Courting a Blue Sky?
Understanding the Constrained Judicialization of Environmental Governance in China

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Abstract: This paper studies the constrained judicialization of environmental governance in China. It starts by quantitatively describing the judicialization of environmental protection in China over the past decade, including both its progresses and the suppressions that it faced, and shows that environmental courts have had virtually no tangible impact on reducing pollution levels. It then attempts to rationalize the observed patterns by answering two questions. First, why does the government choose to empower the courts when it possesses a rich set of other regulatory tools in environmental protection? This choice can be attributed to both the central government's needs to curb local protectionism, as well as the local governments' incentives to promote legitimacy. Second, to the extent that courts can contribute to environmental governance, why does the government impose tight controls over environmental litigation? This can be explained by the government's deep-rooted wariness of class lawsuits and other collective actions, as well as the judiciary's inherent conflicts with the flexibility required by a regulatory regime. In addition, the judiciary's limited capacity also impedes the judicialization of environmental governance.

1. Introduction

Over the past decade, the Chinese government has actively directed citizens, NGOs, prosecutors, and government agencies themselves towards utilizing courts as a venue for combating industrial pollution, diversifying a governance landscape once solely dominated by administrative agencies through regulation. This judicialization process follows an authoritarian logic, occurring without the retreat of party-state control. This paper documents that the regime's attitude towards judicialization is ambivalent, oscillating between providing support and imposing restrictions. The Chinese government has systematically developed a legal framework for environmental litigation, with the judiciary prioritizing environmental protection as one of its primary objectives. However, the number of environmental lawsuits remains strikingly low in comparison to the widespread pollution incidents that adversely affect citizens, and environmental courts and tribunals have had virtually no tangible impact on reducing pollution levels.

Such seemingly contradictory phenomena raise interesting questions: (a) Given that government regulators are well-equipped with funding, personnel, and various types of law enforcement means, why does China still want to promote judicialization as a tool to fight pollution? (b) To the extent that the environmental courts may contribute to environmental governance, why does the government actively constrain the rise of environmental litigation nationwide?

To answer question (a), the paper offers two explanations for the endeavors in advocating for the judiciary's role. First follows the logic of centralization, that is, the judicialization of environmental protection can be seen as among the means to overcome local protectionism and strengthen central law enforcement. Specifically, the paper illustrates how the judicial centralization reform initiated after 2014 laid the groundwork for this process, and how the professional and hierarchical nature of the judiciary enables itself to have effective top-down control, thereby consolidating the implementation of the central policies. Second, the paper contends that the judicialization of environmental protection functions as a legitimacy enhancement scheme for local government regulators, an aspect often overlooked in the literature. As the Chinese population increasingly attributes sociopolitical legitimacy to law and legal institutions, the legal system has begun to gain social prominence and prestige (Zhang and Ginsburg, 2019). Empowering and resorting to formal legal institutions have emerged as an important and often effective political and also law enforcement strategy. The paper provides examples to illustrate different types of legitimacy enhancement.

On question (b), the paper investigates the ambivalent attitude behind the government's tight control over judicialization. Factors contributing to this ambivalence include the government's deep-rooted wariness of class lawsuits and other collective actions, as well as the judiciary's inherent conflicts with the flexibility and speediness required by a regulatory regime. The judiciary's limited capacity, which encompasses both political factors such as the lack of judicial independence and technical factors such as inadequate information and expertise, further impedes its ability to effectively play a vital role in environmental governance.

The research in this paper contributes to the existing literature in several ways. The existing studies provide valuable descriptive accounts of how juridical organs, including procuratorates and courts, have become important actors in environmental governance over the past decade (e.g., van Rooij, et al., 2016; Kostka and Nahm, 2017;

Xia and Wang, 2023) and how various types of environmental litigation (particularly public interest litigation) function in China (Xie and Xu, 2022; Wang and Xia, 2023). This paper integrates data from various sources, presenting comprehensive quantitative evidence and thereby offering an overview of the complex landscape of judicialization in environmental governance in China. Unlike many previous studies, our analysis paints a less optimistic picture of this process, casting doubts on its overall effectiveness in promoting environmental protection.

Expanding upon existing literature, the paper juxtaposes government regulators and the judiciary, examining the underlying need for legal and judicial institutions in environmental protection and the challenges arising from conflicting governmental concerns. The judicialization of environmental protection is both a top-down and bottom-up process. The demand for judicialization is not only driven by the central government but also by the public's respect for the law, which encourages local governments to adopt judicial approaches. However, this demand for judicialization and adherence to the law often succumbs to deeply entrenched factors within the Chinese political system. The unique setting in environmental governance offers an opportunity to better understand the broader challenges associated with building rule of law or legalism within an authoritarian system, which will be further discussed in the concluding section.

2. The Success of the Regulatory Regime

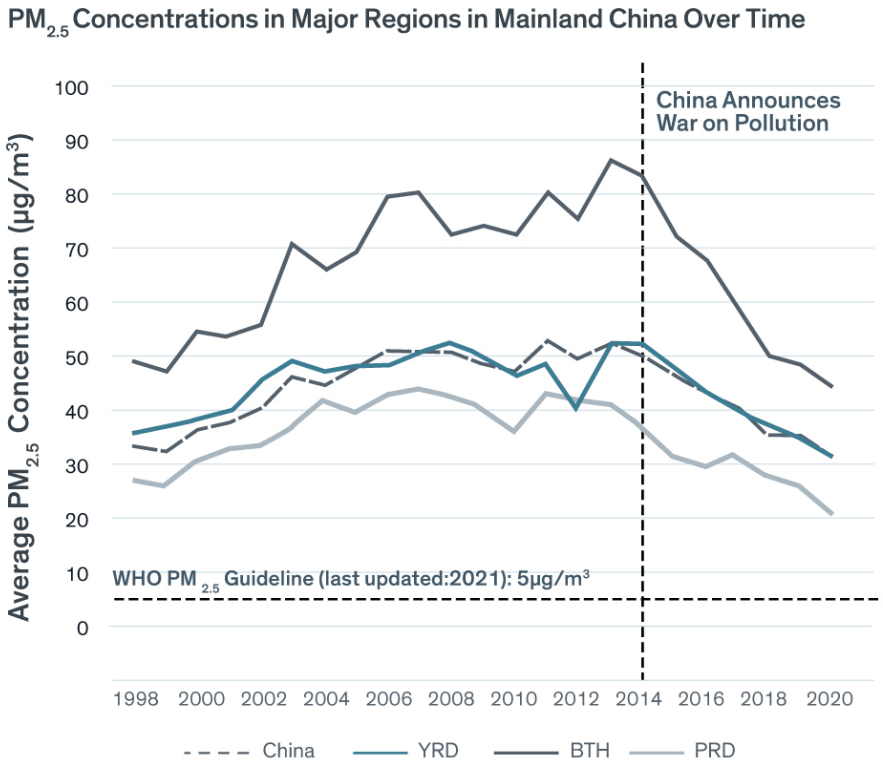


Figure 1. Air Pollution in China over Time (reprinted from Greenstone et al. 2021)

Note: PRD stands for Pearl River Delta and it includes the dense network of cities that covers nine prefectures of the province of Guangdong, namely Dongguan, Foshan, Guangzhou, Huizhou, Jiangmen, Shenzhen, Zhaoqing, Zhongshan and Zhuhai and the Special Administrative Regions of Hong Kong and Macau. YRD stands for Yangtze River Delta and it includes Shanghai, Jiangsu and Zhejiang. BTH stands for Beijing-Tianjin-Hebei.

In China, environmental protection is predominantly managed by administrative agencies through regulation, and this regulatory regime against pollution, when backed by strong political support, has been proven extremely effective. Since declaring a "war on pollution" in 2014, China's strict policy action led to a swift reduction in pollution, which accounted for more than three quarters of the global decline in pollution since 2013. From 2014 to 2020, China's average fine particulate pollution (PM2.5) levels fell by 40 percent (Figure 1), while sulfur dioxide and carbon monoxide concentrations fell by 65 percent and 33 percent, respectively. Beijing experienced the largest decline in air pollution over this period, with PM2.5 levels falling from 85 to 38 µg/m3 in just seven years—a 55 percent decline. To place China's pollution progress into context, it took more than four decades and two economic recessions for the United States to achieve the same pollution reductions

that China was able to accomplish in 7 years, even as the Chinese economy grew by nearly 40% during this period.

