjudication in Independent Tribunals: The Role of an Alternative Agency Structure*, 66 NOTRE DAME L. REV. 965, 980 (1991); Boyd & Driscoll, *supra* note 9, at 6.

[20] Boyd & Driscoll, *supra* note 9, at 2.

[21] *See id.*

[22] Administrative Appeal Act (Taiwan), §52.

[23] In the United States, administrative appeals may go to agency heads or an appeals council. *See* MICHAEL R. ASIMOW, ADMINISTRATIVE LAW 219 (14th ed. 2008); DANIEL E. HALL, ADMINISTRATIVE LAW: BUREAUCRACY IN A DEMOCRACY 210 (4th ed. 2009). In Japan, an official in the supervising agency handles administrative appeals. Takahashi, *supra* note 10, at 316. In Germany, usually it is a high-ranking official in the agency that deals with an administrative appeal. *See* Wu, *supra* note 10, at 285.

[24] The literature, somewhat surprisingly, does not stress that administrative oversight would

uses data from Taiwan[25] for the following reasons. First, in some countries, like France, Japan, Korea, and China,[26] in principle, appellants are free to choose whether to use administrative appeals before going to court.[27] Evaluating the merits of administrative appeal systems in these jurisdictions through empirical studies of administrative appeal decisions may incur selection bias problems. By contrast, in Taiwan the administrative appeal procedure is mandatory for all administrative disputes involving an "administrative act."[28] Moreover, Taiwan has compiled statistics on its administrative appeal system for several decades, and, since 2001, detailed statistics and preliminary analysis have been available to the public.[29] Most importantly, every administrative appeal decision is available on the Internet. Consequently, an empirical study on Taiwan's administrative appeal system

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motivate administrative agencies to make better decision in the first place. I thank J.J. Prescott for this point.

[25] An empirical study on Germany's administrative appeal system will also be interesting, as many states (*Bundesländer*) in Germany are reforming (some even repealing) their administrative appeal systems. For the current progress of the reform, *see* HUFEN, *supra* note 17, at 68–69. Singh offers a short overview of the German "*Widerspruch*" (administrative appeal) system. *See* MAHENDRA P. SINGH, GERMAN ADMINISTRATIVE LAW IN COMMON LAW PERSPECTIVE 219–21 (2d ed. 2001).

[26] For an official introduction of France's administrative appeal system, *see generally* JEAN WALINE, DROIT ADMINISTRATIF 611–13 (24th ed. 2012) (noting that in specific fields more and more statutes mandate administrative appeals before administrative litigation). For Japan's system, see J. MARK RAMSEYER & MINORU NAKAZATO, JAPANESE LAW: AN ECONOMIC APPROACH 195–202 (1999); Hitoshi Ushijima, *Administrative Law and Judicialized Governance in Japan*, *in* ADMINISTRATIVE LAW AND GOVERNANCE IN ASIA: COMPARATIVE PERSPECTIVES 81, 86–87 (Tom Ginsburg & Albert H. Y. Chen eds., 2009). For China's system, see Lu, *supra* note 10, at 345. For Korea's system, see Jongcheol Kim, *Government Reform, Judicialization, and the Development of Public Law in the Republic of Korea*, *in* ADMINISTRATIVE LAW AND GOVERNANCE IN ASIA: COMPARATIVE PERSPECTIVES 101, 119 (Tom Ginsburg & Albert H. Y. Chen eds., 2009).

[27] There may be exceptions. For Japan's system, see Suefong Lin, *Rìběn Xíngzhèng Zhēngsòng Chéngxù yǔ Shěnjí zhī Yánjiù—Yǐ Xíngzhèng Shěnpàn yǔ Xíngzhèng Sùsòng zhī Guānxì wèi Zhōngxīn* [*On Japan's Administrative Litigation Procedures: With a Focus on the Relationship Between Administrative Appeal and Administrative Litigations*], *in* XÍNGZHÈNG SÙSÒNG ZHÌDÙ XIĀNGGUĀN LÙNWÉN HUÌBIĀN [COLLECTED ARTICLES ON ADMINISTRATIVE LITIGATION] 72 (Judicial Yuan ed., 2007); Lin, *supra* 10, at 415. For exceptions in China's system, see China's Administrative Litigation Act, art. 37, *available at* http://www.law-lib.com/law/law_view.asp?id=5641(no trans.).

[28] An "administrative act" is a unilateral administrative disposition with direct external effects, rendered by an administrative authority in making a decision or taking other actions within its public authority, in respect of a specific matter in the area of public law. *See* Taiwan Administrative Appeal Act [hereinafter TAAA] art. 92. Official English translation of TAAA is available at Laws and Regulations Database of the Republic of China http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=A0030020 (June 6, 2012).

Administrative acts are an important concept in Germany's administrative law (called *Verwaltungsakt*) and administrative laws in other jurisdictions affected by the German model (like Taiwan).

[29] Official Website of Executive Yuan, Taiwan, www.ey.gov.tw/Content_List.aspx?n=0DF272671EC15E9A.

can have breadth and depth at the same time without selection bias.[30] Granted, because the designs of the administrative appeal systems across jurisdictions are different, the findings in Taiwan (indeed, any country) cannot be readily generalized to other countries. Nevertheless, the problems this Article investigates and Taiwan's experience in implementing a unique design still provide precious lessons for other jurisdictions.

Using randomly sampled data on Taiwan's administrative appeal cases between 2006 and 2012 in Fisher's exact tests,[31] two-group proportion tests, and logit regression models, and using official statistics on the functioning of Taiwan's administrative appeal system between 2005 and 2009 in descriptive analysis, this Article finds that, first, the addition of outside scholars and experts, vis-à-vis senior governmental staff, do not appear to increase the rate of revocation of the original administrative decisions. If one believes that the senior staff has a pro-agency bias, this result might suggest that, as long as administrative appeal is an *administrative* procedure, it could hardly be neutral. In addition, the rate of appeals to administrative courts did not decrease with the addition of law professors' votes in the final administrative appeal decisions. This suggests that the citizens who seek administrative remedies are not more satisfied with the appeal decisions that are made by more law professors.

Furthermore, the administrative appeal procedure contributes to 87 percent of the corrected errors, whereas the administrative court is given credit for the rest. In this regard, the administrative appeal procedure does relieve the court's burden.[32] However, not all errors made by the administrative agencies will be uncovered. First, it appears that Review Committees rarely examine the merits of administrative acts. Second, the court defers to administrative agencies' discretion in fact-finding that involves non-legal expertise, and the Review Committees (unjustifiably) defer to their subordinate agencies as well. Cases involving non-legal expertise have a statistically significant effect on the Review Committees' decision to dismiss a case or revoke an administrative act. Therefore, some

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[30] This study is without selection bias because the purpose of this study is studying the administrative appeal procedure and the use of it is mandatory—so there is no selection. If the goal was to study the quality of administrative acts, merely examining those administrative acts that are appealed would suffer from selection bias.

[31], *See, e.g.*, ROBERT M. LAWLESS, JENNIFER K ROBBENNOLT & THOMAS S. ULEN, EMPIRICAL METHODS IN LAW 258–61 (2009) for the concept of Fisher's exact test. This Article uses Fisher's exact test instead of Chi-square analysis because a few of "the expected counts are less than five in more than 20 percent of the cells" in my table. *Id.*

[32] This Article will not go into details as to whether the administrative appeal procedure resolves claims more quickly than regular courts. Data from Taiwan do show that from 2005 to 2008, it took High Administrative Courts on average 220 days to close a case, whereas 96 percent of the administrative appeal cases are resolved within five months. Nevertheless, because courts and review committees handle different sets of cases, it is not very meaningful to directly compare their speed of closing cases.

administrative acts, determined based on non-legal expertise, have never been seriously examined after their declaration. These two dismal findings can be attributed, at least partially, to the fact that both inside senior staff and outside law professors are only trained under the civil law legal tradition; thus they lack policy perspectives and non-legal expertise.

This Article is structured as follows: Part II provides an overview of Taiwan's administrative appeal system. Part III lays out research questions and explains methodology, especially the specifications of the logit regression models. Part IV chronicles the nature of the data used. Part V reports the statistical and econometric results and discusses the implications. Part VI concludes.

II. TAIWAN'S ADMINISTRATIVE APPEAL SYSTEM

While most of the law of exhaustion in the United States is judge-made,[33] civil law countries (such as Germany, China, and Japan) stipulate requirements for administrative appeals exclusively in statutes.[34] Taiwan Administrative Appeal Act contains the procedural requirements and decision-making standards for administrative appeals. That is, the administrative appeal procedure is the same for all administrative agencies (local or central), regardless of subject matter. In essence, anyone is entitled to file an administrative appeal when a central or local government agency's act infringes on her rights or interests.[35] One must go through the administrative appeal procedure before bringing her case to court, provided that she seeks to revoke the administrative acts. In addition, an administrative appeal has to be filed within 30 days after the date on which

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[33] *See* PIERCE ET AL., *supra* note 7, at 199. *Cf.* HALL, *supra* note 23, at 237 ("One must look to statute, regulation, practice, or even contract to determine what remedies are available."). KRISTIN E. HICKMAN & RICHARD J. PIERCE JR., FEDERAL ADMINISTRATIVE LAW: CASES AND MATERIALS 768–74 (2010) (observing that in the 1990s, Congress began to use statutes to explicitly impose statutory duties to exhaust, and statutory stipulations to override the court-made doctrines in the same issue).

[34] *See generally,* Germany's *Verwaltungsgerichtsordnung* [Vw 60] [Administrative Court Act], Apr. 1, 1960, BGB 1.15.686 at 17 (Ger.). (English translation available at http://gesetze-im-internet.de/english_vwgo/englisch_vwgo.html.); Gyōsei fufuku shinsa-hō [Administrative Appeal Act] Act No 3755, Dec. 15 1984; China's Administrative Reconsideration Law, art. 6 (1999) (English translation available at http://www.en8848.com.cn/hangye/law/chinaflfg/93017.html) (last visited Oct. 20, 2013).

