

Paper Topic: Litigious civil society on the rise? The case of a green NGO's legal mobilization

The “rule of law” discourse in China has enabled environmental nongovernmental organizations (ENGOS) to embrace legal strategies in their advocacy. This article studies a local ENGO campaign, in which its leader filed an administrative suit against local state agencies over the conversion of pedestrian sidewalks into parking spaces. Based on digital ethnography and participant observation, I demonstrate three aspects of the struggle that challenge conventional depictions of Chinese environmental activism. First, legal processes are conflict-laden and confrontational; second, depoliticized legal actions belie the development of critical consciousness among campaign supporters; third, professional ties become more instrumental than connections with state officials. The net result is then a less embedded activism, and a less blurred relationship between state and society. Besides updating extant understanding of ENGOS and analyzing societal responses to the “rule of law” regime, this article assesses if Chinese civil society may be on the path to litigiousness.

Keywords: environmental NGOs; legal mobilization; administrative litigation; embedded activism; rule of law; China

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In May 2015, the local court in City Z accepted an administrative suit brought by Fei, challenging the local government over “pedestrians’ rights”.¹ Fei, the leader of an environmental nongovernmental organization (ENGO) called “Z Green Association” (ZGA), usually goes to work on foot from her nearby home. However, since 2012, the pedestrian sidewalk through which she must pass on Auspicious Road was redesigned and doubled up as parking spaces for motorists. This city-wide phenomenon drove Fei to sue the street-level office (*jiedao banshichu* 街道办事处), because the sidewalk became significantly narrower for pedestrians. Fei contended, her right to use the walkway was consequently deprived, and she had to use the road instead, subjecting herself to greater traffic risks. She demanded a reversal of this policy for Auspicious Road. What seemed like an individualized action was in fact a deliberate part of an ENGO campaign called “Defending Pedestrians’ Rights (*weihu xingren luquan* 维护行人路权)” launched on 28 March 2015.

Prior to 2010, it would seem accurate to portray the law as a contested terrain exclusive to redistributive conflicts over property and labour.² Environmental activism, by contrast, is thought to “take the form of *civic activism*, often, but not always, non-confrontational, community-focused, routine associational activities, at times becoming overt oppositional protests”.³ This is further reinforced by the notion of “embedded activism” in which environmentalists’ informal and institutionalized relations with the state circumscribe their advocacy strategies.⁴ Thus, when an ENGO got involved with administrative litigation, it urges a recalibration of conventional depictions about ENGOs and their supposedly “routine” and “non-confrontational” activism.

This ENGO campaign was both reactive and proactive; it reactively resisted “new disadvantages” that hinder pedestrians’ mobility, while proactively seeking recognition of pedestrians’ rights in the long run.⁵ As Fei regularly lamented, the concept of “right of way” (*luquan* 路权) remains absent in Chinese law. In that vein, the legal arena becomes more than a means for conflict resolution, but also an avenue for advocating policy change. My examination of this legal campaign captures a rare snapshot of diffusing litigiousness within environmental activism. Besides exploring urban-based social perceptions and responses to “rule of

1 All persons, organizations and places are given pseudonyms, unless otherwise stated.

2 See for example Chen 2004; Gallagher 2006; Hsing 2010; Lee 2007; O’Brien and Li 2004.

3 Hsing and Lee 2010, 3-4, emphasis in original; Yang 2010.

4 Ho and Edmonds 2008a.

5 Koopmans and Kriesi 1995, 42.

law”, it highlights the evolving action repertoire of ENGOs. Where litigation is acknowledged as an ENGO strategy, researchers usually cite only the example of the Center for Legal Aid for Pollution Victims (CLAPV). Therefore, this article addresses the under-explored dynamics of ENGO-led legal mobilization.⁶ In that vein, it demonstrates how the rule-of-law national project has ensured some opening during what many observers believe to be one of the most repressive periods in post-reform China, which facilitated creative experimentation among the grassroots to challenge state practices.

My findings lend support to Mary Gallagher’s concept of “informed disenchantment”. As a by-product of legal mobilization, ZGA campaigners obtained strategic legal knowledge and became socially included and empowered, becoming “little experts” who shared information with others about “working the law”. As their frustrations with the legal process coalesced into a critique of local state agencies and the legal system, their positive feelings of individual efficacy encouraged further action, rather than giving way to fatalism.⁷ Their behaviour and attitudes thus find greater affinity with the rural resisters studied by O'Brien and Li, as they invoke legality and display sophisticated rights consciousness.⁸ ENGO strategies are typically “closer to institutionalized than non-institutionalized politics.”⁹ Though they steadfastly rejected mass protest as a mode of mobilization, their legal strategy shows qualities of “resistance” that are otherwise obscured by overwhelmingly focusing on “embeddedness” and “civiness”. Litigation approximates a “boundary-spanning” *resistance* that works at the bounds separating “official, prescribed politics and politics by other means”.¹⁰ As Yang comments, legal action is “politics by other means...that thrives on political ambiguities”.¹¹ This perspective builds on a rich literature on social movements and law and society that views legal mobilization as an overt and symbolic resistance toward the state.¹²

In what follows, I first delve further into the theoretical flaws of “embedded activism”. After brief remarks on the data, I tackle the question: what explains the timing for this kind of ENGO-led legal mobilization? To do so, I analyze its political opportunity structure by zeroing in on the macro-level political

6 Stern (2013) and Wang (2007) are exceptions that analyze cases of *civil* litigation.

7 Gallagher 2006.

8 O'Brien and Li 2006.

9 Yang 2010, 123; Ho and Edmonds 2008; Yang 2005.

10 O'Brien and Li 2006, 63.

11 Yang 2005, 55.

12 See for example Burstein 1991; Chua 2012; McCann 1994; Meranto 1998; Merry 1990.

conditions and micro-level associational relationships. Next, based on societal perspectives, I detail the ZGA legal campaign process, illuminating the “micro-foundations of an active society”.¹³ I then discuss how it challenges extant understanding of environmental activism in China, before finally concluding on the possible trajectory of litigiousness for ENGOs.

