THE SYMBOLIC ASPECTS OF ENVIRONMENTAL REFORM IN CHINA

Alex L. Wang
UCLA School of Law

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Alex L. Wang, Assistant Professor of Law, UCLA School of Law

Dear NYU Readers: Attached is a portion of a work-in-progress on the symbolic aspects of environmental reform in China. This project is an exploration of the ways in which the Chinese party-state is seeking to legitimate itself through means other than the liberal democratic rule of law reform typically promoted by global law & development practitioners. An earlier article of mine took a critical look at the ways in which China has used law and law-like governance mechanisms to bolster legitimacy based on performance. This article will examine the ways in which environmental reform can be structured to persuade the public that the state is performing.

This draft is somewhat rough and unfinished, so please do not circulate it beyond this workshop. But, because it is still an early stage project, any suggestions, comments, and ideas for new directions are also particularly welcome.

INTRODUCTION

This Article is about the symbolic role of governance reform in China and its relation to functional governance performance and state legitimacy. Despite Trubek & Galanter’s well-known critique in Scholars in Self-Estrangement more than 40 years ago, the modern law and development movement continues to market a particular model of liberal democratic rule of law to developing countries as the solution to problems of economic development and political legitimacy. China’s authoritarian leaders have instead sought to legitimate an alternative model of rule based primarily on performance - economic development, maintenance of social stability, and the projection of nationalist strength. I have argued elsewhere that law has been marshaled mainly in service of attaining these performance objectives and operationalizing this performance-based model of governance. In my area of research, environmental protection, scholars have largely focused on how to reduce the distance between law on the books and law in practice. But apart from any actual results that Chinese governance may generate, I argue herein that the entire project of governance reform can be structured in a way that supports state legitimacy. Put another way, broad-based governance reform can generate symbolic value for leaders


seeking to sustain the legitimacy of their rule. The process of reform is not only about attaining performance goals, but is itself a kind of performance. This act of “performing performance” is an aspect of China’s “authoritarian resilience” that existing scholarship has not yet addressed. In past millennia, this political function of rule might have been fulfilled through the mobilization of state resources in the service of large-scale infrastructure development. The Great Wall of China, for example, was ostensibly meant for defense, but the project of building the wall itself was meant as a symbol of state strength, capacity to marshal resources, and a focus of bureaucratic institutional attention. And critics have argued that the Great Wall was ineffective for defense, but rather successful in terms of symbolic benefits for the state.

In China today, I argue that governance reform - policy and legislation, enforcement efforts, and institutional reforms - plays a similar symbolic or performative role apart from the ostensible functional purposes of the state action. This goes beyond (but includes) mere symbolic legislation - laws with aspirational goals that signal certain messages, but are unlikely to be met in practice. And it is also different than propaganda as a tool for convincing the public that the state is performing, although propaganda is certainly an important part of the effort. This is the use of large-scale, technocratic governance reform in a way that allows China to signal legitimacy or “pass” as a high-performance state, regardless of actual results. These are actions as propaganda. This does not mean that no actual performance is required. In certain cases, Chinese leaders must make a credible case that they have achieved some level of performance. But beyond that, the very design and process of governance reform can provide additional political value - particularly where information is uncertain or performance goals are difficult to monitor.

I. Models of Legitimacy

A. Performance vs. Liberal Democratic Rule of Law

The leaders of all nations need legitimacy to maintain power. State legitimacy, according to Seymour Lipset, is “the capacity of the system to engender and maintain the belief that the existing political institutions are the most appropriate ones for the

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society.”\textsuperscript{6} Coercive capacity is another means of maintaining rule, but “[t]he strongest is never strong enough to be always the master, unless he transforms strength into right and obedience into duty.”\textsuperscript{7}

In debates over Chinese rule of law, scholars have focused in particular on two foundations of legitimacy: legitimacy based on performance, and politico-legal or procedural legitimacy. Post-1978, these came to be seen in various quarters as the most plausible paths forward as other sources of legitimacy reached a nadir. Ideology (Marxism-Leninism), tradition (attacked as illegitimate in the Mao era), charismatic leadership (Mao Zedong), and nationalism (the Party’s promise to restore Chinese preeminence after a “century of humiliation”) had all faded in prestige by the 1980s.\textsuperscript{8} Peking University administrative law professor Luo Haocai famously framed the role of law as supporting a “theory of balance” between these two goals of performance and procedural justice.

Liberals within China and western observers commonly take the view that some form of democratization or, at least, movement toward greater politico-legal or procedural accountability is necessary if China is to stave off collapse. This view was strongly held in the years after the collapse of the Soviet Union and other Communist authoritarian states. Political scientist Andrew Nathan’s view is representative:

[L]ike all contemporary nondemocratic systems, the Chinese system suffers from a birth defect that it cannot cure: the fact that an alternative form of government is by common consent more legitimate... [T]he regime admits... that its authority has never been subject to popular review and is never intended to be. In that sense,

\textsuperscript{6} SEYMOUR MARTIN LIPSET, POLITICAL MAN: THE SOCIAL BASES OF POLITICS 64 (1983) (defining “state legitimacy”).

\textsuperscript{7} JEAN-JACQUES ROUSSEAU, THE SOCIAL CONTRACT 3 (G.D.H. Cole trans., 2008). And coercion can delegitimize the state, bringing about increased resistance to rule from the populace. BAOGANG HE, THE DEMOCRATIZATION OF CHINA 195 (David S.G. Goodman ed., 1996). In contrast, a state with legitimacy retains rule at lower cost because citizens are more willing to comply.