[35] TAAA art. 1. Note that there is an important difference in Taiwanese and American administrative laws. In Taiwan (and many other civil law countries), administrative agencies can enforce the administrative act themselves, without having prior permissions from the court. In the United States, agencies often have to refer the cases (in which the party being regulated refuses to comply) to the Department of Justice, which will then bring a civil or criminal action against the recalcitrant actor. For the U.S. system, *see* Jeffrey J. Rachlinski, *The Puzzling Persistence of the Generalist Judge* (Aug. 22, 2010) (unpublished paper presented at the 10th Anniversary of the Administrative Law Court, at Taipei, Taiwan) (on file with author).

the administrative act is served,[36] to the agency that has made the administrative act.[37] If this agency refuses to revoke or modify the administrative act (which is true about 96 percent of the time)[38], it has to transfer the case to its supervising agency.[39] Note that in most cases, the "supervising agency" is the ministry itself.[40]

An independent Review Committee in the supervising agency will handle the case. In principle, members of such committees shall have legal expertise, and no less than 50 percent of the members should be scholars, experts, or "righteous gentlemen in the society." In practice, outside experts usually are public law professors.[41] Other members of the committee are the senior staff in the supervising agencies.[42] Review Committees usually have more than a dozen members.[43] An administrative appeal is a proceeding of paper review, but Review Committees could allow appellants to make statements or hold an oral hearing.[44] Review Committees have the power to investigate evidence and conduct inspection.[45] In practice, however, Review Committees rarely exert the above power; see Panel A in Table 2.

The committee votes on the basis of majority rule,[46] and usually makes one of three types of decisions: (1) "case not entertained" if the appeal violates procedural requirements;[47] (2) "dismissal" if the appeal is substantively unsustainable;[48] or (3) "revocation" if the appeal is substantively

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[36] TAAA art. 14.

[37] TAAA art. 58.

[38] This can be computed by using numbers in Columns B & E in Table 2. The formula: (E-B)/E≒96 percent.

[39] TAAA arts. 4, 58.

[40] For example, a ministry (such as the Ministry of the Interior, which this Article studies) contains a number of administrative agencies (such as the Department of Land Administration). An appeal to an administrative act rendered by the Department of Land Administration has to be sent to the Ministry of the Interior.

[41] TAAA art. 52. Law professors are not obliged to serve as Review Committee members, as the honorarium they receive is negligible. Each term is usually one or two years, but there is no term limit. Anecdotal evidence suggests that a law professor serving in a busy Review Committee would have to commit a half day or a whole day each week to review appeal materials.

[42] *Id*.

[43] *Id*. (authorizing the "Yuan" in charge to stipulate the minimum and maximum number of reviewers in the committees. The Executive Yuan, which supervises most administrative agencies in Taiwan's central government, requires five to fifteen members in the Review Committees).

[44] TAAA arts. 63, 66.

[45] TAAA art. 67.

[46] TAAA art. 53.

[47] TAAA art. 77.

[48] TAAA art. 79.

sustainable.[49]

Those who are not satisfied with administrative appeal decisions can bring their cases to the administrative court.[50] Taiwan has a two-track judicial system. The ordinary court handles civil and criminal cases, while administrative cases go to the High Administrative Court, which is the court of the first instance.[51] A panel of three judges decides both questions of fact and questions of law.[52] A panel of five judges can review questions of law once a case is appealed to the Supreme Administrative Court from the High Administrative Court.[53]

III. RESEARCH QUESTIONS AND METHODOLOGY

This Article's main empirical research question is whether Taiwan's unique requirement of committee membership has made the administrative appeal procedure fairer to appellants. In addition, this Article will examine whether Taiwan's administrative appeal system has achieved the three main purposes such a system commonly serves. This section specifies these research questions in more detail, and puts them in the context of their theoretical background. Moreover, this section explains the statistical methods used to examine those research questions, including descriptive analyses, Fisher's exact tests, two-group proportion tests, and logistic regression models. The limitation of my methodology will also be discussed. Finally, this Article summarizes the pertinent data.

A. The Influence of Outside Experts

Taiwanese law requires outside experts—in practice, mostly public law professors at top law schools—to make up at least half of the seats in a Review Committee.[54] This part examines the effects of the presence of these

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[49] TAAA art. 81.

[50] Taiwan Administrative Litigation Act art. 4.

[51] Since September 2012, small-claim cases go to District Administrative Court first. Taiwan Administrative Litigation Act art. 229.

[52] Almost all judges in Taiwan are career judges. In 2006–2010, only 10 percent of new judges are attorneys who were selected to be judges. Other new judges are career judges. Statistics available at p. 33 of the official whitepaper issued by the Judicial Yuan, http://www.judicial.gov.twrevolution/%E6%B3%95%E5%AE%98%E5%A4%9A%E5%85%83%E9%80%B2%E7%94%A8%E5%88%B6%E5%BA%A6%E8%AA%AA%E6%98%8E.pdf.

[53] Taiwan Organic Act of Administrative Court art. 3; Taiwan Administrative Litigation Act art. 242.

[54] In this study, *all* outside experts are full-time law professors at universities (though not necessarily at law schools). In the author's observation, most academically sound law professors do serve on the Review Committees, sometimes on multiple such committees at the same time. Thus, the lack of effect of outside law professors cannot be attributed to the "quality" of serving law professors. University regulations on faculty members' serving on the Review Committees vary. It is certainly not prohibitive. Faculty members are obliged to disclose their services to the

outside experts. Before entering the empirics, a summary of how the legislature in Taiwan came up with this requirement is useful. In Taiwan, most laws are drafted by the executive branch, which then submits bills to the legislature for deliberation, revision, and ultimately legislation. The comments accompanying the bills and the minutes of the floor debate in the legislature show that the executive branch was concerned that outside experts might not be able to devote themselves to reviewing administrative appeal cases, so the original bill only required that no less than *one-third* of the committee members be outside experts.[55] The legislature, however, doubted the impartiality of the senior staff,[56] and raised the minimum requirement for outside experts to *one-half*, to increase the (perceived) trustworthiness of the administrative appeal procedure. The bill's strong preference for legal experts over non-legal experts has been challenged in floor debates. The executive branch's stance is that in a rule-of-law country every question arising during the administrative appeal process is a *legal* question, nevertheless, carried the day. Thus, the preference for legal experts as outside members in the Review Committees was incorporated into the law in 2000.

In the administrative law literature developed thereafter, the outside experts are thought to be homogenous and impartial — preferring neither revocation nor dismissal, but correct decisions,[57] while senior staff members are assumed to be homogenous and preferring dismissal.[58] Hence, the

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universities and may be limited in the amount of honorarium (at most about $260 per month for serving in one Review Committee if attending all four of the weekly half or full day meeting) they receive from such service. Outside experts are appointed by agency heads without outside scrutiny. *See also infra* note 75.

[55] LEGISLATIVE YUAN, FĂLÜÀN ZHUĀNJÍ DÌ 263 JÍ—FĂZHÌ (16) —SÙYUÀNFĂ XIŪZHÈNGÀN [LEGISLATION RECORD VOL. 263] (1998).

[56] Many legislators brought up the same old Chinese proverb "bureaucrats protect bureaucrats," and considered it a fact. *See id.* at 132.

[57] One legislator, however, during the legislative process, explicitly conjectured that outside experts prefer revocation. *See id.*, at 190; WEN-PIN TSAI, XÍNGZHÈNG SÙSÒNG XIĀNXÍNG CHÉNGXÙ YÁNJIÙ [A STUDY OF PRELIMINARY PROCEDURE IN THE ADMINISTRATIVE LITIGATION] 177 (2001); TZU-CHIANG CHANG & CHICH-HENG KUO, SÙYUÀNFĂ SHÌYÌ YŬ SHÍWÙ [INTERPRETATION AND PRACTICE OF TAIWAN'S ADMINISTRATIVE APPEAL ACT] 201 (2008).

[58] Again, this Article emphasizes that although the senior staff work for the supervising agency (usually the ministries), which is, technically speaking, different from the subordinate agency, their relationship is *not* like, for example, the OIRA's relationship to federal agencies in the United States For one thing, the official names of most subordinate agencies discussed in this article have to append the names of the supervising agency. For example, "Department of Land Administration, Ministry of the Interior" contains the name of the supervising agency after the comma. Besides, senior staff members usually worked in one or more subordinate agencies before being raised to the supervising agency. Therefore, the senior staff members' preference for dismissal may be attributed to at least their affection of and familiarity with the subordinate agencies, as well as the sense of unity of the supervising and subordinate agencies. CHINGHSIOU CHEN, XÍNGZHÈNG SÙSÒNG FĂ [ADMINISTRATIVE LITIGATION LAW] 104 (2009); *See also* CHANG & KUO, *supra* note 49, at 201.

literature generally praises the prescription of including outside legal experts because it enhances the neutrality of the administrative appeal procedure. This claim, however, has never been subjected to empirical testing.

To examine whether outside experts have played the role the legislature and the literature intended them to, this Article would ideally examine the voting records to test whether the above behavioral assumptions regarding senior staff and law professors are borne out by evidence. Such records are not available. The Article will have to test the effect of outside experts in indirect ways. The appeal decisions list the participating committee members of the cases. Pursuant to TAAA §53, as long as at least half of the Review Committee members are present at its meetings, the Review Committees are qualified to vote on appeal cases—a case is determined by majority vote. Both senior staff members and outside experts sometimes take leaves of absence.[59] Consequently, the number of the outside experts that vote in a specific case can be more than, equal to, or less than that of the senior staff members. The variation in attendance enables this Article to tease out the influence of these law professors in indirect ways.

Given the rule of majority vote and following the assumptions in the literature that insiders are dismissal-prone, and outsiders are neutral—and thus more inclined to revoke as compared to insiders—this Article's hypothesis is that the more that experts outnumber senior staff, the higher the revocation rate. In other words, the revocation rate is higher when the voting experts outnumber the voting staff than when the voting staff are more numerous. I use two-group proportion tests to examine whether there is any statistically significant difference in "revocation rate" [60] when the composition of voters varies.

