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Never Again:

Legal Change After Public Health Crises in China



Annemieke van den Dool

Never Again: Legal Change After Public Health Crises in China

Annemieke van den Dool

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Never Again: Legal Change After Public Health Crises in China

ACADEMISCH PROEFSCHRIFT

TER VERKRIJGING VAN DE GRAAD VAN DOCTOR

aan de Universiteit van Amsterdam

op gezag van de Rector Magnificus

prof. dr. ir. K.I.J. Maex

ten overstaan van een door het College voor Promoties ingestelde commissie,

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Promotiecommissie

Promotor:	prof. dr. B. van Rooij	Universiteit van Amsterdam
Copromotor:	dr. J.R. Popma	Inspectie SZW
Overige leden:	prof. dr. R.A. Boin	Universiteit Leiden
	prof. dr. ir. B.J. de Kloet	Universiteit van Amsterdam
	dr. N.T. Arnoldussen	Universiteit van Amsterdam
	dr. mr. A. de Ruijter	Universiteit van Amsterdam
	dr. A.M. Howitt	Harvard University
	prof. dr. P. 't Hart	Universiteit Utrecht

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Abbreviations

APPCL	Air Pollution Prevention and Control Law
AQSIQ	General Administration of Quality Supervision, Inspection and Quarantine
CAEFI	China Association of Enterprises with Foreign Investment
CCDI	Central Commission for Discipline Inspection
CCTV	China Central Television
CFDA	China Food and Drug Administration
China CDC	Chinese Center For Disease Control and Prevention
CIRC	China Insurance Regulatory Commission
CLA	NPC-SC Commission on Legislative Affairs
CNCA	Certification and Accreditation Administration
CNKI	China National Knowledge Infrastructure (database)
CPC	Communist Party of China
EIA	Environmental impact assessment
ENRPC	NPC's Environment and Natural Resources Protection Committee
FHL	Food Hygiene Law
FSL	Food Safety Law
LAO	Legislative Affairs Office of the State Council
MEP	Ministry of Environmental Protection
MIIT	Ministry of Industry and Information Technology
MoE	Ministry of Education
MoF	Ministry of Finance
MofCOM	Ministry of Commerce
MoH	Ministry of Health
MoHRSS	Ministry of Human Resources and Social Security
MPS	Ministry of Public Security
NDRC	National Development and Reform Commission
NGO	Non-governmental organization
NHFPC	National Health and Family Planning Commission
NPC	National People's Congress
NPC-SC	National People's Congress Standing Committee
QCA	Qualitative Comparative Analysis
SAIC	State Administration for Industry and Commerce
SARF	Social amplification of risk framework
SARS	Severe acute respiratory syndrome
SEPA	State Environmental Protection Administration
SFDA	State Food and Drug Administration
WHO	World Health Organization

Introduction

I Public Health Crises and Legal Change in China

I.1 Public Health Crises in China

In 2004, hundreds of babies were hospitalized in China's Anhui province due to severe malnutrition, which expressed itself in disproportionately big heads. These so-called "big headed babies" (大头娃娃 *da tou wawa*) had been fed substandard infant formula that turned out to contain only a fraction of the protein required for healthy growth. At least twelve babies died. Substandard infant formula was subsequently discovered in at least ten other provinces across the country (X. Dong, 2004; Hart, 2010; Tam & Yang, 2005; L. Zhou, 2004).

Four years later, another major food safety crisis involving dairy emerged in China in which at least six babies died and 300,000 infants suffered from kidney problems due to infant formula that contained melamine (Q. Mao, 2009; Ministry of Health, 2009a). This substance, used in the production of plastic and not a food ingredient, was illegally added to low quality milk to make the protein content appear higher. Melamine was subsequently detected in a range of food products in China and abroad (Gossner et al., 2009; Hau, Kwan, & Li, 2009).

These are just two examples of China's many recent public health crises. Crisis is here defined as an urgent threat to the basic structures or fundamental values (including safety, welfare, and health) of a social system—a community, an organization, a policy sector, a country, or an entire region—which harbors many unknowns and appears to require a far-reaching response (Boin, 't Hart, Stern, & Sundelius, 2017, pp. 5–7).

While public health crises are not unique to China, the country is particularly prone to such events due to its distinct socio-economic and political features. First of all, while China's economy has grown rapidly, other societal aspects have received less attention, such as economic inequality, food safety, environmental pollution, and biosecurity (Fewsmith, 2004; A. G. Han, 2008). This in turn creates risks, which, if left unmanaged, can easily snowball into crises. Secondly, despite many laws and rules passed in the past decades, its legal system still suffers serious problems, especially in terms of implementation and enforcement. Thirdly, China's authoritarian political system restricts the free flow of information which means that problems easily remain under the radar until it is too late.

Public health crises not only lead to substantial economic and health damage, but also undermine government credibility and are therefore regarded a threat to social and political stability by China's leaders. The reason for this is that they show government failure, which can trigger a decline in government support and lead to activism for change.

Such concerns are not unfounded, because public health crises in the past have indeed led to societal protests. Discontent is expressed through different channels ranging from written petitions and court cases to demonstrations and other organized forms of resistance, including online activism. Examples of crisis-induced social discontent are plenty. To illustrate, in response to a food safety incident that sickened 3,000 school children in Liaoning province in 2003, a crowd of a thousand parents blocked the railroad (T. Ma & Wu, 2003). In response to the 2008 infant formula crisis introduced above, one of the affected parents set up an advocacy group to demand

compensation. In 2012, after local media exposed a case of illegal trade in dead pigs for food production that involved corrupt government officials, a professor in Henan province went on hunger strike during a sit-in at a central square in Zhengzhou city (C. Ying, 2012). In early 2019, hundreds of parents went out on the streets of Jinhu in Jiangsu province to demand information about substandard vaccines (P. Zhang, 2019). An example of online protest is the various online campaigns launched by Zhao Lianhai, whose child was diagnosed with kidney stones due to melamine containing infant formula, that called upon parents to collectively demand justice in terms of compensation, recognition, and information about long-term health consequences (G. Yang, 2013). Such activism directly threatens political stability because it could potentially grow into large-scale resistance against the governing Communist Party (Cai, 2010; Roberts, 2018; Shirk, 2007).

Public health crises in China are not only a domestic issue, but are also relevant to the rest of the world because in our globalized world crises easily travel across borders (Goldin & Mariathasan, 2018). An illustration of this is the aforementioned 2008 melamine crisis, during which melamine was detected in a wide range of dairy and nondairy products around the world (Barboza, 2008a; Gossner et al., 2009). In fact, an early warning sign was the detection of melamine in an ingredient of pet food—sourced from China—in the USA in 2007, which led to kidney problems in thousands of pets and killed at least 18 (Gossner et al., 2009; Nestle, 2008).

Especially significant in terms of global crises are those involving epidemic diseases, because China is a hotspot for zoonotic diseases, i.e. diseases that are naturally transferred from vertebrate animals to humans (Quan Liu, Cao, & Zhu, 2014; X. Wei, Lin, & Hennessy, 2015). The reason for this is China's population size and density in combination with vast amounts of animals (especially birds and pigs), often held in close proximity to humans, which creates a breeding ground for new infectious diseases, both in humans and in animals (Diamond, 1997; Ke & Han, 2007; Quan Liu et al., 2014; Shortridge, 1982; Webster, Bean, Gorman, Chambers, & Kawaoka, 1992).

But even if crises remain in China, the rest of the world can be affected if a crisis leads to domestic political instability. This is especially so given China's growing role in the international community in terms of trade, climate change, development aid, and politics. It is therefore crucial to gain a better understanding of how China responds to public health crises.

1.2 Post-Crisis Legal Change

Because public health crises have the potential to create health, economic, and political damage, ideally we would prevent them by learning from past crises and implementing changes accordingly. The undesirability of making the same mistake twice is a deeply engrained normative perspective, which is reflected in proverbs such as “a fox is not taken twice in the same snare” and “a scalded cat fears cold water.” Likewise, crisis is often seen as an opportunity for change, which is evidenced by the popularity of using the Chinese word for crisis in crisis management literature and training because it is made up of the characters for crisis and opportunity.¹

In addition to our intuitive desire to prevent crises, there is an increased political need to do so, which is the consequence of the risk society, i.e. the increased preoccupation with risk (Giddens,

¹ This interpretation of the Chinese word crisis is, however, incorrect, see Mair (2009).

1997). Citizens demand less risk and demand more and more risk management (Boin et al., 2017). This is exacerbated by the rapid development of the internet, which makes that crises can now be followed in real time. As a result, crisis management is no longer solely the field of political leaders and professionals, but is also influenced by the general public who continuously puts pressure on governments to change practices and policies.

Nevertheless, reality and literature show that crises keep occurring and that we certainly do not always learn from them. Evidence of this are the above mentioned infant formula crises, which are just two out of a series of crises experienced by the Chinese dairy industry in the past two decades. Another example are food safety crises involving clenbuterol, which is an asthma medicine that is illegally added to pig feed to produce lean pork, but can lead to increased heart rates, tremor and sickness in humans. Large-scale incidents affecting dozens to hundreds of people at a time have been reported almost annually in the past two decades in China (Qiao, Guo, & Klein, 2012; Shao & Cai, 2015).

Recurrence of similar crises is not surprising given the various individual, organizational, and political constraints on changing and learning. A key obstacle at the individual level is captured in the threat-rigidity hypothesis, which argues that people rely on prior expectations, have a narrowed field of attention, and tend to fall back on learned routines when confronted with threats (Staw, Sandelands, & Dutton, 1981). As a result, change becomes less likely (Boin et al., 2017; Stern, 1997). A key problem for organizations is that they are unable to properly collect, communicate, understand, and memorize information (Boin et al., 2017). A major political constraint is that the prerequisites for reform are at odds with the prerequisites for crisis management. Whereas the former requires a negative tone regarding the status quo, the latter requires reaffirmation of the existing situation (Boin & 't Hart, 2003).

Yet, despite these numerous obstacles, change does happen after a crisis, albeit with varying degree in terms of substance, size and learning (Boin, 't Hart, & McConnell, 2009). For example, the SARS pandemic triggered the amendment of the Infectious Diseases Law, which requires public health departments under the State Council to provide timely, accurate information in case of an infectious disease outbreak. This is important because secrecy allowed the virus to spread more widely than would have been the case if information would have been available. Another example is the Earthquake Disaster Prevention and Mitigation Law, which was passed in response to the 2008 Wenchuan earthquake, which killed almost 90,000 people and injured almost 400,000.

Although it is not possible to predict legal change after a crisis, the crisis and policy change literature does provide some guidance in explaining the *process* behind post-crisis change. A crisis can open a window for change, i.e. "an opportunity for advocates of proposals to push their pet solutions, or to push attention to their special problems" (Kingdon, 2014, p. 165). Normally, the policy window is barricaded by a number of constraints such as existing rent seeking interest groups (Olson, 1982), decision-making procedures (Tsebelis, 1995), stalemates between different groups within a policy subdomain (Weible & Sabatier, 2006), and policy paradigms (Hall, 1993). A crisis can relax such constraints. Crises also challenge existing ideas about societal problems and solutions.

Whether an open policy window eventually leads to change depends on a complex web of factors, including the nature of the crisis, news media and social media attention, framing of the

crisis, mobilization of pro-change forces (e.g., lobbying, petitions, and protests), the availability of a feasible solution, the political climate, and the presence of policy advocates (Birkland, 1997, 1998, 2006; Birkland & Lawrence, 2009; Boin & 't Hart, 2003; Boin et al., 2009, 2017; Boin, McConnell, & 't Hart, 2008; Hansén, 2007; J. X. Kasperson, Kasperson, Pidgeon, & Slovic, 2003; Kingdon, 1984; Nohrstedt, 2010).

However, existing literature provides much less guidance for understanding and explaining the *nature* of post-crisis change, which is important because change is not the same as learning and improvement. While it is quite common for crisis to result in some kind of change (Boin et al., 2009), there are marked differences in terms of the depth and scope of change. Measuring the degree of change and learning is difficult because it includes both a cognitive and behavioral aspect. Despite these difficulties, we do know that learning at the operational level is more common than change in goals and norms (Boin, 2008; Deverell, 2009, 2015). Furthermore, learning is more likely when a crisis happens more than one time (Deverell, 2015). Further research is needed to better understand how post-crisis change deals with problems exposed by the crisis and its likelihood to mitigate such problems.

1.3 Research Problem

While there are flourishing bodies of research on policy change and crisis politics, these predominantly consist of studies conducted in high income liberal democracies. Crises that have been studied in depth and persistently recur in the literature include the Three Mile Island nuclear power plant partial meltdown, the Exxon Valdez oil spill, the 9/11 attacks, Hurricane Katrina, Tylenol product tampering by Johnson and Johnson, and the BSE outbreak. Cases from other parts of the world are scarce. The few cases from non-western contexts that are mentioned in crisis literature lack in-depth scrutiny and are largely ignored in theory building. Examples include the 1984 chemical leak at the Union Carbide pesticide plant in Bhopal, India; the 1986 Chernobyl nuclear accident; and the 1985 earthquake in Mexico City.

Others have noticed the absence of case studies from non-western, non-democratic states too. For example, Pidgeon, Kasperson, and Slovic write in their book about the social amplification of risk framework (SARF)—a framework that helps to understand how risks and events can snowball into issues of societal and political concern and eventually lead to secondary effects including legal change: “The chapters probably say less about the cross-cultural transferability of SARF (originally developed primarily in the North American social context), than we would have liked” (Pidgeon, Kasperson, & Slovic, 2003, p. 9). Birkland and Warnement acknowledge that studies on focusing events (i.e. sudden, unpredictable events such as terrorism attacks and earthquakes) mostly focus on high income liberal democracies and therefore they published a study on earthquakes in China, Haiti, and Nicaragua to “illustrate the role of focusing events in what we consider ‘developing countries’” (Birkland & Warnement, 2014, p. 42).

The bias towards high income liberal democracies is perhaps not surprising because, first of all, most social science research funding still comes from such countries and eligibility often requires the studies to be conducted in these countries. Secondly, the domestic politics and legal systems of China and other developing countries are often deemed unimportant to understand. Thirdly, there is a lack of specialists equipped with sufficient knowledge and skills to execute studies in China

and other non-democratic countries.

However, the absence of studies on crisis and policy change in non-western, non-democratic countries is a growing problem because it is not clear how well existing theories can explain these phenomena in different socio-political systems, including authoritarian China, which is significant given the growing role of these countries in international trade and politics. As Birkland writes, the politics following large public events may be different in nondemocratic systems, because “citizens and policy advocates are not able to use the familiar democratic means to mobilize support for better policy” (Birkland & Warnement, 2014, pp. 39–40). China’s authoritarian context is indeed different in terms of feedback systems, press and internet freedom, transparency, and public participation in policymaking. Therefore, it is conceivable that crisis-change processes and the nature of post-crisis change are different from what we know. Yet, there are very few studies on the interaction of crises and policy in China.

In addition, most of the existing crisis-change literature examines the broader topic of policy and institutional change, and is not specifically focused on legislation (Balleisen, Benneer, Krawiec, & Wiener, 2017; Hutter & Lloyd-Bostock, 2017). There is a dearth of socio-legal studies in the crisis field (Birkland, 2013). This is a missed opportunity because “change in law is obviously the most direct and important evidence” of post-crisis change and—depending on its substance—learning (Birkland, 2006, p. 24). Moreover, because it is a clearly demarcated type of evidence, focusing on law also allows for systematic analysis across different policy areas within a country and possibly even for cross-country analysis.

And finally, existing literature pays relatively little attention to the nature of post-crisis legal change, which is important because the mere passage of laws tells very little about its potential to mitigate problems exposed by the crisis. For effective crisis preparedness, it is pivotal to assess post-crisis change, because if the issues underlying a crisis are not addressed, similar crises may occur again, resulting in more economic, health, and political harm. While the passage of law may help restore order, if the underlying problems are not addressed, post-crisis legal change can create a false sense of safety and in turn actually breed a new crisis.

Despite the importance of assessing the nature of post-crisis change, there is no consensus in existing literature about basic concepts including typology (i.e. degrees of change or types of learning) and methodology. Instead, the existing literature provides a number of alternative approaches, some of which are quantitative, for example focused on the size of change, whereas others are qualitative, for example focused on the process of learning. This makes it difficult to systematically analyze, let alone compare, post-crisis legal change.

1.4 Research Aims and Research Questions

Taking the research problems identified above as a starting point, this project examines legal change after public health crises in China. Specifically, the research aim is threefold.

First of all, it aims to contribute to our understanding of how crisis can lead to legal change in China. It does so by examining the conditions that together lead to post-crisis legal change, based on existing crisis-change literature. The findings are relevant to two overlapping fields, namely crisis politics and policy change, especially the literature on focusing events, the multiple streams framework, the social amplification of risk framework, the punctuated equilibrium theory, and

the advocacy coalition framework. Moreover, the detailed description of the crises can be used by other scholars for other aspects of theory development.

Secondly, the study aims to contribute to our understanding of post-crisis lawmaking. Here, I aim to build bridges between political science and legal studies as well as between crisis studies and legal studies. By drawing upon concepts central to political science, I aim to introduce new concepts and literature to the field of legal studies, especially regarding the politics of lawmaking and the importance of understanding societal problems for effective legislative drawing. Likewise, by focusing on *legal* change, I aim to provide a legal perspective to crisis studies.

Thirdly, the study aims to develop tools for measuring and assessing the nature of legal change and post-crisis legal change in particular. This contributes to existing efforts in this area, especially regarding qualitative text analysis of policy change, quantitative computational methods, and crisis-learning.

These three aims have been captured in one overarching research question:

To what extent and under which conditions do public health crises lead to legal change in China?

As a first step towards research operationalization, the overarching question is broken down into seven sub questions, which are summarized in table 1-1 along with the empirical evidence that is used to answer each question. The first question is focused on the identification of potential post-crisis legal change, while the second and third sets of questions are respectively focused on the *process* and *nature* of post-crisis legal change.

Table 1-1. Research Questions and Main Sources of Empirical Evidence

Research questions	Empirical evidence
Identification of potential post-crisis legal change	
What legal change since the crisis can plausibly be the result of the crisis?	Legal databases (correlation with dates and topic of crisis) Key legal issues as reflected in the crisis-change storyline
Understanding the process of post-crisis legal change	
Did the crisis initiate the lawmaking process?	Legislative plans of the NPC and State Council Date of draft laws Reference to the crisis in explanation of draft law Newspapers articles about the drafting process Crisis-change storyline
Did the crisis accelerate or delay the lawmaking process?	Legislative plans of the NPC and State Council Length and speed of the lawmaking process Time between crisis and passing date of the law Public comments procedure Number of NPC deliberations NPC deliberation records
Under what conditions did post-crisis legal change take place?	Reports of (potential) harm, injuries, property damage (Witness) accounts of the crisis and lawmaking processes Social media activity and newspaper articles Official legislative documents Polls (when available), online search statistics Crisis-change storyline
Understanding the nature of post-crisis legal change	
Does the post-crisis law respond to the issues exposed by the crisis? (crisis-responsiveness)	Key issues of the crisis as reflected in the storyline Post-crisis law, especially the scope of topics covered
Does the post-crisis law have the potential to mitigate the problems exposed by the crisis? (problem-solving)	Investigative reports about causes and solutions Reports about causes and solutions Reports about officially appointed investigation teams Experts (other than lawmakers) taking part in the process Official claims of drawing lessons from the crisis Time between crisis and law
What is the significance of post-crisis law in terms of substance, degree of change, and learning?	Degree of textual change between pre- and post-crisis law Evolution of a policy area Crisis-responsiveness and problem-solving potential Qualitative textual composition analysis Quantitative analysis of textual change

1.5 Case Study Approach

This project examines the interaction of public health crises and lawmaking, both of which are complex phenomena that are driven by many different factors such as the nature of the crisis, news media, political context, institutional arrangements, lobbying, and preferences of decision-makers. Many of these factors are interconnected. For example, the way in which news media frame an issue influences the extent to which an issue develops into a crisis, which in turn influences the response of lawmakers. In such a complex environment with no space for the researcher to control parameters, case studies are the preferred research method because they allow for detailed, contextual analysis of causal relationships (R. K. Yin, 2009).

To answer the research questions, the thesis thus adopts the case study approach, which is a non-experimental research method consisting of a small number of cases with a large number of diverse observations per case. Because of their in-depth and contextual analysis, case studies are widely used in the social sciences to help understand complex issues and causal relationships. Case studies allow for “an intensive reflection on the relationship between concrete empirical observations and abstract theoretical concepts” (Blatter & Haverland, 2012, p. 18).

Case study research relies on multiple sources of evidence, which is especially appropriate in the context of China, where data availability and accessibility are limited and inconsistent. To illustrate, sometimes a summary of public comments is published, but this is not done systematically for all laws. Part of the problem is state censorship, which means not only that data is not available at all, but also that data that once was available can disappear, as happens for example in the case of weblogs and social media.

The thesis consists of three explanatory case studies that each aim to explain under which conditions and how crisis led to what kind of legal change. The cases are exploratory in nature in the sense that this is the first study that systematically studies the interaction of public health crises and lawmaking in China. Moreover, the focus is on within-case inferences rather than cross-case comparisons, meaning that the aim is to explain the individual cases rather than to develop a theory that applies to all instances of post-crisis legal change. That being said, the case studies themselves do have implications for our understanding of crisis politics, policy change, lawmaking, and China. The study also contributes to the development of new hypotheses to be tested in future research.

The case studies are grounded in theories on crisis-change processes, lawmaking in China, and post-crisis legal change, as presented in chapters 2, 3, and 4. These chapters further operationalize the research beyond the general research design presented here. Specifically, chapter 2 introduces an analytical framework for understanding crisis-change processes in China. Chapter 3 provides an in-depth, up-to-date analysis of lawmaking processes in China, including the role of state actors and non-state actors involved in each stage. Chapter 4 develops an approach to measure and assess post-crisis legal change in a systematic and meaningful way, taking into account the specifics of the Chinese legal system.

1.6 Causal-Process Tracing

Case study research is a versatile approach that needs to be tailored to the specific aim of the research, in this case understanding the process and nature of post-crisis legal change in China.

Given the research aims, I adopt the causal-process tracing method, which is a small-N case study approach to examine the factors that *together* led to a certain outcome. It does so by using a wide range of qualitative data to reconstruct the unfolding of processes (Blatter & Haverland, 2012, 2014). Causal-process tracing is characterized by a dense description of successive, critical events and pays attention to the perceptions and motivations of important actors (Blatter & Haverland, 2012, 2014). The case studies are based on many different data points, which are qualitatively organized and analyzed, resulting in a chronological overview of events. Because of these detailed chronological narratives, causal-process tracing is “very costly, both in terms of time (research) and space (writing)” (Trampusch & Palier, 2016).

Although process tracing is a commonly used research method, there is no consensus about its definition other than that “it is a method for unpacking causality, that aims at studying what happens between X and Y and beyond” (Trampusch & Palier, 2016, p. 438). In fact, Trampusch and Palier (2016) have identified 18 different variants of process tracing in the research methodology literature, with differences in terms of case selection, data collection, and possibilities for generalization (D. Beach, 2017; D. Beach & Pedersen, 2013; Blatter & Haverland, 2012; Trampusch & Palier, 2016).

The thesis adopts the approach to causal-process tracing developed by Blatter & Haverland (2012, 2014), because it fits most closely with the research aims, namely to examine the driving forces of a specific result, in this case post-crisis legal change. This particular strand of causal-process tracing is based on the concept of configurational thinking as developed by Ragin (2008), which greatly overlaps with what we know about crisis-change processes.² Configurational thinking assumes that (1) almost all social outcomes are the results of a combination of causal factors; (2) there are different pathways to similar outcomes; and (3) the effect of the same causal factor can be different in different contexts and combinations (Blatter & Haverland, 2012, 2014). Causal-process tracing enables the examination of the chronological steps between causal factors and outcomes and is therefore the ultimate method for answering both how and why questions (Blatter & Haverland, 2014), which is also the type of question that this study explores: To what extent and under what conditions (i.e. how and why) do public health crises lead to legal change in China? Moreover, this method is presented in an accessible, coherent, and reproducible way. The authors also illustrate how the approach can be used to explain regulatory change (Blatter & Haverland, 2014, pp. 71–72).

Because the driving forces of post-crisis legal change do not act independently from each other, this study does not employ the terminology of dependent and independent variables.³ This kind of terminology is typically used in cross-case analyses that use Mill’s (1843) comparative methods of agreement and difference. However, the goal of this thesis is not to examine whether a certain

² Ragin (1987, 2008) used configurational thinking to develop *Qualitative Comparative Analysis*, which is a method for medium-N research. Note that this thesis is a small-N study and therefore relies on causal-process tracing.

³ See also Ragin (1987) on case-oriented versus variable-oriented approaches.

factor (e.g., media attention) makes a difference in post-crisis legal change, but to examine the factors that together made post-crisis legal change possible. Therefore, the terms ‘causal conditions’ and ‘causal configurations’ will be used. Causal conditions are the individual factors that produce a certain outcome. Examples of such conditions in the case studies are media attention and the availability of a policy solution. A causal configuration is a combination of causal factors that together lead to a certain outcome. The focus is thus on a combination of factors rather than on measuring the effect of a specific causal factor.

1.7 Case Selection

Contrary to other types of case studies (Seawright & Gerring, 2008), the goal of this thesis is not to generalize the findings to a population of cases that is similar in outcome or to examine the effect of a single causal factor across multiple cases, but to identify the combination of factors that made post-crisis legal change possible. Following the logic of configurational thinking as introduced above, there are multiple causal recipes (i.e. combinations of causal conditions) for post-crisis legal change (Ragin, 2008). The case studies are probabilistic in the sense that the effect of the same causal factor can be different in different contexts and combinations (Blatter & Haverland, 2012, 2014; Trampusch & Palier, 2016). This also means that the case studies do not result in a checklist to predict the outcome of future crises. Moreover, the case studies do not represent a certain type of cases and therefore the study does not use terminology such as population, sampling, and typicality. Instead, case selection is based on societal and theoretical relevance.

Because the thesis examines under which conditions and how public health crises lead to legal change in China, ideally, cases would be selected in which there is post-crisis legal change. However, it is not always clear ex-ante whether a crisis has generated legal change. Therefore, case selection is based on the *potential* of a crisis to lead to post-crisis legal change. This also means that crises may be included that have generated no change, in which case the focus will be on explaining the lack of change.

In this thesis, the potential of a crisis to generate legal change is assessed based on two criteria. The first criterion is *recurrence of problems* in a policy domain e.g., livestock pollution, vaccination, and food safety. Some domains have been involved in multiple crises in a relatively short time. Examples are the Chinese dairy industry and the Chinese vaccination sector. Recurrence of the same widely published problems increases the salience of a crisis, which increases its potential of reaching the legislative agenda (Deverell, 2015; Kingdon, 2014, pp. 98–100). The second criterion is the *nature of a crisis* in terms of the number and type of affected people. The more people affected by the event, the larger the drama, which increases its news value (Birkland, 1997, pp. 31–32). Moreover, stories that can be framed as injustice against innocent victims resonate especially well in China (G. Yang, 2009, pp. 55–57).

The first case study selected is the 2008 melamine milk powder crisis, which is undoubtedly China’s largest food safety crisis, resulting in at least six deaths and 300,000 ill children. Melamine—a chemical used in the production of plastics—was illegally added to diluted and low quality milk in order to pass mandatory protein tests that measure protein levels on the basis of the milk’s nitrogen content. Melamine is high in nitrogen, but does not contain any protein

and thus serves to fool protein tests (Hau et al., 2009). Ingestion of melamine can lead to kidney stones and kidney failure, which can eventually lead to death (Hau et al., 2009). There might also be long-term adverse health effects resulting from kidney stones, kidney failure or kidney damage in early childhood as well as damage to other organs due to the accumulation of melamine in the body (Y. Wei & Liu, 2012).

The Chinese dairy industry is prone to crises. As mentioned above, at least a dozen infants died in 2004 because the infant formula they had been fed did not contain the nutrients necessary for a child to grow (Xinhua, 2004; R. Zhou, 2004). The same problem reemerged in Hunan province in 2005, leading to at least one more severely malnourished infant (Juan Li, 2005; Ministry of Health, 2005). A year later, in 2006, such 'empty' milk powder appeared again. This time it was not only very low in protein, but also very high in arsenic, which is carcinogenic (State Food and Drug Administration, 2006; H. Tang, 2006). One of the reasons for these recurrent crises is China's rapid growth in dairy consumption. Dairy is not part of the traditional Chinese diet (Wiley, 2011; Z.-Y. Zhou, Tian, & Zhou, 2002), but its consumption has been growing rapidly in the past two decades. This trend is not just the result of income growth, lifestyle changes, and new marketing channels, but also of governmental support of the dairy industry (Fuller, Huang, Ma, & Rozelle, 2006). The increased demand has led to severe competition. Combined with an immature industry and lack of regulation, this created an environment conducive to food fraud.

The second case study is the Huangpu River dead pigs crisis, which happened in March 2013, when thousands of decomposing and smelling dead pigs appeared floating in Shanghai's Huangpu River. In subsequent weeks, government authorities dredged more than ten thousand pig carcasses from the river. The affected areas of the river supplied 22% of the drinking water of Shanghai (Shanghai government, 2013a), a city of major economic and political importance with 24 million inhabitants.

The incident was only the tip of an iceberg: the illegal improper disposal of dead animals is widespread in China. Experts previously estimated that the majority of dead livestock ends up in the human food chain, rather than being buried or otherwise properly disposed of (CCTV, 2004; G. Jiang, 2007; P. Li, 2009; H. Xie & He, 2013). The number of reported food safety incidents involving pork from animals that have died from disease rapidly increased in the years preceding the crisis, accounting for 30% of meat quality and safety incidents in 2013 (Xiujuan Chen et al., 2017). Using dead animals in food products is problematic because it may lead to microbial contamination, which is the main source of foodborne illnesses (Alcorn & Ouyang, 2012; Calvin, Gale, Hu, & Lohmar, 2006; J. Xue & Zhang, 2013). To illustrate, 215 people in Sichuan fell ill and 38 died in 2005 after contact with diseased hogs, which led to a *Streptococcus suis* infection (Hongjie Yu et al., 2006). In addition, the consequences of improper disposal of dead animals can be severe and include soil and water pollution and the spread of diseases.

The improper disposal of and illegal trade in dead-on-farm pigs for food production was acknowledged as a problem by the Chinese government long before the Huangpu River dead pigs crisis. Among efforts to tackle this problem was a 2008 government enforcement campaign to crack down on illegal slaughterhouses and illegal trade in pork from sick animals, which was actually induced by the aforementioned melamine milk powder crisis (Ministry of Commerce & Ministry of Agriculture, 2008).

The third case study is avian influenza A(H7N9), which was detected in humans for the first time in the world in China in March 2013. The virus spread through direct or indirect contact with infected poultry and contaminated environments such as live-poultry markets. As of early 2019, a total of 1,567 cases have been reported to the World Health Organization, of which 615 were fatal. Although the virus has not spread to other countries, there is a risk that the virus changes in such a way that it easily transmits from person to person and may cause a pandemic. Public health experts widely regard the H7N9 virus as a warning for a coming influenza pandemic and emphasize the need for preparation (Osterholm & Olshaker, 2017; Pu et al., 2018; Subbarao, 2018; W. D. Tanner, Toth, & Gundlapalli, 2015).

As mentioned above, China is a hotspot for zoonotic diseases. In fact, the majority of past human influenza pandemics originated in China. An estimated 1–2 million people worldwide died in 1956–1958 from H2N2 avian influenza, which was first detected in China (Saunders-Hastings & Krewski, 2016). Similarly, the H3N2 avian influenza virus was first reported in Hong Kong and led to an estimated 500,000 to two million deaths worldwide in 1968–1970 (Saunders-Hastings & Krewski, 2016). More recently, the severe acute respiratory syndrome (SARS) virus, which emerged first in China in 2003, infected more than 8,000 people in 17 countries and killed almost 800 (WHO, 2003). Several years later, the very lethal influenza A(H5N1) virus emerged in southern China, infecting 860 people from sixteen countries, of whom more than 50% died (WHO, 2018b).

Because of the number of people affected (whether directly involving harm or indirectly as a perceived threat) and the recurrent problems in these policy domains, these three crises all have potential to generate legal change.

1.8 Doing Social Science Research in China

Doing social science research in China poses a number of challenges, especially regarding data availability, data accessibility, data reliability, and case selection (Heimer & Thøgersen, 2006; Van Rooij, 2006).

First of all, as a result of its authoritarian political system, China's government bureaucracy and lawmaking system lack transparency. This means that data that is commonly publicly available in high income liberal democracies is not available in China, such as pertinent crisis data including the number of victims, post-crisis official inquiry reports, voting records of the National People's Congress, lists of actors consulted during lawmaking processes, and records of legislative hearings. Secondly, data accessibility is limited and dynamic. It may be possible to obtain data, for example through interviews or databases, but gaining respectively retaining access can be challenging and time-consuming. Thirdly, official data is notorious for its lack of reliability. Numbers are often inflated and is generally speaking one-dimensional in the sense that perspectives other than the official one often are not included. This is especially true for state news media. The implication of this is that the space for selecting cases is limited which means that it is often not possible to select cases based on theoretic considerations. Fourthly, additional challenges arise for non-native Chinese researchers like me, which include language and cultural obstacles as well as practical issues such as obtaining a research permit, funding, and visa.

How these obstacles play out in practice is illustrated by my own research journey, which

started with a very different research proposal, namely on regulatory compliance processes in the Chinese dairy industry. Despite previous rural fieldwork experience in China, Chinese language skills, and training in dairy farming, the obstacles turned out to be unsurmountable. Compliance research by itself is challenging because compliance depends on both cognitive processes and behavior which are difficult to measure. Problems were exacerbated by the political sensitivity of food safety issues in China, which made access to the field difficult on all levels: finding a host and getting a visa, obtaining a research permit, and getting access to field sites and interviewees. Although being a foreigner can be helpful because Chinese people are generally quite interested in meeting foreigners and sharing their stories with outsiders, in this case, my presence could have influenced compliance behavior, which would have resulted in unreliable data.

