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Considering Legal, Cultural, and Ecological Diversity to Strengthen the Law: Some Indicators From Comparative Environmental Law

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The aim of this paper is to demonstrate the importance of a comparative approach in environmental protection. More specifically, it shows the impact of legal culture on the effectiveness of environmental protection law. As the task is broad, environmental protection in Chinese and European contexts is specifically analyzed as an example. Three elements stand out at the study of these areas from a comparative perspective. First of all, the role of law in regulating life in society; secondly the way society considers natural elements; and finally, the integration of international rules in each legal order. This paper establishes that values and traditions hidden in environmental governances need to be deeply studied before launching any renewal of international environmental law. If law is an essential tool to environmental protection, one needs to renew the method(s). Indeed, a unique global legislation applied to a diversity of legal cultures, as well as international conventions based on Western conception of nature, may not be relevant. The comparison between EU and Chinese environmental laws reveals indicators of this tendency.

Keywords: comparative environmental law, China, European Union, legal culture

> (Legal rules) must be relative to the physics of the country; […] to the kind of life of the people, […] they must relate to the degree of freedom that the constitution can suffer, to the religion of the inhabitants, to their inclinations, […] to their manners. (Montesquieu, 1748, p. 128)

Montesquieu highlights here the invisible but permanent link between the rules of law and the cultural traits of any society. This is especially true within environmental law. However, international environmental law does not take into account the entire scope of this element, which is, perhaps, a reason of its lack of effectiveness. Here is this paper hypothesis: There is an urgent need to consider legal, cultural, and ecological diversity to strengthen environmental law, through a better included comparative law approach. Indeed, a comparative law perspective highlights some elements that are important but rarely included in international perspectives. To understand the importance of these elements, a comparison between European Union (EU) and Chinese laws may be relevant.

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China and the European Union are two of the three largest economies in the world. China is the EU's second biggest trading partner behind the US, and the EU is China's biggest trading partner. In a 2019 Communication, the European Commission describes China as a "systemic rival promoting alternative models of governance" (EC, 2019). A main issue is established: The model of governance in China is profoundly different from that in Europe. In fact, the entire legal culture is truly distinct. A comparison between the EU and China implies methodological issues about the comparability of these legal systems: For legal scholars, the EU and China are usually seen as profoundly different. The European Union is considered a member of the continental legal system. China is a member of the socialist family, and, more widely, a member of non-western legal systems (David, 1964; Zweigert & Kötz, 1998; Kishel, 2019). Some scholars in comparative law, such as authors from the relativist approach, refute this kind of comparison due to the significant differences between the backgrounds and characteristics of these two legal systems (Oderkerk, 2017). The European legal basis is far removed from that of China, both in the aspects of the foundations of the state power or the role of legal rules in society. However, the central place of China in international exchanges and specifically in Europe creates a real need to learn more about the new first economy of the world. It appears as a main issue for comparatist scholars (Feinerman, 2017). Moreover, a part of the literature maintains that a comparison of the protection of nature as operated by a Western legal system and that of an Asian State like China does not constitute an insurmountable difficulty. Some authors indeed assert that if Asian, and more precisely Chinese, specificities exist, they would not be the basis of an ideological conflict between the East and the West making any comparison impossible (Mushkat, 2004). Other authors, like Y. Ghai, take up the idea of the absence of civilizational conflict and go further: There would be common elements between Asia and the West (Ghai, 1995). This is reflected in the development of an analogous ideological foundation: the protection of a "good human life". This concept is the foundation of Western liberal theory and is also fundamental in non-Western cultures. It implies not only the protection of the human being, but also of his or her habitat, however it is defined. According to this approach, there is no intrinsic incompatibility between Western and Asian cultures that would prevent a comparative analysis of two legal systems from these areas. A fortiori, such a comparison would make it possible to provide avenues for reflection under a new perspective; and to propose a renewal not only of the theoretical analytical grids applied to Chinese law, but also in practice in the formulation of rules of international environmental law.