In addition, the logit regression models examine the effect of law professors in the following, alternative ways. The first approach is to use two dummy variables to control whether the number of experts is more than, equal to, or less than that of staff. The weakness of the approach is that it heavily relies on the assumption that experts (and staff) as a group are homogenous, and discards valuable information (how many more votes outside experts control) when categorizing the cases into three groups. Thus, this Article uses two different variables (one at a time) to replace the above two dummy variables in the logit regression models. One is the "percentage of outsiders in the vote"; the other is "the difference in the number of votes each

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[59] There is no reason to believe that members' leaves of absence will correlate with a certain outcome, as each meeting deals with many appeal cases.

[60] Revocation rate = (the number of revocation cases) / (the number of revocation cases + the number of dismissal cases). The calculation of the revocation rate is thus different from the "percentage of revocation cases" used in the prior literature, as the latter includes the number of cases not entertained in the denominator. See generally Fang, *supra* note 10; Lu, *supra* note 10.

group casts."[61]

Finally, to further tease out the effects of law professors, this Article also tests whether the number of law professors who participate in the administrative appeal decision correlates with the error correction rate. The hypothesis is that legal errors of administrative acts are more likely to be identified when more law professors participate in the appeal procedure.[62] If Review Committees are generally willing to revoke administrative acts for any identified and serious legal errors, fewer errors will be left for the administrative court to find, and thus the error correction rate will be higher, because a bigger portion of legal errors are resolved at the administrative appeal level (more on this below).

B. Error Correction

The prior literature[63] suggests using percentage of revocation cases—the number of cases ending in revocation divided by the number of total cases[64]—as a measure of whether the administrative appeal system has corrected errors made by administrative agencies. This approach, however, is far from ideal, as a low percentage of revocation cases can imply that the Review Committees are inactive, or that the administrative agencies making the administrative acts are competent.[65] Also, if many people bring complaints to the Review Committees that cannot be resolved in an administrative appeal procedure, the number of cases not entertained will soar, thus diluting the percentage of cases where revocation occurs.

The error correction rate this Article uses will involve an improved (albeit still imperfect) index on the functioning of administrative appeal.[66] Ideally, this rate is computed by examining the administrative cases one by one and determining how many errors have and have not been spotted by the administrative appeal reviewers. This approach is obviously time consuming—FOIA-ing [67] the administrative documents will take several

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[61] The number of vote differences ranges from -3 to 5 (see

Figure 2). To avoid using a variable containing both positive and negative numbers, this Article adds 3 to each value, so that the values become 0 to 8.

[62] Law professors may not always agree with one another, but in not-so-hard cases, these outside experts should be able to form a consensus opinion.

[63] *See generally supra* note 60.

[64] In Table 1, percentage of revocation cases is computed by Column D / Column F.

[65] For a similar argument that using reversal rates as a measure of judicial quality is problematic, see Joshua B. Fischman, *Reuniting 'is' and 'ought' in Empirical Legal Scholarship*, 162 U. PENN. L. REV. 117, 139–46 (2013).

[66] One constraint of the index is that it assumes that only erroneous decisions will be corrected, but correct decisions will not be mistakenly revoked.

[67] FOIA stands for Freedom of Information Act. FOIA here is used as a verb to mean acquiring information from the government.

months at least—and assumes that the researcher will be able to identify true errors.

As an alternative, the error correction rate can be computed using the percentage of erroneous administrative acts that the review committees identified in the administrative appeals procedure. In other words, the denominator is the summation of the number of the erroneous administrative acts revoked by the administrative appeal review committees (X) and the number of the erroneous administrative acts identified by the administrative courts (Y), whereas the numerator is just the former number (X). Error correction rate = X/(X+Y).[68] A low error correction rate indicates the malfunction of the administrative appeal procedure, as it leaves many erroneous administrative decisions for the administrative court to handle. A high error correction rate suggests that the administrative appeal procedure filters out most of the illegal or improper administrative acts and presumably reduces the workload of the administrative court.[69] Note, however, that a high error correction rate does not necessarily indicate that the administrative appeal system is working well, as the formula is not able to take into account the unrevealed erroneous administrative acts. Put differently, the ideal index for measuring the performance of the administrative appeal system should be X/(X+Y+Z), with Z representing said number of unrevealed erroneous administrative acts. As mentioned above, however, it is difficult to identify accurately the size of Z. Evidence presented below, though, suggests that Z might be quite large. Not all administrative appeals cases reach the court, and certain issues are unreviewable—or deferred—by courts but reviewable by the Review Committees. Yet the Review Committees appear to conduct merit reviews infrequently, and are highly deferential in non-legal expertise cases—more on this below. That being said, the error correction rate is still a good indicator of whether the administrative appeal procedure relieves the burden of the administrative court, though it is an imperfect —yet improved—indicator of how often the administrative appeal procedure enables the administrative agencies to correct their own mistakes.

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[68] This can be computed by using numbers in Columns B, D, and K in Table 1. The formula: (B+D)/(B+D+K).

[69] Hence, the error correction rate is an improvement over the traditional percentage of revocation cases, because the former can convey a clear message. Low error correction rate shows that the administrative appeal system is not working well, though high error correction rate does not necessarily indicate that the administrative appeal system is working well (it could also demonstrate the malfunctioning of the administrative court). Percentage of revocation cases, by contrast, always conveys ambiguous messages.

C. Application of Expertise

When the *McKart* court[70] and civil lawyers talk about expertise, they refer to knowledge in fields other than law. For instance in terms of scientific or technological knowledge, administrative agencies have an edge over the court. Courts, due to their lack of such expertise, among other reasons, often defer to administrative agencies' finding of facts when the facts require advanced non-legal knowledge to ascertain—for example, real estate appraisal for tax purposes.[71] It is interesting, therefore, to explore whether the Review Committees are equipped with non-legal expertise, and whether they have used it adequately to solve appeal cases.

Review Committees in Taiwan are usually composed of law professors and governmental legal staff who have studied law since college.[72] To enhance their fact-finding abilities, the TAAA gives Review Committees broad power to investigate evidence and conduct inspection. Review Committees can hold oral arguments or hear statements from both parties, so that Review Committees can make up for their lack of non-legal expertise.

This Article first examines how often Review Committees employ those means to get a better grasp of the facts. Then, more importantly, it will analyze whether the involvement of legal expertise or non-legal expertise in administrative appeal cases affects the holdings of the cases. Only people with legal expertise can interpret statutes adequately or distinguish judicial precedents, whereas only people with certain non-legal expertise can determine, for example, whether the appraisal method used by an administrative agency in assessing property value for tax purposes meets the professional requirement.[73] Resolution of all administrative appeal cases more or less requires legal expertise, but only some of them require non-legal expertise to review the merits and legality of the administrative acts. Here, this Article will code the non-legal expertise variable as one in the latter scenario, to highlight the importance of non-legal expertise in handling these cases.

The null hypothesis asserts that decided cases requiring non-legal expertise and decided cases requiring legal expertise are equally likely to end

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[70] *McKart v. United States,* 395 U.S. 185 (1969).

[71] *See* Yun-chien Chang, *Takings Compensation Cases in Administrative Appeal Procedures: Empirical Observations and Reform Suggestions*, 36 J. NEW PERSP. L.75 (2012) (in Chinese).

[72] There are exceptions. For example, a few medical doctors serve in the Review Committee under the Department of Health.

[73] *See infra* sec. IV.c. It is indeed difficult to operationalize the coding of non-legal expertise. My research assistants and I have only had legal training. We ask ourselves, judged from the review opinions, whether our knowledge is sufficient to make a sound decision if we can gather all the necessary information. If we think that a professional training in other disciplines is necessary to make a responsible decision, we code the case as involving non-legal expertise.

up revoked. The alternative hypothesis is that the former are less likely to be revoked than the latter. If the null hypothesis is rejected, the Review Committees have failed to correct many non-legal errors made by the decision-making agencies.[74] This Article will first use Fisher's exact test[75] to examine whether or not a case involving non-legal expertise affects the holdings of the Review Committees. Then it will put non-legal expertise as an independent variable in the logit regressions to further test its statistical significance.

D. Merits Review

Due to concerns over separation of powers, the courts cannot review agency decisions unless the agency abused its discretion. Review Committees in Taiwan—and counterpart institutions in other civil-law countries—as part of the administration, thus have an important role—reviewing agency discretion *de novo*.[76] Specifically, Review Committees conduct merits review;[77] that is, modifying improper yet legal administrative decisions. To put it in another way, they should consider every aspect of an administrative act, examining whether it fits the government's policies, and exploring whether a different decision will better realize the legislative intent.[78] When an agency uses its discretion and makes a bad judgment (but not to the extent of abuse of discretion), or an agency interprets a statute in an allowable—but not the best possible—way, the court cannot overrule it.[79] Instead, the law authorizes and indeed requires the Review Committees to redress the harms by revoking the original administrative act and directing the administrative agencies to come up with a better decision.[80] Therefore, although administrative agencies have discretion in interpreting statutes,

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[74] Another possible explanation is that the non-legal expertise cases were decided correctly more often than the legal expertise cases were; therefore, the former were revoked less often. Nevertheless, I do not think this explanation carries much weight in Taiwan's context.

[75] Although the alternative hypothesis is one-sided, this Article will still use a two-tailed Fisher's exact test, in order to prevent finding a statistically significant result too easily.

[76] TAAA arts. 1, 81.

[77] In the German legal system, merits review is called "*zweckmaessigkeit*." Fisher translates this as expediency examination. However, this translation does not seem to capture the essence of this term, HOWARD D. FISHER, THE GERMAN LEGAL SYSTEM AND LEGAL LANGUAGE 240 (4th ed. 2008). This article follows Cane in calling this type of review merits review. *See* CANE, *supra* note 8, at 144–82. Merits review has been defined as "a process by which any errors or defects which have led to the making of a wrong decision may be set right." *Id.* at 150. In other words, the reviewers examine the case *de novo* to determine whether the original decision is correct or preferable, with no obligation to defer to the original decision-makers and can substitute the reviewer's judgment with the original decision-maker's judgment. *See id.* at 162, 429.

[78] *See* GENG WU, SHING JENG JENG SUNG FA LUEN [Administrative Litigation Law] 375 (6th ed. 2012).

[79] *See id.*

[80] TAAA art. 81.

Review Committees' discretion trumps the agencies', and the law does not expect Review Committees to defer to administrative agencies' discretion in fact-finding or statutory interpretation.

