

THE SEARCH FOR SUSTAINABLE LEGITIMACY: ENVIRONMENTAL LAW AND BUREAUCRACY IN CHINA

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During China's 11th five-year plan (2006–10), bureaucrats began to take substantial actions on environmental protection, making major investments in pollution control infrastructure and forcing the shutdown of thousands of outdated facilities and production lines. This was not accomplished through meaningful reform of a notoriously weak environmental law regime. Rather, Chinese authorities turned to cadre evaluation — the system for top-down bureaucratic personnel assessments — to set high-priority, quantitative environmental targets designed to mobilize governors, mayors, and state-owned enterprise leaders in every corner of China's massive bureaucracy.

While conventional analysis has primarily viewed this effort through the lens of environmental protection, this Article argues that "environmental cadre evaluation" is better understood as something more fundamental. Chinese authorities have embraced environmental cadre evaluation as a tool for limiting risks to the party-state's hold on power, using environmental protection in an unexpected way to deliver economic growth and social stability. Environmental objectives have been elevated, but primarily to the extent they support these other values as well.

But implementation problems inherent to this top-down approach abound. Local agents falsify information and shut down pollution control equipment. Closed factories are secretly reopened. These problems create an imperative for reform. Of the initiatives already under way, governance reforms that strengthen public supervision have particular advantages for resolving institutional pathologies that limit the effectiveness of China's environmental efforts.

By examining why and how Chinese leaders have elevated environmental priorities through the cadre evaluation system, this Article seeks to offer insight into a number of broader ongoing debates — about environmental regulation in developing countries, accountability and regime survival in authoritarian states, and legal development in China.

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INTRODUCTION

By just about any metric of environmental quality and sustainability, China faces an environmental crisis of daunting proportions.¹ The country is the world's leading emitter of greenhouse gases, sulfur dioxide, mercury, and a range of other pollutants. Severe environmental quality problems threaten human health and ecosystems. China has some of the most polluted cities in the world.² More than 300 million people lack access to safe drinking water.³ The cost of environmental degradation has been estimated at anywhere from 3 to 15 percent of the country's GDP annually.⁴

Although China has constructed an expansive environmental law framework over the past 30 years, implementation of laws and regulations in practice has been notoriously weak. A leading Chinese environmental law scholar put the problem bluntly: "China's green laws are useless."⁵

So it came as something of a surprise when Chinese bureaucrats began to take substantial action on environmental protection and energy efficiency during China's 11th five-year plan period (2006–10).⁶ Investment in pollution control infrastructure soared. One province that had only two wastewater treatment plants in 2006 built more than 100 treatment facilities by the end of 2010. Another province built 119 wastewater treatment plants in the span of three years. Nationwide, coal-fired power plants clamored to install pollution control equipment, with the rate of installation in plants rising from 10 percent in 2005 to 86 percent at the end of 2010. Local governments ordered the clo-

¹ Public policy research and the media have documented and drawn attention to this crisis. See generally Alex Wang, *China's Environmental Tipping Point?*, in CHINA IN AND BEYOND THE HEADLINES (Tim Weston & Lionel Jensen eds., 2012); WORLD BANK, COST OF POLLUTION IN CHINA: ECONOMIC ESTIMATES OF PHYSICAL DAMAGES (2007) [hereinafter COST OF POLLUTION]; MUN S. HO & CHRIS P. NIELSEN, CLEARING THE AIR: THE HEALTH AND ECONOMIC DAMAGES OF AIR POLLUTION IN CHINA (2007); ELIZABETH C. ECONOMY, THE RIVER RUNS BLACK: THE ENVIRONMENTAL CHALLENGE TO CHINA'S FUTURE (2010); JUN MA, CHINA'S WATER CRISIS (2004); TODD M. JOHNSON, FENG LIU & RICHARD NEWFARMER, WORLD BANK, CLEAR WATER, BLUE SKIES: CHINA'S ENVIRONMENT IN THE NEW CENTURY (1997) [hereinafter CLEAR WATER, BLUE SKIES].

