2004

Striking the Right Balance: The Contrasting Ways in which the United States and China Implement National Projects Affecting the Environment

Pamela Howlett

Follow this and additional works at: https://scholarship.law.missouri.edu/jesl

Part of the Environmental Law Commons

Recommended Citation

This Article is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Journal of Environmental and Sustainability Law by an authorized editor of University of Missouri School of Law Scholarship Repository. For more information, please contact bassettcw@missouri.edu.
ARTICLE

STRIKING THE RIGHT BALANCE: THE CONTRASTING WAYS IN WHICH THE UNITED STATES AND CHINA IMPLEMENT NATIONAL PROJECTS AFFECTING THE ENVIRONMENT

PAMELA HOWLETT

When the first indications of error begin to appear in the state, Heaven sends forth ominous portents and calamities to warn men and announce the fact.¹

[T]he more clearly we can focus our attention on the wonders and realities of the universe about us, the less taste we shall have for destruction.²

In late December 2002, dozens of women in China’s Eastern Jiangsu province gathered outside a major construction site and ceremoniously beat red drums to announce the ground breaking of the first phase of China’s national Water Diversion Project, which will likely be the largest national project of its kind in history.³ This unprecedented project, approved by China’s State Council on August 23, 2002, connects four of China’s major existing rivers by building three man-made rivers in an effort to provide water to China’s drought-ridden north.⁴ The Chinese government promises that the project will improve the ecological environment and cause sustained social and economic development.⁵ Nonetheless, controversy and opposition are likely because of the major environmental problems the project could cause.⁶ Based on China’s most recent national project, the

⁵ Id.

A ready comparison can be drawn between the Water Diversion Project and China’s ongoing project, the construction of the Three Gorges Dam, which was approved in 1992 and will be completed in stages beginning in 2002. See Yangtze River Three Gorges Stopped from Flow, Nov. 6, 2002. XINHUA available at http://news.xinhuanet.com/english/2002-11/06/content_620233.htm. The projects are similar because they both involve the same environmental issues as described above. In fact, the Three Gorges Dam project is of such scale that it will change the weather in the area surrounding the dam. Xinhua News Agency, Three Gorges Reservoir to Bring Slight Changes in Weather (Dec. 2, 2002), available at http://www.china.org.cn/english/China/50235.htm.
construction of the Three Gorges Dam, the new Water Diversion Project will be completed regardless of controversy and opposition.\(^7\)

Contrast the Chinese Water Diversion Project with the American Rogue River Basin Project in the Pacific Northwest. The Rogue River Basin Project involved the construction of three dams in Oregon for the primary purpose of controlling flooding, as well as to supply water, irrigation, and recreation benefits.\(^8\) The United States Congress approved the project in 1962,\(^9\) and two of the dams were completed by 1981.\(^10\) Parties opposing the project halted the building of the third dam by obtaining a federal court injunction against the Army Corps of Engineers.\(^11\) The opposing parties successfully argued that the Agency had failed to consider fully the environmental impacts of the project on the water quality and animal population of the basin.\(^12\) Construction of the third dam got under way after being delayed for several years,\(^13\) but it was never completed. Ultimately, the United States government has recommended that completion of the third dam be abandoned altogether,\(^14\) leaving the project's goals unrealized.

National projects, like China’s Water Diversion Project and the United States’ Rogue River Basin Project, serve a valuable purpose for a country. They provide jobs,\(^15\) prestige,\(^16\) and fix a perceived problem.\(^17\) On the other hand, the scale of the projects imposes a high price on both the surrounding environment and the population,\(^18\) whether geographically close to the project or not.\(^19\) Therefore, it seems that a balance between the positive and negative effects of major projects should be sought.


\(^7\) Based on the similarities of the two projects, it is not a leap of logic to predict that there will be controversy and opposition to the Water Diversion Project, as demonstrated by the public's reaction to the Three Gorges Dam Project. See, e.g., The Stars of Asia, NEWSWEEK (int’l ed.), June 14, 1999, at 57. available at http://www.businessweek.com/1999/99_24/b3633096.htm (describing Dai Qing’s efforts, including publishing the influential collaborative work, Yangtze! Yangtze!, to halt the dam project). The project was so controversial, in fact, that one third of the usually compliant NPC delegates abstained on the vote to approve the project. CAI DINGJIAN, ZHONGHUA RENDA ZHIDU 280 (3d ed. 1996).

The fact that the Three Gorges Dam project came to fruition in spite of its dramatic environmental impact indicates that opposition will not stop or forestall the full implementation of the Water Diversion Project. For an overview of the debate over the Three Gorges project, see Three Gorges Dam, WIKIPEDIA, available at: http://www.wikipedia.org/wiki/Three_Gorges_Dam (last modified Oct. 14, 2004).


\(^9\) Id.

\(^10\) Or. Natural Res. Council v. Marsh. 490 U.S. 360, 364 (1989). The federal agency charged with the task was the United States Army Corps of Engineers. Id. at 363.

\(^11\) Id. at 368.

\(^12\) Id. The parties opposing the project were several nonprofit, nongovernmental organizations that used the federal law titled the National Environmental Policy Act to stop the dam from being built. See infra note 46 and accompanying text.

\(^13\) Fact Sheet-Elk Creek Dam, Oregon Natural Resources Council. available at: http: www.onrc.org/info/elkcreekdam/factsheet.html (last visited Oct. 14, 2004). To date, only two of the three dams are completed, the Applegate and the Lost Creek. Id.


\(^16\) Both Dr. Sun Yat Sen and Mao Zedong, two prominent Chinese leaders, espoused the project long before it came to fruition. See William Shapiro, China’s Three Gorges Dam. 1997 COLO. J. INT’L ENVTL. L. & POL’Y 146, 147 (1997).

\(^17\) Both the Water Diversion Project and Rogue River Basin Project aimed, in part, to control flooding and divert water. See supra text accompanying notes 4 and 8.

\(^18\) See supra note 6.
Because of their massive scale, projects like China’s Water Diversion Project and the United States’ Rogue River Basin Project profoundly and permanently affect both the people and the natural environment of each nation. This raises the question of how to address environmental interests when they are impacted by a major national project. The examples of the United States and China show that a government must seek to balance the advantages of initiating large-scale projects that impact the environment with the resulting negative effects in order to allow for both progress and environmental protection.

Part II of this article will examine national environmental laws that each country has enacted and how they come into play in light of national projects that affect the environment. It concludes that the laws in the United States, while seemingly less comprehensive than their Chinese counterparts, are more closely enforced than the more sweeping Chinese environmental laws. Part III of this article will provide an overview of the different forms of government in both the United States and China and how their antithetical structures influence environmental lawmaking and the implementation of national projects that affect the environment. It contends that the United States’ system of checks and balances allows for review of government action, while Chinese government action is driven solely by the policy choices of the ruling leadership, with no countervailing government authority. Part IV of this article will identify how nongovernmental entities are involved in government actions that affect the environment of each nation. It argues that nongovernmental parties have a stronger role in environmental issues in the United States than their counterparts in China. Part V of this article compares the benefits and detriments of each system. It concludes that although the United States’ system has certain flaws, its system of review, at minimum, forces government actors to justify their plans to implement a national project that will affect the environment. China’s system, by contrast, lacks the ability to review government action to such an extent that it could lead to environmental disasters. Finally, this article concludes that while neither system strikes the perfect balance in addressing national projects that affect the environment, China must implement some meaningful form of review of its proposed projects in order to avoid an inevitable environmental disaster.

II. THE EFFECT OF NATIONAL ENVIRONMENTAL LAWS ON THE ENVIRONMENT

The United States Rogue River Basin Project and the Chinese Water Diversion Project highlight the differences in each country’s environmental laws: in the United States, the laws allow a project to be stopped, even if it has the full backing of the government; while in China, laws serve the policy needs of the ruling leadership. An explanation of the development of environmental laws and their application to each of the above projects illustrates that the implementation of laws in each country makes a real difference.

---

19 The act of diverting a river in the eastern province of Jiangsu affects not only its population, but the population of the central province of Hubei as well. See China Plans to Reroute Part of a River, supra note 6 (describing a Hubei official’s comment that the project will alter the environment and force the relocation of almost 300,000 people in his province).

20 Competing interests in the environmental context generally involve the interests involving economic growth on one hand, see supra note 15, and individuals, environmental groups, and the natural environment itself on the other hand. see supra note 6.

21 A national project in the context of this article will be considered to involve national environmental laws and affect the environment beyond the local level.

22 China must seek to avoid an environmental disaster because such an event could undermine its primary goal of promoting economic growth. See infra note 267 (discussing the negative economic impact the SARS epidemic has caused the Chinese economy).
A. Law and Environment in the United States: A System of Review

1. The Origins of America’s Environmental Laws

Environmental law in the United States did not begin developing until the twentieth century, after pollution had already seriously fouled rivers, air, and the food supply. In spite of rapid industrialization, in the first half of the twentieth century, only the common law was available to address environmental issues. After World War II, Congress did enact some environmental legislation, but it was largely aimed at maintaining the responsibility for the environment at the state level. Federal inaction, coupled with the continued industrial growth and development that fouled the environment within and across state boundaries, created widespread environmental disasters. These disasters magnified the fact that environmental issues could not effectively be

---

24 The common law only offered the theories of trespass and nuisance to parties who were injured by environmental degradation. See, e.g., Madison v. Ducktown Sulphur, Copper & Iron, 83 S.W. 658 (Tenn. 1904) (allowing damages but not injunctive relief where smoke from stacks killed crops and forests in the area caused nuisance to neighbors); Missouri v. Illinois, 200 U.S. 496 (1906) (denying Missouri’s nuisance claim against Illinois where Illinois dumped sewage into a river shared by the two states that, once contaminated, passed through Missouri’s territory).
25 In 1948, Congress enacted the Federal Water Pollution Control Act of 1948, which provided funding to states to address water pollution control. 33 U.S.C. §§ 1251-1387 (2000).
26 For a history of the development of environmental legislation and the struggle between state and federal responsibility specific to the water context, see William L. Andreen, The Evolution of Water Pollution Control in the United States—State, Local, and Federal Efforts, 22 STAN. ENVTL. L.J. 145 (2003). The evolution of water pollution control is representative of regulation in other environmental contexts. See generally id.
27 An example of a national project with national environmental impact is the Three Mile Island nuclear disaster, which involved a meltdown at a nuclear power plant that was built as part of a national program to promote the use of nuclear energy. See U.S. Nuclear Regulatory Commission, Fact Sheet on Three Mile Island, at http://www.nrc.gov/reading-rm/doc-collections/fact-sheets/3mile-isle.html (last visited Mar. 1, 2004). The United States’ government created the Atomic Energy Commission in 1946 to both promote and regulate the use of nuclear power across the United States. See U.S. Department of Energy, Atomic Energy Commission (AEC). 1947, at http://www.eere.energy.gov/t87 (last visited Oct. 21, 2004). The combined goals of promotion and regulation of nuclear power proved to be incompatible, as critics noted that the promotion of nuclear energy limited its regulation. As a result, the AEC was abolished in 1974 and replaced by the Nuclear Regulatory Commission (“NRC”). See U.S. Nuclear Regulatory Commission. Our History, at http://www.nrc.gov/who-we-are/history.html (last updated Aug. 11, 2004). The continued debate over the adequate level of regulation continued until March 28, 1979, when a core meltdown at Three Mile Island galvanized the NRC into comprehensive action in tightening the oversight and regulation of nuclear power plants. Id. Without the oversight of the national government in regulating the nuclear power industry, a disaster of the magnitude of Chernobyl could eventually have occurred. See U.S. Nuclear Regulatory Commission, Fact Sheet on the Accident at the Chernobyl Nuclear Power Plant (Dec. 2000), at http://www.nrc.gov/reading-rm/doc-collections/fact-sheets/fschernobyl.html (“U.S. reactors have different plant designs, broader shutdown margins, robust containment structures, and operational controls to protect them against the combination of lapses that led to the accident at Chernobyl.”). Id.

