
Contesting Legality in Authoritarian Contexts: Food Safety, Rule of Law and China's Networked Public Sphere

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Since the introduction of the Internet, China's networked public sphere has become a critical site in which various actors compete to shape public opinion and promote or forestall legal and political change. This paper examines how members of an online public, the Tianya Forum, conceptualized and discussed law in relation to a specific event, the 2008 Sanlu milk scandal. Whereas previous studies suggest the Chinese state effectively controls citizens' legal consciousness via propaganda, this analysis shows that the construction of legality by the Tianya public was not a top-down process, but a complex negotiation involving multiple parties. The Chinese state had to compete with lawyers and outspoken media to frame and interpret the scandal for the Tianya public and it was not always successful in doing so. Data show further how the online public framed the food safety incident as indicative of fundamental problems rooted in China's political regime and critiqued the state's instrumental use of law.

Recent studies show that issues related to law, particularly citizen rights protection, the government's illegal practices, and a variety of legal disputes, are among the most widely discussed topics in China's networked public sphere.¹ The ways in which Party-state agencies apply legal norms and operate legal institutions often trigger "public opinion incidents (*gonggong yulun shijian*)"—events that capture the public's attention—and become targets of public criticism. Public opinion incidents create opportunities for many actors, particularly liberal-leaning lawyers, journalists, and victims, to address grievances and pursue social,

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¹ Following Habermas (1996: 360), we use the term public sphere to refer to "the social space generated in communicative action" and "a network of communicating information and points of view."

legal, and political change. As a result, Party-state agencies in charge of legal issues, especially the public security system, the procuratorial system, and the courts, are faced with enormous pressure (Li, Chen, and Chang 2015). Despite the centrality of law in China's networked public sphere, however, we know little about the ways in which individuals who do not necessarily have personal legal disputes engage with legal norms, perceive legal institutions, and interact with legal ideologies in this public sphere. This article addresses this gap in the literature by examining how members of the online public in the Tianya Forum—the most influential online forum in China from 2008 to 2010—conceptualized and discussed ideas related to law and the 2008 Sanlu milk scandal.

The importance of online public opinion to social, legal, and political change (or its lack thereof) in China makes the construction of legality in the networked public sphere a critical research topic. Following Habermas (1996: 362), we do not use the term public opinion to refer to aggregated, privately expressed attitudes that are gathered in surveys or public opinion polls. Instead, we use the term to refer to collective will-formation among citizens. In this usage, public opinion is the outcome of public discussion or debate. Public opinion generated by the online public has an important role in bringing about change in China even though the online public is unrepresentative and its composition tends to be obscure (Dahlberg 2007). Precisely due to the absence of meaningful electoral battlefields and functioning institutions for political participation, Chinese citizens who express their opinion publicly are more likely to influence politics than the silent majority. Research shows that since its introduction and popularization, the Internet has become the most important venue for public opinion formation and expression in China; even when online viewpoints are far from representative, their dissemination and discussion among large numbers of citizens gives them the power to shape news agendas, create public opinion incidents, and eventually impose pressure on the Chinese Party-state (Yang 2009).

Many ordinary citizens as well as legal and media professionals believe that strong public opinion raises the probability that Party-state agencies will respond to problems and grievances (He, Wang, and Su 2013; Liu and Halliday 2011; Yang 2009). Consequently, public opinion has become a tool that various actors attempt to mobilize public opinion to influence political and legal processes (Fu and Cullen 2008; Halliday and Liu 2007; He et al. 2013; Liebman 2005; Liu and Halliday 2011; Stern 2011). Indeed, cases of legal mobilization indicate that beliefs about the Chinese Party-state's responsiveness to public opinion are not

ungrounded. For instance, criticism of the government both online and offline in the Sun Zhigang case in 2003 led to the overhaul of unconstitutional detention regulations. The Deng Yujiao case in 2009 similarly demonstrated that public opinion can influence court decisions. When interviewed by the media about the Deng Yujiao case, the Vice President of the Hubei Higher People's Court said that judges should consider how the public perceives cases on trial and avoid arousing public sentiment.² The Vice President's statement is consistent with studies of the Chinese legal system that show that, to appease the public, Chinese courts and Party-state agencies involved in legal disputes take public opinion into consideration, particularly when pressure from public opinion is intense (He 2014; He et al. 2013; Liebman 2005, 2011a, 2011b).

The Chinese Party-state's responsiveness to public opinion has also been documented and explained by scholars of Chinese politics. Reilly (2012) and Stockmann (2013) argue that the Chinese Communist Party (CCP) has developed a form of authoritarianism characterized not only by repression and coercion but also by responsiveness. By allowing a certain degree of criticism—particularly criticism of government agencies and problems at the local level—the central government increases its information about, and ability to monitor local Party-states. Furthermore, by accommodating popular pressures to some extent within its decision-making process, the CCP aims to sustain its legitimacy and maintain regime stability (Reilly 2012: 1–2; Stockmann 2013: 6).

To be sure, the Chinese Party-state's responsiveness to public opinion should not be overstated, just as the various ways in which it continues to repress public opinion should not be underestimated. Ultimately, responsiveness and repression are both strategies used by the CCP to maintain its political monopoly. Our point, however, is the following: in a context where formal channels for political participation are limited and where legal institutions cannot or do not address grievances in a satisfying manner, the networked public sphere has become a critical site for various dissatisfied actors to address individual grievances, define and discuss societal problems, and advance legal, political, and social change. Furthermore, research suggests that the public opinion produced within this sphere can potentially influence the Chinese Party-state's decisionmaking. The court of public opinion is not a formal political or legal institution, but it nonetheless has the

² http://news.ifeng.com/mainland/200909/0922_17_1360006.shtml (accessed 21 January 2014).

potential to influence institutional processes related to law in China. Given this, it is imperative to examine how the online public engages with legal norms, perceives legal institutions, and interacts with legal ideologies.

Construction of Legality in the Networked Public Sphere

Our study builds existing scholarship that studies the construction of legality and legal consciousness. Social-legal scholars conceptualize legality as part of the social structure (Ewick and Silbey 1998: 43), using the term legality to refer to “the meanings, sources of authority, and cultural practices that are commonly recognized as legal, regardless of who employs them or for what purposes” (Silbey 2005: 323). The term legal consciousness is used to refer to the ways in which individuals understand, interpret, and experience law, as well as participate in the process of constructing legality (Merry 1985: 45; Silbey 2001: 8623).

Literature on legality and legal consciousness suggests that the Chinese Party-state and citizens’ personal experiences largely shape legality and legal consciousness. On the one hand, the Chinese Party-state plays a critical role in delivering the state’s legal ideology and creating a positive view of China’s legal institutions, mainly through the state-controlled media (Gallagher 2006; Liebman 2011a: 183; Stockmann and Gallagher 2011; Su and He 2010: 163). The Chinese state has demanded that the media disseminate legal knowledge to the populace as part of the state’s propaganda. Furthermore, it has put pressure on the media to focus on the positive rather than negative aspects of the legal system. The resulting reportage, with its narrative emphasis on the usefulness of law as a “weapon” for the people, boosts the public’s perception of and expectations regarding legal norms and the legal system (Stockmann and Gallagher 2011). Negative stories about the legal system do emerge occasionally and trigger negative sentiment, but they are usually framed as individual problems rather than structural flaws. As such, these stories have little impact on the media’s heroic (albeit state-mandated) image of China’s legal system (Gallagher 2006; Michelson and Read 2011: 193–94).

On the other hand, citizens’ personal experiences with the law can undermine and challenge these positive narratives. Scholars find “informed disenchantment” among people with personal experiences with the legal system. Such citizens have exceedingly negative assessments of their encounters with the law in terms of fairness and efficacy, though, on the “up” side, they do also think their personal experiences enhance their

knowledge about the legal system and their capability to engage with the law (Gallagher and Wang 2011; Michelson and Read 2011: 170).

Other social-legal studies suggest that we should look beyond how a monolithic Party-state and personal legal experiences shape the construction of legality. First, studies of the legal profession and political liberalism (Fu and Cullen 2008; Halliday and Liu 2007; Liu and Halliday 2011) suggest that politically liberal legal discourse can be propagated, circulated, and received in the public sphere. Examining discourse in the online forum of the All China Lawyers Association, Halliday and Liu find that some lawyers have developed a liberal ideology of the rule of law that simultaneously challenges the illiberal aspects of China's legal institutions (Halliday and Liu 2007). Furthermore, Liu and Halliday (2011) identify variation among Chinese criminal lawyers in terms of their political and legal ideology. A group of politically liberal lawyers Halliday and Liu term "notable activists" rely on the media and the Internet to protect themselves and influence public opinion. Research looking at *weiquang* (rights protection) and public interest lawyers reach similar findings (Fu and Cullen 2008, 2011). The viewpoints of such liberal and public-minded lawyers offer an alternative to official legal discourse through the mediation of the media.

