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China's post-reform policy implementation gaps and governmental vs. non-governmental fire alarm solutions

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China’s Post-Reform Policy Implementation Gaps and Governmental vs. Non-Governmental Fire Alarm Solutions

A dissertation submitted in partial satisfaction of the requirements for the degree of Doctor of Philosophy

in

Political Science

by

Melanie M. Hart

Committee in Charge:

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Professor Mathew D. McCubbins
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2010
This Dissertation of Melanie M. Hart is approved, and it is acceptable in quality and form for publication on microfilm and electronically:

Co-Chair

Co-Chair

University of California, San Diego

2010
To my parents, Iva and Margie Hart,

and to my husband, Yi Yang,

for their love and support.
TABLE OF CONTENTS

Signature Page……………………………………………………………………………… iii
Dedication……………………………………………………………………………….. iv
Table of Contents………………………………………………………………………… v
List of Abbreviations…………………………………………………………………….. x
List of Tables……………………………………………………………………………… xi
Acknowledgements……………………………………………………………………... xiii
Vita………………………………………………………………………………………… xv
Abstract……………………………………………………………………………………… xvi

Chapter 1 – China’s Post-Reform Oversight Problems and Governmental vs.
Non-Governmental Fire Alarm Solutions………………………………………. 1

1.1. Introduction………………………………………………………………………… 1
1.2. Chinese Governance Problems and Authoritarian Institutional Studies……… 5
1.3. The Fire Alarm Model: Using Citizen Input to Overcome Principal-Agent
    Information Asymmetries…………………………………………………………… 8
1.4. Fire Alarm Institutions in China: Authoritarian Regime Constraints and the
    Governmental vs. Non-Governmental Divide…………………………………….. 12
1.5. Cross-Sector Variation in Malfeasance-Induced Social Instability Risks……… 22
1.6. Regime Reputational Risks from Official Malfeasance………………………… 25
1.7. Protest Risks from Official Malfeasance………………………………………… 28
1.8. Malfeasance-Induced Social Instability Risks (IV) and
Fire Alarm Policy (DV)................................................................................................. 36

1.9. Limited Fire Alarms, Unfilled Oversight Gaps and Persistent Policy Implementation Problems.................................................................................. 40

1.10. Hypothesis Testing and Case Studies............................................................... 46

1.11. Conclusion......................................................................................................... 52

Chapter 2 – Reform-Era Shocks to China’s Traditional Police Patrol Oversight System.................................................................................................. 55

2.1. Introduction ......................................................................................................... 55

2.2. China’s Political Hierarchy................................................................................. 56

2.3. China’s Traditional “Police Patrol” System for Principal-Agent Oversight.............................................................................................................. 61

2.4. Economic Reform, Decentralization and New Principal-Agent Problems……... 72

2.5. Increasing Corruption in the Post-Reform Era................................................... 81

2.6. Limited Recentralization: Not an Effective Oversight Fix................................. 83

2.7. Conclusion........................................................................................................... 86

Chapter 3 – Rural Land Expropriation: Official Malfeasance and Fire Alarm Policy in a High-Risk Sector........................................................................... 88

3.1. Introduction......................................................................................................... 88

3.2. Institutional Background...................................................................................... 91

3.3. Land Conversion Spirals Out of Control............................................................. 95

3.4. Fire Alarm Policy in China’s Land Sector............................................................ 104

3.5. Governmental Fire Alarms.................................................................................. 105
3.6. Non-Governmental Fire Alarms .......................................................... 115
3.7. Fire Alarm Limitations Spur Continued Institutional Innovation .......... 124
3.8. Conclusion .......................................................................................... 128

Chapter 4 – Rural Land Expropriation: Case Narratives from a High-Risk Policy Sector .......................................................... 130
4.1. Introduction .......................................................................................... 130
4.2. Changting Village Land Expropriation Case ....................................... 131
4.3. Hanyuan County Land Expropriation Case ......................................... 151
4.4. Conclusion .......................................................................................... 171

Chapter 5 – Food and Drug Safety: Official Malfeasance and Fire Alarm Policy in a Low-Risk Sector .......................................................... 172
5.1. Introduction .......................................................................................... 172
5.2. Institutional Background ...................................................................... 175
5.3. Fire Alarm Policy in the Food and Drug Sector .................................... 187
5.4. Governmental Fire Alarms ................................................................. 189
5.5. Non-Governmental Fire Alarms ......................................................... 207
5.6. Fire Alarm Limitations Spur Continued Institutional Innovation .......... 223
5.7. Conclusion .......................................................................................... 227

Chapter 6 – Food and Drug Safety: Case Narratives from a Low-Risk Policy Sector .......................................................... 229
6.1. Introduction .......................................................................................... 229
6.2. The Fuyang Infant Milk Powder Scandal ........................................... 230
6.3. The Qiqihar ‘Armillarisin A’ Pharmaceutical Scandal.......................... 245
6.4. Conclusion.............................................................................................. 259

Chapter 7 – Environmental Protection: Official Malfeasance and Fire Alarm Policy in a Medium-Risk Sector.......................................................... 261
7.1. Introduction.............................................................................................. 261
7.2. Institutional Background........................................................................ 264
7.3. Escalating Pollution Crisis Forces Chinese Leaders to Change Course...... 270
7.4. Fire Alarm Policy in the Environmental Protection Sector...................... 273
7.5. China’s Environmental Information Control Policies.............................. 274
7.6. Governmental Fire Alarms...................................................................... 280
7.7. Non-Governmental Fire Alarms................................................................. 300
7.8. Environmental Fire Alarm Limitations Spur Continued Institutional Innovation........................................................................................................ 314
7.9. Conclusion.............................................................................................. 320

Chapter 8 – Environmental Protection: Case Studies from a Medium-Risk Policy Sector.......................................................... 322
8.1. Introduction.............................................................................................. 322
8.2. Beiwangjia Village Air Pollution Case..................................................... 324
8.3. Fengxiang County Lead Poisoning Case................................................... 342
8.4. Conclusion.............................................................................................. 369

Chapter 9 – Conclusion.................................................................................. 371
9.1. Empirical Findings................................................................................... 373
9.2. Principal-Agent Problems and Democratization in China..................... 376

General References..................................................................................384
### LIST OF ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACEF</td>
<td>All China Environmental Federation</td>
</tr>
<tr>
<td>AQSIQ</td>
<td>General Administration of Quality Supervision, Inspection and Quarantine</td>
</tr>
<tr>
<td>CASS</td>
<td>China Academy of Social Sciences</td>
</tr>
<tr>
<td>CCA</td>
<td>China Consumers’ Association</td>
</tr>
<tr>
<td>CCP</td>
<td>Chinese Communist Party</td>
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<tr>
<td>CDC</td>
<td>Center for Disease Control and Prevention</td>
</tr>
<tr>
<td>CDIC</td>
<td>Central Discipline Inspection Commission</td>
</tr>
<tr>
<td>CENRP</td>
<td>Commission for Environmental and Natural Resource Protection</td>
</tr>
<tr>
<td>CLAPV</td>
<td>Center for Legal Assistance to Pollution Victims</td>
</tr>
<tr>
<td>CPD</td>
<td>Central Propaganda Department</td>
</tr>
<tr>
<td>CSBTS</td>
<td>China State Bureau of Technical Supervision</td>
</tr>
<tr>
<td>DIC</td>
<td>Discipline Inspection Commission</td>
</tr>
<tr>
<td>DRC</td>
<td>(Sub-National) Development and Reform Committee</td>
</tr>
<tr>
<td>EIA</td>
<td>Environmental Impact Assessment</td>
</tr>
<tr>
<td>ENGO</td>
<td>Environmental Non-Governmental Organization</td>
</tr>
<tr>
<td>EPB</td>
<td>Environmental Protection Bureau</td>
</tr>
<tr>
<td>EPTRS</td>
<td>Environmental Protection Target Responsibility System</td>
</tr>
<tr>
<td>FDA</td>
<td>Food and Drug Administration (United States)</td>
</tr>
<tr>
<td>GGDP</td>
<td>Green GDP</td>
</tr>
<tr>
<td>LAL</td>
<td>Land Administration Law</td>
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</table>
LRB  Land and Resources Bureau
MEP  Ministry of Environmental Protection
MLR  Ministry of Land and Resources
MOA  Ministry of Agriculture
MOH  Ministry of Health
MOS  Ministry of Supervision
NAO  National Audit Office
NBS  National Bureau of Statistics
NDA  New Drug Approval (Certificate)
NEPA  National Environmental Protection Agency
NEPO  National Environmental Protection Office
NGO  Non-Governmental Organization
NPC  National People’s Congress
SAIC  State Administration for Industry and Commerce
SARS  Severe Acute Respiratory Syndrome
SDA  State Drug Administration
SEPA  State Environmental Protection Agency
SFDA  State Food and Drug Administration
SLAB  State Land Administration Bureau
SLS  State Land Supervision System
SOE  State-Owned Enterprise
SPA  State Pharmaceutical Administration
LIST OF TABLES

Table 1.1.: Malfeasance-Induced Social Instability Risks (IV) and Fire Alarm Policy (DV) in Three Critical Sectors: Rural Land Expropriation, Environmental Protection and Food and Drug Safety ................................................................. 48

Table 7.1. Comparative Governmental Fire Alarm Use in China’s Environmental Protection Sector: Administrative Reconsideration, Administrative Lawsuits and Xinfang Petitions ..................................................................................... 282
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I thank Professors Peter Cowhey, Mathew McCubbins and Barry Naughton for serving on the committee and for providing many insightful comments.

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ABSTRACT OF THE DISSERTATION

China’s Post-Reform Policy Implementation Gaps and Governmental vs. Non-Governmental Fire Alarm Solutions

by

Melanie M. Hart

Doctor of Philosophy in Political Science
University of California, San Diego, 2010

Professor Susan L. Shirk, Co-Chair
Professor Stephan M. Haggard, Co-Chair

This dissertation examines China’s attempts to incorporate new, seemingly democratic ‘fire alarm’ oversight institutions into their authoritarian political system. China’s market economic reforms created new principal-agent problems that their traditional top-down oversight institutions cannot rectify, and these problems are forcing Chinese leaders to look for new solutions. Democratic leaders solve principal-agent problems by transferring monitoring authority to the citizenry, and Chinese leaders are borrowing that strategy by giving their own citizens new fire alarm
institutions for holding local-level officials accountable to national-level laws and policies. However, Chinese leaders do not deploy these institutions uniformly across all policy sectors. Instead, they vary their fire alarm institutions on a sector-by-sector basis, and this dissertation attempts to explain that variation.

I argue that Chinese leaders divide their fire alarm institutions into two broad categories: governmental and non-governmental. Governmental fire alarms operate through state agencies; non-governmental fire alarms operate through non-state communication and organization networks. Governmental fire alarms are relatively safe, but they do not work well in China’s politically controlled administrative environment. Non-governmental fire alarms are relatively effective despite China’s political controls, but they also pose additional risks. I argue that the risks associated with non-governmental fire alarms vary across policy sectors. I hypothesize that Chinese leaders distinguish between high- and low-risk policy sectors and enable the more dangerous (and also more useful) non-governmental fire alarms in the low-risk sectors only. This strategy maximizes the benefits from fire alarm oversight while also minimizing the potential political risks from non-governmental fire alarms. Unfortunately, this strategy also limits fire alarm effectiveness – especially in the high-risk sectors with the most restrictive non-governmental fire alarm policies – so China’s fire alarm institutions will not be as effective as their (relatively unlimited) democratic counterparts.

I test my hypothesis by comparing Chinese fire alarm oversight strategies across three policy sectors: rural land expropriation (high risk), environmental
protection (medium risk) and food and drug safety (low risk). The case studies from these three sectors support my argument that Chinese leaders differentiate between governmental and non-governmental institutions and only employ non-governmental fire alarms when the sector-specific political risks are relatively low.
1.1 Introduction

Chinese leaders are facing new principal-agent problems in the post-reform era, and these problems are undermining policy implementation and threatening Chinese Communist Party (CCP) regime stability. When national-level leaders issue new policies in their citizens’ interests, local-level officials often fail to implement and enforce them, and that denies Chinese citizens the promised policy benefits and erodes citizen satisfaction with the CCP regime. In the pre-reform command and control era, Chinese leaders could monitor and control local officials through police patrol institutions; however, those institutions are less effective in China’s post-reform decentralized administrative environment.

Chinese leaders are responding to these challenges by giving their citizens new fire alarm institutions that they can use for grievance redress and for holding malfeasant local officials accountable to central laws and policies.¹ These institutions

¹ The “fire alarm” versus “police patrol” distinction was conceived and defined by McCubbins and Schwartz (1984). According to their definition, “police patrol” oversight is centralized and top-down: principals use their own resources to routinely police subordinate behavior. In contrast, “fire alarm” oversight is decentralized and bottom-up: principals empower third-party citizens to monitor subordinate behavior and to sound an ‘alarm’ when they discover malfeasance. McCubbins, Mathew D. and Thomas Schwartz (1984), “Congressional Oversight Overlooked: Police Patrols versus Fire Alarms,” American Journal of Political Science, Vol. 28, No. 1, pp. 165-179. Chinese leaders and scholars generally refer to fire alarm institutions as “grievance expression channels” (suqiu biaoda qudao) or “social supervision channels” (shehui jiandu qudao). Some Chinese scholars also describe media watchdogs as “alarms” (bao jing qi), but they generally describe other fire alarm institutions as “channels” (qudao or tujing) rather than “alarms.”
shift monitoring burdens from the central leadership to the citizenry and open up new citizen-leadership information channels that Chinese leaders can use to target and punish local-level official malfeasance. However, given the authoritarian nature of the system, fire alarms also generate tradeoffs and risks. Primarily, the institutions designed to channel information for principal-agent oversight can also channel political opposition, and that could potentially destabilize the CCP regime. This dissertation examines the leadership’s attempts to manage those risks. I will argue that some of the risks vary across policy sectors, and Chinese leaders adjust their fire alarm policies on a sector-by-sector basis to accommodate that variation.

Fire alarm policy is the dependant variable in this thesis. Chinese leaders can offer their citizens five different fire alarm institutions: administrative reconsideration, judicial review, xinfang petitions, media oversight and social organization. Administrative reconsideration, judicial review and xinfang petitions are governmental fire alarms operating through state agencies; media watchdogs and social organizations are non-governmental fire alarms operating through non-state communication and organization networks. This governmental vs. non-governmental distinction is crucial in China’s authoritarian political system and a key element in China’s fire alarm policy design.

All fire alarms pose political risks in China, both governmental and non-governmental. Chinese leaders always worry that their citizens will use fire alarm institutions to monitor and constrain the central leadership itself or to challenge key national-level policies, and they build controls into all fire alarm institutions (both
governmental and non-governmental) to confine these institutions to the sub-national level. Unfortunately, these controls introduce agency loss into the fire alarm system, and that impedes fire alarm effectiveness. This agency loss is particularly acute in China’s governmental fire alarm channels; in contrast, non-governmental fire alarms bypass China’s administrative hierarchy and therefore bypass many of the agency loss problems plaguing their governmental counterparts. In other words, although Chinese leaders need both governmental and non-governmental fire alarms, non-governmental institutions are particularly useful because they work well despite the political controls.

However, non-governmental fire alarms also pose additional political threats that governmental fire alarms do not. Primarily, non-governmental fire alarms could erode public confidence in the central government and/or facilitate mass protests – two very serious political threats in China’s authoritarian context. Chinese leaders therefore face a strategic dilemma: governmental fire alarms are relatively safe, but they do not work well in a politically controlled environment; non-governmental fire alarms are relatively effective despite the political controls, but they also pose additional political risks.

In this thesis I will argue that the political risks Chinese leaders face from non-governmental fire alarms vary across policy sectors. Non-governmental fire alarms always have risk potential in China, but sector-specific environmental factors determine whether that potential will become a reality. In some policy sectors, official malfeasance impacts dense citizen groups that can easily overcome communication and transportation costs, the degree of harm makes protest opportunity costs and
repression risks worthwhile, and government agencies are the primary targets for citizen grievances. Non-governmental fire alarms are particularly dangerous in that context because fire alarm publicity could damage the regime’s reputation, official malfeasance will likely trigger dangerous mass protests, and non-state communication and organization networks could expand the scope of those protests and increase protest suppression costs. In other policy sectors, official malfeasance impacts a more diffuse group of citizens that cannot easily communicate with one another or gather in one protest location, the degree of harm does not make protest opportunity costs or repression risks worthwhile, and commercial enterprises are the primary targets for citizen grievances. Non-governmental fire alarms are much safer in that context because protests are less likely and citizen anger is more easily deflected away from the regime.

I hypothesize that Chinese leaders will respond to this variation by enabling and encouraging non-governmental fire alarms in the low-risk sectors and controlling and/or cutting off non-governmental fire alarms in the high-risk sectors. This strategy maximizes the benefits from fire alarm oversight within the regime’s parameters of acceptable political risk. Unfortunately, this strategy also limits fire alarm effectiveness – especially in the high-risk sectors with the most restrictive non-governmental fire alarm policies – so China’s fire alarm institutions will not always be as effective as their (relatively unlimited) democratic counterparts. However, even limited fire alarm deployment should increase the probability that malfeasant will be caught and punished and improve overall citizen perceptions of regime performance,
and that is a critical achievement for China’s authoritarian leaders and a big improvement over the previous status quo.

This chapter will proceed as follows. Section 1.2 will discuss how this thesis fits into the broader literature on authoritarian regimes and authoritarian governance problems. Section 1.3 will introduce the general fire alarm model and explain how this model fits China’s authoritarian regime context. Sections 1.4-1.7 will present my arguments on the relationship between malfeasance-induced instability risk and fire alarm policy variation in China. Sections 1.8 and 1.9 will derive testable hypotheses from those arguments, and section 1.10 will describe the case studies I will use to test these hypotheses in subsequent chapters.

1.2. Chinese Governance Problems and Authoritarian Institutional Studies

In the political science literature, institutional studies and authoritarian regime studies previously followed two very separate tracks. Authoritarian regime scholars generally assumed that authoritarianism was on the decline and that authoritarian leaders did not operate through formal institutions, so they focused their studies on regime collapse and democratic transitions, and they generally ignored or black-boxed formal authoritarian governance structures. However, the impressive economic successes in China and Singapore and recent authoritarian reversals in Russia,

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Pakistan, Venezuela and other key states are challenging these old assumptions about democratic inevitability and fueling a new interest in how authoritarian regimes actually work. This has led to a new academic focus on formal institutions and the role they play in authoritarian (and semi-authoritarian) regime survival. These new studies reveal that many authoritarian leaders are increasingly borrowing formal institutions from democratic regimes and adapting them to suit their own political objectives. For example, Gandhi and Przeworski (2006) study multi-party legislatures in authoritarian regimes, Moustafa and Ginsburg (2008) study authoritarian judicial institutions and Levitsky and Way (2002) study authoritarian elections.

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This thesis contributes to this new wave of scholarship by examining the seemingly democratic institutions that Chinese leaders are using to address the governance problems created by their transition from central planning to a market economy. China is the undeniable poster child for “market authoritarianism,” but China’s post-reform governance problems and institutional solutions also have broader political significance. All authoritarian leaders need strong economies, most of these leaders cannot achieve that strength without some degree of effective market regulation, and market regulation poses similar governance problems in all authoritarian regimes. Primarily, authoritarian leaders cannot effectively regulate complex markets without delegating significant authority down to lower-level agents, delegation creates central-local information asymmetries, and it is extremely difficult to overcome these information asymmetries without some form of local-level democratic accountability. As a result, democratic regimes are generally more effective market regulators, and authoritarian leaders are increasingly trying to incorporate democratic institutional bits and pieces to achieve similar regulatory benefits.

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Chinese leaders are currently trying to negotiate this tricky balance – they are trying to incorporate enough democratic bits and pieces to improve market regulation without going so far that they risk opening themselves up to regime change. The strategies Chinese leaders employ to negotiate this balance and their eventual success or failure will likely determine China’s domestic political future, and these issues also have a broader political significance that extends far beyond China. Primarily, if Chinese leaders can successfully negotiate this balance and solve their market regulatory problems without regime change, China’s experience will constitute a major counter-argument against the idea that full-scale democratization is necessary for long-term market economic growth, and China’s success will provide a new model for other developing countries to follow. In contrast, if Chinese leaders cannot achieve these goals within their current regime parameters, that failure will support the Huntington (1968) view that authoritarian economic advantages can only last for a limited time and that most states must eventually democratize to achieve long-term economic success.⁷

1.3 The Fire Alarm Model: Using Citizen Input to Overcome Principal-Agent Information Asymmetries

In the United States and other market economic systems, political leaders have long realized that they cannot keep tabs on subordinate agents without significant help from the citizenry. Although distance and information asymmetries make it hard for

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principals to accurately judge subordinate agent behavior, the citizens who are directly
affected by the actions of lower-level officials often have as much information as the
agents themselves, and they also have an incentive to share this information with
principals if they think the principals will respond by punishing or removing wayward
officials. McCubbins and Schwartz (1984) use the term “fire alarm oversight” to
describe this citizen-based approach. Whereas China’s traditional oversight approach
depends primarily on internal government “police patrols” to sniff out deviant agent
behavior, democratic leaders empower their citizens to take over the bulk of these
monitoring duties, and they set up a variety of institutional “fire alarms” that citizens
can use to seek redress against deviant agents.\textsuperscript{8}

As defined by McCubbins and Schwartz (1984), fire alarm oversight systems
generally contain the following core institutional components:\textsuperscript{9}

1. First, national-level principals communicate policy guidelines and directives to
   their bureaucratic agents via formal laws, regulations and standards that
   individual citizens can easily access and examine.
2. Second, principals give citizens the information needed to assess agent
   compliance. For example, principals may require agencies to publicize all
   regulatory decisions and related documents, hold frequent press conferences,
   and/or release specific information in response to citizen requests. Principals
   may also use specific procedural requirements to open up internal agency
   decision-making processes so that citizens can view (and possibly influence)
   forthcoming actions ex ante. For example, before taking important regulatory
   actions, agencies may be required to hold public hearings on the issue, invite

\textsuperscript{8} McCubbins and Schwartz (1984). For a broader overview of the distinction between centralized
(police patrol) and decentralized (fire alarm) oversight systems, see Ogul, Morris S. and Bert A.
\textsuperscript{9} Also see McCubbins, Mathew D. (1999), “Abdication or Delegation? Congress, Bureaucracy, and the
all interested citizens to participate in these hearings, and formally document all of the comments and concerns that citizens raise during the hearing process.

3. Third, principals delegate enforcement capabilities to judicial institutions – including both the national court system and the various internal administrative adjudication institutions – and give citizens the legal standing needed to challenge agent actions via administrative litigation.

4. Fourth, in the event that citizens are not satisfied with these administrative litigation procedures, they can notify principals about the problem and ask for direct intervention. To facilitate citizen-principal communication, principals can set up ombudsman offices to accept complaint calls and letters, help citizens form civic organizations to facilitate lobbying, and allow the domestic media to investigate and publicize information about agent malfeasance and related citizen complaints.

This fire alarm oversight model is derived from the study of democratic regimes and therefore assumes that principals have an electoral incentive to produce and implement their constituents’ preferred policies.\(^\text{10}\) This electoral assumption has two important implications. First, electoral incentives produce a close interest alignment between principals and citizens, and this interest alignment puts citizens in an optimal position to assist principals in monitoring subordinate agent behavior.

Second, by derailing citizen-preferred policy programs, agent malfeasance can negatively impact a principal’s future reelection prospects.\(^\text{11}\) Therefore, when citizens complain about bureaucratic malfeasance, principals have a strong electoral incentive

\(^{10}\) McCubbins and Schwartz (1984).

to investigate and punish deviant agents in order to improve policy implementation (and therefore increase citizen satisfaction).

Although China’s authoritarian leaders are not subject to the same electoral incentives, they do need to maintain regime stability, and that depends on maintaining a minimum level of citizen satisfaction. The CCP maintains its power monopoly through a combination of goods provision and political repression: they must provide enough goods to convince critical portions of the citizenry that it is not in their interests to push for regime change and risk political repression. If goods provision dips too low, those citizens may become dissatisfied enough to participate in mass protests and other forms of contentious politics that would seriously threaten CCP regime stability. In effect, the CCP has a de facto contract with the Chinese people promising to do their best to further some citizen interests in exchange for continued political support. Toward that end, they will adopt at least some of their citizens’ preferred policies and do their best to make sure these policies are actually carried out. If deviant agents derail policy implementation and enforcement at the grassroots level, many citizens will miss out on the benefits from those policy programs. As a result, those citizens will be less satisfied with CCP regime performance and therefore more likely to push for regime change.

In sum, despite the difference in political context, Chinese citizens also have an incentive to share private information about deviant agent behavior, and Chinese leaders have an incentive to respond to their citizens’ complaints. In fact, the fire alarm model may be even more useful in China’s authoritarian context. Unlike their
democratic counterparts, Chinese leaders cannot use election results to measure how their citizens rate regime performance, and this creates a serious operational dilemma. In order to maintain regime stability Chinese leaders must ensure that their citizens are satisfied with regime performance; however, in China’s authoritarian political system there are very few institutional pathways that citizens can use to register discontent, and that means Chinese leaders do not have a strong system for measuring public satisfaction. As a result, when local-level official corruption undermines citizen welfare, local-level discontent can build up enough to constitute a serious threat to regime stability before CCP leaders ever hear about local policy implementation problems. Fire alarms are a possible solution to this problem because they give citizens new avenues to seek redress and they provide Chinese leaders with the information they need to fix local policy implementation problems before they can seriously impact regime stability. Whereas fire alarms merely supplement other citizen-principal information channels in democratic regimes, in an authoritarian context they may be the only channel available for accurate and timely citizen feedback.


The principals in democratic systems generally offer their citizens five key fire alarm institutions that they can use to register grievances and seek redress against malfeasant government agents: (1) administrative reconsideration, (2) judicial review, (3) petitions to ombudsman and elected representatives’ offices, (3) an independent
domestic press and (5) social organization. These institutions can be grouped into two distinct categories: governmental fire alarms and non-governmental fire alarms. Administrative reconsideration, judicial review and citizen petitions to government offices are all governmental fire alarms: these institutions all channel citizen complaints through state agencies. In contrast, media watchdogs and social organizations are non-governmental fire alarms: these institutions channel citizen complaints through non-state communication and organization networks, and those non-state networks serve as a liaison between aggrieved citizens and state agencies.

China has parallels to all five fire alarm institutions, both governmental and non-governmental. However, unlike their democratic counterparts, Chinese leaders must weigh the benefits of citizen-based oversight against the risks that empowered citizens would use these institutions to challenge the CCP political monopoly. In other words, fire alarm institutions could ‘backfire’ in China, and I will argue that Chinese leaders face two critical backfire risks.

First, Chinese citizens could potentially use these institutions at the national-level, i.e., to monitor and restrain the central leadership itself or to contest key national-level policies. This is a serious political threat in an authoritarian regime, and it applies to both governmental and non-governmental fire alarms. For example, watchdog journalists could expose corruption among the top leaders, disenfranchised

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12 These five pathways are not mutually exclusive. In fact, fire alarms are most effective when citizens can coordinate fire alarm activities among multiple institutional channels. For example, when lax regulatory enforcement undermines consumer product safety, the citizens who are harmed by substandard goods can turn to consumer protection organizations for assistance, and the industry professionals associated with those organizations can coordinate efforts to file for administrative or judicial review, register complaints at ombudsman and elected representatives’ offices, and disseminate consumer product safety information through the domestic media.
citizens could file administrative lawsuits questioning the legality of CCP policies, and social organizations could rally public opposition against CCP leadership appointments or other national-level political decisions. Chinese leaders must restrict their fire alarms to the sub-national level to avoid national-level regime challenges, and they build controls into all of their fire alarms to uphold that restriction. These controls are a constant across both governmental and non-governmental fire alarms, but their effects are not: the controls introduce agency loss into the fire alarm system, and that agency loss has a disproportionate impact on governmental fire alarm performance.

Second, non-governmental fire alarms pose additional political risks that their governmental counterparts do not. Primarily, non-governmental fire alarms could erode public confidence in the central government and/or facilitate mass protests. For example, negative media reports could focus too much attention on the regime’s governance problems, and social organizations formed for fire alarm purposes could mobilize their members for mass protests and other contentious political tactics.

These backfire risks and resultant governmental vs. non-governmental fire alarm differences create a critical fire alarm policy dilemma in China: governmental fire alarms are relatively safe, but they also suffer from agency loss; non-governmental fire alarms are relatively effective, but they can also be politically dangerous. This section of the chapter will examine these governmental vs. non-governmental institutional differences in detail.

1.4.1. Fire Alarm Political Controls, Control-Induced Agency Loss, and Governmental vs. Non-Governmental Fire Alarm Performance
Chinese leaders do not want their citizens using fire alarm institutions to monitor and control the central leadership itself or to challenge key national-level policies; they want a restricted fire alarm system directed toward the sub-national levels only, and they incorporate political controls into all of their fire alarm institutions to uphold those boundaries. For example, governmental fire alarm agencies must follow procedural requirements dictating the types of complaints they can (or can not) accept for redress proceedings. In general, complaints against concrete acts committed by the agencies under the State Council are permitted, complaints against abstract policies and/or acts committed by national-level Party and government leaders are not. Non-governmental fire alarms face similar restrictions. For example, watchdog journalists can expose sub-national malfeasance, but China’s press guidelines state that the national-level leaders are always off limits, and social organization regulations prohibit any groups or activities that criticize or challenge the Party’s key political platforms.


Central-level leaders do not have the resources to manage these fire alarm controls directly, so they delegate control operations down to the local level, thus turning local-level officials into fire alarm gatekeepers and opening the door to corruption and agency loss. The gatekeepers are given general definitions of ‘legitimate’ versus ‘illegitimate’ fire alarm complaints, and their job is to judge each complaint on a case-by-case basis, reject the illegitimate complaints and grant institutional access to the legitimate ones. For example, local-level administrative reconsideration officials, court judges and xinfang officials examine complaint applications to determine which ones will be accepted for processing and which ones will not; similarly, local propaganda department officials determine which media exposés will be published and which ones will not, and local civil affairs officials determine which organized social groups and activities will be allowed and which ones will not.

Unfortunately, these fire alarm gatekeepers are not independent. The gatekeepers are all government officials, they generally fall under local Party and People’s government personnel and budgetary control, and the local leaders wielding that control often have a strong incentive to keep legitimate (but politically inconvenient) complaints out of the fire alarm system. The malfeasant officials who generate citizen complaints generally do not do so without some form of approval from local political leaders, and those local leaders generally would not give their approval unless they also benefit from the malfeasance in some way. Those benefits disappear when fire alarm mechanisms expose, punish and redress official
malfeasance, and corrupt local leaders can use their personnel and budgetary controls over the fire alarm gatekeepers to avoid that loss. In other words, when citizens file legitimate but politically inconvenient fire alarm complaints, local leaders can order local gatekeepers to (wrongly) declare that those complaints are illegitimate, thus blocking fire alarm access. Gatekeepers can try to defy those orders, but the ones who do so can easily lose their jobs. As a result, the fire alarm political controls designed to protect central-level leaders often wind up protecting local-level malfeasants, and that undermines China’s oversight system.

This form of agency loss is more pervasive in governmental fire alarms because local-level officials manage both gate-keeping and grievance redress, and those officials generally have strong protectionist incentives. Administrative reconsideration committees, judicial courts and xinfang offices are all staffed with local government officials, those officials serve a dual role as gatekeepers (i.e., judges deciding whether to accept or decline a legal suit) and fire alarm operators (i.e., judges ruling on an accepted suit), and they all answer to the local Party committee.

In contrast, non-governmental fire alarms are generally operated by private citizens with a wider range of incentives, and those incentives can more easily favor grievance redress over local protectionism. Local Party and People’s government officials still wield the gate-keeping authority for non-governmental fire alarms (through the local propaganda department and the local civil affairs bureau), and they often abuse this authority to influence beyond-the-gate operational incentives. For

15 Unlike their governmental counterparts, non-governmental fire alarm operators generally do not depend on the local Party committee or the local People’s government for personnel appointments or operational budgets.
example, they can offer political rewards to the journalists and social organizations who support local political interests and threaten to punish those who do not (i.e., by ordering propaganda officials to dismiss watchdog journalists and their editors).\(^\text{16}\)

However, unlike their governmental counterparts, journalists and social organizations do not get *all* of their professional benefits from the local Party committee, and many will have an incentive to subvert protectionist interference, especially if they know the protectionism is all local. For example, journalists often defy local-level propaganda restrictions to expose local official malfeasance. This exposure may risk a local propaganda department crackdown, but it can also bring substantial commercial rewards, and the crackdowns are not inevitable, especially if the media exposé attracts higher-level attention.

The institutional mechanisms themselves further exacerbate China’s governmental vs. non-governmental agency loss divide. Governmental fire alarms are designed to operate throughout the lower levels without direct leadership intervention; in theory, the local-level administrative reconsideration, judicial and *xinfang* bureaus should be able to process and redress most citizen complaints in situ instead of passing these problems up the hierarchy to overburden central Party and government agencies.

China’s governmental fire alarm laws and regulations all reflect this in situ principle—they all direct citizen complaints toward the governmental fire alarm agencies at the same administrative level (or, at most, one level up) as the malfeasant official or agency generating the complaint. Aggrieved citizens can respond to unsatisfactory or failed governmental fire alarm attempts by appealing up the hierarchy, but they must do so in a step-by-step fashion, i.e., they cannot jump levels to file complaints with provincial or national-level leaders. This system is designed to maximize efficiency and protect the limited time and resources of higher-level leaders. Unfortunately, it also insulates governmental fire alarms within protectionist local political networks, and that invites agency loss. Aggrieved citizens must exhaust local-level fire alarm processes before they can reach potentially impartial officials at higher administrative levels, and that process can delay effective redress, sometimes beyond what the aggrieved citizens can bear. In contrast, non-governmental fire alarms can circumvent local protectionism because they can bypass the administrative hierarchy altogether. These institutions set up their own communication and organization networks outside the state realm and use those networks to gather information on citizen grievances and transmit that information straight up to higher-level principals. Whereas governmental fire alarm processes often drag on for months or even years, non-governmental fire alarms can reach national-level leaders in a matter of days or hours.

In sum, Chinese leaders build political controls into their fire alarm mechanisms, those controls beget agency loss, and the agency loss is generally more prevalent in governmental fire alarms. These effects are not absolute. Non-
governmental channels can also suffer from agency loss when local officials use their political influence to abuse gate-keeping authority and/or sway operational incentives, and governmental channels can work very well when local leaders support grievance redress. However, these problems are pervasive enough that they substantially weaken the system overall, and those weakness are generally more debilitating in the governmental channels.

1.4.2. Non-Governmental Fire Alarms Pose Additional Political Threats

Non-governmental fire alarms offer the above-mentioned benefits in China, but they also pose additional political threats that governmental fire alarms do not. Primarily, non-governmental fire alarms could erode public confidence in the central government and/or facilitate mass protests.\(^{17}\)

First, non-governmental fire alarms expose official malfeasance to public scrutiny, and that publicity could damage the regime’s image. The CCP cannot maintain its power monopoly unless it keeps critical portions of the citizenry convinced that the current status quo is better than the potential alternatives. Fire alarm media exposés and social organizations are dangerous because they focus public attention on welfare-reducing governance problems, and that can reduce citizen estimates of the benefits they will receive under the current regime. Governmental

\(^{17}\) In the Bueno de Mesquita and Downs (2005) terminology, non-governmental fire alarms are dangerous in authoritarian regimes because they facilitate “strategic coordination” among potential political challengers. Bueno de Mesquita and Downs argue that successful authoritarian leaders survive by restricting the “coordination goods” that their opponents would need to orchestrate a successful political challenge without also restricting the more general public goods needed for effective economic growth. Bueno de Mesquita, Bruce and George Downs (2005), “Development and Democracy,” *Foreign Affairs*, Vol. 84, No. 5.
Fire alarms do not pose this threat because they are a private interaction between aggrieved citizens and state agencies. The aggrieved citizens pursuing redress through state agencies know about particular malfeasance problems, and that knowledge may alter their assessment of regime performance; however, that knowledge (and the regime’s reputational damage) is generally limited to the directly impacted group. In contrast, non-governmental fire alarms spread malfeasance information far beyond the directly impacted group, and that can spread political discontent and increase the reputational costs associated with each act of official malfeasance.

Second, non-governmental fire alarms can also facilitate mass protests. Isolated individuals are unlikely to engage in risky political activities—even if they are very unhappy with the existing regime and believe that regime change is in their best interests—because individual actions are more likely to result in harsh individual punishments rather than real political change. Non-governmental fire alarms facilitate information exchange among disenfranchised citizens, and that facilitates protest mobilization. For example, media coverage that portrays the government in a negative light may convince potential protest participants that many others share their dissatisfaction with the regime and can be depended on to show up for mass protests.

Similarly, social organizations formed for sanctioned fire alarm purposes (i.e., to

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18 This information can still spread beyond the directly impacted individual or group through community and social ties; however, person-to-person information dissemination is much slower and smaller-scale than dissemination through the mass media or social organizations.


20 Ibid.

21 Ibid. Also see: Tarrow, Sidney (1994), Power in Movement: Social Movements, Collective Action and Politics (Cambridge, MA: Cambridge University Press).
monitor policy enforcement at the local level) can facilitate communication among aggrieved citizens and rally the group for non-sanctioned mass protests.  

Once protests are underway, non-governmental fire alarms can also increase protest suppression costs. Protests are relatively easy to contain and suppress as long as they are localized and operating without formal or cross-regional communication and organization networks. Non-state communication and organization networks can unite previously dispersed groups of citizens into larger cross-regional groups and therefore expand protests from singular localized incidents into larger campaigns with coordinated action in multiple areas. As protests grow in size, scope and organizational sophistication, more extensive police and paramilitary involvement is required to shut them down, thus increasing the risk of sustained violent conflicts between protestors and security forces. Larger protests also attract more attention from the domestic public, and that increases the likelihood that other domestic social groups will identify with the protestors and react negatively to state suppression attempts.

1.5. Cross-Sector Variation in Malfeasance-Induced Social Instability Risks

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22 Political opponents could also mobilize disenfranchised citizens to support the social organization as a new reform party.


24 Chinese leaders can always impose domestic press blackouts to suppress protest coverage by the traditional media outlets; however, the higher the degree of public interest, the more difficult it becomes to restrict the spread of information via independent internet discussions on blogs and other public discussion forums. Foreign media interest further erodes information control because foreign journalists have no compunction about portraying the CCP regime in a negative light. When domestic media coverage is curtailed and public interest is high, Chinese netizens often track down foreign press pieces, translate them into Chinese and disseminate the translations on domestic Chinese websites.
The previous section outlined two key threats that Chinese leaders face when they deploy fire alarm institutions in an authoritarian political context: (1) the threat that Chinese citizens could use these institutions at the national level to monitor and restrain the central leadership itself, and (2) the threat that non-governmental fire alarms could damage the leadership’s public image or facilitate mass protests. The first threat applies to both governmental and non-governmental fire alarms, it is relatively constant across all policy sectors, and Chinese leaders use a gate-keeping system to hedge against those threats. The second threat applies to non-governmental alarms only, and I will now argue that the second threat is not constant across policy sectors.

Non-governmental fire alarms always have the potential to spread damaging information and facilitate mass protests; however, environmental factors determine whether that potential will become a reality, and those factors vary from sector to sector. For example, some cases of official malfeasance are just not bad enough to influence public perceptions of regime performance or spark mass protests; as a result, publicly redressing those cases through non-governmental fire alarms could actually boost the leadership’s image. Public fire alarm successes can convince Chinese citizens that the central leadership takes malfeasance seriously – especially when key leaders intervene and publicly discipline the guilty officials – and success cases can
also reassure other citizens that they themselves could achieve similar redress if they face similar problems in the future.\textsuperscript{25}

Different acts of official malfeasance produce different levels of social instability risk.\textsuperscript{26} These risk levels vary across policy sectors, and that variance determines whether non-governmental fire alarms will or will not pose a serious political threat. I assume that these risks vary based on the following factors:

- \textit{Regime reputational risks} vary based on (1) citizen perceptions of the welfare impacts they suffer from official malfeasance, and (2) whether the malfeasance is conducted by government agencies only or a mix of both governmental and commercial actors.

- \textit{Protest risks} vary based on (1) citizen perceptions of the welfare impacts they suffer from official malfeasance, and (2) the geographical concentration of malfeasance victims.\textsuperscript{27}

When these risks are relatively high, non-governmental fire alarms could spread negative perceptions of regime performance and spread protest risks; when these risks are relatively low, non-governmental fire alarms do not pose serious reputational or

\textsuperscript{25} Zhao and Sun (2007). Li, Xiaoping (2002), “‘Focus’ (Jiaodian Fangtan) and the Changes to the Chinese Television Industry,” \textit{Journal of Contemporary China}, Vol. 11, No. 30, pp. 17-34.

\textsuperscript{26} In China’s political lexicon, “social instability” refers to social unrest in the form of mass protests, riots, strikes or demonstrations. Chinese leaders assume that unchecked social unrest could bring down the regime, so they carefully monitor social instability risks (i.e., the likelihood that a particular action will generate a contentious collective response) and avoid actions that could increase those risks. Chinese leaders worry about both direct and indirect social instability risks. For example, they fear large protest gatherings in any form (direct risk), as well as media exposure that portrays the regime in a negative light (indirect risk). The leadership’s social instability fears are discussed in greater detail in section 1.7 of this chapter.

\textsuperscript{27} Geographical concentration is not the only factor that can facilitate or impede collective action. For further discussion, see section 1.7.2.2 (pp. 31-33).
protest risks and are therefore politically safe. The following sections will examine these risk factors and their impact on non-governmental fire alarms in detail.

1.6. Regime Reputational Risks from Official Malfeasance

Non-governmental fire alarms publicize information about official malfeasance, and that publicity can potentially undermine the regime’s reputation and cause Chinese citizens to discount the political status quo. I assume that the regime’s reputational risks are highest when (1) citizens believe that the malfeasance has severely impacted their welfare, and (2) government agencies are the primary target for citizen grievances. In contrast, I assume that the regime’s reputational risks are relatively low when citizens believe that the welfare impacts are minimal and commercial enterprises are the primary target for citizen grievances.

1.6.1. Perceived Welfare Impacts and Regime Reputational Risks

The larger the perceived welfare impacts from official malfeasance, the more those acts reduce citizen estimates of the benefits they receive under the current regime. If a particular act of malfeasance will have a strong negative impact on the regime’s reputation, it is critical to restrict the number of citizens exposed to that information. Directly impacted citizens will always know about the malfeasant act and its effects; however, non-governmental fire alarms could spread that knowledge beyond the immediate group and therefore extend the regime’s reputational damage.
Citizen perception is important because malfeasance victims may not fully understand how and to what extent a particular act of malfeasance impacts their welfare. Some policy sectors create information asymmetries between malfeasants and their victims, and this can reduce citizen estimates of their own welfare damage.\(^{28}\) Information asymmetries are most likely when damage assessment requires specialized technical knowledge.\(^{29}\) For example, environmental pollution victims will recognize their own current health problems, but they may not connect the dots between specific health problems and specific polluting factories, and they may not comprehend the long-term health implications from current pollution exposure. In contrast, land expropriation victims can easily measure the difference between expected and received monetary compensation, and they fully understand how that shortfall will impact their own incomes and living standards. In the environmental example, the pollution victims do not have all of the information they need to assess harm; as a result, they may underestimate welfare damage. In the land example, the expropriation victims have full information about their own finances and can therefore fully (and immediately) comprehend the welfare damage.

The larger the perceived welfare damage from official malfeasance, the more likely the affected victims will discount the political status quo. The more the affected


\(^{29}\) Ibid.
victims discount the status quo, the more Chinese leaders should restrict malfeasance publicity to keep that assessment from spreading.

1.6.2. Primary Grievance Targets and Regime Reputational Risks

Malfeasance publicity is relatively safe when citizens view the malfeasant act as an isolated incident caused by a few bad apples at the lower level; malfeasance publicity is dangerous when citizens believe that the act reflects systemic governance problems plaguing the regime as a whole.

Chinese citizens are more likely to view local-level malfeasance as a relatively isolated incident the larger the degree of separation between central leaders and grassroots-level malfeasant actors, and this separation is maximized when commercial enterprises are a primary target for citizen grievances. For example, when local officials protect local enterprises from regulatory enforcement, the officials are the politically malfeasant actors, but the enterprises are the direct cause of citizen harm, and the enterprises can deflect at least some attention and anger away from the regime. Commercial enterprises are a convenient scapegoat, even when local citizens know that the local government shares at least some culpability. When higher-level officials intervene in these situations, they often loudly punish the enterprise and quietly discipline the officials. This tactic can address the malfeasance problem and satisfy the local citizenry without focusing too much attention on official corruption and other possible systemic problems within the regime.
In contrast, Chinese citizens are more likely to view malfeasance as a larger systemic issue when government agencies are the direct and sole cause of citizen harm. The CCP has full administrative control over government officials at all levels (either directly through the *nomenklatura* system or indirectly through the government’s personnel system); all government officials are CCP agents, and CCP leaders will more likely share a portion of the blame when their own agents are the sole malfeasants. It is also much harder for the Party to deflect blame when they lack convenient commercial scapegoats. When enterprises are not involved, malfeasance publicity can only highlight Party and/or government corruption, and that poses a more serious reputational threat.

1.7. Protest Risks from Official Malfeasance

1.7.1. *Why does official malfeasance spark mass protests?*

To understand *when* aggrieved citizens protest, it is critical to first examine *why* aggrieved citizens protest. I assume that Chinese citizens stage malfeasance-induced mass protests as a fire alarm tactic. In other words, when aggrieved citizens stage mass protests, their primary goal is to attract central leadership attention, and they pursue that goal because they generally believe that official corruption declines as they travel up the chain of authority toward the central leadership in Beijing. This perception most likely stems from a combination of factors.

So (2007) argues that local-level governments have actually become increasingly predatory in the reform area while the center has become increasingly
benevolent. National-level officials have issued a wide range of well-publicized policies designed to benefit rural peasants and other aggrieved sectors of society; in contrast, local officials often refuse to implement those policies, and they are extracting more citizen resources and providing fewer collective goods in the reform era due to increasing fiscal pressures (and decreasing central-local principal-agent oversight). Guo (2001) argues that this distinction is based primarily on proximity: citizen interactions with the local state are based on concrete problems with a direct conflict of interests; their dealings with the center are remote and primarily “symbolic.” In general, each step up the hierarchy is another step removed from local rent-seeking arrangements – higher-level leaders may also be corrupt, but at least they are not directly involved in local-level disputes, so they are more likely to give local grievances a fair hearing. Whether the difference between central and local officials is real or imagined, surveys do reveal that most Chinese citizens trust higher-level officials more than lower-level officials.

Due to this vertical trust differential, the aggrieved citizens who cannot gain redress through local-level institutions have an incentive to seek intervention from higher-level leaders. Those citizens often assume that higher-level leaders (especially central leaders) do not know about local official malfeasance, would welcome

31 Guo (2001: 436) quotes local villagers in Yunnan Province who explain the difference as follows: “The central policies are good and in favor of us peasants. But when they reach the provincial level, the policies have gone out of shape. The further down, the more distorted the policies become. By the time they reach the village, the policies have completely changed from what they were in the first place.” Guo, Xiaolin (2001), “Land Expropriation and Rural Conflicts in China,” The China Quarterly, No. 166, pp. 422-439.
information about these problems, and would likely respond to that information by punishing the guilty officials and redressing the citizens’ grievances.\textsuperscript{34} Aggrieved citizens will first try to reach higher-level leaders through sanctioned institutional channels (governmental and non-governmental fire alarms); however, if those channels fail they may escalate and try to attract higher-level attention with mass protests.\textsuperscript{35}

These alarm-ringing protestors are not trying to challenge or oppose the central leadership; instead, they are engaging in what O’Brien and Li call “rightful resistance” or “boundary-spanning contention.”\textsuperscript{36} The protestors are using non-sanctioned methods, but their demands are limited and legitimate: they are simply demanding that local officials comply with central laws and policies, and they are pleading with the center to step in and enforce that compliance.\textsuperscript{37} Chinese protestors are generally very politically savvy, and they carefully frame their actions to differentiate their contempt for malfeasant local-level officials and their continued support for central Party and government leaders. For example, protest banners and chants usually pair specific local-level anti-corruption slogans with more general pro-government slogans such as

\textsuperscript{34} So (2007); Guo (2001).


\textsuperscript{37} Ibid.
“We support Communist party General Secretary Hu Jintao” and “Long Live the CCP!”

Chinese leaders fully understand the motivation behind fire alarm protests – they know that these protests are a plea for help, not a national-level political challenge. However, Chinese leaders do not want aggrieved citizens staging mass protests as a fire alarm method of choice. Organized mass protests always pose a serious political threat in any authoritarian regime, no matter the context, and China is no exception. The 1989 Tiananmen Square crisis left Chinese leaders with a deep fear of public protests and a strong appreciation for the speed at which they can build. Even non-political protests with specific local or economic goals are considered a threat due to fears that they could grow to encompass other issues and trigger large-scale social unrest against the CCP regime. Therefore, Chinese leaders always have a strong incentive to deter and contain mass protests – including fire alarm protests – and they will generally avoid deploying non-governmental fire alarms when they believe those institutions would exacerbate or spread existing protest threats.

Ironically, due to the leadership’s protest fears, they generally intervene very quickly to appease fire alarm protestors, and that quick response has convinced

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Chinese citizens that protests are a very effective fire alarm tactic. China’s protest response regulations tailor internal reporting mandates to protest size: the larger the protest, the higher up the administrative chain and the faster it must be reported.\(^{40}\) These guidelines are designed to ensure that serious protests will not spiral out of control unbeknownst to the central leadership. However, these regulations have also convinced the Chinese citizenry that larger protests are more effective fire alarms, because larger protests bring in higher-level interventions in a shorter time frame. Chinese citizens therefore commonly state that “small disturbances bring small solutions, big disturbances bring big solutions, and no disturbance brings no solutions.”\(^{41}\)

1.7.2. When does official malfeasance spark mass protests?

Aggrieved citizens know that mass protests can be a relatively effective fire alarm. However, protests are costly, and not all citizens are willing and able to pay those costs. Potential protestors have competing commitments – jobs, family commitments, schoolwork – and they may not be willing to transfer personal time and resources away from those commitments to participate in mass protests. Protest


participants also risk state repression, and many citizens may not believe that their grievances are bad enough to make those risks worthwhile. There are also group costs: protest organizers need communication resources to communicate among themselves and with protest participants, and some groups may also need transportation resources to assemble participants at the protest site.

Protest costs and the aggrieved citizens’ ability to meet those costs vary across policy sectors. Different acts of official malfeasance create different aggrieved citizen groups: in some sectors, malfeasance produces aggrieved groups that can easily organize for protests; in others, group dynamics make protest organization and mobilization much more difficult. As a result, Chinese leaders confront higher protest risks in some sectors than in others. I assume that malfeasance-induced protest risks are highest when (1) the victims believe that the malfeasance has severely damaged their welfare and (2) the victims are geographically concentrated. In contrast, protests are not likely when the welfare impacts are relatively minimal and the victims are geographically dispersed.

1.7.2.1. Perceived Welfare Impacts and Mass Protests

Chinese leaders depend on police repression to deter most citizens from organizing or participating in mass protests. However, the larger the perceived welfare costs from official malfeasance, the more likely aggrieved citizens will decide that protests are worth the risk. Potential arrest, imprisonment, and other reprisals will not be an effective deterrent against risky political behavior if the status quo is even
worse. High welfare costs should also increase the protestors’ resolve: once contentious political activities are underway, the more desperate citizen groups may not back down easily because protest cessation would likely entail a return to the status quo.

As with the reputation risks outlined above, citizen perception of the welfare damage is more important than actual damage. If citizens underestimate malfeasance-induced harm, that will inflate their estimate of the current status quo and reduce their willingness to bear protest costs.

1.7.2.2. Geographical Concentration and Mass Protests

Geographically concentrated malfeasance victims can easily organize mass protests because their resource mobilization costs are relatively low: they can easily meet together to discuss their shared interests and to plan collective activities, and they can all show up in one place for mass protests without paying substantial transportation costs.\(^{42}\) Geographical concentration also reduces free-rider problems because group members can easily see who shows up to participate in protests and who does not.\(^{43}\) Geographically concentrated groups may also be linked through social and/or kinship networks, and those networks engender mutual trust – i.e., individuals are more likely to participate in protests and other forms of risky


contentious politics because they can trust that their neighbors will all be there (and they know that they will lose face with those same neighbors if they themselves do not participate).\(^{44}\) In contrast, geographically dispersed groups face high communication and transportation costs, and the larger separation distance makes it harder for group members to view one another’s actions and to trust that others will participate.

Geographical concentration is not the only factor that can facilitate or inhibit collective action. For example, Olson (1965) argues that group size, the nature of the benefits a group is trying to achieve and how those benefits will be allocated are also important. However, geographical concentration is particularly critical in the Chinese context because geographical concentration is the “coordination good” that Chinese leaders cannot monitor or control.\(^{45}\) Geographically dispersed groups generally depend on the mass media, network technology (including internet connections, text messaging and other forms of telecommunication) and/or cross-regional social organizations to communicate with one another, realize their collective interests and organize for collective action. Chinese leaders can monitor and withhold all of these coordination goods – they can impose domestic press reporting guidelines or blackouts, monitor or shut down telecommunication traffic and limit cross-regional social organization, and these actions can significantly reduce the risk that a geographically

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\(^{44}\) Chong (1991) models collective protests as an “assurance game” in which an individuals’ willingness to participate is determined by their estimate of how many others will do so as well. Chong, Dennis (1991), *Collective Action and the Civil Rights Movement* (Chicago, IL: University of Chicago Press). Benson and Rochon (2004) identify a positive relationship between interpersonal trust and protest size/intensity; they argue that individuals are more willing to engage in risky collective behavior when they can trust that others in the group will participate and stand firm alongside them. Benson, Michelle and Thomas R. Rochon (2004), “Interpersonal Trust and the Magnitude of Protest,” *Comparative Political Studies*, Vol. 37, No. 4, pp. 435-457.

\(^{45}\) Bueno de Mesquita and Downs (2005) discuss “coordination goods” and their dangers in authoritarian regimes.
dispersed group will unite for collective action. In contrast, geographically concentrated groups generally do not need these coordination goods. They can utilize their own person-to-person social and kinship networks instead of state-provided mass communication or telecommunication networks, and local person-to-person networks are extremely difficult for Chinese leaders to monitor or control. For this reason, this thesis will assume that geographical concentration is the primary factor that will determine collective action costs in most Chinese malfeasance cases.

In sum, malfeasance-induced regime reputational risks and protest risks are the independent variables for this thesis. I assume that these risks vary on a sector-by-sector basis, and I argue that these risks determine whether Chinese leaders can safely employ non-governmental fire alarms in a particular policy sector. I measure these risk levels based on the following three factors:

1. Citizen perceptions of the welfare impacts they suffer from official malfeasance [impacts both regime reputation and protest risks].
2. Whether the malfeasance is conducted by government agencies only or a mix of both governmental and commercial actors [impacts regime reputation risks].
3. The geographical concentration of malfeasance victims [impacts protest risks].

1.8. Malfeasance-Induced Social Instability Risks (IV) and Fire Alarm Policy (DV)

I assume that Chinese leaders aim to maximize principal-agent oversight across all policy sectors, and they can best achieve that goal by deploying all available fire alarm institutions, both governmental and non-governmental. However, Chinese leaders must also minimize social instability risks, and social stability always takes precedence over alternative political goals. Chinese leaders are unwilling to take any
actions that will move them beyond their acceptable threshold for social instability risk, no matter what benefits those actions could bring across other dimensions. In other words, Chinese leaders will not trade social stability for principal-agent oversight, and they therefore will not deploy fire alarm institutions when they believe that deployment would bring unacceptable social instability risks. More specifically, although Chinese leaders have much to gain from non-governmental fire alarms, they will only deploy those institutions when the malfeasance-induced instability risks defined above are relatively low. If this portrayal is correct, we can logically expect to see the following empirical patterns:

1.8.1. Governmental vs. Non-Governmental Fire Alarm Policy Variation

Governmental fire alarms are the backbone of China’s citizen-based oversight model. Chinese leaders will always deploy political controls to restrict governmental fire alarms to the sub-national level; however, those controls should be relatively constant across policy sectors, and control policies will never aim to cut off sub-national fire alarm activities completely.

In contrast, Chinese leaders will only deploy non-governmental fire alarms when malfeasance-induced instability risks are relatively low. As with governmental fire alarms, Chinese leaders will always use political controls to restrict non-governmental fire alarm activities to the sub-national level. However, even the sub-national activities will be politically dangerous when instability risks are high, so
Chinese leaders will also deploy additional political controls to further limit and/or cut off non-governmental fire alarms in those high-risk sectors.

H1a: Governmental fire alarm openness will be constant across all policy sectors: Chinese leaders will always allow aggrieved citizens to access governmental fire alarms.

H1b: Non-governmental fire alarm openness will be determined by the instability risks in each policy sector: the higher the instability risks, the more Chinese leaders will control and/or cut off citizen access to non-governmental fire alarms.

1.8.2. Fire Alarm Publicity Variation

By implication, if Chinese leaders vary their fire alarm policies from sector to sector, China’s state-run media coverage of fire alarm success cases should also reflect cross-sector variation. Fire alarm institutions only work when aggrieved citizens actually use them, and media publicity is the primary avenue Chinese leaders can use to disseminate information about these institutions and convince aggrieved citizens that fire alarm redress is a worthwhile pursuit.

To encourage governmental fire alarm use, Chinese leaders can order state media outlets to publicize successful administrative reconsideration cases, judicial suits and xinfang petitions. Since I expect Chinese leaders to deploy governmental fire alarms in all policy sectors, this publicity should hold relatively constant from sector to sector. To encourage non-governmental fire alarm use, Chinese leaders can order the state media to publicize their responses to non-governmental alarms. When the leadership responds to non-governmental alarms with public interventions and disciplinary action, this publicity sends a message to aggrieved citizens that the
leadership welcomes non-governmental alarm ringing and will respond to those alarms by intervening on the citizens’ behalf. This publicity also sends a warning to subordinate agents that they themselves could be exposed via the same mechanism.

In general, Chinese leaders should always have an incentive to respond to non-governmental fire alarms because the alarms always expose principal-agent problems. However, Chinese leaders will not always have an incentive to publicize their response. Publicity encourages other aggrieved citizens to use those same mechanisms for similar purposes, and Chinese leaders only want to encourage further non-governmental alarm-ringing in the low-risk sectors; therefore, although non-governmental alarms may always spark higher-level interventions, I expect that those interventions will be publicized in the low-risk sectors only. In the high-risk sectors, I expect Chinese leaders to strictly limit intervention publicity to avoid encouraging further non-governmental alarm ringing. For example, if reporters defy propaganda restrictions to publish watchdog pieces in a high-risk policy sector, Chinese leaders may still respond by intervening to punish the exposed officials; however, they may also punish the responsible journalists, and they will strictly control intervention publicity to reduce the potential political fallout and to avoid encouraging further defiance.

H2a: In general, Chinese leaders will always publicize governmental fire alarm institutional improvements and at least some governmental fire alarm success cases to encourage citizens to use these institutions for grievance redress.

H2b: Non-governmental fire alarm publicity is determined by the instability risks in each policy sector: Chinese leaders are more likely to allow domestic media coverage of non-governmental alarm ringing and subsequent higher-
level official responses when the malfeasance-induced instability risks are relatively low.

1.9. Limited Fire Alarms, Unfilled Oversight Gaps and Persistent Policy Implementation Problems

The more Chinese leaders try to control and limit their fire alarms, the more they expose those institutions to agency loss, and agency loss always reduces fire alarm effectiveness. In other words, although fire alarm institutions are a potential post-reform oversight fix, limited fire alarms will always leave remaining oversight gaps. Chinese leaders limit all of their fire alarms to some degree (to keep them away from the national leadership), so these institutions will never be as effective as their (relatively unlimited) democratic counterparts.

On the one hand, although China’s fire alarm system is not perfect, it can still be very influential. Not every aggrieved citizen will achieve redress, and not every malfeasant official will be caught; however, there are still many success cases, and those success cases should improve overall citizen perceptions of regime performance and increase the probability that malfeasants will be caught and punished. This is a critical achievement in China’s authoritarian regime and a big improvement over the previous status quo.

On the other hand, it is unlikely that Chinese leaders will accept a status quo with significant fire alarm agency loss. In that environment, many malfeasant officials will still pursue their own interests, and that behavior will continue to undermine key national policy goals. Agency loss and persistent policy implementation problems will impact all policy sectors to some degree, but these problems will be particularly
acute in the relatively high-risk sectors with the most restrictive fire alarm policies (i.e., where non-governmental fire alarms are severely limited or cut off completely).

From the Chinese citizens’ perspective, agency loss will impede many of their attempts to seek intervention and redress through sanctioned institutional fire alarms, and that could spark mass protests. The more Chinese leaders force their citizens to depend only on governmental fire alarms, the more local protectionism will block or delay grievance redress, and that can convince malfeasance victims that protests are the only effective fire alarm mechanism available. Ironically, China’s risk-adverse fire alarm strategy is unlikely to significantly reduce existing protest threats because it applies the most restrictive (and therefore relatively ineffective) fire alarm policies in the sectors with the lowest collective action barriers.

In sum, although fire alarms should improve oversight overall, they will not solve China’s principal-agent problems immediately or completely, and Chinese leaders will continue to receive negative feedback in the form of unmet policy targets and malfeasance-induced mass protests, especially in the high-risk sectors where fire alarms are more limited and therefore less effective. This negative feedback will keep Chinese leaders from resting on their fire alarm laurels, and it will likely incite further rounds of institutional reform.

China’s remaining fire alarm oversight gaps stem primarily from the authoritarian nature of the regime and the political controls that limit fire alarm effectiveness, and Chinese leaders cannot eradicate those problems by opening up for political reform or unfettering their fire alarm institutions. However, Chinese leaders
do have a degree of maneuvering room within these authoritarian regime constraints. Primarily, Chinese leaders can respond to negative feedback and push for further oversight improvements through three different avenues: (1) they can fine-tune the fire alarm control system to reduce control-induced agency loss, (2) they can reform and improve the police patrol system to reduce the demands on fire alarm oversight, and (3) as a short-term fix, particularly in the high-risk policy sectors, they can treat malfeasance-induced protests as a quasi-legitimate fire alarm. Through these three pathways, Chinese leaders should be able to improve principal-agent oversight over time, and those improvements should be enough to secure continued regime stability, at least in the near-term.

1.9.1. Fire Alarm and Police Patrol Institutional Reforms

Due to gate-keeping delegation and local protectionism, the political controls designed to protect central-level leaders from fire alarm oversight often wind up protecting local-level malfeasants, especially in the governmental fire alarm channels. If Chinese leaders can fine-tune those controls to reduce agency loss, they can potentially improve principal-agent oversight without sacrificing their national-level political safeguards (and without opening up for non-governmental fire alarms when it is not safe to do so).

In general, China’s first-round fire alarm policies give sub-national agents wide discretion to decide whether and how to redress fire alarm complaints. Chinese leaders can reduce that discretion and reduce the opportunities for abuse through a
combination of tighter procedural requirements and stronger top-down oversight within each fire alarm mechanism. For example, Chinese leaders can issue more specific lists of the types of complaints that that administrative review committees, judicial courts and xinfang offices should accept for redress processing, and they can also increase vertical supervision over complaint acceptance decisions, i.e., by requiring the fire alarm agencies at each level to explain the rationale behind each complaint rejection and pass that information up to their superiors. In theory, tighter procedural requirements and increased vertical supervision should reduce the maneuvering room for fire alarm protectionism, and that should increase the probability that legitimate grievances will receive some form of redress.

Police patrol institutions are another critical arena for oversight reform. Police patrols still play a critical oversight role in China, despite their post-reform deficiencies, and Chinese leaders could potentially strengthen that role by addressing some of the post-reform administrative factors that inhibit police patrol effectiveness. For example, Chinese leaders can verticalize appointment authority to reduce local-level capture, set up independent monitoring agencies to provide national-level leaders with unbiased information about local-level activities, and reform cadre assessment procedures to prioritize more diverse policy goals (instead of focusing only on economic growth). These reforms would shift monitoring responsibilities up the administrative hierarchy, thus increasing the burden on higher-level officials, and that may not be feasible in all policy sectors. On the other hand, that burden may be worthwhile in the high-risk sectors where decentralized fire alarms are less effective
(due to their more stringent political limitations). In theory, a higher dependence on fire alarms in the relatively low-risk sectors should reduce police patrol demands in those issue areas, and that may free up central resources for a stronger top-down oversight effort in the high-risk sectors where fire alarm institutions are more limited.

If these predictions are correct, Chinese leaders will not finalize their oversight institutions through one single round of institutional reform; rather, they will continually monitor institutional performance and try to adjust and improve the system in response to negative feedback.

H3a: China’s oversight institutions will not remain constant over time: if Chinese leaders receive negative feedback on fire alarm performance, they will launch further rounds of oversight reform to address those problems.

1.9.2. Treating Malfeasance-Induced Protests as a Quasi-Legitimate Fire Alarm

Although Chinese leaders do not want to encourage protest activity, once malfeasance-induced protests are already underway they have two strong incentives to treat those protests as a quasi-legitimate fire alarm.