Federal inaction can also contribute to a race-to-the bottom philosophy in individual states by which states will reduce their environmental protections in order to attract industry. See Kirsten H. Engel, State Environmental Standard-Setting: Is There a “Race” and Is It “To the Bottom?”, 48 HASTINGS L.J. 271 (1997). An example of an environmental disaster arising from federal inaction and the state’s failure to safeguard the environment is the example of Love Canal. For a comprehensive source covering the events at Love Canal, see Ecumenical Task Force of the Niagara Frontier, Love Canal Collection, at http://ublib.buffalo.edu/libraries/projects/lovecanal/index.html (last updated Oct. 13, 1998). Love Canal was a private chemical waste dumpsite that had been sold as-is to the city of Niagara Falls, New York in 1953 for one dollar. Id. The city built single-family homes and a school on the property, and continued to develop the neighborhood until 1978, when city officials determined that the site was a health hazard. Id. The buried toxic chemicals had made their way to the surface and flooded the properties that were built on the site, ultimately forcing the United States government to declare a federal emergency in the area, relocate 239 families, and manage an expensive clean-up effort. Id. Another representative disaster was the 1969 burning of Ohio’s polluted Cuyahoga River. See
dealt with locally,\textsuperscript{28} or be ignored.\textsuperscript{29} The widespread occurrences of environmental crises created pressure on the federal government to take action.

In 1970, Congress enacted its first national statute addressing the environment,\textsuperscript{30} the National Environmental Policy Act of 1969 ("NEPA").\textsuperscript{31} In the following ten years, which became known as the "environmental decade,"\textsuperscript{32} the United States Congress enacted the vast majority of statutes that most broadly affect the environment, including: statutes concerning air and water pollution, endangered species, pesticides, and hazardous waste.\textsuperscript{33} During this time period, the Environmental Protection Agency ("EPA") was established.
(by order of the President of the United States) to consolidate the implementation of environmental laws into a single federal agency. Because of this flurry of comprehensive legislative and executive activity, the federal government has not enacted significant environmental legislation, and instead has refined and implemented the legislation passed during the environmental decade.

In addition to federal laws, each state supplements the national program by enacting and enforcing its own environmental laws. For example, in the water pollution context, forty-four of fifty states have adopted their own permitting plans for pollutant dischargers, enabling them to handle water pollution without the direct oversight by the federal government. States can also enact laws that are unique to their individual needs, as long as they do not conflict with federal law. In spite of this flexibility allowing for some local implementation, the relatively specific and prescriptive national environmental laws drive the implementation of federal projects like the Rogue River Basin Project.

2. American Laws as They Relate to the Rogue River Basin Project

The national government enacts and implements environmental laws, and both government and non-government actors invoke the laws. Both government and non-government actors can enforce environmental laws because federal statutes and their resulting agency rules provide for enforcement by public or nongovernmental actors. Additionally, the federal statutes allow citizens to sue nongovernmental parties and the government in a court of law for violating environmental laws, and private groups often take advantage of


The EPA now employs over eighteen thousand employees at eleven offices around the country, and still implements the laws that Congress enacted in the “environmental decade” from 1970 to 1980. About EPA. at http://www.epa.gov/epahome/aboutepa.htm (last updated June 8, 2004). For more information about the EPA and its projects, see Environmental Protection Agency. id. The EPA is not the only federal agency involved in implementing environmental laws. The Food and Drug Administration. Occupational Safety and Health Administration, and Nuclear Regulatory Commission are examples of agencies that help to control environmental risks. This overlapping of jurisdiction can make regulating activities difficult and expensive for both the government and regulated parties.

The only significant environmental legislation after 1980 was the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11001-11050 (2000) (originally enacted in 1986). The statutes enacted during the environmental decade have been amended since 1980, but there has been no expansion of environmental protection since these amendments. In fact, one piece of legislation enacted in 1996 seems to have reversed the expansion of environmental protection. See Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. §§ 601-612 (2000) (forcing the EPA to consider the impact on small businesses before enacting environmentally protective rules).


An example of a state enacting its own law is California, who faces a special problem because of vehicle emissions. It was the first state to mandate the development and use of low-emission and zero-emission vehicles, something not required by federal law. See Cal. Health & Safety Code § 43018 (West 1996).

Government actors often use administrative means to invoke environmental laws, such as through the procedure of the Notice of Violation. See, e.g., 33 U.S.C. § 1319(a) (2000) (outlining compliance orders under the Clean Water Act). Nongovernmental actors most often use courts to help them enforce environmental laws.

Whether a law or regulation is at issue, the United States has an elaborate system of notification and publication, based largely on the constitutional right to Due Process and judicial rulings. See U.S. Const. amend. XIV. § 1; Sally J. Kelly, Note, Legal Research on the Internet: A Primer and an Update to the United States Code on the Web, 1999 Ark. L. Notes 127 (1999) (describing ways to gain easier access to published federal statutes); Barbara H. Brennan and Robert D Carlitz, Online Rulemaking and Other Tools for Strengthening Our Civil Infrastructure, 54 ADMIN. L. REV. 1421 (2002) (explaining the process of rulemaking and how the internet can further aid publication).
these citizen-suit provisions. Because of the enforcement options enacted by Congress, multiple actors enforce American environmental laws.

Both government and nongovernmental actors have the ability to enforce environmental laws. However, as part of the enforcement scheme they are forced to depend heavily on self-reporting by regulated parties, such as factories and power plants. This occurs because federal and local governments have vast responsibilities and scarce resources. Additionally, self-reporting can be critical because citizens and other non-government actors often cannot determine when an environmental law has been violated. Thus, while it seems logical that federal and state authorities with the help of citizens and NGOs would exclusively enforce environmental laws, regulated parties do much of the work by policing themselves. In the example of the Rogue River Basin Project, non-government actors primarily invoked the environmental laws in order to seek review of the environmental impacts of the project.

Several major American environmental laws apply to projects that propose to impact the environment, such as the Rogue River Basin Project. The primary law is the National Environmental Policy Act of 1969 ("NEPA"). NEPA is essentially a procedural statute that requires a federal agency to address environmental impacts when implementing a project. NEPA’s requirements are most stringent when there is a major federal action that significantly impacts the quality of the human environment. The agency implementing the project was legally required to perform an environmental impact statement ("EIS"). because the Rogue River Project was legally required to perform an environmental impact statement. See, e.g., 33 U.S.C. § 1367 (employee protection provision of the Clean Water Act).

41 See, e.g., 33 U.S.C. § 1365 (section of Clean Water Act allowing citizens to bring civil suits against private parties and the government). See also infra notes 65-70 and accompanying text.
44 Freeman, supra note 43, at 835-36. “Agencies simply lack the resources necessary to do independent research about, properly inspect, and successfully pursue regulated interests that violate regulations.” Id.
45 Private actors would have no way of knowing if a factory has failed to meet if effluent limitations goal under the Clean Water Act or its emissions goals under the Clean Air Act without the help of the factory’s self-reporting of these measurements.
46 See David R. Hodas, Enforcement of Environmental Law in a Triangular Federal System: Can Three Not Be a Crowd When Enforcement Authority is Shared by the United States, the States, and Their Citizens?, 54 Md. L. Rev. 1552, 1558-63 (1995) (describing how citizens have initiated more litigation than the federal government under the CWA. and that budgetary and political constraints prevent local governments from being the most effective enforcers). See also infra notes 172-174 and accompanying text.
47 The Rogue River project proposed to divert rivers and dam running water. See supra note 8 and accompanying text.
48 42 U.S.C. §§ 4321-4370(f) (2000). NEPA is a unique statute in that it does not explicitly allow for a citizen suit to be brought. However, citizens have successfully invoked NEPA countless times in seeking judicial review. See generally Erik Figlio, Note, Stacking the Deck Against "Purely Economic Interests": Inequity and Intervention in Environmental Litigation, 35 GA. L. REV. 1219 (2001) (describing how a NEPA suit is brought and how other environmental statutes provide for citizen action).
49 NEPA is a unique regulatory scheme because it is procedural rather than substantive. It mandates that federal agencies employ a decision-making process that takes into account environmental issues rather than setting out a complex regulatory scheme. The heart of the program lies in only two of its provisions, 42 U.S.C. §§ 4331-4332. If an agency properly follows the procedure outlined in the statute, that is to consider environmental impacts when examining a project, it is nearly impossible to dispute the merits of the agency's decision.
50 A major federal action, as defined by the EPA rather than the Congress, is one that involves a federal permit, federal funding, or a federal project. Protection of the Environment, Council on Environmental Quality. 40 C.F.R. § 1508.18(b) (2004) (codifying case law on the issue). When an action is a major federal action, it requires an agency to complete an environmental impact statement ("EIS"). 42 U.S.C. § 4332(2)(C). Any other type of government action requires the less stringent environmental assessment to be performed. 42 U.S.C. § 4332(2)(E).
51 A significant impact is one that is either categorically included (as in a nuclear power plant), or one that has been determined as such by the results of an environmental assessment. 42 U.S.C. § 4332(e).
Basin Project required federal agency oversight and federal funding. NEPA not only requires an EIS before a project begins: it requires the preparation of a supplemental statement in the event that new information shows a significant impact on the environment and federal action remains to be taken on the project. The supplemental EIS requirement is notable because it can be used to address problems that arise after a project’s implementation and were not anticipated earlier, allowing for review before an action with irreversible consequences is taken. In the Rogue River case, the United States Supreme Court found that the government agency had properly performed its duties by completing its EIS, and that a supplemental EIS had not been required during the implementation of the project. Nonetheless, opponents to the project claimed ultimate victory. The project was halted for nine years while the case was heard and appealed in the federal court system, ultimately making it infeasible and impossible for the government to complete.

Another federal statute applicable to a project like the Rogue River Basin is the Endangered Species Act (“ESA”). The ESA prohibits any person or government agency from “taking” a protected species. Additionally, federal agencies must insure that actions they carry out are “not likely to jeopardize the continued existence of any endangered species or threatened species.” Thus, a federal agency must account for the preservation of a resident species before embarking upon a project that affects its habitat. The stringency of the law is clearly evidenced by the fact that it permanently halted a nearly completed dam project in the central United States after the discovery of a new species of perch. The ESA was not applicable in the initial stages of the Rogue River Basin Project because there was no endangered species to consider. It did, however, become applicable later when the partially completed dam began to affect a recently endangered salmon population, causing another round of litigation and uncertainty as to the future direction of the project.

---

53 Id. at 371-72. In this case, the United States Supreme Court made a supplemental environmental impact statement a legal requirement by interpreting a federal statute and clarifying a point on which Congress had been silent.
54 At issue in the Rogue River case was environmentalists’ contention that downstream fishing and water turbidity was going to be more negatively impacted than initially determined by the Army Corps of Engineers. Id. at 369.
55 Id. at 385.
56 See supra notes 13-14 and accompanying text.
57 See supra note 14. See also Paul J. Culhane, NEPA’s Impacts on Federal Agencies, Anticipated and Unanticipated, 20 ENVTL. L. 681. 700 (1990). Culhane finds that: “NEPA litigation, by itself, almost never resulted in a permanent injunction against a project. However, the interminable delay of EIS review and protracted NEPA litigation has contributed to the suspension or cancellation of many water projects, nuclear plants, and other locally unwanted land uses.” Id. Although opponents to the project were victorious, the positive goals the project sought to achieve were thwarted. See supra notes 8 and 14 and accompanying text.
59 “Take” is defined as: “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct.” 16 U.S.C. § 1532(19).
62 16 U.S.C. § 1536(a)(2) (describing federal agency required actions and consultations with the Secretary of the Interior). Like NEPA, the ESA, through administrative rules, requires that an agency must not only consult with the Secretary before an action is taken, but it must reintiate consultation if new information is discovered or the project causes unintended consequences. 50 C.F.R. § 402.16 (2004).
63 See Tenn. Valley Auth. v. Hill, 437 U.S. 153 (1978). Congress had already appropriated $29 million to the Tellico Dam project, and had already been stopped once under NEPA by environmental groups. Id. at 158, 158 n.5. Justice Powell, in his dissent, noted that the Court’s decision “casts a long shadow over the operation of even the most important projects, serving vital needs of society and national defense . . . .” Id. at 195-96 (Powell, J., dissenting).
Another federal statute that could come into play in light of a project like the Rogue River Basin is the Clean Water Act ("CWA"). While the CWA primarily regulates parties who discharge pollutants into navigable waters, it also requires the federal government to get a permit to discharge, dredge or fill materials into navigable waters. Additionally, the CWA applies to parties who are required to obtain a federal license or permit in order to undertake a project, where the project may result in discharges into navigable waters. The Rogue River Basin Project did not implicate the CWA, but other projects with a similar environmental impact did implicate the CWA, and project managers were forced to comply with its requirements.