Beyond embeddedness?

Studies on ENGOs – and other NGOs – in China have tended to focus on the issue of associational autonomy, particularly given the authoritarian milieu.¹⁴ In that tradition, Ho and Edmonds describe Chinese environmental activism as “embedded”, distinguishing it from its radical counterparts elsewhere. Enabled by formal and informal ties to state officials, environmentalists deploy non-confrontational strategies that portray themselves as partners with the state. Its implications are twofold: ENGOs prefer undertaking depoliticized action, and forging instrumental ties with state authorities is a survival strategy that bestows legitimacy on them.¹⁵

However, in light of my findings, there are three issues with “embedded activism”. First, it operates on a maximal definition of “confrontational”, that is “confrontations with the national government”.¹⁶ Litigating against local state agents would invariably be considered as non-confrontational. Further, in the face of salient threats of state repression, no NGOs would portray themselves as “against the national state”. Hence, assuming litigation as being embedded or non-confrontational may be close to tautology. More importantly, legal action can be institutionalized but confrontational, especially when it entails suing the local state. As one legal scholar remarks, the confrontational nature (*duili xing* 对立性) is crystalized when a lawsuit enrages state officials, and they might fume: “you [dare to] sue me?” (*ni gao wo* 你告我?).¹⁷

Second, maintaining relations with state officials certainly remains paramount, but that legal mobilization still took place as political space shrunk in China speaks about how embeddedness needs not be the default coping strategy of ENGOs. Hence, with growing viability over legal options, the rising rule-of-

13 Hsing and Lee 2010, 2.

14 See for example Cooper 2006; Saich 2000; Song, Wang and Parris 2015; Wu 2002; Xie and Ho 2008.

15 Ho and Edmonds 2008. For a similar point on lawyers, see Michelson 2007.

16 Ho and Edmonds 2008, 219.

17 Interview with legal scholar, Beijing, 9 June 2015.

law regime has offered an alternative source of legitimacy. Additionally, studies that support the notion of “embedded activism” are based mostly on analyses of early ENGOs and their first-generation leaders, who often were part of the state system. The classic example is the founder of Friends of Nature (FON), Liang Congjie, who was a member of the national Chinese People’s Political Consultative Conference. ENGOs are usually absent from disruptive environmental protests, due to fears of state reprisal towards organized resistance. But by legally taking on a depoliticized matter, ENGOs could assume a leadership role under the shelter of “rule of law” without risking state censure, even if that means potentially putting the local state in a bad light.

Third, Yang correctly critiques that “an emphasis on embeddedness downplays the disembedding aspect”.¹⁸ I argue, legal mobilization marks this disembedding moment of environmental activism. When up against state-imposed hurdles, litigants resist them both overtly and symbolically, undergoing continual learning and adaptation to outwit and outplay the local state. Moreover, the notion of litigation is antithetical to embeddedness, because principles of universalism and equality before the law underpin the legal system, foreclosing actions relying on particularistic ties with state officials.¹⁹

Notes on the Data

Data collection was conducted primarily through participant observation – onsite and offsite. Through observation at actual “sites” of interactions – digital or physical, it generates important insights into popular experiences of “the rule of law” that help us understand what goes on “behind the scenes” without being hindered by undue self-censorship.

During my field research in China from March to October 2015, I spent nearly three months in City Z between April and June. It was then that I joined the legal campaign as a volunteer and observer, barely a month after it kicked off. Besides visiting the ZGA office a number of times, I attended campaign meetings and went to the local court. My observations were also borne out from personal communications with Fei and other campaign supporters. Fei added me to the WeChat (*Weixin* 微信) group that keeps interested people abreast of the campaign developments. Through access to this group, I continued my observation offsite and

¹⁸ Yang 2010, 121.

¹⁹ Gallagher and Wang 2011.

online after leaving City Z.²⁰

WeChat acts as a Chinese functional equivalent to Whatsapp on mobile phones. With this popular homegrown mobile messaging application, phone users can send images, text, audio and video messages over the Internet. It is also a social networking tool, where users share their profiles and subscribe to group messaging. It is the latter function that has enabled environmentalists to connect with like-minded people, when they join a WeChat group for an issue of interest.

Green legalism

The production and circulation of environmental discourses – or “greenspeak” – by ENGOs and the media has encouraged an emerging “green public sphere”.²¹ This is partly facilitated by an increased emphasis by the central state in environmentalism, especially in the wake of some disastrous pollution incidents in the 1980s and 90s.²² The “greening” of state and society has thus enabled a vibrant environmental activism in China. But less emphasized is the parallel discursive growth of “lawspeak” around environmentalism since the eve of the 21st century.²³

State programmes of “legalization” (*fazhigua* 法制化) to facilitate China’s market transition laid the foundation for environmental legalization. In 1999, the Chinese constitution was amended to formalize the concept of a socialist rule-of-law.²⁴ Subsequently, public participation was enshrined in a series of legislations between 2003 and 2008, heralding a form of “green legalism” that marks the penetration of the “rule of law” discourse into the environmental realm.²⁵

Under Xi Jinping, some commentators saw a “concerted effort to obliterate civil society”, and a

20 This incorporates elements of digital or virtual ethnography. It is not new to Chinese studies, though past data sources have been mainly bulletin board systems (BBS), blogs, and “mini-blogs” (*weibo* 微博). See for example, Leibold 2011; Yang 2009.

