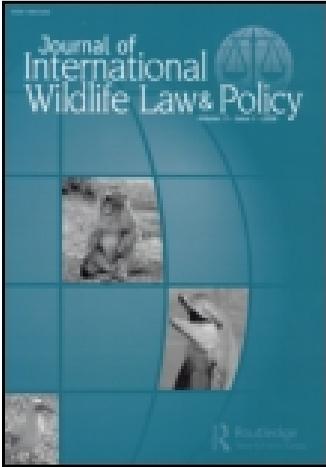


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Biodiversity Conservation and Protected Areas in China: Science, Law, and the Obdurate Party-State

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The recent increase in scholarly and other professional interest in environmental policy in China is quite remarkable.¹ It is almost as remarkable as the persistent inability of that literature, despite the generally high-quality, impressive disciplinary range and diverse national origins of the contributions, to settle on any clear or widely shared understanding of how environmental policy in China works, or why it works the way it does.

The growth of the literature is a direct reflection of two major factors. One is the extent and severity of the environmental problems the leadership of the Chinese party-state² has gradually come to acknowledge since the 1970s as the direct and increasingly unattractive and unacceptable consequence of the policies China has chosen to follow. The transformation of the economy and society, notably through rapid industrialization, urbanization, and economic

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¹ We have in mind that portion of the literature that appears in English. We have no way to gauge the rate of increase in the level of interest reflected by the literature published in Chinese, although our rough sense is that here, too, interest is high and growing.

² Governmental institutions in China, across the board and at all levels, are so closely integrated with the institutions of the Chinese Communist Party and so subject to Party control that effective governance is provided by what many China watchers simply call the party-state.

growth, has exacted a very high price.³ The other factor is the opacity of the language the leadership of the Chinese party-state has chosen to use to explain and to rationalize what it believes it wishes to achieve as it begins to try to take environmental policy seriously.⁴ Chinese leadership pronouncements on all subjects are notoriously opaque, giving rise to an army of China watchers who try to pierce the veil with which the top leadership of the Chinese Communist Party cloaks itself, as well as to the old adage among China scholars to “watch what they do, not what they say.”

The two factors together create an intense curiosity, inside the country and around the world, about what China is really doing and whether it works, both with respect to chronic “brown” environmental issues and notorious related acute episodes of air and water pollution and toxic spills, and with respect to the “greener” wildlife and biodiversity conservation issues of greater interest to us and to the readers of the Journal, because these issues bear on the long-term health and resilience of the ecosystems that sustain life in China. On both counts and over the next several years, curiosity will intensify.

We hope this special issue goes some way towards further illuminating the uses China has tried to make, and is still trying to make, of protected areas as a wildlife and biodiversity conservation tool.⁵ The articles in the issue offer a historical overview of the use of protected areas as a conservation tool in China (Xu et al.), a suggestion for the development of a new Protected Areas Law (Xie et al.), a look at how the operation of protected areas is being influenced by ideas about co-management under a well-resourced

³For an overview, see ELIZABETH ECONOMY, *THE RIVER RUNS BLACK: THE ENVIRONMENTAL CHALLENGE TO CHINA'S FUTURE* (2010); JUDITH SHAPIRO, *CHINA'S ENVIRONMENTAL CHALLENGES* (2012); CHINESE ENVIRONMENTAL GOVERNANCE: DYNAMICS, CHALLENGES, AND PROSPECTS IN A CHANGING SOCIETY (Bingqiang Ren & Huisheng Shou, eds., 2013); CLEARER SKIES OVER CHINA: RECONCILING AIR QUALITY, CLIMATE, AND ECONOMIC GOALS (Chris Nielsen & Mun Ho, eds., 2013).

⁴Questions about whether, when, and why China began to take environmental policy seriously are controverted. Although some see signs of interest as early as the 1970s and 1980s, particularly as China began to be influenced by growing attention to environmental issues on the world stage, there is general agreement that the adoption of the 11th Five Year Plan (2006–10) marks the beginning of a serious attempt to deal with “brown” environmental issues, notably air and water pollution control. Some observers believe the adoption of the 12th Five Year Plan (2011–15) marks a determination not only to expand and intensify pollution control efforts but also to shift to a new economic development model for the country, one that would move China decisively towards “green governance.” This last point, however, remains contentious. See R. Edward Grumbine & Jianchu Xu, *Creating a ‘Conservation with Chinese Characteristics,’* 144 *BIO. CONSERVATION* 1347–1355 (2011); R. Edward Grumbine & Jianchu Xu, *Recalibrating China's Environmental Policy: The Next 10 Years,* 166 *BIO. CONSERVATION* 287–292 (2013); Guizhen He et al., *Changes and Challenges: China's Environmental Management in Transition,* 3 *ENVTL. DEV.* 25–38 (2012); Alex Wang, *The Search for Sustainable Legitimacy: Environmental Law and Bureaucracy in China,* 37 *HARV. ENVTL. L. REV.* 365–440 (2013).

⁵An earlier treatment appeared as Jerry McBeath & Jenifer Huang McBeath, *Biodiversity Conservation in China: Policies and Practice,* 9 *J. INT'L WILDLIFE L. & POL'Y* 293–317 (2006). See also GERALD A. McBEATH & TSE-KANG LENG, *GOVERNANCE OF BIODIVERSITY CONSERVATION IN CHINA AND TAIWAN* (2006).

UNDP-GEF project in western China (Foggin), and a selected bibliography to assist with further research (Sonnenfeld and Snyder).

While the growth of interest in Chinese environmental studies is readily explicable, it is harder to understand the indeterminacy that is a hallmark of this literature. Here, obviously, a large number of factors are at work.

One is the sheer size and diversity of the country, both in environmental and human terms. What scholars see of China, and what they think they learn about it, is very much influenced by what part of the country, what sector of the economy, and what agencies of the party-state they are examining. Tibet and the western provinces, for example, present a very different face of China than the richer and more densely populated and more urban and industrialized coastal provinces in the east and south. Which China is the real China, or is there one?⁶ It is hard to get a balanced, overarching view, one that maintains a respectable critical distance whilst also acknowledging and encouraging constructive efforts for change, where they exist.

