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ARTICLE

The Compensation Trap: The Limits of Community-Based Pollution Regulation in China

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I. INTRODUCTION

A. Pollution Regulation in Emerging Markets

The control of environmental risks increasingly demands effective regulation in "industrializing countries" such as India, Brazil, and China. The global integration, economic growth, agricultural commercialization, urbanization, and industrialization of these countries have shifted the worst environmental hazards from the industrialized to the industrializing world. Consider, for example, the daunting scale of pollution in China; according to recent estimates, it causes

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750,000 premature deaths annually.[1] About 300 million Chinese people drink contaminated water on a daily basis, and 190 million of them suffer from related illnesses.[2] Moreover, sixteen of the world's twenty most polluted cities are in China.[3] Neighbors including Russia, South Korea, and Japan have long suffered from China's pollution, which increasingly influences more distant regions. A striking example is that on some days, according to the U.S. Environmental Protection Agency (EPA), twenty-five percent of suspended air particulates in Los Angeles originate from the People's Republic.[4] China also became a dominant factor in global climate change when it surpassed the U.S. in 2006 as the world's number one producer of greenhouse gases.[5]

To control environmental risks, industrialized countries that are part of the Organization for Economic Co-Operation and Development (OECD) have applied a combination of regulatory instruments but with mixed success. Direct legal instruments, in which a government sets standards and issues permits to polluting facilities, dominated the early regulatory landscape.[6] In later years, economic market-based instruments, such as discharge fees, pollution taxes, and emissions trading systems,

1. Richard McGregor, *750,000 a Year Killed by Chinese Pollution*, FIN. TIMES (July 2, 2007), http://www.ft.com/cms/s/0/8f40e248-28c7-11dc-af78-000b5df10621.html. *See generally* WORLD BANK & STATE ENVTL. PROT. ADMIN., COSTS OF POLLUTION IN CHINA: ECONOMIC ESTIMATES OF PHYSICAL DAMAGES (2007), *available at* http://siteresources.worldbank.org/INTEAPREGTOPENVIRONMENT/ Resources/China_Cost_of_Pollution.pdf.

2. ORGANISATION FOR ECON. CO-OPERATION & DEV., OECD ENVIRONMENTAL PERFORMANCE REVIEW: CHINA 239 (2007) [hereinafter OECD PERFORMANCE REVIEW], *available at* http://www.efchina.org/csepupfiles/report/200812095029729.8523773582758.pdf/Environmental%20Performance%20Review%20-%20China%2007-23-07.pdf.

3. Elizabeth C. Economy, *The Great Leap Backward? The Costs of China's Environmental Crisis*, 86 FOREIGN AFF. 38, 40 (2007).

4. *Id*. at 44.

5. *China Now No. 1 in CO2 Emissions; USA in Second Position*, PBL NETH. ENVTL. ASSESSMENT AGENCY, http://www.pbl.nl/en/dossiers/Climatechange/moreinfo/Chinanowno1inCO2emissionsUSAinsecondposition (last visited Mar. 18, 2012).

6. *See generally* EUGENE BARDACH & ROBERT A. KAGAN, GOING BY THE BOOK: THE PROBLEM OF REGULATORY UNREASONABLENESS (1982); NEIL GUNNINGHAM ET AL., SMART REGULATION: DESIGNING ENVIRONMENTAL POLICY (1998).

were incorporated into regulatory frameworks.[7] In addition to mandatory approaches, OECD countries have also experimented with a wide range of voluntary or semi-voluntary programs, such as certification and public disclosure, as well as quasi-voluntary methods, such as environmental covenants and government-sponsored self-regulatory mechanisms.[8] Industrializing countries, which are not a part of the OECD, have copied these regulatory instruments, but effective implementation has been difficult, leaving national and global risks under-regulated.[9]

A limited law enforcement capacity and low levels of compliance are factors that explain why environmental regulation in industrializing countries has been inadequate.[10]

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7. *See generally* ALBERT WEALE, THE NEW POLITICS OF POLLUTION (1992); TOM H. TIETENBERG, EMISSIONS TRADING: PRINCIPLES AND PRACTICE (2006).

8. *See, e.g.*, REGULATING FROM THE INSIDE: CAN ENVIRONMENTAL MANAGEMENT SYSTEMS ACHIEVE POLICY GOALS? (Cary Coglianese & Jennifer Nash eds., 2001); GUNNINGHAM ET AL., *supra* note 6.

9. *See, e.g.*, DARA O'ROURKE, COMMUNITY-DRIVEN REGULATION: BALANCING DEVELOPMENT AND THE ENVIRONMENT IN VIETNAM (2004); LESLEY K. MCALLISTER, MAKING LAW MATTER: ENVIRONMENTAL PROTECTION AND LEGAL INSTITUTIONS IN BRAZIL (2008); Adriaan Bedner, *Consequences of Decentralization: Environmental Impact Assessment and Water Pollution Control in Indonesia*, 32 LAW & POL'Y 38 (2010); ALLEN BLACKMAN, RES. FOR THE FUTURE, DISCUSSION PAPER 00-02-REV, INFORMAL SECTOR POLLUTION CONTROL: WHAT POLICY OPTIONS DO WE HAVE? (2000), *available at* http://www.jac-ccc.org/PDN-ARP/RFF/BLACKMAN.PDF; ALLEN BLACKMAN, RES. FOR THE FUTURE, DISCUSSION PAPER 05-31, COLOMBIA'S DISCHARGE FEE PROGRAM: INCENTIVES FOR POLLUTERS OR REGULATORS? (2005), *available at* http://www.mamacoca.org/docs_de_base/Fumigas/rff-dp-05-31.pdf; Allen Blackman, *Introduction: Small Firms and the Environment in Developing Countries*, *in* SMALL FIRMS AND THE ENVIRONMENT IN DEVELOPING COUNTRIES: COLLECTIVE IMPACTS, COLLECTIVE ACTION 3 (Allen Blackman ed., RFF Press 2006) [hereinafter Blackman, *Small Firms*]; Benjamin van Rooij & Carlos Wing-Hung Lo, *A Fragile Convergence: Understanding Variation in the Enforcement of China's Industrial Pollution Law*, 32 LAW & POL'Y 14 (2010); David Stuligross, *The Political Economy of Environmental Regulation in India*, 72 PAC. AFF. 392 (1999).

10. *See generally* JEAN-JACQUES LAFFONT, REGULATION AND DEVELOPMENT (2005); Blackman, *Small Firms*, *supra* note 9; WORLD BANK, GREENING INDUSTRY: NEW ROLES FOR COMMUNITIES, MARKETS AND GOVERNMENTS (2000), *available at* http://econ.worldbank.org/external/default/main?pagePK=64165259&theSitePK=469372&piPK=64165421&menuPK=64166093&entityID=000094946_9911240530591; van Rooij & Lo, *supra* note 9; O'ROURKE, *supra* note 9; Lesley McAllister et al., *Reorienting Regulation: Pollution Enforcement in Industrializing Countries*, 32 LAW & POL'Y 1 (2010); MCALLISTER, *supra* note 9.

China serves as an example; in many fields of regulation, including arable land protection,[11] pollution,[12] food safety,[13] mining,[14] intellectual property rights,[15] and labor,[16] enforcement has been weak and violations widespread. Low compliance and weak enforcement are mutually reinforcing, creating a vicious circle that undermines the implementation of any regulatory instrument, be it legal, economic, or voluntary.[17] Such vicious circles are often embedded in and facilitated by a governance structure that is susceptible to the capture of state regulatory

11. *See* BENJAMIN VAN ROOIJ, REGULATING LAND AND POLLUTION IN CHINA: LAWMAKING, COMPLIANCE, AND ENFORCEMENT; THEORY AND CASES (2006), *available at* https://openaccess.leidenuniv.nl/bitstream/handle/1887/5433/Thesis.pdf?sequence=1%20.

12. *See* XIAOYING MA & LEONARD ORTOLANO, ENVIRONMENTAL REGULATION IN CHINA 182 (2000); ORGANISATION FOR ECON. CO-OPERATION & DEV., ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT IN CHINA: AN ASSESSMENT OF CURRENT PRACTICES AND WAYS FORWARD 34 (2006); Bryan Tilt, *The Political Ecology of Pollution Enforcement in China: A Case from Sichuan's Rural Industrial Sector*, 192 CHINA Q. 915 (2007); VAN ROOIJ, *supra* note 11; OECD PERFORMANCE REVIEW, *supra* note 2.

13. *See* WORLD BANK, CHINA'S COMPLIANCE WITH FOOD SAFETY REQUIREMENTS FOR FRUITS AND VEGETABLES, PROMOTING FOOD SAFETY, COMPETITIVENESS, AND POVERTY REDUCTION (2007), *available at* http://www-wds.worldbank.org/servlet/main?menuPK=64187510&pagePK=64193027&piPK=64187937&theSitePK=523679&entityID=000310607_20070802162742; Aleda V. Roth et al., *Unraveling the Food Supply Chain: Strategic Insights from China and the 2007 Recalls*, 44 J. SUPPLY CHAIN MGMT. 22 (2008); David Barboza, *In Food Safety Crackdown, China Closes 180 Plants*, N.Y. TIMES (June 27, 2007), *available at* http://www.nytimes.com/2007/06/27/world/asia/27cnd-China.html?_r=1&scp=1&sq=David%20Barboza,%20In%20Food%20Safety%20Crackdown,%20China%20Closes%20180%20Plants,%20N.Y.%20TIMES,%20June%2027%202007&st=cse.

14. *See* Tim Wright, *The Political Economy of Coal Mine Disasters in China: "Your Rice Bowl or Your Life"*, 179 CHINA Q. 629 (2004).

15. *See* ANDREW C. MERTHA, THE POLITICS OF PIRACY: INTELLECTUAL PROPERTY IN CONTEMPORARY CHINA (2005).

16. *See* Sean Cooney, *China's Labour Law, Compliance and Flaws in Implementing Institutions*, 49 J. INDUS. REL. 673 (2007); Sean Cooney, *Making Chinese Labor Law Work: The Prospects for Regulatory Innovation in the People's Republic of China*, 30 FORDHAM INT'L L.J. 1050 (2007).

17. *See generally* Gjalt Huppes & Robert A. Kagan, *Market-Oriented Regulation of Environmental Problems in the Netherlands*, 11 J.L. & POL'Y 215 (1989); Darren Sinclair, *Self-Regulation Versus Command and Control? Beyond False Dichotomies*, 19 J.L. & POL'Y 529 (1997).

institutions by business elites.[18] Several factors, including the unclear demarcation between state and market institutions,[19] the state's lack of steering and coordinating capacity,[20] and the dominance of informal networks over formal legal structures[21] can foster this capture.

To deal with the increasingly worrying levels of pollution from industrializing countries, we need to understand how regulatory instruments can be effective when there is a vicious circle of low compliance and weak enforcement occurring in capture-prone governance contexts. This necessitates a reorientation of regulatory theory, shifting the focus from industrialized to industrializing countries, concentrating on how regulation functions and how it can be improved when compliance levels and enforcement capacity are low, and studying regulatory design and implementation in governance settings where business and regulators are closely aligned.[22]

B. Citizen-Based Pollution Regulation as a Solution?

One idea[23] for breaking through the regulatory deadlock that so often exists in industrializing countries is to expand the

18. *See* Clifford Russell & William Vaughan, *The Choice of Pollution Control Policy Instruments in Developing Countries: Arguments, Evidence and Suggestions*, *in* THE INTERNATIONAL YEARBOOK OF ENVIRONMENTAL AND RESOURCE ECONOMICS 2003/2004 (Henk Folmer & Tom Tietenberg eds., 2003).

