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Bluebook on the Rule of Environmental Law in China (1979~2010)

Jing Wang *et al*

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The recently published *Bluebook on the Rule of Environmental Law in China (1979~2010)* (*the Bluebook*) was written by an environmental legal research group led by Professor Jing Wang. Prof. Wang is the Head of the Environmental and Resource Law Centre, Peking University. This fascinating book is the result of collaboration with numerous prestigious environmental law professors, and follows five-year's of nationwide fieldwork incorporating surveys and case studies.

The 30 years since China's first national environmental law - 'Environmental Protection Law 1979 (On Trial)' was promulgated has witnessed China's rapid economic development, improved environmental legislation, enhancement of environmental protection authorities and a growing number of participants in the environmental protection process. At the same time, environmental issues have aroused concern both within the government and the public. Although progress has been observed in terms of the application of environmental law and the construction of an environmental legal system, the concept of 'the rule of law' in environmental protection is not yet fully developed. The problems are obvious: in recent years there have been more frequent environmental pollution incidents; environmental quality is deteriorating; prevention mechanisms are not fully employed and there is limited application of environmental responsibility. These factors lead to questions: why for example, do these problems continue despite the fact that China has established a

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relatively advanced environmental law system? There are also questions as to why environmental remediation has not kept pace with environmental pollution. It may be assumed that either the legislation is defective or, that there are problems with the administrative process. One of the objectives behind *the Bluebook* is to illuminate the extent to which these assumptions are correct.

A Comprehensive Review of 30 years of Environmental Law in China

This book takes the principal legal institutions of China's environmental law as a starting point and analyses the implementation of each legal institution after reviewing its evolution. The analysis is based largely on empirical work. In this respect *the Bluebook* makes a very valuable contribution to the legal literature in China. There are a myriad of research products on environmental law in China, but few of them carry out such a thorough empirical analysis. *The Bluebook* will almost certainly promote innovation in Chinese environmental legal research more broadly as it highlights the benefits empirical analysis can bring through the provision of precise statistics and data.

The key feature of *the Bluebook* is then its inclusion of a large amount of empirical evidence. Specifically, it includes references to: significant international and domestic environmental conferences which have influenced the development of environmental law in China; plans and outlines for practical implementation in different periods and other important environmental incidents. This information is contained in a total of 104 highlighted diagrams and fact boxes. The benefits can be seen, for example, in the clarity of information provided by 55 cases on environmental pollution, compensation for environmental damages and other environmental disputes; 33 diagrams on various indicators and impact factors relevant to environmental law, such as air pollution, collective protests incited by environmental disputes and the government's measures designed to resolve known problems. These all help readers to gain broad insight into the implementation of environmental law in China. This information is complimented by the comprehensive fieldwork and questionnaires on the implementation of environmental law across China carried out in the five years of preparation that went in to the production of this book. Additional texture to the analysis is provided through the 38 surveys of public environmental awareness carried out in the streets and many universities located in Beijing. The thoroughness

of the research combined with the comprehensive literature review and the expert data analysis, lead to a meaningful discussion of Chinese environmental law.

The publication of this book thus marks an innovation in environmental law research in China, bringing as it does empirical analysis to the fore. It demonstrates that if environmental law research in China can adopt a more rigorous scientific approach, drawing on both scientific and social science research methods to ensure comprehensive analysis, it will be able to feed in to the development of environmental law more effectively, and environmental law in turn will then be able to play an effective role in settling environmental problems. In the following sections some key aspects of the discussion in *the Bluebook* are reviewed.

Effectiveness - 30 years of Environmental Legal Practice Focussed on the Control of Sources

It is generally accepted that robust environmental legislation includes the control of sources, and that sound environmental legislation provides for both implementation and enforcement. Even if legislation aiming at the control of sources of pollution is not in place, a strong environmental law ought to provide sufficient judicial and enforcement powers to result in their control in practice.

