

Explaining Environmental Information Disclosure in China

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In recent years, China has adopted a range of measures for information disclosure or “open government information.” This comes as a surprise in an authoritarian system known more for secrecy and information control. Why do authoritarian leaders embrace such mechanisms, and how do state and society actors respond? This Article examines in particular the emergence of environmental information disclosure in China, and makes two main contributions to the scholarly debate on Chinese law and governance.

First, this Article demonstrates how local demand for legal transplant can arise out of diverse (and sometimes competing) societal interests. State, society, and international actors saw in information disclosure law a range of possibilities—the prospect of improved environmental performance, greater accountability to citizens, and strengthened state control. This interest convergence among strange bedfellows has enabled the seemingly paradoxical flowering of disclosure law in China.

Second, this Article unpacks the social effects of information disclosure law in China’s authoritarian bureaucratic governance setting. Where interests are compatible in practice, disclosure has enabled state and society advocacy, and catalyzed new channels for public supervision in environmental regulation. It has also provided a powerful rights-based way for advocates to frame their actions. Yet, for all its promise, information disclosure creates risks for those involved and reveals deep tensions in Chinese governance—between authoritarian and bottom-up approaches to rule, and the overarching policy

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objectives of social stability and performance. These tensions limit the utility of disclosure in practice, with consequences (for example, weakened state legitimacy and a hobbled environment) for state and society actors alike.

Introduction.....	867
I. The Promise and Peril of Information Disclosure	874
A. China's Environmental Challenges and Recent Reforms.....	874
B. The Emergence of Environmental Information Disclosure Law	877
C. Interest Convergence and Divergence	883
II. Converging Interests and Expanded Autonomy.....	883
A. Interest Compatibility	884
B. Engaging the State	889
1. Fire Alarms	889
a. The Role of Information Disclosure	890
b. Shandong's Disclosure Platform	893
2. Agenda Setting.....	898
a. The 2014 Environmental Protection Law Amendment	898
b. Non-Disclosure as an Agenda Setter	900
C. Circumventing the State.....	900
1. Quasi-Regulatory Strategies	900
2. Self-Help.....	902
III. Diverging Interests and Constrained Autonomy.....	904
A. Disclosure Dilemmas.....	904
B. State Control	910
1. Preemptive Strategies: Selective Disclosure and Information Manipulation.....	911
2. Post-Hoc Regulation: Hard Rules and Enforcement	913
C. Fragmentation	917
Conclusion	921

Citizens, legal persons and other organizations shall have the right to obtain environmental information, participate and supervise the activities of environment protection in accordance with the law.

– Art. 53 of the *Environmental Protection Law of the People's Republic of China (2014)*.¹

INTRODUCTION

China is not known for its transparency.² Take environmental information, for example. Not so long ago, citizens had limited access to environmental information in China. Chinese law did not require environmental agencies to release much data at all about air, water, or soil quality. If a factory violated environmental rules, the law did not demand notice to the public, nor did a person have a right to obtain information by request. Even as rapid economic development proceeded apace, citizens had little ability to learn about risks from the industrial facilities—power plants, smelters, incinerators, and the like—transforming the world around them. This lack of access to information was part and parcel of a governance system fundamentally lacking in formal mechanisms of government accountability.³

During the early years of China's post-1978 "reform and opening" period, the absence of public information disclosure tended to obscure environmental problems, limiting public conflicts and enabling rapid growth. But, as the Chinese economy boomed, the environmental side effects of development became increasingly apparent. Farmers began to attribute crop losses and

1. 中华人民共和国环境保护法 [Environmental Protection Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 26, 1989, rev'd Apr. 24, 2014, effective Jan. 1, 2015), art. 53, *translated in* CHINA DIALOGUE, <http://bit.ly/1JtGWDD> (unofficial translation by the EU-China Environmental Governance Programme).

2. In this Article, I largely use the term *information disclosure* to recognize that disclosure is not necessarily *transparency*. See, e.g., David Heald, *Varieties of Transparency*, in *TRANSPARENCY: THE KEY TO BETTER GOVERNANCE?* 25, 25–26 (Christopher Hood & David Heald eds., 2006). Even though environmental disclosure has expanded, it still may not enable understanding of government and enterprise behavior. Disclosure is weak in some Chinese jurisdictions, and even where disclosure is implemented it may be time limited (disappearing after a certain amount of time), difficult to find or comprehend, or unreliable in quality and veracity. See also *CLEAN AIR ALL OF CHINA, CHINA AIR QUALITY MANAGEMENT ASSESSMENT REPORT: LITE EDITION 15 (2015)* ("By the end of 2014, official websites of all provincial/municipal environmental protection offices have released [sic] real-time monitoring data of ambient air quality, yet no access [was] found to keep historical monitoring data [sic].").

3. See Carlos Wing Hung Lo & Sai Wing Leung, *Environmental Agency and Public Opinion in Guangzhou: The Limits of a Popular Approach to Environmental Governance*, 163 *CHINA Q.* 677, 679 (2000) ("The communist political system . . . provides no institutional channel for the general public to exercise strong influence on the environmental policy process. . . . In the absence of public participation, accountability in the environmental regulatory process is almost non-existent.").

animal deaths to industrial pollution.⁴ Villagers came to see birth defects, premature deaths, and illnesses as caused by pollution, bringing the term *cancer villages* (癌症村) into the Chinese vernacular.⁵ Middle-class citizens, increasingly invested in property and worried about their health, organized against proposed industrial projects in their communities.⁶

In the last decade or so, various corners of Chinese society have come to see this dearth of environmental information as problematic. For a party-state leadership concerned with social stability and the legitimacy of its rule, the lack of information disclosure has stirred public discontent and created the sense that China's authoritarian model is not up to the task. For citizens, it has limited their ability to understand and take action against environmental risks. As citizens and civil society groups have lobbied against sources of pollution or other environmental harm, they have called for greater *open information* (信息公开) or satisfaction of the public *right-to-know* (知情权). For regulators, this absence of disclosure has sharpened conflict with citizens, preventing them from taking advantage of public support that is so critical to successful regulation in other countries.

In response, the government has adopted a surprisingly broad range of measures on information disclosure or "open government information."⁷ Environmental regulators have been among the most active supporters of disclosure. In recent years, environmental officials have promulgated rules requiring "real-time" disclosure of pollution data from more than fifteen thousand major emitters in China, a requirement seen nowhere else in the world. Citizens now have access to hourly data on air and water quality, reported from monitoring stations that can be tracked on smart phones and web-based mapping tools. At the same time, data falsification remains a serious problem. Evidence suggests that government response to public information requests has been uneven at best, and virtually non-existent in places.⁸ More

4. E.g., ROBERT P. WELLER, *DISCOVERING NATURE: GLOBALIZATION AND ENVIRONMENTAL CULTURE IN CHINA AND TAIWAN* 118–19 (2006); Anna Lora-Wainwright, *The Inadequate Life: Rural Industrial Pollution and Lay Epidemiology in China*, 214 *CHINA Q.* 302, 302–03 (2013).

5. E.g., Anna Lora-Wainwright, *An Anthropology of 'Cancer Villages': Villagers' Perspectives and the Politics of Responsibility*, 19 *J. CONTEMP. CHINA* 79, 80 (2010).

6. E.g., Benjamin van Rooij, *The People vs. Pollution: Understanding Citizen Action against Pollution in China*, 19 *J. CONTEMP. CHINA* 55, 63–65 (2010); Jeffrey N. Wasserstrom, *Middle-Class Mobilization*, *J. DEMOCRACY*, July 2009, at 29, 30; Jianqiang Liu, *China's New "Middle Class" Environmental Protests*, *CHINA DIALOGUE* (Feb. 1, 2013), <https://www.chinadialogue.net/article/show/single/en/5561-China-s-new-middle-class-environmental-protests>.

7. The move toward greater disclosure is surprising given findings that "[t]ransparency destabilizes autocracies via mass protest." See James R. Hollyer et al., *Transparency, Protest, and Autocratic Instability*, 109 *AM. POL. SCI. REV.* 764, 764–67 (2015) (arguing that transparency enables collective action by allowing citizens to evaluate regime performance and recognize that beliefs about weak regime performance are commonly held).

8. See INST. OF PUB. & ENVTL. AFFAIRS & NAT. RES. DEF. COUNCIL, *GAINING MOMENTUM, TOWARDS BREAKTHROUGHS: 2015–2016 POLLUTION INFORMATION TRANSPARENCY INDEX (PITI)* 39–40 (2016) [hereinafter *PITI: GAINING MOMENTUM, TOWARDS BREAKTHROUGHS*]; INST. OF PUB. & ENVTL. AFFAIRS & NAT. RES. DEF. COUNCIL, *NEW MINDSETS, INNOVATIVE SOLUTIONS: 2014–2015*

seriously, citizens who have pushed too hard for information have faced repercussions from the state.

How should we understand China's cautious embrace of information disclosure, and how have state and society actors responded? Nearly a decade after the passage of China's main open government information regulation and nearly two decades after its earliest local experiments in government disclosure began, it is time to take stock.⁹

Existing literature on China's environmental disclosure regime is primarily descriptive or doctrinal.¹⁰ Some studies have examined the disclosure framework at the initial stages of implementation, but do not say much about on-the-ground behaviors and social effects.¹¹ Others have analyzed the factors that affect the level of disclosure, but do not touch on the use of information disclosure in practice.¹²

This Article contributes to existing work on information disclosure in China by introducing a framework for understanding why China has adopted environmental information measures. Furthermore, it provides a broad-based

ANNUAL PITI ASSESSMENT 40–41 (2015) [hereinafter PITI: NEW MINDSETS, INNOVATIVE SOLUTIONS]; 北京大学公众参与研究与支持中心 [PEKING UNIV. CTR. FOR PUB. PARTICIPATION STUDIES & SUPPORT], 中国行政透明度观察报告 [CHINA ADMINISTRATIVE TRANSPARENCY SURVEY REPORT] (2014–2015), <http://ogi.cpsps.org/a/gb2312/news/20150930/1404.html>.

9. See *infra* Part I.B. for a discussion of the early history of information disclosure law in China. This Article examines formal government and enterprise environmental information disclosure mechanisms set forth in laws, regulations, administrative measures, and other normative documents (规范性文件), as well as informal government and enterprise disclosure, citizen-generated information, and other unofficial channels for information that were enabled, if not encouraged, by the advent of the formal disclosure mechanisms.

10. See generally 王社坤 [Wang Shekun] & 汪劲 [Wang Jin], 企业自行监测义务的法律逻辑与制度保障 [Legal Logic and System Guarantee of Enterprise's Self-Monitoring Obligation], 41 环境保护 [ENVTL. PROT.] 19 (2013); 蔡守秋 [Cai Shouqiu], 环境信息公开与公众环境参与的法治建设 [The Legal Construction of Environmental Information Disclosure and Public Environmental Participation], 6 世界环境 [WORLD ENV'T] 33 (2012); 贺桂珍等 [He Guizhen et al.], 中国政府环境信息公开实施效果评价 [Evaluation of Environmental Information Disclosure Implementation by Environmental Agencies], 32 环境科学 [ENVTL. SCI.] 3137 (2011); 王灿发 [Wang Canfa], 环境信息公开与环境保护 [Environmental Information Disclosure and Environmental Protection], 13 环境保护 [ENVTL. PROT.] 18 (2008).

11. See, e.g., Arthur P.J. Mol et al., *Information Disclosure in Environmental Risk Management: Developments in China*, 40 J. CURRENT CHINESE AFF., no. 3, 2011, at 163, 170; Timothy Riley & Cai Huiyan, *Unmasking Chinese Business Enterprises: Using Information Disclosure Laws to Enhance Public Participation in Corporate Environmental Decision Making*, 33 HARV. ENVTL. L. REV. 177, 188–89 (2009); Hua Wang et al., *Environmental Performance Rating and Disclosure: China's GreenWatch Program*, 71 J. ENVTL. MGMT. 123, 126–28 (2004). But see Yeling Tan, *Transparency without Democracy: The Unexpected Effects of China's Environmental Disclosure Policy*, 27, 45–58 GOVERNANCE 37 (2014) (examining the social impact of two civil society initiatives at early stages of implementation).

12. E.g., Peter Lorentzen et al., *Undermining Authoritarian Innovation: The Power of China's Industrial Giants*, 76 J. POL. 182, 183 (2014). But see Greg Distelhorst, *The Power of Empty Promises: Quasi-Democratic Institutions and Activism in China*, 50 COMP. POL. STUD. 464, 478–87 (2015) [hereinafter *Empty Promises*]; Greg Distelhorst, *Publicity-Driven Accountability in China: Qualitative and Experimental Evidence* 5–11 (Mass. Inst. of Tech. Pol. Sci. Dep't, Working Paper No. 2012-24, 2012) [hereinafter *Publicity-Driven Accountability*].

picture of the ways in which information disclosure has affected life on the ground among a diverse set of state and society actors. Finally, this Article situates these findings within the debate on Chinese rule of law and legitimacy. What emerges is a more nuanced picture of Chinese law and governance, where greater citizen autonomy and complex dynamics of state control coexist in an uneasy tension.

The analysis in this Article draws on the author's first-hand experience as a participant-observer in information disclosure and legal reform advocacy in China between 2004 and 2017.¹³ This experience included seven years of on-the-ground work in China, and continued formal and informal engagement with Chinese officials at all levels, civil society advocates, lawyers, scholars, journalists, and community members throughout this period. It also relies on primary documents, secondary literature, and empirical evidence drawn from more than sixty field interviews conducted in China between 2012 and 2015 specifically for this project.¹⁴

This Article proceeds as follows:

Part I offers background on environmental regulation and information disclosure law in China. Part II begins to develop an interest-based theory of information disclosure law, unpacking the reasons that state and society actors support information disclosure.¹⁵ The emergence of environmental information disclosure law can be explained in significant part by interest compatibility. In practice, interest convergence leads to "positive interaction" among state and society actors and greater autonomy for citizens.

The common denominator is an interest in information as a tool for improved *environmental performance*. This is the idea of disclosure as a "third wave" regulatory instrument (after command and control and market measures) and an essential tool for enhancing compliance with environmental laws and reducing pollution.¹⁶ In China, there has been broad state and society

13. The author was a senior attorney and founding director of the China Environmental Law and Governance Project for an international environmental group based in Beijing from 2005 to 2011.

14. Semi-structured interviews were conducted through snowball sampling (i.e., interviewees were generally acquaintances of prior interviewees who offered introductions), or with individuals the author encountered over the course of more than a decade of engagement with China on legal reform and technical assistance projects. It is probable that the sample of interviewees includes a higher proportion of liberal or reform-minded people open to international engagement. However, interviewees also include officials, academics, and others who did not obviously share these propensities. As is common practice in qualitative social sciences research in China, the anonymity of interviewees has been preserved. Some observations noted, *infra*, are drawn from personal interactions rather than formal interviews and are noted as such.

15. This Article will focus in particular on advocacy-oriented actors in Chinese society ("advocates"). These include citizens, environmental activists, lawyers, journalists, and foreign actors. The analysis will at times also draw relevant distinctions between "average citizen" and "civil society" advocates. While there is overlap, the former tend to be engaged in more parochial, ad hoc advocacy, whereas the latter aim to engage in strategic, longer-term advocacy.

16. For examples from the western literature, see Arthur P.J. Mol, *The Future of Transparency: Power, Pitfalls and Promises*, GLOBAL ENVTL. POL., Aug. 2010, at 132, 133-35 (discussing environmental performance, and democratic and participatory aspects of disclosure); ARTHUR P.J. MOL,

acceptance of this role for disclosure. Citizens and more liberal observers also seek disclosure as a means of generating greater bottom-up *public accountability* and freedom from unwarranted state intrusion.¹⁷ On the other hand, state leaders see information disclosure as a means of asserting *state control* over local agents through reduced information asymmetry.¹⁸ State actors also find symbolic value in information disclosure as way to signal rational, deliberative, performance-oriented governance to the masses.¹⁹ Berkowitz, Pistor, and Richard have argued that legal transplants take root most effectively in jurisdictions with strong local demand.²⁰ This Article unpacks the ways in which this demand manifests itself among disparate state and society actors in China's authoritarian governance setting. To be even more explicit, this is a case where laws that favor non-elite actors emerge when those in power see benefit as well.²¹

Part III further develops the theory by examining instances of interest divergence—when the specter of state control looms largest, and companies and local governments exploit fragmentation to limit information disclosure. Interest divergence can emerge from the tensions between authoritarian and liberal approaches to law and governance, as well as conflicts between policy

ENVIRONMENTAL REFORM IN THE INFORMATION AGE: THE CONTOURS OF INFORMATIONAL GOVERNANCE 132–61 (2008); Bradley C. Karkkainen, *Bottlenecks and Baselines: Tackling Information Deficits in Environmental Regulation*, 86 TEX. L. REV. 1409, 1411 (2008); Douglas A. Kysar & James Salzman, *Foreword: Making Sense of Information for Environmental Protection*, 86 TEX. L. REV. 1347, 1350–62 (2008); ARCHON FUNG, MARY GRAHAM & DAVID WEIL, FULL DISCLOSURE: THE PERILS AND PROMISE OF TRANSPARENCY 132–61 (2007); Timothy F. Malloy, *Disclosure Stories*, 32 FLA. ST. U. L. REV. 617, 655–60 (2005); JAMES T. HAMILTON, REGULATION THROUGH REVELATION: THE ORIGIN, POLITICS, AND IMPACTS OF THE TOXICS RELEASE INVENTORY PROGRAM 38–41 (2005); Cary Coglianese et al., *Seeking Truth for Power: Informational Strategy and Regulatory Policymaking*, 89 MINN. L. REV. 277, 337–41 (2004); Bradley C. Karkkainen, *Information as Environmental Regulation: TRI and Performance Benchmarking, Precursor to a New Paradigm?*, 89 GEO. L.J. 257, 335–39 (2001); Tom Tietenberg, *Disclosure Strategies for Pollution Control*, 11 ENVTL. & RESOURCE ECON. 587, 588–93 (1998); Paul R. Kleindorfer & Eric W. Orts, *Informational Regulation of Environmental Risks*, 18 RISK ANALYSIS 155, 156–59 (1998).

17. E.g., Yue Pan, *The Environment Needs Public Participation*, CHINA DIALOGUE (May 12, 2006), <https://www.chinadialogue.net/article/show/single/en/604-the-environment-needs-public-participation>.

18. See, e.g., Jamie P. Horsley, *Toward a More Open China?*, in THE RIGHT TO KNOW: TRANSPARENCY FOR AN OPEN WORLD 54, 62–63 (Ann Florini ed., 2007); Distelhorst, *Empty Promises*, *supra* note 12, at 468–69; Distelhorst, *Publicity-Driven Accountability*, *supra* note 12, at 4; Lorentzen et al., *supra* note 12, at 184.

19. See Martha S. Feldman & James G. March, *Information in Organizations as Signal and Symbol*, 26 ADMIN. SCI. Q. 171, 178–80 (1981), for a discussion of this function of information gathering in the context of western organizational theory.

20. Daniel Berkowitz, Katharina Pistor & Jean-Francois Richard, *The Transplant Effect*, 51 AM. J. COMP. L. 163, 167–68 (2003).

21. There is an analogy here to “interest-convergence” theory, which Derrick Bell first presented in the context of U.S. school desegregation and the U.S. Supreme Court’s *Brown v. Board of Education* decision. Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523–25 (1980) (arguing that the *Brown* desegregation decision must be understood as in part motivated by “the decision’s value to whites,” including reasons of social stability, economic transition, and international reputation).

goals of social stability and environmental performance.²² Chinese leaders adopt disclosure measures to gain greater top-down control over environmental performance, yet such tools inevitably require some loosening of control over bottom-up societal forces. Concerns about loss of control can trigger state retrenchment and repression. As for competing goals, security-oriented agencies—such as public security, state security, propaganda, procuratorates (prosecutors) and stability maintenance offices—have little institutional stake in the performance benefits of environmental disclosure and strong incentives for taking a precautionary approach toward social stability maintenance.²³ These institutional actors are ever vigilant for any indication that disclosure may pose a threat to social stability. Where perceived risks emerge, environmental bureaus retreat, security institutions enter the fray, and the balance of efforts shifts decisively toward social control.

This Article is in significant part an account of how state and society actors navigate the tensions among converging and diverging interests. Ultimately, this is a story of a complex and fluid dance. In a rapidly changing society, the introduction of information disclosure offers the possibility of reform, even as it generates profound disequilibrium. This is a system with a distinct authoritarian logic that nonetheless provides greater space for movement. Put another way, information disclosure laws present promise and peril for all involved.

Beyond the literature on information disclosure, this Article contributes to several other scholarly debates. First, it adds to the literature on Chinese legal development, offering a detailed account of how one critical component of “rule of law” has developed in the Chinese setting. This account both supports and contradicts stories of China’s “turn against law.” On one hand, this is not a story of liberal rule of law reform. The Party remains in command and top-down governance still rules. In this sense, current governance approaches reflect not so much a “turn” as a continuity with authoritarian, Legalist strands of law and governance that have existed in China since time immemorial. At the same time, where there is interest compatibility, Chinese information disclosure works in ways that, at least at local levels of government, track with concepts of “power directing” and “power checking” at the core of liberal democratic administrative law.²⁴

22. “‘Social stability’ is the most pressing socio-political issue driving the governance agenda in China today.” Jason Todd, *China’s Rigid Stability – Yu Jianrong 于建嵘 Analyzes a Predicament*, CHINA STORY J. (Jan. 27, 2013), <https://www.thechinastory.org/2013/01/chinas-rigid-stability-analysis-of-a-predicament-by-yu-jianrong-于建嵘/>.

23. Courts arguably fall somewhere in between, playing a role in stability maintenance and environmental regulation (particularly where environmental disputes affect stability).