\textsuperscript{8} Lowell Dittmer has argued that “continuous revolution” was a core basis of Chinese legitimacy during the Mao era. This is a legitimacy based on a heavy dose of Marxist ideology combined with the possibility of performance (achievement of the socialist state). Traditional authority is legitimated by custom, societal beliefs, and longevity (e.g., monarchy). Charismatic legitimacy rests on “devotion to the exceptional sanctity, heroism, or exemplary character of an individual person, and of the normative patterns or order revealed or ordained by him.” "Politics as Vocation" pp. 129-198, and "Discipline and Charisma" pp. 59-72 in Weber’s Rationalism and Modern Society, edited and translated by Tony Waters and Dagmar Waters, Palgrave MacMillan (2015).
the regime is branded as an expedient, something temporary and transitional needed to meet the exigencies of the time. Democratic regimes, by contrast, often elicit disappointment and frustration, but they confront no rival form that outshines them in prestige. Authoritarian regimes in this sense are not forever. For all their diversity and longevity, they live under the shadow of the future, vulnerable to existential challenges that mature democratic systems do not face.9

Chinese leaders have not surprisingly resisted this view. Instead, they have largely asserted legitimacy on alternative grounds. Post-1978, China has justified its right to rule through performance - an “output-oriented” strategy of legitimization.10 This performance-based approach has meant prioritizing economic growth and social stability. Chinese leaders redoubled their efforts to bolster state performance in the wake of the political crisis of 1989 in Tiananmen Square and elsewhere in China. Since the turn of the 21st Century, leaders have attempted to broaden the foundations of Chinese state legitimacy. During the Hu Jintao administration, political slogans emphasized an expansion of the components of performance legitimacy to include social goods such as education, health care, and environmental protection. Since 2013, the Xi Jinping administration has continued the focus on performance, but also sought to reinvigorate legitimacy based on ideology (Confucianism), tradition (Legalism and other Imperial concepts), and nationalism (promoting the rejuvenation of the “China Dream”) as well.

For Chinese leaders, these alternative (non-democratic) foundations of legitimacy form the basis of a “China model” of governance that is, in their view, an alternative to democratic forms of rule. Different observers have articulated this in varying ways. The China model is, for example, a “meritocracy” ruled by a “modern Mandarinate” or a “Beijing Consensus” set to rival western approaches.11 While different accounts emphasize different aspects, the China model, generally speaking, involves top-down, party-led bureaucratic governance; a non-democratic system with

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limited institutional checks and balances; state intervention in the economy; and prioritization of economic goals over civil and political rights, among other features.\footnote{Scholars have elaborated these models further, but for purposes of this Article this dichotomy is sufficient. For example, Randall Peerenboom’s “statist socialist” and “liberal democratic” rule of law models track the dichotomy between Chinese and western governance models. His “neo-authoritarian” and “communitarian” models provide variations that, for example, push the “statist socialist” model in more democratic or liberal directions. See Randall Peerenboom, China’s Long March Toward Rule of Law (2002). Samuli Seppanen sets forth “conservative socialist” and “liberal” perspectives on rule of law that track this dichotomy. His “mainstream” and “avante garde” views of rule of law offer additional refinements and variations. See Samuli Seppanen, Ideological Conflict and the Rule of Law in Contemporary China: Useful Paradoxes (2016).}

In theory, nations that base their right to rule primarily on performance are more fragile and “vulnerable to existential challenges that mature democracies do not face.”\footnote{Nathan supra note 9.} Performance certainly matters in democracies, “but the legitimacy of rulers is to a large extent delinked from the legitimacy of the system or state.”\footnote{Wang, Sustainable Legitimacy, supra note 2, at 376.} Weakly performing leaders in democracies can be replaced, and the legitimacy of democratic systems is thereby (presumably) validated and renewed.\footnote{I say “presumably” to reflect growing concern that democracies are in decline. For example, where democratic institutions are captured, eroded, or otherwise rendered ineffective (through gerrymandering, voter suppression, money in politics, etc.), politico-legal legitimacy will decline. See, e.g., Ishaan Tharoor, The Man who Declared the ‘End of History’ Fears for Democracy’s Future, Washington Post, Feb. 9, 2017 (“If you’ve tilted the playing field in the electoral system that it doesn’t allow you to boot parties out of power, then you’ve got a real problem,” said Fukuyama).} Non-democratic states that rely on performance to sustain their right to rule risk losing the “Mandate of Heaven” and succumbing to collapse when performance inevitably falters.\footnote{Dingxin Zhao, The Mandate of Heaven and Performance Legitimation in Historical and Contemporary China, 53 AM. BEHAV. SCIENTIST 416, 422 (2009).} Along these lines, western China specialists “seem to have taken it as an article of faith that the CCP government is doomed” without liberal reform.\footnote{Brady supra note 5, at 435.} The strong form of this view was presented in Francis Fukuyama’s 1992 book The End of History and the Last Man, which posited that all nations were headed toward some form of western liberal democracy.\footnote{Francis Fukuyama, The End of History and the Last Man (1992). Fukuyama has become more circumspect about the inevitability of democratic transition since then.} To critics, non-democracies are less prestigious, institutionally unable...
to renew themselves, and prone to perform more poorly than democracies.¹⁹ The China model is beset by fragmentation and corruption, and institutional incentives encourage widespread repression and violation of basic human rights.²⁰ The result is a sclerotic system caught in a “trapped transition,” well into the advanced stages of regime decay.²¹ Even some of those who once saw resilience in China’s approach to governance now see “authoritarian impermanence” and the possibility of a “crackup.”²²

China’s leaders themselves worry about persistent threats to state legitimacy (hefaxing).²³ Slowing economic growth, rising debt levels, reduced investment efficiency, increased protest, and international tensions all create the sense that China is in crisis.²⁴ China’s environmental problems have become a source of risk for Chinese legitimacy as well.