B. Law and Environment in China: A System Promoting the Ruling Leadership's Agenda

1. The Origins of China's Environmental Laws

China, while behind the United States in its level of industrial advancement, began the process of modern environmental lawmaking shortly after the movement began in the United States. However, China began the process of environmental legislation based on international influences while internal forces drove the movement in the United States. Although China had enacted basic environmental laws over the several centuries of its existence, its first modern environmental law was promulgated in 1979 on a trial basis, and

---

65 33 U.S.C. §§ 1251-1387 (2000). The Clean Water Act is not the only water law that is impacted by major projects. The Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271-1287, also affects the implementation of national projects. The purpose of the WSRA was to protect those American rivers that had not already been altered by dams or other construction projects of the unrestricted development era, and the WSRA only applies when a river possesses "outstandingly remarkable" qualities and exists in "free-flowing condition." See Kenny Seale, Note, The Effect of the Wild and Scenic Rivers Act on Proposed Bridge Construction: Sierra Club North Star Chapter v. Pena, 7 WIS. ENVTL. L.J. 225, 229-30 (2000). Thus, WSRA applied to the Rogue River Basin Project, but had a very limited role, especially as compared to NEPA. See also Marsh v. Or. Natural Res. Council, 490 U.S. 360, 369 n.11 (1989) (explaining that environmentalists withdrew WSRA claim and proceeded on the NEPA claim alone).


67 33 U.S.C. § 1344. This requirement most often comes into play when a party seeks to implement a project on property containing wetlands.

68 Id. An example of the application of this requirement is when a party seeks to build a hydroelectric facility, it must have a permit from the Federal Energy Regulatory Commission. PUD No. 1 of Jefferson County v. Wash. Dept. of Ecology, 511 U.S. 700, 722-23 (1994).


70 Sec. e.g., PUD, 511 U.S. at 708-09 (discussing the controversy over a project involving the water quality after the construction of a dam and re-routing of a river).

71 Modern environmental lawmaking encompasses laws that deal with the pollution and environmental damage resulting from modern industrialization of the nineteenth and twentieth centuries.

72 China enacted many of its environmental laws in the 1980's, which was in the decade following the "environmental decade" in the United States. See infra note 81.

73 The catalyst for China's focus on the environment and subsequent policy decisions appears to be the First and Second National Environmental Protection Work Conferences in 1973 and again in 1983-84. LESTER ROSS & MITCHELL A. SILK, ENVIRONMENTAL LAW AND POLICY IN THE PEOPLE'S REPUBLIC OF CHINA 19-20 (Quorum Books 1987) [hereinafter ROSS & SILK]. For a discussion of the conflict between developed and developing nations in protecting the environment, see Mark A. Drumm, Poverty, Wealth, and Obligation in International Environmental Law, 76 TUL. L. REV. 843 (2002) (describing the developed nations including the United States as the "North" and the developing nations including China as the "South"). Drumm highlights the problem of industrialized nations criticizing developing nations regarding their lacking environmental policies by quoting: "if the wealthy have no general obligation to help the poor, then the poor certainly have no general obligation to help the wealthy." Id. at 845 (quoting Henry Shue, Global Environment and International Inequality, 75 INT'L AFF. 531, 543 (1999)).

74 See supra note 32, discussing the work of Rachel Carson and subsequent environmentalists within the United States.

75 The Qin Code, enacted during the Qin Dynasty's reign from 221 B.C. until 207 B.C., included provisions forbidding cutting lumber in mountain forests in spring, blocking waterways, and other measures. Mao Xiancong, Preliminary Discussion on the Law of Environmental Protection, 2 FAXIU, YANJIE (STUDIES IN LAW) 40-43 (1979) (cited in ROSS & SILK, supra note 73, at 63).
was made permanent a decade later. When China’s Standing Committee made the law permanent in 1989, it shifted responsibility for environmental protection from solely local environmental protection bureaus (“EPB”) to both national and local governments. At approximately the same time, the State Council established a stand-alone national agency to deal with environmental issues, which at the time was named the National Environmental Protection Bureau. During the 1980s and 1990s, China enacted more than twenty special laws to complement its basic 1989 law, including water and air pollution laws, and ultimately upgraded the status of the Bureau to full ministerial rank in 1998 with the new name of State Environmental Protection Administration (“SEPA”). The full ministerial status accorded to SEPA was important because it has increased its minister’s influence with the State Council. The Chinese Constitution specifically provides for environmental protection, which contrasts the United States Constitution.

2. Chinese Laws As They Relate to the Water Diversion Project

In our Water Diversion Project example, the Chinese Constitution, basic law, and certain special laws all come into play. First, the Constitution calls for the protection of the environment. This exemplifies that there was at least some priority afforded the environment by the drafters of the Constitution. However, these constitutive powers of the state are limited. For example, Article 35 (1982) states: “[The state] designs the rational use of natural resources and protects rare animals and plants. Appropriation or damaging natural resources by any organization or individual by whatever means is prohibited.”

76 XIAOYING MA & LEONARD ORTOLANO, ENVIRONMENTAL REGULATION IN CHINA: INSTITUTIONS, ENFORCEMENT, AND COMPLIANCE 8 (Rowman & Littlefield Publishers 2000) [hereinafter MA & ORTOLANO]. The PRC Environmental Protection Law was enacted as a basic law, indicating that the full NPC enacted the law and not the Standing Committee alone.
77 Id.
78 China’s Standing Committee is a small group of lawmakers chosen from the leadership of the Communist Party of China who enacts a majority of Chinese laws. See infra note 143 and accompanying text.
79 Article 7 of the PRC Environmental Protection Law states: “The competent department of environmental protection administration under the State Council shall conduct unified supervision and management of the environmental protection work throughout the country. The competent departments of environmental protection administration of the local people’s governments at or above the county level shall conduct unified supervision and management of the environmental protection work within areas under their jurisdiction.” Environmental Protection Law, art. 7 (1989) (P.R.C.). available at http://www.globaloceans.org/laws/PRC_envpro_law.html.
80 The State Council is China’s highest ranking organ of the nation’s bureaucracy. See infra note 146 and accompanying text.
81 In 1988, when the National Environmental Protection Agency (later SEPA) was established, it was brought out from the shadow of the Ministry of Urban and Rural Construction and Environmental Protection, where it performed only planning functions and had no control over the lower levels of government. MA & ORTOLANO, supra note 76, at 78.
83 MA & ORTOLANO, supra note 76, at 80.
84 Id. This factor is critical when the Standing Committee and State Council set national policies. See infra notes 146-147 and accompanying text.
85 XIANFA, arts. 9, 10, 26 (1982). For example, Article 9 states: “The state ensures the rational use of natural resources and protects rare animals and plants. Appropriation or damaging natural resources by any organization or individual by whatever means is prohibited.”
86 See infra note 125 and accompanying text.
87 See supra note 85 and accompanying text. This discussion is not necessary in the context of the United States because its constitution does not contain any particular government aspiration with respect to the environment. Let alone mandating any particular government action.
88 In addition to calling for the state to protect natural resources and species, supra note 85, the Chinese Constitution announces that the state: “protects and improves the environment in which people live and the ecological environment.” XIANFA, art. 35 (1982) (emphasis added). There are inherent limitations in the force of this provision, however. See Lawrence Watters & Wang Xi, The Protection of Wildlife and Endangered Species in China, 14 GJO. INT’L ENVTL. L. REV. 489, 501 (2002) (“Despite its focus on the state’s role, however, the provision does not create an environmental right, nor does it authorize actions to directly protect environmental rights.”).
environmentally protective provisions are contradicted by other provisions that indicate other, and possibly higher, priorities.\footnote{See Eric W. Orts, The Rule of Law in China, 34 Vand. J. Transnat'l L. 43, 68-69 (2001) (describing how conflicting provisions of the Constitution send conflicting messages, particularly with respect to Party rule versus the rule of law).} For example, while the Constitution requires all organizations, political parties included, to abide by the law,\footnote{See infra note 147.} it also announces the supreme power of the Communist Party of China ("CPC")\footnote{XIANFA, art. 5 (1982).} over the state and its citizens.\footnote{See infra note 147.} Additionally, there are several provisions that prioritize economic concerns,\footnote{The preamble to the 1993 Chinese Constitution, amending the 1982 version, states: "Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, the Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship and follow the socialist road to preserve in reform and opening to the outside . . . ." XIANFA, preamble (1993). See also, Orts, supra note 89, at 68 ("The most fundamental shortcoming of the Chinese legal system is therefore constitutional. It lies in 'the ambiguous relationship between the constitutional supremacy of the Communist Party and the authority of the law.'") (quoting Perry Keller, Sources of Order in Chinese Law, 42 Am J. Comp. L. 711, 729 (1994)). Additionally, amendments proposed in 1999 seem to further support the underlying premise that the CPC has supreme power over the state. One amendment that has been adopted adds a reference to "Deng Xiaoping theory and development of a socialist market economy." See Orts, supra note 89, at 69. Deng Xiaoping Theory calls for adherence to the following "four principles: 1. We must keep to the socialist road; 2. We must uphold the dictatorship of the proletariat; 3. We must uphold the leadership of the Communist Party; and 4. We must uphold Marxism-Leninism and Mao Zedong Thought." See Deng Xiaoping, Remarks to Uphold the Four Cardinal Principles, People's Daily, Mar. 30, 1979, available at http://english.peopledaily.com.cn/dengxp/vol2/text/b1290.html.} which often conflict with environmental priorities. Therefore, CPC policies, as put forth by the Standing Committee and State Council,\footnote{See, e.g., XIANFA, art. 15 (1982) ("The state shall enhance economic legislation and improve macro-control of the economy."). One commentator notes: One might predict that certain developing countries that place a greater value on economic development than other values would favor the construction of new plants in their territories even if this may cause environmental problems. China, for example, has forged ahead with the construction of the Three Gorges Dam despite widespread international concern that the dam would inflict serious damage to the surrounding region and to the living creatures in the Yangtze River. Lan Cao, Corporate and Product Identity in the Posinational Economy: Rethinking U.S. Trade Laws, 90 Calif. L. Rev. 401, 460 n.231(2000) [citation omitted].} will likely take precedence over other constitutionally protected policies, including environmental protection.\footnote{The current priority of the CPC and NPC appears to be continued economic growth. See e.g., 16th CPC National Congress Closes. People's Daily, Nov. 15, 2002, available at http://english.peopledaily.com.cn/200211/14/eng20021114_106798.shtml. The article states as follows: The congress pointed out that for the country, the first two decades of the 21st century are a period of important strategic opportunities, which must be seized tightly and which offers bright prospects. The congress agreed with the objectives of building a well-off society in an all-round way put forward in the report and held that the objectives are of great significance for rallying the forces of the whole Party and the people of all ethnic groups and speeding up the socialist modernization drive. See also China Gambles, supra note 15.} Because the Water Diversion Project is a national project aimed at achieving continued economic growth,\footnote{Environmental Protection Law, arts. 4, 6, 7, 9 (1989) (P.R.C.).} the project will take precedence over any conflicting constitutional provisions addressing the environment.

The Environmental Protection Law, enacted in 1989, is the overarching law that generally addresses environmental protection in China. It makes government bodies at all levels responsible for environmental protection.\footnote{For example, has forged ahead with the construction of the Three Gorges Dam despite widespread international concern that the dam would inflict serious damage to the surrounding region and to the living creatures in the Yangtze River. See also China Gambles, supra note 15.} This is a departure from the concept previously held by Chinese authorities that only environmental protection bureaus were responsible for environmental protection.\footnote{See infra notes 143-151 and accompanying text for a discussion of the role of the Standing Committee and State Council in drafting and enacting environmental laws.} Nonetheless, the law, as implemented, still lacks meaningful input or oversight by the national government. in contrast to the United

96 MA & ORTOLANO, supra note 76, at 16.
States' model. This lack of oversight by the national government over local governments results in the exercise of a high level of discretion at the local level. Additionally, the law explicitly calls for a balancing of environmental protection with development. The combination of discretion and balancing means environmental protection can often take a secondary position to more pressing economic concerns. The Chinese law thus displays the same problems that the Chinese Constitution does: the existence of the law does not prohibit it from being ignored in the face of issues that have a higher priority.

In addition to the basic Environmental Protection Law, there are several special laws that address issues created by the Water Diversion Project. These laws include the Water Pollution Prevention and Control Law, Water and Soil Conservation Law and the Cultural Relics Protection Law. These laws can be considered together because they will likely be implemented in a similar manner with respect to the Water Diversion Project. The laws mirror provisions in the Environmental Protection Law in that they vest primary implementation responsibility in the local governments and allow them a great deal of discretion. The one variation with the Environmental Protection Law is that the State Council directly controls and sets national water quality standards. Nonetheless, the State Council is also the same body that supported and ratified the Water Diversion Project, giving it complete autonomy in balancing the project's economic benefits against environmental protection. Consequently, this allows it to set water quality standards at levels needed to make allowances for the project. Additionally, local governments are subordinate to the national government, making them unable to stop the implementation of a national project. Therefore, the existence of the various laws that touch on the Water Diversion Project's activities may guide and inform the decisions of those government officials directing the project, but the laws do not necessarily bind them in the event that an aspect of the project conflicts with environmental concerns.

