

**A CHANGING ENVIRONMENT IN CHINA: THE RIPE
OPPORTUNITY FOR ENVIRONMENTAL LAW CLINICS TO
INCREASE PUBLIC PARTICIPATION AND TO SHAPE LAW
AND POLICY**

*Nicholas J. Schroeck**

Introduction.....	1
I. Environmental Pollution and Fundamental Changes to Chinese Environmental Law	2
China’s Revised Environmental Protection Law.....	3
II. Environmental Policy and the Essential Role of Environmental Law Clinics.....	5
United States Environmental Law Clinics Working for Environmental Justice.....	8
III. United States Environmental Law Clinics as a Model for China to Confront the Persistent Challenge of Environmental Protection.....	10
Increased Opportunity for United States and Chinese Law Schools to Partner on Environmental Law Clinics	15
Conclusion	16

INTRODUCTION

The 2014 revision of China’s Environmental Protection Law provides greater opportunity for Chinese environmental law clinics to participate in the development of environmental law and policy and to train the next generation of Chinese environmental advocates. The revisions to the Environmental Protection Law allow clinics increased access to pollution data and more information on government decision-making and enforcement. Building on the experiences of United States environmental law clinics, China can develop or expand existing clinics to help navigate

* Nicholas J. Schroeck. Assistant Clinical Professor, Director of Transnational Environmental Law Clinic, Wayne State University Law School. Thank you to former Clinic students David Furman, Kyle Bredell, and Justin Sterk for their research assistance.

the political and economic barriers to change. As environmental law clinics in China grow in strength and effectiveness, they will likely face the same headwinds that have often plagued clinics in the United States. During this era of great change in China, partnership opportunities abound for United States law schools and Chinese law schools to learn bilaterally from faculty exchanges, litigation trainings, and collaborative scholarship.

I. ENVIRONMENTAL POLLUTION AND FUNDAMENTAL CHANGES TO CHINESE ENVIRONMENTAL LAW

Decades of dynamic economic growth have created an environmental crisis for the People's Republic of China (PRC).¹ Years of corruption, failed enforcement, and political barriers have produced an environmental and public health emergency.² Less than one percent of the 500 largest cities in the PRC meet the air quality standards recommended by the World Health Organization.³ Seven of these cities rank among the ten most polluted cities in the world.⁴ Coal consumption provides 70 percent of China's energy needs, which is a main culprit in the degradation of air quality.⁵ Approximately 4,384 deaths per day result from the effects of these severe air pollution conditions.⁶ Further, in 2006 China surpassed the United States to become the world's largest emitter of greenhouse gases.⁷

Regrettably, air quality degradation is only one of a multitude of serious environmental crises facing the PRC. A 2006 report released from the Chinese Embassy in Great Britain revealed that 70 percent of China's rivers and lakes are polluted.⁸ In addition, 90 percent of underground water

1. Eleanor Albert & Beina Xu, *China's Environmental Crisis*, COUNCIL ON FOREIGN RELATIONS (Jan. 18, 2016), <http://www.cfr.org/china/chinas-environmental-crisis/p12608>.

2. Tyler Roney, *Will China's New Environmental Protection Law Make a Difference?*, THE DIPLOMAT (Apr. 25, 2014), <http://thediplomat.com/2014/04/will-chinas-new-environmental-protection-law-make-a-difference/>.

3. QINGFENG ZHANG ET AL., ENVIRONMENTALLY SUSTAINABLE DEVELOPMENT IN THE PEOPLE'S REPUBLIC OF CHINA 8 (Asian Development Bank 2011).

4. *Id.*

5. Albert & Xu, *supra* note 1.

6. ROBERT ROHDE & RICHARD MULLER, BERKELEY EARTH, AIR POLLUTION IN CHINA: A MAPPING OF CONCENTRATIONS AND SOURCES 1 (2015), <http://berkeleyearth.org/wp-content/uploads/2015/08/China-Air-Quality-Paper-July-2015.pdf> (stating air pollution contributes to about 1.6 million deaths/year).

7. *China Overtakes U.S. in Greenhouse Gas Emissions*, N.Y. TIMES (Jun. 20, 2007), <http://www.nytimes.com/2007/06/20/business/worldbusiness/20iht-emit.1.6227564.html>.

