

# SYMBOLIC LEGITIMACY AND CHINESE ENVIRONMENTAL REFORM

By  
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*At the heart of debates over Chinese rule of law is the question of state legitimacy. Critics argue that legitimacy requires liberal democratic rule of law. Chinese leaders have long relied on performance legitimacy—economic development and maintenance of social stability—as the core basis of their rule. Western scholarship on modern Chinese law and politics has, to a significant degree, critiqued the ability of China’s current institutions to perform as claimed.*

*But apart from any actual results that Chinese governance may generate, the entire project of governance reform can be structured in a way that influences public impressions of state legitimacy. The process of reform is not only about attaining performance goals, but is itself a kind of performance. This act of “performing performance” also signals competence, commitment to the people, tradition, nationalist strength, and a host of other positive values to citizens and other audiences. This focus on the reform process itself as a means of “symbolic legitimation” is an aspect of China’s “authoritarian resilience” that existing scholarship has virtually ignored.*

*This Article develops the concept of symbolic legitimation and identifies its key tools, structures, and approaches. Central to the phenomenon is uncertainty created by complexity, active information control, and populist politics. When outputs are difficult to ascertain, reform inputs come to stand for outcomes. Even more, the reform*

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*process itself becomes an output that can signal state legitimacy, apart from any results the process might produce. The Article presents case studies on eco-civilization reform, air pollution, soil pollution, ozone-depleting substances, and climate change to illustrate the concept.*

*To be clear, symbolic use of law and governance is present in any country, regardless of region or regime type. This Article's contribution is to shine a light on the ways in which symbolic reform works in China's authoritarian setting. Put another way, this is about the particular stories that the Chinese state tells about itself. At the same time, the findings here will be of interest to those concerned about the growing impact of information manipulation and populism on governance in the United States and other countries.*

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## I. INTRODUCTION

*The construction of ecological civilization is . . . central to the realization of the great rejuvenation of the nation and the China dream. – Xi Jinping*<sup>1</sup>

This Article is about the symbolic role of governance reform in China and its relationship to actual performance and state legitimacy. China's authoritarian leaders have long relied on performance legitimacy—economic development and maintenance of social stability—as the core basis of their rule. I have argued elsewhere that law has been marshaled mainly in service of attaining these performance objectives and operationalizing this performance-based model of governance.<sup>2</sup> In my area of research, environmental protection, scholars have largely focused on how to reduce the distance between law on the books and law in practice. In such contexts, “performance” has been defined by such functional metrics as pollution reduction, improved energy efficiency, and the shutdown of outdated power plants and factories.

But apart from any results that Chinese governance may generate, I argue herein that the entire project of governance reform can be structured in a way that supports overall state legitimacy. Put another way, broad-based governance reform can signal information to citizens and other audiences about state performance, nationalist strength, tradition, and other values that bolster legitimacy. The process of reform is not only about attaining performance goals as commonly supposed, but is also itself a kind of performance. While there is a voluminous literature on the role of propaganda and symbolic politics in authoritarian settings, this focus on the reform process itself as a means of *symbolic legitimation* is an aspect of China's “authoritarian resilience” that existing scholarship has virtually ignored.<sup>3</sup>

In past millennia, this political function of rule might have been fulfilled through the mobilization of state resources in the service of large-scale

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<sup>1</sup> 绿水青山就是金山银山 [Green Waters and Clear Mountains are Gold and Silver Mountains], 人民日报 [PEOPLE'S DAILY] (July 11, 2014), <https://perma.cc/ELW7-7352>.

<sup>2</sup> This contrasts with a conception of law as furthering certain normative values associated with liberal, democratic rule of law. See Alex L. Wang, *The Search for Sustainable Legitimacy: Environmental Law and Bureaucracy in China*, 37 HARV. ENVTL. L. REV. 365, 385, 435 (2013) [hereinafter *Sustainable Legitimacy*]; Alex L. Wang, *Explaining Environmental Information Disclosure in China*, 44 ECOLOGY L.Q. 865, 871 (2018) [hereinafter *Explaining Information*].

<sup>3</sup> A lone article has discussed the idea of “symbolic reform” in the context of local policy experimentation on financial reforms in the Chinese city of Wenzhou. See Jinghan Zeng, *Did Policy Experimentation in China Always Seek Efficiency? A Case Study of Wenzhou Financial Reform in 2012*, 24 J. CONTEMP. CHINA 338 (2015); see also Iza Ding, *The Performative State* (draft manuscript on file with author) (arguing that street-level bureaucrats in China engage in *performative governance*, that is, “strategically and theatrically deploy[ing] visual, discursive, and behavioral symbols to signal the provision of good governance to . . . citizens”). As discussed *infra*, this Article develops a broader concept of governance reform as *symbolic legitimation* that examines how legal and policy reforms can serve as symbolic political forms that bolster public belief in the legitimacy of the ruling regime.

infrastructure development. The Great Wall of China, for example, was ostensibly meant for defense, but the project of building the wall itself also served as a symbol of state strength, capacity to marshal resources, and a focus of bureaucratic institutional attention.<sup>4</sup> And critics have argued that the Great Wall was ineffective for defense, but rather successful in terms of symbolic benefits for the state.<sup>5</sup>

In China today, I argue, governance reforms—policy, legislation, enforcement campaigns, institutional design, and even actual outcomes—play a similar symbolic or performative role apart from the functional purposes of state action.<sup>6</sup> This goes beyond (but includes) mere symbolic legislation—laws with aspirational goals that signal certain messages, but are unlikely to be met in practice.<sup>7</sup> It is also different than propaganda as a tool for convincing the public that the state is performing, although propaganda is certainly an important part of the effort.<sup>8</sup> This is the use of large-scale, technocratic governance reform action in a way that allows China to signal legitimacy or “pass” as a strong, high-performance state, regardless of actual results.<sup>9</sup> The very design of governance reform conveys information and provides additional political value. This act of “performing performance” also signals competence and commitment to the people (i.e., performance-orientation), tradition, nationalist strength, and a host of other positive values.

Central to the effect are high levels of *uncertainty*, whether due to complexity, information gaps, or state control of information. *Populist politics* further exacerbates uncertainty and diverts citizen focus away from actual results of reform. These factors render citizens both *less able* and *less willing* to verify and hold the state accountable for its performance.

The intuition here is that citizens, faced with the difficult task of evaluating actual outcomes, see reform actions (or inputs) as proxies for

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<sup>4</sup> See generally ARTHUR WALDRON, *THE GREAT WALL OF CHINA: FROM HISTORY TO MYTH* (1990).

<sup>5</sup> *Id.*

<sup>6</sup> The closest analogy comes from the literature on organizational behavior. See, e.g., Martha S. Feldman & James G. March, *Information in Organizations as Signal and Symbol*, 26 ADMIN. SCI. Q. 171, 174, 178–80 (1981) (arguing that organizations gather more information than they use because doing so serves symbolic and signaling functions); see also NILS BRUNSSON, *THE ORGANIZATION OF HYPOCRISY: TALK, DECISIONS, AND ACTIONS IN ORGANIZATIONS* (2nd ed. 2002). See generally Michael Spence, *Job Market Signaling*, 87 Q. J. ECON. 355 (1973) (developing an economic theory of signaling in contexts of information asymmetry).

<sup>7</sup> See, e.g., John P. Dwyer, *The Pathology of Symbolic Legislation*, 17 ECOLOGY L.Q. 233, 233–34 (1990); Jens Newig, *Symbolic Environmental Legislation and Societal Self-Deception*, 16 ENVTL. POL. 276, 276–77 (2007).

<sup>8</sup> See, e.g., Anne-Marie Brady, *Mass Persuasion as a Means of Legitimation and China's Popular Authoritarianism*, 53 AM. BEHAV. SCIENTIST 434, 449–50 (2009); Elizabeth J. Perry, *Cultural Governance in Contemporary China: “Re-Orienting” Party Propaganda 1–2*, 25 (Harvard-Yenching Institute Working Paper Series, 2013) (on file with author).

<sup>9</sup> On “passing,” see, e.g., ERVING GOFFMAN, *THE PRESENTATION OF SELF IN EVERYDAY LIFE* 156–57 (1956); Erin Reid, *Embracing, Passing, Revealing, and the Ideal Worker Image: How People Navigate Expected and Experienced Professional Identities*, 26 ORG. SCI. 997, 1008 (2015).

results. Theories of performance legitimacy typically assume a necessary connection between performance and legitimacy. Symbolic legitimation posits the idea that performance-based legitimacy can become decoupled from actual results. This may be due to bounded rationality, societal self-deception, or tribal instincts heightened by populism. What's more, where outcomes are difficult to evaluate, citizens may not seek to understand results at all, instead relying on general *impressions* of competency, strength, and commitment as markers of legitimacy. Put another way, reform inputs themselves become positive outputs that influence public views of state legitimacy. At stake is the question of state accountability. The concept of symbolic legitimation does not suggest that the Chinese state will not deliver any performance at all or that governance reforms are a sham. But, for leaders with bad intentions, this offers a powerful tool of misdirection and deception. Even leaders with more benign intentions may find symbolic reform to be an irresistible insurance policy against irreconcilable policy objectives, or political and administrative barriers to implementation that would otherwise undermine public faith in the leadership.

As a case study, this Article will examine China's embrace of green development and the pursuit of what Chinese Party-state officials call "ecological civilization" (生态文明). China is engaged in an extraordinary array of environmental reforms. In some instances, these reforms seem to have borne fruit, yet uncertainty about results and political constraints within the Chinese system raise the possibility that many other reforms will be merely symbolic in nature.

This Article is organized in three parts. Part II establishes the conceptual framework for *symbolic legitimation*. The discussion here engages a core debate in the legal scholarship on China: the comparative legitimacy of performance-based models of governance versus liberal democratic rule of law regimes. Chinese leaders have emphasized the former. Critics of the regime have focused on the latter. Rather than examining the capacity of the system to deliver actual performance, the focus here is on the role of reform in generating the *belief* in performance and other bases of state legitimacy through *symbolic reform*.

Part III describes the structure of symbolic reform—its governance tools and reform style—and identifies features of China's governance system that render reform more likely to be *merely* symbolic, or decoupled from functional performance. It argues that uncertainty about outcomes and populist politics that delegitimize critics are particularly important foundations of symbolic reform in China's authoritarian governance setting.

Part IV explains how China's much-publicized "war on pollution" and its efforts at eco-civilization reform can be understood in terms of symbolic legitimation.<sup>10</sup> But the likelihood that reform will *only* be symbolic varies

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<sup>10</sup> For popular commentary on China's recent environmental efforts, see, e.g., Isabel Hilton, *China Emerges as Global Climate Leader in Wake of Trump's Triumph*, GUARDIAN (Nov. 22,

across subject areas. In some areas, like air pollution, conditions (particularly the high visibility of smog) suggest the likelihood of more functional reform.<sup>11</sup> But other areas—such as soil pollution, toxic chemicals, or ozone depleting substances—that are much more difficult to monitor remain ripe for purely symbolic reform. Climate change regulation represents an intermediate case with factors cutting in both directions. This Part analyzes these case studies in light of the dynamics of symbolic reform identified earlier in the Article.

The Article concludes with thoughts on potential lines of further inquiry. These include more in-depth examination of the costs and benefits of symbolic reform, distributional justice problems, and the role of citizens themselves in enabling symbolic action. One caveat is in order. This Article is not an empirical study of how citizens actually receive or interpret the signals sent by reform. The theory here is that symbolic reform will tend to enhance citizen belief in the legitimacy of the ruling regime, but future research is needed to better understand how this phenomenon plays out in practice.<sup>12</sup> Existing research has shown that public belief in the legitimacy of China's central government is high.<sup>13</sup> The intuition of this Article is that symbolic reform plays an important role in sustaining this level of support.

To be clear, symbolic uses of law and governance appear in any country, regardless of region or regime type. This Article shines a light on

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2016), <https://perma.cc/6TLQ-T9DA>; Bart Kolodziejczyk, *Will China Become a Global Environment Leader?*, WORLD ECON. F. (Nov. 25, 2015), <https://perma.cc/H8PG-WS59>.

<sup>11</sup> See discussion *infra* Part IV.

<sup>12</sup> For an example of an empirical study in this vein, see, e.g., Saar Alon-Barkat & Sharon Gilad, *Compensating for Poor Performance with Promotional Symbols: Evidence from a Survey Experiment*, 27 J. PUB. ADMIN. RES. & THEORY 661, 662 (2017) (examining the impact of “promotional symbols” on customer trust, satisfaction, and performance evaluation in an Israeli state-owned electric monopoly); see also Ding *supra* note 3, at 5.

<sup>13</sup> See, e.g., CHING KWAN LEE, *AGAINST THE LAW: LABOR PROTESTS IN CHINA'S RUSTBELT AND SUNBELT* 9 (2007) (stating that local government rather than the central government is the target of labor protests in two Chinese regions); Qing Yang & Wenfang Tang, *Exploring the Sources of Institutional Trust in China: Culture, Mobilization, or Performance?*, 2 ASIAN POL. & POL'Y 415–36 (2010) (finding high levels of institutional trust in China); Lianjiang Li, *The Magnitude and Resilience of Trust in the Center: Evidence from Interviews with Petitioners in Beijing and a Local Survey in Rural China*, 39 MOD. CHINA 3, 4 (2013); PEW RESEARCH CTR., *CHINESE PUBLIC SEES MORE POWERFUL ROLE IN WORLD, NAMES U.S. AS TOP THREAT* 19 (2016), <https://perma.cc/29Q5-5WYL> (in 2016, 86 out of 100 Chinese survey participants online were satisfied “with the way things are going in our country today”); H. Christoph Steinhardt, *Discursive Accommodation: Popular Protest and Strategic Elite Communication in China*, 9 EURO. POL. SCI. REV. 539, 550 (2016) (explaining that the central government has maintained high political support through public discourse); Tony Saich, *How China's Citizens View the Quality of Governance under Xi Jinping*, 1 J. CHINESE GOVERNANCE 1–20 (2016) (finding a high level of political support and trust for central government, but lower support for local governments); Mayling Birney, *Beyond Performance Legitimacy: Procedural Legitimacy and Discontent in China* 25–26 (London Sch. of Econ. & Political Sci., Working Paper No. 17-189, 2017) (draft manuscript on file with author) (suggesting that “performance-based legitimacy” is a fragile basis for state legitimacy); Hsin-Hao Huang, *Exploring Citizens' Hierarchical Government Satisfaction: Evidence from China and Taiwan*, 19 JAPANESE J. POL. SCI. 122–45 (2018); EDELMAN, 2018 EDELMAN TRUST BAROMETER GLOBAL REPORT 13 (2018), <https://perma.cc/R6AV-3FT6>.

the way symbolic reform works in China's authoritarian governance setting, offering a fresh perspective from which to understand Chinese state action. At the same time, the findings here will be of interest to those concerned about symbolic politics and the growing impact of information manipulation and populism on governance in the United States and other countries.

## II. CONCEPTUALIZING SYMBOLIC LEGITIMATION

### A. Models of Legitimacy

Leaders of all nations need legitimacy to maintain power. State legitimacy, according to Seymour Lipset, is "the capacity of the system to engender and maintain the belief that the existing political institutions are the most appropriate ones for the society."<sup>14</sup> Coercive capacity is another means of maintaining rule, but "[t]he strongest is never strong enough to be always the master, unless he transforms strength into right and obedience into duty."<sup>15</sup>

In debates over Chinese rule of law, scholars have focused mainly on two foundations of legitimacy: legitimacy based on performance,<sup>16</sup> and procedural (or politico-legal) legitimacy.<sup>17</sup> Post-1978, these came to be seen

<sup>14</sup> SEYMOUR MARTIN LIPSET, *POLITICAL MAN: THE SOCIAL BASES OF POLITICS* 64 (1983) (defining "state legitimacy").

<sup>15</sup> JEAN-JACQUES ROUSSEAU, *THE SOCIAL CONTRACT* 3 (G.D.H. Cole trans., 2008). And coercion can delegitimize the state, bringing about increased resistance to rule from the populace. BAOGANG HE, *THE DEMOCRATIZATION OF CHINA* 195 (David S.G. Goodman ed., 1996). In contrast, a legitimate state retains rule at lower cost because citizens are more willing to comply.

<sup>16</sup> On performance legitimacy, see, e.g., Daniel A. Bell, *Political Legitimacy in China: A Confucian Approach*, in *EAST ASIAN PERSPECTIVES ON POLITICAL LEGITIMACY: BRIDGING THE EMPIRICAL-NORMATIVE DIVIDE* 78, 82 (J. Chan et al. eds., 2016) (arguing that China bases its political legitimacy on performance, meritocracy, and nationalism); Heike Holbig & Bruce Gilley, *Reclaiming Legitimacy in China*, 38 *POL. & POL'Y* 395, 405 (2010); Dingxin Zhao, *The Mandate of Heaven and Performance Legitimation in Historical and Contemporary China*, 53 *AM. BEHAV. SCIENTIST* 416, 416 (2009); Dingxin Zhao & Hongxing Yang, *Performance Legitimacy, State Autonomy and China's Economic Miracle* 6–7 (Apr. 2013) (manuscript on file with author).

<sup>17</sup> Politico-legal legitimacy is one of Max Weber's "three types of legitimate rule." See Max Weber, *Politics as Vocation*, in *WEBER'S RATIONALISM AND MODERN SOCIETY* 129, 137–38 (T. Waters & D. Waters eds., 2015) The other two are traditional and charismatic legitimacy. *Id.* *Politico-legal* legitimacy comes from "belief in the validity of legal statute and functional 'competence' based on rationally created rules." *Id.* Weber discussed what he called "legal" legitimacy in the context of democratic and non-democratic states. *Id.* This Article will equate politico-legal legitimacy with liberal, democratic bases of legitimacy. As used here, the concept will also incorporate notions of legitimacy derived from procedural fairness. See, e.g., TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* 47 (1990). Legal legitimacy that arises out of bureaucracy will be discussed as "bureaucratic" or "meritocratic" bases of legitimacy. *Traditional legitimacy* arises from custom, societal beliefs, and longevity (e.g., monarchy). See *id.* at 137. *Charismatic legitimacy* rests on "devotion to the exceptional sanctity, heroism, or exemplary character of an individual person, and of the normative patterns or order revealed or ordained by him." See *id.* See generally Max Weber, *Discipline and Charisma*, in *WEBER'S RATIONALISM AND MODERN SOCIETY* 59 (T. Waters & D. Waters eds., 2015).

in various quarters as the most plausible paths forward as other sources of legitimacy reached a nadir. Ideology (Marxism-Leninism), tradition (attacked as illegitimate in the Mao era), charismatic leadership (the death of Mao Zedong), and nationalism (the Party's promise to restore Chinese preeminence after a "century of humiliation") all faded in prestige by the 1980s.<sup>18</sup>

Liberals within China and Western observers commonly take the view that some form of democratization or, at least, movement toward greater politico-legal accountability is necessary if China is to stave off collapse. This view was strongly held in the years after the demise of the Soviet Union and other Communist states. Political scientist Andrew Nathan's view is representative:

[L]ike all contemporary nondemocratic systems, the Chinese system suffers from a birth defect that it cannot cure: the fact that an alternative form of government is by common consent more legitimate. . . . [T]he regime admits . . . that its authority has never been subject to popular review and is never intended to be. In that sense, the regime is branded as an expedient, something temporary and transitional needed to meet the exigencies of the time. Democratic regimes, by contrast, often elicit disappointment and frustration, but they confront no rival form that outshines them in prestige. Authoritarian regimes in this sense are not forever. For all their diversity and longevity, they live under the shadow of the future, vulnerable to existential challenges that mature democratic systems do not face.<sup>19</sup>

Chinese leaders not surprisingly resist this view. Instead, they assert legitimacy on other grounds. Post-1978, China has largely justified its right to rule through performance—an "output-oriented" strategy of legitimization.<sup>20</sup> This performance-based approach has meant prioritizing economic growth and social stability. Chinese leaders redoubled their efforts to bolster state performance in the wake of the 1989 Tiananmen Square crackdown.<sup>21</sup> Since the turn of the 21st Century, leaders have attempted to broaden the foundations of Chinese state legitimacy. During the Hu Jintao Administration, political slogans emphasized an expansion of the components of performance legitimacy to include social goods such as education, health care, and environmental protection.<sup>22</sup> Since 2013, the Xi

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<sup>18</sup> Lowell Dittmer has argued that "continuous revolution" was a core basis of Chinese legitimacy during the Mao era. See LOWELL DITTMER, *CHINA'S CONTINUOUS REVOLUTION: THE POST-REVOLUTION EPOCH 1949–1981*, at 1–2 (1989). This is a legitimacy based on a heavy dose of Marxist ideology combined with the possibility of performance (achievement of the socialist state). *Id.* This basis of legitimacy passed with the end of the Cultural Revolution, but one might consider the modern process of continuous reform to be its progeny. *Id.*

<sup>19</sup> Andrew J. Nathan, *China Since Tiananmen: Authoritarian Impermanence*, J. DEMOCRACY, July 2009, at 38 (footnotes omitted).

<sup>20</sup> On output-oriented legitimacy in general, see FRITZ SCHARPF, *GOVERNING IN EUROPE: EFFECTIVE AND DEMOCRATIC?* 10–13 (1999).

<sup>21</sup> Zhao & Yang, *supra* note 16, at 27.

<sup>22</sup> See, e.g., Manoranjan Mohanty, *'Harmonious Society': Hu Jintao's Vision and the Chinese Party Congress*, 47 *ECON. & POL. WKLY.* 12, 16 (2012); *Full Text of Hu Jintao's Report at 18th*



Jinping Administration has continued the focus on performance, but has also sought to reinvigorate legitimacy based on ideology (Confucianism), tradition (Legalism), and nationalism (promoting the rejuvenation of the “China Dream” (中国梦)).<sup>23</sup>

For Chinese leaders, these alternative, non-democratic foundations of legitimacy form the basis of a “China model” of governance that is a viable contender to democratic forms of rule. Observers have articulated this in various ways. The China model is a “meritocracy” ruled by a “modern Mandarinate,” a “Beijing Consensus,” or a “statist socialist rule of law.”<sup>24</sup> While accounts emphasize different aspects, the China model, generally speaking, involves top-down, Chinese Communist Party-led bureaucratic governance; a non-democratic system with limited institutional checks and balances; state intervention in the economy; and prioritization of economic goals over civil and political rights.<sup>25</sup> Under this model, the less encumbered state, so the argument goes, is empowered to deliver performance and stave off domestic and foreign risks of all kinds.

In theory, nations that base their right to rule primarily on performance are more fragile and “vulnerable to existential challenges that mature democracies do not face.”<sup>26</sup> Performance certainly matters in democracies, “but the legitimacy of rulers is to a large extent delinked from the legitimacy of the system or state.”<sup>27</sup> Weakly performing leaders in democracies can be replaced, and the legitimacy of democratic systems is thereby (presumably)

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*Party Congress*, EMBASSY PEOPLE’S REPUBLIC CHINA U.S. AM. (Nov. 27, 2012), <https://perma.cc/3Z8J-F6P3>.

<sup>23</sup> See, e.g., Chris Buckley, *Xi Jinping Thought Explained: A New Ideology for a New Era*, N.Y. TIMES (Feb. 26, 2018), <https://perma.cc/QRB8-KBJ4> (describing Xi’s links to Confucianism); Sam Crane, *Why Xi Jinping’s China is Legalist, Not Confucian*, CHINA CHANNEL (June 29, 2018), <https://perma.cc/39RG-HUXE> (describing the legalist characteristics of Xi’s regime); *The Chinese Dream Infuses Socialism with Chinese Characteristics with New Energy*, CHINA COPYRIGHT MEDIA (May 6, 2013), <https://perma.cc/H974-Y99R> (describing the Chinese Dream and actions taken within recent years by Xi’s regime to further the Dream).