In discussing laws that impact the environment, it is worth noting that China has recently promulgated a law that adds a new check on the development activities of government actors. The new law, the

---

99 Environmental Protection Law, art. 27 (1989) (P.R.C.). See also infra notes 153-156, describing local implementation of environmental laws.


101 Environmental Protection Law, art. 4 (1989) (P.R.C.). The Article states: “The plans for environmental protection formulated by the state must be incorporated into the national economic and social development plans; the state shall adopt economic and technological policies and measures favourable for environmental protection so as to coordinate the work of environmental protection with economic construction and social development.” Some laws in the United States do the opposite by prohibiting an administrative agency from considering the costs of achieving a standard when establishing them. See Whitman v. Am. Trucking Ass'n, 531 U.S. 457, 465 (2001).

102 See Watters & Wang, supra note 88, at 502 (noting that because of agency discretion and competing demands for agency resources, wildlife issues could “languish through benign neglect”).

103 See supra note 82. These laws will likely be relevant based on the prior experience of the issues that arose during the construction of the Three Gorges Dam. See supra note 6.

104 See infra note 158 (quoting Chinese official's broad statement that effective measures will be taken to control possible ecological damage).

105 MA & ORTOLANO, supra note 76, at 15.


107 See supra note 4.

108 XIANFA, art. 35 (1982).
Environmental Impact Assessment Law of the People’s Republic of China, mandates that national or local governments analyze, forecast, and assess the possible environmental impacts of projects they undertake. Additionally, the party who prepares the plan must hold meetings that involve both experts and the public, and further consider and address comments brought up at the meetings. The problem with the law is that the only parties who can enforce the law are “higher level authorities or supervisory authorities.” This perpetuates the problem that already exists in other areas of Chinese environmental law: only higher authorities from the same government that approved a project can check the actions of lower authorities implementing the project. If a project, like the Water Diversion Project, has backing from the highest levels of the Chinese government, it is unlikely that the absence or poor quality of an environmental assessment will hinder the implementation of the project.

III. THE EFFECT OF GOVERNMENT STRUCTURE ON THE ENVIRONMENT

The differences between the United States and Chinese government structures cause the different outcomes that occur when comparing the United States’ aborted Rogue River Basin Project to China’s progressing Water Diversion Project. The United States system of checks and balances allows a project to be stopped, even if one or more branch of government supports the project. In China, on the other hand, the structure of the government is designed to facilitate the implementation of projects supported by the ruling leadership.

A. The United States: Checks and Balances of Actions Affecting the Environment

In the United States, the functions of legislating environmental statutes, administering them, and enforcing them are divided among three branches of government. The United States government consists of three equal bodies with separate powers, which not only exist to perform separate functions, but also serve to check the actions of the others. The legislative branch, known as the Congress, has exclusive federal
lawmaking powers. The executive branch is vested in the office of the President, whose department administers, or more precisely defines, and enforces environmental laws. The judicial branch, with the Supreme Court at its apex, reviews both Congress’s action with respect to the constitutionality of an environmental law and the actions of the executive branch with respect to its implementation and enforcement of the law pursuant to congressional intent. A law can originate in either House of Congress, or by a suggestion from the president to the Congress. Congress must draft its environmental laws with some level of specificity in order for the executive branch to administer them. Once Congress passes the law and the president signs it, it goes into effect. and if the government must affirmatively act to implement the law: an agency of the executive branch will take the necessary implementation and enforcement actions.

2. The State Role in Implementing the National Scheme

In addition to this national scheme, local governments play a role in developing environmental laws. The national government has limited, enumerated powers as established in the Constitution and environmental lawmaking has been interpreted to be one of those powers. Remaining powers are reserved to which is by constituting the legislative. and appointing in whose hands that shall be. And when the people have said we will submit to rules, and be governed by laws made by such men. and in such forms. nobody else can say other men shall make laws for them; nor can the people be bound by any laws but such as are enacted by those whom they have chosen and authorised to make laws for them.


For example, the judicial branch can effectively check the legislative branch by examining laws to make sure they are constitutional. Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803). In this landmark case, the Court indicated that “[i]t is emphatically the province and duty of the judicial department to say what the law is,” thereby claiming its right to review the laws of Congress. Additionally, under this separation of powers scheme, Congress directs the administration of laws to administrative agencies, which fall under the power of the executive branch. U.S. CONST. art. II, § 3 (stating that the president shall “take Care that the Laws be faithfully executed”). Similarly, the executive and legislative branches check each other because the president has to sign any law that Congress passes: if Congress wishes to override a presidential veto it must pass legislation by a two-thirds majority, which can be a difficult task. U.S. CONST. art. I, § 7, cl. 2. The task of gaining a two-thirds majority is difficult because the United States is a two-party system.

[Notes]

117 U.S. CONST. art. I, § 1. The Congress consists of two bodies. One is the House of Representatives, whose members are generally elected by the voters in districts of the state they represent. Id. at cl. 2. The number of Representatives from each state varies, because the number is dependent upon the state’s population. Id. at cl. 3. The House currently has 435 members. See Congressional Member Profile, at http://clerk.house.gov/members/congProfile.html (last updated Sept. 23, 2004). The other body comprising the Congress is the Senate, whose members are elected by all the voters of the state they represent. U.S. CONST. art. I, § 3, cl. 1. There are two senators from each state, thus numbering the Senate at 100 members. See Congressional Member Profile, supra.

118 U.S. CONST. art. II, § 1, cl. 1.

119 For example, the Supreme Court had to rule on the constitutionality of Congress’ method of regulating radioactive waste in New York v. United States. 505 U.S. 144, 149 (1992).

120 U.S. CONST. art. III, § 1. For example, the Supreme Court had to determine whether a federal agency had exceeded the power granted by Congress in implementing the Clean Water Act in Solid Waste Agency of N. Cook County v. U.S. Army Corps of Eng’rs. 531 U.S. 159, 166 (2001).

121 U.S. CONST. art. I, § 6, cl. 2, 3.

122 U.S. CONST. art. II, § 3.


124 In the environmental context, the majority of implementation work is done by the EPA. See supra notes 34-35 and accompanying text.

125 The national government has power to engage in environmental lawmaking pursuant to the Commerce Clause of the Constitution. U.S. CONST. art. I, § 8, cl. 3. The United States Constitution does not contain any provisions for the protection of the environment.
the government of each state. Each state does have the power to make and enforce its own environmental laws, but that power is strictly limited by federal mandates when the federal government has validly chosen to act. Additionally, states and the federal government often work together because federal laws usually call for state cooperation or action, a characteristic that is particularly common in environmental lawmaking.

Because of the relationship between the national government and each state, the national government enacts environmental laws that demand implementation action by the states.

3. How the United States Government's Structure Impacts the Rogue River Basin Project

The structure of the United States government meaningfully, if indirectly, shaped the environmental impact of the Rogue River Basin Project. Because of the principle of separation of powers, each branch of government was involved in the project. Specifically, Congress enacted legislation that requires federal agencies to examine environmental impacts when implementing a federal project, such as the dam project in the Rogue River Basin. An agency of the executive branch implemented the law by examining the likely impact of the three dams on the natural environment before it began building them. While the agency attempted to implement the law by performing various environmental impact assessments, opponents of the project appealed to the judicial branch to review the actions of the executive branch. The judicial branch interpreted the history of the case as it made its way from the lowest federal court to the United States Supreme Court over the course of three years.

126 A state is a local government within the United States, defined as "[t]he section of territory occupied by one of the United States. One of the component commonwealths or states of the United States of America." BLACK'S LAW DICTIONARY 979 (6th ed. 1991).

127 U.S. CONST. art. VI, § 2. States are limited to act where the federal government has not taken action by enacting a statute and accompanying administrative rules in an area of law. See supra notes 37-38 and accompanying text. In the area of environmental lawmaking, the federal government generally sets a floor, leaving states free to enact more stringent environmental laws if they so choose. See infra note 128.

128 See, e.g., Federal Water Pollution Prevention and Control Act, 33 U.S.C. §§ 1251-1387 (2000), where Congress declares its goals and policies by stating:

> It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources. . . . It is further the policy of the Congress to support and aid research relating to the prevention, reduction, and elimination of pollution, and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution.

Id. §1251. In this way, Congress acknowledges that states can and should implement their own laws regarding water pollution, but directs state efforts by providing funding for projects approved by Congress. See also David R. Hodas. Enforcement of Environmental Law in a Triangular Federal System: Can Three Not Be a Crowd When Enforcement Authority is Shared by the United States, the States, and Their Citizens?, 54 Md. L. Rev. 1552, 1571 (1995), stating:

> Although all the major environmental laws are federal, the quantity, variety, and geographic dispersion of those regulated by these laws is so great that enforcement would be impossible if left solely to the federal government. As a result, essentially all the modern major environmental laws provide uniform, minimum national standards with the states "deputized," to a greater or lesser degree, to do the permitting and enforcing for the federal government.

129 For example, in order for an entity to obtain a permit to discharge pollutants into navigable waters, it must obtain a permit as established under the federal permit program, which states can administer if their local program meets federal criteria. 33 U.S.C. § 1342(a), (b) (2000). Also, the issuance of a permit depends upon both federal guidelines for effluent limitations, as well as state guidelines for the overall quality of the water body receiving the discharge. 33 U.S.C. §§ 1311, 1313. Similarly, in the air pollution context, the federal government established national standards for overall air quality, but delegated to the states the function of implementing a plan to achieve the national goal. See Clean Air Act, 42 U.S.C. §§ 7401-7671q (2000). See also id. §§ 7409-7410.

130 See the discussion of the National Environmental Policy Act, supra notes 31, 48-57 and accompanying text.

131 In the case of the Rogue River Basin, the U.S. Army Corps of Engineers was charged with implementing the law. See Marsh v. Or. Natural Res. Council, 490 U.S. 360, 363 (1989).

132 Note the history of the case as it made its way from the lowest federal court to the United States Supreme Court over the course of three years. See supra note 11.
Congress’ law, applied its interpretation to the agency’s action, found the agency’s action to be insufficient, and halted progress on the project, which ultimately resulted in the abandonment of the project. The project’s abandonment interrupted further degradation of an endangered salmon population, and thwarted the goal of controlling flooding in the region.


1. The Ruling Leadership’s Control over Environmental Policy

In contrast to the United States’ three equal branches of government with checks and balances, China’s structure of government is largely modeled after the civil law parliamentary system, in which the legislature holds the primary level of power.中国’s Constitution ostensibly vests primary power in the legislature, which is known as the National People’s Congress (“NPC”). As outlined by the constitutional scheme, other organs of government, including the executive and judicial branches, are subordinate to the NPC. The NPC

135 The law was first interpreted by a federal district court, which held that the agency had properly followed the applicable environmental laws in its analysis of the impact of a dam on the surrounding environment. Or. Natural Res. Council v. Marsh, 628 F. Supp. 1557, 1563 (D. Or. 1986). The Council appealed to the Ninth Circuit Court of Appeals, who reversed the lower court by finding that the agency improperly applied the law in two ways. First, “[b]ecause the wildlife mitigation plan here merely lists measures to be used and includes neither an analysis nor an explanation of effectiveness, it is inadequate to satisfy the NEPA.” Or. Natural Resources Council v. Marsh, 832 F.2d 1489, 1494 (9th Cir. 1987). Further, the court held that the agency erred in failing to complete a supplemental EIS when new information had been discovered regarding the impact of the dam on the environment. Id. at 1494-96. The United States Supreme Court partially reversed the court of appeals by holding that the agency was properly followed the law by not completing a supplemental EIS, but upheld the court of appeals regarding the agency’s inadequate mitigation plan. Marsh, 490 U.S. at 385.

134 The outcome of the various levels of judicial review demanded that the agency adequately evaluate the cumulative impact of the project in order to meet the standards of NEPA if it were to continue with the project. Marsh, 490 U.S. at 369.

136 See supra text accompanying note 14.

137 See Current Dam Removal Efforts, supra note 14. In the case of the Rogue River Basin Project, both the legislative and executive branches supported the project. Congress appropriated funds for the project, and an executive agency found the project to be a worthwhile undertaking. Marsh, 490 U.S. at 363-64. In spite of this support, the judicial branch had the power to stop the project, which it did in a federal court below the Supreme Court. See Or. Natural Res. Council v. Marsh, 832 F.2d at 1500 (granting injunction to opponents of project while ordering agency to prepare proper environmental reports).