First, if central leaders support harsh crackdowns against fire alarm protestors, those crackdowns may damage the regime’s public image.46 According to surveys conducted by the Chinese Academy of Social Sciences, aggrieved citizens who initially differentiate between a corrupt local state and a more benevolent center can lose their faith in the central leadership when their petitions to central officials go unanswered; the central government’s continued indifference eventually convinces

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petitioners that the central leadership is no more trustworthy than the local bureaucracy.\textsuperscript{47} In theory, central leadership indifference to fire-alarm protests should produce the same effect because protest participants see themselves as legitimate petitioners. On the other hand, if central leaders respond to fire alarm protests by disciplining the exposed malfeasants, those actions should bolster the aggrieved citizens’ distinction between the benevolent center and the corrupt localities.

Second, malfeasance-induced protests can provide central leaders with critical information about specific acts of official malfeasance. If central leaders react to that information by disciplining the involved officials, that reaction will send a warning to other malfeasant agents that mass protests are another fire alarm pathway through which they may be caught, and that may increase the risks and reduce the rewards local officials associate with malfeasant activities. These protest interventions can serve as a short-term fix to keep official malfeasance and citizen discontent below critical levels, especially in the high-risk sectors where fire alarms are more limited.

At the same time, Chinese leaders do not want the benevolent interventions to convince other aggrieved citizens that protests are an ideal fire alarm mechanism, so they will strictly control the media coverage of these events. This information will be publicized within the immediate group of aggrieved and protesting citizens to appease their demands and to head off further protest activities. This information will also be publicized throughout the Party and state hierarchies as a warning against further

official malfeasance. However, in general, broader publication (such as national press coverage) will be carefully controlled and suppressed to avoid encouraging other aggrieved groups to use the same tactics.

H3b: When aggrieved citizens stage mass protests as a fire alarm, higher-level leaders will generally respond by intervening to redress the protestors’ grievances and discipline the exposed malfeasants.

1.10. Hypothesis Testing and Case Studies

The following chapters of this thesis will subject these hypotheses to a number of case studies. My primary goal is to test the relationship between the set of fire alarm institutions employed by Chinese leaders (DV) and the level of social instability risk (IV). I expect that Chinese leaders will employ governmental fire alarms in all cases but only employ non-governmental fire alarms when malfeasance-induced instability risks are relatively low. I will measure relative instability risk based on the three factors outlined in section 2.6 of this chapter: (1) citizen perceptions of the welfare impacts they suffer from official malfeasance, (2) whether the malfeasance is conducted by governmental agencies only or a mix of both governmental and commercial actors, and (3) the geographical concentration of malfeasance victims.

In order to maximize variation on the independent variable, I have chosen case studies from the following three policy sectors: rural land expropriation, food and drug safety and environmental pollution. Land expropriation is a relatively high-risk policy sector, food and drug safety is a relatively low-risk sector, and the risks associated with environmental pollution are mixed. These three sectors also represent China’s most prominent and critical post-reform oversight and governance problems.
According to the government’s annual nationwide public opinion surveys, Chinese citizens routinely rank food and drug safety and environmental pollution among their top three concerns, and land expropriation has now eclipsed tax abuse as the number one grievance in the Chinese countryside. Chinese leaders therefore pay high attention to official malfeasance in these three sectors and frequently issue new policies to improve oversight and grievance redress in these critical issue areas. The case studies in these three sectors will examine these policy innovations and provide evidence to support my argument that Chinese leaders differentiate between governmental and non-governmental alarm mechanisms and only employ non-governmental alarms when social instability risks are relatively low.

Table 1.1: Malfeasance-Induced Social Instability Risks (IV) and Fire Alarm Policy (DV) in Three Critical Sectors: Rural Land Expropriation, Environmental Protection and Food and Drug Safety

<table>
<thead>
<tr>
<th></th>
<th>Rural Land Expropriation</th>
<th>Environmental Protection</th>
<th>Food &amp; Drug Safety</th>
</tr>
</thead>
<tbody>
<tr>
<td>Welfare Impact as Perceived by Malfeasance Victims:</td>
<td><em>High</em>: Under-compensated land expropriations plunge households into poverty. Victims have full information about their own incomes and living standards, so they fully perceive this welfare impact.</td>
<td><em>Mixed</em>: Some pollution incidents cause more harm than others. Information asymmetry between polluters and pollution victims causes many victims to underestimate welfare impacts. Some victims are employed by the polluter and therefore discount pollution harm.</td>
<td><em>Mixed</em>: Some product safety violations cause more harm than others. Information asymmetry between producers and consumers causes many victims to underestimate welfare impacts.</td>
</tr>
<tr>
<td>Geographic Concentration of Malfeasance Victims:</td>
<td><em>High</em>: Land is a communal asset, and land expropriations generally impact the entire community as a unit.</td>
<td><em>High</em>: Pollution generally impacts the entire surrounding community.</td>
<td><em>Low</em>: Product distribution generally uneven across communities; malfeasance victims are geographically scattered with few channels for victim-to-victim communication.</td>
</tr>
<tr>
<td>Overall Risk Level:</td>
<td><em>High</em></td>
<td><em>Medium</em>, with variation between cases</td>
<td><em>Low</em></td>
</tr>
<tr>
<td>Governmental Fire Alarm Channels:</td>
<td>Open and Encouraged</td>
<td>Open and Encouraged</td>
<td>Open and Encouraged</td>
</tr>
<tr>
<td>Non-Governmental Fire Alarm Channels:</td>
<td>Closed</td>
<td>Open, but moderated with state secrets policies for pollution information restriction and control.</td>
<td>Open</td>
</tr>
</tbody>
</table>

- **Welfare Impact as Perceived by Malfeasance Victims:**
  - *High*: Under-compensated land expropriations plunge households into poverty. Victims have full information about their own incomes and living standards, so they fully perceive this welfare impact.
  - *Mixed*: Some pollution incidents cause more harm than others. Information asymmetry between polluters and pollution victims causes many victims to underestimate welfare impacts. Some victims are employed by the polluter and therefore discount pollution harm.
  - *Mixed*: Some product safety violations cause more harm than others. Information asymmetry between producers and consumers causes many victims to underestimate welfare impacts.
- **Geographic Concentration of Malfeasance Victims:**
  - *High*: Land is a communal asset, and land expropriations generally impact the entire community as a unit.
  - *High*: Pollution generally impacts the entire surrounding community.
  - *Low*: Product distribution generally uneven across communities; malfeasance victims are geographically scattered with few channels for victim-to-victim communication.
- **Primary Grievance Target:**
  - *Government*: Local officials conduct the land expropriation and compensation activities.
  - *Government and Commercial*: Enterprises violate pollution standards and officials protect those enterprises from enforcement.
  - *Government and Commercial*: Enterprises violate safety standards and officials protect those enterprises from enforcement.
- **Overall Risk Level:**
  - *High*
  - *Medium*, with variation between cases
  - *Low*
- **Governmental Fire Alarm Channels:**
  - Open and Encouraged
  - Open and Encouraged
  - Open and Encouraged
- **Non-Governmental Fire Alarm Channels:**
  - Closed
  - Open, but moderated with state secrets policies for pollution information restriction and control.
  - Open
1.10.1. Relatively High-Risk Sector: Rural Land Expropriation

Chapter three will examine official malfeasance and fire alarm policy in China’s rural land sector. Chinese officials can exercise eminent domain to expropriate collectively-owned rural agricultural land for commercial development as long as the project serves the public good and the original landowners receive adequate compensation. Rural land expropriation is a sensitive political issue because the farmers who lose their land are losing their livelihoods and they generally do not have the education or skills needed to gain employment in other industries; as a result, if the compensation they receive from the government is too low, expropriation will entail a significant decrease in living standards. The State Council’s Land Administration Law sets strict statutory compensation standards to protect the land-loss farmers and provide them with the financial support they need to set up new homes and find new sources of income post-expropriation. Unfortunately, corrupt local officials often violate national compensation policies by first allowing developers to underpay compensation funds and then keeping all or part of the remaining funds for their own uses instead of distributing this support to the original landowners as required by law. As a result, land malfeasance plunges millions of Chinese farmers into abject poverty every year, and their resultant discontent is threatening social stability in the Chinese countryside.

The land sector registers as a high-risk issue area across all three malfeasance risk indicators: (1) the perceived welfare impacts are very high, (2) land malfeasance is conducted by governmental agencies only, and (3) the malfeasance impacts
geographically concentrated community units that can easily organize for collective action. Due to these factors, Chinese leaders face a very high probability that land malfeasance will damage the regime’s reputation and trigger mass protests, and they therefore confine land sector fire alarms to governmental channels only. Unfortunately, these governmental fire alarm channels are vulnerable to local protectionism, so the lack of sanctioned non-governmental channels will likely impede land grievance redress and drive many farmers toward mass protests as a non-sanctioned fire alarm. However, Chinese leaders would rather accept and manage these issue-specific fire alarm protests instead of opening themselves up to the greater threats posed by larger mass protests fortified with non-state communication and organization networks.

Chapter four will present two detailed case narratives from this sector to examine rural land malfeasance and grievance redress options from the Chinese citizens’ perspective.

1.10.2. Relatively Low-Risk Sector: Food and Drug Safety

Chapter five will examine official malfeasance and fire alarm oversight in China’s food and drug sector. The State Council has issued a wide range of detailed laws, regulations and standards to improve food and drug safety. However, these laws are only effective when they are implemented and enforced at the local level, and corrupt local officials routinely undermine national food and drug safety regulations by turning a blind eye to non-compliant manufacturers in exchange for bribes and
other favors. As a result, despite many good intentions at the national level, China’s food and drug safety initiatives have been largely ineffective and public anger is mounting over the government’s apparent inability to protect the basic health and safety of Chinese citizens.

Despite the increasing public frustrations in this sector, social instability risks are relatively low: (1) although some cases do result in severe injuries and fatalities, the majority of these cases have relatively low welfare impacts, and many victims may not even realize that they have consumed substandard or harmful products; (2) malfeasance is conducted by a mix of both governmental and commercial actors; (3) the barriers to collective action are generally very high because the victims are often spread out across a wide geographic area and within-group communication is very difficult. Due to these factors, food and drug protests are relatively rare, safety exposés generally should not damage the regime’s reputation, and Chinese leaders therefore open up for both governmental and non-governmental fire alarms in this sector.

Chapter six will present two detailed case narratives to examine food and drug malfeasance and fire alarm oversight from the Chinese citizens’ perspective.

1.10.3. Medium-Risk Sector: Environmental Protection

Chapter seven will examine official malfeasance and fire alarm policy in China’s environmental protection sector. Although the central government has built up an impressive framework of environmental protection laws and standards, local
officials often derail these efforts with spotty implementation and enforcement. As a result, environmental pollution is rampant and severe, and Chinese citizens consistently rank environmental pollution as one of the regime’s biggest governance problems.\textsuperscript{49} Compared to food and drug safety or land compensation, social instability risks in the environmental protection sector are medium/mixed: (1) perceived welfare impacts vary widely from case to case, and many victims will underestimate welfare impacts (due to information asymmetries) or discount welfare impacts (due to financial dependence on local polluters); (2) environmental malfeasance is conducted by a mix of governmental and commercial actors; (3) environmental malfeasance generally victimizes geographically concentrated communities that can easily organize for collective action. In this sector, Chinese leaders generally do allow non-governmental fire alarms, but they also employ targeted information-control (state secrets) regulations to suppress non-governmental fire alarms in the pollution cases with higher instability risks.

Chapter eight will present two detailed case narratives from the environmental protection sector to examine environmental malfeasance and fire alarm redress options from the Chinese citizens’ perspective.

1.11 Conclusion

In this introductory chapter I have argued that Chinese leaders are increasingly employing fire alarm institutions to improve principal-agent oversight in the post-
reform era, but they must also hedge against two critical backfire risks: (1) the risk that Chinese citizens would use these institutions at the national level to monitor and restrain the central leadership itself, and (2) the risk that non-governmental fire alarms would damage the leadership’s public image and/or facilitate mass protests.

Chinese leaders hedge against the first risk by building controls into all of their fire alarm institutions, both governmental and non-governmental. Unfortunately, these controls must be delegated down to the lower levels, and control delegation produces agency loss. Fire alarm agency loss undermines fire alarm effectiveness, particularly in governmental fire alarm institutions. Non-governmental fire alarms can circumvent protectionist lower-level officials and can therefore circumvent many of these agency problems. However, non-governmental fire alarms also pose additional political risks, so Chinese leaders face an oversight dilemma: governmental fire alarms are relatively safe, but they do not work well in a politically controlled environment; non-governmental fire alarms are relatively effective despite China’s political controls, but they also pose serious political risks that the controls cannot eradicate.

In this chapter I have argued that the risks associated with non-governmental fire alarms are not constant. These risks vary across policy sectors, and Chinese leaders respond to that variance by employing governmental fire alarms in all sectors but limiting non-governmental fire alarms to the relatively low-risk sectors only. This strategy maximizes the benefits from fire alarm oversight while also minimizing the potential political risks associated with non-governmental fire alarms. Unfortunately, this strategy also limits fire alarm effectiveness, especially in the high-risk sectors with
the most restrictive fire alarm policies, and those limitations force Chinese leaders into a continuous cycle of institutional reform.
Chapter 2
Reform-Era Shocks to China’s Traditional Police Patrol Oversight System

2.1. Introduction

In this chapter I will examine China’s political system and explain why Chinese leaders are increasingly turning toward fire alarm institutions for central-local principal-agent oversight. From 1949 through the early reform era, Chinese leaders depended primarily on top-down “police patrols” to keep subordinate Party and government agents in line: they delegated monitoring responsibilities down the vertical hierarchy and ordered the principals at each level to police their own subordinates. This vertical monitoring system worked relatively well in the pre-reform command and control era. However, beginning in the 1980s, reform-era leaders launched a series of economic and administrative decentralizations that altered principal-agent dynamics and produced new oversight problems that the vertical police patrols could not adequately rectify.

Primarily, these decentralization reforms delivered three critical shocks to China’s pre-reform principal-agent equilibrium: (1) decentralization created new local-level economic opportunities that increased interest divergence along the Party and government delegation chains; (2) decentralization widened principal-agent information asymmetries at every level, and that made it much harder for principals to view and assess agent performance, and (3) decentralization gave China’s police
patrol monitoring agencies new incentives to side with local-level officials instead of faithfully enforcing the commands sent down from the center. Post-reform, Chinese leaders are responding to these shocks (and their subsequent principal-agent oversight problems) by opening up new grassroots-level fire alarm oversight channels that can supplement their police patrols and improve central-local oversight and control.

This chapter will proceed as follows. Section 2.2 will examine China’s parallel Party and government political hierarchies and section 2.3 will examine the four key police patrol institutions that Chinese leaders relied on for principal-agent oversight in the command and control era. Section 2.4 will examine China’s reform-era economic and administrative decentralizations and the shocks those changes delivered to the pre-reform principal-agent equilibrium. Sections 2.5 and 2.6 will address China’s increasing post-reform corruption problems and the administrative re-centralizations that have failed to fix those problems. Section 2.7 will conclude.

2.2. China’s Political Hierarchy

China is a single-party authoritarian state, and the Chinese Communist Party (CCP) is the preeminent political authority.\textsuperscript{50} National-level CCP leaders play a

\textsuperscript{50} The most powerful leadership organizations within the Party are the CCP Central Committee, the CCP Politburo and the Politburo Standing Committee. The Central Committee is the largest of the three: it currently has 204 full members, and all of those members are also key leaders in central government ministries, Party agencies, territorial People’s governments, or the military. Within the Central Committee, a core leadership group of approximately 20-25 elite cadres (the Politburo) meets monthly and acts as a board of directors to steer national policy at the macro-level. Within the Politburo, an even smaller and even more elite group of leaders makes up the Politburo Standing Committee; this group meets weekly, and its members (generally 5-9 cadres) are the highest-ranking leaders in the CCP. The Politburo Standing Committee is the true CCP power center, but both the Politburo and the Standing Committee are formally accountable to the larger Central Committee. Although the Central Committee only convenes once or twice per year, Politburo decisions generally
strong leading role in dictating the overall policy agenda, but they do not govern China directly. The CCP delegates governing authority to an executive cabinet (known as the State Council or the Central People’s Government) which heads up China’s government. The State Council then delegates governing authority further down the line in two administrative sets.

One set contains the territorial people’s governments with administrative jurisdiction over specific regions. China’s territorial administrative system is vertically divided into five hierarchical levels: center, province, prefecture, county and township. The provincial-level People’s governments answer directly to the State Council; from the provincial level down, each territorial unit is subordinate to its vertical superior.\(^{51}\)

The second administrative set contains the specialized ministries and commissions responsible for specific industrial or functional jurisdictions – construction, agriculture, foreign affairs, finance, etc. Each of these specialized agencies is directly subordinate to the State Council and has regional offices at each of the provincial, prefecture and county levels nationwide. In some sectors the central agencies and their regional offices are organized vertically with each office subordinate to its functional superior one level up; in other sectors the regional offices reflect overall Committee preferences, and Politburo members most likely meet with Committee members behind the scenes to ensure they have broad political support for key policy decisions. Shirk, Susan L. (1993), *The Political Logic of Economic Reform in China*, (Berkeley, CA: University of California Press). Lieberthal, Kenneth (2004), *Governing China: From Revolution Through Reform*, Second Edition (New York, NY: W.W. Norton and Company).

\(^{51}\) This administrative set is analogous to the local state, county and city governments in the United States; however, instead of being directly elected by the local citizenry, they all report up the chain of command to the national leadership in Beijing.
are subordinate to the local territorial people’s government (at the same administrative level) instead of their functional superiors. Some sectors actually mix these two organization models: the vertical functional superior holds primary personnel authority and the (horizontal) local People’s government holds primary budgetary authority or vice versa.

Each step along each State Council delegation chain is another step away from the national Party leadership, and Party leaders do not trust their government agents to keep all of these chains in line with Party preferences. The Party therefore established its own vertical hierarchy with sub-national Party institutions paralleling (and overseeing) the government institutions at every administrative level. As with the government institutions outlined above, the Party institutions are organized into two sets: a regional set and a functional set. From the provincial level down to the county level, each territorial administrative region has its own regional Party congress, Party committee, and Party standing committee. These organizations serve as the Party leadership’s eyes and ears within each region, and they ensure that the government agents within that region faithfully carry out national Party directives.

The functional Party institutions serve a similar oversight role, but they do so from within rather than outside the government. From 1949 to 1987, the State

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52 Under vertical administration, vertical administrative units are connected via full “leadership” relations, so the functional superiors can issue “binding” orders on their subordinates; those same functional offices are connected horizontally with their local People’s governments, but the horizontal connection is a weaker “professional” relationship, and the local People’s governments therefore cannot issue binding orders on the local functional office. Under horizontal administration, the local People’s government rather than the functional superior has the authority to issue binding orders. The leadership superior also has personnel and budgetary authority over the functional office. Lieberthal (2004). Lieberthal, Kenneth and Michel Oksenberg (1988), *Policy Making in China: Leaders, Structures and Processes* (Princeton, NJ: Princeton University Press).
Council’s ministries and commissions and all of their regional offices had internal Party committees monitoring each office’s activities from the inside. These Party committees formed their own vertical hierarchy running inside the government’s functional administrative system; the ministerial-level Party committee answered directly to the Central Committee in Beijing, and the regional Party committees were all subordinate to their counterparts one level up.

The Chinese party-state can therefore be modeled as a complex series of downward-branching (and sometimes overlapping) principal-agent relationships. The CCP Central Party Committee is the highest-ranking principal in this system and the top node in the Party hierarchy. The State Council is a CCP agent and also the top node in the government hierarchy. The territorial government delegation chains all run vertically from the State Council down through the levels of the local people’s governments. The functional government delegation chains are more complex because they run both vertically and horizontally: some regional offices are

53 In addition to the larger internal Party committees, ministerial-level agencies have a smaller internal “Party group” (also referred to as the Party “fraction” or the Party “core group”) with approximately 3-5 members appointed by the Central Committee. These members generally include the top bureaucratic leaders in each ministry or commission. Party groups were originally designed as a forum for the top Party members within each organization; these groups are based on the assumption that the top bureaucratic leadership would be a mix of Party and non-Party officials, so these groups were designed to bring together each agency’s highest-ranking Party members to discuss key internal bureaucratic decisions from a Party perspective. In reality, from the 1950s onward all bureaucratic leaders have been Party members, so the general high-level bureaucratic meetings do not differ in composition from Party group meetings, and Party interests should be equally represented in both forums. Based on this reasoning, in the mid-1980s some reform leaders argued that these groups should be eliminated; however, these arguments were immediately dropped after 1989, and the top bureaucratic leaders within each ministry or commission still hold separate Party group meetings. See: Shirk (1993). Lieberthal (2004). Manion, Melanie (1985), “The Cadre Management System, Post-Mao: The Appointment, Promotion, Transfer and Removal of Party and State Leaders,” The China Quarterly, No. 102, pp. 203-233.

54 The Central Committee delegates Party authority down the chain of command to the various regional and functional Party committees nationwide.
subordinate to their vertical functional superiors, others answer (horizontally) to the local People’s government at the same administrative level, and still others follow a divided model where they are subordinate to the vertical functional superior in some issue areas and to the horizontal People’s government in others. These Party and government delegation chains overlap at every level with each government agency serving two principals: an administrative superior on the government side and a Party committee on the Party side. The side-by-side Party and government delegation chains give Party leaders two different avenues that they can use to keep their government officials in line: one management avenue running through the State Council hierarchy and a second avenue running through the Party hierarchy.

This centralized delegation structure concentrates all national political authority under the CCP and therefore gives CCP leaders a huge amount of discretionary power over all political affairs nationwide. However, the concentration of power does not come free – as the ultimate principals, CCP leaders must also find a way to monitor and control all of these agents. The national-level principals in federal democratic systems also delegate political authority down to specialized bureaucratic agents; however, in those systems the local state, county and municipal government officials are directly elected by the local citizenry, so those lines of accountability run downward to the local electorate rather than upward to the national leadership. In contrast, the Chinese system combines both bureaucratic and regional agencies into the same nationwide principal-agent network, so CCP principles manage many more agents than their counterparts in other political systems. In other words, due to the
absence of local democratic accountability, Chinese principals face a particularly daunting large-N monitoring problem.

2.3. China’s Traditional “Police Patrol” System for Principal-Agent Oversight

Chinese leaders do not have the resources to directly monitor all of their Party and government agents nationwide, and that makes the regime vulnerable to agency loss. Primarily, Chinese leaders worry that their agents will violate national directives to further their own individual interests, and that could derail national-level political goals, especially if national leaders do not find out about sub-national violations in time to limit the damage. From 1949 through the reform era, CCP leaders depended primarily on top-down “police patrols” to solve this oversight problem – i.e., they delegated monitoring responsibilities down the vertical hierarchy and ordered the principals at each level to police their own subordinates.

Police patrols were relatively effective in China’s pre-reform command and control system, but they are not performing as well in the post-reform, decentralized administrative environment. As a result, Chinese leaders are now supplementing their police patrols with fire alarms – instead of depending only on internal administrative oversight, they are also enfranchising non-state third-parties to monitor and report on subordinate agent behavior at the grassroots level.\textsuperscript{55} China’s post-reform fire alarm institutions are the focus of this thesis. However, police patrols still play a vital role in China’s oversight system, and their post-reform performance problems are the driving

\textsuperscript{55} McCubbins and Schwartz (1984).
force behind fire alarm adoption. Therefore, in order to understand how China utilizes fire alarm institutions, it is critical to first examine the traditional police patrol system and the problems undermining that system in the post-reform era. Toward that end, this section of the chapter will examine China’s four key police patrol oversight institutions: (1) centralized personnel appointments, (2) performance evaluations, (3) Party discipline inspection commissions and (4) government supervisory institutions.

2.3.1. Centralized Personnel Appointments

As in any regime, Chinese principals must begin by appointing obedient agents.\(^{56}\) Toward that end, the CCP adopted the Soviet Union’s *nomenklatura* appointment system, and they use that system to weed out the candidates whose backgrounds and previous performance records suggest that they are more likely to become deviant agents.\(^{57}\) The *nomenklatura* is a list of the most important political positions nationwide; this list includes both Party and government positions, and it

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extends from the national Party secretary all the way down to village-level officials and enterprise heads. Only Party committees can fill nomenklatura positions, and every position on the nomenklatura list was placed there because Party leaders identified that position as a key node in one of the Party or state delegation chains. Party leaders carefully structure nomenklatura lists and appointment procedures to ensure that those critical positions are only filled with the most loyal and obedient agents.

Chinese leaders generally divide the nomenklatura into two separate lists: a list of primary positions that can only be filled by the Central Committee in Beijing and a list of secondary positions that can be filled by local Party Committees (but must be reported to the Central Committee ex post). The primary list includes all central

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58 Ibid.
59 These positions always include key leaders in government and Party agencies. However, nomenklatura lists also include a variety of lower-level and quasi-governmental positions, and those positions vary from list to list to accommodate changes in the leadership’s key policy goals. The addition of new nomenklatura positions or the elevation of appointment authority from local to central Party committees indicates that those positions are in a sector that is gaining political prominence; in contrast, dropping positions from the list or reducing the level of personnel authority indicates either reduced political importance or a desire to give those officials more political autonomy and flexibility. For example, in accordance with the leadership’s “grasping the large and releasing the small” enterprise reform policy, the 1998 nomenklatura centralized personnel controls over the largest and most critical state-owned enterprises and decentralized personnel control over most of the smaller enterprises. Hon S. Chan (2004), “Cadre Personnel Management in China: The Nomenklatura System, 1990-1998,” The China Quarterly, No. 179, pp. 703-734.

60 Before 1984 Party committees had appointment authority over leading cadres at the next two administrative levels down – i.e., the Central Committee appointed provincial and prefecture level leaders on the regional side and ministerial and bureau leaders on the functional side (Manion 1985). In 1984 CCP leaders revised the system from “two levels downward” to “one level downward” – i.e., now the Central Committee still appoints provincial and ministerial leaders, but the provincial and ministerial-level committees appoint the prefecture and bureau-level officials (Burns 1987). This change decentralized thousands of nomenklatura appointments from the Central Committee out to provincial- and ministerial-level officials, thus freeing up central resources and giving regional and functional leaders more discretion to select their own immediate subordinates (Burns 1987). Also see: Li, Cheng (2004), “Political Localism Versus Institutional Restraints: Elite Recruitment in the Jiang Era,” Ch. 1 in Naughton, Barry J. and Dali L. Yang, eds., Holding China Together: Diversity and National Integration in the Post-Deng Era (New York, NY: Cambridge University Press).
Party positions, all State Council positions, all ministers and deputy ministers in functional government agencies, all governors and deputy governors in the provincial people’s governments, and all ministerial and provincial-level Party committee members.\(^{61}\) In effect, CCP leaders use this list to take first-tier government personnel authority away from the State Council; instead of giving State Council officials the authority to appoint and dismiss their own direct subordinates, CCP leaders manage those officials directly. As a result, ministerial and provincial-level government leaders know that their own career advancements depend on keeping the Central Committee happy, and those officials will therefore have a very strong incentive to adhere to Party directives, even if their State Council superiors or their own sectoral or territorial interests give them incentives to do otherwise.

The secondary list includes the heads of ministry bureaus, local People’s government leaders at the prefecture level and below, and Party secretaries, deputy Party secretaries and Party committee members at the bureau level.\(^{62}\) Every regional Party committee has its own roster of secondary nomenklatura positions, and these lists define Party power over government agencies throughout the sub-national levels. Local-level territorial and functional government leaders all know which local Party committees have personnel authority over their positions, and they have a strong

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\(^{61}\) The full primary nomenklatura is too extensive to list here. For the full primary list from the 1998 nomenklatura, see Chan (2004: 719-727), Appendix 1: “Job Title List of Cadres Centrally Managed by the Chinese Communist Party, 1998.”

\(^{62}\) For the full secondary list from the 1998 nomenklatura, see Chan (2004: 727-734), Appendix 2: “List of Cadre Positions to be Reported to the Chinese Communist Party Centre, 1998.” Bureau-level appointments have been on the secondary list since the 1983-84 reforms.
incentive to keep those committees happy to earn career advancements (and avoid punitive dismissal).

The non-\textit{nomenklatura} officials – i.e., bureaucrats other than the top government leaders at each administrative level – are appointed by their own direct superiors within the government hierarchy.\textsuperscript{63} The government side has its own personnel administration headed by the Ministry of Personnel (under the State Council); each government agency has an internal personnel department, and those departments monitor internal personnel decisions to ensure that non-\textit{nomenklatura} appointments still follow key Party and state guidelines.\textsuperscript{64} Personnel departments generally work under the local Party committee’s de facto leadership, so the Party still manages non-\textit{nomenklatura} bureaucratic appointments, albeit indirectly.\textsuperscript{65}

\textbf{2.3.2. Mid-term Performance Evaluations}

Beginning in the mid-1980s, Party and government principals must conduct routine evaluations to assess subordinate agent performance, and the information

\textsuperscript{63} Depending on an individual official’s rank, their direct superiors may be within their own unit (for mid- and lower-ranking officials) or in the next administrative unit up (for unit leaders). The CCP Organization Department sets out specific appointment rules and procedural requirements to guard against nepotism and to steer lower-level bureaucratic principals toward appointing the same sort of agents that the leaders themselves would select if they were managing the process directly. Huang, Yasheng (1995), “Administrative Monitoring in China,” \textit{The China Quarterly}, No. 143, pp. 828-843.

\textsuperscript{64} The Ministry of Personnel and its nationwide network of internal bureaucratic personnel departments are organized into a vertical hierarchy; however, the vertical relationship between higher- and lower-level personnel departments is a professional relationship rather than a leadership relationship (Manion 1985).

\textsuperscript{65} Manion (1985).
gleaned from these performance assessments goes into the agents’ personnel dossiers to be referenced for future appointment decisions.66

The Party committees at each level must evaluate all of the cadres on their *nomenklatura* list.67 These evaluations are carried out yearly by the committee’s organization department in conjunction with the relevant government personnel authorities (for bureaucratic leading-cadre evaluations) and other key officials from the evaluated cadre’s work unit.68 The lower-level, non-*nomenklatura* bureaucratic officials are evaluated by their own internal agency superiors in conjunction with the agency’s personnel department.69 Performance evaluations encompass both political and professional indicators – evaluators examine political backgrounds and attitudes to assess Party loyalty (especially for Party posts and leading bureaucratic cadres) and also review specific job achievements to assess professional merit.

Within the bureaucratic hierarchy, professional merit has become increasingly important throughout the reform era; to improve economic performance CCP leaders wanted to increase bureaucratic efficiency and improve economic growth incentives, and they saw the performance review as a primary means to do so.70 Toward this end,

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67 Ibid.
68 Ibid.
the State Council issued new bureaucratic review regulations in 1993. Under the new system, bureaucratic agents at all levels are given specific performance targets; these generally include quantitative economic and fiscal “hard targets” as well as more qualitative “soft targets” such as maintaining social order or reducing peasant burdens. Principals then focus subsequent evaluations on whether these targets have been met. Agents who exceed their targets are rewarded with career advancement and performance bonuses; agents who fail to meet their targets risk demotion or other administrative punishments. National and local-level leaders can adjust the composition and prioritization of these targets over time to align agent interests with their principals’ changing policy goals.

2.3.3. Party Discipline Inspection Commissions

Chinese leaders depend on local Party committees to manage the abovementioned personnel appointments and performance evaluations. However, Party cadres can only act as reliable institutional checks to the extent that they themselves are obedient and loyal agents, and the Party is another vertical hierarchy.
with its own principal-agent problems. Chinese leaders therefore established additional supervisory institutions for principal-agent oversight within the Party hierarchy.

Each Party committee must select an in-house discipline inspection commission (DIC) to police the committee from the inside.\(^73\) In Beijing, the Central Committee selects a national-level Central Discipline Inspection Commission (CDIC), and the sub-national commissions form a vertical hierarchy under the CDIC. This DIC hierarchy parallels the Party committee hierarchy from the center down to the county level, and each DIC reports to two principals: its DIC superior one level up and its affiliated Party committee at the same administrative level.\(^74\)

\(^73\) Regional Party committees and higher-level functional Party committees elect a multi-cadre discipline inspection commission; the smaller, lower-level functional committees elect an individual discipline inspection commissioner. Under the current system, the Party organization at the next level up determines whether its subordinate will elect a discipline inspection committee or a single discipline inspection commissioner. Article 43, Chapter VIII (Party Organs for Discipline Inspection), “Constitution of the Communist Party of China,” most recent version amended Oct. 21, 2007, available online at: http://www.idcpc.org.cn/english/cpbrief/constitution.htm#viii (accessed July 28, 2010).

CCP leaders imported this system from the Soviet Union and first used internal disciplinary commissions in 1927; these commissions played a large role in keeping the Party together throughout the pre-revolutionary era. CCP leaders immediately established a network of subsidiary regional DICs after they took power in 1949, but the disciplinary system was de-institutionalized during the Cultural Revolution. The post-Mao leadership established a new central DIC in 1979 and new local DICs over the following years. Gong, Ting (2008), “The Party Discipline Inspection in China: Its Evolving Trajectory and Embedded Dilemmas,” Crime, Law and Social Change, Vol. 49, No. 2, pp. 139-152.


\(^74\) Article 43, Chapter VIII (Party Organs for Discipline Inspection), “Constitution of the Communist Party of China.” CCP leaders have increased vertical DIC hierarchal authority over time to improve DIC autonomy vis-à-vis the local Party officials who may have an incentive to stifle local DIC investigations. Prior to the 1980s, DICs were primarily subordinate to the local Party committee; post-reform, although DICs answer to both the local committee and their DIC superior, vertical DIC authority has substantially increased, and this has somewhat reduced the avenues local committees can use to impede DIC investigations into local Party misconduct (Gong 2008).
Individual DICs monitor the members of their affiliated Party committees, investigate any allegations of wrongdoing and punish offenders with one of five Party disciplinary measures: warning, serious warning, dismissal from Party posts, Party probation, or Party expulsion. DICs at the county level and above have the authority to detain suspected Party malfeasant and conduct compulsory interrogations; DICs at all levels can perform quasi-police actions (questioning potential witnesses, searching offices, homes and other locations in pursuit of physical evidence) to investigate complaints or suspicions against Party cadres in their jurisdiction. The national-level CDIC can also send out its own ad hoc inspection groups to investigate corruption allegations and any other reported or suspected problems within the Party’s lower ranks.

2.3.4. Bureaucratic Supervisory Institutions

On the government side, Chinese leaders deploy three bureaucratic supervisory institutions to maintain discipline throughout the government’s delegation chains: the Ministry of Supervision (MOS), the National Audit Office (NAO) and the National Bureau of Statistics (NBS). Each of these institutions answers directly to the State

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75 Article 39, Chapter VII (Party Discipline) and Article 44, Chapter VIII (Party Organs for Discipline Inspection), “Constitution of the Communist Party of China.” These sanctions apply for malfeasant actions that violate Party rules. DICs can issue warnings and serious warnings unilaterally, but they need Party committee approval for dismissals, probation and expulsion. For malfeasance that violates state law, DICs can technically turn officials over to the judicial system for legal prosecution; however, local Party committee leaders must approval judicial transfers, and those approvals are rarely given (Gong 2008).

76 CDICs can conduct their local-level investigations independently or in conjunction with the local DIC. Central-level inspection groups are often much more effective than local DIC teams, especially when allegations involve high-ranking local Party bosses; local DIC officials are all on their local Party committee’s nomenklatura list, and committee members (and especially committee leaders) often use this personnel authority to deter local DIC investigations (Gong 2008).
Council, and each is charged with providing State Council officials with an alternate source of information about ministerial and People’s government activities at all administrative levels nationwide.

Of these, the Ministry of Supervision is the main investigative and disciplinary institution; it is the government counterpart to the Party DIC system outlined above. The MOS has the power to investigate accusations of official misconduct (arising either from internal top-down evaluations or external citizen complaints) and conduct surprise inspections to determine how well the State Council’s policy directives are being implemented at the lower levels. If MOS investigators do find evidence of misconduct, they can either order the relevant departments to discipline those officials in-house or the MOS can itself issue a wide range of administrative sanctions ranging from official warnings (which will be noted in an official’s personnel dossier) to outright dismissal.

The National Audit Office focuses specifically on supervising the financial activities of individual bureaus and key officials. NAO officials have the authority to audit agency budgets, revenues, expenditures and other financial activities to ferret

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77 CCP leaders first established the Ministry of Supervision in 1949 and then abolished the institution in 1959; reformists re-established the MOS in 1987. From 1959-1987 the functions of Party and administrative supervision were combined under the central DIC, and the local DICs at various levels policed both the local Party and the local government officials. Huang, Yasheng (1995), “Administrative Monitoring in China,” The China Quarterly, No. 143, pp. 828-843.


79 Ibid.

out evidence of official corruption and/or misuse of government funds.\footnote{Ibid.} If they do find evidence of misconduct, NAO officials must turn this information over to the MOS for further investigation and potential punishment.\footnote{“Powers of Audit Institutions in China,” available at: http://www.cnao.gov.cn/main/articleshow_ArtID_729.htm?ArtID=NaN&eoShow=1 (accessed July 28, 2010).} In 2008 alone NAO officials audited over 120,000 units/projects and 34,000 individual officials nationwide; according to official state reports, these audits uncovered approximately 6 billion RMB ($877 million) in misused government funds and turned 500 corrupt officials over to the MOS for potential disciplinary action.\footnote{Cui Xiaohuo, “Audit Hints at Graft in Some Areas,” China Daily, February 20, 2009, available at: http://www.chinadaily.com.cn/china/2009-02/20/content_7494648.htm (accessed July 28, 2010).}

The National Bureau of Statistics conducts “statistical investigation” and “statistical supervision” on the State Council’s behalf at all administrative levels nationwide.\footnote{“Statistics Law of the People’s Republic of China,” March 29, 2002, available at: http://www.stats.gov.cn/english/lawsandregulations/statisticallaws/t20020329_15257.htm (accessed July 28, 2010). Pre-reform, statistical operations were carried out within the State Planning Commission – the statistical institution was a bureau under the SPC. Reform-era leaders transformed the statistical bureau into a more independent institution in the 1980s in an attempt to strengthen the agency and improve its monitoring ability vis-à-vis other government departments and state-owned enterprises (Huang 1995).} NBS officials survey a wide range of socio-economic indicators including economic performance, environmental degradation, industrial development and investment, population growth and social migration.\footnote{“About the National Bureau of Statistics of China,” January 4, 2007, available at: http://www.stats.gov.cn/english/nbs/t20070104_402377418.htm (accessed July 28, 2010).} State Council leaders then use this data to judge how well their agents are complying with national economic and social development policies. For example, the State Council uses fixed asset investment statistics to measure local government compliance with policies aimed
toward reigning in excessive economic investment and soaring real estate prices.\textsuperscript{86} The State Council also works with a variety of state-sponsored think tanks and research institutes that supplement NAO and NBS data with independent policy studies on key issue areas.\textsuperscript{87}

2.4. Economic Reform, Decentralization and New Principal-Agent Problems

Beginning in the early 1980s, Deng Xiaoping launched a series of economic and administrative reforms that decentralized substantial political power (originally held by the center) down to the local level.\textsuperscript{88} Deng Xiaoping and other reform-era leaders hoped that this increase in sub-national autonomy would give local Party and People’s government leaders a strong incentive to support new market reform policies.

\textsuperscript{86} Saiget, Robert J., “China Unleashes Crackdown on Illegal Land Dealings,” Agence France Presse, June 25, 2006 [Lexis Nexis Academic].

\textsuperscript{87} For example, although scholars at the highly-respected Chinese Academy of Social Sciences (CASS) can pursue their own independent scholarly research projects, they also receive regular research requests directly from the State Council and carry out these projects in order to provide Chinese leaders with an extra-bureaucratic viewpoint on key policy issues.

at the center and to promote economic growth in their home jurisdictions. From that standpoint, this strategy was very successful: provincial support gave Deng Xiaoping the political momentum he needed to push market reforms past conservative central leaders, and local-level government leaders launched an impressive economic boom. However, the reform-era economic and administrative decentralizations also delivered a series of shocks to the pre-reform principal-agent equilibrium, and those shocks created a host of new oversight problems. This section will examine China’s reform-era decentralizations and subsequent oversight problems in detail.

2.4.1. Economic Decentralization

On the economic front, reform-era leaders decentralized state-owned enterprise (SOE) ownership, economic regulatory authority and fiscal responsibility to give local-level leaders the flexibility to respond to market pressures and the incentives to promote local economic growth.

SOE decentralization gave provincial, municipal and county-level officials management control and property rights over the enterprises in their jurisdictions. Post-reform, these officials could make their own managerial decisions at the local

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89 Shirk (1993).
level instead of following commands from the center, and their stronger claim over SOE profits gave them an incentive to increase local production.91

Regulatory decentralization gave local officials the authority to set prices, approve investments, regulate local market entry, and allocate resources – all functions that were previously controlled by the center.92 Post-reform, local leaders could adjust regulatory parameters as needed to rectify local imbalances and meet emerging market demands.93

Fiscal decentralization gave provincial-level officials more control over their own budgets and expenditures.94 Pre-reform, provincial budgets and expenditures were controlled by the center; if provincial officials could not meet expenditures the center would make up the difference, and if revenues exceeded expenditures the center would appropriate most of the excess.95 As a result, neither revenue shortages nor revenue surpluses had a strong impact on local treasuries, so provincial leaders had few incentives to increase local revenue collection. To change these incentives,

92 Ibid.
reform leaders established a new fiscal contracting system whereby local governments remitted a set amount of revenue to the center and kept the rest.\textsuperscript{96} This change gave provincial leaders a strong incentive to act as a “helping hand” and encourage local enterprise production with favorable polices (for productive enterprises) and targeted reforms (for nonproductive enterprises).\textsuperscript{97}

2.4.2. Administrative Decentralization

On the administrative front, reform-era leaders decentralized China’s functional administrative system to give regional People’s governments more control over the various functional agencies operating in their territorial jurisdiction. Regional branches of the functional agencies had always served two lines of authority: the vertical (\textit{tiao}) or branch line running up to their functional superiors and the horizontal (\textit{kuai}) line connecting them with the local People’s government at their same administrative level.\textsuperscript{98} The relative importance of these two connections varies on a ministry-by-ministry basis; however, beginning in the late 1970s, decentralization gave territorial governments increasing leverage over local functional agencies, and the overall trend was an increase in horizontal leadership at the expense of the

\textsuperscript{97} Post-reform, increases in local enterprise production increased local fiscal revenues: once the contracted central remittances had been met, all of the remaining funds went into the local treasury, and local officials had relatively wide latitude to decide how those funds would be spent. See: Shirk (1993). Jin, Qian and Weingast (2005). Qian (2002). For an analysis of “grabbing hand” vs. “helping hand” government policies toward local enterprises, see: Shleifer, Andrei and Robert W. Vishny (1998), The Grabbing Hand: Government Pathologies and Their Cures (Cambridge, MA: Harvard University Press).
For example, after the 1984 *nomenklatura* decentralization, local governments had primary personnel authority over leadership positions in the local functional agencies, and local functional leaders therefore had a strong incentive to satisfy (horizontal) People’s government preferences.\(^{100}\)

The increase in horizontal leverage improved local-level flexibility and coordination because the local People’s governments could force all of the bureaucratic offices within their region to work together on key policy programs, thus avoiding the inter-agency deadlock that could otherwise delay key development projects. Administrative decentralization also concentrated wide-ranging political authority under the local Party and People’s government leaders, and that helped Deng Xiaoping secure their cooperation and support in the central-level political negotiations over his ambitious reform programs.

2.4.3. New Principal-Agent Problems Undermine Police Patrol Oversight

Economic and administrative decentralization did give local leaders the incentives and the tools to launch an impressive economic boom. Decentralization also gave Deng Xiaoping the political support he needed to push market reforms past

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the conservative bloc at the center. However, these reforms also delivered a series of shocks to China’s pre-reform principal-agent equilibrium.

First, decentralization and marketization gave local-level cadres and officials new economic incentives that increased principal-agent interest divergence all along the Party and government delegation chains. Post-reform, local-level Party and government leaders were the new gatekeepers to commercial success – local cadres and officials controlled local market entry, investment, and (in many industries) prices, and their commercial influence extended across a wide range of policy sectors because they controlled most of the local functional bureaus (such as the local industry regulatory bureaus and local branches of national banks). As a result, local entrepreneurs were soon vying for their patronage and offering enticing rents in exchange for their political support and protection. When central leaders issued policies that would protect Chinese citizens in general but reduce local business profits, the proffered rents gave local cadres and officials strong incentives to side with local businesses interests (instead of the central leadership or the local citizenry) to protect those businesses from policy implementation and enforcement.

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101 These reforms were strongly favored by provincial leaders because decentralization substantially increased their own political power; most of the provincial leaders were also Central Committee members, so their support for market reforms provided Deng Xiaoping with a critical voting bloc at the center (Shirk 1993).

102 Post-reform, all of the functional bureaucratic and People’s government agents within each region were trying to please the same regional leaders (in order to gain personnel and budgetary benefits). Pei, Minxin (2006), China’s Trapped Transition: The Limits of Developmental Autocracy (Cambridge, MA: Harvard University Press).


Second, decentralization and marketization increased local agent discretion and local economic complexity, and those changes widened principal-agent information asymmetries. Post-reform, local officials were managing more market players (including both public and private enterprises) and a more diversified local economy; as a result, local managerial decisions increased in number and specialization, and that made it much harder for the principals (at every level) to monitor and assess agent performance. For example, in the environmental protection arena, pollution monitoring became more difficult as production diversity and the number of factories increased. Local factories were using more diverse production practices and a wider range of environmental protection equipment and standards (thus increasing knowledge demands on regulators), and the increasing number of factories increased the resources needed to directly monitor overall regulatory compliance. Post-reform, environmental protection principals did not have the time or the resources to measure environmental compliance in their subordinate agents’ regions; principals increasingly relied on the agents’ own data, and that reliance gave agents an opportunity to manipulate their own performance assessments.¹⁰⁵ In effect, due to these information asymmetries, local businesses could easily monitor local-level regulatory activity but central leaders and other higher-level principals could not, and that gave subordinate

agents an incentive to prioritize local business interests instead of their principals’ interests.

Third, China’s local-level police patrol agencies were no longer as effective because those agencies were all accountable to the local Party and People’s government leaders, and those leaders’ interests were increasingly diverging from the central leadership’s. In theory, the Party’s internal discipline inspection commissions (DICs) should have kept local Party committees in line, and the local Party committees should have policed the local People’s governments to enforce local compliance with central policy directives. However, Party DICs are accountable to two principals: the Party committee it polices (at the same administrative level) and the Party committee one level up, and many higher-level cadres (in the Party committee one level up) favored local economic interests over the central leadership’s policy implementation interests. For example, many higher-level Party cadres allowed their lower-level Party subordinates to protect local enterprises from regulatory enforcement in exchange for a cut of the profits. In that environment, if the lower-level Party committee’s DIC tried to expose protectionism and enforce policy compliance, those DIC cadres would likely lose their positions.

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107 Ibid. In the mid-1990s, the Central DIC asked the Central Committee to separate local DICs from the local Party committees and centralize those institutions under hierarchal CDIC leadership; CDIC cadres argued that the local DICs needed more independence to effectively investigate and police the behavior of local Party cadres. Their request was denied. The Central Committee ruled that local DICs needed the “participation and coordination of local Party committees” to do their work; however, Jiang Zemin reportedly vetoed the idea himself because he was afraid that centralized DIC policing would anger and alienate regional leaders (who are themselves a critical voting bloc in the Central Committee and may have played a strong role in voting down the proposal). “Party Rejects Independence for Local Discipline Inspection Units,” BBC Summary of World Broadcasts, August 30, 1996, FE/D2704/G,
The same dynamic undermined vertical oversight on the government side. After administrative decentralization, local-level Ministry of Security (MOS) and National Audit Office (NAO) officials were appointed by the local Party committee (for leading cadres) and the local People’s government, so those disciplinary officials had a strong incentive to side with local-level officials instead of faithfully enforcing the central leadership’s commands.¹⁰⁸

With marketization, Chinese leaders did establish new specialized government regulatory agencies (food and drug regulators, environmental regulators, financial regulators, etc.) to police commercial activities in each market sector. In theory, the sectoral regulators should have improved top-down policing and policy enforcement in their respective sectors. However, as with the local MOS and NAO offices, the local market regulatory offices were generally placed under local Party and People’s government personnel and budgetary control. As a result, if the local Party and People’s government leaders decided to block regulatory enforcement to protect local businesses, the regional regulatory heads could only fall in line – otherwise, they would likely lose their appointments and operating budgets.

In sum, China’s reform-era economic and administrative decentralizations created a host of new principal-agent problems that significantly undermined central-local principal-agent oversight and control in the post-reform era. Primarily, decentralization increased interest divergence along the Party and government delegation chains, widened principal-agent information asymmetries at every level and

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¹⁰⁸ Huang (1996).
gave the local-level police patrol monitoring agencies new incentives to side with local-level officials instead of faithfully enforcing the commands sent down from the center.

2.5. Increasing Corruption in the Post-Reform Era

These post-reform oversight and enforcement problems routinely undermine central leadership policies that are designed to improve citizen welfare. For example, Chinese leaders have issued a wide range of new laws and policies designed to clean up the environment, protect consumers from faulty products, establish safety standards for construction and infrastructure projects and protect rural farmers from over-taxation. When local officials refuse to implement these policies, the resultant policy implementation gaps deny Chinese citizens the promised welfare benefits and reduce citizen perceptions of CCP regime performance. In many cases, those citizens are increasingly voicing their frustrations through mass protests, and those protests threaten CCP regime stability.\(^{109}\)

Internal documents and leadership statements clearly show that China’s top leaders see this as a critical survival issue.\(^{110}\) For example, in 1993 Party General


Secretary Jiang Zemin (speaking at a CCP ministerial-level cadre meeting on corruption) warned:

If we cannot defeat the corruption and bourgeois liberalization emerging among ourselves during the construction period, this means that the Communist Party can no longer represent the people's interests. If we cannot, comparatively speaking, thoroughly resolve inner-party corruption in two to three years, the masses’ resentment will increase and may lead to a turmoil. By then our Party's cause will be affected and ruined.111

There is much scholarly debate over the extent to which economic and administrative decentralization has reduced the leadership’s ability to monitor and control their subordinate Party and state agents. Some scholars point out that central leaders still maintain strong control over key personnel appointments and promotions via the nomenklatura list, and they argue that these personnel controls have kept local cadres in line despite the abovementioned administrative reforms.112 Others focus on the fact that decentralization significantly eroded Beijing’s control over local government budgets and investment decisions, and these scholars generally argue that the central leadership has struggled to enforce local agent compliance without these monetary carrots and sticks.113 Although this study is not designed to test these

competing views, the unprecedented post-reform increase in local agent corruption suggests that local officials are operating in an environment of lax principal-agent oversight. Although central leaders can still use personnel controls to punish deviant agents, that will only be effective when principals can effectively monitor agent actions and accurately determine whether those actions comply with central policy directives, and those two tasks have become increasingly difficult in China’s post-reform administrative environment. Central leaders are struggling to figure out not only what their agents are doing, but also whether those micro-level activities will produce outcomes that are consistent with macro-level policy programs.

2.6. Limited Recentralization: Not an Effective Oversight Fix

Chinese leaders are well aware of the connection between reform-era decentralization and their increasing post-reform corruption problems. Starting in 1998, in a bid to at least partially restore the old system of top-down principal-agent control, Chinese leaders re-centralized some of their key functional bureaucracies by returning local office personnel and budgetary authority to the vertical/functional administrative superiors (and therefore taking these powers away from the local
People’s governments). CCP leaders focused these re-centralizations on the bureaucratic agencies involved in administrative regulation, financial services, and commodities management – in other words, the agencies most involved in economic development and marketization. Post-reform, local capture had created a wave of local protectionism, and Chinese leaders hoped that the re-centralizations would give key economic and regulatory agencies enough independence and authority to combat local protectionism and standardize cross-regional policy implementation and enforcement.

However, China’s national-level regulatory agencies did not have the resources to directly manage all of their provincial-level subordinates, so Chinese leaders only recentralized up to the provincial level. From the prefecture level down, appointment and budgetary powers previously held (horizontally) by local People’s governments were handed up to each agency’s (vertical) administrative superior. However, the provincial-level bureaus were still appointed and managed horizontally by the provincial-level Party committee and the provincial People’s government (instead of their vertical functional superiors at the national level). In other words, the provincial-

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116 Re-centralized administrative regulatory agencies included: the Administration for Industry and Commerce, the Quality Technical Supervision Bureau, the Pharmaceutical Supervision Bureau, the Tax Bureau, and the Land Resources Bureau (Mertha and Zeng 2005). Re-centralized financial services agencies included: the China Securities Regulatory Commission, the China Construction Bank Auditing Department, the Agricultural Bank of China Auditing Department, and Life Insurance (Mertha and Zeng 2005). Re-centralized commodities management agencies included: electric power, grain management, and coal safety (Mertha and Zeng 2005). 117 Mertha (2005) therefore refers to this as “soft” centralization.
level regulatory heads were still subordinate to the provincial Party and People’s
government leaders, and those leaders often favored provincial-level business interests
instead of national-level policy interests.

Unfortunately, due to the discrepancy between provincial-level and national-
level leadership interests, these partial re-centralizations just shifted local
protectionism up to the provincial level. The re-centralized sub-provincial
bureaucratic offices are now following commands sent down the vertical hierarchy;
however, those commands generally reflect provincial-level economic growth interests,
not national regulatory interests.118 In fact, re-centralization has given the sub-
provincial bureaucratic agencies more opportunities for graft because they no longer
share industry-specific rents with sub-provincial People’s government officials. As
one China Daily article lamented, “Without supervision, vertical [administrative]
integration simply narrows the number of officials unscrupulous businesses need to
bribe.”119

Management?), People’s Daily, April 11, 2005, available at
119 “Effective Supervision will Cure China’s Corruption Woes,” China Daily, February 9, 2007
(http://www.chinadaily.com.cn/china/2007-02/09/content_806239.htm). Due to these persistent
oversight problems, Chinese leaders are increasingly relying on sporadic ‘national campaign’
crackdowns to roust out corrupt sub-national officials and scare others into compliance. Campaign
crackdowns circumvent the above-mentioned oversight problems because they go around rather than
through the vertical administrative hierarchy. These campaigns always have very specific short-term
policy objectives – central leaders order all relevant government agencies to make these objectives their
top priority and they heighten top-down supervision to ensure that these orders are carried out.
Unfortunately, campaign-style enforcement is unsustainable because it diverts large amounts of
personnel and fiscal resources toward one specific task and therefore sidelines other important
governance activities. Eventually these resources must revert back to their normal functions and
leadership attention is caught by the next issue on the political agenda. When that happens, the rates of
policy enforcement generally return to the pre-campaign status quo. As Wedeman (2005) argues,
“campaign-style enforcement is the poor man’s alternative to effective policing.” Wedeman, Andrew
These persistent corruption problems are convincing Chinese leaders that top-down police patrols are not sufficient for keeping their agents in line post-reform. National-level leaders do not have the resources they would need to effectively monitor and control subordinate agents in China’s post-reform decentralized market environment, and they can no longer depend on the local Party committees to serve as effective institutional checks. As a result, Chinese leaders are turning toward new oversight partners: the citizens at the grassroots level. In many policy sectors, those citizens stand to benefit from national-level policy directives, and they can also view and assess local-level policy implementation more accurately than the national leadership. Those citizens can potentially provide Chinese leaders with a new source of information on local agent behavior and assist in holding those agents accountable.

2.7. Conclusion

This institutional chapter has outlined China’s political system and post-reform oversight challenges to explain why Chinese leaders are increasingly incorporating fire alarm institutions into their traditional command-and-control system. Reform-era economic and administrative decentralization delivered three key shocks that destabilized China’s pre-reform principal-agent equilibrium and created new post-reform oversight problems that the traditional police patrols were unable to rectify on their own. First, decentralization created new economic opportunities that increased interest divergence along the Party and government delegation chains and gave sub-

national agents strong incentives to defy central policy directives. Second, decentralization widened principal-agent information asymmetries at every level and therefore made it much harder for principals to view and assess subordinate agent performance. Third, after administrative decentralization, China’s local-level police patrol agents are all appointed by local-level officials, and that gives the monitoring agencies a strong incentive to side with local-level officials instead of faithfully following enforcement commands sent down from the center.

The following chapters of this thesis (chapters 3-8) will examine these issues in three policy sectors: rural land expropriation, food and drug safety and environmental protection. In each of these sectors, reform-era changes created new principal-agent problems, and Chinese leaders are rolling out new fire alarm institutions to address those problems. Unfortunately, in some of these policy sectors high malfeasance-induced instability risks limit the political room for fire alarm institutional innovation, and that limits the leaderships’ ability to effectively address sub-national corruption.
Chapter 3

Rural Land Expropriation:

Official Malfeasance and Fire Alarm Policy in a High-Risk Sector

3.1 Introduction

This chapter examines official malfeasance and fire alarm oversight in China’s rural land sector. The Chinese state has a constitutional right to execute land takings through eminent domain: Chinese officials can expropriate collectively-held agricultural land for commercial developments as long as the new development serves the “public interest” and the original collective landowners receive adequate compensate for their property loss. The State Council sets strict statutory compensation standards to ensure that the collective landowners who lose their land rights to eminent domain will not face a significant decline in income and living standards. In theory, national compensation policies should provide previous landowners with the financial support they need to set up new homes and find new sources of income post-expropriation. Unfortunately, corrupt local officials often violate these policies by first allowing developers to underpay compensation funds and then keeping all or part of the remaining funds for their own uses instead of distributing them to the original owners as required by law. Through these and other illegal rent-seeking tactics, malfeasant rural land expropriations are plunging millions
of Chinese farmers into abject poverty and creating a massive groundswell of rural
discontent.

Based on the three instability risk indicators outlined in chapter one of this
thesis, Chinese leaders face very high malfeasance-induced instability risks in this
sector:

1. **Perceived welfare impacts are generally very high.** Under-compensated
   land expropriations plunge entire households and communities into poverty.
   Furthermore, malfeasance victims have full information about their own
   incomes and living standards, so they fully comprehend this welfare damage.
   As a result, most land-loss farmers feel that they have nothing to lose and are
   willing to participate in high-risk activities such as mass protests, riots, and
   even violent conflicts with local officials and security forces.

2. **Land malfeasance is conducted by governmental actors only.** Chinese
   leaders generally do not have convenient commercial scapegoats in this sector,
   and that increases the risks associated with non-governmental fire alarms.

3. **Land malfeasance generally victimizes geographically concentrated
   communities that can easily organize for collective action.** Protests should
   be highly likely in this sector, and that increases the risks associated with non-
   governmental fire alarms.

These indicators suggest that land malfeasance poses serious reputational and
protest threats, and non-governmental fire alarms should therefore be much riskier in
the land sector than in the environmental protection sector or the food and drug sector.
Land expropriation is therefore best described as a high-risk policy sector, and that
risk level should produce the following policy patterns:

- **Governmental vs. Non-Governmental Fire Alarm Openness:**
  - (H1a) Chinese leaders should allow aggrieved citizens to access
    governmental fire alarms in this sector.
  - (H1b) Non-governmental fire alarms should be completely closed to
    mitigate the associated political risks.

- **Governmental vs. Non-Governmental Fire Alarm Publicity:**
  - (H2a) Chinese leaders should publicize governmental fire alarm
    institutional improvements and at least some governmental fire alarm
success cases to encourage land victims to use those institutions for grievance redress.
- (H2b) Domestic media coverage of non-governmental alarm-ringing and resultant higher-level official responses should be completely prohibited to mitigate the associated political risks.

- **Cyclical Reform and Innovation:**
  - (H3a) If Chinese leaders receive negative feedback on land sector fire alarm and police patrol institutional performance, they will launch further rounds of oversight reform to address those problems.

  This chapter provides evidence to support these predictions. Chinese leaders limit their land sector fire alarms to governmental channels only. Unfortunately, as in other policy sectors, governmental fire alarms suffer from agency loss. Malfeasant local officials routinely suppress governmental fire alarms to protect the rents they stand to gain through illegal land deals, and this protectionism undermines grassroots-level accountability and impedes the land-loss farmers’ attempts to seek redress through sanctioned institutional channels. As a result, China’s fire alarm policies have not significantly reduced official malfeasance in this sector, and Chinese leaders continue to receive negative feedback in the form of unmet land policy targets and malfeasance-induced mass protests. That feedback is driving further rounds of fire alarm institutional reforms, and Chinese leaders are also reforming their police patrol mechanisms in an attempt to close these persistent land oversight gaps.

  This chapter will proceed as follows. Sections 3.2 and 3.3 will introduce China’s land regime and highlight the oversight problems that foster official malfeasance and citizen discontent in this sector. Section 3.4 will outline the leadership’s general governmental-only fire alarm policy and section 3.5 will discuss China’s land-sector governmental fire alarm institutions, the agency problems that
undermine these institutions and the reforms that Chinese leaders are implementing to address those problems. Section 3.6 will discuss China’s land-sector non-governmental fire alarms, the steps Chinese leaders take to suppress these institutions and citizen attempts to circumvent that suppression. Section 3.7 will outline the police patrol reforms Chinese leaders are pursuing in this sector, and section 3.8 will conclude.

3.2. Institutional Background

Beginning in the early 1980s, Chinese leaders realized that they could not achieve their new marketization and development goals without opening up the land system to allow for some form of private property rights. Under the prevailing Mao-era land regime, the Chinese state owned all urban and construction land, rural farming collectives owned all agricultural land, and it was strictly illegal for any private organization or individual to buy, sell, lease, or otherwise transfer land ownership or use rights. This land policy presented a serious roadblock for economic growth because private investors (especially foreign investors) were hesitant to build factories and other fixed-investment projects without legal private property guarantees. In addition, the existing amount of state-owned urban land could not meet increasing reform-era demands for new construction space, so Chinese leaders

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121 Ibid.
also needed a means to convert collectively-owned rural agricultural land into open
collection land for new development projects.\footnote{122} 

However, although economic growth was a high priority for the central
leadership, they also had to balance land development against two other important
objectives: preserving the fundamental principle of socialist public land ownership and
protecting domestic food security.\footnote{123} Although Chinese territory stretches across 9.6
million square kilometers, less than 14 percent of Chinese land is arable (the majority
is too mountainous, hilly or arid to support agricultural production) and as a result
China’s arable land per capita is relatively low.\footnote{124} Central leaders feared that an open
land conversion market would lead to a rush of farmers selling off their agricultural
lands for construction development, thus further diminishing the amount of arable land
per capita and threatening China’s domestic food supply.\footnote{125} Therefore, although
China needed to establish some form of a domestic land market to meet its
development goals, Chinese leaders were unwilling to privatize land ownership or to
open up a direct land rights transfer market between rural farming collectives and land
developers.

Beginning in the mid-1980s, Chinese leaders addressed these challenges with a
series of land administration reforms. First, in order to incorporate private property
rights into the existing socialist land regime, Chinese leaders formally separated land

\footnote{122} Lin and Ho (2005).
\footnote{123} Ibid.
\footnote{124} Land Characteristics, Resources and Environment, \textit{China Statistical Yearbook 2008}, National
Cultivated Land Barely Half of World Average,” \textit{People's Daily}, Tuesday, June 05, 2001,
\footnote{125} Lin and Ho (2005).}
ownership from land-use rights and created a market for the latter: under the new dual-track land system, although land could only be owned by the state itself or the rural collectives, the state could lease land-use rights to development companies via formal long-term land-use contracts.¹²⁶ Second, Chinese leaders promulgated the first Land Administration Law (LAL) in 1986, in which they outlined a new three-step procedure for converting existing agricultural land into construction land and transferring the land-use rights to development companies.¹²⁷ Under the new law, developers could not buy or lease agricultural land directly from farmers for construction purposes – instead, all agricultural-to-commercial land transactions had to go through the local state.¹²⁸ Potential developers had to first apply with the local government for construction and land-use approval. Local officials had full discretion to determine whether the proposed project would serve the “public interest” and fit within regional development plans.¹²⁹

¹²⁶ Ibid; Ho and Lin (2003); Wong and Zhao (1999). Chinese leaders later amended the P.R.C. Constitution to reflect this change in the national land regime. Article 10 of the original 1982 Constitution stated that: “no organization or individual may appropriate, buy, sell or lease land or otherwise engage in the transfer of land by unlawful means.” The 1988 amended version states: “no organization or individual may appropriate, buy, sell or otherwise engage in the transfer of land by unlawful means. The right to the use of land may be transferred according to law.” Amendment One, Amendments to the Constitution, Constitution of the People’s Republic of China, http://english.peopledaily.com.cn/constitution/constitution.html.


¹²⁸ Once the land conversion is complete and the commercial lease-holder purchases the commercial land-use rights; those rights are then transferable. Only the initial agricultural-to-commercial conversion must be conducted through the state. Ibid; Lin and Ho (2005).