19. *See, e.g.*, TONY SAICH, GOVERNANCE AND POLITICS OF CHINA (1st ed. 2001); RICHARD ROBISON & VEDI HADIZ, REORGANISING POWER IN INDONESIA: THE POLITICS OF OLIGARCHY IN AN AGE OF MARKETS (2004); Susanna B. Hecht, *Soybeans, Development and Conservation on the Amazon Frontier*, 36 DEV. & CHANGE 375 (2005).

20. *See* Henk Schulte Nordholt, *Renegotiating Boundaries: Access, Agency and Identity in Post-Soeharto Indonesia*, 159 BIJDRAGEN TOT DE TAAL-, LAND- EN VOLKENKUNDE 550, 570 (2003); Andrew C. Mertha, *China's "Soft" Centralization: Shifting* Tiao/Kuai *Authority Relations*, 184 CHINA Q. 791, 792 (2005); *see also* MCALLISTER, *supra* note 9.

21. *See* Tim Lindsey, *The Criminal State: Premanisme and the New Indonesia*, *in* INDONESIA TODAY: CHALLENGES OF HIST. (Grayson J. Lloyd & Shannon L. Smith eds., 2001); Mayfair Mei-hui Yang, *The Resilience of* Guanxi *and Its New Deployments: A Critique of Some New* Guanxi *Scholarship*, 170 CHINA Q. 459, 465 (2002); *see also* KATHRYN HOCHSTETLER & MARGARET E. KECK, GREENING BRAZIL: ENVIRONMENTAL ACTIVISM IN STATE AND SOCIETY (2007).

22. *See* McAllister et al., *supra* note 10.

23. Another idea is the introduction of market-based instruments.

regulatory space for non-state actors such as consumers, NGOs, and local communities.[24] By involving these non-state actors, less state capacity is needed and capture-type state-business relations can be circumvented through the force of a relatively independent civil society. Citizen complaints can add inspection capacity to aid state regulators. Citizens can oversee captured state regulators and pressure them into action through legal and political means. They can also help to enhance the legitimacy for environmental regulation and support weak environmental regulators. Citizens can directly act as regulators by exerting pressure on polluting firms through legal or political means. That said, we know from the broader literature that community-based pollution regulation is not a panacea and it requires certain conditions to be successful. We know that the higher the income, the level of awareness, the independency of local industry, and the capacity for organization and leadership, the more likely citizen efforts are to succeed.[25] Furthermore, we know that successful community regulation requires support from state and civil society organizations.[26] These attributes may be particularly lacking in rural communities located in rapidly developing and industrializing countries of the South, and thus, the promise of community regulation may go unfulfilled.

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24. *See* Blackman, *Small Firms*, *supra* note 9, at 1; O'ROURKE, *supra* note 9, at 6, 14; NEIL GUNNINGHAM ET AL., SHADES OF GREEN: BUSINESS, REGULATION, AND ENVIRONMENT 53-153 (Stanford Univ. Press 2003); Bridget M. Hutter & Clive J. Jones, *From Government to Governance: External Influences on Business Risk Management*, 1 REG. & GOVERNANCE 32-36 (2007); Neil Gunningham, *Regulating Small and Medium Sized Enterprises*, 14 J. ENVTL. L. 3-32 (2002). *See generally* BRIDGET M. HUTTER, CTR. FOR ANALYSIS OF RISK & REG., ECON. & SOC. RES. COUNCIL, THE ROLE OF NON-STATE ACTORS IN REGULATION (2006), *available at* http://eprints.lse.ac.uk/36118/1/Disspaper37.pdf; BRIDGET M. HUTTER & JOAN O'MAHONY, CTR. FOR ANALYSIS OF RISK & REG., ECON. & SOC. RES. COUNCIL, THE ROLE OF CIVIL SOCIETY ORGANISATIONS IN REGULATING BUSINESS (2004), *available at* http://www2.lse.ac.uk/researchAndExpertise/units/CARR/pdf/DPs/Disspaper26.pdf; SHAKEB AFSAH ET AL., RES. FOR THE FUTURE, HOW DO PUBLIC DISCLOSURE CONTROL PROGRAMS WORK? EVIDENCE FROM INDONESIA (2000), *available at* http://www.rff.org/RFF/Documents/RFF-DP-00-44.pdf.

25. Benjamin van Rooij, *The People Vs. Pollution: Understanding Citizen Action Against Pollution in China*, 19 J. CONTEM. CHINA 55, 63-65 (2010).

26. *See generally* O'ROURKE, *supra* note 9; Benjamin van Rooij, *Greening Industry Without Enforcement? An Assessment of the World Bank's Pollution Regulation Model for Developing Countries*, 32 J.L. & POL'Y 1 (2010).

In the last decade, China has expanded the possibilities for citizen-based pollution regulation. China has expanded the legal possibilities for pollution compensation redress[27] through reversing the burden of proof of causation,[28] allowing collective action with multiple plaintiffs,[29] introducing disclosure systems,[30] expanding public participation in environmental impact assessments,[31] and introducing a system providing for the right to environmental information.[32] The state has also made efforts

27. For an elaborate discussion of this, see Benjamin van Rooij, *The People's Regulation: Citizens and Implementation of Law in China*, 25 COLUM. J. ASIAN L. (forthcoming Aug. 2012).

28. *See* Zhong Hua Ren Min Gong He Guo Shui Wu Ran Fang Zhi Fa (中华人民共和国水污染防治法) [Law of the People's Republic of China on the Prevention and Control of Water Pollution] (promulgated by the Standing Comm. of the Sixth Nat'l People's Cong., May. 11, 1984, amended pursuant to the Decision on Amending the Law of the People's Republic of China on Prevention and Control of Water Pollution adopted at the 19th meeting of the Standing Committee of the Eight National People's Congress on May 15, 1996, and amended at the 32nd meeting of the Standing Committee of the Tenth National People's Congress on Feb. 28, 2008) art 87 (China); Zhong Hua Ren Min Gong He Guo Gu Ti Fei Wu Fang Zhi Fa (中华人民共和国固体废物防治法) [Law of the People's Republic of China on the Prevention and Control of Solid Waste] (promulgated by the Standing Comm. of the Eight Nat'l People's Cong., Oct. 30, 1995, amended pursuant to the Decision on Amending the Law of the People's Republic of China on Prevention and Control of Water Pollution adopted at the 13th meeting of the Standing Committee of the Tenth National People's Congress on Dec. 29, 2004) art. 86 (China); Zui Gao Ren Min Fa Yuan Guan Yu Min Shi Su Song Zheng Ju de Ruo Gan Gui Ding (最高人民法院关于民事诉讼证据的若干规定) [Supreme People's Court Various Regulations Rgearding Evidence for Civil Suits] (promulgated by the Sup. Peoples'Ct. Dec. 6, 2001, effective Apr. 1, 2002) art. 4 section 3 (China).

29. *See* Zhong Hua Ren Min Min Shi Su Song Fa (中华人民共和国民事诉讼法) [Law of the People's Republic of China on Civil Procedure] (promulgated by the seventh Nat'l People's Cong. at the 4th Plenary Apr. 9, 1991, amended pursuant to the decision on Amending the Law of the People's Republic of China on Civil Procedure adopted at the 13th meeting of the Standing Committee of the Tenth Nat'l People's Congress on Oct. 28, 2007) art 53 (China); Law of the People's Republic of China on the Prevention and Control of Water Pollution, *supra* note 28, at art. 88.

30. *See generally* Hua Wang et al., *Environmental Performance Rating and Disclosure: China's Green-Watch Program* (World Bank, Policy Research Working Paper No. 2889, 2002), *available at* http://www-wds. worldbank.org/servlet/WDSContentServer/WDSP/IB/2002/10/18/000094946_02100304104987/additional/126526322_20041117182557.pdf.

31. *See generally* VAN ROOIJ, *supra* note 11.

32. *See* JAMIE P. HORSLEY, CHINA L. CTR., YALE L. SCH., UPDATE ON CHINA'S OPEN GOVERNMENT INFORMATION REGULATIONS: SURPRISING PUBLIC DEMAND

to engage citizens in its law enforcement work, establishing special complaint hotlines, offering rewards for reliable citizen information about pollution, and getting citizens involved in pollution enforcement campaigns targeted at citizen grievances.[33] Meanwhile, Chinese environmental civil society organizations have become increasingly active in aiding and stimulating citizens to take action against pollution.[34]

These measures seem to have had some effect. There is increasing evidence that, despite limited political freedom and a non-independent judiciary, Chinese citizens living in the vicinity of polluting enterprises have become increasingly activist – helped in part by China's growing environmental NGO movement.[35] For instance, citizens have sued chemical plants responsible for destroying their fishponds. They have voiced formal complaints demanding enforcement action from environmental authorities. They have petitioned other local and national government institutions, going all the way to Beijing. Lastly, citizens have organized mass demonstrations against pollution.[36] Citizens play an increasingly important role in Chinese pollution regulation, and the numbers prove it. In 2006, Environmental Protection Bureaus (EPBs) in China received 616,122 complaints and petitions from citizens concerning

YIELDING SOME POSITIVE RESULTS 2 (2010), *available at* http://www.law.yale.edu/documents/pdf/Intellectual_Life/CL-OGI_Update_for_freedominfo_Horsley_article_4-6-10.pdf.

33. *See* VAN ROOIJ, *supra* note 11, ch. 14.

34. *See generally* van Rooij, *supra* note 25.

35. *See* Peter Ho, *Greening without Conflict? Environmentalism, NGOs and Civil Society in China*, 32 DEV. & CHANGE 893, 899-900 (2001). *See generally* CHINA'S EMBEDDED ACTIVISM: OPPORTUNITIES AND CONSTRAINTS OF A SOCIAL MOVEMENT (Peter Ho & Richard Louis Edmonds eds., 2008) (laying out an overview of Chinese Environmental NGOs); Guobin Yang, *Environmental NGOs and Institutional Dynamics in China*, 46 CHINA Q. 181 (2005).