How the objective of environmental protection will be met depends on such things as one's political structure, legal tradition and socio-economic factors. Thus, when reviewing foreign laws, we are confronted with different legislative models and legal cultures. They do, however, have one commonality: in each, legal effectiveness relies on a good match between legal norms and social practices. Legislation alone is not a guarantee that the end objective of environmental protection will be achieved. The effectiveness of the legislation in prompting adjustment of social relationships and behaviour depends largely on how it is implemented and this ultimately rests on the degree to which the legislation can be effectively enforced. As some have said 'one should not worry about the lack of laws but about strict enforcement.' Weak enforcement is therefore more harmful than weak legislation. With weak enforcement the values being promulgated by the laws will not be realised.

The Bluebook explains the paradox in the reality of environmental law in China. On the one hand, environmental laws appeared to be developing rapidly in 'batch

production', while environmental agencies are continuously being upgraded. On the other hand, local environmental quality has not been fundamentally improved, but has instead partially deteriorated. This paradox, *the Bluebook* indicates, is a result of problems in the environmental legislation. There are numerous legislative gaps and loopholes and in addition many of the laws lack detailed formulation and are too abstract to be enforced. The overall result is that enforcement of environmental law is weak, and the sources of pollution are not effectively controlled. This prompts the conclusion that if Chinese environmental law is to become effective, new, more relevant, legislation is required.

Practicability - A Structured Analysis of 30 Years of Environmental Law

In addition to examining enforcement and implementation, *the Bluebook* considers the question of whether or not the 30 years of environmental law have been successful by analysing the legislation, the executive, justice and related subjects in further detail. The conclusion is that China's environmental legal system has failed to function as designed. The authors then undertake an analysis on the causes of this failure as follows:

First, legislative factors are considered. Here it is found that the environmental legislation contains no major mistakes, but equally has no far-reaching effects. This is explained by the fact that its contents look more like declarations than legislative provisions.

Second, government bodies are shown to have inadequate authority and power to safeguard the environment. For example, the administrative punishment measures they may use are not rigorous enough.

Third, judicial relief is minimal, victims have difficulty obtaining compensation for damages suffered and there are few provisions in the criminal law that can be applied in environmental lawsuits.

Fourth, the role of civic society is found to be lacking in a number of ways. Enterprises are shown to be inclined to ignore their social responsibility for environmental protection and to have failed to undertake socially and environmentally responsible action. The public are limited in their ability to engage by inadequate

legislative provision for public participation. In addition, it is shown that there is a lack of willingness by the public to play a monitoring role and report pollution incidents.

Response to the Future of Environmental Law

While it is clear that there is room for more analysis and improvement of environmental law in China, we must acknowledge that it has already made remarkable progress and that the continued existence of some problems is inevitable. Since environmental law is still developing and being updated, it is not yet appropriate to draw a conclusion on whether it is a success or not, but it is clear that the current environmental law is 'better than nothing'. This conclusion still leaves scope for a significant contribution to be made in terms of pointing to possible future improvements in China's environmental law and one might anticipate that *the Bluebook* would make a significant contribution here. The goal of reflection on environmental law is, after all, to enhance the environmental legal system, to ensure sustainable development and the purpose of analysing the environmental law is to contribute to its improvement. Besides pointing out the difficulties faced by environmental law in China and their causes, some relevant countermeasures and suggestions are proposed at the end of *the Bluebook*. This part is not, however, as well developed as one might hope for and the proposals are relatively vague. This reviewer suggests that identifying problems should not be the main purpose of research and that instead proposing methods and countermeasures to solve these problems should be the key point. Consequently, if a revised edition of *the Bluebook* contained an enriched responsive part it would gain even greater significance and academic value.

Ensuring the rule of law cannot be completed overnight and the problems found in environmental law are symptomatic of China's problems with the rule of law more generally. As *the Bluebook* demonstrates, research on environmental law can function as the engine and stimulation for legal research in China more generally. Through reflection on environmental law in the past 30 years, the course of the rule of law in China will undoubtedly be promoted.