Hence, in each administrative appeal case, Review Committees should examine the legality and merits of the administrative act in question. A case that passes both tests should be dismissed, whereas an administrative act that fails either test should be revoked. Originally, I thought the coding problem would be how to determine the reasons for revoking. However, it turns out that Review Committees rarely mention the merits of the reviewed administrative acts—that is, the Review Committees seem to behave like an administrative court, reviewing only the legality of administrative decisions. Simply assuming that the Review Committees examined the merits—because they are required to—is confusing law in books with law in action. Thus, the following standard determines whether the Review Committees examined the merits of the administrative acts. First, if the appeal decision shows that the Review Committee explicitly explores legislative intents or better options, or discusses the merits, the variable is coded as one/yes. If the appeal decision only states that the original decision is legal or not legal, this Article codes it as zero/no. Coding based on the contents of the decisions themselves is not perfect, as the Review Committee may have explored the legislative intent,[81] and found the original decision error-free, without mentioning its exploration in the decision. Therefore, there could be a few false negatives in the coding.

This Article will summarize how frequently the Review Committees examine the merits of administrative acts and put the dummy variable merits into the logit regressions to examine whether the dummy variable affected Review Committees' decisions.

E. The Logit Regression Model

This Article uses logit regression to tease out what factors have statistically significant effects on the Review Committees' decisions to dismiss or revoke administrative acts. The dependent variable in the regression is the holding of the administrative appeal cases. Independent variables are different legal aspects of the administrative appeal cases; the logit regression model takes the following form:

$$\textbf{HOLDING} = \alpha + \beta\,(\textbf{NONLEGAL}) + \eta\,(\textbf{MERITS}) + \delta\,(\textbf{PROCEDURE}) + \theta\,(\textbf{VOTE}) + \omega\,(\textbf{FINE}) + \rho\,(\textbf{YEAR}) + \mu\,(\textbf{ISSUE}) + \lambda\,(\textbf{CHAIR}) + \kappa\,(\textbf{MINISTER}) + \varepsilon$$

Where **HOLDING** is a binary variable that equals zero for dismissal

[81] This Article interviewed several law professors who have extensive experience serving in Review Committees. They all contended that in their personal experience Review Committees conduct frequently merits review.

results and equals one for revocation results;[82] **NONLEGAL** is a dummy variable that equals one if non-legal expertise is required to adequately solve the case and equals zero if only legal expertise is required to adequately solve the case; **MERITS** indicates whether Review Committees have examined the merits (not just the legality) of the administrative acts in question; [83] **PROCEDURE** represents a series of variables that take into account how Review Committees have handled the cases, particularly regarding collecting evidence; **VOTE** includes two variables that equal one, respectively, when the outside experts outnumber senior staff members and when the numbers of both sides are equal;[84] **FINE** is a dummy variable that equals one if the administrative act has imposed a civil fine on the appellants, and zero if otherwise; **YEAR** are year fixed effects; **ISSUES** are a series of dummy variables controlling for the types of cases; **CHAIR** and **MINISTER**, respectively, control for the chairpersons of the Review Committees and ministers of the supervising agency. The coefficients to be estimated are α, β, δ, θ, ω, η, ρ, μ, λ, and κ; ε is an error term.[85]

To be more concrete, **PROCEDURE** is a group of 7 variables: whether the Review Committee investigated evidence, whether the Review Committee denied the appellant's plea to hold oral arguments whether the Review Committee allowed appellants to make a statement in person, whether the Review Committee denied appellants' request to make a statement in person, whether the agency that made the administrative act allowed appellants to make a statement in person whether the agency that made the administrative act denied appellants' request to make a statement in person,

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[82] Cases not entertained are not included in the logit regression models, because the Review Committees do not decide the cases on their merit, and I do not have variables that can predict a procedural failure. Granted, cases not entertained could be a form of secret dismissal. However, these cases can be brought to court, and the court does not defer to the administrative agencies for this kind of legal question. Thus, an unjustifiably non-entertained case will be an easy target for court revocation.

[83] One may wonder whether **NONLEGAL** and **MERITS** are collinear. Collinearity should not be a major issue here. Non-legal expertise is sometimes required to deal with question of facts, and, to a much lesser extent—if at all— question of law. Administrative appeal reviewers have to reconsider the questions of facts and the questions of laws for both legality and merits reviews. Thus, **NONLEGAL** and **MERITS** are relevant but should not be highly collinear. Moreover, in afterthoughts, as Table 4 shows, **NONLEGAL** equals one in 11.6 percent of the cases and **MERITS** equals one in 0.7 percent of the cases—they are not highly collinear.

[84] This Article also used the percentage of outside experts in the case and the size of the vote difference in the case to replace the two **VOTE** variables. *See supra* Section 0. The results are still statistically insignificant.

[85] This Article tried to use **DAYS**, which measures the length of time from the day the administrative act is made to the day the administrative appeal is decided, as an independent variable. The problem with using **DAYS** in the logit regressions is the simultaneity problem, or even worse, because the length of time may not affect the holding *at all*—rather, it is probably the holding that affects the length of time. Unreported regression results show that with or without **DAYS**, the coefficients and statistical significance of most other variables are essentially unchanged.

and whether the appellants have been given a chance to make a statement in person before the administrative act was made but did not do so.

ISSUES represents the categories of cases. I assign one dummy variable to each type. The categories are as follows: conscription, social welfare, social insurance, fire safety, household registration, re-drawing land boundaries, takings compensation for land, takings compensation for buildings and crops, land title disputes, land registration correction, claims for returning land, other land use issues, general building disputes, illegal building, urban planning, regional planning, condominium law disputes, and miscellaneous—the last one as the basis.[86]

This Article uses three logit regression models for testing which factors listed above affect the substantive decision—dismissal or revocation. Model 1 is the base-line model. Because voting records are missing in 60 cases, to maximize observations put in the regression models, Model 2 omitted the two variables on voting records. Model 3 is a conservative model that serves as a robustness check. "Non-legal expertise" (**NONLEGAL**) and "merits review" (**MERITS**) are coded subjectively and thus more error-prone. To ensure that possible coding errors do not affect the statistical significance of other variables, Model 3 omits these two variables.

F. Data

This Article includes data from two sources. The first source of data is Taiwan's central government website. The Taiwanese government has collected data on administrative appeals for decades, and data since 2001 are available online.[87] The data are very rich. The downloadable spreadsheets break down statistics by central government agencies, local jurisdictions, holdings, years, and sometimes even months.[88] Taiwan's government tracks every administrative appeal case; statistics regarding how soon administrative appeals are handled, the number of administrative appellants that go to court, how often the court revokes administrative appeal decisions and why—the court holdings of revocation are categorized into twelve different reasons—etc., are available. This Article will draw on parts of these rich datasets to answer some of the research questions.

To answer the remaining research questions, this Article will use a coding of the administrative appellate decisions by the Review Committee under the Ministry of the Interior ("MOIRC"). The MOIRC is one of the

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[86] This Article tried to interact issue dummies with vote dummies, on the conjecture that outside experts may be influential only in certain types of cases. Nevertheless, none of the stand-alone dummies or interaction terms is statistically significant. I thank J.J. Prescott for this suggestion.

[87] Executive Yuan, Republic of China (TAIWAN), *Statistics of Executive Yuan and Levels of Administrative Organs Appeals,* http://www.ey.gov.tw/pda/news.aspx?n=6577239FDC0F719E&sms=78702647C7A5B61B (last visited Oct. 21, 2013).

[88] *Id.*

busiest Review Committees in Taiwan. This Article studies the MOIRC decisions for four reasons. First, other busy committees may not be representative. For example, the busiest review committee, the Ministry of Finance, revokes much less frequently—5 percent—than other busy committees.[89] Second, the MOIRC has to handle a variety of cases—as the numerous **ISSUE** dummies used demonstrate)—so a sufficient number of cases will involve non-legal expertise. Third, outside experts in the MOIRC are all law professors and lawyers—some other Review Committees may have one or a few non-law professors) ensuring that there will be no non-legal experts present to affect the decisions. Thus, it will be easier to test the thesis that legal experts tend not to revoke decisions involving non-legal expertise. Fourth, as a property, land use, and administrative law scholar, the author knows enough about the issues in most of the MOIRC cases to make correct coding judgments.

Because certain aspects of the administrative appeal decisions—such as the participating committee members and chairpersons—are available only after August 2006, this Article is limited to the period from January 2006 to December 2009. In this period, the MOIRC announced 1,873–2,282 decisions each year.[90] To obtain a representative sample, this Article looks at 5 percent of each year's decisions.[91] This Article coded 415 decisions, which are the basis of most of my inferences.

Previous articles have coded *all* land use regulation and urban planning cases from 2009.[92] (Note that Panel B of Table 4 shows that about two-thirds of the cases handled by MOIRC fall in this category.) This work totaled 469 cases. Because they are not randomly sampled, this Article cannot generalize the analytical results of these cases to other years or other types of cases. Nevertheless, this Article uses this data set in the same logit regression model to do a robustness check.

Finally, this Article randomly sampled 5 percent of the decisions in 2010–2012 (inclusive) that end in dismissal or revocation, but collected information only regarding the types of issues and number of voting staff and outside experts. Preliminary tests of the aforementioned 2006–2009 data on the effect of the relative size of voting outside experts on the decisions produce

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[89] Statistics can be computed from data available at the official website of Taiwan's Executive Yuan. *Id.*

[90] PETITION AND APPEALS COMMITTEE, MOI, http://coaa.moi.gov.tw/Form/AA500000.aspx (last visited Oct. 21, 2013). I count the number of decisions per year by searching cases in this database.

[91] This Article used STATA to produce a random sample. For example, for a 5 percent sample of 1,873 cases (94 cases), STATA produced 94 random numbers between 1 and 1873. Then the sample included the corresponding administrative appeal decisions from the MOIRC website database.

[92] *See* Chang, *supra* note 71.

statistically insignificant results, but the power of the test is only about 0.6 (on a scale of 0–1). To make sure that the lack of observable effect is not due to the lack of statistical power, this Article adds three more years of data.