21 Yang and Calhoun 2008.

22 Economy 2010; Ho 2001.

23 “Lawspeak” here is different from what is typically considered as being an inaccessible legal language to the lay public.

24 See Peerenboom 2002.

25 Examples are Article 21 in the 2003 Environmental Impact Assessment law (*huanjing yingxiang pingjia fa* 环境影响评价法), the 2006 Interim Measures on Public Participation in Environmental Impact (*huanjing yingxiang pingjia gongzhong canyu zanxing banfa* 环境影响评价公众参与暂行办法), and the 2008 Measures for the Disclosure of Environmental Information (*huanjing xinxi gongkai banfa [shixing]* 环境信息公开办法[试行]). See Johnson 2010; Moore and Warren 2006; Zhang et al 2010.

growing crisis for China's legal system.²⁶ Though relinquishing Party control of the judiciary is out of sight, the current central government has appeared committed to further legal reforms. The fourth plenum of the Chinese Communist Party Central Committee in October 2014 addressed the theme of "rule of law" – a legal milestone whose significance Peerenboom likens to Deng's southern tour for economic reforms.²⁷ In 2014 alone, both the Administrative Procedure Law and Environmental Protection Law were successfully amended for the first time since 1989. This development is consistent with Xi's ambitious agenda of deepening marketization and disciplining local state agents. Consolidating administrative law is after all tightly intertwined with the authoritarian goal of political control over lower-level governments.²⁸

The first ENGO public interest lawsuit in 2011, and the establishment of environmental courts since 2007 that began as local legal innovation backed by the Hu Jintao-Wen Jiabao central administration,²⁹ precluded formal legal changes. Despite resistance among local governments, the renewed emphasis on environmental protection by the new central leadership helped ensure amendments to the Environmental Protection Law were passed.³⁰ Taking effect beginning in 2015, the amended law crucially introduces a new chapter devoted to "information disclosure and public participation" (*xinxi gongkai he gongzhong canyu* 信息公开和公众参与). It recognizes certain ENGOs for bringing public interest lawsuits on behalf of environmentally aggrieved citizens. They must have been first, registered with a civil affairs authority at or above the city level; second, involved in environmental protection public interest activities continuously for five years without having broken any law.³¹ FON, one of China's oldest ENGOs, had taken on six such lawsuits as of 29 October 2015, winning the first of them in Nanping city, Fujian.³² Nonetheless, the 2011 ENGO lawsuit remains ongoing. Involving also FON, this case in Qujing city, Yunnan, demonstrates legal obstacles facing even the most resourceful ENGO are indeed formidable.³³ Similarly, the environmental

26 Cohen 2016; Philips 2015.

27 Peerenboom 2015.

28 Ginsburg 2008; He 2009.

29 Stern 2014.

30 Zhou Chen. 2015. "Shishang zuiyan huanbaofa shishi: xuezhe huanyuan xiufa boyi guocheng, chen zuichu yayi fennu" (Implementing the strictest environmental protection law in history: scholar recounts the struggle of amending the law, and had to repress his anger initially), *The Paper*, 1 January, http://www.thepaper.cn/newsDetail_forward_1290473. Accessed 9 November 2015.

31 See "Zhonghua Renmin Gongheguo Huanjing Baohu Fa (Environmental Protection Law of the People's Republic of China)," 25 April 2014, http://zfs.mep.gov.cn/fl/201404/t20140425_271040.htm.

32 Friends of Nature. 2015. "Xin huanbao fa diyi qi huanjing gongyi susong an xuanpan, yuangao shengsu (Decision pronounced on new environmental protection law's first environmental public interest litigation case, plaintiffs won)," 29 October, <http://www.fon.org.cn/index.php/index/post/id/3096>. Accessed 9 November 2015.

33 Liu Songbo. 2015. "Huanjing gongyi susong qianlu kanke (Bumpy road ahead for environmental public interest

courts were found to be “preoccupied with prosecuting small-time rule-breakers, rather than tackling pollution”.³⁴ Manifestly, the law in practice questions the rosy picture the law on the books might conjure.

Amidst the flurry of legislations, ENGOs have been receiving years of legal and advocacy trainings (*peixun* 培训). Usually organized by ENGOs, lawyers or legal scholars were often invited to educate ENGO representatives about the latest legal changes. In fact, there have been publications of manuals and pamphlets on relevant legislations. For instance, in anticipation of the 2008 Measures for the Disclosure of Environmental Information (DEI), CLAPV held a workshop on it in Beijing – months prior to its formal implementation. Attended by a number of ENGOs all over China, it was supported by the Natural Resources Defense Council and Beijing Global Village Environmental Education Center. It also resulted in a well-compiled handbook circulated among ENGOs.³⁵ Even prior to that, at a CLAPV seminar on 25 April 2007, the attendees signed a proposal, entitled “We believe in the law” (*women xiangxin falv* 我们相信法律), exhibiting their commitment to using legal means in environmental protection endeavours.³⁶ This is accompanied by the realization among ENGOs that they could not rely solely on publicity and awareness campaigns and there was a need for more assertive actions.³⁷

The periodic workshops for ENGOs have served as a platform for important experience-sharing. Recent ENGO publications elucidated not only step-by-step best practices in legal advocacy, but also successful case studies for emulation.³⁸ Despite countless stories on the futility of legal action, the few successful instances were sufficient to inspire confidence in its feasibility. As McCann remarks, small advances are good enough for movements to build on for further legal mobilization.³⁹ Besides lawsuits initiated by ENGOs like CLAPV and FON, legal measures are becoming part of the *modus operandi* of many others. For example, to build a database on waste incinerators in China, Wuhu Ecology Center (WEC)

litigation),” *Economic Daily*, 31 March, http://paper.ce.cn/jjrb/html/2015-03/31/content_235748.htm. Accessed 9 November 2015.