Therefore, a few months into my research, I decided to change direction, which eventually led to the current topic of legal change after public health crises. This was triggered by the recurrent crises in the Chinese dairy industry. This time, in order to prevent running into the same obstacles, I decided to take a digital data approach rather than relying on interviews and participatory observation.

Yet, in order to ensure a thorough understanding of the context of my research, I spent fourteen months in China, first from March to December 2014 and again from June to November 2016. I was hosted by Shandong University and the law school of the Central University of Finance and Economics in Beijing. In addition to immersing myself in the Chinese society, I participated in scholarly activities, including several conferences and two summer schools. I was also able to conduct a number of explorative interviews about lawmaking processes in China.

In addition, I made a number of field visits to get a better understanding of food safety issues, which vary enormously in their nature. On one side of the continuum are small-scale farms without proper facilities for waste and live poultry markets without adequate hygiene procedures. On the other side of the continuum are large-scale farms that raise different questions, including in terms of biosecurity and animal welfare. Especially memorable was a visit to a pig farm and slaughterhouse in Baoding, which is about 150 km southwest of Beijing. The company took its ambition to produce high quality pork very seriously: not only were the animals on a special diet, they also swam across a 25m swimming pool daily, which they accessed by slide. Equally memorable was my visit to Asia's largest egg farm, which is based in Pinggu district just outside Beijing, where four million chickens are raised. Here, biosecurity measures were very strict, which meant that I could only see the chickens from behind a window. In fact, to maximize efficiency and minimize risks, the company used robots to detect and remove dead animals.

During my time in China I also gained first-hand experience of the dynamics of political sensitivity and foreign policy. Whereas scholars generally welcomed my research because of its societal relevance, I also noticed that it was still a sensitive topic at the institutional level. In fact, one of my anticipated hosts at a prominent research institute was unexpectedly forced to pull back his invitation as a result of higher level disagreement, which was likely linked to my research topic. This is not an isolated case. Other scholars too report increasing obstacles in doing research in China, which includes difficulties in obtaining visa and research permits.

1.9 Data Collection Obstacles

China's authoritarian political context poses a number of challenges to data collection, including limited data availability, fragmented data, censored data, and disappearing data. This section briefly discusses each of these challenges as they pertain to this research project.

First of all, compared to liberal democracies, data on lawmaking processes and crises is extremely limited in China. Notably, while studies on policy change in western democracies often rely on the volume and substance of legislative hearings, such data is not (publicly) available in China. As will be discussed in chapter 3, data about lawmaking is roughly limited to legislative plans, public consultation draft laws, the number of public comments, and general records of deliberation by China's legislature, the National People's Congress (NPC). Relatively little evidence of internal processes is available, such as ministerial or congressional research reports, the substance of public comments, and debates. Moreover, it is not possible to file freedom of information requests to get access to such missing information. Even more restricted is the availability of data about crises. Whereas official and non-official inquiries into the causes, impact, and handling of crises are usually publicly available in western democracies, in China, crises are surrounded by substantial secrecy. Even basic data such as the number and distribution of victims is usually kept secret and official inquiry reports are seldom made public.

Secondly, the available data is fragmented in the sense that it is not organized in one central place but is scattered across a multitude of websites. Whereas studies on the USA and Europe often rely on databases such as Congressional Informational Service or other well-organized government or parliament websites that contain bills, committee reports, records of hearings, etcetera, no such comprehensive database is available for China. To illustrate, although the website of China's legislature, the National People's Congress, is frequently updated, it is done so in an unstructured and inconsistent way. For example, there is no dedicated section for legislative plans and the section on speeches made during NPC deliberations has not been updated since July 2016.

Thirdly, due to state censorship, available data only provides a certain range of perspectives. Although the emergence of commercial news media and the internet has led to some diversification, state censorship still prevails, which means that only certain frames are expressed and tolerated. Moreover, the Chinese state "guides" public opinion, which means that the official perspective is actively being promoted, sometimes to the extent that all other perspectives are flat-out banned. Complicating all this is the fact that censorship is a highly dynamic concept. An issue that is not sensitive today may be sensitive and subsequently banned tomorrow, which is a common pattern during crises. Once an issue becomes politically sensitive, it is either completely censored from news reporting, resulting in a news blackout, or only certain angles are allowed. This means that within the case studies, it is not possible to get all the facts or full range of perspectives.

Fourthly, it is not uncommon for data to disappear, meaning that data that once was available becomes inaccessible. The Chinese state has developed a number of tools that make it impossible to even share certain information, for example by blocking entire websites such as Facebook and Twitter and by blocking sensitive keywords on Weibo—a major Chinese microblogging website that resembles Twitter. It also censors information after it has been shared, which means that it is common that news media and social media content gets deleted, websites are taken down, and (micro)blog accounts are blocked. Moreover, inconsistent accessibility of government and social

media websites is a common problem. For example, the National People's Congress China Laws & Regulations Database may function perfectly fine one day but fails the next. While websites may be intentionally programmed to make it difficult to systematically download and analyze data, this may also be an unintentional technical issue. Either way, the bottom line is that there is no guarantee that data available today will be available tomorrow.

1.10 Data Collection Strategy

To overcome the data collection obstacles discussed above, I first of all adopted a digital data approach, meaning that my data primarily consist of digital data collected through the internet. A key reason for doing so is the volume and depth of observations needed for case studies that use causal-process tracing. Empirical observations are necessary for each step in the crisis-change and lawmaking processes. Considering that I examine three different crises and a dozen different lawmaking processes, the volume of required data is substantial. The major advantage of the digital data approach is that it is a time efficient and cost efficient method that allows for a large number of observations in the form of e.g., newspaper articles, legislative plans, and draft laws. While such an approach would previously have been unthinkable because there simply were no or few digital sources, along with the expansion of the internet and the professionalization of the Chinese legislature and government, there is now much more data available online. The result of this approach is very rich case studies that shed light on all the main aspects of crisis-change and lawmaking processes. This is a first attempt to systematically study post-crisis legal change in China. It provides a firm foundation for zooming in on specific aspects of this phenomenon. The practical advantage of this strategy is that it made me relatively independent from the whims of the Chinese political context and the willingness and ability of Chinese collaborators to help me, because digital data can in principle be collected from anywhere in the world.

The most suitable alternative would have been to conduct interviews. However, because I examine three different crises and a dozen different lawmaking processes, and considering the need for triangulation, this would have required access to dozens of interviewees, including high-level government officials and NPC delegates. Gaining access to this type of interviewees and building sufficient trust to go beyond socially desirable answers is a time-consuming endeavor in China. Moreover, given that this is the first study that systematically examines post-crisis legal change in China, there was very little existing literature that I could use to develop interview questions. That being said, as I will argue below, future research on certain isolated aspects of post-crisis legal change in China should rely on interviewing because digital data does not cover all aspects and perspectives. The case studies are a great starting point for this because it provides a theoretical and empirical foundation and points out research gaps.

Secondly, I acknowledge and accept that available data may be incomplete, meaning that I have used it with care. In other words, the possibility that data is incomplete is not a reason to abstain from using it at all. Examples of potential "missing data" (Roberts, Liebman, Stern, & Wang, 2017) relevant to this research project are summaries of public comments on draft laws, legislative drafting progress reports, and records of deliberation of draft laws by China's legislature, the National People's Congress. It is conceivable that the available documents are edited in the sense that some parts may have been omitted or that substance has been modified. However, there

is no way to verify this—this would make for a research project by itself.

With that in mind, I have taken much effort to triangulate data, i.e. cross verify by using multiple sources (R. K. Yin, 2009). I did so by collecting data from weblogs, social media, newspapers, Western and Chinese literature, television reports, and occasionally NGO reports. Especially helpful is data about censorship, which is made available by various censorship watchdogs based outside China.

In order to collect all of these different pieces of evidence, I adopted smart web searching strategies, which essentially means that I cast a wide net on the internet until I reach data saturation, i.e. data collection until new data is starting to be redundant of data already collected (Saunders et al., 2017). This means that I did not rely on just one database or website for data collection, but consulted different websites and databases. To illustrate, sometimes policy documents refer to other official documents, which may not or no longer be available on the website of that particular ministry, but using the online search engine Baidu, I often found a copy on websites of local governments. This is even true for newspaper articles, which may no longer be available at the newspaper website (not necessarily because of censorship; information may get lost or removed during website reorganizations). Although I always strove to find the original article, if this was not possible, I resorted to a copy of the information on e.g., online forums. Occasionally, when Chinese websites were inaccessible from outside Europe, I used a virtual private network (VPN), which sometimes solved the problem.

Because disappearing data threatens research replicability, I created two databases, namely a case study database and a legal database. The first consists of all the data that I have used in my case studies except from English and Chinese language journal articles and books. The second database is called SinoLawGist and consists of all laws (法律 *falü*) passed by the National People's Congress between 1954 and 2018 as well as NPC five-year legislative plans covering the period 1993–2018. Data has primarily been sourced from the China Laws & Regulations Database, discussed in more detail below. The SinoLawGist database allowed me to compare pre- and post-crisis laws and to examine innovation in law by searching for specific keywords that are used in post-crisis laws. Chapter 4 discusses this database and its application in this study in more depth.

Although, as discussed in more detail below, the data in the case studies is presented in chronological order, data collection was an iterative task that moved back and forth between different phases of crisis-change and lawmaking processes. A purely chronological approach would have been very challenging. To illustrate, I could have chosen to unravel the unfolding of a crisis or lawmaking process by relying on newspaper reports. However, there were points at which media coverage (temporarily) halted, while these processes were still unfolding. Such a scenario is especially likely in China where media attention depends on the sensitivity of the matter at hand, which can differ from day to day. Moreover, the onset of a crisis often starts before news media start paying attention to it. Therefore, data collection started with low-hanging fruit such as the event that appeared to have started the crisis, policy notices, the dates of deliberation of a draft law by the National People's Congress, and the passing date of a law. Later in the data collection process, as more pieces of evidence were collected, the narrative became more specific and complete.

1.11 Data Sources

Despite the data limitations discussed above, I found that there is relevant data available, most of which has been underutilized, especially regarding lawmaking processes in China. In fact, as a result of digitization and increased government transparency, the available data is growing (Horsley, 2007; J. Liu & Guo, 2017; Van Rooij & Van den Dool, 2016; Xiaomeng Zhang, 2014). While the references list provides a detailed account of data used, this section briefly introduces the main data sources.

First of all, in addition to English language literature, I collected Chinese language literature using the China National Knowledge Infrastructure (CNKI), a widely used Chinese database that includes journals, doctoral dissertations, newspapers, yearbooks, and statistical yearbooks. The range of journals is rather wide and includes not just independent academic journals, but also magazines and journals published by government organizations, for example *Jiandu he Xuanze* (“Supervision and Selection”), which is sponsored by the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) and *Zhongguo Renda* (“The National People’s Congress of China”), which is the official NPC magazine. Although, for various reasons, China scholars do not always consult the Chinese language literature, I found it helpful in two ways. It provided valuable pieces of evidence about the crises and lawmaking processes. Moreover, it helped me to better understand the timing and substance of scholarly attention regarding the topics examined in the case studies such as food safety and the H7N9 virus.

Secondly, official data including legislation, legislative records, and policy documents was collected from a variety of sources. For laws, I mostly relied on PKUlaw (北大法宝 *beida fabao*)⁴ and the China Laws & Regulations Database (中国法律法规信息库 *Zhongguo falü fagui xinxi ku*).⁵ The former is hosted and managed by the Peking University School of Law and is the most comprehensive database for Chinese law (J. Liu & Guo, 2017). It contains more than a million primary and secondary legal documents, including records of legislative processes such as draft laws and policy documents. The database is conveniently organized into policy domains such as food hygiene and livestock management, which allows for identifying peaks in legislative developments parallel with the occurrence of selected crises. The latter, China Laws & Regulations Database, was launched in 2016 by the National People’s Congress (J. Shen, 2016), and is—as opposed to PKUlaw—freely accessible. In addition to legislation, it contains records of legislative processes that are organized in such a way that they are relatively easy to find and collect. However, access to this database is unstable: at times it is not possible to reach it, a situation which sometimes lasts for just minutes or hours, but can also last for weeks or even months (which was the case during the fall of 2018–2019). In terms of policy documents, depending on the topic, I relied on departmental websites of e.g., the Ministry of Health and the Ministry of Agriculture, but because there is no reliable single database for all policy documents, I frequently had to resort to the Chinese internet search engine Baidu (i.e. the Chinese equivalent of Google, which is blocked in China).

Thirdly, newspaper articles were collected from a variety of sources, including the China Core Newspaper Database, which is a full-text database that contains more than 600 Chinese national and local newspapers since the year 2000. In addition, I also consulted the digital archives of

4 <http://www.pkulaw.cn>

5 law.npc.gov.cn:8081/FLFG

specific newspapers and major China Central Television (CCTV) programs including Focus (焦点访谈 *jiaodian fangtan*), News Simulcast (新闻联播 *xinwen lianbo*), and News 1+1 (新闻 1+1 *xinwen 1+1*). In terms of online news, I have experimented with Baidu Advanced News Search⁶ to collect information about the volume of online news, but because search results were inconsistent, data was not sufficiently reliable. However, I did use the Baidu search engine to search for news articles on specific topics. Moreover, on several occasions, I used Baidu Index,⁷ which allows users to look up the volume of online news on a topic during a specific period of time.

Fourthly, in terms of social media and public attention, I sourced data from weblogs, online forums, and Weibo. The most popular social media platform during the period in which the melamine milk powder crisis happened was the forum Tianya (Lei & Zhou, 2015), while Weibo was the largest social media platform during the other two crises studied in this thesis (Le Chen, Zhang, & Wilson, 2013). In addition, Baidu Index was consulted, which lets users look up the volume of specific search queries entered in the Baidu search engine during a specific period of time. This service is increasingly used to detect attitudes and predict behavior (Vaughan & Chen, 2015). In this study, it is used as an indicator of public attention.

Fifthly, data about censorship was predominantly sourced from China Digital Times and Free Weibo in addition to secondary literature. The former website, China Digital Times, based in California, maintains a database of keywords that are blocked on Weibo (敏感词库 *mingan ciku*) and publishes censorship instructions (“Directives from the Ministry of Truth”), which are issued to the media by government authorities and (anonymously) leaked online. The latter website, Free Weibo,⁸ which is ran anonymously, allows users uncensored searching of Weibo, meaning that you can use keywords that are blocked for searching on the official Weibo website. Moreover, Free Weibo makes available Weibo content that has been deleted on the official website as a result of censorship (ARD, 2013), which happens to up to 10% of all the messages (Roberts, 2018, p. 151).

1.12 Data Analysis

The collected data was used to develop comprehensive storylines of crisis-change and lawmaking processes. A storyline is a chronological narrative of the process that led to a certain outcome, in this case legal change (Blatter & Haverland, 2012, pp. 111–115). The *crisis-change storylines* start with a risk event, which is an accident or incident such as the discovery of a new virus or hospitalized infants (J. X. Kasperon et al., 2003). This storyline ends with change in law, if there is any such change at all, because as pointed out above, crisis does not necessarily lead to legal change. To identify legal change that could plausibly have been the result of a crisis, I consulted the legal databases mentioned above. Specifically, I looked for laws that were passed after the crisis that relate to the affected policy domains e.g., infectious diseases and dairy safety. The development of this type of storyline is based on the analytical framework for understanding crisis-change processes presented in chapter 2, which consists of amplifying and attenuating factors, i.e. forces that either encourage or discourage post-crisis legal change. The *lawmaking storylines* start with agenda setting, i.e. the process by which problems and solutions gain or lose

6 http://news.baidu.com/advanced_news.html

7 <https://index.baidu.com/>

8 <https://freeweibo.com/en/>

the attention of lawmakers (Birkland, 2011, pp. 168–173). This type of storyline ends with the passage of legislation or, alternatively, its disappearance from the agenda. This type of storylines is based on the in-depth overview of lawmaking in China provided in chapter 3.

The two types of storylines form the starting point for analyzing the role of crises in the *process* behind post-crisis legal change (see table 1-1). Specifically, I examine whether the crisis has initiated, accelerated, or delayed lawmaking processes. I do so based on a variety of observations, listed in table 1-1, including legislative plans of the National People's Congress and State Council, the date of draft laws, and deliberation records. I also analyze the conditions that led to post-crisis legal change, for which I use newspaper articles, social media activity, official legislative documents, and other types of evidence listed in table 1-1.

Next, the storylines were used to analyze the role of the crises in the *nature* of post-crisis legal change (see table 1-1). Specifically, I examined crisis-responsiveness, problem-solving potential as well as the significance of post-crisis law in terms of substance, degree of change, and learning.

In the context of the present study, *crisis-responsiveness* indicates whether post-crisis law addresses the issues exposed by a crisis. The aim is to examine how it aligns with issues that were exposed by the crisis. To illustrate, the changes proposed by the NPC Legal Committee in the draft Food Safety Law after the milk powder crisis in October 2008 included a ban on exempting products from inspection. This topic is closely related to the crisis because Sanlu infant powder was in fact exempted from government food safety inspection. This element of the 2009 Food Safety Law thus scores positive on crisis-responsiveness. To contrast, the Raw Milk Production and Purchasing Rules that were initiated and accelerated by the melamine milk powder crisis contained a section on the transportation of raw milk. Although this is of course important from a food safety perspective, it does not correspond with issues central to the melamine crisis and therefore scores negative on crisis-responsiveness.

Problem-solving potential indicates whether post-crisis law has the potential to mitigate the problems revealed by the crisis. An example of post-crisis legal change that scores positively on problem-solving potential is the aforementioned ban on exempting products from quality inspection, because this meant that dairy products were again subject to testing, thus decreasing the risk of food fraud. An example of post-crisis legal change that scores negatively on problem-solving potential are the government subsidies for the treatment of dead livestock stipulated in the Livestock Pollution Regulations that were passed after the Huangpu River dead pigs crisis. However, not only is there a lack of specification, but such a subsidy already existed at the time of the crisis. The Regulations thus do not change anything in this respect, especially because there are no sanctions in case local governments fail to provide the subsidy. Finally, I assess the significance of post-crisis law based on its substance, degree of change, and the extent to which learning has taken place, which is discussed more in depth in chapter 4. The degree of change is assessed through qualitative analysis of key elements of laws (e.g., regulator and sanctions) and quantitative analysis of textual change and the evolution of laws over time.

To ensure internal validity, empirical evidence to answer each question consists of multiple observations (Blatter & Haverland, 2012, pp. 109–119). To illustrate, the 2009 Food Safety Law was passed five months after the aforementioned milk powder crisis. Despite the temporal proximity between the crisis and the passage of this law, it is not sufficient evidence for crisis-

induced legal change, because a lawmaking process may start before the onset of a crisis, which was in fact the case for the Food Safety Law. Therefore, triangulation in the sense of multiple data sources is necessary, such as legislative plans and the date of the first deliberation by the National People's Congress.

Moreover, the case studies use counterfactuals, which are well-documented, theory-based thought experiments in which the researcher asks what would have happened if a certain condition would not have been present. Counterfactuals are a common method in social science to get a better understanding of causal processes in society and politics (Blatter & Haverland, 2012; Emmenegger, 2011; Levy, 2008). To illustrate the use of counterfactuals in this study, imagine that one of the driving forces for post-crisis legal change is the availability of a feasible solution, for example a draft law. Questions asked in the subsequent counterfactual are: What if such a draft law would not have been available at the time the crisis broke? How likely is it that a law would have been passed after the crisis?

Three criteria have been used to ensure the validity of counterfactuals (Blatter & Haverland, 2012; Emmenegger, 2011; Levy, 2008). The first criterion is *clarity*, which means that the case studies must clearly state both the causal condition (e.g., availability of a feasible solution) that is being substituted and the substitute causal condition (e.g., no feasible solution). The same applies to the consequence of the counterfactual causal condition and the relationship between them. Simply arguing that the outcome would have been different without specification is not helpful. An example of clear counterfactual reasoning would be the question what would have happened in terms of legal change if the melamine milk powder crisis would not have coincided with the 2008 Beijing Olympics. The second criterion is the *plausibility* of the counterfactual causal condition and its consequence. The counterfactual causal condition, i.e. antecedent of an outcome, should be logically consistent and should not imply a completely different historical context. For example, counterfactual reasoning in the milk powder case study could be the proposition that if Sanlu had taken seriously the early complaints of parents about their babies urine after drinking the company's milk powder, the milk powder crisis would not have happened. On the contrary, a counterfactual that considers what would have happened after a specific crisis if China was not led by the Communist Party is such a big departure from reality that it becomes highly hypothetical and thus less plausible. Moreover, such a counterfactual would change many of the other causal conditions, such as the role of the media and citizen mobilization. The third criterion is *theoretical consistency*, which means that counterfactuals must as much as possible be supported by existing theories, for example by theories about legislative speed and legislative processes. To illustrate, if history and practice show that the legislature meets every second month and in the days prior to a crisis the legislature has already met, it is not theoretically consistent to argue that a law could have been passed sooner than approximately two months after the crisis.

1.13 Research Limitations

The choices made regarding research design, data collection, and data analysis have important implications for the final product, including limited generalizability, underexposure of certain aspects of crisis-change and lawmaking processes, a focus on national level law rather than other types of policy change, and a focus on 'law in the books' rather than law in action.

First of all, while the case studies provide valuable insights into crisis and lawmaking in China, I am careful with extrapolating the findings to other policy areas and crises because of the small number of cases. Rather than explaining all instances of post-crisis legal change, the aims are to explain the three cases and from there generate ideas for new research avenues by comparing the cases to existing literature as introduced in chapters 2, 3, and 4.

Secondly, although the case studies present rich data that is unique to the fields of crisis and policy processes in China, because data collection is based on digital online research, some aspects of crises and lawmaking are underexposed. Examples are the role of policy entrepreneurs—individuals who invest time and other resources to push their preferred policy solution through the policy process (Kingdon, 2014)—and the presence of advocacy coalitions—individuals and groups who work together based on shared values (Sabatier, 1988). Given China's lack of transparency in policymaking processes, written evidence of policy entrepreneurs and advocacy coalitions is limited. Follow up studies based on interviews are needed to better understand these aspects.

Thirdly, the thesis covers only one aspect of post-crisis change namely *legal* change and only at the national level. However, it is plausible that crises trigger other types of policy change. To illustrate, the melamine milk powder crisis led to a lowered protein standard for raw milk. However, in the Chinese legal system, such food safety standards are policy rather than law, and therefore this has not been included in the case study, despite their relevance to the crisis and importance at the operational level. Likewise, it is conceivable that the crises have triggered change in subnational legislation and policy. Additional research is thus needed to examine other types and levels of policy change.

Along the same line, it is possible that there are spillover effects, meaning that a crisis in one policy domain triggers or accelerates legal change in a different policy domain. This happened, for example after SARS, which accelerated the making of the Government Information Openness Regulations (Yijun Wang, 2007). One way to examine spillover effects in a systematic way would be to search for references to a specific crisis in the legislative histories of all laws. However, although the NPC does publish various legal documents online, it does not publish public records of NPC deliberations in a systematic way, which makes such an endeavor complicated. Therefore, there are limitations to identifying spillover effects. Although I attempt to include any national level change, if less visible legal change occurs in a policy domain that is less obviously related to the crisis, there is a chance that it is not included in the case studies.

Fourthly, related to the previous point, the thesis solely focuses on change on paper rather than the implementation of law. It is possible that crises trigger change in the implementation of law, for example by way of enforcement campaigns focused on implementing existing laws. Given the many problems regarding the implementation of laws in China, this certainly deserves scholarly attention. That being said, equally important—and less understood—is 'law in the books' because without laws, there would not be any implementation. Laws are thus an important starting point for change on the ground.

Finally, rather than using multiple theories in parallel (Cairney, 2013; Hansén, 2007; Van der Heijden, 2012), this thesis synthesizes the most relevant theories into one analytical framework, which is presented in chapter 2 and includes the multiple streams framework, the punctuated equilibrium theory, focusing events theory, and the advocacy coalition framework. The reason for

this integrated approach is the lack of available data and relevant literature. For example, central to the multiple streams framework is the policy entrepreneur, but examining this aspect requires extensive interviewing, which is outside the scope of this thesis. Evidence of the difficulties of applying existing theories to China is the small number of such studies (Birkland & Warnement, 2014; M. D. Jones et al., 2016; Kuhlmann & van der Heijden, 2018; Pierce, Peterson, Jones, Garrard, & Vu, 2017). Consequently, the thesis has an explorative nature, laying the foundation for empirical testing of existing theories in future research.

1.14 Structure of the Thesis

This thesis consists of two parts: theory and empirical research. The first part introduces existing theories on crisis-change processes, lawmaking in China, and the nature of post-crisis legal change, while the second part presents the empirical case studies.

The three theory chapters of part one lay the foundation for the case studies. Chapter 2 draws upon the policy processes and crisis politics literature to develop a framework for analyzing crisis-change processes. This framework is subsequently adjusted to the Chinese political context, taking into account state control of news media and the internet, limited pluralization in policymaking, and responsive authoritarianism, i.e. the selective response of policymakers to perceived widespread opposition. Chapter 3 provides an in-depth, up-to-date analysis of lawmaking processes in China. It examines the role and power of state actors and non-state actors involved in the different lawmaking stages. The focus is on national level legislation, which includes laws (法律 *falü*), administrative regulations (行政法规 *xingzheng fagui*), and departmental rules (部门规章 *bumen guizhang*). Chapter 4 draws upon the literature on policy change and learning to develop a method to identify, measure, and assess post-crisis legal change in a systematic and meaningful way, taking into account the specifics of the Chinese legal system. Specifically, the chapter focuses on the significance of post-crisis legal change in terms substance, degree of change, and learning.

The three empirical chapters of part two examine post-crisis legal change after the three public health crises introduced above. Chapter 5 looks into legal change after the melamine milk powder crisis, chapter 6 focuses on such change after the Huangpu River dead pigs crisis, and chapter 7 examines legal change after the emergence of avian influenza A(H7N9). Each chapter starts with a chronological narrative of the crisis-change process. This is followed by a chronological narrative of relevant lawmaking processes and an analysis of the nature of post-crisis legal change. Each of these three chapters ends with a discussion section in which I link the case studies to existing literature and examine theoretical implications.

In the conclusion, chapter 8, I summarize the empirical findings and contributions in terms of theory and methodology. The chapter also puts forward new avenues for future research. Finally, the chapter looks ahead and proposes policy recommendations for managing and learning from crises in China.

Part I

Theory

2 From Crisis to Law in China

2.1 Introduction

In the heat and aftermath of crises there are often voices demanding change, because “something must be done” so that “this will never happen again.” This is exactly what China’s premier Wen Jiabao called for in 2008, when news broke that several babies in China had died and thousands of infants had fallen ill after being fed infant formula that contained the chemical melamine, which was illegally added to milk in order to fool protein tests. The substance can lead to kidney damage if ingested (Hau et al., 2009). Wen Jiabao responded on state television:

What we are doing now is ensuring that this kind of thing will not happen again. And we are not only talking about dairy products, no such thing should happen again with any food. Let the people be able to eat without worrying. (CCTV, 2008b)

Despite these strong words, reality and literature both show that change after crisis, including legal change, is not at all self-evident, but depends on a complex web of factors (Birkland, 1997, 1998, 2006; Birkland & Lawrence, 2009; Boin & ‘t Hart, 2003; Boin et al., 2009, 2017, 2008; Hansén, 2007; J. X. Kaspersen et al., 2003; Kingdon, 1984; Nohrstedt, 2010).

Existing literature provides guidance in understanding the processes and driving forces of post-crisis policy change, however, it is largely based on western, democratic countries. Crises such as the Three Mile Island nuclear power plant partial meltdown in Pennsylvania in 1979, the Exxon Valdez oil spill in Alaska in 1989, the mad cow disease outbreak in the 1990s, the September 11 attacks in 2001, and Hurricane Katrina in 2005, have been studied in depth, but cases from other parts of the world are scarce and insignificant in theory building.

Therefore, building on this literature, the present chapter develops a framework for understanding crisis-change processes, but adapts this framework to the Chinese context, taking into account the country’s key political features including authoritarianism, state control over mass media, and restricted space for mobilization. Given that law is a policy tool and because legal change is a subset of policy change, the chapter takes the policy literature as a starting point but includes a section on lawmaking.

The chapter consists of three parts. It first reviews existing theories of policy change. It then develops a framework to analyze the process and driving forces of post-crisis legal change. The final part adjusts this analytical framework to China’s political reality.

2.2 Gradual Policy Change

Policy change is often studied through the policy cycle framework, which is a simplification that essentially presents policymaking as a comprehensive process consisting of discrete successive stages, including agenda setting, formulation of policy response, decision-making, implementation, and evaluation (Howlett, Ramesh, & Perl, 2009; Jann & Wegrich, 2007). The strength of this framework is that it facilitates the understanding of policymaking by breaking the process down into smaller pieces—including the role of actors, ideas, and institutions—that can be examined

separately. Moreover, it can be used at all levels of government, from local to international, which aids comparative research (Howlett et al., 2009; Jann & Wegrich, 2007).

Despite its growing popularity in public policy research, the framework has several weaknesses. These are often acknowledged by its proponents. The most relevant critique in the context of this thesis is that, in reality, policymaking does not follow a particular sequence of stages. Moreover, the framework excludes the role of politics and gives the impression that policymaking is a comprehensive, rational, linear process (Howard, 2005; Jann & Wegrich, 2007; Kingdon, 2014, pp. 77–79; Stone, 2012, pp. 9–13).

Such a full scale rational-comprehensive approach is not feasible when dealing with complex social problems due to bounded rationality, which means that even though we intend to make rational decisions, we simply cannot always reach a high degree of rationality (Simon, 1957). The reason for this is that we do not have access to all the information required to make a fully rational decision and even if we would, human beings cannot properly process all of it in a rational way (B. D. Jones, 1999; Lindblom, 1959, 1979; Simon, 1997). Time is too short to analyze the huge amounts of available data and compare this with policy goals and values, in part because often there is no consensus about the latter two. Moreover, public administrators are restricted by what is politically and legally possible (Lindblom, 1959, 1979). In addition, there is a gap between the world of research and the world of decision-making (Bogenschneider & Corbett, 2011, pp. 1–3).

As a result, policy analysis and subsequent decision-making is typically based on successive limited comparisons, meaning that instead of starting with a ‘clean slate’, policymakers reason from the existing situation and only take small steps away from the status quo (Lindblom, 1959). This is not only due to bounded rationality, but also because politicians inherit policy commitments made by all of their predecessors, which limits their space for policymaking (Rose, 1990). In addition, politicians in general do not like to take big steps out of fear for unanticipated consequences as well as societal or political resistance (Kingdon, 2014).

2.3 Shocks in Policymaking

Because gradualism does not capture the many instances of non-incremental agenda change, Kingdon (1984) developed the multiple streams framework in the 1980s. This framework was developed based on case studies from the United States about policy change in health care, transportation, federal budgeting, and taxes. Although Kingdon mostly focused on agenda setting, he has also applied the framework to the development of bills and legislation (Kingdon, 2014). The framework was inspired by the garbage can model of organization choice. This model, put forward by Cohen, March, and Olsen (1972), argues that organizational decision-making is like a garbage can in which problems and solutions are dumped by a variety of people, with the mix determining the outcomes of decisions.

The multiple streams framework holds that policymaking is the product of the collision of three independent streams, namely policies, problems, and politics. In the policy stream, proposals for policy change are constantly being developed, often in an incremental manner, and float around the policy space, waiting for an open policy window, which is, “an opportunity for advocates of proposals to push their pet solutions, or to push attention to their special problems” (Kingdon, 2014, p. 165). Windows of opportunity can be opened either by a shift in the political context

e.g., resulting from elections, or by the emergence of a pressing problem such as a food safety crisis. When such a pressing societal problem appears, it draws attention to particular issues and generates demands for action.

Normally, the policy window is barricaded by a number of constraints such as existing rent seeking interest groups (Olson, 1982), decision-making procedures (Tsebelis, 1995), stalemates between advocacy coalitions (Weible & Sabatier, 2006), and policy paradigms, which is the set of prevailing normative and cognitive ideas and standards that determine problem definition, policy goals, and the selection of policy instruments (Hall, 1993).

On the infrequent occasion that a crisis opens a policy window, there is a limited period of time during which a policy entrepreneur can overcome constraints to policymaking by swiftly bringing the three streams together. Policy entrepreneurs are individuals “who are willing to invest their resources in pushing their pet proposals or problems” and “are responsible not only for prompting important people to pay attention, but also for coupling solutions to problems and for coupling both problems and solutions to politics” (Kingdon, 2014, p. 20).

The outcome of this process is determined by the mix of garbage (i.e. problems, solutions, and politics) in the can and how it is processed. While an open policy window typically results in sudden agenda change, the actual outcome in terms of policy or law is not necessarily equally big. Because policy alternatives are often developed in a gradual fashion (Lindblom, 1959), the enactment of laws may only be a small step away from the status quo.

Nevertheless, like agenda setting, policymaking is not always a gradual process. This has been captured in the punctuated equilibrium theory, which holds that long periods of relative policy stability alternate with abrupt policy change (Baumgartner & Jones, 1993). Non-incremental change, referred to as punctuations, is especially likely to occur if institutional structures for policymaking resist change. Such resistance is termed friction (Baumgartner, Berry, Hojnacki, Kimball, & Leech, 2009, pp. 29–45; Baumgartner & Jones, 2009; B. D. Jones & Baumgartner, 2005, 2012; B. D. Jones, Sulkin, & Larsen, 2003). The punctuated equilibrium theory argues that, much like earthquakes, the more the built up friction, the larger the subsequent force of sudden movement, that is, policy change.