24. E.g., Richard B. Stewart, *U.S. Administrative Law: A Model for Global Environmental Law?*, 68 LAW & CONTEMP. PROBS. 63, 72–75 (2005) (discussing the “power directing” and “power checking” functions of U.S. administrative law).

Second, this Article contributes to the literature on China's "authoritarian resilience," which seeks to understand how China has persisted when so many other authoritarian states have failed.²⁵ Here, the story is one of state resilience through a greater focus on environmental performance and a pragmatic willingness to introduce potentially risky liberal legal transplants. At the same time, this account tempers the story of resilience by reminding us how the internal security and stability logic of the system constrains and distorts efforts to generate performance. In this way, this Article builds upon scholarly work on "responsive," "consultative," or "deliberative authoritarianism."²⁶

Third, this Article is a contribution to the literature on social mobilization in authoritarian states.²⁷ The advocates in this Article use many of the strategies seen in earlier accounts of rural protest, but also expand on them. They "operate[] near the boundary of authorized channels," yet they also help the state to generate new approaches to governance.²⁸ They "employ[] the rhetoric and commitments of the powerful to curb the exercise of power," even as they work to shape that rhetoric and the content of those commitments.²⁹ They exploit "divisions within the state" not only between center and local or among agencies, but also between regions and among differently situated businesses.³⁰ They "mobiliz[e] support from the community," but also seek leverage from a variety of other sources—netizens, elite scholars, media, as well as foreign corporations and governments.³¹ The new environment for social mobilization is also inevitably transformed by dramatic changes in technology, international trade, and outside engagement.

25. See generally 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 this line of literature.

26. See, e.g., DANIELA STOCKMANN, MEDIA COMMERCIALIZATION AND AUTHORITARIAN RULE IN CHINA 254–62 (2013); JESSICA C. TEETS, CIVIL SOCIETY UNDER AUTHORITARIANISM: THE CHINA MODEL 38–42 (2014); Pan Wei, *Toward a Consultative Rule of Law Regime in China*, in DEBATING POLITICAL REFORM IN CHINA: RULE OF LAW VS. DEMOCRATIZATION 3, 32–40 (Suisheng Zhao ed., 2006); Robert P. Weller, *Responsive Authoritarianism and Blind-Eye Governance in China*, in SOCIALISM VANQUISHED, SOCIALISM CHALLENGED: EASTERN EUROPE AND CHINA, 1989–2009, at 83 (Nina Bandelj & Dorothy J. Solinger eds., 2012); see also, ANDREW C. MERTHA, CHINA'S WATER WARRIORS: CITIZEN ACTION AND POLICY CHANGE 151–62 (2008) (discussing China's "[k]inder, [g]entler '[f]ragmented [a]uthoritarianism'"); RACHEL E. STERN, ENVIRONMENTAL LITIGATION IN CHINA: A STUDY IN POLITICAL AMBIVALENCE 97–122 (2013) (discussing China's "political ambivalence").

27. See generally KEVIN J. O'BRIEN & LIANJIANG LI, RIGHTFUL RESISTANCE IN RURAL CHINA (2006); Peter Ho, *Embedded Activism and Political Change in a Semi-Authoritarian Context*, in CHINA'S EMBEDDED ACTIVISM: OPPORTUNITIES AND CONSTRAINTS OF A SOCIAL MOVEMENT 1 (Peter Ho & Richard Louis Edmonds eds., 2008).

28. Kevin J. O'Brien, *Rightful Resistance Revisited*, 40 J. PEASANT STUD. 1051, 1051 (2013).

29. *Id.* at 1051–52.

30. *Id.* at 1052.

31. *Id.*

I. THE PROMISE AND PERIL OF INFORMATION DISCLOSURE

China has adopted formal environmental information disclosure measures, despite an authoritarian system known more for secrecy and a lack of deliberative policy processes.³² This Part provides background on Chinese environmental regulation, and begins to develop a framework for understanding how the diverse interests of state and society actors affect law making and environmental protection in the Chinese context.

A. *China's Environmental Challenges and Recent Reforms*

China's environmental problems are by now well known.³³ The country faces some of the heaviest pollution levels in the world as the result of an economic structure reliant on heavy industry and an energy mix dominated by coal. At the same time, Chinese environmental regulation has long been weak. Scholars have argued that this mainly reflects fragmentation or local protectionism.³⁴ The emphasis has been on the inability of central leaders to implement their goals at the local level. Despite a comprehensive set of national environmental laws, the "heavens are high and the emperor is far away" (天高皇帝远).

Fragmentation has certainly played a role, but various institutional design features of the regulatory system have also reflected the low political priority of environmental regulation in favor of rapid economic growth. For example,

32. See Lei Zhang et al., *Transparency and Information Disclosure in China's Environmental Governance*, 18 CURRENT OPINION ENVTL. SUSTAINABILITY 17, 17 (2016). On China's traditional lack of transparency and public participation in general, see, for example, Randall Peerenboom, *Globalization, Path Dependency and the Limits of Law: Administrative Law Reform and Rule of Law in the People's Republic of China*, 19 BERKELEY J. INT'L L. 161, 185 (2001) ("As a result, problems of government and administrative corruption are likely to be more prevalent in China than elsewhere, particularly given the lack of transparency, public supervision and right of access to information. . . . The absence of democratic traditions may explain in part why China has been slow to pass a procedural law that would provide effective channels for public participation. . . ."); see also Liu Wenjing, *Approaching Democracy through Transparency: A Comparative Law Study on Chinese Open Government Information*, 26 AM. U. INT'L L. REV. 983, 1001-03 (2011).

33. See, e.g., ELIZABETH C. ECONOMY, *THE RIVER RUNS BLACK: THE ENVIRONMENTAL CHALLENGE TO CHINA'S FUTURE* 62-78 (2010); Isabel Hilton, *Introduction: The Return of Chinese Civil Society*, in *CHINA AND THE ENVIRONMENT: THE GREEN REVOLUTION* 1, 8-9 (Sam Geall ed., 2013); JONATHAN WATTS, *WHEN A BILLION CHINESE JUMP: HOW CHINA WILL SAVE MANKIND—OR DESTROY IT*, at x-xii (2010).

34. See KENNETH LIEBERTHAL, *GOVERNING CHINA: FROM REVOLUTION THROUGH REFORM* 246-48, 282-83 (2d ed. 2004); XIAOYING MA & LEONARD ORTOLANO, *ENVIRONMENTAL REGULATION IN CHINA: INSTITUTIONS, ENFORCEMENT, AND COMPLIANCE* 14-15 (2000); BENJAMIN VAN ROOIJ, *REGULATING LAND AND POLLUTION IN CHINA: LAWMAKING, COMPLIANCE, AND ENFORCEMENT; THEORY AND CASES* 354-55 (2006); Abigail Jahiel, *The Organization of Environmental Protection in China*, 156 CHINA Q. (SPECIAL ISSUE) 757, 757-58 (1998); Kenneth Lieberthal, *China's Governing System and Its Impact on Environmental Policy Implementation*, 1 CHINA ENV'T SERIES, 1997, at 3, 4-5; Wang Canfa, *Chinese Environmental Law Enforcement: Current Deficiencies and Suggested Reforms*, 8 VT. J. ENVTL. L. 159, 171 (2007); Alex Wang, *The Role of Law in Environmental Protection in China*, 8 VT. J. ENVTL. L. 195, 199-201 (2007) [hereinafter *Role of Law*].

under Chinese law, responsibility for environmental protection is expressly delegated to local authorities.³⁵ At the same time, local governments have strong formal and informal incentives to pursue economic growth.³⁶ Thus, local environmental protection bureaus (EPBs) have traditionally been underfunded, understaffed, and lacking in political support from superiors needed for effective regulation.³⁷ Central environmental oversight has traditionally been weak as well. The central environmental agency did not enjoy full ministry status until 2007 and even today remains thinly staffed and funded, with limited authority to intervene in local affairs absent crisis, public protest, or the periodic central enforcement campaign.

Other institutional weaknesses have stymied environmental regulation. Courts have played a limited role in environmental protection, offering only modest recourse to citizens claiming tort liability.³⁸ Public interest lawsuits only became available in 2014 and their efficacy remains unproven. Moreover, judges—like local environmental regulators—are managed through bureaucratic targets geared toward economic growth and social stability, and are “penetrable” by outside political and economic forces.³⁹ Market measures have not much been used as a tool for environmental regulation. Discharge fees have historically been set at levels too low to incentivize pollution reduction.⁴⁰ Instead, these fees have become essential supplements to thin local environmental enforcement budgets, creating a perverse incentive to collect fees without reducing pollution.⁴¹ State pricing policies encourage environmental degradation by subsidizing energy and natural resources development. Information disclosure and public participation mechanisms, so critical to environmental enforcement in many other countries, were virtually nonexistent in China prior to 2000.⁴² And Chinese citizens cannot, of course,

35. See 中华人民共和国环境保护法 [Environmental Protection Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 26, 1989, effective Dec. 26, 1989), art. 16, <http://www.china.org.cn/english/environment/34356.htm> (“The local people's governments at various levels shall be responsible for the environment quality of areas under their jurisdiction . . .”).

36. These incentives are incorporated into the bureaucratic evaluation targets to which local leaders are subject, and through central-local fiscal policy that transfers tax funding to the center, creating a “revenue hunger” at the local level. Of course, local officials also gain power, prestige, influence, and personal enrichment through economic development.

37. See VAN ROOIJ, *supra* note 34 at 276–77; Wang, *Role of Law*, *supra* note 34.

38. Wang, *Role of Law*, *supra* note 34, at 216–17.

39. Xin He & Yang Su, *Do the “Haves” Come Out Ahead in Shanghai Courts?*, 10 J. EMPIRICAL LEGAL STUD. 120, 139–40 (2013) (discussing the penetrability of Chinese courts).

40. E.g., Benjamin van Rooij, *Implementing Chinese Environmental Law through Enforcement: The Shiwu Xiao and Shuang Dabiao Campaigns*, in IMPLEMENTATION OF LAW IN THE PEOPLE'S REPUBLIC OF CHINA 149, 151–52 n.20 (Jianfu Chen et al. eds., 2002). *But see* Hua Wang and David Wheeler, *Financial Incentives and Endogenous Enforcement in China's Pollution Levy System*, 49 J. ENVTL. ECON. & MGMT. 174, 194–95 (2005) (noting geographic variation in fee levels and finding pollution reductions to be correlated with fee increases).

41. van Rooij, *supra* note 40.

42. See Lo & Leung, *supra* note 3.

vote their leaders out of office in response to poor environmental conditions. Broadly speaking, these conditions reflected the general state of affairs for environmental regulation in the first three decades of China's post-1978 reform and opening.

Over the last decade, Chinese leaders have appeared to make efforts to elevate the priority of environmental protection. For one, the official discourse on environmental protection reflected greater state concern about the impact of environmental problems (air and water pollution) on China's economic growth, social instability, and international reputation.⁴³ Chinese leaders attempted to strengthen bureaucratic control over environmental regulation as well. In the eleventh five-year plan (2006–10), China for the first time set forth “hard” environmental and energy efficiency targets to which local officials at all levels of the bureaucracy would be subject.⁴⁴ China's twelfth (2011–2015) and thirteenth (2016–2020) five-year plans expanded the use of bureaucratic hard targets for pollution reduction, energy efficiency, and carbon intensity reduction.⁴⁵

Various institutional reforms also suggest the rising importance of environmental goals. In 2008, China elevated its chief environmental agency to full ministry status.⁴⁶ China's Supreme People's Court announced a policy encouraging the creation of hundreds of environmental courts around the country and a special environmental division within the Court itself.⁴⁷ Since 2012, China has announced a broad range of “eco-civilization institutional reforms” (生态文明体制改革) designed to strengthen enforcement and expand the range of environmental protections.

Legal reforms have followed in kind.⁴⁸ In 2013, China's National People's Congress (NPC) passed an amended Environmental Protection Law—the first amendment to the law since 1989—that added a range of provisions designed

43. See Alex L. Wang, *The Search for Sustainable Legitimacy: Environmental Law and Bureaucracy in China*, 37 HARV. ENVTL. L. REV. 365, 386–88 (2013) [hereinafter *Sustainable Legitimacy*].

44. Enforcement of these targets has been weak. See generally Tucker van Aken & Orion Lewis, *The Political Economy of Non-Compliance in China: The Case of Industrial Energy Policy*, 24 J. CONTEMP. CHINA 798 (2015).

45. 第三章: 主要目标 [Chapter Three: Main Targets], 中华人民共和国国民经济和社会发展第十二个五年规划纲要 [PEOPLE'S REPUBLIC OF CHINA NATIONAL ECONOMIC AND SOCIAL DEVELOPMENT TWELFTH FIVE-YEAR PLAN OUTLINE] (2011), http://news.xinhuanet.com/politics/2011-03/16/c_121193916.htm; 第三章: 主要目标 [Chapter Three: Main Targets], 中华人民共和国国民经济和社会发展第十三个五年规划纲要 [PEOPLE'S REPUBLIC OF CHINA NATIONAL ECONOMIC AND SOCIAL DEVELOPMENT THIRTEENTH FIVE-YEAR PLAN OUTLINE] (2016), http://sh.xinhuanet.com/2016-03/18/c_135200400.htm.

46. Xinhua, *China Upgrades Environmental Administration to Ministry*, NAT'L PEOPLE'S CONG. OF THE PEOPLE'S REPUBLIC OF CHINA (Mar. 12, 2008), bit.ly/1RaugE1.

47. Rachel E. Stern, *The Political Logic of China's New Environmental Courts*, 72 CHINA J. 53, 59 (2014); see also Alex L. Wang & Jie Gao, *Environmental Courts and the Development of Environmental Public Interest Litigation in China*, 3 J. CT. INNOVATION 37, 40–41 (2010).

48. In China, legal reform often follows policy and institutional reform, rather than creating the underlying legal authority for action as in many other countries.

to strengthen environmental enforcement. Against this backdrop, one of the most prominent legal reforms has been the expansion of regulations on information disclosure and public participation.

B. The Emergence of Environmental Information Disclosure Law

Although the major breakthroughs in Chinese environmental information disclosure occurred after 2007, the earliest experiments with environmental disclosure commenced nearly a decade earlier. This subpart offers a narrative of the development of environmental information disclosure since those early days.

Environmental information disclosure law arrived in China as a legal transplant. The first formal government initiative on environmental information disclosure date to 1999 and 2000, when enterprising researchers within the World Bank worked with regulators in Jiangsu Province and Inner Mongolia Province to develop pilot projects on corporate environmental performance disclosure.⁴⁹ The World Bank introduced this “Greenwatch” program based on experience with a similar program in Indonesia—known as PROPER.⁵⁰ The program did not disclose raw environmental data, but instead only publicized a qualitative, color-coded assessment of each facility’s environmental performance (excellent, very good, good, poor, very poor). Authorities stated that such a color-coded system would make the system more understandable to enterprises and the public, but political sensitivities and local government opposition also explained a reluctance to disclose underlying data.⁵¹ The experiment was successful in reducing pollution in Jiangsu and Inner Mongolia.⁵² This early success led the environmental ministry to promulgate national measures in 2005 recommending—but not requiring—local adoption of the system.⁵³

These initial experiments in environmental information disclosure took place at a time of growing party-state interest in “informatization” (信息化).⁵⁴

49. Wang et al., *supra* note 11, at 123; Wanxin Li, *Self-Motivated Versus Forced Disclosure of Environmental Information in China: A Comparative Case Study of the Pilot Disclosure Programmes*, 206 CHINA Q. 331, 332–34 (2011).

50. Wang et al., *supra* note 11, at 123.

51. *Id.* at 125–26 (noting that “[t]he most important resistance to environmental performance disclosure programs in China may come from local governments” and attributing such resistance to concerns about imposing costs on local businesses, added administrative costs, ability to implement, and the potential to stir up conflict between local companies and communities).

52. *See id.* at 129.

53. 国家环境保护总局 [STATE ENVTL. PROT. ADMIN.], 关于加快推进企业环境行为评价工作的意见 [RECOMMENDATIONS ON ACCELERATING THE PROMOTION OF ENTERPRISE ENVIRONMENTAL BEHAVIOR EVALUATION WORK] (Nov. 21, 2005), http://www.mep.gov.cn/gkml/zj/wj/200910/t20091022_172357.htm (last visited Oct. 30, 2017).

54. In China, “informatization” includes concepts of open government information or information disclosure, but is also a broader concept that includes development of computer and internet technologies and industries. *See, e.g.*, 贺劲松 [He Jinsong], 朱镕基主持召开国家信息化领导小组第一次会议 [Zhu Rongji Presides over the First Meeting of the State Informatization Leading Group], 新

In the 1990s, China had experimented with “open village affairs” programs at the lowest levels of Chinese governance that had roots in “the collectivization and commune ideology of the Party, with its legacy of farmer participation at the commune (now the village) level and expectations of transparency, especially in local finances.”⁵⁵ In 2000, the China Academy of Social Sciences initiated a research project to produce a draft regulation on open government information.⁵⁶ World Trade Organization (WTO) accession agreements, executed in 2001, introduced an external incentive for information disclosure, requiring the disclosure of “all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange” requirements.⁵⁷ Public pressure for greater openness about crises, such as the 2002 outbreak of severe acute respiratory syndrome (SARS), has played a role in advancing open government information disclosure.⁵⁸ Since 2002, more than thirty municipalities and provinces—including Guangzhou and Shanghai—have promulgated local “open government information” legislation.⁵⁹

Environmental information disclosure gradually expanded as well. The 2003 Environmental Impact Assessment Law and the 2004 Administrative Licensing Law included concepts of disclosure and public participation.⁶⁰

华网 [XINHUA] (Dec. 27, 2001), http://news.xinhuanet.com/news/2001-12/27/content_214603.htm; see generally 周汉华 [Zhou Hanhua], 起草《政府信息公开条例》(专家建议稿)的基本考虑 [Basic Considerations in Drafting the ‘Regulations on Government Open Information’ (Expert Recommendations Draft)], 6 法学研究 [LEGAL RESEARCH] 75 (2002).

55. Horsley, *supra* note 18, at 58; see also Liu, *supra* note 32, at 984.

56. Zhou, *supra* note 54.

57. World Trade Organization, Protocol on the Accession of the People’s Republic of China, WTO Doc. WT/L/432, art. 2(C) (Nov. 10, 2001), <https://docsonline.wto.org/dol2fe/Pages/SS/DirectDoc.aspx?filename=t%3A%2Fwt%2F1%2F432.doc>. “TRIPS” refers to trade-related aspects of intellectual property rights.

58. See Yanzhong Huang, *The SARS Epidemic and Its Aftermath in China: A Political Perspective*, in LEARNING FROM SARS: PREPARING FOR THE NEXT DISEASE OUTBREAK: WORKSHOP SUMMARY 116, 127 (2004), https://www.ncbi.nlm.nih.gov/books/NBK92462/pdf/Bookshelf_NBK92462.pdf (“There are signs suggesting that the crisis is forcing the government to take steps to establish an image of a more open and transparent government.”).

59. The 2003 Guangzhou Municipality Rules on Open Government Information are generally thought to be “the first official legislation on open government information” in China. Liu, *supra* note 32, at 987–88 (noting that the municipality had built on experience from temporary rules on open government it had promulgated more than a decade earlier in 1992); see also Jamie P. Horsley, *China’s Pioneering Foray into Open Government: A Tale of Two Cities*, FREEDOMINFO.ORG (July 14, 2003), <http://www.freedominfo.org/2003/07/chinas-pioneering-foray-into-open-government-a-tale-of-two-cities/>. In 2004, the cities of Shenzhen, Chengdu, Shanghai, Chongqing, Wuhan, Datong, Hangzhou, Changchun, and Ningbo, as well as some provinces passed similar regulations. Liu, *supra* note 32, at 989; see also Jamie P. Horsley, *Shanghai Advances the Cause of Open Government Information in China 1* (Apr. 15, 2004), https://www.law.yale.edu/system/files/documents/pdf/Shanghai_Advances.pdf.

60. 中华人民共和国环境影响评价法 [Environmental Impact Assessment Law of the People’s Republic of China] (promulgated by the Standing Comm. Nat’l People’s Cong., Oct. 28, 2002, effective Sept. 1, 2003) art. 4, 5, 11, 21, <http://www.people.com.cn/GB/shehui/212/3572/3574/20021029/853043.html>; 中华人民共和国行政许可法 [Administrative License Law of the People’s Republic of China] (promulgated by the Standing Comm. Nat’l People’s Cong., Aug. 27, 2003, effective July 1,

Environmental regulators promulgated agency measures that elaborated these requirements.⁶¹ Though these provisions were modest in scope, many observers saw them as promising openings for disclosure.⁶² In December 2005, China's State Council issued a *Decision on Implementing Scientific Development and Strengthening Environmental Protection* (Decision) that called for greater information disclosure and the "perfection of a social supervision mechanism."⁶³ The Decision noted that disclosure of information about environmental quality, pollution accidents, and firm-level environmental information were necessary for effective public participation.⁶⁴

These developments presaged what is generally considered to be the key legal milestone in Chinese open information disclosure—the State Council's 2007 promulgation of Regulations on Open Government Information, which established a Freedom of Information Act-style disclosure framework.⁶⁵ Environmental regulators were the first to promulgate implementing rules pursuant to the State Council Regulation on Open Government Information, a signal of support for disclosure.⁶⁶ These regulations required EPBs to disclose environmental laws and regulations; data on environmental quality; information about environmental management and supervision (violation records, discharge fees collected, and emissions data for some "serious polluting enterprises"); and information about accident and emergency response plans.⁶⁷

Despite substantial rule-making activity, by 2009 (the year after China's Freedom of Information Act-like regulations went into effect) China's rules on environmental information disclosure remained incomplete by international standards.⁶⁸ The law only required the release of abridged environmental

2004) art. 5, 40, 48, 61, http://www.gov.cn/flfg/2005-06/27/content_9899.htm (last visited Oct. 30, 2017).