34 Stern 2014, 54.

35 The electronic copy can be found at CLAPV’s website: <http://www.clapv.org/upfile/201052411216697.pdf>.

36 Guo Shuhua. May 2007. “*Women xiangxin falv* – NGO yi falv shouduan tuidong huanjing zhili de shijian yu kunjing (We believe in the law – NGOs to use legal means to promote environmental governance),” *Green Leaf*.

37 *Legal Weekly*. 2011. “*Yunnan gezha’an lvshi: susong zhengju qujue yu huanbaoju peihe chengdu* (Yunnan chromic slag case lawyer: evidence for lawsuit depends on the environmental protection bureau),” 12 November, <http://news.sina.com.cn/c/sd/2011-11-12/004823453854.shtml>. Accessed 31 March 2016.

38 See for example Dong 2015; Ma 2011.

39 McCann 1994.

collected information from environmental protection bureaus through DEI.⁴⁰ While opposing the Jinsha hydroelectric dam project, the Chongqing Green Volunteer League applied for administrative review over this project under the Administrative Reconsideration Law.⁴¹

Engaging the law evidently delivers much-needed legitimacy for ENGOs to conduct their work. As an ENGO worker commented, drawing on the law “makes their work easier” (*bijiao hao zuoshi* 比较好做事), especially in dealing with unfriendly and unresponsive government agencies.⁴² The production and distribution of “lawspeak”, as well as its actualization and its perceived returns, has thus prepared ENGOs to embrace legal strategies as part of their action repertoire. ZGA’s legal campaign should be seen as an extension from these trends.

From Green Commuting to Pedestrians’ Rights

In lieu with the looming threat of climate change, ENGOs have tailored their projects and activities around the broader goals of reducing carbon emissions, for example, by promoting low-carbon travel. ZGA has been working towards the development of sustainable transport since 2005. It helped with launching the first “No Car Day (*wuche ri* 无车日)” in City Z, before it became an annual city-wide event continuing till today. It also joined the Green Commuting Network, an alliance of over twenty ENGOs that aimed to spread the idea of “green commuting” (*lvse chuxing* 绿色出行) nationwide.

Existing traffic infrastructure in Chinese cities has failed to keep up with the rapid pace of urbanization. The massive population growth has precipitated a rise in private ownership of motorized vehicles – seen as both a necessity and status symbol. Traffic congestion and pollution has thus become part and parcel of urban life in China. Urban mobility, in consequence, emerged as a grave issue. Current traffic designs usually prioritize car owners, often at the expense of pedestrians and non-motorized vehicle owners – the natural constituents of ENGOs advocating green commuting. In recent years, ENGOs from Guangzhou to Beijing have been campaigning to make cycling more safe and viable. They have called for city planning to

40 See WEC website at <http://www.wuhueco.org/index.php?m=content&c=index&a=show&catid=13&id=14>.

41 Du Ruiying. 2009. “*Jinshajiang huanjing gongyi weiquan shijian zhuizong* (Following the case of the Jinsha river environmental public interest rights protection),” *China Economic Times*, 27 August, http://lib.cet.com.cn/paper/szb_con/38476.html. Accessed 9 November 2015.

42 Personal communication with an ENGO worker, Chengdu, 10 September 2015.

accommodate cyclists' interests, as well as stronger legal enforcement to stop motorized vehicles from obstructing bicycle lanes.⁴³ With greater awareness of how urban mobility is better handled outside of China, grievances over commuting have found expressions in the language of "rights", which would frame the wider debates and struggles against unjust traffic policies. Safeguarding pedestrians' rights is thus a continuity from these ongoing efforts, rather than an entirely new issue frontier for environmentalists.

City Z, located in a coastal province, is fairly developed. Its GDP per capita reached 81,572 yuan in 2013, projecting a 7.6 per cent growth compared to 2012.⁴⁴ Car ownership of every hundred households steadily rose from 23 in 2010, 30 in 2011, and to 33 by the end of 2012. Though lagging behind Beijing's car ownership, which exceeded 33 by the end of 2010, it surpassed that of Guangzhou, a far larger city, which recorded 21 in 2010, 26 in 2011 and 32 in 2012. Indeed, according to a 2012 government-run survey in City Z, 84.6 per cent of the respondents believed the increasing number of motorized vehicles contributed to its worsening traffic situation, and 32.5 per cent of them attributed the problem to "unreasonable traffic planning". Motorized vehicle ownership reached about 1.035 million in 2013, a 13.38 per cent increase from previous year.⁴⁵ ZGA, on the other hand, began its work since 1999, before being registered with the civil affairs bureau in 2007. As one of the earliest ENGOs in City Z that was founded by Fei, it has engaged in various issues, from waste sorting and recycling, to monitoring the water quality of a nearby river.

Preparing the ground

Beginning from February 2015, Fei took interest in the city-wide situation of cars parking on sidewalks. She started posting pictures of these incidents to her micro-blog, hoping to stir up public attention. In March, ZGA began recruiting volunteers among its long-time supporters and the public at large. The campaign attracted interested citizens beyond City Z to its WeChat group, as well as local volunteers from different professions including education, urban planning, the media and the legal sector.