2.4 A Framework for Understanding Crisis-Change Processes

The policy literature provides a number of perspectives that help explain why crises do or do not lead to policy change. In addition to the abovementioned multiple streams framework and punctuated equilibrium theory, this includes the advocacy coalition framework (Sabatier, 1988), Boin et al.’s (2009) crisis exploitation theory, and Birkland’s (2006) framework for event-related policy change.

This thesis takes Birkland’s (2006) focusing event theory as point of departure because it incorporates aspects of all of the above perspectives. Such a broad approach fits well with the exploratory nature of this study and the lack of studies on post-crisis policy processes in China. Moreover, China’s political context combined with limited data availability makes it difficult to draw conclusions regarding some aspects of these perspectives and therefore multiple ‘puzzle pieces’ are required.

Central to Birkland's work is Kingdon's streams metaphor of the policy process. As discussed above, Kingdon argued that the policymaking is a random process in which policies are typically already developed but can only be effectively promoted when a (dormant) problem emerges or when the political context changes. Thus, politics, policies, and problems are three streams that are running parallel "until something happens to cause the streams to meet in a 'window of opportunity'" (Birkland, 1997, p. 6; Kingdon, 2014).

Birkland also draws upon Sabatier's advocacy coalition framework, which explains policy change by examining the interaction between different groups within a policy subdomain (Jenkins-Smith, Nohrstedt, Weible, & Ingold, 2017; Sabatier, 1988; Weible & Sabatier, 2006). Within policy domains (e.g., air pollution or food safety), individuals and groups, both public and private, with overlapping values, unite in advocacy coalitions. At the core of this framework are belief systems, which are sets of ideas about how society should function, which problems are urgent, and what solutions are appropriate. While values pertaining to the specifics of a policy, such as administrative rules or budgetary allocations are moderately easy to change, fluctuations in fundamental ideas such as the distribution of welfare in society typically depend on external factors, including crises. In response to a crisis, existing advocacy coalitions change because new and existing participants such as NGOs, experts, and politicians mobilize resources to influence policymaking (Birkland, 1997, 1998, Nohrstedt, 2007, 2010).

While the point of departure is Birkland's (1997, 2006) work on event-related policy change, this chapter also borrows from the social amplification of risk framework (SARF) (J. X. Kasperson et al., 2003; R. E. Kasperson et al., 1988). SARF has been applied to societal issues such as the mad cow disease, nuclear energy, and environmental accidents to understand how risks and events can snowball into an issue of societal and political concern and eventually lead to secondary effects including legal change. At its core is the amplification (i.e. intensification) or attenuation (i.e. weakening) of risk.

Amplification or attenuation happens when actors such as individuals, social groups, scientists, politicians, reporters, and mass media produce, receive, interpret, and share news about a risk or an event. By doing so, actors increase or decrease the volume of information about an event and heighten or weaken its salience. In this process, individual receivers and senders of news about the event first filter, decode, and process the information before transmitting it to others. Each time the news is passed on it is shaped by the individual's perception of the event. How a person perceives a risk event is complex and depends on a range of factors, including memories of similar events, trust, blame, as well as personal priorities and value systems (J. X. Kasperson et al., 2003; R. E. Kasperson et al., 1988).

2.4.1 Three Interacting Processes

Loosely based on the aforementioned policy cycle model (Howlett et al., 2009), this thesis focuses on three interacting and interdependent processes: agenda setting, institutional response, and legal change. Recognizing that policymaking is not necessarily a neatly organized, linear process, these processes may run parallel or sequential.

Because the process of post-crisis legal change is highly complex, developing a deterministic model that includes all possible pathways and conditions would be an impossible endeavor

(Birkland, 1997, p. 143). Therefore, the framework is limited to factors that are observable or measurable in the particular context of the selected crises using process-causal tracing and qualitative text analysis. Largely drawing upon Birkland's work on event-related policy change and SARF, the following sections describe the process from crisis to legal change and introduce driving forces of amplification and attenuation.

2.4.2 Agenda Setting: News and Social Media

The process from crisis to legal change starts with a risk event, which refers to “occurrences that are manifestations of the risk and that initiate signals pertaining to the risk” (R. E. Kasperson et al., 1988, p. 178) such as transportation accidents, nuclear plant meltdowns, and terrorist attacks. The event itself does not have to be new. For example, new reports about the usage of an illegal additive in food can spark a crisis if it provides a new angle or new information about an existing but dormant problem (R. E. Kasperson et al., 1988; Pidgeon et al., 2003).

Not all risk events become crises, because news about the event (i.e. risk signals) must first be disseminated beyond those directly involved, or else the event remains a private misfortune rather than becoming a public disaster (Alaszewski & Brown, 2012, p. 118). News can be shared through different channels, including direct conversations, text messaging, telephone calls, email, but especially effective are news media (Alaszewski & Brown, 2012, pp. 210–233; R. E. Kasperson et al., 1988) and social media (Wirz et al., 2018; E. X. Zhang et al., 2015; Lun Zhang, Xu, & Zhang, 2017). A risk event has reached the news and social media agenda if it generates an attention spike, which can be measured by the volume of coverage that an event receives.

However, news media cannot report all risk events, but instead select certain stories, a process that is heavily influenced by the event's impact, unexpectedness, and superlativeness (Bednarek & Caple, 2017; Birkland, 1997, pp. 31–32). As a result, some risk events are picked up (i.e. amplified), while others are not (i.e. attenuated).

Impact refers to the effect or consequences of a risk event (Bednarek & Caple, 2017). Risk events are more likely to be featured by news media if they involve major impacts such as death, injuries, and property damage (Birkland, 1997; Singer & Endreny, 1993). This is especially true if damage is visible and tangible, because this influences the availability of vivid symbols and images, which are important because they “condense complex ideas into easily understood, easily transmitted ideas” (Birkland, 1997, p. 12; Moeller, 1999). Symbols are amongst the most powerful ways for amplification and attenuation (Coleman, 2009; R. E. Kasperson et al., 1988, p. 181). Especially influential are simple, graphic, familiar, and visual symbols such as photographs and television images. However, the most visible or most tangible harm is not necessarily the most serious (Birkland, 1997; Eldridge & Reilly, 2003; Moeller, 1999). For instance, in case of oil spills, pictures of cute, photogenic animals abound and the volume of spilled oil is often mentioned in news media, but the biggest impact may not be on wildlife and the adverse impact of an oil spill does not only depend on its volume; it also depends on location, ecology, and weather circumstances, amongst other things. Nevertheless, these pictures and numbers visualize harm and are therefore powerful (Anderson, 2002; Birkland, 1997). Alternative ways to make a story newsworthy are using personal stories, catchy phrases, afflicted celebrities, or a scapegoat (Alaszewski & Brown, 2012, pp. 221–222).

Unexpectedness here refers to events that are “atypical, unusual, rare, different, that is, out of the ordinary in some way because they conflict with what audiences have come to expect based on their experience of the world” (Bednarek & Caple, 2017, p. 66). This aspect of newsworthiness is also referred to as the rarity or novelty of an event (Birkland, 1997, pp. 31–32; Moeller, 1999). Generally speaking, new events are more likely to attract media attention and are more likely to result in longer news articles and more prominent coverage (Birkland, 1997; Singer & Endreny, 1993). However, the event does not have to be entirely new or unprecedented. For example, the threat of the September 11 attacks was not entirely new, but because four planes were hijacked in one day and almost three thousand people were killed, it was unprecedented and carried a very high shock factor (Birkland, 2006).

Superlativeness refers to the intensity or scope of a risk event relative to previous events, which can be based on many different aspects, including the geographical area affected, the number of people involved, and economic damage (Bednarek & Caple, 2017). Generally speaking, the more people affected by the event, the larger the drama, the more newsworthy a risk event is (Birkland, 1997, pp. 31–32; Singer & Endreny, 1993). Moreover, events that have multiple victims at once are more likely to be amplified than isolated cases. To illustrate, news media invariably report on plane crashes, but are less likely to report on individual car accidents, unless presented in aggregation, for example a new report about the total number of traffic fatalities in a year (Kingdon, 2014; Singer & Endreny, 1993).

To construct the scope of an event as superlative, journalists use media templates, which are key events that “have an ongoing shelf life which extends beyond the conclusion of news happenings” (Kitzinger, 2000, p. 76). These templates are used “to explain current events, as a point of comparison and, often, as proof of an ongoing problem” (Kitzinger, 2000, p. 76). News media will often use phrases such as “the largest earthquake since the founding of the People’s Republic of China” and “the deadliest outbreak since Ebola first emerged in central Africa in 1976.” This makes the story more interesting and comprehensible, because it builds on pre-existing familiarity with the issue (Alaszewski & Brown, 2012, pp. 221–222).

However, with the arrival of smart devices and the expansion of Internet access, news media no longer have a monopoly over news production. Nowadays, anyone can be a news producer and provide live updates through text, photos, and videos. This is especially true for crises, which are often first reported on social media platforms by victims or witnesses rather than by news media. In addition to news production by citizens, social media also facilitates interaction between news media and audience. As a result, social media shape the media agenda as well as the interpretation and meaning of risk events (Belair-Gagnon, 2015; Stern, 2017).-

In the event of a crisis, news media tend to follow a fixed reporting pattern. Initially, if circumstances allow, news media flock to the location where the event happened and focus in their reporting on basic features such as the number of casualties, injuries, and economic damage. This is typically accompanied with dramatic visual material. Once all news media outlets have picked up the risk event, attention shifts to explaining its cause (Birkland, 1997, p. 2). In what some describe as “media frenzy,” news outlets compete with each other in a search for the individuals or leaders responsible for the event, who are subsequently pressured to respond immediately (Alaszewski & Brown, 2012, pp. 230–231; Lodge & Hood, 2002).

Crisis reporting typically reaches its peak within weeks after the event emerges (Birkland, 1997, p. 30). The reason for this is that people have a limited “issue-attention cycle,” meaning that regardless of whether an issue has been resolved, attention to the problem fades and news media start reporting on other issues (Downs, 1972). However, some events permanently increase coverage of an issue compared to coverage of an issue prior to the event. This happened, for example, with the issue of terrorism following the September 11 attacks (Birkland, 2011, pp. 181–183).

A risk event is newsworthy only so long as something is happening, such as press conferences, policy announcements, new victims, new data or new scientific evidence (Eldridge & Reilly, 2003). Conversely, a lack of information creates a vacuum that triggers news and social media to focus on cover-ups, government inaction, secrecy, and conspiracy (Boin et al., 2017, 2008; Eldridge & Reilly, 2003; D. Miller & Reilly, 1995). This is especially true if there is a lack of trust towards responsible individuals and organizations, because low confidence intensifies public reactions (J. X. Kaspersen et al., 2003, pp. 31–33).

2.4.3 Institutional Response

Whether a risk event reaches the institutional agenda, i.e. “scheduled for active and serious consideration by a particular institutional decision-making body” (R. W. Cobb & Elder, 1971, p. 906), depends on a number of factors, including news coverage, framing, mobilization of pro-change forces, and the nature of the event (Birkland, 1997, pp. 33–35).

As a crisis develops, administrators and politicians are dragged into the event not only because pressure from the general public and media forces them to respond, but also due to *media coverage* (Birkland, 1997, p. 33). It must be noted, however, that existing research is inconclusive regarding the media’s exact role in institutional agenda setting (Walgrave, Soroka, & Nuytemans, 2007). While Baumgartner and Jones (2009, p. 49) found that media coverage does correspond to official concerns, Kingdon (2014) argues that mass media has a very limited direct effect on the government agenda. These different findings point towards varying media effects, depending on the type of media outlet, type of institutional agenda, policy domain, and political system (Walgrave et al., 2007).

The influence of media coverage on public perception and subsequently on political agendas can be explained by heuristics, which are cognitive biases that lead to intuitive thinking rather than objective risk assessment. Especially relevant in the current context is the so-called availability heuristic, which means that events that can be more easily brought to mind or imagined are judged to be more likely to happen than events that cannot easily be imagined. The ease with which issues are retrieved from memory is in turn strongly influenced by the extent of media coverage. The implication of this is that certain issues are disproportionately amplified, while other, perhaps more serious risks are ignored. To illustrate, the number of traffic deaths is much higher than the number of casualties due to terrorism. However, the steady stream of reports about and shocking images of terrorism makes it difficult not to be concerned about terrorism, while people generally do not think twice about driving to work by car (Kahneman, 2011, pp. 7–8, 144).

The availability heuristic can generate a so-called availability cascade, which is a self-reinforcing process in which a certain belief gains credibility because it is widely discussed in media and shared amongst people (Kuran & Sunstein, 2007). These beliefs may or may not be true and can

have adverse societal outcomes. An example is the Brent Spar oil storage buoy in the North Sea, which was scheduled to be disposed in deep waters after the storage facility was no longer in use. Environmental experts and the UK government agreed that this was the most environmentally friendly solution. However, Greenpeace led a very aggressive campaign that resulted in the decision to not dispose of the facility at sea but to bring it to land for dismantling. After this mission had been completed, it soon turned out that Greenpeace's claims were inaccurate, for which the NGO later apologized (Hansen, 1999).

However, news coverage is not a necessary condition for institutional agenda setting. Sometimes a risk event is so large that it simply cannot be ignored by government officials and politicians, as is the case, for instance, in a devastating earthquake or infrastructure disruption (Kingdon, 2014, p. 96).

In addition to media coverage, the institutional agenda is furthermore influenced by the *framing* of an event, which is a process that starts as soon as the first reports about an event emerge. Framing means to “select some aspects of a perceived reality and make them more salient in a communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation for the item described” (Entman, 1993, p. 52). There may be many ways to frame an event, both negative and positive, but only one or a few become dominant. Within such framing contests, Boin et al. (2009) have identified three postures prevalent in post-crisis situations: denial, defense, and attack. In case of denial, the event is framed as an “unfortunate incident” or “an act of God” and the need for change is downplayed. If the attitude is one of defense, blame will be diffused and current policies, organizational practices, and existing leadership will be defended. Finally, a crisis can also be framed as an opportunity for change by attacking individuals, organizations, or existing policies and blaming these for the crisis. Such a negative tone not only makes institutional agenda setting more likely (Birkland, 1997, p. 35), but also breaks down existing power structures and policy monopolies (Baumgartner & Jones, 2009, pp. 83–102). Policy monopolies determine what the problem and appropriate policy solutions are and shape participation in the decision-making process (Baumgartner & Jones, 2009, pp. 83–102). Framing crisis as opportunity for change may include a risk-regulation reflex, meaning a tendency to advocate for more rules and laws in an attempt to continuously reduce risks in society (De Ridder & Reinders, 2014). In promoting their explanation of a crisis, certain actors will follow predictable patterns. For example, if a crisis results from policy failure, or is portrayed as such, the responsible minister is likely to issue a public statement that acknowledges the unacceptability of harm, commits to punishing those directly responsible, announces an investigation, and vows to rectify the system (Alaszewski & Brown, 2012, pp. 226–232).

The *mobilization of pro-change forces* is a third major driving force of the institutional agenda (Birkland, 2006). Mobilization means that actors such as grassroots activists, local residents, non-governmental organizations, regional and national media, government organizations, bureaucrats, politicians, and technical experts “take action—lobbying, protest, or any other form of expression—in response to an issue or problem” (Birkland, 2011, p. 133). Literature distinguishes three sources of mobilization: actors outside government structures (the outside-initiative model), institutions or political leaders (the mobilization model), and actors inside the government or actors with access

to decision-makers, for example a government department (the inside-access model) (R. Cobb, Ross, & Ross, 1976; Knill & Tosun, 2012). Change-oriented actors will criticize existing policies, promote their preferred solutions, and attempt to mobilize people for their cause. In the process, individuals and groups that share ideas regarding the crisis' cause, solutions, and responsibilities, will seek allies and coalesce into advocacy coalitions (Sabatier, 1988; Stone, 2012). Pro-status quo advocates are likely to try to contain and downplay the issue or their role in it, and oppose negative framing (Birkland, 1997, 2006). By doing so, they defend the policy monopoly and try prevent it from breaking down (Baumgartner & Jones, 2009, pp. 83–102).

A final major driving force is the *nature of the crisis*, which can be measured quantitatively through indicators such as the number of victims or assessed qualitatively by examining the seriousness of the event (Baumgartner & Jones, 2009; Birkland, 1997). However, Birkland (1997, p. 149) found that “the sheer scope of an event is not a determinant of the post-event institutional agenda.” That a large number of people are in some way affected by the event is not a sufficient reason to gain political attention. Rather, it is the damage or seriousness of the consequences of an event that seem to play a role as well as whether there is consensus about the seriousness of the event (Birkland, 1997, p. 150).

2.4.4 Legal Change

Whereas news media, social media, and the general public focus on an issue only for a short period of time, governments and legislatures typically act over longer periods of time and in a much slower manner (Birkland, 2011, p. 183). Therefore, it can easily take months before an issue reaches the legislative agenda and leads to legislative change, if any at all.

According to Kingdon's (2014) streams metaphor, the likelihood of policy change, including legal change, depends on four key factors: problem salience, the availability of a feasible solution, the political climate, and the availability of a successful policy entrepreneur.

Problem salience refers to the importance of an issue to the public and policymakers (Birkland, 2006). A crisis by itself is seldom sufficient to trigger policy change, but needs accompaniment, which can happen in a number of ways (Kingdon, 2014, pp. 98–100). First of all, the prominence of a problem grows if it can be linked to preexisting concerns or issues. An indicator of such preexisting concerns is the volume of media and scholarly attention in the period prior to the crisis. Secondly, salience also increases if a risk event turns out to be only the tip of the iceberg, i.e. if the crisis is an indication of widespread problems. This was the case, for example, in China's 2008 melamine crisis, which started with the discovery of melamine in infant formula, but was followed by melamine in a wide range of products in many different countries across the world. Thirdly, a crisis becomes more important if it is linked to similar crises.

Legal change furthermore depends on the availability of a *feasible solution*. However, solutions do not have to be entirely new. In fact, solutions are often already floating around, waiting for a problem and for the right political context (Kingdon, 2014). From this follows that problems are not necessarily new either, otherwise solutions would not have been developed yet. In the case of the September 11 attacks, for example, solutions had been developed in response to existing shortcomings in airline security, including the idea for a Department of Homeland Security, which was established after and in response to the attacks (Birkland, 2006, pp. 166–168). A solution is

feasible if it is technically possible, matches values of policy specialists (e.g., concerns over equity and efficiency), is tolerable in terms of economic costs, supported by the public, and stands a reasonable chance of receptivity among elected decision-makers (Kingdon, 2014, pp. 131–144). The availability of a policy solution closely relates to how an event is framed and the tone toward existing law. If a crisis can be or is blamed on someone or something, there is space for proposing change. Conversely, if a crisis is framed as an unfortunate event, there will be a tendency to deny the need for policy change (Birkland, 1997, p. 15; Boin et al., 2009).

Whether the *political climate* is conducive to change depends on the national mood, events in the government, organized political forces, and the extent of polarization (Kingdon, 2014, pp. 145–164). The national mood refers to a shared way of thinking about society by the general public as perceived by politicians and bureaucrats, for example a conservative, optimistic, or green mood. Although the national mood is a very general observation, politicians additionally typically assess the public opinion through surveys, commentaries in the news, meetings, social media as well as letters and complaints from their constituents. Events within government that influence policy change are the selection of personnel, changes in the priorities of bureaucrats at key positions, and official mandates of administrative agencies and administrative committees. Organized political forces consist of individuals from various organizations who share a common cause and act jointly. Such coalitions can include a diverse range of actors such as academics, experts, journalists, grassroots organizations, citizens, government officials, members of parliament, other countries, consulting firms, industry, and industry associations (Sabatier, 1988, p. 139). However, the existence of more than one advocacy coalition can be an obstacle to legal change if there is strong polarization between the beliefs of the groups. Even in the event of a crisis, strongly polarized coalitions are unlikely to adjust their core beliefs. On the contrary, each coalition will exert itself to defend its own beliefs. Therefore, there will be little room for compromise, which is a prerequisite for reaching a legislative solution. Conversely, if polarization is limited, one group can use a crisis to promote its own problem definition and solutions (Birkland, 1997, pp. 36–41).

Once a policy window opens and there is a problem, solution, and a favorable political climate, it takes a *successful policy entrepreneur* to combine the three streams. The policy entrepreneur is “central in moving a subject up on the agenda and into position for enactment.” To be successful, the entrepreneur must “have a claim to a hearing”, meaning that the person has expertise, the ability to speak for others (for example as a leader of an interest group), or hold an authoritative decision-making position such as chairing a parliamentary committee. In addition, the person must be well-connected in the political arena or have strong negotiating skills. Finally, the entrepreneur must be persistent (Kingdon, 2014, pp. 179–181).

Table 2-1. Post-Crisis Legal Change: Process and Driving Forces

Agenda setting: News and social media <i>Risk event (i.e. actual or hypothesized accident or incident) generates an attention spike</i>	
Driving forces	<ul style="list-style-type: none"> • Impact • Unexpectedness • Superlativeness (i.e. scope relative to previous events)
Institutional response <i>Crisis is on the list of issues that is being considered by government(s)</i>	
Driving forces	<ul style="list-style-type: none"> • Media coverage • Framing • Mobilization of pro-change forces • Nature of the crisis
Legal change <i>Enactment of law, regulations, or rules</i>	
Driving forces	<ul style="list-style-type: none"> • Problem salience <ul style="list-style-type: none"> • Reinforcement of pre-existing concerns • Symptom of a widespread problem • Linked to similar events • Availability of a feasible solution <ul style="list-style-type: none"> • Technical feasibility • Compatible with values of policy specialists • Acceptable cost • Anticipated public agreement • Reasonable chance of adoption by elected decision-makers • Favorable political climate <ul style="list-style-type: none"> • National mood • Organized political forces • Events within government • Limited polarization • Successful policy entrepreneur <ul style="list-style-type: none"> • Expert, ability to speak for others, authoritative position • Well-connected with strong negotiating skills • Persistent

Source: Author's summary of literature discussed in this chapter.

2.5 Adjusting the Framework to Understand Crisis-Change Processes in China

Because China's political context is very different from the western democracies on which existing policy and crisis literature is based, the framework for analyzing crisis-change processes presented in table 2-1 might not be directly applicable to China. As Birkland writes, the politics following large public events may be different in nondemocratic systems, because "citizens and policy advocates are not able to use the familiar democratic means to mobilize support for better policy" (Birkland & Warnement, 2014, pp. 39–40). Along similar lines, the architects of the SARF state: "...we urgently need to conduct basic investigations on the transferability of the existing findings... as well as the ways in which different cultural contexts uniquely shape risk communication and risk amplification effects" (J. X. Kaspersen et al., 2003, p. 44).

Therefore, the second part of this chapter adjusts the framework presented above to China's context. It does so by first introducing China's political system, focusing on authoritarianism and media censorship. The subsequent section discusses the implications of China's political context for the crisis-change framework, resulting in an updated version, which is presented in table 2-2.

2.5.1 China's Political Context

China is governed by an authoritarian regime, meaning a political system with limited political pluralism and "without extensive nor intensive political mobilization except at some points in their development and in which a leader or occasionally a small group exercises power within formally ill-defined limits, but actually quite predictable ones" (Linz, 2000, p. 159). While eight so-called democratic political parties (民主党派 *minzhu dangpai*) co-exist with the Communist Party, prominent members of these parties are also members of the Communist Party (J. Chen, 2008, p. 109). Moreover, these political parties generally only have an advisory function. Because the bulk of individuals in state level law making bodies are Party members, the Communist Party heavily controls law making processes and tightly controls state affairs.

Over the years, scholars have proposed more nuanced descriptions of China's form of authoritarianism, among which fragmented authoritarianism and responsive authoritarianism are most relevant in the context of post-crisis legal change. Because these concepts help identify major contextual differences between China and western, democratic systems, the following paragraphs briefly discuss these forms of authoritarianism. This is followed by an in-depth discussion of how China's political context affects the crisis-change process.

2.5.1.1 Fragmented Authoritarianism

According to the concept of fragmented authoritarianism, Communist Party leadership is very powerful, but it is not almighty, because "authority below the very peak of the Chinese political system is fragmented and disjointed" (Lieberthal, 1992, p. 8). The Chinese bureaucracy is often described as a *tiao-kuai* system (Lieberthal, 2003, pp. 186–188). *Tiao* refers to the vertical hierarchy of state administrations e.g., the ministry of environmental protection at the national level, with offices at the provincial, county, and township levels. *Kuai* refers to the horizontal or territorial administrations, for example the ministry of environmental protection, the ministry of agriculture, and the ministry of finance at the national level or the bureau of environmental

protection, the bureau of agriculture, and the bureau of finance at the provincial level. Within this system, each bureaucratic unit is responsible to both its superior on the vertical bureaucratic axis and the local government on the horizontal bureaucratic axis. For example, the provincial bureau of environmental protection has at least two overseers, namely the ministry of environmental protection and the provincial government.

Because power is fragmented, responsibilities are often shared amongst different bureaucratic units, which can easily create a vacuum in which none takes responsibility or simply passes problems on to other units. How fragmented authoritarianism can aggravate problems and worsen a crisis is exemplified by the 2003 outbreak of the severe acute respiratory syndrome (SARS). During this crisis, there was tension and miscommunication between “different levels of health authorities, coordination problems existed between functional departments and territorial governments, as well as between civilian and military institutions” (Y. Huang, 2004, p. 121). For example, SARS first occurred in military hospitals in Beijing, but the military did not report this to civilian authorities. Likewise, the city of Beijing, which had hundreds of SARS cases, hid information from the president and premier and argued it would deal with the problem independently from the health ministry and other relevant authorities (Pomfret, 2003b).

In addition to the ambiguous division of responsibilities and subsequent buck passing, another key feature of China’s fragmented authoritarianism is that policymaking involves extensive bargaining among a range of administrative bodies that each are equal in their level of authority. For example, the development of regulation on pollution from livestock farming requires consensus between the ministry of environmental protection and the ministry of agriculture. Bargaining aimed to reach such agreement is thus done between “units that effectively have mutual veto power” (Lieberthal, 1992, pp. 8–9). Bargaining processes are tiresome because each bureaucratic and political unit brings its own interests to the table. A major challenge here is departmentalism, i.e. the narrow focus of a work unit on its own goals or missions, unwillingness to develop legislation with other departments, and a lack of effective dispute resolution between departments (M. S. Tanner, 1994, p. 65). The outcome of this bargaining process between actors with sometimes significantly different agenda’s is a tendency towards slow, incremental change.

As will be discussed in chapter 3, extended bargaining in lawmaking can easily lead to a gridlock that prevents or delays the enactment of a law. In fact, the inability of units to solve a problem by jointly developing legislation may in itself lead to a crisis, because certain problems are left unregulated. Indecisiveness may furthermore aggravate a crisis, which happened in the case of SARS when the Ministry of Health was slow to respond because “we have to negotiate with other ministries and government departments before anything could be done” (Pomfret, 2003b).

Since it was first coined in the 1980’s, the term fragmented authoritarianism is often mentioned in literature about Chinese politics, but recently an updated version has been proposed, namely ‘fragmented authoritarianism 2.0,’ which argues that policymaking processes have become more pluralized. Mertha (2009), who introduced the new term, argues that China’s fragmented authoritarianism has been instrumental in this development, because a fragmented bureaucracy means that within decision-making processes there are many players available to which policy advocates can sell their pet proposals. Government officials, news media, non-governmental agencies, and individual activists increasingly use these channels to shape policymaking.

2.5.1.2 Responsive Authoritarianism

In China's authoritarian system, although political leaders are not accountable to citizens through open and direct elections, this does not mean that public opinion is completely disregarded. In fact, party and government officials closely monitor and sometimes accommodate popular demands, a phenomenon that has been captured in the term responsive authoritarianism (Weller, 2008). In this delicate balance of tolerance and control, citizens are to a certain extent allowed to express their opinions, the pressure of which leads decision-makers to selectively meet public demands in order to avoid social instability (Heurlin, 2016; Stockmann, 2013, pp. 254–260). Similarly, Truex (2016) shows that, for non-sensitive issues, demands of the population correspond with legislative activity of the National People's Congress (NPC).

The rationale behind responsive authoritarianism is that, while the Communist Party is not accountable to its citizens through elections, a certain level of responsiveness is required for its political survival. Too much divergence between public opinion on the one hand and state policies and politics on the other hand creates societal unrest, which is amongst the largest fears of the Communist Party (Shirk, 2007, pp. 38–39). Unrest is fueled by widespread environmental pollution, labor conflicts, forced evictions, unfairly compensated land requisitions, corruption, amongst other things.

Responsive authoritarianism is also an important mechanism for Chinese leaders to get feedback from citizens regarding policies and politics and to monitor the performance of local level officials. In practice, this means that leadership is “allowing letters and petitions to the state, granting some access to legal recourse, giving the media a little more investigative freedom, and even allowing localized demonstrations” (Weller, 2012). Citizen feedback is also important to monitor local implementation of national policies and the work of local officials, because citizen activism can help leaders in Beijing to identify and address problems at the local level before they grow out of hand (Shirk, 2011).

2.5.1.3 State Control of News Media and the Internet

News media are tightly controlled by the Chinese state out of fear that the free flow of information will seriously challenge the power of the Communist Party, as has happened to some authoritarian regimes in other parts of the world (Shirk, 2011, pp. 5–6). Memories of the 1989 student protests on Tiananmen Square adds to this fear because full media coverage of the events helped mobilization of the movement which almost led to the collapse of the Communist Party (G. Yang, 2009, pp. 45–46). As a result of the tightly controlled media environment, Reporters without Borders ranks China number 176 of 180 countries in the 2017 World Press Freedom index. Similarly, China received a score of 87 on a scale from most free (0) to least free (100) in the 2017 Freedom of Press report by Freedom House.

Through high level bureaucratic and political units such as the State Council Information Office, the Propaganda Department of the Communist Party and its local counterparts, China's political leaders apply a number of mechanisms to control the timing, volume, and tone of news. This includes a licensing system for media outlets as well as mandatory registration with a government or Party entity that not only appoints its chief editors, but also is responsible for news content. Although China's vast media landscape is no longer restricted to official media,

but also includes commercialized media outlets, some of which are independent, all publications are still subject to censorship (Shirk, 2011, p. 12). Moreover, officials from the (local) Propaganda Department meet regularly with staff of media outlets to instruct how and what to report.

When new sensitive stories appear, propaganda officials instruct news editors by telephone or during face-to-face meetings how to treat the topic. This includes instructions of what not to report, to not publish a story on the front page, or to only reprint the official story as published by the state news agency Xinhua (Stockmann, 2013, pp. 77–103). For example, in response to public outcry in 2016 following a news report on the illegal distribution of spoiled vaccines in 18 provinces across the country, propaganda officials instructed editors to not reprint or hype the published article (Rudolph 2016).

Compared to television and printed media, the Internet is much more difficult to fully control because of its sheer size, number of users, and speed of information flows, which means that the Chinese state no longer has monopoly over news production and dissemination. This is especially relevant in crises, many of which are first reported by Internet users (Shanghai Jiaotong Daxue Public Opinion Research Laboratory, 2015). To illustrate, the first reports about the 2008 Wenchuan earthquake in 2008 and the 2011 Wenzhou train accident appeared on Twitter (before the platform was banned) and Weibo respectively, before news media or governments even knew about it (Jessica Li & Rao, 2010; Gang Qian, 2011). The emergence of citizen journalism means that it is no longer possible for the Chinese state to cover-up crises. Moreover, it has no longer full control over the framing of events.

That being said, the Chinese state has implemented a number of mechanisms that severely restrict Internet freedom, the most important of which is the Great Firewall, which simply blocks access to entire websites such as the New York Times and platforms such as Facebook, Youtube, Twitter, and Google. Internet service providers and Internet access providers, i.e. companies that provide individual Internet users with access to the Internet, are responsible for regulating their customers' behavior. They do so through real-name registration as well as filtering and blocking sensitive words and websites. These companies furthermore hire staff to manually monitor and censor web content (King, Pan, & Roberts, 2014; G. Yang, 2009, pp. 51–53).

Another way in which official propaganda shapes the Internet, is the mechanism of paid commentators, commonly referred to as the Fifty Cent Party (五毛党 *wu mao dang*), because individuals are allegedly paid fifty cent for each comment left on websites, forums, and chatrooms that advances the Party's official position (G. Yang, 2009, pp. 50–51). However, there is no evidence that such online propaganda commentators are indeed paid per post. In fact, it seems that the commentators are government employees that are not specifically hired for this task, but write social media messages on top of their regular jobs. The aim of their estimated 448 million posts per year is to distract the public and change the subject of online conversations (King, Pan, & Roberts, 2017). Occasionally, Chinese leaders adopt a very radical approach by simply switching off the Internet completely. Following riots in Xinjiang province in July 2009, for instance, the government shut down most of the Internet in the province for ten months (B. Cao, 2014).

Political sensitivity varies from case to case and from time to time. Something that is not sensitive today may be sensitive tomorrow. During certain times of the year, censorship tightens, such as when China's parliament gathers for its yearly meeting or around the anniversary of

politically sensitive events such as the 1989 Tiananmen protests. To illustrate, when the National People's Congress met in 2016, propaganda officials issued 21 rules for news media to follow, including "strictly control negative reports in news media" and "strengthen management of reporters in Beijing, and ensure that all conduct is orderly" (Wade, 2016).

In case a media outlet, journalist, or Internet user crosses the line of the acceptable, content is deleted, websites or accounts are blocked, and it may even be followed up with offline harassment, arrest, or even imprisonment (Shirk, 2011). This also applies in case Internet users are producing or spreading "rumors," for example about the spread of a new virus or other calamities.

2.6 Crisis-Change Processes in China: A Modified Framework

China's political context has implications for the analytical framework outlined in the first part of this chapter. The following sections discuss how China's political system affects each of the previously introduced processes. The result is summarized in table 2-2.

2.6.1 Agenda Setting: News and Social Media

In addition to impact, unexpectedness, and superlativeness, literature indicates that at least five more factors play a role in news and social media agenda setting in China: issue resonance, political sensitivity; journalists' personal features; availability of non-sensitive frames; and state capability to suppress news. The following paragraphs discuss each of these.