² Fine particulate matter concentrations in urban areas are at least four to five times those found in developed countries. *190 Million Chinese Drinking Polluted Water*, PEOPLE'S DAILY ONLINE, Apr. 22, 2011, <http://english.peopledaily.com.cn/90001/98649/7359043.html>.

³ *Id.*

⁴ See *Green GDP Accounting Study Report 2004 Issued*, XINHUA, Sept. 12, 2006, http://news.xinhuanet.com/english/2006-09/12/content_5080599.htm; see also CLEAR WATER, BLUE SKIES, *supra* note 1, at 23; COST OF POLLUTION, *supra* note 1, at xvii; 潘希 [Pan Xi], 解振华痛陈：生态破坏一年“吃掉” GDP [Xie Zhenhua Sorrowfully States: Ecological Damage "Eats Up" 15% of GDP Each Year], 竞报 [JING BAO], Apr. 29, 2005, <http://tech.sina.com.cn/d/2005-04-29/1430598439.shtml> (citing 2003 Chinese Academy of Sciences study); United Nations Environment Programme ("UNEP"), Tongji University, *Green Accounting Practice in China (Draft Report)*, Apr. 2008, at 2–10.

⁵ Jin Wang, *China's Green Laws are Useless*, CHINA DIALOGUE, Sept. 23, 2010, <http://www.chinadialogue.net/article/show/single/en/3831>.

⁶ Five-year plans are created by Chinese government and approved by the Chinese Communist Party and the National People's Congress. China's first five-year plan was implemented in 1953. JONATHAN SPENCE, THE SEARCH FOR MODERN CHINA 514 (1999). See Part III(B)(1), *infra*, for further discussion of China's five-year plans.

sure of substantial amounts of “backward industrial capacity” (*luohou chan-neng*). By the end of 2010, for example, officials had forced the shutdown of some 70 gigawatts of small thermal-power plant capacity nationwide.⁷

This dramatic shift in behavior did not arise out of any meaningful reform of China’s environmental law framework. Rather, it stemmed from the elevation of environmental priorities through the cadre evaluation system — China’s system for top-down bureaucratic personnel evaluation.⁸ At the beginning of the 11th five-year plan, Chinese authorities established high-priority, quantitative pollution reduction and energy efficiency performance targets that were assigned to governors, mayors, county magistrates, and state-owned enterprise leaders in every corner of China’s massive bureaucracy. These “energy saving, emissions reduction” (“ESER” or *jienerg jianpai*) targets included mandates for a 10 percent reduction in sulfur dioxide and chemical oxygen demand (“COD”) releases,⁹ and a 20 percent reduction in energy intensity.¹⁰

While China had set environmental targets in previous five-year plans, failure to meet those targets brought few consequences. Environmental targets, like China’s environmental laws, had never been taken very seriously. ESER targets in the 11th five-year plan, however, represented a substantial elevation of environmental goals, raising environmental targets to a level of priority previously reserved only for the most important party-state¹¹ mandates, such as economic growth, social stability, and the one-child policy.¹²

This system of “environmental cadre evaluation”¹³ has since become the central focus of China’s domestic and international environmental strategy.¹⁴ Central authorities have applied the tool to a range of new priorities concerning climate change, energy efficiency, and pollution.¹⁵ Chinese leaders announced

⁷ Hongwei Yang, *Hitting Green Targets*, CHINA DAILY, Dec. 1, 2010, http://www.china.org.cn/opinion/2010-12/01/content_21458373_2.htm. In 2006, China had about 115 GW of small thermal (under 100 megawatts) capacity, out of roughly 391 GW overall of thermal-fired power plant capacity. Jing Cao et al., *China’s 11th Five-Year Plan and the Environment: Reducing SO₂ Emissions*, 3 REV. ENVTL. ECON. & POL. 231, 240 n.10 (2009).