The volunteers were divided into a few groups and assigned a specific responsibility. The legal team,

43 Bike Guangzhou and Beijing-based Nature University's project named "Public Evaluation City" (gongping chengshi 公评城市) are notable examples.

44 Based on *Z Statistical Yearbook 2014*.

45 Sources from *Beijing Statistical Yearbook 2012*, *Guangzhou Statistical Yearbooks* (2012 and 2013), and *Z Statistical Yearbooks* (2014, 2013, 2012, and 2011).

for example, focused on working through legal means. Making use of the Regulation on the Disclosure of Government Information (DGI), team members individually requested information from respective government agencies. To construct the legal case, they amassed information on: which government unit was responsible for collecting parking charges, which was responsible for drawing up the parking spaces, and so on. With this, they were able to make sense of the opaque local governance, identifying the line of responsibilities and hierarchies.

The campaign chose an ingenious strategy in approaching its legal battle. They attacked it through two separate lawsuits, nicknamed the spear (*mao* 茅) and the shield (*dun* 盾). The “spear” would dispute the selective enforcement of traffic police, whereas the “shield” would challenge the decision of turning sidewalks into parking spaces. In the former, Fei temporarily parked her car at a bay-shaped roadside. Since there was no yellow line or any signs, it did not strike her as an illegal parking. However, she was fined 100 *yuan* on the spot by the traffic police. Dissatisfied and suspecting this had been an entrapment (*diaoyu zhifa* 钓鱼执法) zone, she sued the traffic police, to at least clarify whether the bay was part of the carriageway or the walkway. Fei calculated that, if she had to lose this suit on the basis that it was a walkway, then it would aid her defence for her “shield”, throwing doubt on the legality of parking on sidewalks altogether. As such, she aimed to “take the state at its word”,⁴⁶ forcing the state to contradict itself.⁴⁷

For both cases, Fei found lawyers to take up the cases on a *pro bono* basis. Representing Fei for the “shield” was a local lawyer, who had also become the official legal advisor to ZGA. She was however prevented by her employer to take up the other case. So, Fei mobilized her personal networks all the way to Beijing, securing the services of a lawyer from a neighbouring province. To absorb the lawyer’s travelling and accommodation expenses, in addition to a nominal fee of 3,000 *yuan*, ZGA launched a donation drive on WeChat. Campaign volunteers forwarded the crowd-funding plea to their respective social networks. Setting 10,000 *yuan* as the target, after a month, nearly 5,300 *yuan* poured in from 230 people.⁴⁸

In court

46 Straughn 2005.

47 Hence, it is “*mao*” and “*dun*”, as “*mandun*” also means contradiction in Chinese.

48 Based on a volunteer’s WeChat report, 1 July 2015.

To the campaigners' surprise, the suits were successfully filed at the administrative adjudication chambers (*xingzheng shenpan ting* 行政审判庭).⁴⁹ When they received the defendants' pre-trial written responses, they saw them as a list of specious arguments (*jiabian* 狡辩).⁵⁰ For the "shield", the defendant demanded the suit to be dismissed on several bases. First, as the parking spaces were drawn up by the traffic police (even though, as the plaintiff argued, it required the co-operation from the street office), the office was wrongfully sued. Second, prior to implementation, the policy was already advertised on the traffic police website for public consultation and feedback. Third, the statute of limitations had expired. Fourth, the plaintiff could not prove any harm caused by the policy to herself, nor could she prove she was a regular user of the sidewalk.

On 28 May, as the hearing commenced, those arguments were repeated at court. The hearing drew in an audience of about 15 people. Even before, ZGA tried hard to publicize the hearing online and on social media, urging the public to attend to "push for justice" (*weiguan cu gongping* 围观促公平). Fei also personally asked reporters she knew to come cover it. As she rationalized later, judges would be less inclined to act according to their whims, if the court audience was large enough (*pangting renduo faguan xianchang jiu bugan luanlai* 旁听人多法官现场就不敢乱来).⁵¹

By contrast, for the "spear", the defendant did not even bother to argue (*jianzhi shi lan de bian* 简直是懒得辩).⁵² Their written responses claimed that it was part of the walkway. But at court on 15 June, they flip-flopped between a walkway or a carriageway, before finally confirming the latter. They asserted, the act of leaving the car parked at the roadside was illegal, even if there was no yellow line. When questioned about the propriety to take evidentiary pictures with a digital camera, instead of a specialized camera, the defendants shrugged it off, seeing no wrong in it.

Returning to court

The court ruled against Fei for the "spear". The judges interpreted the traffic police action as flawed (*xiaci* 瑕疵), rather than illegal (*weifa* 违法). They declared that it was indeed part of the carriageway, calling

⁴⁹ The following will refer to it as "the court".

⁵⁰ The following is based on my personal observations at the court on 12 and 28 May 2015.

⁵¹ WeChat conversation, 25 September 2015.

⁵² Personal communication with Fei, 24 June 2015; the following is based on a volunteer's WeChat reports.

it a “bay-style road section” (*gangwan shi luduan* 港湾式路段). In the decision, they also cited a traffic law to defend the traffic police, which was otherwise never presented or mentioned throughout the hearing. Fei went ahead with an appeal. On 25 September, for the appeal hearing in City Z’s intermediate people’s court, the defendant reverted to calling it a walkway, and that a digital camera was considered a “traffic monitoring equipment” (*jiaotong jishu jiankong shebei* 交通技术监控设备). Fei lost her appeal.

The “shield”, on the other hand, remained undecided. After much deliberation, the judges asked Fei to switch the defendant to the traffic police. Fei and her lawyer resisted as long as they could, insisting to sue both the street office *and* the traffic police. They acquiesced when the judge threatened of throwing out the suit.⁵³ Hence, a retrial was scheduled on 12 November, which they lost. The decision of their appeal is unknown, as of this writing.