8. Miao Hong, *China Battles Pollution Amid Full-Speed Economic Growth*, EMBASSY OF CHINA IN THE U.K. AND N. IR. (Sept. 29, 2006), <http://www.chinese-embassy.org.uk/eng/zt/Features/t274443.htm>.

resources in Chinese cities are contaminated.⁹ The Embassy estimates that more than 300 million PRC citizens have no access to clean water.¹⁰

Land degradation has further exasperated the environmental crisis in China. The Chinese State Forestry Administration has stated that due to climate change, population increase, and economic development, desertification affects some 400 million PRC citizens.¹¹ As of 2013, desertification has consumed 27.36 percent of the total land area in China.¹² Contamination of agriculture production is a significant problem facing the PRC. Significant mining, metal smelting, and industrial processes have contaminated soil in the PRC with heavy metals, including cadmium.¹³ In 2006, the PRC commissioned a special investigation conducted by the Ministry of Environmental Protection and the Ministry of Land and Resources to examine the levels of heavy metal contamination in the PRC's soil.¹⁴ Nevertheless in 2013, following the completion of the investigation, the PRC refused to release the results and declared their findings a national secret.¹⁵ However, Zhou Shengxian, the head of the Ministry of Environmental Protection, revealed that heavy metals pollute 12 million tons of crops each year.¹⁶ Furthermore, irrigation crops with polluted water or solid waste contaminates 150 million metric units¹⁷ of arable land each year.¹⁸ Severe pollution has prompted over 51,000 public disputes, which the PRC views as a "great threat to public stability."¹⁹

China's Revised Environmental Protection Law

In light of these many challenges, the year 2014 brought pivotal change to Chinese environmental law and policy. Following years of debate, the Central People's Government of the PRC passed the first revision to

9. *Id.*

10. *Id.*

11. Elizabeth Economy, *The Case of China and the Global Environment*, in *POWER REALIGNMENTS IN ASIA: CHINA, INDIA AND THE UNITED STATES* 70, 73 (Alyssa Ayres & C. Raja Mohan eds., 2009).

12. Cheng Zhiliang, *Tree by Tree, China Rolls Back Deserts*, EMBASSY OF THE PEOPLE'S REPUBLIC OF CHINA IN ROM. (Sept. 29, 2007), <http://www.chinaembassy.org.ro/rom/xw/t356601.htm>.

13. JENNIFER HOLDAWAY & LEWIS HUSAIN, SOC. SCI. RESEARCH COUNCIL, *FOOD SAFETY IN CHINA: A MAPPING OF PROBLEMS, GOVERNANCE AND RESEARCH* 27 (2014).

14. *Id.*

15. *Id.* at 28.

16. *Id.*

17. Converts to 38,610 square miles.

18. *Id.* at 28.

19. Hong, *supra* note 8.

China's original 1989 Environmental Protection Law (EPL).²⁰ The 2014 revision delivers numerous updates to China's environmental law and has transformed the original EPL from 47 articles within six chapters, to 70 articles within seven chapters.²¹ The most notable additions include increasing civil society's role in environmental protection, a greater level of regulatory specificity, and new accountability provisions.²²

Chapter V of the revised EPL provides several improvements to the availability of environmental information and data. The Chapter V articles guarantee rights to environmental information requested by the public,²³ require applicable departments to disclose the requested data,²⁴ and mandate that industry disclose their emissions.²⁵ The process for preparing an environmental impact statement must include public engagement and publishing the statement upon completion.²⁶ The revised law further provides for fines for the failure to disclose this important information.²⁷

The revised EPL also provides standing for public interest environmental organizations to engage in litigation. In granting standing, the law requires that the organization must specialize in environmental protection and public welfare activities, and must have done so for at least five years with no record of offense.²⁸ However, as discussed by Professor Tseming Yang, the success of public interest litigation has been quite limited. "There is limited availability of trained environmental lawyers to bring such cases. The courts have limited capacity to properly adjudicate them, in part because of pressing needs for judicial training on issues such as natural resource damages assessment and other technical . . . issues."²⁹

A judiciary willing to find parties liable for their actions is essential to the purpose and success of the revised articles. While Article 59 of the EPL imposes compounding penalties against polluters, it only obligates parties to pay penalties upon the order of a court.³⁰ Unfortunately, external

20. Tseming Yang, *The 2014 Revisions of China's Environmental Protection Law*, SWISS RE CTR. FOR GLOBAL DIALOGUE 1 (Oct. 16, 2014), http://media.cgd.swissre.com/documents/RDM_Oct2014_RevisionsofChinasEnvironmentalProtectionLaw_TYang1.pdf.

21. *Id.* at 2.

22. *Id.*

23. (中华人民共和国环境保护法) [Environmental Protection Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 24, 2014, effective Jan. 1, 2015) 8 P.R.C. LAWS 12 EPL art. 53.

24. *Id.* at art. 54.

25. *Id.* at art. 55.

26. *Id.* at art. 56.

27. *Id.* at art. 62.

28. *Id.* at art. 58.

29. Yang, *supra* note 20, at 4.

30. 8 P.R.C. LAWS 12 EPL art. 59.

interference in judicial decisions is commonplace in China. Local governments often interfere in judicial decisions in order to protect industries or litigants, or in the case of administrative lawsuits, to shield themselves from liability.³¹ The Communist Party further influences the judiciary through party discipline and approval of judicial appointments and decisions.³² The revised EPL's intent is to promote compliance and reduce delay in corrective action, but success depends on greater independence of the judiciary system.

The 2014 revisions to the EPL provide hope for the future. The new law delivers enhanced resources and opportunities for environmentalists, and reduces barriers to the enforcement and prosecution of offenders. These changes open the door for Chinese environmental law clinics to participate in the development of environmental law and policy, and to train the next generation of Chinese environmental advocates.