Second, notwithstanding the Chinese Party-state's association with propaganda and censorship, it is important to note that state-controlled newspapers actually vary in terms of how they diffuse legal knowledge and report on the legal system. Research finds that, in localities where political and market conditions are more fragmented, media professionals collaborate with lawyers to diffuse ideas about constitutionalism, the state's infringement of rights, judicial independence, and civil society and political participation—topics discouraged by the Department of Propaganda (Lei 2013). Essentially, although the Chinese Party-state has advanced the rule of law and avoided liberal democracy (Peerenboom 2002), certain state-controlled media have, nonetheless, been diffusing legal discourse that diverges from and even critiques the CCP's legal ideology.

Research also suggests that legal disputants themselves might influence the construction of legality in the networked public sphere by sharing their experiences with journalists or directly with the public via the Internet. He et al.'s (2013) study of migrant wage claimants finds that workers who feel alienated by formal legal institutions appeal to the court of public opinion to address their grievances. In a similar vein, Yang's (2009) research on the Internet finds that rights protection activism is common in China's online public sphere. Disputants often discuss their

frustration online regarding legal and political institutions to mobilize public support and restore justice.

Together, the above studies suggest that the networked public sphere is a critical site for studying legal consciousness and legality. When considering how to advance scholarship on legal consciousness and legality, Silbey (2005: 360) argues that the most promising work looks at “the middle level between citizen and the transcendent rule of law,” since focusing on such middle ground enables one to study a full range of mechanisms by which legal schemas are propagated, circulated, and received. The networked public sphere is such a middle-level site. The Party-state’s propaganda system has attempted to retain control over public discourse. Nevertheless, a variety of actors who do not necessarily agree with official discourse and ideology—such as maverick newspapers, legal and media professionals, and legal disputants—have also tried to use the Internet to win support from the public. Furthermore, the individuals who constitute the networked public do not simply receive information and viewpoints passively. Digital and information communication technologies have given individuals more opportunity to interact with one another and to participate in the production of information and viewpoints. The networked public sphere has thus provided more promising social conditions for unorganized individuals to modify and transform culture (Benkler 2006: 10–13), even though powerful actors, like the state, remain influential. Indeed, despite censorship, research indicates that the Internet has contributed to a more participatory and critical networked public sphere in China. An emerging body of increasingly critical citizens has become an important actor in Chinese politics and popular culture (Lei 2011; Yang 2009). This article thus aims to examine how members of an online public interact with one another and with various ideas about law propagated by both state and non-state actors, collectively constructing legality in the process.

Case Selection

This article investigates the specific case of how members of the online public in China’s Tianya Forum conceptualized and discussed various ideas about law in relation to the 2008 Sanlu milk scandal. We selected the Tianya Forum because it was the most popular, influential, and relatively diverse online discussion forum in China between 2008 and 2010, our period of study. Online forums are critical sites for public discussion and public

opinion formation in China, especially before the rise of weibo in 2010. By the end of 2010, China had 457 million Internet users. Among these users, 77.2 percent read news online and 32.4 percent visited online discussion forums.³ Established in 1999 and owned and operated by the Hainan Tianya Community Network Technology Co., the Tianya Forum was one of the most popular online discussion forums. In 2005, Google and Lenovo invested five million US dollars in the Hainan Tianya Community, and by 2010 Tianya had over 32 million registered users. Compared with other popular online forums, participants in Tianya were more diverse in terms of their political orientation,⁴ and the forum soon became famous for vibrant political discussion.

Evidence suggests that the Tianya Forum was the most influential forum from 2008–2010. In 2009, Tianya was identified by the Chinese government as one of the major forums in which grassroots public opinion emerges.⁵ Li (2011) examined forty widely discussed public opinion incidents between 2008 and 2010. He found that the Tianya Forum was the core of the online communication networks discussing these incidents; indeed, it was the only website that played a critical role as both a receiver and disseminator of information. In most of the public opinion incidents, information first traveled from smaller online forums and weibo to Tianya. Discussion in Tianya amplified events and led to traditional media coverage. Media reports were then widely disseminated by online news websites widely, which led, in turn, to more discussion online. The process eventually culminated in public opinion incidents.

The Tianya Forum's influence attracted the attention of both the media and the Chinese state. Journalists regularly observed discussion in Tianya to keep up with potential news topics and sources. Similarly, both central and local Party-state agencies monitored discussion in Tianya regularly so as to acquire information about public concerns. The government also demanded that Tianya be responsible for censoring online discussion. In response, Tianya hired full-time editors and part-time moderators as censors. The forum conducted censorship based on a list of keywords "blacklisted" by the state and guidelines provided by the propaganda system. The guidelines consisted of abstract principles, such as prohibiting messages that could threaten social stability or instigate collective actions. When certain events

³ *Statistical Report on Internet Development in China*, CNNIC, <http://www.cnnic.cn/hlwfzyj/hlwxzbg/201101/P020120709345289031187.pdf> (accessed 17 February 2014).

⁴ Interview: I-16 and I-17.

⁵ *Statistical Report on Internet Development in China*, CNNIC, <http://www.cnnic.cn/hlwfzyj/hlwxzbg/200912/P020120709345307778361.pdf> (accessed 17 February 2014).

occurred, the propaganda system also gave specific instructions on how to censor and influence public opinion.⁶ At the same time, however, the Tianya company also wanted to maximize its profits, and thus still endeavored to create an environment for lively discussion that would attract and retain users and minimize the negative impact of censorship on users' participation.⁷

It is difficult to collect precise demographic data about Tianya users, so we rely on the estimates of the Tianya Forum itself, which collected self-reported demographic information from users for the purpose of marketing. In 2009, the estimated average age of users in Tianya was 28-years-old. About 75 percent of the users were between 23–35 years old. Around 60% of users had a bachelor's degree.⁸ The average Tianya user was more highly educated than the average Internet user in 2009, as only 12.4 percent of Internet users in that year had a bachelor's degree.⁹ The employees of the Tianya Forum reported that a large proportion of Tianya users resided in coastal cities, particularly in Beijing, Guangzhou, and Shanghai. Users who lived in the same cities also had offline gatherings.

We also analyzed a nationally representative dataset, the 2008 China Survey conducted by Texas A&M University, to better understand the online population that read and wrote about political issues in online forums. The 2008 China Survey found that 12.1 percent of the respondents used the Internet, but only 2.68 percent of the entire respondents read and commented about political issues or national affairs. Sixty percent of this group of people was male. The group's average number of years of education was 13.2, higher than the average education of other Internet users (11.6 years) and non-Internet users (7.2 years). This group's average age was 29.3 years old, younger than other Internet users (31.1 years old) and non-Internet users (47.9 years old). The data suggest that the population that read and wrote about political issues or national affairs in online forums tended to be young and highly educated.

In short, users in the Tianya Forum were a very special group of Chinese citizens, but their lack of representativeness did not undermine their political influence. Although the media and the Chinese government are fully aware that individuals who read and discuss public affairs in online forums are not

⁶ Interviews: I-16 and I-17.

⁷ Interview: I-16 and I-17.

⁸ Interview: I-16.

⁹ *Statistical Report on Internet Development in China*, CNNIC, <http://www.cnnic.net.cn/hlwfzj/hlwzbg/200907/P020120709345315706062.pdf> (accessed 17 February 2014).

representative of the Chinese population, they still take the opinions and influence of these citizens seriously. In an interview, a former central-level propaganda official explained that representativeness is not a really relevant issue for the Chinese Party-state. Even though a public opinion might not be representative, it could still influence other citizens and undermine the Party-state's control of the society. As the propaganda official put it, in the end it is those who speak up instead of those who keep silent that influence other people and bring trouble for the Chinese government.¹⁰ This key role of the Tianya Forum in the formation of public opinion incidents makes it an important site in which to investigate the construction of legality online.

In terms of what was discussed within the Tianya Forum, we focus on a much discussed event in 2008: the Sanlu milk scandal. In September 2008, a news report revealed that several infants suffered from kidney damage after drinking melamine-tainted milk formula produced by the Sanlu Group. The Sanlu Group was a company jointly owned by the Shijiazhuang city government in the Hebei province and the New Zealand Fonterra Group. According to the official estimate, at least four infants died and 860 babies were hospitalized, many from poor families. In subsequent criminal prosecution, the Sanlu CEO was given a life sentence and three milk farmers were sentenced to the death penalty in 2009.

We decided to study the Sanlu milk scandal for two reasons. First, the event reflected a common problem facing Chinese people, i.e., food safety. Second, and more importantly, the Sanlu milk scandal had far-reaching legal implications, linking it to a number of legal and political problems in China. The issue of compensation for victims led to civil litigation, entailing the participation of lawyers and NGOs in providing legal aid. The scandal also led to criminal trials of a Sanlu CEO, a number of milk farmers, and, unfortunately, the father of one of the victims, the latter of whom tried to organize other parents to pursue compensation. In addition, the scandal spurred law-making in the area of food safety law and regulation, and highlighted problems related to Chinese state oversight (or lack thereof) vis-à-vis business actors and lower-level state actors. As the Sanlu Group attempted to silence news reports about the scandal, the incident also touched on issues related to censorship. Finally, the Sanlu milk scandal influenced consumers not only within China but also beyond it, as Sanlu's products were exported overseas. As such, the case provides an excellent opportunity to examine

¹⁰ Interview: I-18.

whether and how the public in Tianya also thought about institutions outside of China. The complexity and multidimensionality of the Sanlu milk scandal make it an excellent case study.