Insights from the legal campaign

So how does the nature and significance of this legal campaign modify extant conceptualization of ENGO activism in China? Clearly, suing the state remains an uphill battle, and the disappointing legal outcome might imply resentment and resignation among the campaigners. My research, however, suggests an increased confidence in working the law and facing off the local state. This turn to the law also marks a disjuncture with “embedded activism”, if examined at three levels: first, its conflictual aspects; second, the critical consciousness that developed underneath the depoliticized action; and third, the social ties built away from the state. Taken together, it shows ENGOs do not necessarily prefer “informality over formality, mediation over adjudication, and the preservation of relationships over rights assertion”.⁵⁴

Conflict-laden process

The Administrative Litigation Law (ALL) is meant to check against cadre abuses and misconduct, granting Chinese citizens a route to dispute state decisions. Nevertheless, its core goal is to push state agencies into compliance with the law, rather than protecting citizens’ negative freedoms.⁵⁵ But unlike civil

⁵³ WeChat conversations, 13 July, 18 August and 10 November 2015. The amended Administrative Litigation Law took effect beginning 1 May 2015. One of its new provisions permits suing multiple agencies.

⁵⁴ Woo 2005, 352.

⁵⁵ Potter 1994. See also Marshall 2003; O’Brien and Li 2004; Pei 1997; Zhang and Ortolano 2010.

litigation that allows for mediation, administrative litigation generally designates winners and losers, giving rise to a zero-sum game that raises the stakes.⁵⁶ Besides a possible polarizing outcome, plaintiffs confront not only specious substantive arguments, but also constraints in the legal process itself.

As outlined above, the counter-arguments offered by the defendants and judges had outraged the campaigners' sense of justice. Through colourful and provocative use of words, ZGA deftly reported on them via social media. For instance, one summary of the "spear" court decision was entitled, "what happened to the promised fairness and justice?" (*shuohao de gongping zhengyi ne* 说好的公平正义呢)⁵⁷ These reports consistently contrasted the preposterousness of those arguments with the plaintiff's well-reasoned points. They questioned out loud the commitment of these state agencies in serving the people and justice. Consequently, awarding victory to the defendants was perceived as a sign of the court colluding with them. Though campaigners had little illusion about the court's partiality from the beginning, they were not acquainted with the *extent* of its partiality until experiencing it themselves.

Reinforcing the sense of injustice is the constraints they endured throughout the legal course. Aimed to limit the publicity of the legal battle – and thus the possible blowback to the state, judicial officials had resorted to various subtle suppressive tactics.⁵⁸ For the "shield" hearing, reporters were banned from attending and covering it. When attendees were noticed scribbling notes during the proceeding, court officials queried whether they were from the media.⁵⁹ As court officials could recognize the faces of certain journalists, the press dispatched fresh-faced reporters to the hearing. When one of them was found out, she was reprimanded by one official. After this made it to the press, the judge told Fei that it was wrong to mobilize media attention and that it would affect the judicial process, questioning her motives and indirectly threatening her. At the "spear" hearing, court officials photocopied attendees' identity cards, and requested for their employers' information (*gongzuo danwei* 工作单位). Since everyone already had to go through routine security and identity checks at the entrance, this was seen as intimidation.

56 Though mediation is prohibited, Palmer (2010) argues that pre-trial mediation still occurs. The 2014 amendments explicitly permit mediation for certain cases, for example, disputes that require compensation.

57 A volunteer's WeChat report, 24 July 2015.

58 Instead of coercion, environmentalists may face state-imposed constraints through non-coercive bureaucratic processes and procedures. See Yew forthcoming.

59 I was not spared from this.

Hence, litigation turns the campaigners and the state agencies into legal adversaries. The confrontation between citizens and officials is also manifested symbolically and physically. The imagery of “citizens suing officials” (*min gao guan* 民告官) underlying administrative litigation already pits society against the state. Its physical manifestation in the courtroom, with the plaintiffs on the left facing directly the defendants on the right, signifies this confrontational nature.⁶⁰ Though litigation is not a full-blown rebellion, portraying it as anything other than resistance misses how campaigners had to resist both legal arguments and extra-legal tactics from the state.

Thriving critical consciousness

“The numerous workshops, seminars, and other projects organized by environmental NGOs not only transmit environmental values, skills, and knowledge. They are also meeting grounds of like-minded people and arenas of self-transformation and identity production.”⁶¹

Like those workshops and seminars, the legal campaign formed a site for “self-transformation and identity production” that led to the creation of a collective action frame. This frame functions to “organize experience and guide action”, sustaining the struggle.⁶² Gamson argues that there are three key components to such a collective action frame: injustice, agency, and identity. The continuous experience of constraints and unreasonable behaviours among state agents contributed to a “shared moral indignation”. The agency component kicked in by telling campaigners that “something can be done” about this injustice, and “that ‘we’ can do something”. But to construct this identity of “we”, it needs to be set against “some ‘they’ who have different interests or values.”⁶³

Throughout the legal mobilization, campaigners agreed it was an eye-opening learning process. They were exposed to – and indeed witnessed – the possibilities for agency to challenge the state’s infallibility. Despite everyday experiences of bad policies and administrative abuses, many ordinary Chinese would balk

60 As Du (2015)’s study of Chinese court design for criminal trials suggests, the “face-to-face placement symbolises the opposing and competing relationship between the two sides”. This adversarial layout brings to mind also that of the UK parliament, known for its equally adversarial debates.