⁸ See Part I(B), *infra*, for further discussion of the cadre evaluation system.

⁹ Sulfur dioxide is an air pollutant produced by fossil fuel combustion (for example, power plants and industrial facilities). Chemical oxygen demand is a general measure of organic water pollution.

¹⁰ “Energy intensity” refers to the amount of energy required to produce a given unit of economic output. Eleventh five-year plan target reductions were to be achieved by 2010 and are reductions from 2005 baseline numbers.

¹¹ Chinese government institutions are closely integrated with Party institutions and subject to Party control. This Article uses the term “party-state” to refer to these Chinese governance institutions in general.

¹² See, e.g., Angang Hu, *Green Light for Hard Targets*, CHINA DAILY, Mar. 28, 2011, http://www.chinadaily.com.cn/opinion/2011-03/28/content_12234557.htm; 邓聿文 [Deng Yuwen], 环保“一票否决”的威力会有多大? [How Powerful Will Environmental “Veto” Targets Be?], 新华网 [XINHUA], Dec. 5, 2007, <http://env.people.com.cn/GB/6613692.html>.

¹³ “Cadres,” simply put, are party-state bureaucrats, which in the Chinese system include bureaucrats in state agencies and bureaus, state-owned enterprise workers, and staff in a range of other state institutions.

¹⁴ The idea of evaluating bureaucrats against environmental criteria has been part of the public debate since the 1980s, but the 2006 11th five-year plan was the first one in which environmental criteria were elevated from “soft” to “hard” target status. See *infra* Parts I(B) and II(B)(1).

¹⁵ Hu, *supra* note 12.

a “domestically binding” carbon intensity target as the centerpiece of China’s negotiating position at the 2009 Copenhagen climate negotiations.¹⁶ China expanded its use of environmental targets in the 12th five-year plan (2011–15), with targets for carbon intensity and renewable energy, among others. Environmental cadre evaluation has been used to address heavy metal pollution and fine particulate pollution.¹⁷

Despite the importance of the cadre evaluation system, the study of its implications for environmental regulation and governance in China has been relatively limited. Few of the articles that have addressed environmental cadre evaluation have attempted to theorize the ways in which cadre evaluation has worked as an environmental governance mechanism to alter the low priority government leaders had long placed on environmental objectives, and to drive local government action.¹⁸ Those studies have tended to be descriptive in nature or have treated cadre evaluation in passing as one among many environmental governance tools.¹⁹ Moreover, little academic work has attempted to develop a broader theory of the functional relationship between bureaucratic mandates and Chinese law.²⁰ For the most part, researchers have studied the two governance systems in isolation — (almost) never the twain shall meet.

This Article attempts to fill this gap in the literature by developing a comprehensive empirical case study of the operation of environmental cadre evaluation²¹ based upon a review of Chinese- and English-language source materials

¹⁶ Hu Jintao's Speech on Climate Change, N.Y. TIMES, Sept. 22, 2009, <http://www.nytimes.com/2009/09/23/world/asia/23hu.text.html>; 单位GDP碳强度降低40–45%是我国自愿、自主的行动 [Carbon Intensity Reduction of 40–45% is a Voluntary Action], 中华人民共和国中央人民政府 [THE CENT. PEOPLE'S GOV'T OF THE PEOPLE'S REPUBLIC OF CHINA], Nov. 26, 2009, http://www.gov.cn/wszb/zhibo356/content_1474280.htm.

¹⁷ PM2.5 Readings Vital for Political Careers, CHINA DAILY, Feb. 17, 2012, http://www2.china-daily.com.cn/china/2012-02/17/content_14634482.htm.