Data and Analysis

As our main goal is to understand how the public in the Tianya Forum constructed legality, our analysis focuses on participation in the Tianya Forum. We qualitatively and quantitatively analyzed online texts produced by Tianya participants. We also analyzed in-depth interviews with Tianya's moderators and participants. To better understand the political and discursive contexts in which the online public constructed legality and the nature of this emerging legality, we also examined official discourse and alternative voices produced by lawyers, NGOs, victims' parents, and outspoken journalists, based on analysis of news reports and in-depth interviews. We briefly introduce the two types of data that we analyzed and then explain our strategy for analyzing these data.

Textual Data

The first type of data we analyzed was texts produced by Tianya participants, the *People's Daily*, and *Xinhua News Agency*. We extracted textual data from webpages of the Tianya Forum from September 2008 to December 2011. To examine official discourse, we also collected news written by the *People's Daily* and *Xinhua News Agency* from September 2008 to 2011 using the China Core Newspaper Database. News reports written by the *People's Daily* and *Xinhua News Agency* represent and reflect the stance of the central government. They are the most widely distributed official news sources.

We then selected discussion threads and news reports related to the Sanlu milk scandal for analysis. We first used the keyword "Sanlu" for the preliminary selection. Then, we read each news report and the first post in a discussion thread to decide whether the news report or discussion thread was relevant to the Sanlu milk scandal. If the milk scandal was the main theme of an article or an initial post in a discussion thread, that article or thread was included in the data set. Accordingly, we generated two sets of texts used for content analysis: (1) *People's Daily* and *Xinhua News Agency* reports and (2) Tianya discussion.

To examine the construction of legality in both the Tianya Forum and official discourse, we analyzed textual data in two ways. We first qualitatively analyzed a portion of the textual data in-depth, as this allowed us to understand the dynamic and

interactive process by which legality was constructed. Then, we employed computer-assisted co-occurrence analysis to examine the entire two sets of texts; this allowed us to leverage the large amount of data and to parsimoniously compare the conceptions of law in the Tianya Forum and official discourse.

We qualitatively analyzed a 20% random sample of the Tianya texts, as well as the entire official discourse texts (161 articles). The 20% random sample comprises 84 discussion threads (including 2323 posts) regarding the milk scandal. To code the data, we analyzed how the narratives of the scandal were constructed in the two discursive spaces. Specifically, we examined how problems were defined, how causes of the problems were identified, what solutions were proposed, and whether and how law was related to the problems, causes, and solutions. Furthermore, we carefully analyzed how participants in Tianya interacted with one another, and how they engaged with official discourse and the voices of lawyers, NGOs, outspoken journalists, and victims' parents.

In addition to qualitative content analysis, we applied computer-assisted co-occurrence analysis to the two sets of texts *without* sampling to investigate the conceptions of law that emerged in official discourse and in the Tianya Forum. We conceptualized the semantic meaning of a term as its co-occurrence relations with other terms in the same context (Krippendorff 2004: 207). For instance, suppose the term "democracy" co-occurs frequently with "human rights," "election," and "freedom," as in the liberal tradition; its meaning would thus be quite different from the Maoist definition of "democracy," which co-occurs frequently with "class," "people," and so forth.

We conducted co-occurrence analysis via the following steps. We first used Institute of Computing Technology, Chinese Lexical Analysis System (ICTCLAS) to process word segmentation. Next, we used a synonym table to combine synonymous terms. A considerable proportion of the synonymous terms were created by Chinese netizens to circumvent censorship. Following convention in content analysis, we considered two terms as co-occurring when they were within 50-words distance of one another (Krippendorff 2004). Finally, we identified the terms that co-occurred with the term "law (*fa*)" in the two sets of texts in turn.

Interview Data

One of the coauthors conducted in-depth interviews with 15 Tianya users who participated in the discussion in the Sanlu case. Due to resource limitations, we were able to interview users only in Guangzhou, Beijing, and Chongqing. The distribution of the

interviewees is provided in the appendix (Table A1). Each interview lasted about 1 hour. Although the sample size is very small and unrepresentative of Tianya users, the interview data still provides information about interaction in Tianya and thus complements our content analysis.

One of the coauthors also interviewed lawyers, media professionals, NGO participants, and parents of victims involved in the Sanlu milk scandal. Despite censorship, these actors still endeavored to disseminate information and viewpoints that deviated from official discourse to elicit support from the public. The distribution of these interviewees is provided in the appendix (Table A2). Face-to-face interviews took place in Guangzhou, Beijing, Shanghai, and Boston between 2009 and 2015. Each interview lasted about one to one and half hours.

Constructions of Problems and Legality in the Sanlu Milk Scandal

In this section, we present our empirical analysis. We begin by describing the political contexts in which the Sanlu milk scandal unfolded. Next, we present the official discourse or what the Department of Propaganda calls “the main melody (*zhuxuanlu*).” Building on the state’s own metaphor, we then present the cacophonies beneath the main melody that did not resonate with the main discourse—the voices of lawyers, journalists, NGOs, and victims’ parents. Finally, we analyze how participants in Tianya engaged with the official discourse and cacophonies, as well as how they collectively constructed a narrative of events and their relation to legality.

Political Context

Beginning in March 2008, the Sanlu Group began to receive a growing number of complaints from parents who suspected that their children were becoming sick after consuming Sanlu’s milk formula. After several months of internal investigation, on 1 August 2008, the Sanlu Group determined that Sanlu’s milk formula, along with other companies’ milk formula, was contaminated with melamine. The next day, Sanlu immediately reported the crisis situation to the Shijiazhuang city government. Sanlu begged the Shijiazhuang government to strengthen its control over news reporting so that Sanlu would not suffer from public outrage. Together, Sanlu and the Shijiazhuang government decided to handle the problem quietly. Instead of making the information public and announcing a public recall, Sanlu conducted only a trade recall (i.e., recovering products from

wholesalers) and explained that it was doing so to provide better products for the 2008 Beijing Olympics. Although Fonterra, the New Zealand joint owner of Sanlu, began lobbying for a public recall as early as August 2nd, its suggestion was not adopted in Sanlu's board meetings.¹¹

Sanlu wasn't the only actor aware of a problem. The media also received complaints from parents, but it, too, failed to blow the whistle until September 2008, thanks to multiple layers of censorship. In July 2008, several journalists had begun to investigate the illness of infants in Hubei, Hunan, and Guangdong, and even considered Sanlu milk formula as a plausible cause of their illness. However, the timing of events made whistle blowing extremely difficult. Prior to the opening of the Olympics in August 2008, the central Department of Propaganda was intent on creating a positive image of China. It prohibited news coverage related to domestic food safety problems, as such news would tarnish the country's reputation. Certain newspapers, such as the *Southern Weekly*, were thus prohibited from publishing their investigative reports on Sanlu's problems. Censorship also operated at the local level. Both the Sanlu Group and the local government silenced whistleblowers for their own interests. As a large state-owned business, the Sanlu Group was able to mobilize political connections and money to prevent local newspapers in Hubei and Hunan from covering the milk scandal. With its close ties to the Shijiazhuang city government, the Sanlu Group also received assistance from the Shijiazhuang government to silence the local news media there. These multiple layers of censorship delayed the disclosure of the scandal for almost 2 months.¹²

Both the New Zealand Fonterra group and the Chinese press attempted to overcome this censorship. After failing to persuade the Sanlu Group and the Shijiazhuang government, Fonterra reported the scandal to the New Zealand government. Prime Minister Helen Clark decided to bypass the local government and informed the Chinese central government on September 8, but the Chinese central government still did not disclose the information to the public. The scandal was ultimately exposed by the Chinese press. After witnessing the suffering of young victims, some journalists decided to report on the problem. In late August and early September of 2008, the *Changjiang Times* in Wuhan and the *Lanzhou Morning Post* in Lanzhou both reported that several children had developed kidney stones and linked the illness to milk formula. Still, the reports did not disclose Sanlu's

¹¹ Interviews: I-4, I-5, I-6, and I-7.