²² See Nathan supra note 9; see also U.S. CONG. –EXEC. COMM. ON CHINA (CECC), 2016 ANNUAL REPORT (Oct. 2016) and David Shambaugh, The Coming Chinese Crackup, WALL ST. J., Mar. 6, 2015. Studies have even questioned China’s most vaunted success - economic growth that has lifted some 500 million people out of absolute poverty. While China’s economic might has grown by significant margins, some have argued that this growth was in spite of party-state leadership, not because of it. These observers argue that China’s signature achievement in the reform era - its economic “miracle” - has mainly been enabled by the removal of harmful state intervention that allowed local citizen initiative to flourish. NICHOLAS LARDY, MARKETS OVER MAO: THE RISE OF PRIVATE BUSINESS IN CHINA (2014); YASHENG HUANG, CAPITALISM WITH CHINESE CHARACTERISTICS: ENTREPRENEURSHIP AND THE STATE (2008). Others have questioned whether growth is as significant as claimed or noted tremendous income disparity that has left countless citizens behind. In short, the critiques ask whether the China model actually delivers performance as claimed or whether the costs of performance (corruption, inefficiency, human rights violations) are too high. Scholars have referred to Chinese views on governance as utilitarian, yet few discussions of performance legitimacy make any sort of explicit cost-benefit analysis. Not surprisingly, official accounts tend to focus on achievements, rather than costs.
²³ Zheping Huang, For the First Time Ever, China’s Communist Party is Openly Questioning its Legitimacy, QUARTZ, Sept. 11, 2015.
Faced with threats to political legitimacy, Chinese leaders have faced an ongoing choice between these competing approaches to reform. Liberal reformers commonly recommend some form of procedural democratic reform that bolsters politico-legal legitimacy. But as Huntington has observed – political reforms are “deeply threatening to the survival of authoritarian regimes.”25 Alternatively, leaders can engage in reforms aimed squarely at improving performance. The two are not mutually exclusive. Liberal reforms that offer procedural legitimacy may also bolster performance through leadership renewal, public accountability, and civic input. But for purposes of discussion it is cleaner to keep these two types of reform conceptually separate.

Chinese leaders have relied on “reform” writ large as the solution to ongoing performance legitimacy risk. A China Daily op-ed headline assured readers that “China is stable, confident” despite turmoil in other non-democratic states around the world (in the Middle East and North Africa). The reason for this stability and confidence was reform.26 Reform is meant to bolster performance (economic, social, etc.) without the political reform (and diffusion of power away from the party) required by a reliance on politico-legal legitimacy. Since 1978 – and the beginning of “reform and opening” – the Chinese state has engaged in a continual, ever-changing process of governance reform.27 Since 2013, the Xi Jinping administration has unveiled a wide array of reforms that promise to reshape Chinese governance and performance. And despite some ebbs and flows, these reforms have most definitely not been aimed at liberal democratic political reform.

B. Functional vs. Symbolic Performance

The debate over Chinese performance legitimacy has, for the most part, revolved around the ability of party-state reform to deliver functional results in practice. The literature on “adaptive authoritarianism” has enumerated governance techniques and a “guerilla policy-making” style that have allowed China to perform when other Communist, authoritarian states have failed.28 Grouped under this rubric are governance techniques as varied as age limits for bureaucrats, norms of local policy experimentation, and pragmatic management of central-local relations. In the legal realm, courts operate in a populist way that responds to public sentiment and the demand for substantive outcomes. At the same time, there is no shortage of skeptics

25 Elizabeth Perry, Will China Crumble? FOREIGN AFFAIRS, Mar. 6, 2017 (paraphrasing Huntington, and noting that “Huntington famously observed that political reform is more difficult to carry out successfully than revolution).

26 China is Stable, Confident, CHINA DAILY, Mar. 21, 2011.

27 This includes legal, institutional, and other types of reform.

ready to predict imminent Chinese collapse as performance weakens. Economic slowdown (rebranded in party rhetoric as “the new normal” xing changtai), soaring debt levels, official corruption, and environmental crisis are all cited as possible sources of political legitimacy crisis. One influential 2015 article proclaimed “the end of reform in China” and argued that authoritarian adaptation had “hit a wall.”

Yet, reform possesses a critical symbolic aspect that has not been adequately explored in the literature. When faced with the perceived fragility of performance legitimacy, Chinese leaders may nonetheless benefit from reform that is structured to signal to relevant audiences the achievement of reform goals. It is possible that reform is intended to be purely symbolic. But more often it is reform that fails to adequately “address the administrative and political constraints that will block implementation.” Political acts that are merely “aspirational” may be the product of inattention to the “inherent limits upon the effectiveness of the law.” Whatever the root motivation, functional performance suffers and symbolic reform becomes in effect an act of “performing performance,” rather than a vehicle for substantive results.

In a situation of high uncertainty (whether from complexity or political control of information), symbolic reform can nonetheless generate public belief in state legitimacy or buy the regime time before public perceptions of state legitimacy begin to decline. This is reform as persuasion, convincing the public that the state is performing or at least taking the steps necessary to achieve performance down the road. The result is that symbolic reform can serve as shock absorber (or insurance policy) of sorts against the risks of declining functional performance, cushioning the state against the risks of declining political legitimacy.

As Murray Edelman put it (speaking of symbolic politics in the American context):

“The basic thesis is that mass publics respond to currently conspicuous political symbols: not to “facts”...

The mass public does not study and analyze detailed data... It ignores these things until political actions... make them symbolically


30 Dwyer supra note 4.

threatening or reassuring, and it then responds to the cues furnished by the actions... not to direct knowledge of the facts.\textsuperscript{32}

In short, the Chinese masses do not respond to precise evaluation of the leadership’s actual performance. Persistent uncertainty due to data quality and active information control means that even close examination of the “facts” would not likely produce a meaningful conclusion. Rather, political symbols play an important role in public attitudes toward the ruling regime and the symbolic aspects of reform writ large play a critical and underappreciated role in this process. Symbolic reform delivers the message that China’s current governance model is the best one for its people. It signals to observers that the China model is legitimate, and a viable alternative to liberal democratic rule of law.

There is reason to believe that the symbolic aspects of reform are embraced as political strategy in China. Party rhetoric has long supported a legitimation strategy based on performance and persuasion. Since 1989, this came to be known as a so-called “two hands” strategy, after Deng Xiaoping’s statement that the party-state must “seize with both hands; both hands must be strong” (liang shou zhu, liang shou dou yao ying).\textsuperscript{33} In party rhetoric, this would mean a focus on the construction of “material civilization” (wuzhi wenming jianshe) and “spiritual civilization” (jingshen wenming jianshe). In practice, material civilization meant economic and social reform, and spiritual civilization meant propaganda, thought work, and ideology. Propaganda included not only positive messaging about the party-state, but also censorship and control of information detrimental to the party-state, as well as efforts to delegitimize competing western governance models.