61. The Administrative Licensing Law implementing measures gave interested parties, for example, the right to "consult the files" regarding administrative decisions. 环境保护行政许可听证暂行办法 [Provisional Measures for Environmental Protection Administrative License Hearings], (promulgated by the Ministry of Env'tl. Prot., June 23, 2004, effective July 1, 2004), art. 12(8); 环境影响评价公众参与暂行办法 [Provisional Measures for Public Participation in Environmental Impact Assessment], (promulgated by the Ministry of Env'tl. Prot., Feb. 14, 2006, effective Mar. 18, 2006), art. 5, 7, 9.

62. This is based on the author's personal observations.

63. 国务院关于落实科学发展观加强环境保护的决定 [State Council Decision on Implementing Scientific Development and Strengthening Environmental Protection] (promulgated by the State Council, Dec. 13, 2005), art. 27, http://www.gov.cn/zwggk/2005-12/13/content_125680.htm (last visited Oct. 30, 2017).

64. *Id.*

65. 中华人民共和国政府信息公开条例 [Regulations on Open Government Information of the People's Republic of China] (promulgated by the State Council, Apr. 5, 2007, effective May 1, 2008) ST. COUNCIL GAZ., Apr. 24, 2007 [hereinafter OGI Regulations].

66. 环境信息公开办法（试行） [Measures on Environmental Open Information], (promulgated by the Ministry of Env'tl. Prot., Apr. 11, 2007, effective May 1, 2008), http://www.gov.cn/flfg/2007-04/20/content_589673.htm (last visited Oct. 30, 2017) [hereinafter OEI Measures].

67. *Id.*

68. In part, this reflected ambivalence about disclosure and public supervision within the environmental bureaucracy itself. Certainly not everyone supported greater information disclosure.

impact assessment reports. Regulators did not disclose environmental quality data in sufficient detail to allow disaggregation by pollutant. Detailed firm-level pollutant release information (concentrations and absolute volumes) was not generally available. Environmental regulators often refused to accommodate public information requests.⁶⁹ Authorities did not release administrative documentation related to government decision making.⁷⁰ Chinese law was conspicuously weak as to consequences for data falsification.⁷¹

In short, despite reform, China's disclosure rules remained quite limited, even on paper. If the goal was to create greater accountability for polluting enterprises and the government officials responsible for environmental oversight, the law still did not require the disclosure of comprehensive information that would allow the public to identify violators and press for a cure to their violations. The door to disclosure had opened, but the insufficiency of initial forays into disclosure and the disparity between rhetoric and reality only heightened public demand for more.

Public debate and pressure for disclosure of fine particulate matter (PM_{2.5}) levels in 2011 and 2012 were the most visible manifestation of public pressure for greater environmental disclosure.⁷² Triggered by the U.S. Embassy

Vice-Minister Pan Yue was the most vocal spokesman for environmental disclosure and public supervision at this time. However, Pan was sidelined in 2009. He was considered a rival of Zhou Shengxian, the head of the environmental ministry, who was thought of as an "upward-looking" bureaucrat (in contrast to Pan's citizen orientation). Insiders at the time viewed Pan's fall and Zhou's rise as indicative of the tension between the top-down and bottom-up views of information disclosure described herein. See, e.g., *Vice Minister Pan Yue Required that We Should Deepen Disclosure of Environmental Information and Media Supervision at the Meeting of China Environment News on Publicity*, MINISTRY OF ENVTL. PROT.: PEOPLE'S REPUBLIC OF CHINA (Sept. 15, 2010), <http://bit.ly/1LE7HmA>; Jonathan Watts, *China's Green Champion Sidelined*, GUARDIAN (Mar. 12, 2009), <https://www.theguardian.com/environment/2009/mar/12/activism-china>. This is also based on the author's personal observations.

69. See *supra* note 8.

70. One cannot obtain the type of decision-related information from agencies commonly seen in the administrative record in the United States (such as emails, internal government reports, and notes). This remains true as of this writing.

71. See Environmental Protection Law of the People's Republic of China, *supra* note 35, art. 35 (authorizing only warnings or fines for data falsification and obstruction of inspections). The 2014 amended EPL authorizes more stringent penalties for falsification, including administrative detention and publication of violations. See EPL, *supra* note 1, art. 56.

72. See Wang, *Sustainable Legitimacy*, *supra* note 43, at 407–09, for a discussion of this episode. See also Sophie Beach, *Smoggy Air Inspires Media Transparency*, CHINA DIGITAL TIMES (Jan. 14, 2013), <http://bit.ly/1OHuGBJ>; Melissa Chan, *China Comes Clean on Air Pollution*, CHINA DIGITAL TIMES (Jan. 22, 2012), <http://bit.ly/1SnzLNe>; Mengyu Dong, *Secrecy in China's Environmental Monitoring*, CHINA DIGITAL TIMES (Aug. 7, 2012), <http://bit.ly/1QldjqA>; Anne Henochowicz, *Drawing the News: Advantage Beijing Air*, CHINA DIGITAL TIMES (Oct. 7, 2013), <http://bit.ly/1OHuHWm>; Anne Henochowicz, *Netizen Voices: Clearing the Air*, CHINA DIGITAL TIMES (June 6, 2012), <http://bit.ly/1HF3jpk>; Josh Rudolph, *Can Transparency Clean Up China's Hazy Environment?*, CHINA DIGITAL TIMES (Feb. 1, 2012), <http://bit.ly/1iY5f0i>.

in Beijing's decision to post hourly PM2.5 data,⁷³ and the ensuing public outcry about disparities between official Chinese and U.S. data, the Ministry of Environmental Protection (MEP) eventually decided to require "real-time" disclosure of PM2.5 data in 179 Chinese cities.⁷⁴ Despite eventual support, the decision was not an easy one within the environmental ministry. Only days before the public announcement to require PM2.5 disclosure, a researcher party to internal discussions professed uncertainty as to whether disclosure would happen, noting that "there are voices on both sides."⁷⁵ But public pressure to disclose PM2.5 had grown intense. The well-known real estate magnate Pan Shiyi posted widely distributed "tweets" calling for disclosure.⁷⁶ He "polled" other micro-blog (*weibo*) users on the subject and generated overwhelming support.⁷⁷ The Institute of Public and Environmental Affairs (IPE)—a Chinese advocacy group—issued a report on air quality disclosure in China versus the major cities around the world. Surprisingly, PM2.5 entered the Chinese vernacular.

Since the decision to disclose PM2.5, Chinese regulators have issued several other rules that significantly expand the mandatory disclosure of environmental data related to government and firm environmental performance. If the government was caught unaware by the sudden surge of public demand for PM2.5 disclosure, it now seemed to take a more active role in controlling the debate. New rules required public disclosure of local government environmental performance data.⁷⁸ Disclosure of firm-level environmental data has expanded as well. In 2014, the environmental ministry issued rules requiring the top 65 percent of polluting facilities (more than 15,000 plants) to disclose hourly data on air and water pollution releases, a requirement not found in any other country.⁷⁹ Chinese law now requires developers to disclose

73. PM2.5 refers to particulate matter of 2.5 microns or less in diameter. Also known as "fine particulate," PM2.5 is thought to be more harmful to human health than coarser particles.

74. Lin Luan, *179 Chinese Cities Agree to Real-Time Disclosure of Air Quality*, CHINA DIALOGUE (Jan. 16, 2014), <https://www.chinadialogue.net/blog/6657-179-Chinese-cities-agree-to-real-time-disclosure-of-air-quality/en>. "Real-time" disclosure generally occurs on an hourly basis.

75. This is based on the author's personal observations.

76. 黄伟安 [Edward Wong], 北京再度被“霾没” 政府出台紧急措施 [*Beijing Takes Emergency Steps to Fight Smog*], N.Y. TIMES (Jan. 31, 2013), <http://cn.nytimes.com/china/20130131/c31pollution>.

77. China has a number of *weibo* platforms, which function much like Twitter in the U.S. Sina Weibo (新浪微博 weibo.com) is the most popular version, and the term *weibo* commonly refers to this particular version of *weibo*.

78. Local government officials are evaluated, among other things, on their performance in ambient environmental quality (such as air and water) and "total emissions control" (总量控制; e.g., total SO₂, NO_x, COD, and ammonium nitrate emissions in the jurisdiction).

79. See 国家重点监控企业自行监测及信息公开办法(试行) [Measures for the Self-Monitoring and Information Disclosure by the Enterprises subject to Intensive Monitoring and Control of the State (for Trial Implementation)], art. 20(3) (promulgated by the Ministry of Env'tl. Prot., July 30, 2013, effective Jan. 1, 2014), St. Council Gaz. July 30, 2013, *translated in* pkulaw.cn (requiring firms to engage in "real-time" (实时) disclosure of continuous monitoring information (企业自行监测信息) for air (hourly) and water (every two hours) pollutants), <http://en.pkulaw.cn/display.aspx?cgid=207735>

complete, unabridged environmental impact reports for the first time.⁸⁰ In 2014, China's national legislature amended the Environmental Protection Law and emphasized "Information Disclosure and Public Participation," making the topic the focus of one of only six chapters of the law.⁸¹ In 2014 and 2015, the environmental ministry promulgated further administrative measures on firm information disclosure and environmental public participation.⁸² The State Council emphasized the importance of environmental disclosure once again in an important policy guidance issued in 2016.⁸³ Certainly, significant concerns about data quality remained.⁸⁴ But, after years of pressing for these disclosure policies, advocates were surprised by the speed and suddenness with which the dam broke on disclosure, at least on paper.⁸⁵

&lib=law; see also 2012 年国家重点监控企业筛选原则和方法 [2012 Selection Principles and Methods for Enterprises subject to Intensive Monitoring and Control of the State], arts. 2(1)-(4) (issued by the Ministry of Env'tl. Prot., Dec. 31, 2011) (noting the 65 percent threshold for enterprises discharging air and water pollutants). In 2013, China designated 15,797 firms as "Enterprises subject to Intensive Monitoring and Control of the State." See 关于印发 2013 年国家重点监控企业名单的通知 [Notice Regarding the Issuance of the 2013 Name List of Enterprises subject to Intensive Monitoring and Control of the State] (issued by the Ministry of Env'tl. Prot., Mar. 22, 2013). For related official documents regarding public disclosure of pollution data, see 中华人民共和国环境保护部 [Ministry of Env'tl. Prot.], 环境保护部关于加强污染源环境监管信息公开工作的通知 [MEP Announcement of Strengthening of Environmental Pollution Information Disclosure Work] (July 12, 2013); 国家重点监控企业污染源监督性监测及信息公开办法(试行) [Measures for the Pollution Sources Supervisory Monitoring and Information Disclosure by the Enterprises subject to Intensive Monitoring and Control of the State (for Trial Implementation)] (promulgated by the Ministry of Env'tl. Prot., July 30, 2013, effective Jan. 1, 2014), St. Council Gaz. July 30, 2013, *translated in* pkulaw.cn, <http://en.pkulaw.cn/display.aspx?cgid=207735&lib=law>.

80. Environmental Protection Law of the People's Republic of China, *supra* note 1, art. 56; 建设项目环境影响评价政府信息公开指南(试行) [Guide for Construction Project Environmental Impact Assessment Open Government Information (for Trial Implementation)] (promulgated by the Ministry of Env'tl. Prot., Nov. 14, 2013, effective Jan. 1, 2014).

81. See Environmental Protection Law of the People's Republic of China, *supra* note 1, art. 53-58, 62, 63(3), 65.

82. 企业事业单位环境信息公开办法 [Measures for the Disclosure of Environmental Information by Enterprises and Public Institutions] (promulgated by the Ministry Env'tl. Prot., Dec. 15, 2014, effective Jan. 1, 2015), http://www.mep.gov.cn/gkml/hbb/bl/201412/t20141224_293393.htm (last visited Oct. 30, 2017); 环境保护公众参与办法 [Measures for Public Participation in Environmental Protection] (promulgated by the Ministry Env'tl. Prot., July 2, 2015, effective Sept. 1, 2016), http://www.mep.gov.cn/gkml/hbb/bl/201507/t20150720_306928.htm (last visited Oct. 30, 2017).

83. 中共中央国务院关于加快推进生态文明建设的意见 [Opinions of the CPC Central Committee and the State Council on Accelerating the Ecological Civilization Construction] (promulgated by the CPC Central Comm. and the State Council, Apr. 25, 2015, effective Apr. 25, 2015), 新华 [Xinhua], May 5, 2015, http://news.xinhuanet.com/politics/2015-05/05/c_1115187518.htm.

84. See, e.g., Wang, *Search for Sustainable Legitimacy*, *supra* note 43, at 424-29.

85. See, e.g., Austin Ramzy, *Q. & A.: Ma Jun on Using Mobile Phones to Fight Pollution*, N.Y. TIMES (Apr. 28, 2015), <https://mobile.nytimes.com/blogs/sinosphere/2015/04/28/q-and-a-ma-jun-on-using-mobile-phones-to-fight-pollution/?mcubz=0> ("Our first request was for online monitoring data. For more than 10 years this kind of data could only be accessed by environmental agencies, not by the public. To our surprise, the MEP came up with a bylaw to require real-time disclosure."). This is also based on the author's personal conversations with Chinese NGO advocates and scholars.

C. Interest Convergence and Divergence

How should we understand China's embrace of environmental information disclosure? This Article argues that the emergence of information disclosure law reflects a convergence of interests among three key groups of actors—party-state leaders, citizens and civil society, and environmental regulators—around a common goal of environmental protection. Beyond these main categories of actors, local governments, regulated companies, and foreign actors have played a role as well. Even where the parochial interests of these actors differ, they are nonetheless compatible in many instances. Central leaders see functional and symbolic value in information disclosure law. Citizens and civil society groups demand information about the risks of increasingly severe environmental problems. Environmental regulators support disclosure as a tool to achieve policy goals, and to insulate themselves from risks coming from above and below. There is evidence of internal opposition to environmental information disclosure law—for example, from the NPC and the MEP—but support has nonetheless been sufficient to allow the promulgation of a range of disclosure provisions.

Central to what has made environmental disclosure possible is a *zone of compatibility* where disclosure simultaneously enhances environmental performance, facilitates citizen autonomy, and enhances state control and legitimacy. Outside of this zone, the harder, control-oriented edges of the state emerge, information disclosure is reduced, and citizen freedom to move is constrained. In practice, state and society actors engage in an ongoing battle over the contours of this space. Those who see risk seek to minimize the zone. Those who benefit seek to enlarge it. In the end, the result is mixed—a situation where state and society actors engage in a delicate dance nudging disclosure forward or seeking to constrain its effects. Though there is more space for society than ever before, the role of the party-state nonetheless still dominates.

Part II develops this theory of interest compatibility and offers detailed empirical examples of productive interaction or coexistence among state and society actors. Part III further elaborates the theory by explaining the dilemmas that state and society actors face in engaging with information disclosure. Part III also offers empirical evidence of interest divergence where China's stability-oriented logic comes to the fore and actors opposed to disclosure exploit the Chinese political environment to frustrate policy implementation and citizen action.

II. CONVERGING INTERESTS AND EXPANDED AUTONOMY

Where diverse interests are compatible, or at least relatively aligned, space has opened for state and society actors to experiment with new approaches to using information disclosure in environmental governance. Part II (A) develops an interest-based theory of environmental information disclosure, unpacking the diverse motivations of key actors in supporting disclosure. Parts II (B) and

(C) then offer detailed examples of how disclosure has allowed citizens greater opportunity to engage with the state, and created channels for circumventing the state in environmental regulation altogether. This has all occurred during a period where central leaders have increasingly emphasized environmental goals. These developments offer the promise of improved environmental protection, broader citizen autonomy, and strengthened state legitimacy.

A. Interest Compatibility

This subpart unpacks the interests of party-state leaders, citizens and civil society, environmental regulators, international actors, local governments, and businesses in environmental information disclosure.⁸⁶

Party-State Leaders. China's party-state leaders have pursued information disclosure in general for a number of pragmatic reasons:

[T]o involve a wider spectrum of the public in making increasingly complex policy decisions and laws to support China's drive for economic development, to curb rampant corruption . . . , to establish new mechanisms to ensure social stability and build trust in government, and to comply with China's transparency commitments in its 2001 WTO accession agreements.⁸⁷

China's environmental problems have created even more acute demand for information disclosure by heightening risks to the economy and social stability, among other things. Several studies have shown that environmental degradation has imposed extraordinary costs on Chinese society in terms of premature deaths, lost work days, and wasted natural resources.⁸⁸ Party-state leaders now

86. "Local governments" refers to sub-national levels of government (provincial, municipal, and below).

87. Horsley, *supra* note 18, at 63. Information disclosure is also thought to improve inter-agency information sharing, and supervision of local governments and agencies. These reasons for China's pursuit of disclosure policies are broadly consistent with explanations for its pursuit of a law-based order in general. See Peerenboom, *supra* note 34, at 163–64 ("While legal reform today is partly a response to the forces of globalization, such as WTO requirements and the demands of foreign investors, the main driving forces behind post-Mao reforms have been a visceral and personal reaction to the arbitrariness of the Cultural Revolution by many senior Party leaders, which led to the call for a more law-based order; the regime's desire for legitimacy at home and abroad; the need to ensure economic growth and attract foreign investment; the central government's desire to rationalize governance, enhance administrative efficiency and rein in local governments; and an increasing demand from citizens that the legal system protect their rights, particularly their increasingly valuable property rights."). But see Liu, *supra* note 32, at 989–92 (stating that "international law also significantly influenced China's march towards transparency" and noting the importance of academic and professional exchanges—particularly with U.S. scholars and lawyers—in shaping Chinese domestic transparency legislation); see also Ann Seidman & Robert B. Seidman, *Drafting Legislation for Development: Lessons from a Chinese Project*, 44 AM. J. COMP. L. 1, 37–38 (1996).

88. Yuyu Chen et al., *Evidence on the Impact of Sustained Exposure to Air Pollution on Life Expectancy from China's Huai River Policy*, 110 PROC. NAT'L ACAD. SCI. 12,936, 12,936 (2013); TODD M. JOHNSON ET AL., CLEAR WATER, BLUE SKIES: CHINA'S ENVIRONMENT IN THE NEW CENTURY 17–28 (1997), <http://documents.worldbank.org/curated/en/944011468743999953/Clear-water-blue-skies-Chinas-environment-in-the-new-century>; WORLD BANK & STATE ENVTL. PROT. ADMIN., COST OF POLLUTION IN CHINA: ECONOMIC ESTIMATES OF PHYSICAL DAMAGES 67–75 (2007),

see environmental regulation as a tool for economic transformation—favoring less polluting services industries and imposing costs on traditional heavy industry. Environmental problems have also become the leading cause of civic protest,⁸⁹ and covering up information during environmental accidents has exacerbated social unrest when facts inevitably make their way to the public.⁹⁰

Information disclosure is seen as a well-established tool for environmental regulation that can indirectly help to solve serious economic development and stability problems. Central officials have identified it as a means of increasing public supervision to strengthen environmental enforcement. The very act of disclosure can serve as a safety valve—releasing social pressure—and signal state concern for matters of public interest.⁹¹ Officials are also attracted to information disclosure because it is seen as controllable. They can release information seen as helpful and constrain information perceived as risky.

Citizens and Civil Society. The demand for information among citizens reflects a shift in Chinese society from one in which the state handled everything—the proverbial “iron rice bowl”—to a more “individualized”

<http://documents.worldbank.org/curated/en/782171468027560055/Cost-of-pollution-in-China-economic-estimates-of-physical-damages>.

89. Citizen complaints and protest over environmental problems have skyrocketed in the last twenty years. Environmental complaints have more than doubled, from 268,592 in 1999 to 735,756 in 2010. See generally ANN. STAT. REP. ON THE ENV'T IN CHINA (1999–2013); CHINA STAT. Y.B. (1999–2013); see also Katherine Zhao, *Boundary-Spanning Contention: The Panyu Anti-Pollution Protest in Guangdong, China*, 11 STAN. J. E. ASIAN AFFAIRS 17, 17–20, 23 (2011); cf. Kevin J. O'Brien, *Neither Transgressive nor Contained: Boundary-Spanning Contention in China*, 8 MOBILIZATION 51, 54–57 (2003) (recounting complaints and protests made by Chinese villagers against local government officials for voter and financial corruption).

90. For example, after a petrochemical facility explosion spilled one hundred tons of benzene and nitrobenzene into the Songhua River in 2005, local media famously printed the headline “There Will Not Be an Earthquake in Harbin” to dispel rumors of an impending earthquake that arose when city officials without notice shutdown the local water supply in response to the accident. The officials had not disclosed any news of the chemical spill at that time. Nat Green, *Positive Spillover? Impact of the Songhua River Benzene Incident on China's Environmental Policy*, WILSON CTR.: CHINA ENV'T FORUM (July 7, 2011), <https://www.wilsoncenter.org/publication/positive-spillover-impact-the-songhua-river-benzene-incident-china-s-environmental>; Jim Yardley, *Spill in China Brings Danger, and Cover-Up*, N.Y. TIMES (Nov. 26, 2005), <http://www.nytimes.com/2005/11/26/world/asia/spill-in-china-brings-danger-and-coverup.html>; *The Water Crisis in Harbin*, EASTSOUTHWESTNORTH (Nov. 22, 2005), http://www.zonaeuropa.com/20051123_1.htm. The author observed a central environmental agency official use this rationale—that the cover up is worse than the crime—to convince local environmental officials at a 2009 national training to implement environmental information disclosure.