Although the extent to which an event is relevant to the everyday lives of the audience plays a role in news selection in high income liberal democracies too (Bednarek & Caple, 2017), such *issue resonance* is especially important in China, both from the perspective of the general public and from the perspective of reporters (Huan, 2018; G. Yang, 2009, pp. 55–57). The former is hungry for real, credible news (as opposed to propaganda) which news editors must deliver in order to survive the intense competition among news outlets that has developed since China started to commercialize media in the 1980s (Shirk, 2011). As a result, stories that are framed as injustice against innocent victims or "appeal to the moral sense of right and wrong, and that have a more concrete attribution of blame" resonate especially well and are more likely to be amplified (G. Yang, 2009, pp. 55–57). Note that this does not mean that the Chinese public is apathetic towards political news. In fact, the Chinese public turns to official media if they want to learn about the official position on a topic. But if the Chinese audience wants to read "real news", they are more likely to turn to commercial media (Stockmann, 2013). The reason for this is that readers can more easily relate to it due to the more frequent use of human interest frames, i.e. stories that "focus on how persons or groups are affected by events, issues, or problems and they are written in such a way as to generate emotions among their readers" (Stockmann, 2013, p. 174). An example is the Sun Zhigang story. This migrant worker was detained because he could not show his ID and temporary residence permit when the police asked for it. He was subsequently arrested and beaten to death. With help of Sun's friends, his family shared the story with the Southern Metropolitan Daily. This eventually led to the repeal of the Custody and Repatriation Measures (Hand, 2006; Stockmann, 2013; Y. Zhao, 2008).

When selecting news, however, Chinese reporters not only take into account audience demands, but must also pay attention to propaganda demands (Huan, 2018), which are shaped by *political sensitivity*. Political sensitivity increases “as reporting becomes more relevant to political reputation, careers, and continuation of rule by China’s political elites” (Stockmann, 2013, p. 103). Therefore, reporters in China generally refrain from criticizing leaders in their own locality and leaders high up in the political hierarchy. Leaders at the provincial level and higher up are only criticized if there are clear signs that an official investigation into misconduct is ongoing (Shirk, 2011, pp. 19–22). On the local level, party and governments officials tend to suppress negative news, because maintaining social order is a major criterion in the evaluation of the performance of local leaders (Edin, 2003). This is especially relevant in the area of food safety, which is an important aspect of the performance evaluation since 2012 (State Council, 2012). In addition to local government and party officials, industry also tries to contain negative news, for example by bribing local propaganda officials in return for restrictions on the local news media (Stockmann, 2013, p. 80).

The assessment of and response to political sensitivity depends on *personal features of the journalist* and is shaped by “when and how long the person has practiced journalism, where and for which institution, which topics she reported about, and the person’s personality” (Stockmann, 2013, pp. 80–85). This is important because political sensitivity is a highly dynamic concept in China and it is not always clear what is sensitive and what is not. Although most reporters abide by explicit or implicit censorship demands, some reporters are more skilled or experienced in depoliticizing a news event and some reporters are bolder than others and report an issue despite its political sensitivity and despite the risks to their jobs and personal safety. Generally speaking, reporters from commercial media are more willing to pursue a politically sensitive story than their colleagues at state media, because the latter risk “losing salary, health insurance, housing subsidies, and other benefits if they defy orders from the censors” (Zhan, 2011, p. 125).

One strategy for reporters to desensitize a story is to use a *non-sensitive frame*. For example, the story about Sun Zhigang focused on a particular individual and incident rather than involving groups or directly attacking wider problems, which are more likely to be politically sensitive and censored (Stockmann, 2013, pp. 133–139; G. Yang, 2009, pp. 55–57). With regard to framing stories, Hu Shuli, a prominent Chinese journalist and founder of Caixin Media was quoted as saying: “We never say a word in a very emotional or causal way, like ‘You lied,’ ... We try to analyze the system and say why a good idea or a good wish cannot become reality” (Osno, 2014, p. 128). Using facts is important too: “The publication of such [politically sensitive] stories presents the government with a *fait accompli* that forces them to address the issues. If facts corroborate the story, it is difficult for the government to criticize reporters and editors” (Shuli Hu, 2011, p. 86).

The effectiveness of censorship depends on the *capability to suppress the news*, which is sometimes limited because news may spread through channels outside the jurisdiction of government officials or because news dissemination outpaces censorship. The latter is especially true for social media, because the Internet is often the first place for people to vent their concerns. Because of its vastness and the speed with which information spreads, it is impossible for propaganda officials to completely control the Internet. Consequently, information can reach millions of people before censorship kicks in. One common strategy to overcome local censorship is to send a sensitive

story to a newspaper or website that is based in a different jurisdiction. An example of this are the negative messages about the construction of a chemical factory in Xiamen that were deleted by provincial and municipal officials, but could spread nonetheless because the website of the blogger who wrote about the project was hosted on a server in a different province, outside the jurisdiction of the municipal and provincial officials (Qiang, 2011, pp. 202–203).

2.6.2 Institutional Response

While media coverage, framing, mobilization of pro-change forces, and the nature of the crisis may play a role in triggering an institutional response in China too, they are all shaped by the country's authoritarian political system.

First of all, although there is some space for news media to expose risk events, sustained media coverage and subsequent censorship depend on the *political sensitivity* of the matter, which may change rapidly over time (Stockmann, 2013, p. 81). As a rule of thumb, “the central authorities tolerate greater press openness on the type of problems that, if left unreported and unsolved, might stir up serious popular dissatisfaction...” (Shirk, 2011, p. 20). As a result, reporting on major societal concerns including environmental pollution, food and drug safety, labor law disputes, and even mass protests and large public events such as earthquakes and explosions are tolerated. Nevertheless, these topics can quickly become sensitive. “Journalists play a cat and mouse game with the censors,” (Shirk, 2011, p. 4) trying to break and analyze a story before propaganda officials learn about the event and step in with increased censorship (Stockmann, 2013, p. 134). News that initially is not perceived as sensitive becomes sensitive if it turns to criticizing leaders, goals, or policies and turns away from the official position of the state. During regular meetings with propaganda officials, editors and journalists are presented the official standpoint of the state on an issue, which they are to reflect in reporting, and surely should not deviate from (Stockmann, 2013, pp. 77–103).

Again, *framing* plays an important role here and is a tool for journalists to desensitize an issue (Stockmann, 2013, p. 137). For example, in the case of Sun Zhigang, the young man who was beaten to death in custody, media and activists focused on one individual case and embedded pleas for investigation and legal reform in a rule of law rhetoric, providing compelling legal arguments for review of the Custody and Repatriation Rules that formed the basis for Sun Zhigang's arrest. The focus was on modest legal reforms, rather than criticizing specific leaders or challenging leadership as a whole (Hand, 2006). Invoking legal rights is something that is increasingly common in news reporting, which is the result of a major government campaign to empower citizens to “use the law as a weapon” in case of injustices. Mass media play a major role in this campaign and disseminate legal knowledge through e.g., columns, newspapers, and television programs. China's leaders, too, increasingly resort to law as a way to address societal issues. While this shift to formal rational authoritarianism creates more demanding citizens, it also increases state legitimacy, improves China's international status, and depoliticizes conflicts (M. E. Gallagher, 2006; Van Rooij, 2014, p. 85).

The *official position of the Chinese leadership* regarding an issue shapes framing and thus the tone displayed in reports about the event. Once mobilization or media coverage undermines leadership, policy, politics, or the position of the government on a certain topic, leadership responds by

tightening control of mass media and the Internet. In practice, this means that media content gets deleted, websites are taken down, and (micro)blog accounts are blocked. Any remaining news coverage of the event can only take place within the limited, one-sided frames provided by government and propaganda authorities, who will try to convince the public that the problem is being solved (Shirk, 2011; Stockmann, 2013, pp. 256–260). To illustrate, following a high-speed train accident in Wenzhou in 2011, propaganda officials ordered “all subsidiaries including newspaper, magazines and websites [...] to be well controlled.” Media was instructed to “not investigate the causes of the accident; use information released from authorities as standard” and to report “more touching stories” such as blood donation and free taxi services (S. Fu, 2011).

Similarly, *mobilization of pro-change forces* in China is different than in democratic contexts because most forms of collective action are illegal (Cai, 2010). Nevertheless, protests are widespread, albeit most of them are small-scale (10–100 participants) and focus on labor conflicts (Göbel, 2019). As mentioned in the previous chapter, there have been reports of organized protests in response to public health issues including food safety, substandard medicine, and environmental accidents, but it is unclear exactly how common these are. Whether collective action is suppressed, tolerated, or leads to concessions depends on the type of demands (e.g., compensation or discipline of a government official) and its forcefulness in terms of the number of participants, media coverage, and casualties (Cai, 2010). Generally speaking, low cost of making concessions combined with forceful action is more likely to lead to change than high costs and weak action. Violence is not uncommon in resistance in China, but it does not increase the success of the protesters and if violence is used in a small-scale protest, it is likely to be suppressed immediately (Cai, 2010).

Long-term collective action is furthermore greatly restricted through bureaucratic requirements on interest groups such as mandatory registration with the Ministry of Civil Affairs. Such registration is necessary to execute such basic tasks as opening a bank account and hiring staff (Ashley & He, 2008). To circumvent this requirement, some organizations register as companies instead, but this makes an organization vulnerable to accusations of economic and tax fraud (Bandurski, 2009). Consequently, grassroots mobilization in China typically comes with clear goals and peaks within a short time to then dissolve (Cai, 2010).

It must be noted though that the Internet provides a new way to mobilize: it is a platform for people to connect, to exchange information, and to coordinate action (Qiang, 2011; G. Yang, 2009). Before the Internet age, it took considerable time and effort to publish open letters of protests and politically sensitive manuscripts because activists relied on phone calls and in-person visits to connect with like-minded people, collect signatures, get it printed, and distributed. The Internet has changed all of this. The late Nobel Peace Prize Winner Liu Xiaobo even called it “God’s gift to China” because it greatly reduced the costs and trouble of mobilization (Osnos, 2014, pp. 159–160). The Internet played a vital role in the case of Sun Zhigang and the subsequent abolishment of the Custody and Repatriation Rules, not only because the Internet amplified the story, but also because it allowed Teng Biao, Xu Zhiyong, and Yu Jiang to discuss the case and prepare a petition via online fora and email (Hand, 2006; Teng, 2013).

However, the space for online mobilization is limited and depends on the creativity of Internet users as well as censorship. Research shows that online censorship kicks in if there is a perceived *threat of mobilization*, regardless of whether online posts are in support of or against the government

(King, Pan, & Roberts, 2013). Censors look for bursts of social media activity and then identify the real world event that is behind the burst. If the event has the potential to move people into collective action, all posts within the burst will be deleted, regardless of their content. Criticism of censorship will also be deleted. At the same time, criticism of the state, Party, and individual leaders, and policies does not increase the probability that an online post is deleted.

Likewise, mobilization of the public by decision-makers rather than grassroots mobilization (so-called inside mobilization), is also closely monitored because avoiding open splits amongst leaders is a top priority for the Communist Party. This is the legacy of the 1989 Tiananmen protests during which leaders openly disagreed over how to respond, which signaled to the protesters that at least some of the leaders supported their claims. This in turn encouraged the students to continue their demonstrations and almost led to the collapse of Communist Party rule. Ever since the Tiananmen crisis, leadership is careful to portray itself as one united, unanimous group of people (Shirk, 2007, pp. 35–52). In practice, this means that internal deliberations remain a taboo topic for the media and leaders generally do not “publicize speech contrary to decisions at the national level in the media” (Stockmann, 2013, p. 87).

Finally, Chinese leadership assesses the seriousness of a crisis not only in terms of human or monetary damage but also in terms of the extent to which it forms a *threat to social and political stability*. Large-scale unrest in the form of demonstrations undermines the power and stability of the Communist Party and must therefore be avoided (Shirk, 2007, pp. 52–69). When the legitimacy of leadership is undermined, there is a tendency to restore credibility by ensuring the public that leaders are paying attention to the problem, for example by visiting the crisis site and by punishing severely those that are blamed for the crisis (Cai, 2010, pp. 155–183). This happened, for instance, in September 2008, when premier Wen Jiabao visited sick infants in hospitals in Beijing after news media exposed that melamine in milk powder was linked to kidney damage. A few months later, in January 2009, Zhang Yujun and Geng Jinping were handed down the death penalty for adulterating protein powder and adding this to raw milk (Z. Dong, Zhu, & Ren, 2009).

2.6.3 Legal Change

The driving forces of legal change as identified in the first part of the chapter (i.e. problem salience, availability of a feasible solution, a favorable political climate, and a successful policy entrepreneur) also work out differently in China’s context. The following paragraphs highlight the most relevant differences.

A crisis in China gains salience not just if it reinforces pre-existing concerns, signals the existence of a widespread problem, and is linked to similar events, but especially if it is a *threat to political and social stability*. One such threat is if the majority of citizens cannot identify with political decisions and try to change these (Hengshan Zhang, 2013). As discussed above, although most collective action is forbidden in China, it does happen. The level of threat from such action depends on the number of people involved, media exposure, and casualties. Resistance has more chance of generating policy change if it disruptive (e.g., strikes or blockades) and if it can leverage support from others, especially the media (Cai, 2010). At the same time, there is limited freedom for the media and activists to freely link an individual crisis to systematic issues and widespread problems because this will likely trigger increased censorship or other kinds of suppression.

One strategy to overcome these limitations is to take a pragmatic approach to a problem and to put forward a proposal that is *clear, incremental, and non-regime threatening*. This means that proposals such as Charter 08, which demanded substantial amendment of the constitution and was signed by the late Nobel Peace Prize winner Liu Xiaobo and many others, are banned from circulation and not considered for legislative change. On the contrary, in the case of Sun Zhigang, the young man who was beaten to death in custody, advocates put forward a clear and specific proposal that was carefully embedded in legal rhetoric and called only for moderate change that did not undermine the regime (Hand, 2006).

In terms of the political climate, as discussed above, polarization is relatively difficult to observe in China, because Chinese leaders do not openly disagree with decisions that have been made. Nevertheless, there is considerable space for discussion amongst bureaucrats and legislators before a decision is made. Often, there are conflicts between the agendas and interests of these actors. This situation can easily lead to a legislative gridlock (Truex, 2018). An example of this are the Livestock Pollution Regulations, examined in chapter 6, which took almost ten years to come about, partly due to disagreement between the Ministry of Environmental Protection and the Ministry of Agriculture.

In order to prevent or overcome a legislative gridlock and watered down legislation, it is crucial that there is a policy entrepreneur who is capable of convincing all involved actors of the necessity of legal change and who pushes the idea through the different legislative stages. While pluralization of decision-making in China provides opportunities for a range of actors to sell and push their pet proposals, contrary to their peers in democratic settings, a policy entrepreneur in China needs a “*political cover* to insulate their activities from the state’s ability to close them down.” Such a cover can be provided by a policy portfolio or job position at a government office, a political patron, international recognition, or a VIP status such as some Chinese bloggers enjoy (Mertha, 2008, pp. 19–20).

However, although there is a small number of studies on policy entrepreneurs in China, they do not focus on national level lawmaking (Hammond, 2013; Mertha, 2009; Xufeng Zhu, 2008). An exception is Tanner’s case study on the making of the Bankruptcy Law, which was pushed forward by Cao Siyuan, a government employee who proposed a bankruptcy law, which was a very sensitive issue at that time in the 1980s. Over the course of several years, Cao wrote dozens of articles about bankruptcy and “no matter where he has worked since 1983, he repeatedly succeeded in turning these organizations into the chief bureaucratic sponsors of his proposals.” Cao’s success was based on two strategies. First of all, because bankruptcy was such a sensitive issue in a socialist system, Cao was carefully in choosing his words. In his first article, he did not use the word “bankruptcy” (破产 *pochan*), but instead used words such as “going out of business” (淘汰 *taotai*). Secondly, like policy entrepreneurs in the West, he constantly reframed and broadened the need for a bankruptcy law to gain support from a wide range of policy actors (M. S. Tanner, 1999, pp. 135–166).

2.7 Conclusion

This chapter introduced a framework for understanding the process behind post-crisis legal change in China. Loosely based on the policy cycle model, this study distinguished three policy processes: news and social media agenda setting, institutional response, and legal change. Within these processes, there are factors that amplify (i.e. intensify) the risk event and factors that attenuate (i.e. weaken) it.

The point of departure was the flourishing body of literature on policy change and policy processes, which is largely based on studies from Western, democratic countries and consequently may not be applicable to China in the same way. Therefore, the chapter also drew upon the modern China literature. Key here is China's authoritarianism, which comes with severe restrictions on media and mobilization. Although China's leaders are not directly accountable to their citizens, the state closely monitors and sometimes accommodates public demands for change or action. Such responsive authoritarianism carries important implications for the crisis-change framework: mobilization, media attention, and demands for change are only tolerated to the extent that it does not directly threaten existing policies, incumbent leaders, social stability, or the communist party as a whole.

The framework is the starting point for data collection and analysis of the case studies presented in part II of the thesis, which each reconstructs the process from risk event to legal change. These reconstructions (so-called storylines) form the basis for identifying the driving forces of crisis-induced law. Now that there is a stable basis for understanding the crisis-change process, the next chapter zooms in on the specifics of lawmaking in China.

Table 2-2. Post-Crisis Legal Change in China: Process and Driving Forces

Agenda setting: News and social media			
<i>Risk event (i.e. actual or hypothesized accident or incident) generates an attention spike</i>			
Amplifying factors	Impact Unexpectedness Superlativeness (i.e. relative scope) Issue resonance Journalists' personal features Availability of non-sensitive frames	Political sensitivity and censorship <ul style="list-style-type: none"> • Threat to political careers, power • Criticism of local and national leaders • Criticism of goals and policies • Deviation from official position • Local protectionism of industry Capability to suppress news	Attenuating factors
Institutional response			
<i>Crisis is on the list of issues that is being considered by government(s)</i>			
Amplifying factors	Media coverage Framing Mobilization of pro-change forces <ul style="list-style-type: none"> • Low cost demands • Forceful: size, media coverage, casualties Nature of the crisis Threat to social and political stability	Political sensitivity and censorship <ul style="list-style-type: none"> • Threat of (online) mobilization Framing Official position of the Party on the issue	Attenuating factors
Legal change			
<i>Enactment of law, regulations, or rules</i>			
Amplifying factors	Problem salience <ul style="list-style-type: none"> • Focus on individuals • Facts rather than emotions • Threat to political and social stability Availability of a feasible solution <ul style="list-style-type: none"> • Technically feasible and acceptable costs • Anticipated public quiescence • Clear, moderate, non-threatening/political Favorable political climate <ul style="list-style-type: none"> • National mood • Organized political forces • Events within government • Limited polarization Successful policy entrepreneur <ul style="list-style-type: none"> • Expert, representative, authoritative • Well-connected, strong negotiating skills • Persistent, political cover 	Political sensitivity and censorship <ul style="list-style-type: none"> • Focus on groups or systematic problems • Aggregation of harm • Extreme, vague, political/threatening demands Lack of consensus amongst decision-makers Official Party position	Attenuating factors

Source: Author's summary of literature discussed in this chapter.

3 Lawmaking in China: Processes and Actors

3.1 Introduction

Five months after a Chinese newspaper revealed that infant milk powder caused kidney stones in babies across China in September 2008, the National People's Congress passed the country's first Food Safety Law. Because of the short time between the crisis and the Food Safety Law, it is tempting to conclude that the law was the result of the melamine milk powder crisis. However, if we take a closer look, we see that the role of this crisis in the making of the Food Safety Law is limited. The first proposals for amendment of the existing Food Hygiene Law were put forward at least as early as 2001 and formal drafting started in 2004. By the time the melamine milk powder crisis broke in September 2008, the draft of the Food Safety Law was already in a very advanced state. Although lawmakers claim that they have incorporated lessons from the crisis in the final version of the law, a closer analysis shows that only a handful of post-crisis changes were initiated by the crisis and some of them were not new rules, but reproductions of existing provisions in other laws.

This example shows that in order to explain under which conditions and how crises lead to legal change, it is crucial to reconstruct the entire lawmaking process from agenda setting to law. Lawmaking processes may have started prior to a crisis, may develop independently from the crisis, and may continue even after the operational response to a crisis has ended. In order to analyze the role of crisis in Chinese lawmaking in a structural way, this chapter provides a detailed analysis of how laws are made in China. This framework forms the starting point for the reconstruction of lawmaking processes presented in later chapters.

Surprisingly little has been written about lawmaking processes in China in recent years (Van Rooij & Van den Dool, 2016). The most comprehensive studies are from the 1990's (Otto, Polak, Chen, & Li, 2000; M. S. Tanner, 1999).⁹ Since then, much has changed in China in terms of economy, society, and politics. New developments include the Legislation Law that was passed in 2000 and amended in 2015 as well as emerging responsiveness of Chinese leaders to popular demands, albeit very selectively. Moreover, China's bureaucracy is professionalizing, resulting in a more open, transparent state (Horsley, 2007). Since Tanner's aforementioned study, several case studies have been published, including on the making of air pollution law (Alford & Liebman, 2001), the legislation law (Paler, 2005), land and environmental law (Van Rooij, 2006), and labor law (Biddulph, Cooney, & Zhu, 2012; M. Gallagher & Dong, 2011). However, such studies remain few and far between.

Taking existing literature as the starting point, the current chapter provides an in-depth, up-to-date analysis of lawmaking processes in China. It examines the role of state actors and non-state actors involved in each stage of lawmaking as well as where power lies. Furthermore, the chapter provides a hands-on checklist of documents typically produced by state actors during legislative processes, which is not only instrumental in the present study but is also a valuable

⁹ Notable exceptions are Truex (2014, 2016).

resource for other lawmaking scholars.¹⁰ Because the object of study includes national level law as well as administrative regulations and departmental rules, the chapter also briefly discusses how the latter two are made.

In addition to the most recent literature and legislation, the chapter is based on quantitative data drawn from the SinoLawGist database, which consists of all laws (法律 *falü*) passed by the National People's Congress between 1954–2018 as well as NPC five-year legislative plans covering the period 1993–2018. Data has primarily been sourced from the NPC website. The database has been specifically developed for the purpose of mapping the development of the Chinese legal system. It will be discussed in more depth in chapter 4.

The chapter consists of three parts. The first part introduces sources of law in China. The second part discusses the making of national level laws. The third part focuses on the making of national level administrative regulations and departmental rules.

3.2 Sources and Hierarchy of Chinese law

As shown in table 3-1, at the top of China's legislative hierarchy is the Constitution. According to article 5 of the Constitution and article 87 of the 2015 Legislation Law, no other type of law or rule is allowed to contradict the Constitution. However, if a court in China finds that a law, administrative regulation, or departmental rule is unconstitutional, it does not have the power to invalidate it. Only the Standing Committee of the National People's Congress can invalidate laws and administrative regulations, but the legislature does not use this power (J. Chen, 2008, pp. 195–198; Hand, 2006, pp. 124–125). According to article 89 of the Constitution, departmental rules can be changed or withdrawn by the State Council, China's highest administrative authority.

Table 3-1. Sources of Law in China

Legislative body	Type of law
National People's Congress	Constitution (宪法 <i>xianfa</i>)
	Basic laws (基本法律 <i>jiben falü</i>)
Standing Committee of the National People's Congress	Ordinary laws (其他法律 <i>qita falü</i>)
	Amendment of basic laws if this does not violate the fundamental principles of the law
State Council	Administrative rules and regulations (行政法规 <i>xingzheng fagui</i>), generally referred to as 条例 <i>tiaoli</i> , 规定 <i>guiding</i> , 办法 <i>banfa</i>
Ministries and commissions	Departmental rules (部门规章 <i>bumen guizhang</i>), generally referred to as <i>guiding</i> or <i>banfa</i>
Local People's Congresses	Local regulations (地方性法规 <i>difangxing fagui</i>)
Local governments	Local government rules (地方规章 <i>difang guizhang</i>), generally referred to as <i>guiding</i> or <i>banfa</i>

The Constitution distinguishes three types of national level law: primary law in the form of laws (法律 *falü*), secondary law in the form of administrative regulations (行政法规 *xingzheng fagui*), and tertiary law in the form of departmental rules (部门规章 *bumen guizhang*) (Otto,

¹⁰ See appendix 2.

2000). Because the object of the present study is change in national level law, all three types of law will be discussed in this chapter.

Laws are the basis of the Chinese legal system and come in two types: basic laws (基本法律 *jiben falü*) and other laws (其他法律 *qita falü*). The term basic law lacks a clear definition, but this generally refers to laws that “have a fundamental effect on the whole society, including law concerning state organization and structure; minority autonomy and special administrative regions; criminal, civil, and marriage codes and procedural codes; laws dealing with citizens’ political and civil rights and personal liberties and freedoms; and other laws establishing state and social systems” (J. Chen, 2008, p. 181). The Constitution (articles 62 and 67) stipulates that basic laws are made by the National People’s Congress (NPC, 全国人民代表大会 *quanguo renmin daibiao dahui*), whereas other laws are made by the National People’s Congress Standing Committee (NPC-SC, 全国人民代表大会常务委员会 *quanguo renmin daibiao dahui changwu weiyuanhui*). According to article 88 of the 2015 Legislation Law (立法法 *lifa fa*), the legal effect of laws is stronger than that of national and local level regulations and rules.

Administrative regulations (行政法规 *xingzheng fagui*) are made by the State Council, which is stipulated by article 89 of the Constitution. According to article 4 of the Regulations on the Formulation Procedure of Administrative Rules, administrative regulations are generally titled *tiaoli* (条例), but can also be called *guiding* (规定) or *banfa* (办法). The State Council formulates regulations in a wide range of policy areas, except from those listed in article 8 of the Legislation Law, such as state sovereignty, people’s congresses, criminal sanctions, and litigation systems, which is the exclusive area of the NPC and its Standing Committee. Nevertheless, the NPC or NPC-SC can delegate specific legislative tasks to the State Council.

Departmental rules (部门规章 *bumen guizhang*) are issued by commissions and ministries under the State Council. According to article 6 of the Regulations on the Formulation Procedures of Rules, these are generally titled *guiding* or *banfa* and are not allowed to be called *tiaoli*.

Local law includes local regulations (地方性法规 *difangxing fagui*), which are made by local People’s Congresses, and local government rules (地方规章 *difang guizhang*), which are made by local governments. However, these will not be discussed here because the case studies focus on change in national level law and do not include local level law.

3.3 The Making of Laws

The making of laws (法律 *falü*) in China is governed by a number of laws and regulations, most important of which are the Constitution, the Legislation Law, the Organic Laws of the NPC and the State Council, and the procedural rules of the NPC and NPC-SC.

Although these laws give the impression that lawmaking is a linear, straightforward process, as discussed in chapter 2, formal models of lawmaking tend to ignore the influence of politics and external factors such as crises. To illustrate, sometimes there are ideas and even complete drafts long before a law appears on formal legislative agendas and before formal drafting begins. In fact, policymakers at central-level Party and State Council bureaucracies “can also draft ready-made legislative proposals and keep them ‘alive’ internally for years until they sense that the political mood is ripe for them to emerge or re-emerge on the active agenda” (M. S. Tanner, 1995, p. 49). As discussed in the previous chapter, once a policy window opens, for example because of a public

health crisis, chances are that old proposals reappear.

The following sections provide a nuanced, up-to-date overview of the complexity and politics of legislative processes in China. The sections draw upon the most recent legislation on lawmaking processes, secondary literature, and the aforementioned SinoLawGist database. The stages are loosely based on Tanner (1999, pp. 209–230).¹¹

3.3.1 Agenda Setting

Despite China's authoritarian political system, ideas for new laws or amendments can come from a wide range of actors both inside and outside government and the legislature, including from lawmakers, advisors, bureaucrats, provincial governments, trade unions, scholars, think-tanks, individual policy entrepreneurs, citizens, and top leaders of the Communist Party of China (CPC).

Contrary to popular belief about authoritarian states, top leaders in China are “more of a background presence” in the stage of agenda setting, and any policy-related thinking at this level is extremely vague. In fact, “all available evidence indicates that top leaders do not, as had often been supposed, directly initiate or dictate many legislative proposals” (M. S. Tanner, 1995, pp. 45–53).

Scholars and experts advise decision-makers either behind closed doors or by using news media in case they want to exert pressure on leadership and generate support for their ideas by mobilizing others inside or outside government (Shaoguang Wang, 2008). In general, it is common for scholars and lawmakers to develop and maintain relationships with each other. Scholars frequently organize symposiums to discuss ideas for new laws, to which they often invite lawmakers. Especially prominent advisors are scholars from the Chinese Academy of Sciences and the Chinese Academy of Social Sciences. An example of a scholar who was successful in agenda setting is Professor Wang Canfa. As founder of a leading environmental group that provides legal aid, Wang advocated for stronger citizen rights in environmental disputes. After years of seeking support from other scholars, bureaucrats, and lawmakers, the NPC and State Environmental Protection Administration eventually commissioned Wang to draft the amendment of the 1996 Water Pollution Law. Some of his proposals, including the reverse burden of proof, made it into the amended law that was passed in 2008 (Y. Fu, 2008; Van Rooij & Van den Dool, 2016, p. 38).

Like scholars and experts, non-governmental organizations (NGOs) in China also increasingly lobby lawmakers. An example of a NGO that successfully did so is Beijing Yilian regarding the amendment of the Occupational Disease Law. Beijing Yilian is a NGO that offers free legal aid services to workers. It was the only NGO participating in the revision of the Occupational Disease Law, which was passed in 2011. In order to convince lawmakers of the urgency to amend the law, the NGO released research reports, held news conferences, and organized seminars. Some NPC delegates recommended that Beijing Yilian send its proposal draft straight to delegates of the National People's Congress Standing Committee. Subsequently, the NGO sent its proposal straight to more than one hundred delegates. Finally, of all the proposals Beijing Yilian made, thirteen were included in the new law (L. Huang, 2013). In general, NGOs in China attempt to influence legislative processes through media, interviews and reports. Like scholars, they commonly organize meetings with state officials and lawmakers to influence the legislative agenda and the substance of laws. NGOs in China also send open letters to relevant government departments,

11 See appendix 1 for a summary of the actors, strategies, and data in each stage.

organize seminars when lawmakers solicit public opinion for draft laws, and launch historical “first-time-ever” lawsuits to put pressure on lawmakers (Fürst, 2016; Lan, 2012).

An example of an individual government official who was successful in attracting the attention of lawmakers is Cao Siyuan, who—as discussed in chapter 2—became the father of China’s Enterprise Bankruptcy Law. After Cao got the idea of a bankruptcy law as a student in the 1970’s, he tirelessly promoted his idea by writing reports and lobbying various high profile state entities. Many years of lobbying later, Cao convinced the State Council’s Technical Economic Research Center, where he was employed at the time, to sponsor the proposal. It was eventually proposed to the NPC and finally adopted in 1986. Because of his persistent advocacy, Cao Siyuan is so strongly identified with the bankruptcy law that decision-makers nicknamed him “Cao Pochan”, which means “Bankruptcy Cao” (M. S. Tanner, 1999, pp. 135–166).

Sometimes citizens can play a direct role in agenda setting. One rare example, introduced in chapter 2, is the case of Sun Zhigang, a Wuhan University graduate who had moved to Guangzhou for work. Sun could not show his ID and temporary residence permit when the police asked for it. He was subsequently arrested and beaten to death. This happened in March 2003. Sun’s family shared the story with the Southern Metropolitan Daily. The news story spread very rapidly through the internet. When Xu Zhiyong, Teng Biao, and Yi Jiang—three fresh graduates with doctorates in law—learned about Sun’s case, they submitted a formal petition to the National People’s Congress Standing Committee in May 2003. The legal basis for the petition was article 90 of the 2000 Legislation Law, which stipulates that citizens may ask the NPC-SC to investigate administrative regulations that contradict the Constitution and other laws. In the petition they requested a review of the Custody and Repatriation Measures (城市流浪乞讨人员收容遣送办法 *chengshi liulang qitao renyuan shourong qiansong banfa*), which were the legal basis for Sun’s arrest. The three young scholars argued that the Custody and Repatriation system lacked legality and constitutionality. In the same month, another small group of legal scholars filed a petition with the NPC-SC, demanding an investigation of the implementation of the Custody and Repatriation Measures and the handling of the Sun Zhigang case. In June 2003, the State Council replaced the Custody and Repatriation Measures with the Measures on the Administration of Aid to Indigent Vagrants and Beggars, which repealed the former (Hand, 2006).

However, cases such as Sun Zhigang, in which citizens, with help of news and social media, put an issue on the legislative agenda are rare (Shirk, 2011, p. 18). Moreover, note that dissatisfaction with the Custody and Repatriation Measures had built up over several years and that problems with this form of detention were well-known to the State Council and the Ministry of Public Security. In fact, various legal scholars publicly called for reform or abolition of the Custody and Repatriation Measures in the early 2000’s (Becquelin, 2003; Gang & Bandurski, 2011). Thus, not only was the problem well-known, there was also a feasible solution available (i.e. abolition), which—as discussed in the previous chapter—increases the likelihood of legal change.

Nevertheless, the Sun Zhigang case shows that not just people, but also events in society can bring an issue to the attention of a broader range of people than normally would consider it, which—as we have seen in the previous chapter—increases the likelihood of legal change.

3.3.2 Legislative Planning

If an idea for a new law attracts sustained attention of the decision-makers in the NPC or the State Council, it is put on the official legislative agenda. The NPC produces five-year legislative plans (立法规划 *lifa guihua*) and annual legislative plans (年度立法工作计划 *niandu lifa gongzuo jihua*). Both distinguish different categories of laws, based on the maturity of the draft law. Category 1 bills are expected to be passed soon, while category 2 bills need some more work or revisions and category 3 bills are only in the preparatory phase. The annual plans include an approximate time schedule. Both the five-year plan and the annual plans can easily be found online, for example on the NPC website¹² and in the magazine *Zhongguo Renda* (“China’s NPC”).