36. *See* William P. Alford et al., *The Human Dimensions of Pollution Policy Implementation: Air Quality in Rural China*, 11 J. CONTEMP. CHINA 32 (2002); Jun Jing, *Environmental Protests in China*, *in* CHINESE SOCIETY: CHANGE, CONFLICT AND RESISTANCE 197, 200-02 (Elisabeth J. Perry & Mark Selden eds., 2004). *See generally* ELIZABETH C. ECONOMY, THE RIVER RUNS BLACK: THE ENVIRONMENTAL CHALLENGE TO CHINA'S FUTURE (2004); VAN ROOIJ, *supra* note 11; Anna M. Brettell, The Politics of Public Participation and the Emergence of Environmental Proto-Movements in China (Dec. 9, 2003) (unpublished Ph.D. dissertation, University of Maryland) (on file with the University of Maryland).

pollution[37] compared to 247,741 in 2000. Meanwhile, the State Environmental Protection Administration (SEPA) stated that over 510,000 cases of "public conflict" had been initiated in 2005 by "severe environmental problems" that threatened social stability.[38] Citizens have even tried to sue polluters in China's notoriously inaccessible and protectionist courts: the number of cases has fluctuated, with 2,146 cases nationwide in 2006, compared to 4,453 and 1,545 in 2004 and 2005, respectively.[39]

Most analyses of citizen activism against pollution have looked at court cases,[40] at the effects of complaints on enforcement,[41] or at linkages between income levels, pollution levels, and complaints.[42] Generally, we know that citizens in China, as elsewhere, require a certain amount of independence from the local industry to take action.[43] We also know that knowledge about pollution need not lead to the development of a cause for complaint and a resultant course of action.[44] We understand that local governments and industries can obstruct citizens attempting to take action, while legal aid centers and the

37. STATE ENVTL. PROT. ADMIN., ZHONGGUO HUANJING TONGJI NIANBAO 2006 [CHINA ENVIRONMENT STATISTICAL REPORT 2006] (2007).

38. *Officials: Environmental Deterioration Threatens Social Stability,* BBC CHINESE. COM, (Apr. 19, 2006, 4:10 PM), http://news.bbc.co.uk/chinese/simp/low/newsid_4920000/newsid_4923800/4923810.stm.

39. *Representative Mei Lüzhong: Recommendations on the Establishment of Environmental Tribunals*, XINHUA (Mar. 8, 2008, 4:49 PM), http://news.xinhuanet.com/misc/2008-03/08/content_7746377.htm.

40. *See generally* Rachel E. Stern, *On the Frontlines: Making Decisions in Chinese Civil Environmental Lawsuits*, 32 LAW & POL'Y 79 (2010); van Rooij, *supra* note 25; Alex Wang, *The Role of Law in Environmental Protection in China: Recent Developments*, 8 VT. J. ENVTL. L. 195, 207 (2007).

41. *See, e.g.*, van Rooij & Lo, *supra* note 9, at 22; Carlos Wing Hung Lo & Sai Wing Leung, *Environmental Agency and Public Opinion in Guangzhou: The Limits of a Popular Approach to Environmental Governance*, 163 CHINA Q. 677, 680 (2000). *See generally* Carlos Wing-Hung Lo & Gerald Erick Fryxell, *Governmental and Societal Support for Environmental Enforcement in China: An Empirical Study in Guangzhou*, 41 J. DEV. STUD. 558 (2005).

42. van Rooij & Lo, *supra* note 9, at 24.

43. van Rooij, *supra* note 25, at 61.

44. *Id*. at 61-62.

media can be very helpful, if the citizens can get them to help out.[45]

C. Aims, Methods, and Outline

Existing studies offer a limited view of citizen-based pollution regulation. An initial problem is that existing data and analyses tell us little about how citizens are moved to take action and assume a regulatory role. We understand little about the interaction between the citizens, the factories involved, and local state actors. Few of them have looked in depth at how citizens perceive pollution problems and how such awareness translates into courses of action.[46] Moreover, existing studies have been biased towards cases in which citizens took action outside of their own locality. These studies fail to inform us of cases where citizens either did not take action or took action only through localized negotiations or protests that were not covered by the media. Michelson's work on dispute processing in China demonstrates that there are many citizens with grievances who do not take action outside their locality, either putting up with such problems or seeking local options.[47]

Against the background of the promises and challenges of community-based regulation and the limitations of existing research, this article presents a unique in-depth analysis of a localized pattern of citizen involvement in pollution regulation. This pattern, which is drawn from a detailed ethnographic case study of one locality in southwestern China, has three aspects. First, despite a well-developed awareness of pollution related

45. *Id*. at 62; *see also* Kathinka Fürst, Access to Justice in Environmental Disputes: Opportunities and Obstacles for Chinese Pollution Victims (2008) (unpublished M.A. thesis, University of Oslo) (on file with author).

46. *See, e.g.*, Anna Lora-Wainwright, *An Anthropology of 'Cancer Villages': Villagers' Perspectives and the Politics of Responsibility*, 19 J. CONTEMP. CHINA 79 (2010); Jing, *supra* note 36; Bryan Tilt, *Perceptions of Risk from the Industrial Pollution in China: A Comparison of Occupational Groups*, 65 HUM. ORG. 115 (2006); Alford et al., *supra* note 36.

47. *See* Ethan Michelson, *Climbing the Dispute Pagoda: Grievances and Appeals to the Official Justice System in Rural China*, 72 AM. SOC. REV. 459 (2007) [hereinafter Michelson, *Climbing the Dispute Pagoda*]; Ethan Michelson, *Justice From Above or Below? Popular Strategies for Resolving Grievances in Rural China*, 193 CHINA Q. 43 (2008).

damage,[48] citizens have only made limited use of the possible avenues open to them to deal with pollution. In one instance, citizen action was undertaken in a locally isolated manner at the village or town level, and consisted chiefly of negotiation and collective action. Citizens did not initiate legal action; they did not seek advice from lawyers; they did not file a complaint with the environmental protection authorities; they did not contact one of the environmental legal aid centers, and they did not seek the help of the media, even when the media came to speak to them.[49] Second, citizen demands largely focused on redress rather than ending or preventing the environmental damage. Third, citizen action resulted in compensation, not regulation; the years of collective action and negotiation resulted in minor pay-offs that barely covered the costs of pollution and had no effect on the pollution control of the factories involved. This pattern has proved resilient, despite its limited effects to control pollution or even to get sufficient compensation.

The study of this pattern offers us a unique first insight into how and why citizens have organized localized forms of activism to deal with pollution, which has so far been left largely unexamined. This view is unique as it goes beyond studies that are based on cases reported in the media, in court, or in governmental records. If all instances of citizen-based pollution regulation are an iceberg, the cases studied so far are just the tip that is visible above the water. The pattern of localized regulation studied in this paper is the part that has remained obscured under the water. Since we lack data, there is no way of knowing how such an iceberg is shaped, whether it is a pyramid, a cone, or some form of a rectangle. We can guess that the pattern studied here is not exceptional. As we know from Michelson's quantitative study of dispute processing in China, many citizens take no action (thirty-three percent) or just bilateral action negotiating with the person they deem

48. *See* Anna Lora-Wainwright, Collective Illness Experiences and Individual Uncertainty: Rural Industrial Pollution and Lay Epidemiology in China (unpublished manuscript) (on file with author).

49. On this process, see Anna Lora-Wainwright et al., *Learning to Live with Pollution: The Making of Environmental Subjects in a Chinese Industrialised Village*, 68 CHINA J. (forthcoming July 2012).

responsible for their grievances (forty-seven percent)[50], and if they do, many take localized forms of action.[51]

This article seeks to understand this particular pattern of citizen-based pollution regulation. It explores why it developed and what sustains it. This article derives lessons about the possibilities and conditions for pollution regulation in similar contexts. It argues that the social, economic, and political contexts in the local community are deeply affected by the processes of industrialization that in turn give rise to a particular form of community-based pollution regulation. In this form, monetary redress for damages caused by industrial activities – whether pollution or loss of land – becomes an overarching end. It reframes the way damages are viewed and grievances are developed, limiting the courses of action that could be taken and restraining the outcomes of such action. We find that in this case, industrialization developed into a "compensation trap," where activism became passivism, where solidarity was replaced by opportunism, and where awareness about the dangers of pollution could not translate into effective demands to control or decrease discharges. The paper analyzes how the compensation trap developed and through inference draws larger lessons for pollution regulation in China and countries with similar contexts.[52]

Apart from the large body of academic knowledge on pollution regulation and citizen activism, the article draws on insights from Gaventa's work, which studies the historical formation of power and powerlessness in an industrial community[53]. Gaventa teaches the importance of industrial stratification and the vital role that framing structures[54] can

50. *See* Michelson, *Climbing the Dispute Pagoda*, *supra* note 47, at 466.

51. *Id*.

52. Awareness levels can vary significantly, and it is worth considering whether more detailed knowledge about the risks entailed by pollution would translate into action.

53. JOHN GAVENTA, POWER AND POWERLESSNESS, QUIESCENCE AND REBELLION IN AN APPALACHIAN VALLEY (Clarendon Press. 1980).

54. Framing structures indicate the discursive frames through which people see, understand, and discuss social reality. *See generally* Maarten Hajer, *Discourse Analysis and the Study of Policy Making*, EUROPEAN POL. SCI., Autumn 2002, at 61.

have on particular instances of agency. The article also draws from power theorists about the organizational,[55] behavioral,[56] and exclusionary[57] aspects of how power shapes activism, as well as the framing aspects of power when a structure of thought[58] or routine[59] influences grievance development and courses of action.

This study is based on data collected in 2009 through extensive fieldwork carried out in five sub-villages in southwestern China, with an in-depth study of two of them. The team of researchers included social scientists, lawyers, and medical experts. The fieldwork methodology was anthropological in nature, consisting of semi-structured interviews, both long and short, and ranging from semi-formal to highly informal, as well as observations made during the weeks living in the local village. Additional data was gathered earlier in 2004 when an initial study was done on state regulation, which included interviews with relevant state enforcement agents, village leaders, and a limited number of villagers.[60] For the sake of confidentiality, all names of persons and places have been changed.

The remainder of this article consists of three sections detailing what we have identified as the three stages of community-based regulation: (1) industrial compensation in the planned economy; (2) compensation contracts and collective action; and (3) resource capitalism and opportunist acquiescence. These three stages should not be seen as strict chronological

55. *See* BARRY BARNES, THE NATURE OF POWER (1988).

56. *See* Robert A. Dahl, *The Concept of Power*, 2 BEHAV. SCI. 201, 202-04 (1957); ROBERT A. DAHL, WHO GOVERNS?: DEMOCRACY AND POWER IN AN AMERICAN CITY (1961); ROBERT A. DAHL, INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES 408 (David S. Sills ed., 1968).

57. *See* Peter Bachrach & Morton S. Baratz, *Two Faces of Power*, 56 AM. POL. SCI. REV. 947, 949 (1962); ELMER E. SCHATTSCHNEIDER, THE SEMISOVEREIGN PEOPLE: A REALIST'S VIEW OF DEMOCRACY IN AMERICA (1960).

58. *See generally* STEVEN LUKES, POWER: A RADICAL VIEW 34-35 (1st ed. 1974); MICHEL FOUCAULT, MADNESS AND CIVILIZATION: A HISTORY OF INSANITY IN THE AGE OF REASON (1965); ANTHONY GIDDENS, THE CONSTITUTION OF SOCIETY: OUTLINE OF THE THEORY OF STRUCTURATION (1984).

59. *See generally* GIDDENS, *supra* note 58; Pierre Bourdieu, *Social Space and Symbolic Power*, 7 SOC. THEORY 14 (1989).

60. *See generally* VAN ROOIJ, *supra* note 11 (detaling findings from this study).

periods[61] but rather as analytical constructs that allow us to group and highlight important aspects. These aspects constitute the evolution of community-based regulation and ultimately result in the formation of the compensation trap. These sections are followed by a discussion of how discursive and practice frameworks form during these three stages and how these frameworks influence community-based regulation. Finally, we conclude by drawing out the theoretical and practical implications of the Baocun findings.