¹²⁹ Local-level officials had (and still have) full authority to determine whether a particular development project would serve the “public interest” – Chinese leaders did not specify any procedural requirements or oversight mechanisms for the “public interest” designation. China’s 1986 Land Law simply states
the necessary agricultural lands from local farming collectives and compensate the farmers according to national statutory standards, (2) formally convert the land-use classification from agricultural-use to construction-use, and (3) sell the land-use rights to the developers at a negotiated price.\(^{130}\)

In order to keep a tight reign on local government officials and ensure that they themselves were not converting excessive amounts of agricultural land, Chinese leaders also introduced a national land conversion quota and established the State Land Administration Bureau (SLAB) to enforce these quotas nationwide.\(^{131}\) Central leaders determined the maximum amount of land that could be converted in a given year and distributed that amount among the provinces; provincial leaders then divided their quota among the prefectures, prefectures distributed quotas among the counties, and counties distributed quotas among the townships.\(^{132}\) The new State Land Administration Bureau reported directly to the State Council and carried out

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\(^{130}\) Ibid. The lease prices (paid by developers) were determined by market demand, i.e., by what the various potential developers were willing to pay. The developers could be state agencies at various levels, state-owned enterprises or private enterprises. In many cases, the same local state agencies involved in converting the land and selling the land-use rights were also major investors in the local state-owned real estate companies; as a result, those land converting agencies had a strong incentive to maximize land conversions and depress lease prices – two actions that undermined the central government’s key land policy goals. Keng, Kenneth C.W. (1996), “China’s Land Disposition System,” *Journal of Contemporary China*, Vol. 5, No. 13, pp. 325-345.

\(^{131}\) 1986 PRC Land Administration Law; Wong and Zhao (1999); Lin and Ho (2005). Before 1986, there was no centralized national land management agency: land administration policies were handed down from the central leadership as part of the general development plan, and there were no specialized land officials to manage policy implementation at the local level. Ho and Lin (2003); Keng (1996). Ho, Peter (2001), “Who Owns China’s Land? Policies, Property Rights and Deliberate Institutional Ambiguity,” *China Quarterly*, No. 166, pp. 394-421.

\(^{132}\) Ho and Lin (2003). This hierarchal approval system prioritized higher-level government interests (such as provincial-level interests) over lower-level interests (such as county- or township-level interests) because the higher-level agencies would first ensure that their own projects had enough conversion quota before passing the leftovers down to their subordinates (Keng 1996).
nationwide oversight and enforcement activities via regional Land Management Offices within the provincial, prefecture, county and township-level people’s governments nationwide.\textsuperscript{133} Local people’s governments could not convert agricultural land for construction projects without Land Bureau approval, and Chinese leaders set up a hierarchical approval system based on the amount of land being converted – the larger the plot of land, the higher the local government had to go for conversion approval.\textsuperscript{134}

3.3. Land Conversion Spirals Out of Control

Chinese leaders designed their land administration regime around the idea that the local state would act as a constrictive regulatory valve – they wanted local officials to limit the amount of land converted each year and maximize land-use efficiency by hand-picking the best land development projects. However, they apparently overlooked the fact that the new three-step land conversion procedure would be a huge moneymaker for local governments at all levels.\textsuperscript{135} Although the 1986 Land Administration Law required local governments to compensate the rural collectives for expropriated agricultural land, the compensation rates were based on average annual crop yields rather than the (much higher) market value of the land rights post-

\textsuperscript{133} 1986 PRC Land Administration Law; Wong and Zhao (1999); Keng (1996).
\textsuperscript{134} Local governments could convert up to 3 mu (one mu is 0.0667 hectares) of agricultural land for construction projects with county-level Land Administration Bureau approval; 3mu - 10 mu conversions required prefecture-level approval; 10mu - 1000 mu conversions required provincial-level approval, and conversions involving over 1000 mu needed State Council approval (Article 25, 1986 PRC Land Administration Law). Also see “Zhonghua renmin gonghe guo tudi guanli fa shishi tiaoli” (Rules for the Implementation of the Land Administration Law of the People’s Republic of China), State Council, promulgated January 4, 1991, available at China Agricultural Law Service Center, http://www.nmql.com/ShowArticle.shtml?ID=20071016144609061.htm.
\textsuperscript{135} Wong and Zhao (1999); Ho and Lin (2003); Lin and Ho (2005).
Furthermore, the developers who bought the land-use rights were responsible for paying the compensation fees, not the local state. As a result, local officials could expropriate farmland at no cost, convert the land to construction use, sell the land-use rights to developers at a very high price, and reap a huge profit from the sale. Many local officials increased their profit margins even further by pocketing some or all of the fees earmarked for the farmers’ compensation. Post-construction, taxes and fees levied on the newly-built factories, real estate developments and infrastructure projects generated even more revenue for the local government – many times more than they would have ever collected from the rural farming collectives when the land was used for agricultural production.

These land conversion profits were particularly alluring in the context of reform era increases in local government expenditures. Beginning in the 1980s, local governments at all levels faced increasing fiscal shortages due to the combination of administrative decentralization and reduced center-local fiscal

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138 Ibid; Lin and Ho (2005); Wong and Zhao (1999); Ho and Lin (2003).


transfers.\textsuperscript{142} For example, the downward delegation of SOE ownership shifted social service responsibilities from the center out to the localities – as SOE owners, local governments were responsible for funding health care, pensions, and other services for SOE employees.\textsuperscript{143} However, at the same time, under the new self-reliant fiscal regime, local governments were no longer receiving big fiscal transfers from the center, and as a result many regions found that they were expected to provide an increasing amount of public goods with a decreasing amount of money.\textsuperscript{144} In addition, the new cadre responsibility system evaluated cadre performance based on local economic growth, so officials at all levels were under tremendous pressure to increase investment in local development projects.\textsuperscript{145} In this context, land conversions became a magic bullet on multiple fronts: the profits from land-use sales filled local government treasuries, new development projects (built on previous agricultural land) spurred local economic growth, and individual officials had impressive growth rates and development projects listed in their personnel dossiers.\textsuperscript{146}

Due to these financial incentives, local governments at all levels ignored the national conversion quotas and launched a huge land development boom,


\textsuperscript{145} Ibid.

\textsuperscript{146} Wong and Zhao (1999); Guo (2001); Lin and Ho (2005); He (2007); Chan (2006).
expropriating their local agricultural lands and selling off the land-use rights as quickly and as widely as they could.\textsuperscript{147} Although central leaders expected the State Land Administration Bureau to enforce the quotas and keep land conversions in check, local-level inspection and enforcement responsibilities were delegated down to the regional Land Management Offices, and those offices were all integrated into the local people’s governments and therefore subject to local political pressure.\textsuperscript{148} Furthermore, the profits from land transactions were distributed vertically among multiple administrative levels – lower-level governments had to share land profits with their superiors – so higher-level people’s government units had no incentive to enforce conversion quotas among their subordinates because excess land conversions brought in extra profits for everyone.\textsuperscript{149}

Starting in the mid-1990s, more and more academic, government and media reports began questioning the rate of Chinese land conversions and the potential impact on domestic food security.\textsuperscript{150} In 1996 Premier Li Peng (who reportedly noticed large quantities of suspiciously idle farmland while flying over Hebei Province) ordered the central SLAB in Beijing to conduct an independent national land survey


\textsuperscript{148} Keng (1996); Wong and Zhao (1999).


based on aerial photography instead of local government statistics. The results were a huge wake-up call for central government leaders. After comparing detailed satellite imagery from 1987, 1991 and 1995, the SLAB concluded that the actual land conversion rate was 2.5 times greater than what the local governments were reporting in the official statistics. The SLAB report estimated that between 1986 and 1995 China had lost almost 2 million hectares of arable land. As a result, China’s cultivated land per capita was down to 0.106 ha, and agricultural statistics for the early 1990s confirmed that the extensive land losses were already reducing grain outputs.

Chinese leaders responded to the 1997 SLAB report with a complete overhaul of the land conversion system. In May 1997, three months after Chinese leaders first viewed the report, the State Council and the CCP Central Committee jointly imposed a one-year moratorium on all land conversions nationwide. The State Council also launched a nationwide land-use audit, ordering all local governments (from the township level up) to inspect and report on previous land conversions carried out in


155 In April 1998 Chinese leaders further extended this moratorium to encompass a second year (Cartier 2001).
their respective jurisdictions. In order to strengthen centralized oversight and give the SLAB more clout vis-à-vis the local people’s governments, Chinese leaders merged the SLAB with three other departments to create a new Ministry of Land and Resources (MLR), a move that effectively elevated the SLAB to ministerial rank. Chinese leaders also replaced the 1986 Land Administration Law with a new 1998 version that took all land conversion authority away from the lower-level people’s governments. Under the new 1998 LAL, all land conversions require at least provincial level approval, provincial governments must report all conversions to the State Council, and State Council approval is required for all conversions involving basic cropland, arable land over 35 hectares, or any other type of land (arable or not) over 70 hectares. Chinese leaders also adjusted the criminal code to make illegal agricultural-to-construction land conversion a criminal offense.

Nevertheless, post-1998, despite the regulatory tightening and increased central leadership attention, local officials continue to violate land restrictions in two ways: expropriations and conversions that are themselves illegal, and technically legal expropriations where local officials pocket all of the farmers’ compensation fees. For example, local officials regularly sidestep formal land expropriation and

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156 Ibid.  
157 Chinese leaders merged the Land Bureau with the Ministry of Geology and Mineral Resources, the National Bureau of Oceanography, and the State Bureau of Surveying and Mapping; the original SLAB was a bureau-level agency and therefore ranked below the ministries and provincial People’s governments (Ho 2001).  
159 U.S. Embassy, “China’s Farmland Loss Rings Alarm.” Chinese scholars had previously argued that the lack of criminality encouraged land abuse and made it harder to prosecute offenders (Jiang and Chen 1997).  
160 Cartier (2001); Ho and Lin (2003); Lin and Ho (2005); He (2007).
conversion requirements by dividing larger projects into smaller ones (thus evading the 35 hectare and 70 hectare State Council approval requirements), misrepresenting agricultural land as urban construction land in construction approval documents, or foregoing the formal approval process altogether.\textsuperscript{161}

Chinese leaders have responded with numerous nationwide campaign crackdowns against local land corruption, but the scope of illegal land seizures has only increased.\textsuperscript{162} Local officials are willing to take significant political risks on illegal land deals because the monetary rewards far outweigh the risk of getting caught.\textsuperscript{163} For example, for the year 2003 land sales accounted for approximately 40-60\% of the total annual revenues for many county and municipal governments.\textsuperscript{164} Professor Zhou Tianyong from the CCP Central Party School estimates that total national land sale profits exceeded USD $600 billion over the 2003-2005 time period, and he calculates that farmers received only 10\% of this amount in compensation for expropriated lands – the rest stayed in local government pockets.\textsuperscript{165} These financial incentives have created a huge interest discrepancy between Chinese leaders (who want to preserve the nation’s agricultural land base, maintain social stability in the countryside and minimize economic overheating) and their subordinate agents.

\textsuperscript{161} Cartier (2001); Ho and Lin (2003); Lin and Ho (2005).
\textsuperscript{162} Shi, Jiangtao, “Local Bodies Under Fire Over Land Deals; Illegal Seizures Becoming Serious Issue, Beijing Says,” \textit{South China Morning Post}, April 17, 2006 [Lexis Nexis Academic]. Recent exposes suggest that corruption is endemic even at the highest levels of the land administration hierarchy: in September 2004 CCP leaders ousted Land and Resources Minister Tian Fengshan and revoked his Party membership over corruption and bribery charges (Lin and Ho 2005).
\textsuperscript{163} Lin and Ho (2005); Jiang and Chen (1997); He (2007).
\textsuperscript{164} Li Bian, “Call for End to Land-Sale Spree,” \textit{China Daily} [Hong Kong Edition], March 17, 2003.
managing land administration at the local level. Chinese leaders can no longer depend on the local Party agencies, bureaucratic supervisory institutions (such as the Ministry of Supervision) or land administration departments to keep these activities in check because those officials are all tied up in the local political network and sharing in the massive land development profits.

The farmers are the real losers in illegal land deals because they rarely receive enough compensation to offset the welfare impacts from agricultural land losses. Since most Chinese farmers do not have the education or skills needed to gain employment in other industries, inadequately compensated land loss brings a significant decrease in living standards. As a result, illegal land seizures are sparking waves of discontent across the Chinese countryside, and desperate farmers

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166 Lin and Ho (2005).
167 Chinese leaders have repeatedly tried to shock this system with intensive top-down enforcement campaigns; however, land conversion is a very large-N problem, and central leaders just do not have the manpower to dispatch central inspection groups to directly monitor all local land transactions nationwide. As a result, most local officials conduct their land transactions in an environment of relatively lax principal-agent oversight, and the potential financial rewards convince many of these officials that land graft is a worthwhile risk.
are increasingly resorting to contentious politics to expose corrupt local officials and halt imminent land expropriation and construction activities.\(^{170}\)

From the Chinese leadership perspective, escalating discontent among under-compensated farmers and the resultant increase in rural protests pose terrifying political threats. In their 2005 annual report, the Chinese Academy of Social Sciences – a top national think tank that reports directly to the State Council – warned that malfeasant agricultural land expropriations had become a primary threat to social stability nationwide.\(^{171}\) In 2006, official statistics confirmed that land expropriations had eclipsed tax abuse as the number one reason for protests in the Chinese countryside.\(^{172}\) Even more concerning is the fact that these rural land protests often attract a large number of participants – well over ten thousand in some cases – and

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\(^{170}\) In some cases, local citizen discontent also leads to violent conflict between peasants and local officials. Since the potential financial rewards from land malfeasance are so great, local officials are often willing to take serious measures to ensure that citizen complaints do not derail favored land development projects. For example, many local officials deploy local police, paramilitary troops and even mafia gangs to suppress the land-loss farmers’ protests, construction blockades, *xinfang* petitions, lawsuits, and other farmer attempts to disrupt expropriation activities and expose illegal land deals to higher-level authorities. Walker (2008); He (2007); So (2007); Zweig (2000). He, Qinglian (2006), “Officially Sanctioned Crime in China: a Catalogue of Lawlessness,” *China Rights Forum*, No. 3, pp. 92-3.


In response, Chinese leaders are turning toward fire alarm institutions as a potential solution to these persistent land problems. Fire alarms could provide Chinese leaders with the information they need to target and punish deviant agents (thus deterring others from engaging in the same behavior).\footnote{McCubbins, Mathew D. and Thomas Schwartz (1984). “Congressional Oversight Overlooked: Police Patrols versus Fire Alarms,” \textit{American Journal of Political Science}, Vol. 28, No. 1, pp. 165-179.} In addition, if the land-loss farmers have effective and sanctioned pathways for grievance redress they will be much less likely to engage in risky contentious politics. In other words, effective fire alarm channels could reduce land malfeasance and also reduce the associated social instability threats.

3.4. Fire Alarm Policies in China’s Land Sector: Encouraging Governmental Fire Alarms and Actively Suppressing Non-governmental Fire Alarms

As predicted, Chinese leaders are unwilling to risk opening up for non-governmental fire alarms in the land sector; instead, they encourage aggrieved citizens to utilize governmental channels only. In January 2007, speaking on behalf of the State Council, Director Chen Xiwen from the Office of the Central Rural Work Leading Small Group described fire alarm institutions in the land sector as follows:
Having unimpeded channels for the peasants to express their grievances is a very important issue... The peasant masses can go through multiple channels, for example through organizations such as the village committee, the township government or the county government; they can also go through Party organizations such as the [local village] Party branch, the township Party committee or the county Party committee; there are also many who go through xinfang channels, and even some are going through legal channels; [the land-loss peasants] are utilizing all of these different kinds of channels to convey [their grievances] upwards.\textsuperscript{175}

In other words, rural farmers with expropriation grievances can complain to the Party or government directly or pursue redress through xinfang institutions or the legal system. Social organization and media oversight are not mentioned (and actively suppressed, as will be discussed below).

By limiting their land sector fire alarms to governmental channels, Chinese leaders can minimize the risk that non-governmental fire alarms will expand malfeasance-induced reputational and protest risks. However, these political savings are not costless. Since governmental fire alarms are susceptible to local political interference, Chinese leaders cannot restrict non-governmental channels without facing remaining oversight gaps and continued (and potentially increasing) land malfeasance and protest activity in the near term. The following sections will examine China’s land-sector fire alarms and their limitations in detail.

3.5. Governmental Fire Alarms

Chinese leaders give the land-loss farmers full access to all three governmental fire-alarm institutions (administrative reconsideration, administrative litigation and xinfang petitions). However, they primarily encourage the land-loss farmers to seek redress through administrative litigation. China’s judicial system is subject to substantial political interference from local Party and government officials, but the political biases are even worse in reconsideration proceedings because those reviews are carried out within the same agency that committed the administrative offense (or its immediate administrative superior). Xinfang petitioners also face strong local political biases, and xinfang activities make Chinese leaders particularly nervous in this sector because the land-loss farmers often use failed petition campaigns as springboard for mass protests. Chinese leaders therefore actively encourage the land-loss farmers to seek judicial redress as their primary fire alarm mechanism, and the recent policy developments in this sector all aim to improve the farmers’ legal standing in expropriation lawsuits. This section will examine China’s three land-sector governmental fire alarms, the agency problems that often undermine those institutions and the steps Chinese leaders are taking to address those problems.

3.5.1. Administrative Reconsideration

Land expropriation and compensation decisions are official administrative acts subject to administrative reconsideration. Chinese law stipulates that the affected farmers can file for reconsideration against concrete administrative decisions that “infringe on their lawful rights and interests;” they can submit reconsideration
applications to the infringing agency itself or to its immediate administrative superior. In theory, China’s Administrative Reconsideration Law should guarantee prompt redress because the law specifies statutory time limits for reconsideration proceedings. Based on this assumption, Chinese leaders originally planned for administration reconsideration to serve as the primary fire alarm institution in this sector: China’s original 1998 Land Administration Law required farmers to submit administrative reconsideration applications as a necessary first step in all expropriation disputes; expropriation victims could also file lawsuits, but only as an ex post response to unfavorable administrative reconsideration outcomes.

At first glance, administrative reconsideration should be an efficient and effective fire alarm pathway because it gives the aggrieved farmers direct access to the offending agency’s administrative superior, and the superior has the policy expertise needed to investigate the appeal as well as the authority to enforce its decision – two qualities that would be lacking if the farmers sought judicial redress through the local court. However, administrative superiors can only serve as effective arbitrators when there is a separation of interests between vertical administrative levels, and that is rarely the case in the land sector because expropriation profits are distributed both vertically and horizontally among multiple agencies and multiple administrative levels.

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177 Ibid. If an agency cannot accept a reconsideration application for any reason they must either notify the applicants of the rejection (and the reason for the rejection) within five days or turn it over to another agency within seven days; otherwise, they must investigate and make a final decision within sixty days.

It is therefore virtually impossible for the farmers to redress land grievances through administrative reconsideration because they can only file reconsideration applications with the agencies involved in the expropriation process, and those agencies would damage their own financial and political interests if they ruled that the process was being conducted illegally. As a result, the 1998 LAL reconsideration requirement only served to delay effective redress – the farmers’ applications were generally ignored, and the administrative reconsideration process just gave the involved agencies more time to complete disputed projects before they could be discovered and stopped by higher-level officials. For this reason, in 2002 Chinese leaders removed the ex ante administrative reconsideration requirement to give expropriation victims direct access to the judicial system.

3.5.2. Administrative Lawsuits

From 2002 onward the central leadership has continuously encouraged judicial redress as the main avenue for resolving land disputes, and they have enacted a host of new laws and policies to improve the land-loss farmers’ legal standing in court. For example, in 2005 the Supreme People’s Court issued a judicial interpretation that clarifies the legal grounds for land expropriation and under-compensation lawsuits and


explicitly defines these cases as one of the five kinds of contract disputes that the courts are obligated to accept.\(^{181}\) According to Supreme Court Vice President Huang Songyou, the key purpose of the judicial interpretation was “helping the country’s 900 million farmers resolve land contract disputes” by “provid[ing] judicial grounds for the courts in dealing with such cases.”\(^{182}\) In 2007 China’s landmark Property Law officially defined farmers’ land-use rights as a “property right” with the same legal protections afforded to state-owned property rights; the law also explicitly stated that these land-use rights cannot be legally expropriated unless the farmers receive reasonable compensation for their loss.\(^{183}\) In January 2008, in a follow-up to the 2007 Property Law, Chinese leaders launched a nationwide media campaign to educate farmers about their legal property rights and encourage them to seek legal redress in land disputes. Ministry of Agriculture Deputy Director General Hu Jianfeng described the campaign as an effort to “enhance publicity and raise the awareness of relevant laws and regulations so farmers will employ lawful channels to uphold their land rights.”\(^{184}\)


\(^{184}\) “China to Increase Farmer Awareness of Property Rights to Curb Violent Land Disputes,” The Associated Press, January 15, 2008 [Lexis Nexis Academic]
The flagrant illegality of many expropriation cases does give land plaintiffs fairly solid ground for procedural administrative suits – i.e., the farmers can sue the expropriating agency based on the fact that they did not obtain the necessary expropriation approvals from higher level authorities and/or violated national compensation requirements.\textsuperscript{185} However, even with solid procedural evidence, many expropriation plaintiffs are turned away from the local courts and denied legal process.\textsuperscript{186} Chinese courts are under the budgetary and personnel authority of the local People’s governments and the local Party committee, and most judges fear that they will jeopardize their own careers if they accept lawsuits that directly oppose powerful local political interests.\textsuperscript{187} Chinese administrative law dictates that plaintiffs must first file suit in the same jurisdiction where the offense occurred; they can appeal

\textsuperscript{185} Alternatively, if expropriation plans have all necessary approvals and compensation does meet national standards, plaintiffs can try to argue that expropriation should not be allowed because the planned construction project does not satisfy the constitutional “for the public interest” requirement (P.R.C. Constitution, Article 13). However, this approach is a challenge to the expropriation decision itself rather than a challenge to the legality of particular administrative acts, and the decision itself is generally classified as a binding regulation that is not subject to judicial review under China’s Administrative Litigation Law. It is therefore extremely unlikely that expropriation plaintiffs would succeed in a public interest approach without very clear evidence of significant fraud. Cheng, Jie (2008), “The Injustice and Reconstruction of Procedures in Eminent Domain and Land Acquisition,” \textit{Front. Law China}, Vol. 3, No. 1, pp. 65-97.


to a higher level court, but only after the local court officially processes the case.\textsuperscript{188} Unfortunately, this requirement opens up a loophole that local officials can use to deny legal process – if the local court refuses to try the case but also refuses to issue the official documents to reject the case, plaintiffs will not have the documentation needed to appeal at higher levels, and they will be stuck in a legal runaround while local officials move forward with expropriation and compensation activities.

For example, in one 2004-2005 land expropriation case, farmers from Shiqiao village in Hebei province tried repeatedly to file suit against planned expropriations in their village.\textsuperscript{189} The Shiqiao farmers had strong procedural grounds for an administrative suit because the local government was expropriating prime farmland without prior State Council approval – a clear violation of the 1998 Land Administration Law.\textsuperscript{190} Nevertheless, local courts used a variety of tactics to ignore the evidence and block the suit. The court first demanded a huge filing fee (which the farmers managed to raise via group contributions) and then ignored the case for months; when Shiqiao farmers demanded a response, court officials finally explained that the case was just too politically sensitive and would never go to trial.\textsuperscript{191} Meanwhile, the development company was steadily moving forward with construction activities on Shiqiao land. The frustrated Shiqiao farmers finally resorted to contentious politics and tried to physically block construction with stand-ins at the


\textsuperscript{190} Ibid.

\textsuperscript{191} Ibid.
expropriation site. In March 2005 local officials sent police and paramilitary troops to
remove the farmers from the site, and the attempted police intervention triggered a
mass protest and a violent riot. 192

In sum, despite the leadership’s attempts to improve and encourage judicial
redress for land grievances, local judicial protectionism still undermines most of these
cases, so most land victims still choose the xinfang petition system as their first-choice
fire alarm pathway.

3.5.3. Xinfang Petitions

From the farmers’ perspective, the xinfang system is the most economical and
straightforward of the three governmental fire alarm channels. Unlike judicial suits,
xinfang petitions are relatively costless. There are no filing fees and there is no need
to hire a professional representative; the only fees incurred are traveling fees if
petitioners travel to file in-person xinfang petitions with provincial- or national-level
officials. Although xinfang regulations prohibit ‘skipping levels,’ aggrieved citizens
generally ignore this restriction and file petitions at-will – if they do not receive a
timely or favorable response from local officials they immediately begin filing
petitions at higher administrative levels. 193 Technically, China’s xinfang regulations
stipulate that higher-level officials should ignore these level-skipping petitions;

192 Ibid.
193 “Guowuyuan xinfang tiaoli” (State Council Xinfang Regulations), promulgated January 2005,
01/18/content_3583093.htm. Yu, Jian Rong (2005), “Zhongguo Xinfang Zhidu Pipan” (Criticizing
however, there is always a chance that relevant higher-level officials will read the petition and decide to intervene anyway. Based on that chance, farmers generally believe that xinfang petitions are more efficient than administrative reconsideration or judicial suits because they do not have to wait through lengthy lower-level bureaucratic or judicial processes before seeking higher-level intervention.  

Unfortunately, xinfang success rates are very low. Local officials often ignore xinfang petitions and may even strike back to deter further petition activity. Local official reprisals are particularly likely when they know aggrieved citizens plan to file petitions at higher administrative levels. Although local officials can keep petition filings off the record in their own jurisdictions, they may not have enough influence to do this at higher administrative levels, and a large or increasing number of petition filings (especially if they are filed at central government levels) will constitute a serious black mark on an individual official’s personnel record. Local officials also worry that higher-level leaders may pay attention to citizen petitions and send out investigation teams, thus exposing and potentially halting illegal land deals. Since the potential financial benefits from these deals are so attractive, many officials will go to great lengths in their efforts to block citizen petitions. For example, local officials

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routinely dispatch hired thugs to intercept aggrieved citizens outside central
government petition offices in Beijing and drag them back home, and many officials
are illegally detaining land petitioners in secret “black jails” or mental institutions to
prevent further petition attempts.\textsuperscript{196}

Unfortunately, even when farmers do succeed in gaining an audience with
higher-level agencies, those officials are so overloaded that they often just pass the
petition materials back down the administrative hierarchy to local-level agencies
where the petitions are again ignored.\textsuperscript{197} When petitioners repeatedly bombard
multiple agencies at multiple administrative levels they can sometimes generate
enough attention for an official investigation. However, due to general overloading at
the higher levels, investigation authority is almost always delegated downward, and
local agencies exploit this opportunity by conducting pro forma investigations with no
real results – for example, local agencies often respond to investigation orders by
forming an official investigation work group that never does anything.\textsuperscript{198} In effect,
local indifference and higher-level overloading turn the petition process into one big
runaround.

Due to these difficulties, frustrated petitioners often up the ante by filing group
petitions, traveling to Beijing en masse, and staging protests as a tactic to catch central


\textsuperscript{198} Ibid.
leadership attention. Petition protests are particularly common in the land sector because the barriers to collective action are already quite low. Chinese leaders are well aware of this problem and routinely urge lower-level officials to quickly address land petitions in order to prevent unrest. At the same time, Chinese leaders are increasingly encouraging the land-loss farmers to choose administrative litigation as a primary pathway for grievance redress (instead of the xinfang system). However, until the leadership can convince farmers that administrative litigation is worth the time and expense, most citizens will likely continue to pursue the more traditional (and free) xinfang route.

3.6. Non-Governmental Fire Alarms

Chinese leaders generally do not tolerate non-governmental fire alarms in the land sector: there are no central policies to encourage media oversight or social organization in this sector; instead, Chinese leaders actively discourage and prohibit these fire alarm activities. The following section will outline these prohibitions in detail.

3.6.1. Watchdog Media

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199 Zweig (2000).
Chinese leaders generally suppress independent media reports on illegal rural land expropriation and under-compensation cases. In October 2004 China’s Central Propaganda department issued an official notice explicitly banning all independent news reporting on rural land expropriations; the nationwide ban included not only traditional news outlets but also independent domestic websites that specialize in investigating and exposing evidence of local official corruption and malfeasance.\footnote{Ma, Josephine, “Reporting of Farmland Seizures Outlawed,” \textit{South China Morning Post}, October 7, 2004 [Lexis Nexis Academic].} Journalists who ignore the news blackout generally receive harsh punishments. For example, in December 2005 central propaganda officials sacked three \textit{Beijing News} editors after they published reports on a rural land dispute and associated farmer protests in Hebei Province.\footnote{The \textit{Beijing News} is well known as a publication that tests the boundaries of censorship with watchdog reporting on key social issues. “Restless Journalists at Beijing News Kept under Close Surveillance,” Reporters without Borders, January 3, 2006, http://www.rsf.org/Restless-journalists-at-Beijing.html.} In January 2006 the Lishui municipal court (Zhejiang Province) tried and convicted two reporters for publishing a story on a May 2005 rural land dispute in the Lishui City area; the reporters received six- and ten-year jail sentences.\footnote{“China: Journalists imprisoned after reporting on land disputes,” Committee to Protect Journalists, January 19, 2006, http://cpj.org/2006/01/china-journalists-imprisoned-after-reporting-on-la.php.} In May 2007 propaganda officials removed the \textit{Baixing} magazine editor and reorganized the magazine after it published an exposé on illegal land seizures.\footnote{\textit{Baixing} was a popular rural issues publication well known for investigating official corruption in the Chinese countryside; to guarantee that \textit{Baixing} would stay out of these issues in the future, the propaganda department reorganized the magazine and turned it into a “cultural and lifestyle digest” that collects and re-prints previously published lifestyle articles and features no original reporting on rural issues. “Chinese Officials Neutralize Cutting-Edge Magazine,” \textit{Radio Free Asia}, May 3, 2007, http://www.rfa.org/english/news/politics/china_baixing-20070503.html.}

Since journalists are generally banned from reporting on rural land disputes, desperate farmers often turn to the internet and post public letters, photos and other
evidence of official wrongdoing in an attempt to call attention to these cases. Unfortunately, single postings on blogs and other public forums are rarely enough to attract central government attention, and many of the posts are quickly removed by lower-level internet censors. The individuals who post this information also risk reprisals from local government officials. For example, local governments are increasingly suing these citizens for libel, and local courts regularly rule in favor of the local state despite the fact that Chinese law clearly defines libel as an act that can only be committed against private individuals, not against the government itself.\textsuperscript{205} Other land-loss farmers try to sidestep domestic media blockades by passing off their information to foreign journalists. Local officials are well aware of this strategy and work hard to prevent foreign media involvement. For example, they often set up road blockades to keep journalists away from expropriation sites, and some local officials force the farmers to sign contracts promising not to share information with overseas media outlets or other outsiders.\textsuperscript{206}

Despite these substantial media barriers, in some cases media-savvy farmers and daring reporters do manage to get their stories past the government censors. When that happens, although the reporters themselves will likely receive punishments


for their involvement (if they are Chinese nationals affiliated with domestic rather than foreign news agencies), the central government does generally intervene to address the farmers’ key grievances and punish guilty officials. However, unlike the highly publicized interventions in low-risk sectors (where non-governmental fire alarms are generally encouraged), Chinese leaders carefully restrict public information about non-governmental fire alarms and resultant interventions in the land sector to avoid encouraging others to follow these examples.

For example, one *Beijing News* reporter uncovered extremely flagrant acts of official malfeasance against land expropriation victims in Shengyou village (in the Dingzhou City area of Hebei Province) in June 2005. Local officials had responded to a compensation dispute by hiring thugs and sending them to violently remove peasants from their land in two separate nighttime attacks. Although the first attack went unreported, one of the villagers recorded video footage of the second attack and

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passed the video to a Beijing News reporter who showed up to investigate the following day.\textsuperscript{208} The Beijing News reporter managed to escape the area and send photographs and his accompanying story to his editors in Beijing despite repeated attempts by local police to detain him and confiscate his materials.\textsuperscript{209} Beijing News editors forwarded the Shengyou information to Xinhua, and the Xinhua Internal Reference Department immediately contacted the reporter to request a copy of the attack video for internal (Party and government) reference.\textsuperscript{210} According to a Xinhua Internal Reference Department official, central leaders immediately responded to this information by issuing internal directives on the Shengyou case; however, Xinhua could not publish those directives or reveal their contents in any way because they were strictly internal and classified.\textsuperscript{211}

Beijing News editors published the reporter’s Shengyou article on June 13 (and their decision to do so reportedly contributed to their subsequent dismissal).\textsuperscript{212} On June 17 central propaganda officials issued a media blackout on the Shengyou case, and all reporters were ordered to immediately halt their investigation activities.\textsuperscript{213} The


\textsuperscript{209} Beijing News reporter Liu Binglu’s June 2005 Dingzhou field notes.

\textsuperscript{210} Ibid.

\textsuperscript{211} Ibid. Hebei provincial officials had also been ordered not to speak publicly about the case. Pan, Philip P., “Chinese Peasants Attacked in Land Dispute,” The Washington Post, June 15, 2005 [Lexis Nexis Academic].


\textsuperscript{213} Beijing News reporter Liu Binglu’s June 2005 Dingzhou field notes. Following the blackout, all reporters (both domestic and foreign) were barred from entering the Dingzhou municipal area. The
Dingzhou CCP Party secretary and the Dingzhou mayor were immediately dismissed by Hebei provincial officials; however, *Xinhua* reports played down local Party and government involvement and placed full blame for the attacks on two private contractors involved in the power plant construction activities.\textsuperscript{214} Subsequent state-run media coverage framed the incident as a dispute between Shengyou villagers and private contractors and focused on the fact that the victims were receiving justice through the judicial system; the central leadership intervention was never mentioned in China’s domestic press.\textsuperscript{215}

### 3.6.2. Social Organization

Chinese leaders do not encourage the land-loss farmers to form formal social organizations, and existing organizations are not allowed to cross over into the land sector. Chinese regulations stipulate that all potential organizations must first find an official sponsor before they can apply for a ‘social organization’ permit from the local government dispatched police officials to patrol the area in a search for reporters; any reporters discovered in the Dingzhou area were detained and their materials were confiscated. “BBC jizhe caifang Dingzhou Shengyoucun lixian ji” (BBC Reporter Field Interview Notes from Dingzhou’s Shengyou Village), *Boxun News Network*, July 24, 2005, http://news.boxun.com/news/gb/china/2005/07/200507240639.shtml.  
Ministry of Civil Affairs. Only government agencies and their quasi-government subsidiary departments can serve as organization sponsors, and these agencies can only sponsor organizations that are located within their same regional jurisdiction and area of professional expertise. In effect, this means that the land-loss farmers can only form land-related social organizations under the aegis of the local land agencies – in other words, the farmers can only form organizations to fight back against illegal or under-compensated land expropriations if the expropriating agencies themselves agree to sponsor these activities. It is extremely unlikely that any local land agency would ever sponsor a social organization whose sole purpose is to contravene the agency’s own interests, so this regulatory requirement effectively eliminates the possibility that land-loss farmers could form an official social organization for expropriation defense purposes.

There have been cases where social organizations from other sectors cross over into the expropriation arena; however, cross-over activities generally bring swift reprisals from the local Civil Affairs department, the local police and the organization’s sponsor. For example, Chinese environmental NGO Green Watershed strayed too close to the land sector in 2004 during an environmental campaign against

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217 Ibid.

planned hydropower projects in Yunnan province. Green Watershed’s official social organization permit allows it to conduct environmental education and conservation activities related to dam construction and river basin management. However, these sanctioned activities brought them into contact with the farmers whose lands are expropriated for hydropower developments. In 2004 Green Watershed organized a series of activities for a group of farmers slated to lose their lands for a hydropower project on the Nujiang River – Green Watershed held expropriation training classes to educate the farmers about their individual rights and the social welfare impacts associated with land expropriation and resettlement, they brought the farmers to visit impoverished land-loss communities from previous dam development projects, and they encouraged the participating farmers to hold their own expropriation meetings and classes to disseminate this information throughout their home communities. Shortly thereafter, Green Watershed received an official admonishment from the Yunnan provincial government for straying beyond the scope of its organization charter and an official warning to stay away from expropriation issues in the future. Green Watershed ignored this warning and continued to pursue land issues; as a result, local officials launched an investigation into the NGO’s

\[220\] Ibid. 
\[221\] Ibid.
activities, local police continually harassed the NGO’s founder, and its operating
license was eventually revoked.\(^{222}\)

In response to these formal organizational barriers – and frustrated by their
inability to achieve grievance redress through sanctioned fire alarm channels – many
Chinese farmers are forming their own underground “land defense organizations.”\(^{223}\)
These groups begin as a loose social network of concerned citizens, but many then go
on to conduct relatively sophisticated collective operations: they organize popular
elections to select a group president and a team of “land protection representatives”
who travel on behalf of the group to petition higher level officials, they hold “peasants
rights protection friendship meetings” to discuss potential land-protection strategies,
and they go door-to-door collecting funds to support group activities.\(^{224}\) Some of
these groups are even reaching out to distressed farmers in other areas. For example,
in June 2004 farmers from Shaanxi’s Zhouzhi county formed their own “Informal
Inspection Group Seeking Justice for Peasant Expropriation Victims” to fight back
against illegal land expropriations in their area; after achieving a few local successes
the group reached out to educate and assist land-loss farmers in other counties across

\(^{222}\) “In China Local Politics Still Trump Environmental Protection,” \textit{Agence France Presse}, March 14, 2006 [Lexis Nexis Academic]. The threat of similar reprisals generally deters other organizations from crossing over into unsanctioned territory. As one environmental NGO leader explained in response to the crackdown against Green Watershed over its controversial land activities: “Survival is of paramount importance. Radical actions can get NGOs ‘killed.’” Another NGO leader commented: “If we all become martyrs, then who is left to do the work?” Lu, Yiyi (2007), “Environmental Civil Society and Governance in China,” \textit{International Journal of Environmental Studies}, 64:1, 59-69.

\(^{223}\) Liu Jian, Dong Zhenguo, Jiang Tao, Lin Wei and Zhang Zhun, “Nongcun ‘Hudi Zuzhi’ Diaocha: wei baowei nongmin minggenzi er zhan” (Investigating the Rural “Land Defense Organizations”: Fighting to Protect the Rural Liferoots), \textit{Banyuetan} (Bimonthly Forum), November 28, 2006, http://www.ycnw.gov.cn/Newsview1.asp?ID=43135&class1id=1&class1Name=%E9%90%91%EE%85%A0%E5%81%A3%E9%8F%82%E4%BC%B4%E6%A4%88.

\(^{224}\) Ibid.
Undoubtedly, these groups are a huge concern for the CCP, especially once they begin forming cross-regional linkages. In 2006 journalists from the CCP official party magazine investigated this issue and discovered that continued frustration with governmental fire alarm channels was the key factor driving these farmers toward more sophisticated autonomous organization; they warned that the lack of an effective sanctioned fire alarm mechanism could seriously undermine social stability in the countryside by driving these groups to engage in protests and other forms of destabilizing contentious politics.  

3.7. Fire Alarm Limitations Spur Continued Institutional Innovation

Due to the abovementioned governmental fire alarm agency problems and non-governmental fire alarm limitations, fire alarms have not yet substantially reduced official malfeasance in this sector. Instead, government statistics indicate that land malfeasance is actually increasing over time. For example, a 2004 MLR investigation revealed that 52.8% of the land used for new construction projects between October 2003 and September 2004 was expropriated and converted illegally; by 2006, that percentage was up to 60% overall and 90% in the most egregious regions. By 2008

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225 Ibid.
226 Ibid.
227 Since these official statistics only include cases that were actually exposed by MLR authorities, the reality is likely much worse. Hon, Chua Chin, “Beijing Govt Hits Out at Illegal Land Grabs; Local Authorities Slammed for Allowing Up to 90% of Land to be Acquired Illegally,” *The Straits Times* (Singapore), June 8, 2006 [Lexis Nexis Academic]. Ma, Josephine, “Watchdog Set Up to Stop Rampant Illegal Conversion of Farmland,” *South China Morning Post*, July 25, 2006 [Lexis Nexis Academic]. According to the director of the MLR law enforcement and supervision bureau, their records suggest that the total amount of land converted illegally over the 1999-2005 period (330,000 hectares) is higher than the total amount of land used in all new construction projects in 2004. Shi,
– ten years after Chinese leaders first tightened up their land regulatory system – China’s arable land mass had dropped to 121.7 million hectares, just above the 120 million mark designated by the central government as the critical “red line” for domestic food security.\(^{228}\) Chinese leaders do not provide annual statistics on malfeasance-induced land protests, but the available data suggests that protest activity has not decreased; instead, these protests have actually grown increasingly violent over the past decade.\(^{229}\)

Chinese leaders are responding to these continued land problems with successive rounds of institutional reform. As mentioned above, one area of reform is governmental fire alarm procedural reform, primarily through new laws and policies that aim to facilitate judicial redress for rural land grievances. In addition, Chinese leaders are also reforming their police patrol mechanisms to tighten top-down oversight in this sector.

Toward this end, the State Council launched a series of police patrol reforms in 2006 with the 2006 Notice on Issues Regarding the Further Strengthening of Land Control.\(^{230}\) Under the new post-2006 guidelines, local People’s government leaders bear full responsibility for land malfeasance in their territorial jurisdictions. The MLR

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\(^{229}\) Walker (2008).

\(^{230}\) Chinese leaders launched an earlier round of land management reforms in 2004. These reforms focused primarily on tightening the procedural requirements for land conversions. These reforms were relatively ineffective, officials seem to have ignored those. “Guowuyuan guanyu jiaqiang tudi tiaokong youguan wenti de tongzhi” (State Council Notice Regarding Problems with Strengthening Land Control), State Council 2006 #31, August 31, 2006, available at: http://www.gov.cn/gongbao/content/2006/content_421751.htm (accessed April 25, 2010).
and the Ministry of Supervision have been dispatched to police China’s local-level land conversion operations on an annual basis; if those officials find land policy violations, the directly-involved malfeasants and the relevant regional People’s governmental leaders will all be punished. The 2006 Notice also tightens the central-local approval procedures for land conversions. Previously, provincial governments sent these applications to the State Council on a case-by-case basis; however, from 2006 onward, the State Council will only review these applications on an annual basis. Provincial governments must now compile comprehensive land conversion applications listing all of the proposed conversions for the upcoming year, and that comprehensive formula should make it easier for national-level MLR and State Council officials to compare those proposals with regional conversion quotas.

To reduce local-level fiscal incentives for land malfeasance, the 2006 Notice also establishes minimum lease fees for converted land and centralizes control over land profits. Developers generally consider many different locations for forthcoming development projects, and regional officials often compete with one another to lure those projects with discounted (or free) land lease rates. The 2006 notice

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232 Ibid.

establishes nationwide land lease rate minimums that aim to end this practice and ensure that land conversions will always produce at least enough revenue to cover compensation costs. Even more importantly, the 2006 notice orders local governments to include land revenues in their fiscal budgets (instead of registering them as extra-budgetary funds) and to pass all of these revenues up to central and provincial-level officials.\(^{234}\) Local People’s governments can apply to their provincial superiors to get some of those funds back for their own use, but they can no longer keep and spend those funds at their own discretion.\(^{235}\)

The MLR bears primary oversight responsibility for these new land-control measures, and the MLR has its own internal central-local principal-agent problems, so the State Council is also centralizing MLR monitoring and enforcement authorities to improve its police patrol regulatory capabilities.\(^{236}\) In 2006 the State Council set up a new State Land Supervision (SLS) system consisting of nine regional land

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\(^{234}\) Previously, these were extra-budgetary funds and therefore not overseen by higher-level officials; local officials generally had full discretion to determine how those revenues would be spent. Under the new rules, land revenues must be included in the local fiscal budget and higher level authorities supervise how those are collected. “China Tightens Land Supply in New Move to Curb Economic Overheating,” Xinhua General News Service, September 5, 2006 [Lexis Nexis Academic]. In November 2006 the Ministry of Finance, the Ministry of Land and Resources and the People’s Bank of China issued an a follow-up notice which takes all land revenue away from the local governments; they must remit 30% of land revenue to the center and 70% to the provincial government; they can then apply to get the 70% back; previously, the city and county governments automatically kept 70% of the revenue from land use fees.


management centers that answer directly to the MLR. The new regional centers are tasked with monitoring and enforcing regional land conversion quotas and punishing the officials who exceed these quotas or otherwise violate central land management policies. The MLR’s new regional land supervision centers have no ties to the local People’s governments or to the local Land Resources Bureaus; therefore, in theory, these centers should be insulated from the local protectionism that previously undermined top-down land monitoring efforts.

3.8. Conclusion

This chapter has provided evidence to support my argument that Chinese leaders adjust their fire alarm policies to account for sector-specific instability risks. China’s land sector registers as extremely high-risk on all three malfeasance risk indicators:

1. Perceived welfare impacts are generally very high.
2. Land malfeasance is conducted by governmental actors only, so Chinese leaders do not have convenient commercial scapegoats in this sector, and that increases the risks associated with non-governmental fire alarms.
3. Land malfeasance victimizes geographically concentrated communities that can easily organize for collective action; as a result, protests should be highly likely in this sector, and that increases the risks associated with non-governmental fire alarms.

In response, Chinese leaders limit their land sector fire alarms to governmental channels only. Unfortunately, as in other policy sectors, governmental fire alarms

suffer from agency loss. Malfeasant local officials routinely suppress governmental fire alarms to protect the rents they stand to gain through illegal land deals, and this protectionism undermines grievance redress and local official accountability. As a result, China’s governmental-only fire alarm policies have not significantly reduced official malfeasance in this sector. Chinese leaders continue to receive negative feedback in the form of unmet land policy targets and malfeasance-induced mass protests, and that feedback is driving further rounds of institutional reform.
Chapter 4

Rural Land Expropriation:

Case Narratives from a High-Risk Policy Sector

4.1. Introduction

This chapter will present two detailed case narratives of official malfeasance and fire alarm oversight in China’s rural land sector. These case studies will examine land malfeasance from a grassroots perspective to demonstrate how Chinese citizens are actually using (or attempting to use) governmental fire alarms to redress their land grievances and to hold malfeasant local officials accountable to central laws and policies. In the first case, Changting Village (Zhejiang Province) farmers file a series of administrative lawsuits to contest under-compensated and illegal land expropriations. The farmers eventually win their case, higher-level officials revoke the Changting Village land expropriation permits and the development project is suspended. In the second case, Hanyuan County (Sichuan Province) residents file a series of xinfang petitions to contest under-compensated land expropriations for a large dam-building project. The petition campaign is not successful, and Hanyuan residents resort to mass protests as a fire alarm tactic.

The first case – the Changting Village land expropriation case – provides evidence to support the governmental fire alarm publicity hypothesis introduced in chapter one:
H2a: In general, Chinese leaders will publicize governmental fire alarm institutional improvements and at least some governmental fire alarm success cases to encourage their citizens to use these institutions for grievance redress.

In the Changting case, Chinese leaders respond to the Changting plaintiffs’ eventual legal success with a national media blitz that aims to convince other land-loss farmers to pursue legal redress for their own grievances.

The second case – the Hanyuan County land expropriation case – provides evidence to support the protest hypothesis introduced in chapter one:

H3b: When aggrieved citizens stage mass protests as a fire alarm tactic, higher-level leaders will generally intervene to redress the protestors’ grievances and discipline exposed malfeasants.

Hanyuan residents resort to mass protests in a bid to catch central-level attention, and the central leadership reacts by intervening in the dispute to redress the residents’ land compensation grievances and discipline the malfeasant officials who were illegally suppressing compensation rates.

Both of these cases suggest that fire alarm redress is extremely hard to achieve in the land sector, primarily due to governmental fire alarm agency loss and the lack of alternative sanctioned institutional channels. As a result, many land victims still resort to mass protests and other non-sanctioned fire alarm tactics, and Chinese leaders still face serious instability risks in this sector.

4.2. Changting Village Land Expropriation Case: Ten Failed Administrative Lawsuits and One Provincial Supreme Court Success

Changting Village is a farming community with 184 hectares of land and approximately 2000 residents in the Fenghua City region of Zhejiang Province. In
December 2003 the Changting Village Party committee distributed notices to the Changting residents stating that all of their collectively-owned land would be expropriated for a new development project and all land-holders would receive adequate compensation. Initially, the Changting residents were not against the project. One Changting farmer, Mr. Zhang Shaoliang, estimated that he should receive over 200,000 RMB in compensation for his 11.5 mu of grape fields – enough that he could give up farming and go into business. However, when he received his official compensation notice from the village Party committee it fell short of his own estimates by 30,000 RMB. Village cadres told him that his crops were in poor condition and they therefore did not calculate his compensation according to the national standard for healthy crops; when he disputed this assessment they told him that his compensation rates were not open to discussion and he could “take it or leave it.”

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239 Ibid; “Mu” is a Chinese land measurement equivalent to 0.067 hectares.


Mr. Zhang filed formal complaints with multiple departments throughout the Fenghua City and Ningbo City People’s governments; however, every time he filed a complaint, his complaint forms and accompanying materials were all passed down to the Changting Village level where they were subsequently ignored. Mr. Zhang then tried negotiating with Changting Village cadres: he offered to stop filing complaints and accept the expropriation decision if they would meet him halfway and increase his compensation by 15,000 RMB (instead of the full 30,000). The village cadres were not interested in negotiation. They told Mr. Zhang that they were not bothered by his complaint activities; they stated that he could file all the complaints he wanted and still the compensation rates would never change.

At that point, Mr. Zhang decided that he needed a new strategy, so he hired Mr. Yuan Yulai, a Fenghua City lawyer specializing in administrative litigation cases. Mr. Yuan suspected that there was more at fault with the Changting expropriation than Mr. Zhang’s 30,000 RMB, so he suggested they sue the Fenghua municipal Land and Resources Bureau (LRB) to contest the legality of the expropriation itself. Under Mr. Yuan’s direction, Mr. Zhang first filed an administrative reconsideration application (in February 2004) asking the Fenghua LRB to investigate the legality of

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242 Sun, “Zhejiang Peasant Zhang Shaoliang’s Rights-Defending Path.” Ningbo city is Fenghua city’s administrative superior in the People’s government hierarchy.
243 Ibid.
244 Ibid.
the Changting expropriations. By April 2004 Mr. Zhang still had not received a response, so he filed an administrative omission suit against the Fenghua LRB in Fenghua City court. At the trial, Fenghua LRB officials claimed that they were not yet carrying out land expropriations in Changting Village; they argued that the current activities were just pre-expropriation “preparatory work,” and they promised that they would not proceed with the real expropriations until they had all of the necessary approvals. During their testimony, LRB officials presented an internal approval document from the Fenghua City government. According to that document, the Fenghua government had already approved the Changting land development plans, including the expropriation of all collectively-owned village land. The Fenghua LRB submitted this document to the court to demonstrate that their activities in Changting Village already had higher-level approval. However, municipal-level

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247 Ibid.
248 Ibid. Feng, Jianhua, “Filing a Lawsuit for Personal Dignity.” Song, “Modern Peasant Zhang Shaoliang.” China’s Administrative Reconsideration Law sets statutory time limits for administrative reconsideration proceedings. If an agency receives an administrative reconsideration application they must examine the application within 5 days (Article 17). If they decide against processing that application they must immediately notify the applicant and give reason for their refusal (Article 17). If they decided that the reconsideration should be conducted by another agency they must pass the application onward and notify the applicant of that transfer within 7 days of the original receipt (Article 18). If they accept the application they must make a reconsideration decision within 60 days; they can extend this time limit by 30 days in some cases, but they must notify the applicant if they do so (Article 31). Under this law, the Fenghua LRB committed an illegal administrative act because they let 60 days go by without sending Mr. Zhang any notification. “Zhonghua renmin gonghe guo xingzheng fuyi fa” (Administrative Reconsideration Law of the People’s Republic of China), Supreme People’s Procuratorate of the People’s Republic of China, http://www.fz-china.com.cn/NewsDetail-34674.html. In the Chinese legal system, bureaucratic agencies commit “administrative omission” when they do not respond to citizen applications as required by law. Zhou, Feng “Jian lun xingzheng bu zuowei de xingshi yiji ruhe rending” (General Discussion of Administrative Omission: Form and Recognition), September 3, 2009, China Legal Information Network, P.R.C. Ministry of Justice, http://www.legalinfo.gov.cn/2009-09/03/content_1148216.htm.
governments do not have expropriation approval authority, so the Fenghua court ruled (in June 2004) that the Fenghua LRB expropriation activities were illegal.\textsuperscript{251} Despite that ruling, the Fenghua court did not order the LRB to suspend Changting Village expropriation and construction activities and Mr. Zhang’s land situation did not change.\textsuperscript{252}

Mr. Zhang and lawyer Yuan responded with another lawsuit, this time against the Fenghua City government. They asked the Fenghua court to repeal the Changting expropriation approval document (issued by the Fenghua City government and revealed during the first trial against the Fenghua LRB) on the grounds that the city government did not have the authority to grant expropriation approvals.\textsuperscript{253} The Fenghua court rejected Mr. Zhang’s suit (and his subsequent appeal).\textsuperscript{254} The approval document was clearly illegal; however, it was issued in an internal \textit{chao gao dan} format, and the court ruled that an internal \textit{chao gao dan} document does not constitute an official administrative act and therefore cannot be contested under China’s administrative litigation law.\textsuperscript{255}

\textsuperscript{252} Sun, “Zhejiang Peasant Zhang Shaoliang’s Rights-Defending Path.”
\textsuperscript{253} Ibid. Feng, “Zhejiang Villager Zhang Shaoliang.”
\textsuperscript{254} Yu and Li, “One Case Creates a Thousand-Layer Wave.”
\textsuperscript{255} Feng, Yulu, “Zhejiang Villager Zhang Shaoliang.” A \textit{chao gao dan} is an internal bureaucratic memo. According to Lawyer Yuan Yulai, it is a common strategy for local governments to purposely issue documents in this format to protect themselves from judicial review. When local officials take illegal policy actions, they issue the relevant documents in the form of \textit{chao gao dan} or other internal and informal methods, represent these documents to the local citizenry as formal administrative acts and use them to coerce citizens into following orders (often with full support from the local police and other local bureaucratic agencies, so the citizens have few avenues for political or physical resistance). If local citizens file lawsuits to contest these “administrative acts” the suits are generally thrown out because those informal documents cannot be sued under China’s Administrative Litigation Law. Sun, “Zhejiang Peasant Zhang Shaoliang’s Rights-Defending Path.”
Despite these legal challenges, in May 2004 the Fenghua City government formally (and illegally) expropriated the Changting villagers’ 184 hectares of collectively-owned agricultural land and added the same 184 hectares to the official state-owned construction land registry. In June 2004 the Fenghua LRB leased a portion of the (now supposedly state-owned) Changting land-use rights to Ningbo Luozi Real Estate Corporation for 100 million RMB; according to the leasing contract, Ningbo Luozi would use the land for a commercial real estate project and also build additional housing for the relocated Chanting residents. In July 2004 the Fenghua City government issued demolition and relocation notices (to all Changting Village residents) stating that Ningbo Luozi would be tearing down the existing Changting residences and providing new homes in exchange. The notices also warned residents that they must all vacate their homes on schedule – otherwise, local officials would cut off their electricity and water services and the Public Security Bureau would carry out the evictions and demolitions by force.

By this point, Mr. Zhang’s neighbors were growing increasingly disillusioned with the Changting development project. Most villagers had been offered 30,000

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RMB per mu in land compensation; however, they discovered that the village Party committee would receive between 300,000 RMB per mu (for industrial developments) and 2,000,000 RMB per mu (for residential developments) when they sold off those same land-use rights post-expropriation. Furthermore, local cadres had begun telling Changting residents that they would not receive their compensation funds pre-eviction; instead, the village committee would hand out IOU certificates, and villagers could later trade those certificates for new homes and other reimbursements. This was a big concern for many Changting villagers – based on this relocation plan, they would first move into sub-standard interim housing where they would have no farmland and therefore no guaranteed household income, and local officials were not specifying concrete dates for new home construction or monetary compensation disbursements. Due to these concerns, many residents did not vacate their homes on schedule, and local officials followed through with their threats: they cut off services to the disputed homes, carried out forced evictions and demolitions and injured some local villagers in the process.

These experiences motivated Mr. Zhang to file suit again, and this time he was joined by eleven other Changting residents. The twelve plaintiffs hired lawyer Yuan Yulai, jointly contributed the funds for his 20,000 RMB engagement fee and filed a

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new round of administrative suits. They first filed suit against the Fenghua LRB (in Fenghua municipal People’s court) for posting the Changting Village demolition and relocation notices without first obtaining the necessary permits. In court, the Fenghua LRB produced a copy of their ‘expropriation demolition and relocation permit’ and the Changting residents lost their case. The residents immediately filed a second suit against the Fenghua LRB, this time for issuing the ‘expropriation demolition and relocation permit’ without first obtaining the necessary land approval documents from higher-level officials. The LRB responded by producing three new documents: 1) a document from the Fenghua City government approving the Changting land development plan, 2) a document from the Fenghua City government approving the Changting land conversion (from collectively-owned agricultural land to state-owned construction land), and 3) a document from the Zhejiang Provincial government allocating the (now supposedly state-owned) Changting land to the Fenghua City land conversion office. Based on these three documents, the LRB argued that they had all of the necessary approvals for their demolition and relocation activities, and the Changting residents again lost their case (and subsequent appeal).

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269 Yu and Li, “One Case Creates a Thousand-Layer Wave.”
However, those three documents were all illegal administrative acts: 1) the Fenghua City government approved the Changting development plans without first notifying and consulting the original land-owners as required by law, 2) the Fenghua City government carried out a 184 hectare land conversion without first obtaining State Council approval as required by law, and 3) since the Fenghua City government’s land conversion was illegal and therefore invalid, the Changting villagers still held the land ownership and use rights at the time that the Zhejiang Provincial government allocated that same land to the Fenghua land office, so the Zhejiang land allocation was also illegal.270 These irregularities gave Mr. Zhang and his eleven neighbors the legal grounds for another round of administrative suits.

First, in September 2005 they filed two suits against the Fenghua City government in Ningbo Intermediate People’s Court: one suit for approving the Changting development plans without following the necessary ex ante notice and comment procedures and a second suit for carrying out the land conversion without the necessary State Council approval.271 Although both actions were blatantly illegal, the Ningbo court rejected both suits on procedural grounds.272 The Ningbo court claimed that the twelve Changting plaintiffs were not qualified to file suit against the two Fenghua administrative acts because the Changting land had been collectively-owned, and a small group of twelve farmers could not represent the broader interests

272 Yu and Li, “One Case Creates a Thousand-Layer Wave.”
of the village collective.\(^{273}\) Court officials stated that those suits could only be filed by the Changting village committee, the Changting economic collective, or possibly a much larger plaintiff group that could more accurately represent Changting majority interests.

At the same time, the twelve Changting plaintiffs were also preparing to file suit against the Zhejiang Provincial government. Based on lawyer Yuan’s advice, they first filed an administrative reconsideration application (on August 25, 2005) asking the Zhejiang Provincial government to investigate the legality of the Changting land allocation.\(^{274}\) On September 1 the Zhejiang Provincial legal affairs office formally rejected their reconsideration application. The rejection letter stated that the Changting land allocation was an administrative decision involving state-owned land and therefore an internal government matter; as a result, a group of peasants could not possibly claim that this (purely governmental) administrative decision “infringed on their [individual] lawful rights and interests” and therefore would have no legal standing to challenge this decision under China’s administrative reconsideration law.\(^{275}\)

On September 12 the twelve plaintiffs responded by filing suit against the Zhejiang Provincial government in Hangzhou intermediate people’s court.\(^{276}\) The suit

\(^{273}\) Ibid. Feng, Yulu, “Zhejiang Villager Zhang Shaoliang.”


\(^{275}\) Zhejiang Provincial Supreme People’s Court, “Land Administrative Reconsideration Appeals Case.” Feng, Jianhua, “Filing a Lawsuit for Personal Dignity.”

accused the provincial government of illegally allocating the Changting villagers’ collectively-owned agricultural land to the Fenghua land conversion office. The plaintiffs argued that the Zhejiang officials had just accepted the Fenghua City documents classifying the land as “state-owned land” without doing their own investigations to verify that their subordinates had gone through the appropriate conversion procedures. The plaintiffs therefore asked the court to order the Zhejiang Provincial government to accept and process their administrative reconsideration application. Again, despite clear administrative illegality, the Hangzhou court ruled in favor of the government.

The Changting plaintiffs immediately filed an appeal with the Zhejiang Provincial Supreme Court. This time, two weeks before the Zhejiang Supreme Court was due to issue a ruling on the case, the Zhejiang Provincial government suddenly accepted and began processing the original Changting administrative reconsideration application. At the same time, the Zhejiang Provincial government sent a notice to the Fenghua City government ordering the Fenghua officials to address the Changting villagers’ expropriation complaints. A group of provincial-level

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277 Zhejiang Provincial Supreme People’s Court, “Land Administrative Reconsideration Appeals Case.”
278 Ibid.
281 Yu and Li, “One Case Creates a Thousand-Layer Wave.” Song, “Modern Peasant Zhang Shaoliang.” The Provincial legal affairs office claimed that this sudden decision to accept Mr. Zhang’s previously declined application was not due to pressure from the court; rather, they claimed this reversal was just their own independent attempt to “solve problems on behalf of the public.” Sun, “Zhejiang Peasant Zhang Shaoliang’s Rights-Defending Path.”
282 Yu and Li, “One Case Creates a Thousand-Layer Wave.”
officials traveled to Fenghua City and held a meeting with Fenghua municipal leaders and Changting Village representatives, but the meeting did not resolve the dispute.\footnote{283}

Finally, on April 14, 2006 the Zhejiang Supreme Court ruled in favor of the twelve Changting plaintiffs and overturned the previous ruling from the Hangzhou municipal court.\footnote{284} The Zhejiang Supreme Court ruled that the Zhejiang Provincial government had infringed on the Changting villagers’ legal interests when they allocated the collectively-owned Changting Village land to the Fenghua land conversion office; as a result, the provincial government’s subsequent refusal to accept the villagers’ reconsideration application constituted an illegal administrative act.\footnote{285}

By this point the Zhejiang legal affairs office was already re-examining the reconsideration application (most likely due to advance warning from the court); on December 28, 2006 the reconsideration committee ruled that the July 2005 land allocation had indeed been illegal and they therefore repealed the provincial government’s allocation approval. This decision effectively revoked provincial-level permission for the Changting land development project; as a result, Ningbo Luozi Real Estate Corp. suspended their construction activities at the Changting site in February 2007.

\footnote{283} Ibid.
\footnote{285} Ibid.
China’s state-run media outlets responded with a nationwide media blitz spotlighting Mr. Zhang’s judicial victory and urging other aggrieved citizens to follow his example. The CCP Central Party Committee’s People’s Daily hailed Mr. Zhang as an exemplary “modern peasant;” the China Daily called his success a “victory for the rule of law” and urged other expropriation victims to raise their own legal consciousness and follow the Changting peasants’ example by “choos[ing] the law as their protector to correct improper government actions.” China Central Television (CCTV) repeatedly aired their interviews with Mr. Zhang, and CCTV commentators declared that the Changting legal victory “clearly demonstrates that the citizens who sue administrative agencies are not at all ‘throwing an egg against stone’ as the popular saying goes.”

4.2.1. Governmental Fire Alarm Publicity in the Changting Case

The Changting case supports the governmental fire alarm publicity hypothesis introduced in chapter one:

H2a: In general, Chinese leaders will always publicize governmental fire alarm institutional improvements and at least some governmental fire alarm success cases to encourage their citizens to use these institutions for grievance redress.

I interpret the heavy state publicity in the aftermath of this case as an attempt to encourage other aggrieved land-loss farmers to follow Mr. Zhang’s legal example. Some scholars could argue that state-run media coverage does not necessarily imply active leadership involvement – although the *People’s Daily*, *Xinhua*, *CCTV* and *China Daily* are all Party mouthpieces, they also have a degree of editorial discretion in selecting interesting stories for the national press, and the editors themselves may have decided to highlight the Changting case as a socially interesting (and politically safe) human-interest piece. However, although editorial interest may have played an initial role in highlighting the Changting case, subsequent national-level Party and government involvement is indisputable for two reasons. First, the CCP and the National People’s Congress repeatedly referenced Mr. Zhang’s legal victory on their own news websites. Second, and most importantly, the Changting case was again highlighted in CCP propaganda reports associated with the 2007 Seventeenth National Party Congress and the P.R.C. 2009 60-year anniversary. These propaganda reports

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were published by the People’s Daily and prominently featured on the Party’s own news website as well as the National People’s Congress news website. From the CCP leadership perspective, Party congress meetings and anniversary celebrations have extreme political importance and sensitivity; as a result, the Party propaganda messages issued for these events could only have been selected and approved by national-level Party leaders. I therefore assume that Chinese leaders played a role in publicizing the Changting case.