138 A parliamentary system is defined as “a system of government having the real executive power vested in a cabinet composed of members of the legislature who are individually and collectively responsible to the legislature.” MERRIAM WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2101 (2002). A civil law system is one in which the legislature makes and interprets laws; therefore, courts do not review a legislature’s action nor do their decisions have precedential value. See generally ALAN WATSON, THE MAKING OF THE CIVIL LAW, 168-78 (Harvard Univ. Press 1981).

139 The majority of countries other than the United States are based on a parliamentary model, either using the French or German structure. See RENE DAVID, FRENCH LAW: ITS STRUCTURE, SOURCES, AND METHODOLOGY 19-38 (Michael Kindred trans., 1972) (discussing the separation of powers and the supremacy of the legislative branch); GRUNDEGESETZ, art. 20 (outlining power as emanating from the people in the form of the legislature, or Bundestag). See also DONALD P. KOMMERS, THE CONSTITUTIONAL JURISPRUDENCE OF THE FEDERAL REPUBLIC OF GERMANY, 85-86 (Duke Univ. Press 1989) (describing a parliamentary system like that implemented in China, which has a unique aspect of federalism, where the federal government enacts the majority of laws, but the implementation for the laws is left primarily up to states) and notes 120-23 and accompanying text (concerning the role of the national and local governments in enacting legislation).

140 The president is elected by the NPC and serves only as long as members of the NPC. XIANFA art. 57, sec. 1 (1982). The State Council is the highest organ of the state administration. Id. at art. 85, sec. 3. The People’s Courts are established and defined under section 7 of the Constitution. Id. at art. 123-135, sec. 7. See ROSS & SILK, supra note 73, at 19-20 ("[J]udicial organs remain
is quite large, having approximately three thousand members, and as a result of its size it convenes only once per year. This affords the NPC a very limited time to enact laws, and as such the NPC’s Standing Committee, a permanent sitting body comprised of the highest-ranking members of the NPC, enacts most of the national environmental laws in China.

Although the NPC performs the highest legislative functions in China, it is not the sole source of environmental law, nor does it enact environmental laws in a vacuum. The NPC usually acts upon recommendations from the ranking members of the Standing Committee or State Council, who are high-level members of the Communist Party of China (“CPC”). Also, the NPC uses input from the Environmental Protection and Natural Resources Conservation Committee (“EPNRC”) and SEPA to enact legislation. Once the NPC or its Standing Committee enacts legislation, it delegates the work of implementation to the State Council (who likely drafted the law in the first place) and SEPA, either of which will issue more specific notices and binding edicts concerning the NPC’s law.

2. The Local Governments as Primary Environmental Lawmakers and Enforcers

33
Chinese environmental legislation, in contrast to similar legislation in the United States, is intentionally vague and general in nature.\textsuperscript{152} As a result, local agencies\textsuperscript{153} implement the vast majority of laws that address day-to-day environmental issues.\textsuperscript{154} This leaves an inadequate structure at the national level to implement specific laws when they are needed.\textsuperscript{155} After the NPC. or its Standing Committee, enacts legislation and the State Council, or SEPA, issues edicts and notices, the national bodies generally allow local governments autonomy to implement and monitor environmental laws that are based on the spirit of the national law.\textsuperscript{156} There are, however, notable exceptions to this scheme in cases where specialized environmental laws are enacted that are subject to national plans and programs.\textsuperscript{157} The Water Diversion Project and Three Gorges Dam project are examples of the exceptions where the national government maintains some level of direct control.\textsuperscript{158}

3. How China’s Government Structure Impacts Actions Affecting the Environment

The absence of a check on China’s legislative branch by other branches of government, and the absence of any check within the leadership itself,\textsuperscript{159} leaves China’s natural environment solely in the hands of the ruling leadership’s legislative agenda. The Communist Party leadership, through the State Council and Standing

\textsuperscript{152} See supra note 144. For example, Article 19 of the People’s Republic of China Environmental Protection Law states: “Measures must be taken to protect the ecological environment while natural resources are being developed or utilized.” Environmental Protection Law, art. 19 (1989) (P.R.C.). There is no further guidance, clarification, or action required by the statute. See supra notes 97-102 and accompanying text.

\textsuperscript{153} A local government describes any level of government below the national level. The level directly beneath the national level includes centrally administered municipalities (Beijing, Chongqing, Shanghai, Tianjin), autonomous regions, and provinces. MA & ORTOLANO, supra note 76, at 33. Beneath this level is the municipal level, with the county level at the bottom. Id. at 39. The environmental bureaus at each level are referred to as Environmental Protection Bureaus (“EPB”). Id. at 8.

\textsuperscript{154} Id. at 15. Generally, local people’s congresses and the executive branch of local governments enact their own versions of national legislation, so long as their version is consistent with the national legislation. Id. Article 16 of the PRC Environmental Law states: “The local people’s governments at various levels shall be responsible for the environment quality of areas under their jurisdiction and take measures to improve the environment quality.”

\textsuperscript{155} At the national level, SEPA has only two hundred employees. making it impossible for it to address every environmental issue that it could face in a country the size of China. See Guo Jia Huan Jing Bao Hu Zong Ju Zhi Neng She Zhi. Nei She Ji Gou He Ren Yuan Bian Zhi Gui Ding [Regulation on Responsibility. Allocation. Organizational Structure and Personnel Limitations of the State Environmental Protection Administration] (State Council on June 23, 1998).

\textsuperscript{156} For example, the Water Pollution Prevention and Control Law of 1984 outlines the duties and requirements for the supervision and administration related to prevention and control of water pollution by stating:

In exploiting, utilizing, readjusting, and allocating water resources, the relevant departments of the State Council and the people’s governments at all levels should take all factors into consideration. maintain the rational discharge of the rivers, the rational water level for lakes, reservoirs, and groundwater, and the natural purification capacity of the waters.

Water Pollution Prevention and Control Act. art. 9 (1984) (P.R.C.). There are no dates for compliance in the statute, no requirement that certain methods be used, and no accountability system to the national government outlining what is being done and how. This is a contrast to legislation covering the same issue in American legislation. See supra note 122 and accompanying text.

\textsuperscript{157} MA & ORTOLANO, supra note 76, at 17. An early example of this type of legislation is the Three Norths Shelter Belt Development Program, enacted in 1978, that involves several northern provinces in China. See id.

\textsuperscript{158} See Officials on China’s Water Diversion Project. supra note 6 (The former deputy general manager of the China Yangtze Three Gorges Development Company commented that: “Relevant departments of China will work out effective measures to control the project’s possible damage to the ecological environment at the lowest level.”) The Water Diversion Project holds such prominence that it is specifically described in the Draft Outline of the Tenth Five-Year Plan for National Economic and Social Development (2001-2005). See West Route of the Water Diversion Project to Start in 2010, PEOPLE’S DAILY, Aug. 19, 2002, available at http://english.peopledaily.com.cn/200208/19/eng20020819_101681.shtml. The problem with this is the fact that the national government is ill equipped to handle several environmental issues at any one time. See supra note 155 and infra note 220.

\textsuperscript{159} In the Three Gorges Dam context, it was anticipated that the project would be approved through then Prime Minister Li Ping’s agenda, in spite of opposition in many quarters. The Biggest in Question (Three Gorges Dam, China), ECONOMIST, Mar. 28, 1992, available at 1992 WL 11281156.
Committee sets the nation's policy and drives the enactment of laws, thereby ordering the government's priorities. The current national policy priority is continued economic growth, not environmental protection. Therefore, major projects like the Water Diversion Project will likely be implemented in spite of concerns about environmental issues and population dislocation.

IV. THE EFFECT OF PRIVATE ACTORS ON THE ENVIRONMENT

The role of nongovernmental actors in environmental matters facilitates the same outcome of providing checks and balances (in the case of the American Rogue River Basin Project) or unimpeded progress (in the case of the Chinese Water Diversion Project) as the effect of the government structures and their implementation of environmental laws. There are three primary nongovernmental actors that must be considered for each country. Further, the level of each nation's development seems to cause different outcomes in the ability of nongovernmental actors to affect how each nation handles environmental issues.

First, nongovernmental organizations ("NGOs") must be considered as forces in dealing with environmental issues. The comparison between the United States and China results in the same outcome as found in the earlier comparisons between the laws and structure of each nation. In fact, this result occurs largely because of the laws and government structures in each nation: in the United States, NGOs have the means and ability to take a role in the implementation of projects affecting the environment; while in China, they do so to a much lesser extent. Second, citizens must be considered as a factor in addressing environmental concerns. In the United States, citizens generally act in groups, and have a similar ultimate impact as formal NGOs. In China, citizens play a more limited role, but their role appears to be growing as modernization continues in the Chinese economy. Finally, international entities must be considered. In the United States, international entities play a role, but their role is relatively limited because the United States already has programs in place that satisfy the requirements of international trade, and provide it with a leadership role.

---

160 See supra notes 146-147 and accompanying text.
161 See ROSS & SILK, supra note 73, at 4 ("In the most limited aspect, law has simply been used to provide a veneer of respectability for what are essentially partisan political purposes.").
162 See China Gambles, supra note 15 ("China is desperate to keep its economy growing quickly. Over the past few years, it has reached deep into the national treasury to finance projects that it hopes will create jobs and stimulate enough growth to ensure social stability and to keep the Communist Party in power.").
163 In spite of the fact that environmental protection is not the Chinese government’s current priority. Ross and Silk comment that “it is particularly remarkable that support for pollution control and many other aspects of environmental protection has by and large remained firm regardless of shifts in the relative influence of contending leadership groups . . . .” ROSS & SILK, supra note 73. at 4. In spite of this support, however, China is apparently losing the battle with environmental contamination and degradation. See, e.g., Richard J. Ferris, Jr. & Hongjun Zhang, The Challenges of Reforming an Environmental Legal Culture: Assessing the Status Quo and Looking at Post-WTO Admission Challenges for the People’s Republic of China, 14 GEO. INT’L ENVTL. L. REV. 429, 434-35 (2002) (describing many of the environmental challenges China currently faces).
164 See supra note 6 (discussing the comparable Three Gorges Dam project, which was implemented in spite of environmental concerns and protests).
165 See infra Part IV.A.1 (concerning the United States and Part IV.B.1 concerning China).
166 See infra Part IV.A.2 (concerning the United States and Part IV.B.2 concerning China).
168 See infra Part IV.A.3 (concerning the United States and Part IV.B.3 concerning China).
169 For example, the United States, considered a developed nation, was one of the original members of the WTO, while China did not join until 2001 as a developing country. The United States has already met the requirements for membership in the WTO, where China has not. See supra text accompanying notes 217-219. See also Christopher Duncan, Out of Conformity: China’s Capacity to Implement World Trade Organization Dispute Settlement Body Decisions After Accession, 18 AM. U. INT’L L. REV. 399, 406 (2002) (describing China’s entry into the WTO as a developing country and its effects on the organization).
China, by contrast, is still a developing nation. and needs to make several internal changes in order to continue its economic growth through international trade. Therefore, entities such as the World Trade Organization (“WTO”) appear to be influencing how China develops its environmental law and policy as it continues to expand economically.

A. The United States

1. Nongovernmental Organizations

In the United States, NGOs are the primary, and possibly most important, catalysts for checking legislative and executive actions that affect the environment. An individual NGO has almost complete freedom in establishing itself, because a group of citizens can organize NGOs by simply incorporating under the laws of the state in which the organization will be based. NGOs are free to support government policies or to oppose them, even in a confrontational manner. NGOs are the primary non-government parties that bring cases to court seeking review of government actions. This is important because a court must have a case before it to review the action of the legislative and executive branches: it cannot review the other branches’ actions on its own accord. Therefore, while the separation of powers principle theoretically balances government powers in an effective manner, the principle cannot work without the participation of outside parties such as NGOs.

---


171 For the purposes of this article, an NGO is any nongovernmental organization, including what is commonly known in the United States as a not-for-profit institution.

172 All that is required of a party that wants to establish itself as a corporation is to visit its state’s website and complete the required forms. See, e.g., Missouri Secretary of State. Forms, at http://www.sos.mo.gov/forms.asp (last visited Oct. 21, 2004). The vast majority of environmental NGOs are registered as nonprofit organizations that receive tax exempt status from the federal government under Section 501(c)(3) of the United States Internal Revenue Code. ED, NRDC, and the Sierra Club are examples of NGOs that operate in this manner. See infra note 173.