<sup>24</sup> See generally DANIEL BELL, *THE CHINA MODEL: POLITICAL MERITOCRACY AND THE LIMITS OF DEMOCRACY* (2015); NICOLAS BERGGUEN & NATHAN GARDELS, *INTELLIGENT GOVERNANCE FOR THE 21ST CENTURY: A MIDDLE WAY BETWEEN WEST AND EAST* 14 (2013); JOSHUA COOPER RAMO, *THE BEIJING CONSENSUS* (2004); 潘维 [Pan Wei], *当代中华体制 [Contemporary Chinese System]*, in *中国模式：解读人民共和国的60年 [THE CHINA MODEL: UNDERSTANDING 60 YEARS OF THE PEOPLE’S REPUBLIC OF CHINA]*; RANDALL PEERENBOOM, *CHINA’S LONG MARCH TOWARD RULE OF LAW* 3 (2002).

<sup>25</sup> Scholars have elaborated these models further, but for purposes of this Article this dichotomy is sufficient. For example, Randall Peerenboom’s “statist socialist” and “liberal democratic” rule of law models track the dichotomy between Chinese and Western governance models. His “neo-authoritarian” and “communitarian” models provide variations that push the “statist socialist” model in more democratic or liberal directions. See PEERENBOOM, *supra* note 24, at 27. Samuli Seppanen sets forth “conservative socialist” and “liberal” perspectives on rule of law that track this dichotomy. His “mainstream” and “avante garde” views of rule of law offer additional refinements and variations. See SAMULI SEPPANEN, *IDEOLOGICAL CONFLICT AND THE RULE OF LAW IN CONTEMPORARY CHINA: USEFUL PARADOXES* (2016).

<sup>26</sup> See Nathan, *supra* note 19, at 38.

<sup>27</sup> *Sustainable Legitimacy*, *supra* note 2, at 376.

validated and renewed.<sup>28</sup> Non-democratic states that rely on performance to sustain their right to rule risk collapse when performance inevitably falters.<sup>29</sup> Along these lines, western China specialists “seem to have taken it as an article of faith that the [Communist Party of China (CCP)] government is doomed” without liberal reform.<sup>30</sup> The strong form of this view was presented in Francis Fukuyama’s 1992 book *The End of History and the Last Man*, which posited that all nations were headed toward some form of Western liberal democracy.<sup>31</sup> To critics, non-democracies are less prestigious, institutionally unable to renew themselves, and prone to perform more poorly than democracies.<sup>32</sup> The China model is beset by fragmentation and corruption, and institutional incentives encourage widespread repression and violation of basic human rights.<sup>33</sup> The result is a sclerotic system caught in a “trapped transition,” and well into the advanced stages of regime decay.<sup>34</sup> Even some of those who once saw resilience in China’s approach to governance now see “authoritarian impermanence” and the possibility of a “crackup.”<sup>35</sup>

Even China’s leaders themselves worry about persistent threats to state legitimacy (合法性).<sup>36</sup> Slowing economic growth (rebranded in Party rhetoric as “the new normal” (新常态)), soaring debt levels, official corruption, reduced investment efficiency, increased protest, and international tensions

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<sup>28</sup> I say “presumably” to reflect growing concern that democracies are in decline. For example, where democratic institutions are captured, eroded, or otherwise rendered ineffective (through gerrymandering, voter suppression, money in politics, etc.), politico-legal legitimacy will decline. *See, e.g.*, Ishaan Tharoor, *The Man Who Declared the ‘End of History’ Fears for Democracy’s Future*, WASH. POST (Feb. 9, 2017), <https://perma.cc/9XG3-QZSF> (“If you’ve tilted the playing field in the electoral system that it doesn’t allow you to boot parties out of power, then you’ve got a real problem,” said Fukuyama.”).

<sup>29</sup> *See* Zhao, *supra* note 16, at 9. Indeed, Elizabeth Perry has argued that Weber’s original conception of state legitimacy requires something *beyond* mere performance. *See* Elizabeth Perry, *Is the Chinese Communist Regime Legitimate?*, in CHINA QUESTIONS: CRITICAL INSIGHTS INTO A RISING POWER 13 (Jennifer Rudolph & Michael Szonyi eds., 2018).

<sup>30</sup> *See* Brady, *Mass Persuasion as a Means of Legitimation and China’s Popular Authoritarianism*, *supra* note 8, at 435.

<sup>31</sup> For an early discussion consistent with this idea, see Seymour Lipset, *Some Social Requisites of Democracy: Economic Development and Political Legitimacy*, 53 AM. POL. SCI. REV. 69, 90 (1959); FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* 42–43, 45 (1992). Fukuyama has since become more circumspect about the inevitability of democratic transition. *See, e.g.*, FRANCIS FUKUYAMA, *THE ORIGINS OF POLITICAL ORDER* 113–15, 124, 127, 138–39, 452–53, 457 (2011); FRANCIS FUKUYAMA, *POLITICAL ORDER AND POLITICAL DECAY* 28–29, 401 (2014).

<sup>32</sup> *See, e.g.*, Scott Kennedy, *The Myth of the Beijing Consensus*, 19 J. CONTEMP. CHINA 461, 461–62, 477 (2010).

<sup>33</sup> *See, e.g.*, MINXIN PEI, *CHINA’S CRONY CAPITALISM: THE DYNAMICS OF REGIME DECAY* 128–29 (2016).

<sup>34</sup> MINXIN PEI, *CHINA’S TRAPPED TRANSITION: THE LIMITS OF DEVELOPMENTAL AUTOCRACY* 17–18 (2006). *See generally* CARL F. MINZNER, *END OF AN ERA: HOW CHINA’S AUTHORITARIAN REVIVAL IS UNDERMINING ITS RISE* (2018).

<sup>35</sup> *See* Nathan, *supra* note 19, at 38–40; *see also* CONG.-EXEC. COMM’N ON CHINA, ANNUAL REPORT 5 (2016); David Shambaugh, *The Coming Chinese Crackup*, WALL STREET J. (Mar. 6, 2015), <https://perma.cc/3279-99YN>.

<sup>36</sup> *See* Zheping Huang, *For the First Time Ever, China’s Communist Party is Openly Questioning its Legitimacy*, QUARTZ (Sept. 11, 2015), <https://perma.cc/BPY3-SVPM>.

all create the sense that China is in crisis.<sup>37</sup> China's environmental problems have become a source of risk for Chinese legitimacy as well. Indeed, in December 2017, senior Chinese Party leaders designated environmental pollution as one of three major risks (along with local debt and rural poverty) confronting China.<sup>38</sup> These political risks call into question the long-term viability of the Chinese approach to governance.

Faced with threats to political legitimacy, Chinese leaders have been compelled to choose between these competing approaches to reform. Liberal reformers commonly recommend some form of procedural democratic reform that bolsters politico-legal legitimacy. But as Huntington has observed, "political reforms are deeply threatening to the survival of authoritarian regimes."<sup>39</sup> Alternatively, leaders can engage in reforms aimed squarely at improving performance and bolstering other bases of legitimacy.<sup>40</sup> These approaches are not mutually exclusive. Liberal reforms that offer procedural legitimacy may also bolster performance through leadership renewal, public accountability, and civic input. Hybrid reforms that combine elements of liberal and authoritarian approaches—such as with environmental disclosure and public interest litigation—have been one path for reform.<sup>41</sup>

But, in general, Chinese leaders have sought to limit ongoing risks to legitimacy through a reform process squarely aimed at improving performance.<sup>42</sup> Reform is meant to bolster state legitimacy without the political reform (and diffusion of power away from the Party) required by a reliance on politico-legal legitimacy. Since 1978—and the beginning of "reform and opening"—the Chinese state has engaged in a continual, ever-changing process of governance reform.<sup>43</sup> The current Xi Jinping Administration, since 2013, has unveiled a wide array of reforms that promise to reshape Chinese governance and performance.<sup>44</sup> And despite some ebbs and flows, these have *not* been liberal democratic political reforms.

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<sup>37</sup> See, e.g., *Full Text of Hu Jintao's Report at 18th Party Congress*, XINHUA (Nov. 17, 2012), <https://perma.cc/37E5-4XJU>.

<sup>38</sup> *China Focus: Xi Steers Chinese Economy Toward High-quality Development*, XINHUA (Dec. 21, 2017), <https://perma.cc/RZ4Q-UCXG> ("Pollution control will also be a key battlefield, with authorities aiming for a significant reduction in major pollutant emissions and improvement in the overall environment. Efforts should be focused on adjusting the structures of industries, eliminating outdated capacity and making the skies blue again, according to the meeting.")

<sup>39</sup> *Will China Crumble?*, FOREIGN AFFAIRS (Apr. 30, 2015), <https://perma.cc/7ELX-7U2X> (quoting comment provided by Elizabeth J. Perry, the Henry Rosovsky Professor of Government and Director of the Harvard-Yenching Institute).

<sup>40</sup> *Id.*

<sup>41</sup> See, e.g., *Explaining Information*, *supra* note 2, at 922.

<sup>42</sup> See Youwei, *The End of Reform in China: Authoritarian Adaptation Hits a Wall*, FOREIGN AFFAIRS (May/June 2015), <https://perma.cc/835W-NWNW>.

<sup>43</sup> This includes legal, institutional, and other types of reform.

<sup>44</sup> See, e.g., Ben Westcott & Serenitie Wang, *Xi Jinping Is Making Sweeping Changes to How China Is Run*, CNN (Mar. 17, 2018), <https://perma.cc/22HJ-BYCX>.

*B. Functional and Symbolic Reform*

Because of the focus on performance, the debate over Chinese legitimacy has, in significant part, revolved around the ability of Party-state reform to deliver functional results in practice. Some observers of the Chinese approach note the success the model has achieved in terms of lives lifted out of poverty and general improvements in material well-being.<sup>45</sup> The literature on “adaptive authoritarianism” has enumerated governance techniques and a “guerilla policy-making” style that have allowed China to perform when other Communist, authoritarian states have failed.<sup>46</sup> Grouped under this rubric are governance techniques as varied as age limits for bureaucrats, norms of local policy experimentation, and pragmatic management of central-local relations. In the legal realm, courts operate in a populist way that responds to public sentiment and the demand for substantive outcomes. At the same time, there is no shortage of skeptics ready to predict imminent Chinese collapse as performance weakens. One influential 2015 article proclaimed “the end of reform in China” and argued that authoritarian adaptation had “hit a wall.”<sup>47</sup> These critics point out the darker side of reform, where performance is less than it appears on the surface or is produced despite state action and not because of it.<sup>48</sup>

Yet, reform possesses a critical *symbolic* aspect that has not been adequately explored in the literature on authoritarian states in general, and China in particular. When faced with the perceived fragility of performance legitimacy, Chinese leaders can nonetheless benefit from reform that is structured to *signal* legitimacy through the achievement of reform goals and a host of other less tangible values or characteristics to relevant audiences.

Particularly in situations of relative uncertainty, symbolic reform can generate public *belief* in state legitimacy or buy the regime time before public perceptions of state legitimacy begin to suffer. This is reform as persuasion, convincing the public that the state is performing or at least taking steps necessary to achieve performance down the road. At the same time, the reform process can signal competence, commitment to the people, ideology, politico-legal legitimacy, and appeals to nationalism or tradition. The result is that symbolic reform can act as an insurance policy of sorts against the risks of declining functional performance, cushioning the state against the risks of weakening political legitimacy.

As Murray Edelman put it (speaking of symbolic politics in the American context):

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<sup>45</sup> See *Sustainable Legitimacy*, *supra* note 2, at 375–77.

<sup>46</sup> See, e.g., Sebastian Heilmann & Elizabeth J. Perry, *Embracing Uncertainty: Guerrilla Policy Style and Adaptive Governance China*, in MAO'S INVISIBLE HAND: THE POLITICAL FOUNDATIONS OF ADAPTIVE GOVERNANCE IN CHINA 1, 8–13, 21–23 (Sebastian Heilmann & Elizabeth J. Perry eds., 2011).

<sup>47</sup> Youwei, *supra* note 42.

<sup>48</sup> See generally YASHENG HUANG ET AL., CAPITALISM WITH CHINESE CHARACTERISTICS: ENTREPRENEURSHIP AND THE STATE (2008); STEIN RINGEN, THE PERFECT DICTATORSHIP: CHINA IN THE 21ST CENTURY (2016).

The basic thesis is that mass publics respond to currently conspicuous political symbols: not to “facts[.]”

The mass public does not study and analyze detailed data . . . It ignores these things until political actions . . . make them symbolically threatening or reassuring, and it then responds to the cues furnished by the actions . . . not to direct knowledge of the facts.<sup>49</sup>

Edelman further argues that “[p]olitical forms thus come to symbolize what large masses of men [and women] need to believe about the state to reassure themselves.”<sup>50</sup> In the U.S. context, what the public *needs to believe* is mainly that political institutions are democratic, participatory, and procedurally just.<sup>51</sup> These norms are built into most popular conceptions of the liberal “rule of law.”<sup>52</sup>

In China, I argue, the public does not respond to precise facts about the leadership’s actual performance either. Persistent uncertainty due to bounded rationality, lack of education or expertise, data quality, information control, populist pressures, or simple inattention or lack of concern means that even close examination of the “facts” would not likely produce a meaningful conclusion. Rather, political symbols play an important role in public attitudes toward the ruling regime, and the symbolic aspects of reform play a critical and underappreciated role in this process.<sup>53</sup>

The difference between U.S. and Chinese symbolic politics is *what* the masses need to believe about the state to reassure themselves. Whereas U.S. political forms emphasize the message that American institutions are democratic, participatory, and just, Chinese political symbols must send the signal above all that the political leadership performs (or is at least performance-oriented), and that the ruling regime, one might say, continues to grasp the “Mandate of Heaven” (天命).

Social sciences research provides some evidence for this difference in public expectations in the two countries—i.e., that Chinese citizens prioritize substantive justice, while U.S. citizens find procedural justice more important.<sup>54</sup> Using methodology pioneered by Tom Tyler in the United States, Ethan Michelson found that Chinese citizens were dissatisfied with Chinese legal proceedings if the substantive outcome was not in their favor,

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<sup>49</sup> MURRAY EDELMAN, *THE SYMBOLIC USES OF POLITICS* 172 (1964).

<sup>50</sup> *Id.* at 2.

<sup>51</sup> *See id.* at 2–4. Politicians in the United States will also attempt to signal performance, but citizen belief that the system “works” (including by refreshing leadership that has failed to perform) is arguably more important.

<sup>52</sup> *The Rule of Law*, STAN. ENCYCLOPEDIA OF PHIL. (June 22, 2016), <https://perma.cc/2AL3-NFB6>.

<sup>53</sup> *See, e.g.*, EDELMAN, *THE SYMBOLIC USES OF POLITICS*, *supra* note 49, at 172–73.

<sup>54</sup> *See* Ethan Michelson & Benjamin L. Read, *Public Attitudes Toward Official Justice in Beijing and Rural China*, in *CHINESE JUSTICE: CIVIL DISPUTE RESOLUTION IN CONTEMPORARY CHINA* 169, 178–80, 197 (Margaret Woo & Mary Gallagher eds., 2011); *see also* TYLER, *supra* note 17, at 162.

even if they felt that procedures were fair.<sup>55</sup> This is a different outcome than Tyler found in the United States, where those surveyed were satisfied with legal proceedings if the procedures were fair, despite unfavorable substantive outcomes.<sup>56</sup> These results comport with what people on the ground say about the perceived differences between Chinese and U.S. justice and governance.<sup>57</sup>

The key insight here is somewhat counterintuitive. I argue that the substantive performance that Chinese citizens demand from their central leaders can in fact be satisfied in a procedural way—by establishing a process of reform that signals or symbolizes performance, competence (i.e., the ability to perform), and other markers of legitimacy. In other words, reform inputs become outputs themselves that support citizen belief in the state.

Other scholars have gestured at this notion, but ultimately in a meaningfully different way. Weber's own definition of "legal" legitimacy focuses heavily on the value of a rational rule-based bureaucracy.<sup>58</sup> Daniel Bell has argued that Confucian "meritocracy" is a core basis of regime legitimacy in China.<sup>59</sup> Frances Fukuyama has written favorably about Chinese bureaucracy, but ultimately treats effective bureaucracy as a necessary prerequisite for democratic governance not as a potential basis of legitimacy on its own.<sup>60</sup> Bruce Gilley has argued that Chinese institutional change is a response to the need to continually generate performance legitimacy.<sup>61</sup> Heilmann and Perry's concept of "guerilla policymaking" usefully conceptualizes China's particular style of governance, but the ultimate concern is the actual results such an approach is able to deliver.<sup>62</sup> In the end, these formulations remain focused on functional performance. Iza Ding has developed a theory of "performative governance;" however, her focus is on the "visual, discursive, and behavioral symbols" of *street-level* environmental bureaucrats.<sup>63</sup>

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<sup>55</sup> Michelson & Read, *supra* note 54, at 197.

<sup>56</sup> *Id.* at 178–80.

<sup>57</sup> At the same time, Mayling Birney has argued that Chinese citizens are concerned about procedural legitimacy as well. *See* Birney, *supra* note 13, at 34–35. However, her survey evidence demonstrated that failures in legal procedures and institutions tended to weaken public opinion of local officials, without meaningful negative effect on the perceptions of central leadership legitimacy. *See id.* In other words, Chinese citizens expect some level of procedural legitimacy from *local* leaders, but also seem to believe that *central* leaders are legitimate for other reasons. *See id.*

<sup>58</sup> *See generally* Max Weber, *The Three Types of Legitimate Rule*, 1 BERKELEY PUBLICATIONS IN SOC. & INST. 2 (1958).

<sup>59</sup> *See generally* Bell, *Political Legitimacy in China*, *supra* note 16.

<sup>60</sup> *See* FUKUYAMA, *THE ORIGINS OF POLITICAL ORDER*, *supra* note 31, at 450–54 (describing the role of institutions in political development); FUKUYAMA, *POLITICAL ORDER AND POLITICAL DECAY*, *supra* note 31, at 52–54 (describing the need for bureaucracy in order for a state to be effective).

<sup>61</sup> Bruce Gilley, *Legitimacy and Institutional Change: The Case of China*, 41 COMP. POL. STUD. 259, 260 (2008).

<sup>62</sup> *See generally* Heilmann & Perry, *supra* note 46.

<sup>63</sup> *See* Ding, *supra* note 3.

Different than these concepts, the notion of symbolic legitimation concerns the ability of legal and governance reform to signal information that influences public belief in Chinese state legitimacy. In one respect, this is not a stand-alone basis of legitimacy, but rather support for legitimacy derived from performance, tradition, ideology, nationalism, bureaucracy, procedure, and other means. At the same time, symbolic legitimation is its own basis of legitimacy—a process of reform that bolsters citizen belief that the state is oriented towards performance.

### C. Uses of Symbolic Reform

The symbolic aspects of reform are likely embraced as political strategy in China.<sup>64</sup> Chinese leaders have fully embraced propaganda and the shaping of public opinion as a central tool of governance. We see this in Party rhetoric, which has long supported a legitimation strategy based on performance *and* persuasion. Since 1989, this came to be known as a “two-hands” strategy, after Deng Xiaoping’s statement that the Party-state must “seize with both hands; both hands must be strong” (两手抓，两手都要硬).<sup>65</sup> In Party rhetoric, this would mean a focus on the construction of “material civilization” (物质文明建设) and “spiritual civilization” (精神文明建设).<sup>66</sup> In practice, material civilization meant economic and social reform, and spiritual civilization meant propaganda, thought work, and ideology.<sup>67</sup> Propaganda included not only positive messaging about the Party-state, but also censorship and control of information detrimental to the Party-state, as well as efforts to delegitimize competing Western governance models.<sup>68</sup>

Party scholars have seen this focus on propaganda as consistent with Lipset’s definition of state legitimacy, with its focus on the system’s capacity to “engender and maintain the *belief* that its existing political institutions are the most appropriate ones.”<sup>69</sup> What some regard “as a failing in Lipset’s definition is regarded as praiseworthy in the officially sanctioned discourse

<sup>64</sup> Indeed, politicians in any country appeal to symbolic politics.

<sup>65</sup> Anne-Marie Brady, *Guiding Hand: The Role of the CCP Central Propaganda Department in the Current Era*, in CRITICAL READINGS ON THE CHINESE COMMUNIST PARTY 752, 753 (Kjeld Erik Brødsgaard ed., 2017).

<sup>66</sup> Børge Bakken, *Norms, Values and Cynical Games with Party Ideology*, in CRITICAL READINGS ON THE CHINESE COMMUNIST PARTY 826 (Kjeld Erik Brødsgaard ed., 2017).

<sup>67</sup> *Id.*; Brady, *Guiding Hand*, *supra* note 65, at 752.

<sup>68</sup> Brady, *Guiding Hand*, *supra* note 65, at 764–67.

<sup>69</sup> See Brady, *Mass Persuasion as a Means of Legitimation and China’s Popular Authoritarianism*, *supra* note 8, at 436 (emphasis added) (citing to J.Y. Jiang, 政治合法性: 共产党执政建设的重要课题 [Political Legitimacy: An Important Issue for the Establishment of the CCP as a Party in Power], 马克思主义研究网 [MARXIST RES. ONLINE] (2006)); Kefeng Wu, 征集困局: 概念, 原因及其破解 [Political Achievement and Political Difficulties: Perspectives, Causes and Solutions], 6 马克思主义与现实 [MARXISM AND REALITY] (2006); Fangyi Xie, 政治转型中政治合法性问题探析 [On Political Legitimacy in the Transformation of the Party], 5 中共浙江省委党校学报 [J. ZHEJIANG PROVINCIAL PARTY SCH.] (2004); Guangbin Yang, 合法性遮蔽什么? [What’s Behind Legitimacy?], 学习时报 [STUDY TIMES] (Oct. 23, 2007).

on legitimacy in China.”<sup>70</sup> Lipset’s formulation “suits current CCP political needs and is in line with the Party’s traditional emphasis on mass persuasion as a key task of government.”<sup>71</sup>

Symbolic reform is arguably in this tradition of persuasion. But, in contrast to traditional propaganda, symbolic reform delivers its messages through the structure, style, and actions of reform. Symbolic reform can signal a variety of things beyond functional performance, such as concern for the people, nationalist strength, tradition, modernity, or simply the ability (or willingness) to get things done. It probably does not even need to be internally consistent, as the leadership will want to send signals that appeal to different audiences.

Symbolic reform is not necessarily a conscious strategy, nor does it preclude a sincere desire among senior leaders to achieve a particular policy goal. It may simply be reform that fails to adequately “address the administrative and political constraints that will block implementation.”<sup>72</sup> Political acts that are merely “aspirational” may be the product of inattention to the “inherent limits upon the effectiveness of law,” rather than intent.<sup>73</sup> Even sincere efforts at reform have a symbolic aspect, where reform structure and process convey signals that bolster state legitimacy. But given official support for Party-state image making, thought work, and control of public opinion, it is difficult to imagine that it is *not* strategic to some extent, particularly when it is coupled with the express messages delivered through formal propaganda.

Even if symbolic reform is not strategic, it is easy to see why rational state leaders and line-level bureaucrats would nonetheless be drawn to it as a response to weak performance. Functional performance is often difficult. It typically requires political skill, compromise, and uneasy trade-offs. To be successful, it often involves direct confrontation with powerful interests. Conflicting, sometimes irreconcilable, norms and policy objectives are commonplace. In a system where leaders are highly attuned to legitimacy risks, symbolic reform allows them to sustain public belief in state legitimacy without confronting (or at least relying solely on) the messiness and challenges of genuine reform.