State media reports analyzing and referencing the Changting case primarily highlight Mr. Zhang’s legal success and use his victory to argue that administrative litigation is not as difficult or biased (toward government defendants) as many citizens believe. These reports also repeatedly compare xinfang petitioning with administrative litigation and praise Mr. Zhang for choosing the latter. For example, one article posted on the CCP news website states:

In the past, when ordinary people had problems they were accustomed to seeking leaders through petitions, now more people are accustomed to seeking “law” when they have problems, going to court, finding legal justification [for their case] in legal clauses, using rule by law


291 For example, see: Song, Wei “Modern Peasant Zhang Shaoliang.” Chen, Jianrong, “Glorious Chapters in the Democratic Rule by Law.” CCTV, “12 Zhejiang Peasants Sue the Provincial Governor and Win their Suit.”
standards to determine right from wrong, courageously taking up the
weapons of the law to defend their own legal rights. In the arena of
unjust land expropriation and compensation, Zhejiang peasant Zhang
Shaoliang took up the weapons of the law to defend [his own legal]
rights... 292

This petition vs. litigation theme is repeated in Party propaganda articles associated
with the 2009 60-year PRC anniversary. For example, a People’s Daily article (posted
on the CCP and NPC news websites) quotes Mr. Zhang explaining why he chose
administrative litigation instead of petitioning:

My understanding was, petitioning can turn into running around in
circles. Only by going to a court of law, by going through the channels
for legal redress, only then can things be faster and more effective,
[only then] can [you] receive a clear verdict; that is [what it is like to]
manage affairs according to law; besides, petitioning can prolong the
time [required for grievance redress], and can easily incite problems
and turn into something illegal. 293

CCTV coverage repeated the petition vs. litigation theme: the CCTV
interviewer asked Mr. Zhang a series of questions on this topic and repeatedly
asked him to elaborate on the differences between petitioning and litigation
and the reasons why litigation is the better choice for citizens seeking
grievance redress. 294

293 People’s Daily. “Changes in the Era of Political Civilization,” Author translation. This article is re-
publishing excerpts from an earlier People’s Daily interview transcript with Mr. Zhang. The original
transcript includes Mr. Zhang’s responses to thirteen interview questions; of these, the petition vs. law
question was one of only two question/answer segments selected for the subsequent propaganda piece.
For the original People’s Daily article, see: Song, Wei “Xiandai nongmin Zhang Shaoliang – Shei shi
shei fei rang fa lu lai shuo hua” (Modern Peasant Zhang Shaoliang – Let the Law Say Who is Right and
294 “Zhang Shaoliang: Wo yong falu wei zhengfu bumen jiu cuo” (Zhang Shaoliang: I Used the Law to
Correct a Bureaucratic Error), Interview Transcript, Xinwen Huiketing (People in the News), China
These media reports all convey the same message: petitioning is an old and difficult method that often causes problems; in contrast, litigation is modern, faster, and much more effective. This message fits within a broader leadership strategy to direct land victims toward litigation as an alternative to the more traditional petition approach – primarily because the *xinfang* system is basically defunct, and land-loss farmers often respond to unanswered petitions by staging mass protests.\(^{295}\) As mentioned previously in this thesis, Chinese citizens are still wary of administrative litigation due to the high fees, a perceived pro-government bias in the courts, and the potential for local official reprisals; however, Chinese leaders can potentially change these perceptions by widely publicizing success cases such as Mr. Zhang’s.\(^{296}\)

### 4.2.2. Governmental Fire Alarm Agency Loss in the Changting Case

On the other hand, although the Changting case is technically a governmental fire alarm ‘success’ case, it also demonstrates the significant barriers Chinese citizens face when they try to redress land grievances through administrative litigation. Mr.


Zhang filed ten different administrative lawsuits over a three-year period before finally winning the Zhejiang Supreme Court appeal. The plaintiffs had clear evidence of procedural illegality in each of the first 10 administrative suits; however, the court sided with the local government in all but one case. Although Mr. Zhang did actually win his first lawsuit against the Fenghua LRB, the court did not order the LRB to suspend the Changting Village expropriation activities. This is a common problem in the Chinese legal system: winning a case against illegal administrative acts does not necessarily stop the local government from committing those acts; the court must formally repeal or order the agency to repeal the illegal act, otherwise, court-proven illegally has no real effect on administrative behavior.\footnote{Shen, Xinwang, “Yong ‘xingzheng susong’ jiandu zhengfu yifa xingzheng” (Using ‘Administrative Litigation’ to Supervise the Legality of Government Administration), \textit{Fazhi Ribao} (Legal Daily), http://article.chinalawinfo.com/article_detail.asp?ArticleID=37307.}

The Zhejiang Provincial government did actually respond to court-proven illegally by repealing the contested administrative act; however, this is a relatively rare phenomenon.\footnote{Ibid.} Interestingly, Zhejiang officials actually continued to break administrative procedure during the trial: the Zhejiang legal affairs office suddenly began re-processing the previously rejected Changting reconsideration application mid-trial (most likely as a face-saving response to advance warning about the forthcoming verdict) despite the fact that mid-trial re-processing is strictly prohibited under the PRC Administrative Reconsideration Law.\footnote{Ibid; Article 16, PRC Administrative Reconsideration Law.} Zhejiang officials also waited eight months before issuing the formal repeal and therefore allowed Changting expropriation and construction activities to continue until February 2007 (almost a full
year after the Zhejiang court ruled that those activities were illegal.\(^{300}\) These enforcement delays are very significant in expropriation cases because continued demolition and construction activities can eliminate the option of reverting back to the original pre-expropriation status quo.\(^{301}\) Once the farmers’ homes are demolished and their fields are covered in layers of concrete they will be in a very weak bargaining position vis-à-vis local officials and development companies, and higher-level officials are more likely to approve the project ex post instead of forcing a project closure that would leave the farmers without compensation funds and leave the disputed lands unused.

Mr. Zhang also paid significant personal costs for his three-year legal effort.\(^{302}\) The court proceedings and ex ante preparations took up so much of his time that he was unable to earn an income; at the same time, he had to pay substantial legal fees for each of the eleven lawsuits.\(^{303}\) Mr. Zhang did gain financial assistance after he was joined by the 11 other Changting residents; however, the three-year process still left his own family heavily in debt.\(^{304}\) Mr. Zhang also faced physical reprisals: he was repeatedly followed and beaten by groups of hired thugs (assumedly dispatched by local government officials) and he was eventually afraid to leave his home.\(^{305}\)

Neighbors then began reporting sightings of an unidentified man staking out Mr.

\(^{300}\) Yu and Li, “One Case Creates a Thousand-Layer Wave.”
\(^{303}\) Feng, Jianhua, “Filing a Lawsuit for Personal Dignity.”
\(^{304}\) Ibid.
\(^{305}\) Feng, Jianhua, “Filing a Lawsuit for Personal Dignity.” When Mr. Zhang first began filing lawsuits his fellow villagers were afraid to associate with him lest they themselves also suffer political reprisals.
Zhang’s house, and he became so worried about his wife’s and son’s safety that he legally divorced his wife to distance his family from his judicial disputes.\textsuperscript{306}

In sum, although the Changting case technically represents successful expropriation redress via governmental fire alarm channels, this case does not bode well for other expropriation victims seeking redress through legal channels. In fact, despite their landmark court victory, Mr. Zhang, his fellow plaintiffs and lawyer Yuan Yulai were all quite certain that the Fenghua City and Changting Village officials would still find a way to continue with their originally planned expropriation and construction activities.\textsuperscript{307} They therefore followed up on their provincial-level legal victory by submitting an administrative adjudication application asking the State Council legal affairs office to investigate the case.\textsuperscript{308} The State Council legal affairs office did accept this application, and they also sent a representative to conduct investigations in Fenghua City and Changting Village.\textsuperscript{309} However, State Council representatives also expressed confusion because State Council adjudications are conducted in response to unfavorable provincial-level verdicts; in other words, the Changting plaintiffs should only have filed this application if they were seeking to overturn the previous Zhejiang Supreme court verdict (which was ruled in their

\textsuperscript{306} Mr. Zhang also transferred all of his property and assets into his wife’s name and gave her full custody of their son – all of these actions were taken as precautionary measures due to their fear of local government reprisals. Feng, Jianhua, “Filing a Lawsuit for Personal Dignity.” According to his neighbor’s reports, this man was watching his house during the night wearing dark sunglasses and armed with a knife. Sun, “Zhejiang Peasant Zhang Shaoliang’s Rights-Defending Path.”


\textsuperscript{308} Feng; Sun.

\textsuperscript{309} Sun, “Zhejiang Peasant Zhang Shaoliang’s Rights-Defending Path.”
favor).\textsuperscript{310} The Changting plaintiffs apologized to the State Council for this error and blamed their mistake on a lack of legal understanding.\textsuperscript{311} However, Chinese legal specialists suspect that the Changting villagers were well aware of this policy and actually intended for their adjudication application to serve as a back-door national-level \textit{xinfang} petition.\textsuperscript{312} If that analysis is correct, Mr. Zhang’s personal views on \textit{xinfang} petitions and administrative litigation may differ from the stance he took during the aforementioned state-run press interviews.

4.3. Hanyuan County Land Expropriation Case: Unsuccessful \textit{Xinfang} Petitions Lead to Mass Protests; Mass Protests Lead to a Central Leadership Intervention

In 2001 the Sichuan provincial government and China Guodian Corporation launched preparatory construction for a series of 17 large-scale hydropower dams along the Dadu River.\textsuperscript{313} The largest dam would be constructed at Pubugou, in Sichuan’s Hanyuan County. The 19.9 billion RMB (USD 2.9 billion) Pubugou dam would stand 186 meters tall and its water reservoir would submerge 84 square kilometers of land.\textsuperscript{314} As a result, project planners estimated that they would need to

\textsuperscript{310}Ibid.
\textsuperscript{311}Ibid.
\textsuperscript{312}Ibid.
\textsuperscript{313}China Guodian Corp. is one of China’s five state-owned power producers.
expropriate land from approximately 100,000 local residents – one third of the entire Hanyuan County population.  

The Sichuan provincial government did not have the authority to issue the necessary construction and expropriation permits for a project of this size without prior State Council approval. However, provincial officials were eager to move forward, so they gave Guodian Corporation the permission to launch preparatory construction in November 2001. Jiaotuo Village was located near the immediate construction area and therefore one of the first villages to receive expropriation notices. In August 2001, almost three years before the State Council would grant official expropriation approval, village-level officials notified Jiaotuo residents that their land would be expropriated and that they would be moving to arable land in two new locations: Erzichang and Tianjiezi. Village officials assured Jiaotuo residents that they would receive adequate financial compensation; they also took villagers to visit Erzichang and Tianjiezi and promised to improve the areas by setting up water lines, electricity lines and roads and by helping the residents to build new homes and prepare


317 Xinhua, “National ‘Fifteen’ Project.”

the new land for cultivation. Based on this understanding, Jiaotuo villagers signed a relocation agreement stating their willingness to give up their land, accept the monetary compensation and relocate.

To the villagers’ dismay, in April 2002 the Hanyuan County Relocation Bureau suddenly voided the original Jiaotuo agreement and issued a new document stating that the residents would move to an uncultivated area on a mountain slope near Qianyu Village. Jiaotuo residents refused to sign the new agreement. They were unwilling to move to the Qianyu area because the land was not well suited for agriculture, there was no water available for irrigation, the area lacked permanent infrastructure for potable water and other necessary services, and they feared that the steep mountain slopes would be vulnerable to rock and land slides. On July 4, 2002 the Hanyuan County government responded by sending 100 public security and police officers to forcefully move the entire village to their new location. According to Jiaotuo residents, approximately one dozen villagers tried to resist and were beaten by police; other resisters were jailed and were not released until they signed relocation agreements. Despite the village officials’ previous promises, the Jiaotuo villagers received no compensation and no government assistance building infrastructure or

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319 Ibid.
320 Ibid.
321 Ibid.
322 Ibid.
323 Ibid.
preparing the new lands for cultivation; instead, the Jiaotuo villagers were forced to live in dilapidated shacks, and they had no source of income.324

News of the Jiaotuo villagers’ plight spread rapidly throughout Hanyuan County and fueled local anxieties about the forthcoming county-wide land expropriations.325 Dam construction was obviously moving forward, and local officials were telling Hanyuan residents that they would all move within the next few years. However, they were not releasing any details on specific relocation sites or compensation rates because the project still did not have central government approval.326 The State Council did not approve the Pubugou dam project until March 2004; in June 2004 (two years after the first expropriations took place) the Hanyuan County government finally issued a notice listing compensation rates for land, crops and standing structures.327 Local residents were furious. Compensation rates were much lower than expected, and well below what they would need to maintain their existing living standards post-expropriation. The land along the Dadu River is a fertile plain with consistently high crop yields, so land compensation rates should have been relatively high.328 However, when Hanyuan residents examined official compensation

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324 Since the State Council had not yet approved the project, there was no system in place to provide expropriated residents with the compensation and subsidies that they were legally entitled to receive.
325 Huang, Qi, “Sichuan Dadu River Hydropower Station Construction.”
326 The State Council ratified the project on December 25, 2002. However, ratification does not entail construction or expropriation approval; ratification only grants the developer permission to inspect the site and conduct feasibility studies. Tan, Xinpeng, “Developer Misrepresents Good Land as Mountain Ravine.” Mertha, Andrew C., China’s Water Warriors: Citizen Action and Policy Change (Ithaca, NY: Cornell University Press).
327 Tan, Xinpeng, “Developer Misrepresents Good Land as Mountain Ravine.”
328 According to local farmers, average household incomes ranged from 7,000 to 10,000 RMB per year in Hanyuan County, which is well above the national average. However, they knew they would be relocated up the mountain to arid land with lower yields. Even if they invested in expensive irrigation systems, Hanyuan residents knew the relocation would entail a significant income reduction, and
plans, they discovered that their land was classified as low-yield mountain ravines instead of high-yield farmland, and this significantly reduced their compensation rates.\textsuperscript{329} Compensation funds are part of the fees that developers must pay to obtain land-use rights, and high compensation rates can significantly reduce profit margins; Sichuan provincial-level officials had purposefully misrepresented the Hanyuan land in order to reduce construction costs.\textsuperscript{330} The provincial government has wide discretion to set compensation rates for homes and other standing structures, and those rates were also very low. For example, home compensation rates ranged from 200-400 RMB per square meter, but it would cost a minimum of 500 RMB per square meter to rebuild at the relocation sites.\textsuperscript{331} Hanyuan residents would have to make up the difference themselves, and most did not have the money to do so.\textsuperscript{332}

Hanyuan residents immediately began filing \textit{xinfang} petitions with county-level government agencies calling for an investigation into these compensation discrepancies.\textsuperscript{333} In response, the Hanyuan County government quietly launched an

\textsuperscript{329} In reality, although Hanyuan is a mountainous area, these farmers are on plains along the river that are very fertile. Tan, Xinpeng, “Developer Misrepresents Good Land as Mountain Ravine.”

\textsuperscript{330} Ibid. Zhang, Kejia, “Out of 16 Million Large-Scale Hydropower Construction Migrants.”

\textsuperscript{331} Huang, Qi, “Sichuan Dadu River Hydropower Station Construction.”

\textsuperscript{332} Ibid.

\textsuperscript{333} The Hanyuan county farmers were furious that they themselves had not been consulted during the land valuation process; they also suspected that the NDRC had just accepted the developers’ faulty land
internal investigation and quickly discovered that the residents’ complaints were well-grounded.\(^{334}\) When Hanyuan officials compared Pubugou compensation rates with the national standards as well as the actual rates issued for similar projects, they discovered that the total compensation shortfall amounted to 1.19 billion RMB (USD $143 million).\(^{335}\) Not only were compensation standards set well below national guidelines, but some forms of compensation required by law were actually left out of the compensation plans altogether.\(^{336}\) However, as explained by Hanyuan Party committee deputy secretary Bai Rangao, although Hanyuan officials did quietly pass this information up to their superiors, they did not share this information with the local residents because, “for one thing, if we cannot fulfill the promise [of increasing compensation to match national standards] it will be difficult to explain that to the people; secondly, if we publicize this information, it would be the equivalent of passing the problem up to the higher authorities.”\(^{337}\) Hanyuan County officials also had their own reasons to keep quiet about the compensation discrepancy: they themselves had been under-reporting regional incomes in the official statistics as a strategy to gain preferential economic policies from provincial- and central-level valuation data instead of doing their own investigations. Tan, Xinpeng, “Developer Misrepresents Good Land as Mountain Ravine.”

\(^{334}\) Ibid. Local government officials complained that the Hanyuan farmers were all studying national laws and regulations to find legal ground for their petitions – the local officials themselves did not know those laws and regulations and were therefore forced to do their own studying in order to understand the farmers’ arguments.

\(^{335}\) Ibid.

\(^{336}\) Ibid. For example, although the compensation rates for agricultural land were too low, compensation for non-agricultural lands had been left out entirely. Other excluded items included: compensation for standing crops, compensation funds to set up roads, communications and electricity services in the new areas, and compensation funds for one hundred and twenty three of Hanyuan’s local small-scale rural manufacturing enterprises.

\(^{337}\) Ibid.
leaders. This created a potentially embarrassing dilemma when the depressed income data was used for compensation calculations, so the Hanyuan County officials had a strong incentive to keep quiet rather than push for a widespread investigation by higher-level officials.

When the Hanyuan residents’ petitions did not bring results at the county level they started moving up through the administrative hierarchy. They filed petitions with the Ya’an Municipal Government, the Ya’an Municipal Party Committee, the Sichuan Provincial Government, the Sichuan Provincial Party Committee, the Sichuan DRC and the Sichuan provincial resettlement bureau, all to no avail. By summer 2004 Hanyuan residents were growing increasingly anxious because the compensation dispute was still unresolved, the scheduled damming of the river was just months away, and officials were still ignoring all of their petitions. Since they could not get redress at local or provincial levels they decided to petition central government offices in Beijing, and a group of representatives made two trips (in July and August 2004) to take their petitions to the State Council, the National Development and Reform Commission, the Ministry of Land Resources, the Ministry of Water Resources and

338 This is a common strategy often referred to as “putting on the ‘impoverished county’ cap.” Huang, Qi, “Sichuan Dadu River Hydropower Station Construction.”
339 Ibid.
the Ministry of Agriculture. They also began organizing collective petitions and quickly gathered over 10,000 signatures.

By late October 2004 Hanyuan residents were running out of time. Their extensive xinfang petition campaign still had not elicited a higher-level investigation, and they knew that Guodian Co. planned to open up the diversion channels and begin the actual dam construction on October 27. Furthermore, new problems were emerging as the relocation activities advanced. Hanyuan residents still had not received the promised 2000 RMB per household subsidy to defray moving costs, and there still were no housing structures at the relocation sites so they would all have to build temporary shacks. Land compensation was also inexplicably delayed. Most residents were scheduled to receive around 20,000 RMB in compensation per mu of land, but local officials still had not dispersed any of those funds.

341 Ibid.
343 Central News Agency Taiwan, “PRC Mouthpiece in Hong Kong Confirms Hanyuan Protest.”
Many Hanyuan residents decided that a mass protest was their only remaining option – otherwise, they faced forced relocation, inadequate compensation and an uncertain future. On October 27 thousands of residents gathered at the Pubugou construction site to physically block the planned river diversion.\(^{346}\) Paramilitary troops were stationed in a cordon around the construction site, but approximately 5000 protestors broke through the police barricades and organized a sit-in on the embankment, forcing a stop to all construction activities.\(^{347}\) Thousands more joined on October 28 until the crowds reached a maximum of approximately 40,000-50,000 protestors.\(^{348}\) Participants hoped their protests would accomplish three key goals: expose the issue to central-level leaders, open a dialogue with the county Party committee and the county government on compensation issues, and expose corrupt local officials.\(^{349}\) Hanyuan residents were careful to frame their protest as an appeal for a higher-level intervention in the compensation dispute rather than a protest against the Pubugou project itself or a rebellion against the CCP regime. For example, protestors chanted “We support Communist party General Secretary Hu Jintao” and carried banners and posters with slogans including: “Long live the People’s Republic of China!” “Long live the CCP!” “Build Pubugou for a prosperous Hanyuan County!” and “Squash greedy officials!”\(^{350}\) Protests continued on October 29, and regular


\(^{347}\) *Epoch Times*, “Violent Demolition and Relocation.”

\(^{348}\) Ibid.

\(^{349}\) Feng, Changle, “The 100,000-Person Rebellion in Sichuan’s Hanyuan Enters Final Stages.”

\(^{350}\) *Epoch Times*, “Violent Demolition and Relocation.” Han, Dongfang, “Problems Implied by the Sichuan Hanyuan Protest Incident.” “Zhuanjia jiexi 08 nian quntixing shijian: sanbu xingshi ke bimian
business activities ground to a halt as shopkeepers and schools closed their doors throughout the county.\(^{351}\) Local officials sent in a wave of paramilitary squadrons to break up the protesters using batons, tear gas and smoke bombs.\(^{352}\) According to local reports, scuffles broke out between police and protestors, and a local man was beaten to death by paramilitary troops.\(^{353}\) In response, thousands of angry residents marched through the streets carrying his body aloft toward the county government headquarters and attacked and looted a large county government office building.\(^{354}\)

On October 30 Sichuan Provincial Party Committee Vice Secretary Li Chongxi, Provincial Party Committee Political and Legal Commission Secretary Ou Zegao, and Provincial Vice Governor Wang Huaichen arrived in Hanyuan County to convene a five-level cadre meeting with officials from Ya’an Municipality, Hanyuan County, and all local township and village governments.\(^{355}\) To the protestors’

\(^{351}\) Business activities ground to a halt as shopkeepers and schools closed their doors throughout the county. 
\(^{352}\) Local officials sent in a wave of paramilitary squadrons to break up the protesters using batons, tear gas and smoke bombs. 
\(^{353}\) According to local reports, scuffles broke out between police and protestors, and a local man was beaten to death by paramilitary troops. 
\(^{354}\) In response, thousands of angry residents marched through the streets carrying his body aloft toward the county government headquarters and attacked and looted a large county government office building. 

\(^{355}\) Five-level cadre meetings involve officials from the provincial level down to the village level – i.e., all administrative levels except the national level (six-level meetings also involve national officials).
disappointment, the provincial leaders took a hard-line stance and Vice Secretary Li ordered all local officials to “resolutely protect the national top-priority construction project.” He did not directly acknowledge or address the protestors’ legitimate compensation concerns. Instead, he bombarded them with more empty rhetoric – he ordered Hanyuan residents to “take the big picture into consideration,” to support the expropriation and relocation activities carried out by local Party committees and local government officials, and to trust in the Party and the government to ensure that the “relocation sites can only get better and better, the [agricultural] production conditions can only get better and better, and the living environment can only get better and better.” The provincial delegation also vilified the previous days’ mass protests, called them an illegal act organized and instigated by “criminal elements,” promised harsh punishments for protest organizers, and ordered everyone involved in the rioting to surrender and turn themselves in to the police.

Hanyuan residents responded with another round of mass protests beginning on November 2, and local officials brought in more and more paramilitary squadrons to restore order. Over the following days, thousands of local residents tried to keep paramilitary troops away from protest sites; large crowds blockaded streets, surrounded incoming troop busses, and in some cases attacked paramilitary vehicles

356 Ibid.
357 Ibid.
358 Ibid.
and troops with sticks and other rudimentary weapons. Many of these confrontations
turned violent – one policeman and at least two protestors were killed, and there were
many injuries on both sides.\textsuperscript{360} On November 5, Sichuan Provincial Party Secretary
Zhang Xuezhong traveled to Hanyuan to meet with local officials and protest
representatives. Thousands of angry residents showed up to voice their complaints in
person, and the crowds surrounding the meeting site grew so large that Secretary
Zhang was reportedly trapped inside a government building for hours.\textsuperscript{361} By
November 6 over 6,000 paramilitary troops had arrived in Hanyuan County;
squadrons patrolled the streets with riot guns and shields and reportedly arrested
everyone in sight.\textsuperscript{362} The large paramilitary presence deterred most street protestors
but there were still a few thousand residents camping out and protesting at the dam
site.\textsuperscript{363}

\textsuperscript{360} The policeman was killed in a large clash on November 4; local officials call that incident the “11.4
Severe Violence Incident.” Bai Mingyun and Hao Xiaoming, “Zhou wei juxing changwei kuoda huiyi
bushu quan zhou weihu wending gongzuo” (Provincial Committee Convenes Standing Committee
Expanded Conference to Deploy Province-Wide Work to Defend Stability), \textit{Liangshan Ribao}
(Liangshan Daily), November 11, 2004, http://www.lsz.gov.cn/3/3.aspx?id=c0f142a9-9d0b-4b42-95ec-
08e1d5d48518&Channel=%E4%BB%8A%E6%97%A5%E5%87%89%E5%B1%B1&ChannelId=3&channelindex=%2Fjrls%2Findex.aspx. “Tension Easing, but Discontent Remains at Scene of Fatal
China Dam Clashes,” \textit{Agence France Presse}, November 7, 2004 [Lexis Nexis Academic]. “Top
Chinese Official Briefly Detained by Dam Protestors,” \textit{Agence France Presse}, November 6, 2004
[Lexis Nexis Academic]. “China Suspends Dam Project, Fires Cadres After Violent Clashes,” \textit{Agence
France Presse}, November 19, 2004 [Lexis Nexis Academic].

\textsuperscript{361} Zhao, Zifa, “People Killed in Sichuan’s Hanyuan.” \textit{Agence France Presse}, “Top Chinese Official
Briefly Detained by Dam Protestors.” “Tension Easing, but Discontent Remains at Scene of Fatal
China Dam Clashes,” \textit{Agence France Presse}, November 7, 2004 [Lexis Nexis Academic]. “Yimin
bouchang biaozhun huo dafu tigao Sichuan Pubugou dianzhan jiuyue fu gong” (Resettlement
Compensation Standards Substantially Increased: Sichuan Pubugou Power Station Construction
Recommences in September), \textit{Da Gong Bao} (Ta Kung News, Hong Kong), September 6, 2005,
as China Dam Protest Eases,” \textit{The Straits Times} (Singapore), November 8, 2004 [Lexis Nexis
Academic].

\textsuperscript{362} Zhao, Zifa, “People Killed in Sichuan’s Hanyuan.”

\textsuperscript{363} Ibid.
The central leadership intervened on November 6. President Hu Jintao and Premier Wen Jiabao ordered the Sichuan provincial government to immediately suspend all dam construction activities and maintain the suspension until the residents’ grievances were redressed. They also dispatched a central work group (led by State Council Deputy Secretary General Wang Yang) and ordered the group to stay in Hanyuan to thoroughly investigate the compensation dispute and meet face to face with local residents to hear their opinions on the issue. The CCP Central Committee issued an additional directive that officially labeled the protest the “10.27 Misinformed Migrants’ Large-Scale Public Gathering Incident” and explicitly stated that regular participants in the protests would not be punished. Central leadership investigations later revealed that the Hanyuan residents’ compensation complaints were legitimate: under the original compensation plan, they were only receiving one tenth of the amount mandated by national standards. Central and provincial-level officials therefore increased the compensation rates and charged several municipal and county-level officials with corruption; dismissed officials included Ya’an Municipal

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365 Lianhe Zaobao, “Central Leaders Stress Protecting the Farmers’ Interests.”

366 Central leaders stated that they would only punish the protestors who engaged in violent riots or committed violent acts against government officials and paramilitary troops. “Migrants” refers to the Hanyuan residents forced to vacate their homes and relocate to other areas due to the dam expropriations. Lianhe Zaobao, “Central Leaders Stress Protecting the Farmers’ Interests.” “Hujintao Wenjiabao jiu Hanyuan yimin juji shijian zuo si dian zhishi” (Hu Jintao Wen Jiabao Take on the Hanyuan Resetteler Assembly Incident and Issue Four Directives), Feng Huang Wei Shi (Phoenix TV), November 10, 2004, posted on the website for the Minyang City (Sichuan Province) State Land Resources Department: http://www.mytd.gov.cn/mo2.asp?NewsID=253&SmallClassID=2. Lianhe Zaobao, “Central Leaders Stress Protecting the Farmers’ Interests.”

367 “Yimin buchang biaozhun huo dafu tigao Sichuan Pubugou dianzhan jiuyue fu gong” (Migrant Compensation Standards Increased: Sichuan Pubugou Power Station Construction Recommences in September), Da Gong Bao (Ta Kung News, Hong Kong), September 6, 2005, http://www.cyol.net/cydgn/content/2005-09/06/content_1097815.htm.
Vice Mayor (and previous Hanyuan County Party Secretary) Tang Fujin, Hanyuan County Party Secretary Tan Zhengyu, and Hanyuan Deputy Party Secretary Bai Rangao.  

4.3.1. Protests Bring Higher-Level Official Intervention and Grievance Redress

The Hanyuan case supports the protest hypothesis introduced in chapter one:

H3b: When aggrieved citizens stage mass protests as a fire alarm tactic, higher-level leaders will generally intervene to redress the protestors’ grievances and discipline exposed malfeasants.

Hanyuan residents actively sought a central leadership intervention because they perceived a difference between central and local-level leaders: corrupt local cadres were benefiting from under-compensation and therefore had an incentive to ignore compensation grievances; in contrast, central leaders had nothing to gain from exploiting the Hanyuan residents and were therefore more likely to give their grievances a fair hearing. Hanyuan residents initially tried to reach central-level leaders through xinfang petitions, but their initial efforts were unsuccessful and the date for the river diversion was fast approaching. The residents therefore escalated from sanctioned xinfang petitions to non-sanctioned protests and carefully scripted

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369 As one local resident explained to reporters: “we don’t trust local governments any more but we certainly have confidence in the central government.” Quoted in: “Beijing Moves in to Defuse Dam Crisis,” *South China Morning Post*, November 18, 2004 [Lexis Nexis Academic].
their protest banners and slogans to ensure that central leaders would view their behavior as a call for help rather than a regime challenge.

Prior to the central leadership intervention, local officials took a hard-line stance and defined the protests as an illegal disturbance rather than a quasi-legitimate fire alarm. Local officials labeled the protests “bao luan” (a term meaning “riot” or “rebellion”) and refused to acknowledge any link between contentious protest activities and legitimate compensation grievances.\(^{370}\) When the provincial Party delegation traveled to Hanyuan to address local officials and residents, Sichuan Vice Party Secretary Li Chongxi called the protests an illegal disturbance instigated by a small group of “criminal elements” and claimed that he spoke directly with a number of villagers throughout Hanyuan County and could not find anyone who actually supported or identified with the protests (he claimed that they all strongly supported continued dam construction and were very angry about the protests).\(^{371}\)

Upon intervention, the central leadership immediately took a very different stance toward the Hanyuan protestors. By officially labeling the protests a “large-scale public gathering incident” instead of a “riot” or even a “mass incident,” the CCP Central Party Committee opened up the political space to treat the protests as a politically neutral incident instead of a contentious regime threat. Party Secretary Hu Jintao and Premier Wen Jiabao then bestowed clear fire alarm legitimacy on the


\(^{371}\) *Ya’an Daily*, “The Next Generation will be Better Off if the Current Generation does not Suffer Losses.” *Ya’an Daily*, “Bringing Affection, Bringing Policy, Bringing Solicitude.”
Hanyuan protests when they dispatched a central work group to investigate the Hanyuan residents’ compensation grievances, ordered local officials to suspend construction activities and disciplined the local cadres implicated in the compensation scandal.

Post-intervention, provincial-level leaders immediately changed course to conform to the leadership’s ‘legitimate fire alarm’ approach. On November 13, Sichuan provincial Party leaders convened a special expanded provincial Party committee meeting to address the Hanyuan protests and “study” the key points and directives handed down from Hu Jintao and Wen Jiabao.⁷² At this meeting, Provincial Party Secretary Xue Zhong described the protests as a legitimate call for help by aggrieved residents whose previous calls had gone unheeded.⁷³ Provincial Party cadres also stated that one of the four key lessons learned from the protests was the fact that “when the relocation compensation standards for home eviction/demolition and land expropriation are too low, the relocating masses may create a disturbance to protect their own interests; they may complain in an organized format and with extensive mass support.”⁷⁴ In other words, the protests were primarily a fire alarm based on legitimate compensation grievances, not just a series of illegal riots instigated by “criminal elements.”

⁷² This was an “expanded” provincial Party meeting because it was also attended by Party secretaries and deputy secretaries from cities and prefectures as well as representatives from a variety of provincial-level government departments with ties to the land issue. “Zai shiwei weihu wending gongzuo huiyi shang de jianghua” (Speeches at the Municipal Party Committee Meeting on Working to Protect Social Stability), posted on August 25, 2005 (meeting date November 13, 2004), Gongwen Yi (Document Exchange), http://www.govyi.com/gongwenxiezuo/xinfangweiwen/200508/14549.html.
⁷³ Ibid.
⁷⁴ Ibid. It is unclear whether this “lesson” is a provincial-level interpretation of more general directives handed down from the center or whether central leaders issued this specific lesson statement themselves.
There were no nationwide media reports publicizing the central government intervention – publication was limited to the immediate Hanyuan area (to appease protestors) and internal Party and government communications (to send a warning to malfeasant officials). For example, local Hanyuan television stations immediately announced the construction suspension and even tracked the progress of the central government jet as it carried the State Council work group from Beijing to Sichuan.\(^\text{375}\) Upon arrival in Sichuan, State Council Deputy Secretary General Wang Yang’s announcements regarding grievance redress were also publicized in Hanyuan as were announcements regarding corruption investigations and the subsequent disciplinary actions against local cadres.\(^\text{376}\) In contrast, China’s domestic media (reportedly under a complete CPD news blackout on the Hanyuan incident) did not cover the Hanyuan protests or the subsequent leadership intervention, and Hanyuan county officials told foreign reporters that the protest reports were just rumors.\(^\text{377}\)

The CCP Discipline Inspection Commission created anti-corruption study videos on the Hanyuan incident and distributed these videos internally to serve as a


warning lesson about corruption and its consequences. Sub-national internal discipline inspection commissions organized mandatory group viewings and study sessions during which cadres were reportedly warned about the dangers of following in the Hanyuan officials’ malfecesant footsteps. In keeping with the leadership’s ‘legitimate fire alarm’ interpretation, these disciplinary videos explicitly stated that the Hanyuan officials’ disciplinary violations and illegal actions had been “exposed by the Hanyuan county resettlement mass incident.” In other words, the leadership was delivering a very clear warning message: protest fire alarms exposed corrupt cadres in Hanyuan and the leadership responded with serious disciplinary action; other cadres should think twice before engaging in similar corrupt acts because they too could be exposed by the same mechanism.

Although the Hanyuan protests did serve as a relatively successful fire alarm, they also demonstrated how quickly these protests can change course from a relatively peaceful fire alarm attempt to a sustained violent conflict between aggrieved citizens and security forces. Local leaders are often prime beneficiaries in the corrupt land deals triggering citizen grievances and therefore have a strong incentive to suppress

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complaints about those deals. As a result, they often take a hard-line stance toward fire alarm protesters by emphatically denying grievance legitimacy and dispatching paramilitary troops to suppress protest activities by force. As the Hanyuan case demonstrates, since the land victims are so desperate to avoid the expropriation status quo they may respond to these crackdowns with escalation instead of capitulation. Escalation then increases the probability of citizen injuries and casualties, and the resulting anger can trigger further escalation and violence.

Central leadership directives and associated Party meetings on the Hanyuan case addressed these dangers in depth. The internal Party and government Hanyuan incident lessons repeatedly order cadres to pay more attention to citizen grievances and to solve those problems early on to prevent grievance-induced protests and avoid the associated social stability threats. These lessons also order cadres to use more caution when managing and suppressing grievance-induced mass protests – specifically, to avoid using coercive measures unless absolutely necessary, to avoid deploying paramilitary troops unless absolutely necessary, and to use extreme caution to ensure that police and paramilitary suppression tactics do not trigger protest escalation and violence. Unfortunately, given the extremely high financial rewards associated with illegal land deals and the relatively weak center-local oversight in this sector, it is highly unlikely that these directives will significantly improve land grievance redress or reduce land protest violence in the near term.

382 Ibid.
4.3.2. Governmental Fire Alarm Agency Loss in the Hanyuan Case

The Hanyuan case also demonstrates the barriers Chinese citizens face when they attempt to redress their land grievances through governmental fire alarms. Local-level xinfang petitions were ineffective in this case because the local government was benefitting from the depressed compensation rates and therefore had a financial incentive to ignore citizen complaints on this issue. This project involved at least three different administrative levels: Hanyuan County, Ya’an City and Sichuan Province. Sichuan Provincial leaders strongly supported the project and initiated the expropriation and compensation malfeasance themselves – for example, provincial-level officials gave Guodian Corporation the permission to launch land expropriations without waiting for the legally-required State Council approval, and provincial-level officials purposefully misrepresented the fertile Hanyuan farmland as a barren mountain ravine to reduce construction costs.383 In other words, provincial-level officials were directly involved in the Hanyuan land malfeasance and therefore had a strong incentive to suppress fire alarms attempting to expose the problem. Hanyuan County and Ya’an City officials both answer to Sichuan Province, so county and city-level complaints were also ineffective. Hanyuan County residents could only achieve governmental fire alarm redress at the national level, but the national petition offices were overloaded with complaints and unable to address the issue before the October

27 deadline. As a result, the Hanyuan residents had just two options: escalate to unsanctioned fire alarm methods or give up and suffer extreme welfare damage.

4.4. Conclusion

This chapter has presented two detailed case narratives of official malfeasance and fire alarm oversight in China’s rural land sector: one case of eventual governmental fire alarm redress, and one case of failed governmental fire alarm attempts leading to mass protests. Unfortunately, both of these cases suggest that China’s land sector fire alarms do not work well, primarily due to governmental fire alarm agency loss and local official protectionism. Chinese leaders do not allow non-governmental fire alarms in this sector, so Chinese citizens can only pursue grievance redress through the local state, and local officials have strong incentives to ignore or suppress their fire alarm complaints. As a result, many land victims still view mass protests as a key method of choice for fire alarm redress, and Chinese leaders continue to face serious instability risks in this sector.
Chapter 5

Food and Drug Safety:

Official Malfeasance and Fire Alarm Policy in a Low-Risk Sector

5.1 Introduction

This chapter examines official malfeasance and fire alarm policy in China’s food and drug sector. Chinese food and drug manufacturers are endangering consumers by secretly swapping cheap and potentially life-threatening industrial chemicals for the more expensive ingredients used to produce thousands of products ranging from antibiotics to duck eggs. In response, Chinese leaders have issued a wide range of detailed laws, regulations and standards designed to keep these dangerous products off the market. However, these new policies are only effective when they are implemented and enforced at the local level, and local officials routinely undermine policy implementation to protect local manufacturers and sellers. As a result, despite good intentions at the national level, China’s food and drug safety initiatives have been largely ineffective, and public anger is mounting over the government’s apparent inability to protect the basic health and safety of its citizens. Chinese leaders are therefore looking for an oversight fix in this sector, and they are increasingly turning toward fire alarms as a potential solution.

Based on the three instability risk indicators outlined in chapter one, Chinese leaders face relatively low malfeasance-induced instability risks in this sector:
1. **Perceived welfare impacts are generally relatively low.** Although some cases do result in severe injuries and fatalities, the majority of these cases have relatively low welfare impacts, and many victims may not even realize that they have consumed substandard or harmful products.

2. **Food and drug malfeasance is conducted by a mix of governmental and commercial actors.** As a result, Chinese leaders will always have convenient commercial scapegoats in this sector, and that will reduce some of the risks from non-governmental fire alarms.

3. **Food and drug malfeasance generally victimizes geographically dispersed communities that cannot easily organize for collective action.** Market distribution spreads faulty food and drug products over a large geographic area, so within-group communication is generally very difficult. As a result, protests should not be likely in this sector, even when the perceived welfare impacts are relatively high.

These indicators suggest that malfeasance-induced social instability risks are relatively low in this sector: food and drug protests are relatively rare, and public safety exposés should not damage the regime’s reputation. Food and drug safety is therefore best described as a low-risk policy sector, and that risk level should produce the following policy patterns:

- **Governmental vs. Non-Governmental Fire Alarm Openness:**
  - (H1a) Chinese leaders should allow aggrieved citizens to access governmental fire alarms in this sector.
  - (H1b) Non-governmental fire alarms should also be completely open – Chinese leaders should not apply sector-specific media or social organization restrictions to restrict these institutions in the food and drug sector.

- **Governmental vs. Non-Governmental Fire Alarm Publicity:**
  - (H2a) Chinese leaders should publicize governmental fire alarm institutional improvements and at least some governmental fire alarm success cases to encourage food and drug victims to use these institutions for grievance redress.
  - (H2b) Chinese leaders should publicize non-governmental alarm-ringing and resultant higher-level official responses to encourage food and drug victims to use these institutions for grievance redress.

- **Cyclical Reform and Innovation:**
o (H3a) China’s food and drug oversight institutions will not remain constant over time: if Chinese leaders receive negative feedback on fire alarm institutional performance, they will launch further rounds of oversight reform to address those problems.

This chapter provides evidence to support these predictions. As expected, Chinese leaders allow and strongly encourage both governmental and non-governmental fire alarms in this sector. Furthermore, unlike the environmental protection sector, they do not issue food and drug state secrets regulations to contain non-governmental fire alarms within sector-specific political boundaries. However, this openness does not mean that China’s food and drug fire alarms are always effective. China’s food and drug regulatory regime is extremely fragmented, and China’s many food and drug regulators often refuse to coordinate with one another, especially at the local level. Food and drug victims generally need some form of higher-level intervention to enforce and coordinate local-level redress operations, but higher-level official resources are limited – they can only intervene in a small minority of these cases, and that means that many food and drug victims will fail to achieve effective redress. Overall, this sector demonstrates that fire alarm institutions (even relatively open fire alarm institutions) cannot overcome bad regulatory design. China needs a more effective food and drug regulatory regime that can handle the majority of these fire alarm complaints at the local level, and they are still reforming in an attempt to achieve that goal.

The rest of this chapter will proceed as follows. Section 5.2 will introduce China’s food and drug institutions and highlight the oversight problems that foster official malfeasance and citizen discontent in this sector. Sections 5.3 - 5.5 will
outline the fire alarm policies Chinese leaders use to address those problems. Section 5.6 will outline the police patrol reforms Chinese leaders are pursuing in parallel with their fire alarm innovations, and section 5.7 will conclude.

5.2. Institutional Background: Reforming the Command and Control Agencies to Create a Post-Reform Market Regulatory Regime

Food and drug safety was never a critical issue in China’s command and control era. In the food sector, China’s pre-reform supply chains primarily transferred staple grains and produce from rural farms to nearby urban areas; farmers had no access to chemical fertilizers or pesticides, food processors could only access a small range of food additives, and there were very few spoilable products in circulation (such as meat or dairy). As a result, food safety risks were very low, and food safety guidelines primarily promoted hand washing, pest control and other basic hygiene practices. In the pharmaceutical sector, large state-owned manufacturers obtained their raw materials through central allocation, produced a relatively narrow range of drugs (primarily antibiotics, aspirin, penicillin and other staple pharmaceuticals) and distributed their products through state-run hospitals and clinics. State agencies managed every step of the production and distribution process without

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386 For example, see: “Shipin weisheng guanli shixing tiaoli” (Trial Provisions for Food Hygiene Supervision), P.R.C. State Council, August 17, 1965, Chinese version available at: http://news.xinhuanet.com/ziliao/2005-02/02/content_2538913.htm (last accessed June 1, 2010).
profit incentives, so there were very few incentives or opportunities to distribute harmful products.\(^{387}\)

This equilibrium shifted dramatically when reform-era leaders decentralized their food and drug sectors and opened them up for private entry and market competition. Profit-driven producers (large and small, state-owned and private) suddenly had the incentives to cut costs with substandard (and sometimes poisonous) production inputs than endangered consumer health. At the same time, many new (and often small-scale) producers and sellers were entering the market with a diverse array of new products and new processing methods, and this increasing market diversity widened information asymmetries between buyers and sellers.\(^{388}\) Reform-era leaders needed to construct a new regulatory regime to supervise these expanding markets and protect Chinese consumers from faulty products. Toward that end, Chinese leaders began reforming their command and control agencies to create new market regulators, and they immediately encountered two critical regulatory design dilemmas.

First, China’s post-reform food and drug supply chains are long and complex, and Chinese leaders must decide whether to consolidate supply chain regulation under one massive food and drug regulator (i.e., whether to follow the U.S. FDA model) or to divide these regulatory tasks among multiple agencies. This dilemma is

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complicated by the fact that so many agencies can logically claim jurisdiction over food and drug safety: the Ministry of Agriculture traditionally controls farm operations, the Ministry of Health traditionally controls food hygiene and pharmaceutical distribution, and the Ministry of Commerce and the State Administration for Industry and Commerce (SAIC) traditionally control product circulation. When Chinese leaders attempt to consolidate food and drug authority under a single regulator, the other agencies all lobby ferociously against it.\textsuperscript{389} However, when Chinese leaders divide regulatory tasks among multiple agencies, those agencies often fight over fines and licensing fees, issue conflicting regulations for the same products, refuse to share information on cross-jurisdictional issues and point fingers at one another when things go wrong.\textsuperscript{390}

Second, as in other regulatory sectors, Chinese leaders must decide whether to centralize food and drug authority under the vertical functional agencies or to decentralize authority out to the local People’s governments. Regulatory centralization gives the functional agencies (Health Ministry, Agriculture Ministry, etc.) primary budgetary and personnel control over their subordinate regional offices, and that vertical control can improve standardization (since the local offices all follow the same regulatory standards passed down from the center) and reduce regional


\textsuperscript{390} Ibid.; Liu, Hobbs and Kerr (2009). Multi-agency coordination problems are particularly bad at the sub-national level, where local agencies often ignore central directives aiming to clarify regulatory jurisdictions.
protectionism. In contrast, regulatory decentralization transfers budgetary and personnel authority down to the local People’s governments, and that can improve local-level inter-agency coordination (since the local regulatory offices all answer to the same local principal) and encourage local innovation. In general, the functional officials lobby for centralization, and local People’s government officials lobby for decentralization.

Chinese leaders have not yet settled on an ideal regulatory model for their food and drug sector. Instead, they have struggled with these design issues from the beginning of the reform era to the present, and they experiment with different regulatory structures (fragmentation vs. consolidation; horizontal vs. vertical management) on a trial and error basis. When one regulatory model produces a major safety scandal, the political fallout generally weakens that model’s supporters and gives their opponents an opportunity to lobby for a change in direction.


In the first stage of the reform era, Chinese leaders created a fragmented and decentralized regulatory regime that assigned some regulatory tasks to legacy agencies

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392 Liu, Jingjing, “Drug Regulatory Authority Revolves Again.”

393 Ibid. For example, when Chinese leaders re-decentralized the SFDA in 2008, over one thousand regional SFDA bureau heads signed a joint petition to protest that decision. Huang, Zhiwei, “Drug Regulator’s New Policy Has Been Reversed.”
from the command and control era and created new agencies to manage others. On
the production side, the production management agencies from the command and
control era became market regulators overnight and supervised many of the same
activities post-reform. In the food sector, the Ministry of Agriculture continued to
supervise farm production; however, instead of directly managing production
activities through central planning, the MOA issued and implemented new agricultural
regulations and standards. In the pharmaceutical sector, Chinese leaders decentralized
their state-owned manufacturers by transferring SOE management from the State
Pharmaceutical Association (SPA) to the local People’s governments. Post-reform,
the SPA took on a regulatory role and began setting product quality standards and
issuing production licenses for the same enterprises it had managed pre-reform.394

The Ministry of Health (MOH) also took on new regulatory responsibilities. Pre-
reform, the MOH supervised food hygiene (for the state distribution system) and
managed state hospitals and clinics; post-reform, as marketization and privatization
expanded regulatory duties in these two sectors, the MOH mandate shifted from
central planning to standard-setting and licensing.395

On the distribution side, Chinese leaders were creating new regulatory
agencies to supervise market circulation and product quality in general, and those

Promise and Tragedy at the State Food and Drug Administration,” Ch. 7 (pp. 139-162) in John Gillespie
and Randal Peerenboom (eds.), Regulation in Asia: Pushing Back on Globalization (London and New
York: Routledge).
395 Zeng, Xianghua (2009), “Shipin anquan jianzhu li de shizhi zhuanhuan yu fazhi hua” (Food
Safety Oversight Model: Fundamental Transformation and Legalization), Xinan Zhengfa Daxue Bao
(Journal of Southwest University of Political Science and Law), Vol. 11, No. 1, pp. 22-30. Also see:
1965 P.R.C. Provisional Regulations for Food Hygiene Supervision, 1984 P.R.C. Provisional Food
Hygiene Law and 1995 P.R.C. Food Hygiene Law.
agencies had broad regulatory mandates that included food and drug sales. In 1993 Chinese leaders created the China State Bureau of Technical Supervision (CSBTS) and charged the CSBTS with supervising product quality for all goods nationwide, including food and drug products.\textsuperscript{396} In 1994 Chinese leaders promulgated the first \textit{P.R.C. Consumer Rights Protection Law}, and that law named the SAIC as the primary agency responsible for protecting consumers’ rights and interests and gave the SAIC full authority to investigate and punish the enterprises that produce and/or distribute harmful goods, including food and drug products.\textsuperscript{397}

Unfortunately, Chinese leaders spread these regulatory responsibilities around without clarifying inter-agency jurisdiction, and that created inter-agency competition and market chaos. For example, in the pharmaceutical sector, both the MOH and the SPA had the authority to set pharmaceutical standards and issue production licenses.\textsuperscript{398} These two agencies represented two very different interest groups – the MOH was closely aligned with hospitals and the SPA was closely aligned with manufacturers – and they battled incessantly over their overlapping regulatory

\begin{flushleft}
\textsuperscript{396} Article 6, \textit{“Zhonghua renmin gonghe guo chanpin zhiliang fa” (P.R.C. Product Quality Law)}, National People’s Congress Standing Committee, promulgated February 22, 1993, effective September 1, 1993, Chinese version available at: http://www.chinacourt.org/flwk/show.php?file_id=16742 (last accessed June 28, 2010). The Product Quality Law orders the CSBTS to work together with other quality-control agencies (such as the MOH); however, the law does not specify how they should do so, and the jurisdictional boundaries are overlapping. In 2001 Chinese leaders merged the CSBTS with the State Administration for Import and Export Inspection and Quarantine to create the State Administration for Quality Supervision, Inspection and Quarantine (AQSIQ).
\textsuperscript{398} Yang, Dali L. (2009); Liu, Peng (2010).
\end{flushleft}
jurisdictions. Neither agency was willing to cede regulatory authority to its competitor, and they were also unwilling to cooperate, so they issued conflicting standards and licensing requirements for the exact same products, and China’s pharmaceutical manufacturers had no idea which set of regulations to follow.\textsuperscript{399}

Chinese leaders also decentralized all of these agencies, and that created even more market chaos. The local People’s governments had personnel and budgetary authority over all of the post-reform food and drug regulators, and from the local People’s government perspective, the food and drug sectors were pillar industries with huge growth potential, and they had a strong incentive to bring as many enterprises and products onto the market as quickly as possible.\textsuperscript{400} From that perspective, product safety regulation was an inconvenient roadblock, and they used their personnel and budgetary controls to protect local enterprises from profit- and growth-dampening regulatory enforcement.\textsuperscript{401} As a result, by the mid-1990s Chinese markets were awash in shoddy food and drug products, and Chinese leaders began looking for new institutional solutions.\textsuperscript{402}

\textbf{5.2.2. Limited Consolidation and Verticalization: 1998-2008}

\textsuperscript{399} The MOH had a strong incentive to encourage generic drugs and facilitate market entry (to reduce pharmaceutical market prices and associated hospital costs), and the SPA had a strong incentive to encourage innovation and control market entry to increase industry profits. Chai, Huiqun, “Yiyao jianguan shinian fenhe zhitong” (Ten-Year Pain of Hospital and Pharmacy Regulatory Separation and Re-Integration), Nanfang Zhoumo (Southern Weekend), April 2, 2008, available at: http://www.infzm.com/content/6351/0 (last accessed June 1, 2010).


\textsuperscript{401} Ibid.\textsuperscript{402} Ibid.

Chinese leaders responded to these problems by shifting toward a more consolidated and vertical regulatory model based on the U.S. FDA. First, in 1998 Chinese leaders combined the MOH Drug Management Bureau with the SPA to create a single drug regulator. As a ministerial-level agency, the MOH outranked the vice-ministerial SPA, but the SPA outranked the MOH Drug Management Bureau, so SPA officials (and the industry interests they represented) gained the upper hand in the new State Drug Administration (SDA). The new SDA launched an ambitious national drug reform program, and in 2000 Chinese leaders centralized the SDA up to the provincial level to facilitate national standardization and to reduce local government interference in SDA reform efforts. By 2003 the new drug regulator appeared to be a shining star: it was straightening out China’s chaotic drug market, forcing manufacturers to abide by national safety standards, closing down illegal enterprises and bringing in new foreign investors. In contrast, food safety problems were continuing under MOH management (and the MOH was reeling from the 2003 SARS outbreak and subsequent cover-up allegations), so Chinese leaders took primary food

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regulatory authority away from the MOH and gave it to the SDA, thus renaming the agency the State Food and Drug Administration (SFDA).  

Unfortunately, China’s new regulatory regime faced three critical problems that undermined this system from the beginning. First, Chinese leaders never fully consolidated regulatory authority under the SFDA. The Ministry of Health (MOH), the Ministry of Agriculture (MOA), the State Association for Industry and Commerce (SAIC) and the General Association of Quality Supervision, Inspection and Quarantine (AQSIQ) all lobbied hard to protect their mandates and successfully held on to many key regulatory responsibilities. As a result, the SFDA could not fully execute its authority without cooperation from multiple agencies, but those agencies outranked the SFDA and ignored its requests.

Inter-agency coordination was particularly messy at the sub-provincial level because these agencies followed different organizational models. The MOH, the

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406 “Guanyu yinfa guojia shipin yaopin jiandu guanli ju nei she jigou ji zhineng guiding de tongzhi” (Notice on Promulgating the Stipulations for the State Food and Drug Administration Internal Organization and Role), State Food and Drug Administration, June 23, 2003, available at: http://www.sda.gov.cn/WS01/CL0095/25228.html (last accessed July 2010). Food processing was becoming more and more complex, and the MOH was not keeping up with technological advances. In contrast, the SDA had developed new technical resources for drug sector testing and standardization, so Chinese leaders were hoping the SDA could extend those same resources into the food sector. In addition, Chinese medicinal health-food products (food products with added medicinal ingredients) were booming, and the SDA and the MOH had been bumping into one other in those markets. The safety scandals associated with Chinese medicinal health-food products were increasing, and that helped convince Chinese leaders that these two sectors should be combined under one regulator. 
409 Huang, Hanqi and Zhang Chan (2010), “Cong sanlu naifen’ shijian kan woguo zhengfu de shipin anquan jianguan” (Viewing Chinese Government Food Safety Supervision Through the ‘Sanlu Milk
MOA and the SAIC were all decentralized, with sub-national bureaus answering to the local People’s governments, and the local People’s governments often pressured those bureaus to overlook non-compliant activities that contributed to the local tax base.\textsuperscript{410} In contrast, the SFDA was partially centralized, with sub-provincial bureaus answering to their vertical functional superiors, and centralization helped shield the SFDA from local protectionism. However, local SFDA offices still had to coordinate policy enforcement with the decentralized regulatory bureaus (MOH, MOA, SAIC, etc.) at each territorial administrative level. Those bureaus generally sided with the local People’s governments to protect local enterprises (since the local People’s governments were their direct principals), and those bureaus all outranked the SFDA at every territorial administrative level, so sub-national policy enforcement was very difficult to coordinate.\textsuperscript{411} Furthermore, when these problems produced food and drug safety scandals, regulatory fragmentation and overlapping jurisdictions made it very hard to figure out which agencies were at fault, so regulatory malfeasance often went unpunished.\textsuperscript{412}

Second, within the SFDA, verticalization centralized authority under a small group of national-level officials, and many of those officials – including national-level SFDA Commissioner Zheng Xiaoyu – were captured by industry interests. Sub-national SFDA officials were all accountable to their superiors in the vertical hierarchy, and national-level SFDA officials were accountable to the State Council;
however, the State Council did not have the knowledge or the resources it would need to effectively monitor SFDA activities, so the national-level SFDA leaders had wide leeway to engage in rent-seeking and to order their subordinates to do the same.  

Third, no matter how Chinese leaders organize their regulators, China’s food and drug sectors are just too large-n and too complex for effective top-down regulatory policing.  

For example, China had 448,000 domestic food production enterprises as of August 2007, and at least 353,000 of those enterprises were small businesses employing less than 10 people.  

In comparison, the U.S. FDA regulates just over 200,000 food production firms – a much more manageable task.  

China’s food processors are also widely dispersed geographically with many smaller plants feeding into larger firms, and that can make it very difficult to pinpoint the source of dangerous products.  

Regulatory enforcement is further complicated by the fact that rural farmers and small businessmen operate many of these small processing plants

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out of their own households with no understanding of the standards or regulations that apply to their products.\footnote{Ibid. These small household processors are also highly flexible – they can quickly change locations and products to meet market demands or evade regulatory crack-downs.}

On the pharmaceutical side, China had 6,913 drug manufacturers by year-end 2007, and the market is highly fragmented – China’s ten largest firms control just 20% of the market; in contrast, at least 50% of the market is concentrated among the top ten firms in most developed countries.\footnote{State Council Information Office Whitepaper, “Status Quo of Drug Supervision in China,” July 2008 (http://eng.sfda.gov.cn/cmsweb/webportal/W43879541/A64028182.html). “China Pharmaceutical Industry: Analysis and Market Trends,” Research and Markets, March 2008 Report (http://www.researchandmarkets.com/reports/c86240).} Chinese pharmaceutical firms generally lag behind their foreign rivals in R&D and product innovation so they focus primarily on churning out multiple new imitations of generic drugs that are already on the market.\footnote{Hepeng Jia, “Poor Enforcement Could Jeopardize China’s Drug Innovation Policy,” Nature Biotechnology 24 (October 2006), 1182 – 1183 (http://www.nature.com/nbt/journal/v24/n10/full/nbt1006-1182.html).} This business strategy further taxes domestic regulators because Chinese law defines each imitation as a new product that requires a “New Drug Approval” (NDA) certificate from the SFDA. In contrast, since most developed countries define “new” drugs more narrowly, their regulators process a much smaller number of NDA applications each year. For example, in 2004 the US FDA approved only 136 NDA applications but China’s SFDA approved approximately 10,000.\footnote{Dale Chenoweth (2005), “Is More Really Less in China’s New Drug Approvals?” Drug Discovery Today, Vol. 10, No. 17, pp. 1140-1142.} This massive number of incoming Chinese NDA applications overtaxed SFDA staff and slowed down application processing times, and the resultant logjam gave Chinese companies
huge incentives to pay extra fees to move their applications to the top of the stack (or to bypass the process altogether).\textsuperscript{421}

Due to these three problems – regulatory fragmentation, insufficient internal SFDA oversight and market complexity – safety scandals have continued to rock Chinese markets despite the post-1998 regulatory reforms, and Chinese consumers have become increasingly concerned about food and drug safety and increasingly critical of CCP performance in this sector. In response, Chinese leaders are turning toward fire alarms to address both the regulatory gaps and the resultant citizen dissatisfaction. Since the Chinese citizens are directly impacted by local-level food and drug malfeasance, they can provide higher-level leaders with the feedback they need to enforce sub-national policy compliance, and fire alarm institutions can also improve citizen satisfaction by giving them new avenues for grievance redress.

5.3. Fire Alarm Policy in the Food and Drug Sector

Chinese leaders employ a relatively unrestricted fire alarm strategy in this sector – they generally allow and encourage food and drug victims to utilize all possible fire alarm channels, both governmental and non-governmental. For example, in the \textit{National Eleventh Five-year Plan for Food and Drug Safety}, Chinese leaders describe their fire alarm improvement goals for 2006-2010 as follows:

\begin{quote}
Fully utilize the positive role of food and drug safety industry associations, scholarly associations and [social] intermediary organizations for building trust, for industry self-regulation and for promoting food and drug safety. Encourage the establishment of every
\end{quote}

\textsuperscript{421} Yang, Dali L. (2009).
kind of food and drug safety professional organization and fully utilize their counsel for strategic decision-making. Strengthen the publicity of food and drug safety laws and regulations and [improve] general legal education…encourage the news media to conduct public opinion supervision within legal boundaries and to create favorable conditions for government supervision. Take full advantage of the consumers’ supervision abilities, further perfect the channels for collecting information about consumer complaints; establish a system for public participation in the supervision of market circulation, and establish strong communication channels between consumers and the government in the food and drug safety arena.422

In other words, Chinese leaders are opening up both governmental and non-governmental fire alarms in this sector, and they strongly encourage their citizens to take an active supervisory role via the judicial system, the xinfang complaint system, the mass media and social organizations. Furthermore, unlike the environmental protection sector, they do not issue food and drug state secrets regulations to contain these fire alarms within sector-specific political boundaries. On the other hand, this general openness does not mean that China’s food and drug fire alarms are always effective.

In reality, malfeasance victims often face particular difficulties in this sector, for three reasons. First, supply chain complexity and regulatory fragmentation widen information asymmetries between food and drug malfeasants and their victims – it is very difficult for the average citizen to track down the specific enterprises and/or agencies responsible for a particular food or drug scandal, and that makes it very hard to seek grievance redress. Second, inter-agency coordination is needed to redress

most food and drug grievances, and inter-agency coordination is very difficult to achieve at the local level. Food and drug victims generally need some form of higher-level intervention to enforce and coordinate local-level redress operations, but higher-level official resources are very limited, so many aggrieved citizens will fall through the cracks. Third, victim coordination is particularly difficult in this sector because the welfare impacts generally do not create tight-knit local-level victim groups, and China’s social organization regulations prohibit the cross-regional linkages that most geographically dispersed groups would need for effective collective action. As a result, it is very difficult for food and drug victims to communicate with one another and use collective action to overcome information asymmetries, resource constraints and other barriers to grievance redress. The following sections will discuss China’s governmental and non-governmental fire alarm policies and these sector-specific difficulties in detail.

5.4. Governmental Fire Alarms in the Food and Drug Sector

Regulatory fragmentation and supply-chain complexity pose particular challenges for governmental fire alarms in this sector. Primarily, it is very difficult for most food and drug victims to pinpoint the specific enterprises and/or administrative agencies responsible for a particular safety scandal, and that makes it very hard to seek redress against those enterprises and/or agencies through governmental channels. In addition, even when the victims actually can pinpoint the responsible parties and local officials actually are willing to accept and redress their complaints, inter-agency
coordination problems routinely impede redress enforcement. This section will discuss China’s food and drug governmental fire alarm policies and problems in detail.

5.4.1. Administrative Reconsideration and Administrative Litigation

In theory, if food and drug regulators issue licenses to sub-standard producers or sellers and the licensed enterprises produce and/or distribute products that endanger consumer health, the victimized consumers can contest the original licensing decisions through administrative reconsideration or administrative litigation.\(^{423}\) In reality, these two fire alarm pathways are virtually ignored in the food and drug sector, for two reasons.

First, China’s food and drug regulatory regime is so fragmented that it is very difficult to pinpoint the specific agencies responsible for a particular safety scandal.\(^{424}\) Almost any food or drug scandal could potentially involve, at a minimum, the SFDA, the Ministry of Health, the AQSIQ and the SAIC. China’s administrative reconsideration proceedings are generally so biased against consumers that the process is practically defunct; in the food and drug sector, consumers face the added

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complication of not knowing where to even file these applications.\textsuperscript{425} For administrative lawsuits, regulatory fragmentation gives administrative defendants an additional loophole that they can use to deny liability. When scandals emerge, all of the implicated agencies generally respond by denying responsibility and arguing that one (or multiple) of the other agencies is at fault, and it is very difficult for consumers to contest agency claims on jurisdictional issues. Even if administrative plaintiffs do provide legislative evidence to support their claims about a particular agency’s liability, local judges are still likely to side with the local government for political reasons.\textsuperscript{426}

Second, from the Chinese leadership’s perspective, food and drug fire alarms need to be fast-moving: the longer the harmful products remain on market shelves, the more consumers will buy and consume them, and that increases the number of victims and increases the political fallout Chinese leaders may face once the scandal finally breaks. In that context, slow-moving administrative reconsideration and litigation proceedings are not ideal fire alarm pathways. Furthermore, these proceedings can only contest “concrete” administrative acts such as production licenses, and even if reconsideration committees or administrative judges side with the consumers – which


is generally unlikely – revoking a single production license will not necessarily address the root problem. The local court must still depend on the local food and drug regulators to investigate the alleged product safety violation and force the company to cease production, and the regulator can easily refuse to do so or simply re-issue the contested license and claim that the enterprise has already rectified the problem.

Due to these factors, neither the Chinese leaders nor their citizens have made a strong effort to utilize administrative reconsideration or administrative litigation to expose and redress food and drug problems. Instead, they are primarily funneling governmental fire alarm complaints through civil litigation and the xinfang petition system.

5.4.2. Civil Litigation

Due to the challenges mentioned above – and the general judicial bias against administrative plaintiffs – Chinese consumers generally prefer to sue malfeasant food and drug enterprises directly instead of going after the government agencies that licensed them. Chinese consumers still face serious difficulties tracing shoddy products back to their producers and proving producer liability in court; however, Chinese courts are much more likely to rule against an enterprise than to rule against the local government, and civil lawsuits at least offer the possibility of immediate monetary compensation.

427 In the food and drug sector, these two administrative channels are primarily utilized by enterprises contesting unfavorable regulatory actions (such as fines and licensing refusals).
Chinese leaders took the first step toward opened up civil litigation as a food and drug fire alarm in 1982. China’s 1982 Food Hygiene Law states that:

Those who violate the [Food Hygiene] Law and cause food poisoning accidents or other food-borne illnesses must accept responsibility for compensating those damages. The injured parties have the right to request damage compensation. Damage compensation includes medical expenses, lost wages, living subsidies, funeral expenses and surviving-dependant pensions…victims or their agents can go directly to the People’s Court to file a [compensation] lawsuit.\textsuperscript{428}

China’s 1986 General Principles of Civil Law, 1993 Product Quality Law and 1994 Consumer Rights Protection Law extended civil liability to include pharmaceuticals and other market goods.\textsuperscript{429} If Chinese consumers purchase faulty food or drug products and those products cause personal harm, these laws give consumers the right to file a civil lawsuit to seek compensation from the producers and/or sellers.\textsuperscript{430}

Unfortunately, as in all sectors, these civil compensation suits are resource-consuming, time-consuming and difficult to win: food and drug plaintiffs must hire legal


\textsuperscript{430} If Chinese consumers pursue legal redress under the 1993 Product Quality Law, they must pursue arbitration as a first step; consumers can also file civil lawsuits, but they cannot do so without first exhausting the arbitration process (Article 35). Chinese leaders upheld the arbitration requirement when they revised the law in 2000 (Article 47). In contrast, the Food Hygiene Law and the Consumer Rights Protection Law grant immediate judicial access, i.e., there is no arbitration pre-requisite.
representation, pay court fees, overcome judicial protectionism, and, in some cases, travel long distances to attend court hearings. Plaintiffs must also gather evidence to support their claims, and evidence burdens are particularly onerous in the food and drug sector.