173 An example of an NGO that uses a confrontational approach to address environmental concerns is Greenpeace, whose mission statement is: “Greenpeace is an independent, campaigning organisation that uses non-violent, creative confrontation to expose global environmental problems, and force solutions for a green and peaceful future. Greenpeace’s goal is to ensure the ability of the Earth to nurture life in all its diversity.” See Greenpeace. Our Mission, at http://www.greenpeace.org/extra?item_id=4265&language_id=en (last visited Oct. 22, 2004). Another example of a confrontational NGO is People for the Ethical Treatment of Animals (“PETA”), who uses messages such as “Feeding Kids Meat Is Child Abuse” to inform people of its views. See PETA, PETA’s New Billboard: “Feeding Kids Meat Is Child Abuse” Up for Diabetes Meeting (Apr. 4, 2003), at http://www.peta.org/news/NewsItem.asp?id=2108.

174 See id. (describing two well-established NGOs and their work). In some cases, NGOs join forces to file suit requesting review of government action. For example, in March of 2003, the Sierra Club and NRDC worked together to file a suit against the EPA alleging violations of the CWA. See Sierra Club Press Releases, Environmentalists Sue EPA Over New Factory Farm Pollution Rule (Mar. 10, 2002), at http://lists.sierraclub.org/SCRIPTS/WA.EXE?A2=ind0303&D=L=ce-scnews-releases&D=T=0&H=1&D=F=&S=&P=771.

175 Article III of the United States Constitution allows the judicial power to extend to all cases, implying that there must be a controversy before a court in order for it to act. U.S.CONST. art. III, § 2, cl.1. This concept was elucidated in Marbury v. Madison, where the Supreme Court stated: “Questions, in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court.” 5 U.S. (1 Cranch) 137, 170 (1803).

176 The lawsuit concerning the Rogue River Basin Project is an example of a precedent-setting case that was brought by an NGO. See generally Or. Natural Res. Defense Council v. Marsh, 490 U.S. 360 (1989).
2. Citizens

While individual American citizens rarely get involved in environmental issues, groups of citizens commonly do get involved. Citizen groups are often formed because there is a need to address a local environmental crisis that is or has taken place in a community. Sometimes, where the government wants citizen feedback, it notifies citizens that it is about to take action or permit an action that will affect the environment and a group is formed. In other cases, citizens form groups in an attempt to block action that the government has decided to take that threatens their community.

In the United States, the most recent trend in citizen action has been the development of citizen group participation in economically disadvantaged and minority communities, giving rise to what has become known as the “environmental justice” movement. Environmental justice advocates seek to address the disproportionate environmental impact that disadvantaged communities face, and the movement has become a vocal force in the environmental realm. While there are legal hurdles for groups challenging government action on environmental justice grounds, the development of coalitions between a combination of citizens, regulated parties and government actors has shown promise as a way for the two groups to find common ground.

---

177 See Michael S. Grave, Private Enforcement of Environmental Law, 65 Tul. L. Rev. 339, 351 (1990), stating:

When it first included citizen suit provisions in environmental statutes, Congress expected that citizen suits against alleged polluters would usually be brought by individual “concerned citizens,” not by nationally organized environmental advocacy groups. However, enforcement by “concerned citizens” without organized support has turned out to be a rare phenomenon. The vast majority of private enforcement actions has been brought by environmental advocacy groups such as National Resources Defense Council (NRDC).

178 For example, the Ecumenical Task Force of the Niagara Frontier was a prominent citizen group formed to address the Love Canal Disaster and publicize the problem of toxic waste in America. See Ecumenical Task Force of the Niagara Frontier, Love Canal Collection, Progress Report of the Ecumenical Task Force of the Niagara Frontier, at http://ublib.buffalo.edu/libraries/projects/lovecanal/documents_online.html (last updated Oct. 17, 2001). See also supra note 27.

179 See Sara Pirk, Expanding Public Participation in Environmental Justice: Methods, Legislation, Litigation and Beyond, 17 J. Envtl. L. & Litig. 207, 213-16 (2002) (describing both notice-and-comment type and advisory task force groups that are formed specifically to deal with agencies who are taking action in a community that will affect its environment).

180 S. Camden Citizens in Action v. N.J. Dep’t of Envtl. Prot. is an example of a community citizen group filing suit to prevent a plant from emitting certain levels of air pollutants as approved by the state and federal government. 274 F.3d 771 (3d Cir. 2001). See also Jonathan Poisner, A Civic Republican Perspective on the National Environmental Policy Act’s Process for Citizen Participation, 26 Envtl. L. 53, 54-55 (1996) (commenting that NEPA has led to an unprecedented level of citizen participation in environmental decision-making, spawning a great national experiment in participatory pluralism).

181 It is regularly the case that the most economical place for a factory to open or for a waste dump site to be located is in an area where land is inexpensive, which coincides with the location of poor and minority communities. See Pirk, supra note 179, at 207-08. Environmental justice can be defined as “the idea that poor and minority neighborhoods disproportionately bear the burdens of environmental hazards.” Id. at 208.

182 Environmental justice has garnered so much attention that in 1994, the President of the United States issued an Executive Order requiring each federal agency to make environmental justice part of its mission and address any disproportionate affects to human health and the environment that occur because of agency policies or practices. Exec Order No. 12,898, 59 Fed. Reg. 7,629 (Feb. 11, 1994). The environmental justice movement suffers from roadblocks, however, because legal barriers prevent disadvantaged communities from making a case against the government. Citizen groups must show that the government intended to discriminate against them by its action, which is often an impossible burden. See e.g., S. Camden Citizens, 274 F.3d at 788 (denying plaintiffs injunction where intentional discrimination could not be shown).


184 The example of the proposed location of a Shintech plant is a good example. Shintech attempted to locate a plant in a disadvantaged community, and applied for permits from the EPA without addressing the concerns of the community. The huge controversy the project caused ultimately forced Shintech to abandon its plans. It chose an alternate site for its plant, met with community members and used alternative dispute resolution devices to deal with environmental concerns, and finally constructed its
3. International Entities

Environmental law not only affects the environment and citizens within each nation, it directly affects other nations as well. As a result, international entities have an impact, albeit through primarily extralegal means, on the handling of environmental issues within each nation. Because nations do not have a predictable method by which to enforce environmental laws against each other, most countries rely on agreements between sovereign states in the form of treaties or conventions in order to address environmental issues. The United States is no exception to this practice, as it is a party to numerous treaties and conventions involving environmental issues. However, there are also several key treaties that the United States has failed to ratify, which can negatively impact international relationships. From an environmental standpoint, however, the fact that the United States has elected not to participate in recent treaties does not mean that it will not act at all towards the goals of the treaties. In spite of its nonparticipation, the United States will likely modify its handling of environmental issues in response to the ratification of the agreement by other nations.

B. China

1. Nongovernmental Organizations


The environmental justice model in China will likely develop in a different manner than in the United States, primarily because the two countries are very different concerning race and financial inequality issues. See Ruixue Quan, Establishing China’s Environmental Justice Study Models, 14 GEO. INT’L ENVTL. L. REV. 461, 463 (2002).

The obvious examples of this is in the areas of global warming and ozone depletion, which is caused by each nation’s internal activities. See infra notes 191 and 211 (identifying treaties that were enacted to deal with these problems).

Each nation addresses this impact in a different way, because there is no body able to enforce laws between nations, and because nations are more likely driven to act by diplomacy, morality, and pressure than by laws. See Mark Janis, An Introduction to International Law 3 (Aspen Publishers, 3d ed. 1999).


See Head, supra note 188 (listing those treaties that the United States has not ratified). In the recent past, the United States has been highly criticized for failing to ratify the Kyoto Protocol. See infra note 191.


See Bailey, supra note 190, at 120-21 (outlining way in which the United States has attempted to address the emissions reductions demanded by the Kyoto Protocol even though it has failed to join). Additionally, the fact United States failed to ratify the Kyoto Protocol does not free it from the political constraints of customary international law. See generally Kara K. Davis, Note, The United States’s Obligation to Lower Greenhouse Gas Emissions: An American Perspective of the Kyoto Protocol, 10 U. MIAMI INT’L & COMP. L. REV. 97 (2002).
In China, in contrast to the United States, NGOs play a lesser role in addressing environmental issues that arise from its government’s actions. All NGOs must be approved by and registered with the government. There are several NGOs in existence in China, but they were primarily established at the direction of the government to meet agency objectives. The government sponsored NGOs only function for research, training, and environmental awareness, and have limited access to participate in implementing environmental law in China. Additionally, there are few independent NGOs, because it is very difficult to obtain a registration. Because the vast majority of existing NGOs are established at the direction of the government, they are not free to criticize government actions and cannot effectively block government action that is detrimental to the environment before the action is taken.

2. Citizens

In China, citizens have some ability to address environmental issues, but do not often use available avenues and lack access to some important ones. Because most of the day-to-day work in the area of environmental law takes place at the local level, it is not surprising that the most common method of citizen activity takes place at local EPBs. Many local governments have “offices of letters and visits” that allow citizens to lodge complaints. Additionally, many EPBs have active mechanisms to receive citizen complaints. In some cases, citizens attempt to deal directly with a polluting factory before taking a problem to their local EPB.

Several Chinese laws, including environmental laws, allow citizens to file suit

193 MA & ORTOLANO, supra note 76, at 72.
194 Examples include Friends of Nature, established under the Academy of Culture in 1993; Global Village Environmental Culture Institute, established under the Chinese Commercial Agency in the mid-1990's; and Beijing Environment and Development Institute, established in 1995. MA & ORTOLANO, supra note 76, at 72-73.
195 Id. at 72.
197 Id. at 450-51 (finding that because registration is so cumbersome and time consuming, citizen groups have forgone registering as NGOs and have registered under China's Company Law instead).
198 MA & ORTOLANO, supra note 76, at 72-73.
199 See supra notes 153-156 and accompanying text.
200 MA & ORTOLANO, supra note 76, at 71.
201 Id. at 70. Between 25-50% of all complaints are anonymous, indicating that citizens fear retaliation by government officials. Id. An example of retaliation was recounted where citizens petitioned the central government to investigate false claims by local officials that land reclamation funds had been used to create farmland. CHINESE SOCIETY: CHANGE, CONFLICT AND RESISTANCE. 149-51 (Elizabeth J. Perry & Mark Selden eds., 2001). After the citizens petitioned the central government, local officials accused them of causing trouble during the Cultural Revolution, and informed other villagers to dissociate with the complaining citizens. Id. at 150-51.
202 MA & ORTOLANO, supra note 76, at 70-71. This mechanism can be in the form of an office mirroring that of municipal governments, or a hotline that citizens can use to call in complaints. See id. In the time period of 1991-1993, EPBs received approximately 55,000 complaint letters per year and 80,000 visits from concerned citizens. Id. at 71. Generally, EPBs respond to over 80% of the issues raised by citizens. Id.
203 Id. at 71. This system does not always end in a peaceful resolution, however, as evidenced by citizen uprisings in response to environmental complaints that go unsatisfied. See, e.g., Thousands of Beijing Residents Block Highways to Protest Environmental Pollution, Hong Kong Ming Pao, Aug. 6, 2002 (describing citizens' blocking roads and demonstrating against garbage dump that was polluting the environment) and CHINESE SOCIETY, supra note 201, at 143-59 (describing rural citizens' efforts to address environmental grievances through protest and other means).
204 Article 6 of the Environmental Protection Law provides that: “All units and individuals shall have the obligation to protect the environment and shall have the right to report on or file charges against units or individuals that cause pollution or damage to the environment.” Citizens have also relied upon the 1991 Civil Procedure Law as a mechanism to bring complaints for environmental pollution. Zhonghua Renmin Gongheguo Minshi Susong Fa [Civil Procedure Law of the People's Republic of China] 1991.
concerning environmental problems. However, until recently Chinese citizens have been reluctant to resort to suing in order to address environmental grievances.205

In spite of the various mechanisms available to environmentally concerned citizens, these mechanisms will not likely affect projects like the Three Gorges Dam or the Water Diversion Project. First, there is no formal mechanism for citizens to use to address likely environmental impacts before such projects actually do impact the environment.206 Second, even if citizens did try to prevent the implementation of a project that impacted the environment, it is unlikely that such a measure would have any effect if the project was backed by the Chinese leadership.207 Finally, even if mechanisms provide citizens with the right to act, citizens would likely be reluctant to do so.208

3. International Entities

China’s environmental policies, to even a greater extent than the United States, are affected by agreements with sovereign nations and their expectations concerning the environment.209 China’s participation in more than eighty environmental treaties influences its implementation of environmental laws. For example, China is a member of the Montreal Protocol,210 which demands the production of chlorofluorocarbons and halons in China be eliminated by the year 2010.212 This agreement will require changes in China’s environmental policies.213 In spite of the existence of these agreements, however, if China chooses not to comply with its part of the agreement, there is little that the international community can do.214

205 MA & ORTOLANO, supra note 76, at 71.
206 For example, the Environmental Protection Law, quoted supra note 204, does not provide for citizens to take action until pollution or environmental damage has already occurred. See also text accompanying note 198. In the context of the Three Gorges Dam, the primary outlet for citizen dissatisfaction was through protests and the efforts of Dai Qing and people like her. See supra note 6.
207 See supra notes 109-114 and accompanying text (describing how government structure prevents effective check on ruling party activity). See also supra notes 88-95 and accompanying text (outlining how environmental protection laws receive lower priority when they conflict with the ruling leadership’s agenda).
208 See supra text accompanying note 205. Not only are citizens reluctant to criticize their government for environmental errors, they are even more sensitive to the idea of criticizing the central government for such errors. MA & ORTOLANO, supra note 76, at 72. An example of this can be seen in the case described in note 201, supra, in which citizens petitioned officials in the central government concerning problems with local officials. The citizen complaint arose from land use, which was an issue because of farmland loss resulting from the Three Gorges Dam project. The citizens had to be careful in making their argument to the central government because “[t]hey were keenly aware that their challenge to official wrongdoings must be framed in terms acceptable to the central government, for their challenge raised serious questions on the feasibility of the politically glorified Three Gorges project.”