¹² Interviews: I-4, I-5, I-6, and I-7.

brand name to avoid defamation lawsuits. It was Jian Guangzhou at the *Oriental Morning Post* in Shanghai who, finally, publicly linked Sanlu to the scandal on September 11. On September 16, the General Administration of Quality Supervision, Inspection, and Quarantine finally released its investigative reports, confirming that melamine was found in baby formula produced by 22 Chinese companies. The scandal then turned into a lightning rod for heated discussion and evolved into a public opinion incident.¹³

In an effort to control the crisis, the Department of Propaganda and the State Council Information Office of the central Party-state imposed censorship and initiated propaganda work to influence public opinion. They monitored developments closely to adjust their censorship and propaganda practices as needed. The propaganda system first ordered that newspapers and online news providers should use news articles written by the *People's Daily* and Xinhua News Agency when reporting on the scandal. The propaganda system also took measures to minimize the negative impact of the scandal. It instructed that reports on the Sanlu milk scandal were not allowed to appear in the headlines. News media and Internet news providers should not connect the Sanlu milk scandal to other food safety incidents or publish special reports on food safety issues. In addition, news media, Internet news providers, online forums, and blogs should not criticize the Party-state—the scandal should be simply defined as the Sanlu Group's problem. Neither should news media, Internet news providers, online forums, and blogs disseminate information that would encourage calls for rights protection (*weiquang*) or petitions, as either of these outcomes, it was argued, would threaten social stability. After some of the victims' parents began to mobilize and initiate civil litigations, the propaganda system further prohibited discussion of these actions or the criminal charges imposed on the parents. Furthermore, the Department of Propaganda instructed media to publish reports that focused instead on the government and the health care system's efforts to address the problem. Online forums were similarly required to spread information that praised the Party-state and the health care system.¹⁴

The Main Melody: The Construction of Problems and Legality in Official Discourse

News reports written by the *People's Daily* and Xinhua News Agency were consistent with the Department of Propaganda's guidelines. In official discursive space, the Sanlu milk scandal was

¹³ Interviews: I-4, I-5, I-6, and I-7.

¹⁴ Interviews: I-4, I-5, I-6, I-7, I-12, I-13, I-14, I-15, and I-16.

understood as a food safety incident. Little effort was made to relate the Sanlu milk scandal to other food safety cases; instead, reports attributed blame to illegal milk farmers and the Sanlu group, specifically. The causal analysis in news reports was straightforward, identifying two equally important causes: first, market actors disregarded morality in their pursuit of market profits; and second, government agencies did not adequately regulate and monitor market actors—more specifically, the government failed to implement existing laws and regulations. Additionally, laws and regulations related to food safety were not comprehensive enough to prohibit various forms of harmful behavior. In the official discourse, the two-month delay before the scandal was disclosed was not an issue. Among the 161 articles, only one article discussed the timing of the public disclosure. The official framing emphasized instead that the Shijiazhuang government had lacked political sensitivity by paying more attention to the interests of business actors than to consumers' health.¹⁵ Key here was the admission of problems with governance only at the *local* level, thus leaving the authority of the central government intact.

In the wake of the Sanlu milk scandal, the State Council classified the incident as the highest-level food safety incident and proposed various solutions, which were then disseminated by the *People's Daily* and Xinhua News Agency. Most of the follow-up reports were about the implementation of solutions. The most salient feature of the proposed solutions is that all of them were related to law.

The first solution was free medical treatment. The official discourse emphasized that affected children would receive free medical treatment and examination, with all expenses covered by the government. Importantly, however, while official discourse highlighted free medical treatment, it simultaneously downplayed issues related to compensation, especially civil litigations. The few reports that touched on the issue of compensation made a point of praising the efforts of the dairy industry to take responsibility and establish a special compensation fund. Those reports also endorsed the fairness of the compensation packages provided by the 22 companies that produced melamine contaminated formula. The *People's Daily* published no reports that discussed civil litigation until March 2009, even though the scandal had broken in September 2008 and many lawyers and parents had quickly attempted to file lawsuits.

¹⁵ *People's Daily*, 1 October 2008.

When the *People's Daily* finally did address the issue of compensation, it was in a very short piece that documented the conversation between Shen Deyong, the Vice President of the Supreme People's Court, and users of the Strong Nation Forum, an online forum affiliated with the *People's Daily*. With the rise of online public opinion, the Strong Nation Forum sometimes invited high-level government officials to communicate with forum users to show the government's responsiveness. One user asked the Vice President about the issue of compensation in the Sanlu case and complained that there was insufficient information. The Vice President responded that over 95 percent of the 300,000 patients had already accepted the compensation packages provided by the dairy industry, and that Chinese courts were "prepared to accept" civil litigations filed by those parents. The Vice President's response obliquely referenced a gate-keeping procedure in Chinese Civil Procedure Law that often drew criticism: the requirement that all cases must first appear before a special division of the court that has discretion to decide whether or not to accept them. Yet, even after the Vice President said that Chinese courts were prepared to accept compensation cases, no article in the *People's Daily* reported on civil litigation issues afterwards. This striking silence on compensation and civil litigation in the official discourse corresponded to the propaganda system's instructions to discourage any efforts to frame the scandal in terms of rights or the need to defend them.

The official discourse also highlighted punishment in accordance with law as a solution to the scandal. News reports written by the *People's Daily* and Xinhua News Agency stressed that the government would severely punish the actors responsible for the milk scandal. The Intermediate People's Court in Shijiazhuang sentenced three dairy farmers to death for adding melamine to milk and then selling the toxic milk. In addition to the dairy farmers, the court sentenced Tian Wenhua, the General Manager of the Sanlu Company and Secretary of the Sanlu Communist Party chapter, to life in prison. Several other managers in Sanlu were also given sentences of varying lengths. In addition to controlling the judicial investigation, the central government also handled the associated administrative responsibilities. Several officials in Shijiazhuang were removed from office, and Li Changjiang, the minister of the General Administration of Quality Supervision, Inspection, and Quarantine, was forced to resign.

The third solution in the official discourse concerned the Party-state's restructuring of the food regulatory regime. News articles reported an intensification of enforcement on the part of several government agencies, particularly the Ministry of the General Administration of Quality Supervision, Inspection, and

Quarantine, the Ministry of Health, the State Administration for Industry and Commerce, and the Ministry of Agriculture. Reports also covered efforts to revise and enact existing laws and regulation. These efforts included the enactment of the Regulation on the Supervision and Administration of the Quality and Safety of Dairy and the Food Safety Law. Essentially, news reports conveyed the idea that the appropriate response was for the Chinese government to strengthen its regulation regime and ensure the enforcement of laws and regulations, and that it was doing just that.

The centrality of law in the official discourse is confirmed by our computer-assisted content analysis. In news reports written by the *People's Daily* and Xinhua News Agency, the term “law (*fa*)” was ranked number 16 out of 1413 terms¹⁶ (percentile rank: 99.99 percent) in terms of frequency. Based on the top 100 terms that co-occurred most frequently with the term “law,”¹⁷ the notion of law in official discourse was characterized by its association with food safety, responsibility, Chinese people, legislation, socialism, and “Chinese characteristics.”

The terms “food (*shipin*)” and “safety (*anquan*)” were ranked #7 and #9, respectively. This shows that law was framed as a solution to food safety problems. The term “law” was also connected with responsibility (#16: *zeren*) and supervision (#12: *jiandu*), as well as citizens (#40: *gongmin*) and people (#25: *renmin*). Law correlated strongly with terms regarding legislation (#1: *lifa*), particularly legislative draft (#4: *caotan*), regulation (#7: *fagui*), legislative review (#11: *shenji*), People's Congress (#15: *renda*), and the Standing Committee of the National People's Congress (#19: *quanguo renda changweihui*). This is consistent with our qualitative analysis, as the results of both analyses indicate the critical importance of law-making in the government's solution to the Sanlu milk scandal. Compared with terms related to legislation, terms regarding the judiciary, particularly trial (#60: *shenpan*) and judiciary (#66: *sifa*), were not so highly correlated with the notion of law. This also corresponds to our qualitative analysis and indicates that the Chinese state intentionally downplayed the role of the judiciary in addressing the compensation issue for victims. Finally, law was associated with socialism (#8: *shehui zhuyi*) and “Chinese characteristics (#13: *zhongguo tese*).” This suggests that official discourse attempted to defend China's legal system vis-à-vis alternative models. As a whole, the results of

¹⁶ As we have stated, we used ICTCLAS to process word segmentation. In this set of texts, we identified 1413 nouns in total.

¹⁷ The full list of the 100 terms and all articles/posts are available upon request.

Table 1. Co-occurrence of the Term “Law” with Other Terms in Official Discourse

Category	Term
Legislation	legislation (#1), legislative draft (#4), regulation (#7), legislative review (#11), People’s Congress (#15), the Standing Committee of the National People’s Congress (#19).
Food safety	food (#7), safety (#9).
Responsibility	responsibility (#16), supervision (#12).
People	citizens (#40), people (#25).
Chinese socialism	socialism (#8), Chinese characteristics (#13).
Institutions other than legislature	government (#80), democracy (#32), judiciary (#65), constitution (#36).

the co-occurrence analysis suggest that law was framed in official discourse as rules enacted by the government according to socialism to supervise and address food safety problems faced by the Chinese people. We summarize the characteristics of the conception of law in official discourse in Table 1.

Cacophonies Beneath the Main Melody

Despite censorship and propaganda, cacophonies existed beneath the main melody orchestrated by the Chinese Party-state. Volunteer lawyers, legal aid NGOs, parents of victims, and a few relatively outspoken members of the media presented neglected facts and views to the public and mobilized public support. They believed support from the public would help victims get reasonable compensation. Some parents of victims created blogs to share their experience and gain public support.¹⁸ Volunteers with legal aid NGOs, mostly college students, helped to spread information about legal aid online. Through email communication and offline gatherings, legal aid NGOs were able to mobilize outspoken newspapers to report on compensation issues.¹⁹ And, most importantly, the articles produced in those newspapers were further circulated in and through major online news websites, particularly Sina, NetEase, Tencent, and Sohu. Editors of major online news websites reprinted these candid articles out of professional and business consideration. On the one hand, they wanted to present readers with different perspectives; on the other hand, the editors also believed that reprinting articles published by outspoken news media would boost their websites’ popularity and revenues.²⁰ Since around 80% of

¹⁸ Interviews: I-10 and I-11.