The State Council, too, produces annual legislative plans that include laws (法律 *falü*). Like the NPC-SC legislative work plans, there are different categories, including tasks that are scheduled to be completed within that year. The plans also specify the organization responsible for drafting the law or amendment. Departments under the State Council can request the State Council to include an item on the agenda. The Legislative Affairs Office of the State Council (LAO) reviews all applications and drafts the legislative plan (State Council, 2001, art. 6–9, 2017, art. 7–10).

A place on the NPC legislative plan is significant, because the majority of bills that are included will sooner or later be passed, as is shown in table 3-2. The table, which draws from the SinoLawGist database, shows the percentage of items on the NPC five-year plans that are eventually passed as laws. The period covered here is from 1993, when the first five-year plan was made, until the last completed plan at the time of writing, 2008–2013. The plans include both new laws and amendments of existing laws.¹³

Table 3-2. Percentage of Bills on NPC Five-Year Legislative Plans That Are Passed Into Law

Period	Category 1 bills	Passed	Not passed	Category 2 bills	Passed	Not passed
1993–1998	108	80%	20%	36	58%	42%
1998–2003	60	83%	17%	25	64%	36%
2003–2008	59	78%	22%	17	41%	59%
2008–2013	49	82%	18%	15	33%	67%

Source: SinoLawGist database consisting of Chinese laws (1954–2017) and NPC-SC five-year plans (1993–2018). Category 1: Bills that are expected to be passed soon. Category 2: Bills that need some more work or revisions.

Laws are not necessarily passed within the five-year period, but may be passed much later. In fact, many laws appear in multiple five-year plans, sometimes moving from category 2 to category 1. Clearly and unsurprisingly, bills in category 1, i.e. those that are considered the most mature, have a larger chance of becoming law than bills in category 2. Approximately 80% of all category 1 bills are sooner or later passed as laws, while only 30 till 60% of category 2 bills become laws. More research is needed to understand why approximately one in five category 1 items do not become laws. Perhaps these are laws that are controversial and lack consensus or perhaps require coordination between multiple government organizations.

However, inclusion in NPC five-year legislative plans is not a requisite for an idea to become

¹² www.npc.gov.cn

¹³ Any items on the five-year plans that are not laws (e.g., regulations *tiaoli* and rules *banfa*) have been excluded from the analysis.

law, which is shown in figure 3-1. The horizontal axe shows the period from 1993 until 2017. The blue line shows the number of laws passed by the NPC each year. The red line shows the number of laws passed by the NPC that were not included in legislative plans. Historically, more than half of laws passed by the NPC and NPC Standing Committee have not been mentioned in the five-year plans (257 out of 480). In fact, figure 3-1 shows that the NPC increasingly passes laws without including them in the five-year plans.

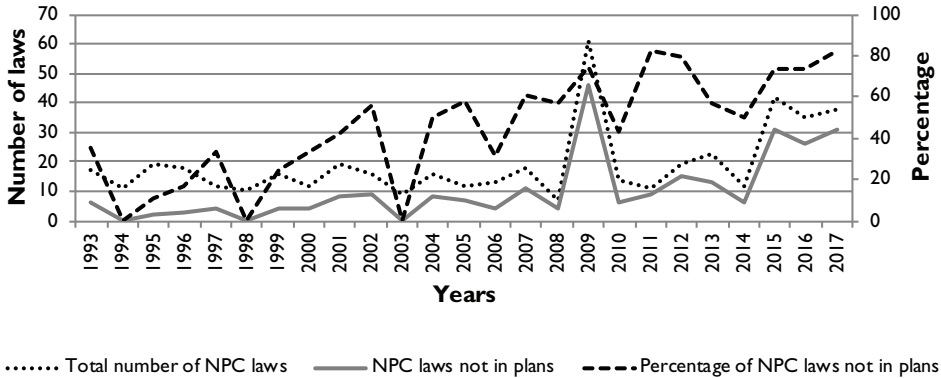


Figure 3-1. NPC Laws Included in Five-Year Legislative Plans, 1993–2017

Data source: SinoLawGist database consisting of Chinese laws (1954–2017) and NPC-SC five-year plans (1993–2018).

In general, amendments are more likely to be passed without being included in the legislative plan. One possible explanation for this is that amendments are perceived as a less radical change than writing an entirely new law from scratch and therefore needs less preparation. A new law requires a certain degree of consensus about the need for and content of the law, whereas existing laws already enjoy at least some sort of support, at the very least by the organization that administers the particular law and that depends on that law for its existence.

Thus, although an item that is included in the NPC five-year legislative plan has a substantial chance to become law, many laws are passed without being included in legislative plans. This is especially true for amendments of existing laws.

3.3.3 Appointment of Drafting Group and First Draft

The five-year legislative plans specify the unit that submitted the bill or that leads the drafting process. An analysis of these plans, as shown in table 3-3, clearly shows that the State Council is most active in drafting laws. Out of the 440 laws included in the NPC five-year plans,¹⁴ offices under the State Council were mentioned 269 times. This means that the State Council is responsible for about 60% of the proposed laws. This is no surprise considering the human resources of the State Council as well as its access to crucial information about the policy problem at hand and about implementation processes. The NPC, which has a lot less resources and implementation

14 Note that some laws originated with or have been assigned to multiple units. The total laws included in the five-year plans is 440, but the total number of units mentioned is 457.

knowledge, comes second, with about a third of the laws assigned to the NPC and the NPC Standing Committee.

Table 3-3. Drafting Units Included in NPC Five-Year Legislative Plans, 1993–2018

Submitted or to be drafted by	1993– 1998	1998– 2003	2003– 2008	2008– 2013	2013– 2018	Total
State Council	95	44	39	48	42	268
NPC	22	24	15	6	13	80
NPC Standing Committee	20	12	18	12	5	67
Central Military Commission	2	6	3	6	4	21
People's Liberation Army	7	0	0	0	0	7
Supreme People's Court	3	2	1	0	0	6
Supreme People's Procuratorate	3	1	1	0	0	5
Communist Party	3	0	0	0	0	3
Total	155	89	77	72	64	457

Data source: NPC-SC five-year legislative plans.

Often, scholars produce an expert draft (专家建议稿 *zhuanjia jianyi gao*), either on their own initiative or because they have been commissioned by lawmakers. According to article 53 of the Legislation Law, in case of highly specialized laws, lawmakers can ask experts to take part in the drafting process or can commission experts to formulate a draft. An example of a draft produced by scholars on their own initiative is the draft animal protection law (动物保护法 *dongwu baohu fa*) that was released by the Chinese Academy of Social Sciences in September 2009. It is a collaborative product of Chinese and foreign legal scholars and NGOs. After public consultation, a revised draft law was published online and submitted to the National People's Congress in 2011 (Whitfort, 2012). At the time of writing, however, despite occasional calls for a law protecting pets from violence, there are no signs that the law will be on the legislative agenda of the NPC. So far, this has been an unsuccessful attempt of the so-called reach-out model of agenda setting, in which think-tanks publish their proposals, hoping to attract the attention of lawmakers and convince them to place an issue on the legislative agenda (Shaoguang Wang, 2008, pp. 67–69).

It is not uncommon for a draft law to face resistance, but the drafting group has several ways to deal with opposition and produce a satisfactory stringent law. One strategy is to start bold and hope for the best. An example is the draft of the 1996 Water Pollution Law (水污染防治法 *shui wuran fangzhi fa*), which was formulated by the NPC Environment and Natural Resources Protection Committee and the National Environmental Protection Agency. The original drafts included a comprehensive pollution permit system. However, as a result of industry opposition, the final law included a much weaker permit system that applied only to designated areas (Van Rooij, 2006, pp. 70–78). An alternative strategy is to involve opponents early in the process. While this may lead to a less ambitious draft, there is a bigger chance that the draft law gets through the NPC or NPC-SC without much watering down. For example, one reason why the 2000 revision of the Air Pollution Law (大气污染防治法 *daqi wuran fangzhi fa*) was much stricter than its predecessor, the 1995 Air Pollution Law, is that the NPC Environment and Natural Resources Protection Committee sought comments on the draft law early in the process. It was

especially careful to solicit the opinions of affected industries and local governments. This was a major difference with the making of the 1995 Air Pollution Law, which was generally considered a disappointment in terms of its strictness (Alford & Liebman, 2001).

Sometimes, the opposite happens: the initial draft law is weak, but grows stronger during the process. This happened, for instance, in the making of the 2008 amendment of the Water Pollution Law (水污染防治法 *shui wuran fangzhi fa*). When Professor Wang Canfa was commissioned to draft this bill, he originally included stronger administrative as well as civic enforcement powers, such as public interest litigation standing and the addition of water quality to the formal evaluation system for local government leaders (J. Ye, 2007). The NPC Environmental and Resource Protection Committee and the State Environmental Protection Administration (SEPA), which had commissioned the draft, removed the additional citizens' rights that Wang had included, such as public interest litigation standing, collective litigation, and reversal of the burden of proof for causation from plaintiff to defendant. They did so fearing that if they presented this draft to the first informal round of review under the supervision of the State Council Legal Affairs Office, the entire bill would fail to be approved for discussion on the NPC-SC agenda. So, the bill that was released for public comments did not include the stronger citizens' rights against pollution proposed by Wang. However, during the deliberations and bargaining processes that followed, some of the proposed provisions, such as the use of the cadre evaluation system, collective litigation, and public interest litigation, were put back into the bill and made it into the final law (NPC-SC, 2008a; NPC-SC General Office, 2007; Van Rooij & Van den Dool, 2016, pp. 45–46).

If a law is supported by central level stakeholders, the likelihood of a watered down draft law is smaller. This was the case for the 2000 Air Pollution Law, which was supported by central level stakeholders, including the State Council, the NPC Legal Committee, and the State Environmental Protection Agency¹⁵ (Alford & Liebman, 2001; Van Rooij, 2006, pp. 78–88).

3.3.4 Inter-Agency Consultation and Review

Once the appointed drafting group finishes its first draft, a period of intense discussion and bargaining amongst a range of state actors starts. It is during this phase that the content of a bill is largely decided (M. S. Tanner, 1995, p. 53). Initially, only the major concerned state departments are consulted (M. S. Tanner, 1995, p. 55). The drafting group sends its draft to state actors such as the Legislative Affairs Office of the State Council (LAO), the Commission on Legislative Affairs of the NPC-SC, affected ministries and commissions, and the standing committees of the people's congresses of provinces and centrally administered municipalities (see e.g., Alford & Liebman, 2001).

During this process, the original draft is reviewed multiple times, which altogether can take several years. To illustrate, the Commission on Legislative Affairs produced at least five drafts of the Legislation Law over a period of six years before it was submitted to the NPC-SC for deliberation (J. Chen, 2008, p. 177). The contrary can also happen. An example of this is the 1995 amendment of the Air Pollution Law. In this case, the Environment and Natural Resources

¹⁵ The State Environmental Protection Agency was the successor of the aforementioned National Environmental Protection Agency. It became a ministerial level government department in 1998, which meant that it became more powerful.

Protection Committee of the NPC moved very fast. In March 1994, a drafting group led by the National Environmental Protection Agency started to work on the first draft. The group solicited views from environmental officials at national and sub-national levels. It then produced a first draft. Because this draft failed to meet the expectations of the NPC's Environment and Natural Resources Protection Committee (ENRPC), the committee rewrote the draft, which was subsequently sent to the State Council's Legislative Affairs Office, the affected ministries and commissions as well as the standing committees of the people's congress of each province, and centrally administered municipalities. In October 1994, just seven months after formally starting the drafting work, the ENRPC submitted its draft to the NPC-SC. It was passed in August 1995. One explanation for this speedy process appears to be the lack of extensive bargaining. Instead, the ENRPC largely ignored objections to the draft, until it was forced to negotiate with the powerful Commission on Legislative Affairs and the NPC Legal Committee, which resulted in a much weaker law (Alford & Liebman, 2001).

Table 3-4. Average Number of Years From NPC Five-Year Legislative Plan to Law

Period	Category 1 bills	Category 2 bills
1993–1998	4.64	7.88
1998–2003	3.29	6.38
2003–2008	4.16	5.89
2008–2013	2.81	6.35

Data source: SinoLawGist database consisting of Chinese laws (1954–2017) and NPC-SC five-year plans (1993–2018).

As shown in table 3-4, category 1 bills included in the NPC-SC five-year plans that become laws are generally passed within five years. However, as shown in figure 3-2, some legislative processes take much longer, up to 22 years. The Law on National Medals and National Honorary Titles first appeared as a category 1 item in the 1993–1998 plan, but was only passed in 2015. The second longest process was the amendment of the 1989 Environmental Protection Law, which appeared as a category 2 item in the 1993–1998 plan, but was only passed in 2014, 21 years later. This does not mean, however, that legislators have been working on the draft law during that entire period. Sometimes an idea for a law appears, but the urgency to legislate may disappear or a gridlock may occur. Unsurprisingly, as shown in table 3-4, category 2 bills take, on average, longer to pass than category 1 bills.

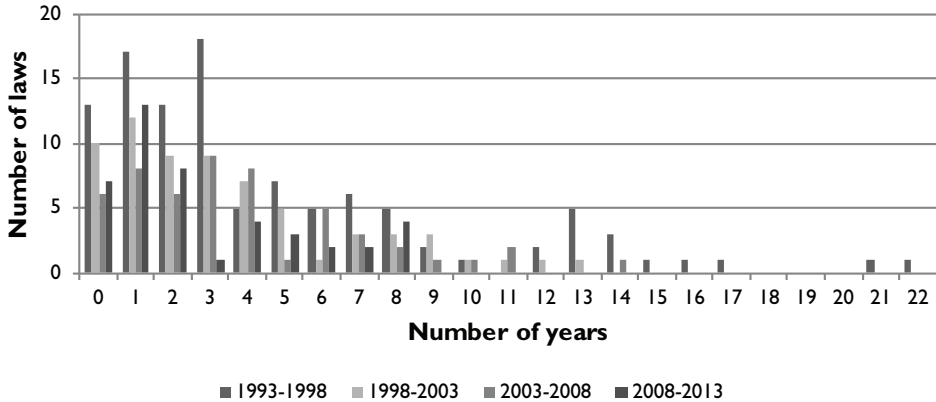


Figure 3-2. Duration in Years From NPC-SC Legislative Plan to Law, 1993–2013

Data source: SinoLawGist database consisting of Chinese laws (1954–2017) and NPC-SC five-year plans (1993–2018).

For a bill to pass the stage of initial inter-agency consultation it needs a patron (i.e. a leader or organization) who is willing and capable to convince decision-makers of the law’s necessity and who helps overcome inter-ministerial stalemates and watering down of the bill. Stalemates are not uncommon, as is evidenced by figure 3-2. According to Tanner (1995, p. 49), “numerous laws have emerged or re-emerged on the agenda because two or more political actors with widely divergent, or even mutually exclusive, views have all felt an interest in keeping them there.” One major reason why draft laws are not moving forward is disagreement over the content of a law.

The second phase of inter-agency consultation and review is characterized by broad opinion solicitation, including from grassroots level bureaucracies, work units, industry, NGOs, and citizens. By now, access to the legislative process is more open. Stakeholders will attempt to influence the draft by organizing highly publicized meetings, conducting opinion polls, and submitting written comments to the drafting group (M. S. Tanner, 1995, pp. 55–56). To illustrate, the China Food and Drug Administration (CFDA) was in charge of drafting the amendment of the 2009 Food Safety Law (State Council General Office, 2013b). In June 2013, the CFDA organized a symposium to solicit opinions of scholars and local level food safety experts (China Food and Drug Administration, 2013a). In the same month, the CFDA also solicited suggestions from the general public (China Food and Drug Administration, 2013b).

Even though most of the content of a draft law is already decided, this final phase of the inter-agency consultation process is not just symbolic. Those who have not had a chance to voice their concerns can now do so and doing so does influence legislation (M. S. Tanner, 1995).

3.3.5 Top Leadership Approval

While it is conceivable that top CPC leaders play a decisive role in lawmaking, it is unclear exactly how and how much they are involved in lawmaking. Based on available data, top Party leaders are not heavily involved in lawmaking. However, “occasionally there is strong intervention by those leaders who are responsible for lawmaking in general, or those who are responsible for the

particular area under discussion” (M. S. Tanner, 1995, p. 45).

Although Chinese laws do not clarify the role of the Communist Party in legislative processes, the CPC has formally claimed a role in lawmaking, namely in a 1991 document titled “Several Opinions on Strengthening Leadership in State Law-Making,” which outlined for the first time ever the scope and procedures of CPC involvement in lawmaking (Qin & Li, 2003).¹⁶ The document specifies the influence of the Party based on the type of law. In case of laws in the area of politics, the NPC-SC must report the law’s ideology and principles to the Central Committee of the CPC (中央委员会 *zhongyang weiyuanhui*, abbreviated as 党中央 *dang zhongyang* or 中共中央 *zhonggong zhongyang*) for approval, prior to drafting. Major laws in the area of politics as well as particularly important laws on the economy and administration must be approved by the Politburo or its Standing Committee and the plenary session of the Central Committee of the CPC before submission to the NPC for deliberation. For political laws and important economic and administration laws, the Party Group of the NPC-SC (全国人大常委会党组 *quanguo renda changweihui dangzu*) must submit a report to the Politburo or its Standing Committee for approval. In addition, the Party Group of the NPC-SC must report all bills drafted by the NPC and NPC-SC to the CPC Central Committee for approval. The same applies to laws drafted by bodies other than the NPC and NPC-SC that are to be deliberated and enacted by the NPC.¹⁷

However, the extent to which this document reflects reality remains unclear. More research is needed to understand the extent to which the timing and substance of laws are influenced by the Party prior to debate and revision in the NPC or NPC-SC, or even prior to drafting.

3.3.6 First Cycle of Deliberation by the NPC or NPC-SC

Depending on the importance of the law, it is deliberated by either the NPC or its Standing Committee.¹⁸ According to 2015 Legislation Law (article 14), a bill can be submitted to the NPC by the NPC Presidium, the NPC-SC, the State Council, the Central Military Commission, the Supreme People’s Court, the Supreme People’s Procuratorate, and the NPC’s special committees. A group of at least 30 NPC delegates can also propose a law. Bill can be submitted to the NPC Standing Committee by the NPC-SC Chairman Group, the NPC special committees, the State Council, the Central Military Commission, the Supreme People’s Court, and the Supreme People’s Procuratorate. A group of at least ten members of the Standing Committee can also submit a bill. The latter is stipulated in articles 26 and 27 of the 2015 Legislation Law.

The NPC Presidium (人大主席团 *renda zhuxituan*) decides whether to list the legislative proposals on the NPC meeting agenda (2015 Legislation Law, article 14). Likewise, drafts proposed to the NPC-SC are either passed on to a special committee (专门委员会 *zhuanmen weiyuanhui*) or sent to the entire Standing Committee for deliberation by the NPC-SC Chairman

16 The Chinese title of the document is *Guanyu jiaqiang dui guojia lifa gongzuo lingdao de ruogan yijian* [Some opinions on strengthening the leadership of national legislative work]. The document is secret (*jinmi*) and therefore this paragraph is based on a secondary source. See also Tanner, 1999, pp. 66–70.

17 So-called Party Committees (党组 *dangzu*) can be set up in central and local level state organizations, non-state organizations, economic, cultural, and other non-party leading organizations. The Party Committee serves a leading function. Among its main responsibility is the implementation of the Party’s line of thinking, guidelines, and policies. See CCP Constitution or *Zhongguo gongchandang zhangcheng*, article 46.

18 This section is based on the 2015 Legislation Law (*lifa fa*) and the Organic Law of the National People’s Congress (*Zhonghua Renmin Gongheguo quanguo remin daibiao dahui zuzhi fa*) as well as observed praxis.

Group (Organic Law of the NPC, article 25). A copy of the draft legislation must be sent to NPC or NPC-SC delegates one month and seven days, respectively, prior to the scheduled deliberation.

As shown in figure 3-3, deliberation starts with the introduction of the bill by either the NPC-SC or the sponsor of the law. This introduction (说明 *shuoming*) includes the justification of the proposal as well as an overview of its main content. The draft is then discussed in subgroups. During this deliberation, the proposer dispatches someone to hear the opinions of the subgroups and to answer questions. Also, the subgroups can invite other relevant offices and organizations to explain certain issues. The special committee may conduct surveys and investigations at localities throughout the country to understand challenges faced by local state agencies, industry, and other stakeholders. Once a special committee has reviewed the draft law, it sends its recommendations to the Presidium in case of deliberation in the NPC or to the NPC-SC Chairman group in case of deliberation in the NPC-SC.

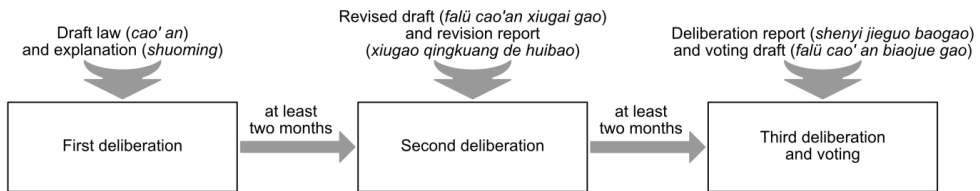


Figure 3-3. Deliberation of Laws and Amendments by NPC or NPC Standing Committee

After the meeting, the NPC-SC Commission on Legislative Affairs (CLA) distributes the draft (草案 *cao'an*) to the provinces, relevant state departments, relevant state enterprises, and state research institutes for feedback. According to the Legislation Law (article 36), the NPC Legal Committee, special committees and the NPC-SC should “listen to suggestions from all sides. They can organize symposiums, discussion meetings, public hearings, etc.”¹⁹ If deemed necessary, the NPC Legal Committee and CLA execute additional research together with relevant state departments.

3.3.7 Public Consultation

In recent years, lawmakers in China have started to engage the general public in lawmaking through increased transparency and a formal public consultation procedure. The Legislation Law states in article 5: “Legislation should embody the people’s will ... and guarantee that the people participate in legislative activities through various channels.” Whereas the original Legislation Law stipulated that the Chairman Group could decide to publish draft for important laws for public comments, the 2015 amendment requires all draft laws (exceptions allowed) accompanied with an explanation (*shuoming*) to be made public after NPC-SC deliberation with the aim to seek public comments.

The period for public consultation is typically thirty days, which has been formalized in the 2015 amendment of the Legislation Law. Citizens and other stakeholders can easily use the Internet to

¹⁹ The Chinese terms are: 座谈会 *zuo tanhui* (hold a symposium), 论证会 *lunzhenghui* (discussion meeting), and 听证会 *tingzhenghui* (public hearings).

submit comments. The NPC has a special section for this on its website, called “Seeking opinion on draft laws” (法律草案拯救意见 *falü cao'an zhengqiu yijian*). The NPC-SC Commission on Legislative Affairs (CLA) sorts, categorizes, and summarizes the public comments and forwards it to the NPC Legal Committee. Based on the input provided by delegates, special committees, and opinions solicited by the CLA, the NPC Legal Committee produces a revised draft (法律草案修改稿 *falü cao'an xiugaigao* or 草案二审稿 *cao'an ershengao*).

In order to maintain the credibility of the formal comment system, legislators increasingly disclose information about the submitted public comments. From a transparency point of view, this would ideally not only include the number of comments, but also the substance of the comments. However, the latter happens only selectively. An example is the draft Property Law. In this case, the National People's Congress “published a discussion of 24 major issues that were identified in the 11,543 comments it received ... together with the response of the Legislative Affairs Office to each of those categories of comments” (Horsley, 2009, p. 13). Likewise, after the NPC solicited the opinion of the general public on the 2009 Food Safety draft law, the NPC-SC Commission on Legislative Affairs published a summary of the submitted comments (NPC-SC Commission on Legislative Affairs, 2008a, 2008b). For the amendment of the 2009 Food Safety Law, citizens were again asked to provide comments. During the first deliberation cycle, almost 2,500 people together submitted close to 9,000 comments.²⁰

In theory, public hearings (听证会 *tingzhenghui*) are another channel for the general public to voice its opinion, but such hearings have only been used by the NPC-SC and only one time, namely during the NPC-SC review of the Individual Income Tax Law in 2005 (Horsley, 2009).

Although the lack of transparency makes it difficult to measure the influence of the general public on lawmaking, there is at least one instance in which comments from a wide range of actors seem to have influenced lawmaking, namely in the debate about public litigation in an amendment of the Environmental Protection Law. In this case, citizens, experts, NGOs, and the media all called for a revision of article 35 in the second draft law which was released for public consultation in July 2013. This draft stipulated that only the All-China Environmental Federation and its provincial level branches were entitled to file environmental public interest lawsuits. Many citizens, NGOs, and lawyers did not agree that the right to litigate would be restricted to just one body, an environmental organization that lacked public trust. This led to voluminous formal comments submitted through the public comments procedure recommending a wider range of actors to file an environmental public interest lawsuit. It was one of the three topics that received most comments (H. Yin & Wang, 2013). In the media too, many voiced their strong dissatisfaction with the severely restricted public interest standing. For example, Li Gang, a prominent public interest lawyer, remarked that it is “a step backwards for environmental legislation.” Xu Xin, a professor in law said the law would be “encouraging the pollution of the environment.” NGOs too, made their opposition clear in open letters to the NPC (C. Zhang, 2013). The end result is a wider standing for public interest litigation in article 58 of the 2014 Environmental Protection Law. NGOs specialized in environmental protection public interest activities that are registered with the civil affairs departments of governments at or above city level in selected areas now have the right to file public interest lawsuits.

20 See NPC website, section “Seeking opinion on draft laws” (法律草案拯救意见 *falü cao'an zhengqiu yijian*).

While there is evidence that industry in China tries to influence lawmaking processes, research on the topic is very limited. What we do know is that firms try to exert influence on the policy process either directly or indirectly via trade associations (行业协会 *hangyexiehui*) and chambers of commerce (商会 *shanghui*) (Kennedy, 2005, p. 3). Large companies (Deng & Kennedy, 2010) as well as multinational and large state-owned are more likely to be successful lobbyists (H. Song, 2008).

To influence the substantive views of government officials on a given topic, companies employ a wide range of strategies to develop relationships (关系 *guanxi*) with governments at various levels. Lobbying activities range from requesting policy information and the circulation of written reports to engaging in philanthropy, hosting banquets, sponsoring research, providing “soft money” for e.g., training, and hosting press conferences about policy issues (which comes with *hongbao*—enveloped small amounts of money as gifts—for journalists to ensure a high attendance rate). Hiring former government officials is another way to influence public policies. This is not because of their connections with officials in office, but also because of their understanding of government bureaucracy (Deng & Kennedy, 2010; H. Song, 2008). Research has further shown that a substantial portion of the NPC deputies are CEOs of various companies. In this role, they submit opinions and motions, which are more often than average focused on improving the business environment in their specific industry sector. However, due to a lack of data about the outcome of these proposals, it is unclear what exactly the influence of such delegates is on NPC lawmaking (Truex, 2014).

Industry associations adopt similar strategies. Behavior that is specifically typical for industry associations in China is the oral exchange of information with government officials. This is possible because “many national industry associations are still closely connected to government, they have natural access to officials.” Scholars (Kennedy, 2005, p. 33; H. Song, 2008, p. 43) highlight the role of the China Association of Enterprises with Foreign Investment (CAEFI, 中国外商投资企业协会 *Zhongguo waishang touzi qiye xiehui*), a prominent association set up specifically for foreign firms operating in China. The activities of CAEFI include maintaining relations with government officials and contributing to policy discussions.

3.3.8 Additional Cycles of Deliberation by the NPC or NPC-SC

Prior to the second deliberation by the NPC or NPC-SC, the NPC Legal Committee sends a revised draft law to the Presidium or the NPC-SC Chairman group respectively.²¹ The draft comes with a so-called revision report (修改情况的汇报 *xiugai qingkuang de huibao*), which briefly discusses the status of the drafting process and the main issues of contention. These two documents are presented at the start of the second deliberation of the law. What follows is another discussion in subgroups.

Based on suggestions provided during this second review, the Legal Committee produces a new draft (法律草案修改稿 *falü cao'an xiugaigao* or 草案三审稿 *cao'an sanshengao*), which comes with a so-called deliberation results report (审议结果报告 *shenyi jieguo baogao*) that explains conflicting viewpoints. Likewise, if suggestions made by the special committee(s) are not adopted

²¹ This section is based on the 2015 Legislation Law (*lifā fǎ*), the Organic Law of the National People's Congress (*Zhonghua Renmin Gongheguo quanguo remin daibiao dabui zuzhi fǎ*), and observed praxis.

in the revised draft, the Legal Committee must offer an explanation.

During the entire process of deliberation in the NPC or NPC-SC, debates can be organized to discuss the draft's major issues as deemed necessary by the Presidium or NPC-SC. There may also be another round of public consultation. Depending on how many times the draft law is reviewed in the NPC or NPC-SC, there might be more than one revision report.

3.3.9 Voting and Passage by the NPC or NPC-SC

Most laws are deliberated three times by the NPC or NPC-SC before they are put to a vote, but this is not a legal requirement. The 2015 Legislation Law (article 29) stipulates that a draft should be put to vote after three deliberations. However, it also states (article 28) that draft laws may be put to vote after two or even a single deliberation if there is consensus about the content. While it is thus legally possible to pass a law in a single NPC-SC meeting, contrary to popular belief, such speedy lawmaking does not necessarily happen in a post-crisis situation. We will see evidence of this in the case study of the 2009 Food Safety Law, which could have been passed in October 2008 or in December 2008, but was not passed until February 2009. Sometimes a draft law is deliberated by the NPC or NPC-SC more than three times. Examples are the 2009 Food Safety Law (L. Mao & Bai, 2009) and the 2014 amendment of the Environmental Protection Law (Xiaojie Yu, Gu, & Wu, 2014), both of which were reviewed four times before voting.

After the final round of debate and revision in the NPC or NPC-SC, the NPC Legal Committee produces a voting draft (法律草案表决稿 *falü cao'an biaojue gao*).²² The Presidium or NPC-SC Chairman group sends the voting draft to the NPC or NPC-SC, respectively. Votes are collected straight after the final deliberation session, i.e. during the same meeting.

A bill might be intensively debated, but it will not be voted down. In fact, the NPC has never voted down a piece of legislation put in front of it (Caixin, 2014). Two bills failed to pass in the NPC-SC (Kan, 2014a). The first one is the Urban Resident Committee Organic Law, which was put to vote in 1989. Some delegates disagreed about the wording of one particular article. Subsequently, the delegates voted about whether to delete two characters. Only 65 out of 150 delegates voted in favor. Because a bill needs support from at least half of the delegates, the proposed change in wording was not approved. However, the proposed wording was adopted in a new draft, and the bill was passed several months later. The second case of a bill that did not pass the NPC-SC occurred in 1999, when an amendment of the Highway Law was put to vote. Only 77 out of 154 delegates voted in favor. Again, the bill failed because those in favor failed to exceed the threshold of 50% of the delegates. According to a NPC report, the Highway Law did not pass at that time for two reasons: disagreement over the content of the law and the absence of twenty-nine delegates because of sick leave, business trips, or other (political) activities (D. Ren, 2014).

Although bills are rarely voted down, this does not mean that the NPC and NPC-SC are only rubber stamps. In fact, "few if any laws pass through NPC review without substantive amendment, and many have had their contents significantly altered" (M. S. Tanner, 1995, p. 57). Only one basic NPC law has been adopted with zero opposing votes: the 2005 Anti-Secession Law (Hanqiu Jiang, 2013), a law that is controversial because it authorizes the Chinese state to use "non-peaceful

²² Unless otherwise indicated, the remainder of this section is based on the 2015 Legislation Law (*lifa fa*), the Organic Law of the National People's Congress (*Zhonghua Renmin Gongheguo quanguo rein daibiao dahui zuzhi fa*), and observed praxis.

means” if Taiwan declares independence. More recently, the NPC-SC passed the Administrative Litigation Law with zero opposing votes (Hong Jiang, 2014).

One explanation for the relatively small number of dissenting votes by NPC and NPC-SC delegates in lawmaking is that voting takes place only after general agreement has been reached among the delegates. In the absence of consensus, research and bargaining will continue and no voting will take place. Other hypotheses are a lack of interest amongst delegates or reluctance to express disagreement.

After a law is passed, it is published by the State Council Legislative Affairs Office. In order to implement new or amended laws, executive regulations are drafted in the form of administrative regulations (行政法规 *xingzheng fagui*), departmental rules (部门规章 *bumen guizhang*), and local rules (地方性法规 *difangxing fagui* and 地方规章 *difang guizhang*). Those in charge of drafting such secondary and tertiary legislation can influence whether and how laws are implemented. This can make or break the spirit and execution of the original law as passed by the NPC or NPC-SC.

3.3.10 The Role of State-Actors in Lawmaking

While the previous section discussed the *process* from agenda setting to implementation, the current section provides an overview of the key *actors* involved in the lawmaking process. As mentioned earlier in the chapter, sometimes a legislative process moves forward very slowly. This is because different actors have different resources, agendas, and negotiating strategies. The present section introduces each of these actors and their respective roles in lawmaking, which is summarized in table 3-5.