There are methodological choices at work, too. Scholars steeped in a tradition of on-the-ground field work, for example, especially those working in remote rural regions,⁷ have trouble seeing the same China as those who feed on a steady diet of documents and pronouncements emanating from the central institutions of the party-state in Beijing, such as the Central Committee of the Chinese Communist Party, the Politburo, the State Council, and the Standing Committees of the National People's Congress.⁸

Language and discipline add further complications. The English-language literature on Chinese environmental policy has been substantially supplemented in recent years by a modest but steady flow of Chinese scholars working in universities and research institutions outside their own country, at least for limited terms, and often co-authoring publications with their hosts.⁹

⁶ Very little has been written and published in English on wildlife conservation law and policy in China, although the scientific and technical literature is more plentiful. The standard treatment, with attention to the charismatic megafauna of the western provinces, is RICHARD B. HARRIS, *WILDLIFE CONSERVATION IN CHINA: PRESERVING THE HABITAT OF CHINA'S WILD WEST* (2007). See also CHRIS COGGINS, *THE TIGER AND THE PANGOLIN: NATURE, CULTURE AND CONSERVATION IN CHINA* (2002). Until recently, and despite the earlier appearance of a literary and aesthetic environmental history of China [MARK ELVIN, *THE RETREAT OF THE ELEPHANTS: AN ENVIRONMENTAL HISTORY OF CHINA* (2004)], it has been hard to grasp the broad outlines of environmental transformation in China and what that has meant both for nature and for people. That gap is now substantially filled by ROBERT B. MARKS, *CHINA: ITS ENVIRONMENT AND HISTORY* (2011).

⁷ The difficulties of field research on local social, economic, and political phenomena in China are discussed in Graeme Smith, *Measurement, Promotions and Patterns of Behavior in Chinese Local Government*, 40 J. PEASANT STUD. 1027, 1027–1028 (2013).

⁸ This diet of sources is the basis for Wang (2013), *supra* note 4.

⁹ An excellent case in point is Wenxuan Yu & Jason J. Czarnecki, *Challenges in China's Natural Resources Conservation & Biodiversity Legislation*, 43 ENVTL. L. 125–144 (2013). When the article was written, Czarnecki was Faculty Director of the U.S.-China Partnership for Environmental Law at the University of Vermont Law School, now one of a number of American law school initiatives with a China focus.

But neither these Chinese scholars nor those who live and work exclusively in China but publish some of their work in English are inclined, for obvious reasons, to be directly critical of the way the party-state runs things in China.

This reluctance to probe deeply can be and often is compounded by disciplinary preferences. Scientists, for example, often eschew interest in political arguments even when their work engenders controversy and clearly has political implications. They are, for the most part, more comfortable focusing on the collection and analysis of what they consider to be “objective” data and findings, which they believe should speak for themselves in terms of policy implications.¹⁰

Lawyers who have written about China have had a great deal to say about the deficiencies of Chinese environmental law and the legal norms that ought to govern the drafting and enactment of better laws.¹¹ But very few have stopped to ask in their published work how likely it is, first, that better laws will be adopted and, if they are, how probable it is that they will actually make any difference. China is not a place after all, at least not yet,

Earlier, the partnership yielded a special China issue of the Vermont environmental law journal with both Chinese and American contributors. See 8(2) VT. ENVTL. L. J. (2006–07).

¹⁰ The story is told, for example, of Jianguo Liu, who began soon after his appointment as an assistant professor of ecology at Michigan State University a study of the 200,000-hectare Wolong Nature Reserve in southwestern China, established in 1975 chiefly to protect the giant panda. The reserve contained more than a tenth of the wild giant panda population and had very substantial support from both the Chinese government and international environmental organizations, including the World Wildlife Fund (WWF), for which the giant panda is *the* charismatic species. Liu’s research, published with others as *Ecological Degradation in Protected Areas: The Case of Wolong Nature Reserve for Giant Pandas*, 292 SCIENCE 98–101 (2001), is a landmark contribution to conservation science. It showed that 25 years after designation of the reserve, the most crucial parts of the forest canopy were being destroyed at an accelerating pace. The habitat inside the reserve was more vulnerable than that outside. Instead of being protective, the reserve was making things worse, chiefly because of the harvesting of fuel wood, which was, in turn, being fueled by an enormous influx of tourists wanting to see the pandas. The Chinese government responded by paying residents to monitor illegal wood harvesting in the reserve, but the program went awry when households, the recipients of the payments, decided to splinter into smaller units to capture more payments. When interviewed recently, Liu, whose findings at Wolong provoked immediate political controversy and were initially rejected by the government, said he had little interest in such political arguments and was devoted only to his data, which he always tried to “let speak for itself.” Jonah Lehrer, *Ecological Freakonomics*, CONSERVATION MAGAZINE (August 2008), a University of Washington publication, online at <http://conservationmagazine.org/2008/08/ecological-freakonomics> (accessed 1 July 2014). Emily Yeh’s take on Liu’s research, however, is that only some of Liu’s data are afforded this detached consideration: “Despite the authors’ assessment that the thousands of tourists attracted by the reserve every year have ‘significantly stimulated the extraction of natural resources such as fuelwood to produce marketable goods’, they nevertheless conclude that ‘local people in the reserve were the direct driving force behind the destruction of the forest and the panda habitat.’ This familiar narrative blames local people by considering only proximate factors, contradicting the study’s own finding of the role played by broader political–economic forces such as those driving the development of tourism” (citation omitted). Emily Yeh, *The Politics of Conservation in Contemporary Rural China*, 40 J. PEASANT STUD. 1165, at 1173 (2013).