This decreased pollution has led to a significant improvement in people's health. Existing literature in health economics translates these air quality improvements into the number of additional years that an average person would live, assuming these reductions are sustained (Greenstone et al., 2021). In Beijing, the AQLI suggests that the average person could expect to live 4.6 years longer due to the steady decline in pollution since 2013, assuming the reduction is permanent. In Shanghai, the average person could expect to live 2.2 years longer. Across the country, the life expectancy gain is 2 years longer on average relative to 2013. Such improvements in health outcomes are estimated to be associated with significant savings of medical care costs and major gains in labor productivity.

China was able to make such significant reductions in air pollution because of aggressive policy actions. After China experienced its highest pollution levels, public awareness and criticism reached new heights. The central government responded with a National Air Quality Action Plan in the fall of 2013, laying out specific targets to improve air quality. The plan included a $270 billion initiative to reduce annual average PM2.5 concentrations in the densely populated Beijing-Tianjin-Hebei area by 25 percent, and in the Pearl and Yangtze River Delta regions by 15 and 20 percent, respectively. At the next annual meeting of the People's Congress in March 2014, Premier Li Keqiang declared a "war on pollution." The timing of this declaration—at the kickoff of a nationally-televised conference typically reserved for discussing key economic targets—marked an important shift in the country's long-standing policy of prioritizing economic growth over concerns about environmental protection.

To meet its pollution goals, the central government introduced specific policies for each heavily polluting sector—residential heating, transportation, and construction and production—creating an integrated set of pollution prevention and control programs. For example, heating in northern China has been gradually replaced by natural gas and electricity, instead of relying primarily on coal. To reduce vehicle

emissions, the country has gradually improved oil quality and motor vehicle emission standards and is actively promoting the popularity of electric vehicles. On the production and construction side, the government has continued to set strict environmental protection and emission standards and has restricted production or even shut down heavy polluters altogether.

The War on Pollution transformed the Ministry of Ecology and Environment (MEE, formerly known as the Ministry of Environmental Protection) from a relatively weak government branch to one possessing tremendous political power. Specifically, the environmental targets set by the MEE directly entered into the evaluation of local officials, and could veto promotion cases where the local officials failed to achieve environmental compliance. Such high-powered political incentives in-turn led to significant empowerment of environmental regulations. On the one hand, regulators in China adopted some of the most sophisticated monitoring technologies, such as automating the national ambient pollution monitoring stations, and building a continuous emissions monitoring system that covered more than 25,000 largest industrial polluters nationwide, which greatly reduced information asymmetry between regulators and polluters, and laid foundations for widespread bottom-up citizen participation in environmental governance. On the other hand, traditional top-down command-and-control policies also became significantly more salient during this period, where regulators combined randomized audits and targeted audits to firms, and issued punishments for firms in violation of emissions standards, ranging from warning to fines, and all the way to temporary/permanent shutdown.

Indeed, government regulators possess substantial resources, personnel, technologies, and various law enforcement methods, which have demonstrated success in combating pollution. The question remains: what can the judiciary add to this already powerful regulatory regime?

3. The Rise and Limits of the Judiciary in Environmental Governance

3.1 The seemingly rising judiciary

For a long time, the judiciary's involvement in environmental protection was largely

unsuccessful. In the 1980s and 1990s, the Supreme People's Court (SPC) experimented with establishing specialized environmental courts, but it later retracted these efforts, citing a lack of legal foundation for their existence. The underlying reason for this retraction was primarily political in nature, with environmental courts being perceived as encroaching on the responsibilities of government agencies. As a weaker political actor compared to most other central government ministries, the SPC exercised caution and refrained from overstepping its boundaries (Stern, 2014).

In the past decade, however, there has been an orchestrated effort to promote the role of the judiciary in environmental governance. There is a substantial rise in the establishment of environmental courts, tribunals, and collegiate panels, exceeding a total of 2,000 as of 2022 (SPC, 2022).[1] Figure 2 illustrates the widespread rollout of these environmental judicial institutions across the country.

Concurrently, the Chinese judiciary has placed increasing emphasis on environmental protection in its promotional efforts. An analysis of 138,566 news reports from 2010 to 2022, sourced from the Court Daily (人民法院报) (the official media outlet of the SPC), highlights this trend. Using a dictionary-based method (Mostafa, 2013; Monroe, Colaresi, and Quinn 2008; Quinn et al., 2010), Figure 3 identifies keywords related to environmental protection and calculates their frequency among all words in the media outlet. Notably, there has been a significant increase in the frequency of these environmental protection keywords since 2012.

[1] Supreme People's Court. (2022). China Environmental Judicial Development Report.

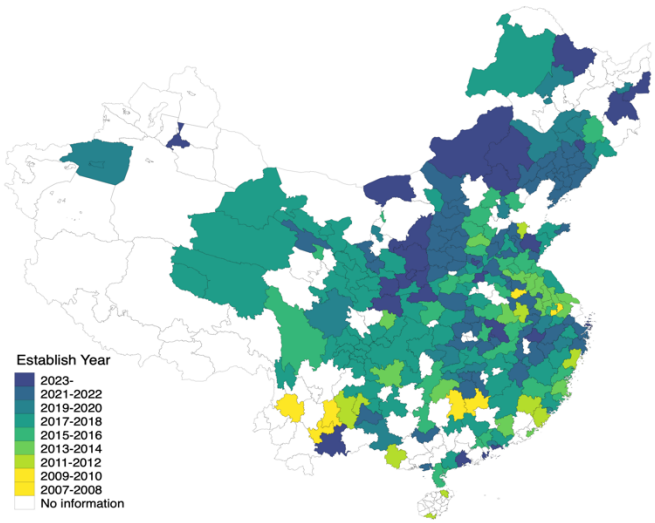


Figure 2. The Spatial Rollout of Environmental Courts and Tribunals

Note: The Figure plots the timing of the first environmental court or tribunal being established in each prefecture since 2007.

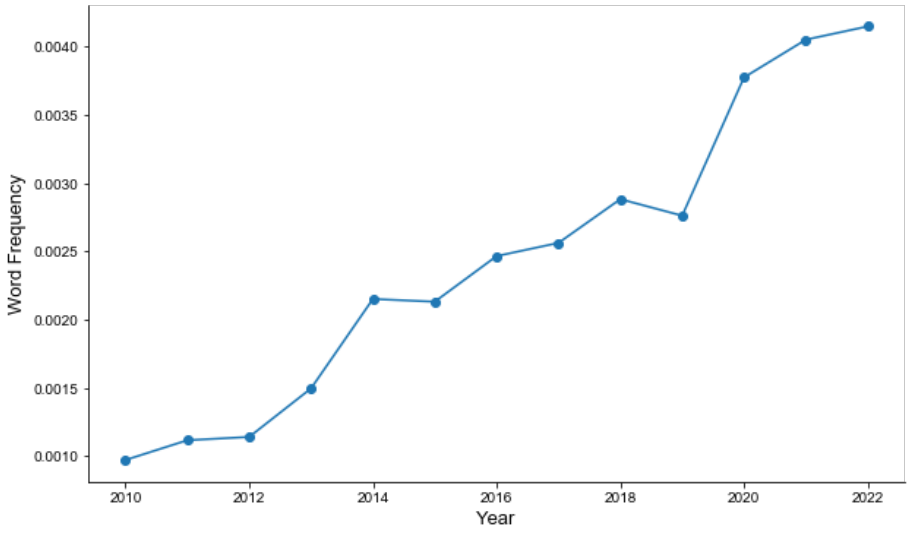


Figure 3. The Frequency of Environment-related Words in the Court Daily

Note: Environment-related words include:生态(Ecology)，生态环境(Ecological Environment)，公益(Public Welfare),环境保护(Environmental Protection),环保(Environmental Conservation)，污染(Pollution)，绿色(Green)，环境污染(Environmental Pollution)，农业(Agriculture)，野生动物(Wildlife)，污染环境(Polluted Environment),公共利益(Public Interest)，海洋(Ocean)，生物(Biology)，自然资源(Natural Resources)，环资(Environmental Assets).