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<sup>70</sup> Brady, *Mass Persuasion as a Means of Legitimation and China’s Popular Authoritarianism*, *supra* note 8, at 436–37.

<sup>71</sup> *Id.* at 436. Scholars have disapproved of Lipset’s definition of legitimacy for its focus on belief and persuasion. Popular opinion is central to the definition. Schaar disapproves because Lipset sees “legitimacy as a function of a system’s ability to persuade members of its own appropriateness. The flow is from leaders to followers. Leaders lay down rules, promulgate policies, and disseminate symbols which tell followers how they should feel and what they should do.” J.H. SCHAAR, *LEGITIMACY IN THE MODERN STATES* 20–21 (1989). Under a belief-based definition of legitimacy one need not look beyond what the masses *think* of their current political and legal institutions.

<sup>72</sup> Dwyer, *supra* note 7, at 233. See Part II.B for a fuller discussion of conditions that increase the likelihood of symbolic reform decoupled from functional results.

<sup>73</sup> James A. Henderson, Jr. & Richard N. Pearson, *Implementing Federal Environmental Policies: The Limits of Aspirational Commands*, 78 COLUM. L. REV. 1429, 1429 (1978).



The potential benefits of symbolic reform for the political class are exactly what make it a “pathology” for the public in many instances.<sup>74</sup> In the event of weak performance, symbolic reform allows politicians to deceive the public and delay attainment of public policy goals without suffering the political costs of doing so.<sup>75</sup> If symbolic reform works for politicians, it reduces the pressure for functional reform. Citizens are less restive, and the Party-state’s “brand” is secure. Citizens are persuaded that leaders are performance-oriented or achieving performance goals. In such a situation, there is less incentive for politicians to take on the yeoman’s work of actual reform. Symbolic reform need not be divorced from actual results, but it is of greatest concern when the process of reform becomes in effect an act of “performing performance” that masks weaknesses in (or the absence of) actual performance.<sup>76</sup>

Our level of concern about symbolic reform will depend on our assessment of leadership intent, which itself is fraught with uncertainty.<sup>77</sup> If we believe state leaders to be “bad apples” bent on deceiving the public, then we should be quite concerned that symbolic reform will be used in a way that harms the public. If we see leaders as lacking competency or ability in some way (e.g., hindered by political, economic, or administrative barriers to reform), we should nonetheless be attuned to the potential pathologies of symbolic reform. But this view of leadership intent suggests different solutions than if we think leaders are motivated by malign intent. If we believe leaders to be sincere reformers (or “good apples”), then we may feel more confident that symbolic reform is not a pathology at all and instead a support for policy implementation.<sup>78</sup>

As will be discussed in greater detail in Part III.B, uncertainty plays a critical role in symbolic performance. Persistent uncertainty can make it difficult to tell whether functional performance is achieved in the first place. The public may see reform inputs as proxies for results or else come to see these inputs as outcomes themselves that bolster legitimacy. Populist

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<sup>74</sup> Dwyer, *supra* note 7, at 233, 316. To be clear, symbolic reform is not always a pathology. In the hands of sincere reformers, the symbolism of reform can serve various functions that support the achievement of long-term performance, even if near-term results are weak. These include agenda setting or the creation of psychological pre-commitment that affects regulator and firm behavior. Failed reforms can also serve as points of mobilization for future reforms. See, e.g., Daniel A. Farber, *Politics and Procedure in Environmental Law*, 8 J.L. ECON. & ORG. 59, 77 (1992); Christopher T. Giovino, *Defending Overstatement: The Symbolic Clean Air Act and Carbon Dioxide*, 30 HARV. ENVTL. L. REV. 99–100 (2006).

<sup>75</sup> Newig, *supra* note 7, at 291 (“A central element in the concept of symbolic legislation is deception.”); see also EDELMAN, *THE SYMBOLIC USES OF POLITICS*, *supra* note 49, at 20.

<sup>76</sup> To clarify, as discussed herein, reform has both symbolic and functional aspects. It can be symbolic *and* functional at the same time. It may be functional, but lacking in symbolic value (or offer negative symbolic value). In some instances, reform may provide no value at all—symbolic or functional. The focus here is on the implications of reform that is *merely* symbolic, without functional value.

<sup>77</sup> This specifically concerns the ends to which state leaders intend to apply symbolic and functional aspects of reform.

<sup>78</sup> See *supra* notes 49, 53, 73–75 and accompanying text (on the potential benefits of symbolic reform).

political dynamics also enhance symbolic performance by deterring criticism that would otherwise reveal weak performance and by shifting public attention away from performance.

A symbolic reform perspective helps us to see more clearly the relationship between the shaping of public opinion and the delivery of functional results. Whereas scholarly discussions have focused on the relative ability of different governance approaches to deliver performance, an examination of symbolic reform shows how reform might be structured to bolster public belief in reform and state legitimacy, even if actual results fail to materialize. Although some commentators have made a living from predicting Chinese collapse, this analysis shows one way in which China could muddle through: without either collapsing or reaching some higher state of development. This is a persistent set of incentives that provides some protection against weakening state legitimacy, but that also may reduce pressure for greater functional performance. Symbolic reform need not be perfect to be effective. Many people may be quite cynical about the ability of reform to deliver actual results, but the intuition here is that enough people will be convinced, agnostic, or simply unsure of exactly how to think about reform that the sharper edges of discontent will be rounded off.

### III. THE STRUCTURE OF SYMBOLIC REFORM

As an example of the symbolic role of governance reform, this Article examines China's recent efforts to promote the attainment of a so-called "ecological civilization" (or "eco-civilization"). This is a massive governance reform project meant to achieve economic, social, political, cultural, and ecological goals.<sup>79</sup> To signal the importance of the concept, leaders wrote "ecological civilization" into the Party constitution in 2012, and the state constitution in 2018.<sup>80</sup> In 2016, China's thirteenth five-year plan emphasized "ecological civilization" and more than half of that plan's targets (and nearly all of those designated as "binding") concerned environmental matters.<sup>81</sup> In 2014, China's national congress passed a major amendment to its framework environmental protection law that introduced, among other things, a host of enforcement mechanisms, including expanded financial penalties, injunctive powers, and greater authority to detain violators and prosecute offenders for environmental crimes.<sup>82</sup> Between 2013 and 2016, China's State Council issued three major "action plans" meant to address problems of air, water, and soil

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<sup>79</sup> See *Green Waters and Clear Mountains are Gold and Silver Mountains*, *supra* note 1.

<sup>80</sup> CONSTITUTION OF THE COMMUNIST PARTY OF CHINA, GENERAL PROGRAM (2012), <https://perma.cc/4XNV-ZT8N>; CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA, PREAMBLE (2018), <https://perma.cc/2JD7-JPG2>.

<sup>81</sup> See Cent. Comm. of the Communist Party of China, *The 13th Five-Year Plan for Economic and Social Development of the People's Republic of China* (2016), <https://perma.cc/834G-F8HL> (translated into English).

<sup>82</sup> *Environmental Protection Law of the People's Republic of China*, XINHUA NEWS AGENCY (Apr. 24, 2014), <https://perma.cc/YFA9-73NG>.

pollution.<sup>83</sup> The sheer volume of environmental law and policymaking over the last few years is remarkable.

Using environmental governance reform as a case example, this Article will develop a hierarchy of symbolic reform, unpack the conditions that make reform more likely to be purely symbolic, and analyze implications for state performance and legitimacy. Ultimately, Chinese reform suffers from many pathologies common to more-studied Western contexts. However, this Article argues that norms and institutions in China's authoritarian governance setting exacerbate uncertainty and populist politics in a way that can enable the more problematic aspects of symbolic reform.

### A. What Does Symbolic Reform Look Like?

#### 1. Tools

Apart from any functional results they might deliver, reforms also signal information to the public. They are costly interventions that suggest the state is achieving performance, or is at least attempting to achieve publicly desirable policy goals and capable of doing so (i.e., the state is performance-oriented).<sup>84</sup> This subpart examines the symbolic aspects of four different elements of reform—legislation and policy, enforcement, institutional reform, and outcomes. These are discussed in order of (perceived) increasing costliness.

Each of these reform components has an ostensible functional purpose, but the focus here is on the signals sent by such reform actions and the importance of such signals in contexts where it is difficult to determine actual outcomes.

*Symbolic legislation & policy.* Legal authorities and policies can signal to the public state concern about the environment, public health, and other desirable values. China's national legislature has generated a comprehensive range of environmental legislation that covers most environmental problems typically the subject of regulation in other countries. Since reform and opening in 1978, these laws have played a largely symbolic role, signaling CCP concern for the environment with limited actual performance.<sup>85</sup> Likewise, the confirmation of environmental protection as a "fundamental national policy" (基本国策) at the Second National Environmental

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<sup>83</sup> 大气污染防治行动计划 [Action Plan for Air Pollution Prevention and Control], GOV.CN, <https://perma.cc/6UQL-PSNK> (last visited Nov. 25, 2018) (promulgated by the St. Council, Sept. 10 2013, effective Sept. 10 2013); 水污染防治行动计划 [Action Plan for Water Pollution Prevention and Control], GOV.CN, <https://perma.cc/QW2R-69LH> (last visited Jan. 4, 2019) (promulgated by the St. Council, Apr. 2, 2015); 土壤污染防治行动计划 [Action Plan for Soil Pollution Prevention and Control], GOV.CN, <https://perma.cc/AK68-WWQ4> (last visited Jan. 4, 2019) (promulgated by the St. Council, May 28, 2016).

<sup>84</sup> These are akin to "sheepskin" in the economics literature—referring to, for example, the signaling function of costly investments in higher degrees to potential employers evaluating job applicants. See Spence, *supra* note 6, at 358.

<sup>85</sup> For an earlier account of this dynamic, see William P. Alford & Yuanyuan Shen, *Limits of Law in Addressing China's Environmental Dilemma*, 16 STAN. ENVTL. L.J. 125, 127 (1996).

Protection Conference in early 1984 has played a symbolic role as well.<sup>86</sup> Officials have used this policy status as evidence of long-term Party-state concern for the environment, despite yawning implementation gaps over the decades.<sup>87</sup> Commentators have suggested that more recent laws and policies are no longer symbolic, but, in many instances, insufficient transparency and uncertainty have made it difficult to tell whether new actions have led to genuine results.<sup>88</sup>

*Symbolic enforcement.* Periodic enforcement actions can signal regulatory resolve and serious state concern about actual implementation. Citizens know that legal authorities without enforcement are not worth the paper they are printed upon. Environmental enforcement campaigns can provide periodic reminders of state concern about environmental regulation.<sup>89</sup> These are modeled after so-called “strike hard” anti-crime campaigns that have occurred with relative frequency since the 1980s.<sup>90</sup> Studies have argued that such campaigns have very little deterrent effect beyond the period of the campaigns.<sup>91</sup> Even though more recent enforcement campaigns suggest a new-found seriousness of purpose, their success or failure remains, like their predecessors, difficult to evaluate and verify in many instances. The government has released little detailed information about the identity of violators, the nature of the violations and punishments, or the scale of the environmental harm prevented.

At minimum, civil and criminal enforcement campaigns symbolize top-down authority, strength, resolve, and concern for the people. These campaigns strike a populist note as a symbol of sweeping out local corruption and malfeasance. Thus, at the end of China’s eleventh five-year plan, local news stories showing pictures of local officials literally dynamiting “backward production capacity” (e.g., old power plants) proliferated.<sup>92</sup> Since 2013, environmental criminal enforcement spiked, rising from just a few cases a year to case numbers in the thousands.<sup>93</sup>

<sup>86</sup> Rui Lin Jin & Wen Liu, *Environmental Policy and Legislation in China*, in PROCEEDINGS OF THE SINO-AMERICAN CONFERENCE ON ENVIRONMENTAL LAW 163, 165 (1987).

<sup>87</sup> See 习近平：坚持节约资源和保护环境基本国策 努力走向社会主义生态文明新时代 [Xi Jinping: Persist in Resource Conservation and Environmental Protection as Fundamental National Policies, Diligently Head Towards the Era of Socialist Ecological Civilization], 新华网 [XINHUA] (May 24, 2013), <https://perma.cc/8TAG-TJG7>.

<sup>88</sup> See, e.g., Michael Greenstone, *Four Years After Declaring War on Pollution, China is Winning*, N.Y. TIMES (Mar. 12, 2018), <https://perma.cc/Q9DC-8P6Q>.

<sup>89</sup> See Benjamin van Rooij, *Implementation of Chinese Environmental Law: Regular Enforcement and Political Campaigns*, 37 DEV. & CHANGE 57, 61 (2006).

<sup>90</sup> *Id.* at 65–66.

<sup>91</sup> See *id.* at 61; Xuehua Zhang, *Implementation of Pollution Control Targets in China: Has a Centralized Enforcement Approach Worked*, 231 CHINA Q. 749, 770–71 (2017).

<sup>92</sup> Such actions can also be seen as an attempt by local bureaucrats to signal commitment and compliance to their superiors in the bureaucracy. This is a view that puts bureaucratic principal-agent problems at the center of the analysis. A symbolic legitimacy perspective highlights the potential for such actions to bolster state legitimacy for central officials by signaling overall state performance or performance-orientation.

<sup>93</sup> 严厚福 [Yan Houfu], 污染环境罪结果犯还是行为犯——以 2015 年 1322 份“污染环境罪”一审判决书为参照 [Environmental Pollution Crimes, Outcome Offense or Behavioral Offense –

Political leaders have also taken to using major enforcement sweeps to improve urban air quality before and during major international events. Environmental enforcement surrounding the 2008 Beijing Olympics, 2010 Shanghai Expo, 2010 Guangdong Asian Games, and 2014 Asia-Pacific Economic Cooperation Summit provided temporary relief from pollution during high profile international events.<sup>94</sup> These could be interpreted as a signal of the state's power to generate rapid—if temporary—results. These shutdowns, however, have incentivized local producers to accelerate production before and after the prohibited time zones, leading to more aggregate pollution than otherwise would have been produced.<sup>95</sup> The symbolism of the actions remains powerful. Yet, the ephemeral nature of many enforcement campaigns—and rapid returns to the status quo when campaigns end—have aroused skepticism in some quarters, requiring further reform response.

*Symbolic institutional reform* (体制改革). Institutional reforms can signal deeper resolve and commitment to achieving results in practice. Such reforms purport to address structural barriers to performance. On one hand, the technical nature of these measures suggests genuine intent to reform as it seems difficult to imagine technocratic bureaucratic reform capturing the attention (let alone imagination) of average citizens. But extensive media coverage and the collective impact of developing and messaging internal policy to the Party's membership ninety-million strong<sup>96</sup> nonetheless creates many points of formal and informal contact for citizens to receive the messages of symbolic reform.

The tools of bureaucratic hierarchy, for example, serve a symbolic function in reform. Take the case of environmental targets for local officials. Such targets signal that the Party is in command and reinforce the primacy of CCP control. The elevation of environmental targets from “soft” to “hard” status signals an elevation of environmental priorities and greater national resolve. Hard targets also signal central efforts to free local citizens from the corruption and incompetence of local officials. Targets also send more subtle signals. Targets are an indigenous governance tool and hearken back

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*Taking the 1,322 First Instance Judgments for Environmental Pollution Crimes from 2015 as Examples*, 17 中国地质大学学报 (社会科学版) [J. CHINA U. GEOSCIENCES (SOC. SCI. ED.)] 56, 65 (2017); 安然 [An Ran], 环境污染罪的解释论展开——以规范司法适用为中心的思考 [Discussing and Explaining Environmental Pollution Crime – Thoughts on the Standardization of Judicial Application] (May. 23, 2017) (unpublished doctoral dissertation, Shandong University) (on file with author).

<sup>94</sup> See, e.g., Christina Larsen, *How did Beijing Achieve “APEC Blue”?*, BLOOMBERG (Nov. 18, 2014), <https://perma.cc/7CS7-KKBV>.

<sup>95</sup> Fan Ruohong & Fran Wang, *Tangshan's Pollution-Control Measures Fall Victim to Quest for Profits*, CAIXIN (Feb. 17, 2017), <https://perma.cc/GLG9-ZLB6>.

<sup>96</sup> 崔静 [Cui Jing], 党内统计数据显示: 中国共产党现有党员 8944.7 万名 基层党组织 451.8 万个 [Party Internal Statistics Show: The Communist Party of China Has 89.447 Million Members, 4.518 Grassroots Party Units], 新华网 [XINHUA] (June 30, 2017), <https://perma.cc/Q9LV-5LQ6>.

to Imperial era techniques.<sup>97</sup> This appeals to nationalist sentiments and concerns about foreign incursion and the hegemony of Western governance tools. To outsiders, the technocratic nature of bureaucratic targets also suggests credible commitment.<sup>98</sup> Yet, past evidence of soft enforcement, weak punishments, and goal displacement suggests the potential for environmental targets to be merely symbolic.<sup>99</sup>

Other institutional reforms that purport to demonstrate Party-state commitment and resolve include bureaucratic restructuring (such as the 2018 creation of the Ministry of Ecology & Environment), centralization of budget authority, and enhanced bureaucratic or public oversight of local government agents.<sup>100</sup> The purpose of “Party-state joint responsibility” policies was to make *both* Party and government local officials more concerned about environmental matters.<sup>101</sup> These reforms target local protectionism and the improper influence of vested interests.<sup>102</sup> The proliferation of environmental courts around China since 2007 promised to strengthen judicial effort toward environmental regulation. Public supervision mechanisms signal democratic accountability and occupy citizens in “productive” activity with the promise of success at the end of the road. China’s announcement of a national carbon dioxide cap-and-trade system for 2017 resulted in overwhelmingly positive reaction from domestic and international observers, despite serious concerns that the system would not in fact involve any sort of actual “cap” and reasons to believe that trade volume would be low.<sup>103</sup>

*Symbolic outcomes.* Reforms that generate actual outcomes play a symbolic role as well. On one hand, actual outcomes are the point of reform. But, results in one policy area can signal broader state competence and concern for the people in other policy areas. For example, air pollution

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<sup>97</sup> See generally William P. Alford, *Of Arsenic and Old Laws: Looking Anew at Criminal Justice in Late Imperial China*, 72 CAL. L. REV. 1180 (1984) (discussing criminal justice in Imperial China).

<sup>98</sup> See, e.g., Alex Wang, *What to Make of China’s Efforts to Meet Its Energy Intensity Targets*, HUFFINGTON POST (Oct. 23, 2010), <https://perma.cc/4GZT-289G>.

<sup>99</sup> See, e.g., Tucker Van Aken & Orion Lewis, *The Political Economy of Non-Compliance in China: The Case of Industrial Energy Policy*, 24 J. CONTEMP. CHINA 798, 801–03 (2015).

<sup>100</sup> See discussion *infra* Part III.A.2 for more detailed discussion of these institutional reform measures.

<sup>101</sup> 常纪文 [CHANG JIWEN], 生态文明的前沿政策和法律问题 [ECO-CIVILIZATION’S LEADING-EDGE POLICY AND LEGAL PROBLEMS] (2016).

<sup>102</sup> On local protectionism, see, e.g., Kenneth Lieberthal, *China’s Governing System and Its Impact on Environmental Policy Implementation*, in CHINA ENVT. SERIES 4–5 (1997); Abigail Jahiel, *Special Issue: China’s Environment, The Organization of Environmental Protection in China*, 156 CHINA Q. 757 (1998); XIAOYING MA & LEONARD ORTOLANO, ENVIRONMENTAL REGULATION IN CHINA 49, 53 (2000); BENJAMIN VAN ROOIJ, REGULATING LAND AND POLLUTION IN CHINA: LAWMAKING, COMPLIANCE, AND ENFORCEMENT; THEORY AND CASES (2006). On the influence of vested interests, see Fan & Wang, *supra* note 95.

<sup>103</sup> See John Fialka, *China Will Start the World’s Largest Carbon Trading Market*, SCI. AM. (May 16, 2015), <https://perma.cc/89QZ-G2SZ>; Edward A. Cunningham, *China’s New Plans for a Cap and Trade System Just Might Work*, FOREIGN POL’Y (Oct. 6, 2015), <https://perma.cc/HJ7N-66U5>; see also Ruth Greenspan Bell, *Will China Cheat on Cap-and-Trade?*, L.A. TIMES (Oct. 1, 2015), <https://perma.cc/QQ9V-CLJJ>.

action is a policy issue where a high level of visibility, concerns about social stability, and convergence with other goals have produced some level of functional performance.<sup>104</sup> But state leaders have presented this as a general commitment to environmental protection in all areas—the spearhead of an effort to deliver ecological civilization. Attention to symbolic performance makes clear that this is not necessarily so. We might, for example, expect weaker performance in areas such as soil pollution, toxic chemicals, or ozone-depleting substances where monitoring is more difficult, harms are often delayed, and costs of control are high.<sup>105</sup>

Another type of symbolic outcome is the framing of possibly epiphenomenal performance as *caused* by governance reform. For example, a Xinhua report on a 9.4% decline in coal production in 2016 attributed the decline to “the country’s effort to build a greener energy system” despite the likely role of economic slowdown.<sup>106</sup> Chinese state media has also made the best of slowing economic growth figures, framing it as part of a concerted effort to adopt “a more mature view on development” that incorporates stronger environmental protection.<sup>107</sup> Such an approach “will eventually benefit the world.”<sup>108</sup> Of course, politicians anywhere in the world claim credit for positive results whether warranted or not. This is no surprise. But, causal uncertainty due to higher degrees of general information uncertainty offers critical support to symbolic reform in China’s authoritarian setting.

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These types of symbolic reform can be conceptualized as a hierarchical pyramid. The increasing costliness of these measures to the state (or the impression thereof) mean that the sequencing and grouping of these tools can signal additional information (e.g., about increasing resolve and commitment to regulation) as well.

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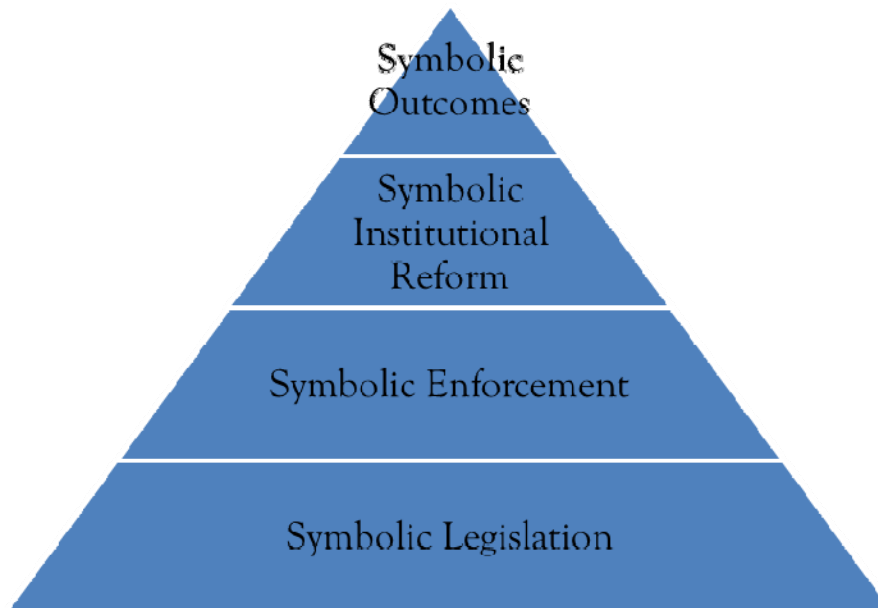
<sup>104</sup> See discussion *infra* Part III.B.

<sup>105</sup> See discussion *infra* Part III.B. See, e.g., Feng Hao, *Ozone-Depleting Substances Test China’s Commitment to Global Treaty*, CHINA DIALOGUE (Aug. 22, 2018), <https://perma.cc/F97L-D9LT>.