¹¹ See, e.g., Yu & Czarnecki, *supra* note 9.

where the rule of law consistently trumps the rule of the party-state and its cadres.¹² It is not a place where courts are encouraged to think of themselves as independent and open to the sorts of public interest litigation that has helped shape more effective environmental laws in other countries.¹³ And China is not a place where, despite more than 2,000 years of bureaucratic development, there has ever been a direct path between the creation of law at the center and its successful implementation on the ground. In imperial China, local discretion abounded, and the implementation outcomes ultimately stemming from the emperor's uncompromising edicts were always negotiated. By all accounts, the same continues to be true in the modern party-state.¹⁴ There is a sense, of course, in which this is also an iron rule of policy implementation everywhere.¹⁵

The paradox in China, where the party-state has been so controlling and so dominant at the center through various ways and means since 1949,¹⁶ and may now in some ways be more controlling than it has ever been,¹⁷ is that it has proven to be so difficult to come to grips with China's self-evidently serious and now centrally acknowledged environmental problems and to produce better results on the ground.¹⁸ The tendency is for scholars when writing about environmental policy in contemporary China to profess puzzlement about or, in the case of many scientists, abdication of interest in this Chinese paradox.

¹² "Chinese authorities have . . . engaged in the project of enhancing legitimacy through 'rule of law' development. Note, however, that this is not—in the leadership's own words—a legal legitimacy that incorporates concepts of democracy, checks and balances, and the notion that all citizens are subject to the law. Chinese leaders have tended to treat 'rule of law' as a more limited concept in the sense of 'enhancing cadre efficiency and accountability'" (citations omitted). Wang (2013), *supra* note 4, at 377. See also Carl Minzner, *China's Turn Against Law*, 59 AM J. COMP. L. 935–984 (2011); Thomas Heberer & Gunther Schubert, *Political Reform and Regime Legitimacy in Contemporary China*, 99 ASIAN 9–28 (2006).

¹³ Patti Goldman, *Public Interest Environmental Litigation in China: Lessons Learned from the U.S. Experience*, 8 VT. ENVTL. L. J. 251–279 (2006–07); Alex Wang & Jie Gao, *Environmental Courts and the Development of Environmental Public Interest Litigation in China*, 3 J. CT. INNOVATION 37–50 (2007).

¹⁴ BUREAUCRACY, POLITICS, AND DECISION MAKING IN POST-MAO CHINA (Kenneth Lieberthal & David Lampton eds., 1992).

¹⁵ The classic statement remains JEFFREY PRESSMAN & AARON WILDAVSKY, IMPLEMENTATION: HOW GREAT EXPECTATIONS IN WASHINGTON ARE DASHED IN OAKLAND, OR WHY IT'S AMAZING THAT FEDERAL PROGRAMS WORK AT ALL, THIS BEING A SAGA OF THE ECONOMIC DEVELOPMENT ADMINISTRATION AS TOLD BY TWO SYMPATHETIC OBSERVERS WHO SEEK TO BUILD MORALS ON A FOUNDATION OF RUINED HOPES (3rd ed. 1984).

¹⁶ Much of the relevant history is traced in ZHENGYUAN FU, AUTOCRATIC TRADITION AND CHINESE POLITICS (1993).

¹⁷ Wang (2013), *supra* note 4, at 376–77. This is not to gainsay that one important strand of official party-state doctrine and policy in China since the late 1970s has been the decentralization of power, although its impacts generally and for conservation are hard to separate from other factors affecting outcomes on the ground. See PIERRE LANDRY, DECENTRALIZED AUTHORITARIANISM IN CHINA: THE COMMUNIST PARTY'S CONTROL OF LOCAL ELITES IN THE POST-MAO ERA (2008).

¹⁸ Kenneth Lieberthal, *China's Governing System and Its Impact on Environmental Policy Implementation*, WILSON CTR. CHINA ENV'T SER. (1997), online at <http://www.wilsoncenter.org/sites/default/files/Lieberthal%20article.pdf> (accessed 1 July 2014).

When a solution or explanation of the paradox is proffered, especially in relation to protected areas and wildlife conservation, it is simply that the good or at least promising environmental policy intentions expressed or endorsed by the party-state at the center have been frustrated by local intransigence and protectionism,¹⁹ undoubtedly mixed in some cases with an element of corruption and official rent-seeking.²⁰

So when China undertook major financial reforms, radically realigning fiscal relationships between the center and the periphery, strengthening the revenues of the former at the expense of the latter and leaving provincial but, more especially, county and township governments with serious revenue-to-expenditure imbalances, many local governments turned away from fiscal means—the imposition of local taxes and fees—to pay for service provision and to otherwise keep themselves afloat, and they looked instead to the

¹⁹ This is the approach taken, to very good effect, one might add, by Yeh (2013), *supra* note 10, and Ashild Kolås, *Degradation Discourse and Green Governmentality in the Xilinguole Grasslands of Inner Mongolia*, 45 *DEV. & CHANGE* 308–328 (2014). Other good intentions have been frustrated, too. More than once, China has turned to large international environmental NGOs such as WWF and the Nature Conservancy for help in developing new conservation tools. National parks are a case in point. But Yeh's summary of what happened is discouraging. The parks were intended as a market-based method to combine conservation with community participation by using tourism revenues to benefit both rural residents and the environment. But a succession of shifting local alliances emerged around efforts to establish the parks. Local governments competed to expand tourism economies by applying the national park designation simply to upgrade local attractions and then dragged their feet on active conservation management and resident involvement. Local agencies jostled with each other to acquire organizational turf. Thus, Pudacuo National Park in Yunnan, the first park established in 2007, did become an important source of revenue for local governments, but local residents, who see very little of this money, are unhappy. The search for a new conservation model was, thus, frustrated by the mistake that marks other conservation initiatives in China, namely the tendency to treat as merely technical and economic problems what are also political issues and, thus, to stimulate local resentment. "Efforts to reforest and to conserve biodiversity are political processes," Yeh writes, "that significantly [alter] rural residents' access to livelihood resources, while political-economic pressures, bureaucratic structures and the system of incentives for cadres and local governments [also] prevent significant achievement of . . . environmental goals." This outline follows Yeh (2013), *supra* note 10, at 1175, who draws on John Zinda, *Hazards of Collaboration: Local State Co-optation of a New Protected Area Model in southwest China*, 25 *SOC'Y & NAT. RESOURCES* 384–399 (2012), and John Zinda, *Making National Parks in Yunnan: Shifts and Struggles within the Ecological State*, in *MAPPING SHANGRILA: CONTESTED LANDSCAPES IN THE SINO-TIBETAN BORDERLANDS* 105–128 (Emily Yeh & Chris Coggins, eds. 2014). Others see the "center good, local bad" dynamic quite differently. Wang writes, for example, that "the traditional 'central good, local bad' narrative has obscured the fact that central and local authorities have been more aligned in their focus on economic goals and deemphasis of environmental objectives than is commonly acknowledged. . . . The view of central authorities as doing their best to balance economic and environmental interests, but failing in the face of an unruly bureaucracy, places the blame for China's environmental degradation squarely with local governments. But the strong cadre incentives for economic growth and weak targets for environmental protection (to the extent they existed at all) belie this narrative, and highlight the role of central leadership in enabling and permitting dramatic environmental degradation to persist. It must be acknowledged that the prioritization of growth over environmental protection was an overt topdown policy choice." Wang (2013), *supra* note 4, at 387–388.

