Book Reviews


*Reviewed by Phillip Stalley*  
*DePaul University*

It is well known that China has both an authoritarian government and a tremendous environmental challenge. Less widely recognized, at least outside the community of Asian Studies scholars, is that over the last three decades the Chinese central government has pushed, albeit with varying degrees of enthusiasm, to establish a stronger and more comprehensive legal system. Rachel Stern’s important new book examines the relationship among these three elements: authoritarianism, pollution, and the legal system. Seeking to tease out how the three influence one another, Stern offers a succinct, insightful analysis of the role of environmental litigation in China. Based on extensive field research in China involving more than 170 interviews and the review of dozens of environmental legal cases, Stern’s work is a highly engaging portrayal of the legal system in action that simultaneously addresses questions of fundamental importance to Chinese politics and environmental protection. While scholars and graduate students are the book’s main audience, the cogent prose and deft use of examples make this book accessible to a far wider range of readers than the typical academic study. Upper-level undergraduate students and those with a general interest in China or law and society will find this book a valuable read.

Stern’s book starts with an important observation: China is a country of contradictions and conflicting aspirations. It is, for example, a communist country instituting capitalist reforms and a one-party political system in which there are nominally democratic experiments such village elections. Most relevant to Stern’s work, China’s leaders are seeking to gain the economic and social benefits of a strong legal system while simultaneously maintaining the Communist Party’s monopoly on political power. The central government is also aiming to protect the environment and avoid the social instability that widespread pollution causes, without sacrificing its primary mission of promoting economic growth. As Stern documents admirably, these contradictions lead to ambiguity and mixed signals from the political leadership about the value of public litigation. This ambiguity means that lawyers, judges, citizens, and activists have to tread lightly when considering environmental legal cases, but it also opens up space for innovation and experimentation in using the court system as a tool for environmental protection. This potential for innovation raises three vital questions, which are the focus of Stern’s book. To what extent does the legal system offer a viable option for
addressing China’s significant and growing pollution challenge? How useful is the law to Chinese citizens seeking to resolve environmental disputes? To what extent is the development of environmental litigation, and, more broadly, public interest law, changing the Chinese political system?

Her answers to each of these questions, which she addresses in seven empirical chapters, tend toward the pessimistic end of the spectrum. Despite the rapid expansion of China’s environmental law, and its legal system more broadly, the law is a tool with only a limited ability to protect citizens or the environment. In fact, Stern’s book leaves the impression that it is a minor miracle that any environmental dispute is ever resolved within the Chinese court system. In impressive detail, she analyzes a seemingly endless set of barriers that prevent Chinese citizens and activists from using the courts to address grievances and promote environmental protection. For instance, would-be plaintiffs have only three years from the initial discovery of a pollution-related loss to file a claim. The time they spend petitioning the local government or seeking administrative solutions, which is inevitably their first choice, counts toward the three-year limit. Moreover, there are few lawyers who specialize in environmental cases. Most lawyers that take a pollution compensation case are “occasional dabblers” (p. 176). Lawyers will often be reluctant to take cases that are unprofitable, challenge local power holders, are politically sensitive, or involve significant legwork. Both lawyers and plaintiffs often are subject to intimidation tactics by local officials or factory owners. These tactics range from the more mundane, such as government officials dropping by a plaintiff’s house uninvited and helping themselves to food, to the actual use of physical violence by local thugs.

Even if a pollution victim can find a lawyer, judges routinely refuse cases, often without offering an explanation (although one is required). Rejection may be the result of a direct order from higher courts, simple cautiousness on the part of the local court, or an attempt to shield a factory deemed important to the local economy. Collective lawsuits are often broken up into individual cases (in order to maximize court fees or undermine collective action). Litigation fees, which must be paid upfront to the court, also inhibit prospective plaintiffs. And although China received more than a half-billion dollars in foreign aid during the first decade of the twenty-first century, international donors are reluctant to give aid that directly supports environmental litigation. Rather, they tend to offer “soft support” in the form of legal training, some of which Stern indicates is of mixed value to the recipients.

Given the costs and risks associated with litigation, it is hardly surprising that more than 99 percent of environmental disputes never make it into a court room. Yet even when a case makes it to court and pollution victims win, there are limits to victory. In one of China’s most well-known success stories, a chemical plant deemed to have harmed the local environment and health of citizens was ordered by a court to “stop the infringement,” a vague and virtually unenforceable order that did not lead to a significant change in the company’s
pollution abatement practices. The more than 1,700 plaintiffs were awarded less than 2 percent of the compensation they requested.

Despite these challenges, however, the courts yield an occasional, important victory for pollution victims and environmental protection. And the expansion of environmental litigation is not without influence on the political system. In some cases judges, lawyers, and activists have used the legal system to push the boundaries of the politically permissible. For example, more than sixty jurisdictions have established environmental courts, some of which have allowed social organizations or the government to sue polluters on behalf of the public. Successful policy innovations or lawsuits have spurred imitation or legitimated new practices such as the increased use of rights language. While experiments such as these have not fundamentally altered the Chinese political or legal systems, or tipped the balance in favor of environmental protection over economic growth, they may plant seeds of change. The bottom line is that, while courts are not the answer to China’s environmental problems, the environmental legal system is an important arena of modest innovation and cautious experimentation.


Reviewed by David L. Downie
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This interesting and well-researched book provides in-depth analysis of the ongoing attempt to phase out methyl bromide (MeBr) under the Montreal Protocol. It demonstrates how allowable exemptions, the influence of large and predominantly California-based agricultural businesses, and expanding influence of neo-liberal economic and political paradigms have frustrated efforts to eliminate this toxic and ozone-depleting substance (ODS). Gareau argues that the success of economic interests in significantly delaying the elimination of methyl bromide in the United States and in the ozone regime is a worrisome example of the threat that neoliberalism poses for achieving the ultimate goal of the ozone regime and for effective global environmental politics in general.

The book helps to fill several important gaps in the secondary literature on the ozone regime. MeBr is a powerful ODS used as a pesticide, as a fumigant in shipping containers and to sterilize soil, especially in commercial large-scale monoculture settings. Its uses are different from, and have received far less attention than, other ozone-depleting substances. The exemptions for MeBr are far broader and subject to far less review than for other substances within the Montreal Protocol process. These include a permissive “critical use exemption” for agriculture.

Gareau provides the most detailed treatment to date of the political economy of the MeBr issue and how agricultural lobbyists and their political allies, especially in the United States, have exploited the broader exemptions to keep