II. ENVIRONMENTAL POLICY AND THE ESSENTIAL ROLE OF ENVIRONMENTAL LAW CLINICS

The experience of United States environmental law clinics provides a model for the continued development of environmental law clinics in China. Clinical legal education in the United States is a relatively new concept. While the theory of introducing clinical experience into the legal curriculum dates back to the 1920s,³³ the concept did not become reality until the 1960s.³⁴ More recently, clinics formed to focus specifically on protecting the natural resources of the United States. The University of Oregon and the University of Colorado, in collaboration with the National Wildlife Federation, were the first universities to create environmental clinics during 1975 and 1978 respectively.³⁵ Today, approximately one out of five law schools in the United States operate environmental law clinics.³⁶

Environmental law clinics now serve an integral role in the protection of natural resources and in the prevention of pollution. The purpose of these clinics is two-fold. Foremost, clinical experience serves to train effective

31. *Judicial Independence in the PRC*, CONG.-EXECUTIVE COMMISSION ON CHINA, <http://www.cecc.gov/judicial-independence-in-the-prc> (last visited Sept. 28, 2016).

32. *Id.*

33. Peter A. Joy & Robert R. Kuehn, *The Evolution of ABA Standards for Clinical Faculty*, 75 TENN. L. REV. 183, 186 (2008).

34. *Id.* at 187–88.

35. Robert F. Kennedy Jr. & Steven P. Solow, *Environmental Litigation as Clinical Education: A Case Study*, 8 J. ENVTL. L. & LITIG. 319, 321 (1993).

36. Hope M. Babcock, *How Judicial Hostility Toward Environmental Claims and Intimidation Tactics by Lawyers Have Formed the Perfect Storm Against Environmental Clinics: What's the Big Deal About Students and Chickens Anyway?*, 25 J. ENVTL. L. & LITIG. 249, 250 (2010).

and ethical lawyers by guiding law students through actual client representation.³⁷ Further, the clinics work to “expand access to the legal system, either through development of new law or active representation, especially for those who could not otherwise afford legal help on environmental issues.”³⁸

Law clinics have shaped environmental law and policy in a variety of ways. For example, the Michigan Environmental Protection Act of 1970 (MEPA), was a pivotal law that gave standing to any citizen to bring an environmental suit to protect against the pollution, impairment, or destruction of the environment.³⁹ In collaboration with multiple environmental organizations, University of Michigan School of Law environmental students assisted in drafting the MEPA language and testified before the Michigan legislature in support of the Act. MEPA’s passage was in large part thanks to the work of law students. Their testimony addressed the fears and concerns of many parties who would have otherwise opposed the Act’s passage.⁴⁰ Environmental law clinics across the country have been similarly instrumental in effecting positive changes to federal and state environmental laws.

The function of environmental law clinics in the United States is fairly straightforward. The clinics may represent individuals, communities, and environmental organizations before state and federal courts and agencies. In the clinics, law students work under the supervision of licensed attorneys and professors.⁴¹ Clinical education offers students experience in the practice of environmental law and shaping of environmental policy. In many environmental law clinics, students begin their involvement in a project with research, factual investigations, interviews, and memorandum drafting. Early in the information gathering process, clinic students may submit Freedom of Information Act⁴² requests to state and federal agencies, and appeal information request denials if appropriate. Clinic students may also draft comment letters on permit applications, attend public meetings

37. Adam Babich, *Twenty Questions (and Answers) About Environmental Law School Clinics*, 22 PROF. LAW. 45, 46 (2013).

38. *Id.*

39. MICH. COMP. LAWS § 324.1701 (1994).

40. See JOAN WOLFE, A ‘HISTORY’ OF THE MICHIGAN ENVIRONMENTAL PROTECTION ACT OF 1970 AND A HISTORY OF THE INLAND LAKES AND STREAMS ACT 346 OF 1972 <https://dspace.nmc.edu/bitstream/handle/11045/10580/wolfe-history-of-mepa.pdf?sequence=6> (last visited Sept. 2, 2016) (explaining how the careful work and testimony of University of Michigan law students persuaded listeners of the bill’s merits).

41. See, e.g., *Environmental & Natural Resources Law Clinic*, VT. L. SCH., <http://www.vermontlaw.edu/academics/clinics-and-externships/ENRLC> (last visited Oct. 10, 2016) (explaining the experience that law students gain through learning under the supervision of licensed attorneys and professors).

42. 5 U.S.C. § 552 (2012).

and hearings, provide legislative testimony, and advise clients throughout the process.