¹⁸ See Yuan Xu, *The Use of a Goal for SO2 Mitigation Planning and Management in China's 11th Five-Year Plan*, 54 J. ENVTL. PLANNING & MGMT. 769, 783 (2011); ANNUAL REVIEW OF LOW-CARBON DEVELOPMENT IN CHINA, CLIMATE POL'Y INITIATIVE (2010), summary available at <http://climatepolicyinitiative.org/publication/china-annual-review-2011-2012>; Lynn Price et al., *Assessment of China's Energy-Saving and Emission-Reduction Accomplishments and Opportunities During the 11th Five-Year Plan*, 39 ENERGY POL. 2165, 2178 (2011). A notable exception is Dan Guttman & Yaqin Song, *Making Central-Local Relations Work: Comparing America and China Environmental Governance Systems*, 1 FRONTIERS OF ENVTL. SCI. & ENGINEERING IN CHINA 418, 433 (2007) [hereinafter *Central-Local Relations*]; see also Wyatt Golding, *Incentives for Change: China's Cadre System Applied to Water Quality*, 20 PAC. RIM L. & POL'Y J. 399 (2011).

¹⁹ The existing work on environmental cadre evaluation has also largely been based on official pronouncements and statistics, rather than empirical investigation.

²⁰ The exceptions are Carl Minzner, *Riots and Cover-Ups: Counterproductive Control of Local Agents in China*, 31 U. PA. J. INT'L L. 53 (2009–10) [hereinafter Minzner, *Riots & Cover-Ups*] (identifying how target incentives lead to principal-agent problems and exacerbate public instability); Mayling Birney, *Objective-Maximizing Authoritarianism: Evidence from China* (June 2012) (setting forth a theory of the “rule of mandates” that treats “laws” and “regulations” as secondary, subordinate norms to cadre evaluation targets); see also Guttman & Song, *supra* note 18.

²¹ This Article focuses specifically on the system for implementing “pollution reduction” (*jianpai*) targets, and discusses the “energy savings” (*jienerg*) target system only where relevant to the pollution reduction system. The pollution reduction targets are under the jurisdiction of the Ministry of Environmental Protection, whereas energy savings targets are under the jurisdiction of a different “system” in the bureaucracy — that headed by the National Development and Reform Commission.

and several dozen in-person interviews with central and local government officials, scholars and researchers, and environmentalists.²²

This case study, in turn, serves as the foundation for an examination of both *why* and *how* Chinese leaders have elevated environmental priorities during the 11th five-year plan.

First, this Article sets forth a theory of why Chinese leaders would elevate environmental priorities in this way. While most observers have viewed environmental cadre evaluation primarily through the lens of environmental protection, this Article argues that it is ultimately driven by something more fundamental. Environmental cadre evaluation is better understood as part of a broader political strategy to limit risks to the party-state's hold on power. It represents the use of environmental protection as a tool for delivering on the central components of China's "performance legitimacy" — sustained economic growth and social stability. Environmental goals, therefore, have been prioritized primarily to the extent that they benefit economic development or social stability. But this also represents an effort to elevate environmental protection as a normative value in and of itself.

This account differs from the narratives of environmental protection seen in democratic states like the U.S., Germany, and Japan, which focus on the role of the public in driving shifts in environmental priorities.²³ But it also differs from existing studies of "authoritarian environmentalism," which suggest the potential superiority of authoritarian states over democracies in resolving environmental problems.²⁴ Rather, this Article offers an account of an authoritarian state harnessing environmental regulations in the name of pursuing a range of state interests, but also (as will be discussed below) facing substantial challenges in governance and implementation.

This analysis deepens our understanding of specifically how Chinese authorities are attempting to adjust to perceived threats to the regime, and allows us to situate Chinese environmental protection efforts among other party-state moves to enhance regime legitimacy, such as economic reform, revival of Confucian ideology, international soft power efforts, rule of law reforms, attempts to stoke nationalist impulses, a broad range of social reforms, and the ramping up of the state's coercive apparatus.