Another notable effort is the introduction of environmental public interest litigation

(EPIL). The 2012 revision to Article 55 of the Civil Procedure Law (CPL), effective January 2013, allowed "relevant bodies and organizations" to represent the public interest in lawsuits to address environmental pollution. Further major legal and institutional developments towards the establishment of an EPIL system took place from 2014 to 2017. Since 2014, qualified NGOs have been able to bring civil EPIL cases. To be eligible, these NGOs must register with the authorities and have environmental protection as their primary objective. They also need to have a clean record without any unlawful activities or rule-breaking in the previous five years. In civil EPIL cases, NGOs have the right to seek various remedies from the court against defendants responsible for environmental or ecological harm. These remedies include putting an end to harmful behaviors or activities that impact the environment, implementing remedial actions, providing compensation for environmental damage (including the loss of service function during the period of harm before full recovery), covering the costs of pollution cleanup or environmental remediation, and obtaining a public apology from the defendant. Additionally, NGOs may recover reasonable costs incurred during the pursuit of EPIL, including expenses for forensic analysis and legal fees.

The procuratorate began implementing civil EPIL in 2015 as a pilot program across 13 provinces, which later expanded nationwide in 2017. When incidents of environmental damage are discovered, the procuratorate is required to first request relevant authorities (governmental departments) or qualified organizations (NGOs) to initiate civil EPIL. If no such authority or organization is willing to take on the case, the procuratorate can then initiate civil EPIL itself. Procuratorial EPIL offers a similar range of remedies as civil EPIL brought by NGOs.

In addition to civil EPIL, the procuratorate also has the authority to initiate administrative EPIL against local governments or governmental departments for failing to fulfill their environmental protection duties. In administrative EPIL cases, the court can find the government in breach of its duties in environmental protection and order the timely performance of such duties.

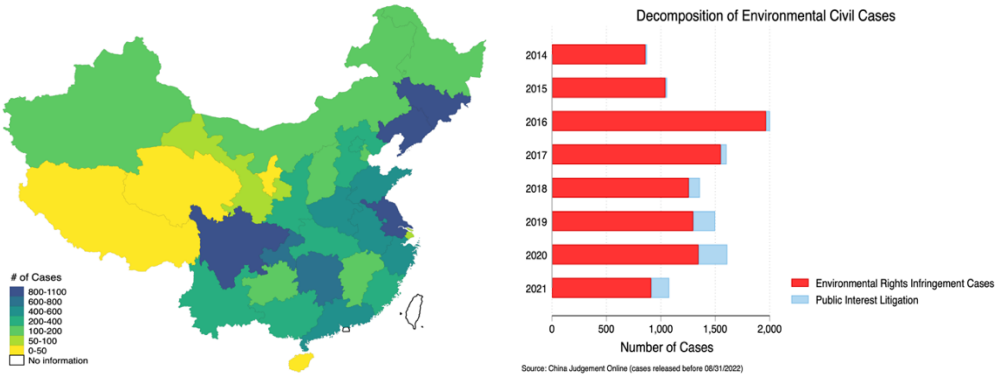
Finaly, the introduction of punitive damages in environmental tort represents a culmination in the concerted efforts to enhance the judiciary's role in environmental governance. Effective January 1, 2021, the Civil Code introduced a significant development in environmental law by allowing for punitive damages in cases

involving severe and intentional pollution or ecological harm. This provision is groundbreaking as it is the first time that punitive damages have been permitted in environmental civil litigation, highlighting the growing recognition of court's role in holding polluters accountable for their actions.

3.2 The puzzling constraint

As suggested by the above analysis, since 2010s, the Chinese environmental law framework has evolved dramatically into a comprehensive system, with more than 2,000 environmental courts or tribunals implementing the law. However, when examining the data on environmental litigation extracted from China Judgment Online, it becomes apparent that these reform efforts have been ineffective and "all bark and no bite." The surprisingly low number of cases in comparison to the prevalence of environmental grievances raises doubts about the substantial impact that environmental litigation can have on local or national environmental governance.

Environmental civil litigation allows parties who have suffered damages as a result of environmental harm to seek legal remedies under the general law of tort within the standard civil law framework. Figure 4 presents the geographical distribution, time trends, and case type breakdowns of environmental civil litigation from 2014 to 2021. In 2014, the total number of nationwide cases was merely about 1,000. Although there was a notable increase in cases in 2016, the number has remained relatively constant at around 1,500 cases annually since then.

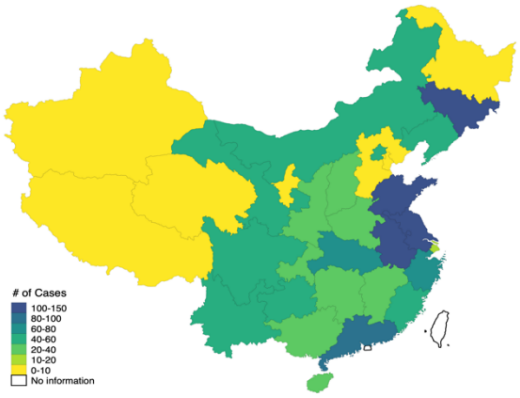


Panel A. Spatial Distribution **Panel B. Time Trend**

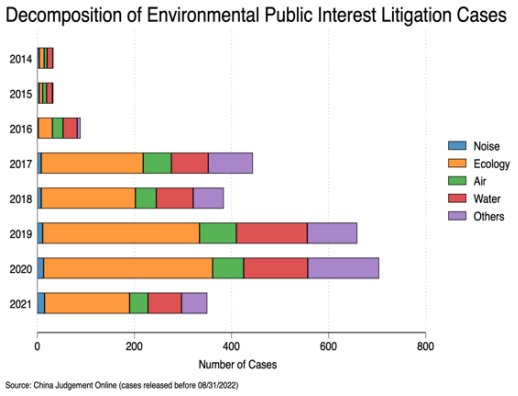
Figure 4. Overview of Environmental Civil Litigation (2014-2021)

Moreover, while the legal framework for environmental public interest litigation has

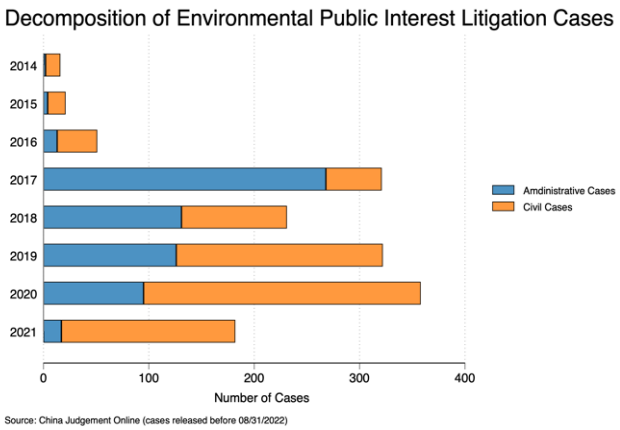
developed and expanded over the past decade, the overall quantity and scope of such cases remain limited. From 2014 to 2021, a total of only 1,599 environmental public interest litigation (EPIL) cases were recorded nationwide. Figure 5 displays detailed patterns and trends of these cases. Geographically, most cases are concentrated in a few coastal provinces such as Shandong, Jiangsu, and Guangdong. The rise in case volume seems to be primarily driven by issues related to ecological damage. It is also worth noting that administrative EPIL experienced a surge in 2017, reaching around 270 cases nationwide, followed by a significant decline in subsequent years. Civil EPIL demonstrated growth throughout the entire period, signifying continued engagement and involvement from NGOs in environmental litigation. But the total number of cases was still very limited.



Panel A. Spatial Distribution



Panel B. Time Trend and Case Breakdown



Panel C. Administrative EPIL vs. Civil EPIL

Figure 5. Overview of Environmental Public Interest Litigation (2014-2021)

The number of environmental lawsuits remains strikingly low in contrast to the widespread and escalating pollution incidents that impact citizens' well-being; some of the most serious incidents have also led to collective actions and unrest. As illustrated in Figure 6, from 2011 to 2021, a total of 12,155 pollution-related protests were identified by using comprehensive user-posted text and image data from Weibo. Notably, this data represents just the tip of the iceberg of actual pollution disputes, as it only captures the most significant incidents that led to protests. Nevertheless, the number of protests is comparable to, if not greater than, the number of environmental civil litigation, highlighting the limited scope and reach of environmental litigation.