²⁰ See BEN HILLMAN, *PATRONAGE AND POWER: LOCAL STATE NETWORKS AND PARTY-STATE RESILIENCE IN RURAL CHINA* (2014).

realization of benefits from their control over natural resources, most especially land.²¹ Private land could be locally expropriated—especially from poor farmers—public and private land could be enclosed within locally designated protected areas, local people could be resettled, if need be, to make the enclosures plausibly protective, and, where it proved expedient, development could be undertaken within the enclosures, for tourism and even mining, for example, to bolster local finances.²²

The weak and ambiguous rules in place at the center for the governance of protected areas do not, of course, explicitly sanction or anticipate such results, certainly not on the scale that has occurred in recent years as the number of protected areas has mushroomed, but these rules, like most other environmental laws on the books in China, have never been taken very seriously.²³

Hence the perception, which is widespread, that many of China's protected areas, now numbering in excess of 5,000, depending on how you define and count them, are a sham, places protected in name only and on paper but with no real connection to conservation purposes.²⁴ In too many instances they have no strategic conservation plans, no clearly demarcated boundaries, no properly trained managers and staff, no data-driven scientific basis for making decisions, and no sources of finance that are sustainable if and when the returns from *ad hoc* schemes to develop within and around protected areas run dry.

Similar conclusions can be drawn about other truly massive interventions the party-state has made in the name of ecological restoration and biodiversity

²¹ John James Kennedy, *Finance and Rural Governance: Centralization and Local Challenges*, 40 J. PEASANT STUD. 1009–1026 (2013); Smith (2013), *supra* note 7; Yeh (2013), *supra* note 10, at 1172–1175.

²² Jianchu Xu & David Melick, *Rethinking the Effectiveness of Public Protected Areas in Southwestern China*, 21 CONSERVATION BIOLOGY 318–328 (2007).

²³ HARRIS (2007), *supra* note 6; Wang (2013), *supra* note 4, at 368. Indeed, Wang adds later, “Strong incentives for local officials to boost economic growth have long exacerbated China’s environmental woes. This simple dynamic goes a long way toward explaining the so-called ‘paradox’ of poor environmental law enforcement and compliance in China. At the same time, cadre evaluation incentives set a rough upper limit on environmental degradation by establishing penalties for environmental problems that caused social instability (protests, appeals to higher levels of government, excessive complaints, etc.). Put another way, failure to meet economic targets had consequences. Violations of environmental law largely did not, unless they triggered social instability or scandal. Environmental protection bureaus commonly took a reactive approach to environmental problems. In circumstances of few resources and clear incentives, only the squeaky wheel got the grease. While it has often been assumed that this dynamic is the result of poor regulatory capacity, weak institutions, and insufficient funding, it is worth noting that in China it has also been a dynamic reinforced by explicit top-down incentives” (citations omitted). *Id.* at 387.

²⁴ C. Y. Jim & Steve S. W. Xu, *Recent Protected Area Designation in China: An Evaluation of Administrative and Statutory Procedures*, 170 GEO. J. 39–50 (2004). Those looking for the alternative view that many protected areas in China are functional and full of promise can consult MEGAN KRAM ET AL., *PROTECTING CHINA’S BIODIVERSITY: A GUIDE TO LAND USE, LAND TENURE & LAND PROTECTION TOOLS* 169–228 (The Nature Conservancy, Beijing, 2012).

conservation, where, again, good intentions at the center apparently have been frustrated by a variety of local missteps and distortions on the ground. After devastating floods along the Yellow and Yangtze Rivers in the late 1990s, for example, China instituted the National Forest Protection Program (NFPP, or simply the “logging ban”) and the Sloping Land Conversion Program (SLCP, or “Grain for Green”). At one point in her comprehensive and sensitive assessment of how and why these programs work, Emily Yeh puts her finger on one of the basic mechanisms:

In addition to insufficient funding for local SLCP offices, lack of coordination between county finance bureaus and forestry bureaus makes it difficult for the latter to confirm that compensation reaches the right farmers. Further, *reflecting the bureaucratic structure of China’s cadre system, cadres have strong incentives to report exaggerated results rather than actual implementation of NFPP and SLCP, because of the way in which they are evaluated for promotion.* [Some analysts] conclude based on their field study that the combination of the [cadre] incentive system and the lack of adequate funding and coordination *set the programs up for failure that is reported as success*, while not taking into account the needs of local [people].