IV. RESULTS AND DISCUSSIONS

The key variable in this study is the holding of the administrative appeal cases. Table 1 and Figure 1 show that the percentages of dismissal, revocation, and cases not entertained are stable over the years for all central government cases combined. About 70 percent of the appeals were dismissed——meaning the appellants lost their cases)—10 percent of the cases were revoked—meaning the appellants won their cases—and the rest were not entertained. The distributions of holdings in all Ministry of Interior cases between 2005 and 2009, as well as in the sampled cases between 2006 and 2009, are similar. [93] In the following sub-sections, this Article demonstrates the findings related to the research questions laid out in Section 0. In addition, it also explores the implications and possible reform options.

[93] Statistics and graphs unreported.

Table 1: Summary Statistics of Administrative Appeal Cases in All of Taiwan's Central Government Agencies, 2005 – 2009

Year	Holding (#)				# of Appeal Decisions	# of Litigation Brought	Appeal Favor Rate (%)	Substantive Favor Rate (%)	Litigation Rate (%)	Revocation Rate by Court ‡ (%)	# of Revocation Verdict‡	Error Correction Rate (%)
	Not Entertained	Withdraw	Dismiss	Revoke								
	A†	B†	C	D	E=A+C+D	F	G=(B+D)/E	H=D/(C+D)	I=F/[(A-B)+C]	J*	K=F*J	L=(B+D)/(B+D+K)
2005	3,331	751	12,362	2,165	17,858	5,439	16	15	36	8	454	87
2006	3,660	868	13,367	2,075	19,102	5,698	15	13	35	9	541	84
2007	4,580	625	11,922	1,713	18,215	4,970	13	13	31	8	398	85
2008	4,006	892	11,208	1,574	16,788	3,891	15	12	27	8	298	89
2009	3,431	897	15,636	1,819	20,886	3,865	13	10	21	9	343	89
Average (% of holding)	3,802 (20%)	807	12,899 (70%)	1,869 (10%)	18,570	4,773	14	13	30	8	407	87

94

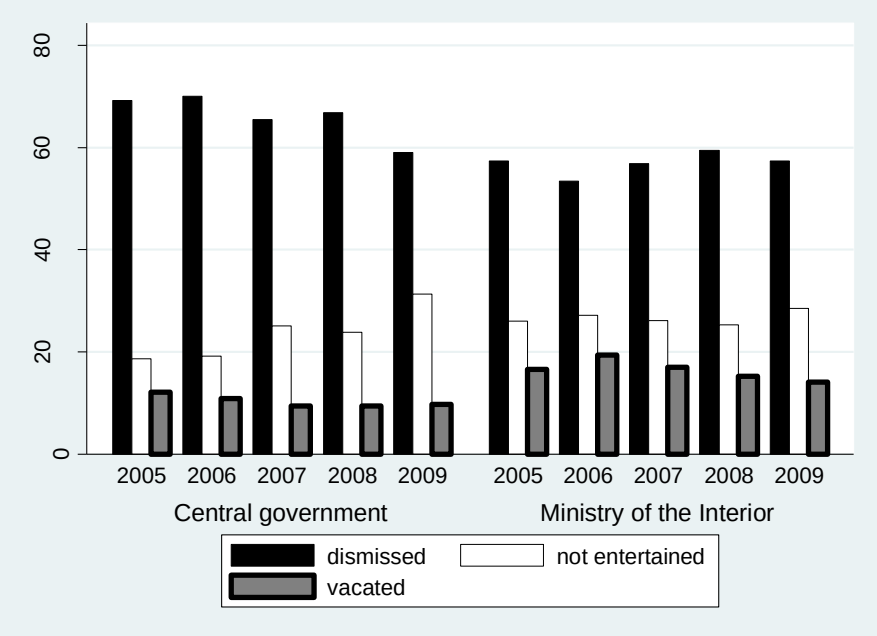
[94] Source: Official data published at the official website of Taiwan's Executive Yuan (the cabinet): http://www.ey.gov.tw/pda/news.aspx?n=6577239FDC0F719E&sms=78702647C7A5B61B.

† A includes B. B refers to the cases in which an administrative-act-making agency withdraws their decisions before a Review Committee reaches its decision.

‡ The "Revocation Rate by Court" refers to the percentage of cases in which the Administrative Court revokes the Review Committees' decisions. The "Revocation Rate by Court" is computed based on court cases handed out that year, not on appeal cases brought to the court that year. Therefore, the number of revocation verdicts (Column K) is only an estimate (which should not be far off, since "Revocation Rates by Court" are stable at around 8%).

* Not all court revocations are due to mistakes by the administrative agencies. For example, the law may change after the Review Committee made a decision but before the court rules. Column J includes in the nominator only those court revocations for which administrative agencies are liable.

Figure 1: Distribution of Holding of Administrative Appeal Cases by Year in Taiwan's Central Government and the Ministry of the Interior, 2005 – 2009



[95]

A. Number of Participatory Law Professors Has No Effect

1. Revocation Rate

The presence of law professors as outside experts at the final voting does not appear to lead to more revocations (nor, for that matter, does it make the administrative appeal less biased). Figure 2, using data from 2006–2012, shows that revocation rate does not increase with the number of "expert voters minus staff voters." Rather, the revocation rate peaks when the numbers of voters at both sides are equal. The revocation rate is at its lowest

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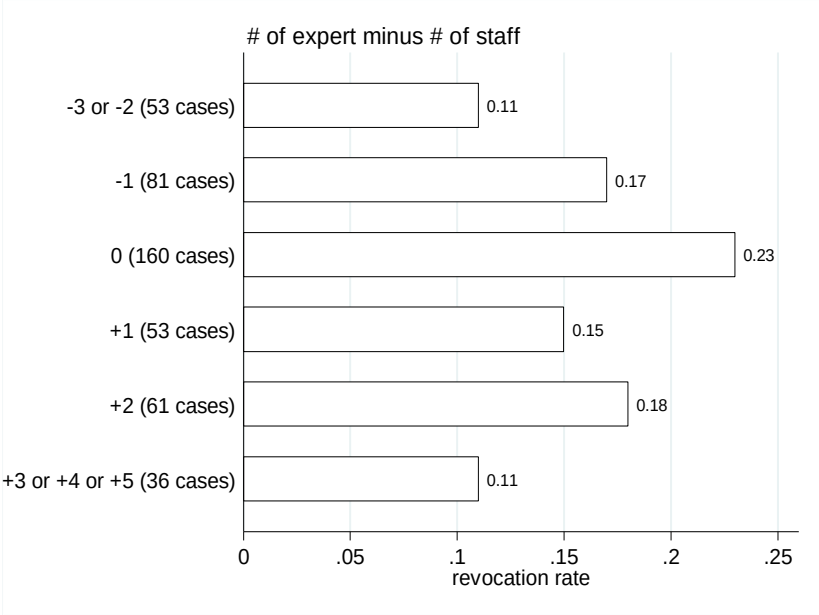
[95] N for all the central government agencies in 2005, 2006, 2007, 2008, and 2009 is 17858, 19102, 18215, 16788, and 20886, respectively. N for the Ministry of the Interior in 2005, 2006, 2007, 2008, and 2009 is 2032, 2214, 2035, 2235, and 1928, respectively. The data of the latter is included in that of the former, as the Ministry of the Interior is part of the central government. Official data published at the official website of Taiwan's Executive Yuan (the cabinet): http://www.ey.gov.tw/pda/news.aspx?n=6577239FDC0F719E&sms=78702647C7A5B61B.

ebb when either experts outnumber staff by more than two votes, or staff outnumber experts by more than one vote. The symmetrical shape of the bar chart in Figure 2 does not conform to the prediction generated by the hypothesis laid out above. Moreover, the differences in revocation rates among the six categories in Figure 2 are often statistically significant. Specifically, the two-group proportion test between "the number of both sides is equal (0)" and "experts outnumbering staff by more than two votes (>+2)" (see Figure 2 shows that the revocation rate under the former is statistically significantly *higher* than that under the latter (p=0.0628 under a one-tailed test). Both two-group proportion tests show that the revocation rate under "equal number (0)" is statistically significantly higher than that under either "more experts (>0)" or "more staff (<0)" (p=0.0540 and 0.0496 under one-tail test). These are all contrary to the predictions derived from the hypothesis. Finally, the difference in revocation between "experts outnumbering staff (>0)" and "staff outnumbering experts (<0)" (see Figure 2) is only 0.004, *not* statistically significantly different (p=0.4617 under a one-tailed test).[96]

[96] Granted, the power of the test is 0.03. But other statistically significant results reported in the text should suffice to support a rejection of the null hypothesis.

Figure 2: Effects of Outside Experts on the Holding of the Review Committee, Ministry of the Interior (randomly sampled cases in 2006–2012).



[97]

Figure 3, using data from all land use regulation and urban planning cases in 2009, provides a similar story. The pattern of fluctuation in revocation rate is again inconsistent with the theory of impartial experts. Granted, when experts outnumber staff, the revocation rate is higher (p<0.0001 under a one-tailed t-test). Nevertheless, the two-group proportion test between "experts outnumbering staff by one vote" and "experts outnumbering staff by more than one vote" shows that the revocation rate under the former is statistically significantly *higher* than that under the latter (p=0.024 under a one-tailed test). This suggests that having too many experts leads to a lower revocation rate.