II. INDUSTRIAL COMPENSATION IN THE PLANNED ECONOMY

A. When Industrialization Started

A few decades ago, Baocun was a purely agricultural village located in the hills adjacent to a river in southwestern China. Farmers cultivated wet rice on the best land, using water buffaloes to plow the paddies, while other land was used to grow corn and vegetables. Life was not easy; in some years villagers struggled to meet the state grain quota. Industrialization arrived when the village's immense phosphorus resources attracted state and collective investment. A large state-owned factory, called Linchang, started production, and several collectively-owned mines began to produce the raw materials needed in the factory. Meanwhile, village collectives initiated enterprises to make products for Linchang.

This was the time of the planned economy, when income originated from either the state or the collective. Industrialization brought state investments to the village and thereby increased the collective income, which no longer solely depended on agriculture. The new state-owned factory required village land for its premises. To compensate the village for the lost land, it offered to take on a set number of villagers as formal

61. A very general chronological indication sets the first stage from the early 1980s until the late 1980s, the second stage from the mid-1980s until (depending which sub-village) 2004-present, followed by the last stage, which has only occurred in some of the sub-villages (most notably in Tazu) starting from about 2004.

employees with full benefits, including housing, insurance, and pensions.[62] Meanwhile, the collective factories and mines also needed land. Seeing as the collective enterprises did not need to compensate themselves for using collectively owned land, they acquired it in exchange for nothing.

Industrialization brought pollution to Baocun. Pollution sickened the local livestock,[63] and farmers were no longer able to use water buffaloes (*shuiniu*) to plow their rice paddies. In addition, the lively agricultural market that used to be organized in the center of Baocun ceased to be profitable.[64] To compensate for the sickened livestock, Linchang not only offered to buy the buffaloes[65] but also offered to incorporate market personnel into the factory as formal workers.[66]

This was a time when villagers still wanted to become formal workers. It offered a unique opportunity for upwards social mobility, providing income, housing, insurance, and pension benefits as well as the status of a worker. Worker registration proved that one was no longer tied to the village but to the factory.[67] Industrialization thus led to stratification and the creation of a new social stratum, the industrial worker, adding to the original strata of peasants and leaders. The ties between the state enterprise and the village were still loose and largely consisted of linkages between the state and the collective industries, without directly affecting the incomes of local

62. Interview by Yunmei Wu, Yiyun Zhang & Anna Lora Wainwright with Elder Male Retired Worker, in Baocun, China (May 12, 2009) (interview transcript on file with author); Interview by Yunmei Wu & Yiyun Zhang with Elder Female Villager, in Baocun, China (May 5, 2009) (interview transcript on file with author).

63. Interview by Yunmei Wu, Yiyun Zhang & Anna Lora Wainwright with Elder Male Villager, in Baocun, China (May 5, 2009) (interview transcript on file with author).

64. Interview by Yunmei Wu & Yiyun Zhang with Elder Male Villager, in Baocun, China (Apr. 30, 2009) (interview transcript on file with author).

65. Interview by Yunmei Wu & Yiyun Zhang with Middle-aged Male Villager, in Baocun, China (May 16, 2009) (interview transcript on file with author).

66. Interview with Elder Male Villager, *supra* note 63.

67. Interview by Yunmei Wu & Yiyun Zhang with Middle-aged Female Village Committee Member, in Baocun, China (Apr. 24, 2009) (interview transcript on file with author).

villagers. All of this set the first stage of community-based regulation in Baocun village.

B. The First Community-Based Regulation

At the first stage, industrialization caused damage that was compensated for in a very indirect manner: no calculation of the damage was made nor was the damage attributed to specific individuals. Instead, a social package was offered by the state as a *douceur* for the adverse effects of industrialization. The state thus acted as a generous benefactor, and villagers were expected to be happy with what they got. In this first stage, no clear relation existed between compensation and damage. Compensation in the planned economy came from the state and was initiated by the state. It did not involve much participation or negotiation from the village collective, let alone individual villagers. As a result, no activism was needed for this type of compensation. In any case, there was no context in which activism could be organized without direct repercussions. It was still a time where the town police came into the village to arrest villagers reported to have voiced critical opinions against the state.[68] The compensation package of the planned economy had no regulatory intentions or effects, as there was little to induce the factory to prevent or control any damage. The compensation paid to the villagers consisted of salaries that the factory would have had to pay its workers anyway. The first stage set a path that guided later instances of community regulation. It has left a legacy of the all-powerful state that supports the industry and of the powerlessness of local citizens who should be happy to get anything for the damage incurred.

68. Interview with Elder Male Retired Worker, *supra* note 62.

III. COMPENSATION CONTRACTS AND COLLECTIVE ACTION

A. The Start of Compensation for Land Loss and Pollution

The second stage of community-based regulation began when the factory started to *pay* the village collective to compensate for pollution and loss of collective land. It was at this stage that damage caused by the industry became linked to monetary compensation as well as the provision of certain services like irrigation and road construction. It was also at this stage that villagers tried to organize collective action to get or improve such compensation.

Monetary compensation commenced when Linchang needed land to store residue from the phosphorous chemical fertilizer production (i.e., phosphor gypsum, *linshigao*). It did not acquire land in return for labor contracts; instead, it offered the Qingyizu sub-village a fixed amount of money for storing its waste on a designated area in their hills. A ten-year contract between the factory and the sub-village was signed, under which the factory paid 15,000 RMB[69] annually to the sub-village collective.[70] In the neighboring sub-village of Qingerzu, where the factory also wanted to store part of its waste residue, a similar contract was signed. It was stipulated that as long as the factory exists, it will provide free irrigation water in exchange for waste storage.[71] Other pollution compensation contracts followed, as industrial pollution became increasingly manifest: crops failed, the water deteriorated, and the air started to smell. With the largest compensation contract, Linchang paid Tazu sub-village 66,000 RMB annually for what was termed "agricultural compensation," which actually consisted of payments for damage resulting from pollution. Linchang also paid contract-based compensation to the

69. RMB stands for Ren Min Bi, China's national currency.

70. Interview by Yunmei Wu & Yiyun Zhang with Middle-aged Male Qing Yizu Sub-Village Committee Representative, in Baocun, China (Apr. 27, 2009) (interview transcript on file with author).

71. Interview by Yunmei Wu & Yiyun Zhang with Qing Erzu Sub-village Leader, in Baocun, China (Apr. 28, 2009) (interview transcript on file with author).

Jiaoqingzu sub-village of around 10,000 RMB and a couple of thousand to the Qingyizu sub-village.[72] Smaller factories and mines also entered into compensation agreements, often framed as end-of-year bonuses (*guonianqian*), paying 200 RMB to each villager involved and often paying more for elderly people.[73]

Concurrently with an uptick in pollution compensation, this stage saw an increasing amount of money flowing into the collective village finance as a result of payments by industry for the land used for industrial premises and mines. This change occurred as privatization set in, and the original collective and state-owned industry became mostly privately-owned.[74] As a result, land was no longer provided without payment to the collective factories and mines; it was to be paid for, on the basis of long-term contracts. The village collective remitted some of the money to the villagers, who started to get an extra 200 to 300 RMB as end-of-year bonuses.[75]

B. Negotiation and Activism for Compensation

Citizens no longer remained passive bystanders in all of this and started to actively seek better compensation. With different degrees of success, citizens organized themselves to support negotiations for pollution compensation deals or to voice that they were not happy with the deals made. They organized different forms of action, including independent testing of water wells,[76] joint requests to village leaders, and blockades of factory premises, mines, or major transport routes to industrial

72. Interview by Yunmei Wu & Yiyun Zhang with Vice-Secretary of the Village Committee, in Baocun, China (Apr. 27, 2009) (interview transcript on file with author).

73. Interview by Yunmei Wu & Yiyun Zhang with Sub-Village Leader Qing Yizu, in Baocun, China (Apr. 27, 2009) (interview transcript on file with author).

74. *See* BARRY NAUGHTON, THE CHINESE ECONOMY: TRANSITIONS AND GROWTH 121 (2007).

75. Interview by Yunmei Wu & Yiyun Zhang with Wife of Baita Sub-village Leader, in Baocun, China (Apr. 30, 2009) (interview transcript on file with author).

76. Interview with Elder Male Retired Worker, *supra* note 62.

complexes. Villagers in Tazu sub-village were particularly active; they have a local reputation for ferocity and solidarity.[77]

At first an attempt was made to involve the town authorities. Village leaders organized villagers to write a joint petition to the town government complaining about Linchang's pollution. The attempted petition failed, however, and the town authorities declined to consider their grievances. Villagers recall that Linchang sent two cars with what they think were gifts to the village leaders, who later no longer pursued the petition.[78]

In another incident, in Tazu, Linchang's discharge pipes were somehow connected to the village irrigation canals, and the acidic wastewater killed crops. Meanwhile, villagers noted that there was a high incidence of gallstones. The villagers went to the factory and demanded that it provide the same clean water as the factory itself used, and arrange free health check-ups. The factory agreed to give them the water but refused to give them check-ups.[79]

Following another spillage that killed crops and resulted in more complaints that they did not feel well (*bushufu*), villagers went to the factory to protest (*qu nao*).[80] After the factory had investigated the matter, it agreed to pay a fee based on the amount of land that was involved.[81] From this moment onwards, the sub-village started to receive an annual fixed compensation fee of 66,000 RMB.[82] Here again, villagers had demanded health check-ups, a demand which the factory ignored. As one villager recalls, "[The factory] did not dare, and even if check-ups had turned up diseases, they would not have told [the villagers]."[83]

77. Interview by Yunmei Wu, Yiyun Zhang & Anna Lora Wainwright with Niece of Village Leader, in Baocun, China (May 4, 2009) (interview transcript on file with author).

78. Interview by Yunmei Wu, Yiyun Zhang & Anna Lora Wainwright with Middle-aged Female Rice Noodle Seller, in Baocun, China (May 11, 2009) (interview transcript on file with author).

79. Interview by Yunmei Wu & Yiyun Zhang with Niece of Village Leader, in Baocun, China (May 14, 2009) (interview transcript on file with author).

80. Interview with Middle-aged Female Rice Noodle Seller, *supra* note 78.

81. Interview with Elder Retired Worker, *supra* note 62.

82. Interview with Middle-aged Female Rice Noodle Seller, *supra* note 78; Interview with Elder Retired Worker, *supra* note 62.