Party scholars have seen this focus on propaganda as consistent with Lipset’s definition of state legitimacy, with its focus on the system’s capacity to “engender and maintain the belief [emphasis added]” that its existing political institutions are the most appropriate ones.\textsuperscript{34} What some regard as a failing in Lipset’s definition is regarded as praiseworthy in the officially sanctioned discourse on legitimacy in

\textsuperscript{32} MURRAY EDELMAN, THE SYMBOLIC USE OF POLITICS (1964), at 172.

\textsuperscript{33} Deng 1989.

\textsuperscript{34} See Brady supra note 5, at 436 (citing to Jiang, ZHENGJI HEFAXING: GONGCHANDANG ZHIZHENG JIANSHI DE ZHONGYAO KETI [Political legitimacy: An important issue for the establishment of the CCP as a party in power], MAKESIZHUO YI YANJIU WANG [Marxist Research Online] (2006); Wu, ZHENGJI KUNJIE: GAINIAN, YUANYIN, JI QI POJIE [Political achievement and political difficulties: Perspectives, causes and solutions]. MAKESIZHUO YU XIANSHI [Marxism and Reality], 6 (2006); Xie, ZHENGJI ZHUANXING ZHONG ZHENGJI HEFAXING WENTI TANXI [On political legitimacy in the transformation of the party], ZHONGGONG ZHEJIANG SHENWEI DANGXIAO XUEBAO [Journal of the CCP Zhejiang Party School], 5 (2004); Yang, HEFAXING ZHEBI SHENME? [What’s behind legitimacy?], XUEXI SHIBAO [Study Times] (Oct. 23, 2007)).
China.” Lipset’s formulation “suits current CCP political needs and is in line with the Party’s traditional emphasis on mass persuasion as a key task of government.”

Symbolic reform is arguably in this tradition of persuasion. But rather than traditional propaganda, symbolic reform delivers its messages through the structure, style, and actions of reform. Symbolic reform can signal a variety of things beyond functional performance, such as party-state concern for the people, nationalist strength, democracy, tradition, modernity, or simply the ability to get things done. Symbolic reform need not preclude a sincere desire among senior leaders to achieve a particular policy goal; nor is it necessarily a conscious strategy. But given official support for party-state image making, thought work, and control of public opinion it is difficult to imagine that it is not strategic on some level.

Even if symbolic reform is not strategic, it is easy to see why rational state leaders and line-level bureaucrats would nonetheless be drawn to it. Functional performance is difficult. It requires political skill, compromise, and uneasy trade-offs. To be successful, it often involves direct confrontation with powerful interests. In a system where leaders are highly attuned to legitimacy risks, symbolic reform allows them to sustain public belief in state legitimacy without confronting the messiness and challenges of genuine reform.

The benefits of symbolic reform for the political class are exactly what make it a “pathology” for the public. Symbolic reform allows politicians to benefit from deceiving citizens, wasting public resources, and delaying attainment of desirable public policy goals. If symbolic reform works for politicians, it reduces the pressure for functional reform. Citizens are less restive and the party-state’s “brand” is secure. Citizens are persuaded that leaders are performance-oriented or achieving

35 Brady supra note 5.
36 Id. Scholars have disapproved of Lipset’s definition of legitimacy for its focus on belief and persuasion. Popular opinion is central to the definition. Schaar disapproves because Lipset sees “legitimacy as a function of a system’s ability to persuade members of its own appropriateness. The flow is from leaders to followers. Leaders lay down rules, promulgate policies, and disseminate symbols which tell followers how they should feel and what they should do.” J.H. SCHAAR, LEGITIMACY IN THE MODERN STATES (1989), pp. 20-21. Under a belief-based definition of legitimacy one need not look beyond what the masses think of their current political and legal institutions.
37 Dwyer supra note 4.
performance goals. In such a situation, there is not much incentive for politicians to take on the yeoman’s work of actual reform. And, as we will see, the complexity and uncertainty of information that allows symbolic reform to thrive not only reduces political pressure for reform, but also hinders the proper functioning of regulatory compliance and enforcement. To the extent that this uncertainty is actively generated by the party-state (through censorship, propaganda, etc.), the bureaucracy is hindering the system’s ability to deliver performance, even as it sustains public belief in its legitimacy.

A symbolic reform perspective helps us to see this relationship between shaping public opinion and the delivery of functional results. It also allows us to better understand how China could “muddle through” - without either collapsing, or reaching some higher state of development. Symbolic reform sustains regime legitimacy, even as it weakens the incentives for functional performance. This is hardly the inevitable “coming collapse of China.” But it is also a persistent set of incentives that hinders functional performance. Symbolic reform need not be perfect to be effective. Many people may be quite cynical about reform, but the intuition here is that a sufficient number of people will be convinced, agnostic, or simply unsure of exactly how to think that the sharper edges of discontent are rounded off. And, as Hannah Arendt has said, “with such a people you can then do what you please.”

II. The Structure of Symbolic Reform

As an example of the symbolic role of governance reform, this Article examines China’s recent efforts to promote the attainment of a so-called “ecological civilization” (or “eco-civilization”). This is a massive governance reform project meant to achieve economic, social, political, cultural, and ecological goals. To signal the importance of the concept, leaders wrote “ecological civilization” into the Party constitution in 2012. In 2016, China’s 13th five-year plan emphasized “ecological civilization” and more than half of that plan’s targets (and nearly all of those designated as “binding”) concerned environmental matters. In 2014, China’s national congress passed a major amendment to its framework environmental protection law that introduced, among other things, a host of enforcement mechanisms, including expanded financial penalties, injunctive powers, and greater authority to detain violators and prosecute offenders for environmental crimes.