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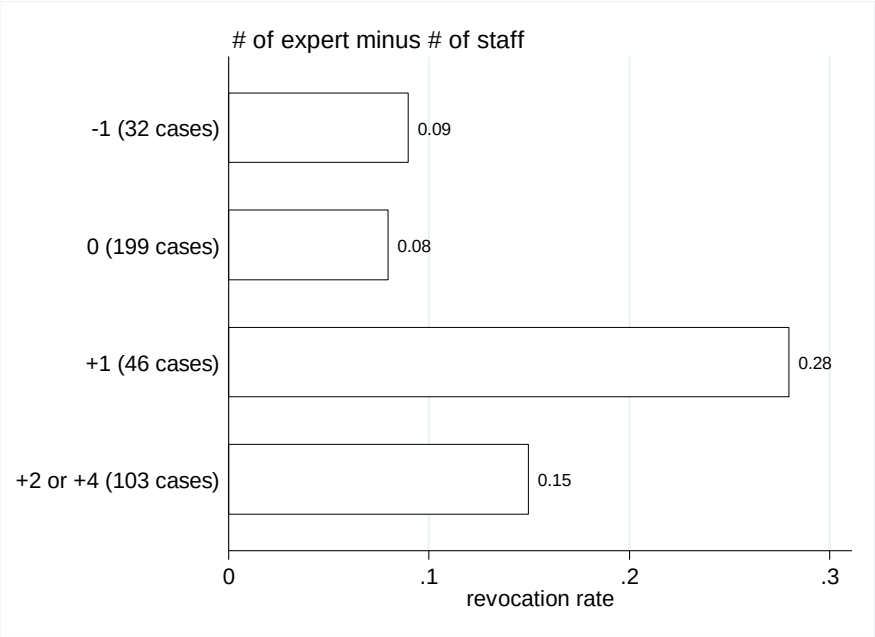
[97] N=444. The number in Y-axis represents the number of voting outside experts minus the number of voting staff. I combine -3 and -2, as well as +3, +4, and +5, because the numbers of cases in individual categories are too small. "Cases not entertained" are excluded from the calculation of revocation rate. That is, the denominator is the number of revocation cases and that of dismissal cases combined, whereas the nominator is the former. Cases are available at MOIRC website: http://coaa.moi.gov.tw/Form/AA200000.aspx.

Figure 3: Effects of Outside Experts on the Holding of the Review Committee, Ministry of the Interior (all land use regulation and urban planning cases in 2009).



[98]

Incorporating variables on experts vis-à-vis staff into logit regression models reveals a similar pattern: having more voting law professors does not necessarily lead to more revocation. Indeed, none of the three sets of specifications for the expert effect produces statistically significant results. Table 5 reports the regression results from one set of specifications. In sum, the evidence above should be sufficient to reject the null hypothesis that the relative numbers of outside experts and senior staff influence the substantive holding of the Review Committee.

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[98] N=380. The number in Y-axis represents the number of voting outside experts minus the number of voting staff. I combine +2 and +4 because the numbers of cases in individual categories are too small (no +3 case). "Cases not entertained" are excluded from the calculation of revocation rate. That is, the denominator is the number of revocation cases and that of dismissal cases combined, whereas the nominator is the former. The cases presented here are included in Figure 2 only if they also happened to be randomly sampled.

Cases are available at MOIRC website: http://coaa.moi.gov.tw/Form/AA200000.aspx.

2. Error Correction Rate and Appeal Rate

The number of experts and error correction rate are not clearly positively or negatively correlated, as reported in Table 2.[99] The hypothesis is that the administrative appeal procedure is more likely to identify and correct errors in a case with more law professors participating in the deliberation. The data suggest that while this is plausible, the marginal benefits of participating law professors might sharply decline after one or two law professors or even legally trained insiders are already serving. At least three law professors participate in any given case in this dataset; thus, it is not possible to test the conjecture directly. Table 2 also shows that the rates of appealing to the administrative courts do not consistently change in one direction with an increase in the number of law professors, suggesting that the administrative appellants are not more satisfied with the administrative appeal decisions when more outside experts vote.

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[99] The differences in error correction rates between six participatory law professors and five participatory law professors are statistically significant at the 0.01 level (data from Panel A in Table 2). Due to the small sample sizes in each category, not all differences are statistically significant (and the power is low). The focus here is on the lack of pattern in the change of error correction rate.

Table 2: Effects of Outside Experts on Error Correction Rate

Panel A: Randomly sampled cases in 2006–2009

	Number of law professors voting in the administrative appeal decisions[100]						
	3	4	5	6	7	8	total
Court verdict							
Dismiss (A)	1	6	15	8	5	2	37
Revoke (B)	0	3	1	3	1	0	8
Total (C=A+B)	1	9	16	11	6	2	45
MOIRC decision							
Dismiss (D)	6	39	70	46	38	15	214
Revoke (E)	4	8	11	8	9	4	44
Total (F=D+E)	10	47	81	54	47	19	258
Error correction rate = E/(B+E)	100%	73%	92%	73%	90%	100%	85%
Appeal rate = C/F	10%	19%	20%	20%	13%	11%	18%

[100] Only 258 administrative appeal decisions are considered here. From the 415 decisions in my database, 60 observations are excluded for missing voting record. Among them, the 94 cases not entertained are excluded. Because courts cannot review merits of the case, for proper calculation and comparison of the error correction rate, the 3 cases are further excluded here. Among the 258 administrative appeal decisions, 45 cases were appealed to the administrative court of the first instance and have been rendered verdicts on the merit.

Panel B: All land use regulation and urban planning cases in 2009

	Number of law professors voting in the administrative appeal decisions[101]					
	4	5	6	7	8	total
Court verdict						
Dismiss (A)	12	59	20	21	NA	112
Revoke (B)	0	6	2	3	NA	11
Total (C=A+B)	12	65	22	24	NA	123
MOIRC decision						
Dismiss (D)	29	207	54	42	2	334
Revoke (E)	3	22	11	10	0	46
Total (F=D+E)	32	229	65	52	2	380
Error correction rate = E/(B+E)	100%	79%	85%	77%	NA	81%
Appeal rate = C/F	38%	28%	34%	46%	0%	32%

[101] All (382) land use regulation and urban planning cases decided on the merit in 2009. Two observations with missing voting record are excluded from the table. Among them, 123 cases were appealed to the administrative court of the first instance and have been rendered verdicts on the merit.

Source: Administrative appeal cases are available at MOIRC website: http://coaa.moi.gov.tw/Form/AA200000.aspx. Administrative court cases are available at the official website of the Judicial Yuan: http://jirs.judicial.gov.tw/FJUD/.

3. Explanations

There are several possible explanations for these findings. The first two challenge the assumptions about the impartiality of law professors and senior staff members. That is, law professors can be as pro-agency as senior staff, or senior staff can be as impartial as law professors. A homogenous preference of these two groups could explain the variation of revocation rate as simply random, or affected by other factors. Indeed, Lin's interviews of a few senior staff members in the MOIRC indicate that outside experts are sometimes deferential to the will of the chairperson,[102] the highest-ranking staff member in the MOIRC, and usually a firm defender of governmental policies and decisions.[103] Nevertheless, a prestigious public law professor interviewed for this study provides a contrasting story. In his view, it is the unbalanced reviewing process that makes revoking administrative acts difficult, no matter how many law professors participate.[104] The disputants can rarely make their cases in person[105] to debate with the representatives of the administrative agency. However, an official from the administrative agency that made the administrative act in question is always present to make the government's case, sometimes debating with the outside experts.[106] The official is even present when the committee members vote.[107] This design gives outside experts some pressure when they are inclined to vote for revocation.

Another theory is that voting itself does not carry much water. Thus an

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[102] This dataset covers seven years of sampled decisions. Members of the MOIRC, particularly outside experts, change regularly. No law professor who served in 2006 was still contributing in 2012, though a few senior staff members are a staple in MOIRC. Thus, at the very least, it is unlikely that a few dismissal-prone law professors are driving the results.

[103] Mei-li Lin, Wǒguó Sùyuàn Jīguān Jīxiào Pínggū Zhǐbiāo zhī Yánjiù—Yǐ Nèizhèngbù Wéilì, [The Research of Performance Evaluation Indicators of Administrative Appeals Commission—A Case Study of the Department of Interior], 131–36 (June 15, 2008) (unpublished M.A. dissertation, National Chengchi University) (on file with author). Law professors are neither obliged to serve in Review Committees nor randomly chosen to serve. Agency heads decide who to invite to serve. Therefore, agencies may choose to invite those who are more deferential to or cooperative with the agency stance as Review Committee members. Further, the law professors who agree to serve may have the tendency to be more deferential than an average law professor. It appears, however, that this selection bias thesis cannot fully explain what happened in Taiwan.

In addition, it is possible that outside experts are generally unlikely to alter their positions to please the agency, in order to be re-appointed after their term. There are more than fifty Review Committees in Taiwan. Apparently 300 outside experts thus have to be retained. Therefore, it is generally a top law professor market.

[104] Interview with Chien-liang Lee, Professor (Institutum Iurisprudentiae, Academia Sinica, in Taipei, Taiwan)(Nov. 29, 2010).

[105] *See also* Table 4.

[106] Interview with Chien-liang Lee, *supra* note 104.

[107] *Id.*

empirical test based on the number of votes is unlikely to reveal the positive influence of outside experts. By request, senior staff in the MOIRC has commented on these findings. One senior staff member said that the MOIRC is further divided into two sub-groups.[108] One of the two sub-groups does the preliminary review and submits its opinion to the *en banc* committee for a final decision captured in the voting data.[109] The senior staff member claimed that usually outside experts outnumber inside staff in the sub-group meeting and that the sub-group's preliminary opinion carries a lot of weight in the final voting.[110] Put differently, this theory is essentially claiming that the *en banc* committee is mostly rubber-stamping the sub-group's preliminary opinion. Thus, it does not matter whether experts outnumber, or are outnumbered by, senior staff when voting. This is an interesting hypothesis, but information regarding sub-group meetings is not publicly or privately available. Therefore, it is not possible to empirically examine this claim.

The take-away point here is that there is no apparent benefit in filling the Review Committees with law professors. An increase in the relative number of outside experts versus senior staff does not always increase the revocation rate, which presumably suggests less bias and error correction rate, and does not always decrease the appeal rate. Law professors can be useful in the pre-voting stage by pointing out flawed legal reasoning and even threatening to expose the pro-agency bias of senior staff. Nonetheless, the marginal benefits of additional law professors might decrease sharply. In short, a smaller review committee with a few law professors might enhance administrative integrity, but the empirical findings of this Article do not lend credence to the superiority of a large review committee with outside experts as more than half of its members.

B. "Error Correction Rate" Is 87 Percent

Table 1 summarizes the official data on administrative appeal cases in the twenty plus administrative agencies including the Ministry of the Interior in Taiwan's central government. Statistics in Table 1 show that about 14 percent of the people who have filed for an administrative appeal received a favorable result administrative act withdrawn or revoked.[111] If only cases that the agencies have decided on the merits excluding cases not entertained are taken into account, the favorable result rate increases to around 13 percent.[112]

The Review Committees do not always correct the agencies' mistakes, as

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[108] Interview with Rui Hong Weng, in Taipei, Taiwan (Dec. 21, 2011).