Under the guidance and supervision of a licensed supervising attorney, the students may draft Notice of Intent to Sue letters and participate in all phases of litigation from drafting and filing complaints, motions, and briefs, all the way to settlement negotiations. Depending on the forum, students may participate in hearings and oral argument. The students participate in the full judicial process, and gain unparalleled experience in litigation and legal strategy.⁴³

The growth and expansion of environmental law clinics in the United States has not been without controversy. Clinics have faced interference from individual politicians, and local, state, and federal legislators due to the sometimes controversial environmental law and policy matters that they are engaged in. Those opposed to the clinics' work have applied political and economic pressure, seeking to limit the clinics' ability to properly represent clients.⁴⁴ Attacks on clinics have included attempts to defund the host law school,⁴⁵ disqualify the clinic from suit,⁴⁶ enact legislation severely restricting students from practice,⁴⁷ and dismiss clinical directors.⁴⁸ In 2010, in response to the work of the Tulane Environmental Law Clinic, the Louisiana legislature introduced Senate Bill 549. This Bill would have eliminated an estimated \$45 million in state funds for Tulane University, and prohibited civil clinics from filing suits, seeking monetary damages, or raising constitutional challenges.⁴⁹ Eventually, the Bill was struck down in Committee. Further in 2010, the University of Maryland School of Law faced a similar attack when their environmental clinic took on a case adverse to large agricultural interests, namely chicken growers.⁵⁰ The

43. See MICH. CT. R. 8.120 (permitting law students and law graduates to participate in judicial processes in Michigan courts).

44. Robert R. Kuehn & Peter A. Joy, *An Ethics Critique of Interference in Law School Clinics*, 71 *FORDHAM L. REV.* 1971, 1975 (2003).

45. *Id.* at 1982, 1986.

46. *Id.* at 1981–82.

47. *Id.* at 1984.

48. *Id.* at 1976.

49. Adam Babich, *Controversy, Conflicts, and Law School Clinics*, 17 *CLINICAL L. REV.* 469, 471 n.7 (2011).

50. See Gabriel Nelson, *Law Students' Role in the Farm Pollution Suit Angers Md. Lawmakers, Sparks Nat'l Debate*, *N.Y. TIMES* (Apr. 8, 2010), <http://www.nytimes.com/gwire/2010/04/08/08greenwire-law-students-role-in-farm-pollution-suit-anger-96381.html?pagewanted=all> (describing how the Maryland state Senate passed a bill threatening to remove \$250,000 from the University of Maryland's budget after the University of Maryland Environmental Law Clinic filed suit against the chicken farmers and requiring the clinic to report budgets and clients); see also *Waterkeeper All., Inc. v. Alan & Kristin Hudson Farms*, 278 F.R.D. 136, 137 (D. Md. 2011) (listing the University of Maryland Environmental Law Clinic as counsel for the plaintiff against a local chicken farm as well as Perdue Farms, Inc.).

Maryland House of Delegates threatened to withhold funding from the University if the clinic continued representing its clients in the matter.⁵¹ The House of Delegates ultimately dropped its threat.

Additionally, early attacks on law school clinics stemmed from the belief that clinics were pilfering business from licensed members of the bar.⁵² More recent attacks have generally stemmed from the “desire to protect the financial interests of clients, alumni, and university donors.”⁵³ Unfortunately, this interference—be it political or financial—will likely continue to impact environmental law clinic work so long as clinics continue to advocate in the public interest on law and policy development and enforcement of existing environmental laws.

Despite these headwinds, environmental law clinics in the United States have continued to play an important role in strengthening environmental law and policy and in holding government agencies accountable for regulatory failures and polluters responsible for their actions.

United States Environmental Law Clinics Working for Environmental Justice

Working toward environmental justice is an important mission for many environmental law clinics.⁵⁴ Environmental justice has been defined as the “fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”⁵⁵ Generally, law school clinics provide legal services to those who would otherwise be shut out of the legal system while providing students with hands on legal training. Environmental clinics are no exception; they allow students to deal with important environmental justice and policy issues. For example, the Transnational Environmental Law Clinic at Wayne State University Law School works closely with the Great Lakes Environmental Law Center to help solve the serious environmental problems facing low income Detroiters and Michiganders, who would

51. Karen Sloan, *Law Clinic Wins! Law Clinic (Sorta) Wins!*, NAT'L L.J. (Apr. 6, 2010), <http://www.nationallawjournal.com/id=1202475526596/Law-Clinic-Wins-Law-Clinic-Sorta-Wins>.

52. Babcock, *supra* note 36, at 261.

53. *Id.*

54. Hope Babcock, *Environmental Justice Clinics: Visible Models of Justice*, 14 STAN. ENVTL. L.J. 3, 6 (1995).

55. *Environmental Justice*, ENVTL. PROT. AGENCY, <https://www.epa.gov/environmentaljustice> (last updated Apr. 19, 2016).