39 Hannah Arendt, Hannah Arendt: From an Interview, NY REV. BOOKS, Oct. 26, 1978 (“What makes it possible for a totalitarian or any other dictatorship to rule is that people are not informed; how can you have an opinion if you are not informed? If everybody always lies to you, the consequence is not that you believe the lies, but rather that nobody believes anything any longer... And a people that no longer can believe anything cannot make up its mind. It is deprived not only of its capacity to act but also of its capacity to think and to judge. And with such a people you can then do what you please”), http://www.nybooks.com/articles/1978/10/26/hannah-arendt-from-an-interview/. 
Between 2013 and 2016, China’s State Council issued three major “action plans” meant to address problems of air, water, and soil pollution. The sheer volume of environmental law and policymaking over the last few years is remarkable.

A. Governance tools

Using environmental governance reform as a case example, this Article will develop a hierarchy of symbolic reform; unpack meta-features across all types of symbolic reform that render the approach more effective; and analyze implications for state performance and legitimacy. The intuition here is that Chinese citizens, like people anywhere else in the world, are well-attuned to government promises not kept. An iterative, continuous cycle of reform is necessary to ward off creeping cynicism that would undermine the effect of symbolic reform.

An examination of environmental reform in China reveals four main types of symbolic reform: symbolic legislation, symbolic enforcement, symbolic institutional reform, and symbolic performance.

Symbolic legislation refers to legal authorities whose primary effect is to signal to the public state concern about “health & environment” and other desirable values. China’s national legislature has generated a comprehensive range of environmental legislation that covers most environmental problems that are typically the subject of environmental regulation in other countries. Since reform and opening in 1978, these laws have played a largely symbolic role, signaling CCP concern for the environment with limited actual performance. 40 Likewise, the confirmation of environmental protection as a “fundamental national policy” (基本国策) at the Second National Environmental Protection Conference in early 1984 has played a symbolic role as well. 41 Officials have used this policy status as evidence of long-term

40 In many respects, these description of Chinese environmental law is just as appropriate in 2017 as it was more than 20 years ago. See, William Alford and Yuanyuan Shen, Limits of Law in Addressing China’s Environmental Dilemma, 16 STAN. ENVT’L L. J. 125 (1996).

41 The Second National Environmental Protection Conference was held from Dec. 31, 1983 to Jan. 7, 1984. In addition to confirming environmental protection as a fundamental national policy, the workshop also established the guiding principle that economic and rural development should proceed in unison with environmental development. It also established principles of “prevention first,” the polluter pays principle, and the strengthening of environmental management. The academic literature widely confirms that these principles have been honored in the breach for decades.
http://www.mep.gov.cn/zghb/jgls/lbhby/lbhby/;
http://www.reformdata.org/special/257/;
http://www.reformdata.org/content/19840701/20764.html; There are only six fundamental national policies in China: family planning (the one-child policy), gender equality, reform and opening (economic), protection of agriculture land, resource conservation, and environmental protection.
http://politics.people.com.cn/GB/1025/10016373.html
party-state concern for the environment and the people, despite yawning implementation gaps over the decades.⁴²

Symbolic legislation results in delay and failures to achieve policy goals. For example, China’s State Council has never promulated implementing regulations for the 2000 PRC Atmospheric Pollution Prevention and Control Law, and there have been no consequences (legal or otherwise) for this omission. Even where implementing regulations have been promulated, symbolic legislation does not much constrain local government and firm behavior. As a result, implementation has long been weak.

Symbolic enforcement is necessary to signal to the public serious concern about actual implementation. Citizens know that legal authorities without enforcement are not worth the paper they are printed upon. Politically-oriented environmental enforcement campaigns provide periodic reminders of state concern about environmental regulation.⁴³ These are modeled after so-called “strike hard” anti-crime campaigns that have occurred with relative frequency since the 1980s. Since 2016, central party-state officials have led highly publicized local inspection campaigns. The hallmark of these enforcement campaigns is the regularly reporting of impressively large numbers of actions taken. A one-month inspection campaign in July and August 2016 resulted in the punishment of 3,422 people in eight provinces.⁴⁴ Yet, the government has released virtually no information about the nature of the violations and punishments, or the scale of the environmental harm prevented.

Civil and criminal enforcement campaigns symbolize top-down authority, resolve, concern, and national strength. These campaigns strike a populist note as a symbol of sweeping out local corruption and malfeasance. Thus, at the end of China’s 11th five-year plan, local news stories showing pictures of local officials literally dynamiting “backward production capacity” (e.g., old power plants) proliferated. In 2015, the environmental ministry’s “year of enforcement” environmental criminal enforcement has spiked – rising from just a few cases a year to case numbers in the thousands. Anecdotal evidence suggests, however, that prosecutors target small private polluters, while avoiding confrontation with more pollution-intensive state-owned enterprises.

Political leaders have also taken to using major enforcement sweeps and the utilization of weather making devices to improve urban air quality before and during major international events. Environmental enforcement surrounding the 2008 Beijing Olympics, 2010 Shanghai Expo, 2010 Guangdong Asian Games, and 2014 Asia-Pacific Economic Cooperation summit provided temporary relief from pollution during high profile international events. These were meant to signal the power of the state to generate rapid – if temporary – results. These shut-downs, however, have incentivized local producers to accelerate production before and after the prohibited time zones, leading to more aggregate pollution than otherwise would have been produced. Yet, the symbolism of the actions remains powerful and the signals they mean to send about state capacity are clear. At the same time, the ephemeral nature of most enforcement campaigns – and rapid returns to the status quo when campaigns end - have aroused skepticism in some quarters, requiring further reform response.

Symbolic institutional reform (tizhi gaige) is a way to show even deeper resolve and commitment to functional performance. Such reform purports to address improperly structured institutional incentives and more systemic problems. Environmental targets for local officials, for example, arguably serve such a symbolic role. First and foremost they signal a party-in-command and reinforce the primacy of CCP rule. They signal that bureaucrats throughout the system still take their orders from on high. The elevation of environmental targets from “soft” to “hard” status signals an elevation of environmental priorities and greater national resolve. Targets also send more subtle signals. Targets are an indigenous governance tool and hearken back to Imperial era techniques. This appeals to nationalist sentiments and concerns about foreign incursion and the hegemony of Western liberal rule of law. The appeal to targets can be populist and technocratic at the same time. Hard targets signal central efforts to free local citizens from the corruption and incompetence of local officials. Yet to outsiders, the technocratic nature of bureaucratic targets also suggests credible commitment.