²² This Article is based in part on interviews conducted in six provinces in China. Interviewees included bureaucrats at the central, provincial, and municipal levels of government, university and government researchers, and environmental organization representatives in China. All interviewees were promised anonymity. Reflecting common practice, interviewees are not identified by name or location. Rather, each interview is only identified by year and interview number. This Article also draws in part on the author's personal experience over nearly seven years in China working on environmental law reform projects with government and quasi-government, academic, and civil society partners.

²³ See, e.g., MIRANDA SCHEURS, ENVIRONMENTAL POLITICS IN JAPAN, GERMANY, AND THE U.S. (2003), available at <http://catdir.loc.gov/catdir/samples/cam033/2002067372.pdf>.

²⁴ Mark Beeson, *The Coming of Environmental Authoritarianism*, 19 ENVTL. POL. 276, 276 (2010) ("The dispiriting reality may be that authoritarian regimes . . . may even prove more capable of responding to the complex political and environmental pressures in the region than some of its democracies."); Bruce Gilley, *Authoritarian Environmentalism*, 21 ENVTL. POL. 287 (2012) (citing to a number of works on "authoritarian environmentalism").

Second, this Article examines how as a governance matter Chinese authorities have sought to implement these elevated environmental priorities. The key point is that, rather than reform China's legal system, leaders have relied primarily on top-down party-state bureaucratic mandates to drive performance of new environmental goals. This view of bureaucratic targets as the core of Chinese governance helps to explain decades of poor environmental law implementation. It is not only that weak environmental protection is a "paradox" between central environmental objectives and intransigent local actors, as most researchers have supposed. Rather, decades of poor environmental enforcement have been, in significant part, the rational response to a different set of norms (cadre targets) that de-prioritized environmental protection. The sudden and robust response of local actors to central elevation of environmental priorities is a stark illustration of the still powerful role of bureaucratic cadre evaluation in Chinese governance.

These research findings regarding the "why" and "how" of environmental cadre evaluation in China offer insight into a number of broader ongoing debates — about environmental regulation in developing countries, accountability and regime survival in authoritarian states, and legal development in China.

Environmental regulation. First, this legitimacy-based framing of environmental cadre evaluation provides vital insight into the normative values underlying China's efforts at environmental protection — namely, growth and stability. For China skeptics, it offers an explanation for why China would attempt such a substantial elevation of environmental priorities and a plausible story of how China can achieve some level of effective implementation. For those who believe China has commenced a radical "green leap forward," this Article demonstrates that environmental targets are aimed in significant part at achieving non-environmental goals. Moreover, findings of substantial principal-agent problems offer a sobering picture of the limitations of China's target-based approach for achieving growth, stability, or environmental objectives.

This study of environmental cadre evaluation contributes to a growing environmental governance literature that examines the ways in which developing countries attempt to address environmental problems in the face of undeveloped rule of law, weak regulatory capacity, and strong pressure for economic growth.²⁵ The linking of economic and environmental aims, in particular, provides a potential roadmap for nations seeking to find a way to create "greener" growth.

Adaptive governance. Second, this case study of environmental cadre evaluation deepens our understanding of China's "adaptive authoritarian" approach to governance in the first decade of the 21st century.²⁶ It takes a previously neglected state priority (environmental protection) and uses it in an

²⁵ See *Pollution Law Enforcement in Emerging Markets*, 32 L. & POL'Y. (SPECIAL ED.) (Benjamin van Rooij et al. eds., No. 1, 2010) for several examples of interesting recent academic work in this area.

²⁶ See MAO'S INVISIBLE HAND: THE POLITICAL FOUNDATIONS OF ADAPTIVE GOVERNANCE IN CHINA (Sebastian Heilmann & Elizabeth J. Perry eds., 2011) for one of the best recent discussions in a line of literature on China's adaptive approach to governance in the post-Mao era.

unexpected way as a vehicle to deliver outputs that have been essential to the party-state's hold on power (GDP growth and stability). At the same time, it is an effort to develop (albeit haltingly) environmental values as a new source of legitimacy under the Hu-Wen rubric of a "harmonious society."²⁷