Other . . . studies have . . . reported shortfalls in subsidies delivered [for planting forests and grassland], with subsidies diverted from farmer compensation by higher levels of government, and villages with connections to local forestry bureaus able to enroll more land than other villages. Because subsidies are applied uniformly over vast regions (with one subsidy level for the Yangtze River watershed and another for the Yellow River watershed), some households are overcompensated relative to their previous crop production while others are undercompensated. Furthermore, insufficient technical support and insufficient budgeting for proper implementation are both widely reported. [T]he literature often presents these as technical, rather than political, issues (citations omitted and emphasis added).²⁵

A little later, Yeh turns to an analysis of SLCP as a showcase program in China of Payment for Ecosystem Services (PES)—in fact, “the largest PES [program] in the developing world, and the largest national-level PES scheme in the world”²⁶—and writes, quite pointedly, that:

[T]he largest potential problem in the program’s attempt to achieve its environmental goals is that the relationship between the cultivation of sloping land upstream and the frequency of flooding downstream is not as clear-cut as presumed . . . Moreover, it is not clear that afforestation, even if successful, is the most effective means to reduce erosion. One study of SLCP in an arid region of Shaanxi province suggested that afforestation there actually led to destruction of natural vegetation and exacerbated water shortages, decreasing vegetation cover, soil moisture and number of species relative to simply prohibiting cultivation and grazing.

[A] number of studies do suggest moderately beneficial local environmental effects . . .

²⁵ Yeh (2013), *supra* note 10, at 1168.

²⁶ *Id.* at 1169.

Many other studies, however, reveal ‘mistargeting’—the implementation of the program on fertile flatlands rather than steep lands, as well as a failure to adequately consider land productivity and environmental heterogeneity in site selection. Site selection is often determined by ease of inspection, as well as minimization of transaction costs. Adequate implementation funding, which could enable more extensive surveys and thus better targeting, is often not available. That is, *many non-environmental factors have been used to determine actual implementation; the implementation of these programs is inescapably political (citations omitted and emphasis added).*²⁷

But if local cadres are finding it rational to describe failure as success and to use non-environmental factors to make conservation decisions, compromising in the process some of China’s most vaunted biodiversity conservation initiatives, why is the powerful party-state letting them get away with it? Is it just a matter of expediency, such that there seems to be no practical alternative to the local accommodation of diverse interests and controversy, and no harm done, perhaps, so long as the center gets at least half a program loaf rather than no implementation bread at all? Or is the party-state, wittingly or unwittingly, undermining the rationality of its programs and, thus, undercutting its legitimacy?

The argument made by Yeh, as well as by others who have highlighted the extent to which and the ways in which Chinese biodiversity conservation policies are locally contested, is that, although local cadres are behaving rationally in the light of circumstances they face on the ground, their behavior is irrational from the larger and external perspective of program effectiveness. It is producing embarrassing results in particular places, such as protected areas that are really just paper parks, wildlife reserves that are overrun with tourists, and the ecological restoration of sloping lands that are, in reality, fertile flatlands.²⁸

More broadly, it is frustrating realization of the “environmental state project” on which China arguably embarked in the 1990s.²⁹ Kolås elaborates:

²⁷ *Id.* at 1170.

²⁸ Another possibility, although not one that gets much scrutiny in the literature on Chinese environmental law and policy, is that local cadres and the power networks in which they are embedded are corrupt. See HILLMAN (2014), *supra* note 20.

²⁹ “Deng Xiaoping’s policy of ‘Opening Up and Reform’ (Gaige Kaifang) marked a major shift in China towards a neoliberal development discourse focusing on marketization and privatization, in which ‘getting rich is glorious’ and prosperity and modernization go hand in hand. In pastoral areas the key policy introduced in this brave new era was the ‘Four Allocations’ (si pei tao), prescribing the fencing of household pastures, construction of animal shelters, house building and planting of forage crops. The expressed goal was to increase pastoral production and standards of living and eliminate poverty, to be achieved by the transformation of herders into ‘modern’ ranchers. The central authorities also introduced the cadre responsibility system (Mubiao Guanli Zerenzhi) to more effectively evaluate and monitor the performance of local government and party officials and guide their efforts through a combination of incentives and disciplinary measures. This meant the introduction of prioritized work

As Chinese authorities pursue their environmental state project, what is (co)produced is first and foremost a new rationality of rule or [a] re-imagination of the state, in which legitimate authority is derived from the protection of the environment rather than the conquest of nature. This relies on the production, application and circulation of new scientific knowledge about threats to the environment, which serves as a foundation for policies, programmes and interventions aimed at protecting the environment against degradation. The Chinese state holds a near monopoly of science production, and scientific knowledge about the environment is also a key tool of governance, whether in the production of facts justifying new laws and policies, the identification of targets and making of incentive systems, or the propagation of normative messages about the significance of environmental threats and the role of the environmental state. The contestation of state-sponsored environmental science thus represents a challenge to state authority.

For [China's] 'green' narrative to be effective (or plausible), the new discourse of [environmental] statehood must avoid disrupting earlier or parallel narratives in which the role of the state is portrayed as that of the provider of goods, modernizer or conqueror of nature. The government's diverse goals of economic development, modernization, poverty alleviation and ecological protection may be difficult (if not impossible) to reconcile, which is precisely why narrative incongruities threaten to bring into question the rationality of the environmental state.³⁰

Perhaps, then, the dynamic driving conservation policy outcomes in China, which often appear to be seriously dysfunctional from an on-the-ground perspective, and almost always so from the perspective of observers trying to assess what is happening in China from an external point of view, has less to do with the Chinese paradox—locally rooted intransigence and protectionism (as well as more than a *souçon*, perhaps, of local corruption)—than with the fundamental irreconcilability, even incoherence, of the goals the party-state is articulating at the center?