Table 3-5. The Most Powerful State Actors Involved in the Making of Laws (Falü)

Actor(s)	Role	Stage(s)
Ministries (部 <i>bu</i>)	Help prepare draft laws; take part in the inter-ministerial bargaining process.	Agenda setting; drafting; inter-agency review and consultation; debate and revision in the NPC or NPC-SC; implementation.
Provinces (省 <i>sheng</i>)	Take part in the legislative bargaining process; translates and transfer national law to the grassroots level through local legislation.	Agenda setting; inter-agency review and consultation; debate and revision in the NPC or NPC-SC; implementation.
State Council Legislative Affairs Office (LAO) (国务院法制办公室 <i>guowuyuan fazhi bangongshi</i>)	Drafts and implements legislative plans; coordinates the entire drafting process, including negotiation and solicitation of opinions; implementing rules.	Legislative planning; inter-agency review and consultation; implementation.
NPC Presidium (人大主席团 <i>renda zhuxituan</i>)	Decides when to list a draft for deliberation in the NPC and organizes debates.	Debate, revision, and passage in the NPC.
NPC Legal Committee (法律委员会 <i>falü weiyuanhui</i>)	Records and organizes feedback on the various drafts; organizes additional meetings to solicit opinions; revises draft laws and produces the final bill.	Debate, revision, and passage in the NPC or NPC-SC.
NPC-SC Chairman Group (委员长会议 <i>weiyuanzhang huiyi</i>)	Sets the meeting agenda of the SCNPC; decides when to deliberate on a draft law.	Debate, revision, and passage in the NPC or NPC-SC.
NPC-SC Commission on Legislative Affairs (CLA) (法制工作委员会 <i>fazhi gongzuo weiyuanhui</i>)	Reviews draft legislation submitted to NPC or NPC-SC; collects opinions of state-actors and non-state actors.	Debate, revision, and passage in the NPC or NPC-SC.
Communist Party of China (CPC) especially the Politburo (政治局 <i>zhengzhiju</i>) and its Standing Committee (政治局常委会 <i>zhengzhiju changweihui</i>)	Requires that prior to NPC or NPC-SC deliberation, certain draft laws are reported to and approved by the CPC. Political laws must be reported to the CPC before drafting.	Top leadership approval prior to debate, revision, and passage in the NPC or NPC-SC. Legislative agenda setting, approval of drafting group.

3.3.10.1 State Council: Ministries, Commissions, Legislative Affairs Office

The Constitution defines the State Council as the “Central People’s Government” and “the highest organ of State administration.” It consists of the premier, vice-premiers and state councilors, ministers in charge of ministries and commissions, the auditor-general, and the secretary general. The current (2013–2018) State Council consists of 35 persons and meets once or twice every year. Its Standing Committee consists of ten persons and meets weekly.²³

As shown above, most laws passed by the NPC and its Standing Committee originate with the ministries and the State Council, which is not surprising considering that they generally have more resources to draw attention to problems and have knowledge of the specific issue that is being regulated (Shishi Li, 2000; Otto, 2000; M. S. Tanner, 1995, pp. 45–49).

Ministries can influence both the content and the speed of the legislative process by proposing, supporting, or obstructing a particular draft. Bargaining between ministries can result in watered down legislation or even in a gridlock, delaying the enactment of a law. As discussed in chapter 2, a key problem in this regard is departmentalism (本位主义 *benwei zhuyi*), which means that government bodies tend to only focus on their own interests, ignoring the fact that they are part of a larger government system that is meant to act for the benefit of society at large (M. S. Tanner, 1994, p. 65). Also, if responsibilities are unclear, there is space for government units to pass the task of drafting legislation to another department, which can result in inaction and undesirable legislative gaps (M. S. Tanner, 1999, pp. 120–132). In general, ministries fear intervention in their work and will try to block or bargain away drafts or clauses that give outsiders the right to intervene in their activities (M. S. Tanner, 1995, pp. 54–55). For example, if the Ministry of Environmental Protection would want to tackle water pollution from livestock farming, it has to reach agreement with the Ministry of Agriculture. But the latter might not acknowledge that water pollution from farming is a problem or might not be willing to legislate on it, because the ministry wants to promote and protect farming.

The bargaining behavior of ministries is not just determined by their own goals and missions, but is also influenced by “higher or lower risk tolerance, fear of losing face, or simply a desire to gather carefully potential resources for important policy battles to come” (M. S. Tanner, 1995, p. 54). Ministries are less likely to obstruct a legislative process if they feel that it is heavily supported by central leadership (M. S. Tanner, 1995). Moreover, in China’s bureaucratic system, power is fragmented amongst many different bureaucratic units, which means that ministries are often forced into compromises with other ministries, local authorities, or the NPC and its Standing Committee (J. Chen, 2008, pp. 183–184; M. S. Tanner, 1994, p. 87).

Ministerial preferences may or may not get adopted by the NPC Legal Committee. To illustrate, during the amendment process of the 1998 Land Management Law, several ministries requested definitions and more specific rules on the land use classification system. The NPC Legal Committee subsequently added definitions of the various categories of land use. However, in other cases legislators do not meet ministerial demands. To illustrate, during the making of the 2002 Environmental Impacts Assessment Law, the Ministry of Construction, the Ministry of National Land Resources, and the State Forestry Agency wanted their planning to be exempted from obligatory environmental impact assessments (EIA). But because the aim of the law was to

²³ Source: State Council website: <http://www.gov.cn/guowuyuan>.

broaden the scope of applicability of the existing EIA system, the NPC Legal Committee did not adopt these suggestions (Van Rooij, 2006, bks. 54–55 and 89–90).

The State Council's Legislative Affairs Office (国务院法制办公室 *guowuyuan fazhi bangongshi*) is also a powerful player in lawmaking (Otto, 2000). If a law regulates an issue that affects multiple policy areas, the LAO may be asked to produce a preliminary draft (Shishi Li, 2000). Moreover, if there is disagreement between departments about a draft, the LAO negotiates. As such, the LAO is the key to access to the legislative process. Despite this powerful position, it tends to hear all major views in order to avoid gridlocks later in the process (M. S. Tanner, 1995). Finally, the LAO is responsible for publishing laws and for drafting the administrative regulations necessary for the implementation of laws.

3.3.10.2 Provinces

Provinces can influence agenda setting through proposals put forward by NPC delegates. Each delegate belongs to a provincial delegation (代表团 *daibiaotuan*). Provincial delegations have the right to submit proposals for laws to the NPC (Legislation Law article 15). Such a proposal requires substantial support from the province: it must have the support of at least half of the delegation (NPC, 2008a). A recent example is the proposal for a Quality Promotion Law put forward by the Anhui delegation in 2014 (Liping Chen, 2014).

Provinces have bargaining power similar to that of ministries, because they have the same bureaucratic rank. Like other state actors, they are expected to advocate in line with their own interests (Shirk, 1993, pp. 92–106). Agendas of local governments can include “economic growth and development; ‘kingdom building’ (i.e. increased individual power at the local level coupled with greater local autonomy from Central authorities); increased access to Central resources; and local leaders’ desire to promote their careers by impressing Central authorities” (M. S. Tanner, 1999, p. 23).

How successful provinces are in convincing the NPC to adopt their suggestions varies. An example of compromise between national agencies, state-owned enterprises, and provinces is the 2010 Pipeline Protection Law. During the review of the first draft, several provinces proposed that pipeline operators be responsible for the protection of oil and gas pipelines. While not fully adopting this suggestion, the resulting law provides a compromise in article 5 in which pipeline operators are obliged to protect pipelines but are guided and supervised by local government agencies (Ji Li, 2014). An example in which provinces were less successful is the 1998 Land Management Law. Most of the feedback provided by provinces during the making of the 1998 Land Management Act was not adopted by the NPC Legal Committee. Instead, the Legal Committee opted for a law that was specific and strict. In this case, the central government was concerned about the availability of sufficient arable land to feed the Chinese population. Therefore, central concerns over food security trumped local concerns about how to implement the law (Van Rooij, 2006, pp. 51–67).

It must be noted, though, that provinces are not necessarily opposed to strict laws. In the case of the 2000 amendment of the Air Pollution Prevention and Control Law (APPCL), for instance, Beijing, Shanghai, and Tianjin were very supportive of stricter rules. Especially Beijing wanted the law to be revised because it was faced with ever increasing pollution, some of which originated from other provinces and from local industries that were likely to simply relocate if localities would

draft stricter rules (Alford & Liebman, 2001).

Finally, provinces play an important role in the implementation of national law. Legislation enacted by provinces provides details necessary for implementation of central level law. It also brings the law to the local level, which is important because local people tend to be most familiar with local rules (Van Rooij, 2006, pp. 64–67).

3.3.10.3 NPC: Presidium and Legal Committee

Although the Chinese constitution defines the NPC as “the highest organ of state power,” it only meets once per year, in the first quarter of each year. The NPC is elected for a period of five years. Delegates are not elected by the general public, but are “elected by the people’s congresses of the provinces, autonomous regions, and municipalities directly under the Central Government, and by the People’s Liberation Army.”²⁴ At the time of writing, the twelfth NPC (2013–2018) is in office. It has 2,987 delegates (Xinhua, 2013a).²⁵ NPC delegates can put forward legislative proposals, but their influence on lawmaking appears limited and depends on the policy area. Generally speaking, non-sensitive proposals can be influential, whereas sensitive proposals such as for political reform have very low chances of success (Truex, 2016).

Two subgroups within the NPC are especially powerful in the lawmaking process, one of which is the NPC Presidium. This group of approximately 175 individuals, who are elected prior to each annual NPC meeting, is in charge of important *procedural* issues, including the meeting agenda.²⁶ The role of the Presidium in lawmaking is to decide whether to put a legislative proposal (议案 *yì'àn*)²⁷ on the meeting agenda or to forward it to a special committee, which will then advise the Presidium on whether or not to include the proposal in the meeting agenda. The Presidium also decides whether or not to put a bill to vote, convenes meetings with delegation heads to discuss a proposal, and serves as the bridge between the NPC Legal Committee and the full NPC as legislative reports and draft laws are first sent to the Presidium before they are forwarded to the NPC delegates.

The second subgroup within the NPC that plays a key role in lawmaking is the NPC Legal Committee (法律委员会 *fǎlǜ weiyuanhui*), which is one of the NPC’s nine special committees. According to the Constitution, these committees “research, deliberate and draft relevant proposals.” The members of special committees are “former high-ranking Party and state officials who have recently retired from the key ministries, departments, mass organs, and localities concerned with the issues under each particular committee’s provenance” (M. S. Tanner, 1995, pp. 57–58). As a result, they have plenty of expertise and connections to review and amend draft legislation.

While initial draft laws can be made by a wide range of administrative or legislative units, the bills will always end up with and revised by the NPC Legal Committee. Moreover, during deliberation in the NPC or NPC-SC, it records and organizes the opinions and suggestions

24 Electoral Law of the NPC and Local People’s Congresses (*Quanguo renmin daibiao dahui he difang geji renmin daibiao dahui xuanju fa*), article 15.

25 Note that according to the NPC Electoral Law (article 15), the number of deputies cannot exceed 3,000. Recently, though, it has been informally proposed to reduce the number to 1,200 delegates (Kan, 2014b).

26 This and the next paragraph are based on the Rules of Procedure for the National People’s Congress of the People’s Republic of China (*Zhonghua renmin gongheguo quanguo renmin daibiao dahui yishi guize*), chapters 1 and 2.

27 The Chinese term *yì'àn* is commonly confused with *tí'àn* (提案). However, the latter is a proposal submitted to the Chinese People’s Political Consultative Conference.

voiced by delegates as well as by other NPC special committees. In order to obtain a wider range of opinions, the Legal Committee, jointly with other legislative bodies such as special committees, organizes meetings during which social organizations, provinces, cities, relevant departments, citizens, and political parties other than the Communist Party can express their point of view. This data is then summarized in reports and considered for inclusion in subsequent drafts which are produced by the Legal Committee. This includes the voting draft.

Exactly how the Legal Committee operates, i.e. when it meets, what is on the agenda, or how it makes decisions is unclear. The webpages of the Legal Committee are not very informative and are seldom updated. News media sometimes report on the Legal Committee, for example when the Committee visits a locality to collect data in support of a new law or when it organizes symposia or similar activities, but meetings of the Legal Committee are only sporadically and superficially covered. The current NPC Legal Committee has 22 members, most of whom are senior in age: 14 out of 22 members were born before 1955. They have many years of experience in China's bureaucracy, but are not necessarily formally trained in law. Many of the members concurrently hold other high level political posts. For example, membership includes the chairman and two vice chairmen of the Standing Committee's Commission on Legislative Affairs.²⁸

Although very little has been written about the Legal Committee in literature, it appears a very powerful body that has the last word about key elements of draft laws. It is not simply an executive body that, based on a set of recommendations, mechanically puts draft laws together, but rather has its own ideas regarding the substance of laws. This means that it does not necessarily adopt all suggestions put forward by others. Van Rooij (2006, pp. 25–104) presents evidence of this from several lawmaking processes. One example is from the making of the 1998 Land Management Law, which was drafted in a time when there was a national sense of urgency over the threat of food shortage due to a lack of arable land. In the lawmaking process, several provinces and large cities opposed the legal requirement to earmark a certain amount of land for agriculture. However, the Legal Committee rejected their counter proposal of flexible targets, stating that it would be difficult to implement and that the law's target was realistic. Similarly, Chen (J. Chen, 2008, pp. 487–491) shows how the Legal Committee severely diminished the significance of the Partnership Enterprise Law by changing the scope of the original draft.

Of course, the Legal Committee may work under direct instructions from other organs, including the Communist Party, but based on existing literature, we do not know whether and to what extent this is the case.

3.3.10.4 NPC-SC: Chairman Group and Commission on Legislative Affairs

Because the NPC meets so rarely, most of the year the NPC Standing Committee is in charge of lawmaking. The NPC-SC is the permanent body of the NPC and meets every other month.²⁹ The current 12th NPC Standing Committee (2013–2018) consists of 161 persons (Xinhua, 2013c), who have been elected by the NPC.

²⁸ Basic background information about the Committee's members is available online at the website of the NPC Legal Committee.

²⁹ This and the next paragraph are based on the 2015 Legislation Law, the Organic Law of the National People's Congress (*Zhonghua renmin gongheguo quanguo renmin daibiao dahui zuzhi fa*), and the Rules of Procedure for the Standing Committee of the National People's Congress of the People's Republic of China (*Zhonghua renmin gongheguo quanguo renmin daibiao dahui changwu weiyuanhui yishi guize*).

Two groups within the NPC Standing Committee are especially important in lawmaking, one of which is the Chairman Group (委员长会议 *weiyuanzhang huiyi*). This group has 15 members at the time of writing. It decides when the Standing Committee meets, drafts the agenda for each meeting, decides whether proposals submitted to the Standing Committee are handed over to a special committee or are forwarded to the Standing Committee for deliberation, guides and coordinates the daily work of the NPC special committees, and handles “other important daily work of the Standing Committee.” Moreover, legislative plans require approval of the NPC-SC Chairman Group. Drafts for voting first pass the Chairman group before they are passed on to the members of the Standing Committee. In terms of lawmaking, it is thus most influential in the timing of laws. Indirectly it can influence the substance of draft laws by referring a draft to a certain player or requesting more research.

The second NPC-SC group that is heavily involved in lawmaking is the Commission on Legislative Affairs (法制工作委员会 *fazhi gongzuo weiyuanhui*, commonly referred to as 法工委 *fagongwei*). Its principal tasks include formulating and revising draft laws and collecting public comments on draft laws. Since 2007, this commission is also in charge of drafting legislative plans.³⁰ In this process, the commission “must seriously consider the proposals and suggestions of the delegates, widely solicit opinions, scientifically debate and evaluate, and on the basis of the needs of economic and social development and the establishment of democratic rule, determine legislative projects” (Legislation Law, article 52).

Although the internal decision-making dynamics remain unclear, we do know that the Legislative Affairs Commission can and does influence the timing and substance of law. One example is from the making of the Labor Law, which Deng Xiaoping had requested in 1979. The State Council and Ministry of Labor together submitted a draft labor law to the NPC in the mid-1980s, but the Legislative Affairs Commission did not feel the bill was ready for passage and therefore returned the draft to the ministry for revision. The Labor Law was eventually passed in 1994 (M. S. Tanner, 1999, pp. 222–223). Another example is from the making of the Civil Code, which China has been trying to write for decades. The NPC Standing Committee commissioned six scholars to each draft specific books in 2001. These draft books were submitted to the NPC Standing Committee in 2002. However, the Legislative Affairs Commission excluded the books on contract, family, succession, and intellectual property in the draft it submitted to the Standing Committee for deliberation in December 2002 (J. Chen, 2008, pp. 336–337). A final case is that of the 1995 Air Pollution Law, which turned out much weaker than the initial draft formulated by the NPC’s Environment and Natural Resources Protection Committee, because the Legislative Affairs Commission opposed tough regulations (Alford & Liebman, 2001).

While there is overlap between the NPC Legal Committee and the NPC-SC Commission on Legislative Affairs, the NPC Legal Committee appears to have the last say. All material that is gathered and organized by the Commission on Legislative Affairs, including the input gathered from the general public, is sent to the NPC Legal Committee, which then produces revised draft laws and the final version of the bill. Nevertheless, drafts and decisions may be heavily influenced by the Legislative Affairs Commission, because the NPC Legal Committee does not have its own

³⁰ The first five-year plan was made for the 8th NPC (1993–1998). Initially, the NPC-SC secretariat was in charge of legislative planning. From 2003 until 2007, the plans were drafted by the NPC-SC General Office (X. Guo, 2007).

offices, but jointly uses the staff and offices of the Legislative Affairs Commission (M. S. Tanner, 1999, pp. 101–104).

3.3.10.5 Communist Party: Politburo and its Standing Committee

Chinese law does not specify the role of the Communist Party in lawmaking. The preamble of the Constitution includes phrases such as “under the leadership of the CPC ...” multiple times, yet it does not define the role of the party in lawmaking. The Legislation Law mentions the CPC only once, namely in article 3, which stipulates that “laws shall be made in compliance with the basic principles laid down in the Constitution ... adhering to the leadership of the Communist Party of China ...”

However, the CPC does formally claim a role in lawmaking. As discussed above, the CPC requires the NPC-SC to submit its legislative plans for examination and approval (Kan, 2013). Moreover, all draft laws that are formulated by the NPC or NPC-SC as well as all draft laws that are deliberated by the NPC must be submitted to the Politburo or its Standing Committee and the CPC Central Committee for examination and approval. Laws in the area of politics must even be reported to the CPC Central Committee before drafting.

In a 2014 party decision, the CPC Central Committee reiterated the leadership role of the Party in lawmaking. Laws involving major organizational and policy adjustments must be reported to the CPC Central Committee for discussion and decision. Furthermore, major issues in making and amending laws must be reported to the Party Central Committee by the Party Group of the NPC-SC (CPC Central Committee, 2014).

Nevertheless, as mentioned in the previous chapter, we know little about decision-making processes within the CPC. As shown in figure 3-4, at the core of the Party apparatus is the Politburo (政治局 *zhengzhiju*), which currently (2013–2018) consists of 25 high-level leaders, who are said to meet in roundtable format approximately once a month, with each meeting lasting a day. Its Standing Committee (政治局常委会 *zhengzhiju changweihui*) has seven members and is said to meet weekly. Each member has its own portfolio, for example economic development, propaganda, or public security.

Especially little is known about internal decision-making dynamics of the Politburo. Yu Zhengsheng, member of the current Standing Committee, has been quoted as saying: “Many issues are openly discussed, we meet regularly, every kind of interest is reflected.” Decisions by the Standing Committee are claimed to be made through voting, whereby the majority decides and the vote of the president is worth equally much as those of the other members. There is no way to verify this because meetings are seldom covered by news media and even if they are, media will never show the meeting itself: “you only see writings, no people” (Jun Wang, 2014). Most of the reports about meetings of the Standing Committee of the Politburo that have appeared since the early 1990’s are in response of natural disasters or public health crises (A. Miller, 2016, p. 3). An example is a news report about a meeting in August 2014 in response to the Ludian earthquake in which more than 600 people died. The report was tellingly titled “Xinhua News Agency for the first time in 2014 reports on a meeting of the Standing Committee of the Politburo.”

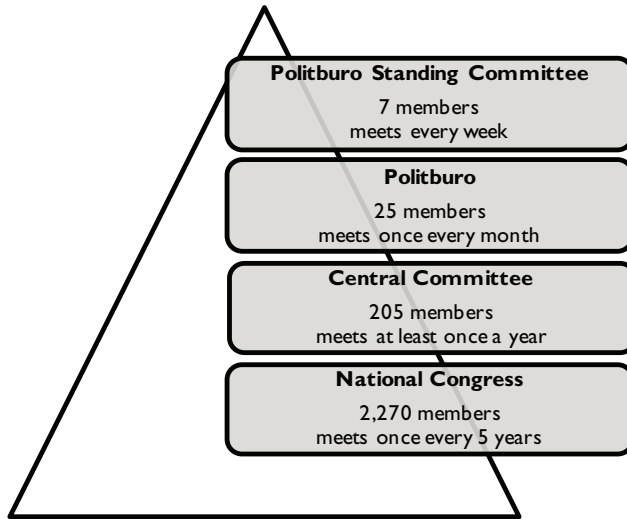


Figure 3-4. Simplified Structure of the Communist Party of China (CPC)

In terms of indirect influence, the Communist Party influences lawmaking through its members, as most of the individuals in state and legislative bodies are Party members. To illustrate, the NPC Presidium Standing Committee had 14 members in 2017, three of whom were Politburo members. Moreover, almost all members of the Politburo were members of the 2017 NPC Presidium. The CPC controls the appointment of key positions in state and legislative bodies through the *nomenklatura* system (职务名称表 *zhiwu mingcheng biao*), which essentially is a list of persons selected by the party core leadership deemed suitable for important positions. In fact, “Standing Committee members are ... on the *nomenklatura* list of the CPC Politburo, unlike members of the full NPC, most of whom are selected with far more provincial-level input” (M. S. Tanner, 1999, p. 92).

Note that although there are eight so-called democratic parties (民主党派 *minzhu dangpai*) in addition to the Communist Party, it is “not unusual for prominent members of the Democratic Parties to concurrently hold membership of the Communist Party” (J. Chen, 2008, p. 109). A little less than a third of the National People’s Congress consists of non-CPC members. Five out of the thirteen vice chairmen of the twelfth NPC’s Standing Committee are from one of the Democratic Parties (X. Ye, 2013).

In sum, it is unclear exactly how much direct influence the Party has on lawmaking and how decisions pertaining to lawmaking are made within the Party core, although “top leaders exercise a good deal less control or micromanagement of lawmaking that Western studies of the Chinese legal system have often assumed” (M. S. Tanner, 1995, p. 45).

3.4 The Making of Administrative Regulations

So far, this chapter has focused on lawmaking by the NPC, but because the present study examines post-crisis change in all three types of national level law, this section discusses administrative regulations (行政法规 *xingzheng fagui*), which are made by the State Council.

Administrative regulations are important because these are much more plentiful than laws, which means that it is more likely that a crisis will be followed by a new or amended administrative regulation than by a new or amended NPC law. In the period from 1979 until 2015, the State Council promulgated almost 1,065 pieces of legislation, while the NPC and NPC-SC together passed only 549 laws.³¹

An important task of administrative regulations is the implementation of laws passed by the NPC or NPC-SC. Failing to pass such implementing regulations (实施条例 *shishi tiaoli*) severely undermines a law's potential. However, this does sometimes happen. An example is the 1995 revision of the Air Pollution Prevention and Control Law. In this case, "the vague provisions of the 1995 APPCL itself made rapid revision of the implementing regulations essential" (Alford & Liebman, 2001, p. 21). Nevertheless, "the process of revising the implementing regulations proceeded slowly, ultimately, at the national level, yielding only a set of 'detailed rules,' [namely] the acid rain provisions, and provisions restricting nitrogen oxide emissions" (Alford & Liebman, 2001, p. 21). The State Council failed to pass general implementing regulations. General implementing regulations were drafted, but not passed, which meant that the general implementing regulations that came with the original 1987 Air Pollution Prevention and Control Law remained legally effective. When the NPC special committee on Environment and Natural Resources Protection eventually proposed to amend the law, one of the two major driving forces behind this proposal was the lack of implementing regulations (Alford & Liebman, 2001).

In addition to implementing regulations, the State Council issues regulations based on the list of topics that fall within its jurisdiction as stipulated by article 89 of the Constitution. This list includes economy, urban and rural construction, education, science, culture, health, sports, among other things. Article 8 of the Constitution lists the themes which are exclusively reserved to legislation by the NPC or NPC-SC. If there is a need for legislation on one of these topics and it has not yet been addressed by NPC or NPC-SC law, the State Council can get authorized to make administrative rules and regulations in certain specific areas.

Despite the volume and importance of administrative regulations, there is surprisingly little recent literature about them in terms of how they are made and how the legislative process influences its substance. The State Council legislative process is governed by the 2001 Regulations for Administrative Rules (行政法规制定程序条例 *xingzheng fagui zhiding chengxu tiaoli*)³² and chapter 3 of the Legislation Law.

At first sight, the process from agenda setting to the implementation of administrative regulations, as summarized in figure 3-5, has much in common with NPC and NPC-SC lawmaking processes. Once the proposed rules are on the legislative agenda and a drafting group has been appointed, the draft goes through multiple cycles of review before it is finally approved,

31 Based on China Law & Regulations Database (中国法律法规信息库 *Zhongguo falü fagui xinxi ku*), accessible through law.npc.gov.cn:8081/FLFG.

32 These Regulations were revised in December 2017.

published, and implemented.

However, despite the emphasis on soliciting opinions from a wide range of state and non-state actors, fewer actors are involved in the making of administrative regulations compared to the making of laws. While heavyweights in NPC lawmaking include ministries, the NPC-SC Commission on Legislative Affairs, and the NPC Legal Committee, State Council rulemaking has only two main players: the State Council Legislative Affairs Office (LAO) and the drafting group. As shown in figure 3-5, the LAO coordinates the entire process, from agenda setting to drafting to submitting the draft to the State Council, all the way to interpretation. The drafting group is appointed by the State Council Legislative Affairs Office and approved by the State Council. This drafting group can be a State Council department such as the Ministry of Finance or the Ministry of Agriculture. However, the LAO itself can also draft the regulations.

The previously mentioned State Council legislative plans specify the administrative unit responsible for drafting each set of regulations. In case of implementing regulations, the drafting group is usually the ministry that originally drafted the law passed by the NPC or NPC-SC (M. S. Tanner, 1999, pp. 129–131). The drafting group may organize meetings with other stakeholders including local departments and industry, to get input on the first draft (初稿 *chugao*). Public hearings might be convened. An example of such a public hearing is the one that was organized in June 2014 by the Ministry of Agriculture when amending the Pesticides Regulations. A total of about twenty representatives from different stakeholder groups (e.g., pesticide manufacturers, pesticide retailers, pesticide users, industry associations, experts) were invited to participate in the hearing. Notably, citizens were not included in the invitation (Ministry of Agriculture, 2014d).

Eventually, the drafting group submits its draft to the State Council Legislative Affairs Office (LAO). The Regulations for Administrative Rules (article 16) require that the draft (送审稿 *songshengao*) is accompanied with an explanation (说明 *shuoming*) that includes the necessity of the rules, an overview of their main content, conflicting opinions on key issues as well as a report about consultation with related agencies, organizations, and citizens.

The LAO then examines and amends the draft regulations. According to the Regulations for Administrative Rules (article 17), the LAO's task is furthermore to judge whether the opinions of related agencies, organizations, and citizens, about the main topics of the rules have been handled correctly. The Office may convene legislative work meetings to solicit the opinions of ministries, Party organs, experts, industry, and other stakeholders. It may also publish the draft regulation and solicit opinions from the general public. The website of the Legislative Affairs Office of the State Council has a special section for this, called “comments collection system.” Within the online application, one can, after logging in, leave comments on administrative regulations and departmental rules.³³ Finally, the LAO submits the draft to the State Council for review. This final product should, according to the Regulations for Administrative Rules (article 5), “not be complicated, logical, the articles clear and specific, the wording precise, simple and clean, and it should possess maneuverability.”

Until recently, the State Council could postpone regulation for years or could simply not issue any regulations at all. This may change with the 2015 Legislation Law, which stipulates in article

33 The comments collection system is called *fagui guizhang cao'an yijian zhengji xitong* (法规规章草案意见征集系统) and is available through <http://www.chinalaw.gov.cn/article/cayjzxt/index.html>.

62 that if a government agency fails to issue specific rules required by law within a year after a law goes into force, it must explain the situation to the NPC-SC.

In addition to the timing of implementation, the State Council can also influence the how laws are implemented. Sometimes elements of draft laws that were rejected by the NPC or NPC-SC, are reintroduced by the drafting group of the administrative rules. This is what happened in the acid rain provisions promulgated by the State Council for the implementation of the 1995 Air Pollution Prevention and Control Law (Alford & Liebman, 2001). Another example is the State-Owned Industrial Enterprise Law. The director of the Legislative Affairs Office claimed that it “would strengthen many of the very same reforms which NPC delegates had found so odious” (M. S. Tanner, 1999, pp. 129–131).

The main players in making administrative regulations are thus the drafting group and the LAO. The drafting group, which usually is a ministry, decides the bulk of its substance. Insiders claim that the LAO merely has a technical and coordinative role such as ensuring proper legal language and resolving interagency disagreements. However, Tanner (1999, p. 130) concludes that the LAO “does have a policy agenda of its own, and it is not above using its power over implementation to promote it.”

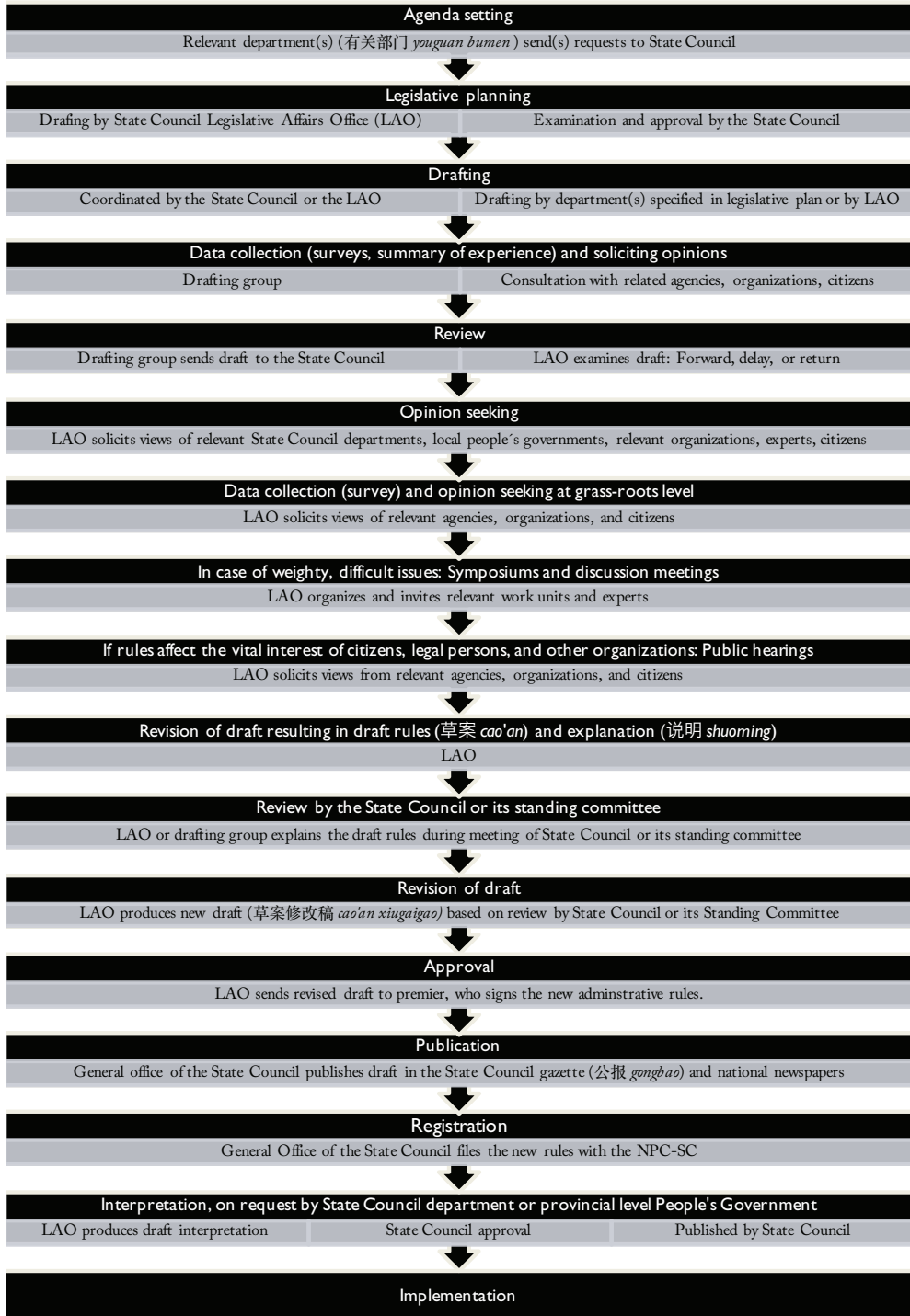


Figure 3-5. The Making of Administrative Rules (行政法规 *xingzheng fagui*)

3.5 The Making of Departmental Rules

At the national level, departmental rules (部门规章 *bumen guizhang*) are the most pervasive form of regulation. Between 1979 and 2005, more than 6,500 departmental rules were issued, almost six times the number of administrative regulations passed during the same period.³⁴

Yet, little has been written about departmental rulemaking. One explanation for this is that, until recently, the status of departmental rules was debated. Not everyone agreed that departmental rules were law. However, the 2000 Legislation Law included a chapter on departmental rules, so that these are now officially law (J. Chen, 2008, pp. 191–192). Another explanation is that legislative processes in the NPC, NPC-SC, and State Council are more open and better documented than rulemaking in the executive branches.

Departmental rulemaking is governed by the Legislation Law and the Regulations on Procedures for the Formulation of Rules (规章制定程序条例 *guizhang zhiding chengxu tiaoli*). Based on these two sets of rules, the process is summarized in figure 3-6.³⁵

The Legislation Law authorizes State Council departments, committees, the Bank of China, the National Audit Office, and directly subordinated administrative bodies to promulgate departmental rules. Each department can only legislate within the scope of its respective jurisdiction and only with the aim to implement laws and administrative rules. If an issue involves two or more departments, they must request the State Council to issue administrative regulations or the departments must work together in drafting rules. In the absence of laws or administrative regulations, departments may only issue legislative rules that do not impair the rights of citizens, legal persons, and organizations. They must be in line with laws and administrative regulations as well as with the Constitution. Departmental rules are usually titled 规定 *guiding* (regulations) or 办法 *banfa* (measures).