Other institutional reforms that purport to demonstrate party-state commitment and resolve include centralization of budget authority and enhanced bureaucratic oversight of local government agents. The purpose of “party-state joint

45 See, e.g., Christina Larsen, How did Beijing Achieve “APEC Blue”? BLOOMBERG, Nov. 18, 2014.


“Symbolic performance” was to make both party and government local officials more concerned about environmental matters. These reforms target local protectionism and the improper influence of vested interests. The proliferation of environmental courts around China since 2007 promises to strengthen judicial effort toward environmental regulation. Public supervision mechanisms signal democratic accountability and occupy citizens in “productive” activity with the promise of success at the end of the road. China’s announcement of a national carbon dioxide cap-and-trade system for 2017 resulted in overwhelmingly positive reaction from domestic and international observers, despite serious concerns that the system would not in fact involve any sort of actual “cap” and reasons to believe that trade volume would be low.49

The common thread among symbolic legislation, enforcement, and institutional reform is that anecdotal and empirical studies suggest persistent implementation problems. These reforms are broad in scope, but are seldom deep enough to effect actual change. The programs promise dramatic results but reflect none of the careful planning, detailed implementation guidance, and penalties for non-compliance that one would expect in a successful regulatory program. For most observers, these failures of performance will not be apparent. The symbolism of the effort is what becomes most prominent. In some instances, though, environmental problems become so salient that weak performance cannot be hidden.

Symbolic performance is the final kind of symbolic reform in this typology, and addresses instances where symbolic legislation, enforcement, and institutional reform are not enough to persuade citizens that performance is forthcoming. These are policy areas where the problems have become too apparent to ignore. The persistence of highly visible or acute environmental can lead to public unrest and boiling dissatisfaction.

Air pollution is perhaps the best example of such a problem. A decade ago most people would have said that Beijing’s life-threatening smog was in fact “fog.” A local environmental official in western Gansu Province once told me that they worried most about water pollution, because air pollution would not make one sick in the short term (and so would not generate public complaints). But this is no longer the case. Air pollution is simply too obvious now to paper over. It’s highly plausible that party-state efforts will become more functional for salient issues, like air pollution, while continuing to delay or obfuscate in the case of other less apparent problems. Selective performance of this sort can signal to the public party-state ability to engage in broader performance, whether such performance happens in practice or not. Even though this involves functional performance, there is an element of

misdirection when party-state officials use the narrow example to infer performance in a wider range of areas.

Symbolic performance may also involve strategic framing or inferences of causation. For example, a Xinhua report on a 9.4% decline in coal production in 2016 framed this as the outcome of “the country’s effort to build a greener energy system.” Chinese state media has also made the best of slowing economic growth figures, framing it as part of a concerted effort to adopt “a more mature view of development” that incorporates stronger environmental protection. Such an approach “will eventually benefit the world.” We see the party-state playing a subtle game here – reframing weakening economic performance as strengthened environmental performance. This act of changing the terms of performance to suit party-state needs is the policy equivalent of making lemonade from lemons. To be sure, these examples represent actual results (if the data are to be believed), but they nonetheless involve some element of political deception and effort to signal messages beneficial to the party-state.

These types of symbolic reform can be conceptualized as a hierarchical pyramid with cost and the likelihood or degree of actual performance increasing with each level.


B. Governance style

Each of these types of symbolic reform are supported by cross-cutting meta-features that bolster the signaling or branding function of reform. These include:

- The continuous, iterative nature of reform, signaling the potential for performance always just over the horizon;
- The sheer volume of reform initiatives, which overwhelms the ability of the public (and even experts) to track and verify performance (this is not a stagnant or passive leadership, all this activity seems to signal);\(^2\)
- Appeals to ‘indigenous’ governance resources that confer traditional legitimacy upon the state and appeal to present-day nationalist impulses within society;
- Flexible use of foreign legal transplants that signal modernity, resilience, and pragmatism;
- Liberal governance tools that signal democracy and the promise of minimizing inefficiencies of top-down, autocratic rule;

\(^2\) This is a “bed of nails” strategy, where failure on one initiative standing alone might cause damage to party-state reputation, but countless initiatives in aggregate combine to blunt the impact of any individual failure and serve to cushion state legitimacy.
Use of media, security and other parts of the bureaucracy to “otherize” domestic and foreign actors who support disfavored liberal ideas, and delegitimize alternative models of governance.

Uncertainty

Above all, symbolic reform benefits from the inherent uncertainty and complexity of environmental regulation, coupled with an active strategy of information control and coercion to limit segments of society that seek to clarify China’s actual performance. Uncertainty makes it difficult if not impossible to verify actual performance. This uncertainty arises out of conflicting signals – government reports and statistics indicating governance success, on one hand; empirical and anecdotal evidence of data falsification, and scholarly studies that suggest weaker performance than officially claimed, on the other. In such an environment, even environmental officials within the system are unsure whether claimed results are genuine. While for some the response under the circumstances will be skepticism, for others inputs come to be seen as a proxy for outputs.

Complexity also allows Chinese officials to signal performance in non-traditional, populist ways. Hence, the head of Shandong Province’s environmental protection bureau (EPB) talks not of levels of pollution and impacts on health, rather his metric of success is based on what citizens can perceive. For him, success in air pollution regulation is focused on “visibility” (nengjiangdu) because lack of visibility (haze) is a common public complaint. For water pollution, his metric of success is the return of fish to public waters. Never mind that environmental risks that are unseen can be as much or more serious than ones that can be perceived by the senses. Such performance goals are keyed to populist goals, rather than scientific assessments of risk to health and ecosystems. On the other hand, state leaders can also define success in technical terms that are difficult for the public to understand – limiting citizen ability to question the state’s performance. Energy intensity, carbon intensity, and pollution volume metrics, for example, are calculated in complicated ways that do not necessarily comport with lay understandings of these terms.