Instead of doing everything it can to protect the environment, which is what, on some level, it says it wants to do, and what it presumably ought to do to get itself out of its awful environmental predicament, even at some cost, the leadership, one might argue, is caught up in a muddled effort to have its cake and eat it, too. It wants to do right by the environment but not at the expense of doing other things it believes are much more important to its legitimacy, such as sustaining economic growth, modernizing the economy, alleviating poverty, corralling pastoral people, and containing social unrest. In the end, from the perspective of Kolås and many other critics, the results do not add up because the center is not getting the balance right between competing and

targets, usually quantified and with timetables, linked to career rewards and individual or collective sanctions. In pastoral areas, targets were set for all four 'allocations', that is, the number of herders' dwellings and animal shelters, the length of fences, and the area under forage crop cultivation. Herders were often encouraged (or pressured) by offers of subsidies in the form of money or materials (such as wire fencing). Authorities also launched campaigns to persuade herders to change their norms and values, to embrace modern market rationalities and discard 'old' ideas." Kolås, *supra* note 17, at 313–314.

³⁰ *Id.* at 323–324.

even conflicting concerns. A more coherent conservation policy would strike a different and, arguably, a better balance.³¹

So we should ask a question that the conservation critics often do not ask: at the center, what balance, in fact, has been struck, and what coherence does it have?

The leading published analysis of party-state pronouncements about environmental policy made at the center in relation to the current, twelfth five-year plan (2011–15), as well as the preceding eleventh five-year plan (2006–10) and in associated official documents, argues that there is no environmental state project in China, at least not yet, and certainly nothing that extends beyond the parameters of pollution control and waste management to ecological restoration and the protection of ecosystem health and resilience.³²

The leadership of the party-state has shown a keen awareness over many years that there are a number of risks to its legitimacy and that environmental degradation could be one of them, not least because acute pollution episodes and toxic spills, in addition to imposing economic costs, can also provoke public protest, and have done so in China's recent past.³³ By the same token, elevation of an environmental protection agenda could be subversive of what since the Deng era has become the regime's chief claim to legitimacy, namely that the party-state delivers the goods for the people of China and keeps a lid on civil disturbance.³⁴

Thus, the coherence of party-state doctrine on environmental protection, when examined from the perspective of the center, has long been that it *subordinates* environmental protection to the pursuit of economic growth

³¹ The realities of Chinese conservation policy on the ground, Kolås writes, are unpredictable as well as dysfunctional because of “the incoherence of policy making at the centre, with its competing agendas of economic growth and environmental protection.” *Id.* at 325.

³² Wang (2013), *supra* note 4, 399. The 11th Five Year Plan was the first to make leading cadres responsible for the achievement of specific, quantified environmental protection targets. These are applicable, however, in the context of air and water pollution control and resource use for energy production—the “energy saving, emissions reduction” (ESER, or jieneng jianpai) targets. The principal thrust was to reduce bottlenecks in the economy in the efficient use of resources and to limit those forms of pollution that caused public unrest, even riots. The protection of ecosystem health was then and remains now a distinctly secondary goal, and it is hard to see how environmental cadre evaluation could be more closely adapted to the prevention of harm to the health and resilience of ecosystems, subjects in which neither the Chinese leadership nor official Chinese science have shown much serious interest. *Id.* at 398 and 412.

³³ Regime perceptions of the risks to legitimacy posed by environmental degradation are treated in *id.* at 395–398.

³⁴ Since 1949, the legitimacy of the party-state has rested on a number of different bases. They were originally ideological (Marxist-Leninism) or stemmed from Mao's charismatic leadership, although both of those faded after Mao's death and the chaos of the Cultural Revolution. Claims to legitimacy have also been rooted in the robust assertion of Chinese nationalism by a Chinese Communist Party that promised to restore China to great power status after a century of humiliation at the hands of foreign powers. The turn to performance legitimacy began under the leadership of Deng Xiaoping. *Id.* at 376–77.

and the containment of protest.³⁵ And it has followed from this that the increasingly ambitious environmental goals articulated in successive five-year plans³⁶ were to be pursued by cadres at all levels only to the extent that their attainment also contributed to the achievement of what for the party-state were higher-order goals with direct legitimacy benefits. For a number of years, China did not find a way to square this circle, meaning that it did not find a way to do both things at once. The quite explicit and hierarchical ordering of party-state priorities demanded that, in the event of a conflict, environmental goals were to be sacrificed or be discretely ignored. And that is exactly what happened.³⁷

On the face of it, this system changed appreciably in 2006 with the adoption of the 11th Five-Year Plan, which marked “the rather dramatic elevation of *certain* environmental mandates . . . from low-priority soft targets long left to the discretion of local government to hard and veto-level targets subject to tight enforcement from the top. This raised environmental performance targets to a level of priority previously reserved for only a limited number of key state objectives” (emphasis added).³⁸

³⁵ In China, the “[e]nvironmental quality, human health, and ecosystem protection priorities that are typically presented as central priorities in the environmental protection frameworks of most developed nations are treated as secondary.” *Id.* at 398.

³⁶ “The idea of incorporating environmental considerations into bureaucratic evaluations has been part of the discourse in China since the 1980s, but it has not been effective in practice because of the low priority assigned to environmental targets . . . Incorporation of environmental factors into the cadre evaluation system emerged as official policy for the first time in 1989 when the Environmental Protection Law designated the idea of environmental targets as one of eight fundamental ‘environmental protection systems.’ The concept received further central government support in 1996 at the outset of the 9th five-year plan when the State Council issued a renewed call for the use of an ‘environmental quality administrative leadership responsibility system.’ The 1996 document clarified that the leading government officials at each level of government (governors, mayors, county and township heads), not just the environmental agency, would be responsible for environmental performance in their respective jurisdictions. Under the cadre evaluation system, key local leaders (*lingdao banzi*) at each sub-national jurisdiction were evaluated annually (with monitoring at mid-year) by the government at the level immediately above against specific performance criteria set forth in ‘responsibility contracts.’” *Id.* at 388–389.