83. Interview with Middle-aged Female Rice Noodle Seller, *supra* note 78.

An explosion in the sulphuric acid (*liusuan*) plant several years later, which again had major effects on local crops and fish, sparked another round of activism. The village leaders and the factory had originally reached a deal after the factory itself sent its environmental protection division to investigate. The deal meant that the factory would pay for the damage, the annual compensation payment would be raised to 100,000 RMB, and the payment be raised again every three years.[84] Villagers were not happy with the deal as they considered the compensation too low. In addition, they discovered that village leaders received more than others. In response, half of Tazu sub-village went to the factory in protest, some bringing dead fish from their polluted fish ponds.[85] This time, factory representatives responded that they would not talk with villagers, only with their formal representatives. To no avail, villagers responded: "Who says so? The masses (*qunzhong*) are representatives, the masses are community members, the masses are also leaders (*guan*)."[86] In the end their pleas fell on deaf ears as the factory continued to refuse to negotiate with them. Finally, the village leaders convinced them to leave and let them talk with the factory.[87] At the time, the local media was barred from reporting the accident on orders of the local government.[88]

C. The Role of Local Leaders

Village leaders have played an important, albeit contested role, in the formation and execution of these contracts as well as in the organization of collective action. They were active in the negotiations for the compensation. They were stimulated to do so by the industry, which excluded all but the village leaders from the negotiations. Village leaders were thereby placed in an intermediary position between the villagers and the factories. This position presented an opportunity for private gain, as the

84. Interview with Niece of Village Leader, *supra* note 62.
85. Interview with Middle-aged Male Villager, *supra* note 65.
86. Interview by Yunmei Wu & Yiyun Zhang with Elderly Female Villager, in Baocun, China (May 15, 2009) (interview transcript on file with author).
87. Interview with Niece of Village Leader, *supra* note 79.
88. Interview with Middle-aged Male Villager, *supra* note 65.

factory has provided preferential benefits to village leaders, especially following bouts of local collective action.[89] Not only were they offered better compensation for their land, they were also rumored to have taken part of the collective compensation package offered to the village. In Qingyizu, for instance, a deal was reached in which the factory would pay the sub-village 150,000 RMB over a period of ten years; after five years, villagers found out that the money paid over that period, 75,000 RMB, was missing.[90] Leaders were also suspected of keeping most of the income made through land deals and only relaying part of the money to villagers via the end-of-year bonus system. Village leaders could also benefit from their monopoly control by providing non-local labor to the local factories. They could do so when Linchang started to hire temporary laborers, who were not offered a full contract with all benefits and worker status. At first, these workers were largely drawn from the local countryside, but gradually, the factory preferred to hire non-local laborers, especially for the heavy work which locals increasingly did not like to do. Linchang let the Baocun village leaders establish a labor agency that has had the exclusive authority to arrange for such temporary labor contracts and has allowed the leaders to make a hefty profit.[91]

All of this affected the role that leaders played at this stage of collective action. On the one hand, interviewees pointed out that this generation of leaders was more willing to support collective action, as their corruption meant they could benefit directly, with less of the money going to the villagers.[92] On the other hand, interviewees stressed that the older leaders suppressed collective

89. Interview with Niece of Village Leader, *supra* note 79.

90. Interview by Yunmei Wu & Yiyun Zhang with Middle-aged Male Villager, in Baocun, China (July 7, 2009) (interview transcript on file with author).

91. Interview with Middle-aged Female Villager, *supra* note 62; Interview by Yunmei Wu, Yiyun Zhang & Anna Lora Wainwright with Middle-aged Male Migrant Worker, in Baocun, China (May 10, 2009) (interview transcript on file with author); Interview by Yunmei Wu, Yiyun Zhang & Anna Lora Wainwright with Middle-aged Male Villager, in Baocun, China (May 11, 2009) (interview transcript on file with author); Interview by Yunmei Wu & Yiyun Zhang with Middle-aged Male Villager, in Baocun, China (May 3, 2009) (interview transcript on file with author).

92. Interview by Yunmei Wu & Yiyun Zhang with Niece of Village Leader, in Baocun, China (May 15, 2009) (interview transcript on file with author).

action, scolding those who wanted to protest and telling villagers that only the leaders should talk with the factory.[93] This dual perception is best understood by their dual role. They could benefit from deals made with the factories and thus would condone some amount of pressure to arrange these deals. At the same time, they would not benefit if protests got out of hand and upset higher levels of government or the industry they were so indebted to.

Here we see that the factories were not neutral. By co-opting local leaders and strengthening their bargaining position in pollution, land, and labor agreements, they tied villagers to leaders who were more likely to serve their own financial interests rather than local public interests. The factories have carefully responded to pollution-related demands, paying relatively small amounts for material damage while consistently refusing to give in to potentially more difficult demands related to health, such as medical check-ups.

D. The Role of Governmental Regulators

In all of this, the role of the State as pollution regulator remained limited. Although the Chinese state started to regulate pollution in earnest by the mid-1990s,[94] it seems to have had little effect on industrial pollution. After the state EPBs started regular on-site inspections, they failed for years to uncover that local factories were secretly and illegally discharging and emitting pollution at night by switching off their environmental installations. In one case, the provincial EPB even sent a team of inspectors to live on-site for a period, after which an environmental responsibility contract was signed between the factory and the EPB detailing an internal responsibility system involving top-to-bottom management for pollution control

93. Interview with Elder Male Retired Worker, *supra* note 62; Interview with Niece of Village Leader, *supra* note 79.

94. *See generally* MA & ORTOLANO, *supra* note 12; BARBARA J. SINKULE & LEONARD ORTOLANO, IMPLEMENTING ENVIRONMENTAL POLICY IN CHINA (1995); Benjamin van Rooij, *Implementing Chinese Environmental Law through Enforcement*, *in* THE IMPLEMENTATION OF LAW IN THE PEOPLE'S REPUBLIC OF CHINA (J. Chen et al. eds., 2002); VAN ROOIJ, *supra* note 11.

results.[95] For a long time Linchang was listed as a compliant factory.[96] Inspection agents seem to have been unable to detect the local problems, as inspections were too few and too limited to detect that anything unusual was happening. Since the state failed to successfully engage local villagers, villagers kept a distance from the state such that the environmental authorities had difficulty ascertaining the pollution issues that were so well-known by the locals.[97]

The second stage of community-based regulation was thus one of compensation contracts and collective action. Compensation contracts regularized land and pollution claims. While they generally linked damage to compensation, they did so for a longer term and at the village level, making it difficult for individual villagers to know how the compensation they were finally paid was related to the damage incurred. Citizens started to play a role, albeit one that was set and staged within a tight framework. Their role was to highlight and support claims, which were then negotiated in a closed setting involving village and enterprise "leaders" (*dangguande*). Only leaders decided how much money was to be paid and its distribution. Citizen-based activism was confined within set boundaries. The boundaries were perceived through experience, as villagers learned what action would lead to compensation, what action was seriously checked, and what would be ignored.[98] Failure to involve outside support in the proposed petition was followed by a period in which no further attempts were made. Activism, as villagers knew and their leaders stressed, should not attract too much attention from the higher levels and cause trouble. Villagers largely took what was offered, even though what they got was not based on the actual damage that had occurred (i.e., loss of land or pollution). Despite increasing solidarity, the second stage still had a sense of orientation around sub-villages. This was definitely the case in Tacun, the activist sub-village, where villagers strove to increase their joint income even though they knew their leaders were pocketing a substantial amount of it.

95. Interview with Middle-aged Male Migrant Worker, *supra* note 91.
96. *See* VAN ROOIJ, *supra note* 11, at 198.
97. *See id.* at chs. 13-14.
98. *See* Lora-Wainwright et al., *supra* note 49.

E. Compensation Legitimizing and Normalizing Pollution

In the second stage, compensation seems to have had a legitimizing instead of a regulatory effect, as payment bought a license to pollute. In community claims, villagers did not make value judgments about pollution, refraining from normative claims about the unjust, illegal or immoral nature of pollution. Claims were about redress; they were about payment for damage or finding out about damage. They were not about ending, controlling, or decreasing pollution. Claims paid seemed not to have had much, if any, deterrent effect, simply because the amounts remained very low in comparison with the costs of abatement. Here, the riches of the factories stand in stark contrast to the poverty of the villagers, for whom a small amount of compensation was a welcome addition to their income. Furthermore, villagers were not free to accept or decline compensation offers like the co-opted village leaders, whose interests were aligned with the industry dominated negotiations. Thus, redress started to preclude regulation.

The legacy of the second stage has been two-fold. First, contractual compensation has rationalized pollution and made it routine, setting the compensation tightly in a frame of redress and not pollution regulation. Second, collective action is clearly set within this frame as well as within the larger frame of growing stratification and increasing interdependencies (among the village, its leadership, the industrial complex and the state), keeping activism focused on material redress and away from state involvement or other outside forms of support.

IV. RESOURCE CAPITALISM AND OPPORTUNIST ACQUIESCENCE

A. Deepening Interdependencies

At the third stage of community-based regulation, compensation derived from the industrial complex (whether for land usage or pollution) becomes an important source of individual income. This deepens the interdependencies between villagers, their leaders, and the industrial complex, creating a

setting in which local activism is strongly directed towards redress instead of regulation. It also deepens stratification by dividing pollution victims and undermining the solidarity necessary for consorted action. The activism that continues during this period has opportunist characteristics and is limited through leadership control and community acquiescence.

While villagers depended largely on work for income until the third stage, whether through agricultural or industrial labor, land use compensation began to make up a large part of the local income. This started when new leaders were elected in 2004. These new leaders broke with the old tradition of splitting only a small portion of collective income amongst villagers, instead initiating a *fenhong* (division of the red) system. Through this system, Tazu villagers received a per-capita annual income of 8000 RMB in 2009 and 15,000 RMB in 2008,[99] when a large amount of land usage compensation was paid by a local mine.[100] This resource-based, work-free income paid more than most villagers made working in fields or factories. The new leaders also broke with the old policy severely restricting housing development. Farmers have thereby started to earn extra income renting out rooms in newly built houses to the many migrants that have by now come to work in Baocun[101] (about sixty to eighty per room per month, with one household for instance renting fourteen rooms[102]). Such land-related income has now become so important that there is much concern when outsiders marry into the village, especially with respect to divorce, as many believe they should also abandon their local Tazu registration (*hukou*) and related *fenhong* entitlements.[103] People even pay considerable sums of money to retain or get a Tazu registration, willingly paying up to 10,000 RMB, seeing it as a good

99. Interview by Yunmei Wu & Yiyun Zhang with Middle-aged Female Villager, in Baocun, China (May 19, 2009) (interview transcript on file with author); Interview with Niece of Village Leader, *supra* note 77; Interview with Middle-aged Female Rice Noodle Seller, *supra* note 78.

100. Interview with Middle-aged Female Villager, *supra* note 62.

101. Interview with Middle-aged Male Qing Yizu Sub-village Committee Representative, *supra* note 70.

102. Interview by Yunmei Wu & Yiyun Zhang with Female Local Doctor, in Baocun, China (May 3, 2009) (interview transcript on file with author).

103. Interview with Wife of Baita Sub-village Leader, *supra* note 75.

investment. Life in Tazu village has changed; many people now depend on this resource-based income and have more time for leisure. As a result, the sub-village now boasts an extraordinary amount of *majiang* halls,[104] where the locals spend their days playing and gambling.[105] Sub-village leaders have used the money to organize popular holidays for villagers to Xishuanbanna, Shanghai, and Beijing.[106]

The third stage, as it is presently unfolding, shows a deepening of the stratification initiated by the process of industrialization. It seems that the original industrial stratification has reversed: while in the collective days formal worker status was the most desired position, now, at least in Tazu, villager status has become more desirable because of land-related income. As one villager stated, "In the past, workers' lives were better than farmers', now farmers do better than workers."[107] Additionally, there are now clear differences between the resource-capitalist villagers of Tazu, who get a significant portion of their income from the rent derived from land compensation and housing, and the villagers from other sub-villages who only receive a small amount of such income, too little to stop or even reduce working. Furthermore, migrants have become a dominant stratum in Baocun; there are now more migrants living there than native villagers. The migrants have a special status, with only limited citizenship in the village. They can rent housing, work in local factories and fields, and arrange schooling for their children; however, they do not get to

104. More than ten public ones and many private ones at home. Interview by Yunmei Wu & Yiyun Zhang with Female Local Market Salesperson, in Baocun, China (May 20, 2009) (interview transcript on file with author).