61 Yang 2010, 120.

62 Snow et al 1986, 464.

63 Gamson 1996, 29.

at the costly option of legal redress.⁶⁴ One of the listeners at the “shield” hearing gave this astute observation. Attached to a local service-delivery NGO, she claimed that most people either know little of legal channels, or have no confidence in their individual efficacy. Their powerlessness vis-à-vis the state, she reckoned, is akin to an ant versus an elephant – but she cheekily added, “but sometimes, even ants can eat an elephant!” (*mayi dou keyi chi daxiang* 蚂蚁都可以吃大象)⁶⁵

For many, it was their first chance to exercise agency. It was in fact Fei’s first time stepping into a courtroom. Despite the numerous instances of frustrations and indignation, navigating the legal process could also be energizing and empowering. It is a kind of resistance that aims to “make [the state] suffer” (*zheteng tamen* 折腾他们) for flouting the rules.⁶⁶ Indeed, campaigners relished at the opportunity of giving the state agencies a hard time, frequently eliciting the phrase “very fun” (*hen haowan* 很好玩) throughout their discussions. Therefore, engaging the law parallels “consentful contention” in “exhibit[ing] a game-like structure that subordinate actors take pleasure in attempting to master”.⁶⁷

Campaigners’ direct contact with the state only strengthened the critical consciousness they might already possessed. At a meeting on 23 May, Fei excitedly shared her recent experience of lodging her complaints to “110”.⁶⁸ She first called to complain about illegal parking on the sidewalks. But having waited for an hour with no police appearing, she called back, only to get a rude treatment from the police officer on the line. Fei then lodged complaints against him. Days after, she received a personal apology. When she phoned again to make a different complaint, the police arrived at the scene within five minutes. Fei ended the account with a lesson to all in attendance: “call ‘110’ next time – you need to try it out to know [its effect]” (*yao shile cai zhidao* 要试了才知道). This line summed up the motivations they carried regarding engaging the law. As such, the legal campaign approximates a school for learning and believing in one’s own individual agency.

Immediately after the “shield” hearing, listeners, among whom many were strangers at first, spontaneously gathered and burst into audible discussions inside the courtroom itself. Pointed criticisms of

64 Michelson 2008.

65 Personal communication, 28 May 2015.

66 WeChat conversation, 16 October 2015.

67 Straughn 2005, 1607, fn.21.

68 “110” is the hotline for the police in China.

the defendants were sounded, even though they had yet left the room. These citizens spoke of their rights as a “subject to be served” (*bei fuwu zhuti* 被服务主体), and roundly criticized the incompetency of the street office, as well as the ridiculous areas of local traffic planning. The legal process thus offered a window into an open and civil clash, where one could indulge in “rights” talk.

The discourse of citizenship and rights percolated throughout the campaign. *Against* a local state that had unmistakably different interests and values, campaigners established a collective identity of “citizens”. Tied with this identity is the critical consciousness over the meanings of citizenship. It entails consciousness not only of given rights, but also that of means of agency to satisfy those rights. “Rights-protection” efforts in turn are channelled into the greater good of promoting the “rule of law”. As several discussions involving Fei reveal, her hope was to “push for the government to rule according to law” (*tuidong zhengfu yifa zhiguo* 推动政府依法治国), and that other citizens would follow suit and use the law to do so. Even if she were to lose her suits, she believed state agencies would be less likely to persist in their old ways. If most citizens and government officials are law-illiterate, then they could educate them.⁶⁹

Professional ties

Legal mobilization is a knowledge-intensive process, and because of the uncertainty surrounding court processes, the chosen legal strategy may be decisive.⁷⁰ In such a scenario, it requires expertise not only in the law, but also in the issue domain itself. ZGA thus brought on a few lawyers to the WeChat group. When Fei and her colleagues were unsure about certain legal procedures or the propriety of the court’s action, these lawyers stepped in to supply guidance and assurances, even urging patience when the court had not promptly responded. For instance, the court rang up one of the volunteers whom had filed her own suit for a meet-up. Suspecting it was an attempt to persuade her to drop the suit, one lawyer told her to ignore it because it was not a standard legal procedure.⁷¹ Similarly, one volunteer affiliated with the local

69 WeChat conversations, 9 and 25 September 2015.

70 As the lawyer for the FON Yunnan lawsuit explains, legal strategy (*celue xuanze* 策略选择) determines the outcome. Zeng Xiangbin. 2012. “Gonyi susong tuidong huanjing fazhi – cong Yunnan gezha wuran yinfa de huanjing gongyi susong diyi an tanqi (Public interest litigation pushes environmental rule-of-law: beginning with the first environmental public interest litigation over Yunnan’s chromic slag pollution),” *The Aozora Foundation*, <http://aozora.or.jp/wp-content/uploads/2012/03/75d47cee8e9047e548f13a5a9745041c.pdf>. Accessed 31 March 2016.

71 WeChat conversations, 10 August 2015.

urban planning and design institute was helpful with her knowledge about traffic design. She assisted when the lawyer needed information on the optimal width of a parking space and walkway.⁷²

Furthermore, Fei viewed the media as capable of shaping public opinion, which in turn could pressure the state. Therefore, she appealed often to her personal network of reporters to cover the hearings. As she told me, “[the legal struggle] will make a difference, only if there is pressure from public opinion and the media picks it up (*yaoyou yulun yali yu meiti genjin, cai youyong* 要有舆论压力与媒体跟进，才有用).”⁷³ Moreover, the crowd-funding method of fundraising also pushed the campaigners to mobilize their own social networks for donation. Fellow environmentalists also constantly provided encouragement and suggestions when faced with uncertainties in how to effectively publicize the hearings or to raise funds through social media.