³⁷ “The relative importance of different targets is made explicit within the [bureaucratic] system. Performance targets are clearly labeled as soft (‘guidance’) targets (*zhidao xing* or *yiban zhibiao*), hard targets (*ying zhibiao*) or ‘targets with veto power’ (*yipiao fojue mubiao*) . . . Economic goals have long been hard targets that were tightly correlated with career outcomes . . . Social stability-related objectives and one-child policy implementation had long been ‘veto’ targets, which meant that failure to meet those targets would in theory automatically result in punishment . . . Environmental, rule of law, ethics, and other targets have historically been soft guidance targets, a powerful indication of the secondary importance of these values within the Chinese bureaucratic system. Put another way, these objectives have largely been left to the discretion of local governments to do as they choose.” *Id.* at 380–381.

³⁸ *Id.* at 381. It is not as clear as we would like how much of the dramatic shift in 2006 to quantitative hard and veto level targets for pollution control spilled over to conservation policy. In both cases, however, the more important observation Wang makes here is that hard and veto targets were to be “subject to” tight enforcement from the top. In practice, in pollution control and conservation, “tight enforcement from the top” has seen considerable slippage, but this has not diminished either the party-state’s rhetorical elevation of environmental targets or its commitment to cadre evaluation as its preferred tool for trying to meet those targets.

The crucial innovation was to link the achievement of environmental targets to economic growth objectives through environmental cadre evaluation.³⁹

Faced with risks of weakening economic growth and declining legitimacy (that is, perceived risks to party-state hold on power) from environmental and energy problems . . . Chinese authorities responded by joining traditional cadre management tools with environmental protection policies in a way not seen anywhere else in the world. Environmental and energy targets became a tool first and foremost for staving off economic stagnation and minimizing social unrest.

In practice, environmental cadre evaluation has focused to the greatest extent on transforming China's economic growth model: seeking new avenues for investment in the environmental and energy industries, attempting to move away from heavy industry into higher margin industries, improving resource efficiency, and closing down polluting small firms to create consolidated corporate powerhouses capable of competing on the global stage. It has also attempted to limit particular environmental problems that have caused acute social instability and scandal—such as heavy metal pollution and heavy urban air pollution.

There is, in other words, neither a paradox gnawing at the heart of Chinese environmental policy nor any incoherence to that policy. The top-down and local incentives that have historically produced poor environmental law enforcement and distorted conservation program outcomes in China have been aligned, not misaligned.⁴⁰ And there is every prospect that this will continue to be the case. “Those who have argued,” Wang writes, “that China is engaged in a ‘green leap forward’ are surely getting ahead of themselves . . . [W]ithout a doubt, China is in the midst of the most serious long-term campaign to tackle environmental problems it has ever implemented [but it] is an effort deeply and inextricably linked to the party-state's ultimate self-interest: doing what it takes to remain in power.”⁴¹

Should we, then, conclude that the fog of indeterminacy that hangs over analyses of Chinese environmental policy might be dispelled once the obdurate self-interest of the party-state is brought clearly into focus and the intricate workings of environmental cadre evaluation are revealed?

The distinctive genius of the formula the party-state has hit on for pollution control seems clear enough. Wang stops short of claiming that environmental cadre evaluation has cured China's pollution problems. He does

³⁹ *Id.* at 393.

⁴⁰ What has been seen historically as poor environmental enforcement and compliance, Wang writes “is no paradox at all, but rather in large part a rational reaction by local actors to clear central norms.” Wang (2013), *supra* note 4, at 387.

⁴¹ *Id.* at 440. The durability of similar sorts of “adaptive authoritarianism” reforms designed to provide greater accountability, transparency, and public supervision for a wider range of party-state programs is questioned by JOSEPH FEWSMITH, *THE LOGIC AND LIMITS OF POLITICAL REFORM IN CHINA* (2013).

claim, however, that the marriage of quantitative targets for pollution reduction with investments in environmental infrastructure has substantially advanced the party-state's environmental protection agenda, as well as helping meet economic growth objectives and containing protest. It has, thus, enhanced the legitimacy of the party-state and its hold on power in the process.

The system is far from perfect. It is plagued, for example, by a number of well-known principal-agent issues involving goal selection, goal displacement, information problems, and outright collusion. Wang describes these in detail,⁴² but the more compelling point he makes is that the party-state has long been fully aware of these issues. Moreover, in an impressive display of "adaptive authoritarianism," it has instituted reforms to provide greater transparency, accountability, and public supervision.⁴³ It is this adaptability together with the upward mobility of local cadres that keeps environmental cadre evaluation viable and makes local cadres key players, perhaps the key players, in a system that is steered by Chinese leaders from the top down but is operationally decentered.

There are some indications that the critics of Chinese conservation policy have trouble seeing local cadres and cadre evaluation the same way that Wang does. Some of the same elements seem to be present. Kolås, for example, describes the introduction of cadre evaluation to the conservation of China's extensive grasslands in the 1990s and the linkage of this to quantitative targets. Party policy anticipates the fencing of household pastures, the construction of animal shelters, house building, and the planting of forage crops, all actions susceptible to measurement and all measures intended "to increase pastoral production and standards of living and eliminate poverty . . . by the transformation of herders into 'modern' ranchers."⁴⁴

When the time comes, however, for the local cadres at one Inner Mongolian location to explain the success of their implementation of these policies to visiting examiners the scene verges on the comedic:

Along with impressive posters mounted on billboards providing key 'facts and figures', the cadres had prepared an elaborate exhibition, set up in the spacious backyard of their office building. The yard was adorned with all the equipment with which the [local] bureau was supposed to boost pastoral productivity, such as automatically refilling water troughs for livestock and high-tech machinery for seeding

⁴² *Id.* at 413–438.

⁴³ Wang does caution, however, that "reforms aimed at greater public supervision are most likely to take China in the direction, not of Western-style democracy, but toward what has been termed 'deliberative authoritarianism' or 'consultative authoritarianism,' if such a thing is possible. This is an approach that is designed to expand civic participation and government accountability, but under one-party [Chinese Communist Party] rule." *Id.* at 430.