For example, the 1993 Product Quality Law states that producers and sellers are generally liable for consumer damages from “defective” products, which the law defines as products that pose “unreasonable dangers” to consumer health and/or violate national or industry-specific product safety standards. However, producers can escape liability if they can prove one of the following: (1) they did not put the product into circulation, (2) the product did not contain the defect when they did put it into circulation, or (3) the producer’s quality control measures could not have detected the problem because science and technology had not advanced to that point when the product entered the market. If the producer evades liability through one of the above loopholes, Chinese consumers can file a lawsuit against the seller, but they must then provide evidence to prove that the seller is at fault. China’s 1991 Civil Procedure Law states that plaintiffs bear the burden of proof in civil lawsuits (unless it is explicitly reversed, as will be discussed below); therefore, from a civil law standpoint, food and drug products are considered safe until proven otherwise, and

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432 1993 P.R.C. Product Quality Law.
433 Article 29, 1993 P.R.C. Product Quality Law.
434 The 1993 Product Quality Law outlines the guidelines for determining seller liability in articles 28 and 30. In general, sellers are liable if the product does not meet logical quality or functionality expectations (i.e., if the product does not meet the standards described on its packaging). Sellers are also liable if they cannot provide accurate information about the product’s producers or distributors.
consumers must provide technical evidence to demonstrate product defects in court. As a result, when Chinese consumers use the *Product Quality Law* to seek compensation for shoddy food or drug products, they must provide evidence to support every aspect of their claim, including:

- Evidence that the product does pose an “unreasonable danger” and/or violates safety standards and therefore meets the legal definition of a “defective” product;
- Evidence that there is a cause-and-effect relationship between the specific defect and the consumer’s specific damages;
- Evidence that the defendant did produce or sell the defective product and is therefore liable for the associated damages; and,
- Evidence to counter producer claims that they are exempt from liability due to one of the three mitigating factors listed above and/or evidence that the seller is liable.

These evidentiary requirements are often highly technical and very difficult for the average consumer to fulfill. Furthermore, China’s food and drug supply chains are fragmented and complex – production is often highly decentralized, with small (and possibly unlicensed) rural producers feeding into larger wholesalers, and labeling may not accurately reflect product origin, so it can be very difficult to track down the original producers, much less gather the evidence to prove producer liability in court. Overall, these onerous evidentiary requirements offer multiple loopholes that producers and sellers can use to evade liability.

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Chinese leaders designed the *1994 Consumer Rights Protection Law* to address some of these loopholes. Unlike the *Product Liability Law*, the *Consumer Rights Protection Law* states that sellers are generally liable for faulty products, so consumers do not necessarily need to trace supply chains and track down elusive producers.

The *Consumer Rights Protection Law* also extends seller liability to include market owners and organizers. For example, if a seller leases space in a marketplace, sells faulty products and then disappears, the victimized consumers can file suit against the marketplace owners and/or organizers. In theory, these provisions should ensure that consumers can find a local plaintiff for food and drug lawsuits, and that should significantly reduce resource and evidentiary burdens (since consumers no longer need to travel to other regions to compile evidence and file lawsuits).

In 2002 China’s Supreme Court further reduced food and drug evidentiary burdens by reversing the burden of proof for all civil product liability suits. The Supreme Court’s 2002 *Provisions on Evidence in Civil Lawsuits* states that, when consumers claim harm from defective products, producers are responsible for providing evidence to prove that the product was *not* defective; if producers cannot provide that evidence, the court should automatically accept the plaintiff’s claims.

In other words, from 2002 onward, as long as the suit is against a producer, consumers

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437 The 1994 P.R.C. Consumer Rights Protection Law also drops the arbitration requirement – consumers can go directly to judicial suits as a first step (Article 34), and the law specifically orders the courts to take these cases (Article 30).


439 Article 38, 1994 P.R.C. Consumer Rights Protection Law.


441 Ibid.
must only prove that they consumed a product and suffered losses as a result. Unfortunately, producers are still very hard to track down, and, in many cases, the remaining evidence burdens are still very hard to surmount.\footnote{Gao, Yu (2008), “Wanshan woguo shipin anquan falu tixi de sikao” (Ideas for Perfecting China’s Food Safety Legal System), \textit{Fujian Zhiliang Xinxi} (Fujian Quality Information), Issue 10, pp. 45-49.} For example, in 2005 Chinese food regulators discovered carcinogenic Sudan Red dye in preserved duck eggs, chili oil and Kentucky Fried Chicken. The consumers who suffered harm from those carcinogenic products should have been eligible for civil compensation.

However, many consumers never received product receipts or no longer had them, so they had no evidence to prove that they had actually consumed the faulty products.\footnote{Wang, Feng, “Falu zhuang jia guanzhu kendeji sudan hong shijian: suopei juzheng you nandu” (Legal Experts Paying Close Attention to the Kentucky Fried Chicken Sudan Red Incident: Evidence for Compensation Presents Difficulties), \textit{Fazhi Ribao} (Legal Daily), March 21, 2005, available at: http://www.southcn.com/law/fzjctj/200503240132.htm (last accessed June 29, 2010). “Sudan hong shijian zhuizong: xiang gao kendeji juzhong you dian nan” (Tracing the Sudan Red Incident: If You Want to Sue Kentucky, Providing Evidence Will be a Bit Difficult), \textit{Beijing Qingnian Bao} (Beijing Youth Daily), March 18, 2005, available at: http://www.bj.xinhuanet.com/bjpd_sdzx/2005-03/18/content_3899064.htm (last accessed July 7, 2010).} Furthermore, even if they could prove consumption, it was nearly impossible to prove that the Sudan Red dye produced specific health effects – i.e., since the average consumer eats many different things in one day, it is nearly impossible to rule out the possibility that one of the other consumed products caused or contributed to the health damage.\footnote{Wang, Feng (Legal Daily). Gao, Yu, “Wanshan woguo shipin anquan falu tixi de sikao” (Thoughts on Perfecting China’s Food Safety Legal System), \textit{Fujian Zhiliang Xinxi} (Fujian Quality Information), 2008 Issue No. 10, pp. 45-49.}

China’s product liability legislation primarily compensates consumers for direct and measurable damages (medical expenses, lost wages and other direct losses) instead of punitive damages. Chinese leaders are gradually opening up for punitive
damages in product liability cases, but the evidentiary requirements are even higher. The *1994 Consumer Rights Protection Law* first awarded punitive damages on a “one times” system: in addition to the compensation for medical expenses and other measurable losses, consumers could also seek punitive compensation equal to the amount they paid for the faulty product.\(^{445}\) However, to do so, consumers had to prove that the defendant acted *deliberately*; i.e., that the defendant knowingly and intentionally produced or sold the defective product to cheat the consumer, not out of general unintended negligence.\(^{446}\) It is nearly impossible for consumers to provide evidence about producer or seller intent, and Chinese food and drug products are generally very low-cost, so the “one times” punitive damage principle did little to benefit consumers or alter producer incentives.\(^{447}\) With much fanfare, China’s 2009 *Food Safety Law* extended punitive damages in food safety suits from “one times” to “ten times” the price of the faulty product.\(^{448}\) However, although the *Food Safety Law* removes the intent requirement for producers, it does not do so for sellers, and ten times the price of a food product is still minimal in most cases, so the new law does not significantly increase punitive liability in this sector.\(^{449}\) China’s first tort law takes

\(^{445}\) Article 49, 1994 P.R.C. Consumer Rights Protection Law.


\(^{447}\) Sun, Xiaomin (2010).


\(^{449}\) Article 96, 2009 P.R.C. Food Safety Law. The original draft reportedly removed the deliberate intent requirement for both producers and sellers, but the final version did not adopt such a wide
effect in July 2010, and the new tort law gives consumers the right to seek undefined punitive damages for faulty products (i.e., they are not legally restricted to a multiplier of the original product price); however, as with earlier statutes, consumers must prove malfeasant intent, and it is not yet clear whether Chinese judges will grant large punitive payouts.\textsuperscript{450}

In theory, if Chinese food and drug victims can communicate with one another and unite for collective action, they can overcome many of the abovementioned judicial barriers by filing class action suits: plaintiffs can pool their resources to pay doctors and other technical specialists for causal evidence, hire qualified lawyers and send elected delegates to attend court hearings and other critical meetings. In addition, class action lawsuits often attract attention from journalists and higher-level officials, and that attention can give local courts stronger incentives to provide a fair trial. However, the large-n nature of most food and drug scandals creates major complications for class action suits. China’s \textit{Civil Procedure Law} governs class action litigation, and the \textit{Civil Procedure Law} states that, when the total number of plaintiffs is undetermined – i.e., when the court is not certain that a plaintiff class includes all victims from a particular food or drug scandal – the court can issue a public notice inviting other victims to join the lawsuit.\textsuperscript{451} On the one hand, these public notices can


\textsuperscript{451} Article 55, 1991 P.R.C. Civil Procedure Law. Chinese leaders preserved these statutes in the 2007 revision. See Article 55, “Zhonghua renmin gonghe guo minshi susong fa – 2007 xiuzheng” (P.R.C. Civil Procedure Law - 2007 Revision), National People’s Congress Standing Committee, promulgated
bring geographically dispersed food and drug victims together for mutually-beneficial collective action. On the other hand, this statute means that collective food and drug plaintiffs cannot control entry into their class, and that creates two major problems. First, large plaintiff classes must choose delegates to represent the class at court hearings and other critical meetings. Court officials organize delegate selection proceedings, and all class members have the right to attend and voice their opinions; if the class cannot reach consensus, the court can intervene and play a leading role in delegate selection. In other words, the larger the class, the less likely they will reach consensus, and the more likely court officials will pick delegates of their own choosing. Second, and most importantly, the Civil Procedure Law requires class unanimity for settlement acceptance and other critical decisions. The entire class must agree on a particular settlement package, and that unanimity is very difficult for a large class to achieve, especially for scattered food and drug plaintiffs who may not have social ties or other connections to facilitate within-group coordination and negotiation.

Overall, the technical complexity, evidentiary requirements and large-n nature of food and drug cases create substantial barriers to judicial redress, and these barriers still deter many food and drug lawsuits. For example, the March 2004 Fuyang infant

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452 Article 55, P.R.C. Civil Procedure Law. Wang, Yaohuan (2009), “You shipin anquan jiufen lun woguo daibiaoren susong zhidu de wanshan” (Discussion on Perfecting China’s Representative Lawsuit System from the Perspective of Food Safety Disputes), Fazhi yu Shehui (Legal System and Society), Issue 29, pp. 46-47.
453 Article 55, P.R.C. Civil Procedure Law.
454 Wang, Yaohuan (2009). In contrast, environmental pollution and land expropriation both impact a limited number of victims, and those victims generally live in the same community, so class actions are both limited in scale and easier to coordinate.
milk powder scandal impacted over two hundred children, but only ten families filed civil lawsuits to seek compensation from the responsible enterprises.\textsuperscript{455} On the other hand, despite these barriers, most Chinese consumers still prefer civil lawsuits over state-negotiated settlements. When particularly egregious food or drug scandals inflict serious welfare damage on a large group of victims, Chinese leaders worry that class action lawsuits could unite the previously unconnected victims for mass protests and other contentious collective action, and they routinely intervene in these disputes to settle consumer claims through state allocation. For example, after the 2008 melamine infant milk scandal, Chinese leaders negotiated a settlement package with the responsible companies behind closed doors, presented the package to consumers as a fait accompli (to be distributed by the state) and forbade civil litigation.\textsuperscript{456} However, hundreds of parents refused to accept the state-negotiated settlement and demanded (and won) the right to seek larger settlements through the judicial system.\textsuperscript{457} This suggests that Chinese consumers do think they can get a better deal through the

\textsuperscript{455} Many of the families who did not file suit told journalists that they were unable to do so due to resource constraints and/or fear of reprisals (the guilty enterprises sent representatives door-to-door to threaten potential plaintiffs). Wan, Xingya, “Hufang Fuyang ‘datou wawa’ 3-15 shei wei nongcun xiaofeizhe weiquan” (Looking Back at the Fuyang March 15 ‘Big-Headed Babies’: Who Will Defend the Rural Consumers’ Rights), \textit{Zhongguo Qingnian Bao} (China Youth Daily), March 15, 2005, available at: http://news.xinhuanet.com/newscenter/2005-03/15/content_2698536.htm (last accessed July 8, 2010).


\textsuperscript{457} Ibid. Although Chinese leaders granted their judicial request, they also restricted these plaintiffs to individual lawsuits; in other words, they forbade class action in this case to hedge against the associated protest threats.
judicial system – despite its many problems – and that bodes well for this fire alarm pathway.

5.4.3. Xinfang Petitions

As in other policy sectors, many food and drug victims turn to the xinfang system as their first-choice governmental fire alarm channel, primarily because petition filings are free, they offer the possibility of immediate official action, and most Chinese citizens are already very familiar with this system. Unfortunately, as in other policy sectors, most xinfang petitions are unsuccessful, and even the successful petitioners may file for years before achieving meaningful redress.\(^\text{458}\) For example, Hebei whistleblower Gao Chun filed hundreds of xinfang petitions over a twelve-year period in his attempt to expose corruption and bribery between his pharmaceutical employer and local drug regulatory officials.\(^\text{459}\) Mr. Gao first petitioned the State Pharmaceutical Association (SPA) in 1995; as an internal whistleblower, Mr. Gao could access technical evidence unavailable to most petitioners, but SPA officials ignored his petitions and destroyed the drug samples Gao provided to support his

\(^{458}\) For example, a 2004 survey revealed that only 0.2% of xinfang petition filings were actually settled by higher-level authorities. Zhao, Ling, “Xinfang gaige yinfa zhengyi” (Xinfang Reform Triggers Controversy), Nanfang Zhoumo (Southern Weekend), November 18, 2004, available at: http://news.sina.com.cn/c/2004-11-18/12254278468s.shtml.

Over the next twelve years, Mr. Gao petitioned the national drug regulator at all levels: he sent over 100 letters by post, 42 letters by express mail, over 400 emails and 2 telegrams; he also made over 500 telephone calls and 21 in-person visits. Mr. Gao even spoke directly with national SFDA Commissioner Zheng Xiaoyu, but Zheng himself was collecting bribes for drug regulatory approvals, so national-level SFDA petitioning was not helpful. SFDA officials finally investigated Mr. Gao’s complaints in 2007 (after Zheng was convicted and executed on corruption charges) and discovered that the problematic drugs Gao first tried to expose in 1995 were still on the market twelve years later. Unfortunately, Zheng Xiaoyu’s ouster and the subsequent internal SFDA crackdowns have not necessarily improved petition success rates. In 2007, Mr. Chen Tao’an, an official with the Shanxi Provincial Center for Disease Control and Prevention, tried to expose regulatory violations and safety problems with the Shanxi CDC’s vaccine supplier. In March 2010, after three years of ineffective petitioning, Mr. Chen finally gave up his petition campaign, contacted watchdog journalists and successfully exposed the problem through the national media.

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460 Ibid.
461 Li, Zongtao, “Zheng Xiaoyu Case Whistleblower Gao Chun Files Petitions and Lawsuits for 12 Years.”
462 Ibid.
464 Ibid.
Most Chinese citizens do not have the patience for lengthy petition campaigns, and only a small minority can garner significant media attention. Therefore, when food and drug victims can communicate with one another they often turn to mass petitioning as a political pressure tactic. The larger the number of petitioners on a joint petition, the more dangerous that group will be if they escalate to mass protests, and the implicit protest threat increases the potential political costs food and drug officials could face if they ignore or fail to adequately address the petitioners’ concerns. As a result, the food and drug victims who can unite to organize mass petitions are often very effective at garnering a favorable official response. For example, in the 2008 Sanlu infant milk powder case mentioned above, the parents used joint petitioning to pressure the Ministry of Health into removing the ban on civil compensation lawsuits. Food and drug agencies at all levels must formulate special handling guidelines for joint petitions and special contingency plans for joint petitions that suddenly escalate into mass protests. In general, these guidelines fast-track joint petitions to prevent mass protests – the larger the number of petitioners, the higher and the faster their complaints must be passed up the administrative hierarchy – and that fast-track system encourages other food and drug victims to pursue similar tactics.

465 Buckley, Chris, “China Parents Press Demands in Wake of Milk Sentences.”
466 As in other sectors, these guidelines generally separate joint petitions and petition-related mass protests into three levels of severity; the higher the level, the higher-up it must be reported. For example, see: “Jiayuguan shi shipin yaopin jiandu guanli ju xinfang tufa shijian yingji yuan” (Jiayuguan City Food and Drug Administrative Bureau Emergency Response Plan for Sudden Outburst Xinfang Incidents), Jiayuguan City Food and Drug Administration, June 8, 2010, available at: http://www.jygfda.cn/news/ZWGK/2010/6/1068935216391.html (last accessed June 30, 2010).
467 Ibid.
If central-level food and drug officials can standardize petition processing and improve petition success rates, that should improve oversight in this sector and reduce the incentives for joint petitions. Toward that end, SFDA leaders have recently issued two nationwide xinfang regulations. In June 2004 the SFDA issued nationwide procedural requirements for monthly bureau chief reception days: on the first Monday of every month, SFDA bureau chiefs at every level must hold public xinfang receptions to personally hear and address citizen complaints. In theory, these reception days should give frustrated petitioners immediate access to bureau chiefs with the authority to redress their complaints, and one-on-one meetings with the local citizenry should also ensure that the bureau chiefs are personally aware of key problems. In July 2005 the SFDA issued a broader set of xinfang guidelines with the *Opinions on Further Strengthening Xinfang Work.* The *Opinions* clarify complaint processing jurisdictions, order local officials at all levels to respect petitioners’ rights and forbid official retaliations against petition filings. However, instead of dictating detailed procedural requirements from the top down, these regulations issue very general guidelines and order local SFDA offices to fill in the blanks with their own local-level procedural legislation. Unfortunately, SFDA leaders cannot significantly improve petition processing from the top down because they are

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470 Ibid.
471 Ibid.
constrained by regulatory fragmentation: since many different agencies have jurisdiction over food and drug safety, those agencies must also divide up food and drug xinfang petitions. Complaint redress often requires inter-agency coordination, and the SFDA has no authority over the other agencies; further top-down procedural requirements cannot address inter-agency coordination problems and therefore cannot significantly improve xinfang success rates.

At the local level, some local regulatory offices are taking the initiative to encourage ex ante xinfang petitions, i.e., petitions that expose malfeasant food or drug enterprises before their products create a major safety scandal. Toward that end, many local agencies are now offering monetary rewards to encourage whistleblowers. In general, whistleblowers can report their suspicions to any local food or drug agency including the SFDA, the MOH and other agencies with food and drug mandates. If these agencies investigate the allegation and find that the whistleblower’s information is accurate, the whistleblower is entitled to a percentage of the fee levied against the malfeasant enterprise, and some localities are issuing rewards as high as 50,000 RMB. In response to public requests, many of these programs are also allowing whistleblowers to make these complaints anonymously to guard against retaliation.

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from the exposed enterprises. These monetary rewards will likely increase the number of citizens willing to expose illegal behavior; however, as Mr. Gao Chun’s and Mr. Chen Tao’an’s experiences illustrate, whistleblower reports are only effective when regulators actually investigate and redress the exposed problem, and that process is still hindered by local protectionism and regulatory fragmentation.

5.5. Non-Governmental Fire Alarms: Media Oversight and Social Organization

Compared to other Chinese policy sectors, watchdog journalists and social organizations enjoy a relatively free rein in the food and drug arena. Chinese leaders do not ban these fire alarm activities (as they do in the land sector), nor do they issue targeted state secrets regulations to constrain them within sector-specific political boundaries (as they do in the environmental protection sector). However, this general openness does not mean that non-governmental fire alarms are always effective. In reality, media watchdogs and social organizations often face particular difficulties in this sector due to its fragmented regulatory design and geographically-dispersed welfare impacts.

First, due to the combination of regulatory fragmentation and local protectionism, local-level media exposure is generally not enough for effective grievance redress. Food and drug victims generally need some form of higher-level official intervention to enforce and coordinate local-level redress operations; however, only a minority of the food and drug media exposés can catch higher-level attention.

\[474\] Ibid.
and trigger higher-level interventions, so many aggrieved citizens will fall through the cracks. Second, social organization is particularly difficult in this sector because the welfare impacts generally do not create tight-knit local-level victim groups, and China’s social organization regulations prohibit the cross-regional linkages that geographically dispersed groups generally need for effective collective action. As a result, social organization is very limited in this sector, and most food and drug organizations are either fully state-run or too loosely-organized and under-funded to serve an effective oversight role.

Overall, due to the general political openness in this sector, non-governmental fire alarms are extremely active, especially on the media side. However, due to the abovementioned limitations, these activities do not always generate effective redress. The following sections will discuss China’s food and drug non-governmental fire alarms in detail.

5.5.1. Media Oversight

Chinese leaders strongly encourage media oversight in this sector, and they signal this encouragement through multiple avenues. First, many national-level food and drug laws, regulations and policy directives specifically call on the mass media to oversee food and drug policy implementation and to expose safety problems. These statutes include:

- The 1994 Consumer Rights Protection Law, which states that “The mass media must effectively publicize [information about] defending consumers’ lawful
rights and interests and conduct public opinion supervision over actions that infringe on consumers’ lawful rights and interests.”

- The 2003 State Council General Office Notice on Implementing the Food and Drug Reassurance Project, which orders government officials at all levels to “attach high importance to news media public opinion supervision...[and use the media to] publicly expose cases of legal and regulatory violations.”

- The 2007 Eleventh Five-Year Plan for Food and Drug Safety, which orders government officials at all levels to “encourage the news media to conduct public opinion supervision within legal boundaries and create favorable conditions for government supervision.”

- The 2007 State Council Notice on Strengthening Product Quality and Food Safety Work, which orders government officials at all levels to “encourage and support the news media to carry out public opinion supervision, to [use the news media to] expose the manufacturing and selling of counterfeit and substandard products, promote improvements in product quality and food safety work and quickly solve problems.”

- The 2009 P.R.C. Food Safety Law, which states that “The news media should disseminate information about food safety law, regulations and standards for the public good and conduct public opinion supervision over actions that violate this law.”

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478 This regulation also orders officials to keep a close eye on and “legally handle” the journalists who publish false reports and stir up the public with malicious intent. Unfortunately, that addendum gives local officials wide leeway for ignoring the previous order to support watchdog activities. Section 6, Item 14, “Guowuyuan guanyu jiaqiang chanpin zhiliang he shipin anquan de tongzhi” (State Council Notice on Strengthening Product Quality and Food Safety Work), State Council, August 5, 2007, available at: http://www.gov.cn/gongbao/content/2007/content_744120.htm (last accessed July 1, 2010), Author translation.

These statutes still leave plenty of room for media censorship – media oversight always carries a degree of political risk, so Chinese leaders always give lower-level officials plenty of leeway for shutting journalists down when media exposés could incite protests or tarnish the Party’s image. However, these national-level policy statements still convey the message that central leaders strongly support media fire alarms in this sector, and that message encourages journalists to pursue these stories and warns lower-level officials that media exposure could bring higher-level intervention and punishment. Chinese leaders also emphasize media supervision in public speeches, and the SFDA holds annual media conferences to publicly reward and encourage the journalists who investigate and expose China’s food and drug safety problems.\(^480\) In addition, Chinese leaders routinely respond to these media exposés by publicly intervening to fix the exposed problems and punish the exposed officials, and public interventions further encourage aggrieved citizens to pursue this fire alarm pathway.

China’s high-profile, national-level media outlets are very effective food and drug fire alarms – they have the resources to investigate consumer allegations, they generally have powerful national-level sponsors who can shield them from local-level

\(^{480}\) For example, at the 2010 National SFDA News Media Symposium, SFDA Commissioner Shao Mingli delivered an introductory speech in which he ordered SFDA officials at all levels to view the news media as a regulatory partner and to quickly address the issues and problems they hear about through media channels. “Shao Mingli juzhang chuxi 2010 quanguo shipin yaopin jianguan xinwen meiti zuotanhui” (Commissioner Shao Mingli Attends the 2010 National SFDA News Media Symposium), P.R.C. State Food and Drug Administration, February 8, 2010, available at: http://www.sda.gov.cn/WS01/CL0026/45940.html (last accessed July 2010). Also see: “Shao Mingli: gaijin jiaqiang shipin yaopin jiandu zhudong jieshao yulun jiandu” (Shao Mingli: Improve and Strengthen Food and Drug Oversight, Take the Initiative to Receive Public Opinion Supervision), State Food and Drug Administration, April 2, 2007, available at: http://news.xinhuanet.com/politics/2007-04/02/content_5925541.htm (last accessed July 9, 2010).
political pressure, and their exposés can easily catch top leadership attention. However, national-level media outlets can only investigate and expose a small percentage of China’s food and drug problems, so regional media outlets are critical for effective grassroots oversight. Unfortunately, regional media outlets are also more vulnerable to local intimidation and suppression – local officials have strong incentives to hide information about their own bad behavior, and they can generally use the local propaganda department (which answers to the local Party committee) to keep a tight leash on the regional media outlets based in their home jurisdiction.

Chinese leaders are working to improve local-level media access to and oversight over local food and drug officials with a series of regulations forcing those officials to share more information with local consumers and the local press. In March 2007 – when the SFDA was reeling from corruption allegations and a loss of public trust – national-level SFDA leaders convened the first *Nationwide SFDA Conference on News Dissemination Work* to improve transparency and facilitate media oversight over SFDA activities nationwide.\(^{481}\) At the conference, SFDA leaders ordered SFDA offices at all levels to begin holding mandatory monthly press conferences to publicize upcoming regulatory changes and to answer questions from the local press.\(^{482}\) In

\(^{481}\) "Shao Mingli: Improve and Strengthen Food and Drug Oversight, Take the Initiative to Receive Public Opinion Supervision), State Food and Drug Administration, April 2, 2007.

theory, these conferences should improve local media access to local-level food and drug officials. Those officials can still ignore media questions, but press conference transcripts are published online, so higher-level leaders can potentially monitor subordinate responses to media inquiries. Furthermore, in 2008 the State Council’s *Regulations on Open Government Information* listed food and drug safety as a key focus area for administrative transparency, and in 2009 SFDA leaders issued the *National SFDA Measures on Open Government Information Work* to further specify the information that SFDA officials must publicly disclose as a matter of course – this information includes local statistics, licensing decisions (including the application documents and other evidence submitted by licensing applicants), accident investigation results and emergency response plans.483

Despite their general support for and success with media fire alarms in this sector, in July 2007 Chinese leaders shut down their food and drug watchdogs for political reasons, and the resultant safety scandal has apparently convinced Chinese leaders and Chinese citizens that food and drug safety is impossible to achieve without effective media oversight.484 Chinese leaders shut down their media watchdogs in


484 That month, China’s Central Propaganda Department (CPD) issued an internal notice strictly forbidding all investigative reporting on food and product safety issues until further notice. Chinese media outlets were warned that anyone who published reports portraying Chinese food and product safety in a negative light – even if they were just reprinting articles published by reporters in other regions – would face severe punishment. As per general censored-topic procedure, Xinhua, the state-
July 2007 for four reasons. First, throughout the first half of 2007, a series of international safety scandals seriously damaged global consumer confidence in Chinese imports and sent Chinese leaders scrambling to control the damage. In that atmosphere, domestic media exposés would add more fuel to the fire and undermine the Chinese leadership’s crisis containment efforts.

Second, Chinese citizens were in an uproar over a July 8, 2007 Beijing TV investigative report that showed footage of Beijing street vendors softening cardboard in a chemical bath and using it as a filler in baozi, the popular pork buns that are a common street snack throughout China. Chinese leaders picked up on the strong public reactions to the story and took immediate steps to diffuse citizen concerns.

Two weeks after the July 8 broadcast, in what many Chinese citizens viewed as a government cover-up, Beijing TV claimed that the report was a hoax, Chinese police run news agency, would research and write stories on product safety issues and all other domestic news agencies would have to stick with the Xinhua manuscripts. “Censors Clamp Down on Food Safety Reports; Stick to Sports and Lifestyle, Newspapers Told,” *South China Morning Post* [Lexis-Nexis Academic], July 31, 2007. Jim Yardley and David Barboza, “Despite Warnings, China’s Regulators Failed to Stop Tainted Milk,” *The New York Times* [Lexis-Nexis Academic], September 27, 2008.


Clarissa Oon, “Chinese Media Feels Heat After ‘Cardboard Buns’ Episode,” *The Straits Times* [Singapore], July 31, 2007 (Lexis-Nexis Academic). Although this was by no means China’s first food safety scandal and reporters had no evidence that the cardboard had actually harmed anyone, the baozi story had a huge impact on Chinese citizens – possibly because baozi are such an iconic staple of traditional Chinese cuisine.
arrested the reporter behind the story, and Beijing food safety officials announced that they had examined pork buns across the city and found no evidence of cardboard or any other filler materials. China’s propaganda administrations immediately launched a crackdown on misleading news reports and announced that any journalists who “intentionally fabricated news that caused public anxiety and tarnished the nation's image would be harshly dealt with or even prosecuted.”

Third, Chinese authorities were gearing up for the 2008 Olympics and were determined to suppress watchdog reports that could ruin their grand coming-out party. CCP leaders framed the Beijing Olympics as a symbol of China’s economic success, Chinese national pride, and an indication that China had successfully regained global superpower status; since the CCP was the party that brought these benefits home to the Chinese people, a successful Olympics would be a big boost for CCP regime legitimacy. As a result, the cardboard baozi and the 2007 food export scandals carried extra political weight because both scandals suggested that it may not be safe for foreign athletes and tourists to eat in Beijing during the Olympics. In other words, food safety issues were endangering China’s ability to meet international standards as an Olympic host country, and further mishaps could cause the CCP to lose face at home and abroad.


Fourth, the 17th Chinese Communist Party Congress was scheduled for October 2007, and China’s domestic political atmosphere is always particularly sensitive during the run-up to these meetings.\(^{489}\) Party Congresses convene once every five years when CCP political leaders and over 1000 Party delegates from across the country gather in Beijing to appoint new Party leaders and vote on the key policies and goals that will define the CCP governing agenda over the next five-year period. The months leading up to these meetings are always a critical time because CCP leaders are trying to come to a consensus on these matters and there may be a lot of infighting among rival factions within the Party. The 2007 Congress was particularly sensitive because Party leaders were jockeying over a successor to replace President Hu Jintao.\(^{490}\) In that politically unstable environment, CCP leaders were particularly nervous about media reports portraying the Party in a negative light.\(^{491}\)

Chinese leaders instituted the media ban in July 2007 and kept the ban in place until the Olympic Games ended in September 2008, so China’s domestic food and drug markets went one full year without media supervision. Unfortunately, this press blackout fostered one of the most disastrous food safety scandals in Chinese history: the 2008 melamine milk powder scandal that killed at least 4 infants and sickened over 53,000. Sanlu, one of China’s biggest dairy firms, had been receiving consumer

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\(^{490}\) Although Hu was slated to serve a second five-year term and maintain his leadership position until 2012, the next Party leader is almost always selected at the half-way point in order to guarantee a smooth succession process. Shirk, Susan L. (2007), \textit{China: Fragile Superpower} (Oxford and New York: Oxford University Press).

complaints about melamine in their infant milk powders since December 2007 but had refused to issue product recalls. Angry parents submitted complaints to local-level officials, but the officials refused to address the problem. Many parents also notified local media outlets, but journalists could not investigate or expose their complaints due to the nationwide press blackout. As a result, poisonous milk powder circulated throughout Chinese markets for at least eight months, and thousands of Chinese infants consumed the powder and suffered severe kidney damage. The melamine milk powder was not exposed until September 9, 2008 when the New Zealand government – lobbying on behalf of New Zealand’s Fonterra dairy company, a Sanlu joint-venture partner – contacted leaders in Beijing to expose the problem. Unfortunately, by that point the crisis had already reached disastrous proportions.

Chinese citizens widely blamed the government’s year-long media blackout for the melamine scandal. If reporters had exposed the milk powder issue earlier on, Chinese leaders could have intervened at a much earlier date and removed the faulty milk powders before they caused such extensive damage. Instead, Chinese leaders faced a huge political crisis over public suspicious that they suppressed the scandal in order to present a perfect Olympic image. In order to diffuse domestic political

494 Ibid.
496 Mark Magnier, “China Falls Back Into Crisis Mode; Officials Face Suspicion that they Hid the Infant Formula Scandal During the Olympic Revelry,” Los Angeles Times, September 24, 2008 (Lexis-Nexis Academic).
tension, Chinese leaders quickly launched an all-out propaganda offensive to re-direct public anger away from the media blackout and toward the specific companies and local-level officials involved in the scandal. However, they also allowed the state-run Xinhua news agency to publish an analysis of the melamine case that acknowledges the importance of media oversight as follows:

The media serves as more than just the eyes of society to help the public identify and avoid hazards, in fact, it is also the government’s “eyes and ears.” Even though the higher levels of government can also go through internal channels to find out more than a few things about their subordinates, in reality this internal information is extremely limited; the higher the official rank and the further away they are from the grassroots level, the more limited the direct information from society, and so the more imperative it becomes to go through media channels in order to listen directly to the voice of society. … The Sanlu milk powder event demonstrates that although food safety does indeed require administrative supervision and legal protection, it needs media supervision even more.  

This gentle admonishment is probably as close as Chinese leaders will go in allowing the state-run media to publicly connect the dots between the media blackout and the 53,000 babies harmed by melamine in infant milk powders. At the same time, they would not have allowed Xinhua to publish this analysis unless they were connecting the same dots themselves, and it is highly unlikely that Chinese leaders will shut down their food and drug watchdogs to this extent again.

5.5.2. Social Organization

Chinese leaders generally encourage social organization in the food and drug sector as long as these organizations keep their activities within acceptable political

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boundaries. For example, many national-level food and drug policies include social organization statutes, such as:

- **The 1994 P.R.C. Consumer Rights Protection Law**, which states that “The state encourages and supports all groups and individuals to conduct social supervision over actions that infringe on consumers’ legal rights,” “Consumers have the right to legally form social organizations to defend their own lawful rights and interests,” and “the China Consumers Association and other consumer groups are legally established social groups for conducting social supervision over goods and services and protecting consumers’ lawful rights and interests.”

- **The 1995 P.R.C. Food Hygiene Law**, which states that “The state encourages and protects the social groups and individuals conducting social supervision over food hygiene.”

- **The 2007 National Eleventh Five-Year Plan for Food and Drug Safety**, which orders government officials at all levels to “fully utilize the positive role of food and drug safety industry associations, scholarly associations and [social] intermediary organizations for building trust, for industry self-regulation and for promoting food and drug safety.”

- **The 2009 P.R.C. Food Safety Law**, which states that “The state encourages social organizations and autonomous grassroots-level social groups to conduct popular work on food safety law, regulations, standards and [promoting public] knowledge, to advocate healthy food and drink [preparation] methods, and to strengthen consumer consciousness on food safety and consumers’ self-protection capabilities.”

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Chinese leaders initiated these calls for food and drug organization in the mid-1990s, and they initially planned to channel these activities through the state-run China Consumers Association (CCA).\(^{502}\) However, the CCA is hobbled by two critical shortcomings. First, the CCA is not a specialized food or drug organization – it handles all consumer protection and product safety issues, not just food and drug issues, so it can only dedicate a limited amount of attention and resources to the food and drug sector. Second, and most importantly, the CCA is a completely state-run organization affiliated with the SAIC.\(^{503}\) Many CCA offices take advantage of this connection and use the SAIC’s political clout to force local businesses to redress consumer complaints. However, due to the close SAIC-CCA relationship, CCA offices often share SAIC interests in protecting the local businesses who provide jobs and tax revenue. Even the state-sponsored *China Daily* describes most local CCA branches as de facto subsidiary departments under the local SAIC and states that Chinese citizens view CCA offices “more like complaint centers attached to the

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\(^{502}\) At the national level, the CCA primarily focuses on legislative activities such as promoting better consumer protection laws and regulations; the CCA also has over three thousand local branches at the provincial, municipal and county levels to receive local consumer complaints and arbitrate small-claims disputes against local businesses. Despite its shortcomings, many Chinese citizens clearly view the CCA as a useful organization because the number of complaints increases every year – in the first half of 2008 alone, the CCA received a total of 307,626 complaints from domestic consumers. “Zhongguo xiaofeizhe quanli baohu yundong 30 nian huimou yi min weiben de shanju” (China Consumer Rights Protection Campaign Looking Back at the 30 Year Mark: Philanthropic Undertaking for the People), *Legal Daily* [China], September 21, 2008 (http://www.chinapeace.org.cn/pabb/2008-09/21/content_54614.htm). China Consumers’ Association, “Erlinglingbanian shangbannian quanguo xiaoxie zuzhi shouli tousu qingkuang tongji fenxi” (2008 First Half of the Year Statistical Analysis on Complaints Received by Consumer Assistance Organizations), July 28, 2008 (http://www.cca.org.cn/web/xfts/newsShow.jsp?id=40861).

\(^{503}\) CCA offices receive all of their funding from their affiliated SAIC sponsors. Sun, Ying (2010), “Lun xiaofeizhe zuzhi de yunzuo yu fazhan” (On the Operation and Development of Consumer Groups), *Faxue Pinglun* (Legal Commentary), 2010 Issue #1 (Serial Issue #159), pp. 52-57.
industry and commerce authorities.” This relationship is so close that some CCA offices are actually staffed with SAIC officials. Due to these close government ties, the CCA cannot be trusted to faithfully pursue consumer complaints when consumer interests collide with powerful local businesses and the SAIC officials inclined to protect them.

On the other hand, although the CCA is not a real social organization – even by the Chinese definition – the CCA is still making important contributions toward social organization in the food and drug sector. The CCA is lobbying to expand food and drug organization in general, and CCA offices sometimes risk the ire of higher-level officials by siding with consumers (and indirectly opposing the state) in politically-sensitive safety scandals. For example, in the 2008 Sanlu melamine milk crisis, when Chinese leaders were working on a state settlement package and discouraging lawsuits, local-level CCA offices organized milk victims for class action suits and tried to represent the class actions in court. The CCA’s 2008 Sanlu class action applications were denied; however, after extensive CCA lobbying, in 2009 Chinese leaders finally granted the CCA the right to legally organize and represent similar class actions in future consumer disputes. Some local CCA offices are also taking steps to distance themselves from local government interference. For example,

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506 Ou, Yuanjun (2010).

These are all positive developments, but many Chinese scholars are arguing that the state-run CCA is not enough; they are increasingly calling for more extensive social organization in this sector, and some are doing so from within the Party ranks.\footnote{For scholars calling for more extensive and varied social organization in this sector, see: Ou, Yuanjun (2010); Zhao, Ran (2010); Huang and Zhang (2010); Zhang, Dechuan (2009); Zeng, Xianghua (2009).} For example, a CCP-sponsored book praises social organization in the environmental protection sector and argues that:

Social organizations can also play a critical role in production safety, food safety, health safety and other sectors that are directly related to the common people’s personal interests and personal safety...[these organizations can] provide information and assist with and participate in supervision. [These organizations] can keep some social ills and conflicts from breaking out and inflaming; they can create a favorable social atmosphere for public safety supervision.\footnote{Chi, Fulin, “Yi canyu gonggong fuwu wei zhuyao mubiao de minjian zuzhi fazhan” (Developing Social Organizations With a Primary Objective of Participation in Public Service), People’s Daily Discussion Channel, CCP News Website, September 20, 2007, available at: http://theory.people.com.cn/GB/68294/101280/6290964.html (last accessed July 2010). Author translation. The article is an excerpt from Mr. Chi’s CCP-sponsored book, A New Starting Point: China’s Reform is Stepping into the 30th Year (Beijing: China Economics Press, 2007). In 2002 Mr. Chi received a prestigious national scholarship award from the CCP Organization Department, the CCP Propaganda Department, the State Personnel Administration and the Ministry of Science and Technology. For further information on Mr. Chi’s book and CCP affiliation, see the CCP website at: http://theory.people.com.cn/GB/68294/101280/index.html (last accessed July 2010). For similar calls to action from national-level congressional delegates, see: “Daibiao weiyuan renwei: shipin anquan}
However, China will likely need a broader network of autonomous, grassroots-level social organizations to achieve these benefits, and autonomous organization is still weak in the food and drug sector.\textsuperscript{511} For example, although the CCA estimates that China has approximately twenty to thirty thousand autonomous consumer organizations, only a small minority focus on food and drug issues, and most do not have adequate operational funding, so they depend primarily on volunteers and do not have the personnel or technical resources to test products or investigate consumer complaints.\textsuperscript{512}

Many Chinese scholars are therefore calling on the Chinese leaders to take concrete steps to push social organization development in this sector, for example, by increasing the autonomous food and drug organizations’ legal standing (to protect them from local government interference), formally incorporating them into the policy process, opening up more private donation channels (to reduce their reliance on government sponsorship) and giving these organizations the authority to independently investigate product safety complaints.\textsuperscript{513} Thus far, although the pro-
organization official rhetoric is increasing, the state-run CCA is still the only organization receiving such explicit leadership support. In reality, autonomous organization will depend primarily on a stronger bottom-up push from the Chinese citizenry, and that will be hard to achieve in the near term. Since China’s social organization regulations limit cross-regional linkages, organizational development depends primarily on local-level coordination, and food and drug victims are so dispersed that coordination is hard to achieve, especially at the local level (where there may not be enough similarly-impacted victims in one community to make collective action costs worthwhile).

5.6. Fire Alarm Limitations Spur Continued Institutional Innovation

Due to the abovementioned problems – regulatory fragmentation, supply chain complexity and collective action barriers – China’s relatively open fire alarm policies are not enough to overcome official malfeasance in this sector, and major safety scandals are still a common occurrence. Consumer confidence in China’s food and drug safety regime hit new low points in 2006 and 2007 when internal investigations uncovered such extensive SFDA regulatory malfeasance that Chinese leaders executed SFDA Commissioner Zheng Xiaoyu on corruption charges. Chinese leaders realize that faulty regulatory design is a key factor inhibiting effective oversight in this sector, and they launched a new wave of administrative reforms in 2008 to rectify these design problems.
First, in an attempt to consolidate authority and eliminate some of the problems associated with regulatory fragmentation, Chinese leaders transformed the previously independent SFDA into a subsidiary agency under the MOH.\textsuperscript{514} This move should eliminate SFDA-MOH coordination problems, and the MOH is a ministerial-level agency, so it has more clout vis-à-vis the other regulatory agencies (MOA, AQSIQ, etc.). In theory, food and drug victims can now redress most complaints through the MOH, and local-level health departments should have enough authority to coordinate and enforce local-level redress operations, even when those operations involve multiple agencies.

Second, Chinese leaders also decentralized the SFDA by transferring sub-national personnel and budgetary authority to the local People’s governments at each territorial administrative level.\textsuperscript{515} This change reversed the previous SFDA partial verticalization and eliminated the 2000-2008 organizational discord between the (horizontally-managed) MOH and the (vertically-managed) SFDA. Sub-national SFDA officials strongly opposed this move: many SFDA bureaus used their websites as a forum to argue against decentralization, and over one thousand local-level SFDA

\textsuperscript{514} This move was a huge political coup for the Ministry of Health. The MOH-SFDA rivalry dates back to the pre-reform era, and MOH officials had long resented the fact that they were forced to cede authority to the SFDA in 1998 and 2003. Just as the SARS scandal weakened MOH political capital in 2003, Zheng Xiaoyu’s downfall weakened the SFDA in 2007 and gave the MOH a political opening to reverse its earlier losses. Liu, Jingjing, “Yaopin jiandu guanli quan lunhui” (Drug Regulatory Authority Revolves Again), \textit{Caijing Magazine}, December 8, 2008, available at: http://magazine.caijing.com.cn/2008-12-08/110066533.html (last accessed July 2010). For MOH resistance to the previous pro-SFDA reforms, see: Chen, Jibao, “Shipin yaopin jiandu ‘yi lan zi jie jue’ zhiqian: weisheng bu zhijian zongju cengyou fangan” (Before the Food and Drug Supervision ‘Package Solution:’ the Ministry of Health and the AQSIQ Have Their Own Proposals), \textit{21 Shiji jingji baodao} (21\textsuperscript{st} Century Business Herald), March 10, 2003, available at: http://www.21cbh.com/HTML/2003-3-10/8713.html (last accessed July 2010).

bureau heads signed and submitted an open protest letter to the central leadership.\textsuperscript{516} However, in the aftermath of the Zheng Xiaoyu scandal, SFDA officials no longer had enough political capital to counterbalance the MOH, and Chinese leaders used the SFDA’s internal Party discipline inspection commissions to force these officials to tow the line.\textsuperscript{517}

Third, once Chinese leaders decentralized the SFDA, the local People’s governments had primary sub-national personnel and budgetary authority over all of the food and drug regulators, so Chinese leaders gave the local People’s government leaders primary responsibility for food and drug safety within their respective jurisdictions.\textsuperscript{518} In other words, from 2008 onward, the local-level People’s government leaders will shoulder the blame for safety scandals, no matter which functional agency is at fault, because the local People’s government leaders are the primary regional food and drug principals. In theory, this new policy should give local leaders stronger incentives to support policy enforcement and to take on a coordinating role to ensure that inter-agency buck-passing does not undermine product safety in their home jurisdictions.

It is not yet clear whether these reforms will significantly improve oversight in this sector. Many Chinese scholars and officials (especially SFDA officials) are not optimistic, for two key reasons. First, decentralization will once again give local


\textsuperscript{517} Liu, Jingjing, “Drug Regulatory Authority Revolves Again.”

\textsuperscript{518} Liu, Jingjing, “Sub-provincial Drug Bureaus Revert to Decentralized Management System.”
People’s governments wide leeway to intervene in policy enforcement, and many scholars and officials argue that the new regional responsibility policy will not be enough to overcome local protectionist incentives.\textsuperscript{519} Food and drug officials in China’s well-developed coastal areas are among the most concerned. They fear that the People’s government leaders in China’s less-developed interior regions will prioritize economic growth over consumer safety, protect their local enterprises from national safety policies and export the dangerous products to other provinces.\textsuperscript{520}

Second, many critics worry that the Ministry of Health is too close to the Chinese hospitals and therefore cannot serve an effective drug regulatory role. The MOH has long represented hospital interests, and hospitals are a major player in China’s domestic drug market: they use and/or sell 70-80\% of the drugs purchased in China, and many critics worry that the MOH will use its new authority to block SFDA actions aiming to expose and punish hospital drug malfeasance.\textsuperscript{521} This is a critical regulatory issue because drug sales are a major money-maker for Chinese hospitals; many hospital pharmacies are expanding their profits by combining and modifying medicines to make new products, and some of those combinations endanger consumer health.\textsuperscript{522} On the other hand, China’s latest pharmaceutical scandal suggests that SFDA officials are not necessarily better pharmaceutical regulators than the MOH. In

\begin{itemize}
\item \textsuperscript{519}Ibid. Liu, Jingjing, “Drug Regulatory Authority Revolves Again.” Huang, Zhiwei, “Drug Regulator’s New Policy Has Been Reversed.”
\item \textsuperscript{520}Liu, Jingjing, “Drug Regulatory Authority Revolves Again.”
\item \textsuperscript{521}Chai, Huiqun, “Yiyao jianguan shiniain fenhe zhitong” (Ten-year Pain of Hospital/Pharmaceutical Regulatory Separation and Re-integration), Nanfang Zhoumo (Southern Weekend), April 2, 2008, available at: http://www.infzm.com/content/6351/0 (last accessed July 2010). Liu, Jingjing, “Drug Regulatory Authority Revolves Again.”
\item \textsuperscript{522}Liu, Jingjing, “Drug Regulatory Authority Revolves Again.”
\end{itemize}
April 2010 China’s state-run press announced that internal investigations were uncovering a new wave of SFDA drug regulatory corruption, and in June 2010 Chinese leaders removed national-level SFDA Deputy Chief Zhang Jingli for “suspected disciplinary violations.”

5.7. Conclusion

This chapter has provided evidence to support my argument that Chinese leaders adjust their fire alarm policies to account for sector-specific instability risks. China’s food and drug sector registers as relatively low-risk across all three malfeasance risk indicators:

1. Perceived welfare impacts are generally relatively low. Although some cases do result in severe injuries and fatalities, the majority of these cases have relatively low welfare impacts, and many victims may not even realize that they have consumed substandard or harmful products.
2. Food and drug malfeasance is conducted by a mix of governmental and commercial actors. As a result, Chinese leaders will always have convenient commercial scapegoats in this sector, and that will reduce some of the risks from non-governmental fire alarms.
3. Food and drug malfeasance generally victimizes geographically dispersed communities that cannot easily organize for collective action. Market distribution spreads faulty food and drug products over a large geographic area, so within-group communication is generally very difficult. As a result, protests should not be likely in this sector, even when the perceived welfare impacts are relatively high.

These risk levels give Chinese leaders more leeway for institutional innovation, and they therefore allow and strongly encourage both governmental and non-governmental fire alarms in this sector. Furthermore, unlike the environmental protection sector,

they do not issue food and drug state secrets regulations to contain the non-
governmental fire alarms within sector-specific political boundaries. On the other
hand, this openness does not mean that China’s food and drug fire alarms are always
effective. In reality, malfeasance victims often face particular difficulties in this sector
due to supply chain complexity and faulty regulatory design. China needs a more
effective food and drug regulatory regime that can handle the majority of their
citizens’ fire alarm grievances without higher-level official interventions, and Chinese
leaders are still reforming in an attempt to achieve that goal.
Chapter 6

Food and Drug Safety:

Case Narratives from a Low-Risk Policy Sector

6.1. Introduction

This chapter presents two detailed case narratives of official malfeasance and fire alarm oversight in China’s food and drug sector. In the first case, faulty infant milk powders endanger young children in Fuyang City (Anhui Province). Angry parents and doctors file xinfang petitions to notify local officials about the problem, but the local government does nothing. Local parents then share their stories with the media, and national-level media exposure triggers a State Council intervention. In the second case, poisonous antibiotic injections kill thirteen patients in Guangzhou City (Guangdong Province), and China’s State Food and Drug Administration (SFDA) traces the poisonous injections to their source, blames the scandal on the manufacturers and tells Chinese leaders that the issue is resolved. However, China’s media watchdogs discover that corrupt SFDA officials are the real culprits behind the scandal, and media exposure triggers a State Council intervention and disciplinary action.

Both of these cases provide evidence to support the non-governmental fire alarm publicity hypothesis introduced in chapter one:

H2b: Non-governmental fire alarm publicity is determined by the instability risks in each policy sector: Chinese leaders are more likely to allow domestic
media coverage of non-governmental alarm ringing and subsequent higher-level official responses when the malfeasance-induced instability risks are relatively low.

The food and drug sector is a relatively low-risk policy sector. As a result, Chinese leaders strongly support media fire alarms in this sector, and they use public interventions to signal that these fire alarm channels are open, effective and encouraged. Media exposés incite leadership interventions in both of these cases, and Chinese leaders do not play down the interventions or hide the fact that they are responding to watchdog media coverage. Instead, Chinese leaders issue special press releases to reveal these facts to the Chinese public, and China’s state-run media outlets cover the State Council investigations and disciplinary actions in detail.

Unfortunately, both of these cases suggest that national-level media exposure and higher-level official interventions are critical for effective grievance redress in this sector. In both cases, the subordinate officials did not shift from protectionism to grievance redress until the State Council interventions (and the associated disciplinary threats) forced them to do so. State Council interventions were very effective in both cases. However, national-level leaders can only intervene in a small minority of China’s food and drug scandals – most Chinese citizens must rely on local-level officials for grievance redress, and these two cases suggest that those citizens could face serious difficulties.

6.2. The Fuyang Infant Milk Powder Scandal: National-Level Media Exposure Sparks a State Council Intervention
In April 2004, in one of China’s most disastrous food safety scandals, Chinese journalists revealed that infants in the Fuyang city area of Anhui Province were dying of malnutrition from substandard infant milk powders. Even worse, although local government officials had known about the milk powders for well over a year, they refused to take action and therefore unnecessarily increased the number of infants exposed to the counterfeit formulas. Anxious parents – initially unaware that they were feeding their children a cheap mix of starch, sugar and milk flavoring – coined the term ‘big head disease’ to describe the mysterious illness that withered their children’s bodies and made their heads appear abnormally large. In many of these cases, the malnutrition was so severe that 6-month-old babies weighed less than they had at birth. Some local doctors began seeing malnourished infants in December 2002, but May 2003 brought the biggest influx of cases, and by that point all Fuyang area hospitals were seeing at least one new ‘big head disease’ case every 2-3 days. Local doctors were initially shocked by these cases and struggled to comprehend why infant malnutrition was suddenly soaring to rates they had not seen since the pre-reform era. However, the doctors soon made the connection between infant

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525 “Anhui Fuyang liezhi naifen zhibing 171 ming yinger zhong yi you 13 ren siwang” (13 of the 171 Infants Sickened by Faulty Milk Powders in Anhui Fuyang have Already Died), Xinhua, April 21, 2004 (http://news.xinhuanet.com/newscenter/2004-04/21/content_1430726.htm).
527 Ibid.
malnutrition and the faulty milk powder, and the doctors and parents immediately began filing complaints to notify local government officials about the problem.

By the end of May 2003, the Fuyang City government, the Fuyang SAIC office and the Fuyang City Health Bureau’s Center for Disease Control (CDC) had all received numerous complaints about the substandard milk powders and their effects on local infants. Fuyang CDC laboratories tested 13 different milk powder brands brought in by angry parents and determined that none of the powders contained enough protein, fat, or vitamins to support infant growth. Although Chinese national standards require infant milk powders to contain 12-18% protein, most of the powders they tested only contained 2-3%, and some of the worst contained less than 0.5% – a mix that local doctors described as “worse than rice water.” However, although these powders clearly violated national standards – and many parents even hand-delivered CDC test results to the local SAIC to back up their complaints – the SAIC refused to investigate, and the parents who submitted these complaints received no response.


530 [Author’s translation] Dong Xiaoheng, “Fuyang ‘Empty Shell Milk Powder’ Disaster”

Some frustrated parents and doctors then contacted Fuyang City journalists hoping that the local media could warn other parents about these dangerous milk powders and perhaps even pressure the local government to investigate. Local news outlets did respond and cover the milk powder story, and these reports initially appeared to galvanize local officials into action. For example, the Fuyang City Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) responded to one June 2003 media report by investigating the milk powder manufacturers whose products reportedly caused the death of at least one infant. However, the AQSIQ officials just charged the manufacturers a small fine; they did not force them to stop producing the faulty milk powders or to stop selling them in Fuyang area markets.532 A second round of local media reports in October 2003 spurred another half-hearted investigation, but again, local officials did not take serious action against the manufacturers and did not remove the harmful products from local market shelves.533

Finally, on December 25, 2003 China Central Television (CCTV) picked up the story and broadcasted a nationwide report on the faulty milk powder products in Fuyang. Although the CCTV report did not mention that the powders had actually harmed local infants and therefore did not attract significant national interest, it did at least convince local officials that they needed to put on a better show.534

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City government immediately organized a joint task force composed of the local SAIC, AQSIQ, Health Department and public security bureaus. The task force investigated local markets, seized substandard milk powders, issued a public notice to warn consumers about the problem and published a black list of 33 brands to avoid. However, these actions only brought short-term results. The task force disbanded and terminated their investigations in January 2004, and most of the black-listed powders immediately reappeared in local markets. Local doctors continued to receive new ‘big head’ cases, and consumers grew even more fearful because many of the new cases resulted from milk powders that were not even included on the official black list.

By April 2004 a total of 13 Fuyang babies had died and at least 170 were severely malnourished from substandard milk powder. Fuyang resident Gao Zheng – whose own niece had suffered malnutrition from the substandard milk powders – was determined to expose the milk powder crisis and the local government’s failure to seriously address the problem. Mr. Gao had already collected samples from multiple milk powder brands, submitted the samples to the local CDC lab for analysis, paid the CDC lab fees with his own money and used the CDC evidence to file multiple


536 Ibid.

537 Ibid.

complaints with local government officials – all to no avail. Although Mr. Gao had already discussed these problems with the local media, in April 2004 he began calling scores of Chinese media outlets across the country, including many high-profile national-level newspapers and television stations in Beijing and Shanghai.\footnote{Liu Xianghong and Dai Xiaoyan, “Who Was the First”} Mr. Gao’s strategy was enormously successful. His phone calls motivated multiple Chinese media powerhouses to send journalists into Fuyang, and finally, on April 19, CCTV broadcasted a shocking nationwide report that exposed the number of infants who were killed or severely malnourished from consuming the faulty milk powders, revealed that the same brands were still on local store shelves, and suggested that local government officials had known about this problem for at least a year and failed to take adequate action.\footnote{“Anhui Fuyang liezhi naifen haizhi ying er pianyuan diqu hai zai xiaoshou” (Faulty Milk Powders Killed and Injured Infants in Anhui Fuyang and are Still Being Sold in Remote Areas), CCTV2-Jingji Ban Xiaozi (CCTV2 – Economic Half Hour), April 19, 2004. Transcript available online at: http://news.sina.com.cn/c/2004-04-19/00363140767.shtml}

The April 19 CCTV report caught Chinese leadership attention and sparked a higher-level intervention. On the morning of April 22 – three days after CCTV aired the Fuyang milk powder report – Chinese Premier Wen Jiabao convened a State Council meeting to formulate the central government’s response.\footnote{“Wen Jiabao dui Fuyang poor-liuzhi yinger naifen shijian chu zhongyao zhishi) (Wen Jiabao Sets Out Major Directives on the Fuyang Poor-Quality Infant Milk Powder Incident), Renmin Ribao (People’s Daily), April 22, 2004 (http://www.people.com.cn/GB/14739/14740/22121/2464922.html).} At this meeting, Chinese leaders decided to immediately form a special State Council investigation team composed of officials from the SFDA, the Ministry of Supervision, the Ministry of Public Security, the Health Ministry, the Commerce Department, the AQSIQ and
the SAIC. They called on SFDA Director Zheng Xiaoyu to lead the Fuyang investigation and ordered the team to travel from Beijing to Fuyang that same day.542

At the same time, Premier Wen Jiabao issued a public statement on behalf of the State Council promising to thoroughly investigate and solve the milk powder crisis.543 Premier Wen also promised to keep the public informed with regular updates on the investigation’s progress and findings.544

As soon as the local Fuyang authorities realized that their milk powder situation was attracting serious national scrutiny, they rushed to save face by pretending that they were already working hard to fix the problem. For example, on April 17 and 18, the Fuyang SAIC and the Fuyang police department conducted a series of raids to remove the black-listed milk powders from local market shelves.545 Since local officials had completely ignored these milk powders for months, their sudden interest was almost certainly motivated by a tip-off about the upcoming national media coverage (even if CCTV did not explicitly warn local officials about the report, the journalists’ investigations in Fuyang would not have gone unnoticed).

On the night of April 24 the State Council investigation team moved into Taihe County – a Fuyang City suburb with particularly high malnutrition rates – and that same night, in an attempt to appease and potentially head off the incoming investigators, the Taihe County SAIC selected four of their officials to use as

scapegoats.\textsuperscript{546} The next morning, the Taihe SAIC gave the State Council team an internal report blaming those four officials for the lax supervision, and Taihe SAIC leaders claimed that they had already taken disciplinary action by firing all four. In reality,\textit{Xinhua} investigative journalists later revealed that this was just a cover-up: all four officials continued to work and receive their paychecks as per usual and their bosses assured them that their so-called firings were just a show designed to “placate higher-level officials” from the State Council investigation team and would not be carried out formally within the local government bureaucracy.\textsuperscript{547} As described by one of the four ‘disciplined’ officials, their bosses explained to them that “if we don’t deal with you in this way, the county-level bosses could all be punished.”\textsuperscript{548}

Despite these local-level attempts to patch over the milk powder scandal, the State Council team conducted a thorough investigation and discovered that 45 different companies were producing and selling 55 brands of substandard milk powders.\textsuperscript{549} These milk powders were so prevalent throughout local markets that even those parents who switched brands due to safety concerns were likely to wind up with another fake formula. The Public Security Bureau formally arrested 42 private individuals involved in the faulty milk powder production and distribution and


\textsuperscript{547} [Author’s translation] Zhou Limin and Dai Hao, “Fuyang: The Workers Fired”

\textsuperscript{548} [Author’s translation] Ibid.

detained another 59; local courts summoned an additional 87 for possible legal action.\textsuperscript{550} State Council investigators were well aware that local officials tried to cover up the crisis, and the Ministry of Supervision – the organization responsible for investigating and disciplining wayward officials – charged 97 local officials with offenses ranging from dereliction of duty to accepting bribes from illegal milk producers.\textsuperscript{551} The specific disciplinary actions varied on a case-by-case basis according to each official’s responsibilities and offenses; most disciplinary actions were carried out by the Ministry of Supervision or the CCP Discipline Inspection Commission, and most of the penalties were administrative rather than legal. For example, some officials charged with dereliction of duty were forced to resign or were expelled from the party, and others received demerits in their records or official internal Party warnings.\textsuperscript{552} However, the worst offenders – those who took bribes from illegal milk producers and intentionally suppressed consumer complaints – were handed over to the local court system and later received jail terms.\textsuperscript{553}

6.2.1. Non-Governmental Fire Alarm Publicity in the Fuyang Milk Powder Case

The Fuyang milk powder case supports the non-governmental fire alarm publicity hypothesis introduced in chapter one:

\textsuperscript{550} Ibid.  
H2b: Non-governmental fire alarm publicity is determined by the instability risks in each policy sector: Chinese leaders are more likely to allow domestic media coverage of non-governmental alarm ringing and subsequent higher-level official responses when the malfeasance-induced instability risks are relatively low.

The food and drug sector is a relatively low-risk policy sector – Chinese leaders strongly support media fire alarms in this sector, and they use public interventions to signal that these fire alarm channels are open, effective and encouraged. The State Council did not try to conceal or play down its intervention in the Fuyang Case (or the fact that it was generated by media watchdogs). Instead, the State Council issued an official notice through Xinhua to inform the public about the central leadership intervention, and China’s state-run media outlets followed up with continuous updates on the investigation team’s progress, findings and subsequent disciplinary actions.\(^{554}\)

On the other hand, once Chinese leaders intervened they also restricted further watchdog media coverage to ensure that their own crisis response efforts did not face too much public scrutiny or media criticism. Toward that end, the State Council Emergency Management Office issued the following press directive:

... in order to avoid too much media speculation on this issue which may induce elements of social instability, and according to the joint requirements on news reporting of this case made by the Central Propaganda Department news bureau and the State Council General Office, journalists from Xinhua news agency, the People’s Daily and CCTV are participating in the investigation and will closely cooperate with the [State Council] investigation team and strictly control the way this case will be described to the outside. All of the news media’s draft manuscripts will follow the Xinhua news agency general manuscript. By correctly directing public opinion, we can not only expose typical cases such as the illegally manufactured and sold infant milk

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\(^{554}\) Renmin Ribao, April 22, 2004.
powder, but also forcefully communicate the concern of the CCP Central Committee and the State Council on the Fuyang milk powder case.555

This directive suggests that the State Council values the media’s role in exposing these cases but also wants to ensure that their own shortcomings are not exposed – in other words, they will not allow journalists to freely examine or report on problems with the milk powder situation while it is under their own direct management.

In parallel with these short-term, ex-post press restrictions, the State Council also issued additional statements praising the media for exposing the Fuyang crisis and signaling their support for a continued watchdog media role going forward. For example, on May 17 the State Council ordered all provincial-level governments and relevant bureaucratic agencies to implement a new nation-wide food safety action plan that specifically calls for “strengthening social supervision over food safety” and orders the media to “expose the criminals who manufacture and sell counterfeit products.”556 In addition, state-run press reports widely praised Mr. Gao Zheng’s efforts to notify China’s national media outlets about the milk powder crisis, and CCTV nominated Mr. Gao for 2004 CCTV person of the year. In their announcement about his nomination, CCTV described Mr. Gao as a “powerful voice that truly rises from among the people at the grassroots level” and who “provides a shining example of how the government should improve policy implementation to govern on behalf of

555 State Council Emergency Management Office, “Anhui Fuyang liezhi naifen shijian” (Anhui Fuyang Poor-Quality Milk Powder Incident), August 9, 2005 Report, Author translation. This ex post summary report is restating the press directive issued during the Fuyang milk powder crisis. These press directives are internal documents and generally classified – the original April 2004 press directive is not available publicly.

the people.” This combination of short-term media restrictions and general media encouragement sends a very clear message to Chinese journalists: go out and monitor food safety at the grassroots level and feel free to expose the local officials responsible for safety scandals, but tread softly around the national leadership and back off when they themselves decide to get involved.

6.2.2. Local versus National-Level Media Exposure in the Fuyang Case

Another interesting aspect of the Fuyang milk powder case is the fact that local media outlets reported on the milk powder problems multiple times between May 2003 and April 2004 without eliciting a response from national-level leaders and without significantly altering local government incentives. On the one hand, these media reports did catch the attention of local-level officials and did goad them into taking at least some action: there is a clear pattern of overall local government inaction punctuated by spikes in activity following each round of media coverage. However, every time the media attention died down, local officials reverted back to ignoring the safety problems and exposing more and more children to the fake formula.