¹⁹ Interviews: I-8 and I-9.

²⁰ Interviews: I-12, I-13, I-14, and I-15.

Chinese Internet users read online news in 2008–2009,²¹ such online news websites played an enormous role in helping outspoken newspapers to reach a broader audience.

Both official and nonofficial discourses addressed the problem of the Sanlu scandal and the appropriate solutions, but the latter deviated from the Party-state's "main melody" in several ways. Whereas official discourse focused on food safety problems, some outspoken newspapers considered the media's collective muteness as a problem in itself. These newspapers included the *Southern Weekly* in Guangzhou and some business-focused newspapers affiliated with central-level Party-state agencies, such as the *China Economic Times* and the *China Enterprise News*.²² In articles published in these venues, Sanlu and other businesses were criticized for using money to bribe news media, and the media and an Internet search engine company, Baidu, were accused of complicity in Sanlu's public relation crisis management. And yet, even these outspoken newspapers remained silent about the political conditions that led to media's collective muteness.²³

The largest difference between the official discourse and the cacophonies centered around compensation issues, especially civil litigation. Because many of the victims came from lower class families, the Open Constitution Initiative (*gongmeng*), an NGO in Beijing, provided legal aid and organized volunteer lawyers across China immediately after the Sanlu scandal was made public. Nevertheless, the lawyers were quickly dissuaded from representing victims by the Beijing Lawyers Association, the Beijing Municipal Bureau of Justice, the judicial bureau in Henan, and the Central Political and Legal Affairs Commission. Despite such efforts at suppression, some lawyers still provided free legal aid and, with the help of liberal-leaning journalists, even publicized the difficulties they and the victims were facing.²⁴

News articles published by outspoken newspapers also criticized the Chinese government's role in the problematic compensation process. For instance, an article published by the *Southern Weekly* on October 2, 2008, reported that, although collective compensation could reduce individual costs, the government's dominant role and the marginalization of consumers in the process led to misunderstanding and tension. A news article published by *Caijing* on October 7, 2008, pointed out that free

²¹ *Statistical Report on Internet Development in China*, CNNIC, <http://www.cnnic.cn/hlwfzyj/hlwxzbg/200907/P020120709345315706062.pdf> (accessed 10 February 2015).

²² *Southern Weekly*, 18 September 2008, 8 January 2009; *China Economic Times*, 18 September 2008; *China Enterprise News*, 4 December 2008.

²³ Interviews: I-4 and I-5.

²⁴ Interviews: I-1, I-2, and I-3.

medication provided by the government was limited as it did not cover victims' future medical expenses, parents' loss in wages, or lodging and traveling expenses. *Caijing* also reported that judicial officials in Henan harassed volunteer lawyers to discourage them from representing victims. The article further criticized Chinese courts for their refusal to handle any compensation cases. On April 6, 2009, the *Democracy and Legal System Times* (*minzhu yu fazhi shibao*) reported that a court in Shijiazhuang finally accepted a compensation case after many cases were rejected by other Chinese courts via the aforementioned gate-keeping procedure. But the article still predicted little success, given the difficulty that prior victims had collecting evidence and the fact that Sanlu had filed for bankruptcy. The *Southern Weekly* also reported that the Shijiazhuang local court accepted compensation cases after the Vice President of the Supreme People's Court told Internet users that Chinese courts were prepared to accept compensation cases, but that publication similarly expressed its pessimism about the outcomes.²⁵ Nonetheless, the *Southern Weekly* also argued that the mere filing of litigation by 63 victims was an important event and one that could potentially push legal reform in China.²⁶

Another important theme in the cacophonies troubling official discourse was the predominance of the "administrative state" over the legislation, judiciary, and society. Some newspaper articles pointed out that when the scandal occurred, businesses only reported problems to local governments, which then reported them to high-level governments. Citizens were not informed in this administrative process. The central government then exercised its administrative power to discipline lower actors and expanded its administrative power through law-making. The judiciary and law were thus subordinated to and essentially put at the service of the administrative state. The process was so dominated by administrative logics that citizens were not simply neglected, but actually stripped of their right to litigation. These news articles suggested that the Chinese state should reform how it governs by giving citizens more power and redistributing power among its administrative, legislative, and judicial components.²⁷

Some news articles even reported on how the Chinese Party-state used legal institutions as well as criminal and administrative laws to retaliate against victims and NGOs. When these politically sensitive articles were reprinted by online news websites, many

²⁵ *Southern Weekly*, 16 April 2009.

²⁶ *Southern Weekly*, 15 January 2009.

²⁷ *Southern Weekly*, 13 November 2008 and 5 March 2009; *Henan Daily*, 4 June 2009.

Internet users explicitly articulated their surprise that they were able to read such provocative stories. For example, the *Southern Metropolis Daily* published an article discussing how the parents of victims were suffering as a result of their efforts to pursue compensation. Due to Sanlu's bankruptcy, victims were unable to receive compensation through civil litigation, as their claims did not have priority over insolvency. The article also revealed government retaliation against victims' parents. Zhao Lianhai, the father of one victim, attempted to organize other parents and was subsequently arrested by the police for "disturbing public order."²⁸ This article was reprinted by the online news website NetEase.²⁹ Similarly, the *Oriental Morning Post*, the newspaper that first disclosed the Sanlu scandal, criticized the Party-state for its use of criminal law and the courts to repress parents' pursuing litigation.³⁰ The *Southern Weekly* also reported that the Open Constitution Initiative, the NGO that organized volunteer lawyers in the Sanlu scandal, was unreasonably accused of violating tax regulations by the Chinese government.³¹

The Tianya Forum as a Court of Public Opinion

Mechanisms

Our analysis of textual data and in-depth interviews with 15 Tianya users suggests that participants in Tianya made sense of the Sanlu milk scandal, related problems, and the role of law in the scandal using three mechanisms: *cross-temporality*, *cross-locality*, and *problem tracing*. Cross-temporality and cross-locality refer to the processes by which the public in Tianya brought into discussion relevant events across time and localities, respectively. These events were usually either absent or peripheral in the official discursive space delimited by the Party-state; previous food safety scandals in China were a notable example of a taboo subject disallowed in official coverage, but featured in discussions among Tianya participants. Places outside China also played a significant role in discussion, as perceptions of institutions and life experiences beyond China were cited as representing alternate realities. As one 22-year-old college student said: "It is impossible for one person to know or remember so many events. What is amazing

²⁸ *Southern Weekly*, 30 December 2009.

²⁹ <http://focus.news.163.com/09/1230/11/5RPCUM4D00011SM9.html> (accessed 10 February 2015).

³⁰ *Oriental Morning Post*, 12 November 2010.

³¹ *Southern Weekly*, 23 July 2009.

about Tianya is that people can generate collective wisdom by contributing what they know to the community.”³²

In the process of aggregating cases and finding connections between them, Tianya participants drew connections between the repetitive occurrence of similar individual problems and deeper, structural problems. In doing so, the perceived significance of problems increased, and participants clamored to identify underlying causes. We call this process problem tracing. Many of the interviewees pointed out that their interaction with other participants and their exposure to various ideas in the Tianya forum alerted them to linkages between different cases, revealing the structural roots of problems, and enabling them to develop a more holistic understanding of social problems and law. One 35-year-old taxi driver described the transformative process: “I used to see problems as a single dot, but I can connect them into a line and a plane after I knew more and more in Tianya.”³³ We turn next to how the public in Tianya used these mechanisms to construct problems associated with the Sanlu scandal.

Problems

Although the Department of Propaganda did not allow the news media and Internet news providers to connect the Sanlu milk scandal with other food safety incidents, this was precisely where discussion in the Tianya Forum began. Once Tianya participants aggregated their collective memory of other food safety incidents, they soon declared that the Sanlu milk scandal was not just about food safety. Instead, through processes of cross-temporality, cross-locality, and problem tracing, participants described the Sanlu milk scandal as the tip of a giant iceberg comprised of broader issues related to the safety and quality of products in general.

In the process of connecting the Sanlu milk scandal to other product safety incidents, Tianya participants also probed the causes of these recurring scandals. Like the Chinese government, the participants contended that business people’s (im)morality and the government’s inadequate supervision were factors, but Tianya participants gave greater weight to the latter. Once they had identified the government’s incompetence and regulatory inaction as the main cause of product safety issues, Tianya participants brought even more diverse cases into the discussion; for instance, the Wuwang Club fire and the Wenchuan earthquake in 2008 were cited as further illustrations of the government’s

³² Interview: P11

³³ Interview: P14.

failure. In the Wuwang Club fire incident, individuals who operated the night club failed to follow fire prevention regulations. When the fire began, many people were unable to escape as there were no adequate exits from the building. The participants in Tianya expressed anger and suspicion regarding the absence of government intervention before the fire incident. In the case of the Wenchuan earthquake, thousands of children lost their lives due to the collapse of inferior school buildings. Similar to the situation in the Wuwang Club fire incident, the government's inaction in Wenchuan before the earthquake was believed by the participants to have contributed to the loss of lives. In short, by expanding their discussions to include this wider range of concrete cases, participants in the Tianya Forum redefined the Sanlu milk scandal as a case that spoke more broadly to how government regulatory failure can threaten life and health.