The system’s focus on data-driven metrics also creates opportunities for symbolic, rather than functional, behavior. The leadership and state media focus heavily on the number of actions taken rather than environmental outcomes achieved.

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53 These segments of society include journalists, lawyers, NGOs, scholars, and average citizens.

54 See, e.g., state environmental media commenting on the substantial increase in the number of environmental cases (with no mention of their environmental impact) – “A simple comparison of data shows that China's adjudication of environmental lawsuits has gone from a preliminary, exploratory phase toward a systematic, mature state. Even more, it shows the entire national court system’s resolve and concern for the people's environmental rights.”

一组简单的数据对比，背后是中国环境资源审判从初创探索逐步走向规范成熟的
Data can be manipulated or falsified outright to suggest performance that does not actually exist.

In this environment of uncertainty, formal state propaganda thrives. As Premier Li Keqiang stated at the annual meeting of the National People’s Congress in March 2014, China would now use an “iron fist” against polluters. Chinese leaders offer a steady parade of statements, news segments, and other forms of propaganda that reinforce the notion that the party-state cares about the environment and is doing its utmost to solve China’s environmental problems. These components of symbolic reform are designed to send other signals that bolster state legitimacy, including state commitment to the public interest, flexibility, innovation, and resolve, among other things. Symbolic reform also reinforces core political narratives – such as “center good, local bad,” vested interests, or “hostile foreign forces” narratives – that position the central leadership as a crusader against forces that would destabilize China.

**Proxies**

Symbolic reform is less effective if the only promoters of state performance are party-state actors themselves. Support from those outside of the system (whether domestic or foreign) is critical for the credibility of symbolic reform. State partnerships and cooperation with domestic and foreign actors provide assistance in this regard. Environmental reform can generate allies or proxies with an interest in praising Chinese performance. The sheer volume of environmental related research projects – many sponsored by or conducted in partnership with the government or government-affiliated entities – can itself generate the impression of environmental concern and effort, regardless of actual outcomes. Government and non-government actors associated with projects can become unofficial spokespeople for the state in a sense. Government actors do so for obvious reasons, as they represent the state and could face negative repercussions for failing to toe the party line. Non-government actors who praise state action do so for more diverse reasons. In a state where middle-of-the-road cooperative projects are seen to be safer (politically) and possibly more effective, encouragement of state actions can be strategic - carrots to encourage good state behavior. It is also a way to generate good will with government regulators that can pry open political space for ongoing advocacy.

For example, in the last decade or so, Chinese environmental groups have increasingly engaged party-state officials on climate change. Chinese non-governmental organizations (NGOs) that attended the Paris climate negotiations in one instance lobbied the Climate Action Network International (“CANI”) secretariat when it considered awarding China a “Fossil of the Day Award” (an award used to shame countries who CANI believed were not doing enough to forward climate

Chinese state security officials had traveled to Paris and stayed in the same hotel as many of the Chinese groups. My sense is that these groups were not shills for the Chinese government though, nor was their primary motivation fear of state persecution. It was not clear that any state officials asked NGOs to take these actions defending China. Rather, the Chinese authorities had built relationships with the groups, such that the groups felt that it would be useful for their purposes to maintain good relations with the party-state. They could justify their protection of the Chinese state as good for climate change policy advocacy (not angering Chinese authorities and pushing them into a defensive position; allowing China to garner praise for positive actions), yet at the same time it was also undoubtedly helpful for China’s reputation as a good environmental actor. Such support for Chinese reputation tends to enable symbolic reform.

III. Dilemmas

Another way to frame the effect of symbolic performance is as a discount on the amount of performance the state must provide to retain its legitimacy. This Article has conceived of symbolic reform as a supplement to any legitimacy garnered through performance. Performance is conceived of as economic development, stability, environmental protection, health care, education and other goods. Symbolic performance (or symbolism) is the boost to state legitimacy generated when citizens think the state is performing. This relationship is represented as follows:

\[ \text{Legitimacy} = \text{Performance} + \text{Symbolism} \]

If we believe that the party-state will deliver only as much performance to the public as necessary to retain legitimacy, then any gain from symbolic reform reduces the need to generate functional performance.

One potential dilemma here arises out of the role of information control in symbolic reform. The uncertainty that allows symbolic reform to thrive arguably hinders functional performance. Accurate data, timely information, and accountability should on average improve functional environmental performance, but it makes it harder to rely on symbolic performance and to hide poor performance. The more the state chooses to rely on symbolism, the more it will need to rely on information control as well. And this reliance is detrimental to the business of functional performance.

Relatedly, reliance on symbolic reform strengthens public belief in Chinese performance legitimacy, but likely reduces the system’s actual capacity to generate performance. The state will on average be less capable of delivering performance because it has been operating at a lower level, shielded from pressure to perform. If environmental reform has the symbolic value I have claimed, the risk is that this dividend makes the bureaucracy “soft” and less capable of delivering functional
performance should it need to do so. The dynamic is somewhat different if we consider the incentives around economic performance. Party-state actors should rationally still want to generate economic growth even if it also relies on symbolic economic reform because they can capture for themselves any surplus performance that it does not need to deliver to citizens. Such surplus can be used to fund the security state or line the pockets of elites. In the environmental reform context, party-state actors have less incentive to perform if symbolic reform is providing a boost to legitimacy since environmental performance is a public good that cannot easily be captured by political elites for their own use. There is more risk in the context of symbolic environmental reform that the capacity to deliver functional performance will atrophy.