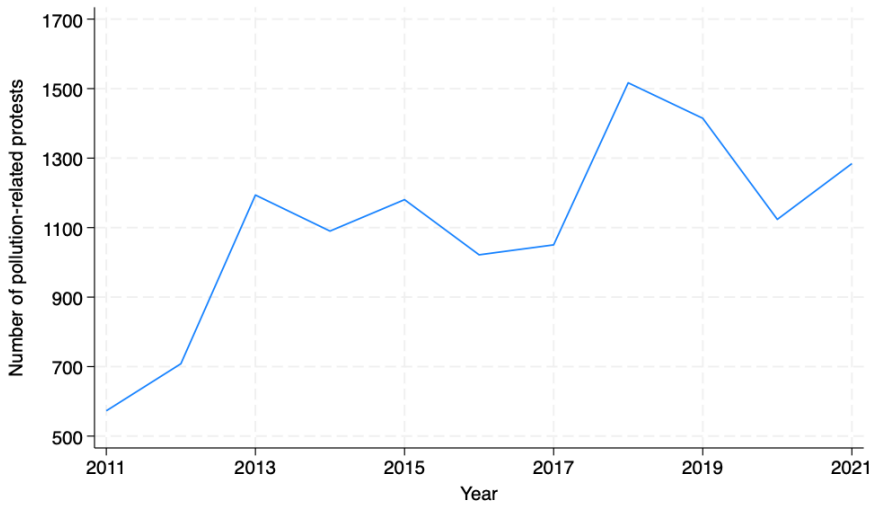
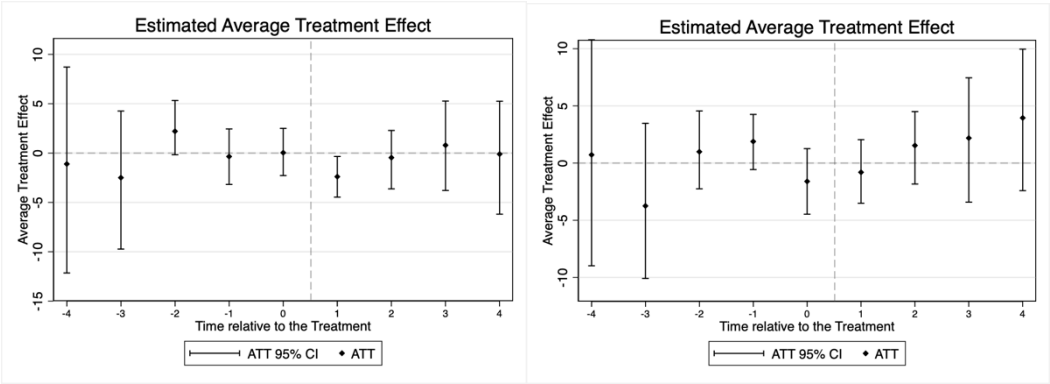


Figure 6. The Number of pollution-related protests drawing from Weibo posts

Note: This figure plots the number of pollution-related protests from 2011 to 2021. 269,245 collective actions are identified using the universal text and image data from Weibo throughout this period, employing a deep-learning approach developed by Zhang and Pan (2019). Among these 269,245 protests, 12,155 events are related to environmental issues, including air and water pollution, soil contamination, and other related topics.

The limited number of cases is fundamentally incongruent with the narrative suggesting that courts and litigation play a vital role in environmental governance in China. With a paucity of actual cases being heard, it is unsurprising to expect that the impact of environmental courts and tribunals is minimal, if not nonexistent. This is quantitatively verified by the data. Employing a generalized synthetic control method

to study prefecture-level pollution data, our analysis shows that there are indeed no significant changes in both PM2.5 level and Air Quality Index (AQI) following the establishment of environmental courts and tribunals (Figure 7).



Panel A. PM2.5 **Panel B. AQI**

Figure 7. Impact of the Establishment of Environmental Courts and Tribunals

4. Judicialization against Local Protectionism

The significant gap between the law on paper and the reality on the ground has led to doubts about the sincerity of China's judicialization of environmental protection. It is tempting to conclude that China's emphasis on environmental courts and litigation is merely a superficial gesture, creating the illusion of responsiveness to public concerns while allowing the government to prioritize economic growth over environmental protection. However, such a conclusion underestimates the complexities of both China's environmental governance system and the central government's intentions to strengthen the role of the judiciary in politics. This section and Sections 5 and 6 discuss the dynamics underlying the puzzling promotion-suppression duet regarding the judicialization in environmental governance.

4.1 The local protectionism problem

From the perspective of the central, the judiciary at least holds the potential to address many persistent issues within local environmental governance. One of the most prominent issues is local protectionism, which has long hindered the effective implementation of environmental laws in China.

It is widely known that local governments prioritize safeguarding local industries over

enforcing stringent environmental regulations. In cases where the enforcement of environmental laws poses a risk to local economic growth, employment opportunities, and tax revenue, local governments often utilize their power to shield local industries. There are ample evidence of how local protectionism affects environmental enforcement at the grassroots level. For example, local officials tend to select cheap and quick approaches to environmental policy implementation (Eaton and Kostka, 2017), impose less stringent regulation standards on border firms (Wang and Wang, 2022), and seek lower amount of fine payment than they are allowed to issue in order to avoid upsetting local industry (van Rooij et al., 2017). Local leaders appoint directors of the environmental protection bureaus who prioritize overall local interests over narrow environmental interests (Eaton and Kostka, 2017). Intricate ties and collaboration between local government and industry management enable polluting companies to continue business as usual (He et al., 2020), and cities with large industrial firms have lagged behind in implementing environmental transparency rules, especially those with highly polluting firms (Lorentzen et al., 2014).

What undergirds local protectionism is China's dual leadership government structure, where local environmental protection bureaus are more closely aligned with the local party-state apparatus (horizontal authority) rather than being under the direct control of the higher-level bureau (vertical authority). Local protectionism is also deeply embedded and partly caused by the central-local incentive structures. For a long time, the tournament of economic development has had decisive influence on local leaders' promotion and political career (Li and Zhou, 2005), which provides incentive for local governments to focus on economic growth and poorly implement or not at all implement environmental policies.

4.2 The increased status of court and the judicialization of environmental governance

Under Xi's leadership, the Chinese government has dedicated itself to environmental protection to an almost unprecedented degree. However, local protectionism and the dual leadership structure supporting it have become obstacles for the central government in implementing its environmental policies. Over the past decade, the central government has made a concerted effort to counteract local protectionist influences on environmental protection. These efforts include introducing more robust national environmental laws, setting strict environmental targets for local

leaders, verticalizing environmental governance, and organizing top-down nationwide enforcement campaigns, among other measures. Interestingly, while the government is often perceived as becoming increasingly repressive towards social movements, it has also strategically engaged societal actors to exert pressure on polluting firms and local environmental regulators. This is exemplified by granting NGOs the standing to pursue public interest litigation, demonstrating a careful balance between maintaining control and utilizing societal forces for environmental protection.

The judicialization of environmental protection can be seen as among the means to overcome local protectionism and strengthen central law enforcement. What stands in its background is a more general trend where the role of the judiciary has been elevated in Chinese politics. In Xi's era, the CCP has centralized power and consolidated its authoritarian rule. In the meantime, law and the judiciary have become a weapon to strengthen, rather than constrain, this authoritarian rule. Several core legal institutions, especially the judiciary, have become more empowered against other state and Party entities, partly as a tool for the central to control local governments (Zhang and Ginsburg, 2019). The last decade has witnessed the increased financial independence of both the courts and the procuratorates from local governments, expanded courts' jurisdiction over administrative disputes, the creation of circuit courts, greater authority for the SPC to interpret statutes, expansion of the scope of judicial review, substantially stronger enforcement powers, and heightened levels of legal proficiency and professionalism among judges. Besides these measures, the judiciary is also entrusted to handle environmental public interest litigation against local governments, which is believed to help monitor the behavior of local government and combat local protectionism in law enforcement.

Using a word frequency analysis (similar to Figure 3), Figure 8 documents that the increase in frequency of environmental protection related words closely coincides with the increase in judicial (centralization) reform related words, particularly from 2014 to 2018, suggesting a strong correlation of the two movements.