Having made this connection, the public in the Tianya Forum then asked another question: what explained the government's continual regulatory failures, especially its failure to regulate business actors? Not surprisingly, this question was not considered in official discourse. In the news written by the *People's Daily* and Xinhua News Agency, the government's regulatory failure was seen as an explanation for food safety issues, but it was not framed as a phenomenon requiring explanation itself. In contrast, discussion in Tianya framed the government's regulatory failure as a problem that needed to be explained and addressed. The consensus in Tianya was that government agencies did not have adequate incentive to enhance or implement regulations because they had a vested interest in protecting actors that violated laws or regulations. Many participants expressed their belief in and fury with the existence of extensive collusion networks connecting government agencies and business actors. For instance, one participant commented:

The institution in China combines political privilege and capitalism... Companies can be exempted from quality examination as long as they bribe government agencies... Government and business actors are so unified.³⁴

The online public's belief in the collusion of power and money relied upon and reinforced a dichotomy that classifies Chinese people into two antagonistic categories: the privileged (i.e., those within networks of power and collusion) and the disadvantaged (i.e., those outside networks of power and collusion). The discussion was thus expanded from the government's

³⁴ ID: caprice, 2008/09/20. This is a quote from a post in the Tianya Forum. We documented the user's ID in Tianya Forum and the date of the post when we cited a quote.

regulatory failure in a single instance to the much deeper problem of the collusion between political power and money. Once again, through the mechanism of problem tracing, the identified cause of the problem became a problem in itself.

Participants in the Tianya Forum then suggested that the government's monopoly over political power explains the prevalent collusion of power and money, since the government's political monopoly deprives people of their right to hold the government accountable. The participants stated that, in light of the government's failure to oversee its own actions and those of business actors, intervention from citizens has become necessary. And yet, such intervention remains implausible as long as the government prevents citizens from exercising their political rights. "We will not be able to address food safety issues unless every citizen has rights to care about and strengthen food safety," said one participant.³⁵ Many participants expressed the opinion that China, like other countries, should have independent NGOs that help consumers to obtain trustworthy information. They voiced frustration with the government's continuing grip on NGOs within the country. As one participant put it:

Why can't we organize NGOs? Does that violate Chinese laws? NGOs can help consumers to hold businesses accountable. . . . Ultimately, the government is afraid that NGOs would subvert the state power.³⁶

Participants also talked about not being able to express their fury or influence the government's decisionmaking by organizing and joining large-scale protests. As the participants continued to discuss the causes of food safety problems, the issues at stake stretched beyond food safety to the Chinese state's political monopoly and citizens' lack of political rights.

The public in Tianya also discussed government control of institutions that could help citizens to oversee the government, particularly media. As we have already mentioned, although a few outspoken news newspapers identified the media's collective muteness as a problem in itself, they did not publicly criticize the state's censorship. But many Tianya participants condemned both Chinese media and the government for covering up truth and impinging upon citizens' right to be informed. Stories about how the government restricted media coverage of Severe Acute Respiratory Syndrome (SARS) in 2003 were linked by participants to the media's early silence on the Sanlu milk scandal. The Tianya public criticized the government's restricting freedom of

³⁵ ID: 什么时候, 2008/10/08.

³⁶ ID: 76huolong, 2008/9/12.

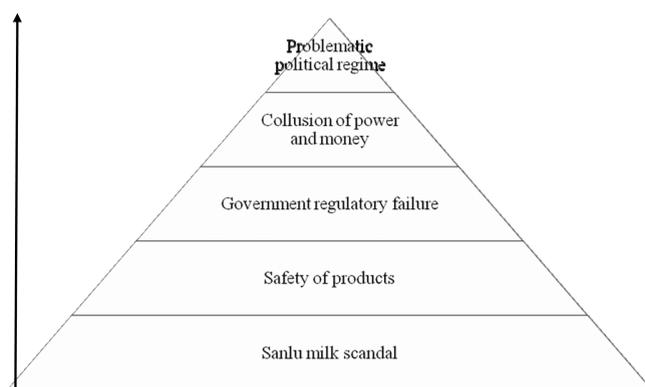


Figure 1. How The Public in Tianya Conceptualized Problems.

speech and controlling media. Nevertheless, certain Chinese media were praised for their coverage of the milk scandal and news reports from these outlets were disseminated within the forum.

Considering diverse forms of restrictions on citizens' rights, many participants in the Tianya Forum concluded that the various problems associated with the Sanlu milk scandal are ultimately rooted in the political regime. "The problem is about the regime" was asserted again and again by participants. The Sanlu milk scandal was understood by the online public as a case demonstrating "how the political regime has facilitated the privileged to harm the disadvantaged."³⁷ In other words, the online public collectively situated the Sanlu milk scandal in relation to cases across time and locality, while also linking the problem to deep-rooted structural issues. Through such processes, the problem eventually escalated from a specific food safety incident to a more generalized pronouncement about China's political regime. We summarize these processes in Figure 1.

Law

Now we move to discourse related to law in Tianya, which was intertwined with other aspects of the Sanlu milk scandal. Here we focus specifically on how participants framed and understood legal norms, legal institutions, and legal ideologies when they came up in their discussions. Tianya participants saw the government's continual regulatory failures as the direct cause of the Sanlu milk scandal. Furthermore, they argued that the regulatory failures evidenced in Sanlu and other food safety scandals

³⁷ ID: richardgui, 2008/9/24.

resulted not so much from insufficient laws and regulations but from inadequate enforcement of these laws. There was a strong consensus among participants in the Tianya Forum on this point, and many participants noted that this failure erodes the credibility of the Chinese government. As one participant commented:

The government made a lot of laws...but the truth is that half of the laws are never implemented. This tendency has greatly weakened the authority of law.³⁸

The insufficient enforcement of law led the Tianya public to reflect much more broadly on the nature and legitimacy of legal authority in China. Many participants expressed the belief that not just law enforcement, but the operation of legal institutions in general is biased because legal norms and legal institutions are essentially government instruments to achieve government goals.

Tianya participants used many concrete cases to contend that the Chinese government tarnishes the independence of the courts to achieve its goals. First, participants claimed that courts are often used to find scapegoats for powerful actors. As we have mentioned, the Shijiazhuang Intermediate People's Court's sentenced three dairy farmers to death and gave managers at Sanlu sentences of varying lengths. The disparity of these penalties was viewed by the Tianya public as a noxious effort on the part of the government to hide the truth and scapegoat the least powerful actors. As one participant commented, "Not surprising at all. I already knew that people without power and money will turn out to be scapegoats and be punished severely by the court."³⁹ Many participants also argued that the government disregarded judicial independence and procedural requirements in criminal trials. The incident reinforced participants' belief that the privileged—those within networks of power and money—will always benefit from the government's regulatory failures, while those outside such networks will take the blame and receive harsh sentences from the court.

Second, Tianya participants claimed that the courts intentionally inhibit the disadvantaged to pursue compensation. Although official discourse avoided the subject of compensation and civil litigation, the alternative accounts produced by victims' parents, lawyers, and outspoken newspapers circulated and were featured prominently in Tianya Forum discussions. Participants complained that many parents of sick children were unable to obtain fair compensation because Chinese courts simply used their discretionary power to refuse to accept the cases. They also

³⁸ ID: 文中思, 2008/9/19.

³⁹ ID: kill2004, 2009/1/25.

criticized the Chinese government for harassing lawyers who represented victims. Participants in Tianya identified these as common methods used by the Chinese government to maintain “social stability” and force victims to accept unreasonable compensation, thus benefiting business interests. Echoing the critique made by volunteer lawyers, many participants in Tianya thought that victims’ parents only accepted the unreasonable packages proposed by the dairy industry given the complete absence of other meaningful choices. One participant commented, “I feel totally weird. Why don’t victims file lawsuits against the evil business? It is because the emperor said no.”⁴⁰ The famous McDonald’s coffee case (*Liebeck v. McDonald’s Restaurants*, 1994) in the United States—in which the plaintiff received substantial compensatory and punitive damages—was cited by a number of online participants to emphasize the contrasting failure of Chinese courts to protect the rights of Chinese people.