<sup>106</sup> *Coal Production Down 9.4 Percent in 2016*, XINHUA (Jan. 27, 2016), <https://perma.cc/7LNJ-4E3U>.

<sup>107</sup> Wang Shang, *Commentary: Slower Growth Target, Tougher Environmental Protection Benefit China, World*, XINHUA (Mar. 15, 2015), <https://perma.cc/V6FS-PJZT>.

<sup>108</sup> *Id.*



## 2. Reform Style

The *style* of reform can also serve a signaling function as well, suggesting competence, innovation, vigor, strength, pragmatism, and other values that support Chinese legitimacy. Again, these different values are most important in signaling performance and performance-orientation, which can serve as a buffer against weak actual performance. Like the reform tools discussed above, these aspects of reform style each have a functional purpose. This subpart focuses, however, on their symbolic aspects. These include:

- The continuous, iterative nature of reform, signaling the potential for performance always just over the horizon;
- The sheer volume of reform initiatives, which overwhelms the ability of the public (and even experts) to track and verify performance (this is not a stagnant or passive leadership, all this activity seems to signal);<sup>109</sup>
- The mobilization of massive human resources through government offices, research institutes, universities, enterprises, and elsewhere in service of reform signals seriousness and performance-orientation;
- Appeals to “indigenous” governance resources that confer traditional legitimacy upon the state and appeal to present-day nationalist or populist impulses within society;

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<sup>109</sup> This is a “bed of nails” strategy, where failure on one initiative standing alone might cause damage to party-state reputation, but countless initiatives in aggregate combine to blunt the impact of any individual failure and serve to cushion state legitimacy.



- Flexible use of foreign legal transplants that signal modernity, resilience, and pragmatism;<sup>110</sup>
- Liberal governance tools that signal democracy and the promise of minimizing inefficiencies of top-down, autocratic rule;
- Framing of reform as led by a benevolent central leadership arrayed against various obstructions or enemies (e.g., local government, vested economic interests, fragmented bureaucratic actors, and “hostile foreign forces”), which can offer credible reasons for weak performance that shield central leaders from legitimacy loss;<sup>111</sup>
- Framing of reform as pragmatic or in China’s self-interest (rather than ideological or idealistic), which suggests a stronger motive for performance.

This focus on the structure of symbolic reform highlights the importance of reform tools, process, and approach as signals of performance, performance-orientation, and other markers of legitimacy.

### *B. When is Symbolic Reform Decoupled from Actual Performance?*

Symbolic reform is a phenomenon where reform inputs send various signals that can bolster state legitimacy. Such signaling is not necessarily inimical to substantive performance. Symbolic reform can support policy implementation, such as when symbolic aspects of reform alert the public to policy priorities or serve to marshal support for implementation.<sup>112</sup> From a regulatory perspective, the concern is when reform becomes *merely* symbolic, masking weak performance and limiting state accountability.<sup>113</sup>

Chinese reform may become purely symbolic because of irreconcilable policy goals,<sup>114</sup> institutional design problems,<sup>115</sup> vested interest opposition,<sup>116</sup>

<sup>110</sup> See Lisheng Dong et al., *A Case Study of China’s Administrative Reform: The Importation of the Super-Department*, 40 AM. REV. PUB. ADMIN. 170, 172, 180 (2010).

<sup>111</sup> This is a way to gain symbolic value from attempts at performance. The messaging seems to say that the task is extraordinarily difficult. Many forces are arrayed against the state, but leaders have done their utmost and will keep trying. Social science survey research of popular opinion suggests that the “center-good, local-bad” narrative, for example, is effective. See, e.g., Birney, *supra* note 13, 25–26.

<sup>112</sup> See, e.g., Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2022, 2024–28, 2030–32 (1996).

<sup>113</sup> As discussed above, symbolic reform may involve some delivery of actual outcomes that then symbolizes broader performance and legitimacy. The concern here is that such symbolic outcomes mask weak performance in other policy areas.

<sup>114</sup> The conflict between economic and environmental goals is a classic example.

<sup>115</sup> Subsidies that lower the cost of natural resources, for example, lead to overexploitation. Tax policies that centralize funds and create a “revenue hunger” at local levels of government exacerbate the conflicts between economic and environmental objectives.

<sup>116</sup> These dynamics are well-studied in the collective action and public choice literature. Vested interests oppose concentrated, short-term costs. Members of the public are less willing and able to advocate for diffuse, long-term benefits. See, e.g., MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS* 2, 10–14 (1965). Vested interest opposition can also lead to regulatory implementation on the backs of the least politically and economically powerful, who are less able to resist regulation.

or capacity limits.<sup>117</sup> As discussed above, state leaders may also simply be “bad apples” for whom reform is a useful myth—a “powerful means of expression for mass publics” and a vehicle “to convey benefits to particular groups” within society.<sup>118</sup> These problems are familiar features of regulation in any country and will not be discussed in further detail herein.

Two other dynamics of China’s authoritarian system—*uncertainty* and *populist politics*—are particularly salient to the emergence of reform that is merely or primarily symbolic. Uncertainty about outcomes (the results of reform), causation (who receives credit for successful outcomes), and leadership intent (whether reform efforts are sincere or not) strengthen the effect of symbolic reform. In addition, populist politics can exacerbate uncertainty by checking criticism and inducing preference falsification in the public sphere. It can also stoke nationalism in a way that leads people to focus less on actual outcomes, so long as state leaders seem to be on their side. In short, these dynamics make citizens *less able* and *less willing* to hold the state accountable for performance outcomes.

The theory of symbolic legitimation here assumes that the signals sent by symbolic reform are interpreted as legitimacy-enhancing by a meaningful portion of the public. Some people may see through mere symbolic action and lose faith in the regime as a result: scientists may feel quite certain that their studies show results to a sufficient degree of accuracy; bureaucrats or social scientists may have seen enough of Chinese governance from the inside to have developed their own sense of state performance. But most people will need to rely on a more limited set of information, which includes the signals conveyed by Chinese reform and propaganda. This limited information is shaped and colored by uncertainty and populist politics. In addition, common human limits—bounded rationality, insufficient education or expertise, or simple lack of concern or inattention—mean that even knowledge of “facts” may not allow citizens to draw meaningful conclusions or recognize reform that is purely symbolic.

### 1. *Uncertainty*

Uncertainty renders citizens less able to verify performance. Amidst uncertainty, the symbolic effect of reform moves to the fore. Observers are more likely to treat regulatory inputs and activity as a proxy for results. Party-state characterization of performance fills the void. Moreover, reform measures designed to address known regulatory problems become symbols of responsiveness, adaptation, and innovation (performance-orientation)—in part *because* actual results are uncertain. Uncertainty about causation and intent also enhance the symbolic effect of reform, allowing party-state leaders more easily to claim credit for successful performance and obscuring state motives for reform.

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<sup>117</sup> This refers to, for example, limits on technical or fiscal capacity.

<sup>118</sup> See EDELMAN, THE SYMBOLIC USES OF POLITICS, *supra* note 49, at 2.

Uncertainty is enhanced by 1) complexity, 2) information asymmetry, and 3) information control or manipulation. Each of these factors is discussed in greater detail below.

*Complexity.* Greater problem complexity creates fertile ground for symbolic reform. Complexity renders it difficult for the public to make its own determinations about the nature and severity of problems and their resolution. It can do this by drawing public focus away from outputs toward input metrics. For example, an early report on implementation of the amended Environmental Protection Law focused entirely on the number of times that new enforcement authorities had been used.<sup>119</sup> The authors provided no information regarding the critical questions regarding the *environmental impact* of enforcement, such as pollution reduced.<sup>120</sup> The system's focus on data-driven metrics enhances opportunities for symbolic, rather than functional, behavior. The leadership and state media focus heavily on the number of *actions taken* rather than *environmental outcomes* achieved.<sup>121</sup>

Complexity forces the masses to rely on elite opinion to understand problems and evaluate state performance. Such a dynamic puts a premium on public faith in elites and heightens the importance of tools for controlling or influencing elite opinion. Therefore, the state mechanisms and strategies for controlling scholars, media, civil society, and other elites are critical to symbolic reform.

State leaders can also define success in technical terms that are difficult for the public to understand—limiting citizen ability to question the state's performance. Energy intensity, carbon intensity, and pollution volume metrics, for example, are calculated in complicated ways that do not necessarily comport with lay understandings of these terms. Complex problems are difficult for even experts, let alone average citizens, to grasp in any comprehensive way, and this challenge to understanding creates a space for the leadership to selectively focus on successful elements of reform and obscure areas of performance failure.

On the other hand, complexity also allows Chinese officials to signal performance in non-traditional, populist ways. Hence, the head of Shandong Province's environmental protection bureau (EPB) talks not of levels of pollution and impacts on health, rather his metric of success is based on what citizens can perceive.<sup>122</sup> For him, success in air pollution regulation is focused on “visibility” (能见度) because lack of visibility (haze) is a common

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<sup>119</sup> Wang Canfa, *Environmental Law: 2 Years On*, CHINA WATER RISK (June 14, 2017), <https://perma.cc/9PY7-6HBZ>.

<sup>120</sup> *Id.*

<sup>121</sup> See, e.g., 霍桃 [Huo Tao], 四年审判案件为前十年的五倍 [The Number of Trials During the Past Four Years is Five Times the Number During the Past Decade] 中国法治 [CENEWS] (Aug. 3, 2016), <https://perma.cc/H24L-HWYB> (state environmental media commenting on the substantial increase in the number of environmental cases (with no mention of their environmental impact)).

<sup>122</sup> *Explaining Information*, *supra* note 2, at 893–98.

public complaint.<sup>123</sup> For water pollution, his metric of success is the return of fish to public waters.<sup>124</sup> Never mind that environmental risks that are unseen can be as much or more serious than ones that can be perceived by the senses. Such performance goals are keyed to populist goals, rather than scientific assessments of risk to health and ecosystems.

Complexity can also offer an excuse for apparent performance failures. Where citizens believe performance to be difficult, leaders may receive political credit by simply showing forceful *attempts* to reform.

*Information asymmetry.* Scholars have long noted that local performance tends to be weaker, compliance less complete in areas that are difficult to measure or monitor.<sup>125</sup> Superiors have difficulty in supervising agents in these cases and agents are more likely to shirk. Yet, the “principal” (central leaders here) can also use information asymmetry to their advantage where citizens also lack access to information. A lack of clarity about environmental performance, for example, allows leaders to claim symbolic achievement based on regulatory action (inputs), rather than actual results (outputs). Data manipulation or falsification is also more likely to escape detection. This is less feasible where environmental outcomes are apparent to the naked eye or otherwise difficult to disguise.

A simple example of this is the difference between visible and non-visible pollution. It is more difficult for casual observers to detect non-visible pollution and so shirking may not be detected as easily. Soil pollution, ozone-depleting substances, and toxic chemicals for example are not visible to the naked eye and cannot be monitored remotely.<sup>126</sup> Carbon emissions likewise are invisible to casual observation. Observers must rely on regulatory inputs and purported results in determining whether these problems have been addressed. Haze, on the other hand, is highly visible and so the symbolic value of reform is diminished if the visible problem remains unresolved.<sup>127</sup>

*Information Control.* State actors or opponents of regulation can also actively control information in ways that enhance symbolic performance. This can be done through misdirection, contradictory messaging, information overload, censorship, and control of common agents of public supervision, such as media, scholars, lawyers, and civil society actors.

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<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> See, e.g., Andrew Wedeman, *Incompetence, Noise, and Fear in Central-Local Relations in China*, 35 ST. COMP. INT. DEV. 59, 83 (2001); Bruce Walker, *Monitoring and Motivation in Principal-Agent Relationships: Some Issues in the Case of Local Authority Services*, 47 SCOTTISH J. POL. ECON. 525, 549 (2003).

<sup>126</sup> In contrast, ambient levels of sulfur dioxide, nitrogen oxides, and particulate matter, which can now be readily monitored through remote sensing (i.e., satellite) information. See generally Randall V. Martin, *Satellite Remote Sensing of Surface Air Quality*, 42 ATMOSPHERIC ENV'T 7823 (2008) (reviewing satellite remote sensing of air quality).

<sup>127</sup> For this to be the case, however, observers must have identified the visible environmental phenomenon as a problem. A decade ago it was much more common for Chinese citizens to suggest that smog was actually “fog”—and hence not an environmental “problem” but a harmless natural phenomenon. See Hilton, *supra* note 10.

In the United States, climate skeptics have created uncertainty about climate science through such techniques.<sup>128</sup> Tobacco conglomerates, with their substantial public relations and lobbying apparatus, have had similar success in creating uncertainty about the risks of cigarettes.<sup>129</sup> Politicians in democratic settings have worked to shape a “post-truth” politics by casting doubt on the media, scientists, and other potential critics, and actively injecting “alternative facts” into the debate.<sup>130</sup>

Governments in authoritarian settings are known for such active manufacture of the “truth” as well, and China is no different. This is the idea that information should be actively shaped by state media, propaganda offices, leadership rhetoric, and ideological training in the service of core state political objectives. Potential rivals for political power within society and legitimacy are carefully monitored and various instruments of formal and informal control can alter the amount and quality of information available to the public for evaluating state performance.<sup>131</sup>

Complexity, information asymmetry, and information manipulation each play an important role in enhancing the symbolic aspects of Chinese reform. While state officials will not necessarily misuse the opportunities presented by uncertainty, uncertainty creates the potential for abuse. Faced with uncertainty, the public will tend to shift toward the more impressionistic messages delivered by governance reforms.

## 2. Populist Politics

Populist politics render citizens both less able and less willing to hold the state accountable for performance. A political atmosphere of nationalist populism enhances symbolic reform by chilling dissent, and shifting attention away from performance toward nationalist or tribal support for the state. Under this view, the state shares the same values as the people and safeguards their interests against domestic and foreign enemies. This sort of populism politicizes debates over performance and casts critics of state performance as against China and its people. Populist politics exacerbate a “post-truth” dynamics, defined as “[r]elating to or denoting circumstances in which objective facts are less influential in shaping public opinion than appeals to emotion and personal belief.”<sup>132</sup>

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<sup>128</sup> See, e.g., NAOMI ORESKES & ERIK M. CONWAY, *MERCHANTS OF DOUBT: HOW A HANDFUL OF SCIENTISTS OBSCURED THE TRUTH ON ISSUES FROM TOBACCO SMOKE TO GLOBAL WARMING* 16 (2010); Peter Jacques et al., *The Organisation of Denial: Conservative Think Tanks and Environmental Skepticism*, 17 ENVTL. POL. 349, 362 (2008).

<sup>129</sup> See, e.g., Douglas A. Kysar & James Salzman, *Foreword: Making Sense of Information for Environmental Protection*, 86 TEX. L. REV. 1347, 1362–63 (2008).

<sup>130</sup> See Allison Orr Larsen, *Constitutional Law in an Age of Alternative Facts*, 93 N.Y.U.L. REV. 175, 176 & n.2, n.3 (2018) (describing the Trump Administrations use of “fake news” and “alternative facts”).

<sup>131</sup> See *Explaining Information*, *supra* note 2, at 905.

<sup>132</sup> *Post-Truth*, OXFORD DICTIONARY, <https://perma.cc/FM67-9QTH> (last visited Nov. 25, 2018); see e.g., William Davies, *The Age of Post-Truth Politics*, N.Y. TIMES (Aug. 24, 2016),

Populist politics can bolster state representations of performance by increasing preference falsification, as citizens learn not to express politically sensitive views even if such views are strongly held in private.<sup>133</sup> When citizens hear no criticisms of state performance, they may be less likely to think performance has been inadequate. A populist environment also encourages attacks on the reputation of rival, democratic governance models by pointing out shortcomings and suggesting that rival models are not worth their salt.

Populist dynamics may be initiated or nurtured by the state, or they may arise out of society itself. One approach is to demonize critics who support Western liberal values as collaborators with foreign hostile forces. He Yan has shown, for example, that in times of political crisis during the Hu-Wen Administration (2003–2012) state media (*People's Daily*) mentions of “foreign hostile forces” (国外敌对势力) and their domestic allies, or articles favorably comparing the “China model” to a “Western model” of rule increased substantially.<sup>134</sup> Security officials collaborate in such attacks by engaging, for example, in arrests of “rights defender” (维权) lawyers.<sup>135</sup> Such campaigns are often viewed as acts of political control against actors with the capacity to generate mass mobilization or public discontent. However, they also have the effect of silencing critics, casting doubt on motives, and sending deterrence signals to the broader public.

Citizens also engage in populist rhetoric and protest on their own. One example of this is the emerging popularity of the term “white left” (白左) in Chinese popular discourse<sup>136</sup>:

Although the emphasis varies, *baizuo* is used generally to describe those who “only care about topics such as immigration, minorities, LGBT and the environment” and “have no sense of real problems in the real world”; they are hypocritical humanitarians who advocate for peace and equality only to “satisfy their own feeling of moral superiority”; they are “obsessed with political correctness” to the extent that they “tolerate backwards Islamic values for the sake of multiculturalism”; they believe in the welfare state that “benefits only

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<https://perma.cc/DZW8-KKGX>; *Yes, I'd Lie to You: The Post Truth World*, ECONOMIST (Sept. 10, 2016), <https://perma.cc/2KXE-HNT3>.

<sup>133</sup> See Junyan Jiang & Dali Yang, *Lying or Believing? Measuring Preference Falsification From a Political Purge in China*, 49 COMP. POL. STUD. 600, 603 (2016). On “preference falsification” more generally, see TIMUR KURAN, PRIVATE TRUTHS, PUBLIC LIES: THE SOCIAL CONSEQUENCES OF PREFERENCE FALSIFICATION 17 (1997).

<sup>134</sup> See Yanan He, *Domestic Troubles, National Identity Discourse, and China's Attitude Toward the West, 2003–2012*, 24 NATIONS & NATIONALISM, 741, 742–43, 750–51 (2018).

<sup>135</sup> Emily Rauhala & Simon Denyer, *China Jails Yet Another Human Rights Lawyer in Ongoing Crackdown on Dissent*, WASH. POST (Nov. 21, 2017), <https://perma.cc/3PP6-BTLT>.

<sup>136</sup> The caveat here is that online commentary about the “white left” may be posted by agents of the state or at the direction of private vested interests. See Chenchen Zhang, *The Curious Rise of the ‘White Left’ as a Chinese Internet Insult*, OPENDEMOCRACY (May 11, 2017), <https://perma.cc/N4NJ-GJLX>. On state direction of online commentary, see, e.g., Gary King et al., *How the Chinese Government Fabricates Social Media Posts for Strategic Distraction, Not Engaged Argument*, 111 AM. POL. SCI. REV. 484 (2017).

the idle and the free riders”; they are the “ignorant and arrogant westerners” who “pity the rest of the world and think they are saviours”.<sup>137</sup>

In part, the term reflects a rejection of common liberal critiques against China on human rights and political freedoms. More broadly speaking, this term can be understood in terms of the idea of “negative soft power” or “constructing the Chinese self through ‘the deliberate creation and then exclusion’ of Others as ‘barbarians’ or otherwise inferior.”<sup>138</sup> Such populist narratives reduce pressure on the Chinese model of governance by delegitimizing the alternatives and attacking critics of the Chinese model at the same time. These arguments shift popular focus away from domestic performance toward nationalist and political allegiances.

To return to symbolic reform, populist politics increase the risk of more confrontational advocacy approaches that challenge the state and subtly push even independent advocates towards stances generally supportive of state pronouncements and representations of performance.<sup>139</sup> In such a political environment, advocates can minimize political risk through more cooperative engagement with the state—cajoling the state with praise for reforms, encouraging state actions that align with private advocacy goals, and moderating criticisms to avoid drawing political or populist retaliation. Put another way, such a strategy prizes carrots, rather than sticks.

State actors can take advantage of this in a way that benefits symbolic reform. For them, symbolic reform is less effective if the only promoters of state performance are state actors themselves. Support from those outside of the system (whether domestic or foreign) is helpful to the credibility of symbolic reform. State partnerships and cooperation with domestic and foreign actors provide assistance in this regard. They may play advocates off each other, granting greater access to those seen as friendly to the state, and creating competition among those seeking to work with the state. The result can be subtle but effective incentives for third-party actors to praise, rather than criticize, Chinese performance.

In recent years, for example, Chinese environmental groups have increasingly engaged Party-state officials on climate change. Chinese non-governmental organizations (NGOs) that attended the Paris climate negotiations were rumored to have lobbied the Climate Action Network International (CANI) secretariat when it considered awarding China a “Fossil of the Day Award” (an award used to shame countries who CANI believed were not doing enough to forward climate negotiations).<sup>140</sup> Chinese state security officials had traveled to Paris and stayed in the same hotel as many of the Chinese groups, sending a not so subtle signal to advocates that

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<sup>137</sup> See Zhang, *supra* note 136.

<sup>138</sup> *Id.* (citing William A. Callahan, *Identity and Security in China: The Negative Soft Power of the China Dream*, 35 *POLITICS* 216, 220 (2015)).

<sup>139</sup> The risks involved in confrontational advocacy are demonstrated in part by the crackdown in recent years on human rights lawyers by the Chinese government. See Rauhala & Denyer, *supra* note 135.

<sup>140</sup> Based on Author’s personal observations.

they were not to embarrass China.<sup>141</sup> These groups did not appear to be agents of the Chinese government though, nor did their primary motivation seem to be fear of state persecution.<sup>142</sup> It was not clear that any state officials asked NGOs to take these actions defending China. Rather, the Chinese authorities had built relationships with the groups, and the groups seemed to feel that it would be best to maintain good relations with the Party-state.<sup>143</sup>

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In this environment of uncertainty and populist politics, formal state messaging thrives. As Premier Li Keqiang stated at the annual meeting of the National People's Congress in March 2014, China would now use an "iron fist" against polluters.<sup>144</sup> Chinese leaders offer a steady parade of statements, news segments, and other forms of propaganda that reinforce the notion that the Party-state cares about the environment and is doing its utmost to solve China's environmental problems.<sup>145</sup> These components of symbolic reform are designed to send other signals that bolster state legitimacy.<sup>146</sup> Symbolic reform reinforces core political narratives—such as "center good, local bad," vested interests, or "hostile foreign forces" narratives—that position the central leadership as a crusader against forces that would destabilize China.<sup>147</sup>

#### IV. CASES

##### *Green is gold.* – Xi Jinping<sup>148</sup>

How does symbolic performance play out in practice? Where is performance most likely to be merely symbolic? This section first looks at the phenomenon of eco-civilization reform in general and then examines four different policy areas: air pollution, soil pollution, ozone-depleting substances, and climate change. The focus here will be on signals sent and the factors that make the gap between symbolic and functional reform more or less likely in each area.

These days, many observers believe that China's leaders now care more about environmental regulation as a policy matter and cite to evidence suggesting that China is beginning to make progress on its war on

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<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> Christopher Beam, *China Tries a New Tactic to Combat Pollution: Transparency*, NEW YORKER (Feb. 6, 2015), <https://perma.cc/P8K2-7Q44>.

<sup>145</sup> *See, e.g.*, XI JINPING, SECURE A DECISIVE VICTORY IN BUILDING A MODERATELY PROSPEROUS SOCIETY IN ALL RESPECTS AND STRIVE FOR THE GREAT SUCCESS OF SOCIALISM WITH CHINESE CHARACTERISTICS FOR A NEW ERA 4, 20 (2017), <https://perma.cc/3BGE-922L>.

<sup>146</sup> *See id.* at 8–10, 18.

<sup>147</sup> *See XI, supra* note 1.

<sup>148</sup> *See id.*



pollution.<sup>149</sup> To some, China is even becoming a global leader on climate change and other environmental issues.<sup>150</sup> Critics argue, however, that these reforms are largely symbolic.<sup>151</sup> A symbolic legitimation perspective offers a new way of understanding this debate—providing the tools and language to identify areas of progress (air pollution), while also bringing appropriate skepticism and a call for stronger accountability to areas of risk (soil, ozone-depleting substances, climate change, toxic chemicals). Variation in uncertainty is a critical differentiating factor.