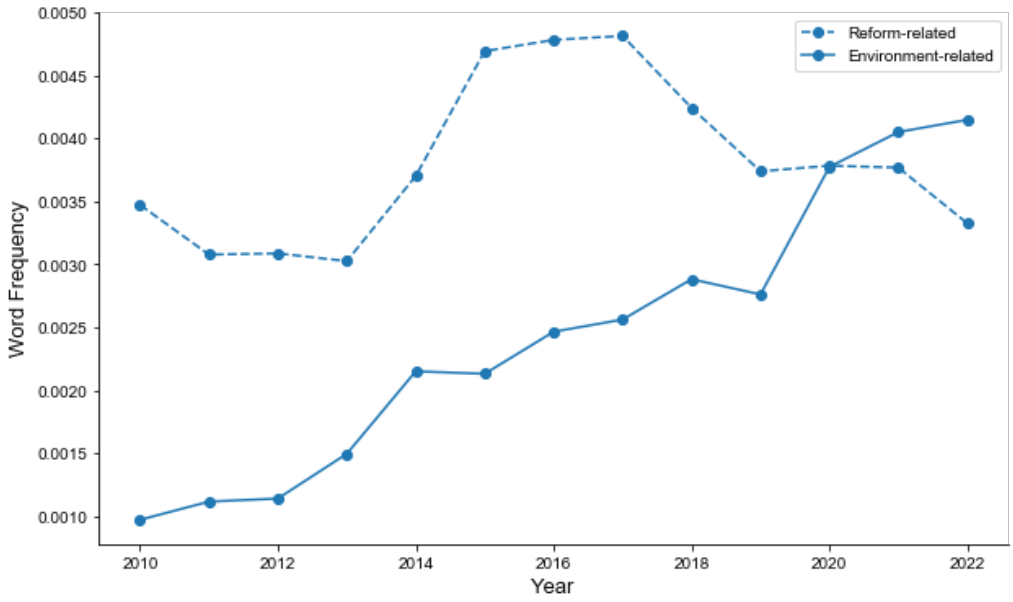


Figure 8. Word frequencies related to judicial reform and environmental protection in the Court Daily

Note: Environment-related words include: 生态(Ecology), 生态环境(Ecological Environment), 公益(Public Welfare),环境保护(Environmental Protection),环保(Environmental Conservation), 污染(Pollution), 绿色(Green), 环境污染(Environmental Pollution), 农业(Agriculture), 野生动物(Wildlife), 污染环境(Polluted Environment),公共利益(Public Interest), 海洋(Ocean), 生物(Biology), 自然资源(Natural Resources), 环资(Environmental Assets).

Judicial reform-related words include: 统一 (Unity), 规范 (Standardization), 责任(Responsibility),巡回 (Circuit),试点 (Pilot), 员额 (Quota), 责任制 (Responsibility system), 集中 (Centralization),配置 (Allocation), 职业化 (Professionalization), 人财物 (Personnel, financial, and material resources), 统管 (Unified management), 财物 (Financial and material resources), 编制 (Staffing quota), 入额 (Admission into staffing quota), 集中统一 (Centralization and unification).

Among the various measures implemented in the judicial reforms, fiscal and personnel centralizations play a particularly crucial role in enhancing the independence of both courts and procuratorates. These centralizations set the stage for the judicialization of environmental protection, promoting more effective and unbiased enforcement of environmental laws and regulations.

Fiscal and personnel centralizations aimed to enhance judicial autonomy by consolidating fiscal and personnel management of local courts and procuratorates at the provincial level. Before the reform, courts and procuratorates at the prefectural and county level were financially supported by their corresponding local governments. Personnel management was also at the local level, with local governments having

control over judges' and procuratorates' appointments. This system allowed local governments to exert budgetary and personnel controls over the courts and procuratorates, inevitably compromising their impartiality.

The reform centralized fiscal authority and personnel decision-making power by transferring their management to higher-level (usually provincial level) governments. This shift aimed to weaken the influence of prefectural and county/district governments over the courts by depriving them of direct control. Under the centralization reform, financial planning, budgetary decisions, resource allocation, and personnel management are now primarily controlled by higher-level governments, making local judiciary and procuratorates less reliant on local governments. Studies have found that local courts are more likely to rule against local governments in administrative litigation (Zhang and Liu, 2023), and they are less likely to rule in favor of local firms – a sign of significant reduction in local protectionism in judicial decision-making (Liu et al., 2023).

In addition to centralizing fiscal and personnel management, the judiciary has implemented a personnel quota system to enhance the quality of judges and emphasize their "lifetime accountability" for judicial decisions. Judicial accountability reforms have also granted judges greater autonomy, enabling them to decide the majority of cases without seeking approval from court leaders or the adjudication committee. These reforms collectively aim to safeguard frontline judges from external influences, particularly those exerted by local governments, and help to address the problem of local protectionism.

4.3 The effective top-down control within the judiciary

A more autonomous judiciary is indeed beneficial for reducing the persistent challenges posed by local protectionism in environmental law enforcement. However, autonomy alone is not sufficient. To effectively implement the policies of the central government, a strong top-down control within the judiciary is also essential.

Within the judicial system, an array of mechanisms exists for higher-level courts to oversee subordinate courts, ensuring the enforcement of central laws and policies. The appellate system serves as the most prominent mechanism, enabling higher courts to correct lower courts' rulings by overturning decisions or remanding cases for retrial. For a lower court, having its decision reversed by a higher-level court constitutes a

grave error. Indeed, the appellate system reflects the professional nature of judicial institutions, granting courts a distinct advantage against illegitimate local interference—though not complete immunity. Courts tend to be less enmeshed in local power structures compared to most executive agencies, as they are legally and administratively bound to follow national laws under their superiors' interpretation.

The procuratorate employs a case approval system to exercise control, requiring lower-level procuratorates to obtain approval from higher-level procuratorates before undertaking specific actions. For instance, in a PIL case, issuing a procuratorial recommendation and initiating or withdrawing a lawsuit are all subject to approval. This system enables higher procuratorates to alleviate certain principal-agent issues, such as potential collusion between a lower-level procuratorate and a defendant leading to case withdrawal (Wang and Xia, 2023). In practice, procuratorates can also mitigate local interference through internal top-down intervention. When a PIL case is at risk of local interference, a higher-level procuratorate can reassign the case to another local procuratorate or to itself, reducing the local government's ability to influence the litigation process.

Both the courts and procuratorates in China are integral components of the bureaucratic government, embodying many of its bureaucratic characteristics. Within this hierarchy, they have established various top-down management institutions. One notable management scheme is the performance evaluation system. The SPC and each provincial high court exercise control over lower courts by setting comprehensive evaluation criteria applicable nationwide or within the provinces. This serves as the basis for annual assessments that measure the performance of local courts. These evaluations influence the promotion of local court leaders, thereby encouraging judges to adhere to central or provincial rules and policies.

The performance evaluation system within the procuratorial system is similar, exhibiting an even more bureaucratic nature than that of the courts. For example, the Supreme People's Procuratorate (SPP) and some provincial procuratorates have specifically instructed local procuratorates to bring more public interest litigation cases against local government institutions.[2] Considering the top-down nature of the

[2] http://www.he.jcy.gov.cn/jcxw/jjyw/202309/t20230926_5963343.shtml
https://hn.rednet.cn/content/646743/62/13099600.html

procuratorial system, such requests place considerable pressure on local procurators to initiate more such lawsuits.

In their field study, Wang and Xia (2023) also found that provincial procuratorates often introduce "special projects" (zhuanxiang 专项), which are initiatives aimed at encouraging lower-level procuratorates to initiate specific types of public interest litigation. Examples of such projects include managing medical waste and reducing plastic bag usage. To gain recognition from higher authorities and generate positive publicity, provincial procuratorates usually design these projects based on the latest Party or Supreme People's Procuratorate (SPP) policies, as well as pressing issues highlighted in the media. Local procurators place significant importance on the additional rewards offered by special projects, and therefore, devote considerable time and effort to relevant cases.

The effective top-down control provides structural advantage for the judiciary, which is particularly pronounced when coupled with high-level political backing, such as national legislation or endorsements by higher-level leadership. Such support emboldens juridical institutions when dealing with polluting firms and local governments that shield these firms, and can be potentially effective in transforming legal outcomes into political consequences for violators.