91. Bureaucrats at all levels of government have been the most supportive of basic disclosure of law and policy documents. These include leadership speeches, regulations and laws, pollution standards, and the like. This sort of disclosure is not politically sensitive, unlikely to produce surprises for unwitting bureaucrats or pressure the interests of local businesses, and it is a requirement under World Trade Organization and other agreements. Moreover, in a system in which the number of laws and regulations is often cited as a metric of success, disclosure of law and policy can serve to signal to the public a bureaucracy diligently working to respond to societal concerns. Thus, it should come as no surprise that local environmental agency websites have almost uniformly constructed “open information” platforms dominated by law and policy materials. See, e.g., 信息公开指南 [Information Disclosure Guide], 山东省环境保护厅 [SHANDONG PROVINCE MINISTRY ENVTL. PROT.], <http://xxgk.sdein.gov.cn/xxgkzn> (last visited Oct. 9, 2017).

society in which citizens see themselves as having more agency and control over their own destinies.⁹² This has coincided with growing societal wealth that has given citizens more personal assets—real estate, in particular—to protect. Heavy industrial pollution has driven demand for emissions data. Proposed factories, roads, and transit lines—often near residential areas—have prompted demands for environmental impact assessment reports. Polluted rivers and skies have led to calls for environmental quality information.

Civil society actors—such as advocacy groups, scholars, lawyers, and journalists—have embraced environmental information disclosure as well.⁹³ Chinese environmental advocacy groups or nongovernmental organizations (“NGOs”) recognize that such information is an important foundation for environmental advocacy. Information enables advocates to identify problems and develop solutions. NGOs may highlight failures of disclosure to place pressure on local governments or companies.⁹⁴ Chinese environmental NGOs have organized their advocacy around lobbying for information disclosure rules and using the information disclosed to advocate for environmental aims. The Institute of Environment and Public Affairs is the most prominent and influential group to do so. But dozens of local NGOs have organized at least part of their work around information gathering and the formal promotion of government and enterprise information disclosure.⁹⁵ Legal scholars have been strong proponents of environmental information disclosure.⁹⁶ Lawyers and journalists have also made seeking disclosure of environmental information a component of their work and advocacy in recent years.

Environmental Regulators. The burdens and expectations placed on environmental regulators have grown as China has developed and its environmental problems have worsened. Increasingly, China is becoming something akin to a “risk society,” where focus on the benefits of development has given way to prominent concerns about the unwanted byproducts of economic development—risks with respect to food safety, worker safety, epidemic disease, and environmental degradation.⁹⁷ The MEP has been a particularly active proponent of environmental disclosure. The notoriously

92. E.g., YUNXIANG YAN, *THE INDIVIDUALIZATION OF CHINESE SOCIETY* 30 (2009).

93. See *supra* note 15 for a discussion of the distinction between “average citizens” and “civil society” advocates.

94. See Distelhorst, *Empty Promises*, *supra* note 12, at 475–78.

95. These include groups such as Chongqing Liangjiang (两江新区), Green Hunan (绿色潇湘), Green Hanjiang (绿色汉江网), Huai River Defenders (淮河卫士), Green Qilu (绿色齐鲁), the Center for Legal Assistance to Pollution Victims (污染受害者法律帮助中心), and Friends of Nature (自然之友).

96. See *supra* note 10.

97. See, e.g., ULRICH BECK, *RISK SOCIETY: TOWARDS A NEW MODERNITY* 19–26 (1992); Paul Thiers, Commentary, *Risk Society Comes to China: SARS, Transparency and Public Accountability*, 27 *ASIAN PERSP.*, no. 2, 2003, at 241, 242–43; Anna Lora-Wainwright, Introduction, *Dying for Development: Pollution, Illness and Limitation of Citizens' Agency in China*, 214 *CHINA Q.* 243, 243–46 (2013); Yunxiang Yan, *Food Safety and Social Risk in Contemporary China*, 71 *J. ASIAN STUD.* 705, 720–25 (2012).

under-resourced agency has seen disclosure as a useful tool for expanding government environmental enforcement capacity and tackling environmental risk.

Local environmental regulators, for their part, exhibit a diversity of viewpoints, capacity, and performance.⁹⁸ Those who support disclosure are motivated by one or more of the following considerations. First, information disclosure is a tool for maintaining stability and managing bureaucratic risk. Disclosure can mollify restive locals demanding information about environmental degradation.⁹⁹ It can also draw attention to problems and demonstrate action in circumstances where political and resource limits make it impossible for regulators to take other regulatory actions. Information disclosure can generate attention that EPBs use to garner public support or spread responsibility to other agencies before problems metastasize into crises. Otherwise, environmental regulators say they are placed in a “passive and disadvantageous” (被动) situation, vulnerable to forces beyond their control. Second, environmental regulators see environmental information as a helpful regulatory tool. It encourages firm “introspection” that can lead firms to take pollution control on their own. It generates information that regulators can use to plan regulatory action. It draws in citizens to assist in supervision of regulatory targets. These possibilities are attractive to overworked regulators faced with ever increasing enforcement obligations. Third, environmental agencies—and their superiors at local levels of government—can use information disclosure initiatives to signal innovation and allegiance to central dictates.

International Actors. International actors have actively promoted the expansion of disclosure mechanisms in China. Multilateral institutions like the World Bank and the Asian Development Bank run programs on “good governance” and “rule of law” to promote “sustainable development.”¹⁰⁰ Transparency has been a bedrock component of these efforts.¹⁰¹ Western

98. Several studies have demonstrated wide variation in disclosure performance at the municipal level. See PITI: GAINING MOMENTUM, TOWARDS BREAKTHROUGHS, *supra* note 8; PITI: NEW MINDSETS, INNOVATIVE SOLUTIONS, *supra* note 8; see also 中国社会科学院法学研究所法治指数创新工程项目组 [CHINESE ACAD. OF SOC. SCIENCES INST. OF LAW UNDER THE RULE OF LAW INDEX INNOVATION PROJECT GRP.], 中国政府透明度指数报告 [CHINA GOVERNMENT TRANSPARENCY INDEX REPORT] (2014). Lorentzen, Landry, and Yasuda have argued that variations in disclosure performance can be explained in significant part by capacity, as measured by municipal budget size. PETER LORENTZEN, PIERRE LANDRY & JOHN YASUDA, TRANSPARENT AUTHORITARIANISM? AN ANALYSIS OF POLITICAL AND ECONOMIC BARRIERS TO GREATER GOVERNMENT TRANSPARENCY IN CHINA 3 (2010), http://cega.berkeley.edu/assets/cega_events/25/3A_Corruption_and_Transparency.pdf. Variation in local government viewpoints on disclosure is reflected in the author’s personal observations and conversations with local level environmental officials and in interviews as well.

99. See *supra* note 89.

100. Alvaro Santos, *The World Bank’s Uses of the “Rule of Law” Promise in Economic Development*, in THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL 253, 267–68 (David M. Trubek & Alvaro Santos eds., 2006).

101. Environmental disclosure has gained substantial traction on the international stage as a central part of what has come to be known as “environmental democracy,” a concept that first gained

government agencies (namely from the United States and European Union) have also promoted information disclosure as part of broader “rule of law” advocacy in China.¹⁰² Likewise, international funders and civil society groups have worked with Chinese actors to support the development of information disclosure mechanisms in China. The American Bar Association commenced a program in 2002 that focused on public participation and disclosure. In 2005, the Natural Resources Defense Council (NRDC) established a project on information disclosure.¹⁰³ Private foundations and U.S. and European government funders have supported work framed around disclosure.¹⁰⁴

Chinese law and policy makers faced with tremendous environmental governance challenges have looked to the U.S. and E.U. experiences for ideas worth transplanting. Information from international actors continues to be seen as valuable, even as Chinese officials remain cautious about the intentions of international actors, and continue to engage in a vigorous debate over the superiority of transplanted ideas versus “indigenous” governance resources. Disclosure has also been a point of contention in international environmental negotiations and a source of pressure on China to improve the verifiability of environmental performance.¹⁰⁵

Local Governments and Enterprises. Local governments have not been the leaders on environmental information disclosure, but some cities have better disclosure than others.¹⁰⁶ Local government leaders have in some cases pursued information disclosure law, seeing disclosure as a means to solve local governance challenges, respond to public demand, garner attention for innovation, and attract international investment. For example, the Tianjin Economic-Technological Development Area, one of China’s earliest development zones, has since 2006 sought to brand itself as a modern and eco-friendly business destination. Part of this effort has been the implementation of a series of information disclosure programs, such as piloting a plan to track and

international prominence in Principle 10 of the 1992 Rio Declaration. Environmental democracy principles, including access to information, constitute the core “pillars” of the 1998 UNECE Aarhus Convention.

102. Governmental bodies have advocated for information disclosure as democracy promotion, to support home country businesses operating in China, and as an area of soft diplomacy, among other reasons. See, e.g., *U.S.-China Administrative Law Dialogue*, U.S. DEP’T OF COMMERCE: OFFICE OF THE GENERAL COUNSEL (May 13, 2016), <https://ogc.commerce.gov/news/blog/2016/05/us-china-administrative-law-dialogue>. This is also based on the author’s personal observations.

103. The author founded and managed this initiative between 2005 and 2011. The project still continues as of this writing under the auspices of the NRDC.

104. These include the Ford Foundation, Rockefeller Brothers Fund, the Energy Foundation, Open Society Foundation, and the Asia Foundation.

105. Meng Si, *China Will Be Transparent*, CHINA DIALOGUE (Nov. 29, 2010), <https://www.chinadialogue.net/article/show/single/en/3966—China-will-be-transparent>.

106. See PITI: GAINING MOMENTUM, TOWARDS BREAKTHROUGHS, *supra* note 8; PITI: NEW MINDSETS, INNOVATIVE SOLUTIONS, *supra* note 8. Local EPBs are thought to be basically aligned with local governments. While this is often the case, I discuss EPBs separately above to highlight the ways in which local government and local EPB interests nonetheless diverge in many instances.

disclose firm environmental data and carbon emissions.¹⁰⁷ But, as with environmental regulators, many local leaders see disclosure as risky and administratively burdensome.

Polluting enterprises have not played a leadership role in developing environmental disclosure law. On the contrary, local and international firms operating in China have often been the targets of regulation and advocacy campaigns critiquing their lack of environmental disclosure.¹⁰⁸ However, as pressure to disclose environmental information has increased, some firms—particularly those with international customers—have made disclosure and responsiveness to environmental problems a point of comparative business advantage.¹⁰⁹

Parts II (B) and (C) below offer specific examples that illustrate how interest compatibility has worked in practice.

B. Engaging the State

Information disclosure has enabled advocates to engage the state on environmental regulation in two ways: by acting (i) as *fire alarms* that alert regulators to problems and spur them to take regulatory action¹¹⁰; and (ii) as *policy entrepreneurs* that help to set party-state environmental priorities or agendas.¹¹¹ In concept, these approaches provide advocates with more influence on enforcement and policy making, and also give party-state officials and regulators support to meet top-down goals and their own parochial interests.

1. Fire Alarms

Direct monitoring and enforcement (or *police patrols*) can be costly, particularly over large geographic areas with a high number of local agents. Faced with this monitoring problem, leaders create channels for citizens to act

107. 天津经济技术开发区 [TIANJIN ECONOMIC-TECHNOLOGICAL DEVELOPMENT AREA], <http://www.teda.gov.cn/index.htm> (last visited Oct. 10, 2017). This is also based on the author's personal interaction with Tianjin Economic-Technological Development Area officials.

108. E.g., *Take Action To Stop BASF's Double Standards in China!*, GREENPEACE (July 7, 2008), <http://www.greenpeace.org/eastasia/news/stories/toxics/2008/stop-basf-double-standards/>; David Barboza, *Apple Cited as Adding to Pollution in China*, N.Y. TIMES (Sept. 1, 2011), <http://www.nytimes.com/2011/09/02/technology/apple-suppliers-causing-environmental-problems-chinese-group-says.html?mcubz=0>.

109. See APPLE, SUPPLIER 2015 RESPONSIBILITY PROGRESS REPORT 27–29 (2015); see also INST. OF PUB. & ENVTL. AFFAIRS & NAT. RES. DEF. COUNCIL, GREENING THE GLOBAL SUPPLY CHAIN: CITI INDEX 2015 ANNUAL EVALUATION REPORT 18, 34 (2015).

110. On “fire alarms” in the U.S. context, see Mathew D. McCubbins et al., *Administrative Procedures as Instruments of Political Control*, 3 J. L. ECON. & ORG. 243, 250 (1987); Mathew D. McCubbins & Thomas Schwartz, *Congressional Oversight Overlooked: Police Patrols Versus Fire Alarms*, 28 J. POL. SCI. 165, 166 (1984).

111. On non-governmental actor involvement in agenda setting in the United States, see JOHN W. KINGDON, AGENDAS, ALTERNATIVES, AND PUBLIC POLICIES 48–74 (1984).

as *fire alarms*—alerting higher ups to problems that need resolution.¹¹² Scholars have identified a diverse range of mechanisms that play this role in today's China, including letters and visits,¹¹³ complaint hotlines,¹¹⁴ administrative litigation,¹¹⁵ and protest.¹¹⁶

a. The Role of Information Disclosure

Information disclosure is essential to this fire alarm function in a few ways. First, it has enabled the emergence of new supervision channels and facilitated the use of existing ones. Second, it has served as a check on data manipulation. Third, it has catalyzed the production of additional information from non-official sources. In various ways, these functions serve the interests of party-state leaders, citizens, and regulators alike.

New and Existing Channels. Greater public availability of information assists people seeking to use traditional fire alarm pathways: lodging complaints, bringing lawsuits, or protesting environmental violations. It has also given civil society groups and individuals a greater role as “intermediaries,” who process information to make it more usable for others. These intermediaries create smart phone apps, online maps and databases, white papers, and rankings as tools of advocacy. These tools “name and shame” bad actors, provide regulators with helpful information, and increase introspection and deterrence among polluters. For example, the Chongqing-based Two Rivers, an advocacy group, created a map gathering environmental impact assessment documents for proposed industrial projects.¹¹⁷ IPE and other NGOs have engaged in a meta-analysis to evaluate and rank the level of information disclosure by various municipal-level environmental agencies.¹¹⁸

112. Chinese thinkers have long argued that good governance should draw on the people as a resource. For example, the early Qing political philosopher Gu Yanwu, a member of the “statecraft school,” proposed a greater role for “public scrutiny” (*qingyi* 清议) in government as a response to an overcentralized, sclerotic bureaucracy. The term *qingyi* implies “transparency.” Gu argued that public scrutiny could serve as a supplement to direct government supervision. John Delury, *Gu Yanwu's Mixed Model and the Problem of Two Despotisms*, LATE IMPERIAL CHINA, June 2013, at 1, 11 (Jun. 2013).

113. Carl F. Minzner, *Xinfang: An Alternative to Formal Chinese Legal Institutions*, 42 STAN. J. INT'L L. 103, 118–19 (2006).

114. Zhang Xuehua, *Green Bounty Hunters: Engaging Citizens in Local Environmental Enforcement*, 11 CHINA ENV'T SERIES, 2010–2011, at 137, 137; Tseming Yang & Xuehua Zhang, *Public Participation in Environmental Enforcement . . . with Chinese Characteristics?: A Comparative Assessment of China's Environmental Complaint Mechanism*, 24 GEO. INT'L ENVTL. L. REV. 325, 329 (2012).

115. He Xin, *Administrative Law as a Mechanism for Political Control in Contemporary China*, in BUILDING CONSTITUTIONALISM IN CHINA 143, 158–161 (Stéphanie Balme & Michael W. Dowdle eds., 2009).

116. See Peter L. Lorentzen, *Regularizing Rioting: Permitting Public Protest in an Authoritarian Regime*, 8 Q. J. POL. SCI. 127, 129 (2013) [hereinafter *Regularizing Rioting*].

117. See 环评公众参与网 [HUANPING GONGZHONG CANYU WANG], <http://www.gzcy.org> (last visited Oct. 10, 2017).

118. These include NRDC, Green Hunan (绿色潇湘), Two Rivers (两江志愿服务发展中心), Green Anhui (绿满江淮), Green Qilu (绿色齐鲁), Green Home of Fujian (福建绿家园), and Nanjing

Based around legally required information disclosure, these efforts create greater space for advocates to publicize other types of information. Chinese journalist Deng Fei created a map of publicly reported “cancer villages” in 2010 to raise awareness and channel advocacy toward these typically rural cases.¹¹⁹

Information Auditing. Citizens can also act as fire alarms by alerting the public and government officials to data manipulation. For party-state officials, this offers a check against data problems in internal reporting.¹²⁰ There are countless examples of this function in practice: The MEP publicized a model “typical case” where citizen complaints led to the discovery of data falsification at a cement plant in the eastern city of Nanjing¹²¹; in June 2015, the Sichuan-based environmental NGO Green and Clear Sichuan (绿蜀清川) found that companies in eight of twenty-one cities within the province had falsely reported emissions violations or had not disclosed any data at all¹²²; and public disclosure of daily air quality data enabled an American researcher to determine that dozens of cities were underreporting their “blue sky day” numbers (i.e., days in compliance with air quality standards).¹²³

Green Stone (南京绿石). See PITI: GAINING MOMENTUM, TOWARDS BREAKTHROUGHS, *supra* note 8, at 9; PITI: NEW MINDSETS, INNOVATIVE SOLUTIONS, *supra* note 8, at 7.

119. Deng Fei, China’s Cancer Villages, GOOGLE MAPS, https://www.google.com/maps/d/viewer?mid=1R70M9vbPN104K-YqFUnK1xUDoY&hl=en_US&ll=30.187076758346237%2C112.2864650000013&z=5 (last visited Oct. 12, 2017).

120. Chinese data quality problems are well known. See Wang, *Sustainable Legitimacy*, note 43, at 424–29; see generally MATTHEW CRABBE, MYTH-BUSTING CHINA’S NUMBERS: UNDERSTANDING AND USING CHINA’S STATISTICS (2014); Yuan Suwen et al., *Northern China Chokes on Fake Emissions Data*, CAIXIN (Apr. 6, 2017, 3:27 AM), <http://www.caixinglobal.com/2017-04-06/101075101.html>.

121. 环境保护部严查环境监测数据弄虚作假 [Ministry of Environmental Protection Scrutinizes Falsification of Environmental Monitoring Statistics], 中华人民共和国环境保护部 [MINISTRY OF ENVTL. PROT. OF THE PEOPLE’S REPUBLIC OF CHINA] (June 12, 2015), http://www.mep.gov.cn/gkml/hbb/qt/201506/t20150612_303415.htm (last visited Oct. 30, 2017).

122. In nine cities, the NGO found that companies had disclosed emissions concentrations that exceeded applicable standards, but in their reporting the companies misstated the emissions standards (adjusting them higher) so that the company did not appear as in violation. For example, on June 8, 2015 at 10 p.m., the Dazu Branch of PetroChina Southwest Oil and Gasfield Company reported that sulfur dioxide emissions at one stack equaled 14,068.13 mg/cubic meter. The company reported that standards allowed 20,000 mg/cubic meter, when in fact standards only allowed 550 mg/cubic meter. 孔令钰 [Kong Lingyu], 四川污染源信息平台排污数据疑造假 [The Pollution Data on Sichuan Pollution Source Information Platform is Suspected to Be Falsified], 财新网 [CAIXIN WANG] (June 10, 2015), <http://china.caixin.com/2015-06-10/100817966.html>; see also 陈锋 [Chen Feng], 京沈高铁拟穿越北京居民区引沿线居民抗议 [Beijing-Shenyang High-Speed Train to Pass through Beijing’s Residential Area and Provokes Protest], 法制网 [LEGAL DAILY] (Dec. 10, 2012, 11:00 AM), http://www.legaldaily.com.cn/report_supervise/content/2012-12/10/content_4039381.htm?node=40810 (recounting protests by Beijing residents regarding the environmental impact assessment report for the Beijing-Shenyang High-Speed Rail project).

123. See, e.g., Steven Q. Andrews, *Seeing through the Smog: Understanding the Limits of Chinese Air Pollution Reporting*, CHINA ENV’T SERIES, 2008–2009, at 5, 17, 20; Steven Q. Andrews, *Inconsistencies in Air Quality Metrics: ‘Blue Sky’ Days and PM₁₀ Concentrations in Beijing*, ENVTL. RES. LETTERS, July–Sept. 2008, at 1, 12; Steven Q. Andrews, *Beijing’s Hazardous Blue Sky*, CHINA DIALOGUE (Dec. 5, 2011), <http://www.chinadialogue.net/article/show/single/en/4661>.

Citizen Information Generation. Greater acceptance of this fire alarm role has helped spur discussions about the “societization” (社会化) or involvement of citizens and private companies in gathering and disseminating environmental information. Information gathering has traditionally been a risky endeavor in China. At best, citizens who gather pollution information have been viewed as meddlesome interlopers. At worst, they have been accused of violating the law.

Despite these risks, several of China’s early environmental NGOs framed their role as local monitors of pollution. These groups included the Huai River Defenders (淮河卫士),¹²⁴ Green Hanjiang (绿色汉江),¹²⁵ and Green Beagle (达尔问环境研究所)¹²⁶ that commenced their work before environmental information was widely disclosed to the public.

With the expansion of formal information disclosure law, citizens can now frame their information gathering as consistent with state priorities and law.¹²⁷ Environmental groups now gather a broader range of environmental information not mandated for disclosure under existing law, such as soil pollution data, for use in advocacy.¹²⁸

Chinese companies have begun to market products that facilitate citizen information gathering. The online retailer, Ali Baba, has offered water testing kits for sale.¹²⁹ Consumer-grade air quality monitors are now widely available on the market in the wake of high levels of urban air pollution. Broad, a maker of energy efficient cooling systems and air purifiers, has developed a “Life Phone” (生命手机) that measures particulate matter and formaldehyde. Baidu, the “Google of China,” produces chopsticks that purport to detect pollutants in

124. On Huo Daishan and the Huai River Defenders, see 淮河卫士霍岱珊 [Huai River Defender Huo Daishan], 新浪微博 [SINA WEIBO], <http://bit.ly/1HLamYe> (last visited Oct. 10, 2017).