otherwise be shut out of the legal system due to lack of resources and access.⁵⁶

Georgetown University Law Center became a leader in the environmental justice movement by creating an environmental justice clinic in 1991.⁵⁷ In the beginning, the school's Institute for Public Representation housed the clinic, which had traditionally emphasized civil rights and administrative law clinical practice.⁵⁸ Now, it is part of Georgetown Law's Community Justice Project.⁵⁹ Georgetown's Environmental Justice Clinic works to improve the public health and environmental conditions of economically disadvantaged and minority communities in the District of Columbia and to broaden support for environmental protection by linking community and grassroots activists in the environmental, public health, civil rights, and legal services areas.⁶⁰ The clinic procures its projects in different ways, including through its own research of environmental threats, community and neighborhood activists, local and national environmental groups, and political organizations.⁶¹ Specific projects have included representing residents of a housing project located near an abandoned coal plant in a clean-up effort,⁶² seeking correction of inappropriate pesticide use and handling of underground storage tanks near the Anacostia River.⁶³ As a result, the Environmental Justice Clinic at Georgetown Law has continuously provided students with practical training from fellows and faculty by working on their individual projects, attending seminars, drafting documents, and representing clients in both hypothetical and actual negotiations.⁶⁴

The University of Maryland Law School Environmental Law Clinic (Maryland Clinic) has also been engaged in environmental justice work. The Clinic recently released an environmental justice report for the state of Maryland,⁶⁵ finding that communities of color and low income communities often bear a disproportionate burden of environmental and

56. *Transnational Environmental Law Clinic*, WAYNE L., <http://law.wayne.edu/clinics/environmental.php> (last visited Mar. 21, 2016).

57. Babcock, *supra* note 54, at 33.

58. *Id.*

59. *Our Clinics*, GEO. L., <https://www.law.georgetown.edu/academics/academic-programs/clinical-programs/our-clinics/Community-Justice-Project.cfm> (last visited Mar. 18, 2016).

60. Babcock, *supra* note 54, at 38.

61. *Id.* at 40–41.

62. *Id.* at 45–46.

63. *Id.* at 46.

64. *Id.* at 51.

65. *Environmental Justice in Maryland*, U. MD. FRANCIS KING CAREY SCH. L., http://www.law.umaryland.edu/programs/environment/news/news_details.html?news=1566 (last visited Sept. 2, 2016).

public health hazards.⁶⁶ Through independent research of published studies and reports, interviews, and community meetings, students in the Maryland Clinic identified a number of examples of environmental injustice. The Students found that the state has done little to address the disparities seen in racially and economically vulnerable communities.⁶⁷

As in the United States, equal access to the decision-making process is essential to long term growth and prosperity in China. The struggle for environmental justice in the United States has demonstrated that equal access to decision-makers is easier in theory than in practice. Environmental law clinics in the United States have increasingly taken up the fight of environmental justice as part of their public interest mission.⁶⁸ They have developed the skills and strategies necessary to “offer high quality legal services to communities at risk from the disproportionate distribution of environmental harms, and they can function as catalysts for reform of the legal framework and institutions creating the disparities.”⁶⁹ High poverty communities and areas with predominately minority populations are most at risk of disproportionate distribution of environmental harms.⁷⁰ While China has a vastly different racial and ethnic fabric than the United States, there are lessons that Chinese environmental law clinics can draw upon from their American counterparts to address the many environmental justice concerns in a rapidly growing society. Environmental law clinics can play an important role in providing access and influence in environmental decision-making for underrepresented communities and to ensure fair treatment for marginalized citizens.

III. UNITED STATES ENVIRONMENTAL LAW CLINICS AS A MODEL FOR CHINA TO CONFRONT THE PERSISTENT CHALLENGE OF ENVIRONMENTAL PROTECTION

The rapid transformation necessary to steer China’s environment back from the brink will require massive expenditure of political and economic capital. Environmental law clinics can, and should, play an ever-expanding role in this necessary shift in Chinese environmental law and policy.

66. See generally JANE F. BARRETT ET AL., ENVTL. LAW CLINIC AT UNIV. OF MD. FRANCIS KING CAREY SCH. OF LAW, ENVIRONMENTAL JUSTICE IN MARYLAND 1 (Sept. 2015), http://www.law.umaryland.edu/programs/environment/documents/Envtl_Justice_in_Md_0915.pdf (stating that negative environmental effects disproportionately affect low income communities).

67. *Id.* at 7–9.

68. See, e.g., *Environmental Justice Clinic*, YALE L. SCH., <https://www.law.yale.edu/clinics/environmental-justice> (last visited Oct. 10, 2016) (illustrating that this particular clinic’s work addresses issues of environmental injustice).

69. Babcock, *supra* note 54, at 23.

70. *Id.* at 12 n.36.