5. Judicialization as A Legitimacy Enhancement Scheme

Until now, judicialization has been primarily portrayed as a top-down approach, with the central government attempting to rein in local wrongdoings. However, what has been less recognized by both commentators and practitioners is the potential of judicialization to serve as a legitimacy enhancement scheme, particularly for local governments and frontline regulators.

In the past decade, the Chinese population is increasingly attributing significant sociopolitical legitimacy to law and legal institutions, as the “explosion” in civil and administrative litigation in recent years suggests. The “legal awakening” of the people has led to the legal system gaining social prominence and prestige, which the government has only begun to grip with (Zhang and Ginsburg, 2019). Resorting to and empowering formal legal institutions have emerged as an important and often effective political strategy. By positioning itself as a champion of law and legalization against traditional bureaucratic arbitrary law enforcement, the government obtains a major

source of legitimacy. This is also true in the context of environmental governance, where a few particularly sensitive local government regulators have started to actively utilize judicialization to achieve their policy objectives.

5.1 Leveraging law to improve compliance

One example is what this paper labels as “leveraging.” Local government institutions sometimes proactively request the procuratorates to investigate them, hoping to leverage the latter's authority to pressure polluting firms to comply. Wang and Xia (2023)’s fieldwork provides a vivid example. A district environmental protection agency in Hubei once asked the procuratorate to initiate a public interest litigation investigation against its inaction in water and soil conservation. The agency's inaction was due to its lack of political influence to force a large university within its jurisdiction – which outranked the agency in the administrative hierarchy – to pay for water and soil conservation on its campus. Unwilling to confront the university independently, the agency requested the procuratorate to issue a formal recommendation against its "failure" to compel the university. The agency then forwarded the recommendation to the university, explaining that it was "required by legal authority" to penalize the latter for noncompliance. Under such a complex local inter-agency relationship, the regulatory agency obviously tries to leverage procuratorates' legal authority to navigate challenges and achieve its regulatory goals.

In fact, as shown by the data presented in Figure 9, civil environmental public interest lawsuits initiated by procuratorates or NGOs disproportionately targeted State-Owned Enterprises (SOEs) and politically connected firms. Out of 457 civil EPIL cases involving firm defendants between 2014 and 2021, 61% of them have SOEs and politically connected firms as defendants, compared to 9% in all commercial lawsuits. Presumably, the authority granted by the law has already been used as a tool to improve compliance of major polluters.

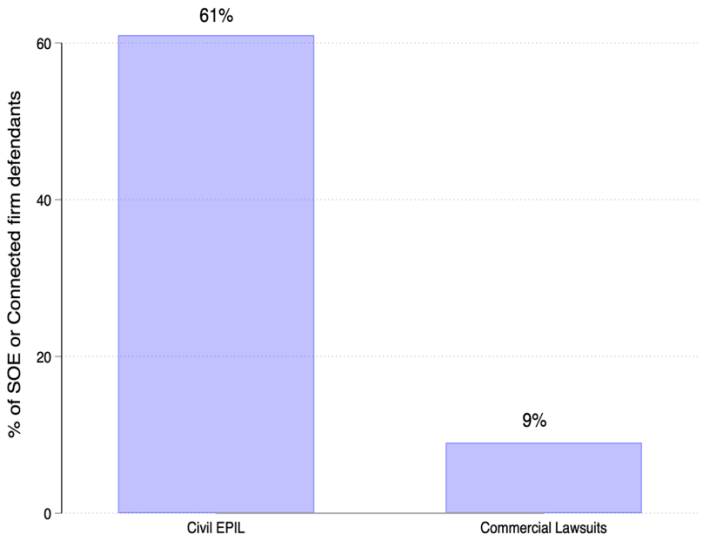


Figure 9. Proportion of State-Owned Enterprises (SOEs) and Politically Connected Firms as Defendants in Civil Lawsuits

Note: A firm is defined as politically connected if it has at least one procurement contract from different levels of governments since 2013.

More broadly, "leverage" also aligns with previous studies illustrating how public pressure can be used to enhance the enforcement of environmental regulations. In a nationwide field experiment, Buntaine et al. (2023) randomly appealed ongoing pollution violations to government regulators and the polluting firms. They discovered that privately informing either the local regulator or the polluting firm had a limited impact. However, calling both parties together (while making the firm aware of their appeal to the government) significantly reduced the likelihood of future pollution violations – harnessing external factors can be effective in bolstering law enforcement efforts.

Legitimacy enhancement also helps explain why collaborations between local government agencies and local procuratorates that try to investigate them are not uncommon – sometimes, local government agencies proactively help local procuratorates to identify case leads, conduct investigation of the polluting firm, and even provide evidence that is unfavorable to the agency itself. In fact, many administrative PIL cases initiated by procuratorates arise through formal or informal agreements between the procuratorate and the government agency being sued. Some procuratorates manage to establish long-term information-sharing agreements with

specific agencies, assisting procurators in identifying shortcomings in the agencies' official actions. One example of such collaboration is in Hubei, where regulatory agencies have agreed to upload their internal administrative information to an online platform accessible by procuratorates. This platform allows procurators to review administrative penalty decisions, including those made by regulators against polluters. When procurators suspect penalties are insufficient or ineffective, they send teams to verify whether the pollution has ceased. These inspections often reveal ongoing pollution, leading to PIL inquiries against both the firms and the regulatory agencies (Wang and Xia, 2023).

Local government agencies also play an active role in supporting procuratorates and NGOs during the litigation process, particularly in the collection of evidence. For example, in Guangzhou, the Tianhe District Environmental Protection Bureau, Tianhe District People's Procuratorate, and Guangdong Provincial Environmental Protection Foundation have entered into a collaborative agreement. Under this agreement, the Environmental Protection Bureau is committed to offering technical consultation and support in the investigation and evidence collection process, specifically assisting the procuratorate and the foundation in environmental public interest litigation. The parties involved explicitly state that this collaboration is aimed at tackling the challenges associated with evidence collection and reducing the costs associated with public interest litigation.[3] Similar collaboration schemes can also be found in any other cities, including Chengdu[4] and Chongqing[5].

5.2 Building a legalistic image

Another example of legitimacy enhancement is when local governments utilize litigation as a platform to demonstrate their deference to the law, which in turn, enhances their overall image. Despite having various regulatory tools at their disposal, governments actively engage in public interest *civil* litigation against polluting firms, which may appear perplexing at first glance. One example is Shenzhen Municipal Bureau of Ecology and Environment vs. Dehuibao Electronics (Shenzhen) Co., Ltd. In 2021, the Bureau initiated this environmental civil public interest lawsuit in the

[3] http://sthjj.gz.gov.cn/qxxx/thq/content/post_2901146.html.
[4] http://www.jinniu.gov.cn/jinniu/c107145/2022-04/25/content_614c4fe5098f40c3abba930e56de9dab.shtml.
[5] http://www.cq.jcy.gov.cn/sthwhycbh/202205/t20220512_3659605.shtml.

Shenzhen Intermediate People's Court. In an on-site inspection, the Bureau had found that the defendant's wastewater collection pond and acidic waste liquid collection pond were leaking, causing severe pollution to water and soil. The Bureau requested the court to injunct the defendant's illegal environmental acts, order the defendant to repair the damaged soil and groundwater, and make compensations.[6]

According to environmental protection laws, the Bureau already has the authority to order the defendant to cease illegal activities and impose administrative penalties. The compensation amount requested in the lawsuit is not greater than the statutory fine. Therefore, litigation does not result in an increase in compensation, nor is it necessary to issue an injunction against the company's polluting behavior. In fact, once the court issues its judicial decision, it relies on the Bureau's assistance in enforcing it. Given these facts, the question arises: what is the purpose of pursuing a seemingly superfluous lawsuit?

Presumably, the Bureau initiated the civil public interest lawsuit to promote and build its image as an entity that acts in accordance with the law, thereby gaining public trust. In fact, the Bureau orchestrated a series of publicity events surrounding the litigation. The case has been reported as the "first civil environmental public interest litigation case in Guangdong Province" and has garnered widespread publicity.[7] Provincial and municipal People's Congress representatives, along with staff from the Bureau, were invited to attend the court hearing – an uncommon occurrence in ordinary cases, but a clear indication of a planned publicity effort. The crux of the issue lies in legitimization: the public endorsement from the court serves to enhance the regulator's legitimacy. The emphasis on legality and legal legitimation is a straightforward response to the underlying social sentiment – the Chinese people has increasingly trust in the law and formal legal institutions.