IV. Case Studies – [to come]

A. Tangshan Steel and Air Pollution

B. Carbon Trading Markets

V. The Way Forward

A. Deliberative and participatory processes

If we accept the idea of a performance-based state as legitimate (a big “if” for some) and believe that Chinese leaders rely on symbolic reform as a buffer against the inherent fragility of performance legitimacy, then there is room to argue for reforms aimed at limiting the risks of declining performance. In this regard, China should develop more deliberative and participatory processes in policy and lawmaking and in enforcement and compliance assistance. If a major aspect of symbolic reform is the failure to consider practical and political barriers to implementation, then deliberative and participatory processes, such as public hearings, transparency, and citizen enforcement can make these processes more rational, introduce expertise and knowledge, and generate early warning of potential problem areas. These processes can be used to bolster functional performance in an authoritarian context if the leadership creates a culture that supports this. The party-state is highly effective at inculcating ideology and could use its capabilities in that regard to introduce a culture of deliberation and participation. Chinese leaders could be convinced that these sorts of deliberative processes could be implemented without exacerbating the risks of subversive mass organization. Chinese leaders can promote such reforms as motivated by performance, rather than liberal political values. At the same time, such reforms confer some rational-legal legitimacy without exacerbating the possibility of losing political control.
B. Potential objections

_Genuine Reform_

One critique of this analysis concerns the line between functional and symbolic reform. Is symbolic reform simply functional reform with weak results? What does a concept of symbolic reform add to the discourse? The key insight here is that symbolic reform can bolster state legitimacy even as it undermines functional performance. Moreover, this paradox is enabled in part by active party-state information control. Confronting the pathologies of symbolic reform also risks short-term loss of legitimacy. An understanding of symbolic reform clarifies the dilemma that Chinese officials will face if they choose to lessen the impacts of symbolic reform.

_Belief_

Another critique of the thesis herein is the assumption that reform structured in a certain way actually generates symbolic value and legitimation benefits for the state. It may be that citizens are more skeptical and critical than presumed in these pages. The premise here is that a certain portion of the Chinese citizenry living in a “post-truth” environment will find symbolic reform persuasive, creating more positive views of Chinese state legitimacy. But it is also true that this is a hypothesis that has not yet been empirically tested. One could conduct surveys or other empirical testing to determine how citizens actually perceive environmental reform and how those perceptions affect their view of party-state legitimacy. Existing studies suggest that citizens have a highly favorable view of central government. More often they have a lower opinion of local government legitimacy, but this nonetheless does not affect their view of the center. My intuition is that symbolic reform plays a role in this view.

_Audience_

Another possible critique of the analysis in this article is the failure to disaggregate the citizenry into different audiences. For example, it is likely that average citizens with no specialized knowledge of environmental reform and elites (scholars, environmental experts, etc.) may require different signals to see symbolic reform as credible. I acknowledge this divide is possible, but do not currently have the data to address the issue.

_Control_

Another potential critique is that this account’s focus on performance and symbolic performance deemphasizes the control aspects of the state to an excessive degree. It is undoubtedly true that control and security play a crucial role in Chinese
regime stability. This is both the backstop against potential rebellion and a critical tool in preempting mass organization and undesirable political activities. Yet, control is a separate concept from legitimacy. Legitimacy is in significant part about persuading the masses to accept state power. This article has focused on the role of performance and belief in the state legitimation process. Much has been written on the Chinese security state and readers can seek information about what Stein Ringen calls China’s “controlocracy” elsewhere.\(^{55}\) These accounts almost uniformly pay too little attention to the role of party-state construction of legitimacy.

**CONCLUSION**

Eco-civilization reform is above all meant to reinforce the message that party-state leadership and planning is essential to China’s future. As a senior member of China’s high-level “deepening reform” leading small group said at a 2015 press conference announcing major eco-civilization policy documents, China’s environmental problems had been due to the lack of “top-down design.” The implication was clear. Now that the leadership had set its mind to China’s environmental problems, a solution was near at hand. State planning would not lead to Hayek’s “Road to Serfdom,” but rather to successful attainment of a more sustainable economic model, social stability, and a greener ecological future.

Stepping back, I argue that an understanding of the symbolic role of governance reform in China reshapes the debate over performance versus politically-legal legitimacy. For one, it injects a bit of realism into claims of Chinese “meritocracy.” Emerging evidence suggests that the costs of eco-civilization reform have fallen disproportionately on the weakest, least politically connected parts of society.\(^{56}\) And for those who measure China’s performance-based system primarily based on its actual performance, this account demonstrates that functional performance is not the only metric that matters. Critics may be correct that declining performance will lead to greater calls for democracy, rights, or liberal rule of law.\(^{57}\)


\(^{57}\) The literature on this point is mixed, however. Some studies suggest that Chinese citizens simply do not value procedural justice to the same degree as Americans do. Using methodology pioneered by Tom Tyler in the U.S., Ethan Michelson found that Chinese citizens were dissatisfied with Chinese legal proceedings if the substantive outcome was not in their favor, even if they felt that procedures were fair. This is a different outcome than Tyler found in the U.S., where those surveyed were satisfied with legal proceedings if the procedures were fair, despite unfavorable substantive outcomes. These results comport with what people say about Chinese vs. U.S. justice. See Ethan Michelson, *Public Attitudes toward Official Justice in Beijing and Rural China*, in *Chinese Justice: Civil Dispute Resolution*
But the symbolic value of massive, broad-based governance reform bolsters the regime through the signaling of performance, regardless of the actual state of affairs, and can extend the period before which calls for liberal reform might commence.58

Ultimately, this Article shines a light on an important strategic resource - China’s use of the process of governance reform itself as a symbolic marker of state legitimacy - while also taking a critical look at the problems this approach obscures.

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IN CONTEMPORARY CHINA, Margaret Woo & Mary Gallagher eds., pp.169-203 (2011); see also TOM TYLER, WHY PEOPLE OBEY THE LAW (1990). Another study found that Chinese citizens rate the legitimacy of local leadership lower when they have experienced procedural injustice. But experience with procedural injustice did not translate into lower opinions of central leadership. See Mayling Birney, Beyond Performance Legitimacy: Procedural Legitimacy and Discontent in China (draft manuscript).

58 At the same time, technological and other changes are making it more difficult to avoid accountability for actual results - international satellite imaging, consumer-level monitoring equipment, web-based information sharing, more active citizen monitoring in general - will make it more difficult for the state to “pass” as high-performing if it in reality is not.