125. On Yun Jianli and Green Hanjiang, see 绿色汉江河流保护联盟 [GREEN HAN RIVER WATERKEEPER ALLIANCE], <http://www.greenhj.org.cn/> (last visited Oct. 10, 2017).

126. On Feng Yongfeng and Green Beagle Environment Institute, see 达尔文环境研究所 [GREEN BEAGLE ENV’T INST.], <http://www.bjep.org.cn> (last visited Oct. 10, 2017). See also Sharon LaFraniere, *Activists Crack China’s Wall of Denial About Air Pollution*, N.Y. TIMES (Jan. 27, 2012), <http://www.nytimes.com/2012/01/28/world/asia/internet-criticism-pushes-china-to-act-on-air-pollution.html>.

127. See Jiping Zuo & Robert D. Benford, *Mobilization Processes and the 1989 Chinese Democracy Movement*, 36 SOC. Q. 131, 139 (1995), on “frame alignment” strategies as a way to walk “a dangerous tightrope” of advocacy. Success meant “understanding and tolerance from state authorities, or at least [neutralization of] the legitimacy of any official pretense to using repressive force.” *Id.* Failed framing could mean being branded a counterrevolutionary. See also Distelhorst, *Empty Promises*, *supra* note 12, at 475–78, on the protective value of “anodyne” frames for advocacy and the use of institutional failure as an advocacy tool.

128. *E.g.*, 长沙市曙光环保公益发展中心 [CHANGSHA SHUGUANG ENVTL. CHARITY DEV. CTR.], <http://www.sggreen.org/index.html> (last visited Oct. 10, 2017); He Guangwei, *The Soil Pollution Crisis in China: A Cleanup Presents Daunting Challenge*, YALE ENV’T 360 (July 14, 2014), <http://bit.ly/1BeMmf3>; see also Kong Lingyu, *NGOs, Volunteer Groups Take Pollution Fight into Their Own Hands*, CAIXIN (Aug. 13, 2015, 4:15 AM), <http://www.caixinglobal.com/2015-08-13/101012265.html>.

129. Susan Chan Shifflett, *China’s Hottest Tech Giants Join the ‘War on Pollution’*, DIPLOMAT (Jan. 31, 2015), <http://thediplomat.com/2015/01/chinas-hottest-tech-giants-join-the-war-on-pollution>.

food.¹³⁰ Risk assessments tools are no longer the sole domain of elite experts or government.

Behind the scenes these efforts are not without their sensitivities. Authorities partially censored a commercial smartphone app that included official Chinese and U.S. embassy data on Beijing air quality in 2014.¹³¹ Concern over drawing this sort of official response has resulted in hand wringing and self-censorship. Senior executives at Ali Baba were rumored to be unhappy with the publicity surrounding the water testing kits and objected to the role of Ali Baba's foundation in supporting the production of the kits.¹³² Staff at Broad mentioned that the company had considered incorporating a feature to broadcast or "tweet" air quality from the Life Phone, but the feature was not included in the end due to political sensitivities.¹³³ At the same time, others have commercialized the ability to broadcast environmental quality data to the public without apparent incident.¹³⁴

b. Shandong's Disclosure Platform

Shandong Province offers an example of how these dynamics of information disclosure work in practice, where interest convergence creates "positive interaction" (良性互动) among state and society actors. Shandong is a major industrial province south of Beijing with significant industries in power, cement, coal, steel, and oil. Located to the south of Beijing, it is a major contributor to air pollution in the Beijing "airshed" (京—津—冀) and subject to more stringent environmental rules pursuant to China's 2013 Air Pollution Action Plan.¹³⁵

In February 2013, Shandong Environmental Protection Bureau officials faced complaints that factories in the city of Weifang were injecting pollution into underground aquifers.¹³⁶ The story was a national scandal that drew media attention and regulatory inquiry from Beijing.

130. *Id.*

131. See Matt Smith, *China Censors Mobile App that Provides 'Airpocalypse' Data* (Nov. 12, 2014, 1:05 PM), <https://news.vice.com/article/china-censors-mobile-app-that-provides-airpocalypse-data>.

132. This is based on the author's personal observations.

133. This is based on the author's personal observations.

134. E.g., *iTunes Preview: Blue Map by 蔚蓝地图 [Azure Map]*, APPLE <https://itunes.apple.com/us/app/wei-lan-tu-rang-ni-dui-zhou/id838211758?mt=8> (last updated Sept. 16, 2017).

135. 贯彻落实山东大气标准 [Implementing the Shandong Air Standard], 山东环境保护 [SHANDONG PROVINCE ENVTL. PROT. BUREAU], <http://www.sdein.gov.cn/zwgk/gclssddqbz> (last visited Oct. 10, 2017). Shandong was the first province in China to pass air emissions standards more stringent than national standards. See 山东省环保厅: 治理污染要敢于自揭家丑和自绝后路! [Shandong Province Environmental Protection Bureau: Dealing with Pollution Requires Us to Expose Our Weaknesses and Leave No Room for Retreat!], 微信易读 [WEIXIN YIDU] (May 30, 2015), http://www.weixinyidu.com/n_1360213.

136. 任重远 [Ren Zhongyuan], 潍坊地下水污染疑云 [Doubt on Weifang's Underground Water Pollution], 财新周刊 [CAIXIN](Feb. 22, 2013), <http://china.caixin.com/2013-02-22/100493283.html>.

The scrutiny from this incident led Shandong EPB officials to expand their efforts at public communication and engagement.¹³⁷ The provincial EPB required city and county-level EPBs to establish Twitter-like *weibo* accounts as a public communications platform.¹³⁸ The *weibo* accounts serve as an interactive channel for disclosure of information and receipt of citizen environmental complaints. The EPBs also established platforms on the messaging app Wechat (*weixin*) to accept submission of complaints.¹³⁹ These channels—operated by the EPB’s Center for Communications and Education (宣教中心)—have served as a forum for public dialogues between the EPBs and citizens.

Other programs followed. In March 2014, the EPB established the “double sunshine” (双晒) program to publicize information about enterprise pollution control and regulatory supervision of more than 7,600 facilities.¹⁴⁰ Shandong Province was also a leader in “real-time” (hourly) disclosure of enterprise level pollution discharges pursuant to national regulations.¹⁴¹ It also promulgated rules that expressly encourage the “societization” of information gathering. In 2014, new rules required public access to discharge pipes to allow citizens to sample discharge effluent themselves.¹⁴² Rules facilitate public monitoring by requiring signage at the output site stating the name of the company and pollutants released.¹⁴³ Environmental officials in Shandong also initiated a campaign to encourage citizens to submit pictures of illegal polluters. Another program—known as *sui shou pai* (随手拍)—encouraged citizens to take and

137. Interview with anonymous source, no. 2015-06 (2015) (transcript on file with author).

138. According to one source this is the first time that all three main local levels of Chinese government (provincial, city, county) have all opened official *weibo* accounts. See *supra* note 135.

139. 田国垒 [Tian Guolei], 环保部将在全国全面开通“12369”环保微信举报平台 [The Environmental Protection Department of China Will Fully Launch Nationwide “12369” Wechat Reporting Platform], 中国山东网 [SD CHINA] (Aug. 13, 2015), http://sd.china.com.cn/a/2015/hbny_0813/267310.html.

140. 董理 [Dong Li], 山东省环保厅“双晒”公开7600余家企业环保信息 [Shandong Province Environmental Protection Bureau “Shuang Shai” Publicized over 7600 Companies’ Environmental Protection Information], 中国山东网 [SD CHINA] (Apr. 22, 2015), <http://news.sdchina.com/show/3300882.html>; see also 关于进一步落实大气污染源信息公开(“双晒”)有关要求的通知 [Notice on Further Implementation on Disclosure of Information of Air Pollution Source (“Double Sun”)], 山东环境保护厅 [SHANDONG PROVINCE ENVTL. PROT. BUREAU] (Mar. 5, 2015), http://xxgk.sdein.gov.cn/zfwj/lhbh/201503/t20150313_275166.html.

141. E.g., PITI: NEW MINDSETS, INNOVATIVE SOLUTIONS, *supra* note 8, at 4, 18–20.

142. 山东省污水排放口环境信息公开技术规范 [Shandong Technical Standards for Environmental Information Disclosure of Sewage Outfall] (promulgated by the Shandong Province Env’tl. Prot. Bureau, Jan. 15, 2014, effective Feb. 1, 2014) art. 1.15, 4.1.2, 4.1.3 [hereinafter Shandong Tech Standards]; see also 张帅 [Zhang Shuai], 山东将完善企业排污口技术规范 “随手拍” 优秀拍客受表彰 [Shandong Province Will Improve the Technical Standard for Sewage Outfall, Good “Sui Shou Pai” Photo Maker Will be Awarded], 齐鲁网 [QILU WANG] (Sept. 27, 2013), <http://news.iqilu.com/shandong/yuanchuang/2013/0927/1682897.shtml>.

143. See Shandong Tech Standards, *supra* note 142.

post pictures of enterprises that discharged untreated effluent directly into the environment.¹⁴⁴

Shandong officials have worked closely with environmental groups to promote the fire alarm function of disclosure. This marked a change from more cautious years past. As one official put it, “the old NGOs used to nitpick and find fault (挑毛病). The new NGOs participate in governance (参与治理).”

The most prominent example of EPB-NGO collaboration involves IPE, the Beijing-based environmental group. IPE has used a smartphone-based pollution app known as “Azure Sky” (蔚蓝地图) to promote the use of environmental information in Shandong Province.¹⁴⁵ IPE’s pollution app, launched in June 2014, facilitates public awareness of environmental violations and communicates complaints to regulators.¹⁴⁶ It includes searchable mobile maps with information on air and water quality, as well as facility-specific air emissions, and water discharge data.¹⁴⁷ Users can send from the app a tagged *weibo* message that local EPBs in some jurisdictions have agreed to treat as formal complaints.

IPE staffers say that the app has generated citizen complaints that have triggered investigations and enforcement action. Five months after the app’s launch, 203 companies nationwide had provided some response to EPB inquiries that were in turn driven by citizen complaints through the IPE app. The lion’s share of these responses (134 of 203) appeared in Shandong Province.¹⁴⁸ IPE states that seventy-four of these facilities acted to correct violations in the face of regulatory enforcement action. Given the scale of the problem in China, these numbers are low. Nonetheless, the app represents an example of a jurisdiction in which information disclosure is driving public supervision that in turn results in regulatory action and enterprise response.

The app works by alerting citizens to pollution problems, offering a way to identify the sources of that pollution, and providing a simple channel to submit complaints. This facilitates what Felstiner, Abel, and Sarat called

144. A survey of the official website for the program shows a relatively low level of activity, however. 杨科 [Yang Ke], “污水直排随手拍”活动启动 菏泽拍客行动起来 [“Direct Discharge of Sewage Sui Shou Pai” Activity Launched, Photographers in Heze Took Actions], 齐鲁网 [QILU WANG] (July 15, 2013), <http://heze.iqilu.com/hzyaowen/2013/0715/1597218.shtml>.

145. See *supra* note 134.

146. The app has been downloaded more than three million times since its release.

147. The app included air quality data in 190 cities from 879 government monitoring stations, and real-time air emissions data from 17,641 emission sources at 4743 facilities (*i.e.*, many facilities have more than one listed pollution source). It incorporates hourly facility-level emissions data disclosure that first became publicly available in 2013. Through the app, users can see the emissions compliance status of major polluting firms. Skeptics have rightly raised questions about the impact of poor data quality and nondisclosure on the efficacy of disclosure. Yet, even accepting the likelihood of widespread falsification or significant nondisclosure, the data disclosed show hundreds, if not thousands, of facilities in violation throughout China at any given moment. Mobile Application: Blue Map (Institute of Public Environment Affairs 2017).

148. According to IPE data, only two other provinces had more than four company responses. These were Zhejiang (thirty) and Jiangsu (fifteen). Fujian, Hebei, and Beijing each had four. Jiangxi had three, and Guangdong and Yunnan had two each. Anhui and Shaanxi each had one. *Id.*

“naming, blaming, and claiming.”¹⁴⁹ The IPE app and the publicity surrounding it enhance *naming* by providing a constant reminder of air and water quality and the severity of pollution. The app presents users with a pollution source map, which citizens can use to *blame*. Citizens may not understand wind patterns and the impact of meteorological conditions on air pollution transfer, but they can easily identify facilities violating emissions standards in their vicinity. Prior to this disclosure, citizens could only guess at the performance of local pollution sources.¹⁵⁰ The app further gives citizens an easy way to *claim* by directly messaging local regulators.

Regulators can be remarkably responsive in this system. I had a firsthand view of the way in which the provincial EPB office responded to online complaints about enterprise pollution violations. An online search of the *weibo* platform produced a list of enterprises that had received public complaints from *weibo* users. A random review revealed that an aluminum plant that had been the object of public complaints in late 2014—leading the plant to install denitrification equipment—was at that moment (in May 2016) violating sulfur dioxide emissions standards. I submitted a complaint through the IPE app, which would in principle be accepted and handled by the Shandong provincial EPB. The next day the local EPB (in Chiping County) posted a response from the company itself explaining that the violation was due to malfunctioning desulfurization equipment and noting countermeasures taken (primarily reducing oil to boilers and using higher quality coal). It is possible that this case is not representative. This factory had been under regulatory scrutiny. My complaint was not anonymous and it may be that attention from a foreign researcher could garner a prompter response from the authorities. Moreover, there was no way to verify the accuracy of the company’s disclosure. But NGO workers who had followed Shandong’s use of the *weibo* response system were not surprised by the rapid response. This, they said, was typical of the several hundred responses the EPB or companies had made.¹⁵¹

Environmental officials say that public attention from citizen groups can offer critical regulatory leverage against intransigent polluters. Regulators believe the public can offer EPBs assistance against state-owned enterprises (SOEs), who are often the most difficult to regulate because of their higher bureaucratic rank (for example, central SOEs are equal or superior in rank to provincial EPBs), superior political connections, and economic influence. Provincial officials highlighted an effort to regulate 178 local enterprises found

149. William L. F. Felstiner, Richard L. Abel & Austin Sarat, *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .*, 15 LAW & SOC’Y REV. 631, 634–37 (1980–81).

150. A 2011 IPE report is indicative. “Looking at the enormous plant and its continuously ascending white smoke, we *feel* this new Shougang plant still has a lot of hard work to undertake until it can effectively reduce its energy consumption.” [emphasis added] See INST. OF PUB. & ENVTL. AFFAIRS, A ROAD MAP TO BLUE SKIES: CHINA’S ATMOSPHERIC POLLUTION SOURCE POSITIONING REPORT, Dec. 2011, at 55–56, <http://www.woa.ipe.org.cn/Upload/Report-Positioning-EN.pdf>.

151. This is based on the author’s personal conversations.

to be in violation of air emissions standards. Though regulators levied fines, the companies remained unmoved. These companies employed thousands of workers and the firms threatened that environmental measures would force them into bankruptcy. The EPB contacted IPE and asked for help in mobilizing local NGOs and citizens to press these companies for change.¹⁵²

Shandong's approach will look familiar to those who have studied environmental disclosure policies in the United States and other countries. But, state and society actors also respond to powerful institutional incentives particular to China's unitary system. These include incentives that reward local experimentation and maintenance of social stability. There is an upward looking aspect to Shandong's transparency reforms. Local officials have discussed the programs as a "Shandong Model" (山东模式). This is a signal to their superiors in Beijing of local governance innovation, and an exercise in local branding. After all, "officials need achievements," one government interviewee noted.¹⁵³ Zhang Bo, the head of Shandong's EPB at the time of this research, presented himself as an innovator. No bland technocrat, he developed for Shandong a comprehensive environmental program based on a progressive moral view, science-backed policies, and an emphasis on transparency and public involvement. Observers suggested that he sought a promotion to Beijing, and in August 2016 he was in fact promoted to direct the national environmental ministry's water department.¹⁵⁴

Local officials also face strong incentives for social stability maintenance. Some choose to rule their domain with an iron fist. Others, like the environmental leaders in Shandong, have emphasized a policy of engagement. Officials connect transparency efforts with a new initiative called Open Environmental Protection Day (环保开放日) where officials meet with citizens and answer questions on the last Friday of each month. In part, this is a strategy of self-defense. The programs create an early warning system for citizen discontent and potential conflict. When inevitable environmental accidents do occur, EPBs can also use these programs as evidence of reasonable precautions taken.

In the end, these efforts may also be driven by straightforward environmental policy objectives. Observers praised Zhang Bo, the progressive head of the provincial environmental bureau, as a person with skill and commitment seeking to implement "real" regulation. He is very "open" and supportive of NGO and citizen supervision, one local official told me.¹⁵⁵ Leadership, like institutional incentives, matters.

152. Interview with anonymous source, no. 2015-02 (2015) (transcript on file with author).

153. Interview with anonymous source, no. 2015-06 (2015) (transcript on file with author).

154. 张波 — 环保部 水环境管理司 司长 博士 [Zhang Bo, Ph.D. — Director of Water Environment Management Department, Ministry of Environmental Protection], 中国水业网 [WATER8848.COM] (Aug. 30, 2016), <http://www.water8848.com/news/201608/30/75544.html>.

155. Interview with anonymous source, no. 2015-06 (2015) (transcript on file with author).

Even so, some observers remain skeptical of these efforts. Central officials have been suspicious of aspects of Shandong's apparent newfound commitment to environmental protection. In early 2015, officials in Linyi, a city in Shandong, made national headlines for forcing more than four hundred local factories "to clean up their operations" in an environmental enforcement campaign.¹⁵⁶ The campaign seemed designed to demonstrate Linyi's resolve in enforcement. Yet, one central environmental official cautioned that Linyi was not what it seemed. "Many of those factories are old and scheduled for closure already, or else they were simply going to close anyway because business was bad."¹⁵⁷ In other words, the shutdowns were partly symbolic and not genuine enforcement actions. Shandong EPB's information disclosure and public supervision programs may share such infirmities under the surface, but the research here suggests that these efforts are not merely symbolic.

2. Agenda Setting

Information disclosure also enables citizens and advocates to play a greater role in policy and law making and determination of party-state agendas. This subpart will highlight two functions of information disclosure in agenda setting—(i) disclosure as a way to steer public opinion and break bureaucratic resistance, and (ii) nondisclosure as an agenda setter. Again, these functions serve various interests of party-state leaders, citizens and civil society groups, and regulators alike.

a. The 2014 Environmental Protection Law Amendment

The emergence of disclosure within the Chinese governance system has allowed public input to play a larger role in legislative processes. Alford and Liebman noted the internal bureaucratic contestation over environmental legislation in the 2000 amendment of the Air Pollution Prevention and Control Law.¹⁵⁸ Since then, the role of actors external to the bureaucracy has increased markedly.

The 2014 amendment of the Environmental Protection Law offers an example of environmental regulators and advocates using disclosure to build public support and counter political opposition from other parts of the bureaucracy.¹⁵⁹ Development-oriented agencies and local governments opposed a strong, pro-environmental revision to China's framework

156. Benjie Batanes, *China Issues over 25,000 Environmental Citations against Erring Companies*, CHINA TOPIX (Aug. 10, 2015), <http://www.chinatopix.com/articles/61135/20150810/china-issues-more-25-000-environmental-citations-against-erring-companies.htm>.

157. Interview with anonymous source, no. LA-2015-01 (2015) (transcript on file with author).

158. William P. Alford & Benjamin L. Liebman, *Clean Air, Clear Processes? The Struggle over Air Pollution Law in the People's Republic of China*, 52 HASTINGS L. J. 703, 725 (2001).

159. The information for this case study is based on interviews, conference presentations by involved parties, and scholarly literature on the matter, such as Lei Zhang et al., *Power Politics in the Revision of China's Environmental Protection Law*, 22 ENV'T POL. 1029, 1030–31 (2013).

Environmental Protection Law.¹⁶⁰ The first public draft of the amended law reflected this opposition.¹⁶¹ The draft largely ignored a slate of recommendations from scholars and the environmental ministry proposing higher administrative penalty limits, information disclosure, public participation, and public interest litigation.

The NPC received more than five thousand public comments on the draft. Academics and civil society actors criticized the draft law as “lacking any substantive improvement” (没有实质性进步) and “not implementable” (不具有操作性).¹⁶² Twelve well-known environmental scholars wrote an open letter critiquing the draft. Civil society actors expressed discontent with the draft in the media and elsewhere. On October 31, MEP officials posted a lengthy report on its official website, raising thirty-four objections to the draft. According to media reports, this was the first time that a lead agency had aired its disagreements with the NPC in such a public way.¹⁶³ Bargaining that typically took place behind the scenes turned public. Media reports remarked (hyperbolically) that the debates left the air filled with “the smell of gunpowder.”¹⁶⁴ Leaders in the relevant departments of the NPC and MEP were rumored to have engaged in unprecedented face-to-face shouting matches in public over MEP’s public posting of critical commentary.

Some eight months later,¹⁶⁵ the NPC released a second comment draft that now included a variety of provisions previously omitted, including provisions on information disclosure and public participation; cumulative penalties for each day of violation; and other provisions MEP, scholars, and civil society actors had sought.¹⁶⁶ Scholars, officials and media post-mortems presented this as the triumph of citizen voices over an intransigent bureaucracy, but it also represented a loose partnership among officials in the environmental ministry, scholars, and civil society groups to generate public pressure for more significant amendments to the draft.¹⁶⁷

160. E.g., 王磊磊 [Wang Leilei], 新环保法立法揭秘: 环保部曾发布长文 提 34 条反对意见 [The Story Behind New Environmental Law: Minister of Environmental Protection Bureau Published an Article Raising 34 Objections], 凤凰资讯 [FENGHUANG ZIXUN] (Mar. 11, 2015), http://news.ifeng.com/a/20150311/43312078_0.shtml.