Rules are proposed by a unit of a department to the legal office of that department, which subsequently decides whether or not to include the proposal in the department's legislative plan. The department decides which internal or external unit produces the draft rules. Experts may be invited to join this process.

Within this process, there is a strong emphasis on seeking the opinion of a wide range of stakeholders. Article 15 of the Regulation on the Formulation of Rules stipulates: "In case there are major differences between the views of relevant organs, organizations, and citizens on rules that directly involve the vital interest of citizens, legal persons, or other organizations, the draft rules should be made public and opinions from all sides of society should be solicited." The drafting group can organize hearings, the procedure of which is specified by the Regulations of Procedures for the Formulation of Rules. The time, location, and content of the hearing should be made public thirty days in advance; participating relevant organs, organizations, and citizens have the right to ask questions and to express their opinion; notes should be taken that accurately reflect the main viewpoints and arguments expressed; and the drafting unit should earnestly study each opinion expressed at the hearing, and in the revised draft explain and justify how it dealt with the opinions. Hearings were first only used by local governments, but are now also adopted by ministries and

34 Based on China Law & Regulations Database.

35 Unless indicated otherwise, the remainder of this section is based on the Legislation Law and the Regulations on Procedures for the Formulation of Rules.

the State Council (Horsley, 2006).

In addition to the drafting group, the second key player in departmental rulemaking is the departmental legislative office, which scrutinizes and coordinates the process and formulates the final draft. First of all, it examines the draft (送审稿 *songshengao*) against a number of criteria, including conformity with existing laws, the protection of citizens' rights, simplicity, and technical requirements. It also reviews whether suggestions put forward by citizens and (government) organizations have been addressed properly. The legislative office decides whether to forward, delay, or return the draft. Secondly, the departmental legislative office sends the draft to relevant (government) organizations and experts, conducts research, and organizes grassroots consultation. If the draft involves major issues, the legislative office is supposed to organize symposia and discussion meetings with relevant units and experts. For rules that directly impact the personal interests of citizens, legal persons, or organizations, the legislative office can publish the draft rules for public comments, if there is disagreement and if the drafting group has not yet done so. Thirdly, the departmental legislative office submits the draft rules (规章草案 *guizhang cao'an*) to the department for deliberation. Based on deliberation, the legislative office revises the draft rules and submits it to the department head, who signs and publishes the rules.

Thus, unsurprisingly, department rulemaking is predominantly a departmental issue. An issue that is not clear and needs additional research is how much of the substance and timing is influenced by the drafting group vis-à-vis the departmental legislative office and how much space is available for other (non-) state actors to influence the content of departmental rules.

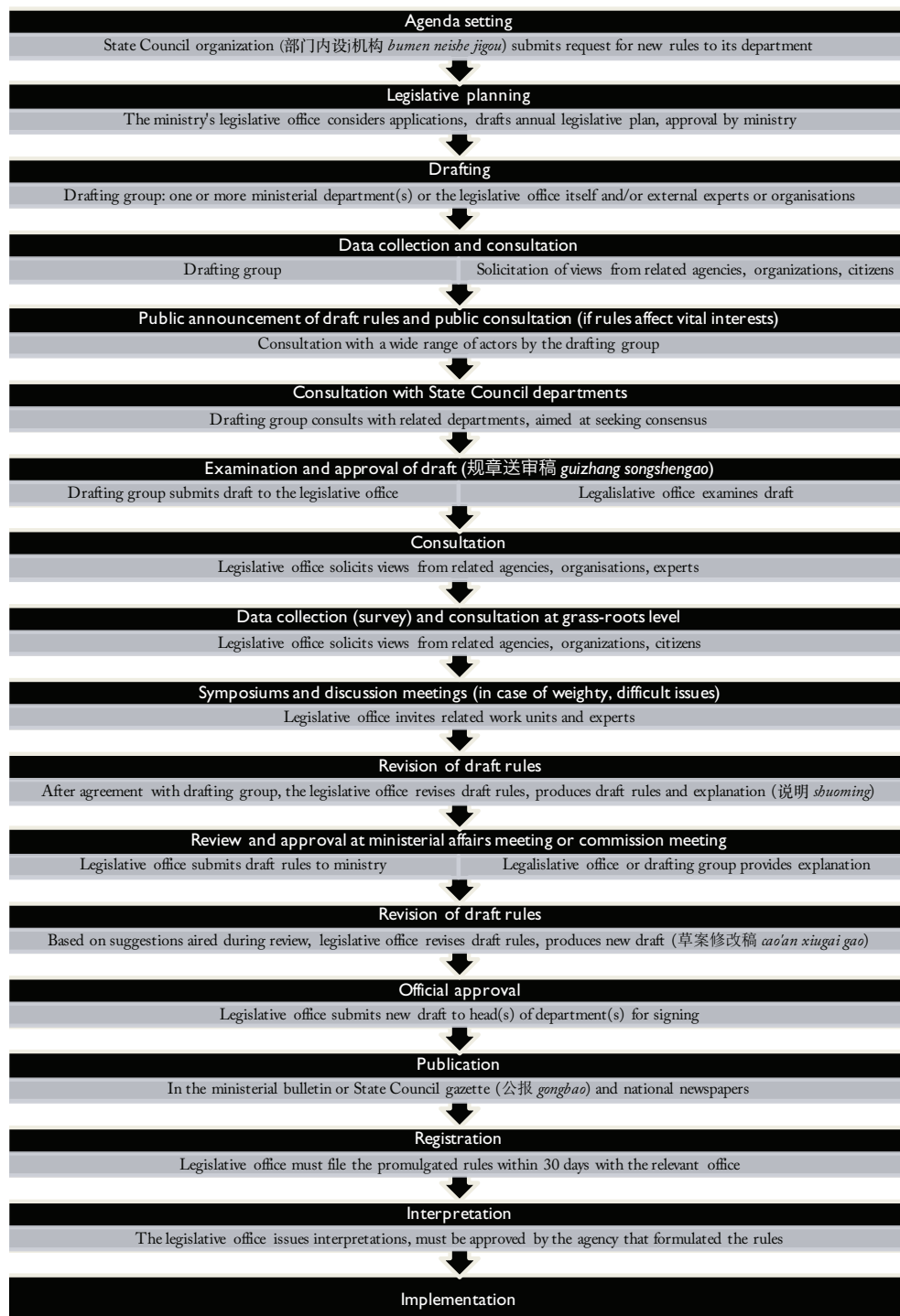


Figure 3-6. The Making of Departmental Rules (部门规章 *bumen guizhang*)

3.6 Conclusion

Whereas the previous chapter provided a general framework for analyzing crisis-change processes in China, this chapter zoomed in on lawmaking. It provided an up-to-date, systematic analysis of national level lawmaking processes in China. The most comprehensive studies on lawmaking in China are from the late 1990s (Otto et al., 2000; M. S. Tanner, 1999). Since then, lawmaking processes have professionalized and become more transparent. With the development of e-government, there is now more data available about lawmaking processes than before. Drawing upon these old and new sources, this chapter details the steps and actors involved in national level law making for laws (法律 *falü*), administrative regulations (行政法规 *xingzheng fagui*), and departmental rules (部门规章 *bumen guizhang*).

The chapter, first of all, showed that—contrary to popular belief—lawmaking in authoritarian China is not controlled by a small group of top leaders, but is a process that consists of bargaining between many different state actors at central and local levels. With regard to the making of national level laws, the most powerful state actors are the ministries, provinces, the State Council Legislative Office, the NPC Presidium and NPC-SC Chairman Group, the NPC Legal Committee, and the NPC-SC Commission on Legislative Affairs. The Communist Party influences lawmaking through elections and bureaucratic appointments, but it also claims a more direct role: certain types of laws require the approval of the Party prior to NPC or NPC-SC deliberation and political laws must even be reported to the Party before drafting starts. However, due to lack of transparency, it is not clear exactly how involved top Party leaders are in lawmaking. In the making of administrative regulations and departmental rules, the State Council's Legislative Affairs Office and the ministries are the most powerful bodies.

Secondly, the chapter showed that although non-state actors increasingly try to influence the timing and content of laws, evidence of the actual impact of these lobbying activities is limited. Along with the professionalization of lawmaking processes and increased transparency, it has become easier for non-state actors such as citizens, journalists, experts, NGOs, and industry to become involved in lawmaking. Lawmakers nowadays usually publish draft laws, regulations, and rules online for public consultation, which allows non-state actors to follow and comment on the process. However, the pluralization that scholars have observed in policy processes in China (see chapter 2) appears not to be mirrored in lawmaking. Evidence of the impact of non-state actors on lawmaking remains anecdotal. There is no evidence that non-state actors structurally and directly influence the timing and substance of laws.

Now that I have laid the theoretic foundation for examining the *process* behind post-crisis legal change, the next chapter focuses on the *substance* of post-crisis legal change. Specifically, it discusses ways to identify, measure, and assess such change.

4 Measuring and Assessing Post-Crisis Legal Change

4.1 Introduction

While crises may be followed by legal change, a key question is what the *nature* of such change is since the mere passing of a law or rule does not necessarily mean that change is meaningful or that lessons have been learned. Measuring and assessing the nature of post-crisis law is important because if the issues underlying a crisis are not addressed, similar crises may occur again, resulting in more victims and social instability. This is especially relevant in China, where crises are rampant and directly undermine the credibility of the Communist Party.

However, despite the abundance of studies on policy change, literature does not provide a clear picture regarding the nature of post-crisis policy change, nor is there consensus about how to best measure and assess such change. Existing literature provides a number of alternative approaches, some of which are quantitative, for example focused on the degree of change, whereas others are qualitative, for example focused on learning.

Based on existing literature, the primary aim of this chapter is to develop a way to measure and assess post-crisis legal change in a systematic and meaningful way, taking into account the characteristics of the Chinese legal system. Specifically, the chapter focuses on three questions regarding post-crisis legal change: (1) what has changed?; (2) what is the significance of this change?; and (3) what kind of learning is reflected in post-crisis legal change?

In the process, the chapter makes three theoretic and methodological contributions. First of all, it provides an overview of existing approaches for measuring and assessing policy change. Secondly, by adjusting and applying existing approaches to China, it sheds light on the evolution of the Chinese legal system, which—despite being one of the largest legal systems in the world—is an underdeveloped topic in Chinese legal studies. Thirdly, by applying existing approaches to a new context, it sheds light on the strengths and weaknesses of these approaches, which provides new avenues for future research. This is especially true for the quantitative approach presented in this chapter.

The chapter consists of three parts. It first introduces existing theories about the nature of post-crisis legal change. Next, it provides an overview of existing approaches for measuring and assessing legal change. Finally, it introduces the hybrid approach used in this study, which combines quantitative automated text analysis with qualitative textual composition analysis. Because little has been written specifically about the assessment of post-crisis legal change, this chapter predominantly draws upon the policy change literature.

4.2 The Nature of Post-Crisis Legal Change

From existing literature, we can distill two ends of a continuum of policy change. One end is best described as dramatic, deep change, possibly accompanied by learning, whereas the other end is best described as incremental, superficial, symbolic change.

With regard to the first scenario, literature shows that crises can result in major, abrupt policy

change. This is best captured in the punctuated equilibrium theory, which holds that policymaking is often stable for a long period of time to then change rapidly and dramatically (Baumgartner & Jones, 1993). Such non-incremental change, referred to as punctuations, is especially likely to occur if institutional structures for policymaking resist change. Such resistance is termed friction (Baumgartner et al., 2009, pp. 29–45; Baumgartner & Jones, 2009; B. D. Jones & Baumgartner, 2005, 2012; B. D. Jones et al., 2003). The punctuated equilibrium theory argues that, much like earthquakes, the more the built up friction, the larger the subsequent force of sudden movement, that is, policy change. Although this theory is based on studies conducted in the US, similar patterns have been found in Europe (B. D. Jones & Baumgartner, 2012). However, very few studies have examined how it captures dynamics outside Europe and the US, especially in non-democratic countries such as China (Baumgartner et al., 2017; Kuhlmann & van der Heijden, 2018).

In one of the few studies on the punctuated equilibrium theory in non-democratic contexts, Lam and Chan (2015) argue that punctuations are more extreme in regimes with centralized power and limited access to policymaking than in democracies. These findings have been confirmed by Chan and Zhao (2016) in an analysis of regional government spending in China. They argue that authoritarian regimes such as China are very resistant to change because of a lack of diverse, independent sources of information and the lack of opposition groups. As a result, policymakers in China tend to focus on issues that they already know about, while other issues are ignored. This underreacting and delay in decision-making eventually leads to a strong reaction. In the context of the present study, this would mean that we should see large legal change after crises, particularly in policy areas in which not much lawmaking has taken place in the years prior to a crisis.

However, turning to the second scenario, Boin and 't Hart (2003) argue that opportunities for post-crisis change are smaller than commonly assumed, because the requisites for reform are at odds with those for crisis management. In order to manage a crisis, leaders will try to minimize damage, alleviate pain, and restore order, which means that leaders will have to convince their audience of the effectiveness of pre-existing policies and institutions. This is the opposite of what is needed for reform, namely blaming the crisis on existing policies, institutions, and individuals working in those institutions. Such blaming is risky for incumbent leaders because it may imply criticizing their own policies and thus acknowledging their fallibility. Discrediting bureaucrats and agencies at the executive level also makes it difficult to gain their support for post-crisis reform. Moreover, in the event of a crisis, leaders will try to bypass decision-making procedures to save time and prevent more damage. This is in conflict with successful reform, which requires negotiations amongst stakeholders to develop the minimal level of support that is necessary to implement a policy.

Taking this a step further, Tommasi (2003) calls the crisis-reform thesis a fairy-tale, because crisis-induced reform tends to be superficial and poorly implemented. Even if crisis does facilitate reform, he argues that crisis does not necessarily lead to change at a meaningful level. Moreover, change at a lower level is not necessarily successful. One reason for this is that policymaking is a complex process that involves multiple stages and actors. Effective policies cannot be made in the magical moment of a crisis. Based on this line of argumentation, we should see limited change after the crises examined in this study.

Moreover, learning from crisis is not as self-evident as one might think. Generally speaking,

learning is difficult due to individual and organizational constraints. In the event of a crisis, individuals experience fear and tend to fall back on learned routines, making change less likely (Boin et al., 2017; Stern, 1997). A key problem for organizations is that they are unable to properly collect, communicate, understand, and memorize information (Boin et al., 2017). Alaszewski and Brown (2012, pp. 119–120) furthermore argue that crises reduce the scope for rational policymaking in several ways: (1) the focus is on particular circumstances and individuals, thus on the special and atypical situation of specific victims of a disaster; (2) focus is on the present or immediate past, rather than on the future; (3) pressure for immediate action; (4) decision-makers act in the media spotlight in an emotionally charged situation; and (5) public trust in government policies is undermined.

Although there is a lack of empirical studies on learning from crisis (Deverell & Hansén, 2009), generally speaking, we know that single-loop learning is more common than double-loop learning (Boin, 2008; Deverell, 2009, 2015). The former refers to learning at the operative level, while the latter means reflection on and change in goals, premises, and norms (Argyris & Schön, 1978). Furthermore, if a similar crisis happens more than one time, the likelihood of change and learning increases (Deverell, 2015). It is important to note that change is not the same as learning: learning requires both learning and behavioral change. Moreover, learning and regulatory change do not necessarily mean that a similar crisis does not happen again (Deverell, 2009, 2015). Change and learning may have unanticipated consequences and may even lead to a new crisis, for example when reorganization leads to fragmented and overlapping jurisdictions, creating loopholes and governance vacuums (Hutter & Lloyd-Bostock, 2017).

4.3 Existing Approaches for Measuring and Assessing Post-Crisis Policy Change

Existing studies of post-crisis policy change mostly focus on *explaining* rather than measuring and assessing it. As a result, there is no consensus about how to best measure and assess post-crisis policy change (Weible & Carter, 2015).

One explanation for the lack of standardized tools is the difficulty of measuring and assessing post-crisis legal change which in turn is a result of the multitude of attributes one could take into account. To illustrate, one could use text length as a proxy for the significance of change, but this tells little about the actual substance of change. Conversely, we could simply list the actual change in substance e.g., change in goals, but it is nearly impossible to compare such lists over time and across policy sectors and jurisdictions.

Consequently, different scholars use different approaches for measuring and assessing policy change, an overview of which is provided in the following paragraphs. Note that this is a mix of quantitative and qualitative approaches.

A first approach is to measure *legislative productivity*, meaning the number of laws or rules passed during a given period of time (B. D. Jones & Whyman, 2014). This is most useful when studying the development of a legal system over time or the development of specific policy areas such as education or health, or legislative activity under different leaders.

A second approach is to assess the *importance* of a law (B. D. Jones & Whyman, 2014), which

is a somewhat ambiguous concept, because significant to whom and in what sense? Moreover, laws that are regarded important today may not be regarded as such in the future and laws that are significant to some people are not important to others. Scholars have addressed this issue in different ways. Mayhew (1991) produced lists of important laws based on their political and policy significance. The former, political significance, was based on whether or not a law was declared important by the editors of the Washington Post and New York Times in newspaper wrap-up stories of Congress, which are stories in which a journalist looks back and writes about laws passed that year. The latter, policy significance, is based on secondary sources, written by policy experts, about which laws count most in their areas of expertise. Another approach is to use media attention as a proxy for the importance of a law (John & Bevan, 2012). Laws that receive media attention are categorized as important, while those that received no media attention are not deemed important. Likewise, one could use scholarly publications as proxy for the importance of a law. Other ways to assess importance are to estimate the number of people affected by the change or to calculate the rule's economic impact. The latter approach is used by the US Office of Information and Regulatory Affairs in the review of significant regulatory actions, which are regulations that have an annual effect on the economy of USD 100 million or more (Sunstein, 2014, pp. 15–25).

A third approach is to assess the *level* at which change takes place. Hall (1993) distinguishes first, second, and third order change. First order change is incremental adjustments of existing policy. These are continual changes that are technical in nature, for example increasing or decreasing the minimal interest rate used by the central bank for lending to financial institutions. Second order change refers to adjustment of current policy or the introduction of new policy instruments. Third order, or fundamental, change means that policy instruments change radically as a result of changes in overarching policy goals. Similarly, the advocacy coalition framework, which explains policy change and policy learning by focusing on the values of different groups within a policy subdomain (see chapter 2), also distinguishes three levels of change, namely change in deep core or normative beliefs; in near core beliefs, which are opinions about how to achieve the deep core beliefs; and in secondary aspects, which are beliefs about how to implement policies, for example in the form of administrative rules (Sabatier, 1988).

A fourth approach is to measure the *degree of change*, which is typically translated in the concepts of incremental versus non-incremental change. For a long time, the dominant view within political science was that policy change happens incrementally, i.e. with only small steps away from the status quo (Lindblom, 1959). However, Baumgartner and Jones (1993) demonstrated with the aforementioned punctuated equilibrium theory that long periods of stability or incrementalism alternate with short bursts of dramatic change. Using indicators such as media coverage, the number and tone of congressional hearings, the number of regulations published per year, and the number of inspections, they showed that the way of thinking about an issue can change dramatically in a very short time. One of their examples is nuclear power in the USA, which was generally welcomed in the 1940s and 1950s, because it was seen as a cheap and secure source of energy. For a long time, the civil nuclear power industry was largely unregulated. But, by the 1970s, the regulatory environment changed dramatically: Congress approved the first civil penalties and the Atomic Energy Commission was abolished. The punctuated equilibrium theory is predominantly studied based on budgetary change, expressed in the degree of budgetary change between successive years.

Except from such budget studies, there are no criteria or definitions to distinguish incrementalism from punctuations (Baumgartner et al., 2009, pp. 34–38).

Recently, methods are being developed to measure the degree of policy change at the document level using computational methods. Because this is a very new research field, publications are scarce and methods are not yet standardized. One of the few studies is by Wilkerson, Smith, and Stramp (2015), who use computational methods to investigate how bills in the US Congress develop over time. Using a computer algorithm that works much like plagiarism software, they measure how much text of one bill is reused in other bills. The advantage of this method is that, once the algorithm has been developed, it can process a large number of documents at once. Moreover, it is a reliable way to compare change, even between just two documents. The disadvantage is that measuring overlap between two texts does not say much about the substance of a law.

A fifth approach is to examine the *substance* of change, which can be done at a macro-, meso-, or micro- level. Taking a macro-level perspective, Jones and Whyman (2014) used a coding scheme that distinguishes 19 different categories such as energy, environment, and education. Each passed law is coded for one of these categories. This approach is most useful for measuring how government policy or legal systems develop over long periods of time. It helps understand how priorities of lawmakers develop and how legal systems expand and deepen. However, again, it does not tell anything about the features of a law such as its aims, scope, and penalties. An alternative approach is to assess the political ideology in which a law moves (B. D. Jones & Whyman, 2014). However, while methods have been developed to measure ideology in legal and policy documents in the USA, the subject of political ideology is an underdeveloped area in the China field³⁶ and therefore such methods are not available for the Chinese context.

Taking a meso-level approach, Coglianese (2010) distinguishes four attributes of regulatory instruments: target, regulator, commands, and consequences. Target refers to “the individual or organization to which a regulatory instrument applies and on whom or which consequences can be imposed.” This can be businesses, individuals, governmental organizations such as school districts, and non-profit organizations. The regulator is “the entity that creates the rule and dispenses the consequences.” Regulator and rule enforcer can be the same or different entities. A command is “what the regulator instructs the target to do or to refrain from doing.” Consequences are the negative response to non-compliance or the positive response to compliance.

The substance of policy change can also be coded at the micro-level, which is what Weible and Carter (2015) did using textual composition analysis. The authors analyze change by dissecting policy documents into sentence-based statements that are subsequently coded based on their syntax components, such as the actor charged with performing an action and the prescribed or forbidden action. This approach is based on the so-called institutional analysis and development framework that was developed to analyze the ways in which institutions operate and change over time (Crawford & Ostrom, 1995). Weible and Carter (2015) apply this approach to a comparison of Colorado’s 1977 and 2006 smoking bans. In their analysis, they focus on five aspects: outputs and outcomes; the regulatory policy logic that connects the regulatory instrument to a policy outcome e.g., a smoking ban leads to less smoking which contributes to the protection of citizen health; rules that grant and restrict behavior; sanctions and inducements; and adaptability over

36 A recent exception is Pan & Xu (2017).

time.

Finally, the sixth approach is to assess *learning* from crisis. Again, due to the challenges in observing learning from crisis, there is no standardized approach available to define and assess learning from crisis (Deverell, 2009). One existing framework for crisis-induced learning breaks learning down into four questions: what is learned? (single or double loop); when? (intra or inter-crisis); what is the focus of the lessons? (prevention or response); and is learning implemented? (Deverell, 2009). In this framework, learning is defined as “periods when experience alters knowledge or behavior.” A different approach is that of Birkland (2009), who distinguishes five post-disaster scenarios, only one of which is deemed learning. The five scenarios are: change without any effort to learn; post-crisis investigation without any evidence of a serious attempt to learn; change with an effort to learn, but without a link between investigation and change; no change despite a thorough investigation; and, lastly, change based on careful investigation.

4.4 Adopted Approach and Operationalization

As evidenced by the previous section, there is not one perfect method available for measuring and assessing post-crisis policy change, but instead, each approach has its own strengths and weaknesses. While the quantitative approaches facilitate systematic and comparative analysis, they do not tell anything about the substance of legal change. Conversely, the qualitative approaches provide a nuanced picture, but are impractical, especially when comparing across time, policy areas, and jurisdictions.

Recognizing the respective strengths and weaknesses of quantitative and qualitative approaches, this study adopts a hybrid approach for measuring and assessing post-crisis legal change consisting of four steps: (1) identification of textual change; (2) qualitative assessment; (3) quantitative assessment; and (4) assessment of learning. Combining qualitative and quantitative methods is a deliberate choice that aims to strengthen the analysis of the nature of post-crisis legal change. The qualitative analysis provides depth and rich data. However, it is difficult to qualitatively compare the substance of two laws when there are large differences in scope, length, and structure. Therefore, quantitative analysis measures the degree of change between a pre- and post-crisis law, which is used to complement the qualitative analysis. The remainder of this chapter describes each of these four steps.

4.4.1 Identification of Textual Change

To identify change between pre- and post-crisis laws, this study uses software specially developed for comparing Chinese laws, consisting of a database called SinoLawGist and a tool called CLOG (China Law Originality in the programming language Go).³⁷

The database consists of all Chinese laws passed by the National People’s Congress from 1954, when the NPC convened for the first time, until 2018. NPC laws have been manually sourced from the official NPC website (<http://law.npc.gov.cn>) and gathered in the database as text files. Using CLOG, these raw text files were parsed to extract the law’s different components such as the title, passing date, in force date, table of contents, date and text of amendments, related

³⁷ All credits for developing this software belong to Mattias van den Dool Enebjörk. My own contribution to the database was the collection of Chinese laws and legislative plans.

documents, appendices, and the actual provisions. This was followed by pre-processing to clean up the documents, which meant the removal of formatting; correction of obvious mistakes in the text such as random letters that probably entered the text during scanning and optical character recognition (OCR) conversion; and correction of inconsistent use of Western, Chinese, and obscure punctuation marks.

CLOG works much like plagiarism software and is similar to the abovementioned method used by Wilkerson, Smith, and Stramp (2015) in their study of the development of bills in the US Congress. It adopts a bag of n-grams approach, which essentially means that two texts from the database, for example the 2009 Food Safety Law as source text and the 2016 Food Safety Law as target text, are searched for identical segments of length n or longer. This segment of an n number of characters is called n-gram. If multiple n-grams exceed the chosen minimum length and match the same phrase, only the longest n-gram is selected. The resulting bag of n-grams is then poured into the target text to visualize all identical segments. The frequency of the segments in the source text is retained and color coded in the visualization.

An example of such is provided in figure 4-1, which shows the differences and similarities between the general principles of the 2009 Food Safety Law and the 2015 Food Safety Law. The black font color means no change, while grey indicates change. An example is article 3 (第三条), which states that “In food safety work, priority shall be given to prevention. Risk management and full process control shall be implemented and the whole society shall participate. A scientific and strict inspection and supervision system shall be established.” This article is completely new and therefore the font color is grey. Sometimes articles are a mix of old and new text, as is the case for article 2 (第二条), which defines the scope of the law. While most of the text is black and has thus not changed, an addition to the 2015 Food Safety Law is point 5 (五), food storage and transportation. CLOG automatically excludes non-substantial phrases such as article number, chapter, and section numbers, which is why the article numbers appear grey. The yellow highlights mark the beginning of segments that appear in both the 2009 and 2015 Food Safety Law. Sometimes a fragment appears multiple times in the older law. If it appears two times, the text is blue. If the fragment appears more than two times, the text is red.

第一章 总则

第一条 为了**保证**食品安全，保障公众身体健康和生命安全，制定本法。

第二条 **在**中华人民共和国境内从事下列活动，应当遵守本法：

- (一) **食品生产和加工**(以下称食品生产)，**食品销售****和**餐饮服务(以下称食品经营)；
- (二) **食品添加剂**的生产经营；
- (三) **用于**食品的包装材料、容器、洗涤剂、消毒剂和用于食品生产经营的工具、设备(以下称食品相关产品)的生产经营；
- (四) **食品生产经营者**使用食品添加剂、食品相关产品；
- (五) 食品的贮存和运输；
- (六) **对食品、食品添加剂、食品相关产品**的安全管理。供食用的源于农业的初级产品(以下称食用农产品)的质量安全管理，遵守《中华人民共和国农产品质量安全法》的规定。但是，**食用农产品的**市场销售、有关**质量安全标准**的制定、有关安全信息的公布和本法**对农业投入品**作出规定的，**应当遵守本法**的规定。

第三条 食品安全工作实行预防为主、风险管理、全程控制、社会共治，建立科学、严格的监督管理制度。

第四条 **食品生产经营者**对其**生产经营食品**的安全负责。**食品生产经营者**应当依照法律、法规和食品安全标准从事生产经营活动，**保证**食品安全，**诚信**自律，**对**社会和公众负责，**接受**社会监督，**承担**社会责任。

Figure 4-1. Visualization of Change in Chinese Laws. The visualization is made by using the SinoLawGist database and the tool CLOG. This is a comparison of the 2009 and 2015 Food Safety Law. Grey font indicates change.

The methodological contribution of this visualization is twofold. First of all, it identifies the articles and sentences that have changed or that have been added without having to manually comb through two texts. Secondly, it sheds light on whether more has changed in, for example, the general principles, which is often considered politically significant, or the main body of the law, which tends to be more technical in nature. Chinese laws typically follow the same structure and are divided into issue specific sections with headers. The first section usually consists of general principles (总则 *zongze*), which includes the aims and scope of a law. The final two sections are usually dedicated to legal responsibilities (法律责任 *falü zeren*) and supplementary provisions (附则 *fuzhe*). Note that this visualization software will only be used if there is pre-existing law, that is, only for amended laws, which will not always be the case because sometimes crisis leads to completely new laws.

4.4.2 Qualitative Assessment of the Nature of Post-Crisis Legal Change

Although the software introduced in the previous section is a powerful tool and unique in the sense that has been developed specifically for visualizing change in Chinese laws, it does not evaluate the substance of the text, which is why the next step is qualitative content analysis.

The adopted approach is based on Weible and Carter (2015) and Coglianesi (2010). The focus is on key components of laws as discussed by Coglianesi, namely target, regulator, commands, and consequences, which are the four components that will be coded in the text. The analysis is structured around Weible and Carter's five guiding questions.

To demonstrate how this hybrid approach will be used in the case studies, the following section applies it to a comparison of the 1995 Food Hygiene Law and its successor, the 2009 Food Safety Law. The latter was passed after the 2008 melamine milk powder crisis.

Question 1: What are the law's outcomes and outputs? An outcome is “the desired change or achievement in the condition of the world” (Weible & Carter, 2015, p. 209). As shown in table 4-1, the outcomes for the 1995 Food Hygiene Law and the 2009 Food Safety Law are similar. One important difference is that the 1995 law uses the term “food hygiene” rather than “food safety.” The latter is often seen as a wider concept that includes not just hygiene, but also food additives, food labelling, import and export inspection, amongst other things.

While outcomes are the reasons behind a law, i.e. the why, outputs are the things produced by a law, i.e. how the outcomes will be achieved. Weible and Carter (2015) distinguish between proximate and transformative outputs. The former are measurable policy results, while the latter are intermediate or transformative links from one situation to the next. However, because Chinese laws (as opposed to other types of policy documents) seldom contain measurable policy results, the analysis will not make this distinction.

As shown in table 4-1, the outputs of the 1995 law are fewer than those of the 2009 law and are phrased in terms of food hygiene rather than food safety. Moreover, the 2009 law includes two instruments for prevention and preparedness, namely contingency plans and risk assessment systems, whereas the 1995 law does not mention these.

Table 4-1. Outcomes and Outputs in 1995 Food Hygiene Law and 2009 Food Safety Law

1995 Food Hygiene Law		2009 Food Safety Law
Outcomes	Ensure food hygiene, prevent harm to the human body from food pollution and harmful factors, safeguard and enhance people's health	Ensure food safety, the health of the public and life safety.
Outputs	Food hygiene standards Hygiene management rules Hygiene permit system Hygiene inspection	Food Safety Commission Food safety standards Permit system for food businesses Food inspection Food safety accidents contingency plans Food safety risk assessment system

Question 2: What is the causal theory? The causal theory or the regulatory logic of a law is the pathway from an undesired situation to the desired future situation. The causal theory consists of the undesired situation(s), outputs, desired qualities, and outcomes.³⁸ The undesired situation(s) is distilled from the official NPC justification (说明 *shuoming*) of the law. The desired qualities are the desired result of the outputs. The desired situation is captured in the law's outcome(s).

Figures 4-2 and 4-3 show the causal theories behind the 1995 Food Hygiene Law and the 2009 Food Safety Law. The main difference is that the 2009 law contains more instruments (i.e. outputs) to achieve similar outcomes. Moreover, the 2009 law explicitly includes elements of preparedness and prevention, whereas the 1995 law is mostly passive and retroactive.

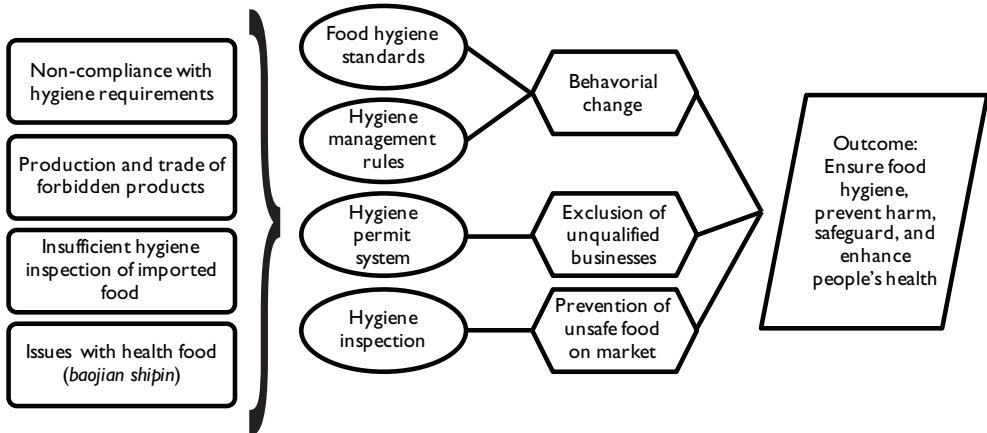


Figure 4-2. Causal Theory of the 1995 Food Hygiene Law. Squares are undesired situations, ovals are outputs, hexagons are desired qualities, parallelogram is desired outcome.

38 Weible and Carter (2015) use target action situations, which they define as “scenarios where collective action is imagined to happen.” Instead, this analysis uses “undesired situations.”