Chinese Society, supra note 201, at 151.
209 See supra notes 163-168 and accompanying text.
210 See Ferris & Zhang, supra note 196, at 431.
212 See MA & ORTOLANO, supra note 76, at 18. “[The] Country Program for the Phaseout of Ozone Depleting Substances under the Montreal Protocol [was] approved by the State Council in 1993.” Id.
213 Id. The enormous expense of eliminating these substances prevented China from joining the Protocol until it obtained financial incentives from developed nations. See Patrick Kelly, The WTO and Global Governance: The Case for Contractual Treaty Regimes, 7 WIDENER L. SYMP. J. 109, 130 (2001).
214 See supra note 186 and accompanying text.
In spite of the impact of international environmental agreements between nations, China's recent accession to the WTO will have the most dramatic impact on China's environmental program. Although the main function of the WTO is to facilitate trade between nations, its rules also affect China in ways only indirectly related to trade, including its environmental policy. Not only does the WTO use its rules to prioritize environmental responsibility, the WTO also expects members to "promote clear and effective notice of [environmental health and safety] standards, greater public participation in standard setting, the strengthening of these standards in developing countries such as China, and consistent and transparent enforcement." This expectation will be an issue because China is currently lacking in all of these areas, primarily because it does not provide notice of new legislation, nor does it promote ease of access to its existing laws and regulations. The intensity with which China addresses the WTO mandates ultimately rests upon how well the mandates are enforced by the WTO, which can only be determined by the actions of other member nations and the WTO itself.

216 The WTO was established in 1995 with a "goal ... to help producers of goods and services, exporters, and importers conduct their business." See What Is the WTO?, at http: www.wto.org/english/thewto_e/whatis_e/whatis_e.htm (last visited Oct. 21, 2004). The WTO currently has 148 member countries, including both China and the United States. Id. WTO rules are implemented through its agreements, which are signed by the member countries. Id.
217 The environment is an emphasis of the WTO: The preamble of the Marrakesh Agreement Establishing the World Trade Organization includes among its objectives, optimal use of the world's resources, sustainable development and environmental protection. This is backed up in concrete terms by a range of provisions in the WTO's rules. Among the most important are umbrella clauses (such as Article 20 of the General Agreement on Tariffs and Trade), which allow countries to take actions to protect human, animal or plant life or health, and to conserve exhaustible natural resources.
See In the WTO, Commercial Interests Do NOT Take Priority Over Environmental Protection, at http://www.wto.org/english/thewto_e/whatis_e/10mis_e/10m04_e.htm (last visited Oct. 21, 2004).
218 See supra note 217.
220 Because court rulings do not have the force of law, and because the law can only be found in statutes and edicts, which differ depending upon each locality and are not published, the Chinese legal system does not provide adequate notice to parties attempting to determine what the law is. Ferris & Zhang, supra note 196, at 443. Providing notice is particularly difficult because SEPA, the equivalent of the United States' Environmental Protection Agency, has only two hundred headquarters employees, in comparison to the EPA's 18,000 employees, making it impossible for SEPA to manage all of the laws and regulations arising under its control. Id. at 457.
221 The combination of vague federal laws and local implementation and enforcement make it difficult for outside parties to comply with legal requirements. Ferris & Zhang, supra note 196, at 457.
222 The WTO is unable to enforce its agreements itself; it depends upon member nations to file a complaint against the offending nation. If the nations themselves cannot reach a resolution, the WTO's Dispute Settlement Body will hear arguments on both sides and decide the matter. If the losing nation fails to comply with the decision, the injured nation can retaliate by suspending its obligations or concessions made to the offending nation. Therefore, unless a member nation files a complaint against China for its violation of an agreement, the WTO cannot itself intervene. See Curtis Miller, Note, The WTO: Biting the Hand that Fed It, 44 WM. & MARY L. REV. 2319, 2324-29 (2003) (describing WTO enforcement procedures).
V. HAS THE UNITED STATES OR CHINA STRUCK THE RIGHT BALANCE?

The Rogue River Basin Project in the United States shows that a national project, even with compelling and valuable goals, can be completely shut down under certain circumstances.\(^223\) China’s Water Diversion Project, by contrast, shows that national projects promoted by the ruling leadership can overcome practically any obstacle in coming to fruition.\(^224\) It would seem that neither result is fully satisfactory.\(^225\) However, the United States’ system of review at a minimum demands that the government justify its proposed actions, while China’s system does not; leaving China vulnerable to the type of environmental disaster that could dramatically impact its citizens and the environment.

A. The Case of the United States

The United States’ system contains valuable tools that force review of national projects to address environmental considerations. Laws, the principle of checks and balances, and the participation by nongovernmental actors in the United States allow review of government actions, promoting government bodies to provide reasoned justification when they contemplate large-scale projects.\(^226\) While there is controversy over whether the United States’ system is effective or fatally flawed in the balance it has struck,\(^227\) it can at least be said that government actors must review actions they propose to take.\(^228\) This feature arises from the United States’ combination of laws, government structure and the availability of public participation.

Environmental laws in the United States facilitate review of government actions affecting the environment. First, the laws clearly reflect the United States Congress’s acknowledgement of the important

\(^{223}\) See supra notes 14, 63, and accompanying text, discussing the Rogue River Basin and Tellico Dam projects. It would be an overgeneralization to suggest that every nationally sponsored project has or could be stopped in the United States, but it is also true that a party who opposes a project has the ability to at least delay a proposed project. See, e.g., James Dao, Environmental Groups to File Suit over Missile Defense, N.Y. TIMES, Aug. 28, 2001, at A10. available at http://query.nytimes.com/gst/abstract.html?res=F10815F734550C7B8E6A10894D94444282&incamp=archive:search (stating that environmental NGOs will sue under NEPA to force an EIS on plans for a missile defense test range, with one activist admitting: “Obviously the hope is that delay will lead to cancellation.... That’s what we always hope for in these suits.”).

\(^{224}\) See supra notes 6, 7, and accompanying text, discussing the Three Gorges Dam and national Water Diversion Project.

\(^{225}\) In the United States scenario, the failure of the dam projects meant that flooding would not be controlled in the Rogue River Basin and that valuable farmland would remain submerged in the Tennessee Valley. See supra notes 14, 63. In the Chinese scenario, the unencumbered implementation of national projects could cause irreparable harm to the country. See supra note 6.

\(^{226}\) In order for executive action to withstand judicial scrutiny, the judicial branch must be able to ascertain the decision making process of the executive agency. See Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto Ins., 463 U.S. 29 (1983):

"Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. The reviewing court should not attempt itself to make up for such deficiencies: "We may not supply a reasoned basis for the agency's action that the agency itself has not given."

Id. at 43 (citing SEC v. Chenery, 332 U.S. 194, 196 (1947)).

\(^{227}\) See Bradley C. Karkkainen, Toward a Smarter NEPA: Monitoring and Managing Government’s Environmental Performance, 102 COLUM. L. REV. 903, 904-06 (2002) (describing the positions of both proponents and critics of the NEPA program). Critics on all sides of the issue have diametrically opposed views. Some view the United States’ system of review as cumbersome and merely an exercise in paperwork that should be scaled back: others think that it does not go nearly far enough in requiring a focus on environmental considerations. Id.

\(^{228}\) See supra note 226. See also SERGE TAYLOR, MAKING BURLIAR CRACKERS THINK: THE ENVIRONMENTAL IMPACT STATEMENT STRATEGY OF ADMINISTRATIVE REFORM 251 (Stanford Univ. Press 1984) (concluding that NEPA disclosure has forced agencies to confront and anticipate environmental concerns, resulting in “relatively inexpensive environmental mitigation” in many cases).
public interest in protecting the environment. This factor is magnified by the fact that environmental laws are drafted to limit a party's ability to implement a project that will affect the environment without a reasoned explanation for its actions. Additionally, the fact that the laws allow for public participation supports review of government action. Thus, on several levels, the government and nongovernmental parties are affected by the fact that environmental laws are structured to promote review of government action.

The structure of the United States' government also promotes review of government action regarding projects that affect the environment. The system of three equal branches implements checks and balances so that no branch of government can act without the possibility of scrutiny by another branch. This causes government bodies to review their plans and provide justification for them before taking any action. In this way, government bodies themselves are encouraged to review their actions, because it is possible that another body will do so in the future.

While laws and structure in the United States provide for avenues of review, the availability of nongovernmental participation is often the catalyst allowing for review of government actions that affect the environment. The laws and structure would be ineffective if nongovernmental entities, particularly citizens, did not participate. Citizens can assist the government in enforcing environmental laws and check government action that may negatively impact the environment and work together with government and nongovernmental industry in deciding the best way to meet their objectives as well as the objectives of concerned citizens. Additionally, although to a lesser extent, international entities use informal pressure to impact the United States' actions in dealing with environmental issues. In using a range of available mechanisms, nongovernmental actors provide a critical link between laws, the system of checks and balances, and actual review of national projects that impact the environment.

While review can be a valuable tool in verifying that a proposed government action is worth its impact on the environment, the Rogue River Basin Project suggests that review can also incapacitate a government's attempts to make improvements within the nation. It is a disturbing consequence of the United States' system, by allowing for review, that an opposing party can kill an otherwise worthwhile project because of the broad language of a law. It is even more troublesome that a party can invoke laws and the government machinery to delay a project to death when the project may be perfectly legal and environmentally

229 The laws were drafted in response to the discovery of widespread environmental disasters. supra note 27. and comprehensively address every major area of environmental concern. See supra note 32 and accompanying text.

230 The environmental laws of the United States have provisions that do not allow for them to be ignored. One example of this factor is the broad application of the ESA to protect all endangered species. See supra note 63. Also, NEPA requires that agencies provide detailed assessments of the likely environmental impacts their actions will have. See supra note 48. Additionally, government actors must provide explanations for their actions because of the possibility of judicial review. Id.

231 See supra text accompanying notes 40, 41.

232 See supra Part III B.3.

233 This phenomenon is most commonly seen in the NEPA context. See 42 U.S.C. § 4332(c) (2000) which requires agencies to review proposed actions for their impact on the environment.

234 See supra Part IV A.1, 2.

235 See supra notes 43–46 and accompanying text.


237 See supra note 184 and accompanying text.

238 See supra Part IV.A.3.

239 The possible environmental impacts of a national project can be severe. See supra note 6.

240 For example, the Rogue River Basin Project sought to control flooding. See supra note 17.

241 The discovery of the snail darter, a type of perch, caused the abandonment of a nearly completed dam project in Tennessee. See Tenn. Valley Auth., 437 U.S. at 158. In his dissent, Justice Powell stated "Nor can I believe that Congress could have intended this Act to produce the 'absurd result'--in the words of the District Court--of this case." Id. at 196 (J. Powell, dissenting).
reasonable.\textsuperscript{242} This problem, which is serious in the United States, could be devastating in a developing country like China, whose leadership plans to continue developing China’s economy in order to improve the standard of living for its citizens.\textsuperscript{243} Therefore, it may be unrealistic for China to employ some version of the United States’ system of review when it undertakes projects that will impact the environment.