161. The Environment and Resources Committee of the NPC posted the first draft of the EPL for public comment on August 31, 2012.

162. See Wang, *supra* note 160.

163. *Id.*

164. *Id.*

165. In June 2013.

166. See Wang, *supra* note 160.

167. Such an approach is not easy to sustain or replicate. China’s Air Pollution Prevention and Control Law was amended in 2015 to much less sustained public debate. Scholars and media commentators have largely been disappointed in the new amended law. See, e.g., David Stanway & Kathy Chen, *China Passes New Pollution Law, Sets Sights on Coal Consumption Cap*, REUTERS (Aug. 29, 2015), <http://www.reuters.com/article/us-china-pollution/china-passes-new-pollution-law-sets-sights-on-coal-consumption-cap-idUSKCN0QY08A20150829> (quoting Chang Jiwen of the official State Council Development and Research Center as calling the law “not very useful”). This is also based on the author’s personal observations.

b. Non-Disclosure as an Agenda Setter

As information disclosure has become more commonplace, decisions *not to disclose* also provide information to the public. Whether accurate or not, the common presumption is that non-disclosure signals an attempt to hide problems.¹⁶⁸ The failure to disclose can serve as a rallying cry for advocacy.

Chinese authorities' refusal to disclose ambient levels of PM2.5 pollution led to public outrage that ultimately forced a change in air pollution disclosure and regulatory rules. Government refusals to disclose soil pollution information have increased the sense that the problem is much worse than people suspect.¹⁶⁹ These are instances where the "cover-up" itself becomes a point of contention. Officials often cite to social instability risk as a reason to withhold information, yet non-disclosure can create problems for officials as well.¹⁷⁰

C. Circumventing the State

Information disclosure also creates opportunities for citizens to sidestep regulators and seek out enforcement from third-party regulators (or "quasi-regulators").¹⁷¹ Citizens appeal to quasi-regulators as a supplement or alternative to government action. Such strategies are particularly appealing where government regulators are captured or lacking in capacity.¹⁷² Disclosure also gives citizens the tools to better engage in self-help. These strategies benefit citizens and advocacy groups, and support the interests of party-state leaders and regulators. They strengthen regulation and mitigate public discontent in a period where the party-state has elevated environmental policy priorities.

1. Quasi-Regulatory Strategies

Supply chain strategies are a particularly well-developed form of quasi-regulatory strategy. Such strategies are facilitated by information disclosure laws that underline problems and reduce corporate deniability. The key players in such strategies are multi-national corporations (the quasi-regulators), their suppliers (the targets of regulation), and advocacy groups to whom the quasi-

168. Relatedly, Greg Distelhorst notes that information disclosure serves two functions: (i) it provides an anodyne frame for advocacy ostensibly acceptable to the state, and (ii) the refusal of disclosure—if perceived as in conflict with the law—can provide advocates with an example of government failure that puts pressure on state officials. He calls the latter the "power of empty promises." Distelhorst, *Empty Promises*, *supra* note 12, at 475–78.

169. This is based on the author's personal observations.

170. This is based on the author's personal observations.

171. This is similar to Jon Michael's concept of "fire brigades" in the U.S. administrative law context. Jon D. Michaels, *Of Constitutional Custodians and Regulatory Rivals: An Account of the Old and New Separation of Powers*, 91 N.Y.U. L. REV. 227, 249 (2016) (describing citizen involvement in implementation of state priorities).

172. On regulatory capture, see Lorentzen et al., *supra* note 12, at 184.

regulators are in some way accountable.¹⁷³ These strategies are usually initiated by advocacy groups in collaboration (or contention) with multi-national corporations. In response, corporations require certain environmental standards and safeguards from their suppliers and conduct auditing to support compliance. The approach is particularly salient in China, which has become the “workshop of the world.” Major multi-national corporations, like Walmart, Apple, Nike, and H&M, produce substantial portions of their product lines in China for sale in the United States, Europe, and Japan.

The corporate quasi-regulators themselves are driven by both risk and opportunity.¹⁷⁴ Some corporations are reluctant participants, motivated mainly by concerns of reputational damage should news of poor environmental performance reach the media. Consumer brands and companies with sustainability pledges are particularly vulnerable. Apple, which had previously refused to disclose any information about its Chinese suppliers, reversed course after public criticism from Chinese NGOs.¹⁷⁵ Other companies less reliant on consumer brands may feel relatively invulnerable to such pressure. The Chinese suppliers are in turn motivated to comply with quasi-regulator demands because of their own economic incentives—the risk of losing business from international purchasers.

Supply chain strategies also generate positive economic incentives. Advocates have long made the case that “pollution prevention” strategies can generate cost savings, as well as environmental benefits. For example, a report by NRDC argues that a number of polluting practices in the textiles industry are associated with costly waste of water, energy, and other resources.¹⁷⁶ Resource savings by suppliers enable lower prices for goods as well. For example, Walmart has incorporated a supply chain strategy into its efforts to offer “everyday low costs,” saving \$279 million in energy costs alone since

173. Benita M. Beamon, *Designing the Green Supply Chain*, 12 *LOGISTICS INFO. MGMT.* 332 (1999); Jeremy Hall, *Environmental Supply Chain Dynamics*, 8 *J. CLEANER PRODUCTION* 455, 457–58 (2000); Helen Walker et al., *Drivers and Barriers to Environmental Supply Chain Management Practices: Lessons from the Public and Private Sectors*, 14 *J. PURCHASING & SUPPLY MGMT.* 69, 72–73 (2008); Bing Zhang et al., *Why Do Firms Engage in Environmental Management? An Empirical Study in China*, 16 *J. CLEANER PRODUCTION* 1036, 1042 (2008).

174. My personal interaction with staff of several major U.S. multi-national consumer goods and technology companies supports the notion that at least line-level staff members within these corporations do not view environmental norms as the primary motivation for engaging with NGOs. Although there is variation, many such staffers wonder why the corporations should be responsible for environmental enforcement, when they perceive this to be the job of local regulators.

175. See Barboza, *supra* note 108.

176. For example, water reuse is both less polluting and saves on water costs. Simple production adjustments, such as dyeing similar colored fabrics (for example, a light blue and a dark blue batch) with a single portion of water, can produce \$115,000 (720,000 RMB) of savings in production costs per year for an average factory. Common industry practice is to dye each batch of fabric with a separate portion of water (with the used, polluted water dumped into waterways or treatment plants). LINDA GREER ET AL., *THE TEXTILE INDUSTRY LEAPS FORWARD WITH CLEAN BY DESIGN: LESS ENVIRONMENTAL IMPACT WITH BIGGER PROFITS* 4 (2015), <http://on.nrdc.org/1DJCdIa>.

2008.¹⁷⁷ Firms may also find that they can build positive brand value through creating a public image of sustainability and environmentalism.

Supply chain strategies also serve to remedy prevalent capacity and knowledge gaps in developing countries like China. Suppliers oftentimes come from humble beginnings and lack sufficient technical expertise to improve environmental performance. One NRDC staffer noted that many of the Chinese textile managers she encountered had been farmers just a few years before.¹⁷⁸ While some firms act in bad faith—avoiding compliance simply because they can—other firms lack the capacity to improve performance, even if it would be in their rational self-interest. NRDC’s green supply chain program found numerous Chinese suppliers willing to take advantage of training programs that promised to save money and solidify business with multi-national purchasers.

On the other hand, supply chain strategies can also serve a “wag the dog” function, diverting attention from other corporate problems, such as labor disputes or corruption. Environmental efforts can serve to burnish a firm’s reputation for corporate social responsibility in an area more likely to yield “no regrets” solutions with economic and environmental benefits.¹⁷⁹ It may be no surprise that the vice-president of Walmart’s sustainability efforts for many years had a long prior career in public relations.¹⁸⁰

2. Self-Help

Information disclosure also provides citizens with the tools to engage in “self-help” to avoid environmental risks to health and property. This pathway acts as a “pressure release valve,” enabling citizens to gain some modicum of control over their own lives.¹⁸¹ People may keep children inside during bad air days; wear face masks when outside; and purchase safe drinking water, imported rice, or non-Chinese milk products.¹⁸² Urban residents in high-

177. Press Release, Walmart, Walmart Continues to Strengthen Global Supply Chain Sustainability; Announces New Commitment to Advance Factory Energy Efficiency in China (Aug. 27, 2014), http://corporate.walmart.com/_news_/news-archive/2014/08/27/walmart-continues-to-strengthen-global-supply-chain-sustainability-announces-new-commitment-to-advance-factory-energy-efficiency-in-china.

178. This is based on the author’s personal conversation.

179. Stephanie Clifford, *Man Who Helped Image of Wal-Mart Steps Down*, N.Y. TIMES (Mar. 8, 2013), <http://www.nytimes.com/2013/03/09/business/man-who-helped-image-of-wal-mart-steps-down.html>; Josh Eidelson & Lee Fang, *Obama’s Budget Chief Nominee Led Walmart’s Targeted Giving*, NATION (Feb. 15, 2013), <https://www.thenation.com/article/obamas-top-choice-omb-led-walmart-foundations-targeted-giving/>; Orville Schell, *How Walmart is Changing China*, ATLANTIC (Dec. 2011), <https://www.theatlantic.com/magazine/archive/2011/12/how-walmart-is-changing-china/308709/>.

180. Jeffrey Goldberg, *Selling Wal-Mart: Can the Company Co-opt Liberals*, NEW YORKER (Apr. 2, 2007), <https://www.newyorker.com/magazine/2007/04/02/selling-wal-mart>.

181. Such an outcome is not inevitable, of course. Citizens may be angered by the need to take these self-help precautions.

182. On self-help and air pollution, see *Air Pollution Survival Guide*, JUCCE (Dec. 1, 2013), <http://web.archive.org/web/20170202093715/https://www.jucce.org/air/>; Monica Tran, *The Three Types of Masks that Protect You from Air Pollution PM2.5*, GREENPEACE E. ASIA (Dec. 6, 2011), <http://bit.ly/1Euayzc>. On self-help and food safety, see William Bi, *Cadmium Scare Boosts Appeal of*

pollution areas may move to less developed, lower pollution areas of the country.¹⁸³ Others may choose to leave China altogether.¹⁸⁴

Information reduces the public sense of helplessness in the face of seemingly insurmountable problems. Such arguments may work most effectively with middle-class or wealthier citizens with the means to exit a bad situation. Officials may also find that citizens respond to this strategy to the greatest degree where persuasive arguments can be made that the problem is genuinely difficult to resolve or will entail trade-offs that citizens might not like (i.e., the costs of additional regulatory action are high). In such instances, environmental disclosure—like a product warning—acts as a reasonable precaution taken.

* * * * *

This Part has illustrated the productive potential of environmental information disclosure in China's authoritarian context. These are instances where the interests of the various state and society actors converge, creating opportunities for "positive interaction." These functions would have been unimaginable just a decade or two ago. Yet, the authoritarian logic of the Chinese system and its precautionary approach to social stability risk become apparent in numerous instances where state and society interests diverge. Local actors—often government bureaucrats or companies that are the targets of regulation—also take strategic advantage of these political circumstances to thwart policy implementation. Part III explores these dynamics.

North China Rice, Thai Imports, BLOOMBERG BUS. (May 26, 2013), <https://www.bloomberg.com/news/articles/2013-05-27/cadmium-scare-boosts-appeal-of-north-china-rice-thai-imports>; William Bi, *Hunan Rice Sales Plunge as China Probes Cadmium Contamination*, BLOOMBERG BUS. (May 21, 2013), <https://www.bloomberg.com/news/articles/2013-05-21/hunan-rice-sales-plunge-as-china-probes-cadmium-contamination>; Alexandra Harney & Yuka Obayashi, *Japanese Rice: The New, Safe Luxury Food in China*, REUTERS (Jan. 25, 2015), <http://www.reuters.com/article/us-china-japan-rice/japanese-rice-the-new-safe-luxury-food-in-china-idUSKBN0KY0YX20150126>; *As Toxin Fears Grow, More Chinese Are Buying Imported Rice*, FOOD NEWS SAFETY (Jan. 28, 2015), <http://bit.ly/1JFvoHu>; *Why Do So Many People Refuse to Buy Milk Powder or Baby Formula from the Chinese Mainland? Is It Safe for Me to Use?*, GLOBAL TIMES ONE-STOP (Mar. 8, 2015), <http://onestop.globaltimes.cn/why-do-so-many-people-refuse-to-buy-milk-powder-or-baby-formula-from-the-chinese-mainland-is-it-safe-for-me-to-use/>.

183. E.g., Edward Wong, *Urbanites Flee China's Smog for Blue Skies*, N.Y. TIMES (Nov. 22, 2013), http://www.nytimes.com/2013/11/23/world/asia/urbanites-flee-chinas-smog-for-blue-skies.html?pagewanted=all&_r=0.

184. See, e.g., Liu Qin, *Citizens Leaving China Should Pay Environmental Levy*, CHINA DIALOGUE (Oct. 2, 2014), <https://www.chinadialogue.net/blog/6715-Citizens-leaving-China-should-pay-environmental-levy/en>; Zheng Wang, *Why China's New Rich Want to Emigrate*, DIPLOMAT (Nov. 5, 2013), <https://thediplomat.com/2013/11/why-chinas-new-rich-want-to-emigrate/> (noting one report citing to "environmental issues like air pollution and the low quality of drinking water and food safety" as a leading reason wealthy entrepreneurs are planning to emigrate); Rachel Wang, *Why China's Rich Want to Leave*, ATLANTIC (Apr. 11, 2013), <https://www.theatlantic.com/china/archive/2013/04/why-chinas-rich-want-to-leave/274920/>.

III. DIVERGING INTERESTS AND CONSTRAINED AUTONOMY

Despite areas of convergence, interactions among state and society actors are often contentious. Outside of a zone of interest compatibility, the more conservative or repressive aspects of China's authoritarian state come to the fore. Regulators are mindful of straying from party-state political orthodoxy. Security agencies responsible for propaganda, social stability, and control of various social groups step forward to intervene. Citizens and civil society actors struggle to stay within the zone and self-regulate, even as they seek to expand the boundaries of acceptable action. Bureaucrats and firms opposing disclosure take advantage of China's politics to confuse, delay, and attack. These dynamics create risks for all involved.

Part III (A) unpacks the dilemmas different actors face in engaging with information disclosure. This is not merely citizens versus the state. State actors themselves are forced to navigate complex political dynamics. Parts III (B) and (C) then explore two categories of interest divergence. The first examines state strategies to counter perceived security risk from citizen and civil society "misuse" of information disclosure. Control efforts ostensibly support the state's interests in social stability, but constrain citizen autonomy and the environmental functions of disclosure. The second category explores fragmentation and the ways it can be used strategically by the polluting firms and local governments that are often the targets of regulation.

Contentious politics and authoritarian control are well-trodden scholarly territory. The discussion here is not exhaustive, but rather focuses on strategies that frustrate information disclosure and public supervision by taking advantage of China's social stability-oriented governance logic.¹⁸⁵

A. Disclosure Dilemmas

Whereas Part II (A) examined interest compatibility, this subpart unpacks the dilemmas that party-state leaders, citizens and civil society, environmental regulators, international actors, local governments, and businesses face in the wake of China's expansion of environmental disclosure.

Party-State Leaders. The dilemma for Chinese leaders is how to garner the practical benefits of information disclosure and public supervision without unleashing forces beyond their control. On one hand, environmental information disclosure is a pragmatic tool that promises to resolve burgeoning environmental problems, while assuaging restive masses and signaling that leaders are modern and adaptable to complex challenges. Yet, the adoption of disclosure presents risks. For a regime that bases its legitimacy on performance,

185. Other reasons for local level party-state or enterprise resistance to disclosure and public supervision include financial and human capacity, regulatory capture, corruption, and garden-variety shirking. See generally *supra* note 34 for sources that discuss reasons for local resistance to environmental regulation.

greater transparency reveals poor performance or corruption, allowing citizens to recognize that beliefs about weak regime performance are commonly held.¹⁸⁶

Information disclosure also forces leaders to confront the challenges of managing public supervision and civic action. Public mobilization can lead to undesirable results from the perspective of the leadership. Mao-era mass mobilization campaigns resulted in Cultural Revolution chaos. Officials are well aware of the role of environmental NGOs in fomenting revolution in the former Soviet Union, Eastern Europe, and the so-called “Color Revolution” states.¹⁸⁷ Chinese leaders remember all too well the role of Gorbachev’s *glasnost* (or openness) in hastening the collapse of the Soviet state.¹⁸⁸ Adopting a tool so associated with “environmental democracy” and “freedom of information” can send the wrong impression to the public that leaders are interested in a greater degree of liberalization or Westernization than they are actually willing to accept. In the ongoing debate over Chinese versus western modes of governance, leaders want to ensure that the use of information disclosure does not undermine the legitimacy of Chinese rule.

Yet, evidence also suggests that officials see this risk as manageable. Scholars have argued, for example, that central officials see local protests as controllable and a valuable source of information.¹⁸⁹ China’s party-state has substantial resources committed to monitoring and controlling the various actors who might engage in behaviors that threaten social stability or state legitimacy. Civil society groups are monitored through the civil affairs apparatus and its web of registration, reporting, and monitoring requirements. Journalists are controlled by a sophisticated propaganda and censorship system. Universities remain largely state institutions, and academics are subject to bureaucratic control in a variety of ways.¹⁹⁰ Lawyers are regulated and monitored by bar associations (which, in China, are part of the state), and party-state institutions in charge of them (for example, the Chinese Communist Party (CCP) politico-legal committee, Ministry of Justice system). Public security, state security, and government “stability maintenance” offices provide omnibus coverage of potential threats to security from all walks of society.¹⁹¹

186. See Hollyer et al., *supra* note 7, at 766.

187. See Titus C. Chen, *China’s Reaction to the Color Revolutions: Adaptive Authoritarianism in Full Swing*, 34 *ASIAN PERSP.*, no. 2, 2010, at 5, 24.

188. *Id.* at 20–21.

189. See Lorentzen, *Regularizing Rioting*, *supra* note 116, at 127 (arguing that “informal toleration and even encouragement of small-scale, narrowly economic protests can be an effective information gathering tool, mitigating . . . informational problems”).

190. These include various control points that relate to academic career success and advancement, including the university-based party and promotions apparatus, control of journal publications, and access to state-funded research projects.

191. *E.g.*, Ching Kwan Lee & Yonghong Zhang, *The Power of Instability: Unraveling the Microfoundations of Bargained Authoritarianism in China*, 118 *AM. J. SOC.* 1475, 1487–88 (2013).

Citizens and Civil Society. Advocates in Chinese society face different dilemmas.¹⁹² Average citizens are more willing than ever to advocate for their own interests. In doing so, they face various choices on the spectrum between quiescence and rebellion.¹⁹³ These include employing the “weapons of the weak” in everyday forms of resistance, more direct challenges of “rightful resistance” that nonetheless mitigate risk for their participants, and radical rights-oriented advocacy that pushes toward (and beyond) lines of political acceptability.¹⁹⁴ Information disclosure and the “right to know” have become popular tools and rallying cries.¹⁹⁵ But citizens know that risks increase where political lines are crossed. Those who hew closely to state signals on how to behave enjoy some freedom to move. Those who advocate too aggressively risk the heavy hand of the state.

Civil society advocates face additional dilemmas in seeking and using information disclosure. These are the NGO activists, scholars, journalists, lawyers, and others who choose to engage the party-state and polluting enterprises to seek change in some form.¹⁹⁶ Like average citizens, they are confronted with a particular bargain with the state—play by the rules, and receive the opportunity (although constrained) to engage in civic affairs, as well as relative autonomy from the security state. But this calculus must constantly be reassessed. How high are the costs of playing along? What are the actual benefits received?

The challenges for civil society advocacy are many. First, like average citizens, these advocates are ever mindful of the lines of political acceptability, and self-censor or stay away from sensitive issues altogether.¹⁹⁷ Yet, public pressure and the threat of instability are often the very forces that induce state

192. See *supra* note 15 for a brief discussion of the use of the term “advocates” in this Article.

193. JAMES C. SCOTT, WEAPONS OF THE WEAK: EVERYDAY FORMS OF PEASANT RESISTANCE 242–243 (1985).

194. For more on “weapons of the weak,” see generally *id.* On “rightful resistance,” see generally O’Brien, *supra* note 28. On more radical forms of protest, see EVA PILS, CHINA’S HUMAN RIGHTS LAWYERS: ADVOCACY AND RESISTANCE 233–67 (2015); Kevin J. O’Brien & Yanhua Deng, *Repression Backfires: Tactical Radicalization and Protest Spectacle in Rural China*, 24 J. CONTEMP. CHINA 457, 466–69 (2015).

195. See William Ide, *Chinese Environmental Protesters Demand Transparency*, VOICE AM. (May 17, 2013), <http://www.voanews.com/a/Chinese-environmental-protesters-demand-transparency/1662908.html>; Samuel Wade, *Lack of Transparency Fuels Environmental Protests*, CHINA DIGITAL TIMES (June 11, 2014), <http://chinadigitaltimes.net/2014/06/mep-official-lack-transparency-fuels-environmental-protests/>; Alex Wang, *Environmental Protection in China: The Role of Law*, CHINA DIALOGUE (Feb. 5, 2007), <https://www.chinadialogue.net/article/show/single/en/745-Environmental-protection-in-China-the-role-of-law>; *Freedom of Information: Right to Know*, ECONOMIST (May 3, 2014), <http://www.economist.com/news/china/21601564-leaders-discover-some-transparency-can-help-make-society-more-stable-right-know>; *People vs. Chemical Plant*, CHINA.ORG.CN (Jan. 14, 2008), <http://www.china.org.cn/english/China/239357.htm> (“Xiamen residents were deprived of the right to know about the PX [paraxylene] project, a fact that proves the project is against the people’s will.”).