This paper proposes to compare environmental legal systems in the European Union and China in order to highlight some legal issues in the green sector. They both apply a multilevel governance in the field of environmental protection, as it is a shared power amongst different levels of government in both legal systems. These are sets of organic and material elements that form part of a law applicable to a given society, sharing powers between several political and legal levels (Pernice, 2009). Moreover, the European Union and China both face serious environmental issues. Simultaneously, they must ensure economic development. Finally, European and Chinese officials have ratified several international conventions concerning environmental protection. As a result, international law is applied in both legal systems.

Legal culture (Nelken, 2017) seems to have a strong impact on these issues and more widely on the entire environmental protection legal system. This analysis highlights the effect of certain elements of legal culture on environmental protection instruments and their effectivity. This issue is usually underestimated in the environmental field, despite its strong impact on green sector achievements. Several contributions on

environmental law in China have used a Western reading grid, disregarding Chinese legal culture characteristics. Chinese legal culture itself is subject to a lack of literature by both legal scholars and legal anthropology (Chiba, 1998). Misunderstandings are common in Western literature as well (Ruskola, 2002).

The comparative study presented here is based on a combined method, including a contextualist approach and some elements from the multi-level governance theory (Pernice, 2009). Some aspects of contextualism have been applied in order to consider elements from legal traditions that influence the formation and implementation of each rule. In this field of research, the link between law and the society to which it is applied is dominant (Legrand, 1996).

As a result, this paper focuses first on a Western perspective (I); then it proposes the comparison of environmental law in the EU and China with a comparative reading grid (II). Moving from a Western to a comparative approach highlights cultural elements that were previously invisible and shows a different picture of environmental protection.

From a Western Perspective: Similarities in Environmental Legislations

Wearing Western glasses, one will easily observe that the EU and China both developed environmental law in the 1970s with a similar structure, based on a Western matrix, which implies a utilitarian perspective. Chinese law is composed of 6 global environmental protection acts, 15 natural resources protection acts, about 50 national regulations, and more than 600 local regulations. The EU has published several thousand texts in this domain. The quantity is not the same, but similarities can be observed. Two groups of elements are particularly interesting: general principles of environmental law and natural resources protection.

General Principles of Environmental Law

Some general principles of environmental law—mainly stemming from the 1992 Rio Declaration—appear in the Chinese legal system. With a Western reading grid, Chinese law is quite similar to the EU legal system.

First, the right to a healthy environment, stemming from the international declarations of Stockholm (1972) and Rio (1992), is protected in EU law under the Charter of Fundamental Rights of the European Union (Article 37). Although this right does not appear explicitly in Chinese law, its implementation principles, such as the right to information and public participation, can be found. Public information appears in Chinese law as an instrument of environmental protection. The Act of 29 June 2002 (Articles 17 & 31) concerning the promotion of cleaner production provides for the publication of business listings in the media. It is both a deterrent and an incentive tool.

Second, the principle of integrating environmental protection requirements into other policies, established in Europe by the Treaty on the Functioning of the European Union (Article 11), has been developing in Chinese law since the 1980s. The main environmental protection laws provide, in similar terms, that the national public authorities "incorporate environmental protection" into national planning for economic and social development. The concept of impact studies, deeply linked to the principle of integration, was already present in the Chinese Act of 11 May 1984 on the prevention and reduction of water pollution, the 1989 Act on the protection of the environment, and the 2000 Act on air pollution.

Above all, the Environmental Impact Assessment Act of 2002 takes up large parts of the European system by laying down substantive rules. To this end, the assessments conducted "should be objective, transparent and

equitable and take into consideration all possible environmental impacts of planning and construction projects to provide a scientific basis for the decision-making process" (Article 4).

Third, the principle of prevention, present in the entire EU law, is implicitly laid down in the Chinese Constitution when it states that "the State protects […] the human environment and the ecological environment" and more directly when it creates the obligation to "prevent and control pollution and other public nuisances" (Article 26). It also appears in the main environmental legislation. Thus, the term "prevention" is included in the laws relating to water, waste, and air (2000 Act About Prevention and Atmospheric Pollution Reduction, 2004 Act About Prevention of Waste Pollution), as well as in the 1989 Environmental Protection Act (Article 1). This Environmental Protection Act includes an entire chapter on the prevention and control of pollution and other hazards to the public, the content of which is very similar to that of the European IPPC Directive (2008/1/CE Directive, replaced by 2010/75/UE IED Directive). Indeed, this chapter encompasses the most diverse sources (production, construction, etc.) of various types of pollution (gaseous waste, wastewater, residual waste, etc.) as well as European classifications.