More broadly speaking, this case study of environmental cadre evaluation reflects an adaptive "process" of governance that includes feedback loops for problem identification, pilot experimentation,²⁸ flexible adjustment of priorities,²⁹ reforms to governance mechanisms,³⁰ and a relatively institutionalized process of continuous review and adjustment to shifting problems³¹ — a bureaucratic version of the corporate philosophy of "total quality management."³²

Consistent with this adaptive process of governance, Chinese leaders have begun to identify problems and implement further reforms in the current 12th five-year plan. This Article will take a preliminary look at the range of reforms under way as of this writing. Of these measures, this Article argues that public supervision reforms — including greater transparency, public participation, and public interest litigation — have the greatest potential to improve government accountability (to central objectives and to the public will) because they actually create a possibility for third party, independent monitoring and the increased likelihood of sanctions for bad behavior.

Legal development. Finally, this study serves to correct some long-standing misconceptions about the way that law and governance work in China. This Article decenters the role of law in Chinese governance and highlights the central role of hierarchical structures and bureaucratic plan targets. Bureaucratic mandates sit at the core of China's governance apparatus, leading the way. Despite years of official rhetoric on the development of Chinese rule of law, laws and regulations remain secondary. And their implementation is heavily influenced by whether they support or conflict with senior bureaucratic mandates.³³ As a practical matter, to understand Chinese governance we must understand this relationship between targets and law.

This new understanding of the dynamic between law and cadre targets lays the foundation for further research into the role of law in Chinese society. Does it serve primarily a symbolic or expressive role — both to show that the party-state "cares" about certain values and to set aspirational norms that should be followed?³⁴ Does law primarily do its work in the areas where it does not conflict with bureaucratic mandates? Do laws and regulations raise

²⁷ See *infra* Part III(A)(1) for a discussion of the Hu-Wen "harmonious society" project as a programmatic response to concerns about declining state legitimacy.

²⁸ See *infra* Part II.

²⁹ See *infra* Part III.

³⁰ See *id.*; *infra* Part IV.

³¹ See *infra* Part V.

³² *How to Build Quality*, THE ECONOMIST, Sept. 23, 1989, at 121–22.

³³ See Guttman & Song, *supra* note 18; see also Minzner, *Riots & Cover-Ups*, *supra* note 20.

³⁴ See, e.g., Lauren B. Edelman, *When Organizations Rule: Judicial Deference to Institutionalized Employment Structures*, 117 AM. J. SOC. 888, 898 (2011) (discussing symbolic compliance); Cass Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021 (1996); see also Terrence Halliday & Bruce Carruthers, *How Countries Resist Global Institutions*, CENTER ON LAW AND GLOBALIZATION, http://clg.portalxm.com/library/keytext.cfm?keytext_id=30.

citizen expectations in a way inconsistent with this party-state conception of the role of law? Can environmental priorities set forth in cadre evaluation targets actually lend weight and credibility to environmental laws and regulations long ignored?³⁵ Can administrative law mechanisms that generate greater public accountability serve the party-state by mitigating principal-agent problems inherent to the cadre evaluation system? These questions suggest the possibility of a more fluid ongoing interaction between bureaucratic targets and law than has been portrayed in recent studies of China's "turn against law."³⁶

* * *

This Article proceeds in five Parts. Parts I to III set forth a legitimacy-based theory for why Chinese authorities would elevate environmental priorities through the use of environmental cadre evaluation. Part IV describes central party-state strategies to improve central-local control and examines persistent implementation problems of the cadre evaluation system. Part V looks at the implications of weak implementation and potential solutions. More specifically:

Part I draws from the political science, sociology, and social theory literature to set forth a framework for understanding regime legitimacy. It then argues that cadre evaluation is the central tool by which the party-state has attempted to achieve goals it sees as central to staying in power.