105. Interview with Middle-aged Male Migrant Worker, *supra* note 91; Interview by Yunmei Wu & Yiyun Zhang, with Middle-aged Male Owner of Majiang Hall, in Baocun, China (May 16, 2009) (interview transcript on file with author); Interview by Yunmei Wu & Yiyun Zhang, with Middle-aged Male Local Mine Worker, in Baocun, China (May 16, 2009) (interview transcript on file with author).

106. Interview by Yunmei Wu & Yiyun Zhang, with Female Accountant of Sub-village, in Baocun, China (Apr. 24, 2009) (interview transcript on file with author).

107. Interview by Yunmei Wu & Yiyun Zhang, with Middle-aged Female Villager, in Baocun, China (Apr. 26, 2009) (interview transcript on file with author).

participate in the local elections, nor can they share in the collective resources that have become a more important part of village income. Their limited village citizenship also excludes them from income-derived pollution compensation contracts, which are based on land to which they have no formal entitlement.

As Tazu villagers now receive an important source of income from revenue derived from the industrial complex, they are tied to the local industries more strongly than ever. While in the past their income was largely agricultural, and thus independent of industry, few presently engage in agriculture. Pollution has made agriculture difficult, and land-related income has made it unattractive, hard work with little pay. Villagers let migrants cultivate the land, as they do not want it to lie idle and get covered in long grass (*changcao*). One villager explained that would mean that they would lose entitlement to pollution-related compensation. Local villagers also derive income from the industrial complex as factory workers and as transporters with small private transport companies. The industrial complex has enabled the development of a service sector, with many food and leisure haunts catering to the land-lucky villagers of Tazu. The migrants attracted by the industrial complex provide further income to villagers. As one migrant explained, "Of every five chickens sold in the local market, four are bought by migrants." The intermediary position of local leaders, between villagers and the industrial complex, has only strengthened in the third phase, given that the village leaders have arranged the land-related revenue. They have therefore gained local legitimacy and voter support for future elections, while also maintaining favorable ties with the local industry through the continued and increasingly lucrative control of the labor company. Villagers in Tazu thus depend more on their leaders than ever before, seeing as they are now responsible for a large share of their income.

B. Continued Pollution and Increasing Awareness

As described above, the third stage reflects an intricate web of interdependencies between local villagers, migrants, industrial enterprises and mines, and village leaders. Meanwhile, pollution continues, both regular and incidental. Although there have been

some improvements, given the pollution abatement investments made by Linchang, villagers still report many pollution-related problems. They informed us that they are still unable to grow certain crops or keep certain livestock. They are very careful about using water from local wells, fearing that it is polluted or even poisonous. They ascribe certain health-related problems to pollution, which some call strange diseases (*guaibing*). These include nose infections and nose bleeds, rheumatism and sore joints, headaches, memory loss, bad teeth and weak bones (which they fear comes from *fluorosis*), issues related to reproductive organs, and even a higher incidence of certain kinds of cancer according to some villagers. Some said that for years now, their youngsters have been unable to pass army medical tests. Villagers also complained of a bad smell at night, which the research team likewise noted. Some call this smell "poison gas" and explain that it is emitted at night by Linchang. They also related that the enterprises use the cover of night to discharge polluted water from the phosphorus mineral cleaning process. There have also been several accidents at Linchang and the other factories. The worst occurred in 2008 when a sulfuric acid depot exploded at Linchang, killing five and leaving twenty-two wounded. While citizens are clearly aware of the problems pollution causes, our interviews also showed a habituation. Villagers told us that you get used to the smell and that you can adapt to pollution by planting different crops, closing your window, or drinking bottled mineral water.[108] As one villager explained: "Pollution? We all get pollution. And if the pollution is really bad, and you cannot grow anything on your land, then don't grow anything, let it lie idle and buy some food."[109]

108. Interview with Female Local Market Salesperson, *supra* note 104, Interview by Yunmei Wu, Yiyun Zhang & Anna Lora Wainwright with Elder Female Villager, in Baocun, China (May 4, 2009) (interview transcript on file with author), Interview with Elder Male Retired Worker, *supra* note 62; Interview by Yunmei Wu, Yiyun Zhang & Anna Lora Wainwright with Middle Aged Male Villager, in Baocun, China (May 3, 2009) (interview transcript on file with author).

109. Interview by Yunmei Wu, Yiyun Zhang & Anna Lora Wainwright with Middle-aged Male Worker, in Baocun, China (May 13, 2009) (interview transcript on file with author).

At this stage, compensation contracts continue and are largely based on agreements made in the second stage. The largest contract between Linchang and Tazu is renegotiated based on the earlier terms that compensation will be raised once every three years. At the beginning of the next term, it is expected that the factory will pay Tazu an annual compensation of 150,000 RMB, a 20,000 RMB increase from the 130,000 RMB paid in 2009. The contracts seem at this stage to have become a set affair, as they are based on agreements made in the past and form a regular additional source of income for villagers. One difference with the past is that leaders now seem to perform better in distributing the income from these contracts to the relevant villagers involved, rather than keeping part of the compensation for themselves as in the past.

C. Reduced Activism and Solidarity

Collective action continues, largely organized in reaction to incidents and not against regular pollution and nightly discharges. There have been several blockades organized by groups of villagers. For instance, there was a chlorine leak at Linchang that caused a terrible and bad-smelling smoke. Villagers recall that they had trouble breathing because of the smoke and feared for their health.[110] In response, villagers organized a blockade when their village leaders remained unresponsive to their grievances. The blockade attracted the attention of the local government (at the town level), which came to deal with the matter. As a result, the factory deputy director came to Tazu to talk with the villagers. Tazu people expressed that they wanted the same drinking water that the factory used and also demanded health check-ups. As in the past, the factory agreed to give them water but refused the health check-ups, offering 100 RMB per person instead.[111] As one villager analyzed it, "Perhaps they were afraid that the tests would reveal illnesses, causing them trouble. That is why they had this attitude of

110. Interview with Middle-aged Male Villager, *supra* note 65.
111. *Id.*

tricking us (*qipian de taidu*), they were just fooling the people (*suisuibianbian de jiu hunongle laobaixing*)."[112]

Another example of activism followed a major explosion of a sulfuric acid depot at Linchang, killing five workers and wounding twenty-two, and breaking many windows in the Tazu sub-village. The morning after, villagers flocked to the factory demanding compensation for relocation. Villagers told us how this incident awakened their anxieties about the safety hazard that the factory presents: "We all know here that there is a large ammonia pipeline there, and if that explodes, well that is scary." I have heard others say: "If the ammonia pipe explodes, you can only survive if you slit your throat to prevent the air from going into your body."[113] In response to their worries about their safety and the demands they made to be relocated, the factory allegedly stated: "You can get a medical check-up, if it shows that there are problems and you have evidence of the problems, let us talk again."[114] Thus, the factory reframed the villagers' original demands and worries into a framework of compensation, where redress based on evidence counts rather than prevention of pollution or hazards. Meanwhile, local leaders urged the villagers to drop their demands and action, claiming that this is a difficult time for the factory and that it will all be solved in due course. Leaders allegedly stated, "If you take action in this way it will put oil on the fire, it is not good."[115] Recalling this incident, one villager stated, "I asked why is it not good? I fear that there are connections (*guanxi*) between the leaders (*dangguande*) of the factory and the village. Of course I thought so."[116] Again the village leaders told the villagers that they would arrange the compensation. The strong language in which all of this was said seems to have had the effect that the villagers abandoned their action. As far as we know, they did not even talk to the many

112. *Id.*

113. Interview by Jianyuan Wang, Yunmei Wu & Yiyun Zhang, with Middle-aged Female Villager, in Baocun, China (Apr. 24, 2009) (interview transcript on file with author).

114. *Id.*

115. Interview by Yunmei Wu & Yiyun Zhang with Middle-aged Female Village Committee Member, in Baocun, China (May 16, 2009) (interview transcript on file with author).

116. *Id.*

journalists or state officials who had come down to the village following the accident. Villagers did not take action again in relation to the explosion, although some ultimately received an incidental compensation of 200 RMB.[117]

Although these incidents show that collective action continues in the third stage, villagers have indicated that there is less activism nowadays than in the past.[118] There is less solidarity, one local activist explained, as people have become richer. The dependency on land-related revenues has likely had a dampening effect on activism. With free money coming in from land deals and citizens less engaged in agriculture, pollution has a less direct effect on their income, while the benefits of activism (getting pollution compensation fees of several hundred RMB) are relatively less attractive to citizens. Land and pollution-related compensation is divided and paid on an individual basis, while money derived from activism has in certain instances gone to the activists involved rather than to the whole community. Meanwhile, villagers also see their village leaders putting their personal interests above the community. All of this has influenced a culture of opportunism where solidarity is a thing of the past. As one villager elaborated, "People do not care for problems that are not their own. This is our biggest problem."[119] Activism has thus become wrought with opportunism. Mrs. Wu, a leading activist involved in many of the Tazu actions, freely admitted that she is "in it" for the money and public office, hoping that her role in the action will get her elected into village leadership.

The lack of solidarity exists at a deeper level than seen by most villagers. Because of stratification and its results on village citizenship and related entitlements, the interests of the people suffering from pollution are not aligned. First of all, the interests of different sub-villages are divided. As land and pollution-related compensation deals are established at the sub-village level, some sub-villages, such as Tazu, have been able to get much

117. *Id.*

118. Interview by Yunmei Wu & Yiyun Zhang with Niece of Village Leader and Male Owner of Majiang Hall, in Baocun, China (May 16, 2009) (interview transcript on file with author).