### A. The Symbolism of Eco-Civilization Reform

In the waning years of the Hu-Wen Administration (2003–2013), looming political pressures created persistent demand for reform. Chinese leaders faced the prospect of weakening legitimacy on several fronts. Despite weathering the 2007–2008 global financial crisis, China’s economic growth was expected to slow.<sup>152</sup> Concerns about social dissatisfaction and unrest loomed.<sup>153</sup> China’s environmental problems were reaching crisis levels.<sup>154</sup> Pollution cast a pall (literally and figuratively) over the Chinese “economic miracle” that had generated unprecedented average annual gross domestic product (GDP) growth rates of more than 10% for over three decades.<sup>155</sup> China’s weakness in “soft power” created domestic political pressures and hindered Chinese interests on the international stage.<sup>156</sup>

#### 1. Signals

How would the Party respond to risks to state legitimacy? This subpart will describe the signals sent by eco-civilization reform, the regulatory tools and approach used to deliver these signals, and the role of uncertainty and populism in enhancing the symbolic aspects of reform.

The broader governance project would be framed as an all-around effort at “comprehensively deepening reform,” which involved substantial initiatives aimed at anti-corruption, bureaucratic centralization, and tightening of space for certain types of social advocacy.<sup>157</sup> A key aspect of the

<sup>149</sup> See, e.g., Greenstone, *supra* note 88; Jeff Kearns et al., *China’s War on Pollution Will Change the World*, BLOOMBERG (Mar. 9, 2018), <https://perma.cc/VFQ6-DYPT>.

<sup>150</sup> See, e.g., Kearns, *supra* note 149.

<sup>151</sup> See discussion *infra* Part IV.A.

<sup>152</sup> Xin Zhiming, *ADB Lowers Forecast for China’s GDP Growth in 2009*, CHINA DAILY, <https://perma.cc/L9VH-ENYM> (last updated Dec. 12, 2008).

<sup>153</sup> See *The Great Wall of Unemployed*, ECONOMIST (Nov. 27, 2008), <https://perma.cc/W7V6-4WXB>.

<sup>154</sup> Carin Zissis & Jayshree Bajoria, *China’s Environmental Crisis*, WASH. POST (Aug. 7, 2008), <https://perma.cc/Y33Z-ESDP>.

<sup>155</sup> See PEI, CHINA’S TRAPPED TRANSITION, *supra* note 34, at 167, 176.

<sup>156</sup> See Zhang, *supra* note 136.

<sup>157</sup> 习近平谈治国理政之八：建设生态文明 [Xi Jinping Talks About the Governance of China: Building an Ecological Civilization], 中国共产党新闻网 [SCIO.GOV.CN] (Aug. 7, 2015), <https://perma.cc/WQ23-5XWU>.

reform effort would be framed around a concept of “green” or “sustainable development” termed *ecological civilization*.<sup>158</sup> This concept purported to serve as a vehicle for delivering solutions to problems of economic development, social stability, and state reputational harm that had sharpened as China reached its ecological limits.<sup>159</sup> The entire project of ecological civilization, which is ongoing as of this writing, signals environmental results and performance-orientation, while also gesturing to a variety of other bases of legitimacy such as tradition, nationalism, strength, modernity, and even politico-legal (or democratic) legitimacy.<sup>160</sup>

At the critical Eighteenth Chinese Communist Party National Congress (Party Congress) in November 2012, President Hu Jintao’s annual work report introduced the concept of *ecological civilization*, stating<sup>161</sup>:

Promoting ecological [civilization] is a long-term task of vital importance to the people’s wellbeing and China’s future. Faced with increasing resource constraints, severe environmental pollution and a deteriorating ecosystem, we must raise our ecological awareness of the need to respect, accommodate, and protect nature. We must give high priority to making ecological [civilization] and incorporate it into all aspects and the whole process of advancing economic, political, cultural, and social progress, work hard to build a beautiful country, and achieve lasting and sustainable development of the Chinese nation.<sup>162</sup>

The Party incorporated the concept of eco-civilization into its constitution that same month.<sup>163</sup>

Xi Jinping would associate himself strongly with this new environmental concept.<sup>164</sup> Ecological civilization had a prominent place in

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> As one might expect, facts on the ground do not organize cleanly into the categories designed by academics. There is inevitable overlap among these different values, but they all suggest a comprehensive and sophisticated signaling of values that appeal to the public and enhance their opinion of the ruling regime. *Id.*

<sup>161</sup> See *Full Text of Hu Jintao’s Report at 18th Party Congress*, CHINA-EMBASSY.ORG (Nov. 27, 2012), <https://perma.cc/7W57-PV3X> (English); see also 胡锦涛在中国共产党第十八次全国代表大会上的报告 [*Hu Jintao’s Report at the Chinese Communist Party’s 18th National Congress*], 人民日报 [PEOPLE’S DAILY] (Nov. 8, 2012), <https://perma.cc/74HU-GMAY>. This English version uses the phrase “ecological progress” as the translation for the Chinese phrase *shengtai wenming*. Subsequent official translations of *shengtai wenming* have used “ecological civilization.” The Eighteenth Party Congress work report “is perhaps the single most important document available” for analysts of Chinese strategy and policy. Timothy Heath, *The 18th Party Congress Work Report: Policy Blueprint for the Xi Administration*, JAMESTOWN FOUND. CHINA BRIEF Nov. 30, 2012, at 7.

<sup>162</sup> *Full Text of Hu Jintao’s Report at 18th Party Congress*, *supra* note 161.

<sup>163</sup> 中国共产党章程 [*Chinese Communist Party Constitution*], 新华社 [XINHUA] (Nov. 18, 2012), <https://perma.cc/DA7A-PLUP> (including a clause under the heading: “The Chinese Communist Party Leads the People’s Construction of Socialist Ecological Civilization” 中国共产党领导人民建设社会主义生态文明). Eco-civilization was also inserted into the state Constitution in 2018. 李在磊 [Li Zailei] & 罗逸爵, “生态文明”入宪: “环境保护本身也是一种产业” [*Eco-Civilization Enters the Constitution: “Environmental Protection Itself is a Kind of Industry”*], 南方周末 [S. WEEKEND] (Mar. 23, 2013).

the major Party plenum platform documents released in 2013 (the “deepening reform” plenum), 2014 (the “rule of law” plenum), and 2015 (releasing the thirteenth five-year plan). Ecological civilization commanded stand-alone chapters in widely distributed major compilations of Xi Jinping’s writings and speeches.<sup>165</sup> Party channels, such as *Seeking Truth* (a Party-sponsored magazine), distributed collections of Xi’s quotes and scholarly analysis on eco-civilization.<sup>166</sup> President Xi discussed eco-civilization in public remarks early and often. A 2015 Xinhua report announced that Xi had “spoken about eco-civilization more than sixty times since the Eighteenth Party Congress.”<sup>167</sup> At a speech in Davos in early 2017, Xi Jinping reiterated the theme, opining that: “[i]t is important to protect the environment while pursuing economic and social progress so as to achieve harmony between man and nature and between man and society.”<sup>168</sup>

Ecological civilization was grander and more capacious than what had come before.<sup>169</sup> Chinese leaders presented it as no less than an effort to redefine the very conception of Chinese civilization. Official rhetoric stated that this was a revision of the core elements of “socialism with Chinese characteristics—a “five-in-one” reform that now grouped ecological

<sup>164</sup> A party spokesman announced that Xi had led the drafting team responsible for the content and framing of the work report. See Heath, *supra* note 161, at 7.

<sup>165</sup> 习近平谈治国理政之八：建设生态文明 [Xi Jinping Talks About the Governance of China: Build Ecological Civilization], *supra* note 157; 习近平总书记系列重要讲话读本(2016年版) [Reader Series on Important Speeches of General Secretary Xi Jinping (2016 Edition)], CPC.PEOPLE.CN, <https://perma.cc/NE29-7B63> (last visited Nov. 25, 2018).

<sup>166</sup> 生态文明，美丽中国：党的十八大以来习近平总书记关于生态工作的新理念，新思想，新战略 [Ecological Civilization, Beautiful China: General Secretary Xi Jinping’s New Concepts, New Thinking, New Strategies on Ecological Work Since the 18th Party Congress] (Mar. 30, 2016), <https://perma.cc/5LS9-37PH>; 十八大报告首提‘美丽中国’引人注目 [The 18th Party Congress Report Raises ‘Beautiful China’ for the First Time, People Take Notice], 新华网 [XINHUA] (Nov. 8, 2012), <https://perma.cc/99ZC-ZM9Z>; 王学军 [Wang Xuejun], 十二届全国人大常委会专题讲座第六讲：大力推进生态文明建设 [Sixth Special Talk of the 12th National People’s Congress Standing Committee: Vigorously Promote Ecological Civilization Construction], 中国人大网 [NAT’L PEOPLE’S CONGRESS OF THE PRC] (Sept. 27, 2013), <https://perma.cc/9M5G-M2Y4>; 刘毅 [Liu Yi] & 孙秀艳 [Sun Xiuyan], 党的十八大以来加强生态文明建设述评 [A Review of Strengthening the Construction of Ecological Civilization Since the 18th National Congress of the CCP], 新华网 [XINHUA] (Feb. 15, 2016), <https://perma.cc/4AEV-T326>; 黄浩涛 [Haotao Huang], 生态兴则文明兴，生态衰则文明衰——系统学习习近平总书记十八大前后关于生态文明建设的重要论述 [Ecosystems Flourish and Civilization Flourishes, Ecosystems Wane and Civilization Wanes – Systematically Study General Secretary Xi Jinping’s Important Discourse on Ecological Civilization Construction Before and After the 18th Party Congress], 学习时报 [STUDY DAILY] (Mar. 30, 2015), <https://perma.cc/ST47-9BY7>.

<sup>167</sup> 十八大以来习近平 60 多次谈生态文明 [Xi Jinping Has Spoken About Eco-Civilization More Than 60 Times Since the 18th Party Congress], 新华网 [XINHUA] (Mar. 10, 2015), <https://perma.cc/8263-AQAT>.

<sup>168</sup> China’s official Xinhua News Agency highlighted this and another remark on climate change among only five so-called “key quotes [from the Davos speech] that win over global elites” and “drew hearty applause from the crowd.” *Xi at Davos: Key Quotes that Win Over Global Elites*, XINHUA (Jan. 17, 2017), <https://perma.cc/HBR6-49TP>.

<sup>169</sup> The Hu-Wen administration (2003–2013) had expanded focus on the environment, but within the context of more general political slogans of *harmonious society* (和谐社会) and *scientific development* (科学发展).

civilization with core “socialist” concepts of economic, political, cultural, and social civilization.<sup>170</sup> Ecological concepts would now, in other words, serve to promote economic development, social stability, political reform, and a renewed Chinese ideology of governance.

Xi Jinping also connected eco-civilization to a broader historical narrative of the “great rejuvenation of the Chinese nation” (中华民族伟大复兴) and the “China Dream.” Environmental protection would be an important part of China’s return to its rightful (and central) place in the world after more than a century in the wilderness.<sup>171</sup>

The economic vision of ecological civilization embraced “green development” concepts that seek out “win-win” opportunities for development and environmental improvement. Xi has invoked this notion in literary terms, referring to his so-called “two mountains theory” (两山论)<sup>172</sup>: “We want green waters and clear mountains, and we want gold and silver mountains . . . Green waters and clear mountains *are* gold and silver mountains.”<sup>173</sup>

In other words, as one commentary put it, “green is gold.”<sup>174</sup>

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<sup>170</sup> Initially, Deng Xiaoping characterized “socialism with Chinese characteristics” as composed of spiritual and material civilization. Since then, the party added political construction (changing the behavior of public officials) and social construction (expanding focus on social goods delivery). Spiritual civilization is now referred to as “cultural” construction (focused on changing the behavior of ordinary citizens). See, e.g., U.N. ENV’T PROGRAMME, GREEN IS GOLD: THE STRATEGY AND ACTIONS OF CHINA’S ECOLOGICAL CIVILIZATION 1–2 (2016), <https://perma.cc/ER7X-KPX5>; 柴逸扉 [Chai Yifei], 五位一体 伟大事业的总体布局 (习近平治国理政关键词 (5)) [Overall Layout for “Economic, Political, Cultural, Social, and Ecological Progress” (Key Words on Xi Jinping’s Governance (5))], 人民日报 [PEOPLE’S DAILY] (Jan. 30, 2016), <https://perma.cc/Y9HN-PJ8U>.

<sup>171</sup> Under Xi, eco-civilization has also been framed as a tool for achieving the two so-called “one hundred year revolutionary targets”—comprehensively building a “moderately prosperous society” (小康社会) and constructing a wealthy, strong, democratic, civilized, harmonious, modern socialist country. (富强民主文明和谐的社会主义现代化国家). See *China a Step Closer to Centenary Goals*, XINHUA, <https://perma.cc/MQL9-8ZQE> (last updated Oct. 9, 2017).

<sup>172</sup> 党的十八大以来加强生态文明建设述评 [A Review of Strengthening the Construction of Ecological Civilization Since the 18th National Congress of the CCP], *supra* note 166.

<sup>173</sup> “我们既要绿水青山，也要金山银山。绿水青山就是金山银山。”

<sup>174</sup> U.N. ENV’T PROGRAMME, *supra* note 170.



The conceptual framework connected today's leaders to Chinese history and indigenous governance experience. For example, a feature article in the official *Xinhua News* analogized the concept of ecological civilization to the writings of Guan Zhong (管仲), a reformer in the State of Qi during the Spring and Autumn Period (720–645 BC), who said:<sup>175</sup>

Where vegetation is not successfully planted, the nation will be poor. Where vegetation is successfully planted, the nation will be wealthy.<sup>176</sup>

Walk to the mountains and ponds, view the mulberry and flax, calculate the production of livestock, and you will know the difference between poor and wealthy nations.<sup>177</sup>

Guan Zhong is considered one of the earliest legalist thinkers, yet he also saw the value in emphasizing moral virtue in the ruled.<sup>178</sup> He steered power from clans to a functioning bureaucracy.<sup>179</sup> He emphasized welfare as the foundation of the state, as well-fed subjects would be more “amenable to being regulated by rulers,” and promoted “decency, justice, integrity, and conscience.”<sup>180</sup> The result was a state of Qi that was prosperous and strong. Eco-civilization's appeal to such historical analogies seems intended to signal the connection of China's current leaders to a powerful traditional legitimacy. Such histories themselves may be constructed, but for purposes

<sup>175</sup> 为了中华民族永续发展——习近平总书记关心生态文明建设纪实 [For the Sustainable Development of the Chinese Nation - General Secretary Xi Jinping Concerned about the Construction of Ecological Civilization], 新华网 [XINHUA] (Mar. 9, 2015), <https://perma.cc/8G97-XF7V>.

<sup>176</sup> “草木不植成，国之贫也”，“草木植成，国之富也”

<sup>177</sup> “行其山泽，观其桑麻，计其六畜之产，而贫富之国可知也”

<sup>178</sup> Tanya Harrison, *Guan Zhong: First Chinese Legalist and State Philosopher*, EPOCH TIMES (Mar. 12, 2013), <https://perma.cc/Z5DB-SRFJ>.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

of symbolic legitimation the key question is whether citizens identify and believe in these analogies.

At the same time, the concept of ecological civilization also connects in myriad ways with modern values and notions of green and sustainable development. In China's thirteenth five-year plan, green development would be part of the "Five Major Development Concepts" introduced that year.<sup>181</sup> The focus—according to Party rhetoric—would now be on innovative, coordinated, green, open, and shared development (创新, 协调, 绿色, 开放, 共享).<sup>182</sup> The Chinese vision of green development has converged with the agendas of multilateral institutions and international consultancies. The World Bank and the China State Council Development Research Center produced a report that contained a comprehensive vision of green development, largely mirroring the elements of eco-civilization reform.<sup>183</sup> United Nations Environment Programme supported the publication of a report describing China's ecological civilization efforts.<sup>184</sup> The consulting firm McKinsey & Co. has written extensively on the need for a "green revolution" in China and the technical opportunities for energy efficiency improvements and reductions in carbon emissions.<sup>185</sup> Chinese reforms largely comport with such recommendations.

In legitimacy terms, this framing of ecological civilization delivers a range of signals to the populace. This is first and foremost a vision of economic transformation. In the face of declining economic performance, eco-civilization has been marshaled as a way to define a renewed economic vision—specifically, of an advanced economy reliant on innovation and greener development.<sup>186</sup> These signals suggest the likelihood of performance and perhaps more importantly a performance-oriented governance approach. At the same time, the concept invokes tradition and nationalism.<sup>187</sup> China's leaders signal that they are legitimate because their governance style harkens back to that of respected historical leaders. But they must also communicate a narrative that embraces modernization and a willingness to use foreign governance practices opportunistically. Eco-civilization reforms signal that China has learned from foreign best practices even as it carefully protects the best of Chinese native resources.

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<sup>181</sup> See, e.g., 创新、协调、绿色、开放、共享 五大发展理念引领中国深刻变革 [Innovation, Coordination, Greenness, Openness, Sharing the Five Key Development Concept to Lead China's Profound Changes], 新华网 [XINHUA] (Oct. 30, 2015), <https://perma.cc/EAC7-7GA3>.

<sup>182</sup> *Id.*

<sup>183</sup> See *China 2030: Building a Modern Harmonious and Creative Society*, WORLD BANK (2015), <https://perma.cc/4CQA-23A6>.

<sup>184</sup> See U.N. ENV'T PROGRAMME, *supra* note 170.

<sup>185</sup> See, e.g., Martin Joerss et al., *China's Green Opportunity*, MCKINSEY & COMPANY (May 2009), <https://perma.cc/Y5VU-LEQ2>.

<sup>186</sup> See *Eco-Civilization: Will China Become the World's Climate Savior?*, FORBES (July 5, 2018), <https://perma.cc/5LCN-QF3M>.

<sup>187</sup> Jeremy Lent, *What Does China's "Ecological Civilization" Mean for Humanity's Future?*, ECOWATCH (Feb. 09, 2018), <https://perma.cc/G8HG-7TT9>.

## 2. Structure & Style

For symbolic reform to be effective, it must however go beyond mere rhetoric. Action must credibly signal performance and other values. Moreover, Chinese leaders must grapple with the fact that decades of environmental reform actions have not prevented dramatic increases in environmental degradation. China's leaders have already signaled *concern* for the environment from the earliest days of post-1978 reform and opening through the passage of the first Environmental Protection Law in 1979 and the designation of environmental protection as a "fundamental national policy" in January 1984.<sup>188</sup> Dozens of environmental laws, hundreds of environmental regulations, thousands of environmental measures and standards and periodic enforcement campaigns did not prevent China from becoming the largest polluter in the world. The recurring mantra in scholarship on Chinese environmental regulation is that a comprehensive regulatory framework is in place, but implementation is the problem.<sup>189</sup> What reason is there for citizens to believe that current environmental pronouncements are any more effective than prior ones?

Eco-civilization reforms must therefore signal performance and performance-orientation, but in doing so it must suggest to the public a break with the past and continuous, iterative efforts at governance reform. Reforms must frame prior failures as either reasonable or the fault of others. The structure of eco-civilization reform, which began to take shape almost immediately in 2013, reflected these messages.<sup>190</sup> The state unleashed an extraordinary outpouring of new plans, policies, and laws, embarked on an intensive center-led enforcement campaign, and announced a dizzying array of institutional reforms aimed at shoring up central authority and channeling the power of the bureaucracy toward eco-civilization efforts.<sup>191</sup> By 2015, two years after the commencement of the Xi Jinping Administration, the concept *and* structure of eco-civilization reform had taken form.<sup>192</sup>

Chinese leaders presented eco-civilization reform as an "edifice" composed of well-conceived concepts, principles, and systems.<sup>193</sup> The reforms seemed to signal that prior environmental failures were not the result of failed planning, but rather the unavoidable (and understandable) consequence of a relentless focus on economic development. China's overall strategy of intelligent "top-down design" (顶层设计), coupled with pragmatic experimentation (Deng's "crossing the rivers by feeling the stones"), had worked for the economy, but state leaders had for too long only "felt the

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<sup>188</sup> See U.N. ENV'T PROGRAMME, *supra* note 170, at 3.

<sup>189</sup> Wang Canfa, *Chinese Environmental Law Enforcement: Current Deficiencies and Suggested Reforms*, 8 VT. J. ENVTL. L. 159, 161, 169–71 (2007).

<sup>190</sup> See Zhang Chun, *China's New Blueprint for an 'Ecological Civilization'*, DIPLOMAT (Sept. 30, 2015), <https://perma.cc/KR53-H4L2>.

<sup>191</sup> See *id.*

<sup>192</sup> See *id.*

<sup>193</sup> THE CLIMATE GRP., *ECO-CIVILIZATION: CHINA'S BLUEPRINT FOR A NEW ERA* 1, 2, 4 (2014), <https://perma.cc/Y5H2-4NZN>.

stones” on environmental protection.<sup>194</sup> The time had come to engage in comprehensive top-down planning for ecological civilization. Contrary to Western critiques, this state planning would not lead to Hayek’s “Road to Serfdom.”<sup>195</sup> Just as China’s state-led governance approach delivered an “economic miracle” at unprecedented speed, top-level focus on the environment would now deliver green development.<sup>196</sup>

A phalanx of senior leaders presented this vision and (more importantly) the intended reform actions at a national State Council press conference in September 2015.<sup>197</sup> The formal edifice of eco-civilization institutional reform was based upon what officials refer to as the “1+6” documents, supported by “6+6+8”—6 concepts, 6 principles, and 8 systems.<sup>198</sup> These were the main “pillars and rafters” (四梁八柱) that supported the structure of reform.<sup>199</sup> Yang Weimin (杨伟民), vice-director for the office of China’s powerful Leading Group for Financial and Economic Affairs (LGFEA),<sup>200</sup> laid out the central role of institutional reform<sup>201</sup>: “Environmental protection requires systems and must rely on rule of law. The General Secretary also says that using system construction to promote eco-civilization is of the utmost importance, to make best efforts to break the systemic and mechanical barriers that limit eco-civilization construction.”<sup>202</sup> This design, leaders said, would be animated by clear conceptual thinking: “It’s difficult to clear the haze in our institutions and the haze in our air—without first eliminating the haze in our thinking.”<sup>203</sup>

What are the components of this reform and how do they connect to the notion of symbolic reform? The following discussion will highlight the

<sup>194</sup> See *Crossing the River by Feeling the Stones*, S. CHINA MORNING POST (July 22, 2002), <https://perma.cc/Y3TR-ATSR>.

<sup>195</sup> See F.A. HAYEK, *THE ROAD TO SERFDOM: TEXT AND DOCUMENTS* (Bruce Caldwell ed., 2007).

<sup>196</sup> Lin Yifu, *China’s Economic Miracle: A First Hand Account*, CHINA TODAY (Aug. 11, 2018), <https://perma.cc/262P-LPLW>.

<sup>197</sup> See 国新办就生态文明体制改革总体方案等情况举行发布会 [State Council Information Office Holds Press Conference Concerning the Overall Plan for Ecological Civilization Institutional Reform and Related Matters], 中国网 [CHINA.COM.CN] (SEPT. 17, 2015), <https://perma.cc/C3AD-RDNZ> [hereinafter *Eco-Civilization Press Conference*].

<sup>198</sup> 蔡梦晓 [Cai Mengxiao] & 袁晗 [Yuan Han], *生态文明改革方案打1+6组合拳 将全文发表* [Eco-Civilization Institutional Reform To Be Published in Full, Featuring “1+6” Documents], 新华网 [XINHUA] (Sep. 17, 2015), <https://perma.cc/TD44-LPZJ>.