Fourth, the precautionary principle has tiptoed into Chinese law. It underlies the "precautionary measures" imposed by the Regulation of 23 May 2001 on the safety of genetically modified agricultural organisms. The adoption of these measures is one of the conditions for issuing an authorization to produce, market, or import such organisms (Articles 19, 21, 26, 31, & 33). The precautionary principle is mentioned in Article 191 of the Treaty on the Functioning of the European Union. It aims to ensure a high level of environmental protection through preventive decision-making in case of risk.

Finally, the "polluter pays" principle appears in a number of Chinese legal texts, such as the law on pollution caused by waste (2004 Act About Prevention of Waste Pollution, Article 5). It is included in Article 191 (2) of the Treaty on the Functioning of the European Union as one of the guiding principles of the Union's environmental policy. It manifests itself in several secondary legislation concerning waste and water.

Natural Resources Protection

Several areas of environmental protection show great similarities, and in some cases, apparent legal transplants. These transplants appear to be a direct application in Chinese law from European instruments.

First is the case in the fight against atmospheric pollution. A five-year plan for the prevention and control of air pollution in key Chinese regions was established, as well as a major law in the year 2000 on the prevention and control of atmospheric pollution. Like EU instruments, it focuses on coordinating efforts between national and local levels. The national standards are those from the European Union: The national department of environmental protection refers expressly to the European Regulations, especially those of 2007 and 2008.

Also, the battle against water pollution in China follows the Western matrix based on uses of natural resources. It stems from a 1964 French Act, which established an innovative way of managing and protecting water resources. This French framework, the French School of Water, inspired the whole European law system in this domain as it was applied in the water protection legal system in the EU (2000/60/EC Directive). It implied water management based on hydrographic basins instead of administrative circumscriptions. The aim is to manage each ecosystem with its uses and its specificities. China adopted this innovative system in the 1980's to insure water protection (Thieffry, 2008).

Finally, forest resources protection is very interesting in this context. Article 26 of the Chinese Constitution states: "The State organizes and encourages the planting of trees and reforestation and protects trees and forests". The 1984 Forestry Act provides the major legislation, completed by the 1986 Implementation of Forest Act, revised in 1998. It has significant provisions on a complete set of uses: the right to use forestland, the requisition of forest woods, the compensation of forests' ecological effects, etc. (Zhang, 2015). In 1998, an integrated approach was established, implying specific uses of the forest to protect other resources (water, soil, air, etc.). The rationale behind forest protection is similar to what is applied in European law: Protection is based on forest uses. About 90% of EU funding for forests comes from the European Agricultural Fund for Rural Development (EAFRD), and is integrated in the Common Agricultural Policy. Moreover, the marketing of forest reproductive material is regulated at the European level by the Directive 1999/105/EC. The European phytosanitary regime aims to control the spread of harmful organisms to forests (Directive 2000/29/EC). Thus, the rationale is similar concerning natural resources protection as it is based on uses in both cases.

Moreover, China goes beyond a well-developed legislation as 130 courts specialized in environmental protection have been created between 2007 and 2013 in order to implement it (Stern, 2014). From a Western perspective, environmental protection seems to be optimal in China on a legal and judicial point of view. As a result, using a Western reading grid allows us to think that environmental legal systems are quite similar. The implementation of a comparative reading grid on environmental laws shows a discrepancy gap, and a materialization of Chinese law ambiguity: The legal system exists, but there are resistances to use it.

From a Comparative Approach: Some Legal Discoveries

Several factors have an impact on environmental protection. This study has chosen to describe two components of the legal tradition in each entity studied as these components reflect the dominant features having an impact on the field of environmental law. Thus, as described below, the role of law in governing life in society, and society's relationship to the environment.