196. See *supra* note 15 for the distinction between “average citizens” and “civil society” advocates.

197. This is based on the author’s personal observations. See also Perry Link, *China: The Anaconda in the Chandelier*, N.Y. REV. BOOKS (Apr. 11, 2002), <http://www.nybooks.com/articles/2002/04/11/china-the-anaconda-in-the-chandelier/>.

action or reform.¹⁹⁸ Second, moderate advocates may have reasons to turn against more radical activists. Radical advocacy techniques often draw a strong state response. Activists are “invited for tea,” put under surveillance, or worse.¹⁹⁹ Scrutiny of radical activists can expand to include greater monitoring of all advocates, even the moderate ones. Periods of tighter political scrutiny cause reform-minded insiders (bureaucrats, scholars, media) to retreat, making it more difficult for moderate advocates to operate. They may lose access to inside channels of information or cancel planned activities. The moderate advocates may blame the radicals for the additional scrutiny, even though the state is the initiator of repression. State pressure can create political splits. Third, incremental change can reduce the demand for more extensive reform. If the state can plausibly project to the populace that it is continuously in a state of “reform,” it may be most rational for citizens to wait for change, ever over the horizon, to arrive. Fourth, and perhaps most importantly, a moderate advocacy strategy based on interest convergence with those in power is ultimately advocacy from a position of weakness and compromise. Despite the language of rights, advocates do not enjoy a genuine *right* to information in any meaningful sense of the term. Advocates are at the mercy of the shifting interests of state leaders, who have broad discretion to change their priorities. If interests subsequently diverge, moderate advocates must move to where the leadership has gone or else face greater barriers or retaliation.

Despite these dilemmas, citizen and civil society advocates can still mitigate political risk through personal networks, connections, or other channels. Residents of communities protesting environmental risks may be government retirees, classmates or relatives of insiders to the party-state, or insiders themselves. Advocates may build informal relationships with party-state actors at the nodes of regulatory or social control.²⁰⁰ While stories of coercion or repression receive the most attention, these party-state entities may also act as information conduits that, for advocates, enhance certainty about political lines, and for officials, lower the cost of monitoring. For example, one international environmental group operating in China regularly met with minders in the state security bureau to report on planned activities and obtain a tacit understanding that these activities would not face government backlash.²⁰¹

198. Benjamin van Rooij, *Regulation by Escalation: Unrest, Lawmaking and Law Enforcement in China*, in *THE POLITICS OF LAW AND STABILITY IN CHINA* 83, 92–93 (Susan Trevaskes et al. eds., 2014).

199. Authorities often use a sort of group liability to increase deterrence against those deemed security threats. Relatives and co-workers of such activists may come under scrutiny. Authorities may refuse to let children of activists attend school or receive other public benefits. Their freedom to move may be constrained. Yanhua Deng & Kevin J. O'Brien, *Relational Repression in China: Using Social Ties to Demobilize Protesters*, 215 *CHINA Q.* 534, 553 (2013). This is also based on the author's personal observation.

200. *E.g.*, bar associations, civil society regulators, university party apparatus, government-organized non-governmental organizations (GONGOs), courts, and even police.

201. This is based on the author's personal observation.

Chinese NGOs also often receive tips from elite or well-connected contacts about their standing within the Chinese security apparatus and the need to take additional precautions.²⁰²

Have these dynamics changed in the post-2012 Xi Jinping administration? Evidence suggests party-state intent to strengthen central oversight of local advocacy activities. Political activists once thought to have mastered the art of staying on the right side of political lines have been prosecuted criminally for their activism. Chinese and foreign activists have been forced to give televised self-confessions, which seem designed to send deterrence signals to others who might become involved in such activities.²⁰³ The state has engaged in a sustained campaign to control advocacy-oriented lawyers (so-called “rights protection lawyers” 维权律师) since at least 2015.²⁰⁴ Environmental activists have been arrested in some parts of the country for their advocacy.²⁰⁵

For environmental civil society advocates, political risks seem to have increased, but, for the most part, headline-making political repression has not affected their day-to-day advocacy work. They have always had to work within the constraints of China’s stability-oriented political environment and they continue to do so. For example, an experienced civil society advocate in Guangdong Province told me that the only thing to do amid signals of political tightening was to continue forward. In his view, this was just the downside of a cycle, and that patience would eventually be rewarded. To him, despite all the challenges, the arc of justice was long and would always bend toward justice. For citizens with specific grievances concerning the impact of environmental problems on their own health or property, their options are not meaningfully different in the Xi Jinping era either. If anything, some believe that their chances of success are higher given Xi’s multi-year anti-corruption campaign, which they believe will make local officials less likely to contravene central dictates supportive of environmental protection.²⁰⁶

The shifting political winds may matter most at the margins of public interest advocacy, among those at the borders of casual civic activity and more organized public interest advocacy. The perception of increased political risk

202. This is based on the author’s personal observation.

203. E.g., Tom Phillips, *Swedish Activist Peter Dahlin Paraded on China State TV for ‘Scripted Confession’*, GUARDIAN (Jan. 19, 2016), <https://www.theguardian.com/world/2016/jan/20/swedish-activist-peter-dahlin-paraded-on-china-state-tv-for-scripted-confession>.

204. E.g., Alex W. Palmer, *‘Flee at Once’: China’s Besieged Human Rights Lawyers*, N.Y. TIMES MAG. (July 25, 2017), <https://www.nytimes.com/2017/07/25/magazine/the-lonely-crusade-of-chinas-human-rights-lawyers.html>.

205. Sara Hsu, *China Wages War on Pollution While Censoring Activists*, FORBES (Aug. 4, 2016), <http://www.forbes.com/sites/sarahsu/2016/08/04/china-wages-war-on-pollution-while-censoring-activists/#5b26bd7b6244>; Yang Fan, *China Jails Environmental Activist for ‘Revealing State Secrets’*, RADIO FREE ASIA (Oct. 11, 2006), <http://www.rfa.org/english/news/china/activist-10112016122729.html>; Tom Philips, *China Arrests Anti-smog Campaigners*, TELEGRAPH (Mar. 9, 2015), <http://www.telegraph.co.uk/news/worldnews/asia/china/11458961/China-arrests-anti-smog-campaigners.html>.

206. This is based on the author’s personal observation.

may keep such actors on the sidelines to a greater degree than in previous years. For example, I observed the meeting of a Shandong Province environmental group that organized casual groups of hikers to take pictures of heavily polluted waters and submit these to the authorities. Despite heavy rhetorical support from the provincial-level government for this sort of “public supervision,” hikers were quite cautious about participating in the monitoring activities or expanding their work to create a proposed provincial network of river monitors.

Environmental Regulators. Environmental regulators face a separate dilemma—the need to balance demands from above and below while simultaneously working to expand their own institutional interests. Fail to regulate local polluters or mismanage the environmental impact assessment of proposed industrial projects and risk public protest or punishment from superiors. Put too much pressure on local businesses and face the wrath of local leaders. Heavily polluting facilities are at once the proverbial goose that lays the golden eggs *and* ticking time bombs that may explode in environmental crisis at a moment’s notice. It is no wonder that local environmental regulators often assert that the job of environmental officials is one of the worst in the Chinese bureaucracy today.

Information disclosure can offer regulators at central and local levels a powerful tool for pressing their own agendas and defending against political risk from citizens, companies, and bureaucratic rivals. But disclosure itself presents dilemmas as well. Disclose too much about environmental problems—particularly those without easy solutions—and risk stirring up the hornet’s nest of public discontent or invite unwanted advocacy pressure. Disclose too little and risk accusations of cover up, or scrutiny from higher-ups on the lookout for intransigent local agents. EPBs can use strategic disclosure to pressure political opponents or lobby for greater resources, but such approaches also risk retaliation from business interests and political rivals.

International Actors. International governments, multilaterals, and civil society actors have played a role in expanding environmental information disclosure in China. At the same time, local Chinese actors within the bureaucracy are sensitive to any suggestion that domestic policy actions are the result of foreign pressure. Local actors are vulnerable to accusations of improper foreign influence. Chinese government regulators, scholars, civil society groups, and others who work with foreign groups (on research or conferences, for example) are subject to surveillance by the party apparatus, state security, and police.²⁰⁷

These dynamics create a dilemma for foreign actors. They can have important influence over local Chinese policy making and political conditions, but they may also stir up nationalist political backlash that constrains local actors as well. In the Xi Jinping era, the regulation of foreign NGOs has

207. This is based on the author’s personal observation.

tightened considerably. Domestic activists have long faced direct security state constraints, but a foreign human rights activist was arrested and made to give a televised self-confession for the first time in January 2016.²⁰⁸ The Foreign NGO Law, adopted in April 2016, requires, among other things, registration and filing of reports about activities on the mainland. These additional controls on foreign activism are motivated by security concerns and have created a sense that foreign groups will have a more difficult time working in China in the future.²⁰⁹

Local Governments and Enterprises. Local governments and polluting enterprises are the agents in our principal-agent relationship. Information disclosure is in significant part an effort to strengthen oversight of these agents. These actors face risks and opportunities of their own. One would typically expect local agents to attempt to shirk where possible. By resisting environmental regulation, firms and local governments continue to reap the benefits of industrial growth without internalizing the environmental costs. Evidence shows wide variation in both the stringency of environmental regulation and the implementation of information disclosure itself.²¹⁰

But with rising environmental priorities, associated “green” economic opportunities, central promotion of disclosure as a policy matter, and the development of technologies that reduce the ability to hide problems, some local governments and enterprises have tried to differentiate themselves on the basis of both environmental performance and innovative use of disclosure and other governance tools. As the overall situation moves from one of environmental non-compliance as the norm toward a more mixed picture, the strategic considerations for local agents become more complex. The likelihood of detecting non-compliance may increase as enforcement efforts expand, fewer actors will be in violation, and those in compliance (particularly rival firms) may have incentives to “blow the whistle” on intransigent competitors.

Parts III (B) and (C) below provide specific examples of interest divergence, where state control and fragmentation become most salient.

B. State Control

State actors employ a number of strategies to prevent advocates from using information in ways that threaten social stability or state legitimacy. These strategies can be preemptive (strategic disclosure, information manipulation) or post-hoc (hard rules and enforcement).

208. Peter Dahlin, a Swedish activist working in China, confessed on CCTV that he had “hurt the feelings of the Chinese people.” Phillips, *supra* note 203.

209. Shawn Shieh, *The Origins of China’s New Law on Foreign NGOs*, CHINAFILE (Jan. 31, 2017), <http://www.chinafile.com/reporting-opinion/viewpoint/origins-of-chinas-new-law-foreign-ngos>.

210. One study found that that over half of all cities might have provided false statistics about air pollution. 马亮 [Ma Liang], 研究显示：国内半数城市空气污染数据存在真实性问题 [Research Shows: Half of the Chinese Cities’ Air Pollution Data is Problematic], 澎湃 [PENGPAI] (Feb. 14, 2015), http://www.thepaper.cn/newsDetail_forward_1303857.

1. Preemptive Strategies: Selective Disclosure and Information Manipulation

State environmental regulators and enterprises can limit the effect of information disclosure through selective disclosure and data manipulation. This problem is often discussed as slippage from policy objectives. Yet, it is plausible to conceive of these phenomena as strategic behavior that supports policy objectives of stability maintenance and state security, as well as norms against harming the reputation and legitimacy of the party-state. These preemptive strategies are an example of how regulators—facilitated by willing enterprises—may retreat from support for information disclosure where other priorities trump environmental regulation, and their interests diverge from those seeking stronger environmental regulation.

Nondisclosure is a simple way for officials to mitigate the risks associated with information disclosure. Studies show that disclosure rates in response to public information requests are often low.²¹¹ While non-disclosing local agencies are often portrayed as rogue actors or shirking bureaucrats, the law itself gives agencies broad discretion to determine what is disclosed. Indeed, state regulations are clear that “government information disclosed by administrative agencies may not endanger state security, public security, economic security and social stability.”²¹² Regulations give local governments discretion to “determine the concrete content of the government information to be disclosed on their own initiative within their scope of responsibility.”²¹³ Other provisions caution bureaucrats to adhere to laws governing state secrets.²¹⁴ In past years, for example, environmental agencies have refused to release information on soil pollution data, ostensibly because of its “sensitivity” or potential to generate social instability. Agencies also develop legal rationale for nondisclosure based upon the identity of the requester or the purpose for which they seek the information.²¹⁵ Whatever the actual reasons for

211. See PITI: GAINING MOMENTUM, TOWARDS BREAKTHROUGHS, *supra* note 8; PITI: NEW MINDSETS, INNOVATIVE SOLUTIONS, *supra* note 8.

212. See *OEI Measures*, *supra* note 66, at art. 10; see also *OGI Regulations*, *supra* note 65, at art. 8.

213. *OEI Measures*, *supra* note 66, at art. 10–12. On the other hand, disclosure is justified under the regulations even if it involves “commercial secrets or individual privacy” if “administrative agencies believe that nondisclosure might negatively impact the public interest.” *Id.* at art. 14(4); see also interview with anonymous source, no. JN-2016-12 (2016) (transcript on file with author). As of this writing, China’s State Council is considering, but has not finalized, a revision of the *OGI Regulations*. The proposed amendment includes, for example, new language regarding the principle of disclosure as the rule, nondisclosure as the exception (以公开为常态、不公开为例外). 中华人民共和国政府信息公开条例（修订草案征求意见稿）[People’s Republic of China Regulations on Open Government Information (Revised Draft for Comment)] (drafted by the People’s Republic of China St. Council, June 13, 2017) art. 5, http://www.cppss.org/news_body.asp?id=1622.

214. See *OGI Regulations*, *supra* note 66, at art. 14; *OEI Measures*, *supra* note 66, at art. 12.

215. This is based on the author’s personal observation of denial letters to information requests submitted by Chinese NGOs (examples on file with author). The proposed amendment to the *OGI Regulations* eliminates language from article 13 of the *OGI Regulation*, which limited public information requests to those related to “the needs of production, life, or scientific research” 根据自身

nondisclosure, the decision not to disclose is arguably authorized under the broad contours and vague wording of relevant Chinese law. And local regulators are expressly told to use this discretion. For example, at a Ministry training in 2009 for local environmental regulators, I observed the seminar instructor (a central environmental regulator) tell local environmental officials that they should feel free to implement disclosure law flexibly according to their own local needs.²¹⁶

Bureaucrats often respond to requests for information through deflection rather than outright refusal. Outright refusal to disclose risks upsetting citizens and inciting complaints or protest. Agencies respond to information requests, for example, by claiming that the information is not in the agency's possession, but in the hands of some other, unspecified bureaucratic actor.²¹⁷ Some bureaucrats insist that this is not strategic behavior, but others see it as a way to "kick the ball" (踢皮球) to other agencies or simply ward off unwanted requests.²¹⁸

Information quality or falsification is also considered a widespread problem in China.²¹⁹ In a number of cases, researchers have discovered problems with environmental data—including air quality data and energy use statistics—due to government intervention.²²⁰ One official was reportedly caught on video covering a monitor with cloth to filter out pollution and deliver improved ambient air quality figures.²²¹ Regulators themselves are skeptical about the validity of official environmental data.²²² As with non-disclosure, this problem is often framed as one of goal displacement or local protectionism. But it is nonetheless plausible to believe that data manipulation or falsification is tacitly allowed where it supports overarching state goals, such as social stability or protection of party-state reputation.

These behaviors are motivated by formal and informal incentives. Officials are evaluated within the bureaucracy against a range of social stability-oriented metrics. These metrics are typically considered "hard," high-

生产、生活、科研等特殊需要。See 万静 [Wan Jing], 政府信息公开条例拟修订 依申请公开不再“三需要” [Open Government Information Regulations Proposed Amendment Removes the “Three Needs” for Information Disclosure Requests], 法制日报 [LEGAL DAILY] (June 6, 2017), <http://www.hinews.cn/news/system/2017/06/06/031146126.shtml>.

216. This is based on the author's personal observation.

217. This is based on the author's personal observation.

218. This is based on the author's personal observation.

219. On data falsification generally, see, for example, Keith Bradsher, *Chinese Data Mask Depth of Slowdown, Executives Say*, N.Y. TIMES (June 22, 2012), <http://www.nytimes.com/2012/06/23/business/global/chinese-data-said-to-be-manipulated-understating-its-slowdown.html>.

220. See Wang, *Sustainable Legitimacy*, *supra* note 43, at 424–29; see also Edward Wong & Vanessa Piao, *When China Wants Better Air Readings, Cotton Does the Trick*, N.Y. TIMES (Oct. 28, 2016), <https://www.nytimes.com/2016/10/29/world/asia/china-xian-air-pollution-data.html?mcubz=3>; Huang Shumao, *Chinese Companies Caught Falsifying Environmental Data*, CHINA DIALOGUE (July 24, 2014), <https://www.chinadialogue.net/blog/7161-Chinese-companies-caught-falsifying-environmental-data/en>.

221. This is based on the author's personal conversation.

222. This is based on the author's personal observations.

priority targets and officials understand them to be important.²²³ Moreover, officials are motivated by bureaucratic tendencies toward risk aversion. As more than one official told me, “less is more” (多一事不如少一事), when explaining why bureaucrats do not like to disclose.

2. *Post-Hoc Regulation: Hard Rules and Enforcement*

The potential risks of information disclosure for the party-state can also be managed post hoc, focusing on control and regulation of those who might use information disclosure. This is accomplished through China’s complex institutional system for social control and stability maintenance. A substantial scholarly literature examines the myriad ways in which the Chinese party-state controls society through police and state security, courts and criminal law, propaganda and ideology, and professional nodes of regulation. This subpart will not revisit this work, instead focusing on a narrower set of strategies that directly affect those engaged in environmental advocacy. These are the litany of hard rules announced in party documents, state policies, and law, as well as the enforcement actions that send deterrence signals to the masses about how rules will be implemented in practice.

Hard Rules. Even as citizens have witnessed greater disclosure and official encouragement of public supervision, other rules remind citizens of political limits. Express limits are set forth in formal party and state documents and rules meant to govern bureaucrats and citizens. For example, in 2013, the CCP’s General Office issued a memo, known as Document No. 9, which called on party members around the country to be vigilant against seven western liberal values and the people who would attempt to use these values to undermine China.²²⁴ Colloquially known as the “seven don’t talk abouts,” the memo warned against “Western constitutional democracy,” “civil society,” “universal values” of human rights, and independent media.²²⁵

Civil society regulation in China has sent similar, if less explicit, signals about the limits of advocacy. From 2009 to 2013, central authorities encouraged local governments to engage in “social management innovation,” which led to initiatives to lower barriers to NGO registration and to develop more active civil society.²²⁶ But these efforts were directed at civil society groups that provided social services or carried out other activities not seen as a threat to the state.²²⁷ Groups engaged in “advocacy, legal aid, labor rights, and

223. See Wang, *Sustainable Legitimacy*, *supra* note 43, at 380–81.

224. *Document No. 9: A ChinaFile Translation: How Much is a Hardline Party Directive Shaping China’s Current Political Climate*, CHINAFILE (Apr. 22, 2013), <https://www.chinafile.com/document-9-chinafile-translation>.

225. *Id.*

226. *E.g.*, *Civic Freedom Monitor: China*, INT’L CTR. NOT-FOR-PROFIT LAW (Dec. 5, 2016), <http://www.icnl.org/research/monitor/china.html>.

227. *Id.*

religion” remain under more restrictive supervision.²²⁸ Lawyers are subject to a variety of controls, such as Chinese bar association rules that limit the ability of lawyers to mobilize large class actions.²²⁹ Citizens’ abilities to carry out mass communications through *weibo* is limited by censorship and laws governing excessively “viral” online communications.²³⁰ Regulators have developed tools to identify social stability risk in industrial development projects.²³¹ These rules do not generally target environmental advocacy in particular, but they form the political environment environmental advocates operate within.

The stability-oriented regulatory environment created by such rules is a constant reminder to advocates that the security state is ever-present. Apart from the specific strictures of these rules, hard rules as a whole also signal broader political directions and serve to delegitimize the actors targeted by those rules, creating general suspicion about activists, foreign groups, and liberal advocates.

Enforcement Actions. Party-state enforcement actions reinforce political limits for would-be advocates. As a strategy, this is unsurprising and follows the same logic as traditional theories of deterrence-based regulatory enforcement. The goal is to make “penalties high enough and the probability of detection great enough” that it is no longer rational to violate requirements.²³²

One example of how such deterrence is achieved in present-day China is the case of the online environmental documentary, *Under the Dome*.²³³ The surprising popularity and subsequent censorship of *Under the Dome* by the former CCTV journalist Chai Jing offers an example of how enforcement is

228. *Id.*

229. *E.g.*, *Guiding Opinion of the All China Lawyers Association Regarding Lawyers Handling Cases of a Mass Nature (CECC Full Translation)*, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA (Mar. 20, 2006), <https://www.cecc.gov/resources/legal-provisions/guiding-opinion-of-the-all-china-lawyers-association-regarding-lawyers>.

230. *See* 最高人民法院最高人民检察院关于办理利用信息网络实施诽谤等刑事案件适用法律若干问题的解释 [Interpretation of the Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues Concerning the Specific Application of Law in Handling of Defamation through Information on Networks and Other Criminal Cases] (promulgated by the Supreme People’s Ct. & Supreme People’s Procuratorate, Sept. 6, 2013, effective Sept. 10, 2013) CHINA CT., Sept. 6, 2013; *see also* Gary King et al., *How Censorship in China Allows Government Criticism but Silences Collective Expression*, 107 AM. POL. SCI. REV. 326, 328, 333 (2013).

231. *E.g.*, 关于印发国家发展改革委重大固定资产投资项目社会稳定风险评估暂行办法的通知 [National Development and Reform Commission on Issuing the Interim Measures for Social Stability Risk Assessment of Major Fixed Asset Investment Projects] (promulgated by Nat’l Dev. & Reform Comm’n, Aug. 16, 2012, effective Aug. 16, 2012).

