Pathways to a Clean Environment: Law, Enforcement, and the Public in China and the United States

Conference Summary

By Andy Morimoto

Introduction

In recent years, the United States and China have faced many environmental challenges, from “airpocalypse” in Beijing and a pollution “red alert” across 30 Chinese cities, to droughts and floods across the United States, and a drinking water crisis in Flint, Michigan. These and other environmental crises pose significant risks for both countries. And although the United States and China have found common ground on some key environmental issues, such as the need to limit their CO2 emissions, there remains much that each can improve.

Against this backdrop, the University of Chicago—in partnership with Tsinghua University in Beijing—convened a day-long conference, “Pathways to a Clean Environment: Law, Enforcement, and the Public in China and the United States” on March 4, 2016. Professors Dali Yang and Mark Templeton of the University of Chicago organized the event. (The previous day Profs. Yang and Templeton, Dean Xue Lan of Tsinghua University and Prof. Chen Ruoying of Peking University participated in program on China’s environmental future held by the Chicago Council on Global Affairs, where Prof. Yang is a non-resident fellow.)

The conference brought together a group of Chinese and American scholars and practitioners to discuss the legal, political, and technical challenges associated with environmental governance in both countries. It had five objectives:

1. To assess the relationship among the central, regional and local governments in coordinating environmental law;
2. To discuss implementation, monitoring, and enforcement;
3. To examine the role of courts in interpreting and enforcing the law;
4. To explore the role of business in environmental regulation; and
5. To discuss how the public and non-governmental organizations participate in developing, enforcing, and giving meaning to environmental law.

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2 Organizers and sponsors of the event include the Abrams Environmental Law Clinic at the University of Chicago Law School, the Center for East Asian Studies at the University of Chicago, the Center for Industrial Development and Environmental Governance (CIDE) at Tsinghua University, the Energy Policy Institute at the University of Chicago (EPIC), and the Paulson Institute at the University of Chicago.)
Through these discussions, the conference highlighted some of the distinct experiences of U.S. and Chinese environmental governance and explored novel ways forward. A full agenda and speaker information can be viewed here. Below are some of the key themes:

1. There is a tug of war within governments over environmental protection

The complex nature of environmental problems often demands multiple levels of response. But who should be responsible for the ultimate content of environmental policy? Which decisions should be made locally, and which regionally or nationally? These were some of the questions addressed through a panel on lawmaking, institutional building, intergovernmental relations, and capacity development.

Prof. Erin Ryan of Florida State University discussed some of the fundamental tensions that exist in America’s “interjurisdictional gray areas”—those in which state and federal regulatory jurisdiction is separate yet overlapping. Ryan noted the pitfalls that exist in the gray area, including hesitant policymaking (i.e., responses to climate change) or an abdication of responsibility (i.e., responses to Hurricane Katrina). American environmental law is especially prone to this intergovernmental tug of war because it exists “in regulatory contexts where state and federal claims to authority are simultaneously at their strongest.”

These tensions exist in China as well, but within different contexts. Tsinghua University’s Zhu Xufeng, the University of Maryland’s Robert Percival, and the University of Chicago’s Zhang Fan and Dali Yang provided some examples. One tension is between national demands for environmental protection and local targets for economic growth. Another is among the multiple departments that share environmental responsibilities, such as the National Development and Reform Commission and the Ministry of Environmental Protection. These departments frequently offer disjointed or conflicting policy solutions. Then there is the tension between the various and proliferating temporary agencies (known as Leading Small Groups) that attempt to coordinate policymaking decisions. Such challenges are further compounded by China’s unwieldy bureaucracy, which is both underfunded and understaffed. It is worth noting that China has much admiration for how the U.S. environmental bureaucracy (the U.S. Environmental Protection Agency, in particular) has grappled with environmental degradation and is trying to emulate its best practices.

2. Effective enforcement remains a key hurdle, particularly in China

After environmental rules are set, the road towards ensuring meaningful compliance is rife with pitfalls. Businesses and individuals need to navigate a host of complex and unwieldy regulations, and it is too often unclear how these rules will be enforced and by whom. For local and national governments, it can be similarly unclear how compliance limits are reported and monitored.

Recent legal changes in China attempt to change this. In 2014, China’s Environmental Protection Law (EPL) was amended to ramp up penalties for polluters. Fines were to be increased, companies were to be “named and shamed,” and individuals were put on notice. The new law also called for improved environmental monitoring and reporting.
Still, challenges remain. As Qin Hu of the Environmental Defense Fund noted, one of the problems is that companies lack awareness of the legal and environmental landscape. He says that better enforcement requires greater transparency and information disclosure. Another challenge is the fact that companies will continue to pollute as long as the simple cost-benefit analysis of polluting tilts in their favor. A broader problem, according to Daniel Farber of the University of California, Berkley, is the common mismatch between the original intentions behind a law and its implementation, which can lead to under-enforcement and noncompliance.

3. The academy can do more to inform and to influence environmental policymaking

In his keynote address, the University of Chicago’s Michael Greenstone stressed the challenge of balancing economic growth with environmental protection. In his words, “we don’t have a historical example of high living standards without high energy consumption.” Overcoming this, he noted, is exceptionally difficult, and therefore demands more—and better—evidence-based policymaking.

One compelling case study involved an experiment in Gujarat, India, led by Greenstone. A little background: India has very strict environmental laws on the books, and, yet, pollution levels in Gujarat are very high. Greenstone found that the big polluters in Gujarat were paying the third party auditors who monitor compliance with India’s environmental regulations—a clear conflict of interest. Working with Gujarat regulators, Greenstone and his team designed an intervention to break the conflict of interest and found a way to measure pollution markers correctly. Doing so led to reduced emissions from Gujarat’s polluters significantly.

Koichiro Ito of the University of Chicago provided another example of how the academy can inform public policies. His presentation focused on Chinese willingness to pay for clean air, with evidence from China’s air purifier markets. Ito’s research showed that the Chinese might be willing to pay the relatively high costs of pollution control. The clear implication is that the government should do more to abate air pollution.

4. The public has a bigger role to play as well

The current water crisis in Flint, Michigan revealed a large-scale failure of environmental governance on multiple levels. But it also demonstrated the power of civil society in addressing such crises. As the University of Chicago’s Mark Templeton noted, there were a variety of ways in which citizens, independent experts, and environmental organizations worked to address the regulatory failures in Flint. Technical experts from the University of Virginia developed the water quality survey that showed the dangerous levels of lead in Flint’s water. Legal experts help citizens lodge lawsuits against the city. And the citizens participated in public and private meetings to direct attention to their community’s problem.

If China were to have a similar water crisis, how would the Chinese public respond? This isn’t a mere hypothetical. Sixty percent of China’s groundwater is deemed either “bad” or “very bad,” and more than half of its lakes considered polluted by the Ministry of Environmental Protection. But the public response has been markedly different than what we have seen in Flint, Michigan. Why? Tsinghua University’s Liu Bing offered some insights from China’s NIMBY (Not-In-My-Backyard) movement. First,
there is a lack of widely accepted procedures and criteria for such environmental movements. Second, there are few independent third-party participants like NGOs to lend support. Third, and perhaps most importantly, NIMBY environmental movements are considered a political threat to the legitimacy of decision makers and the ruling class—and thus, almost always lead to overreaction by the state.

Conclusion

The United States and China have similar goals of improved environmental quality but somewhat different approaches to environmental governance. This conference helped to highlight these different approaches, and how they work—or don’t work—in distinct contexts. It was only the first step, however, in bridging our understanding. Building off of this conference’s success, a follow-up conference will convene in June 2016 in Beijing.