The Rule of Law in the EU and China

The role of law in regulating life in society. The main features of the genesis of a legal system are found in the history of the observed society. A fundamental factor comes into play, that of the foundation of power. It will determine the place of the rules of law in the life of a human community. This is particularly true in a comparison between European and Chinese laws.

A dichotomy appears when one approaches the question of the power base: Between the Western legal systems and the Oriental ones, the base of the power is decidedly different (Cuniberti, 2011). Western legal orders, to which the EU belongs, make power the basis of popular sovereignty. Oriental legal systems devote an alternative or concurrent legitimacy to this sovereignty of the people. In some cases, it may be a religion or an ideology that becomes either the sole basis of power or a rival foundation. In China, it is the socialist ideology that is consecrated. It should be noted, however, that this follows a long tradition of alternative foundations of power.

The substance of this first component has important consequences on the relationship between society and the law that governs it. EU law, influenced by laws from all around Europe, is characterized by the rule of law. The Platonist and Greco-Roman approach is a central point to understand European law genesis. Latin conception

irrigates all Western laws, and implies a certain point of view about law (Li, 1997): It is a categorical imperative for all, defining and regulating, in an abstract manner, the conditions and effects of social activity. Of course, there are major differences as to the place of the law (an important criterion for qualifying a continental legal system), and the role of the judge (characteristic of legal systems belonging to the common law tradition). But nothing is so profoundly different as the Chinese legal situation.

One of the fundamental features of Chinese law is legal pluralism. There is a coexistence between state law and unofficial rules (Chiba, 1998). According to classical comparatist scholars, China has a weak legal tradition (Legeais, 2004), emphasizing social relations and related duties. The traditional Chinese civilization, whose influence is decisive despite the advent of communism, is supposed to be hostile to the *rule of law*, favoring instead a *rule by person* (David, 1964; Chen, 1999; Legeais, 2004). The traditional approach is based on the theory of government by Confucius which implies a different foundation of power. Men are governed by the *Li*, rules of conduct that men impose on themselves, and not by the *Fa*, rules imposed by the sovereign (Legge, 1968; Glenn, 2014). According to Confucius:

> If the people are subject to the law and if uniformity is imposed by means of sanctions, people will seek to evade it and will not be ashamed, whereas if the people are ruled by virtue and uniformity is sought by means of "*Li* (virtue)", people will feel ashamed and therefore become righteous. (Ehr-Soon Tay, 1998, p. 206)

Chinese society is traditionally based on an extrajudicial and non-contractual moral conception of life in society. Recourse to the "*Fa*" (e.g. substantive law) is traditionally proof of social order collapse and lack of harmony between the state and said society. Substantive law is a terrorist intervention of the state and rights conferred to individuals threaten social harmony. According to the first Minister of the Zheng State, in the third century BC: "I have to say that every State about to perish is characterized by the large number of its governmental regulations" (Ehr-Soon Tay, 1998, p. 206).

The study of Chinese society reveals a real distance between the law, as the Western approach defines it, and society. The regulation of social relations obeys standards other than legal norms, such as tradition, propriety, custom, and consultation (Beydon, 2015). The Chinese system is based on social ethics, oriented towards a natural order (a pronounced sense of hierarchy, filial piety with a clan leader, family prevailing). It prioritizes mediation and compromise. The legacy of Confucianism prevails: Chinese culture does not rely on the law to ensure social order and justice. Trials and the normative constraints are used only a last resort. Recourse to courts was discouraged for more than 2,000 years: It is the duty of the clan, the family, the corporation to resolve the conflicts born within them. In the European approach, the role of the courts is not only to apply the law, but very often to interpret it and sometimes to "tell" it, through the use of contradictory debates in which all interests are represented and, normally, defended.

Initially, the communist regime did not break with the traditional Chinese conception of law. At the time of its advent, it abolished all existing laws, decrees, and tribunals. By relying on traditional practices, the central state and communist ideology became the main applicable standards.