<sup>199</sup> See *Eco-Civilization Press Conference*, *supra* note 197.

<sup>200</sup> The Leading Group for Financial and Economic Affairs [中共中央财经领导小组] is the CCP’s highest level body for coordination and discussion of issues related to the economy. It was formed on March 17, 1980 as a body to lead implementation of “reform and opening” policies, and has typically been headed by the General Secretary of the CCP. 解密中央财经领导小组 [The Central Financial Leadership Group], 东方网 [EASTDAY] (Dec. 26, 2015), <https://perma.cc/7M7T-QKM7>.

<sup>201</sup> *Eco-Civilization Press Conference*, *supra* note 197.

<sup>202</sup> *Id.*; see also 刘毅 [Liu Yi] & 孙秀艳 [Sun Xiuyan], *绿色发展, 走向生态文明新时代—党的十八大以来加强生态文明建设述评 (治国理政新实践)* [Green Development, Heading Toward a New Era of Eco-Civilization – Discussion and Analysis of Strengthening Eco-Civilization Construction (New Practices in Governance)], 人民日报 [PEOPLE’S DAILY] (Feb. 16, 2016), <https://perma.cc/78ZU-CSBF>.

<sup>203</sup> *Eco-Civilization Press Conference*, *supra* note 197.



symbolic aspects of three prongs of eco-civilization reform: efforts at centralization, bureaucratic mobilization, and public supervision. These are the sub-stratum of signals that suggest performance-orientation and the likelihood of genuine results. Centralization reforms are a reminder to citizens and other actors of the power of the state to assert control when it sees fit. Bureaucratic mobilization signals the Party-state's ability to marshal China's massive bureaucracy in service of environmental protection. Public supervision reforms mobilize the masses and aim to improve transparency, local monitoring, and accountability. These reforms signal resolve and commitment, and reinforce the notion of a competent, responsive, performance-oriented, and "democratic" state.<sup>204</sup>

*a. Centralization & Tightened Party Control*

China's successful growth during the post-1978 period has in significant part been due to a policy of decentralization.<sup>205</sup> But in past decades, substantial local government discretion and conflicts with economic priorities resulted in local protectionism and weak environmental regulation.<sup>206</sup> In response, a significant portion of eco-civilization reform measures are designed to centralize regulatory authority and limit local discretion in environmental regulation.<sup>207</sup>

Beyond their functional purposes, the symbolism of such measures is clear. Regardless of actual performance, these reform measures signal state concern for the people and the environment, responsiveness, and strength. While it is unlikely that average citizens will internalize the details of these myriad reform measures, the daily drumbeat of reporting and social media about various efforts convey the sense of an active reform program aimed at performance. These measures may or may not centralize authority and improve implementation in practice, but they also send a signal that the state is engaged and *attempting* to solve the problem.

The following discussion surveys several of these reforms.

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<sup>204</sup> Although China does not rely on procedural legitimacy as a core basis of legitimacy, official rhetoric does claim that China is "democratic" (in the sense that leaders consider the people's needs) and state propaganda emphasizes responsiveness and "service to the people."

<sup>205</sup> See generally Baoyun Qiao et al., *The Tradeoff Between Growth and Equity in Decentralization Policy: China's Experience*, 86 J. DEV. ECON. 112 (2008) (finding fiscal decentralization led to economic growth but also significant increases in regional inequality).

<sup>206</sup> A substantial body of scholarship has documented these dynamics in Chinese environmental regulation. See, e.g., *supra* note 102 and accompanying text.

<sup>207</sup> *Eco-Civilization Press Conference*, *supra* note 197.

Centralization Reforms
Bureaucratic targets
Party-state joint responsibility
Elimination of GDP targets
Lifetime responsibility for ecological harm
End-of-term natural resources audit
Vertical management of monitoring & inspections
Central inspection & supervision campaigns

**Bureaucratic targets** are central instructions to China's sprawling bureaucracy about the goals of the state.<sup>208</sup> They signal to bureaucrats and society at-large the relative importance of priorities, shifts in policy, and metrics for bureaucratic evaluation.

In China's eleventh five-year plan (2006–2011), central leaders signaled the elevation of environmental priorities by designating key pollution reduction and energy efficiency targets as “hard” targets, and organizing highly-publicized enforcement campaigns to drive target implementation with an “iron fist.”<sup>209</sup> In subsequent years, the number of targets has steadily increased. In the current thirteenth five-year-plan, environmental and energy targets compose more than half of central plan targets.<sup>210</sup> As a symbolic matter, targets signal greater state concern for the environment and a Party-state in command.

**Party-state joint responsibility (党政同责)** reforms are aimed at making local Party officials “care” about the environment.<sup>211</sup> Local Party secretaries have in the past not been evaluated against targets. This “responsibility” system has typically been reserved for the leading *government* cadres at each level.<sup>212</sup> In 2015, central Party rules affirmed for

<sup>208</sup> *Sustainable Legitimacy*, *supra* note 2, at 371, 401–02.

<sup>209</sup> *See id.* at 380, 420. In the eleventh five-year plan, the national energy intensity reduction target was 20%; for sulfur dioxide and chemical oxygen demand, the national target called for a 10% reduction by 2011 from 2005 averages. *Id.* Such “target accountability and performance evaluation” systems have been written into the Environmental Protection Law of the People's Republic of China. *See Environmental Protection Law of the People's Republic of China*, *supra* note 82, at art. 26.

<sup>210</sup> *See* Cent. Comm. of the Communist Party of China, *supra* note 81.

<sup>211</sup> *See, e.g.*, CHANG, *supra* note 101.

<sup>212</sup> China's “party-state” is a dual-track governance system with an outward-facing *government* hierarchy mirrored by an accompanying Party hierarchy. In principle, the government is responsible for implementation, while the party is responsible for strategy and guidance. *See* 中央文件首提环境损害党政同责, 突出地方党政主要领导责任 [Central Government's Document Raises for the First Time Local Government Officials and Local Party

the first time a policy of “Party-state joint responsibility” aimed at imposing liability on Party *and* government leaders for decisions violating environmental plans, laws, and policies, as well as poor environmental outcomes.<sup>213</sup> The signal to bureaucrats and citizens is again that China’s leaders are taking environmental matters more seriously, and creating the right institutional incentives to achieve genuine results.

State leaders have also announced a host of **other miscellaneous institutional reforms** designed to improve local environmental governance. Evaluation targets that put disproportionate weight on economic growth contribute to local protectionism, so Party officials have proposed to eliminate GDP targets in “ecologically fragile” areas and areas designated for limited development.<sup>214</sup> Short-term thinking driven by relatively brief leadership tenures among mayors (averaging three to four years) is responsible both for rapid development and poor implementation of environmental policies.<sup>215</sup> In response, the Party has announced an end-of-term “natural resources audit”<sup>216</sup> for officials, coupled with a system imposing “lifetime responsibility for ecological/environmental harm.”<sup>217</sup>

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*Leaders Shared Responsibility for Environmental Damage*, 澎湃 [PAPER] (Aug. 17, 2015), <https://perma.cc/3HCB-7C5S>.

<sup>213</sup> *Id.*

<sup>214</sup> 中共中央关于全面深化改革若干重大问题的决定 [Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform], 中国网 [CHINA.ORG.CN] (Nov. 15, 2013), <https://perma.cc/EYK7-KNNM>.

<sup>215</sup> Sarah Eaton & Genia Kostka, *Authoritarian Environmentalism Undermined? Local Leaders’ Time Horizons and Environmental Policy Implementation in China*, 218 CHINA Q. 359, 368–74 (2014).

<sup>216</sup> Wenyao Zhang, *Conducting Natural Resource Assets Departure Audit on Leading Cadres*, 11 J. SERV. SCI. & MGMT. 36, 37 (2018).

<sup>217</sup> “With respect to actions that violate the requirements of scientific development and seriously harm the ecological environment and resources, the responsible person will be liable even if he has been moved to another position, has been promoted, or has retired.” 中共中央关于全面深化改革若干重大问题的决定 中共中央关于全面深化改革若干重大问题的决定 [Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform], *supra* note 214; 授权发布：中共中央国务院关于加快推进生态文明建设的意见 [Authorized Release: Opinions of the CCP Central Committee and the State Council on Accelerating the Construction of Ecological Civilization], 新华网 [XINHUA] (May 5, 2015), <https://perma.cc/FA8D-TMXT>; 《党政领导干部生态环境损害责任追究办法（试行）》 [Measures for the Accountability of Party and Government Leaders for Damage to the Ecological Environment (for Trial Implementation)], 中国共产党新闻网 [CCPNEWS] (Aug. 17, 2015), <https://perma.cc/BC6G-HC2P>, [hereinafter *Measures*]; 生态保护重于GDP 拟编制自然资源资产负债表 [Ecological Protection Weighs More Than GDP], 每经网 [MEIJING] (Nov. 18, 2013), <https://perma.cc/UP8N-YQUY>; 杭州立法：限制开发和生态脆弱地区取消GDP考核 [Legislation In Hangzhou: To Restrict Development and to Cancel the GDP Assessment in Ecologically Fragile Areas], 东方网 [EASTDAY] (Dec. 26, 2015), <https://perma.cc/WHV4-P2SD>; 广东省党政领导干部生态环境损害责任追究实施细则 [Measures for the Implementation of Responsibility of Ecological Environment Damage of Party and Government Leading Cadres in Guangdong Province], GD.GOV.CN (June 29, 2016), <https://perma.cc/3XGN-BYXE>. The drafting of the Measures was led by the CCP Organization department and the Ministry of Supervision, with the participation of NDRC, MOF, Ministry of Land & Resources (国土资源部), MEP, MOHURD (住房城乡建设部), Ministry of Water (水利部), Ministry of Agriculture, and the National Forestry Administration. 《党政领导干部生态环境损害责任追究办法（试行）》印发 [“Administrative Measures on the Responsibility of the Party and Government Leading Cadres’

These require the same sorts of technical assessments that made earlier attempts to model “green GDP” a difficult (but presumably not insurmountable) challenge.<sup>218</sup> Again, apart from the functional purposes of these reforms, the message sent is of performance-orientation, flexibility, pragmatism, and a willingness to get things done. Eco-civilization reforms include “vertical management” (垂直管理) proposals that elevate responsibility for key enforcement tasks such as monitoring and inspections to higher levels of the bureaucracy. The goal is to remove the “fox guarding the henhouse” dynamic that has historically resulted in cursory inspections, weak penalties, and falsification of monitoring data.<sup>219</sup> These reforms authorize *provincial* environmental authorities to engage in “vertical management” of local environmental monitoring and inspection in the municipalities and counties below.<sup>220</sup> Such duties had traditionally been assigned to lower levels of government. Chinese leaders have also announced a substantial expansion in the number of monitors and inspectors in an effort to reduce information asymmetry.<sup>221</sup>

Finally, central officials have instituted an ongoing series of centrally-organized **environmental protection supervision and inspection teams** (中央环境保护督查组). In 2016, central officials organized central environmental protection supervision and inspection teams to carry out campaign-style enforcement actions in multiple provinces for the first time.<sup>222</sup> The plan for supervision and inspection was passed by the high-level

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*Ecological Environment Damage*” (Trial) Issued], 新华网 [XINHUA] (Aug. 17, 2015), <https://perma.cc/H47H-UQVX>; 中共中央组织部有关负责人就《党政领导干部生态环境损害责任追究办法(试行)》答记者问 [The Relevant Person in Charge of the Organization Department of the CCP Central Committee on the “Administrative Measures on the Responsibility of the Party and Government Leading Cadres’ Ecological Environment Damage” (Trial)], 新华网 [XINHUA] (Aug. 17, 2015), <https://perma.cc/CWU4-2KZT>; 新华社评: 终身追责倒逼“关键少数”敬畏绿水青山 [Xinhua Commentary: Lifelong Recovery Forcing “Key Few” Fear of Green Mountains], 新华网 [XINHUA] (Aug. 17, 2015), <https://perma.cc/94QT-YWHN>.

<sup>218</sup> Liu Jianqiang, *China Restarts Study on “Green GDP,”* CHINA DIALOGUE (Mar. 30, 2015), <https://perma.cc/4SWR-3XN3>.

<sup>219</sup> 专家解读十三五环境执法垂直管理: 可避免地方保护和数据作假 [Expert Interpretation of the 13th Five-Year Plan’s Vertical Management of Environmental Enforcement: Can Avoid Local Protectionism and Data Fraud], 澎湃 [PAPER] (Oct. 30, 2015), <https://perma.cc/PFU3-GML2>.

<sup>220</sup> 关于省以下环保机构监测监察执法垂直管理制度改革试点工作的指导意见 (Sept. 22, 2016), <https://perma.cc/F47F-6CT7>; 常纪文 [Chang Jiwen], 新论: 环境执法, 垂直管理更要立体施治 [New Theory: Environmental Enforcement, Vertical Management Requires Three-Dimensional Treatment], 人民日报 [PEOPLE’S DAILY] (Nov. 16, 2015), <https://perma.cc/8NRN-HSLH> (also describing pilot efforts in Chongqing, Shaanxi, and Guizhou).

<sup>221</sup> 官志雄 [Guan Zhixiong], 生态环境部全面推行环境执法“双随机、一公开” [The Ministry of Ecological Environment Engages in Comprehensive Environmental Enforcement with “Inspections of Randomly Selected Entities by Randomly Selected Inspectors and Public Disclosure of Inspection Results”], 中国新闻网 [CHINA NEWS] (Apr. 29, 2018), <https://perma.cc/ED5G-L2QN>.

<sup>222</sup> 2016 第一批中央环保督察工作 8 个督查组全部进驻 [The First Eight Central Environmental Protection Supervision and Inspection Teams in 2016 Have Been Deployed], 人民日报 [PEOPLE’S DAILY] (July. 19, 2016), <https://perma.cc/E5NL-X2WB>.

Central Leading Group on Comprehensively Deepening Reform.<sup>223</sup> As a matter of bureaucratic rank, this allows the inspection teams to go beyond inspection of city and county-level environmental officials to, for the first time, investigate any Party-state leaders at the provincial level and below.<sup>224</sup> This is meant to be the implementation of the Party-state joint responsibility principle, and a shift from past campaigns that mainly targeted polluting enterprises.<sup>225</sup> The nationwide scope and bureaucratic level of these inspection teams is a first for China.

The most salient impression to emerge from these team inspections is simply the sheer number of local officials and firms ostensibly punished. At the conclusion of the first inspection of 2016, officials reported the acceptance of 13,316 complaints;<sup>226</sup> issuance of 9,617 orders to remedy problems;<sup>227</sup> and the levying of fines in 2,659 cases, totaling RMB 198 million.<sup>228</sup> A one-month inspection campaign in summer 2016 resulted in the punishment of 3,422 people in eight provinces.<sup>229</sup> As of June 7, 2017, inspection teams in twenty-eight cities had investigated nearly 20,000 firms, finding violations at more than 70% of them.<sup>230</sup>

But outside of anecdotal reports of punishments for local officials and enterprises, it remains difficult to determine whether environmental objectives have actually been achieved, despite requirements to publicize local response to inspection reports. Media reports have emphasized results, yet the inspection teams have not disclosed sufficient information to verify whether these are more than punishments on paper.

Officials have, however, been quick to frame the symbolic meaning of the inspection tours:

<sup>223</sup> The plan 《环境保护督查方案（试行）》 is not publicly available. 章轲 [Zhang Ke], 揭秘中央环保督察组：成员有谁？有啥规矩？ [Central Environmental Protection Inspection Team Unveiled: Who are the Members? What are the Rules?], 第一财经 [YICAI] (Nov. 26, 2016), <https://perma.cc/HPP4-27N9>.

<sup>224</sup> Central CCP leaders designate the leader of each inspection team. *Id.* The vice-director of the inspection teams is vice-minister of the Ministry of Environmental Protection. *Id.* The inspection teams are otherwise largely staffed with people borrowed from the environmental ministry's regional inspection centers. *Id.*

<sup>225</sup> From supervising enterprises (督企) to supervising government (督政). Ke, *supra* note 223.

<sup>226</sup> 年巍 [Nian Wei], 首批中央环保督察情况反馈结束 8 省区 3000 多人被问责 [The First Inspections Carried Out by Central Environmental Protection Supervision and Inspection Teams in Eight Provinces Concluded with More Than 3,000 Responsible Persons Held Liable], 新华网 [XINHUA] (Nov. 23, 2016), <https://perma.cc/G3A6-UNYB>.

<sup>227</sup> *Id.*

<sup>228</sup> *Id.* Also, 207 other cases were investigated. *Id.* 310 people were detained administratively. *Id.* 2,176 officials were brought in for discussions (约谈). *Id.* 3,287 officials were subject to punishment of some sort (问责). *Id.*

<sup>229</sup> 中央环保督查组晒八省份问题 超 3400 人被问责 [Central Inspections of Environmental Protection Exposed Problems in Eight Provinces and Over 3400 People Were Accountable], 中国新闻网 [CHINA NEWS] (Nov. 23, 2016), <https://perma.cc/X2FH-XRRE>.

<sup>230</sup> Xiang Bo, *Inspections Find 70 Pct of Firms Violated Environmental Rules*, XINHUA (June 11, 2017), <https://perma.cc/EPM4-ANZD>.

The first inspection tour genuinely pushed forward the resolution of a large number of environmental problems. The masses truly feel like they received something. Party-state joint responsibility helped to elevate local party-state official dedication to environmental protection work.<sup>231</sup>

These inspection campaigns continue as of this writing, and empirical studies of their efficacy are sure to be forthcoming. From a symbolic reform perspective, what remains most prominent at this point, though, is the actions themselves and not their effect.

*b. Bureaucratic Mobilization*

Eco-civilization reforms have also emphasized *bureaucratic mobilization*—or allocation of environmental regulatory responsibilities to a broader swathe of the bureaucracy beyond the Ministry of Environmental Protection.<sup>232</sup> Dozens of entities under State Council, the politico-legal entities (police, prosecutors, and courts), and others are now tasked with or authorized to engage in environmental regulation.<sup>233</sup> The message is that leaders want to bring “all hands on deck” to address this problem. As with other eco-civilization reforms, regardless of actual efficacy, Chinese leaders signal concern, commitment, and performance-orientation through such efforts.

*Leading Groups & State Council Agencies.* The leadership has signaled the elevated status of eco-civilization reforms through the structure of bureaucratic mobilization. The reforms are both high-level and extend to twenty-six ministries and their subordinate level agencies.<sup>234</sup> Eco-civilization reforms originate at the high-level Central Leading Group on Comprehensively Deepening Reform and its subgroup on Economic & Eco-Civilization Reform.<sup>235</sup> This group sets policy direction, but then leaves day-to-day work to lower level entities. The work of promoting eco-civilization is coordinated through the State Council’s Leading Group on Climate Change

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<sup>231</sup> 寇江泽 [Kou Jiangze] & 孙秀艳 [Sun Xiuyan], *环保督察是手段不是目的* [*Environmental Supervision and Inspection is a Tool and Not the End Goal*], 人民日报 [PEOPLE’S DAILY] (Nov. 16, 2015), <https://perma.cc/9CJZ-NNVX>.

<sup>232</sup> As of March 2018, the Ministry of Environmental Protection became the Ministry of Ecology & Environment (生态环境部). See 《中共中央关于深化党和国家机构改革的决定》 [*Decision of the CCP Central Committee on Deepening the Reform of the Party and State Institutions*] (promulgated by Central Comm. of the Communist Party of China, Feb. 28, 2018, effective Feb. 28, 2018), CLI.5.310908(EN) (Lawinfochina).

<sup>233</sup> See Ma Tianjie, *China Reshapes Ministries to Better Protect Environment*, CHINA DIALOGUE (Mar. 14, 2018), <https://perma.cc/T2BX-HABL> (discussing China’s decision to consolidate environmental regulation into two new ministries due to the problems with the previously fragmented system).

<sup>234</sup> *An Overhaul of China’s Bureaucracy Enhances the Party’s Authority*, ECONOMIST (Mar. 15, 2018), <https://perma.cc/S2ZG-6J4U>.

<sup>235</sup> Xinhua, *Xi Leads Ecological Civilization*, CHINA DAILY, <https://perma.cc/D9KV-HTJT> (last updated Mar. 22, 2017).

and Energy Savings, Emissions Reductions, which is headed by the Premier.<sup>236</sup>

The leadership has recruited other agencies and institutions to participate in environmental initiatives, such a “green securities” program with the China Securities Regulatory Commission or “green credit” with the MEP, China Banking Regulatory Commission and the People’s Bank of China.<sup>237</sup> In 2016, the environmental ministry announced an agreement with thirty-one government departments to punish firms with severe environmental violations, including starting construction before receiving necessary approvals, discharging excessive pollutants, and violating temporary restrictions designed to limit severe air pollution.<sup>238</sup> Companies designated by MEP face limits on their ability to issue bonds and receive subsidies or tax rebates, among other punishments.<sup>239</sup>

*Police, Prosecutors, Courts.* Recent reforms have also strengthened the role of police, prosecutors, and the courts in environmental regulation.<sup>240</sup> These include expansions in environmental crime prosecutions, the establishment of environmental courts and tribunals, and environmental public interest litigation.

The most startling change in governance has been the rapid expansion of environmental crime prosecutions.<sup>241</sup> From 1997 to 2011, China only had seventeen cases of “environmental pollution crimes” prosecuted under Article 338 of the Criminal Law.<sup>242</sup> But from 2012 to 2016 nationwide there

<sup>236</sup> DAVID SANDALOW, COLUMB. U. CTR. ON GLOBAL ENERGY POL’Y, GUIDE TO CHINESE CLIMATE POLICY 2018 134 (2018), <https://perma.cc/B9GF-DDCN>.

<sup>237</sup> MOTOKO AIZAWA, INT’L FIN. CORP., CHINA’S GREEN CREDIT POLICY: BUILDING SUSTAINABILITY IN THE FINANCIAL SECTOR (2011), <https://perma.cc/77CW-3ESU>.

<sup>238</sup> Jinran Zheng, *New Punishments Take Effect*, CHINA DAILY (July 27, 2016), <https://perma.cc/P7AW-NVFU>.

<sup>239</sup> *Id.*

<sup>240</sup> Within the Chinese bureaucracy, these entities are not under the State Council, but rather coordinated separately by the CCP’s Politico-Legal Committee. SUSAN V. LAWRENCE, CONG. RES. SERVICE, R43303, CHINA’S POLITICAL INSTITUTIONS AND LEADERS IN CHARTS 8 (2013).

<sup>241</sup> For example, Art. 338 of the PRC Criminal Law sets forth the contours of “environmental pollution crime.” 中华人民共和国刑法 [*Criminal Law of the People’s Republic of China*] (promulgated by the Nat’l People’s Cong., July 1, 1979, amended Nov. 4, 2017, effective Nov. 10, 2017), art. 338, *translated in* LAWINFOCHINA, available at <https://perma.cc/3M83-U8Y6>. The provision was amended in 2011. 中华人民共和国刑法修正案(八) [*Amendment (VIII) to the Criminal Law of the People’s Republic of China*], (promulgated by the Nat’l People’s Cong., Feb. 25, 2011, effective May 1, 2011), art. 46 [hereinafter 2011 Amendment VIII], *translated in* LAWINFOCHINA, available at <https://perma.cc/M6G5-B6XM>. Prior to this amendment, only pollution that “caused a major environmental pollution accident” resulting in “major harm to property or serious human injury” qualified as a crime. 中华人民共和国刑法, [*Criminal Law of the People’s Republic of China*] (promulgated by the Nat’l People’s Cong., July 1, 1979, amended Mar. 14, 1997, effective Oct. 10, 1997), art. 338, *translated in* LAWINFOCHINA, available at <https://perma.cc/J2LM-S9CW>. The 2011 amendment changed what had been known as the “major environmental pollution accident crime” to an “environmental pollution crime” that could lead to a three-year sentence for “serious environmental pollution” regardless of the impact on property or health, and up to a seven-year sentence if the “consequences were particularly serious.” 2011 Amendment VIII, *supra*.