Due to existing political and legal barriers in China, environmental law clinics face an uncertain future. The first major barrier for Chinese environmental law clinics, based on the United States model, is the Chinese political system. The Communist Party dominates the Chinese state and society. Its power rests on four pillars: control of the People's Liberation Army, the State Council, the National People's Congress (NPC), and the Chinese People's Political Consultative Conference.⁷¹ China's 1982 Constitution describes the NPC as the "highest organ of state power."⁷² The Constitution provides the NPC with the power to,

amend the constitution; supervise its enforcement; enact and amend laws; ratify and abrogate treaties; approve the state budget and plans for economic and social development; elect and impeach top officials of the state and judiciary; and supervise the work of the State Council, Military Commission, Supreme People's Court, and Supreme People's Procuratorate.⁷³

While the Constitution gives the NPC the right to "elect" top state officials, the Communist Party decides who will fill important positions, with the NPC merely ratifying those decisions.⁷⁴ Accordingly, with this structure, 85 percent of the current NPC deputies hold concurrent posts in the Communist Party, as state officials or civil servants.⁷⁵ As a guarantee of Communist Party control of the legislature, a member of the Communist Party's highest committee, the seven-man Politburo Standing Committee, serves concurrently as chairman of the NPC Standing Committee.⁷⁶

Since the 1989 Tiananmen Square protests, the Communist Party has made maintenance of social stability one of its top priorities, deploying an 800,000-strong police force under the Ministry of Public Security and a 1.5 million-strong paramilitary force to head off protests, or once protests erupt, to prevent them from spreading.⁷⁷ In addition, the Communist Party's Propaganda Department plays an essential role in censoring the media to prevent discussion of subjects, including environmental issues, which may

71. SUSAN V. LAWRENCE & MICHAEL F. MARTIN, CONG. RESEARCH SERV., R41007, UNDERSTANDING CHINA'S POLITICAL SYSTEM 3-4 (2013).

72. *Id.* at 7.

73. *Id.*

74. *Id.*

75. *Id.* at 8.

76. *Id.*

77. *Id.* at 13.

incite movements for change.⁷⁸ It is widely understood in the PRC that demanding political change is akin to “stroking a tiger’s whiskers and asking it for its fur.”⁷⁹ With a population of over one billion, the PCR currently has a mere 2,000 officially registered NGOs, while several thousand environmental organizations and businesses operate unregistered.⁸⁰

In addition to its political supremacy, the Communist Party maintains economic rule by controlling the issuance of loans from state-owned banks.⁸¹ By controlling loan issuance, the Communist Party manages where and when investment occurs. In order to insure proper capitalization within the state-owned banks, the Communist Party significantly restricts investment options of the people of the PRC.⁸² However, the Communist Party permits investment in real estate and wealth management products.⁸³ Party leaders believe that by allowing these investments, citizens will earn more and therefore consume more, increasing economic output.⁸⁴ However, as production increases, so too does the risk of harm to the environment. It is too soon to tell whether the current economic downturn in China will significantly reduce consumption and production.⁸⁵

Another barrier to the growth of Chinese environmental law clinics is students’ ability to participate in client representation. Students at United States law schools, pursuant to Student Practice Rules, have the ability to represent clients in litigation under the supervision of licensed attorneys.⁸⁶ Chinese law students are not currently allowed similar participation due to laws imposed by the NPC. Chinese law students may appear in court only in the role of a citizen representative, with limited access to documents and,

78. *Id.*

79. Zhao Chu, *The War Between the Government and the People over PX Projects in China*, CHINA CHANGE (Jun. 18, 2013), <https://chinachange.org/2013/06/18/the-war-between-the-government-and-the-people-over-px-projects-in-china/>.

80. *Maturing Environmental Movement Takes a Uniquely Chinese Approach*, WORLDWATCH INST., <http://www.worldwatch.org/maturing-environmental-movement-takes-uniquely-chinese-approach> (last updated Sept. 1, 2016).

81. Felix K. Chang, *China’s Economic Reforms and the Communist Party’s New Left*, FOREIGN POL’Y RES. INST. (Mar. 2014), <http://www.fpri.org/article/2014/03/chinas-economic-reforms-and-the-communist-partys-new-left/>.

82. *Id.*

83. *Id.*

84. *Id.*

85. Szu Ping Chan, *China Economy: Growth Targets in Doubt as Investment and Factory Output Stutters*, THE TELEGRAPH (Sept. 13, 2015, 2:03 PM), <http://www.telegraph.co.uk/finance/china-business/11861747/China-economy-growth-target-in-doubt-as-investment-and-factory-output-stutters.html>.

86. *See Student Practice Rules – Clinical Research Guide*, GEO. L., <http://guides.ll.georgetown.edu/StudentPractice> (last updated May 2016) (listing federal and state practice rules that permit law students to appear in court).

in some instances, clients.⁸⁷ Currently, among the clinics that do involve live client representation, most are oriented toward litigation and consultation; however, some focus more on policy-oriented projects.⁸⁸ The Committee of Chinese Clinical Legal Education has provided statistics showing that the vast majority of student interaction with clients is limited to legal advice and consultation.⁸⁹ For example, at the University of Zhongshan, the role of the environmental clinic is to conduct surveys of residents, enterprises, and government agencies for evidentiary use in policymaking.⁹⁰ Additionally, the students at the environmental law clinic at Renmin University seek to educate the public about relevant environmental laws and create “publicity” for the clinic.⁹¹ These clinics are in their infancy and may evolve and grow along with the laws in China aimed at environmental protection.⁹²