In the late 1970's, however, legal certainty became an indispensable factor in attracting foreign investors and ensuring the Chinese Government's new priority: economic development (Potter, 2014). It is a driven element that should not be underestimated. It led to a legislative frenzy that began quickly, in 1978, which

culminated in the establishment of a dense legal fabric with no real hierarchy, characterized by an entanglement of administrative authorities (Delmas-Marty, 2002; 2008). In this context, law and the Constitution, appear to be tools at the service of politics, but they are not a factor of stability. The apparent exaltation of the law seems to be destined to satisfy foreign investors.

Despite a wave of renewal, China appears today trapped between two different legal trends: Western legal formalism and a traditional resistance to this formalism. This ambiguity is cultivated, mostly in China's foreign relationships and has notable consequences on the importing of Western legal models, particularly through the rules of international law (Cuniberti, 2011).

International law implementation: An adjustment variable in China. Another element is highlighted with a comparative reading grid: methods used to implement international law conventions in national laws. It is a big issue as environmental law strongly comes from international law. China's historical conception of its relations with the outside world is different from that in the EU. Having traditionally adopted a vision of superiority vis- à-vis the countries around it, China has not maintained egalitarian relations with other states (Ahl, 2016). Reciprocity is not traditionally part of the Chinese intellectual climate towards what is considered "wastelands". It is a tributary relationship that Chinese civilization has with neighboring states. The *jus gentum* would not have existed there if China had been isolated. However, environmental law is largely made up of international rules and China takes a particularly critical view of international law. The Chinese doctrine accuses monistic theories of denying the essential differences between international and domestic rules, serving the interests of certain Western states. Dualist theories have a more positive view, recognizing the sovereignty of states. Nevertheless, they appear inappropriate to the Chinese legal context because they do not allow for the interconnection between the different spheres of law. Criticism is directed at international law, which is generally considered too Westernized. Chinese constitutional doctrine has in fact established a mechanism specific to the Chinese context, that of so-called automatic or natural coordination. It would thus free itself from considerations that are too formal to apprehend the "true" articulation between Chinese domestic law and international law (Ahl, 2016).

The influence of Marxism-Leninism is notable (Woodman, 2007). Pragmatism has governed the successive reforms, and the Chinese constitutional base is not a carbon copy of the Soviet system. Nevertheless, the influence of the latter remains characteristic and can be found in Chinese constitutional theory. The Marxist dialectic on the relationship between domestic and foreign policy has left its mark on Chinese constitutional law. The Marxist doctrine is thus at the origin of the method practiced at the constitutional level, which consists in freeing oneself from the choice between monism and dualism for the application of international law on the Chinese territory. Characterized by a high degree of theoretical ambiguity, automatic coordination sets up a mechanism that is sufficiently vague to adopt and then implement rules from international conventions when the domestic context lends itself to it, and to circumvent them when the prevailing political objectives do not. More precisely, it is a moderate form of dualism in which international and domestic law are two separate but strongly interconnected legal orders. The principle is that the state respects its international legal obligations in the process of adopting new legislation or amending old legislation. Thus, domestic legislation will not be changed to ensure compliance with China's international commitments. It is when there is a change in the legislative arsenal, which is otherwise justified, that the integration of international rules into the domestic legal order will take place (Ahl, 2016). This

has a significant impact on the penetration of international law into Chinese domestic law, which appears more like a political adjustment variable. International environmental law is thus experiencing difficulties in integrating domestic law, due to the doctrinal and constitutional principle presiding over the articulation of international and domestic law.

The Way Society Considers the Environment

Environmental legislation is obviously influenced by the place accorded to law in society. The main issue is that of the effectiveness of the developed legal regime. In environmental matters, an additional factor comes into play: the relationship to nature maintained by society. It differs according to the origins of the law and it constitutes an important factor as to the effectiveness of the rules of environmental protection.