Even the December 2003 national-level CCTV report apparently failed to catch national leadership attention. It is possible that this report sparked an internal inquiry within the SAIC or the Health Ministry, and an internal notice – or the threat that higher-level officials could intervene – may be what motivated local officials to set up the milk powder task force and to carry out investigative activities from

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December 2003 to January 2004. If so, this inquiry clearly did not go far enough, and local officials could have easily passed up reports claiming that the task force completely eradicated the problem.

The April 19 CCTV report was much more effective, and that effectiveness likely stems from two key factors. First, CCTV is a national-level media outlet (and China’s main state-run television station), so CCTV reports are more likely to catch leadership attention. Second, unlike the December 2003 CCTV coverage, the April 2004 report revealed that the milk powders were inflicting serious harm on local infants. Chinese citizens are all aware that their markets are awash in counterfeit products, and a victimless story about counterfeit milk powders is unlikely to catch significant public or leadership attention, especially since the powders did not contain any poisonous ingredients. The fact that innocent victims were suffering and in some cases even dying from these milk powders significantly changes the story and significantly amplifies the political risks that Chinese leaders will face if the oversight problem continues.

The fact that the State Council seemingly ignored the first report but launched a large-scale response to the second suggests that they have a measuring stick they use to gauge the political risks associated with specific food and drug safety problems. China’s small group of central-level leaders do not have the resources to directly intervene in every product safety scandal nationwide – they must focus their limited resources on the most egregious cases and depend on sub-national officials to manage the rest, and that does not necessarily bode well for the Chinese citizens whose safety
problems register at the lower end of the scale. As one China Daily reporter argued, since national media reports are unlikely to elicit special orders from the Chinese premier in every case, Chinese citizens would be much better off with better governing mechanisms that could keep local officials in line without relying on direct interventions from above.\footnote{Xiao Ming, “Premier’s Involvement Should Not be Necessary,” China Daily, April 29, 2004 (http://www.chinadaily.com.cn/english/doc/2004-04/29/content_327221.htm).}

6.2.3. Governmental Fire Alarms in the Fuyang Milk Powder Case

All of the Fuyang milk powder victims had the right to file civil lawsuits to seek monetary compensation from the responsible enterprises, and the China Consumers’ Association (CCA) issued a public notice through Xinhua to notify the Fuyang milk powder victims about their legal rights and encourage them to file suit.\footnote{Yang, Weihan and Tian Yu, “Zhong xiaoxie fuzeren wei fuyang shouhaizhe zhi zhao: xiang fayuan qisu” (CCA Director Urges the Fuyang Victims: Go to Court and File Suit), Xinhua, April 28, 2004, available at: http://news.xinhuanet.com/newscenter/2004-04/28/content_1445836.htm (last accessed July 2010).}

The CCA Xinhua notice even listed the specific articles of the P.R.C. Consumer Rights Protection Law that applied to the Fuyang case, specified the monetary damages consumers should include in their lawsuits and listed the specific evidence consumers should use to support their claims.\footnote{Ibid.} However, despite this encouragement, less than five percent of the affected families pursued legal redress.\footnote{Wan, Xingya, “Hufang Fuyang ‘datou wawa’ 3-15 shei wei nongcun xiaofeizhe weiquan” (Looking Back at the Fuyang March 15 ‘Big-Headed Babies’: Who Will Defend the Rural Consumers’ Rights), Zhongguo Qingnian Bao (China Youth Daily), March 15, 2005, available at: http://news.xinhuanet.com/newscenter/2005-03/15/content_2698536.htm (last accessed July 8, 2010).} Many of the families who did not file suit claimed that they were unable to do so due to resource
constraints, inability to provide critical evidence and/or fear of reprisals from the accused enterprises. For example, as one Fuyang father explained to reporters from the *China Youth Daily*:

I feel extremely upset about it, but that is just how it is. It is not that rural people do not want to file suit, but the evidence, the court fees are very difficult to manage. For rural people to go to town [to attend court hearings], one trip costs us many tens of RMB! These victimized families also ran into some external pressure, some people [from the accused enterprises] even went to the homes of the poisoned milk powder victims and prohibited them from bringing this incident up again.\(^{562}\)

Even among the few families who did file suit, monetary compensation was very difficult to achieve. Another local parent told reporters:

File suit? Easier said than done! We have already filed suit for one year, and we still have not received a single penny...perhaps when the day comes that they finally issue a verdict, that company will have already relocated its money [and we will get nothing].\(^{563}\)

Unfortunately, these judicial problems – and the fact that Fuyang officials completely ignored the parents’ earlier *xinfang* complaints – suggest that governmental fire alarms did not work in this case. Furthermore, even the local-level non-governmental fire alarms were relatively ineffective: local media exposure did at least force local officials to acknowledge the problem, but they did not seriously punish the enterprises and they did not follow up when the faulty milk powders resurfaced. Overall, this case suggests that governmental fire alarms do not work and that non-governmental fire alarms

\(^{562}\) Ibid, Author translation.

\(^{563}\) Ibid, Author translation.
only work when they are paired with higher-level official interventions. Since higher-level leaders can only intervene in a small minority of these cases, that does not bode well for China’s food safety fire alarm system overall.

6.3. The Qiqihar ‘Armillarisin A’ Pharmaceutical Scandal: Media Watchdogs Expose SFDA Corruption, Trigger Leadership Intervention

A deadly fake medicine scandal rocked Guangzhou, the capital of south China’s Guangdong Province, when a batch of poisonous Armillarisin A antibiotic injections killed 13 patients in April-May 2006. The crisis began on April 19 when Guangzhou’s Zhongshan No. 3 Hospital opened a new box of Armillarisin A injections from the Qiqihar No. 2 Pharmaceutical Company and administered the injections to their liver patients as per usual. Three days later, on April 22, one of these patients suddenly took a turn for the worse and suffered a strange mix of symptoms including fever, vomiting, severe digestive pains and critical kidney failure, and more and more patients came down with these same systems over the following days. This sudden outbreak of critical kidney problems put Zhongshan doctors on


high alert, and by May 1 they concluded that the symptoms must be a reaction to the new Armillarisin A injections from Qiqihar.\footnote{China Medical Tribune, “Reflecting Back”; “Guangzhou Zhongshan San Yuan faxian qieryaochang jia yao liangjunjiasu shi mo” (Walking Through the Process of When Zhongshan No. 3 Hospital Discovered the Fake Qiqihar Armillarisin A), Yangcheng Wanbao (Yangcheng Evening News), May 24, 2006 (http://news.sina.com.cn/c/2006-05-24/14559014821s.shtml)} On May 2 hospital administrators reported the incident to the Guangdong Health Department and the Guangdong Adverse Drug Reaction Monitoring Center, and officials at those two provincial-level offices immediately passed the information up to their national-level principals at the SFDA and the Ministry of Health.\footnote{China’s ADR monitoring centers are affiliated with local SFDA offices and they report up to both the SFDA and the Ministry of Health. Jinhua News Network, “Chronicle of the ‘Qieryao’ Incident.”} National-level SFDA officials found out about the crisis on May 3 and immediately dispatched investigation teams to Zhongshan hospital; they also ordered Heilongjiang Provincial SFDA officials to close down and seal off the Qiqihar No. 2 Pharmaceutical Company, and they ordered SFDA officials at all levels to locate and remove the Qiqihar Armillarisin A injections from all Chinese hospitals and pharmacies nationwide.\footnote{Ibid; “Xinhua shedian: ‘qiqihaer jiayao an’ zhuizong” (Xinhua Perspective: Tracing the “Qiqihar Fake Medicine Case”), Xinhua, May 14, 2006 (http://news.xinhuanet.com/newscenter/2006-05/14/content_4545507.htm)}

On May 9, SFDA investigators discovered that the Qiqihar Armillarisin A injections contained diglycol, a toxic industrial solvent (commonly used in anti-freeze) that triggers acute kidney failure in humans. Armillarisin A injections often contain propylene glycol (an inert carrier liquid and common pharmaceutical solvent), and in September 2005 the Qiqihar No. 2 Pharmaceutical Co. had purchased one ton of propylene glycol at a discount price from Mr. Wang Guiping, a drug trader at Taixing
Chemical Co. in Jiangsu Province. Mr. Wang’s discount propylene glycol was actually poisonous industrial-grade diglycol (which is much cheaper than pharmaceutical-grade propylene glycol, so Mr. Wang made a substantial profit on the sale). Unfortunately, the Qiqihar Pharmaceutical factory never tested Mr. Wang’s so-called discount propylene glycol, so they produced and sold Armillarisin A injections using poisonous diglycol. Based on these revelations, SFDA officials dispatched the Public Security Bureau to detain Mr. Wang Guiping and a group of Qiqihar No. 2 Pharmaceutical Co. managers and employees.

China’s national-level SFDA office released a brief public notice on the toxic Qiqihar injections on May 12; up to that point, the SFDA’s investigations were strictly internal and the Chinese public was unaware of the crisis. On May 15 the SFDA released a more detailed notice that outlined their investigation results and stated that they had already detained the culprits behind the scandal. In effect, the SFDA was trying to claim that the issue had been resolved. However, by that point four Zhongshan hospital patients had already died from kidney failure, and Chinese journalists were not willing to buy the SFDA’s tidy explanations. The Qiqihar Armillarisin A story quickly developed into a national media sensation, and the media coverage grew increasingly negative after the SFDA tried to frame it as a closed issue.

569 The Qiqihar No. 2 Pharmaceutical Co. previously manufactured the Armillarisin A injections with imported propylene glycol; however, Mr. Wang appeared to be offering the same substance at one-third the normal market price. Liang Qiwen, “Fake Drug Death Toll Rises to 9,” China Daily, May 23, 2006 (http://www.chinadaily.com.cn/cndy/2006-05/23/content_597517.htm)
Although the SFDA did an exemplary job in responding to the crisis, domestic journalists and internet commentators all argued that there was another, more important angle to the case: why the SFDA had allowed the incident to occur in the first place.\(^{572}\)

Chinese consumers were particularly interested in and concerned about this case due to the Qiqihar No. 2 Pharmaceutical Company’s large size and official status. As expressed by the *Beijing News*:

> It is not at all unusual for small underground factories to produce fake medicines and sell them through underground channels, but for something like this to happen with a drug manufacturer that has passed all certification requirements and carries the apparently worthless National Pharmaceutical Standard seal, and for the drugs to pass through official hospital channels…consumers cannot help but tremble.\(^{573}\)

Qiqihar was a large company with over 300 employees – not the kind of establishment that regularly flies under the regulatory radar. Even worse, it was a recently-privatized state-owned enterprise. Prior to October 2005, Qiqihar had been one of the biggest state-run liquid injection factories in Heilongjiang Province.\(^{574}\) China’s domestic media outlets all argued that a fake medicine scandal in a company of that size and stature was more than just an isolated incident; it could only mean that there were huge loopholes and possibly even corruption in the national drug regulatory

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\(^{573}\) [Author’s translation] Li Zongpin, “‘Qieryaoshijian’ shifou fang bu sheng fang?” (Are Cases Like the Qiqihar Drug Incident Unavoidable?), *The Beijing News*, May 18, 2006 (http://economy.thebeijingnews.com/0866/2006/05-18/015@091017.htm).

\(^{574}\) *Xinhua*, “Tracing the Qiqihar Fake Medicine Case”
program. Chinese journalists all named the SFDA as the real culprit behind the fake medicine scandal and argued that “although the companies that produced and circulated the fake medicines were undeniably at fault, we cannot just look for a scapegoat and then declare the matter solved.”

One after another, Chinese media outlets called on the national leadership to intervene in the Armillarisin A case to investigate possible SFDA culpability. Chinese journalists and consumers were particularly disturbed by the fact that the SFDA had awarded Qiqihar Co. a Good Manufacturing Practice (GMP) certificate despite obvious shortcomings in the company’s internal quality-control practices. Chinese journalists revealed that the GMP-certified Qiqihar No. 2 Pharmaceutical Co. had been producing Armillarisin A with the poisonous diglycol for two months – way too long to excuse as a one-off lapse in internal management practices. Furthermore, Chinese journalists discovered that the business licenses, production permits and propylene glycol registration papers Mr. Wang Guiping used for the pharmaceutical

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577 Chinese pharmaceutical regulations stipulate that a company must meet specific quality control standards to receive GMP certification. For example, GMP companies must follow strict procedures for purchasing raw materials, set up an independent internal quality control department, and conduct regular testing to make sure their products meet national standards. The SFDA is in charge of issuing GMP certificates to eligible companies and conducting follow-up inspections to ensure that they continue to meet these requirements ex post.
sale were all forgeries. Although Wang claimed he was a drug salesman for Taixing Chemical Co., he was not really employed there; in fact, the Taixing Chemical Co. was not even involved in pharmaceuticals – the company produced industrial dyes and plastics. The toxic industrial diglycol that Wang sold to Qiqihar actually came from the Jiangjiagang China International Trading Corp., another industrial dye manufacturer. In other words, even a rudimentary check by the Qiqihar purchasing department should have exposed this fraudulent supply network.

Chinese media commentators all argued that the Qiqihar No. 2 Pharmaceutical Co. never should have received a GMP certificate from the SFDA. Even if Qiqihar’s internal quality-control problems did not emerge until after the SFDA awarded the company’s GMP certification in 2002, SFDA officials still should have conducted follow-up inspections as stipulated in the Drug Administration Law, and the original GMP certificate should have been revoked. The case against the SFDA grew even more damning after Chinese reporters discovered that this was not even Qiqihar’s first product safety incident – in fact, county-level SFDA officials in Hunan Province

581 Ibid.
582 Xinhua, “Fake Raw Materials Entered the Qiqihar Pharmaceutical Factory”
had uncovered licensing discrepancies and quality problems with the company’s B6 injections in August 2005.\footnote{Qieryao qunian ceng bei faxian shengchan lieyao” (Faulty Qiqihar Medicines Were Discovered Last Year), Xinjingbao (The Beijing News), May 19, 2006 (http://news.sina.com.cn/c/2006-05-19/03319901885.shtml)}

Chinese journalists and consumers were particularly outraged over the fact that the toxic Armillarisin A injections carried China’s National Pharmaceutical Standard seal of approval. As one media commentator argued, Chinese people view the seal as a “government guarantee” that a particular drug has passed all quality and safety standards – therefore, when these medicines turn out to be substandard or even deadly, the government has broken its promise to the Chinese people, and the government department that issued the seal bears as much fault as the factory that produced the drug.\footnote{Author’s translation] Shu Shengxiang, “Qieryao shijian dailai “guoyao zhunzi” xinren weiji” (Qiqihar Drug Incident Brings a Trust Crisis in the ‘National Pharmaceutical Standard Seal’), Sina.com, May 15, 2006 (http://news.sina.com.cn/c/pl/2006-05-15/00049859011.shtml)} These criticisms only gained more fuel when toxic materials were found in four other drugs produced and sold by the Qiqihar No. 2 Pharmaceutical Co.\footnote{Beijing News, “Faulty Qiqihar Medicines”} One after another, domestic media outlets declared that there was a national “trust crisis” in China’s drug regulatory system, claimed that government promises about the quality of Chinese medicines were no longer credible, and argued that the SFDA itself should be held accountable.\footnote{[Author’s translation] Shu Shengxiang, “Qieryao Drug Incident Brings”; “Jia yao rushi baolu yaopin jianguan loudong” (Fake Drugs Entering the Market Reveals Loopholes in Drug Oversight), Xinjingbao (Beijing News) Editorial, May 15, 2006 (http://news.sina.com.cn/c/pl/2006-05-15/08119862442.shtml)} Even Xinhua, China’s state-run news agency, described the Chinese people as “furious” and said that people were all asking themselves, “could
there be more medicines like this in our cupboards?”  

A *Beijing News* editorial called on Chinese leaders to punish the regulatory officials whose negligence led to the Armillarisin A incident and claimed that if the punishments were not severe enough, “not only could it damage the credibility of government administrative actions, it could also foster even more chaos in the drug market and jeopardize the People’s sense of security.”

On May 17 the call for leadership intervention grew even more focused when China’s *Legal Daily* published an article calling on the Ministry of Supervision to step in and officially investigate the SFDA for regulatory negligence. The *Legal Daily* argued that if SFDA regulatory negligence was indeed the reason behind the Armillarisin A scandal, the Ministry of Supervision must punish the SFDA in order to “sound an alarm for other regulatory ministries that will effectively prevent more cases of dangerous counterfeits from happening again in the future.”

The *Legal Daily* article became a national sensation and was immediately picked up and reprinted by *Xinhua*, the *People’s Daily*, the *Beijing News*, *Sina.com* and hundreds of other media outlets across China.

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589 [Author’s translation] *Beijing News*, “Fake Drugs Entering the Market”

590 The Ministry of Supervision has the authority to investigate and discipline government departments and officials— their jurisdiction includes the national departments (ministries, commissions, etc.) under the State Council and the local People’s governments. At that point in the investigation, China’s Public Security Bureau was handling the criminal and legal aspects of the Armillarisin A case and they do not have the authority to investigate government departments. Yang Tao, “Jiancha jiguan ying jinkuai jieru ‘qiyao’ shijian” (Ministry of Supervision Must Intervene in the Qiqihar Drug Incident Immediately), *Legal Daily*, May 17, 2006 (http://www.legaldaily.com.cn/misc/2006-05/17/content_499096.htm).

591 [Author’s translation] Ibid.
On the morning of May 19 the State Council responded to these calls for action and convened a special meeting to address the Armillarisin A case. They immediately put together a State Council Specialized United Investigation Group composed of officials from the Ministry of Supervision, the Ministry of Public Security, the Ministry of Health and the SFDA, and they ordered the Ministry of Supervision to coordinate and lead the team. The State Council immediately dispatched this group to investigate the Armillarisin A scandal and specifically ordered the investigators to root out not only the private individuals directly responsible for manufacturing and selling the fake drugs but also the government officials whose negligence allowed the incident to occur. In addition, State Council officials called on the SFDA to immediately launch a campaign to thoroughly inspect and reevaluate all Chinese drug manufacturers and raw material suppliers nationwide. They specifically ordered the SFDA to evaluate each factory’s internal quality control procedures and to revoke the GMP certificates of non-compliant companies. That same day, the State Council also released a public statement that outlined these response measures and promised the Chinese public that they would thoroughly investigate the situation, severely punish all guilty parties and issue regular

593 Ibid.
594 Ibid; “Shipin yaopin jianguan bumen jiang dui yaopin shengchan qiye jinxing quanmian jiancha” (SFDA Departments Will Conduct Thorough Inspections of All Pharmaceutical Manufacturers), Xinhua, May 19, 2006 (http://www.gov.cn/jrzg/2006-05/19/content_285885.htm)
595 Xinhua, “SFDA Departments Will Conduct"
press releases to keep the public updated about the investigation progress and results.596

The State Council’s investigation team discovered that the Heilongjiang Provincial SFDA office – the regional SFDA office with jurisdiction over the Qiqihar No. 2 Pharmaceutical Co. – was guilty of more than just regulatory negligence. Not only did Heilongjiang Provincial SFDA officials fail to conduct regular follow-up inspections to make sure the company continued to meet GMP standards, in fact, they never inspected the factory when they issued the original GMP certificate in 2002. Instead, Heilongjiang Provincial SFDA officials sold Qiqihar No. 2 Pharmaceutical Co. a data CD containing all of the required GMP certification documents for 100,000 RMB (approximately USD $13,000) and placed the company on China’s national GMP-certified manufacturer register without paying a single field visit to verify whether the factory was actually GMP-compliant.597 Based on these revelations, the Ministry of Supervision fired Qiqihar City SFDA Deputy Director Xun Fubo and punished other local SFDA officials including the Heilongjiang Provincial Deputy Director and the Qiqihar City SFDA Director.598 In Taixing City, where Wang Guiping operated his fraudulent pharmaceutical business, the Ministry of Supervision fired the Taixing SAIC North Substation Bureau Chief and issued sanctions against three other Taixing City SAIC officials.599 The private individuals responsible for the Armillarisin A incident were all arrested by the Public Security Administration and

596 Xinhua, “Wen Jiabao Issues”
598 Xinhua, “21 Suspects and Responsible Persons Penalized”
599 Ibid.
tried in local courts – of these, five Qiqihar No. 2 Pharmaceutical Co. employees received jail terms ranging from four to seven years, and Wang Guiping received a life sentence.\textsuperscript{600}

6.3.1. Fire Alarm Monitoring in the Qiqihar Armillarisin A Case

In most media fire alarm cases, Chinese citizens turn to the media after their governmental fire alarm attempts fail – i.e., they use the media to seek help from higher-level officials after lower-level officials refuse to address their problems. In those cases, the citizens have already suffered personal welfare damage, and they are using fire alarms to redress that damage ex post. In contrast, the directly-impacted victims in the Qiqihar case did not need media fire alarms to expose their welfare damage to higher-level officials. Unlike the Fuyang milk powder case, when local regulators found out about the poisonous Qiqihar injections they immediately sent reports up the bureaucratic hierarchy, and those reports triggered a nationwide SFDA investigation and recall that removed the injections from Chinese markets rather quickly.

However, watchdog journalists suspected that there was more to this story. They used their own resources to investigate further, and they uncovered new information that neither the Chinese leaders nor their citizens were aware of. In other words, in the Qiqihar case, media watchdogs served two different fire alarm roles: (1) they exposed SFDA regulatory problems to the Chinese leaders and the Chinese

public, and (2) when that information provoked Chinese consumer concern, they conveyed that concern to the central leadership.

From the Chinese leadership’s perspective, the first fire alarm role carried a degree of political risk because it exposed serious regulatory problems and eroded consumer confidence in China’s drug safety regime. However, since Chinese leaders stayed the course and allowed the media to open up a lively public discourse on the Armillarisin A incident, they were able to monitor that discourse, pinpoint citizen concerns and tailor their response accordingly. As mentioned above, media reports and online discussion forums revealed that Chinese consumers were primarily concerned about SFDA corruption and about the possibility that there were more toxic drugs circulating through their domestic markets. The State Council therefore intervened with two actions aimed at addressing these issues: (1) they sent the Ministry of Supervision to investigate the SFDA and ordered the team to specifically look for evidence that official corruption or negligence contributed to the scandal, and (2) they ordered the SFDA to initiate a national campaign to investigate every single domestic pharmaceutical plant and re-check every drug on the market to make sure they were all compliant with national standards. By directly addressing these two key issues, State Council officials significantly increased the likelihood that their actions would diffuse citizen concerns and improve consumer confidence. In addition, they themselves gained political capital by directly responding to their citizens’ pleas.

In sum, the Qiqihar case represents optimal media fire alarm use in the Chinese context. Chinese leaders gave their domestic media watchdogs free reign to
investigate and expose hidden regulatory problems within the SFDA, Chinese media outlets used their own resources to conduct watchdog investigations nationwide, media publicity channeled that information directly to the Chinese leadership, and the media reports gave Chinese leaders a much broader and more accurate view of the situation compared to the information they were receiving internally through the SFDA (which blamed the incident on a small group of private individuals and ignored or covered-up the bureaucratic corruption issue). Furthermore, since Chinese leaders allowed their media watchdogs to investigate SFDA corruption in general – as opposed to shutting these watchdogs down as soon as national-level leaders found out about the Zhongshan Hospital incident – media investigations likely prevented further pharmaceutical scandals ex ante, i.e., instead of revealing a single scandal ex post, they exposed a larger corruption problem before that problem could create more scandals and more welfare damage.

6.3.2. Non-Governmental Fire Alarm Publicity in the Qiqihar Case

The Qiqihar case also supports the non-governmental fire alarm publicity hypothesis mentioned above:

H2b: Non-governmental fire alarm publicity is determined by the instability risks in each policy sector: Chinese leaders are more likely to allow domestic media coverage of non-governmental alarm ringing and subsequent higher-level official responses when the malfeasance-induced instability risks are relatively low.

The State Council did not try to conceal or play down its intervention in the Qiqihar case (or the fact that it was generated by media watchdogs). Instead, the State Council
issued an official notice to inform the public about the leadership intervention, and China’s state-run media outlets followed up with continuous updates on the investigation team’s progress, findings and disciplinary actions.

On the other hand, as in the Fuyang milk powder case, one the State Council entered the fray and launched their own investigations (on May 19), they restricted further watchdog media coverage to ensure that their own crisis response efforts did not face too much public scrutiny or media criticism. On May 21 the State Council issued an emergency notice ordering all provincial-level governments and bureaucratic agencies nationwide to “thoroughly and successfully guide public opinion” on the Armillarisin A investigation, to “avoid the negative impacts from sensationalized and misleading media reports” and to “prevent triggering mass incidents and other factors of social instability.”

Since public opinion and domestic media coverage are always intertwined in Chinese political parlance, an order to “guide public opinion” is an order to control the media. Similarly, the statement about “sensational” and “misleading” press coverage sends a clear message that Chinese reporters are no longer allowed to stir up public sentiment with articles bemoaning the critical state of China’s drug safety system. Unlike the explicit press freeze issued after the State Council intervened in the Fuyang milk powder scandal, these orders do leave plenty of room for interpretation. However, since Chinese journalists have no guaranteed

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602 It is also possible (and very likely) that the Central Propaganda Department issued an internal notice with a much more explicit press directive. However, these press notices are generally classified.
press freedoms, these statements give provincial and bureaucratic officials wide leeway to withhold information from the press and to pressure local news agencies to back off from investigative reports that portray the government in a negative light.

6.4. Conclusion

This chapter examined two detailed case narratives of official malfeasance and fire alarm oversight in China’s food and drug sector. In the first case, angry parents and doctors file xinfang petitions and enlist local media outlets to expose faulty milk powders; however, local-level petitioning and local-level media exposure is not effective. The milk powder victims then share their stories with the national media, and national-level media exposure sparks a leadership intervention that successfully eradicates the problem. In the second case, poisonous antibiotic injections kill thirteen patients in Guangzhou City (Guangdong Province), and SFDA officials try to cover up the regulatory corruption behind the scandal. National-level media outlets dig deeper into the story, uncover evidence suggesting SFDA culpability and trigger a leadership intervention that uncovers and removes the corrupt regulatory officials.

Both of these cases provided evidence to support the non-governmental fire alarm publicity hypothesis introduced in chapter one. The food and drug sector is a relatively low-risk policy sector, Chinese leaders strongly support media fire alarms in this sector, and they use public interventions to signal that these fire alarm channels are open, effective and encouraged. Unfortunately, both cases also suggest that higher-level interventions are critical for effective grievance redress. As a result, since
higher-level leaders can only intervene in a small minority of these cases, effective redress may be very difficult for the average Chinese citizen to achieve.
Chapter 7

Environmental Protection:
Official Malfeasance and Fire Alarm Policy in a Medium-Risk Sector

7.1. Introduction

This chapter examines official malfeasance and fire alarm oversight in China’s environmental protection sector. China’s years of rapid industrialization and lax regulatory enforcement have created a massive pollution crisis. Chinese citizens are suffering health problems, reduced crop yields and a variety of other pollution-induced welfare impacts, and their resultant discontent threatens CCP regime stability. Chinese leaders have issued a wide range of new environmental protection laws and standards to address these pollution problems and improve citizen welfare. However, the leadership’s new environmental polices are only effective when they are implemented and enforced at the local level, and captured local-level officials routinely undermine policy implementation to protect local polluters. Chinese’s traditional police patrol oversight mechanisms have not been effective at uncovering and punishing these local malfeasant. As a result, Chinese leaders need an oversight fix in this sector, and they are increasingly turning toward fire alarms as a potential solution.

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Based on the three instability risk indicators outlined in chapter one, Chinese leaders do not face consistently high or consistently low malfeasance-induced instability risks in this sector. Instead, instability risks are relatively mixed:

1. **Perceived welfare impacts vary widely from case to case.** Some pollution cases have a disastrous impact on victim welfare; other cases are relatively minor. Among the relatively high-impact cases, discounting and information asymmetries will sometimes reduce instability risks: some pollution victims earn income from polluting enterprises and will therefore discount pollution-induced welfare damage; other victims lack the technical knowledge they would need to accurately assess pollution damage and may therefore underestimate welfare impacts.

2. **Environmental malfeasance is conducted by a mix of governmental and commercial actors.** Chinese leaders will always have convenient commercial scapegoats in this sector, and that will reduce some of the risks from non-governmental fire alarms.

3. **Environmental malfeasance generally victimizes geographically concentrated communities that can easily organize for collective action.** Protests should be likely in this sector, especially when perceived welfare impacts are relatively high, and non-governmental fire alarms will be risky in those high-impact cases.

These indicators suggest that non-governmental fire alarms generally pose fewer risks in the environmental protection sector than in the land sector (since welfare impacts are not always high and commercial actors can deflect blame away from the government). On the other hand, geographically concentrated pollution victims can easily stage mass protests, so non-governmental fire alarms are not as safe.

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in this sector as they are in the food and drug sector (where malfeasance victims are geographically dispersed). Environmental protection is therefore best described as a medium-risk policy sector, and that risk level should produce the following policy patterns:

- **Governmental vs. Non-Governmental Fire Alarm Openness:**
  - (H1a) Chinese leaders should allow aggrieved citizens to access governmental fire alarms in this sector.
  - (H1b) Non-governmental fire alarms should not be completely closed as in the high-risk land sector, nor should they be as open as they are in the low-risk food and drug sector.

- **Governmental vs. Non-Governmental Fire Alarm Publicity:**
  - (H2a) Chinese leaders should publicize governmental fire alarm institutional improvements and at least some governmental fire alarm success cases to encourage pollution victims to use those institutions for grievance redress.
  - (H2b) Domestic media coverage of non-governmental alarm-ringing and resultant higher-level official responses should not be completely prohibited as in the high-risk land sector, nor should it be as open as in the low-risk food and drug sector.

- **Cyclical Reform and Innovation:**
  - (H3a) China’s environmental oversight institutions will not remain constant over time: if Chinese leaders receive negative feedback on environmental fire alarm institutional performance, they will launch further rounds of oversight reform to address those problems.

This chapter provides evidence to support these predictions. Chinese leaders generally do allow both governmental and non-governmental fire alarms in this sector. However, they also face a degree of instability risk – particularly in the cases with relatively high welfare impacts – and Chinese leaders deploy targeted fire alarm controls to keep non-governmental fire alarms away from those higher-risk cases.

More specifically, Chinese leaders use state secrets regulations to curtail non-governmental fire alarms in the pollution cases with relatively high instability risks.
These regulations prevent non-governmental fire alarms from publicizing information about those high-risk cases without completely shuttering those institutions and forfeiting the benefits they can provide in the lower-risk cases. Unfortunately, as with other fire alarm controls, Chinese leaders delegate their pollution information controls down to the local level, and that gives local officials an additional tool that they can use to interfere in legitimate fire alarm activities. In other words, the added controls increase fire alarm agency loss, and Chinese leaders are forced to constantly reform their environmental fire alarms in an attempt to minimize that agency loss without taking on too much added political risk.

The rest of this chapter will proceed as follows. Sections 7.2 and 7.3 will introduce China’s environmental protection institutions and highlight the oversight problems that foster official malfeasance and citizen discontent in this sector. Sections 7.4 - 7.7 will outline the fire alarm policies Chinese leaders use to address those problems. Section 7.8 will outline the police patrol reforms Chinese leaders are pursuing in parallel with their fire alarm innovations, and section 7.9 will conclude.

7.2. Institutional Background (1949-1989): Building a Weak, Fragmented and Decentralized Environmental Protection System with Perverse Incentives

Environmental protection was never a policy priority during the Mao era (1949-1976). From 1949 to 1972, CCP leaders basically ignored the environmental problems they were generating with rapid industrial expansion, government-encouraged population growth and ecologically unsound resource mobilization
Mao-era leaders addressed environmental issues for the first time in 1972, partly because they were sending a delegation to the first global U.N. environmental conference, but also because China faced a series of major domestic pollution disasters and pollution-related mass protests in the early 1970s, and those incidents forced Party leaders to take China’s environmental problems a bit more seriously. In May 1974 CCP leaders rolled out the first environmental institutions of the post-1949 era: a State Council Environmental Protection Leading Group (to coordinate environmental policymaking at the national level), a national Environmental Protection Office (to support the Leading Group with research and other policy-making services), and a network of provincial and municipal-level Environmental Protection Offices (to monitor local environmental conditions and tax local polluters). These developments marked a big departure from the status quo of no environmental institutions. However, in the political turbulence of the 1970s, few national-level leaders had the energy for serious environmental reforms, and they


607 Before 1974 China had no independent national or local-level environmental agencies; environmental issues were managed (if at all) by various internal departments within other functional ministries. Sanders (1999); Ross (1998); Economy (2004). Jahiel, Abigail R. (1998), “The Organization of Environmental Protection in China,” The China Quarterly, No. 156, pp. 757-787.
never gave these agencies the authority or the resources they would need to seriously tackle China’s pollution problems.\textsuperscript{608}

Deng Xiaoping inherited this rudimentary environmental framework in 1978 and immediately began reforming and expanding these institutions to fit reform-era policy priorities.\textsuperscript{609} Deng-era leaders designed a new environmental protection regime based on two key reform-era principles: (1) prioritizing economic development over competing policy goals, and (2) decentralizing national administrative structures to encourage local-level innovation.

Throughout the 1980s Chinese leaders unanimously accepted a “pollute first, control later” philosophy: they saw environmental pollution as a price they had to pay for early-stage economic growth and development, and they assumed China could wait to seriously tackle pollution issues at a more advanced developmental stage.\textsuperscript{610} As a result, although Deng-era leaders knew they had to address China’s growing pollution problems, they also assumed that an overly-zealous environmental protection effort would dampen economic growth, and that was considered unacceptable as well.

\textsuperscript{608} The State Council Environmental Protection Leading Group only met about once every four years, the national Environmental Protection Office had just thirty personnel and very little contact with the sub-national offices, and the sub-national offices had minimal administrative authority. The Cultural Revolution (1966-1976) also hindered further environmental progress: China’s few standing environmental regulations were denounced as “bourgeois and revisionist restrictions.” Economy (2004), citing Geping Qu, \textit{Environmental Management in China} (Beijing: China Environmental Science Press, 1991).

\textsuperscript{609} Deng-era leaders had a stronger incentive to pursue environmental reform because China’s environmental problems were threatening social stability and production efficiency. Domestic factory workers staged several anti-pollution protests throughout the 1970s, and pollution-related water shortages were depriving factories of a critical production input. Jahiel, Abigail R. (1997), “The Contradictory Impact of Reform on Environmental Protection in China,” \textit{The China Quarterly}, No. 149, pp. 81-103.

as unnecessary. This view was reflected in the reform-era changes to China’s national environmental administration. Deng-era leaders did promote the Mao-era National Environmental Protection Office (NEPO) to vice-ministerial status (thus renaming it the National Environmental Protection Agency or NEPA) and they also expanded its national-level personnel allotment from 30 to 321.\textsuperscript{611} However, they also designed the NEPA to be weaker (in resources and administrative rank) than the economic and industrial agencies at every administrative level, and that power imbalance limited the NEPA’s regulatory capabilities. For example, the NEPA had to depend on the economic and industrial bureaus for environmental policy enforcement – only those bureaus could force local polluters to pay fines, change production practices or compensate pollution victims – and that gave economic and industrial interests wide leeway to protect key development projects from NEPA environmental protection efforts.\textsuperscript{612}

\textsuperscript{611} Reform-era leaders first expanded the NEPO personnel allotment from 30 to 60 during the 1982 administrative reforms when they abolished the State Council Environmental Protection Commission and turned the NEPO into a subsidiary unit under the newly-created Ministry of Urban and Rural Construction and Environmental Protection. Chinese environmental scholars and officials strongly protested this administrative structure because the sub-ministerial position undercut NEPO independence and authority. In 1984 Chinese leaders responded to these criticisms by re-establishing the State Council Environmental Protection Commission, elevating the NEPO to bureau-level status (thus renaming it the National Environmental Protection Bureau or NEPB) and expanding its personnel allotment from 60 to 120. After the 1984 reforms, the new NEPB was still a subsidiary under the Ministry of Urban and Rural Construction and Environmental Protection; however, it was also a direct subsidiary under the State Council Commission. This dual-leadership arrangement significantly increased NEPB administrative status because the NEPB could then operate through the State Council Commission, and the Commission had the authority to issue rules and regulations that other ministerial-level agencies had to follow. In March 1988 Chinese leaders elevated the NEPB to vice-ministerial rank (thus renaming it the National Environmental Protection Agency or NEPA) and expanded its personnel allotment to 321. The 1988 reforms turned the NEPA into an independent vice-ministerial agency answering only to the State Council; from 1988 onward neither the NEPA nor its sub-national counterparts were subordinate to the Construction Ministry.

\textsuperscript{612} In general, environmental protection enforcements actions – especially punitive actions – also required the support of the local Party committee (Jahiel 1998).
Second, Deng-era leaders decentralized China’s environmental administration by delegating primary sub-national authority down to the local People’s governments. They expanded the Mao-era system of regional Environmental Protection Offices into a larger network of regional Environmental Protection Bureaus (EPBs) and tasked those bureaus with local-level monitoring and enforcement. The regional EPBs were all integrated into a vertical administrative hierarchy under the NEPA, but their functional administrative ties to the NEPA were relatively weak. In reality, the regional EPBs operated as subsidiary units under the local People’s governments. The NEPA could provide technical guidance and other (generally knowledge-based) resources to support local-level EPB activities, but the local People’s governments controlled EPB personnel appointments and budgets (which came from local government treasuries, not from the NEPA) and therefore had all of the real administrative authority over EPB operations. This decentralized administrative structure gave local officials plenty of maneuvering room to adjust environmental policy to fit local conditions, and it also supported the economic priorities mentioned above: the local EPBs had an environmental protection agenda, the local People’s governments had a broader policy agenda focused primarily on economic growth, and the People’s governments could keep the EPBs on a tight leash to ensure that environmental enforcement never derailed local growth rates.

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613 Reform-era leaders also set up regional environmental monitoring stations (under the local EPBs) to routinely monitor local environmental conditions (Jahiel 1998).
Unfortunately, although the local People’s government leaders were the primary sub-national environmental protection agents (since they controlled the EPBs), no one was holding them accountable for environmental policy enforcement. The NEPA was the primary national-level environmental principal, but the NEPA had no authority over the local People’s government leaders. Those leaders had their own principals in the regional Party and state hierarchies, but those principles had neither the incentive nor the capability to monitor local environmental performance. In 1989 Chinese leaders tried to fix this problem with the Environmental Protection Target Responsibility System (EPTRS). However, those targets were never integrated into cadre performance evaluations and were therefore relatively ineffective. Cadre evaluations were the main determinants for personnel changes, and those evaluations prioritized economic growth over competing policy goals. Local leaders all assumed that they could not enforce environmental compliance without depressing local growth rates, so they all protected their local polluters instead of regulating them.

616 Under this system, the State Council assigned annual environmental protection targets to each province. From the provincial level down, this system was managed through the local EPBs, with the EPBs at each level assigning targets to the People’s governments one level down. The initial target assignments were flexible, with ample room for negotiation. Upon receiving their targets, People’s government leaders met with leading officials from local-level economic agencies, industrial agencies, and the local EPB to discuss whether they could feasibly meet these targets in conjunction with their pre-established economic development goals. The People’s government leaders would then negotiate new (generally more lenient) targets with the higher-level EPB and sign annual contracts promising to meet those targets. At the end of the year, EPB officials conducted environmental assessments to determine whether these targets had been met and publicized assessment results through the local media.

As a result, year after year, the State Council’s environmental protection targets were not met.

7.3. Escalating Pollution Crisis Forces Chinese Leaders to Change Course

By the mid-1990s China’s growth-at-all-costs incentive structure had created a massive pollution crisis, and Chinese citizens were suffering the consequences. National-level statistics revealed that pollution-related complaints and protests were escalating rapidly, and pollution disputes between citizens and enterprises were growing increasingly violent, especially in the Chinese countryside. For the first time, Chinese leaders began to view environmental unrest as a serious political

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618 On the positive side, by the early 1990s China had many new environmental regulations, local EPBs were collecting fines from excessive polluters, and many larger enterprises were increasingly treating discharge to reduce or remove wastes. However, local officials kept these activities within tight boundaries to protect local growth rates, and many smaller enterprises (especially the rural township and village enterprises) faced no environmental regulation whatsoever. This combination of lax environmental enforcement and rapid industrialization produced an overall net increase in environmental pollution, so Deng-era leaders actually created more environmental problems than they addressed. Jahiel (1997); Sanders (1999); Wang, Alex (2007). Lotspeich, Richard and Aimin Chen (1997), “Environmental protection in the People’s Republic of China,” Journal of Contemporary China, Vol. 6, Issue 14, pp. 33-59.


threat. In addition, a series of statistical surveys conducted throughout the 1990s revealed that China’s pollution problems were actually undermining economic growth, and that finally convinced Chinese leaders to abandon their “pollute first, control later” strategy. In 1996 Chinese leaders changed course and introduced a new “sustainable development” strategy that finally defined environmental protection as a key national-level political priority on par with economic growth and development.

One key element of this strategy was raising the status of the national-level environmental protection agency to give it more clout vis-à-vis the economic and industrial regulators. In 1998 Chinese leaders promoted the NEPA to full ministerial status (thus renaming it the State Environmental Protection Agency or SEPA) and expanded its functional authority to encompass some of the sector-specific


responsibilities that were previously dispersed among other agencies.\textsuperscript{624} They promoted this agency again in 2008, this time to full cabinet-level status, and renamed it the Ministry of Environmental Protection (MEP).\textsuperscript{625}

However, a stronger national-level environmental agency can only improve grassroots-level policy implementation if it can accurately monitor and enforce local-level compliance, and China’s environmental officials faced serious difficulties on both fronts. First, national-level officials do not have the resources to directly measure sub-national environmental indicators themselves; they must depend primarily on local-level environmental data, and local officials routinely (and flagrantly) manipulate that data to hide environmental malfeasance.\textsuperscript{626} Second, Chinese leaders did not believe they could centralize environmental responsibilities without damaging local growth incentives; therefore, despite the national-level administrative promotions, the local EPBs still answer to the local People’s governments, and that gives local officials wide leeway to interfere in environmental enforcement operations.\textsuperscript{627} In response, Chinese leaders are increasingly turning toward citizen fire alarms as a


\textsuperscript{627} Economy (2004).
solution to both of these problems. Chinese citizens are directly impacted by local environmental malfeasance and can therefore provide higher-level leaders with more accurate feedback on grassroots policy enforcement, and fire alarm institutions can potentially give those citizens an avenue for holding local-level officials accountable to national-level environmental policies and standards.

7.4. Fire Alarm Policy in the Environmental Protection Sector

At first glance, Chinese leaders employ a very broad and open fire alarm strategy in this sector – they generally allow and encourage pollution victims to utilize all possible fire alarm channels, both governmental and non-governmental. For example, in the *National Eleventh Five-year Plan for Environmental Protection*, Chinese leaders describe their environmental fire alarm improvement goals for 2006-2010 as follows:

Media guide and supervision role will be brought into full play. More efforts will be made to promote the guidelines, policies, laws and regulations on environmental protection and disclose environmental infringements. … [China] will extensively carry out such activities as the development of green communities, green schools and green household[s] and bring the roles of trade union, Chinese Communist Youth League and women federation, communities, various environmental NGOs and environmental volunteers into full play. It will enhance the work on public complaints by letters and visits, bring the role of environmental hotline of “12369” into play and expand public complaint and report channels. It will study on environmental

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public interest litigation, strengthen administrative reconsideration, facilitate administrative lawsuit and safeguard public environmental rights and interests according to law. 629

In other words, Chinese leaders are opening up all available fire alarm institutions, both governmental and non-governmental: administrative reconsideration, judicial review, xinfang complaints, media oversight and social organization.

On the other hand, this apparent openness is not the full story. Instability risks can vary widely within this sector – environmental malfeasance generates high instability risk in some cases and low instability risks in others – and this case-by-case variation gives Chinese leaders an incentive to build more variability into their environmental fire alarms. Chinese leaders attempt to achieve that variability through environmental information controls. These controls are designed to enable non-governmental fire alarms in general while also keeping those institutions away from the higher-risk cases; however, as with China’s other fire alarm controls, they do not always function as intended. The following sections (7.5 – 7.7) will outline China’s environmental information control regime and fire alarm policies in detail.

7.5. China’s Environmental Information Control Policies: State Secrets and Administrative Transparency Regulations

Information transparency is critical for environmental fire alarm effectiveness because polluters (and their government protectors) have private information about waste emissions and their potential impact on public welfare.\(^{630}\) Local citizens generally do detect increases in environmental pollution, but it is very difficult for them to measure harm and confirm causation – they often need technical assistance to determine whether they are facing nuisance pollution (which may be an acceptable price to pay if polluting enterprises also increase local incomes) versus hazardous pollution with serious welfare impacts.\(^{631}\) Without technical assistance, pollution victims may not connect the dots between pollution cause and effect until they suddenly hit a major crisis point, and Chinese citizens facing a major welfare crisis often resort to mass protests.

Chinese leaders want to give their citizens the information they need to detect environmental malfeasance early on and hold the guilty officials accountable before pollution problems reach crisis levels. Chinese leaders can do this through administrative transparency: if they force lower-level officials to publicize pollution monitoring data, local citizens can use that data to


supervise and enforce environmental compliance.\textsuperscript{632} On the other hand, information disclosure can also bring political risks. In some cases, information disclosure could increase public perceptions of pollution-related welfare problems, exacerbate public frustrations with CCP performance and incite mass protests. These risks are highest when information disclosure would focus public attention on particularly widespread official malfeasance (especially among higher-level officials) or expose serious pollution-related welfare threats that the Party cannot quickly rectify.

Chinese leaders want to maximize the benefits from environmental information disclosure and minimize the risks, and they try to strike that balance by encouraging information disclosure in some cases and restricting it in others. On the restrictive side, China’s state secrets regulations limit the information that government officials, whistleblowers, journalists, social organizations and other knowledgeable individuals or agencies can publicly disclose without suffering severe legal consequences. China’s current environmental state secrets regulations do not specify particular categories of environmental information that must be concealed in all cases.\textsuperscript{633} Rather, any environmental information can become a state secret if information disclosure

\textsuperscript{632} Wu, Changhua (2005).
would likely threaten social stability.\textsuperscript{634} Local officials have wide leeway to determine what information would likely threaten social stability and what information would not, and they can apply the state secrets designation retroactively. For example, if journalists or social organizations expose a local pollution scandal and local residents react with mass protests, local officials can persecute (and imprison) the non-governmental alarm ringers on a state secrets charge for disclosing environmental information that negatively affects social stability. In other words, Chinese journalists and social organizations must self-censor their fire alarm activities in this sector to avoid the cases with

\textsuperscript{634} More specifically, the 2004 regulations state that environmental information is a confidential-level state secret if disclosure could “affect social stability” or “create an unfavorable impression in [China’s] foreign affairs work,” and environmental information is a classified-level state secret if disclosure could “seriously affect social stability” or seriously threaten Chinese military facilities (including nuclear facilities with potential environmental consequences). Before 2004, the 1990 Regulations Defining the Scope and Categorization of State Secrets in Environmental Protection Work provided a much more specific list of the environmental information that was considered ‘classified’ or ‘confidential.’ This list included pollution monitoring data gathered by local environmental officials, detailed environmental quality reports (as opposed to the abridged versions edited for public release), environmental impact data from military nuclear facilities, national-level pollution incidents and information about the public harm from those incidents. In December 2004 SEPA and the State Secrets Bureau issued the new regulations which appear to replace the 1990 version (i.e., sub-national environmental agencies now reference the 2004 version instead of the 1990 version in official documents regarding environmental information disclosure). Ironically, the new 2004 regulations are not widely publicized. SEPA did publish the regulations in the 2005 China Environmental Yearbook (which covers all regulatory activity from 2004), and SEPA also announced their promulgation on its website; however, SEPA later classified the regulations as “internal,” and they are not posted online. Instead, most government-run environmental websites are still posting the 1990 regulations only. This creates confusion because the 1990 list is, in general, much more restrictive. Due to this ambiguity, journalists, citizen environmentalists and other non-governmental actors cannot be sure which state secrets guidelines to follow, and this gives local officials even more leeway to make these designations arbitrarily. For information on the new 2004 regulations, see: China Environmental Yearbook 2005 (Ibid.) and HRIC Report 2007 (Ibid.). For SEPA’s announcement of the 2004 promulgation, see: “Huanjing baohu da shiji 2004 nian 12 yue” (Record of Major Environmental Protection Events for December 2004), December 31, 2004, on the MEP website at: http://bgt.mep.gov.cn/hbdsj/200412/t20041231_64827.htm (accessed April 23, 2010). For an example of government websites still posting (and only posting) the 1990 version, see: “Huanjing baohu gongzuozhe zhong guojia mimi jiqi jiti fanwei de guiding” (Regulations Defining the Scope and Categorization of State Secrets in Environmental Protection Work), Environmental Policies and Regulations, Zhonghua Huanbao Shiji Xing (China Environment Centennial Journey Project), on the project website at: http://www.ccep.org.cn/law/detail_Law_17.html (accessed April 23, 2010).
relatively high instability risks, and that censorship can impede grievance redress.

Beginning in 2008, Chinese leaders balance the state secrets regulations with a separate set of regulations promoting environmental information disclosure in the cases where the state secrets regulations do not apply, i.e., in the pollution cases with relatively low instability risks.\(^{635}\) The State Council Regulations on Open Government Information and the MEP Measures for the Disclosure of Environmental Information (both effective May 1, 2008) order local-level officials to disclose a wide range of environmental data including environmental quality statistics, the results from environmental inspections, pollution emissions and the names of companies violating pollution standards.\(^{636}\) Chinese leaders designed these new transparency regulations to give pollution victims, legal representatives, journalists, social organizations and other interested parties the information they need to serve as grassroots fire alarms.

When there is a conflict between the state secrets and administrative transparency regulations – i.e., if information on the transparency list could potentially threaten social stability – the state secrets regulations always


\(^{636}\) Ibid.
prevail. Chinese leaders designed this system to err on the side of political caution. They want effective environmental fire alarms, both governmental and non-governmental, but they do not want the non-governmental alarms operating when instability risks are high. Unfortunately, as with the other fire alarm controls, Chinese leaders must delegate instability risk assessments down to the local level, and that gives local officials a loophole for concealing the environmental information that should be publicized under the transparency regulations. If local officials want to hide the evidence of their own environmental malfeasance, they can declare that information a state secret, and that impacts both governmental and non-governmental fire alarm effectiveness. On the governmental side, state secrets declarations can deny citizens the information they need to spot regulatory violations and to compile evidence for reconsideration applications, judicial suits and xinfang petitions. On the non-governmental side, local officials routinely use state secrets declarations (in combination with the general media and social organization restrictions) to stifle those fire alarms completely.

In sum, although Chinese leaders open up for both governmental and non-governmental fire alarms in this sector, they also employ additional

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637 Ibid. Both regulations include statutory exceptions for information that is a state secret. This exemption also applies to information that is designated a state secret by local government agencies. “Huanjing jiance shuju gongkai fanwei zunzhao baom i guiding shi qingkuang jinxing gongkai” (Regarding the Circumstances for Publishing Environmental Monitoring Data in Accordance with the State Secrets Regulations), Environmental Protection Ministry Notice # 157, issued July 29, 2008, published in Zhongguo Huanjing Bao (China Environmental News), October 31, 2008, available online at: http://www.cenews.com.cn/xwzx/fz/qt/200810/t20081030_590875.html (accessed February 24, 2010).
639 Zhao, Yuhong (2004).
control mechanisms. These mechanisms are primarily designed to keep non-
governmental fire alarms out of the cases with high instability risks. However,
due to a combination of control delegation and local protectionism, malfeasant
local officials sometimes abuse those controls to suppress legitimate fire alarm
activities that the central leadership would like to encourage, and that impedes
grievance redress. As a result, Chinese leaders still face rampant malfeasance
in this sector and they are continuously reforming their environmental fire
alarm institutions in an attempt to identify and construct a politically-
acceptable system that works.

7.6. Governmental Fire Alarms in the Environmental Protection Sector

Chinese leaders allow and encourage pollution victims to seek redress through
all three governmental fire alarm channels: administrative reconsideration, judicial
review, and xinfang petitions. Unfortunately, fire alarm agency loss is rampant
throughout all of these institutions, primarily due to the general control-induced
agency loss that plagues governmental fire alarms in all Chinese policy sectors, but
also due to the additional problems generated by the abovementioned information
controls. As a result, the pollution victims who seek redress through governmental
fire alarms are often unsuccessful, and Chinese leaders continuously receive negative
feedback in the form of unmet environmental protection targets and pollution-related
mass protests. Chinese leaders are responding to this feedback with continued
institutional reform: they are constantly trying to improve governmental fire alarms in
this sector, primarily through tighter procedural requirements that aim to reduce local-level discretion in fire alarm complaint acceptance and processing.

Thus far, as table 7.1 demonstrates, these reforms have not convinced many Chinese citizens to pursue administrative reconsideration or administrative litigation; instead, xinfang petitions are by far the most popular approach. China does not provide national statistics on civil pollution litigation cases (filed against polluting enterprises), and that fire alarm channel is therefore not represented in table 7.1. Chinese officials do claim that civil environmental lawsuits are increasing steadily and have already far surpassed the number of administrative suits, and civil litigation may eventually become one of the most effective governmental fire alarms in this sector, at least in terms of receiving some form of financial compensation for environmental malfeasance. Nevertheless, according to MEP statistics, Chinese citizens staged 50,000 pollution-related mass protests in 2005, and those high protest numbers (which far outweigh the number of citizens pursuing most governmental fire alarm channels in this sector) suggest that Chinese leaders still have a long way to go with governmental fire alarm institutional reform.

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641 Palmer, Michael, “Environmental Regulation in the People’s Republic of China: the Face of Domestic Law,” The China Quarterly, No. 156, Special Issue: China’s Environment (December 1998), pp. 788-808. This reported increase in environmental civil cases fits a general trend of increasing civil suits across all policy sectors. For example, according to the national statistics bureau, the number of cases accepted for civil trial in China has increased from a nation-wide total of 300,787 in 1978 to over 3.4 million in 2001. Zhao, Yuhong (2004), “Environmental Dispute Resolution in China,” Journal of Environmental Law, Vol. 16, No. 2, pp. 157-192.
Table 7.1. Comparative Governmental Fire Alarm Use in China’s Environmental Protection Sector: Administrative Reconsideration, Administrative Lawsuits and Xinfang Petitions

<table>
<thead>
<tr>
<th>Year</th>
<th>Administrative Reconsideration Cases Accepted</th>
<th>Administrative Lawsuit Rulings Issued</th>
<th>Petitions Received via Letter</th>
<th>Petitions Received via Visit</th>
<th>Total Xinfang Petitions Received</th>
<th>Total Xinfang Petitions Processed</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>246</td>
<td>580</td>
<td>247,741</td>
<td>62,059</td>
<td>309,800</td>
<td>298,958</td>
</tr>
<tr>
<td>2001</td>
<td>290</td>
<td>696</td>
<td>367,402</td>
<td>80,329</td>
<td>447,731</td>
<td>424,490</td>
</tr>
<tr>
<td>2002</td>
<td>285</td>
<td>993</td>
<td>435,020</td>
<td>90,746</td>
<td>525,766</td>
<td>488,101</td>
</tr>
<tr>
<td>2003</td>
<td>230</td>
<td>579</td>
<td>525,988</td>
<td>85,028</td>
<td>611,016</td>
<td>576,272</td>
</tr>
<tr>
<td>2004</td>
<td>271</td>
<td>616</td>
<td>595,852</td>
<td>86,414</td>
<td>682,266</td>
<td>645,028</td>
</tr>
<tr>
<td>2005</td>
<td>211</td>
<td>399</td>
<td>608,245</td>
<td>88,237</td>
<td>696,482</td>
<td>609,839</td>
</tr>
<tr>
<td>2006</td>
<td>208</td>
<td>353</td>
<td>616,122</td>
<td>71,287</td>
<td>687,409</td>
<td>638,317</td>
</tr>
</tbody>
</table>


The following three sections will examine China’s governmental fire alarm institutions, the agency loss problems that often undermine these institutions, and the central leadership’s attempts to reduce that agency loss through tighter procedural requirements and other institutional reforms.

7.6.1. Administrative Reconsideration

If an EPB’s concrete administrative act infringes on a Chinese citizen’s lawful rights and interests (i.e., if an EPB grants environmental permits to an illegally polluting enterprise and the surrounding community suffers losses from the resultant pollution), the victim can ask the offending EPB’s immediate superiors to investigate and possibly reverse that act through administrative reconsideration. Unfortunately,

as in other sectors, environmental reconsideration is rarely effective because the proceedings are fraught with protectionism.\textsuperscript{644}

China’s pollution victims can submit reconsideration applications to an EPB’s immediate functional superior (i.e., the EPB one level up in the administrative hierarchy) or to the local People’s government at the same administrative level (i.e., county-level People’s government reviewing county-level EPB); however, neither reconsideration option takes the process outside the local political network, so these proceedings generally face a strong local political bias.\textsuperscript{645} When EPBs protect local polluters, they generally do so at the behest of the local Party committee and the local People’s government, and those officials can use their personnel and budgetary authority to ensure that malfeasant EPB actions are never overturned in local reconsideration hearings. As a result, many of the citizens who submit these applications receive no response whatsoever.

The MEP is trying to address this problem with new procedural requirements. The MEP has issued three new reconsideration regulations in the past decade – the 2001 \textit{Environmental Administrative Reconsideration Standards for Honest Work}, the 2006 \textit{Measures for Environmental Administrative Reconsideration and Response to Administrative Lawsuits}, and the 2008 \textit{Measures for Environmental Administrative


Reconsideration. Each new regulation replaces the previous version, and each regulation expands and tightens the procedural requirements for reconsideration hearings. However, even the latest legislation still leaves plenty of loopholes, and reconsideration committees still answer to the same local Party and People’s government leaders benefiting from lax environmental enforcement. As a result, the actual on-the-ground impact from this legislation has been minimal.

Personnel qualifications further complicate reconsideration proceedings in this sector because many environmental reconsideration cases are legally and/or technically complex, and reconsideration committees often lack the knowledge needed to make a fair judgment. Some regional EPBs just do not have the funding to hire qualified reconsideration personnel (staff shortages plague China’s environmental protection administration at all levels). As a result, even when local protectionism is not a major hindrance, some EPBs still refuse to accept reconsideration cases due to a lack of resources. Due to these extensive problems, most pollution victims do not view the reconsideration system as credible fire alarm avenue and therefore do not bother to file these applications. Nationwide, China’s environmental reconsideration committees processed just 528 cases in 2008, and that number includes commercial

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cases of enterprises filing applications against environmental enforcement actions.\textsuperscript{647}

In contrast, the annual statistics for environmental \textit{xinfang} petitions always number in the hundreds of thousands.

\textbf{7.6.2. Judicial Redress: Administrative and Civil Litigation}

Due to the abovementioned reconsideration problems, Chinese leaders strongly encourage pollution victims to seek redress through the judicial system. Unfortunately, Chinese courts are very decentralized – local Party committees control court budgets and personnel decisions – and local officials routinely use their political clout to sway or even block pollution lawsuits.\textsuperscript{648} Chinese leaders are well aware of this problem. For example, the 2005 State Council \textit{Decision on Scientific Development and Environmental Protection} states: “environmental protection laws and regulations are not up to the task…the environmental protection legal system is not complete…where laws exist they are not followed and enforcement is not strict.”\textsuperscript{649} The State Council is therefore calling for “perfection of the legal assistance system for pollution victims,” but authoritarian regime constraints limit the available options for legal reform.\textsuperscript{650}

Local judicial protectionism stems primarily from the tight relationship between local


\textsuperscript{648} Compared to administrative reconsideration, judicial review does provide an additional degree of separation between adjudicators and defendants, and this can give pollution victims a better chance for a fair hearing.


\textsuperscript{650} Ibid. English translation from Alex Wang (2007).
courts and local Party committees – in theory, Chinese leaders could significantly reduce (or even eradicate) that protectionism through judicial independence, but they cannot accept the associated political risks.\textsuperscript{651} Chinese leaders are therefore trying to reform court proceedings without separating the courts from the Party, primarily through tighter procedural requirements and other legislative statues that reduce local court discretion in pollution cases.

Environmental malfeasance generally involves two key offenders: (1) the polluting enterprise that violates national regulatory standards and (2) the environmental officials or agencies protecting the polluting enterprise from enforcement. Pollution victims can pursue legal redress against either offender: they can file civil lawsuits against polluting enterprises and they can file administrative lawsuits against the environmental officials or agencies protecting them. The following section will outline these two fire alarm pathways in detail.

\subsection*{7.6.2.1. Administrative Litigation}

If an EPB’s concrete administrative action harms Chinese citizens, those citizens can sue the offending EPB under China’s Administrative Procedure Law.\textsuperscript{652} Unfortunately, plaintiffs must initiate these cases at the local level, and local courts are beholden to local political leaders with incentives to protect malfeasant EPBs.\textsuperscript{653} Once the local court rules on or officially refuses to accept the case, the plaintiffs can then appeal to another court at the next administrative level up, but they cannot go straight to a higher-level court as the court of first instance.\textsuperscript{654} These requirements are designed to protect China’s limited higher-level judicial resources; however, they also force environmental plaintiffs to run a gauntlet of local political obstacles as a first step in administrative litigation cases, and that is a lengthy and resource-consuming process that most pollution victims are unwilling or unable to endure.

The first obstacle most environmental plaintiffs face is getting their cases accepted by the local courts.\textsuperscript{655} China’s Administrative Procedure Law states that malfeasance victims can file suit against “concrete administrative acts that infringe on their lawful rights and interests,” and this statute leaves wide room for


\textsuperscript{654} For jurisdiction regulations (on the court of first instance) see Article 17, P.R.C. Administrative Procedure Law.

\textsuperscript{655} Peng, Benli and Qiwei Li, “Zhong wai huanjing xingzheng susong yuangao zige bijiao yanjiu” (Comparative Research on Environmental Administrative Lawsuit Plaintiff Qualification in China and Foreign Countries), Neimunggu huanjing kexue (Inner Mongolia Environmental Protection), Vol. 20, No. 2, pp. 23-28.
interpretation. The local-level courts of first instance are the judicial gatekeepers: they determine whether an administrative act did indeed (1) infringe on the plaintiff’s interests and (2) whether the infringed interests are specifically protected under Chinese law. Unfortunately, local courts routinely use these two requirements as a loophole to decline environmental litigation suits. For example, courts often argue that plaintiffs must demonstrate “direct” rights infringement. When local officials grant operation permits to an illegally polluting factory and local citizens challenge those permits in court, local courts have argued that the factory is the party directly impacted by the permit decision; therefore, it is the factory whose rights are or are not infringed upon, not the citizens, so the citizens have no legal standing for an administrative suit (even if they are “indirectly” harmed by the factory’s pollution). This interpretation creates a huge barrier to legal redress because those permits are the main concrete administrative acts associated with this form of malfeasance – plaintiffs cannot challenge the local government’s general decision to allow a polluting factory to operate because that is an abstract administrative act and therefore exempt from judicial review.

658 For example, see: “Xiao qiye changqi feifa shengchan wuran huanjing” (Small Enterprise Illegally Producing and Polluting the Environment for a Long Time), Wuran Shouhaizhe Falu Bangzhu Zhongxin (Center for Legal Assistance to Pollution Victims), August 24, 2005, available at: http://www.clapv.org/NewsContent.asp?id=366 (accessed April 18, 2010).
659 Ibid.
Even those plaintiffs who do manage to get their cases accepted for trial generally lose in court.\textsuperscript{661} Chinese judges generally side with the government to protect their own political careers, and most judges lack the legal and technical competence needed to try these cases, so they would be unable to provide a fair hearing even if protectionism were not a factor.\textsuperscript{662} As a result, most environmental administrative lawsuits are unsuccessful in China, and the number of pollution victims pursuing this pathway is relatively low. According to the latest statistics released by the MEP, Chinese courts ruled on a total of 353 administrative litigation cases nationwide in 2006, and that number includes cases of polluting enterprises filing suits to protest environmental enforcement actions. These statistics do not include the number of cases declined by the courts (the MEP does not provide that data), however, even if the number of administrative litigation attempts is much higher than the number of actual rulings, the low acceptance rate would still make this an unattractive fire alarm pathway.

\textbf{7.6.2.2. Civil Litigation}

Pollution victims can also file civil suits against the polluters themselves. Civil plaintiffs can seek injunctions against polluting enterprises (i.e., ordering the enterprise to clean up existing environmental damage, to change production practices

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{661} Xu Kezhu and Alex Wang, “Recent Developments at the Center for Legal Assistance to Pollution Victims (CLAPV),” Woodrow Wilson Center, 8 China Environment Series 103, 104 (2006).
\end{itemize}
\end{footnotesize}
or even to suspend production altogether), and they can also seek financial
compensation for existing pollution damages. Chinese officials do not provide
national statistics on civil environmental cases; however, they do claim that the
number of pollution victims filing civil lawsuits increases year-by-year and already far
exceeds the number of administrative filings. Most of the civil lawsuits are pollution
compensation cases, primarily because local officials are much more likely to grant
compensation than to actually close down a polluting enterprise or force it to adopt
costly environmental protection practices.

Chinese leaders have issued a variety of judicial statues that aim to make civil
litigation a more accessible fire alarm pathway for pollution victims. Critical statutory reforms include:

- **Statues permitting environmental class action lawsuits**: when enterprise
pollution harms multiple plaintiffs, those plaintiffs can file as a group to share
litigation costs.