\section*{B. The Case of China}

The Chinese system of developing government projects, in contrast to the United States, facilitates the implementation of the ruling leadership’s agenda, which is currently economic development.\textsuperscript{244} The leadership’s agenda will take precedence over other considerations, including the negative impact of economic development on the environment.\textsuperscript{245} Laws, government structure, and the level of participation of nongovernmental actors all facilitate, with limited exception, the full implementation of the ruling leadership’s policy agenda without the hindrance of outside influences.

The environmental laws of China facilitate the goal of allowing national projects to come to fruition without effective interference from either government or nongovernmental parties. They are general in nature, which promotes discretion in implementation,\textsuperscript{246} as well as inhibiting enforcement in the event of noncompliance.\textsuperscript{247} Additionally, even those laws that explicitly address environmental protection also call for a balancing of the environment with economic considerations.\textsuperscript{248} Finally, the lack of effective citizen participation in invoking environmental laws insures that the ruling leadership’s policies will be followed.\textsuperscript{249} These factors all contribute to the conclusion that Chinese environmental laws cannot impede a national project that will impact the environment.

Similar to the impact that Chinese laws have on government actions affecting the environment, the Chinese structure of government also promotes the implementation of the ruling leadership’s policy agenda. The Chinese structure of government not only formally places its legislature above the other branches;\textsuperscript{250} its actual function is driven by CPC leaders.\textsuperscript{251} This leaves the other branches little opportunity to check the actions of the NPC as directed by the CPC,\textsuperscript{252} particularly where an issue, such as environmental protection, directly conflicts with the ruling leadership’s agenda.

At this point in China’s development, nongovernmental actors also have limited ability to check the government’s action when the action will impact the environment. NGOs and citizen groups within China still

\textsuperscript{242} See supra note 223 (dramatizing how litigation can be used to stop a project).
\textsuperscript{243} The ruling leadership announced its goal to use economic development to build a “well-off society.” See 16th CPC National Congress Closes, supra note 95. This goal, at least in part, is based on the pragmatic consideration that economic growth will create social stability, thus maintaining the power of the CPC. See China Gambles, supra note 15.
\textsuperscript{244} Economic development often does come at a high environmental cost. See supra note 27. Nonetheless, while air and water pollution are serious matters, they can be secondary considerations when a nation’s citizens face more immediate problems that arise from economic development. See, e.g., Joseph Kahn, China’s Workers Risk Limbs in Export Drive, N.Y. TIMES, Apr. 7, 2003, at A3 (reporting that China’s worker injuries have become “endemic” because of the pressure on officials to achieve economic growth) and Elisabeth Rosenthal, Factories Wrest Land from China’s Farmers, N.Y. TIMES, Mar. 23, 2003, at A8 (describing farmers’ problems with feeding their families as land is converted from farming to industrial use).
\textsuperscript{245} See supra note 95 (detailing the CPC’s commitment to continued economic growth).
\textsuperscript{246} See supra Parts II.B and III.B.
\textsuperscript{247} See supra note 152 and accompanying text.
\textsuperscript{248} See supra note 102 and accompanying text.
\textsuperscript{249} See supra note 101 and accompanying text.
\textsuperscript{250} See supra text accompanying notes 113, 201, and 208.
\textsuperscript{251} See supra notes 138-139 and accompanying text.
\textsuperscript{252} See supra note 147.
have little influence over the national government’s implementation of policy. International entities, through treaties, agreements and informal pressure also have limited ability to check China’s actions concerning projects that will affect the environment. However, the promise of economic growth through the association with the WTO seems to be having some influence as a check on China’s actions with respect to environmental issues.

China’s accession to the WTO will likely act, at least to some extent, as a check on its handling of environmental issues, largely because the WTO is directly linked to China’s goals of economic growth. China has indicated that it will make strides to comply with the WTO’s requirements that it prioritize environmental responsibility; promote transparency in its laws, and allow citizen participation in its lawmaking. These are factors that have all contributed to the system of review in the United States. The WTO offers a direct link to economic progress, making participating nations influential in forcing China to balance its goal of maintaining economic growth with a focus on the environment.

C. Can a Balance Be Struck between National Projects and the Environment?

In the United States, the process of environmental lawmaking, the government structure, and the availability of citizen participation are all hallmarks of the United States’ system of government. Changing any of these characteristics on a large scale would likely prove impossible, as the systems in the United States have a constitutional basis. Additionally, it may not be necessary to look for ways to wholesale change the United States’ system. First, there are ways in which government bodies act in an incremental basis to change the way in which review is applied to national projects. Second, it appears that the primary drawback of the United States’ system is its inefficiency, which in some measure serves to maintain some type of focus on

---

253 See supra Parts IV.B.1.2.
254 See supra note 173 and accompanying text. For example, the Three Gorges Dam continues to be constructed in spite of United States’ sanctions against the China for its lack of full consideration of the environmental impacts of the project. See Adam Smith, A High Price to Pay: The Costs of the U.S. Economic Sanctions Policy and the Need for Process Oriented Reform, 4 UCLA J. INT’L L. & FOREIGN AFF. 325, 334 n.35 (1999).
255 See supra note 216, describing the goals of the WTO.
256 Although China will attempt to comply with WTO mandates, its efforts will not be met without hurdles. See supra note 170, which describes the pragmatic statement of one Chinese official concerning China’s ability to comply with the WTO agreements.
257 See supra text accompanying note 217.
258 See supra text accompanying note 219.
259 See supra Part V.A.
260 See supra Part III.A.
261 Rather than a wholesale change in the United States’ system, government officials usually make incremental changes in laws, the execution of laws, and the interpretation of laws depending upon who is in a given position at a given time. For example, the current environmentally conservative executive branch is seeking to amend the previous administration’s course from demanding air pollutant reduction through lowering emissions to a market-based system that allows air polluters to “trade” emission rights with one another in a market-based scheme. See The White House, Executive Summary -- Clear Skies Initiative (Feb. 14, 2002), available at http://www.whitehouse.gov/news/releases 2002/02/clearskies.html. Another example of incremental change is in United States Supreme Court decisions, which impact the implementation of laws. See, e.g., Solid Waste Agency of N. Cook County v. U.S. Army Corps of Eng’rs, 531 U.S. 159 (2001) (limiting the federal government’s jurisdiction over bodies of water for purposes of the CWA). Review has effectively been limited in certain cases. For example, the fact that the most comprehensive statute dealing with environmental issues. NEPA, is interpreted as a procedural statute only prevents opposing parties from seeking review of every decision an agency makes in implementing a national project. See Strycker’s Bay Neighborhood Council v. Karlen, 444 U.S. 223 (1980) (holding that NEPA establishes procedural obligations only); Vt. Yankee Nuclear Power v. Natural Res. Def. Council, 435 U.S. 519 (1978) (stating that an agency need not consider every conceivable alternative to a proposed action). Additionally, an opponent to a proposed government action must have standing to sue, which is a procedural hurdle that can keep citizens who are upset by an action, but not directly affected by it, from seeking review of an action. See Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992).
environmental concerns. Thus, the United States’ flawed system at least allows for competing considerations, even if it does not perfectly address them.

China, on the other hand, is still developing its national scheme, and has a need and an opportunity to modify its handling of environmental considerations to allow some sort of check over its national policies. It is true that the United States’ system of review has flaws and that it would be practically impossible for China to adopt the United States’ scheme. Nonetheless, it is important for China to take at least some steps in the direction of allowing review in order to avoid irrevocable environmental crises like those that historically occurred in the United States.

There are several reasons that China must take steps to allow for review of national projects that affect the environment. First, China must take steps to avoid creating an environmental disaster that will harm its citizens. Second, China must review its environmental policies because it is undertaking projects that are unprecedented in size and scope and will have unprecedented effects on the environment if they are not carefully reviewed. Third, China must take responsibility for its environmental policies because there will be no one to pass on the expense of environmental contamination to later. Where the United States seeks out nongovernmental parties to pay for the clean-up of past environmental contamination, China does not have that option because most environmental contamination to date has been caused by state-owned actors, leaving no one but the state to pay for remediating environmental damage. If China does not implement some form of check on its implementation of national projects, it could irreparably harm the environment, its citizens, and its goals for economic progress.

---

262 See supra note 223 (describing an environmentalist’s use of the United States system to bog down a proposed project in litigation).
263 The United States’ system of review can cause delay, expense, leave serious problems unaddressed, and stunt economic progress because of the many available avenues parties have to interrupt a national project that affects the environment. See supra text accompanying notes 14-15, 63, 136, 240-242.
264 See supra note 243 and accompanying text.
265 See supra note 27 (describing the environmental crises involving the nuclear power program, as well as more localized disasters at Love Canal, Times Beach, and the Cuyahoga River).
266 In addition to the enumerated reasons are the obvious reasons for promoting environmental protection for its own sake, such as clean air and drinking water, which are serious issues in China. See MA & ORTOLANO, supra note 76, at 1.
267 Beyond the altruistic reasons for protecting the environment, there are practical reasons for China to avoid an environmental disaster that affects the health of its citizens. Economic losses and negative publicity would likely arise in the event of such a disaster, which could impair China’s economic growth. This can be evidenced by China’s SARS epidemic and its imperfect handling of the disease. See Joseph Khan, China Discovers Medical Secrecy is Expensive, N.Y. TIMES, Apr. 13, 2003 at § 4.7 (predicting that the SARS epidemic could reduce economic growth by as much as one-half of one percent in 2003).
268 Both the Three Gorges Dam and the Water Diversion Project are projected to be the largest undertakings of their kind in the world.
269 See supra notes 3, 159 and accompanying text.
270 See supra note 6.
271 See supra note 29 (describing the enactment and implementation of CERCLA, which seeks to put the burden of cleaning up environmental hazards on parties who caused the damage). China, as a socialist state, has only recently begun privatizing its industry, leaving past contamination as a government problem. See MA & ORTOLANO, supra note 76, at 40-41 (describing the development of privately owned businesses in China).
272 It would seem that the least onerous fix available to the Chinese government is some type of internal check of its actions by CPC members within the NPC. This can be accomplished by allowing SEPA’s minister some sort of formal ability to comment on national projects before they are implemented, and enlarging SEPA at the national level to better address the broad spectrum of environmental issues that occur daily in a country the size of China. See supra note 155. The most effective check in the United States’ system is by that of its citizens, which would appear to be the least beneficial toward China’s economic goals, for both the reasons of cost and delay. See supra notes 223, 263. However, China must carefully consider how much to limit citizen participation in order to avoid widespread demonstrations, which occurred during throughout the construction of the Three Gorges Dam, as well as other citizen discontent. See supra notes 7, 201.
VI. CONCLUSION

The United States and China have different underlying systems that cause different outcomes when they are applied to national projects that affect the environment. While each country approaches the implementation of national projects in different ways, neither seems to have completely managed to address the competing interests of economic progress and environmental protection. While the United States has a system that creates inefficiency by allowing meritorious projects to be stopped if opposing parties can invoke certain laws, China has a system that could create an environmental disaster because it is internally lacking any effective mechanism to check its actions before it implements a national project.

This article has demonstrated how the United States' environmental laws, government structure and private entities create a system of review of government action that affects the environment. Part II.A has shown that environmental laws are drafted to allow for checks; Part III.A has shown that the government structure was specifically designed to allow for one branch to review the actions of another; and Part IV.A has shown how nongovernmental actors are the critical feature to police the provisions that allow for review, and in some cases too much review.

This article has also demonstrated how China's environmental laws, government structure, and limited nongovernmental participation, facilitate the full implementation of the ruling leadership's agenda, while failing to provide effective review of government projects with environmental impact. Part II.B has shown that Chinese environmental laws are drafted to allow for higher priorities to trump the efforts to protect the environment; Part III.B has shown that the structure of the Chinese government promotes the implementation of the ruling leadership's goals; Part IV.B has shown that with the exception of its recent accession to the WTO, nongovernmental actors in China, particularly citizens, are not factors in checking government action that affects the environment.

Finally, Part V of this article has demonstrated that the United States' system, while inefficient, serves the goal of demanding that its government officials provide reasoned justification for their proposed actions that will affect the environment. China, by contrast, is not equipped to closely review competing interests, which under current policy is a detriment to the environment. Unless China adopts some method of balancing its desire for economic expansion with environmental issues, it faces the real possibility of creating large-scale environmental disasters that will ultimately hamper the social stability and economic growth China is so earnestly seeking.

272 See, e.g., supra note 136.
273 The exception to the lack of a check is the WTO, who is influencing China's environmental policies, but cannot mandate any certain action. See supra Part IV.B.3.
274 See supra note 223.