Firstly, a detour by the Bible must be made. It is the subject of several interpretations concerning the relationship between humans and nature (Aeschimann & Riché, 2022). In 1967, the historian Lynn White Jr. published an article in *Science* blaming the Judeo-Christian worldview for the environmental crisis (White Jr, 1967). According to Genesis (as interpreted by White), human beings were created in the image of God, which gave them superiority over nature. Both Jews and Christians saw themselves as separate from the rest of nature and entitled to subjugate it. This interpretation, according to White, is at the root of the ecological crisis. In response to this much-publicized article, the American philosopher John Baird Callicott offers three readings of Genesis, concerning the human-nature relationship (Baird Callicott, 1991). First, according to the book of Genesis (1-26), the world was indeed created for the human species and belongs to it: “Let us make man in our image and likeness, and let him have dominion over the fish of the sea, and over the birds of the air, and over the cattle, and over all the earth […]”. This is the “despotic” interpretation. According to J. B. Callicott, a second possibility is provided by the same Book (1-30), that of the obligation of care: On the fifth day, God contemplates what he has created: grass, trees, fruits, animals etc., and he “found it very good”. Since nature is “intrinsically” good, humans should not exploit it but take care of it because of its value. In the third reading, the American philosopher proposes a “citizen” approach, proper to St. Francis and based on Verse 2-7: “God fashioned man out of the clay of the ground”. This is completed in Verse 2-19: “it is not good for man to be alone”, and he then made the animals in the same way. Thus, man and animals would be equal; man would be a citizen of nature. Of the three interpretations, it is the first that has prevailed in Christianity, at least until 2015, when an attempt was made to switch to the third (citizen) reading by the publication of the Encyclical “Laudato si” by Pope Francis. The gap between humans and nature was thus established in the West on the basis of Christianity. The 15th and 16th centuries will deepen this gap, with the theories of Bacon (“man must, by his science and his work, triumph over the elements of nature and thus erase the original sin”), or Descartes (nature is “a passive substance”; the animal is an “automaton without a soul”). The great colonial conquests and the exponential use of energy will crystallize this man-nature gap.

European laws will be influenced by a synergy between this dominant philosophical climate centered on the “despotism”, and three legal sources: the custom, the canonical law, and the Roman law. Both Romano-Germanic and common law family legal systems are driven by these three sources, the conjugation of which produces a particular approach to the environment: a utilitarian approach. Christian and Romanist postulates, even in common law systems, are major factors (Fisher, 2009).

This implies that each component of the environment is broken down into a multitude of components for which a usage-based legal regime is established. A use therefore corresponds to a legal regime (Joachim, 2018). EU law and European laws are globally structured according to this matrix. Thus, a real *maquis juridique* (legal maquis) characterizes EU law in environmental protection, which is thus highly structured and complex.

Secondly, Chinese law differs from EU law in that it considers the environment differently. Theories of Confucius are once again revealing: They historically ground the relationship of man to his environment in traditional China. This relationship is initially marked by a great unity: Man and nature form a whole (Mc Neill, 2001). Nevertheless, an ambiguity appears around the definition of nature in this context. If the Oriental approach, from a Western perspective, is often considered as truly ecological, reality is more nuanced (Falcombello, 2005). According to Confucianism, the individual and the social order must be granted, in order to ensure the common good. The aim is traditionally to obtain harmony within the family, the village, China and humanity. An absolute value of Confucianism resides in unity between man and the cosmos (Li, 1997). Does it imply unity with the elements of nature? Harmony has to remain in a natural order, but does it mean it is supposed to respect an ecological goal? French comparatist R. David established the importance in China to consider the seasonal cycles in private and public lives (David, 1964). This could be considered as a mark of ecological intentions in Chinese tradition. Conversely, in geography doctrine, Chinese civilization is usually considered as a predator of nature. For example, some scholars have suggested a Chinese dislike of trees: "Wherever the Chinese have established themselves, this hatred of the tree, which is almost an ethnic trait, breaks out. Often the forest is destroyed" (Morin & Salomon, 2001, p. 34). More globally, the traditional position concerning the natural elements seems to be more characterized by a mixture of fear and detachment. The traditional relationship with nature is still a source of debate, but it has evolved with the country's modernization.