Part II examines the impact that traditional cadre evaluation focus on economic development has had on environmental protection. The existing literature has focused on "local protectionism" as the primary explanation for poor environmental enforcement in China. However, cadre evaluation incentives have clearly prioritized economic objectives over environmental protection. Disputing the conventional view of a "paradox" between central environmental aims and unruly local bureaucracies, this Part argues that top-down and local incentives for environmental degradation have been more aligned in the past than is commonly recognized — with predictably dire consequences for China's environment.

This Part then describes China's early experiments with environmental cadre evaluation targets and its abortive effort to promote the concept of "green GDP." While the notion of utilizing environmental targets had existed in party-state policies since the 1980s, environmental cadre evaluation would not be used in a serious way to prioritize environmental goals until the 11th five-year plan in 2006.

Part III turns to the central thesis of this Article, offering an explanation for why Chinese authorities have elevated environmental priorities. It provides illustrations, based on review of written materials, in-person interviews in

³⁵ See 孙佑海 [Sun Youhai], *强化法治是实现节能减排目标的根本保障* [Strengthening Rule of Law is a Fundamental Safeguard for Realizing Energy-Saving, Emissions-Reduction Targets], 群言 [GROUP TALK] (July 2007).

³⁶ See, e.g., Carl Minzner, *China's Turn Against Law*, 59 AM. J. COMP. L. 935 (2011).

China and the United States, as well as the author's personal experience working on environmental law matters with Chinese government agencies and civil society, of the ways in which environmental cadre evaluation has been utilized since 2006 to achieve the party-state's core objectives. This Part argues that environmental cadre evaluation reflects an effort by the party-state to sustain the traditional growth and stability foundations of its "performance legitimacy," while expanding, however modestly, environmental protection as a stand-alone normative value.

Part IV focuses on how Chinese authorities have attempted to implement these environmental priorities in practice. It first sets forth a number of central strategies designed to counter traditional central-local implementation problems. It then analyzes persistent implementation challenges of environmental cadre evaluation that nonetheless remain, using criteria derived from studies in economics and political science identifying the classic features of principal-agent problems: goal specification, goal displacement, data falsification, and collusion.

Part V argues that these implementation problems create risks for the regime and an imperative for reform. Several strands of reform are currently in play, including increased top-down administrative monitoring, resort to market measures, and governance reforms that edge China in the direction of greater public accountability and a more "deliberative authoritarianism." This Part makes a normative proposal for expansion of public supervision mechanisms as the most effective way to resolve persistent implementation problems.

Without the "vital cockpit" of an independent court system,³³⁹ are the incentives and checks in the system simply insufficient to cause authorities to actually consider citizen interests — particularly in cases where citizen interests conflict with leadership or business interests? And, in the event that performance based on economic growth inevitably falters (as it must), can this more modest level of deliberation "with Chinese characteristics" actually sustain the state?

CONCLUSION

The arguments set forth in this Article have significant practical implications. To summarize, this Article argues first of all that Chinese action on environmental protection has been motivated by different concerns compared to, for example, what motivated the acceleration of environmental regulation in the United States. In China, the elevation of environmental protection has been motivated by economic development and social stability concerns, which in turn have been the pillars of China's "performance legitimacy" since the late 1970s. The way in which authorities have chosen to implement this elevation of environmental priorities — through the use of bureaucratic mandates and hierarchical evaluation, rather than reform of the legal system — has important implications for our understanding of environmental regulation, governance in general, and the role of law in China.

Environmental Regulation

With regard to environmental protection, the findings of this Article suggest a top-down policy rationale for environmental regulation that is quite different from the bottom-up, citizen-driven story seen in most developed world, democratic states. This confluence of authoritarian self-interest with norms of environmental protection suggests a path by which China may be able to achieve better environmental outcomes within the contours of its current political system. Nonetheless, the persistent problems of implementation associated with a top-down, hierarchical approach to governance with little independent, public accountability create serious risks for the successful achievement of environmental mandates.