The EPL was originally passed by the NPC in 1983, and has had limited effect on protecting the environment in China. In contrast, the United States has implemented multiple, enforceable federal environmental laws. The suite of laws passed during the past half-century include: An Act to Improve, Strengthen, and Accelerate Programs for the Prevention and Abatement of Air Pollution (the Clean Air Act);⁹³ Federal Water Pollution Control Act (the Clean Water Act);⁹⁴ Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, Superfund);⁹⁵ Resource Conservation and Recovery Act of 1976 (RCRA);⁹⁶ Endangered Species Act of 1973 (ESA);⁹⁷ National Environmental Policy Act of 1969 (NEPA);⁹⁸ Federal Land Policy and Management Act of 1976 (FLPMA);⁹⁹ Toxic Substances Control Act of 1976 (TSCA);¹⁰⁰ and Marine Mammal

87. Cecily E. Baskir, *Crossing Borders: Creating an American Law Clinic in China*, 19 CLINICAL L. REV. 163, 177 (2012).

88. *Id.*

89. *Id.*

90. Cecily E. Baskir et al., *Chinese Clinical Legal Education: Globalizing and Localizing*, in CLINICAL LEGAL EDUCATION IN ASIA: ACCESSING JUSTICE FOR THE UNDERPRIVILEGED 37, 42 (Shuvro Prosun Sarker ed., 2015).

91. Peng Jiayu, *Environmental Law Clinic Carries Out “12 • 4” Environmental Laws Publicity and Consultation Activities*, RENMIN U. OF CHINA L. SCH. (Dec. 9, 2011), <http://www.law.ruc.edu.cn/article/?34916.html>.

92. *Id.*

93. Clean Air Act, 42 U.S.C. § 7401 (2012).

94. Federal Water Pollution Control Act, 33 U.S.C. § 1251 (2012).

95. Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 (2012).

96. Resource Conservation and Recovery Act, 42 U.S.C. § 6901 (2012).

97. Endangered Species Act, 16 U.S.C. § 1531 (2012).

98. National Environmental Protection Act, 42 U.S.C. § 4321 (2012).

99. Federal Land and Policy Management Act, 43 U.S.C. § 1701 (2012).

100. Toxic Substance Control Act, 15 U.S.C. § 2601 (2012).

Protection Act of 1972 (MMPA),¹⁰¹ among others. Importantly, many of the United States federal environmental laws include citizen-suit provisions, providing opportunities for citizen enforcement.¹⁰² Even with the 2014 revisions, the EPL is still far less reaching and lacks the total scope of the network of interconnected environmental laws established in the United States.

Significant failures in enforcement will continue to persist until the Communist Party changes its attitude toward accountability, or is forced to change by public pressure. Failed enforcement, intentional misreporting, corruption, and cover-ups have been normal business as usual in China.¹⁰³ China's decentralized economic strategy promotes local governments to collect taxes and introduce local policies, which are often counteractive to the Communist Party's stated environmental goals.¹⁰⁴ Local governments have favored rapid economic growth while disregarding environmental protection.¹⁰⁵

The Communist Party recognized these enforcement challenges when amending the EPL. The revised law increases transparency by requiring local governments and enterprises to make public environmental information, including information on environmental quality, environmental monitoring, incidents, licensing, penalties, and fees.¹⁰⁶ Heavy polluting enterprises are required to publicly disclose the names of principal pollutants discharged, method of discharge, concentration and amount of discharge, discharge that exceeds standards, and the construction or operation of pollution control technologies.¹⁰⁷ If properly enforced, these laws will facilitate greater public scrutiny of environmental pollution while facilitating enforcement actions aimed at restricting the activities of polluting enterprises.¹⁰⁸

The revised EPL provides protection to whistleblowers in an attempt to encourage officials from the Ministry of Environmental Protection to carry out their duties properly and lawfully.¹⁰⁹ Any citizen, legal person, or other

101. Marine Mammal Protection Act, 42 U.S.C. § 1361 (2012).

102. See 42 U.S.C. § 7604 (providing for citizen-suit provisions in the Clean Air Act).

103. C. FRED BERGSTEN ET AL., CHINA'S RISE: CHALLENGES AND OPPORTUNITIES 80 (2009).

104. CHARLES W. FREEMAN III & XIAOQING LU, ASSESSING CHINESE GOVERNMENT RESPONSE TO THE CHALLENGE OF ENVIRONMENT AND HEALTH, CTR. FOR STRATEGIC & INT'L STUD. 9 (2008), https://csis-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/media/csis/pubs/080707_freemanchineseegov_web.pdf.

105. *Id.*

106. HOGAN LOVELL, CLEARING THE AIR ON CHINA'S NEW ENVIRONMENTAL PROTECTION LAW 1 (2014).

107. *Id.*

108. *Id.* at 2.