<sup>242</sup> 安然 [An Ran], 污染环境罪的规制失衡与应对—以对 2011-2016 年一审判决书的分析为切入 [Imbalances in the Regulation of Environmental Pollution Crimes and Countermeasures --

were 2,862 such prosecutions, mostly in 2014 and after.<sup>243</sup> Seventy-six percent occurred in just four provinces: Zhejiang (1,138), Hebei (503), Shandong (293), and Guangdong (233).<sup>244</sup>

Courts and litigation are apparently playing a larger role in environmental regulation as well. Over the four-year period between January 2012 and June 2016, Chinese courts handled 575,777 criminal, civil, or administrative environmental cases (concluding 550,138 of them)—a five-fold increase over the total in the entire decade prior.<sup>245</sup> Reforms have also reshaped judicial institutions. More than 300 environmental courts or tribunals have been established around China since 2010.<sup>246</sup> Their sheer number has been a cause for hope amongst those supportive of stronger environmental protection. Critics have noted that environmental courts “face the awkwardness of no cases to adjudicate.”<sup>247</sup> One study of cases in the Guiyang environmental court noted that few cases targeted large industrial polluters.<sup>248</sup> On the other hand, a large number of cases were criminal cases against peasants accused of setting forest fires. The 2014 Environmental Protection Law authorized civil society groups meeting certain criteria to bring environmental public interest litigation.<sup>249</sup> The Supreme People’s Court and Supreme People’s Procuratorate have authorized pilot projects on procuratorate public interest litigation, experimenting with prosecutor-led actions against firms and local governments.<sup>250</sup>

The ramp-up in new mechanisms, institutional structures, and overall activity offer the promise of performance, but it remains extraordinarily difficult to determine actual practices and results. Such a dynamic emphasizes the signals sent by inputs over any actual outputs of reform.

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Based on an Analysis of First Instance Judicial Decisions on Environmental Pollution Crimes from 2011 to 2016] (2017) (on file with author).

<sup>243</sup> *Id.*

<sup>244</sup> These four provinces, and the next three account for 91% of all Art. 338 cases nationwide between 2012 and 2016. *Id.*

<sup>245</sup> 霍桃 [Huo Tao], *四年审判案件为前十年的五倍: 最高法院发布中国首部环境自愿审判白皮书* [Four Years of Cases Five Times the Previous Ten Years: SPC Issues its First Environmental Resources Adjudication White Paper], 中国环境网 [CHINA ENV’T WEB] (Aug. 3, 2016), <https://perma.cc/75VP-N7QZ>.

<sup>246</sup> Rachel Stern, *The Political Logic of China’s New Environmental Courts*, 72 CHINA J. 53, 55 (2014).

<sup>247</sup> 我国已成立 180 多个环保法庭 “无案可审”? [China Established 180 Environmental Courts with “No Cases to Adjudicate”?], 南方周末 [S. WEEKEND] (June 13, 2014), <https://perma.cc/VF9J-UHDG>.

<sup>248</sup> See, e.g., Stern, *supra* note 246, at 54, 68–69.

<sup>249</sup> Tseming Yang, *The 2014 Revisions of China’s Environmental Protection Law*, SWISS RE INST. (Oct. 16, 2014), <https://perma.cc/M73W-C2UW>.

<sup>250</sup> Stern, *supra* note 246, at 67.



*c. Public Supervision*

Chinese reforms have also enlarged the role of public supervision and transparency in environmental regulation. From a functional perspective, these tools are useful for addressing practical problems associated with top-down, bureaucratic control. Public participation and transparency lower monitoring costs and reduce information asymmetry.

Governance tools that expand public supervision and transparency also provide symbolic benefits for the leadership. At minimum, they signal state intent to make governance more “democratic.” Current reforms situate Chinese efforts in a global language of “environmental democracy,” yet the instrumental purposes behind public supervision still share much in common with Mao-era “mass mobilization” actions. Information gathering through required disclosure (by local governments, organizations, and citizens) also signal good decision-making process and a rational approach to mobilizing the state and attaining performance.<sup>251</sup> Ultimately, these are liberal tools ensconced within an illiberal regime, forming what some have termed a “deliberative authoritarianism.”<sup>252</sup> Weak institutions of public accountability and still limited transparency mean that the tools may be closed down as necessary, such as where stability or other interests are threatened. Even so, the symbolic aspects of these reforms remain.

*3. Uncertainty & Populist Politics*

A hallmark of Chinese reforms is uncertainty about outcomes and causation. Are reforms delivering results, and are alleged results epiphenomenal or in fact due to reform? Even actors close to the action—regulators, researchers, activists—often have no clear sense. Members of the public will have even less sense of actual results, perceiving state performance and leadership intentions through media reports, official statistics, and official pronouncements.<sup>253</sup> These reports may conflict with the lived experience of citizens or third-party empirical evidence, exacerbating uncertainty.<sup>254</sup>

What remains in the face of this uncertainty? Critical observers will see such reform measures as symbolic and remain skeptical about actual performance.<sup>255</sup> Yet others will view this as genuine reform.<sup>256</sup> In the absence

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<sup>251</sup> Feldman & March, *supra* note 6, at 174, 179, make a similar point about the performative and symbolic aspects of information gathering in organizations.

<sup>252</sup> Baogang He & Mark E. Warren, *Authoritarian Deliberation: The Deliberative Turn in Chinese Political Development*, 9 PERSP. POL. 269, 270 (2011).

<sup>253</sup> Yiran Wang & Gloria Mark, *News Trustworthiness and Verification: The Tension of Dual Media Channels*, FIRST MONDAY (Feb. 1, 2016), <https://perma.cc/RGJ5-JYGL>.

<sup>254</sup> *See id.* (arguing that the rise of social media use in China allowed citizens to provide their own perspectives on current events and to post citizen journalism, which at times contradicted “highly curated official news sources”).

<sup>255</sup> This dynamic may create a problem for state leaders if the public remains skeptical of state action, even where actual results are achieved. The solution to this problem is to send

of information about outputs, inputs become a proxy for results, and output-based performance legitimacy becomes input-based legitimacy. To put it another way, reforms themselves become outputs of the system that enhance legitimacy. This is not a suggestion that performance is unknowable, but rather an argument that complexity, information asymmetry, and information control can render theoretically knowable things too difficult to ascertain in practice. On top of this, populist and nationalist dynamics enhance uncertainty by discrediting critics. It also shifts attention away from performance alone and reduces public regard for alternative governance models. This all ultimately plays to the advantage of the leadership.

Political legitimacy is usually determined at a distance. And viewed from a remove, one is left with the impression of a bewildering, but perhaps impressive, array of reform efforts instituted by a leadership that seems to be acting in ways that ultimately benefit the people. Reform actions and style lend symbolic value to a leadership that desires to demonstrate performance. Where performance is obviously weak, reforms emphasize the message that the fault lies somewhere other than the central leadership—in the hands of intransigent and corrupt local officials, venal corporate interests, or perhaps as the fictional concoctions or exaggerations of domestic and foreign enemies of the state. The entire enterprise can be structured to minimize risks to the legitimacy of the central leadership.

Symbolic reform need not be entirely strategic on the part of central leaders though. Central officials themselves face overwhelming challenges of information asymmetry. They may engage in the process of inspection campaigns knowing full well that the process is imperfect and that it will be difficult to uncover many environmental problems. Yet the process itself provides an opportunity for central and local players to act out their respective roles within the hierarchy, reinforcing the rules of the system. Central leaders are able to signal resolve and problem orientation, as well as fairness and rationality in the way the process is carried out. Local leaders show contrition, obedience, innovation (at times), and above all a willingness to be subject to supervision. The symbolism of these actions plays a role in the process of bureaucratic operations (fairness of process garnering local buy-in; local shows of obedience generating greater trust from above), but also sends important signals to citizens, experts, and foreign audiences. This is one example of the ways in which performance can be performed, symbolizing values important to the Chinese system—rationality, ability to perform and improve, and so on.

Is symbolic reform equally likely in all policy areas? The discussion will now turn to a brief assessment of variation among areas of environmental

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signals that counter this lack of faith in state representations of performance. See Zeng, *supra* note 3, at 339, and accompanying text.

<sup>256</sup> See, e.g., Jackson Ewing, *Tough Tasks for China's New Environment Ministry*, DIPLOMAT (Mar. 17, 2018), <https://perma.cc/23GE-9BMZ> (stating that, although there is some skepticism over China's new environmental reforms, this current round of domestic reforms could be a good start to a cleaner environment).

regulation. Air pollution is arguably the area most likely to show functional performance because the problem has become virtually impossible to hide and other factors have aligned to reduce policy conflicts and other barriers to actual reform.<sup>257</sup> Soil pollution and ozone-depleting substances, on the other hand, are areas where uncertainty and other barriers to reform remain stubbornly high.<sup>258</sup> Climate change represents an intermediate case, where some barriers to reform have softened, but uncertainty nonetheless creates ample opportunities for symbolic reform. Other factors, like cost and political economy dynamics, vary among these policy areas as well, but uncertainty—and the epistemological problem of understanding life on the ground in China—is the most powerful factor enabling symbolic reform and legitimation.

### *B. Lower Levels of Uncertainty: Air Pollution*

The dynamics that make purely symbolic reform more likely are in greatest flux in areas with lower levels of uncertainty, such as with air pollution. Public awareness and transparency about the nature and severity of air pollution have increased dramatically in the past decade. Citizens who a decade ago commonly saw air pollution as “fog” have come to understand the negative consequences of air pollution.<sup>259</sup> PM2.5 (or fine particulate) has entered the popular vernacular.<sup>260</sup> Greater transparency has come through the simple visibility of urban air pollution, coupled with the greater availability of official and third-party monitoring data (satellite imaging, a U.S. Embassy air pollution monitor in Beijing, greater academic study of Chinese air pollution). Air pollution emissions from heavily industrialized areas surrounding Beijing are such that heavy violations of emissions standards lead to almost immediate smog days in Beijing (depending on meteorological conditions and other factors).<sup>261</sup> Air pollution has become a widespread issue that is simply impossible to hide.

This newfound awareness of the problem has generated intense public pressure for reform. After corruption, air pollution is the top public concern in China.<sup>262</sup> This public pressure and growing awareness of the costs of air pollution have created the political pressure for air pollution regulation. Chinese leaders have also seen air pollution regulation as fully consistent with—and indeed supportive of—broader efforts to modernize China’s

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<sup>257</sup> See Richard Wike & Bridget Parker, *Corruption, Pollution, Inequality Are Top Concerns in China*, PEW RES. CTR. (Sept. 24, 2015), <https://perma.cc/5GPF-V8M2>. Seventy-six percent of Chinese people in a Pew Research Center survey ranked air pollution as a “very big problem” or a “moderately big problem.” *Id.* The authors state that air pollution is a “top concern” in China, which would make a lack of progress in policy reforms difficult to hide. *Id.*

<sup>258</sup> See discussion *infra* Part IV.C.

<sup>259</sup> See Hilton, *supra* note 10.

<sup>260</sup> See Olivia Boyd, *The Birth of Chinese Environmentalism: Key Campaigns, in CHINA AND THE ENVIRONMENT: THE GREEN REVOLUTION* 35–36 (Sam Geall ed., 2013).

<sup>261</sup> See Ruohong & Wang, *supra* note 95.

<sup>262</sup> Wike & Parker, *supra* note 257.

economy, transforming it from one reliant on traditional “dirty” industry to a service- and consumption-based economy.<sup>263</sup> Leaders have framed eco-civilization reforms in pragmatic, technocratic terms.<sup>264</sup> Chinese economic development and exploitation of nature has pressed up against natural limits that now requires a state response.<sup>265</sup>

Public pressure and conducive political-economy dynamics have led to reform action. In 2014, China’s Premier Li Keqiang declared a “war against pollution” and state regulators, legislators, and policy makers have unleashed a veritable avalanche of new laws, policies, and programs designed to reduce air pollution.<sup>266</sup> Each of the reform tools discussed in Part II are present and their steady roll-out gives the impression of ever-increasing state focus and resolve. These include new legislation (an amended Air Pollution Prevention and Control Law (2014), an air pollution action plan, tightened standards for power plants and other sources, restrictions on coal), an ongoing central enforcement campaign, institutional reforms (hard targets aimed at government and Party officials, information monitoring and disclosure), and so on. Despite criticisms from some quarters, the entire program on air pollution is extensive and suggests a newfound seriousness not seen before.

An August 2017 pollution reduction plan is indicative of these changes in Chinese air pollution governance.<sup>267</sup> China’s environmental ministry publicly released the plan, which addresses air pollution in the Beijing-Tianjin-Hebei “airshed” in the last six months before the deadline for local leaders to meet five-year pollution reduction targets.<sup>268</sup> The 137-page document is notable for its detail. The plan covers a broad range of required actions in twenty-eight cities in the region.<sup>269</sup> In contrast to more impressionistic goals and targets in years past, this document specifies actions in each city regarding retirement of small coal-fired boilers, installation of pollution control equipment, fugitive emissions, volatile organic compounds (VOCs), coal consumption, pollution permits, control of loose coal, heavy duty and passenger vehicle regulation, and a host of other measures.<sup>270</sup> The detail and relative transparency, as well as the

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<sup>263</sup> See Hilton, *supra* note 10.

<sup>264</sup> *Id.*

<sup>265</sup> See Joerss et al., *supra* note 185. For an in-depth discussion of Chinese state response to ecological limits in Imperial times, see, e.g., PETER C. PERDUE, EXHAUSTING THE EARTH: STATE AND PEASANT IN HUNAN 1500–1850 (1987).

<sup>266</sup> Greenstone, *supra* note 88.

<sup>267</sup> 京津冀及周边地区 2017–2018 年秋冬季大气污染综合治理攻坚行动方案 [*Beijing-Tianjin-Hebei and Surrounding Areas 2017–2018 Fall-Winter Air Pollution Comprehensive Control and Attack Action Plan*], MIN. OF ECOLOGY & ENV’T (Aug. 21, 2017), <https://perma.cc/BW93-DTDS>.

<sup>268</sup> September 1, 2017 to March 29, 2018. See *id.*; *China vows big winter air pollution cuts in northern cities*, S. CHINA MORNING POST (Aug. 24, 2017), <https://perma.cc/5YK9-8DPN>.

<sup>269</sup> Zheng Xinran, *New Steps to Tackle Air Pollution Set for Beijing Region*, CHINA DAILY, <https://perma.cc/MW9A-JWDD> (last updated Aug. 23, 2017).

<sup>270</sup> Li Wang et al., *Taking Action on Air Pollution Control in the Beijing-Tianjin-Hebei (BTH) Region: Progress, Challenges and Opportunities*, INT’L J. ENVTL. RES. & PUB. HEALTH, Feb. 9, 2018, at 4.

accompanying flurry of implementation activities signal an action-oriented administration with a greater willingness to be subject to accountability.

Decreasing uncertainty about the results of air pollution regulation are a key factor that renders air pollution reform less likely to be purely symbolic. The high visibility of smog and intense public scrutiny mean that poor performance is much more difficult to hide. State leaders may also see successful control of air pollution as an opportunity not only to send signals about China's broader governance competence (an example of "symbolic outcomes"), but also as a way to explain (or cover for) weakening performance elsewhere (such as slowing economic growth rates). These are all reasons to believe that the current "war on pollution" marks a genuine turn toward environmental regulation, rather than something purely symbolic.

Initial results suggest that this is indeed a shift toward genuine pollution reduction. Official reports state that PM<sub>2.5</sub> levels have declined by 34.7% between 2013 and 2017.<sup>271</sup> Another study found average declines in satellite-based PM<sub>2.5</sub> levels of 17% across China between 2010 and 2015.<sup>272</sup> Researchers attribute such declines to air pollution regulation, investments in natural gas and non-fossil energy sources, and secular economic shifts away from heavy industry.<sup>273</sup>

Nonetheless, uncertainty remains. Institutional barriers to air pollution regulation and perverse incentives have not been fully resolved.<sup>274</sup> Persistent concerns about data falsification among officials and polluting firms are a reason for at least a healthy skepticism about official claims.<sup>275</sup> Positive environmental trends over the last few years—falling coal consumption, reductions in pollution concentrations—may be due to cyclical economic downturn, rather than something more permanent.<sup>276</sup> Vested economic

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<sup>271</sup> See, e.g., Zheng Jinran, *Beijing Close to Meeting PM<sub>2.5</sub> Goals*, CHINA DAILY (Aug. 22, 2017), <https://perma.cc/XV9Y-FLA6>.

<sup>272</sup> GREENPEACE INDIA, CLEAN AIR ACTION PLAN: THE WAY FORWARD (2016), <https://perma.cc/3RT5-8GQ7>; see also Xiao Li et al., *The "APEC Blue" Endeavor: Causal Effects of Air Pollution Regulation on Air Quality in China*, 168 J. CLEANER PRODUCTION 1381 (2017); Yanping Dong et al., *Overview on Air Pollution Control Promoting the Improvement of Ambient Air Quality in Tianjin*, 8 METEOROLOGICAL & ENVTL. RES. 69 (2017); Li Wang et al., *Taking Action on Air Pollution Control in the Beijing-Tianjin-Hebei (BTH) Region: Progress, Challenges and Opportunities*, 15 INT'L J. ENVTL. RES. & PUB. HEALTH 306 (2018); Valerie J. Karplus et al., *Quantifying Coal Power Plant Responses to Tighter SO<sub>2</sub> Emissions Standards in China*, 115 PROC. NAT'L ACAD. SCI. 7004 (2018).

<sup>273</sup> GREENPEACE INDIA, *supra* note 272.

<sup>274</sup> MA JUN, THE ECONOMICS OF AIR POLLUTION IN CHINA: ACHIEVING BETTER AND CLEANER GROWTH 16 (Damien Ma ed., Bernard Cleary trans., 2017).

<sup>275</sup> These concerns are tempered to some extent by validation of official results through third-party monitoring (e.g., U.S. government air monitors in China) and satellite data. Nate Seltenrich, *A Clearer Picture of China's Air: Using Satellite Data and Ground Monitoring to Estimate PM<sub>2.5</sub> Over Time*, ENVTL. HEALTH PERSPECTIVES, February 2016, at 1.

<sup>276</sup> See, e.g., Didi Kirsten Tatlow, *China Air Quality Study Has Good News and Bad News*, N.Y. TIMES (Mar. 30, 2016), <https://perma.cc/CJ4F-9AQC>; see also Xuan Liang et al., *PM<sub>2.5</sub> Data Reliability, Consistency, and Air Quality Assessment in Five Chinese Cities*, J. GEOPHYSICAL RES. 10,220 (2016).

interests and local governments still resist environmental rules.<sup>277</sup> Industrial land prices are artificially low.<sup>278</sup> The tax burden on services is too high.<sup>279</sup> Resource taxes on coal and emissions fees on pollution remain low.<sup>280</sup> Subsidies for clean energy and funding for public transportation are inadequate.<sup>281</sup>

In other words, successful control of air pollution is by no means assured and the discretion and latitude offered by symbolic reform will remain an attractive resource for leaders if genuine performance becomes too difficult or state policy commitments shift elsewhere. Indeed, in 2018, air pollution levels showed a resurgence in key regions of China from the year before.<sup>282</sup>

### *C. Higher Levels of Uncertainty: Soil Pollution and Ozone-Depleting Substances*

Reform is more likely to be merely symbolic where uncertainty is relatively high. Take soil pollution for example. Public pressure for reform on soil pollution has grown in the wake of high-profile incidents around China. These include rice contaminated by cadmium in Guangdong Province and underground chlorobenzene contamination at a school built on a poorly remediated site in Changzhou, Jiangsu Province.<sup>283</sup> A 2014 national soil survey found that 16.1% of all surveyed points on Chinese soil exceeded legal limits for chemical and heavy metal pollution.<sup>284</sup> Sources of pollution include industrial pollution, excessive pesticide use, and irrigation with contaminated water.<sup>285</sup>

The state response has been a flurry of reforms. These include information gathering through official national surveys, a number of plans,

<sup>277</sup> MA, *supra* note 274, at 20.

<sup>278</sup> *Id.* at 78.

<sup>279</sup> *Id.*

<sup>280</sup> *Id.* at 85.

<sup>281</sup> *Id.* at 88.

<sup>282</sup> Steven Bernard & Lucy Hornby, *China's Polluted Skies*, FIN. TIMES (June 28, 2018), <https://perma.cc/NE3P-EJ7G>.

<sup>283</sup> See, e.g., Sophie Song, *A New Food Scandal in China: Rice Tainted with Cadmium in Guangzhou*, INT'L BUS. TIMES (May 20, 2013), <https://perma.cc/NPP8-HZ54>; He Guangwei, *In China's Heartland, A Toxic Trail Leads From Factories to Fields to Food*, YALE ENV'T 360 (July 7, 2014), <https://perma.cc/5HTG-ZP27>; *The Most Neglected Threat to Public Health in China is Toxic Soil*, ECONOMIST (June 8, 2017), <https://perma.cc/MBM8-4FRT>; Angel Hsu & William Miao, *Soil Pollution in China Still a State Secret*, SCI. AM. (June 18, 2014), <https://perma.cc/B9MN-V77E>.

<sup>284</sup> 中华人民共和国国土资源部 [PRC Ministry of Land and Resources], 环境保护部和国土资源部发布全国土壤污染状况调查报告 [Ministry of Environmental Protection and Ministry of Land and Resources Issues National Soil Pollution Situation Survey Report], (promulgated by the Ministry of Land and Resources, Apr. 17, 2014, effective Apr. 17, 2014) MLR.GOV.CN.

<sup>285</sup> See Yonglong Lu et al., *Impacts of Soil and Water Pollution on Food Safety and Health Risks in China*, 77 ENV'T INT'L 5, 6 (2015).

administrative measures, and a draft law that is under consideration as of this writing.<sup>286</sup>

There are numerous reasons why these reforms are likely to be largely symbolic. Unlike air pollution, soil contamination is localized and not readily apparent to the naked eye. Only in the most extreme cases do symptoms of contamination manifest in short-term physical response. Complex cause-effect pathways (fate and transport, exposure, dose-response) make causation for health impacts difficult to prove. Soil treatment is technically difficult and requires significant human resources. Cleaning some 250,000 square kilometers of contaminated soil—“equivalent to the arable farmland of Mexico”—would be extraordinarily costly.<sup>287</sup> Yet, the state has budgeted relatively little for soil pollution regulation—\$4.8 billion during the twelfth five-year plan, as compared to some \$277 billion approved in 2013 for air pollution action.<sup>288</sup>

Symbolic reform nonetheless allows the state to signal concern and willingness to take action to resolve soil pollution problems, while obscuring the extent to which such action may have little functional effect. This performative aspect of reform buys the state time and relief from excessive public pressure, but the human and ecological costs of such delay are potentially enormous. The dynamics that render soil pollution likely to be merely symbolic also create risks for reforms in the areas of toxic chemicals, water pollution, and other less salient types of environmental problems.

#### *Ozone-Depleting Substances*

Ozone-depleting substances, such as CFC-11, are not visible to the naked eye, and their monitoring requires high levels of technical expertise. Moreover, substitutes for banned CFC-11 are less harmful, but more costly. The difficulty in monitoring CFC-11 use and the economic incentives for their continued use make it more likely that performance will be mainly symbolic, rather than substantive.