6. The Ambivalence toward Judicialization

The previous sections have explored the potentially significant impact of the judiciary on environmental governance. However, both the central and local governments appear to be ambivalent about adopting complete judicialization. They maneuver the scope and reach of environmental litigation cautiously, resulting in a limited number

[6] https://m.thepaper.cn/newsDetail_forward_16091189.
[7] https://m.thepaper.cn/newsDetail_forward_16091189

of cases in environmental litigation, as well as limited actual effect in improving environmental governance. The dynamics behind the government's tight control and even suppression of environmental litigation further illustrate the political economy of China.

6.1 The caution against class lawsuit and other collective actions

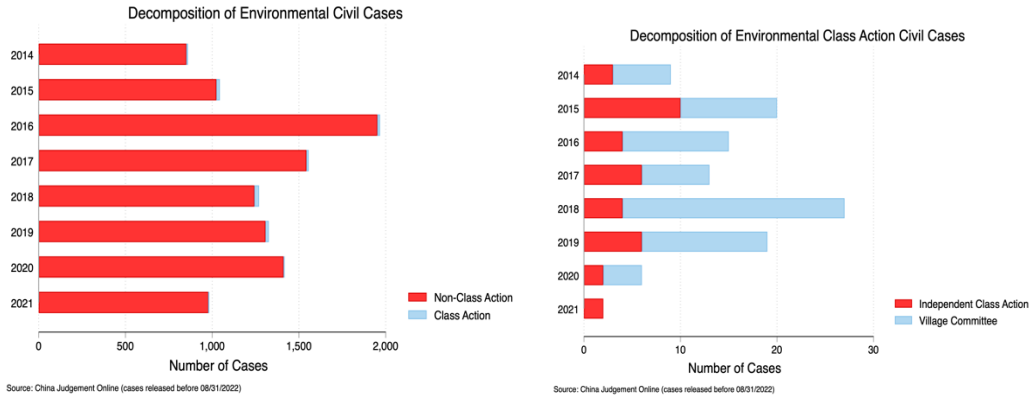
In many other countries, environmental lawsuits against major polluters typically happen in the form of class action, where the plaintiff consists of a large number of individuals who were victims of the pollution incident, and the defendant being the polluter violating the environmental law. In fact, the judiciary can only fulfill its full function with class actions. Class actions promote access to justice for individuals who may not have the resources to pursue individual lawsuits. By pooling their resources and sharing legal costs, plaintiffs in class actions can level the playing field against well-funded defendants, ensuring that justice is not reserved only for those with deep pockets. Additionally, class actions help to deter wrongdoing by holding defendants accountable for their actions. When a large group of individuals comes together in a class action, it sends a powerful message to potential wrongdoers that they will be held responsible for their actions. This can serve as a deterrent and help prevent similar harm from occurring in the future.

However, the fear of collective action and social movement is so entrenched in the Chinese governance system that any institutional arrangement that may facilitate collective action will be greatly constrained, if not completely dismantled. Class actions are indeed closely associated with the notion and practice of collective action. They enable individuals with similar claims or grievances to come together as a group and collectively seek redress or compensation for their harm. In other words, class actions empower the public and harness the power of the masses. Consequently, it is a common practice for local courts to actively discourage the filing of class lawsuits (Ng and He, 2017). An obvious incentive is to contain the usage of class actions and other collective actions seen as undermining social stability.

Moreover, if citizens learn about the effectiveness of class action in environmental cases, they might apply the same weapon to other domains of public interest, especially by bringing up administrative lawsuits against government misbehavior. And the effectiveness of class actions may also educate the public and result in

collective actions in other forms. While environmental protection is currently a domain where citizens are allowed relatively more freedom of expression, there are topics considered more sensitive by the government, where a potential class lawsuit could cause devastating consequences. For example, a class lawsuit against government actions during COVID would likely have strong legal merits, and the costs of losing such cases would likely be "unacceptable" from the government's perspective, both politically and economically. Given such tradeoffs across different domains, it is not surprising that the government suppresses the usage of class lawsuit in environmental protection, despite the potential benefits in this particular domain.

Given this background, it is not unexpected that environmental class action lawsuits (or, more accurately, representative lawsuits) remain rare in China, with fewer than 100 cases annually, as demonstrated in Figure 10. In fact, the majority of these cases are initiated by village committees. These committees are quasi-governmental organizations that can be easily controlled and influenced by local governments as compared to litigants in independently motivated class actions. The limited number of class action cases is unlikely driven by a lack of demand, given the ubiquitous anecdotes of pollution incidents causing harm to citizens at large scale.



Panel A. Time Trend **Panel B. Cases Breakdown by Plaintiff Types**

Figure 10. Environmental Class Action Civil Litigations

6.2 The conflict with regulatory flexibility and speediness

Judicialization faces intrinsic conflicts with the flexibility and speediness of a regulatory regime. This further contributes to the government's ambivalent attitude toward an in-depth judicialization. Refraining from reliance on law, the government

is able to maintain a high degree of flexibility in the enforcement of regulations. The nature of law makes the judicial institution a powerful yet rigid weapon in the government's toolkit, in the sense that holding the legal codes constant, similar violations across space and over time are expected to receive similar rulings, in order for the decisions to be considered "just." Such rigidity can be undesirable for the government, who usually wants certain flexibility to selectively enforce regulations, such as favoring some polluting firms over others, or relaxing the stringency of regulation enforcement during economic downturns.

When relying on conventional regulatory tools for environmental protection, such as conducting audits and issuing fines, the regulators can easily maintain their flexibility. As shown by He et al. (2020), regulators can impose vastly different environmental standards on otherwise identical firms adjacent to each other, based on whose emissions would be reflected in the regulators' performance evaluations. Similarly, instead of enforcing the same environmental equally across all firms, the regulators tend to concentrate their efforts on the pollution violations that receive more public scrutiny, which likely reflects their competing goals of balancing economic growth and social stability (Buntaine et al., 2023). Having discretion over when and where to impose stringent environmental standards is a key reason why regulators prefer ad-hoc policy tools over formal environmental lawsuits.

The speed of adjustment is another factor that leads the government to favor regulatory tools over legal ones. In the case of China, most major policy initiatives over the past decade unfolded in a "campaign-based" manner, such as the anti-corruption campaign, the poverty eradication campaign, and of course, the war on pollution. A major advantage of such campaign-based policy initiatives is that, given how strong and salient the political incentives are, progress can be made rapidly. For instance, in the case of the "war on pollution," after its announcement in 2014, specific environmental targets were set and assigned to each prefecture city within weeks, and local politicians were held personally accountable for not meeting such assigned targets. As a result, significant improvements in air quality nationwide already became visible just in the same year.

In contrast, improving environmental outcomes through formal legal institutions and judicialization can be a much more time-consuming endeavor. Revising environmental laws would involve a lengthy process that includes drafting bills,

internal discussions, circulation among government bureaus, absorbing opinions from the public, three deliberations by the National People's Congress (NPC) Standing Committee, and discussions and approval by the NPC or its standing committee. This process can take several years to complete. In fact, the establishment of the environmental public interest litigation system in China went through a long legislative process that took over a decade. And this does not even account for the fact that initiating litigation against polluters is also a lengthy process, taking several months or even years to resolve.

As a result, pollution reductions achieved through judicialization means take much longer to materialize compared to those achieved through national campaigns, such as the campaign for blue sky. In fact, being able to bypass the law and make faster progress is hailed by the Chinese government as part of its institutional advantage, and successes of such campaigns in areas such as environmental protection implicitly enabled the Chinese government to launch such campaigns in other domains, sometimes less successfully.

7. The Limited Capacity of the Judiciary

In addition to external factors deliberately or inadvertently suppressing the role of the judiciary, there are a range of inherent limitations that hinder its ability to effectively fulfill a crucial role in environmental governance. These limitations encompass both political aspects, such as the lack of judicial independence, and technical aspects, such as the lack of information and expertise.