Authoritarian Governance

With regard to China's approach to governance in general, this study of environmental cadre evaluation reflects China's adaptive approach to governance and regime survival in recent decades. This is a process of governance marked by feedback loops for problem identification and a willingness to experiment, adjust priorities, and adapt governance mechanisms.

³³⁹ See Stewart, *supra* note 331, at 75.

It is a system that by no means produces perfect results, as evidenced by the discussion in Part IV of persistent principal-agent problems. And — given the connection between environmental priorities and broader leadership concerns about political legitimacy — the principal-agent problems of cadre evaluation generate much greater (and potentially existential) risks for the regime. If Chinese authorities agree with the premise that reforms to improve local accountability are necessary to address genuine risks to the regime, then the next question is what sorts of reforms are the most effective and desirable. This Article's suggestion is that central authorities have favored top-down monitoring enhancements and market measures in the name of improving local accountability to the center without incurring excessive political risk. But, for the reasons stated above, these measures are less likely to be effective in practice than governance reforms that create accountability to the public, which is a more diffuse and independent accountability that is less susceptible to gaming and political manipulation.

However, governance (or political) reforms that create some level of check on government power have typically been considered unlikely in China, and indeed have been explicitly rejected by some senior members of the Chinese leadership. And while central environmental regulators may tend to be more amenable to the development of public supervision channels, local officials who are the objects of such supervision are typically less than willing to cooperate.

Even so, reforms of this very nature have quietly been implemented in the environmental sector with some signs of success. This is an opportunity created by a confluence in the interests of the principal (central authorities) and citizens who can serve as monitors of local party-state agents. Though potential political risks to the party-state (and the potential that the interests of the principal might shift away from environmental protection) make continuation of such reforms anything but inevitable, the confluence of factors described at length in this Article (that is, egregious environmental degradation, energy shortages, public unrest, and recognition of the unsustainability of this state of environmental affairs) present as good an opportunity as any for such governance reforms to inch forward for now — out of necessity and party-state self-interest in survival.

If the goal of Chinese authorities is truly to seek out a more sustainable regime legitimacy, however, it is an open question whether this relatively limited notion of “deliberative dictatorship” — in the absence of deeper political reform — can actually fit the bill. Nonetheless, the point here is that Chinese leaders have exhibited a track record of adaptive governance that is very much reflected in the process by which environmental cadre evaluation was developed and implemented. This approach to governance suggests an openness to further experimentation that creates an opportunity for new ideas to enter China's governance system. In part, the discussion of public supervision in Part V above is a proposal for how Chinese leaders might choose to proceed with such reforms.

Legal Development

Finally, the way in which Chinese leaders have adapted the cadre evaluation system to turn once neglected environmental priorities into senior priorities of the party-state offers a window into the relative roles of bureaucratic targets and law in China. This case study suggests that bureaucratic cadre mandates, not laws and regulations, are at the core of Chinese governance. Laws and regulations are more likely to be implemented when supportive of these mandates. Legal implementation is likely to be weaker (or non-existent) when laws conflict with these bureaucratic norms. This decentered view of law offers a new lens through which to assess the role of law in China.

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China has approached environmental protection in a distinctive manner, with an unprecedented elevation of environmental priorities since 2006. While China's approach borrows techniques and mechanisms from developed countries, its focus on hierarchical cadre evaluation, distrust of law and judicialization, and use of environmental protection to promote economic, stability, and environmental objectives arise out of a uniquely "adaptive authoritarian" approach to rule.

To be sure, China is now in uncharted territory. China's current approach to environmental protection has never been attempted before in quite this way, on this scale, and in the face of such urgent, seemingly intractable environmental problems. Those who have argued that China is engaged in a "green leap forward" are surely getting ahead of themselves. Environmental problems in China continue to be some of the worst the world has ever seen.

Yet, without a doubt, China is in the midst of the most serious long-term campaign to tackle environmental problems it has ever implemented. It is an effort deeply and inextricably linked to the party-state's ultimate self-interest: doing what it takes to remain in power.