- **No-fault liability**: enterprises are liable for pollution damages even if their
production practices and pollution outputs meet relevant legal and regulatory
standards; environmental plaintiffs do not have to prove that the enterprise
acted illegally in order to file a civil suit.

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663 Palmer, Michael, “Environmental Regulation in the People’s Republic of China: the Face of Domestic Law,” *The China Quarterly*, No. 156, Special Issue: China’s Environment (December 1998), pp. 788-808. Chinese enterprises are liable for pollution damages under Article 41 of China’s Environmental Protection Law, which states: “A unit that has caused an environmental pollution hazard shall have the obligation to eliminate it and make compensation to the unit or individual that suffered direct losses.”


665 Article 6, 1989 P.R.C. Environmental Protection Law, which states: “All units and individuals shall have the obligation to protect the environment and shall have the right to report on or file charges against units or individuals that cause pollution or damage to the environment.” Chinese legal scholars generally interpret “units” to mean that plaintiffs can file suit as a group. Also see Yuhong Zhao (2004). Also see: “Class Action Litigation in China,” *Harvard Law Review*, Vol. 111, No. 6 (Apr., 1998), pp. 1523-1541.

666 Article 41, 1989 P.R.C. Environmental Protection Law. “Reply Letter on Deciding the Compensation Liability for Environmental Pollution,” National Environmental Protection Agency,
• **Shifting the burden of proof:** pollution victims can sue a polluting enterprise for compensation without providing the evidence for direct causation. The plaintiffs only need to provide evidence to show that: (1) they did suffer damages from pollution, and (2) the enterprise did cause pollution. They do not need to provide technical evidence to prove that the pollution from the specific defendant caused their specific damages. That burden is shifted to the defendant: the enterprise must show evidence to prove that their specific pollution did not cause those specific damages; if they fail to do so, the court should automatically rule for the plaintiff.667

• **Joint Liability:** if multiple enterprises contribute to environmental damages, pollution victims can sue those enterprises as a group to reduce litigation costs.668

• **Extended Statute of Limitations:** China’s Environmental Protection Law extends the statute of limitations for pollution compensation cases to three years (starting from the date the plaintiff first discovered the loss); in contrast, the general time limit for civil suits in other sectors is two years.669

In theory, each of these statutes should make it easier for environmental plaintiffs to file civil suits against polluting enterprises; however, in reality, local judges often ignore or evade these statutes. Some judges act out of local protectionism or other self-interest; others just do not know about or do not fully understand the relevant laws and regulations. For example, class action suits should

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669 Article 42, 1989 P.R.C. Environmental Protection Law. Also see Wang, Alex (2007); Zhao, Yuhong (2004).
help environmental plaintiffs overcome legal fees and other resource barriers; however, Chinese courts routinely break large class actions into multiple smaller lawsuits to increase court fees and to reduce the odds that the case will attract higher-level political attention.\footnote{Wang, Alex (2007); Zhao, Yuhong (2004); “Class Action Litigation in China” (1998).} Chinese courts also routinely violate the no-fault liability principle: polluting enterprises claim that they did not break any laws and are therefore not liable for damages, and courts rule (illegally) in their favor. Many courts also illegally require environmental plaintiffs to prove causality as a pre-condition for case acceptance (in other words, many courts fail to reverse the burden of proof).\footnote{Wang, Alex (2007).} Pollution victims rarely have the technical resources they would need to gather causality evidence, and local EPBs routinely ignore court orders asking them to provide that data on the plaintiff’s behalf, so evidence collection often becomes a major obstacle in pollution suits.\footnote{Ibid. Zhao, Yuhong, “Environmental Dispute Resolution in China,” Journal of Environmental Law, Vol. 16, No. 2, 2004 pp. 157-192. Qi, Shujie and Xiang Cheng (2009). Yang, Louzhao (2004), “Lun huanjing wuran sunhai peichang susong de zhengjiu fa wenti” (On the Evidence Law Problems of Environmental Pollution Damage Suits), Henan Shifen Daxue Xuebao (Journal of Henan Normal University, Philosophy and Social Sciences Edition), Vol. 31, No. 5. “Huanjing wuran sunhai peichang susong de zhengjiu wenti tantao” (Investigating the Problems with Evidence for Environmental Pollution Compensation Lawsuits), Study and Discussion Document, Xihequ renmin jiancha yuan (People’s Procuratorate of Xihe District, Fuxing City, Liaoning Province), July 31, 2008, available at: http://www.fuxinxh.jcy.gov.cn/Article_Show.asp?ArticleID=296 (accessed April 2, 2010).} These judicial obstacles are further exacerbated by the general shortage of qualified legal counsel. The ranks of China’s trained environmental lawyers are growing, but their overall numbers are still very small and inadequate to supply the growing number of pollution plaintiffs.\footnote{Wang Canfa (2007). Ferris, Richard J. and Hongjun Zhang (2003), “Reaching out to the Rule of Law: China’s Continuing Efforts to Develop an Effective Environmental Law Regime,” William and}
block. “Case acceptance fees” are assessed as a percentage of the plaintiffs’ total requested compensation, and plaintiffs must pay those fees up front. In some cases, these fees far outstrip what the plaintiffs could earn in one year, even when they file as a large class. Furthermore, even if environmental plaintiffs do manage to overcome the abovementioned obstacles and actually win their cases, enforcement is not guaranteed. Local courts generally cannot force enterprises to pay pollution compensation, clean up environmental damage or adopt new environmental protection measures unless they have the local Party committee’s political support, and that support will not be forthcoming if the enterprise is a significant player in the local economy.

On the other hand, although environmental plaintiffs face serious political obstacles and many fail to achieve any form of legal redress, there are still quite a few success cases every year, and China’s state-run media outlets routinely publicize these successes to encourage other pollution victims to file their own civil suits. For example, in 2001 a municipal-level court in Jiangsu province ordered a paper mill and

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675 Chinese leaders are reportedly considering possible reforms to fix these financial burdens (Ibid.).


677 Hong Mei; Wang Canfa (126) The court technical does have judicial enforcement power, but the Party controls the courts. Verdicts often go enforced even in the high-profile cases that attract media and leadership attention; once that attention fades, there isn’t much pressure to ensure the verdict is enforced.

678 Zhao, Yuhong (2004).
a chemical plant (as joint defendants) to pay 5.6 million RMB in pollution
compensation to a class action group of fishermen from Jiangsu’s Shilianghe
Reservoir. The court also ordered the defendants to pay 48,000 RMB to cover the
plaintiffs’ pre-trial evidence collection costs.\textsuperscript{679} China’s state-run news organizations
focused national attention on the case when the verdict was first issued and again
when the plaintiffs (finally) received their compensation funds in 2004.\textsuperscript{680}

Another highly-publicized pollution payout involved a series of class action
suits filed by a group of Chinese fishermen and seafood farmers against an
international shipping company.\textsuperscript{681} China’s Tianjin maritime court ruled for the
plaintiffs and awarded over 6 million RMB ($850,000 USD) in pollution
compensation for a November 2002 oil spill.\textsuperscript{682} When the shipping company later

\textsuperscript{679} The plaintiffs had argued that the defendants’ waste discharge polluted the reservoir and killed huge
quantities of farm-raised fish.

\textsuperscript{680} For example, the \textit{People’s Daily} sent a journalist back to the village in 2004 shortly after the
financial disbursement, and the associated article portrayed happy villagers with money in their hands
allegedly saying over and over, “Thank you Party and government, thank you People’s Court.” Wu,
Jing, “Shou xi da faguan yu 97 hu yumin – li dang wei gong, zhizheng wei min” (The Chief Justice and
the 97 Fishing Households – Establishing a Party for the Public, Implementing Policies for the People),
27/06311909108s.shtml. Also see: Liu, Haiyan, Haiquan Yin and Benlong Fu, “97 hu yumin daying
kua sheng wuran gongsii” (97 Fishing Households Win Cross-Provincial Pollution Suit), \textit{Jiangnan Shibao}
15/07041590465s.shtml. “97 wei nongmin yong falu xiang paiwu qie shuo ‘bu’ – shilianghe shui ku
te shui wuran sunhai peichang jiufen shimo” (97 Peasants Use Law to Say ‘NO’ to Polluting
Enterprises – the Full Story Behind the Shilianghe Water Reservoir Special Water Pollution Damage
Compensation Dispute), \textit{Renmin yu Quanli} (People and Power), 2002 Issue #2, Jiangsu Provincial
People’s Congress Standing Committee, available at:

\textsuperscript{681} An oil tanker crashed into another ship in Bohai Bai in November 2002, and the resultant oil spill
killed off huge quantities of marine life.

\textsuperscript{682} The plaintiffs filed suit in Tianjin maritime court seeking 8 million RMB in pollution compensation,
but the court initially awarded just 1.7 million RMB. The plaintiffs appealed and successfully
convinced the court to increase their compensation to over 6 million RMB ($850,000 USD). Qin, Yan,
mln Yuan Award After 5-Year Oil Spill Lawsuit,” \textit{Xinhua General News Service}, February 29, 2008
failed to meet compensation deadlines, the maritime court contacted the company’s insurer and successfully enforced the payout. These high-profile successes are still the minority, but their increasing publicity does appear to be educating Chinese citizens about their legal rights, and that education is increasing the number of pollution victims pursuing this fire alarm pathway. Over time, if Chinese leaders can also reduce judicial agency loss, this trend may increase the costs associated with pollution malfeasance and increase enterprise incentives to abide by China’s national environmental standards.

### 7.6.3. *Xinfang* Petition System

Most environmental pollution victims turn to the petition system as their first-choice governmental fire alarm mechanism, primarily because *xinfang* petitions are free, petition filings are relatively easy and straightforward, and Chinese citizens already have extensive experience using this system. Unfortunately, as in other sectors, pollution victims rarely achieve meaningful redress when they file *xinfang* petitions at the local level. Local officials generally do ‘process’ these applications, but

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685 Unlike reconsideration proceedings, *xinfang* offices generally do accept these petitions for processing; unlike administrative or civil litigation, there are no high court fees and no need to find and retain qualified legal counsel.
and they may issue token compensation for pollution damages; however, they
generally do not take concrete action to address the petitioner’s problems. Even if
environmental officials themselves would like to right the wrongs listed in xinfang
petitions, they generally will not have the authority to do so if local Party and People’s
government leaders support the polluting enterprises.

Due to these factors, frustrated pollution victims – themselves generally well
aware of the local political dynamic – often stage collective protests to increase the
political pressure on local leaders and call attention to unanswered petitions. Pollution
victims also file petitions at higher administrative levels, sometimes traveling to the
provincial capital or even cross-country to file at central government offices in Beijing.
Collective protests and higher-level petition filings are effective pressure tactics
because data on both activities will be recorded in the local leaders’ personnel records
and can easily damage their promotion prospects. Unfortunately, this added pressure
does not necessarily encourage those officials to solve the petitioners’ problems;
instead, many officials retaliate against petitioners and use force to stifle protests and
to head off higher-level petition campaigns ex ante. For example, local officials
routinely dispatch police, paramilitary forces and even hired thugs to crack down on
protestors and to kidnap and illegally detain the petitioners traveling toward higher-
level regional or national petition offices. In some cases, official retaliation sparks

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686 Chinese scholars and policymakers refer to this issue as “solving the problem at the source.”
Beijing to Set up Protest Zone Where Petitioners Can Air Grievances,” South China Morning Post,
March 7, 2009 [Lexis Nexis Academic].
violent conflicts between pollution victims and local security forces (whose ranks sometimes include workers from the polluting enterprise).

Chinese leaders are trying to address these problems by reducing local-level discretion in petition processing. The MEP recently issued new procedural requirements for environmental xinfang petitions; as with the abovementioned environmental reconsideration reforms, the MEP hopes that tighter procedural requirements will limit the opportunities for local protectionism. For example, the MEP’s new 2006 Measures on Environmental Complaints by Letters and Visit stipulate time limits for petition processing, specify types of petitions that environmental officials should always accept, and order environmental agencies at all levels to record petition application information (for accepted as well as declined petitions) and pass those records up the administrative hierarchy. The 2006 Measures also outline special procedures for identifying and fast-tracking the petitions that will most likely lead to collective protests. If local-level environmental officials ignore those xinfang petitions and the petitioners respond with collective protests, the officials will be held personally responsible.


689 Ibid.

690 The 2006 Measures also address the violence that environmental petition activities often spark. For example, they specifically prohibit environmental officials from “striking back at petitioners with reprisals,” and they also specifically prohibit the petitioners from “surrounding and attacking environmental agencies, attacking and beating environmental xinfang intake personnel, or intentionally harming themselves” as pressure tactics.
Unfortunately, the new procedural requirements cannot force local officials to actually redress the petitioners’ complaints. When pollution victims file legitimate but politically inconvenient petitions – i.e., when they file petitions against polluting enterprises that local leaders are determined to protect – the local xinfang office can usually find a way to drown those petitions in red tape without explicitly violating the 2006 procedural requirements. The MEP therefore opened a national pollution complaint hotline in June 2009 to monitor citizen satisfaction with petition results.\(^{691}\) Local environmental agencies already have their own local hotlines for regional pollution complaints, and pollution victims must still file complaints with local officials as a first step – national-level environmental offices just do not have the resources to investigate and remedy all of these complaints themselves.\(^{692}\) However, if local-level officials ignore environmental complaints or otherwise fail to provide effective redress, petitioners can then use the national hotline to report those problems


\(^{692}\) If citizens file initial local-level complaints with the national hotline, the national processing center will pass them down the line to the relevant local-level officials with jurisdiction over the issue. “Ministry of Environmental Protection will open the Hotline 010-12369 for Direct Environmental Complaints on June 5, the World Environment Day,” MEP Press Release, June 4, 2009, available at: http://english.sepa.gov.cn/News_service/news_release/200906/t20090615_152802.htm. In 2001 SEPA made local EPBs answer to a phone line so people can call in their complaints instead of submitting in person.
to central-level MEP officials. This new “12369” hotline makes it much easier for citizens to notify higher-level environmental officials about lower-level malfeasance. In theory, these petitioners no longer need to travel cross-country and queue up outside the national environmental offices in Beijing, and that makes it much harder for local officials to identify and block national-level petition activities ex ante.

These petition reforms cannot solve the fundamental local political problem: local Party and People’s government leaders have all of the real local political authority, and EPB officials cannot enforce environmental compliance unless those leaders are also on board. However, the fact that local leaders have gone to such lengths to keep petition activity (especially higher-level petition activity) off the official record does suggest that petition filings can impact lower-level official incentives. Anecdotal data suggests that the xinfang reforms are at least increasing local officials’ willingness to provide petitioners some form of pollution compensation (instead of attacking them with police and security forces). In general, these officials still do not respond to xinfang complaints by shutting a polluting factory or forcing it to comply with environmental standards; however, they are increasingly trying to pacify the local citizenry with compensation payouts to forestall higher-level complaints. As a result, many Chinese pollution victims are filing successive rounds

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694 Local officials can still retaliate against petitioners (names and other identifying information are always included in xinfang petitions); however, it is now extremely difficult to actually block the national-level complaints ex ante.
of pollution petitions and receiving successive rounds of compensation. This pattern of redress does not rectify the underlying enforcement problem, and it can forestall other fire alarm pursuits that may be more effective (for example, some citizens avoid pollution lawsuits for fear of shutting down the xinfang compensation pipeline). However, as with the civil lawsuits mentioned above, over time these xinfang payouts may increase the costs of environmental malfeasance and increase the incentives for regulatory compliance.

7.7. Non-Governmental Fire Alarms: Media Oversight and Social Organization

Watchdog journalists and social organizations are extremely active in the environmental protection sector. Chinese leaders generally encourage these non-governmental fire alarms, but they also deploy state secrets regulations and other control policies to keep them away from the cases with high instability risks, and local officials often take advantage of those controls to impede legitimate oversight activities. Local official interference is most damaging for the smaller, regional non-governmental fire alarm players: national-level media outlets and social organizations generally have the resources to circumvent local protectionism, but their regional counterparts do not. As a result, although there are many non-governmental fire alarm success cases in this sector, most of those successes involve a relatively small number of national-level media outlets and social organizations, and that does not necessarily bode well for the average citizen seeking pollution redress through grassroots-level

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697 Ibid.
non-governmental fire alarms. This section will discuss China’s environmental non-governmental fire alarms in detail.

7.7.1. Media Oversight

Chinese leaders generally encourage media oversight in the environmental protection arena, and they signal this encouragement through multiple avenues. First, many national-level environmental laws, regulations and policy directives specifically call on the media to oversee policy implementation and to expose environmental malfeasants. For example, the 1996 Decision of the State Council on Several Issues Concerning Environmental Protection states:

> Mass media such as newspaper, broadcasting and television shall…openly disclose and criticize illegal activities of polluting and damaging [the] ecological environment. The press shall play the role of supervision and monitoring and shall expose to the public any unit or individual who has seriously polluted or damaged [the] ecological environment.\(^{698}\)

Subsequent national policy documents repeat this theme, including:

- The State Council’s 2001 National Tenth Five-Year Plan for Environmental Protection, which orders city-level governments to “perfect the mechanisms for public, community and media participation in urban-area environmental supervision.”\(^{699}\)
- The 2002 Law on Cleaner Production, which gives local Environmental Protection Bureaus the legal right to “regularly publish,


\(^{699}\) This document addresses urban and rural environmental protection separately, and the public/media supervision order is not listed in the section addressing pollution in rural areas. “Guowuyuan guanyu guojia huanjing baohu ‘shiwu’ jihua de pifu” (State Council Order on the National Tenth Five-Year Plan for Environmental Protection), State Council, December 30, 2001, available at: http://www.gov.cn/gongbao/content/2002/content_61775.htm (accessed 11-11-2009), Author translation.
through the major local media, the names of the enterprises who cause serious pollution … to provide a foundation for public supervision over the enterprises’ implementation of cleaner production.”\(^{700}\)

- The 2004 *Notice from the State Council General Office on Strengthening Work to Prevent Water Pollution in the Huai River Basin*, which orders regional People’s governments and administrative bureaus at all levels to facilitate public opinion supervision over environmental protection by “bringing the news media into full play.”\(^{701}\)

- The State Council’s 2009 *Work Plan for Energy Conservation and Waste Reduction*, which orders the news media to “increase the vigor of their reporting on energy conservation and waste reduction, publicize the good examples, expose the negative examples, and bring public opinion leadership and supervision into play.”\(^{702}\)

These directives always leave wide leeway for lower-level interpretation (i.e., “bringing the news media into full play”). Chinese leaders do not give lower-level officials a set of procedural requirements that they must follow to enable media fire alarms, nor do they specifically prohibit local-level media censorship. Media oversight always carries a degree of political risk, so Chinese leaders always give lower-level officials the authority to shut journalists down when their media exposés could incite protests or tarnish the Party’s image. Nevertheless, the abovementioned policy statements still covey


the message that central leaders do support media fire alarms in this sector, and that encourages journalists to pursue these stories and warns officials that media exposure could bring higher-level intervention and punishment.

Chinese leaders also launch their own media watchdog campaigns through the China Environment Centennial Journey project.\textsuperscript{703} The National People’s Congress Commission for Environmental and Natural Resource Protection (CENRP) heads this project in conjunction with the Central Propaganda Department, the MEP and twenty-five major national news organizations.\textsuperscript{704} Every year CENRP selects a new environmental protection theme and orders participating media outlets to investigate and expose local malfeasance relating to that topic.\textsuperscript{705} Chinese leaders initiated this project in 1993; the first annual theme was “declaring a war on environmental pollution,” and one of the resultant media exposés focused national attention on the heavily polluted Huai River and the many riverside companies damaging the Huai with illegal dumping, mining and other polluting activities.\textsuperscript{706} The State Council responded to this exposé with a high-profile intervention to clean up


\textsuperscript{704} Other sponsoring agencies include the Ministry of Finance, the Ministry of Land and Natural Resources, the Ministry of Water Resources, the Ministry of Agriculture, the State Administration of Radio, Film and Television, the National Forestry Bureau, the State Oceanic Administration, the All-China Federation of Labor Unions, the Central Communist Youth League, the All-China Federation of Women and the National Science Foundation. Many sub-national People’s Congresses follow this model and organize their own local-level CCEP projects in conjunction with local-level media outlets. “Zhonghua huanbao shiji xing jie shao” (Introduction to the China Environment Centennial Journey), on the project website at: http://www.ccep.org.cn/intro/index.htm (accessed 11-12-2009).

\textsuperscript{705} CENRP also provides many of the participating media outlets with special funding for these guided watchdog activities.

\textsuperscript{706} “Zhonghua huanbao shiji xing huodong zhuti” (China Environment Centennial Journey Activity Themes), on the project website at: http://www.ccep.org.cn/intro/subject.htm (accessed 11-12-2009).
the river and close down many of the polluting enterprises. Subsequent annual themes include protecting the Yellow (1999) and Yangtze (2001) Rivers, investigating the cleanliness of public drinking water (2005) and improving energy conservation and reducing waste (2007). Chinese leaders specifically define this project as an attempt to improve local policy implementation through media oversight and exposure. This is a very centralized, campaign-style approach to media fire alarms – Chinese leaders select the annual topics and hand-pick the media outlets involved. However, these campaigns also open up political space for other journalists to investigate and expose other environmental problems, and the highly publicized leadership interventions that generally follow national campaign exposés reinforce the message that the leadership welcomes this mechanism and will punish exposed malfeasons.

Chinese media outlets also pursue their own independent, bottom-up pollution investigations, and Chinese leaders also respond to many independent media exposés with highly publicized interventions and punishments. China’s high profile, national-level media outlets are the most effective at generating a leadership response,

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707 Ibid.
710 These campaigns make it more dangerous for local officials to overtly suppress media investigations; the reporters have increased political weight when the leaders are making that a focus topic.
primarily because they can more easily catch leadership attention. National-level media outlets also have powerful sponsors, and those sponsors can generally protect their editors and journalists from the various local-level officials trying to suppress these reports. In contrast, regional media outlets are more vulnerable to local intimidation and suppression, and that vulnerability often impedes media fire alarms at the sub-national level. Local officials have a strong incentive to hide information about their own bad behavior, and they can generally use the local propaganda department (which answers to the local Party committee) to keep a tight leash on the regional media outlets based in their home jurisdiction. When local journalists pursue pollution investigations despite political warnings from local officials, those officials can generally pressure the local propaganda department to have those journalists (and often their editors) dismissed.  

China’s environmental state secrets regulations give malfeasant local officials another avenue for evading or curtailing local media supervision. Most journalists lack the technical resources they would need to investigate and expose pollution problems; unless they have actual data on local enterprise pollution and local environmental conditions, they can only report their own (and the local residents’) subjective observations and suspicions. China’s 2008 transparency regulations aim to address this information asymmetry by giving journalists greater access to the government’s own pollution monitoring data; however, local officials at all levels

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routinely use the ‘state secrets’ excuse to keep that information under wraps. For example, in April 2009 the Heilongjiang provincial government convened a provincial-level conference on environmental enforcement and invited the media to attend; at that conference, reporters asked to see the list of local companies exceeding pollution standards, but provincial officials told reporters that information was classified.\footnote{Cheng, Zilong, “Heilongjiang huanbao ting jujue baoguang weifa paifu qiye; jizhe fen ran tui chang” (Heilongjiang Environmental Protection Office Refuses to Expose Illegal Polluting Enterprises; Journalists Leave the Scene in Righteous Anger), Xinhua, April 21, 2009, available at: http://politics.people.com.cn/GB/14562/9162742.html. “Qiye weifa paifu qingkuang ze jiu shuyu ‘guojia jimi?’” (How Can Illegal Enterprise Pollution Constitute a ‘State Secret?’), Shenzhen Xinwen Wang (Shenzhen News Network), April 21, 2009, available at: http://www.sznews.com/news/content/2009-04/21/content_3710765.htm.} Reporters protested this dubious use of the state secrets classification and argued that the list of illegally polluting enterprises should be publicized under the transparency regulations; however, Heilongjiang officials ignored these (legitimate) arguments and kept the information under wraps. Unfortunately, this kind of behavior at the provincial level – and the fact that it apparently went unpunished – sends a message to sub-provincial governments that they can follow the same tactics.

Malfeasant local officials have also used the state secrets regulations to persecute whistleblowers supplying journalists with pollution information. For example, Gansu officials used this tactic to retaliate against Mr. Sun Xiaodi, a former worker from a Gansu Province uranium mine, after Mr. Sun exposed the mine’s pollution problems to foreign reporters in 2004.\footnote{“Environmental Activist Sun Xiaodi Sentenced to Two Years of Reeducation-Through-Labor; Daughter to Year-and-a-Half,” Human Rights in China (HRIC) Press Release, July 16, 2009, available at: http://www.hrichina.org/public/contents/press?revision%5fid=170260&item%5fid=170256. “Forced Labor for Chinese Whistle-Blower, Sun Xiaodi,” Epoch Times, January 29, 2010, available at: http://www.theepochtimes.com/n2/content/view/28838/.} Mr. Sun told reporters that local residents were suffering from radiation poisoning, cancer, birth defects and other
health problems, and local public security officials retaliated by detaining and arresting Mr. Sun for “illegally supplying state secrets and intelligence overseas.”  

Gansu officials later convicted Sun on a state secrets violation (without a judicial trial) and sentenced him to 2 years forced labor.

In sum, Chinese leaders are increasingly encouraging media fire alarms in this sector, and there are many success cases, especially at the national level. Local-level media exposés can also be very influential, particularly when those exposés catch provincial or national-level attention. However, local-level media outlets also face substantial political obstacles due to their relative weakness vis-à-vis local officials, and those obstacles impede many grassroots-level attempts to seek pollution redress through media fire alarms.

7.7.2. Social Organization

Chinese leaders generally encourage social organization in the environmental sector as long as these organizations keep their activities within acceptable political boundaries. As with media fire alarms, they signal this encouragement through a variety of national environmental regulations and policies, including:

- The 1996 Decision of the State Council on Several Issues Concerning Environmental Protection, which states that “social organizations shall be given play to their role” in environmental supervision.

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714 Ibid.
715 Mr. Sun’s daughter received an 18 month labor camp sentence for allegedly helping her father pass the pollution evidence to various foreign reporters. Ibid.
716 Ho (2001).
- The 2002 Law on Cleaner Production, which states: “The State encourages public organizations and the general public to participate in the promotion of, education in, popularization and implementation of and supervision over cleaner production.”

- The 2006 State Council White Paper on Environmental Protection, which states that NGOs are “an important force [for] public participation” in China’s environmental protection sector.

As with media fire alarms, Chinese leaders do not (and have no desire to) give social organizations specific legal guarantees to protect them from lower-level interference. Instead, policy statements encouraging social organization always leave ample room for local political intervention. Nevertheless, general leadership acceptance and encouragement is still fueling a Chinese environmental NGO (ENGO) boom. Chinese leaders first opened the door to these organizations (on a very limited basis) in 1994, and by 2008 there were already over 3,500 officially-registered NGOs operating in this sector. China’s state-run news outlets routinely spotlight ENGO activities, and Chinese leaders have responded to ENGO campaigns by changing policies and intervening in environmental disputes. Favorable state-run press coverage and leadership interventions cannot protect ENGOs from local political

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718 Article 6, P.R.C. Law on Promoting Cleaner Production.
interference; however, as with media fire alarms, these actions can still send a powerful and encouraging political message.

China’s national-level environmental officials are the strongest domestic ENGO supporters. MEP officials generally view China’s ENGOs as political allies that they can use to increase their leverage over other agencies (particularly the economic agencies that generally block environmental protection efforts) and to overcome the resource constraints plaguing environmental enforcement at all levels. MEP leaders routinely issue public statements encouraging ENGOs to play a stronger role in policy enforcement, and they engage ENGOs in a variety of cooperative policy-making projects. For example, the MEP organizes special environmental conferences to gather ENGO input and suggestions for forthcoming laws and policy proposals. The MEP also delegates legislative tasks to specialized ENGOs with the knowledge and expertise to draft effective laws and policies. For example, the MEP has commissioned the Beijing-based Center for Legal Assistance to Pollution Victims (CLAPV) for a wide variety of legislative projects including amendments to the Water Pollution Prevention and Control Act, the Interim Measures for Public Participation in Environmental Impact Assessments and the new law on Environmental Damage Compensation.

722 SEPA also tends to overlook whether these groups conform to the Ministry of Civil Affairs rules on registration, etc.
723 “Chinese Environmental NGOs Called on to Play a Bigger Role,” *Xinhua*, October 29, 2006 [Lexis Nexis Academic].
On the judicial front, Chinese courts have recently begun to experiment with ENGO-led public interest litigation, and they are doing so with support from the top Party leadership. On July 28, 2009 the Qingzhen Municipal Court (in Guizhou province) accepted China’s first ever public interest environmental administrative lawsuit, filed by the All China Environmental Federation (ACEF) against the Qingzhen Municipal Land Resources Bureau. The ACEF is a quasi-official

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726 CCP leaders publicly expressed this support in the National Eleventh Five-year Plan for Environmental Protection, which ordered the government to “study on environmental public interest litigation” during the 2006-2010 five-year period. Mr. Pan Yue, current MEP Vice-Minister (and previous SEPA Deputy Director) has been calling for public interest environmental litigation since 2004. For example, see: “Environment Official Urges Public to Sue Polluters,” October 25, 2004, Xinhua News Agency [Lexis Nexis Academic].

727 In 1994 the Qingzhen land bureau expropriated local land and leased the land to a private developer, but the developer never completed the planned construction project. As a result, the construction site stood idle for 15 years; local residents complained to the ACEF that the site threatened their local ecosystem, and the ACEF filed an environmental suit against the government on the residents’ behalf. The Qingzhen court did not issue a formal ruling on this case; once the hearings were underway, the defendant redressed the plaintiffs’ environmental grievances, and ACEF therefore agreed to drop the suit. This is the second of two environmental public interest litigation experiments. On July 6, 2009, just before the Qingzhen case, a court in Jiangsu province accepted an ACEF-led civil suit against a polluting enterprise. These two July 2009 ACEF-led cases are China’s first ever public interest suits: one civil suit and one administrative suit. Under the existing court interpretations of China’s civil and administrative procedure laws, plaintiffs must show evidence that they were directly impacted by the defendant’s actions; third-parties (such as ENGOs) cannot legally file suit because they themselves were not directly impacted and therefore have no legal standing as a plaintiff under Chinese law. Chinese courts are using the two July 2009 ACEF suits to experiment with a possible change to this interpretation. Luo, Jieqi and Xudong Qin, “Quanguo shouli huanjing gongyi xingzheng susong huo lian” (Nation’s First Ever Environmental Public Interest Administrative Lawsuit Successfully Registered), July 29, 2009, Caijing Wang (Caijing Magazine Online), available at: http://www.caijing.com.cn/2009-07-29/110218333.html. Luo, Jieqi, “Quanguo shouli huanjing gongyi xingzheng susong yi chesu gaozhong” (Nation’s First Ever Environmental Public Interest Administrative Litigation Lawsuit Already Withdrawn and Resolved), September 1, 2009, Caijing Wang (Caijing Magazine Online), available at: http://www.caijing.com.cn/2009-09-01/110236206.html. For further analysis of public interest litigation in China, see: Gao, Junshan and Jingbo Wu (2009), “Woguo xingzheng gongyi susong yuanguo zige wenti qianqi” (Basic Analysis of Problems with Public Interest Administrative Lawsuit Plaintiff Eligibility in China), Jinka Gongcheng (Cards World), Vol. 13, No. 3, p. 124 [China Academic Journals]. Li, Fangjing and Jiaao Chen, “Jiancha jiguan tiqi xingzheng gongyi susong wenti zhi tan xi” (Procuratorate Points out and Analyzes Problems with Public Interest Administrative Litigation), Fazhi yu Shehui (Legal System and Society), 2009, No. 25 [China Academic Journals], (also posted online at: http://china.findlaw.cn/info/xzss/szs/cxxw/80462.html). Huang, Xisheng and Yucheng Lin (2005), “Huanjing gongyi xingzheng susong xinlun” (New Studies
environmental organization endorsed by the State Council, so this initial experiment is not a representative case, and Chinese leaders may not extend these same privileges to the more independent regional ENGOs.\textsuperscript{728} However, from the Chinese leadership perspective, the ACEF’s quasi-official status makes it a politically-safe test case, and Chinese legal scholars are hoping that this initial experiment will lead to others. If China does allow at least some ENGOs to file public interest lawsuits, that policy change will significantly improve principal-agent oversight in this sector because ENGOs can more easily overcome the judicial barriers currently impeding individual environmental protection suits.

Unfortunately, most of the above-mentioned ENGO developments are primarily limited to the national-level organizations with high-profile leaders and powerful sponsors. At the sub-national level, regional ENGOs generally face a very different political dynamic. Local officials have much to lose when ENGOs investigate and reveal local pollution problems, and China’s state secrets and social organization regulations give those officials powerful tools for suppressing unwanted ENGO activities. For example, local officials can use the state secrets excuse to deny ENGO access to critical local environmental data. Many ENGOs (especially the smaller regional ENGOs) do not have the financial and technical resources they would need to gather environmental data on their own, so information restriction can

\textsuperscript{728} Luo, Jieqi and Xudong Qin, “Quanguo shouli huanjing gongyi xingzheng susong huo lian” (Nation’s First Ever Environmental Public Interest Administrative Lawsuit Successfully Registered), July 29, 2009, Caijing Wang (Caijing Magazine Online), available at: http://www.caijing.com.cn/2009-07-29/110218333.html. Nevertheless, many ENGOs immediately followed suit and filed their own cases after ACEF case was accepted.
effectively stifle their ability to serve a fire alarm role. China’s general social organization regulations also give local officials a wide variety of excuses they can use to shut ENGOs down (especially when those ENGOs are registered in the officials’ own territorial jurisdiction), and local officials generally wield that authority with impunity when local ENGOs threaten local political interests.\textsuperscript{729}

Local officials also target individual ENGO leaders and activists as a fire alarm deterrent. When local ENGOs pursue politically sensitive pollution investigations, local officials routinely dispatch local police and hired thugs to harass and intimidate the organization’s leaders; if those intimidation attempts fail, many officials escalate to beating, detaining, arresting and even prosecuting ENGO leaders on trumped-up criminal charges, some of which result in extended jail sentences. The state secrets regulations provide additional ammunition for these harassments. For example, in April 2005 local police arrested and imprisoned Green Watch ENGO founder Tan Kai on a trumped-up state secrets charge to keep Mr. Tan and Green Watch from investigating a chemical factory in Zhejiang Province.\textsuperscript{730}

Most regional Chinese ENGOs rely on self-censorship to survive these political pressures: they take a very non-confrontational approach and avoid the topics that would likely incite local official repression and retaliation. For example, most

\textsuperscript{729} For example, local ENGOs exist at the behest of local government sponsors, so local leaders can use their political clout to force sponsors to withdraw ENGO support (therefore automatically terminating the ENGO). Saich (2000:133); Ho 2001; Yang 2005.

\textsuperscript{730} The chemical factory was located in Huashui Town, in Zhejiang’s Dongyang City. Local residents had complained of damaged crops and birth defects from factory pollution. The residents staged a mass protest, and the protest likely triggered the crackdown against Green Watch and Tan Kai. “State Secrets: China’s Legal Labyrinth,” Human Rights in China (HRIC) Report, June 2007, available at: http://www.hrichina.org/public/contents/article?revision%5fid=41506&item%5fid=41421.
regional ENGOs limit their activities to general environmental education and research, neighborhood clean-up projects, local recycling campaigns, energy efficiency campaigns and other politically-neutral environmental protection activities; they do not expose official malfeasance or otherwise challenge local economic interests.\textsuperscript{731} According to recent survey data from the ACEF, 89\% of China’s registered ENGOs take this politically safe approach; only 11\% actually pursue environmental grievance redress, enterprise supervision and other direct fire alarm activities.\textsuperscript{732} Based on these statistics, despite the burgeoning number of Chinese ENGOs and their many high-profile activities at the national level, social organization is still not a viable fire alarm pathway for most pollution victims. On the other hand, the educational services provided by most Chinese ENGOs can still play a critical fire alarm role, albeit indirectly. These organizations are educating Chinese citizens about environmental issues in general and about their own individual rights, and that information can encourage pollution victims to seek redress and to hold local officials accountable through other fire alarm channels.\textsuperscript{733}

7.8 Environmental Fire Alarm Limitations Spur Continued Institutional Innovation

\begin{itemize}
\item Some ENGOs in the 11\% fire alarm minority monitor environmental conditions and collect technical evidence for pollution victims, others serve as legal advocates to walk citizens through \textit{xinfang} and judicial channels, others provide information to the media or use their own political contacts to expose environmental malfeasance and pressure officials to rectify enforcement problems.
\item Economy (2004).
\end{itemize}
As the previous sections of this chapter demonstrate, there are many fire alarm policy developments in China’s environmental protection sector, but these developments do not always translate into effective environmental oversight and redress. As a result, Chinese leaders still receive negative feedback in the form of unmet environmental protection targets and environmental mass protests, and that feedback spurs continual rounds of institutional reform. In addition to the fire alarm policy reforms mentioned above, Chinese leaders are also responding to this feedback by strengthening their environmental police patrol mechanisms. More specifically, Chinese leaders are reforming the cadre assessment system to improve lower-level environmental protection incentives and centralizing some environmental protection responsibilities to improve central-local monitoring and control. In theory, these reforms could counteract some of the fire alarm agency loss problems mentioned above – if more effective police patrols can reduce local officials’ incentives to protect local polluters, those officials will not have such strong incentives to impede environmental fire alarms.

7.8.1. Cadre Evaluation Reforms

One key area of police patrol reform is the cadre evaluation system: Chinese leaders are trying to increase the weight given to environmental indicators in the local officials’ performance assessments to give those officials stronger incentives to implement and enforce environmental protection policies.
Toward that end, in 2004 Chinese leaders began experimenting with a relatively ambitious “Green GDP” project. This project aimed to create a new ‘GGDP’ indicator that would balance economic growth with environmental protection. The GGDP indicator deducts environmental costs (pollution-induced health costs and other environmental damage) from annual growth statistics, so poor environmental performance would cancel out strong economic growth. In theory, these measurements could reduce or eliminate the ‘growth at all costs’ incentives that previously impeded grassroots-level environmental policy enforcement. In reality, this ambitious project ran into three major problems. First, the Green GDP accounting methods were highly controversial (both at home and abroad) and difficult to execute. SEPA and the National Bureau of Statistics (NBS) had to coordinate among many different agencies to gather and integrate the relevant statistics, and those agencies were often uncooperative. Second, once the initial calculations were complete, the GGDP statistics became a huge embarrassment for local officials and central Party leaders. At the local level, low GGDP measurements threatened to

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735 “GGDP” is also referred to as “environmentally adjusted domestic production” or EDP.  
737 For example, the SEPA and NBS Green GDP teams had to collect timely and accurate statistics from national and local branches of the Ministry of Land and Resources, the Ministry of Water Resources, the Ministry of Agriculture, the State Forestry Bureau, and other relevant agencies (Yu, et al. 2006).  
738 For example, the initial round of calculations revealed that environmental damage added up to 3% of China’s GDP in 2004, and those calculations did not even include many of the proposed pollution
tarnish the performance records of key officials in high-growth regions; at the national level, GGDP measurements threatened to erase the leadership’s previously positive economic growth record, and that record is a critical element of CCP regime legitimacy. Third, local officials launched a huge lobbying effort against the project, and central leaders were unwilling to expend the political capital required to push the project past intense sub-national opposition. Faced with these barriers, Chinese leaders scrapped the project in 2007.

Chinese leaders did not abandon their cadre assessment reforms completely; instead, they implemented a more moderate reform program. In November 2007, with support from the CCP Organization Department, the State Council rolled out a new environmental ‘veto’ target system focused specifically on energy conservation and emission reduction (two goals that are much easier to achieve than overall pollution reduction). Under that system, provincial and municipal-level leading cadres would reportedly lose their jobs if they failed to meet the State Council’s annual energy damage indicators. When the 2005 GGDP calculations were complete, the 2004/2005 comparison revealed that China’s environmental situation had actually worsened. “GDP Takes on a Green Hue in New Figures,” *China Daily*, September 8, 2006 [Lexis Nexis Academic]. Shi, Jiangtao, “Rift Over Release of Green GDP Figures,” *South China Morning Post*, March 24, 2007 [Lexis Nexis Academic].


conservation and emission reduction targets. In 2009 the CCP Organization
Department further extended these reforms by issuing new leading cadre assessment
guidelines that incorporate environmental protection indicators into the Party’s general
comprehensive performance assessments. Unlike the earlier GGDP plan, these
guidelines weigh environmental indicators in the traditional additive format – i.e.,
poor environmental enforcement will impact overall performance ratings, but it will
not cancel out strong economic growth.

These reforms can potentially improve sub-national environmental protection
incentives, but they also face a variety of implementation problems. For example, the
State Council’s initial target assessments were so bad that Chinese leaders decided to
measure sub-national target achievement every five years (instead of annually) to give
local officials more time to achieve their energy conservation and emission reduction
targets. Most importantly, these top-down measurements depend primarily on local-
level environmental data, and local officials routinely submit false statistics to hide
poor performance records. Some Chinese scholars therefore suggest that these top-

743 Ibid.
744 “Difang dangzheng lingdao banzi he lingdao ganbu zhonghe kaohe pingjia banfa (shixing)” (Trial
Evaluation Method for Comprehensive Assessments of Party and Government Leading Groups and
Leading Cadres), Zhonggong Zhongyang Zuzhibu Wenjian #13 (Central Party Organization
‘guanyu jianli cujin kexue fazhan de danzheng lingdao banzi he lingdao ganbu kaohe pingjia jizhi de
yijian’ ji sange kaohe banfa hui jizhe wen” (Officials from the CCP Central Organization Department
Answer Reporters’ Questions About the Promulgation and Implementation of the ‘Opinions on
Establishing and Promoting Scientific Development in the Evaluation Assessment Mechanisms for
Party and Government Leading Groups and Leading Cadres’ and the Three Evaluation Methods),
28, 2006 [Lexis Nexis Academic].
down enforcement mechanisms will only be effective if Chinese leaders give local citizens a role in assessing local officials’ environmental performance ratings.  

7.8.2. Environmental Administrative Centralization

Chinese leaders are also experimenting with administrative centralization. Chinese officials and scholars generally agree that the local People’s governments’ budgetary and personnel authority over sub-national EPBs is one of the main impediments to environmental policy enforcement – when local People’s government leaders want to protect local polluters, that authority gives them the leverage to curtail local EPB enforcement operations. In 2006, in an attempt to partially address this problem, Chinese leaders announced a new plan to establish five regional “environmental protection supervision centers” in Nanjing (supervising eastern China),

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747 Technically, Chinese leaders took the first step toward environmental centralization in 2001 when they altered the appointment rules for provincial-level EPB heads to give national-level SEPA officials a say in those appointment decisions. However, the post-2001 appointment rules do not take primary appointment authority away from the provincial People’s governments – the new rules only state that those governments must “consult” with SEPA when making the appointment decisions – so that change did not truly centralize environmental authority and did not improve provincial-level environmental protection incentives. Miller, Julie, “After Decades of Leniency, the Central Government Gets Serious About Environmental Protection,” Inside Counsel, November 2006 [Lexis Nexis Academic].


Guangzhou (southern China), Xi’an (northwest China), Chengdu (southwest China) and Shenyang (northeast China). These regional centers answer directly to the national environmental protection agency and have no ties with the local People’s governments. These centers are designed to provide national-level officials with independent information on local-level environmental protection activities, and they also supervise local EPBs (to monitor their policy implementation operations) as well as key local enterprises (to provide independent monitoring data on pollution emissions and other environmental indicators).

Some national-level environmental officials claim that these regional centers are a trial run for possible future environmental verticalization up to the provincial level – i.e., provincial-level EPBs would still answer to the provincial-level People’s governments; however, from the provincial level down, each EPB would answer to the EPB above it in the functional administrative chain. However, based on the verticalizations already carried out in other policy sectors, sub-provincial

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750 Impetus for this reform reportedly came from the Songhua River pollution incident, where local officials tried to cover it up and caused a major interational pollution crisis. “New Environment Watchdogs Freed from Local Government Meddling,” Xinhua General News Service, July 31, 2006 [Lexis Nexis Academic].
751 These independent regional measurements are particularly critical due to the past difficulties with false environmental statistics.
752 These centers are also reportedly a compromise between pro-verticalization environmental protection interests and pro-decentralization local interests (who want to maintain control over the key factors influencing local economic growth). SEPA gained central level support for verticalization after the Songhua River incident. “Zhuanjia jianyi huanbao zongju “shengge” huanjing baohu youwang chengli” (Experts’ Recommendations for a SEPA “Promotion” to Environmental Ministry May be Realized), Xinjingbao (Beijing News), December 28, 2006, available at: http://business.sohu.com/20061028/n246054406.shtml (accessed April 23, 2010).
verticalization will not address China’s environmental problems unless central-provincial ties are also centralized in some way.\textsuperscript{753}

7.9. Conclusion

This chapter has provided evidence to support my argument that Chinese leaders adjust their fire alarm policies to account for sector-specific instability risks. The environmental sector does not present consistently high or consistently low malfeasance-induced instability risks. Instead, risk levels are relatively mixed:

1. Perceived welfare impacts vary widely from case to case.
2. Environmental malfeasance is conducted by a mix of governmental and commercial actors, so Chinese leaders will always have convenient commercial scapegoats in this sector, and that will reduce some of the risks from non-governmental fire alarms.
3. Environmental malfeasance generally victimizes geographically concentrated communities that can easily organize for collective action, so protests should be likely in this sector, especially when perceived welfare impacts are relatively high, and that will increase the risks associated with non-governmental fire alarms.

As expected, Chinese leaders do not completely close their non-governmental fire alarms in this sector (as in the high-risk land sector); nor are these institutions as open as in the relatively low-risk food and drug sector. Instead, Chinese leaders pursue a mixed strategy to accommodate the mixed environmental instability risks.

Chinese leaders generally do allow both governmental and non-governmental fire alarms in this sector, but they also deploy targeted information controls to

suppress non-governmental fire alarms in the higher-risk cases. Unfortunately, as with other fire alarm controls, Chinese leaders delegate their environmental information controls down to the local level, and that gives local officials an additional tool that they can use to interfere in legitimate fire alarm activities. In other words, the added controls increase fire alarm agency loss, and Chinese leaders are forced to constantly reform their environmental fire alarms in an attempt to minimize that agency loss without taking on too much added political risk.
Chapter 8

Environmental Protection:

Case Studies from a Medium-Risk Policy Sector

8.1. Introduction

This chapter presents two detailed case narratives of official malfeasance and fire alarm oversight in China’s environmental protection sector. The previous chapter examined environmental fire alarm policy design at the national level and outlined the actions that Chinese leaders are taking to improve principal-agent oversight in this sector. This chapter will now examine these same issues from the grassroots level to demonstrate how Chinese citizens are actually using (or attempting to use) governmental and non-governmental fire alarms to hold environmental malfeasants accountable. This chapter will also demonstrate the agency problems that plague China’s governmental fire alarms and impede many citizen attempts to seek pollution redress.

This chapter will examine two cases. In the first case, a pollution victim from Hebei Province files xinfang petitions, contacts local journalists, contacts a national-level social organization and files a series of administrative lawsuits to expose an illegally polluting factory. In the second case, a large group of pollution victims from Shaanxi Province files xinfang petitions, contacts local journalists and stages mass
protests to expose an illegally-polluting smelter and the associated damage to local public health.

These cases provide evidence to support two key assumptions from chapter one. First, these cases illustrate the relative effectiveness of governmental versus non-governmental fire alarms. Agency loss and protectionism routinely impede citizen attempts to seek redress through governmental fire alarms, especially at the local level. In contrast, non-governmental fire alarms can circumvent local political barriers and quickly expose local-level malfeasants to higher-level principals with the willingness and the authority to redress citizen grievances and enforce policy compliance.

These cases also illustrate the critical role that information asymmetries often play in environmental malfeasance and environmental fire alarm oversight. In both cases, the pollution victims need some form of technical assistance to fully understand the nature of the environmental malfeasance and to expose that malfeasance through governmental and non-governmental fire alarm institutions.

The second case – the Fengxiang lead poisoning case – will also provide evidence to support the protest hypothesis from chapter one of this thesis:

H3b: When aggrieved citizens stage mass protests as a fire alarm tactic, higher-level leaders will generally intervene to redress the protestors’ grievances and discipline exposed malfeasants.

In the Fengxiang case, local citizens stage mass protests as a fire alarm tactic, and higher-level leaders respond by intervening to address their complaints.

Unfortunately, these cases also demonstrate that fire alarm redress is still very difficult for average Chinese pollution victims to achieve. Governmental fire alarms
are often ineffective, especially on the first attempt. Pollution victims often resort to protests and other non-sanctioned tactics to increase the pressure on local-level officials, and those tactics can facilitate short-term redress, but they can also produce disastrous long-term consequences.

8.2. Beiwangjia Village Air Pollution Case: Unsuccessful Administrative Lawsuit Sparks SEPA Intervention; SEPA Intervention Sparks Local Retaliation

Beiwangjia is an agricultural village in Dingzhou City, in the Baoding administrative region of Hebei province. In 1988 Beiwangjia resident Wang Zhenguo opened a small silver extraction factory in the village residential area. Mr. Wang constructed a small brick shack in his own residential courtyard, topped the shack with an iron chimney and installed rudimentary incinerators and roasting furnaces. Mr. Wang’s Beiwangjia Rare Metals Extraction Factory burned waste photographic paper and film sludge, rendered silver from the ashes and melted the

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754 The relevant territorial People’s governments for this case, in ascending administrative authority, are: Beiwangjia Village, Liuzao Town, Dingzhou City (county-level city), Baoding City (prefecture-level city) and Hebei Province.


extracted silver bits to form ingots.\textsuperscript{757} Beiwangjia Village residents initially admired Mr. Wang’s innovative new money-making scheme; however, once he commenced operations, his backyard factory polluted the entire surrounding area with a thick, foul-smelling, acrid black smoke.\textsuperscript{758} Local residents all suffered nausea, headaches, burning noses and breathing problems from the polluted air, and the older residents with bronchial infections, lung disease and asthma were particularly distressed.\textsuperscript{759}

The Beiwangjia villagers submitted numerous pollution complaints to the local government, but local officials ignored their complaints for years.\textsuperscript{760} In 1992 the Dingzhou City and Countryside Construction Committee finally investigated Mr. Wang’s factory and found that he was operating illegally – the factory had never obtained the required construction, operation, site location or environmental protection permits, and factory emissions clearly violated national pollution standards.\textsuperscript{761} The Dingzhou Construction Committee therefore charged Mr. Wang with these violations and issued an immediate stop production notice.\textsuperscript{762} However, they never followed up to enforce these orders, so Mr. Wang quickly restarted his operations without applying for the necessary permits or rectifying the factory’s pollution problems.\textsuperscript{763} Over the next ten years Beiwangjia villagers continued to submit pollution complaints to the

\begin{itemize}
\item \textsuperscript{757} Small Enterprise Illegally Producing,” CLAPV, August 24, 2005. Jing, Dong, “The ‘Vitality’ of a Polluting Enterprise.”
\item \textsuperscript{758} Ibid.
\item \textsuperscript{759} Ibid.
\item \textsuperscript{760} Ibid.
\item \textsuperscript{761} Jing, Dong, “The ‘Vitality’ of a Polluting Enterprise.” Small Enterprise Illegally Producing,” CLAPV, August 24, 2005.
\item \textsuperscript{763} Jing, Dong, “The ‘Vitality’ of a Polluting Enterprise.” Small Enterprise Illegally Producing,” CLAPV, August 24, 2005.
\end{itemize}
local EPB; however, local environmental officials ignored these complaints and took no enforcement actions against Mr. Wang.\(^{764}\)

In December 2003 Beiwangjia resident Zhang Jichang decided to escalate his complaint tactics. First, in an attempt to pressure Mr. Wang and the local EPB authorities, Mr. Zhang detained one of Mr. Wang’s inbound transport trucks, accused Mr. Wang of illegally transporting poisonous waste materials without a permit, and called EPB officials to the scene to search the truck and catch Mr. Wang red-handed.\(^{765}\) This strategy was not particularly effective: the confrontation erupted into a scuffle between Mr. Zhang and Mr. Wang, Wang’s son rushed to the scene, and the two allegedly beat Zhang, ran him down with a pickup truck and broke his arm.\(^{766}\) Local EPB officials did examine the transport truck at Mr. Zhang’s request, and they did confiscate some of the hazardous waste materials that Mr. Wang was processing illegally.\(^{767}\) However, the EPB took no further action – they did not punish Mr. Wang for his illegal activities and they did not attempt to enforce environmental protection standards at the factory.

Undaunted, Mr. Zhang called the pollution report hotline for the Hebei TV ‘Green Homeland’ environmental watchdog news program.\(^{768}\) Green Homeland

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\(^{765}\) Mr. Zhang was hoping that the local EPB would take his complaints more seriously if he could also provide hard evidence of the factory’s pollution illegalities. Sun, Ying, “An Unusual ‘Causing a Disturbance’ Case.”

\(^{766}\) Ibid.

\(^{767}\) Ibid.

\(^{768}\) “Luse Jiayuan” (Green Homeland), Episode #318, Hebei Dianshi Tai (Hebei Television), May 16, 2004 (Includes a segment following up on the Beiwangjia case), available at: http://www.yzhbw.net/news/shownews-22_244.dot (accessed April 24, 2010). Jing, Dong, “The ‘Vitality’ of a Polluting Enterprise.”
dispatched journalists to investigate his complaints and then covered the story on-air, thus exposing the problem on Hebei provincial news. This exposure provoked an immediate official response: two days later, Baoding City and Dingzhou City leaders arrived in Beiwangjia Village, and the Dingzhou City EPB issued an immediate stop-production notice to Mr. Wang. This time, Dingzhou EPB officials ordered Mr. Wang to close his factory permanently, to select a new location further away from the village residential area, to conduct a thorough environmental impact assessment (EIA) and to obtain all required construction and environmental protection permits before reopening at the new location.

Mr. Wang immediately selected a new factory site on the western perimeter of the village and obtained construction permits from the local Industry and Commerce Bureau. Mr. Wang also contacted the Environmental Impact Assessment (EIA) Office under the Metallurgy Ministry’s Geophysics Inspection Department and asked the Metallurgy EIA office to conduct the environmental impact assessment for his new factory. The Metallurgy EIA office quickly completed that assessment and submitted an official EIA report form to the Dingzhou EPB in February 2004. In March 2004 the Dingzhou EPB approved that report form, thus granting Mr. Wang official environmental approval to commence operations at his new location. Due to this speedy EIA assessment and approval process, Mr. Wang was back in business.

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769 Jing, Dong, “The ‘Vitality’ of a Polluting Enterprise.”
771 Jing, Dong, “The ‘Vitality’ of a Polluting Enterprise.”
less than four months after the ‘Green Homeland’ media exposure and subsequent crackdown.

The Beiwangjia villagers were furious. Pollution from the new factory was just as bad as before, so Mr. Wang apparently had not changed his environmental practices.774 Furthermore, Mr. Wang built his new factory just 150 meters away from the village perimeter, so the factory relocation had no significant impact on the villagers’ pollution exposure.775 Mr. Wang’s new factory operated primarily at night – ostensibly to avoid further environmental supervision – and the dense smoke was so bad that it often woke village residents in the middle of the night with burning noses and lungs.776

Since the Dingzhou EPB had approved Mr. Wang’s environmental permits so quickly despite these blatant and ongoing pollution problems, Mr. Zhang suspected possible irregularities in the permit approval process. In September 2004 Mr. Zhang called the legal assistance hotline at the Center for Legal Assistance to Pollution Victims (CLAPV), an environmental NGO operating under the University of Political Science and Law in Beijing.777 Mr. Zhang reported his permit suspicions to CLAPV

and in November 2004 CLAPV dispatched a team of law student volunteers to conduct on-site investigations in Beiwangjia. The CLAPV team found ample evidence to support Zhang’s claims. Primarily, they found a long list of regulatory violations in the factory’s March 2004 EIA assessment and EIA permit approval.

First, waste photographic paper and film sludge are hazardous waste materials subject to special environmental standards; since Mr. Wang’s factory was burning hazardous waste materials, China’s EIA Law and hazardous waste regulations stipulate that environmental approval cannot be granted without a full and comprehensive EIA audit and full-length EIA report. However, in Mr. Wang’s case the Metallurgy EIA office only conducted a minimal EIA audit and only submitted a short-version EIA report form (used for non-hazardous production processes) to the Dingzhou EPB, and the EPB approved that report form and issued the factory’s environmental permit despite those irregularities.

Second, the EIA report form itself contained many regulatory violations and errors. For example, all of the factory’s pollution control and treatment procedures as described in the EIA report form were based on the lax regulatory standards for non-hazardous waste materials, not the more stringent standards for factories burning


waste photographic paper and film sludge. Furthermore, the Beiwangjia factory emitted a wide range of chemical pollutants including benzene, dioxin, chromium and cyanide, and those individual pollutants should have been listed in the EIA report along with the amount of expected emissions and the specific pollution control and treatment strategies for each chemical compound; however, the Beiwangjia factory report form did not include any of that information.

Overall, CLAPV concluded that the Metallurgy EIA office’s Beiwangjia factory audit and EIA report form violated national laws and regulations; as a result, the Dingzhou EPB’s subsequent decision to approve that EIA report form was an illegal administrative act. Armed with this information, CLAPV first filed a formal petition asking the Dingzhou City EPB to investigate these irregularities. The Dingzhou EPB refused their request. EPB officials told CLAPV that they had already granted the factory’s environmental approval, that the approval procedures were conducted according to law, and that the factory was not violating any environmental protection regulations whatsoever.

Mr. Zhang responded by filing an administrative suit against the Dingzhou EPB in Dingzhou Municipal Court (in June 2005), with CLAPV providing free legal representation. The plaintiffs asked the court to review the legality of the Dingzhou EPB’s March 2004 decision to approve the factory’s EIA report form. The court convened a public pre-judicial hearing on the Beiwangjia case on August 1, 2005.

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782 “Small Enterprise Illegally Producing,” CLAPV, August 24, 2005.
783 “Small Enterprise Illegally Producing,” CLAPV, August 24, 2005.
784 Jing, Dong, “The ‘Vitality’ of a Polluting Enterprise.” Zheng, Yi, “Professor Detained.”
To get their case accepted by the court, the plaintiffs had to provide evidence at the pre-judicial hearing to support three key arguments: (1) Mr. Zhang was qualified to file suit as an administrative plaintiff, (2) the case fit the definition of administrative suits that should be accepted under Chinese law, and (3) the EPB approval decision was an illegal concrete administrative act.  

First, CLAPV argued that the Dingzhou EPB’s decision to approve Mr. Wang’s EIA report form enabled Mr. Wang to restart his illegally polluting factory and the resultant pollution harmed the Beiwangjia villagers; therefore, by allowing this illegal pollution to continue, the EPB’s EIA approval decision infringed on the villagers’ lawful rights and interests.  

Since the EIA approval decision was also a concrete administrative act, the rights-infringed villagers could sue the Dingzhou EPB under China’s administrative litigation law.  

Second, CLAPV argued that Mr. Zhang’s case fit the definition of cases that Chinese courts should accept under the Administrative Procedure Law. Specifically, Zhang’s case fit Article 11, Item 8, which states that the courts must accept cases filed against concrete administrative actions that infringe on the plaintiff’s personal or property rights.

Third, CLAPV argued that the Dingzhou EPB abused its power by illegally approving an EIA report form that clearly violated China’s EIA Law and a host of hazardous waste regulations. The Dingzhou EPB approved the report form even

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786 “Small Enterprise Illegally Producing,” CLAPV, August 24, 2005.
though it did not meet the conditions for approval as described in those laws and regulations; therefore, that approval decision was an illegal administrative act.\textsuperscript{789}

The Dingzhou EPB and Mr. Wang (a third party at the pre-judicial hearing) countered that the plaintiffs had no legal standing to file suit against the Dingzhou EPB’s approval decision. The defendants argued that the rights infringement described in China’s Administrative Procedure Law is “direct” rights infringement, and the plaintiffs’ interests were not directly infringed on.\textsuperscript{790} The defendants argued that Mr. Wang was the party directly impacted by the EPB decision, not the villagers. If the EPB granted environmental approval Mr. Wang could operate his factory; if the EPB denied his application Mr. Wang could not operate and would therefore suffer financial loss. According to the defendants, the Beiwangjia villagers were only involved in this administrative decision as a third party and therefore not eligible to contest the decision under Chinese law.\textsuperscript{791}

The defendants also claimed that the Baoding City Environmental Monitoring Station routinely monitored the factory’s emissions and had always found that the emissions met all relevant environmental standards. Therefore, according to the defendants, the factory was not polluting the village or harming the villagers in any way, so the villagers could not claim that the factory had infringed on their lawful rights or interests.\textsuperscript{792}

\textsuperscript{789}“Small Enterprise Illegally Producing,” CLAPV, August 24, 2005.
\textsuperscript{790}Ibid.
\textsuperscript{791}Ibid.
\textsuperscript{792}Ibid.
As to the legality of the EPB approval decision, the defendants argued that the EIA law and hazardous waste regulations cited by the plaintiffs only apply to large-scale enterprises processing a wide range of hazardous waste materials; they argued that these regulations do not apply to small-scale factories like Mr. Wang’s. Therefore, according to the defendants, since those regulations do not apply in this case it was perfectly legal to conduct an abbreviated EIA audit and to submit a short-version EIA report form instead of the full-length EIA report.

The Dingzhou Municipal Court accepted the defendants’ arguments that the plaintiffs were third parties in the approval decision and therefore not qualified to file suit; the court therefore rejected the plaintiff’s application and refused accept the case for trial. Mr. Zhang and CLAPV appealed this decision to the Baoding City Intermediate Court in September 2005, but the Baoding court upheld the lower court’s refusal decision. In other words, both local courts sided with the local government by refusing to accept the case.

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793 “Small Enterprise Illegally Producing,” CLAPV, August 24, 2005.
794 Dingzhou EPB officials also told the court that Mr. Wang’s factory was providing a beneficial social service by processing discarded waste materials and should therefore be applauded and encouraged. “Small Enterprise Illegally Producing,” CLAPV, August 24, 2005.
The Dingzhou and Baoding court refusal decisions presented a huge legal barrier. However, administrative litigation was not the only channel CLAPV was pursuing on Mr. Zhang’s behalf. In late August 2005, just before they filed the Baoding court appeal, CLAPV had also submitted a formal complaint to SEPA’s national EIA Department. In that complaint, CLAPV detailed the Beiwangjia case and accused the Metallurgy Ministry EIA office of conducting fraudulent environmental assessments and submitting illegal EIA reports.

On December 9, 2005 – two weeks after the Baoding City Court denied CLAPV’s appeal – SEPA intervened in the Beiwangjia case and issued a national notice charging the Metallurgy EIA office with EIA fraud. The SEPA notice did not reference the ongoing legal dispute or Mr. Zhang’s difficulty achieving legal redress. However, SEPA did outline and uphold all of the legal objections CLAPV raised in court. For example, the SEPA notice contradicted the Dingzhou EPB’s claims that the hazardous waste regulations did not apply to Mr. Zhang’s small factory – the notice specifically stated that China’s environmental regulations apply to all

797 Zhong, Xinxuan, “Following the Dingzhou Case.”
798 Ibid.
800 Ibid.
factories, regardless of size.\textsuperscript{801} The SEPA notice also stated that the Metallurgy EIA office acted illegally when it violated those regulations in the Beiwangjia factory’s EIA assessment; as punishment, SEPA revoked the Metallurgy office’s EIA license for six months and ordered the office to conduct internal audits and reform its EIA procedures as a pre-condition for re-licensing.\textsuperscript{802}

The SEPA notice did not chastise the Dingzhou EPB directly, and it is not clear whether SEPA issued a separate internal notice for that purpose; however, shortly after SEPA issued the national notice, the Dingzhou EPB revoked Mr. Zhang’s environmental permits and forced the factory to shut down.\textsuperscript{803}

The SEPA intervention was a huge boon to the plaintiffs – it forced Mr. Wang to close his illegally polluting factory, thus redressing the Beiwangjia villagers’ pollution complaints. However, this did not end the pollution dispute for Mr. Zhang. In 2006 Mr. Wang retaliated against Zhang by filing suit over the December 2003 confrontation and scuffle.\textsuperscript{804} Mr. Wang sued Mr. Zhang in Dingzhou city court seeking over 58,000 RMB in civil damages, and the local Dingzhou procuratorate

\textsuperscript{801} Ibid.

\textsuperscript{802} Ibid. The SEPA notice also stated that the Metallurgy EIA office would bear responsibility for any resultant pollution problems in Beiwangjia Village.


\textsuperscript{804} During that incident, Wang’s son ran Zhang down with a pickup truck, and Zhang then confiscated the truck as evidence of the attack. Zhang brought the truck to an acquaintance, Mr. Shen, who had promised to help him seek legal assistance and compensation for the vehicular attack; however, Mr. Shen reportedly disappeared with the truck, so Zhang was unable to return it to the Wang family. Sun, Ying, “Yi qi teshu de xun xin zi shi an” (An Unusual ‘Causing a Disturbance’ Case), Falu yu Shenghuo Zazhi (Law and Life Magazine), November 30, 2007, available at: http://news.sina.com.cn/c/2007-11-30/104014422283.shtml (accessed April 18, 2010).
supported Wang’s case by filing criminal charges against Zhang for illegally “causing a disturbance.” CLAPV continued to represent Zhang pro bono and defended his 2003 actions as a frustrated attempt to seek pollution redress; however, the local Dingzhou court ruled for the plaintiffs. The court sentenced Zhang to three years in prison for the criminal charges and ordered him to pay Mr. Wang 33,200 RMB in civil damages. CLAPV and China’s Justice Department Legal Assistance Center filed multiple appeals on Mr. Zhang’s behalf, but the appellate courts all upheld the initial verdict.