119. *Id.*

more than others. The differential treatment of pollution victims in different sub-villages has prevented victims from joining hands in a consorted effort. Another especially significant gap exists between the interests of migrant workers and formal villagers. Villagers are able to benefit from land and pollution-related compensation packages and are therefore interested in activism at certain times to support compensation deals. In contrast, migrants do not share in the riches created by land and pollution deals, although the damage they suffer from pollution is similar, if not worse, because of their living and working conditions. In addition, migrants, like all workers at the factory, fear repercussions should they join collective action. As one worker put it, "Families with members working at the factory could not protest (*qunao*). Otherwise, this could affect the family salaries. That is why I dared not go."[120]

D. The Role of Town and Village Leaders

Village leaders play a vital role in the third stage. They are responsible for the new land-related revenues, which have transformed the social and economic life in parts of Baocun village. Because of this, they enjoy an unprecedented amount of local legitimacy. Many people support their political agenda of change and transparency even though they question their corruption and strong-willed character. The new leaders have sprung from the industrial stratification that has occurred, with most of them having come to power after earning riches in the Baocun industrial complex. The new leaders are thus born from the industrial entrepreneurs and have much closer ties with industry than the former generation. The village leaders, because of the importance of the land-related revenue, have an even stronger intermediary role between the industrial complex and the villagers, than the former generation. All of this has shaped their influence on collective action. In many of the cases of collective action, the village leaders had a restricting role, both at the Village Committee (VC) and the sub-village level. They urged villagers to let them negotiate with the factories. Since the factories largely excluded villagers from the negotiations, they

120. Interview with Middle-aged Male Villager, *supra* note 65.

were empowered to do so by the polluting factories involved. In several instances, the village leaders dispersed protests, using strong language and threats, with people obeying their charismatic commands out of fear.[121] Sometimes they did so on instructions of the town government, which wanted an end to the local unrest in its jurisdiction.[122] And, at least in the perception of some villagers, village leaders as well as township government leaders wanted to protect the important industrial tax base.[123] Villagers retain a mixed view of the role of village leaders in pollution issues. On the one hand, some claim that without village leadership support, protesting is useless.[124] On the other hand, they protest in response to the lack of support from local leaders and find that unless they protest, they will not get the attention of their leaders or the factories involved.[125]

E. Lack of Trust in State Regulators

In the third stage, state regulation has become stricter. In 2004, the municipal EPB finally took action against the ongoing pollution in the village when it found evidence of secret nightly discharges during an intensive inspection period organized in a national environmental law enforcement campaign.[126] In response, it fined the Linchang company and threatened to make the fine public. It used this threat to make a deal with Linchang to stop outsourcing its most polluting chemical production to small, heavily polluting enterprises located twenty kilometers further downstream and which had been made the prime target of this particular enforcement campaign. While this may have had some effect on these small factories, effects in Baocun remained limited because the company continued secret nightly discharges while slowly investing in abatement equipment,

121. Interview with Middle-aged Female Villager, *supra* note 99.

122. Interview with Middle-aged Male Villager, *supra* note 65.

123. *Id.*; Interview by Yunmei Wu & Yiyun Zhang with Elder Female Villager, in Baocun, China (May 17, 2009) (interview transcript on file with author).

124. Interview with Middle-aged Female Villager, *supra* note 99; Interview by Yunmei Wu & Yiyun Zhang with Niece of Village Leader, in Baocun, China (May 20, 2009) (interview transcript on file with author).

125. Interview with Middle-aged Male Villager, *supra* note 65.

126. *See* VAN ROOIJ, *supra* note 11, at 154.

thereby flaunting state regulatory oversight. A few years later, Baocun attracted the attention of the national environmental regulator (then called SEPA), which placed one of its new expansion projects on a list of the twenty riskiest projects in China. Meanwhile, the local environmental authorities at the municipal level continued to regulate the company, organizing regular daytime inspections and reviewing environmental impact assessment (EIA) reports for new production lines at the factory. These reports continued to be approved, and there was a seemingly standard section in all of them detailing the local public view of the factory and the project. These sections were all positive, with the citizens allegedly expressing that the factory was doing well and the intended new production was good. It is not clear how these sections were prepared or whether citizens were actually interviewed, and if so, which citizens, leaders or ordinary villagers. What is clear is that these reports do not represent the many voices we have heard detailing pollution-related economic and health damage as well as local concerns about safety. The state regulator seems to have been unable to get in touch with local opinion. This can partly be explained by some of the local views of the environmental authorities. Few citizens mentioned the EPBs. The ones that did stressed their strictness, explaining that if they would come to the village and deal with the factories, their action would be strict.[127] The development and compensation frameworks seem to have influenced their views on such stern action. Since there is no belief in pollution reduction and there is a continued hope of compensation derived income, action that punishes pollution and perhaps reduces it is likely not welcome. Reduced pollution is framed together with reduced development.[128] On the other hand, we heard an opportunist view that regulation would divert compensation fees paid to the village towards fines paid to the state.[129] As Tazu leader Li said, "If the EPB comes to fine Linchang and takes their money, is it not better that this stays

127. Interview with Middle-aged Female Villager, *supra* note 62; Interview with Elder Male Retired Worker, *supra* note 62.

128. Interview with Female Local Market Salesperson, *supra* note 104.

129. Interview by Yunmei Wu & Yiyun Zhang with Baita Sub-village Leader, in Baocun, China (May 21, 2009) (interview transcript on file with author).

here and villagers can get it?"[130] Meanwhile, prior experience with a local protectionist state, combined with the pessimist frame, may make villagers doubtful of what environmental authorities can do on the local level. One villager thought that if local leaders were less aligned with the factories, it would be possible for the environmental authorities to come and deal with the pollution.[131] Thus, it is not surprising to hear that when state authorities came to the village following the explosion, villagers refrained from using this opportunity to draw attention to the pollution-related damage and their health and safety concerns.

The third stage is one where community-based regulation fails to positively interact with state regulation. Here, the interests of the state regulators and the local communities seem to be far apart. By this stage, compensation and redress have become an end in and of themselves, instead of a means. Even though villagers know about the problems related to pollution and worry about their health and safety, they do not translate these concerns into effective action that would help reduce and control such problems. An explanation for this attitude comes from the combined legacies of the first and second stages, which set out a controlled path for redress instead of regulation. The third stage adds to this backdrop a community that is further divided, where pollution has become habitual and softened by new riches, new income has empowered a village leadership that is strongly aligned with industrial interests, and an increasingly active state regulator has failed to involve the local community. A further explanation for why Baocun citizens have refrained from taking steps to control and regulate such pollution is more subtle and must be sought in the discursive frameworks that have developed during the three stages.[132]

130. *Id*.
131. Interview with Middle-aged Female Villager, *supra* note 62.
132. *See* Lora-Wainwright et al., *supra* note 49.

V. COMMUNITY-BASED REGULATION AS A MATTER OF FRAMING

A. The Role of Discursive Frameworks

By the third stage, community-based regulation is strongly influenced by discursive frameworks that have evolved over the years and which shape how villagers perceive pollution and related courses of action. In the many conversations we had with villagers, we found that in their analysis of pollution, health, and development as well as the possibility for action against pollution-related damage, villagers used certain discursive frameworks. These frameworks have evolved gradually and are shaped by past experiences with the industrial complex, local and state leaders, and the growing interdependencies between themselves and industry. We have discerned three frameworks: the development frame, the pessimist frame, and the compensation frame. Together, these frames have internalized the experiences of pollution and activism, shaping the way villagers view pollution and possible courses of action against it.

B. The Development Frame

The development frame, as we call it, is a discursive framework that links industrial pollution to development, creating the notion that you cannot have one without the other, and that in order to get richer, pollution is inevitable. We saw this frame in many of the conversations we had, not only with villagers but also with the village leaders and the township cadre. Consider the following quotes. Vice Township Secretary Li stated, "Pollution is a necessary price of the stage of industrial development. Only if we develop first can we discuss environmental protection later."[133] Similarly, Village Leader Wu commented, "If there is no pollution, where will development

133. Interview by Yunmei Wu, Yiyun Zhang & Jianyuan Wang with Vice Township Secretary, in Baocun, China (Apr. 21, 2009) (interview transcript on file with author).

come from?"[134] His subordinate, Tacun, sub-village chief Li, stated similarly: Tacun village head for instance told us pollution is a necessary part of development. Villagers expressed similar views. As one villager stated, "The environment is better now but it will get worse again, the hills have all been sold, the water is polluted, the air cannot get better either unless Linchang factory closes. But then there will be no work, no chance to earn money."[135] Similarly, a villager said in one interview, "Tazu is a good place, only because we have the Linchang factory here . . . To have this factory brings good and bad."[136] Many people repeated that development brings both good (income) and bad (pollution and related damage and even diseases). One even went so far as stating, "without disease there is not such good economic development."[137] It seems that with the increasing income derived from the industrial complex, a discursive framework has developed to deal with the negative effects of the local industry. This framework helps villagers, and their leaders, to rationalize and even accept pollution as an inevitable by-product of development. It provides an unnecessarily dichotomized view of industrial production; it either exists and causes pollution or it does not exist and there is no development or pollution. This view was clearly expressed by one villager, responding to whether the air quality could be improved: "Impossible, it cannot. It only could if Linchang collapsed (*kuadiao*), but then there would be no more work and no more money. If the air would be clean again, it would be hard for us to make money."[138] The reality is more subtle and positive, however, as factories can decrease their pollution if regulatory controls are effective. The development frame makes pollution inevitable and thus precludes claims to

134. Interview by Yunmei Wu, Yiyun Zhang & Jianyuan Wang with Village Leader, in Baocun, China (Apr. 24, 2009) (interview transcript on file with author).

135. Interview by Yunmei Wu & Yiyun Zhang with Middle Aged Female Villager, in Baocun, China (19 May, 2009) (interview transcript on file with author).

136. Interview by Yunmei Wu & Yiyun Zhang with Elder Male Owner of Majiang Hall, in Baocun, China (May 18, 2009) (interview transcript on file with author).

137. *Id.*

138. Interview with Middle-aged Female Villager, *supra* note 99.

decrease or control pollution. As such, it fits nicely with the compensation- and redress-oriented forms of community-based regulation that have developed.

C. The Pessimist Frame

The *pessimist frame* has arisen from a cocktail of pessimism and passivism about what can be done about pollution. Many of the responses to our questions on what to do about the pollution-related grievances were framed in terms of the impossible rather than the possible. People used terms like *meibanfa* (it is impossible),[139] pointing at the strength of the companies and their own weakness. As one villager stated, "We can only live with it (*zhi neng aizhe*), how can we small folk (*xiao laobaixing*) overcome a big enterprise like Linchang, especially now that the state strongly supports industrial development?"[140] Another said, "Taking action is useless. This is a large state-owned company, and the township government will protect it for the tax income it pays, and will not let the people protest."[141] As one other put it, "What can we do about it? Nobody asks you to live in this village."[142] We also noted that many interviewees responded to our question – asking what can be done – by stating that one can "get a little compensation."[143] None expressed that pollution

139. Interview with Middle-aged Female Villager, *supra* note 62; Interview with Elder Male Retired Worker, *supra* note 62; Interview with Middle-aged Male Worker, *supra* note 109; Interview with Niece of Village Leader and Male Owner of Majiang Hall, *supra* note 118; Interview with Female Local Market Salesperson, *supra* note 104.

140. Interview by Yunmei Wu & Yiyun Zhang with Accountant of Baita Sub-village, in Baocun, China (Apr. 29, 2009) (interview transcript on file with author).