⁴⁴ Kolås, *supra* note 17, at 313–314.

and harvesting forage crops. The exhibition seemed to suggest that a ‘mechanization miracle’ was responsible for the bureau’s amazing feat of raising the herders’ income while at the same time bringing livestock numbers down. Most importantly, the presentation of data showed that targets had been met.⁴⁵

Kolås interprets this behavior as one instance of a much more widespread pattern of “creative collusion.”⁴⁶ This is what benighted local cadres do to protect their own interests against those of obstreperous local herders and pes-tering higher authorities. They can be portrayed sympathetically as “political entrepreneurs,”⁴⁷ grasslands middlemen mostly focused on keeping themselves out of trouble and everyone else content. This does not appear to make them, however, faithful servants of the party-state or good stewards of the grasslands. Indeed, Kolås seems quite uninterested in the substance of what, if anything, and for whom local cadres do accomplish, above and beyond their own self-preservation, most likely because of her conviction that nonparticipatory methods of turning Inner Mongolian herders into modern ranchers are inappropriate and her persuasive demonstration that grasslands conservation in China is currently not well supported by the state’s near monopoly on science, at least in the way it is being done now.⁴⁸

In Tibet, where the local implementation of grasslands conservation (*tuimu huancao*, or converting pastures to grasslands, or retire livestock, restore pastures) has also been examined in detail, a somewhat different view emerges:

[T]he effects of the policy have largely been to *strengthen* the implementation of the rangeland household responsibility system and *increase* fencing between villages and seasonal pastures. [One study] finds that in practice, local officials tend to implement the policy in order to *satisfy pressures* from above rather than because they believe the policy will improve rangeland conditions. As a highly visible and easily quantified target, fencing is an easy way for local government officials to demonstrate their *achievement* of policy goals. In addition, fencing is favored by local officials in their efforts to ‘chase projects’ (*pao xiangmu*) as a way to *capture state subsidies*. Because cadre performance is evaluated based on the presence or absence of fencing on inspection visits, the policy has turned largely into one of fencing installation rather than attention to grassland conditions, and in some places the outcome of this logic is that pastoralists are assigned to patrol fencing material, demonstrating how *the political economy of local budgets in contemporary China intersects with environmental protection efforts* (citations omitted and emphasis added).⁴⁹

⁴⁵ Kolås, *supra* note 17, at 316.

⁴⁶ *Id.* at 325.

⁴⁷ *Id.* at 316.

⁴⁸ *Id.* at 317–320.

⁴⁹ Yeh (2013), *supra* note 10, at 1178.

In this account, pressure from the party-state above is being applied, meeting targets has (some) real (but probably modest) local benefits through the capture of state subsidies, and the pursuit of environmental protection goals has other local economic payoffs, too. There is here, then, a much clearer sense that the party-state is using its stated environmental policy for the grasslands to achieve economic and social stability goals important to its legitimacy, much as it does in pollution control.

It is also unquestionably the case, however, that in Inner Mongolia and Tibet nothing much, if anything at all, is being done to “improve rangeland conditions.” All observers of grasslands conservation programs in China agree on this point. But there is nothing in their accounts of grasslands conservation to suggest that adaptive authoritarianism may be unable to turn this situation around, especially if it were to be coupled with a heavy infusion of rigorous rangeland science and a dose of public supervision, giving herders and pastoralists more influence over their fate than they have now.

We come away, then, from this introductory excursion into the literature on Chinese environmental policy with the very clear sense that the party-state sees environmental cadre evaluation as its preferred *modus operandi*.⁵⁰ It is not interested in elevating its environmental priorities through a meaningful revision of the legal framework for environmental policy in China, which could then be enforced through litigation in an independent judiciary.⁵¹ Nor is it much interested in breaking the near monopoly of science production the Chinese state now holds and which it finds to be such a pliable and convenient tool of internal governance.

⁵⁰ Wang says of environmental cadre evaluation that it has become “the central focus of China’s domestic and international environmental strategy. Central authorities have applied the tool to a range of new priorities concerning climate change, energy efficiency, and pollution. Chinese leaders announced a ‘domestically binding’ carbon intensity target as the centerpiece of China’s negotiating position at the 2009 Copenhagen climate negotiations. China expanded its use of environmental targets in the 12th five-year plan (2011–15), with targets for carbon intensity and renewable energy, among others. Environmental cadre evaluation has [also] been used to address heavy metal pollution and fine particulate pollution” (citations omitted). Wang (2013), *supra* note 4, at 368–369. It is an open question whether cadre evaluation has been as successful at maintaining regime legitimacy in conservation policy as it has in pollution control, but in both cases it has clearly been the regime’s tool of choice.

⁵¹ Chinese courts have long been seen as extensions of local government, with the ways they are organized and operated very closely integrated with other government departments and all subject to Party leadership. Yang Su & Xin He, *Street as Courtroom: State Accommodation of Labor Protest in South China*, 44 L. & Soc. REV. 157–184 at 181 (2010). A recent analysis of environmental courts affirms this view. “For local officials striving to meet multiple goals, part of the appeal of environmental courts lay in their flexibility. Specialized courts provided a way to show responsiveness to new environmental concerns, while also occasionally aiding (or at least not obstructing) the ongoing pursuit of GDP growth and social stability. China’s environmental courts are not a step toward judicial empowerment, as they might appear at first glance, but an effort to shore up state capacity through an institution designed to coordinate and act as a backstop for government agencies.” Rachel Stern, *The Political Logic of China’s New Environmental Courts*, 72 CHINA J. 53–74 at 61 (2014).

It strikes us, however, that the undoubted reality of the close relationship that has existed between the party-state and its local cadres in environmental policy since the 1990s and especially since 2006 is more than slightly isolated. It may look like business as usual to people who live in China and spend their professional lives in China. But to those who are external observers, to those Chinese who travel and collaborate abroad, and to the increasing number of tourists and professional visitors who go to China, different expectations about the openness and accountability of political leaders apply. The hope has to be that these external pressures and perspectives will help to persuade Chinese leaders to go further down the path of adaptive authoritarianism than they have gone already and help over time to break down the isolated reality that keeps an obdurate party-state and its local cadres in China so tightly bound together.