8.2.1. Governmental vs. Non-Governmental Fire Alarms in the Beiwangjia Case

This case illustrates the local-level political barriers Chinese pollution victims often face when they seek redress through governmental and non-governmental fire alarms. Beiwangjia village resident Zhang Jichang pursued a variety of fire alarm avenues in his attempts to expose the factory’s pollution problems: Mr. Zhang filed xinfang petitions to the local EPB, contacted a well-known watchdog TV program to expose the situation through the local media, contacted a well-known social

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805 Ibid. This charge is based on Article 293 of the P.R.C. Criminal Law, which states: “Whoever commits any of the following acts of creating disturbances, thus disrupting public order, shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or public surveillance: (1) beating another person at will and to a flagrant extent; (2) chasing, intercepting or hurling insults to another person to a flagrant extent; (3) forcibly taking or demanding, willfully damaging, destroying or occupying public or private money or property to a serious extent; or (4) creating disturbances in a public place, thus causing serious disorder in such place.” “Zhong hua ren min gong he guo xing fa” (P.R.C. Criminal Law), Adopted July 1, 1979, last amended June 29, 2006, available at: http://www.mps.gov.cn/n16/n1282/n3493/n3763/n493954/n494322.html (accessed April 18, 2010). English translation from the U.S. Congressional Executive Commission on China, available at: http://www.cecc.gov/pages/newLaws/criminalLawENG.php.


organization for legal assistance and filed two administrative lawsuits. Local-level protectionism clearly undermined the governmental fire alarm institutions in this case; in contrast, media exposure and social organization lobbying sparked higher-level interventions that forced the factory to shut down on two separate occasions.

From the beginning, xinfang petitions to the local government and the local EPB were ineffective; Beiwangjia village residents filed xinfang petitions from 1988 to 2003 with no results. Dingzhou EPB officials later explained that it was against their interests to force the factory to change its environmental practices or to shut down, for two key reasons. First, local political leaders prioritized economic growth over environmental protection; if EPB officials were too strict with the Beiwangjia factory, that could impact local growth, and the EPB officials would likely lose their positions. Second, the Dingzhou EPB was suffering from a budget shortfall; environmental fines were a critical source of income, and EPB officials could maximize environmental fines by keeping local polluters in business. Due to those two factors, one Dingzhou EPB official told reporters that “rectifying polluting enterprises…would be like beating yourself in the eye with your own fist.”

Judicial redress was also ineffective in this case, even though Mr. Zhang had excellent legal resources (through CLAPV) that are not available to most environmental plaintiffs. Most Chinese laws still leave ample room for lower-level interpretation – generally due to inadequately specified procedural requirements – and

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808 Jing, Dong, “The ‘Vitality’ of a Polluting Enterprise.”
809 Jing, Dong, “The ‘Vitality’ of a Polluting Enterprise.”
that gives lower-level courts wide leeway for judicial protectionism. Unfortunately, China’s Administrative Procedure Law is no exception. The 1990 Administrative Procedure Law states that malfeasance victims can file suit against concrete administrative acts that “infringe on [the victim’s] lawful rights and interests.” Chinese judges and legal scholars originally interpreted this statute to mean that the victims can only file suit if they are an involved party in the administrative decision; for example, as in the Beiwangjia case, if they are the party receiving the environmental permit. However, in 2000 the P.R.C. Supreme People’s Court issued a judicial interpretation to clarify and expand this narrow definition of plaintiff eligibility. Under the 2000 interpretation, there is no ‘directly involved party’ requirement; rather, potential administrative plaintiffs can file suit as long as their legally-protected interests are impacted by the administrative act in some way. In the Beiwangjia case, the Dingzhou City and Baoji City courts clearly violated this

814 Ibid.
2000 statute when they ruled that Mr. Zhang was not qualified simply because he was
not a directly involved party in the Dingzhou EPB’s EIA approval decision.\textsuperscript{815}

Even after Mr. Wang’s factory was shut down and Mr. Zhang was jailed over
the “creating a disturbance” charge, CLAPV continued to appeal the Dingzhou City
and Baoji City court decisions; however, despite the clear illegality of these decisions,
the appeals were not successful. CLAPV is one of China’s top environmental law
organizations; CLAPV trains many of China’s environmental lawyers and judges, and
CLAPV founder Wang Canfa is highly regarded (and well-connected) both nationally
and internationally.\textsuperscript{816} In other words, CLAPV support is among the best that China’s
environmental plaintiffs can hope for, and the fact that CLAPV was unable to reverse
the blatantly illegal Dingzhou City and Baoji City court decisions does not bode well
for other environmental plaintiffs.

Compared to the governmental fire alarm attempts, media oversight was much
more effective in the Beiwangjia case, at least in the short term, because it exposed the
problem to higher-level officials and therefore opened up the possibility of a higher-
level intervention. According to factory manager Wang, every round of media
exposure spurred a corresponding round of environmental enforcement. Mr. Wang
complained, “Journalists write one thing about us, that attracts an inspection; they

\textsuperscript{815} Zhong, Xinxuan, “Following the Dingzhou Case.” Gao, Shangtao, “Following the Dingzhou Case 3.”
\textsuperscript{816} For example, Time Magazine named CLAPV founder Wang Canfa ones of its “Heroes of the
write another thing, the EPB comes again…we are never left in peace!” However, as is common in many pollution cases, this media spotlight was not long-lasting. Once the media spotlight moves on to other issues and local officials have responded to the exposed problem in some way, further environmental enforcement is not guaranteed.

Social organization was also very effective in this case, primarily due to CLAPV’s contacts with the national-level SEPA office in Beijing. CLAPV also attracted additional media attention to the case. For example, when the CLAPV investigation team traveled to Beiwangjia in June/August 2005 to prepare for Mr. Zhang’s first pre-judicial hearing, CLAPV brought along a journalist from China’s Legal Daily, and that journalist later reported on the threats, violence and local police protectionism the team encountered during those investigations. However, despite CLAPV’s national-level government and media ties, CLAPV had no authority or influence at the local level and was therefore unable to overcome local judicial protectionism.

Unfortunately, this case also illustrates an all-too-common fire alarm pattern: pollution victims try governmental fire alarms, but those institutions do not work, so

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817 Jing, Dong, “The ‘Vitality’ of a Polluting Enterprise.”
818 The CLAPV investigation team visited Mr. Wang’s factory on July 31 accompanied by the Legal Daily journalist. During that visit, factory workers locked the team inside the factory compound and detained the team against their will for three hours. Factory workers also threatened to beat the team with bricks and actually threw a brick at one of the students. The Legal Daily reporter called the police, and a local police officer arrived at the scene; however, that officer did not force the factory workers to release the CLAPV team and denied the team’s request to be taken to the local police station to press charges over the incident. The Dingzhou City government had to intervene in the incident and dispatch city-level officials to secure the CLAPV team’s release from the factory. Zheng, Yi, “Jiaoshou diaocha wuran shi bei xianzhii renshou ziyou” (Professor Detained While Investigating Pollution), Zhongguo Huanjing Bao (China Environmental News), August 18, 2005, available at: http://www.clapv.org/NewsContent.asp?id=568 (April 18, 2010).
the victims escalate to non-sanctioned tactics, and that escalation gives local officials an excuse to retaliate and forestall further fire alarm attempts.\textsuperscript{819} According to CLAPV Deputy Director Xu Kezhu, many of CLAPV’s environmental plaintiffs eventually wind up on the other side of the courtroom, as criminal defendants. As Ms. Xu explains:

\begin{quote}
Companies pollute illegally, [pollution victims] complain to the company, but they get no result; they then complain to the government, but they still get no result. [The pollution victims] are then forced to defend their rights themselves; they smash the factory and initiate mass incidents. In the end [the victims] are the ones who are punished, they become law breakers and sacrificial lambs. Why do they break the law? It is because the enterprise was first illegally polluting, and the law enforcers refused to go out and investigate the enterprise’s illegal actions.\textsuperscript{820}
\end{quote}

Unfortunately, as in Mr. Zhang’s case, when environmental complaints escalate into citizen-enterprise disputes, local officials and police forces generally side with the enterprise.

\subsection*{8.2.2. Information Asymmetries in the Beiwangjia Case}

The Beiwangjia case also demonstrates the critical role that information asymmetries can play in pollution welfare assessments and fire alarm redress. Mr. Zhang and the other Beiwangjia villagers knew that the factory was a pollution problem, and they also suspected that local officials were acting illegally and protecting the factory from environmental enforcement. However, they did not have


the ability to confirm those suspicions. CLAPV investigators had the technical and legal expertise to identify the Beiwangjia factory’s regulatory irregularities and to pursue redress through sanctioned governmental fire alarms. In contrast, Mr. Zhang did not have this expertise, and his own attempts to uncover this information led to his subsequent arrest and imprisonment.

8.3. Fengxiang Lead Poisoning Case: Media Exposés, Mass Protests and Higher-Level Interventions Force Local Officials to Redress Pollution Malfeasance

Fengxiang County is a rural farming county in the Baoji City area of Shaanxi province. Like many rural areas in central China, Fengxiang was largely left behind during the first two decades of China’s economic boom, and local officials were eager to close the gap. In 2003, in a bid to attract investors and boost fiscal revenue, local officials decided to build an industrial park on rural farmland in Fengxiang County’s Changqing Town. That same year, Shaanxi Dongling Industry and Trade Group was scouting locations for a new lead and zinc smelting plant, and Fengxiang officials convinced Dongling Group to build the smelter in their nascent industrial park.

821 Changqing Town lies within Fengxiang County. The relevant territorial administrative entities for the industrial park, in descending order of authority, are Shaanxi Province, Baoji City, Fengxiang County and Changqing Town. “Shaanxi Fengxiang Changqing fei meihui zonghe liyong xiangmu” (Shaanxi Fengxiang Changqing Coal Fly Ash Comprehensive Utilization Project), Shaanxi Provincial People’s Government, April 1, 2008, available at: http://www.shaanxi.cn/Html/2008-4-1/151817.Html (accessed April 13, 2010). Tax revenue from the park would be distributed vertically among these four administrative levels, so higher-level officials also had a financial interest in the park. Changqing Town is further divided into individual villages. Two of those villages (Madaokou and Sunjianantou) originally owned the land expropriated for the park, but they had no administrative authority over the park post-expropriation.

Dongling contract was a major coup for Fengxiang County and Changqing Town officials: Dongling was Shaanxi’s largest private enterprise, and many neighboring counties had been fighting to win the contract. Even more importantly, the smelter would bring in a huge amount of fiscal revenue – taxes from the plant would far surpass what local farmers had been paying to use the land for agricultural purposes – and Dongling’s arrival successfully launched the new industrial park.823

Local farmers from two Changqing Town villages – Madaokou Village and Sunjianantou Village – still owned and occupied the land selected for the smelting plant, so Fengxiang officials immediately launched land expropriations to clear the site.824 Dongling Group did not need all of the Madaokou and Sunjianantou village lands, so local officials did not fully relocate those villages. Instead, officials mapped out the Dongling construction site, pushed villagers off those specific farm plots and left the surrounding homes and plots in place.825 Post-construction, the remaining villagers would be living and farming around the smelter, with some homes, schools and farm plots just outside the smelter’s surrounding wall. Many of those villagers

824 Local officials expropriated land from approximately 100 households to build the smelter. County government head Zhao Xiaoming reportedly ordered local officials to carry out the expropriations and relocations within two months and with “no consultation [with expropriated villagers], no research and no hesitation whatsoever.” This approach violates China’s land laws. When local villagers tried to resist, local officials forcefully cut down their standing corn fields and reportedly hired thugs to beat the villagers into submission. Tu, Chonghang, “The Full Story Behind the Shaanxi Fengxiang Lead Poisoning Incident,” August 21, 2009. Sheridan, Michael, “China Uses Fear to Hush up Poisoned Children,” The Sunday Times (London), September 13, 2009 [Lexis Nexis Academic]. “Poison in the Mindset,” China Daily, September 8, 2009 [Lexis Nexis Academic].
were looking forward to potentially higher incomes from jobs at the smelter or from side businesses providing housing and other services to incoming plant workers. However, due to the close proximity, they were also very worried about possible pollution problems.

In March 2004 the Xi’an Geological Mining Industrial Research Institute conducted the official environmental impact assessment (EIA) for the new Dongling smelting plant, and their EIA report validated the local villagers’ pollution concerns. Based on Dongling’s production plans and average wind speeds in the area, EIA inspectors concluded that smelter discharge and emissions would render the entire surrounding area completely uninhabitable. EIA inspectors estimated that the most serious health hazards would extend at least 1000 meters around the smelter, so they urged local officials to establish a 1000 meter safety zone and to relocate all of the residents living within that zone before allowing the smelter to commence operations.

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Under China’s EIA Law, local officials must follow public notice and comment procedures before submitting EIA reports for environmental permit approval; therefore, in theory, Fengxiang County officials should have publicized this EIA report and warned local villagers about the smelter’s likely pollution problems. However, the EIA law also has a state secrets exemption – local officials do not have to follow notice and comment procedures if the EIA pollution warnings are a state secret – and the Baoji City and Fengxiang County officials (apparently evoking that exemption) submitted the smelter’s EIA report without public notice or comment. In fact, when village representatives contacted the local government to voice their pollution fears, local officials launched a propaganda campaign to (falsely) assure the villagers that the smelter would not harm the environment or endanger local public health in any way. Local officials distributed brochures describing the smelter as an environmentally safe, “garden-like factory” constructed according to the latest global design standards, and they repeatedly promised the villagers that they had absolutely no need to worry about smelter pollution.

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829 For example, Article 11 of the EIA law states: “In case a program may cause unfavorable environmental impacts or directly involve the environmental interests of the general public, the organ that works out the special programs shall, prior to submitting the draft of the programs for examination and approval, seek the opinions of the relevant entities, experts and the general public about the draft of the report about the environmental impacts by holding demonstration meetings or hearings or by any other means, except [when] it is provided by the state that it shall be kept confidential.” Law of the People’s Republic of China on Environmental Impact Assessments, Adopted October 28, 2002, Effective September 1, 2003.

830 Ibid.

Free from public accountability, local officials also quietly cut the EIA report’s recommended safety zone in half to reduce relocation costs. Dongling Group would have to fund any residential relocations associated with the smelter, and high relocation fees would reduce the site’s appeal, so local officials cut a deal with the company – the Fengxiang County government reduced the safety radius from 1000 meters to 500 meters, and Dongling Group gave the government 15 million RMB ($1.8 million USD) to fund residential relocations within the 500 meter radius.832 Instead of carrying out the relocations ex ante, Fengxiang officials promised to begin moving residents out of the 500 meter zone in 2006 (the same year the smelter would commence operations) and complete the process over a three-year period.833 In other words, based on this agreement, all residents living 500-1000 meters away from the smelter would suffer severe environmental pollution indefinitely, and residents in the 0-500 meter radius would be exposed for up to three years; however, since the EIA

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The smelter commenced operations in 2006, and some of the environmental impacts were immediately apparent. The smelter quickly depleted local groundwater reserves, and that caused most of the neighboring village wells to run dry. Water in the remaining wells developed a foul taste, a kerosene odor and an oily surface film, and smelter emissions coated the entire surrounding area (and often the villagers themselves) in a thick layer of black and silver dust. Local crop yields soon declined, and local villagers filed numerous pollution complaints with the local government. Local officials did offer token compensation for some pollution damages – for example, they dug new 80 meter wells (at the government’s expense) to replace the dry wells. However, even those deeper wells were soon severely polluted, and local officials never levied a single environmental fine against the smelter and never asked Dongling Group to change its production practices.

In fact, not only did local officials ignore most of the villagers’ pollution complaints, they also scrapped the 500 meter relocation plan. By mid 2007 Fengxiang
County officials had relocated 156 (of the total 581) residential households living in the 500 meter pollution zone, and they still planned to relocate the rest of the residents (425 households) on schedule. However, in September 2007 investors expressed interest in building a methyl alcohol plant on the land set aside for the remaining 425 households, and local officials immediately shelved the relocation plan to sign the methyl alcohol contract. From the officials’ perspective, this was a win-win: not only did they bring in a new development project, they also pocketed any remaining funds from Dongling Group’s 15 million RMB relocation fee. Unfortunately, this deal also left the remaining 425 households living and farming less than 500 meters away from the smelter. Some of those households used their own resources to move out of the area and escape the growing pollution problems, but most could not afford to do so.

In early 2009 those remaining households suddenly discovered that the smelter pollution was impacting much more than their village wells and crop yields. Many local infants and children were suffering a wide range of health problems including stomach pains, loss of appetite, learning and memory problems, irritability, weight loss, thinning hair and retarded growth. Initially, none of their parents associated these symptoms with the smelter. However, in March 2009 one Madaokou village

841 “Shaanxi Fengxiang xian shubai ming haizi xueqian hanliang yichang” (Several Hundred Children Have Abnormal Blood-lead Levels in Shaanxi’s Fengxiang County), Chengdu Shangbao (Chengdu Business News), August 9, 2009, available at: http://news.163.com/09/0809/02/5G8AAUL80001124J.html (accessed April 13, 2010).
family brought their six-year-old daughter to the Fengxiang County hospital with severe stomach pains, and hospital blood tests revealed that she was suffering from severe lead poisoning. Her parents immediately shared this shocking diagnosis with their neighbors. Other local parents brought their own children for blood tests, and those tests revealed that almost all of the village children were suffering from lead poisoning.

Since there were no other factories in the immediate area, the villagers all suspected that the smelter was behind the poisonings. They submitted formal complaints to the Changqing Industrial Park Planning Commission in April 2009 and asked them to investigate, but Changqing officials never responded. Meanwhile, more and more Madaokou and Sunjianantou village parents brought their children to local hospitals for blood testing, and by late July a total of 239 children had been tested and 138 diagnosed with lead poisoning.

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845 The villagers’ knowledge about lead
poisoning and its effects on child development grew with each hospital visit – hospital doctors were educating the parents with poisoned children, and those parents were passing this information on to their neighbors.\footnote{“Fengxiang xian changqing zhen shuming ertong xueqian hanliang chaobiao,” (Many Children Have Above-Average Lead Blood Levels in Fengxiang County’s Changqing Town), Sanqin Dushi Bao (Sanqin Metropolitan Daily), August 6, 2009. Originally available at: http://www.sanqindaily.com/News/20090806/61456.html (last accessed January 2010).} As local knowledge and the number of confirmed poisonings increased, the villagers grew increasingly frustrated over the local government’s apparent indifference to their plight. On August 3 and 4 a group of angry parents tried to force the issue by protesting outside the smelter’s main gate.\footnote{“Several Hundred Children Have Abnormal Blood-lead Levels in Shaanxi’s Fengxiang County,” Chengdu Business News, August 9, 2009.} County officials responded by promising to look into the problem; however, the villagers did not trust these promises, so they also contacted local journalists to expose the poisonings (and pressure the officials) through the local media.\footnote{Tu, Chonghang, “The Full Story Behind the Shaanxi Fengxiang Lead Poisoning Incident,” August 21, 2009. “Several Hundred Children Have Abnormal Blood-lead Levels in Shaanxi’s Fengxiang County,” Chengdu Business News, August 9, 2009.}

On August 6 the local \textit{Sanqin Metropolitan Daily} published a small news article on the Fengxiang lead poisonings and the villagers’ suspicions that the smelter was responsible.\footnote{“Fengxiang xian changqing zhen shuming ertong xueqian hanliang chaobiao,” (Many Children Have Above-Average Lead Blood Levels in Fengxiang County’s Changqing Town), Sanqin Dushi Bao (Sanqin Metropolitan Daily), August 6, 2009. Originally available at: http://www.sanqindaily.com/News/20090806/61456.html (last accessed January 2010).} That same day, a nationwide Chinese web portal posted the \textit{Sanqin} article on its own news page, and the story immediately attracted national attention.\footnote{NetEase is the web portal that first republished the Fengxiang exposé on August 6, 2009. Qian, Gang, “Central Party Media ‘Grab the Megaphone’,” China Media Project (Hong Kong), August 21, 2009, available at: http://cmp.hku.hk/2009/08/21/1709/ (accessed April 14, 2010).} That night, local officials suddenly sprang into action. The Baoji Municipal EPB immediately ordered the smelter to suspend operations, and leading
cadres from the Baoji City Party Committee and the Baoji City People’s government called an emergency meeting to formulate their response strategy. At that meeting (on the evening of August 6), Baoji leaders ordered the Baoji Health Department and the Baoji EPB to immediately dispatch crisis response teams to initiate medical and environmental testing in the two villages.

By August 7 those teams were in place, and Baoji leaders – well aware of the coming national media spotlight – held a press conference to publicly acknowledge the situation and detail their response strategy. Baoji leaders told reporters that medical teams from Xi’an were already at work in the Madaokou and Sunjianantou villages collecting blood samples (at the government’s expense) from every child under 14. Simultaneously, environmental officials were already in the field taking air, soil, groundwater and wastewater samples to measure lead pollution in and around the two villages, and one hundred local cadres and doctors from Fengxiang County

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853 Ibid. The government-funded testing was originally mandated for Madaokou and Sunjianantou Villages, for all children aged 14 and under (a total of 731 children). As panic spread to neighboring villages, local officials extended the testing to include the 286 under-14 children living in Gaojutou Village, located 2km from the smelter. Chen, Gang and Tong Liu, “Investigating the Shaanxi Fengxiang ‘Blood Lead’ Incident,” August 14, 2009.
and Changqing Town were going door to door to inform villagers about the
government’s treatment plans.854

The local government’s quick reaction did not deter Chinese journalists from
launching an in-depth media investigation. *Xinhua* – China’s official state-run news
agency – took the lead in unraveling the crisis, and *Xinhua*’s relatively open press
coverage encouraged other news agencies to follow suit.855 The stalled 500 meter
relocation plan immediately became a huge point of embarrassment for local officials.

With *Xinhua* at the lead, Chinese news agencies dug up the original EIA report and
publicly questioned why local residents had been left in place and what local officials
had done with Dongling Group’s 15 million RMB relocation fee.856 Chinese
journalists also discovered that most of the 156 households that local officials did
actually relocate were still living within a 1000 meter zone around the smelter, so the

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854 Chen, Gang and Tong Liu, “Investigating the Shaanxi Fengxiang ‘Blood Lead’ Incident,” August 14,
2009. Also see: Li, Zhengqian and Xiaowei Zhang, “Fengxiang xian wei xian zhengfu lingdao kanwang
weiven yi si xueqian chaobiao ertong” (Fengxiang County Party Committee and County Government
Leaders Visit the Children Who May Have Above-Average Blood-Lead Levels to Convey their
Concern), *Baoji Ribao* (Baoji Daily), August 11, 2009, available at:
http://www.baojinews.com/_info/content_139172.htm (Accessed April 14, 2010). Feng, Yi,
“Fengxiang jiu ‘baiyu ertong yisi xueqian chaobiao’ zhaokai zhuan ti xinwen fabu hui biao shi:
quansi zuohao qian chaobiao ertong de mianfei zhiliao gongzu” (Fengxiang Convenes Specialized
News Conference on the ‘Hundred or More Children Who May Have Above Average Blood-lead
Levels’ and States: Put All Efforts Into Providing Free Treatment for all Children with Above-Average
Lead), *Baoji Ribao* (Baoji Daily), August 12, 2009, available at:

855 Qian, Gang, “Central Party Media ‘Grab the Megaphone’,” China Media Project (Hong Kong),

856 Tai, Jianlin, “How Can the Government Responsible.” The smelter itself also came under fire, but
smelter managers loudly proclaimed their innocence. The managers blamed the local government for
the stalled relocation plan and repeatedly told reporters that they were certain their emissions met
national standards – smelter managers claimed that the routine environmental monitoring reports had
never indicated any lead pollution and the smelter had therefore never paid a single environmental fine.
Smelter managers suggested that the lead poisonings were most likely a macro-level issue stemming
from a wide variety of sources such as contaminated food, lead paint and car exhaust. (FX200). Chen,
officials did not bother to actually remove those residents from the pollution danger zone described in the original EIA report.\(^\text{857}\) Fengxiang County officials were suddenly scrambling to restart their stalled relocation operations. Under intense media scrutiny, local officials first promised to relocate the remaining villagers within five years (starting from 2009), but they quickly shortened that time frame to two years after the Chinese press harangued them for subjecting village children to another five years of lead exposure.\(^\text{858}\)

By August 15 the Baoji City government’s crisis response teams had completed their field investigations in and around the lead-poisoned villages, and Baoji officials held a special press conference to publicly release their findings.\(^\text{859}\) Baoji officials admitted that the air, soil and water samples taken near the smelter did contain relatively high amounts of lead.\(^\text{860}\) Baoji officials also acknowledged that the

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\(^\text{857}\) Chinese reporters also discovered that the Shaanxi Provincial government had awarded Fengxiang with an ‘ecological example county’ designation on August 5, one day before the Sanqin Daily exposed the lead poisoning scandal. The Fengxiang County and Shaanxi Provincial government websites quickly removed the notices about that award as soon as the scandal broke. Tu, Chonghang, “6-Year Back and Forth Battle.” Tu, Chonghang, “The Full Story Behind the Shaanxi Fengxiang Lead Poisoning Incident,” August 21, 2009. Hong, Jiang, “Environmental Poisoning Shadows Two ‘Ecological Models’ in China,” Epoch Times [Taiwan], October 6, 2009, available at: http://www.theepochtimes.com/n2/content/view/23478/ (accessed April 16, 2010).


smelter emitted 1.11 tons of lead per year and had exceeded national lead emission standards at least three times throughout the previous year (according to the smelter’s own internal monitoring records). Based on that information and the fact that the smelter was also the only lead-emitting factory in the area, Baoji officials concluded that the smelter was undoubtedly responsible for the lead poisonings. However, at the same time, Baoji officials also claimed that the smelter was still innocent of any illegality or wrongdoing. They claimed that the lead levels in the air, soil and water samples were still within national standards; therefore, the smelter had not actually violated any environmental laws or regulations and would not be punished over the incident. To explain this discrepancy, Baoji City Environmental Monitoring Station Chief Han Qinyou told reporters that environmental protection standards and public health standards are two very different things; he claimed that pollution could be compliant with industrial environmental standards but still cause health problems, and


he stated that it was not the local environmental agency’s responsibility to measure or regulate damage to local public health.\textsuperscript{864}

These investigation results were met with a new wave of national media scrutiny and criticism. First, many reporters questioned this alleged distinction between “industrial standards” and “health standards.”\textsuperscript{865} For example, an August 16 Xinhua editorial pointed out that the whole point of environmental protection was to protect public health and asked, “How big is the gap between industrial standards and health standards…what are they trying to hide?”\textsuperscript{866}

The Chinese press also questioned whether the smelter was really innocent of wrongdoing.\textsuperscript{867} By that point, many reporters had already interviewed smelter workers, and the workers were painting a very different picture of the smelter’s role in and knowledge about the lead pollution.\textsuperscript{868} For example, according to the workers, the government’s official pollution monitoring data (including the data presented at the August 15 press conference) could not be trusted because those measurements were always taken with all of the smelting machinery turned off. Plant managers reportedly received a warning before every environmental inspection, and the chimneys would

\begin{itemize}
\item \textsuperscript{864} Chen, Gang, Bo Duan and Tong Liu, “Pollution Emissions Met Standards,” Tu, Chonghang, “The Full Story behind the Shaanxi Fengxiang Lead Poisoning Incident,” August 21, 2009. Baoji City officials also stated that “other factors” could not be ruled out, such as auto exhaust, home decoration, diet and living habits. Smelter management seconded this view: we meet industry standards, but that doesn’t mean we meet residential standards.
\item \textsuperscript{865} Tu, Chonghang, “6-Year Back and Forth Battle.” Chen, Gang, Bo Duan and Tong Liu, “Paiwu dabiao le, za hai rang ren qian zhongdu” (Pollution Emissions Met Standards, Why are People Suffering from Lead Poisoning), Zhongguo Qingnian Bao (China Youth Daily), August 19, 2009, available at: http://www.chinaelections.org/newsinfo.asp?newsid=155026 (accessed April 13, 2010).
\item \textsuperscript{866} Chen, Gang and Tong Liu, “The Truth about the Blood-lead Incident,” August 16, 2009.
\item \textsuperscript{868} Many of them were from the two villages.
\end{itemize}
always stop smoking (and therefore stop emitting the lead dust) before environmental
officials arrived on scene. Furthermore, most of the smelter workers had already
been suffering lead poisoning for years, and smelter managers were well aware of that
fact. Dongling managers conducted annual blood tests to measure all of the
employees’ lead levels; those tests always revealed a large number of poisonings, and
every year the smelter bussed out groups of poisoned employees for hospitalization
and lead-removal treatment at the smelter’s expense.

Investigative reporters also discovered that local officials from three different
administrative levels – Baoji City, Fengxiang County and Changqing Town – had
previously suspected that the Changqing Town children were suffering from lead
poisoning and had apparently taken steps to hide that information. In 2006 China’s
Health Ministry issued special guidelines to protect public health around smelters and
other lead-emitting enterprises; under those guidelines, local officials must routinely
screen children living in those areas to detect and treat potential lead poisonings early
on. Chinese reporters discovered that the Baoji City People’s government did

869 Tu, Chonghang, “6-Year Back and Forth Battle.” Shi, Jiangtao, “Counting the Costs of
Development; Villagers in Shaanxi Province Know the Truth About One of the Mainland’s ‘Model
Enterprises’,” South China Morning Post [Hong Kong], September 10, 2009 [Lexis Nexis Academic].
870 “Shaanxi Fengxiang xian shubai ming haizi xueqian hanliang yichang” (Several Hundred Children
Have Abnormal Blood-lead Levels in Shaanxi’s Fengxiang County), Chengdu Shangbao (Chengdu
Business News), August 9, 2009, available at:
871 The hospitals and doctors that the smelter used for these lead removal treatments refused to provide
workers with printed receipts or other evidence of the specific treatments they were receiving. Many of
the workers had lead blood levels in the 400-800 range, with some as high as 1000 . (some with blood
lead levels 8 to 10 times higher than China’s 100 ug/dL national safety standard) Tu, Chonghang, “The
Full Story behind the Shaanxi Fengxiang Lead Poisoning Incident.” Tu, Chonghang, “6-Year Back
and Forth Battle.” “The Shaanxi Fengxiang Case,” August 11, 2009. “Several Hundred Children Have
Abnormal Blood-lead Levels in Shaanxi’s Fengxiang County, Chengdu Business News, August 9, 2009.
872 Hu, Yongqi and Juan Shan, “Lead Poisoning Persists in Relocation Site, Villagers Claim,” China
Daily, August 17, 2009 [Lexis Nexis Academic].
actually conduct a round of lead tests for local children in 2008, and those results did reveal high blood-lead levels throughout the Baoji City administrative region.\textsuperscript{873} However, local officials conducted those tests in every Fengxiang County township except Changqing Town, so the children living near the Dongling lead smelter were the only ones left out of the 2008 testing program.\textsuperscript{874}

At the local level, the Madaokou and Sunjianantou villagers were particularly angry to hear that the smelter would not be punished. They did not trust the local government’s ‘within national standards’ test results, and also saw that the smelter was still belching smoke and dust despite the August 6 closure order, so the villagers all suspected that their children were still receiving daily doses of lead.\textsuperscript{875} Furthermore, by that point the older children and adults suspected that they too could be suffering from lead poisoning; however, local officials were refusing to test or treat anyone over 14 years old.\textsuperscript{876}

\textsuperscript{873} Tu, Chonghang, “The Full Story Behind the Shaanxi Fengxiang Lead Poisoning Incident,” August 21, 2009.
\textsuperscript{875} Chen, Gang, Bo Duan and Tong Liu, “Pollution Emissions Met Standards.” Shi, Jiangtao and Huifeng He, “Smelter Defies Closure Order in Poison Row,” \textit{South China Morning Post} (Hong Kong), August 19, 2009 [Lexis Nexis Academic]. Tai, Jianlin, “Fengxiang xueqian shijian zhi mian zhengfu wenze ruhe naru fazhi guidao?” (How Can the Government Responsible for the Fengxiang Blood Lead Incident be Held Accountable through Law?), \textit{Fazhi Ribao} (Legal Daily), August 20, 2009, available at: \url{http://www.legaldaily.com.cn/zmbm/content/2009-08/20/content_1140901.htm?node=7568}. The new school year was also about to start, and the local village school was adjacent to the smelter’s surrounding wall. Some parents were already registering their kids at boarding schools outside the area, but the costs were too high for most families to afford, and the local government was not offering compensation for out-of-area school enrollment. Chen, Gang and Tong Liu, “Investigating the Shaanxi Fengxiang ‘Blood Lead’ Incident,” August 14, 2009.
\textsuperscript{876} Many villagers also doubted that the government’s treatment plans were effective. Officials were handing out milk, cucumber and seaweed and advising parents to feed their children those ‘lead removal’ foods, and doctors were injecting the children with vitamins and glucose, but many parents did not believe that these procedures were actually removing any of the lead. Chen, Gang and Tong Liu, “Investigating the Shaanxi Fengxiang ‘Blood Lead’ Incident.” Hu, Yongqi and Juan Shan, “Lead
Local villagers grew even more furious when the local government began announcing the new relocation plans. The Fengxiang County government first selected a relocation site less than 500 meters away from the smelter. When that plan was criticized in the national press they selected a second site 1.32 kilometers away. However, the second site was adjacent to a methyl alcohol plant (another potential pollution source), and by that point local officials were already finding hundreds of lead poisonings 2 km away from the smelter, so the villagers did not believe that 1.32 km was far enough away to protect their children from the smelter’s lead emissions. When local villagers and environmental experts questioned the site’s safety, Fengxiang County government refused to address their concerns; instead, Fengxiang officials bluntly replied that “the relocation site [would] not be changed.”

On August 15 hundreds of local villagers gathered outside the Fengxiang County government’s headquarters and staged a sit-in to protest the government’s unsatisfactory handling of the crisis; however, county-level officials reportedly did not

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come out to hear the villagers’ complaints or to otherwise address the crowd. By August 16 many more local villagers joined the protestors, this time gathering outside the Dongling smelter’s main gate. That evening, a local teenager tried to commit suicide after being denied access to lead testing or treatment (since she was over 14 years old). News of the attempted suicide spread throughout the area and sparked a riot – on Monday August 17 hundreds of protestors from five local villages tore down part of the smelter’s surrounding wall, broke into the plant, trashed smelter offices, smashed cars and destroyed smelting equipment. Local authorities sent police and security forces to restore order, and clashes broke out between protestors and security forces inside the smelter and throughout the surrounding area.

Baoji City mayor Dai Zhengshe rushed to the scene to placate the protestors. Mayor Dai personally apologized for the poisonings, ordered the smelter to immediately shut down all furnaces and promised that the plant would not be allowed to reopen until it met strict health standards. Mayor Dai also promised to expand

880 Sheridan, Michael, “China Uses Fear to Hush up Poisoned Children,” The Sunday Times (London), September 13, 2009 [Lexis Nexis Academic].
883 Shi, Jiangtao and Huifeng He, “Smelter Defies Closure Order in Poison Row,” South China Morning Post (Hong Kong), August 19, 2009 [Lexis Nexis Academic]. Officials explain that the shut down was not a process that could be done immediately. They said the coking plant was still operating because it doesn’t involve lead. They say misunderstanding is why villagers thought it was defying the order. Tu, Chonghang, “The Full Story behind the Shaanxi Fengxiang Lead Poisoning Incident,” August 21, 2009.
the age limit and geographical area of the government-funded lead testing program and to come up with a more satisfactory medical treatment plan. Mayor Dai admitted that the local government had been trying to rush the relocation plans, had underestimated the complexities involved and had therefore made many errors; he promised to scrap the current plan and to do more research to find an optimal relocation site that would be safe over the long-term. The Baoji City government also sent in 200 officials to meet with the local villagers face to face, to listen to their complaints and to try to settle their problems.

Despite these efforts and promises from Mayor Dai, provincial and national-level officials responded to the protests by taking crisis management responsibilities away from the Fengxiang County and Baoji City governments. On August 18 Baoji City EPB Director Wang Hai’ao publicly admitted that the villagers’ suspicions about the government’s test results were valid – Director Wang admitted that the field samples cited at the August 15 press conference were all taken while the smelting equipment was shut down, so the smelter may not actually meet environmental standards with its equipment up and running. The Shaanxi provincial government dispatched provincial-level environmental officials to redo these fraudulent field investigations (conducted by Fengxiang County and Baoji City officials) and to conduct a new, comprehensive EIA audit for the entire Changqing development

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In response to the villagers’ complaints about the lead treatment operations, the Ministry of Health and the Shaanxi provincial health department dispatched specialized medical teams to monitor those operations and ensure that the treatments were valid.\(^{888}\)

Once the central and provincial-level investigations were complete, higher-level officials forced local leaders to abide by the relocation plan recommended in the original 2004 EIA report: all 1,396 households living in the 1000 meter zone were relocated to sites over 4km away at a total cost of 300 million RMB ($44 million USD).\(^{889}\) The Baoji City Discipline Inspection Commission and the Baoji City Supervisory Bureau handled internal investigations for the lead scandal and formally disciplined eleven officials over the incident, including officials from the Fengxiang County Party Committee, the Fengxiang People’s Government, the Changqing Industrial Park Regulatory Commission, and the Baoji City and Fengxiang County EPBs.\(^{890}\)

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\(^{890}\) The Dongling general manager and deputy general manager were also sacked (FX016). Chen, Gang, “Shaanxi ‘Fengxiang xueqian shijian’ 11 ren shou dang zhengji chufen” (11 People Receive Party Disciplinary Action Over the Shaanxi ‘Fengxiang Blood-lead Incident), Renmin Ribao (People’s Daily),
8.3.1. Protests Bring Higher-Level Official Intervention and Redress

The Fengxiang lead poisoning case supports the protest hypothesis introduced in chapter one:

H3b: When aggrieved citizens stage mass protests as a fire alarm tactic, higher-level leaders will generally intervene to redress the protestors’ grievances and discipline the exposed malfeasants.

The Madaokou and Sunjianantou villagers staged mass protests at two points in the crisis: on August 3 and 4 when local officials were ignoring their initial lead pollution complaints and on August 15, 16 and 17 when local officials were ignoring their complaints about the relocation plans, the under-14 testing limitations, the unsatisfactory medical treatment program and the smelter’s apparent refusal to abide by the August 6 closure notice.

The first round of protests (on August 3 and 4) was small, localized and relatively peaceful. As a result, those protests did not catch higher-level attention and therefore did not serve as a fire alarm to notify higher-level leaders about local citizen discontent.891 The second round of protests initially failed to catch higher-level attention when villagers gathered peacefully at the Fengxiang County seat on August 15 and at the smelter’s main gate on August 16; however, as soon as the protests escalated to a large and violent riot on August 17, local-level and higher-level officials immediately responded. At the local level, Baoji City leaders (who had been

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891 Local-level officials did respond to the protests by promising to look into the poisonings, but it is not clear whether those promises were genuine.
mismanaging crisis response operations and ignoring the villagers’ complaints) responded by acknowledging the protestors’ concerns, forcing the smelter to cease operations and promising to rectify the relocation and treatment plans. However, this quick response was not enough to head off a provincial-level intervention – after the protests, provincial agencies stepped in to take over the pollution investigation and crisis response operations, essentially taking those responsibilities away from the Baoji City government. Provincial officials later revised the relocation and treatment plans to address the villagers’ concerns. In other words, provincial-level officials treated the August 17 protest as a quasi-legitimate fire alarm signaling legitimate citizen discontent over the crisis response operations, and provincial-level officials intervened in those operations to redress that discontent.

Protest participants later told reporters that they had to escalate to violent riots because it was the only way they could catch the government’s attention; based on the government’s initial indifference and subsequent rapid response, that assessment appears accurate.892 This case therefore suggests that protests can serve as a quasi-legitimate and effective fire alarm, but only if the protests are large enough to actually catch higher-level attention.893 Most Chinese citizens are well aware of this fact, thus the popular saying: “small disturbances bring small solutions, big disturbances bring big solutions, and no disturbance brings no solution.”

At the same time, the Fengxiang case also suggests that fire alarm protests can potentially impede redress over the long-term. Primarily, protests give local officials an excuse to detain malfeasance victims and to keep watchdog reporters out of the area, and those activities can reduce local political accountability once higher-level leaders shift their attention to other issues. In the Fengxiang case, local public security officials temporarily detained many of the villagers allegedly involved in the August 17 riots; some villagers were left in jail to face possible criminal convictions, and the jailed villagers reportedly suffered beatings and other mistreatment. Other villagers interpreted these incarcerations as a political tactic to silence further complaints: the jailed villagers’ families would keep silent to appease the authorities and secure their relatives’ release, and other villagers would keep silent lest they suffer the same fate.

Before the August 17 protests, Fengxiang County and Baoji City officials made a strong effort to appear transparent and welcoming to the watchdog reporters that descended on the area after the August 6 media

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895 Chinese citizens popularly refer to this all-too-common tactic as “killing the chicken to frighten the monkeys.” Choi, Chi-yuk, “Official Crackdown the New Poison for Shaanxi Peasants,” South China Morning Post (Hong Kong), December 29, 2009 [Lexis Nexis Academic]. China faced a series of lead poisoning scandals across the county in August 2009, and local-level officials used similar methods to stifle dissent after protests erupted in other areas as well. For example, on August 8, 2009, approximately 1,000 residents from Wenping Township in Hunan Province launched a large protest outside a lead smelter that was poisoning children in that area. Local officials offered compensation to placate the protestors, and the protestors were not satisfied with that compensation; however, as one local resident explained: “It is unbelievably low but we don't dare to fight against the government now…the township government has posted a notice everywhere this week saying it will trace the people who led the August 8 protest. They are bullies. But we are just peasants – how can we fight against an armed government?” Shi, Jiangtao and Huifeng He, “Anger Mounts as Number of Poisoned Children Climbs,” South China Morning Post [Hong Kong], August 21, 2009 [Lexis Nexis Academic].
expose. For example, Baoji City officials held regular press conferences to update the media on the investigations, medical treatment campaigns and relocation plans, and journalists reportedly traveled freely throughout the poisoned villages. However, the media dynamic changed dramatically after August 17. Immediately after the protests, local police began following reporters to keep them away from the families with lead-poisoned children and to break up interviews; within a few days local police cordoned off the entire area to completely deny media access to the lead-poisoned villages. These media blockades can easily impede long-term redress (and hide ongoing official malfeasance). If citizens have further complaints about the relocation plans, the medical treatment operations or the smelter’s environmental standards, these media blockades can prevent complaint exposure.

8.3.2. Governmental vs. Non-Governmental Fire Alarms in the Fengxiang Case

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897 “08/19/09 Shaanxi Officials Block Access to Poisoning Victims,” Incident Report, Foreign Correspondents’ Club of China, August 19, 2008, available at: http://www.fccchina.org/2009/08/19/081909-shaanxi-officials-block-access-to-poisoning-victims/ (accessed April 16, 2010). When reporters complained about these measures and argued that they had central government permission to visit the villages, an official from the Baoji City government replied: “The central government has its rules, and we have ours.” “Lead Village Closed to Journalists,” BBC News, August 25, 2009, available at: http://news.bbc.co.uk/2/hi/asia-pacific/8220612.stm (accessed April 15, 2010). The local-level media blockade was followed by a general national-level blackout on lead pollution issues, primarily because the October 1, 2009 60-year CCP anniversary was fast approaching, and Chinese leaders do not allow negative news reporting during the run-up to those political events. The national-level press ban was issued in early September, and it prohibited all watchdog media reports, no matter the topic. Sheridan, Michael, “China Uses Fear to Hush up Poisoned Children,” The Sunday Times (London), September 13, 2009 [Lexis Nexis Academic]. Choi, Chi-yuk, “Lead Smelter Blamed for Childhood Illness Set to Restart Production,” South China Morning Post (Hong Kong), March 6, 2010 [Lexis Nexis Academic].
The Fengxiang case also illustrates the problems that pollution victims can face when they seek redress through governmental fire alarms. The Madaokou and Sunjianantou villagers initially tried to expose the smelter’s pollution problems by submitting *xinfang* petitions to the local government. They filed at least one round of petitions over the water pollution problems (in 2006) and a second round of petitions (in spring 2009) over the lead poisonings. Local officials did respond to the water pollution petitions by digging new village wells and granting token compensation. However, they never enforced environmental standards at the smelter, and they ignored the 2009 lead poisoning complaints completely.

Local officials were unwilling to take enforcement actions against the smelter because it has become a cash cow, and local leaders were unwilling to jeopardize their new revenue stream. From 2001-2005 (before the smelter commenced operations) Fengxiang County’s average annual fiscal revenue was just over 64 million RMB; by 2007 that figure had jumped to 110 million, and 2008 revenue reached 140 million RMB (approximately $20 million USD). The Dongling smelter paid 123 million RMB in taxes for 2008 alone; 24 million went straight into the Fengxiang County treasury (accounting for approximately 17% of Fengxiang’s total 2008 fiscal revenue) and the rest was distributed vertically, primarily to the Baoji City and Shaanxi

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Provincial People’s governments. In other words, local-level governmental fire alarms were not effective in this case because local officials had been captured by the polluting enterprise, and that capture may have extended up to the provincial level.

In contrast, media exposure was very effective because it immediately exposed the environmental malfeasance to national-level officials that were not directly benefiting from smelter revenue. Fengxiang County residents complained about the smelter from 2006 to 2009, and local officials never took enforcement action; in contrast, the local EPB issued a closure notice to the smelter less than 24 hours after the initial media exposé caught national-level press attention. Media oversight continued to impact local official incentives throughout the August 6 – August 17 investigation period: when national journalists criticized local response operations, local officials generally adjusted those operations to address the criticism.

8.3.3. Information Asymmetries in the Fengxiang Case

The Fengxiang case also illustrates how information asymmetries can impact pollution welfare assessments, fire alarm grievance redress and local official accountability.

First, by concealing the 2004 EIA report, local officials blocked citizen access to the government’s technical information about the smelter’s likely pollution problems, and local citizens were unable to replicate those technical predictions with their own resources. Once the smelter was in operation, local citizens could

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immediately detect the pollution problems that they could actually see: the water pollution, dust emissions, etc. However, they could not detect the health impacts from this pollution and they therefore underestimated the welfare damage they were receiving. From 2006 to 2009, although local villagers were angry about the increasing pollution problems, their anger was relatively contained: environmental conditions were deteriorating, crop yields were declining, and the smelter was clearly responsible; however, the villagers also knew that local officials would defend the smelter at all costs, and the welfare impacts were not yet bad enough for the villagers to risk taking on such a united political front.

Local doctors were the key to balancing this information asymmetry and giving local citizens the information they needed to fully understand the welfare damage they were suffering from the smelter. Local officials were well aware of this dynamic – therefore, once the scandal was exposed, local officials tried to restrict medical testing to control the number of victims and control local citizens perceptions (and, perhaps, provincial or national-level leadership perceptions) of the overall welfare damage from the crisis. From the beginning, local officials restricted the government-run test operations to children under fourteen; older children and adults repeatedly petitioned the local government to expand the testing to other age groups, but local officials refused. One Fengxiang County official privately told reporters that the local government suspected many adults were also suffering from lead poisoning;
however, local officials were fearful that a larger sampling population would produce more victims than they could handle.900

After the August 17 protest, local officials later extended the testing prohibitions to include independent local doctors and hospitals. For example, one local doctor complained: “Every day farmers bring in their babies for examination and we can’t accept them…we can only accept babies brought in by officials. And it is policy that we’re not even allowed to perform examinations on children older than thirteen.”901 Local officials also interfered in the actual laboratory work – local doctors and hospitals previously sent all of their patients’ blood samples to a well-respected testing center in the provincial capital; after the protests and subsequent local crackdown, local officials ordered doctors to send further blood samples to a smaller local laboratory.902 Once local officials cut off citizen access to further medical testing, the citizens could no longer monitor their own lead blood levels, and that reduced their ability to monitor the local officials’ lead treatment operations.

8.4. Conclusion

This chapter has examined two detailed case narratives of official malfeasance and fire alarm oversight in the environmental protection sector. These cases both illustrate the relative effectiveness of governmental versus non-governmental fire alarms. In both cases, the pollution victims initially tried to expose malfeasant

900 Tai, Jianlin, “How Can the Government Responsible.”
901 Sheridan, Michael, “China Uses Fear to Hush up Poisoned Children,” The Sunday Times (London), September 13, 2009 [Lexis Nexis Academic].
902 Ibid.
officials and redress their environmental grievances through local-level governmental
fire alarms; however, all of their governmental fire alarm attempts were unsuccessful.
Non-governmental fire alarms were much more successful, and non-governmental
institutions were critical for eventual grievance redress in both cases.

These cases also illustrate the importance of information asymmetries in
environmental fire alarm oversight. In both cases, the pollution victims needed some
form of technical assistance to fully comprehend the environmental malfeasance and
to expose that malfeasance through governmental and non-governmental fire alarms.

The Fengxiang lead poisoning case also provided evidence to support the
protest hypothesis introduced in chapter one: Fengxiang County residents resorted to
mass protests as a fire alarm, and higher-level leaders respond by intervening to
address their complaints.

Overall, these two cases suggest that fire alarm redress is possible in China’s
environmental protection sector, but it is also difficult to achieve. Governmental fire
alarms are often ineffective on the first attempt, and that pushes many pollution
victims toward mass protests and other non-sanctioned tactics.
Chapter 9
Conclusion

This thesis has attempted to explain how Chinese leaders use fire alarm institutions to address their post-reform governance problems and how they modify those institutions to fit their authoritarian context. From 1949 through the early reform era, Chinese leaders depended primarily on top-down police patrols to keep subordinate Party and government agents in line: they delegated monitoring responsibilities down the vertical hierarchy and ordered the principals at each level to police their own subordinates. This vertical monitoring system worked relatively well in the pre-reform command and control era. However, China’s reform-era economic and administrative decentralizations altered principal-agent dynamics nationwide and produced new oversight problems that the vertical police patrol systems could not rectify. In response, Chinese leaders are increasingly supplementing their old police patrols with new fire alarms. These fire alarm institutions shift monitoring burdens from the central leadership to the citizenry and open up new citizen-leadership information channels that Chinese leaders can use to target and punish local-level official malfeasance. These institutions can help Chinese leaders overcome their post-reform governance problems; however, due to China’s authoritarian context, these institutions can also backfire and create new political risks. Primarily, the institutions designed to channel information for principal-agent oversight can also channel political opposition, and that could potentially destabilize the CCP regime.
I have argued that Chinese leaders must hedge against two critical fire alarm backfire risks: (1) the risk that Chinese citizens would use these institutions at the national level to monitor and restrain the central leadership itself, and (2) the risk that non-governmental fire alarms would damage the leadership’s public image and/or facilitate mass protests. Chinese leaders hedge against the first risk by building controls into all of their fire alarm institutions, both governmental and non-governmental. Unfortunately, these controls must be delegated down to the lower levels, and control delegation produces agency loss. Fire alarm agency loss undermines fire alarm effectiveness, particularly in governmental fire alarm institutions. Non-governmental fire alarms can circumvent protectionist lower-level officials and can therefore circumvent many of these agency problems. However, non-governmental fire alarms also pose additional political risks, so Chinese leaders face an oversight dilemma: governmental fire alarms are relatively safe, but they do not work well in a politically controlled environment; non-governmental fire alarms are relatively effective despite China’s political controls, but they also pose serious political risks that the controls cannot eradicate.

I have argued that the risks associated with non-governmental fire alarms vary across policy sectors: non-governmental fire alarms always have risk potential in China, but sector-specific environmental factors determine whether that potential will become a reality. In some policy sectors, official malfeasance impacts dense citizen groups that can easily overcome communication and transportation costs, the degree of harm makes protest opportunity costs and repression risks worthwhile, and
government agencies are the primary targets for citizen grievances. Non-governmental fire alarms are particularly dangerous in that context because fire alarm publicity could damage the regime’s reputation, official malfeasance will likely trigger dangerous mass protests, and non-state communication and organization networks could expand the scope of those protests and increase protest suppression costs. In other policy sectors, official malfeasance impacts a more diffuse group of citizens that cannot easily communicate with one another or gather in one protest location, the degree of harm does not make protest opportunity costs or repression risks worthwhile, and commercial enterprises are the primary targets for citizen grievances. Non-governmental fire alarms are much safer in that context because protests are less likely and citizen anger is more easily deflected away from the regime.

Based on this logic, I hypothesized that Chinese leaders would respond to this variation by enabling and encouraging non-governmental fire alarms in the low-risk sectors and controlling and/or cutting off non-governmental fire alarms in the high-risk sectors. This strategy maximizes the benefits from fire alarm oversight while also minimizing the potential political risks associated with non-governmental fire alarms. Unfortunately, this strategy also limits fire alarm effectiveness, especially in the high-risk sectors with the most restrictive fire alarm policies, and those limitations force Chinese leaders into a continuous cycle of institutional reform.

9.1. Empirical Findings
In chapters 3 through 8, I subjected this hypothesis to a number of case studies. My primary goal was to test the relationship between the set of fire alarm institutions employed by Chinese leaders (DV) and the level of social instability risk (IV). I expected that Chinese leaders would employ governmental fire alarms in all cases but only employ non-governmental fire alarms when malfeasance-induced instability risks are relatively low. I measured relative instability risk based on the three factors outlined in chapter one: (1) citizen perceptions of the welfare impacts they suffer from official malfeasance, (2) whether the malfeasance is conducted by governmental agencies only or a mix of both governmental and commercial actors, and (3) the geographical concentration of malfeasance victims.

In order to maximize variation on the independent variable, I selected case studies from three policy sectors: rural land expropriation, food and drug safety and environmental pollution. Land expropriation is a relatively high-risk policy sector, food and drug safety is a relatively low-risk sector, and the risks associated with environmental pollution are medium/mixed. These three sectors also represent China’s most prominent and critical post-reform oversight and governance problems. The case studies from these three sectors provided strong evidence to support my argument that Chinese leaders differentiate between governmental and non-governmental fire alarm institutions and only employ non-governmental alarms when social instability risks are relatively low.

First, chapter 3 examined official malfeasance and fire alarm policy in China’s rural land sector. The land sector measures as a relatively high-risk sector across all
three instability risk indicators: (1) the perceived welfare impacts are very high, (2) land malfeasance is conducted by governmental agencies only, and (3) the malfeasance impacts geographically concentrated community units that can easily organize for collective action. Due to these factors, Chinese leaders face a very high probability that land malfeasance will damage the regime’s reputation and trigger mass protests. As expected, they respond to this risk by confining their land sector fire alarms to governmental channels only. Unfortunately, governmental fire alarms are vulnerable to local protectionism, so the lack of sanctioned non-governmental channels impedes land grievance redress and drives many farmers toward mass protests as a non-sanctioned fire alarm.

Chapters 5 examined official malfeasance and fire alarm policy in China’s food and drug sector. Despite the increasing public frustrations in this sector, social instability risks are relatively low: (1) although some cases do result in severe injuries and fatalities, the majority of these cases have relatively low welfare impacts, and many victims may not even realize that they have consumed substandard or harmful products; (2) malfeasance is conducted by a mix of both governmental and commercial actors; (3) the barriers to collective action are generally very high because the victims are often spread out across a wide geographic area and within-group communication is very difficult. Due to these factors, food and drug protests are relatively rare, and safety exposés generally should not damage the regime’s reputation. As expected, Chinese leaders open up for both governmental and non-governmental fire alarms in this sector.
Chapter 7 examined official malfeasance and fire alarm policy in China’s environmental protection sector. Compared to land compensation or food and drug safety, social instability risks in the environmental protection sector are medium/mixed: (1) perceived welfare impacts vary widely from case to case, and many victims will underestimate welfare impacts (due to information asymmetries) or discount welfare impacts (due to financial dependence on local polluters); (2) environmental malfeasance is conducted by a mix of governmental and commercial actors; (3) environmental malfeasance generally victimizes geographically concentrated communities that can easily organize for collective action. In this sector, Chinese leaders generally do allow non-governmental fire alarms, but they also employ targeted information-control (state secrets) regulations to suppress non-governmental fire alarms in the specific pollution cases with higher instability risks.

To supplement these national-level fire alarm institutional design analyses, chapters 4, 6 and 8 presented detailed case narratives from each policy sectors to illustrate how official malfeasance and fire alarm policy impacts the Chinese citizens at the grassroots level. Unfortunately, these cases suggest that fire alarm redress is often very hard for the average Chinese citizen to achieve, particularly in the sectors where the non-governmental channels are relatively limited.

9.2. Principal-Agent Problems and Democratization in China

This thesis suggests that China’s authoritarian political structure limits the range of tools that Chinese leaders can use to keep their sub-national agents in line,
and those limitations restrict the regime’s ability to provide critical public goods. This thesis therefore suggests that China’s current political structure is sub-optimal, and that could eventually push Chinese leaders toward democratization. Huntington (1968) would argue that China’s eventual democratization is inevitable – although centralized authoritarian power has many advantages in the earlier stages of economic development, Huntington claims that most states cannot achieve long-term economic success without democratization.903

Thus far, Chinese leaders are still determined to hold on to their Leninist political monopoly, and it is very unlikely that their current governance challenges will inspire a top-down push for Western-style democratization. Over the past few years, Party leaders have repeatedly stressed that their domestic governance reforms – including fire alarm reforms – are in no way a step toward Western-style democratic pluralism. Chinese leaders design these reforms to improve the current system’s ability to meet new challenges, not to move the country toward a new political system, and they carefully avoid taking any steps that could weaken the Party’s monopoly. For example, at the March 2009 National People’s Congress (NPC) annual meeting, NPC Chief and CCP Politburo Standing Committee member Wu Bangguo declared that “Party leadership can only strengthen, it cannot weaken,” and he described China’s political reform path as follows:

The Chinese Communist Party leads the Chinese people in selecting the appropriate political development path that best fits our country’s characteristics, and socialism with Chinese characteristics is the only correct path. To deepen the reform of our political system, we need to

903 Samuel P. Huntington, *Political Order in Changing Societies* (Yale University Press).
continually push forward the self-perfection and development of the
socialist political system….we should proactively draw on the
experiences and achievements of all cultures, including other culture’s
political achievements; however, we absolutely cannot copy the
Western system, absolutely cannot adopt multi-party rotation of power,
separation of powers or bicameralism.904

To support this anti-democratic stance, Chinese leaders are (as always) launching a
propaganda offensive against Western-style democracy, which they generally define
as a multi-party system with direct national-level leadership elections. Chinese
leaders have long argued that democratization would bring chaos and derail the living
standard improvements that are so important to the Chinese people. However, these
arguments are becoming increasingly nuanced. Instead of framing China’s future as
an A or B choice between pure CCP-led authoritarianism and pure Western-style
democracy, Chinese leaders are arguing that China is moving toward its own style of
democracy that does not include leadership elections or multi-party rotation, and they
claim that Chinese-style democracy will avoid some of the problems that undermine
the Western democratic model. For example, NPC Legislative Affairs Deputy
Director Li Fei recently told the China Daily that Chinese democratization will not
include national-level leadership elections because:

904 “Wu Bangguo: juebu gao duodang lunliu zhizheng” (Wu Bangguo: Absolutely Cannot Adopt Multi-
Party Rotation of Power), Transcript of Wu Bangguo’s speech to the second meeting of the eleventh
National People’s Congress, March 9, 2009, Chinese version available at:
http://www.chinaelections.org/newsinfo.asp?newsid=144868 (last accessed July 2010), Author
translation. Also see: “Shiyi jie quanguo renda erci huizi huizi juxing dierci quanzi huizi Wu Bangguo zuo
gongzuo baogao” (Second Meeting of the Eleventh National People’s Congress Convenes Second
General Congress: Wu Bangguo Delivers Work Report), Renmin Ribao (People’s Daily), March 10,
“Wu Bangguo zai shiyi jie quanguo renda erci huizi shang zuo de changweihui gongzuo baogao” (Wu
Bangguo’s Standing Committee Work Report Delivered at the Second Meeting of the Eleventh
National People’s Congress), Renmin Ribao (People’s Daily), March 10, 2009, available at:
Western-style elections...are a game for the rich. They are affected by the resources and funding that a candidate can utilize. Those who manage to win elections are easily in the shoes of their parties or sponsors and become spokespersons for the minority...as a socialist country, we cannot simply take the Western approach.905

Chinese leaders are strongly against any and all democratic institutions that could weaken their own political power, and they will likely take a very hard-line stance against any bottom-up push for political pluralism, including calls for national-level leadership elections or greater access to the “coordination goods” that would empower potential political opponents (a free press, unlimited cross-national social organization, etc.). However, Chinese leaders do see a need to give Chinese citizens more input into the policymaking process and more avenues for holding sub-national agents accountable, and Chinese democratization will likely develop along those two lines.

9.3.1. Increasing Public Participation

To maintain its political monopoly, the CCP must ensure that its policies satisfy enough citizen demands to keep critical portions of the citizenry convinced that regime change is not in their best interests. One way Chinese leaders can ensure that they meet this demand threshold is to give their citizens more input in policy decision-making at all levels. In theory, increasing the avenues for citizen participation in

policy decision-making can improve policy responsiveness to citizen demands and improve the Party’s democratic image without risking CCP authoritarian control.\textsuperscript{906}

Fang Ning, a political scientist at the Chinese Academy of Social Sciences (CASS), uses a kitchen analogy to describe this version of “democracy with Chinese characteristics:”

Western democracy is like going to a restaurant and choosing whether you want a French, Italian or German chef who will decide on your behalf what is on the menu. With Chinese democracy we always have the same chef – the Communist Party – but we will increasingly get to choose which dishes he cooks.\textsuperscript{907}

Toward this end, Chinese leaders are increasingly opening up their rule-making processes for citizen oversight and input. Chinese citizens now have an unprecedented opportunity to view draft laws and regulations, and more and more bureaucracies are following US-style notice and comment procedures that give affected parties a forum to voice their opinions on those rules before they are implemented.\textsuperscript{908} This is a huge improvement over the previous system where Chinese citizens faced great difficulties in viewing the official written versions of existing rules, much less the forthcoming ones.

\section*{9.3.2. Improving Local-Level Official Accountability}

\begin{footnotesize}


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As this thesis has demonstrated, local-level official accountability is a key problem for the current CCP regime. Thus far, local-level officials are only accountable to their higher-level superiors – Chinese citizens can use fire alarms to notify those superiors about subordinate malfeasance, but the citizens cannot sanction malfeasance themselves because the reward and punishment mechanisms are all top-down. Since higher-level official resources are limited, those officials cannot always intervene in response to citizen complaints, and malfeasant behavior often goes unpunished.

One way Chinese leaders can address this problem is to open up for direct local-level leadership elections. Chinese leaders instituted direct popular elections for village-level leaders in 1989, and electoral incentives have made many village-level officials more responsive to their constituents’ demands. In theory, Chinese leaders could extend this system up to the township and possibly even the county level to improve township and county-level official accountability. Some Chinese leaders have voiced their support for township-level elections, and some townships have taken the initiative to independently organize direct elections within their own jurisdictions. However, most Party leaders fear that electoral expansion would threaten Party control over local-level officials and/or become a slippery slope toward

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910 Ibid. For example, in 2000, Premier Zhu Rongji stated that he would like to see grassroots elections extended to more administrative levels “as soon as possible.”
eventual national-level elections, so the CCP Central Committee explicitly banned direct township-level electoral experiments in 2001.\textsuperscript{911}

It is more likely that Chinese leaders will focus on creating new avenues for citizen input within the current personnel appointment system instead of changing that system full-stop. For example, instead of opening up for direct township-level elections, one municipality in Sichuan Province created an “open recommendation and selection” (ORS) procedure that increased public input into the selection process without completely ceding CCP hierarchical appointment authority.\textsuperscript{912} Chinese leaders are also using public opinion surveys and xinfang complaint statistics to measure local citizen satisfaction, and those measures are becoming an increasingly important factor in local officials’ performance evaluations and promotion (or dismissal) decisions.

In sum, Chinese leaders are willing to experiment with democratic institutions, but only those institutions that do not undermine their Leninist political monopoly, and it is very unlikely that they will move beyond this comfort zone in the foreseeable future. Furthermore, the semi-democratic institutional innovations they are pursuing – including fire alarms and public participation in policy decision-making and

\textsuperscript{911} Ibid.
\textsuperscript{912} Saich and Yang (2003). According to Saich and Yang, the Sichuan ORS procedure involved four key steps: (1) local leaders established a set of minimum qualifications for a personnel appointment, publicly advertised the position and accepted applications from all qualified applicants; (2) the CCP organization department prepared and administered written examinations to narrow the applicant pool; (3) the remaining applicants presented campaign speeches to a selectorate composed of Party and government officials from multiple administrative levels, and selectorate members voted for their preferred candidates; (4) the vote winners were recommended to the local Party committee for appointment, and the local Party committee generally respected the selectorate’s choice. This procedure is a far cry from direct democratic elections. However, compared to the current Party-led appointment model, the ORS does broaden the applicant pool and the selectorate to include a more diverse group of local political interests.
leadership selection – are improving the current regime’s ability to meet new challenges. These institutional innovations may be sub-optimal, but they do improve overall citizen perceptions of regime performance, and that is extending the current regime’s time horizon well into the post-reform era.
General References