141. Interview with Niece of Village Leader and Male Owner of Majiang Hall, *supra* note 118.

142. Interview with Female Local Market Salesperson, *supra* note 104.

143. *See e.g.*, Interview by Yunmei Wu, Yiyun Zhang, and Anna Lora Wainwright, with Middle Aged Male Villager in Baocun, China (May 3, 2009) (interview transcript on file with author); Interview by Yunmei Wu and Yiyun Zhang with Middle Aged Male Villager in Baocun, China (Apr. 25, 2009) (interview transcript on file with author); Interview by Yunmei Wu, Yiyun Zhang, and Anna Lora Wainwright, with Niece of Village Leader in Baocun, China (May 4, 2009) (interview transcript on file with author); Interview by Yunmei Wu & Yiyun Zhang, with Tacun subvillage chief Li, in Baocun, China (Apr. 29, 2009) (interview transcript on file with author). The Tacun village

could be addressed or that action could be taken to control it and prevent damage from occurring. This pessimism is combined with a sense of a lack of responsibility; many answered our questions about who should solve pollution-related problems by referring to the leaders (*dangguande*), which can mean those in the village, the factory, or the state. It indicates that others – those in power – should deal with these issues and that villagers are powerless. This attitude is not surprising given the legacy of the past: complete exclusion of citizen participation in these matters in the planned economy, a very restricted role learned through years of activism, and exclusion from compensation negotiations in the second phase. The thought itself, however, also steers their current and future action. It marks a belief that nothing can change, action is ineffective, and the best thing they can get is a little money, which becomes a self-fulfilling prophecy.

D. The Compensation Frame

The third discursive framework shaping community regulation is the *compensation frame*. Following years of responding to pollution by demanding and receiving compensation, villagers have started to view pollution damage in terms of its relevance for compensation. In response to our questions about what can be done, many answered that they can get some compensation. In addition, when asked how the situation can finally be solved, villagers often referred to compensation. Even when asked what the ultimate solution to the problems was, they never replied that pollution should be controlled or that the most polluting parts of the factories should be closed. Instead, they answered that the ultimate solution would be compensation so they could relocate.[144] We have seen

head for instance told us pollution is a necessary part of development (Apr. 29, 2009).

144. *See e.g.,* Interview by Yunmei Wu, Yiyun Zhang, and Anna Lora Wainwright, with Middle Aged Female Villager in Baocun, China (May 10, 2009) (interview transcript on file with author); Interview by Yunmei Wu, Yiyun Zhang, and Anna Lora Wainwright, with Niece of Village Leader in Baocun, China (May 10, 2009) (interview transcript on file with author); Interview by Yunmei Wu, Yiyun Zhang, and Anna Lora Wainwright, with Elder Male Villager in Baocun, China (May 11, 2009) (interview transcript on file with author).

that industry and local leaders have used this framework to control citizen activism and to keep it within the confines of redress-related claims, which preclude regulation of pollution. In instances where villagers expressed worries about their health and safety, the factory and local leaders reframed their worries in terms of redress and compensation. For instance, after the 2008 explosion, villagers worried about their safety and demanded to be relocated, which they saw as the only way to finally solve the matter. The factory responded by ignoring their demands, stressing that if they got evidence of damage they could bring it up again, thus reframing their demands in compensatory terms which did not address the people's concerns about future health hazards. Similarly, health concerns and related claims for check-ups have been responded to, time and again, by being ignored or refused and always matched by a little payment. This seems to have been effective. When asked why another village did get medical check-ups, one of the leading local activists explained, "The pollution in that village is limited, and they do not get pollution compensation any more. If Tazu gets health check-ups but no pollution compensation, that is not worth it; we no longer get money."[145]

Therefore, experiences with compensation and related collective action that originally developed in the second stage and continued in the third stage become set in frameworks that stress redress instead of regulation. These frameworks resonate well with a socio-economic context of dependence on industrial sources of income and a political climate of co-optation, opportunism, and control.

VI. CONCLUSION: THE COMPENSATION TRAP AND ITS IMPLICATIONS

This study has analyzed a particular, localized pattern of community-based pollution regulation. It differs greatly from forms of community regulation studied in the existing literature, which have largely looked at non-localized forms of action involving media, government authorities, and legal measures. As

145. Interview with Niece of Village Leader, *supra* note 92.

we have analyzed elsewhere, the existing studies and data available so far have shown that Chinese citizens have gone to court, complained to the authorities, and protested outside their locality, with varying degrees of success in terms of compensation and sometimes even pollution control.[146] This article provides a unique view of what happens in cases where data has not yet been accessible, simply because citizens never reached the media, courts, or government bureaus.

In the localized pattern studied here, citizens have become caught in a compensation trap. Compensation, for land usage and for pollution-related damage, has become an overarching end that influences means that could normally be used for community-based regulation. As pollution damage continues, grievances and demands are shaped by compensation. This means that citizen demands will only be made for damage where redress is possible and for which there is a level of certainty and hard evidence. It also means that the demands themselves emphasize redress and not control or prevention of pollution. Action organized in the village is also strictly aligned with the search for compensation. Collective action like blockades has supported leadership negotiations for pollution redress payments, while action that involves outside support from the state, media, or civil society has been less prevalent, as it is considered to negatively affect compensation payment. Meanwhile, pollution compensation payments are relatively small and are not directly calculated based on the actual damage that citizens incur. They especially do not involve damage where the linkage to pollution is not certain or damage that may occur in the future, such as health-related issues. When asked, villagers responded that the compensation paid indeed does not make up for the damage they have incurred. Their acquiescence is understandable given the evolution of community-based regulation. The compensation payment is small, and it seems to have a very limited regulatory effect on the local industries that know they must pay every now and then to keep the villagers quiet. Here, the compensation agreements and the collective activism lack a clear normative function; we have received little to no indication that norms were

146. *See* van Rooij, *supra* note 25, at 65-67.

invoked regarding what the factories are allowed or prohibited to emit. Quite to the contrary, compensation payments have become a license to pollute. For example, any normative elements are hidden by framing compensation contracts in terms of agriculture instead of pollution. Meanwhile, a view has started to develop in which villagers are tied to compensation in such a way that they are no longer seen as the victims of pollution. Rather, they are seen as greedy opportunists who will try everything possible to get more money from the industrial complex in their midst. Thus, the compensation trap springs shut.

There are several interrelated explanatory factors for this failure. The first one is the legacy of a planned economy in which villagers had only limited citizenship and where the state and collective industry compensated voluntarily, without being pressed by the local community or even the state. Second, the processes of industrialization have not only caused the pollution that the community has been unable to control but have also created a stratification that divided the pollution victims and established a web of interdependencies between the villagers, migrants, the industrial complex, the state, and the village leaders. Third, the community's capacities are limited; the villagers lack financial independence, pollution-related expertise, cohesion, and activist leadership. Here also the imbalance between their income and that of the factory has made strong bargaining difficult. The fourth factor is the role played by the local village leadership, which has made use of its intermediary position between the village and the industry to enrich the villagers and themselves while controlling acts that could endanger the newly acquired riches or their own position. Here, the village leaders have been influenced by both the local factories and the state. The fifth factor, then, is the role of the state: local governments protecting their tax base and preventing social unrest and environmental authorities failing to align the community to regulate pollution. Here, national policy and law are involved. Years of emphasizing development at the cost of the environment in national policy clearly play out in the locality's short industrial history. National legislation has strengthened the idea of compensation, by developing rights to compensation for directly affected victims instead of more broadly framed environmental rights or courses of action open to other civil

society organizations that are less likely to become caught in a local compensation trap. Sixth, there are the development, pessimist, and compensation frameworks that have resulted from all of this and that influence and control grievance and action development.

In this pattern of localized pollution regulation, unless community claims for compensation become sufficiently great to have a regulatory effect or communities make claims that go beyond redress (even payment for relocation) or engage successfully with regulatory agencies, communities are unlikely to have much impact on the environmental performance of factories in their midst. The pattern studied here is of course not representative of all forms of community-based pollution regulation. We know from existing studies based on publicly available data that there are many cases where citizens have issued complaints to local authorities, where they have gone to court, and sometimes have been able to get some compensation. Until now, we had limited knowledge about what happened in cases that were not made public in the media and in cases where activism is restricted to the locality. Nor do we know much about the long-term regulatory effect, even in cases where citizens won compensation in court.

Through inference we can hypothesize that in China, or countries with similar political and economic settings, many rural, industrializing communities may share similar issues obstructing effective community-based regulation: industrialization in developing countries may often have started in the context of a planned economy and authoritarian regime, with poor and uneducated villagers and a state that protects industry. The question is whether the community develops interdependencies with the industry and what formal or informal local leaders the particular community has. The greater the interdependencies, the greater seem the chances that community leaders will become co-opted as they did in this study. When all five factors discussed above are in place, it is likely that controlling frameworks, similar to those studied here, will ultimately develop to feed acquiescence and acceptance and will obstruct community-based regulation of pollution.

The interrelated nature of these explanatory factors marks the resilience of the compensation trap and its obstacles to effective community-based regulation. One can wonder what could possibly produce a change. It is unlikely that the development of more rights by the state will translate into an effect in the local community, given how they are set in the existing frameworks and how small of a role the law has played in their midst. Still, this article shows the importance of a broader view of what rights must be enshrined in the law, especially the right to a clean environment, apart from the compensation-oriented norms targeted at pollution victims. It also shows that there is a real need for allowing public interest litigation by organizations that are not directly affected by the pollution, including state and non-state organizations. There have been many calls for such provisions in China,[147] which until now have remained without effect as legislators and key stakeholders, including the courts, have halted the development of such rights, amending legal drafts that included such provisions.[148] An understanding of the pattern studied here, however, also leads to doubt about the effectiveness of such provisions. It seems unlikely that any state or civic organization will be able to use such rights, which cynically enough are currently advocated by the local environmental court simply because they lack information about the local pollution problems. It seems that action must start from the local community. This requires a belief that action involving outside actors is useful, and

147. Rachel Stern, *Towards Environmental Public Interest Litigation? Proposals for Legislative Change* (prepared for the Natural Resource Defense Council, 2008).

148. Interview by Benjamin van Rooij with Environmental Law Professor, in Beijing, China (May 5, 2008) (interview transcript on file with author); Interview by Benjamin van Rooij with Member of National People's Congress Legislative Affairs Commission, in Beijing, China (May 17, 2008) (interview transcript on file with author); Interview by Benjamin van Rooij with Environmental Law Professor, in Beijing, China (May 14, 2008) (interview transcript on file with author); Interview by Benjamin van Rooij with Environmental Lawyer, in Beijing, China (July 14, 2008) (interview transcript on file with author); Interview by Benjamin van Rooij with Environmental Law Professor, in Beijing, China (July 15, 2008) (interview transcript on file with author).

a belief that local problems ultimately require regulation, not just compensation.

It seems the state environmental authorities will have a role to play after all. Of all the external actors, they are the best equipped to know the local situation and to initiate a change in the local community. Instead of regulating independently, environmental authorities can involve the local villagers in every step of their work. Agents can communicate about what they are inspecting and compare their results with local knowledge in the community. They can explain to what extent pollution is inevitable and to what extent it can be further reduced and controlled, thus trying to overcome the development discourse. They can try to convince communities that their enforcement action will not automatically shut down development and does not preclude separate claims made by villagers for compensation. As such, they can also get involved in compensation claims and help villagers gather the evidence they need.

To conclude, it seems that the compensation trap may be broken if state regulation directly engages with community-based regulation, possibly also involving civil society organizations. This stresses the relevance of Gunningham's observation that successful pollution regulation comes from a combination of state, social, and economic forces.[149] In the contexts studied here, such a combination will not develop automatically and requires much steering from the state regulators involved.

149. *See* GUNNINNGHAM ET AL., *supra* note 6.