This modernization, begun in the late 1970's, and the protection of the environment are intrinsically linked. There is a historical basis of human duties towards the environment, but the priorities of the Chinese government prevail: Economic development is the foundation on which the protection of the environment is based. It is in this context that Chinese environmental law has developed since the 1980's, with several texts adopted. Nevertheless, the Chinese legislation in this area is particularly vague and written in a flexible way: Its flexibility makes it possible to interpret the obligations prescribed in the sense of the objectives prevailing according to the conjuncture (Legge, 1968; Fisher, 2009; McNeill, 2001).

Thus, the diversity of approaches prevails in terms of the substance of the law, which is as much about the traditional relationship maintained by society in regard to its legal system as the treatment of the environment.

The comparative study of European and Chinese legal systems in this area reveals that one cannot apply a Western analysis grid to an Oriental law if one wants to understand how this legal system really works. If there is perhaps a gap in Western laws between the existing rules of law and their application, the study of Chinese law falls outside this framework.

Some Legal Discoveries With a Comparative Reading Grid

According to several studies by the State Environmental Protection Agency (SEPA) (2021, in particular), the general environmental situation in China is a serious concern. More than 70% of the water in five of the seven main river basins is "unsuitable for human contact". Only 20% of waste is treated appropriately, and the air

quality does not meet the standards of the World Health Organization in 2/3 of the three hundred major Chinese cities. However, environmental declarations are raising awareness at the highest level, in response to growing pressure from the public and to some degree, from international sources. The environmental legal research is rich, and the central administration regularly emphasizes that the Chinese government attaches great importance to the protection of the environment, considering that it relates to the modernization of the country as a whole and to its development in the long term (Thieffry, 2008).

The situation in Europe is not necessarily ideal, but why does there exist such a discrepancy in China between an apparently rich legal system and these alarming environmental results? The relative completeness of Chinese environmental law does not mask the traditional ambiguity. It does not appear to be sufficiently emphasized and translated into concrete and measurable actions. There is an important feature in Chinese legal culture, from a Western point of view: an attraction for the relatively weak law. Thus, Chinese legislation is vague and loosely written. It has a flexibility that allows it to be interpreted in the sense of the prevailing political objectives of the moment. One can observe this trend with the following examples.

About environmental general principles implementation. General principles in environmental law appear in both legal systems, but their application can be a source of ambiguity. The right to a healthy environment is an individual right, not present in traditional Chinese culture, which is more focused on the common good and a collective approach. This is the reason why this right is difficult to find in Chinese legislation. Nevertheless, implementation principles appear, namely: public information and public participation. These implementations are quite far from their European counterparts. Public information in European law implies a right to access to information on environmental quality, and not just on information concerning the virtuous activities of European companies (Aarhus convention). The implementing of public participation in China adopts a particular modality. Indeed, the main environmental protection laws provide, in similar terms, that "all entities and individuals […] shall have the right to report entities or individuals causing pollution or harm to the environment or to lodge a complaint against them". This is a corollary to the imposed obligation to protect the environment (1989 Act About Environmental Protection, Art. 6; 2004 Act About Prevention of Waste Pollution, Art. 9; 2000 Act About Prevention and Atmospheric Pollution Reduction, Art. 5; 1996 Act About Prevention and Reduction of Water Pollution, Art. 5). This implies that by principle, it is not required to have a specific interest to file a complaint under Chinese law and thus everyone has a right of action in environmental protection. Conversely, European laws, such as French law, impose that there must be a direct and personal interest to file a complaint (French Civil Procedure Code, Article 31). This could appear to represent an important difference in the two systems. Chinese procedure, however, reveals that barriers about this issue as the quality for action are assorted with very strict conditions (Thieffry, 2008). Does this imply the existence of a convergence? The answer would seem to be no. Also, European laws, such as French law, have opened their legislation to pure ecological harm (French Civil Code, Article 1249), potentially lightening the standing condition in environmental actions. Here again, the trends seem to be opposed.

Finally, the scope of the "polluter pays" principle is still very limited in China because of the low amount of taxes and fees charged (Thieffry, 2008). Moreover, the Chinese financial incentive system is the opposite to that of the Europeans. It is more of a reward system in the event of remarkable achievements in the protection and improvement of the environment. The European system is more marked by a logic of sanction.