Finding a public interest lawyer or an urban planning expert is not easy, and certainly demands deliberate networking with these professionals. The direction of embeddedness is then gravitated towards professionals operating at the margins of state control. Though embedded ties with the state are not mutually exclusive with this, legal mobilization does reduce the salience of such ties, paving the way for a less embedded activism. For example, rather than mainly relying on government insiders as “back channels” of information to build their legal case, ZGA made use of DGI for this purpose.

Conclusion

“The realm of consciousness gives us a kind of privileged access to lines of action that may – just may – become plausible at some future date.”⁷⁴

In a city with a 3.73 million population, the amount of donation, the number of donors, and the size of court audience throughout this legal campaign indicate a disproportionately low level of public participation. Though public outreach was on ZGA’s agenda, their finite resources had solely been dedicated to the legal action thus far. Hence, insofar as the impact is assessed based on fostering widespread critical awareness in the society, it is probably very limited.

⁷² Personal observations at a campaign meeting, 23 May 2015.

⁷³ Personal communication with Fei, 12 May 2015.

⁷⁴ Scott 1985, 38.

But could what has been teased out from the campaigners' consciousness hint at what lies ahead? It is fair to conclude that ENGOs increasingly see the viability of legal channels as a remedy for environmental grievances. The diffusion of legal strategies across the country is already taking place, and is likely to grow quicker. Due to obvious limitations with a single case study, one could not generalize with confidence whether this heralds litigiousness among environmentalists, or even the civil society at large. Nonetheless, a few observations tentatively point to this direction.

First, ENGOs have been actively undertaking legal measures in environmental disputes. FON, the archetype of embedded activism, has in fact been leading the ENGO bandwagon of litigiousness with its involvement in environmental public interest litigation.

Second, my research elsewhere in an interior province has discovered a rudimentary formation of professional networks between ENGOs and local law firms. Given legal expertise on environmental issues is concentrated in the coastal regions, one ENGO had commenced a project in 2014 to link up with local legal professionals, as well as other ENGOs, to build up their "legal capacity" (*falv nengli* 法律能力).⁷⁵ This potentially reduces over-reliance on personal networks with state officials in certain areas of environmental advocacy.

Third, legal mobilization offers the obvious advantage of rendering the need for mass mobilization less salient, a position with which ENGOs are more comfortable. Restricted public participation and woeful environmental awareness, about which environmentalists regularly complain, does not severely impede legal advocacy. This is compatible with the general authoritarian climate in which mass mobilization is always held with suspicion. Instead, public opinion is mobilized through media publicity of the legal mobilization itself. Nevertheless, there are reasons to believe that older and more mature ENGOs are more likely to turn to litigation. ENGOs, which are underfunded or occupy a narrow niche, are less inclined to do so. To the possibility of legal mobilization, a person from one such ENGO responded – deliberately in English – "no time, no money".⁷⁶

More importantly, the legal campaign expressed an intent of diffusion. Fei declared, "I will go ahead

⁷⁵ Interview with an ENGO worker, Chengdu, 14 September 2015.

⁷⁶ Interview with ENGO workers, Chengdu, 21 August 2015.

and find the path for everyone, after gaining the experience, everyone can then follow suit (*wo xian zai qianmian gei dajia tanlu, youle jingyan, zai rang dajia genjin* 我先在前面给大家探路，有了经验，再让大家跟进)⁷⁷ FON has also described its foray into various legal cases as “testing the law themselves” (*yishen shifa* 以身试法)⁷⁸ Certain ENGOs that have no legal expertise have already demonstrated interest in legal advocacy.⁷⁹ Moreover, included in the WeChat group were ENGO representatives interested in urban mobility issues. Pre-existing horizontal connections linking ENGOs would greatly facilitate such diffusion.⁸⁰ Such developments in the ENGO sphere are grassroots versions of “local experiments” with the law that have characterized China’s national policy process.⁸¹ The more resourceful and innovative organizations take the leap into unknown territories, providing in return lessons and even models for emulation.

Though the action repertoire of many ENGOs still predominantly follows the contours of “embedded activism”, neglecting other forms of action risks underestimating the “disembedding” moments of environmental activism, and indeed the possibilities for “disembedded activism”. ENGOs increasingly see the possibilities of “using the law as their weapon” to attain new rights.⁸² As Merry argues, “law contains both elements of domination and the seeds of resistance”.⁸³ This article shows that though legal reforms in China are driven by the state’s preoccupation with economic development, social stability and regime legitimacy, their unintended consequences are far-reaching, to the extent that courts are emerging as institutional sites for “micro-assertions of rights...[that] are distinctly different from community compromises”.⁸⁴

Ho and Edmonds have suggested that “embedded activism” was meant to acknowledge what is likely a “transient phase”.⁸⁵ If so, then its successor phase may very well be, in an ENGO worker’s words, “environmental protection according to law” (*yifa huanbao* 依法环保).

77 WeChat conversation, 4 June 2015.

78 Friends of Nature. 2015. “*Huanbao gongyi susong jianbao – 2015 nian 2 yue* (Environmental public interest litigation newsletter – February 2015),” 6 March, <http://www.fon.org.cn/index.php/index/post/id/2533>. Accessed 13 November 2015.

79 I am aware of two ENGOs which had sent representatives to observe court hearings involving environmental disputes.

80 Landry (2008) demonstrates that rapid diffusion is likely when it is mediated by social networks.

81 Heilmann 2008. For a similar observation, see Stern 2013.

82 Gallagher 2006.

83 Merry 1990, 8.

84 Woo 2011.

85 Ho and Edmonds 2008, 222.

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