109. *Id.*

organization has the right to report environmental pollution or ecological damage caused by any institution or individual and the failure of any environmental regulatory body to perform its legal duties.¹¹⁰ In addition, local governments and local officials will be assessed on attainment of environmental protection targets as part of their performance evaluations, and the results will be made available to the public.¹¹¹ Government officials will be subject to heavier penalties for committing unlawful acts, such as granting permits where criteria are not met, covering up violations, failing to issue an order to suspend or cease operations in accordance with the law, or failing to disclose environmental information that is subject to public disclosure.¹¹² These changes to the EPL provide an opportunity for environmental law clinics to assist clients with information requests, analyze pollution data, and work to hold public officials accountable for failure to follow the law.

Increased Opportunity for United States and Chinese Law Schools to Partner on Environmental Law Clinics

As China becomes an ever-larger player on the world stage, the government will face increased pressure to adopt international legal customs and rule of law.¹¹³ The notion of a formal legal system is still blossoming in Chinese culture.¹¹⁴ Chinese society increasingly understands the importance of the rule of law, and there is great opportunity for United States environmental law clinics to partner with Chinese institutions to share experience and strategies for shaping environmental law and policy. Many law schools have already taken the lead and partnered with Chinese universities. Since the year 2000, over eighty law schools in the PRC have developed some type of clinical program.¹¹⁵

One encouraging partnership has developed between Vermont Law School (VLS) and Renmin University in Beijing. Since 2006, the two schools have worked together to further the actions of governmental and private organizations that address critical environmental and energy practices.¹¹⁶ The U.S.-Asia Partnership for Environmental Law at VLS

110. 8 P.R.C. LAWS 12 EPL art. 57.

111. 8 P.R.C. LAWS 12 EPL art. 26.

112. 8 P.R.C. LAWS 12 EPL art. 68, at 117.

113. Pamela N. Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 YALE HUM. RTS. & DEV. L.J. 117 (2005).

114. *Id.* at 122.

115. Baskir, *supra* note 90, at 174.

116. *U.S.-Asia Partnerships for Environmental Law*, VT. L. SCH. (Mar. 23, 2016, 6:50 PM), <http://www.vermontlaw.edu/academics/centers-and-programs/us-asia>.

describes itself as working “collaboratively with government institutions, non-government organizations, lawyers, judges, lawmakers and others to promote good environmental governance in Asia.”¹¹⁷ This two-way collaboration involves Renmin hosting American students, while VLS in turn hosts a number of Chinese judges.¹¹⁸ In an effort to address the lack of Chinese judicial knowledge on environmental law, the Chinese judges learn about American environmental law and adjudication.¹¹⁹ Thanks to a \$1.5 million federal grant, VLS also established the first public interest environmental law firm in the PRC, working in conjunction with the clinic at Renmin Law School.¹²⁰

The success of Chinese environmental law clinics will depend in large part on the emergence of highly skilled Chinese practitioners trained to ably navigate Chinese environmental law. There is a great opportunity for United States law schools to partner with Chinese law schools on faculty exchanges, litigation trainings, and collaborative scholarship. These partnerships provide mutual learning opportunities and assist Chinese clinicians with the growth of their programs.

CONCLUSION

The rapid expansion of China’s economy in the past few decades has created an imbalance of wealth distribution while at the same time causing significant environmental harm. The social and economic welfare of many Chinese citizens is in jeopardy from increased health problems, forced resettlement, and social unrest.¹²¹ As Chinese industry expands and the wealth gap increases, those unable to protect themselves from environmental hazards are often left defenseless. In many of these cases, environmental justice principles will play an important role in guiding representation and resources to underserved PRC citizens.

With the revisions to the EPL and the additional requirements placed on local and central governments, the environmental law clinic model has never had greater potential in China. The public and clinics, will have increased access to pollution and monitoring data than ever before. Chinese

117. *Id.*

118. *U.S. China Partnership at Vermont Law School*, VT. LAW. SCH., YOUTUBE (Sept. 21, 2012), <https://www.youtube.com/watch?v=X0jSCEJF5m4>.

119. *Id.*

120. *Vermont Law School Helps China to Open First Public Interest Law Firm*, VT DIGGER (June 15, 2010), <http://vtdigger.org/2010/06/17/vermont-law-school-helps-china-to-open-first-public-interest-law-firm/>.

121. Lei Xie, *Environmental Justice in China’s Urban Decision-Making*, 3 TAIWAN COMP. PERSP. 160, 160 (2011).

law clinics will be able to analyze data and to “watch the watchers” in government to ensure that proper enforcement takes place. Using the experiences of United States environmental law clinics as a guide, China can develop or expand clinics to help their country navigate the political and economic barriers to change.

There are significant challenges in creating Chinese environmental law clinics based upon the United States model. The Chinese legal system limits the ability of citizens and public interest advocates to affect social change. Control still ultimately rests with the Communist Party, with minimal rights for citizens. Corruption is still a significant barrier. But as China continues to reform its legal system to combat the current environmental and public health emergency, the opportunity for Chinese environmental law clinics to build upon the United States model and to influence and shape future law and policy is ripe for the taking.