Third, the Tianya public argued that the Chinese Party-state uses the courts to punish victims when they attempt to restore their rights. In the Sanlu milk scandal, Zhao Lianhai, the father of one of the victims, organized other parents of sick children to pursue compensation. Although Zhao was careful to avoid criticizing the Chinese government, he was charged with disturbing social order and given a two and half year prison sentence. “Zhao is a father, husband, and citizen of the Republic who is imprisoned because of his pursuit of rights. His fate is our fate,” one participant commented.⁴¹ Considering Zhao’s situation and similar stories involving Chinese citizens who pursued their rights, many participants concluded that the Chinese state illegitimately uses law and the courts to punish rightful resisters. Significantly, criticism online led to protests offline. Around twelve Tianya participants actually went to the People’s Court in the Daxing District of Beijing in November 2010, during Zhao’s trial. They even organized fund raising activities for Zhao’s family.⁴²

Participants in Tianya also contended that the government uses not only the courts but the law-making process in general as an instrument to serve its goals. In the midst of the Sanlu milk scandal, the central government set a maximum limit of 1 and 2.5 mg/kg for melamine in powdered baby formula and in other dairy products, respectively, as there were no limits specified before. Far from pacifying public fury, the move provoked widespread criticism. This time, participants pointed to regulations on

⁴⁰ ID: 飞飞是头猪, 2010/10/08.

⁴¹ ID: heart, 2010/10/08.

⁴² Interviews: P7 and P8.

melamine in the United States, Hong Kong, Taiwan, New Zealand, and the EU. Most participants argued that, in comparison with standards elsewhere, the Chinese standard was unreasonably favorable to milk producers; moreover, they linked this standard to malicious intent. For example, one participant stated: “Law is an instrument of the ruling class. Now businesses can add toxic materials to milk legally. This is Chinese law—very Chinese.”⁴³ Many participants argued that the government had simply legalized previously illegal practices to protect businesses.

The Tianya public was particularly infuriated by the differences in how the tainted milk crisis was handled in China versus Taiwan. Because polluted powdered milk was also exported from China to Taiwan, the Taiwanese government initiated administrative measures to deal with the problem. At first, the Department of Health in Taiwan determined that all polluted dairy products must be recalled, but it later changed its policy, raising the legally acceptable limit of melamine from zero to 2.5 mg/kg. The policy shift provoked strong public criticism and ultimately led to the resignation of the Minister of the Department of Health and a return to the original zero-tolerance standard. Participants in Tianya found it ironic that a government official in the Republic of China (ROC) stepped down because of problems originating from the People’s Republic of China (PRC). They asserted that differences between the two political regimes explained why ROC government officials were held responsible for problematic regulations, while PRC officials were not. By comparing law-making processes and the substance of regulations across localities, the public in Tianya compiled and shared evidence that supported an understanding of law as serving only the interests of the Chinese government and those with connections to the government.

Recognizing that the Chinese government uses law as an instrument to achieve its ends, Tianya participants concluded that “rule of law with Chinese characteristics”—a phrase coined by the Chinese government to justify differences between legal systems in China and in other countries—is essentially the absence of rule of law and an opposition to justice, citizens’ rights, and conscience. Although the Chinese government encourages people to use law as a weapon to protect their interests (Gallagher 2006), Tianya participants contested this rhetoric and argued that law is actually an instrument for the government. Participants juxtaposed “rule of law with Chinese characteristics” with rule of law elsewhere and used the latter as a normative standard to measure the former. From the Taiwanese case, the participants saw the critical role of

⁴³ ID: 应先生, 2009/1/25.

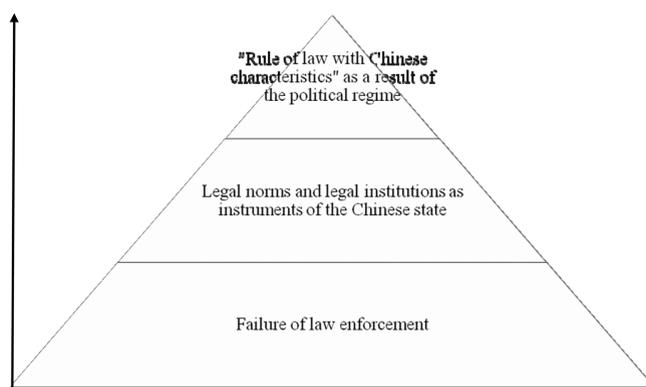


Figure 2. How The Public in Tianya Conceptualized Law.

law in holding the government accountable, as well as the role of democratic elections in empowering citizens. Some participants also praised the legal system in Japan and argued that Japan's democratic constitutionalism explains the strength of the Japanese legal system. The American case was also mentioned frequently in discussions to demonstrate how legal institutions can and should protect citizens' rights. Certain participants argued that if the Sanlu case had occurred in the United States, lawyers for the victims would have been able to file and win lawsuits. The online public connected the political regime in China to what they saw as the country's relative lack of rule of law and concluded that law in China would remain ineffective and unjust as long as the current political regime remains the same. We summarize how the Tianya public constructed legality in Figure 2.

We turn now to the results of our computer-assisted content analysis about the conception of law. Law was central in the discursive space of the Tianya Forum. The term "law (*fa*)" was ranked number 39 out of 2615 terms (percentile rank 98.50 percent). The top 100 terms associated most frequently with law in the Tianya Forum show that, while the notions of law in official discourse and in Tianya were both strongly connected to terms regarding responsibility (#2: *zeren*), Chinese people (#14: *renmin*; #30: *baixing*), and citizens (#41: *gongmin*), the notion of law in Tianya was uniquely linked to citizens' rights, the moral quality of law, problems associated with law, a wide range of institutions and places outside of China. Although the notion of law frequently co-occurred with people and citizens in official discourse, the concept of rights did not. In contrast, rights (#5: *quanli*) was one of the terms that co-occurred with law most frequently in Tianya, especially political rights (*zhengzhi quanli*) and citizens'

Table 2. Co-occurrence of the Term “Law” with Other Terms in the Tianya Forum

Category	Term
Responsibility	responsibility (#2)
People	people (#14; #30), citizens (#41).
Rights	rights (#5)
Normative values	equality (#28), freedom (#38), fairness (#78), independence (#84), and justice (#91).
Problems	violence (#23), power (#29), money (#74), corruption (#55; #60), corrupted officials (#97).
Institutions	legislation (#9), constitution (#10), government (#25), democracy (#26), courts (#33), court decisions (#27), judiciary (#20), judges (#15), police (#77), People’s Congress (#24), cadres (#51), procedure (#59).
Places	United States (#65), Taiwan (#66), the United Kingdom (#67), Mainland China (#59).

rights (*gongmin quanli*). This suggests that, for the Tianya public, the meaning of law centered around law’s protection of rights. In addition to rights, the notion of law in Tianya was related to normative values, particularly equality (#28: *pingdeng*), freedom (#38: *ziyou*), fairness (#78: *gongping*), independence (#84: *duli*), and justice (#91: *zhengyi*). As such, law was expected by Tianya participants to conform to these normative values. Surprisingly, the co-occurrence analysis reveals that none of these values were among the top 100 frequent terms that co-occurred with the term “law” in official discourse. The notion of law in Tianya was also characterized by its relationship with terms that reference law’s negative associations, specifically, violence (#23: *baoli*), power (#29: *quanli*), money (#74: *qian*), corruption (#55: *fubai*; #60: *tanwu*), and corrupted officials (#97: *tangguan*). Again, these terms did not appear in the top 100 terms in official discourse.

Furthermore, whereas the official notion of law emphasized only legislation, the online public’s notion of law associated it with aspects of multiple institutions, such as legislation (#9: *lifa*), government (#25: *zhengfu*), democracy (#26: *minzhu*), courts (#33: *fayuan*), court decisions (#27: *panjue*), judiciary (#20: *sifa*), judges (#15: *faguan*), police (#77: *jingcha*), People’s Congress (#24: *renda*), cadres (#51: *ganbu*), and procedure (#59: *chengxu*). This suggests that the public situated law in relation to a wide range of institutions, the operation of which could, in turn, impact how the public evaluated the law in general.

Lastly, the notion of law in Tianya was also connected by the public to specific places outside of China, especially the United States (#65), Taiwan (#66), and the United Kingdom (#68). The term “law” also frequently occurred with the term “Mainland China” (#59: *dalu*), which is used by Chinese people when they consider the relationship between the PRC, Taiwan, Hong Kong, and Macao. The above findings indicate that participants in

Tianya considered and appraised law and the legal system in China through comparisons with other contexts. By contrast, none of the above terms appeared in the 100 most frequent terms that co-occurred with the term “law” in official discourse. We summarize the characteristics of the conception of law in the Tianya Forum in Table 2.

Discussion and Conclusion

Literature on legality and legal consciousness suggests that the Chinese state controls the construction of legality via state propaganda, and is able to shape citizens’ legal consciousness given most people’s lack of direct experience with the law. (Gallagher 2006; Liebman 2011a: 183; Michelson and Read 2011, Stockmann and Gallagher 2011; Su and He 2010: 163). Our findings, however, suggest that the construction of legality is not a top-down process wholly controlled by the authoritarian state, but rather a complex negotiation involving multiple parties. Participants in Tianya were unconvinced by and openly critical of official state discourse. The participants’ exposure to the voices of volunteer lawyers, NGOs, parents of victims—mainly through the mediation of relatively outspoken newspapers and online news websites—as well as their own discussions in Tianya influenced how they constructed problems associated with the Sanlu scandal and legality.