China has been an active and constructive participant in global efforts to reduce the production and use of ozone-depleting substances. China signed the 1985 Vienna Convention for the Protection of the Ozone Layer in

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<sup>286</sup> For surveys, see *id.* For plans, see 《重金属污染综合防治“十二五”规划》2014 年度考核结果 [The Twelfth Five-Year Plan for Comprehensive Prevention and Control of Heavy Metal Pollution (2014 Assessment Results)], 环境保护部 [MEP.GOV.CN] (Nov. 19, 2015), <https://perma.cc/W7UJ-PLYE>; 土壤污染防治行动计划 [Soil Pollution Prevention Action Plan], *supra* note 83; 国务院关于全国土地整治规划 (2016—2020 年) 的批复 [State Council on the National Land Reform Plan (2016–2020) Approved], 中华人民共和国中央人民政府 [GOV.CN], <https://perma.cc/VQY4-2NJN> (last visited Nov. 25, 2018). For administrative measures, see 污染地块土壤环境管理办法 [Administrative Measures for Soil Environment in Polluted Plots], 生态环境部 [MEE.GOV.CN] (Dec. 31, 2016), <https://perma.cc/AJC2-R94F>. For draft law, see 土壤污染防治法(草案) [Soil Pollution Prevention and Control Law (draft)], 中国人大网 [NPC.GOV.CN], <https://perma.cc/5BF8-28Z6> (last visited Nov. 25, 2018).

<sup>287</sup> See *The Most Neglected Threat to Public Health in China is Toxic Soil*, *supra* note 283.

<sup>288</sup> Angel Hsu & Andrew Moffat, *China's Soil Pollution Crisis Still Buried in Mystery*, CHINA DIALOGUE BLOG (Apr. 8, 2014), <https://perma.cc/SJ2Y-UVBV>.

1989 and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer in 1991.<sup>289</sup> China announced a complete ban on the use of ozone-depleting substances as of July 1, 2007, two and a half years before the 2010 deadline.<sup>290</sup> Since April 2013, China has worked with the World Bank and others to phase out HCFCs, another ozone-depleting substance. China has received plaudits for its work on ODS phase-out (“The government has made a smart decision banning CFCs and halon. It has played a leading role in protecting the environment through technological innovation and international cooperation” – Magda Lovei, manager at a World Bank subsidiary).<sup>291</sup> A vice-minister of China’s environmental ministry noted that China’s “[p]roactive measures have yielded remarkable achievements.”<sup>292</sup> In the language of symbolic legitimacy, the actions associated with the ODS phase-out signaled competence, performance-orientation, respect from international actors, and other positive values.

In May 2018, research published in *Nature* found that reductions in CFC-11 after 2012 were 50% less than would be expected under a ban on CFCs.<sup>293</sup> Media sources and UK-based Environmental Investigation Agency published work placing the blame on illegal use in China’s rigid polyurethane foam industry.<sup>294</sup> In response, a spokesman for the Chinese Embassy in the UK offered a firm response: “We [China] attach great importance to and conscientiously implement relevant international environmental conventions . . . China’s policy is zero tolerance against illicit conduct involving ODSs, including CFC-11.”<sup>295</sup> Chinese authorities announced a tough enforcement campaign in response and framed the campaign as a difficult effort to control local violations.<sup>296</sup>

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<sup>289</sup> See Vienna Convention for the Protection of the Ozone Layer, Sept. 22, 1988, 1513 U.N.T.S. 293; Montreal Protocol on Substances that Deplete the Ozone Layer, Sept. 16, 1987, 1522 U.N.T.S. 3. China has also signed the Kigali Amendment in 2016, an agreement on phase down of hydrofluorocarbons (HFCs) (an ODS substitute that is a harmful climate-warming pollutant).

<sup>290</sup> *China Bans Production, Import of Ozone Depleting Substances*, GOV.CN (July 2, 2007), <https://perma.cc/4U6H-AT4S>; 7月起我国将禁止氟利昂等臭氧层消耗物质的消费 [From July, China will Ban the Use of Freon and Other Ozone-Depleting Substances], GOV.CN (May 10, 2007), <https://perma.cc/CK5F-PYUV>.

<sup>291</sup> See, e.g., *China Announces Major Reduction in Ozone Depleting Gases on International Ozone Day*, WORLD BANK (Sept. 15, 2014), <https://perma.cc/9LGM-47TE>.

<sup>292</sup> Hou Liqiang, *China Phases out 280,000 Metric Tons of Ozone-Depleting Substances*, CHINA DAILY (Sept. 17, 2018, 7:06 PM), <https://perma.cc/62TT-TSC5>.

<sup>293</sup> Stephen A. Montzka et al., *An Unexpected and Persistent Increase in Global Emissions of Ozone-Depleting CFC-11*, 557 NATURE 413, 413 (2018).

<sup>294</sup> See, e.g., ENVTL. INVESTIGATION AGENCY, BLOWING IT: ILLEGAL PRODUCTION AND USE OF BANNED CFC-11 IN CHINA’S FOAM BLOWING INDUSTRY 1 (2018), <https://perma.cc/2ZYE-K8BW>; Chris Buckley & Henry Fountain, *In a High-Stakes Environmental Whodunit, Many Clues Point to China*, N.Y. TIMES (June. 24, 2018), <https://perma.cc/E8ZJ-Y35B>; Chris Buckley, *More Evidence Points to China as Source of Ozone-Depleting Gas*, N.Y. TIMES (Nov. 3, 2018), <https://perma.cc/H3VY-WMMW>.

<sup>295</sup> Zeng Rong, *China’s Efforts to Protect the Ozone Layer*, GUARDIAN (Aug. 5, 2018), <https://perma.cc/65EV-JWJ3>.

<sup>296</sup> *Id.*; Hou, *supra* note 292; Devin Yoshimoto & Yingwei Tao, *China to Launch Special ODS Law Enforcement Campaign*, HYDROCARBONS21.COM (Aug. 3, 2018), <https://perma.cc/YVP6-T7AC>.



The official response to credible evidence of performance failure in controlling ODS can be viewed through the lens of symbolic reform as well. An escalation of enforcement, tough language of “zero tolerance,” inspection of nearly 2,000 firms in just a few weeks send signals of performance-orientation, resolve, and adaptability in the face of intransigent “others” (local firms and governments). At the same time, the research that emerged in 2018 marked a significant improvement in the verifiability of (and uncertainty about) performance. This may augur well for functional performance, assuming that the reform responses to demonstrable performance failure are not seen as sufficient to minimize negative public reaction.

#### *D. Mixed Levels of Uncertainty: Climate Change*

Other environmental problems arguably have *mixed* levels of uncertainty. “Mixed” refers to problems where evaluation of performance is uncertain in some respects, but more certain in others. Climate change represents an area where conditions for genuine performance have improved, but the likelihood of mere symbolic reform remains significant. The symbolism of Chinese climate change action has shifted dramatically over the course of the past decade. In 2009, after the United Nations climate negotiations in Copenhagen, China was widely viewed as an opponent of a global agreement on climate change.<sup>297</sup> Since the 2015 Paris Agreement on climate change, China has been hailed in many quarters as a global leader on climate change.<sup>298</sup>

The shifts in attitude towards China have come from an expansive set of climate change programs and indications of initial reform success. China released its first comprehensive National Climate Change Program in 2007, pursuant to its commitments under the UN Framework Convention on Climate Change.<sup>299</sup> The initial program did not create new policy, but rather gathered together pre-existing energy and environmental policies.<sup>300</sup> These included policies to 1) adjust China’s economic structure (to increase the share of tertiary industries), 2) improve energy efficiency and reduce pollution, 3) increase the share of non-fossil energy, natural gas, and “clean” coal in China’s energy mix, and 4) expand carbon sinks (e.g., through

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<sup>297</sup> See, e.g., Int’l Insts. & Glob. Governance Program, *The Global Climate Change Regime*, COUNCIL FOREIGN REL. (June 19, 2013), <https://perma.cc/83YA-YCK8>; Julia Hollingsworth, *Looking Back at How China’s Stance on Climate Change Shifted*, S. CHINA MORNING POST (June 2, 2017), <https://perma.cc/36H3-2PEV>.

<sup>298</sup> See, e.g., Mark Jones, *How the US and China Compare on Action Against Climate Change*, WORLD ECON. F. (June 27, 2017), <https://perma.cc/7H9H-YBK9>; David E. Sanger & Jane Perlez, *Trump Hands the Chinese a Gift: The Chance for Global Leadership*, N.Y. TIMES (June 1, 2017), <https://perma.cc/LF9H-KH5D>.

<sup>299</sup> See Joanna I. Lewis, *China’s Strategic Priorities in International Climate Change Negotiations*, 31 WASH. Q. 155, 155–62 (2007–08).

<sup>300</sup> *Id.* at 159.

afforestation).<sup>301</sup> China's "one-child" family planning policies were listed as a climate program initially as well.<sup>302</sup>

China has since elaborated on its early climate program in myriad ways: expanding climate-related targets; shutting down outdated coal-fired power plants; subsidizing strategic emerging industries in clean energy, energy efficiency, and environmental protection; and establishing caps on coal use and energy consumption.<sup>303</sup> These efforts have engaged a broad swathe of the bureaucracy in "low-carbon development."<sup>304</sup> These actions have benefited from the same dynamics that have made air pollution regulation plausibly more functional. Many of the measures for air pollution have climate change "co-benefits." Efforts to reduce coal use, increase energy efficiency, expand non-fossil energy, and other measures hold the promise of improving air quality and reducing carbon emissions. The major components of China's climate change program—energy efficiency, reducing industrial output, consolidation of heavy industries, moving to a less carbon-intensive energy mix—also generally align with overarching state goals of economic transformation and modernization.

Evidence suggests that these efforts have borne fruit. China has been the global leader in renewable energy investment every year since 2013.<sup>305</sup> Its renewable energy investment in 2015 alone resulted in expansions in capacity that exceeded the *total* installed energy capacity in Japan and double the total installed capacity of Germany.<sup>306</sup> Coal consumption, coal production, and the share of coal in China's overall energy mix declined in 2014, 2015, and 2016, year over year.<sup>307</sup> Some researchers have concluded that carbon emissions in China peaked in 2014.<sup>308</sup>

<sup>301</sup> See *China's National Climate Change Program*, CHINA.ORG (June 4, 2007), <https://perma.cc/ZED9-YWRN>.

<sup>302</sup> NAT'L DEV. & REFORM COMM'N, CHINA'S NATIONAL CLIMATE CHANGE PROGRAMME 10–11 (2007), <https://perma.cc/5VPU-DP8J>.

<sup>303</sup> See STATE COUNCIL, 13TH FIVE-YEAR WORK PLAN FOR CONTROLLING GREENHOUSE GAS EMISSIONS (2016), <https://perma.cc/C27Z-3ERA>; NAT'L DEV. & REFORM COMM'N, ENERGY DEVELOPMENT "13TH FIVE-YEAR" PLAN (2016), <https://perma.cc/XS8Z-NBAY>; Alex Wang, *Climate Change Policy and Law in China*, in THE OXFORD HANDBOOK OF INTERNATIONAL CLIMATE CHANGE LAW 660–61 (Cinnamon P. Carlame et al. eds., 2016).

<sup>304</sup> See, e.g., "十三五"控制温室气体排放工作方案部门分工 [*Departmental Work Division for the "13th Five-Year" Work Plan on Controlling Greenhouse Gas Emissions*], 国家发展和改革委员会 [NAT DEV. & REFORM COMM'N.] (June 21, 2017), <https://perma.cc/F2ZF-CALE>.

<sup>305</sup> FRANKFURT SCHOOL, GLOBAL TRENDS IN RENEWABLE ENERGY INVESTMENT 2018 (2018), <https://perma.cc/D2F6-5KTH>.

<sup>306</sup> Emma Rumney, *China is World's Largest Investor in Renewable Energy*, PUB. FIN. INT'L (Mar. 31, 2016), <https://perma.cc/BVN9-2A2E>; INT'L ENERGY AGENCY, ENERGY POLICIES OF IEA COUNTRIES: JAPAN 2016 REVIEW 93 (2016); Kerstine Appunn et al., *Germany's Energy Consumption and Power Mix in Charts*, CLEAN ENERGY WIRE (Apr. 3, 2018), <https://perma.cc/5ZJA-KSKR>.

<sup>307</sup> Feng Ho et al., *China's Coal Consumption Grows Slightly*, CHINA DIALOGUE (Feb. 28, 2018), <https://perma.cc/Y5MZ-7BCC>.

<sup>308</sup> FERGUS GREEN & NICHOLAS STERN, CHINA'S "NEW NORMAL": STRUCTURAL CHANGE, BETTER GROWTH, AND PEAK EMISSIONS 28, 32–33, 53 n.119 (2015), <https://perma.cc/ZT2G-CXMY>; Fergus Green & Nicholas Stern, *China's Changing Economy: Implications for its Carbon Dioxide*

Despite preliminary evidence of actual performance, barriers to implementation still create risks that China's climate change action will be more symbolic than substantive.<sup>309</sup> Uncertainty about performance in practice remains high. The actual implementation of carbon trading—with all its complexity and need for reliable data—remains an open question. Integration of non-fossil energy into the grid remains a challenge. Curtailment of renewable energy (unused capacity) has been as high as 43% at the provincial level.<sup>310</sup> The pressures on the coal industry and other heavily polluting industries like steel and cement may lead to leakage of coal emissions to China's western provinces and abroad.<sup>311</sup> Although Chinese officials have halted more than 100 coal-fired power plant projects, Chinese corporations are “building or planning to build more than 700 new coal plants at home and around the world, some in countries that today burn little or no coal.”<sup>312</sup> These account for 340 to 386 gigawatts of coal-fired power.<sup>313</sup> Coal use may be shifted to other industries, such as coal-to-gas, coal-to-liquids, or coal-to-chemicals as pressure to limit coal-fired power plants increases. Dozens of such plants, which produce more than 193 million tons of carbon emissions per year, have been built or are planned for construction.<sup>314</sup> In 2017, China's coal use and its carbon emissions increased.<sup>315</sup>

The symbolic value of China's climate change actions has, nonetheless, been substantial. Premier Li has emphasized China's “responsible” actions on climate change and has drawn a contrast between Chinese commitment to climate change and Trump-era retreat from the Paris Agreement.<sup>316</sup> Researchers have emphasized the symbolic value of China's plans to institute a national carbon trading scheme.<sup>317</sup> A leading Chinese government

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*Emissions*, 17 CLIMATE POL'Y 423 (2017); Ye Qi et al., *China's Post-Coal Growth*, NATURE GEOSCIENCE (July 25, 2016), <https://perma.cc/UYQ5-V27K>.

<sup>309</sup> Elizabeth Economy, *Why China is No Climate Leader*, POLITICO (June 12, 2017) <https://perma.cc/XDN4-AGWE>.

<sup>310</sup> Matthew Brown, *Wasted Green Power Tests China's Energy Leadership*, PHYSORG (June 15, 2017), <https://perma.cc/AJC8-PSEM>.

<sup>311</sup> See, e.g., Zhang Yu, *Hebei Looks to Relocate its Largest and Most Polluting Industries Abroad*, GLOBAL TIMES (Dec. 22, 2014), <https://perma.cc/NU2H-QW9D>.

<sup>312</sup> Hiroko Tabuchi, *As Beijing Joins Climate Fight, Chinese Companies Build Coal Plants*, N.Y. TIMES (July 1, 2017), <https://perma.cc/59WJ-QCEG>.

<sup>313</sup> *Id.* Others have argued that such proposed new capacity is mostly in China (rather than abroad) and unlikely to be constructed because of overcapacity and state policy limits on new coal-fired power capacity. See Lauri Myllyvirta, *Factcheck: Are Chinese Companies Really Leading a New Global Coal Power Boom?*, GREENPEACE (July 7, 2017), <https://perma.cc/2XVY-L6QR>.

<sup>314</sup> See Economy, *supra* note 309.

<sup>315</sup> Muyu Xu & Josephine Mason, *China's 2017 Coal Consumption Rose After Three-Year Decline, Clean Energy Portion Up*, REUTERS, Feb. 28, 2018, <https://perma.cc/QQ4N-BTS3>; Lucy Hornby & Leslie Hook, *China's Carbon Emissions Set for Fastest Growth in 7 Years*, FIN. TIMES (May 29, 2018), <https://perma.cc/T4VZ-QELP>.

<sup>316</sup> See *Paris Deal Tests Responsibility of Washington*, GLOBAL TIMES (June 1, 2017), <https://perma.cc/5UE4-EUDJ>.

<sup>317</sup> Chris Buckley, *Xi Jinping Is Set for a Big Gamble With China's Carbon Trading Market*, N.Y. TIMES (June 23, 2017), <https://perma.cc/5P2Y-DTPK>.

researcher has said that “[c]arbon trading on a national scale will send a signal to the world that China is serious about [climate change].”<sup>318</sup> A Tsinghua University professor involved in the design of the carbon trading system stated that “[a] successful start of a carbon market will greatly enhance China’s international standing in responding to climate change.”<sup>319</sup> Yet, uncertainty about how the system will be set up, data quality, the willingness of officials to enforce caps on emissions, the very nature of the caps (absolute or intensity-based) all remain high.

From a symbolic legitimacy perspective, China’s leadership can garner substantial political benefit from such a robust, comprehensive climate change program even though actual outcomes are difficult to discern. On the one hand, this is just politics as usual. Few successful political leaders will miss the opportunity to claim credit for steps taken and results achieved even if epiphenomenal or only loosely connected to political action. But back-end verifiability in China is hindered by all manner of state action—censorship, information control, ideology, nationalism, and constraints on media, civil society, academics, and citizens at large. A focus on symbolic reform cautions us to seek from Chinese leaders more information about the results of climate change action. An atmosphere of uncertainty and nationalist populism calls for a shift in burdens of proof. Actions alone cannot be presumed to equal results.

If in fact China’s climate change actions are working, the leadership can gain significant global favor by pushing to improve the international U.N. process on “measuring, reporting, and verification” (MRV), and public expectations should require this. A greater commitment to verifiability would be the kind of costly intervention that signals genuine reform, and improves accountability for weak results. A more robust system of MRV would enable China to garner appropriate global credit for its climate change actions and limit the forces within China within the Party-state and the business community that seek to slow down climate change reforms. Chinese leaders can of course also provide sufficient information for verification purposes on their own initiative, apart from any UN system of climate action verification.

## V. CONCLUSION

This Article has developed a concept of governance reform as a means of symbolic legitimation. This is an aspect of reform that allows the central leadership to pass as a performance-oriented state, regardless of actual results. Beyond any functional purpose, common tools of governance become a means of signaling values associated with state legitimacy, and their symbolic aspect is most salient when certain conditions (uncertainty foremost among them) loom large. Symbolic reform does not preclude

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<sup>318</sup> *Id.* (quoting Wang Yi, a professor at the Chinese Academy of Sciences).

<sup>319</sup> *Id.* (quoting Zhang Xiliang, professor at Tsinghua University).

actual performance, but offers a strategic resource for shielding leaders who do not perform for one reason or another from accountability.

An understanding of symbolic legitimation and reform sets the stage for further research. More work needs to be done, for example, on the specific costs of symbolic reform. We know that symbolic action can reduce accountability for functional reform, and prevent the mitigation of environmental risks that have real world negative consequences for human lives and ecosystems. But symbolic reform may also cause long-term atrophy to the muscles of functional reform through disuse, or exacerbate problems of distributional justice. These potential pathologies of symbolic reform deserve further sustained research.

What's more, the positive benefits of symbolic reform remain under-examined. Scholars have made some headway in democratic, developed country contexts, theorizing the expressive functions of law and the positive externalities of symbolic political action. Symbolic reform can act as a "pre-commitment strategy" with a genuine regulatory purpose.<sup>320</sup> It can send signals to the bureaucracy, regulated entities, citizens, and civil society actors about leadership commitment to regulation and put them on notice of their legal obligations.<sup>321</sup> Symbolic reform can also be a form of "overstatement" or "aspirational" regulation that anticipates inevitable slippage from vested interests, capacity constraints, or competing policy objectives.<sup>322</sup> Symbolic reform is also unstable in a way that can edge the state toward functional performance. As Feldman & March note, "[i]t is not easy to be a stable hypocrite"<sup>323</sup>—failures of performance are not necessarily easy to mask for the long-term and require either further symbolic responses or some level of actual performance. Reforms initially undertaken for symbolic reasons also alert citizens to the practical benefits of reform, or create political constituencies with a stake in the success of reform. More work is needed to understand whether and how potential benefits manifest themselves in authoritarian, emerging economy settings such as China's.

A symbolic legitimacy perspective also raises questions about the extent to which the public actually prefers symbolic reform. Is symbolic reform in other words a kind of societal self-deception?<sup>324</sup> The public may want state leaders to project a softer, greener vision of itself, but also expect the state to deliver economic growth and stability first. Citizens themselves may, whether they admit it or not, see the trade-offs made in practice as acceptable compromises among conflicting priorities. While state leaders are often criticized for symbolic politics, symbolic reform may in fact be exactly what citizens demand from their leaders.

Finally, what sort of response is appropriate, given these potential pathologies of symbolic reform? Any proposal to limit the problems of symbolic reform must address its main cause—institutional dynamics that

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<sup>320</sup> See Giovinazzo, *supra* note 74, at 119.

<sup>321</sup> See *id.*

<sup>322</sup> See *id.* at 120–22.

<sup>323</sup> Feldman & March, *supra* note 6, at 180.

<sup>324</sup> See Newig, *supra* note 7, at 276–77, 291–92.

maintain or exacerbate uncertainty. Without a fundamental shift in the verifiability of performance any other proposed reforms risk becoming symbolic themselves. The crux of reform is not to be found in mere changes to institutional mechanisms or policies. It requires a fundamental shift in burden of proof on the leadership to demonstrate actual performance where conditions for symbolic reform are present. Citizens can begin to effect such changes by altering their own expectations about state performance and legitimacy. The public should demand more proof in the face of uncertainty or else presume that the state is *not* performing.

A few near-term steps seem plausible. Deliberative and participatory governance processes and formal mechanisms for transparency create opportunities for information gathering. Loosening controls over media, academia, civil society, and legal and scientific communities would also send strong signals about the credibility of Chinese reform. China's formidable propaganda apparatus could be used to change public expectations for evidence of performance. Such openness and willingness to be subject to scrutiny would signal to the public the state's confidence in its ability to perform and its genuine ability to remain performance-oriented. Over the last decade or more, the state has engaged in some reforms along these lines, but much more is warranted. These changes are part and parcel of what Chinese scholar Yu Jianrong has called the shift from "rigid" to "resilient stability."<sup>325</sup>

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Eco-civilization reform is above all meant to reinforce the message that Party-state leadership and planning is essential to China's future. An understanding of the symbolic role of governance reform in China reshapes the debate over performance versus politico-legal legitimacy. For one, it injects a bit of realism into claims of Chinese "meritocracy." Eco-civilization performance is less certain than many have thought and the costs of reform have fallen disproportionately on the weakest parts of society.<sup>326</sup> For those who measure China's performance-based system primarily on its actual performance, this account demonstrates that functional performance is not the only thing that matters. The symbolic value of massive, broad-based governance reform bolsters the regime through the signaling of performance, performance-orientation and other values, regardless of the actual state of affairs.

Ultimately, this Article shines a light on an important strategic resource—China's use of the process of governance reform itself as a symbolic marker of state legitimacy—while also taking a critical look at the problems of state accountability this approach obscures.

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<sup>325</sup> See, e.g., Jianrong Yu, *Shifting from "Rigid Stability" to "Resilient Stability,"* 46 CONTEMP. CHINESE THOUGHT 85 (2014).

<sup>326</sup> See, e.g., Yuhua Wang, *Politically Connected Polluters Under Smog,* 17 BUS. POL. 97, 98 (2013).