About natural resources protection implementation. The Chinese standards concerning atmospheric protection are those from 2007 and 2008 European regulations. Nevertheless, at the reading of the Chinese text, the characteristics of the Chinese law stand out. Article 7 of the 2000 Act on the Prevention and Control of Atmospheric Pollution states that national emission standards are set by the Department of Environmental Protection. Paragraph 2 specifies that provinces, autonomous regions, and municipalities can set local standards that may be stricter. But all of this is accompanied by conditions such as the systematic approval of the National Council and the necessity that these standards are set in accordance with the economic and technological conditions of the country (2000 Act on the Prevention and Control of Atmospheric Pollution, Article 7).

A great deal of appreciation is allowed for the competent authorities and the courts responsible for their implementation and execution (Thieffry, 2008). The work of the courts here is very revealing of the still strong imprint of traditional Chinese elements. Indeed, the 130 environmental courts specifically created between 2007 and 2013 are struggling to function, due to a lack of cases brought before them. They deal with very minor disputes: The majority of disputes are settled upstream, privately or by the local authorities, in accordance with the Chinese tradition which favours mediation and conciliation (Stern, 2014). It should be noted that it is only as a last resort, and citizens or companies rarely go to court (Stern, 2014). The treatment of Forest Act infringement cases is particularly noteworthy.

In case of violation of this law, beforehand a conciliation phase (by an administrator at his level of competence) has to be conducted, and in certain situations, administrative reconsideration is possible. It is only as a last resort that action in a court is possible. Before the courts, compensation is in kind. In case of illegal cutting of a tree, there is a civil obligation to compensate for this loss. The competent department orders to replant the corresponding number of trees felled. Moreover, if an error occurs by a member of the government administration and this causes a destruction of wood (1984 Forest Act, Article 39), the competent department orders to replant 10 times the corresponding number of trees felled or to pay the cost of the plantation (Zhang, 2015). This is a first mark of the vivacity of the Chinese tradition. Criminal courts offer a second marker in this area. Damage to the environment is not in itself subject to conviction; judges do not seize it. Chinese criminal law implementation (highly developed and old) pays more attention to protecting the property and consequential personal injury more than the environment itself (Zhang, 2015).

Conclusion

As French Pr. Legeais wrote, Chinese environmental law seems to have established “a modern law tackled on a society that gives it effectiveness albeit slowly” (Legeais, 2004, p. 2). This paper demonstrates the importance of legal culture on the effectiveness of environmental protection. It offers only reflections as the task seems immense. Where we see environmental protection in texts, it does not have effect in reality. The legal texts do not in themselves seem important. The EU and Chinese examples show how the reading grid for analyzing a legal system is fundamental. With a Western positivist reading grid, Chinese environmental law seems to be complete and well-constructed. But the Chinese legal culture is an uncommon legal system, leaving considerable room for maneuver with regards to self-regulation or a parallel mode of regulation that Westerners have difficulty in grasping the contours and asperities. Regarding the impact of legal culture on the effectiveness of

environmental protection, it may imply to include legal cultures issues in each project of international agreement in this field.

What's next? Two issues are very important in this scope, especially about China. First, Chinese food safety is a central goal that has been recalled by President Xi Jinping during the 20th Communist Party Congress in October 2022: "It is necessary to accelerate the transformation of our country into an agricultural power (…). We will consolidate the basis of food security in all aspects (…) so that China can provide the people with their daily bowl of rice". Thus, environmental protection in China will be highly linked to this issue in the future (Lemaître, 2022). Then, we have to take into account in the West that climate change may create, from a Chinese perspective, some opportunities in some way that there may not be urgent to limit it. Indeed, the melting of the ice will make it possible to open certain maritime routes which were closed until now, and thus to facilitate the routing of goods from China, which has become the world's factory. President Xi Jinping added: "We will actively participate in global governance on climate change", while pledging to "strengthen the clean and efficient use of coal". This makes it even more urgent to multiply comparative studies in order to establish an effective international law, not through uniformized rules, but by making compatible laws on the planet.

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