As our analysis has shown, the Party-state’s official discourse constructed problems narrowly, downplaying the Sanlu scandal as simply a food safety incident. The legality constructed in official discourse is a top-down and paternalistic order carefully orchestrated by the Party-state. According to this narrative, the benevolent state knows exactly what the problems are and what is best for citizens. It uses law to tackle food safety problems, punish wrongdoers, and protect citizens, while also improving legal norms and institutions to make them better instruments for governance. Under such legality, the purpose of law is to create the kind of order desirable for the state. What is missing from the official discourse, however, is any kind of participatory role for non-state actors, such as citizens and lawyers, to help shape legal norms, choose the kind of legal institutions they want to use, and oversee the implementation of law. The underlying message of the official discourse is that citizens and lawyers’ non-orchestrated participation in the legal system could undermine social stability, especially in a crisis situation.

Our analysis also finds that the Chinese state attempted to defend China’s legal system vis-à-vis alternative models by

developing the concept of “rule of law with Chinese characteristics”—a concept later derisively appropriated and reframed by Tianya participants. Consistent with what scholars call “authoritarian rule of law” (Rajah 2012), “rule by law” (Ginsburg and Moustafa 2008), or “a thin theory of rule of law” (Peerenboom 2002: 3), the legality that emerged in the official discourse stressed the formal and instrumental aspects of law and argued that the government is above the law. Although citizens’ rights do exist, their fulfillment ultimately depends on the consent of the state as, ultimately, the law is a tool in the government’s hands.

Our analysis also shows that, although the state-controlled media tend to report on the positive rather than negative aspects of the legal system (Stockmann and Gallagher 2011), a few state-controlled, but still outspoken newspapers dare to cover voices excluded from the official discourse. Consistent with studies on migrant workers and legal professionals (Fu and Cullen 2008; He et al. 2013; Liu and Halliday 2011), we find that lawyers, disputants, and NGOs attempted to mobilize public opinion through their connection with outspoken newspapers. The cacophonies produced by lawyers, NGOs, disputants, and outspoken newspapers provided the public in Tianya with alternative views and information about the Sanlu scandal. They drew connections with problems that were not mentioned in the official discourse, particularly, the media’s collective muteness, the near impossibility of seeking compensation through litigation, and the dominance of the administrative state.

The discussion in Tianya was essentially an adjudication of various actors and narratives. The Party-state propaganda system failed to present a convincing case to the public in Tianya, while the voices of lawyers, victim’s parents, and outspoken journalists became increasingly resonant. The public in Tianya developed a radical critique of official discourse, Chinese legal institutions, legal norms, and official legal ideology. The online public highlighted the Sanlu scandal’s connections with other cases and framed it as indicative of fundamental problems rooted in China’s authoritarian regime.

The legal ideology among Tianya participants surprisingly resonates with the legal ideology of liberal-leaning lawyers in China as described by Halliday and Liu (2007) and the common conception of the rule of law in Western liberal democracies (Tamanaha 2004). Similar to the liberal-leaning lawyers in Halliday and Liu’s study (2007), participants in Tianya criticized the state for harassing lawyers and tarnishing judicial independence, while also calling for procedural justice, greater protection of citizens’ rights, and restrictions on state power. Similar to the common conception of the rule of law in liberal democracies

(Tamanaha 2004), Tianya participants drew a connection between rights, democracy, and the rule of law. This public expressed a belief that law should protect rights and achieve certain normative qualities; and it assessed China's legal system in relation to various institutions and political regimes within and beyond China. The Tianya public also considered the democratic process essential to ensuring that law has proper content and is fairly and effectively applied. Although the Chinese state accentuates the uniqueness and supremacy of "rule of law with Chinese characteristics," for many participants in Tianya, the deviation of the Chinese legal system from their normative ideals and their perceptions of the rule of law in other countries is unjustified.

In closing, we would like to acknowledge the limitations of our study. First, our data regarding discussion in Tianya suffers from participants' self-censorship and the forum's censorship practices. As a result, our analysis may, if anything, underplay the level of dissent of the public in Tianya. But this problem does not undermine our findings as our analysis has already demonstrated a major disjuncture between official versus grassroots constructions of legality. Second, given the article's case study of a specific online public and its discussion of a specific scandal, we are not able—and do not intend—to make generalization beyond this case.

Despite these limitations, the study suggests interesting implications for future legal and political development. Although the Chinese state's responsiveness to public opinion is not guaranteed, pressure from public opinion increases the chance that Party-state agencies will consider citizens' rights in their decision-making and will undertake legal and political reform. Existing studies show that intermediate actors between the state and society—particularly, liberal-leaning legal and media professionals, along with some NGOs—have effectively mobilized law to speak for disputants, oversee the Chinese state, and advance legal, political, and social change (Fu and Cullen 2008; Hand 2007; Liu and Halliday 2011). These intermediate actors are largely similar in terms of their commitment to protecting citizens' rights, advancing a "genuine" rule of law, and building a civil society (Lei 2013). Our study is among the very first efforts to go beyond the state, intermediate actors, and disputants. It shows that the most influential online public in 2008–2010 responded favorably to proliberal intermediaries, but responded critically to the Chinese state. It is likely that the liberal-leaning intermediaries, together with relatively highly educated, young, opinionated, and public-minded citizens, will more frequently question the official legal ideology and interrogate the ways in which the Chinese state uses

legal norms and legal institutions. Although the Tianya Forum itself is no longer popular today and has essentially become obsolete, social media like weibo have served a similar function of mediating communication and creating larger online publics. The increasing connection between ordinary citizens and public opinion leaders after the rise of weibo has imposed more pressure on the Chinese state to respond to public opinion.

Nevertheless, the Chinese state's may continue to influence future legal and political developments. Our analysis reveals the importance of outspoken newspapers, online news websites, and networks of liberal-leaning media and legal professionals in providing and disseminating alternative views and information to the online public. But the Chinese state, under the Xi leadership, has tightened its control over outspoken newspapers as well as online news websites, while also destroying social networks connecting liberal-leaning lawyers, journalists, NGOs, and intellectuals. This could significantly limit the capacity of such actors to mobilize public opinion, as well as the capacity of the online public to oversee the state.

Finally, we call for more case studies that examine how different publics in China's networked public sphere interact with official discourse, when such publics generate counter-discourse, and with what effects. As the sheer size of China's networked public sphere continues to grow, further research is needed to understand its dynamics and what role it might play in China's rapidly transforming future.

Appendix

TABLE A1. Interviews with Tianya Participants

	Age	Gender	Education	Occupation	Interview Date	Interview Location
P-1	31	Male	College	Employee of a company	June 2011	Guangzhou
P-2	25	Male	Graduate school	Graduate student	June 2011	Guangzhou
P-3	34	Male	College	Employee of a government agency	June 2011	Guangzhou
P-4	29	Female	High school	Employee of a company	June 2011	Guangzhou
P-5	41	Female	College	Employee of a company	June 2011	Guangzhou
P-6	37	Male	High school	Manager of a company	June 2011	Guangzhou
P-7	32	Female	College	Employee of a company	June 2011	Beijing
P-8	28	Male	College	Employee of a government agency	July 2011	Beijing
P-9	27	Male	High school	Self-owned business	July 2011	Beijing
P1-0	24	Male	Graduate school	Graduate student	July 2011	Beijing
P-11	22	Male	College	College student	July 2011	Beijing
P-12	29	Male	College	Self-owned business	July 2011	Chongqing
P-13	31	Female	College	Self-owned business	July 2011	Chongqing
P-14	35	Male	High school	Taxi driver	July 2011	Chongqing
P-15	26	Male	Graduate school	Graduate student	July 2011	Chongqing

TABLE A2. Interviews with Informants

	Category of interviewees	Interview Date	Interview Location
I-1	Volunteer lawyer for consumer litigation	July 2011	Beijing
I-2	Volunteer lawyer for consumer litigation	July 2011	Beijing
I-3	Volunteer lawyer for consumer litigation	July 2011	Beijing
I-4	Journalist at the <i>Southern Weekly</i>	July 2011	Guangzhou
I-5	Journalist at the <i>Southern Weekly</i>	July 2011	Guangzhou
I-6	Journalist at the <i>Oriental Morning Post</i>	July 2014	Shanghai
I-7	Journalist at the <i>Oriental Morning Post</i>	July 2014	Shanghai
I-8	Volunteer at the Open Constitution Initiative (<i>gongmeng</i>)	July 2011	Beijing
I-9	Employee at the Open Constitution Initiative (<i>gongmeng</i>)	January 2015	Boston
I-10	Father of a victim	June 2011	Beijing
I-11	Father of a victim	July 2011	Beijing
I-12	Employee at NetEase	July 2011	Beijing
I-13	Employee at Sina	July 2011	Beijing
I-14	Employee at Tencent	June 2011	Guangzhou
I-15	Employee at Sohu	July 2011	Beijing
I-16	Employee at Tianya	June 2011	Phone interview
I-17	Moderator at Tianya	June 2011	Phone interview
I-18	Propaganda official	June 2011	Beijing

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