[109] *Id.*

[110] *Id.*

[111] *See* Column G in Table 1.

[112] *See* Column H in Table 1.

the court's revocation rate stays stably around 8 percent. The administrative appeal system's error correction rate is on average 87 percent.[113] While this high percentage does *not* indicate that most erroneous administrative acts out there have been corrected by the administrative appeal procedure, it does demonstrate that among those revoked administrative acts, most are identified by the administrative appeal procedure. In this sense, the administrative appeal procedure relieves courts' burden by taking care of many erroneous administrative acts.

C. Non-legal Expertise Matters

Non-legal expertise matters. Table 4 shows that about 15 percent of the MOIRC's cases require non-legal expertise to be resolved adequately. Using the randomly sampled data, panel A in Table 3 shows that whether the case involves non-legal expertise has statistically significant (p-value=0.002) effects on the holding of the administrative appeal cases. More specifically, an administrative appeal case is more likely to result in dismissal if non-legal expertise is required to resolve it adequately. Panel B in Table 3, using the population of land use regulation and urban planning cases in 2009, offers the same story: Non-legal expertise matters. Evidence from the logit regression model in Table 4 is also compelling. The non-legal expertise variable either "predicts failure perfectly" (meaning all cases coded as "non-legal expertise" end in dismissal) or is statistically significant at the 0.01 level (Model 1 and Model 2, respectively).[114]

Review Committees composed of lawyers could have reviewed non-legal expertise cases adequately if they had used their authorized power wisely. As Panel A in Table 4 shows, however, the MOIRC has rarely wielded its power. The MOIRC has *never* investigated evidence or held oral arguments,[115] and rarely has the MOIRC allowed appellants to make a statement in person.[116]

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[113] *See* Column L in Table 1. Note that the "Revocation Rate by Court" in Column J in Table 1 is computed based on the cases finalized in the court in a specific year. That is, this statistic does *not* track those appeal cases rendered by the Review Committees in the same year. As not all appeal cases are resolved in court in the same year as the Review Committees make decisions, the numbers in Column J do not accurately reflect the fate of those administrative appeal cases in court (Column F). Nevertheless, "Revocation Rate by Court" is 8 percent, so it should be acceptable to multiply the statistics in Column J and Column F to estimate the number of revocation verdicts by the court (Column K), and then to roughly estimate the "Error Correction Rate" (Column L).

[114] The odds ratio for non-legal expertise in Model 2 is 0.038, which means that the odds of revocation to dismissal for non-legal expertise cases is only 3.8 percent of the odds of revocation to dismissal for legal expertise cases.

[115] Official statistics show that from 2005 to 2009, Review Committees within the central government hold oral argument in 0.17 percent of the cases. Official statistics are available at Executive Yuan, Republic of China (Taiwan), http://www.ey.gov.tw/pda/news.aspx?n=6577239FDC0F719E&sms=78702647C7A5B61B (last visited Mar. 11, 2014).

[116] Official statistics show that from 2005 to 2009, Review Committees within the central government allow appellants to make a statement in person in 2 percent of the cases. Official

Table 3: Effects of Non-legal Expertise on the Holding of the Review Committee, Ministry of the Interior

Panel A: Randomly sampled cases in 2006–2009

Non-legal expertise?		Holding		
		Dismiss	Revoke	Total
Yes	(#)	46	1	47
	(%)	97.9	2.1	100
No	(#)	205	56	261
	(%)	78.5	21.5	100
Total	(#)	251	57	308
	(%)	81.5	18.5	100

[117]

Panel B: All land use regulation and urban planning cases in 2009

Non-legal expertise?		Holding		
		Dismiss	Revoke	Total
Yes	(#)	67	3	70
	(%)	95.7	4.3	100
No	(#)	269	43	312
	(%)	86.2	13.8	100
Total	(#)	336	46	382
	(%)	88.0	12.0	100

[118]

Before delving into the implications of these findings, this Article gives some concrete examples to explicate what is meant by non-legal expertise and how, in non-legal expertise cases, the Review Committees fail to review the disputes adequately. Many disputes arise regarding takings compensation for

statistics are available at Executive Yuan, Republic of China (Taiwan), http://www.ey.gov.tw/pda/news.aspx?n=6577239FDC0F719E&sms=78702647C7A5B61B (last visited Mar. 11, 2014).

[117] Fisher's exact test = 0.002. Cases not entertained are excluded from the table.

[118] Fisher's exact test = 0.025. Cases not entertained are excluded from the table. Cases are available at MOIRC website: http://coaa.moi.gov.tw/Form/AA200000.aspx.

land (about 11 percent, see Table 4, Panel B). In Taiwan, the yearly pre-announced official land value plus an "extra proportion" determines this compensation.[119] The official land value is often lower than fair market value.[120] Dissatisfied landowners who anticipate that takings are forthcoming will appeal the appraisal decisions of land value. Few, if any, of the MOIRC members are trained in real estate appraisal, and, of those who are, they are very likely to be unfamiliar with the neighborhood in which the appellants' land parcels are located. Unable—and probably unwilling—to verify whether the land parcel at issue has been adequately assessed, the MOIRC reviews the matter merely from a procedural perspective.[121] That is, if the MOIRC finds that the government appraisers have followed the statutory requirements in preparing the appraisal reports, it dismisses the case without appraising the land value *de novo*, disregarding any appraisal reports prepared by the appellants.[122]

Another example is drawn from social welfare cases (8 percent of the cases belong to this category, according to Panel B in Table 4). People with different types of physical disabilities are eligible for different welfare benefits. The classification table is very technical and detailed. For instance, a small difference in eyesight (or blindness) could result in significance reduction or increase in welfare payments. The agencies usually commission one hospital to conduct the physical examination and medical judgment. Disappointed welfare claimants will go to another, prestigious hospital to receive re-examination and then submit the new medical record to the MOIRC for re-consideration. Without medical expertise, the MOIRC will defer to and uphold the original determination without holding oral arguments between both sides or asking a third hospital to examine the two existing medical judgments. In short, when a case requires non-legal expertise to be resolved adequately, the MOIRC chooses to defer to the fact-finding and decisions by the subordinate agencies, which is contrary to what the TAAA art. 67–75.

These findings call into question the wisdom of the TAAA's requirement that the members of the Review Committees "shall be equipped with legal expertise . . . in principle."[123] Indeed, legal expertise is needed in every case. The law allows exceptions, but in practice—at least in the MOIRC—the outside experts are all law professors—sometimes with one practicing

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[119] *See* Yun-chien Chang, *Empire Building and Fiscal Illusion? An Empirical Study of Government Official Behaviors in Takings*, 6 J. EMPIRICAL LEGAL STUD. 541, 545–46 (2009) (describing Taiwan's takings compensation regime).

[120] *See id.* at 546–50.

[121] *See* YUN-CHIEN CHANG, EMINENT DOMAIN COMPENSATION IN TAIWAN: THEORY AND PRACTICE 101–03 (2013) [in Chinese].

[122] *See id.*

[123] TAAA art. 52.

attorney.

It is doubtful that inviting professors and practitioners from non-legal professions can significantly increase the efficacy of Review Committees. First, there is simply too much technical knowledge involved in the administrative acts by agencies in a modern administrative state and too few seats in the Review Committees to accommodate a sufficient number of experts (unless the Review Committees are formed *ad hoc*). Second, if non-legal expertise is critical in a case, and only one member has the knowledge, others may defer to her—just like layman jurors are very likely to follow the lead of the only law professor in the jury. If so, why is a committee of fifteen people necessary? Using a large, resource-consuming committee to handle administrative appeals seems to be a feature unique to Taiwan.[124] This reveals the commitment of Taiwan's legislature to increase the objectiveness of the administrative appeal procedure. Nevertheless, a heavy workload and the complicated nature of many administrative dispositions, among others, have hindered the Review Committees' deliberation. Without diversity of expertise from members and a robust discussion among them, a collective decision-making process does not seem to make much sense.

D. Merits Rarely Examined

As Panel A in Table 4 shows, if it is correct to assume that whenever the MOIRC examines the merits of the administrative acts, it will note it in the decision that more than 99 percent of the time the MOIRC has failed to carry out its most important function. Some would contend that the MOIRC might have examined merits most of the time; but it is just that the decision is not adequately written. However, consider the following numbers: Among the 415 randomly sampled cases in 2006–2009, the MOIRC reached a substantive decision in 308 of them. In 56 of these cases (18 percent), the administrative acts in question were found illegal and hence revoked. In the rest of the 252 cases, assuming that the MOIRC reviewed its merits, it found only 2 of the 252 cases improperly determined. That is, the agencies under the Ministry of the Interior either made illegal administrative acts or made the best possible ones. This is counter-intuitive. The most reasonable explanations are that the MOIRC actually rarely examined the merits of the administrative acts, or the MOIRC did not take a hard look at the merits of the decisions.

Putting the merits review variable "MERITS" into the logit regression produces, unsurprisingly, a plus sign, as more review naturally leads to more revocation. That is, following the above assumption, the MOIRC reviews the legality in only 99.4 percent of the cases, while it reviews the legality as well as the merits in 0.6 percent of the cases—the latter are more likely to be revoked. Table 5 shows that this dummy variable is statistically significant

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[124] For other countries' designs, see *supra* note 23 and accompanying text.

at the 0.1 level.[125]

Nevertheless, this assumption could be unrealistic. If the MOIRC indicated its review of merits mostly in cases in which it intends to modify the administrative acts in question, the dummy variable merits review in the logit regression will create a simultaneity problem. The dependent variable (revocation or dismissal) also influences this independent variable. To do a robustness check, in unreported logit regression, this study ran Model 1 and Model 2 in Table 5 without this variable. Coefficients and statistical significance of other variables do not change much.

E. Other Factors of Interest

Table 4 provides summary statistics for variables used in the logit regressions. Table 5 lists regression results for the three logit regression models. The results are robust. There are few sign changes, and statistically significant variables remain so across models.