232. On the traditional deterrence-based model of enforcement in the environmental regulatory context, *see*, for example, Clifford Rechtschaffen, *Deterrence vs. Cooperation and the Evolving Theory of Environmental Enforcement*, 71 S. CAL. L. REV. 1181, 1186–90 (1998). In the debate between deterrence versus cooperation, the examples of “positive interaction” described in Part II, *supra*, can be thought of as strategies for cooperation, where compliance is maximized by offering regulated entities (citizens and other advocates) positive reinforcement, rewards, and assistance.

233. Linghein He, *Chai Jing’s Review: Under the Dome – Investigating China’s Smog 柴静雾霾调查：穹顶之下 (Full Translation)*, YOUTUBE (Mar. 1, 2015), <https://www.youtube.com/watch?v=T6X2uwIQGM>.

triggered, and the ways in which this example of enforcement is received and interpreted by advocates in China. On February 27, 2015, the former CCTV journalist Chai Jing posted the documentary online. *Under the Dome* was in the format of a TED talk with a charismatic speaker and presentation slides, and had much in common in format and approach with Al Gore's *An Inconvenient Truth*. The documentary was a frank exposition on the harms of air pollution, obstruction by production-oriented parts of the bureaucracy (*i.e.*, the oil industry SOEs), and the fundamental weakness of the environmental regulators. One regulator says in the film: "I don't want to open my mouth because everyone will then see that I have no teeth." The film expressly called for greater transparency and public supervision as an antidote to China's environmental problems.

Released on a Friday, the documentary had been viewed by more than one hundred million people by the end of the weekend.²³⁴ Xinhua, the official China news agency, posted a special feature site about the documentary online. The newly appointed head of MEP—Chen Jining—praised the film.²³⁵ Support for the film seemed so strong that some speculated whether this was a public relations effort by state leaders interested in promoting environmental protection efforts and in criticizing the oil bureaucracy, which was already the target of extensive anti-corruption campaigns.²³⁶

Yet almost immediately propaganda departments issued instructions not to "hype" the film.²³⁷ By the end of the weekend, as the number of viewers of the film exceeded two hundred million, rumors spread of an impending ban.²³⁸ As of March 6, less than a week after its release, authorities had banned *Under the Dome*.²³⁹ *Under the Dome* was designated a sensitive term that could not be searched under *weibo*.²⁴⁰ Subsequently, rumors spread online as to whether the "black hand" of foreign funders had bankrolled Chai Jing's film (a complete reversal from suspicions just the week before that she was an agent of party propaganda). Months later, Chai Jing and *Under the Dome* remained sensitive. When Alashan-SEE, a domestic Chinese environmental foundation, honored Chai Jing later that year with one of their annual environmental hero awards,

234. Steven Jiang, *5 Things to Know About China's 'Inconvenient Truth'*, CNN (Mar. 2, 2015), <http://www.cnn.com/2015/03/02/asia/china-smog-documentary/index.html>.

235. As of this writing, Chen Jining has been promoted to be mayor of Beijing. Li Ganjie is now the head of MEP.

236. This is based on the author's personal conversations.

237. Josh Rudolph, *Minitrue: Don't Hype "Under the Dome"*, CHINA DIGITAL TIMES (Mar. 1, 2015), <http://chinadigitaltimes.net/2015/03/minitrue-dont-hype-dome/>.

238. Anne Henochowicz, *Minitrue: Clamping Down on "Under the Dome"*, CHINA DIGITAL TIMES (Mar. 3, 2015), <http://chinadigitaltimes.net/2015/03/minitrue-clamping-dome/>; Anne Henochowicz, *Sensitive Words: "Under the Dome"*, CHINA DIGITAL TIMES (Mar. 9, 2015), <http://chinadigitaltimes.net/2015/03/sensitive-words-dome/> [hereinafter *Sensitive Words: "Under the Dome"*].

239. Anne Henochowicz, *Minitrue: Delete "Under the Dome"*, CHINA DIGITAL TIMES, (Mar. 7, 2015), <http://chinadigitaltimes.net/2015/03/minitrue-delete-dome/>.

240. Henochowicz, *Sensitive Words: "Under the Dome"*, *supra* note 238.

she was the lone awardee not to appear in person.²⁴¹ Rumors circulated that the foundation had come under pressure for granting her the award.²⁴²

In the inevitable postmortems about the sudden reversal of official favor toward Chai Jing's film, people forwarded diverse theories. Some still thought Party authorities interested in taking out political enemies were backing Chai. Others believed this was simply the work of the propaganda authorities, who could not avoid acting given the sudden mobilization of so much interest. Under this view, this seemed to be a classic example of bureaucratic fragmentation—the environmental ministry going in one direction, only to be counteracted by the more powerful Propaganda authorities. Moreover, the annual “two meetings” (两会) were just the following week, and the prospect of the political message for that week being “hijacked” by an unofficial source was intolerable. Others suggested that the oil industry interests and their supporters had used China's security dynamic as a pretense for taking out political enemies.

Despite these competing interpretations, a few messages rose above the din. What seemed clear to many was that security-minded parts of the bureaucracy were concerned about the ability of one individual to mobilize the masses so effectively. This was a reminder that the state remained on alert, lest anyone forget. Moreover, the response to *Under the Dome* unequivocally put a damper on any sense that political circumstances were liberalizing, even for an increasingly high priority like the environment. To allow *Under the Dome* to proceed uncensored would have risked sending this unwanted signal. In the days before it was censored, not a few people had fleeting thoughts that *Under the Dome* marked some sort of political opening. The film's take-down put to rest such speculation.

The *Under the Dome* incident is only one of many deterrence signals sent by authorities on a remarkably regular basis. High-profile advocates have faced prosecution or harassment seemingly related to efforts to seek official information disclosure. Xu Zhiyong, a lawyer and scholar, was sentenced to four years in prison for “gathering a crowd to disturb public order,” in connection with calls for disclosure of government officials' assets.²⁴³ The artist Ai Weiwei and his volunteers faced legal trouble in the wake of efforts to seek information about those killed in the 2008 Sichuan earthquake.²⁴⁴ Members of the Transition Institute, a liberal think tank, were arrested for

241. This is based on the author's personal observation.

242. This is based on the author's personal observation.

243. Jonathan Kaiman, *China Upholds Four-Year Sentence of Activist Xu Zhiyong*, GUARDIAN (Apr. 11, 2014), <https://www.theguardian.com/world/2014/apr/11/china-upholds-sentence-activist-xu-zhiyong>.

244. Simon Elegant, *A Year After Sichuan Quake, Citizens Press for Answers*, TIME (May 12, 2009), <http://content.time.com/time/world/article/0,8599,1897567,00.html>.

“picking quarrels and provoking troubles.”²⁴⁵ Their work included efforts to obtain official information about environmental costs of the Three Gorges Dam project.²⁴⁶ In 2015, a story circulated about two NGO workers (a man and a woman) who had been arrested by local police on charges of prostitution simply because they shared a hotel room during an investigation into an environmental case.²⁴⁷ Even less prominent incidents such as this last one are widely shared among advocates over dinner tables, via WeChat, and in the hallways at conferences and workshops. News of restrictive new rules and various enforcement actions inform their sense of political risk within the system and shape the scope of what seems politically feasible.

C. Fragmentation

State and society actors can take advantage of the stability-oriented political context in China to limit the utility of environmental information disclosure as well. Whereas Part III (B) above focuses on instances where social stability arguably trumps environmental performance in policy priority, the interventions described in this subpart constitute fragmentation and goal displacement, benefitting only the parochial interests of the local governments, enterprises, or other actors involved. These strategies undermine activists and limit their efficacy in environmental advocacy.²⁴⁸

Advocates who seek to use disclosure and public supervision to promote environmental protection are vulnerable to skepticism about their motives. A common line of attack is to accuse such advocates of ulterior *political* motives. Bureaucratic or economic actors cast political opponents as beholden to foreigners. Under these narratives, opponents do not have reasonable political disagreements, but are portrayed as enemies of the state.

I personally witnessed a minor episode in which an anonymous letter writer distributed an unsigned attack on Greenpeace’s China office to more than a dozen central ministries in 2009. The letter writer accused Greenpeace (whose staff was overwhelmingly Chinese) of being a foreign force seeking to sow instability in China. The apparent offense was their hosting of a panel on environmental information disclosure at an annual meeting of environmental

245. Andrew Jacobs, *Chinese Scholar Who Helped in an Escape is Detained for ‘Picking Quarrels’*, N.Y. TIMES (Oct. 12, 2014), <https://www.nytimes.com/2014/10/13/world/asia/even-more-than-usual-china-clamps-down-on-dissent.html?mcubz=3>.

246. Andrew Jacobs & Chris Buckley, *In China, Civic Groups’ Freedom, and Followers, Are Vanishing*, N.Y. TIMES (Feb. 26, 2015), <https://www.nytimes.com/2015/02/27/world/asia/in-china-civic-groups-freedom-and-followers-are-vanishing.html?mcubz=3>.

247. Kong Lingyu, *Detained NGO Staff Released After Police Fail to Find Evidence of Prostitution*, CAIXIN (Dec. 4, 2015), <http://www.caixinglobal.com/2015-12-04/101012015.html>. This is also based on the author’s personal conversations with Beijing-based environmental advocates who knew those involved.

248. Again, it is a matter of debate as to whether or not this represents goal displacement for central leaders. It may be that central leaders tacitly accept weak implementation of environmental regulation as the price of economic development, which is a more important policy priority.

groups hosted by the All-China Environment Federation (ACEF), a so-called government-organized nongovernmental organization affiliated with the environmental ministry. The letter asked the authorities to investigate Greenpeace and the other NGOs on the panel to understand their intentions. My employer at the time had been mentioned as a participant in the conference, so I was asked to attend a meeting to discuss how to respond to the accusations. A number of those present suspected that the anonymous accuser was a company that had been the target of one of Greenpeace's campaigns. The previous year Greenpeace had campaigned against the German company BASF's Chinese subsidiary and other companies for their refusal to disclose environmental information in China.²⁴⁹

ACEF staffers said that they did not agree with the accusations and only wanted to understand the situation, but the incident led to changes the following year. In previous years, the meeting—held at an environmental ministry-affiliated building in northern Beijing—had become *the* meeting of the year for Chinese and foreign environmental groups to network, strike deals, and plan new activities and partnerships. The year after, ACEF moved the conference to a university in central Beijing. The panels for the workshop were no longer held in a central location and it became more difficult for environmental groups to convene. The meeting did not recover from the anonymous accusation of foreign influence and bad intentions.

The power of such accusations comes from a political environment that prioritizes social stability and security, and that regularly stokes nationalist fears of foreign attempts to undermine Chinese party-state rule. Chinese bureaucrats and quasi-governmental entities like ACEF are well aware of the political importance of stability maintenance and security concerns. There are few penalties in China for taking excessive security precautions, but potentially high costs for failing to do so.

Foreign NGOs and domestic groups with international contact or funding are particularly vulnerable to accusations of ulterior motives. Given minimal domestic support for civil society groups, most advocates come into contact with international networks of advocates and funders in their work. To many, it seems implausible that foreign groups would work in China only to help the Chinese people. To counter such suspicions, one Chinese official regularly explained to skeptics that these groups are like Norman Bethune (白求恩), a Canadian doctor and Communist who served as a war-time physician for the Chinese Communist forces in late 1930s China and died on the battlefield in service of the CCP. The analogy seemed to resonate with many Chinese people. Nonetheless, it is telling that for most people this sort of persuasion was necessary to alter a baseline skepticism toward the possibility of foreign groups operating with ostensibly innocent intentions.

249. *Take Action to Stop BASF's Double Standards in China!*, *supra* note 108.

Relatedly, public interest work enjoys low status within China.²⁵⁰ Advocates are vulnerable to accusations of ulterior *personal* motives. It is widely believed that advocates who claim to engage in public interest work are driven by fame-seeking, desire for illicit financial gain, or personal vendettas. An unfounded rumor, for example, circulated among business circles in China that IPE's supply chain work was driven by the desire to force companies to purchase the services of environmental auditors connected to IPE. I once had the experience of being locked in a rural Hebei factory for several hours with lawyers who were suing the factory for excessive pollution. The lawyers had brought along a journalist from Beijing to write a story about the case. Local officials who finally arrived to release us from detention spent an inordinate amount of energy attempting to convince the journalist that the plaintiff in the case—a local farmer—had no genuine environmental case, but was instead motivated by a personal grievance with the factory owner.

Public interest advocates are often accused of being corrupt and seeking to extort the objects of their environmental campaigns. The most prominent example of this is the case of Jiangsu-based activist, Wu Lihong. Wu, an activist who sought to reduce pollution from firms in the Lake Tai region, was convicted of extorting companies for payments as a condition for *not* seeking enforcement against their environmental discharge violations. He served several years in jail and he remains under surveillance to this day.²⁵¹ His wife and daughter left China for the United States and are unable to return. Though international media have portrayed this as a case of human rights infringement, some local activists believe that Wu really did engage in extortion. Another environmental advocate told me a story of a local company's attempt to entrap an activist by offering him a large sum of unsolicited cash. "The company people put a bag of money on the table and pushed it towards them, but they would not touch it. Immediately after that, the police burst in. It was definitely a set-up."²⁵²

In some instances, these accusations may arise out of genuine wrongdoing. But in many instances, advocates believe these are nothing short of character assassination. In my personal experience in talking with bureaucrats, regulators, judges, scholars, reporters, community groups, and activists, I have found this mistrust of public interest activists to be high in China. Regardless of the truth of the matter, these accusations seem to have damaged activists' reputations.

Authorities also attempt to undermine the credibility of local environmental activism by suggesting ulterior *business motives* behind the

250. This status has steadily increased over the last fifteen to twenty years, but civil society actors enjoy nowhere near the social status of similar actors in the United States, Europe, or even in other parts of the developing world.

251. Jo Ling Kent, *Crusader Risks Prison to Save Chinese Lake*, CNN (July 13, 2010), <http://www.cnn.com/2010/WORLD/asiapcf/07/09/china.green.pioneers.wu.lihong/index.html>. This is also based on the author's personal conversations with a person close to Wu Lihong.

252. This is based on the author's personal observation.

public advocacy. Local environmental officials in rural Yunnan Province once told me that the only reason local people were so concerned about lead pollution was that a company selling fake anti-chelating medicine had stirred up the locals with advertisements about the risks of lead pollution. As it turned out, based on soil testing, local fields, vegetables, and elementary schools had very high lead levels, most likely emitted from local lead smelters in the area. In Shandong Province, environmental officials told me that a national scandal about a company illegally injecting polluted water into underground aquifers arose out of false rumors circulated by a drinking water company that stood to profit from the public panic.²⁵³ In Fujian Province, commentators have speculated that massive public protests against a planned paraxylene plant were orchestrated from behind-the-scenes by local real estate companies that stood to profit from a less polluted urban environment.

Regardless of their veracity, these rumors have served to undermine the justice- and fairness-based narratives that environmental advocates commonly use to justify their mobilization. These techniques amount to efforts to distract advocates, the public, and state officials from underlying (alleged) environmental problems by delegitimizing those who seek to expose and resolve the problems.

* * * * *

A central question is how all of this—selective disclosure, data manipulation, hard rules, enforcement, and fragmentation—affects advocacy behavior. These strategies can have a deterrent effect on advocacy, resulting in self-censorship.²⁵⁴ Advocates attempt to keep their actions and words within a perceived band of acceptability. They frame their actions in terms of the official discourse of the law and official policy, and make efforts to signal that their advocacy supports China and its leaders. Information disclosure campaigns, for example, are framed as aiding the regulators in dealing with rogue polluters and vested economic interests. Advocates believe that it is not so much the substance of any particular action, but rather the question of whether a person is perceived as willing to work within the rules of the system. Advocates understand the “social contract” at work here. If they operate within the “latent rules” (潜规则) of the system, they are allowed to participate in the shaping of Chinese political and social life. If they fail to mind these limits, they know that officials may “kill the chickens to scare the monkeys” (杀鸡儆猴), making an example of them for others to see.

More sophisticated advocates learn to navigate this dynamic in a way that is not too limiting. They know that they will often receive warnings directly from security officials or indirectly through their proxies before any major action is taken. They learn to differentiate between political limits and the opportunistic use of politics by corporate opponents (although these are

253. See *supra* note 135 and accompanying text.

254. See Link, *supra* note 89; see also Stern & Hassid, *supra* note 89.

sometimes indistinguishable). They recognize the political environment as one of the risks of doing business and simply take the requisite actions believed to mitigate that risk as much as possible. Others are not so much strategic as resigned to the political environment. At a dinner with one environmental advocate, a guest conveyed a rumor she had heard that certain government agencies had begun an investigation of their NGO. Asked how this news would change the advocate's work, he responded: "What can we do other than to keep going?" At the same time, this pressurized environment is not for everyone. Some advocates choose to work within this context for a few years and then exit—moving out of the advocacy business or literally leaving the country.

CONCLUSION

This Article has argued that environmental information disclosure law emerged against a broader backdrop of Chinese governance reform designed to deliver performance without effecting a fundamental shift away from one-party rule. Put another way, this strategy recalls China's approach to economic growth in the early decades of reform and opening, what Chen Yun first called the "birdcage economy" in the mid-1950s.²⁵⁵ In the last decade or so, the scope of reform has broadened to include a variety of social aims, including environmental protection, labor, health care, education, and the like. But, similar to economic reform, this is not liberal reform, but rather a model of "birdcage social regulation." Citizens may have a role in delivering social performance, so long as they stay within political limits.

At the heart of the matter is an unresolved tension between authoritarian control and bottom-up notions of accountability and autonomy that are brought to the fore by the discourse and practice of information disclosure. The approach allows society enough space to deliver social performance, while taking a precautionary approach toward threats to control, stability, economic imperatives, and regime survival.

Within these constraints, information disclosure catalyzes a number of dynamics in the Chinese system that offer the promise of increased state accountability to the public. Stability maintenance incentives—the shadow of protest—can lead officials to engage in greater social control, but they also motivate state bargaining and concessions to citizens. This Article has emphasized how law enables these functions in the environmental realm. New dynamics work most harmoniously when the interests of state and society actors converge around a common interest in environmental protection and where top-down interests in control and bottom-up desires for government and enterprise accountability are compatible. Where interests diverge, we see strong counter-reactions. Advocates who step too far face security state action or

255. "The cage is the plan, and it may be large or small. But within the cage the bird [the economy] is free to fly as he wishes." 陈云 [CHEN YUN], 陈云文选 1956–1985 [SELECTED WORK OF CHEN YUN FROM 1956 TO 1985] 287 (1986).

counterattacks from uncooperative agents. Bureaucrats who gain too much influence through public mobilization risk retribution in the palace wars from political blowback or anti-corruption campaigns.

This Article describes action in China at the intersection of state and citizen interests. Information disclosure law has emerged as a tool that supports this convergence of interests. Yet, information disclosure also creates tensions where state and society actors' interests diverge in practice. State officials attempt to cabin the use of disclosure within acceptable bounds. The stability state continually encroaches. But citizens, regulators, companies and others do not necessarily respond as desired. The center has measures, the local has countermeasures. The result is a pressurized environment, but one with room to move.

These findings raise a number of broader implications. For those who see information disclosure as a liberalizing force, this account shows how disclosure can be transformed in an authoritarian setting, bolstering the regime. Despite the rhetoric of environmental democracy and freedom of information, there is nothing inevitably democratic about information disclosure.

Yet for those who only see the authoritarian logic of Chinese information disclosure—with its emphasis on social and political control—the account in this Article shows the ways citizens have gained a greater degree of autonomy to act within society. Citizens have not gained the *right-to-know* in any meaningful sense of the term, but they have gained greater latitude to act and a wider range of options. It is perhaps surprising given the comprehensiveness of China's stability-related controls that information disclosure laws and policies have taken effect at all. But these are not sham laws and policies. Disclosure is being offered, at least in part, as a genuine regulatory tool. The political space granted by disclosure rules may be controlled; those who use disclosure may be the proverbial "bird in a cage." But there is space nonetheless.

The dominant narrative here, however, remains unclear. Information disclosure has put the system into a disequilibrium that has yet to settle. This may be a story of state strategy—Chinese leaders sitting on high, experimenting with a modern version of *qingyi*, hoping to strike a difficult balance between performance and control.²⁵⁶ Or, perhaps leaders are less in control than they would like to let on. Under this view, China's citizens continue to push back against the machine; disclosure is not primarily strategic, but rather the consequence of inexorable pressures imposed on state actors from the outside. On the other hand, agents within the Chinese system may in fact be rogue actors, something apart from the "state"—pressing for control not in the name of party-state priorities or some larger grand strategy, but out of the basic urge for personal or institutional survival and growth.

Another open question is the way these dynamics are changing in the Xi Jinping administration. The conventional narrative about the current regime

256. On *qingyi*, see *supra* note 112.

posits that reform efforts are designed to centralize control and reduce the space for civic action. If this is so, it may be that the dynamics described herein were the product of the previous administration's inability to impose control over Chinese society, rather than any strategic effort to refine governance. Burgeoning governance challenges and weak state capacity, rather than leadership intentions, allowed more liberal ideas the space to grow. If this is so, we would expect the space for environmental advocacy to constrict in coming years. At the same time, evidence suggests that rising environmental priorities have allowed for continued political space, and environmental advocates say that they have not limited their work in any significant way in the new political context. But the ultimate answer to this question remains subject to further research.

In this particular part of the Chinese world, elements of all of these perspectives are at play. The dominant story remains contested and very much in flux. Critically, these tensions within the system render the environmental functions of information disclosure uncertain, with serious potential consequences—weakened state legitimacy and a hobbled environment—for state and society actors alike.