7.1 Limited judicial independence

While judicial reforms have made progress in enhancing judicial autonomy, it would be naive to assume the judiciary can be independent from the local party-state and sever its influence. The judicial reforms are effective but have obvious limitations. For example, while the reform of court personnel has successfully centralized the authority to appoint frontline judges, local Party officials and the CCP's Organization Department continue to wield considerable influence over the appointment of court presidents and vice-presidents. This, in turn, affects personnel management in every court within their respective administrative regions. Financial reforms remain incomplete, as many courts continue to heavily rely on local government support for daily operations and judges' compensation, particularly bonuses. In fact, most courts

still require financial assistance from local governments to secure infrastructure and support staff (Wang 2021; Meng, 2023; Zhang and Liu, 2023).

The most significant factor perpetuating local courts' structural dependence on same-level party-states is the party-state's own reliance on its horizontal line of power concentration and hierarchy (Meng, 2023). The primary objective of implementing these reforms was not to enhance judicial autonomy, but rather to consolidate the power of the Party by asserting tight control over various aspects of Chinese society, including the legal system. The reforms were never intended to, nor can they ever achieve, the establishment of an independent judiciary.

It is not surprising, then, to observe various informal channels through which local governments and other external actors continue to influence procuratorate and judicial decisions, particularly in cases involving high political or economic stakes. Environmental protection litigation cases are deeply entrenched in the local party-state's political dynamics, much like numerous other legal matters. Courts still face resistance and intervention from local entities (Shi and van Rooij 2016; Ng and He, 2017), and procuratorates are pressured by local leadership to drop cases against illegal land use approvals, leading to local procuratorate abandoning the cases and refraining from pursuing similar lawsuits in the future (Wang and Xia, 2023).

7.2 Limited information and expertise

The juridical organs, both the procuratorates and the courts, also face limitations in terms of information and expertise. These limitations undermine their effectiveness in combating local governments and addressing the problem of local protectionism in environmental governance.

In contrast to government regulators, procuratorates and courts lack a formal and regular information channel for collecting production and pollution data from firms. Consequently, it becomes challenging for them to identify potential cases for investigation. In practice, procuratorates often rely on collaborations with local government agencies to discover leads and initiate investigations and litigation. Many administrative public interest litigation cases initiated by procuratorates stem from formal or informal agreements with government entities. This is why some procuratorates and courts have to establish long-term information-sharing agreements with specific agencies, enabling them to identify instances of polluting behavior by

firms, as well as shortcomings in the agencies' official actions (see also the discussion in Section 5).

Citizens can play a critical role in identifying violations of environmental laws, as they often have firsthand experience with pollution in their communities. Research has demonstrated that rural residents in China are often aware of local pollution and law-breaking, and urban residents have been able to uncover relevant information when their local government violated environmental impact assessment procedures (van Rooij et al., 2012). In established democracies, this bottom-up information can be utilized to hold polluting firms accountable through private litigation, particularly class action lawsuits. Public participation, whether through elections or civil society, plays a significant role in ensuring accountability for officials' environmental actions. However, in China, these information channels have been increasingly stifled, and the government has become more repressive towards citizens' collective action, whether through class litigation or civil movements. In other words, the mechanism for obtaining such information has been severely disrupted.[8]

Procuratorates do not possess the legal authority to compel private parties to comply with their investigation requests. In the process of public interest litigation, procuratorates (and NGOs) also rely heavily on local government agencies to collect crucial evidence in environmental cases. Many of these cases also require technical evidence that can only be gathered through professional testing, which is typically beyond the expertise of most procuratorates and NGOs. Due to the scarcity and expense of commercial testing services in many areas, relevant government agencies—such as environmental protection bureaus and water authorities—often serve as the primary sources of technical evidence for these plaintiffs (Wang and Xia, 2023). However, the assistance provided by these agencies is largely discretionary, as no national laws compel them to collaborate with the procuratorates and NGOs. This grants these government regulators considerable leverage over procuratorates and

[8] While China tolerates or even encourages non-governmental organizations (NGOs) to participate in local environmental governance, such involvement is typically cautious, limited, and constrained in terms of formality and focus. The fact that NGOs are legally authorized to bring public interest litigation (PIL) against private parties, but not against government agencies, highlights the limitations of civil society in enhancing environmental accountability within the local party-state. Consequently, juridical institutions, such as courts and procuratorates, emerge as some of the few actors possessing a degree of autonomy from local governments and the ability to hold them accountable.

NGOs. Similarly, courts also face challenges when assessing damages in environmental litigation. In practice, it is often difficult for courts to find qualified experts to evaluate damages, particularly in cases involving air pollution and harms to human health. As a result, courts frequently rely on government agencies to provide professional opinions, which diminishes judges' role in determining the case's outcome.

The lack of information and expertise significantly hinders the judiciary's ability to address the local protectionism problem – the problem which the central government intends to tackle through judicialization in the first place. Occasional interventions from local party-state leadership further diminish the judiciary's effectiveness in this regard.

Discussion and Conclusion

This paper combines various sources of data to present an overview of the complex landscape of the judicialization of environmental governance in China. It investigates the dynamics underlying the puzzling promotion-suppression duet in this process.

The analysis in this paper provides a unique perspective to understand the broader institutional features underlying China's governance model. China has relied primarily on administrative regulation for implementing central policies, placing less emphasis on achieving governance objectives through the judiciary. Over the past decade, in order to consolidate its power, the central government has sought to enhance legalism and the role of courts. The nature of the law dictates that legalism and judicialization foster centralization and unification – laws are designated by the central government and must be uniformly applied across the country. Although local courts may exhibit differences in the application of law, their level of discretion is relatively small compared to the other agencies within the government.

In practice, the principles of legalism and judicialization clash fundamentally with China's deeply entrenched regulatory regime. Within this regime, administrative authorities wield significant power and can adjust law enforcement based on local conditions, rendering policies more adaptable. Local politicians compete for career advancement based on local economic growth (Montinola et al., 1995; Qian and Weingast, 1997; Li and Zhou, 2005; Xu, 2011; Wang and Yang, 2021). The regulatory regime enables them to exercise local protectionism (Zhou, 2004, 2014), and routinely

make “special deals" with important local firms to help them bypass the judicial system and obtain timely support (Bai et al., 2020).

From the central government's standpoint, on one hand, it aims to consolidate its influence, curb local protectionism, and bolster environmental governance by reinforcing legalism and judicialization. On the other hand, the central government does not want legalism to jeopardize social stability or local economies. Concurrently, the central government highly values efficiency and the speed of policy implementation, demonstrating a tendency for campaign-style governance—attainable only through a regulatory regime.

Given this background, legalism and judicialization subsist within the interstices of judicial-administrative and central-local relations, inevitably struggling to find equilibrium and a secure footing for advancement.

Scholars have debated whether China, under Xi's era, is moving towards or away from the law. Some believed that, as the central government consolidated its political control, the country has turned further against the rule of law, leaving the government’s political power unbound by the judicial system (Minzner, 2011, 2015, 2018; Ringen, 2016; Zhang, 2016; Shirk, 2018). Others believed that the systematic shift towards legalism and judicialization is the predominant trend, despite the simultaneous political centralization (Zhou, 2017; Chen, 2018; Zhang and Ginsburg, 2019; Supreme People’s Court, 2019; Liu et al., 2023). Our research indicates that even if the central government aspires to uphold the role of the law, legalism and judicialization will likely confront hindrances from existing institutional factors. This situation imposes profound challenges to the implementation of legalism and the achievement of any intended institutional design objectives of judicialization.

The adoption of legalism and judicialization in environmental protection in China can by no means be equated with the concept of "the rule of law." Rather, it represents a strategic employment of law and courts as a means to implement environmental policy, with careful management of the extent of its application. In essence, this shift towards legalism signifies the government’s adherence to "the rule by law," a system that emphasizes the instrumental value of the law, rather than a commitment to the rule of law, where the law assumes supremacy in governance.

The analysis in this paper also suggests that legalism, without the genuine rule of law,

grapples with addressing the deeply entrenched issues present within the Chinese political and governance system. The judiciary's precarious position in environmental governance serves as just one example. Lacking true judicial independence, the judiciary can hardly function effectively as a tool for enforcing environmental laws, combating protectionism, or guaranteeing environmental protection.

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