The result for the variable "whether the administrative act has imposed a civil fine" is a little bit puzzling. It is consistently statistically significant at the 0.05 level, with a minus sign which suggests a civil-fine-imposing administrative act is more likely to be sustained than revoked.[126] Perhaps administrative agencies have been more careful in making administrative acts that impose civil fines, but this Article can find no evidence to support this thesis. Alternatively, this dummy variable may have captured something important that has not been included as an independent variable. The issue categories marked with a star in Panel B of Table 4 include cases in which civil fines have been imposed. Apparently, this is a selective club. This Article relies on the issue classification listed in the MOIRC administrative appeal decisions. Although this Article has made some substantial adjustments, it may still have erroneously classified issues in some cases. Interestingly, unreported logit regression results (using the population of land use and building use cases in 2009) show that "civil fine imposition" (p-value=0.87) is far from statistically significant. Future research is necessary to determine whether "civil fine imposition" has influenced the MOIRC or other Review Committees' decisions and why.

Finally, ministers, chairpersons, and the years in which the decisions were made have no statistically significant effect on the holding of the cases.

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[125] The odds ratios are twenty–one and sixteen in Model 1 and Model 2, respectively. This means that the odds of revocation to dismissal for cases in which the Review Committees have considered the merits of the cases are at least sixteen times the odds of revocation to dismissal for cases in which the Review Committees have *not* considered the merits of the cases.

[126] The odds ratios are approximately 0.33 in all three models, which means that the odds of revocation to dismissal for cases in which an administrative fine has been imposed is 33 percent of the odds of revocation to dismissal for cases in which no administrative fine has been imposed.

Table 4: Summary Statistics for the Cases and Variables Used in the Logit Regression Models

Panel A

Variable	Yes (number of cases)	(%)
Involving non-legal expertise	47	15.3
Having examined merits	3	1.0
Having investigated evidence	0	0
Imposing civil fine in administrative act	136	44.2
Denied chances to hold oral arguments before the administrative appellate decisions were made	3	1.0
Making statement in person before the administrative act was made	19	6.2
Making statement in person before the administrative appellate decisions was made	1	0.3
Denied chances to make statement in person before the administrative act was made	3	1.0
Denied chances to make statement in person before the administrative appellate decisions were made	1	0.3
Given chance to make a statement in person before the administrative act was made but did not do so	6	1.9

N=308

Panel B

Variable	Number of cases	%
Minister (N=308)		
Chiang	20	6.5
Liao	106	34.4
Lee	175	56.8
Su	7	2.3
Chairperson (N=260; 48 obs. missing information)		
Tseng	60	23.1
Lin	186	71.5
Not participating in the decision	14	5.4
Year (N=308)		
2009	71	23.1
2008	78	25.3
2007	83	27.0
2006	76	24.7
# of Voters (N=260; 48 obs. missing information)		
expert>staff	84	32.3
expert=staff	86	33.1
expert<staff	90	34.6
Issue (N=308)		
conscription	9	2.9
social welfare*	29	9.4
social insurance	25	8.1
fire safety*	21	6.8
household registration	1	0.3
re-drawing land boundary	3	1.0
takings compensation for land	32	10.4
takings compensation for buildings and crops	9	2.9
land title disputes	2	0.7

correction of land registration	2	0.7
claims for returning land	7	2.3
other land use issues*	14	4.6
building disputes in general*	69	22.4
illegal building	11	3.6
urban planning*	16	5.2
regional planning*	16	5.2
condominium law disputes*	8	2.6
miscellaneous*	34	11.0
127		

[127] Issue categories marked with an asterisk (*) include cases in which civil fines are imposed. Randomly sampled cases in 2006–2009. Cases are available at the MOIRC website: http://coaa.moi.gov.tw/Form/AA200000.aspx.

Table 5: Regression Results for Logit Models

	Dependent variable: 0=dismiss; 1=revoke.		
	(1) basic model	(2) maximum observation model	(3) conservative model
=1 if involving non-legal expertise	predicts failure perfectly	**-3.260**** **(1.254)**	
=1 if reviewing the merits of the case	**3.036+** **(1.746)**	**2.762+** **(1.584)**	
=1 if experts > staff members	0.173 (0.618)		0.172 (0.591)
=1 if experts = staff members	0.487 (0.535)		0.486 (0.511)
=1 if the administrative act imposed fine	**-1.095*** **(0.464)**	**-1.039*** **(0.421)**	**-1.024*** **(0.458)**
=1 if making statement in person before the administrative act was made	0.755 (0.892)	0.424 (0.774)	0.666 (0.813)
=1 if denied chances to make statement in person before the administrative act was made	1.231 (1.407)	0.945 (1.393)	1.172 (1.395)
=1 if given chance to make a statement in person before the administrative act was made but did not state	1.852 (1.177)	1.917 (1.173)	1.701 (1.153)
=1 if conscription cases	predicts failure perfectly	0.762 (1.526)	predicts failure perfectly
=1 if social welfare cases	**-1.500+** **(0.894)**	**-1.792*** **(0.860)**	-1.366 (0.882)
=1 if social insurance cases	-1.961 (1.440)	-1.537 (0.972)	**-2.178+** **(1.139)**
=1 if fire safety cases	-0.532 (1.012)	-1.217 (0.938)	-0.163 (0.954)

=1 if household registration cases	predicts failure perfectly		
=1 if cases about re-drawing land boundary	predicts failure perfectly		
=1 if takings compensation for land cases	0.236	0.050	-0.655
	(0.759)	(0.672)	(0.696)
=1 if cases about takings compensation for buildings and crops	predicts failure perfectly		
=1 if cases about land title disputes	predicts failure perfectly		
=1 if cases about correction of land registration	predicts failure perfectly		
=1 if cases about claims for returning land	predicts failure perfectly		
=1 if cases about other land use issues	0.640	0.202	0.703
	(0.813)	(0.742)	(0.801)
=1 if cases about building disputes in general	0.607	0.302	0.641
	(0.597)	(0.521)	(0.593)
=1 if cases regarding illegal building	-0.395	-1.095	-0.481
	(0.974)	(0.911)	(0.958)
=1 if urban planning cases	-0.040	-0.466	0.088
	(0.814)	(0.773)	(0.796)
=1 if regional planning cases	-1.231	-1.889	-1.352
	(1.274)	(1.174)	(1.286)
=1 if cases regarding condominium law disputes	0.718	0.300	0.780
	(1.028)	(0.942)	(1.020)
Minister dummies	Yes	Yes	Yes
Chairperson dummies	Yes	No	Yes
Year dummies	Yes	Yes	Yes

Constant	-0.407	-1.073	-1.180
	(1.778)	(1.199)	(1.650)
Observations (*N*)	197	280	226
Pseudo R^2	0.12	0.16	0.11

128

V. CONCLUSION

Is Taiwan's innovation of adding law professors to the administrative appeal process a success story? The empirical findings of this Article suggest that requiring a majority of outside experts in the Administrative Appeal Review Committees does not appear to be effective in making the administrative appeal procedure more impartial or more acceptable to the disputants involved. Neither the frequency of revoking administrative acts nor the error correction rate increases with the (relative) number of outside experts.[129] Appeal rates to the court do not necessarily decrease with more law professors serving on the review committees. Law professors in civil-law countries in general, and in Taiwan in particular, study law since college and thus usually lack advanced (even basic) non-legal training. It is, therefore, not surprising that the review committees (with insider staff that also only have legal training) defer to the lower agencies' decisions when a case requires non-legal expertise to be solved properly. Civil lawyers are trained to do legal thinking and tend to refrain from engaging in "policy" discussions, and merits reviews often involve policy decisions. Hence, while the review committees are capable of identifying illegal administrative acts, and they should be credited for correcting a high percentage (87 percent) of legal mistakes in the administrative acts, thus relieving many of the burdens of the administrative court, the review committees appear to be inactive in reviewing the merits of agency decisions.

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[128] Coefficients are shown in the cell. Standard errors in parentheses + significant at 10%; * significant at 5%; ** significant at 1%. Some of the PROCEDURE variables are excluded from the regression because of collinearity problems with each other. Randomly sampled cases in 2006–2009. Cases are available at the MOIRC website: http://coaa.moi.gov.tw/Form/AA200000.aspx.

[129] This finding could shed some light on the studies of "Condorcet jury theorem," the simplest version of which states that when a group makes decisions by a majority vote (like Review Committees), each voter's independent probability *p* of voting for the correct decision is critical. If *p* is >0.5, a large group (again, such as the Review Committees) is warranted, as the probability of making the right decisions increases with the size of the group. By contrast, if *p* is <0.5, a larger group neither increases the chance of doing it right nor saves administrative costs. Put differently, entrusting the decision-making power to just one person is preferred. In my studies, *p* may vary between insiders and outsiders, or, indeed, vary among all committee members. More extensive theoretical and empirical researches are needed, however, to contribute to the large literature on "Condorcet jury theorem."

What is the take-away lesson for other jurisdictions? Repealing the administrative appeal procedure altogether is not a panacea. As Germany's recent reform experience suggests, after some states have abolished their administrative appeal systems, the caseloads in some courts increased as much as 100 percent.[130] Congestion in court dockets will almost certainly happen in every jurisdiction that plans to abolish a mandatory—or even optional—administrative appeal system. Furthermore, administrative appeal procedures at least sometimes modify improper—yet legitimate—administrative acts. The (administrative) court, often without power to do so, is unable to redress the harm.[131] Hence, there are merits in the administrative appeal procedure. For countries that use legal staff without sufficient non-legal expertise in other fields to handle administrative appeal cases, the priority in the agenda is to explore, among other things, how to increase administrative appeal reviewers' capabilities in examining "non-legal expertise" cases, and how to push administrative appeal reviewers to examine the merits of the cases (or at least to make merits reviews explicit in the written decision to persuade disputants). Otherwise, for many appellants who dispute "non-legal expertise" cases or cases regarding improperly yet lawfully determined administrative acts, a requirement to exhaust administrative remedies may be just a futile exhaustion of their energy and a denial of legal redress.

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[130] *See* Ulrike Ruessel, *Zukunft des Widerspruchsverfahrens*, 25 NEUE ZEITSCHRIFT FÜR VERWALTUNGSRECHT 523, 527 (2006).

[131] For an overview of German scholars' critique of abolishing the administrative appeal system, *see* Wu, *supra* note 10.