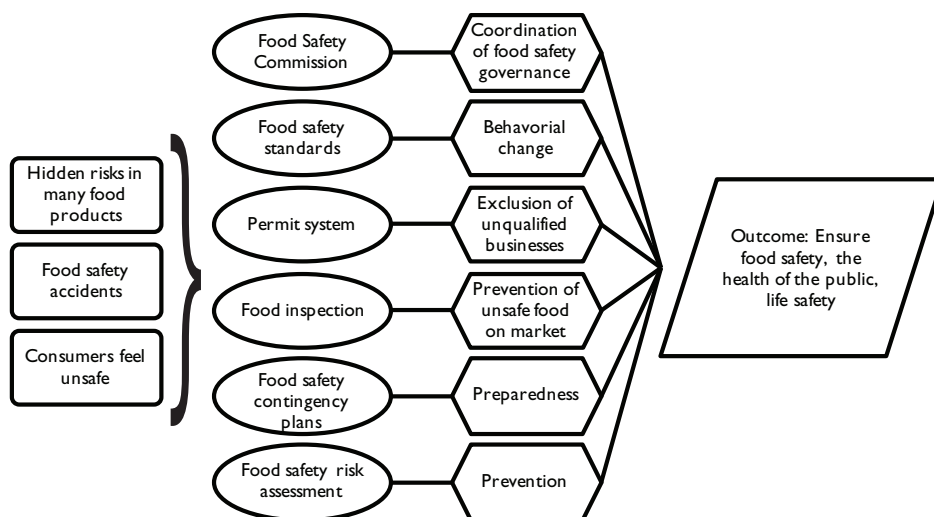


Figure 4-3. Causal Theory of the 2009 Food Safety Law. Squares are undesired situations, ovals are outputs, hexagons are desired qualities, parallelogram is desired outcome.

Question 3: How does the law grant and restrict behavioral discretion of target populations? This part of the analysis provides insight into the commands and the target populations. Commands are “what the regulator instructs the target to do or to refrain from doing.” Target population is “the individual or organization to which a regulatory instrument applies” (Coglianese, 2010). The latter does not just include businesses, but can also include government organizations, for example stipulations about law enforcement.

Table 4-2 provides an overview of the commands in the 1995 Food Hygiene Law (FHL) and the 2009 Food Safety Law (FSL). Unsurprisingly, the main target population is food businesses. Out of the 44 times that a target population is mentioned in the commands of the Food Hygiene Law as listed in the table, 26 (59%) are food businesses. In terms of implementation and enforcement, a variety of departments at different levels of governments is involved, but the Ministry of Health carries the main responsibility for food safety coordination, risk assessment, food safety standards, food safety public information, food safety inspection accreditation, and food safety crisis response (article 4).

The 2009 Food Safety Law contains a number of new commands: food safety standards must be available free of charge to the general public; mandatory specialized technical staff for food safety; mandatory record keeping for outgoing products; food advertising; food safety incidents contingency plans; and risk assessment.

Table 4-2. Commands by Target Population in the 1995 FHL and 2009 FSL

Commands	Target populations	
	1995 FHL	2009 FSL
Hygiene/safety	Food businesses	Food businesses
Banned products	Food businesses	Food businesses
Food additives	Food businesses	Food businesses
	State Council health department	State Council health department
	Imported food hygiene inspection department	Food safety risk assessment expert committee
		Entry and exit inspection organization
Government (county level or above)		
Food containers	Food businesses	Food businesses
	State Council health department	
	Imported food hygiene inspection	
Food safety standards	State Council health department	State Council health department
	Provincial level government	State Council agriculture department
		Food businesses
		Food Safety Commission standards review committee
	Provincial health department	
Food hygiene/safety management	Government	Government
	Food businesses	Food businesses
	Health department	State Council health department
	State Council health department	Market convener
	Provincial health department	Central Military Commission
	Market convener	
	Industry & commerce department	
	Imported food hygiene inspection body	
National import inspection department		
Supervision	Various departments at county level or above	Various departments at county level or above
	Railway and transportation department	State Council health department
	Food safety supervisor	
	Food businesses	
	State Council health department	
	Provincial health department	
	Medical unit	

Although table 4-2 provides some insight into the variety of commands and target populations, it is difficult to compare the laws in this way because the 2009 law is much longer and includes topics that are not or only superficially addressed in the 1995 law. Therefore, table 4-3 provides a macro-level analysis of both laws. The left side shows some basic indicators, while the right side shows the word frequency for selected key words.

Table 4-3. Macro-Level Analysis of the 1995 FHL and 2009 FSL

Indicators	1995 FHL	2009 FSL	Topic	1995 FHL	2009 FSL
Total articles	57	104	Additives	19	49
Total characters	6,796	15,611	Food containers	15	10
Characters per article	119	150	Standards	24	82
Chapters	9	10	Accident	7	40
General principles articles	5	10	Risk assessment	0	20
Characters for definitions	367	567	Food businesses	26	39
Legal liability articles	15	15	Fine	17	12
Legal liability characters	1,772	2,882	Infants	2	4

Table 4-3 shows that the 2009 law is almost twice as long as the 1995 law and that it covers food additives, food safety standards, and food safety accidents much more extensively. Moreover, the 2009 law includes articles on risk assessment, which was not mentioned in the 1995 law at all. On average, the articles have also become 25% longer. One explanation for this is that the law has become more specific, but it may also be the result of the law's expanded scope. An argument in support of the latter hypothesis is that the article that provides definitions for some key terms used in the law has expanded from 7 to 11 definitions and now includes "food safety" and "food safety accidents" while the four definitions that appear in both laws have not become much more specific. In fact, whereas the Food Hygiene Law defined "food producing businesses," its successor does not. This is remarkable considering that the word is mentioned 39 times in the 2009 Food Safety Law.

Question 4: What are the sanctions and inducements to ensure compliance? Sanctions are the negative responses to non-compliance ("sticks") and inducements are the positive responses to compliance ("carrots"). Both can be directed at a range of different actors, including individuals, businesses, governmental organizations, and non-profit organizations. Chinese laws usually contain a separate chapter, titled "legal liability" (法律责任 *falü zeren*), that contains sanctions and inducements.

As shown in table 4-3, although both the 1995 Food Hygiene Law and the 2009 Food Safety Law dedicate 15 articles to legal liability, this section has become much longer (63%).

Table 4-4. Sanctions in the 1995 Food Hygiene Law and 2009 Food Safety Law

Target population	1995 Food Hygiene Law	2009 Food Safety Law
Food businesses	Order to correct non-compliance Order to stop production Destruction of food Confiscation of illegal income Food recall Fine: 1–5 x illegal income Fine: RMB 500–50,000 Enforcement by court Withdrawal of hygiene license Closure of business Civil liability Public security penalties Criminal prosecution	Order to correct non-compliance Order to stop production Confiscation of illegal income, illegally produced food, additives, and other products Fine: 2–10 x illegal income Fine: RMB 2,000–100,000 Withdrawal of license 5-year ban from food industry Civil liability Damages of 10 x purchase price Criminal prosecution
Government officers	Administrative sanction Criminal prosecution	Major demerit, demotion, dismissal, or expulsion Resignation Criminal prosecution
Food inspection organizations and food inspectors		Confiscation of illegal income Revocation of food inspection qualification Dismissal 10-year ban from food inspection sector Criminal prosecution

Table 4-4 lists the variety of sanctions in both laws. They are roughly organized from weakest to strongest. Generally speaking, sanctions are based on escalation logic, meaning that the minimal intervention typically is a warning or an order to correct or stop production. Moreover, the more serious non-compliance is, the heavier the punishment.

In general, the sanctions in the 2009 Food Safety Law are harsher than those in the 1995 Food Hygiene Law. Moreover, the 2009 law gives consumers the right to claim damages of ten times the purchase price. Fines have increased substantially, even though it is questionable whether they are sufficiently high. Furthermore, license revocation means that non-compliant organization and individuals are not allowed to work in the food industry for five years and ten years for food inspection organizations and food inspectors, respectively. Finally, the 2009 includes more specific sanctions for non-compliance by government officials. The 1995 law did not contain sanctions for non-compliance of food inspection organizations and food inspectors, so this is a major difference, although the question remains whether sanctions are sufficiently harsh.

Question 5: How does the law permit adaptation? A major challenge in the design of laws is that societies are constantly changing and that there may be variations in the circumstances of the target populations. Therefore, it is important for a law to have a certain degree of adaptability, both across time and space and for both the regulated actor and the enforcement agent (Van Rooij, 2006, pp. 40–43; Weible & Carter, 2015).

In the case of the 1995 Food Hygiene Law and the 2009 Food Safety Law, a major challenge for law enforcement was the variation of the size of food businesses, which ranges from small-scale street vendors with a modest clientele to companies such as Sanlu, a dairy producer that sells products across the country. The 1995 law did not take these differences into account. Its article 4 states: “All food businesses in China must abide by this law.” This, however, changed in the 2009 law. Its article 29 stipulates: “Small food workshops and food vendors that engage in food production and distribution shall comply with the food safety requirements commensurate with their production or distribution scale and conditions and ensure that the food being produced or distributed is clean, non-toxic and harmless.” More specific rules for these businesses are to be formulated by the provincial people’s congress. However, initially only 8 out of 31 Chinese provinces issued such rules. And even after the passing of the 2015 Food Safety Law, only another 15 provinces did the same, so not all provinces have rules for small scale food businesses.³⁹

In addition to adaptability based on the scale of a business, the 2009 FSL also provides more discretion for enforcement agencies in terms of the level of sanctions. The minimum fine is RMB 2,000, which is four times higher than in the 1995 Food Hygiene Law. Moreover, the range of fines is much wider. The largest range in the 1995 law was from RMB 500 to RMB 10,000. In the 2009 law, the largest range runs from RMB 2,000 to RMB 100,000.

A third and final sign of increased flexibility in the 2009 Food Safety Law is article 103, which states that “The State Council can make adjustments to the food safety supervision and management system according to actual needs.” Although this provision was criticized during NPC review, others argued in favor, because “if there are problems in the management system, it can be adjusted at any time. If the provisions are very specific and the law needs to be amended, this is not a matter of three to five years” (Z. Tang, 2008). Eventually, the provision was included, albeit it was moved from the general principles section to the supplementary articles.

4.4.3 Quantitative Assessment of the Nature of Post-Crisis Legal Change

To assess the degree of post-crisis change, the case studies use the software CLOG, described above, to measure change between two successive Chinese laws on the presumption that large change is more significant than small change. The degree of change is expressed in the change index, which runs on a 0–100 scale. A low number means limited change between two laws, while a high number means substantial change. As discussed above, a limitation of this approach is that the tool does not take into account the relative importance of individual words and phrases. That being said, it does provide a systematic overview of the development of Chinese law over time, which is almost impossible using qualitative content analysis.

Because the change index for an individual post-crisis law is not very meaningful if we do not

39 Based on the Fabao Beida database (<http://pkulaw.cn>), December 2018.

know how much Chinese laws change in general, this section measures change in all amended laws passed by the National People’s Congress from 1954 until 2016. This allows for a comparison of the change index of post-crisis legal change with change in Chinese law in general to assess the relative significance of the change.

To do this, CLOG was used to identify the laws in the SinoLawGist database that have been amended at least one time since they were first passed by the NPC. In China, when a law is revised or amended it almost always retains the same title. This is why the study talks in terms of e.g., the “2015 Food Safety Law” and the “2009 Food Safety Law.”⁴⁰ A first step in comparing is thus to identify laws that carry the same title. This was done using CLOG. In the process, some of the originally sourced content of the SinoLawGist database was excluded because the documents turned out not to be laws (e.g., rules *banfa* and decisions *juding*) or were not passed by the National People’s Congress. The remaining number of documents that were analyzed is 598. For these documents, all prefixes (i.e. the text “People’s Republic of China”) and suffixes (e.g., the words “law” *falü*, “amendment” *xiuzheng*, and “provisional” *zanxing*) were removed from the document headers to isolate the title of the law. Document titles and document content were subsequently compared to identify successive versions of the same law, which were then combined into bundles. As summarized in table 4-5, the result is 269 sets of individual laws. Out of these 269 laws, 106 laws (approximately 40%) have never been amended, while the remaining 163 have been amended up to 11 times. However, the majority (90%) of amended laws have only been amended once, twice, or thrice.

Table 4-5. Revisions in Laws Passed by China’s National People’s Congress, 1954–2016

Number of revisions	0	1	2	3	4	5	6	7	11
Number of laws (n = 269)	106	77	39	30	11	2	2	1	1
Total number of documents (n = 598)	106	154	117	120	55	12	14	8	12

Using CLOG, each of the 163 amended laws was subsequently compared with its predecessor, the result of which is shown in figure 4-4. Each of the 325 dots in the figure represents the change index between two successive versions of a law, for example change between the 2009 Water Law and the 2016 Water Law. The y-axis represents the change index between two successive documents. The x-axis represents the lifespan in years of a law at the time it is amended, i.e. the time between it was passed by the NPC and amended.

40 There are exceptions to this, such as the 2009 Food Safety Law which was preceded to by the 1995 Food Hygiene Law, discussed in the previous section. In such cases, the laws are manually combined into one bundle.

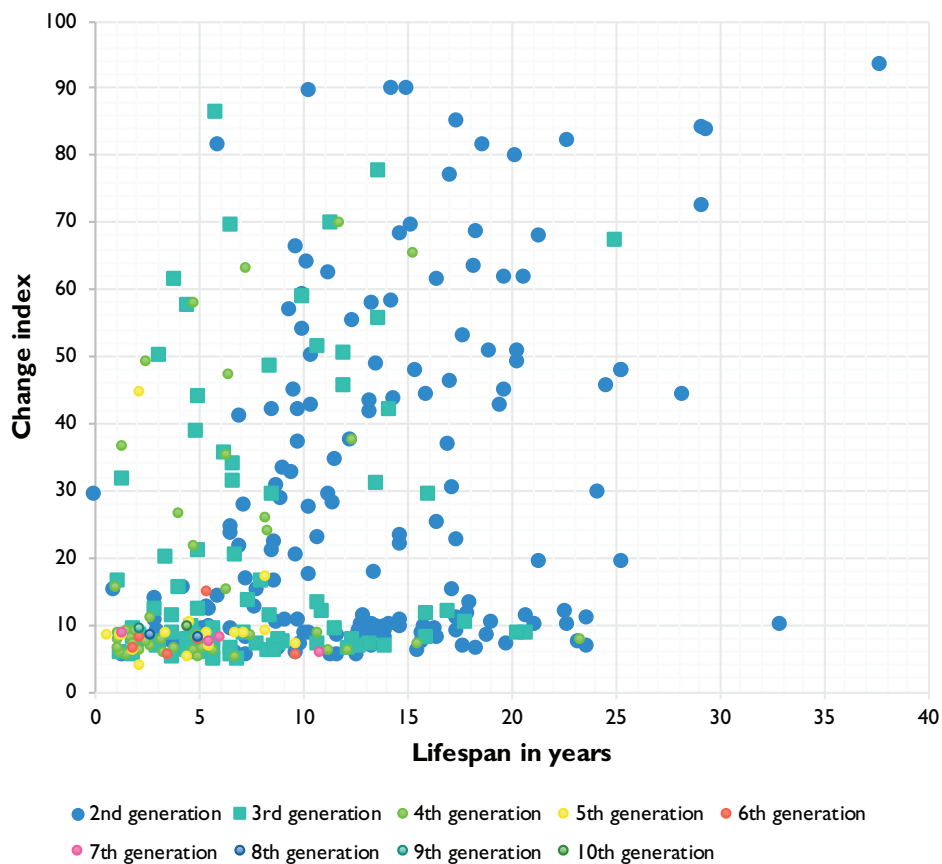


Figure 4-4. Lifespan and Change in Amended NPC laws, 1954–2016

The lifespan is included in this figure to shed light on the expectation, discussed above, that legal change is larger if the lifespan is longer, because friction has accumulated. For similar reasons, the figure distinguishes between second and older generation laws. A first generation law is one that has never been amended, while a second generation law has been amended once, a third generation has been amended twice, and so on. We should expect to see smaller change if a law is amended more often and bigger change if a law is only amended a few times.

Laws that are amended more often indeed score low on the change index: the bottom of figure 4-4 is populated with a wide diversity of colors, while the upper half of the figure is mostly populated with second and third generation laws. This is not surprising, because—as discussed above—laws that are amended more often have less accumulated friction and therefore, change is more likely to be limited.

Most of the 325 data points are in the bottom of the figure, which means that most laws are highly similar to their predecessors. This is also captured in figure 4-5, which shows the frequency distribution of change in Chinese laws. A total of 168 documents, which is about half of the amended laws, score between 0 and 10 on the change index. Although there is no standard

definition of incremental versus non-incremental change (Baumgartner et al., 2009, pp. 35–38), it would be reasonable to say that a change index of up to 10% is incremental, which means that lawmaking is often incremental in China.

Nevertheless, as expected based on the punctuated equilibrium theory discussed above, there are also a considerable number of dots in the upper part of figure 4-4. As shown in figure 4-5, approximately a quarter (76 out of 325 laws) has a change index of at least 40. This means that non-incremental change plays an important role in lawmaking in China.

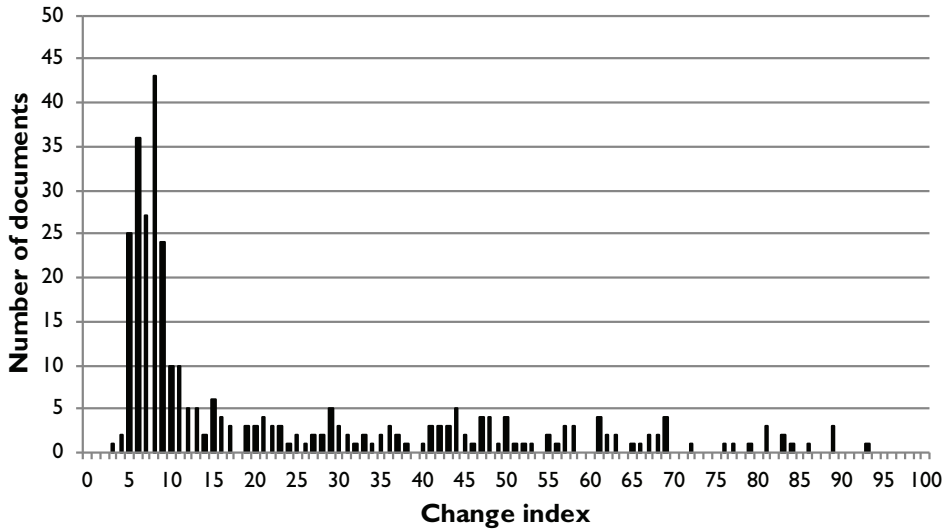


Figure 4-5. Distribution of Change in Chinese Laws, 1954–2016. Total number of documents is 325.

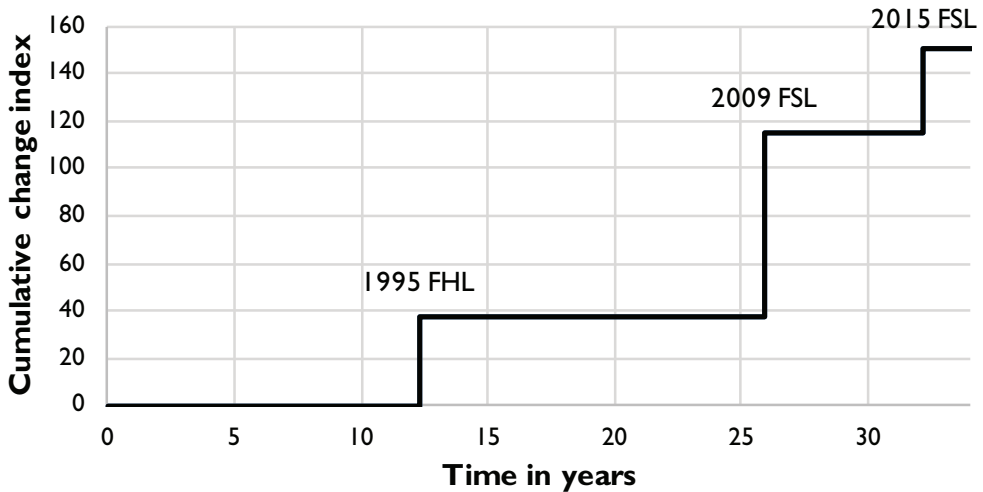


Figure 4-6. The Evolution of Food Safety Law from the 1982 FHL to the 2015 FSL

In the case studies, each instance of post-crisis amendment will be quantified using the change index and compared both to its own evolution and to general patterns of change in law as presented in figure 4-4 to assess the relative significance of the change. If the crisis leads to non-incremental change in legal texts, we should see the law appear in the upper half of the chart. Figure 4-6 shows the significance of change of the 2009 Food Safety Law by comparing it to its development over time. The first Food Hygiene Law was passed in 1982. Thirteen years later, in 1995, the NPC passed an amendment of that law and in 2009, it passed the Food Safety Law. From a quantitative perspective, expressed in the cumulative change on the y-axis, this was the most substantial change in the history of this particular law.

Because crisis can also lead to completely new laws instead of amendments, the significance of change will furthermore be assessed based on legislative productivity in that particular policy area. An example of a policy area is dairy safety or pig farming. To find out what laws (法律 *falü*), administrative regulations (行政法规 *xingzheng fagui*), and departmental rules (部门规章 *bumen guizhang*) exist at the time the crisis occurred, the official NPC database and the Beida Fabao database will be consulted, using key terms that describe the policy area. The latter database consists of several million pieces of primary and secondary legal materials and is hosted by the Peking University School of Law. In theory, both databases should provide the same search results, but in practice this is not the case. For triangulation purposes, i.e. to ensure that all laws, regulations, and rules are included in the analysis, both databases will be used. Based on consultation of these databases, the case studies include an overview of existing regulation, which puts post-crisis legal change in perspective. To illustrate, in the case of the melamine milk powder crisis, the search terms would be dairy industry (乳业 *ruye*) and dairy products (乳制品 *ruzhipin*). The result is just one set of departmental rules titled “Dairy and dairy products hygiene management rules,” which were issued by the Ministry of Health in 1990. This means at the time of the melamine milk powder crisis, no rules had been issued on dairy safety for more than 18 years. Therefore, the passing of the Dairy Products Quality and Safety Supervision and Management Regulations by the State Council and the Rules for the Production and Purchase of Raw Milk issued by the Ministry of Agriculture after the crisis are of great policy significance.

4.4.4 Crisis-Learning

Literature distinguishes a range of different types of policy learning, depending on who learns, what is learned, and the effect of learning (Bennett & Howlett, 1992; Dunlop, 2017; May, 1992). This thesis focuses on learning from public health crises as expressed through change in laws, administrative regulations, and departmental rules.

The thesis thus takes a consequence-based approach (i.e. focus on outcome), rather than a process-based approach (Stern, 1997). The reason for this is the general difficulty of measuring learning *processes*. This situation is exacerbated in China due to a lack of transparency in government processes, which means that there is very little documentation publicly available that can be used as evidence of learning processes, such as reports that compare different policy options and official inquiries into the causes of crises. An alternative would be to interview the individuals that have been involved in post-crisis lawmaking, but considering the number of interviewees that would need to be interviewed and the difficulties to get access to interviewees (see chapter 1), this is far

beyond the scope of the present study.

The key aim is to shed light on the extent to which post-crisis law addresses the issues exposed by the crisis. It therefore adopts Birkland's (2009, p. 147) definition of learning: "policy changes that are reasonably linked to the causal factors that connected the event under consideration to its harms, and if addressing these factors would be likely to mitigate the problem."

One of the two major components of this definition is crisis responsiveness, which here refers to whether a law responds to the issues exposed by a crisis. The aim is not to assess whether a law actually solves a certain problem, but only to see how post-crisis law aligns with issues that were exposed by the crisis. To illustrate, after the 2008 milk powder scandal, the NPC Legal Committee included a ban on exempting products from inspection in the draft Food Safety Law. This topic is closely related to the crisis because Sanlu infant powder, one of the brands that sold milk powder containing melamine, had been granted this exemption status. Therefore, this element of the 2009 Food Safety Law scores positive on crisis-responsiveness. In contrast, the section on transportation in the Raw Milk Production and Purchasing Rules that were passed after the milk powder crisis surely is important from a food safety perspective, but it does not correspond with issues central to the melamine crisis. Therefore, it scores negative on crisis-responsiveness. The assessment of crisis responsiveness is based on the key issues of the crisis as reflected in the crisis reconstruction, which will be compared to the list of post-crisis legal changes that is produced as part of the qualitative analysis.

The other major component of learning is problem-solving, which is defined here as the potential of post-crisis law to mitigate the problems exposed by the crisis. The distinction between crisis-responsiveness and problem-solving is made because even if a law responds to a problem exposed to the crisis, it does not necessarily solve it. For example, a major issue in the melamine milk powder crisis was compensation for the victims. Soon after the scandal broke, parents started to sue the company Sanlu for compensation, but to no avail: courts did not accept cases until March 2009. In the meanwhile, Sanlu was declared bankrupt. The bankruptcy of Sanlu was highly controversial, because it made it impossible for victims to file tort claims. In response to this issue, during the review of the Food Safety Law in October 2008 by the National People's Congress, after the crisis broke, it was proposed to establish a fund for compensation in case of food safety incidents, so that victims can get compensation even if a company goes bankrupt in the event of a food safety issue. However, the NPC Legal Committee chose a different pathway. It added an article to the draft Food Safety Law that prioritized civil compensation claims over government-imposed fines in the case of bankruptcy. This does not solve the issue of compensation for the victims, because a key problem was that victims did not have standing as creditors in the bankruptcy process because courts did not accept their tort cases. Moreover, there are still many other debts that are prioritized over tort claims such as bankruptcy expenses, interest debts, and employee claims. And finally, it is not a new provision. The Product Quality Law already include exactly the same rule, which could have been applied to the Sanlu case.

Thus, post-crisis change in law is not necessarily the same as learning, which is reflected in table 4-6. The typology in this table is based on Birkland (2009), who distinguishes five patterns of learning from crisis. However, Birkland's typology is not directly transferable to the present study, because it takes into account the effort to learn as well as official investigations, both of which

are outside the scope of the present study, as explained above. Therefore, this study adjusts the typologies, which results in four patterns. Only when post-crisis law both responds to a crisis and has the potential to solve the problems exposed by the crisis, is it deemed learning.

Table 4-6. Typologies of Post-Crisis Legislative Learning

Type of learning	Learning	Rhetoric learning	Opportunistic change	Coincidental learning
Crisis-responsiveness	Yes	Yes	No	No
Problem-solving potential	Yes	No	No	Yes

Rhetoric learning occurs when laws are adopted in response to a problem but the new law either “has little or nothing to do with the problem at hand” (Birkland, 2009, p. 148) or its substance is not new. An example of the former is the prioritization of tort claims over government-imposed fines in the 2009 Food Safety Law, as discussed above. Rhetoric learning is more likely when decisions are made hastily after a crisis, which sometimes happens when the pressure to act is high (Birkland, 2009; Stern, 1997). While such superstitious learning may help to restore order in society, because it seems that the problem is being addressed, the risk is that it can create a false sense of safety, because it looks like something has been done about the problem—even lawmakers themselves may think so—while in reality this is not the case, meaning that a similar event can happen again.

Opportunistic change occurs when post-crisis law does not respond to crisis and does not mitigate the problems revealed by the crisis. An example of this is article 51 of the 2009 Food Safety Law, which forbids food producers to claim that a product prevents disease. Although it was inserted in the draft law only after the melamine milk powder crisis broke, it has nothing to do with the crisis and does not help mitigate the problems exposed by the crisis. In such cases, lawmakers have taken the opportunity of the lawmaking process to insert new rules. To be clear, opportunistic change is not necessarily a bad or a good thing, but in any case, it has no causal relationship with the crisis.

Finally, coincidental learning is post-crisis law that does not respond to the crisis but has nevertheless the potential to mitigate the problems exposed by the crisis. An example of this are many of the provisions in the 2009 Food Safety Law, which were drafted before the melamine milk powder crisis, but have the potential to improve overall food safety governance.

4.5 Conclusion

Whereas the previous two chapters discussed under which conditions and how crises can lead to legal change in China, this chapter examined the *nature* of such change. Measuring and assessing post-crisis legal change is important because the mere passing of laws or rules does not say anything about the likelihood that a similar crisis does not happen again. If legal change is incremental or unrelated to the crisis, it is less likely that the problems underlying the crisis are addressed, meaning that similar crisis may happen again. Such symbolic change may also create a false sense of security and consequently create blind spots for crisis preparedness.

In order to examine the nature of post-crisis legal change, the chapter asked three questions: (1) what has changed?; (2) what is the significance of this change?; and (3) what kind of learning is reflected in this post-crisis legal change?

Primarily drawing upon the policy literature, the chapter showed that there is no consensus on how to measure and assess legal change. The reason for this is that, first of all, the focus of policy studies has been on explaining rather than measuring policy change, which means that the subfield of measuring and evaluating policy change remains underdeveloped. Secondly, it is methodologically difficult to measure and evaluate policy change.

Taking existing literature as starting point and recognizing the limitations of purely quantitative or qualitative methods, this chapter introduced a hybrid approach for assessing legal change, which consists of quantitative automated text analysis and qualitative textual composition analysis. The former relies on specially developed software that identifies and compares consecutive laws, for example the 2009 Food Safety Law and the 2015 Food Safety Law, and color-codes any textual changes. The latter is a manual comparative analysis of key components of laws such as aims, outputs, and sanctions.

Based on the quantitative and qualitative identification of change, the chapter introduced an integrated method to assess the significance of change that takes into account the substance and degree of change. Regarding *substance*, the qualitative textual composition analysis allows an assessment of the nature of key components of a law, for example the extent to which aims have changed. The *degree* of change is measured by using the aforementioned software package. The resulting change index is subsequently benchmarked against the evolution of the Chinese legal system and in particular against past change in the same policy area.

Finally, drawing upon the crisis-learning literature, the chapter introduced a typology of post-crisis legislative learning, which is based on two indicators, namely crisis-responsiveness and problem-solving potential. The former refers to whether a law *responds* to the issues exposed by a crisis. The latter is defined as the potential of post-crisis law to *mitigate* the problems exposed by a crisis. This results in four types of post-crisis legislative learning: learning, rhetoric learning, opportunistic learning, and coincidental learning.

This hybrid approach to identifying, measuring, and assessing post-crisis legal change is operationalized in table 4-7 and will be applied to the case studies presented in the next three chapters.

Table 4-7. Operationalization for Measuring and Evaluating Post-Crisis Legal Change

Research Question	Approach	Data	Output
What has changed?	In case of amendments: Map change between two successive versions of the same law using the comparison tool CLOG	Two successive versions of the same law e.g., the 2004 and 2013 Infectious Diseases Law	List of changes and indication of which sections of the law change most substantially
	For all laws: Analysis of textual composition to understand the key components of a law.	Post-crisis law	Overview of key components of a law: aims, outputs, regulatory logic, commands, sanctions and inducements, and adaptability
What is the significance of this change?	Significance based on policy analysis (see above)		
	Significance based on the degree of change, which will be compared to legal change in China in general	SinoLawGist database, consisting of all Chinese laws since 1954, including pre- and post-crisis laws	Change index
	Policy field significance	Number of existing laws, administrative regulations, and departmental rules within a policy area	Overview of policy area
What kind of learning?	Assessment of crisis-responsiveness and problem-solving	List of changes or overview of key components of a law, crisis reconstruction, legal analysis, and SinoLawGist database	Typology of learning in post-crisis legal change: Learning, rhetorical learning, opportunistic change, and coincidental learning

Part II

Case studies

5 Dreaming of Safe Milk: Legal Change After the Melamine Crisis

5.1 Introduction

Unsafe food is a major concern for both citizens and political leaders in China. In a 2016 survey, 40% of polled Chinese people opined that food safety is a very big problem and 34% indicated that it is a moderately big problem (Wike & Stokes, 2016). Chinese politicians consider China's food safety situation a threat to social stability. In a 2013 speech, president Xi Jinping said regarding food safety: "... once there is a [food safety] problem, it can easily cause public panic, and even lead to incidents of social unrest" (Xinhua, 2017).

China's dairy industry is especially prone to food safety problems. In 2004, twelve babies died from malnutrition because they had been fed fake milk powder, which did not contain the nutrients necessary for a baby to grow (Xinhua, 2004; R. Zhou, 2004). In 2005, the same problem appeared in Hunan province, leading to at least one more malnourished baby (Juan Li, 2005; Ministry of Health, 2005). A year later, in 2006, such 'empty' milk powder appeared again. This time it was not only very low in protein, but also very high in arsenic, which is carcinogenic (2006; H. Tang, 2006).

But by far the biggest food safety scandal in the Chinese dairy industry is the 2008 melamine milk powder crisis, in which at least six babies died and nearly 300,000 infants fell ill across the country due to infant formula that contained melamine (Q. Mao, 2009; Ministry of Health, 2009a). This colorless chemical—not a food ingredient—was added to diluted and low quality milk in order to pass mandatory protein tests. These tests measure protein levels based on the milk's nitrogen content. Melamine has high levels of nitrogen, but does not contain any protein and is thus used to fool protein tests. When ingested, it can lead to kidney stones and kidney failure (Gossner et al., 2009; Hau et al., 2009).

This chapter examines the melamine milk powder crisis with the triple aim of identifying post-crisis legal change, uncovering the conditions that led to this outcome, and evaluating the nature of post-crisis legal change. I do so by reconstructing the crisis-change process as well as post-crisis lawmaking processes, which allows me to draw conclusions about the interaction of crisis and law.

The chapter shows, first of all, that the melamine milk powder crisis has indeed led to legal change, including the abolishment of a system that exempted certain food products such as infant formula from safety inspections, the passage of the Dairy Quality Regulations, and the Raw Milk Purchasing Rules. However, the role of the crisis in the 2009 Food Safety Law was much smaller than commonly assumed. Secondly, I show that post-crisis legal change was the result of a complex web of factors, including, *inter alia*, the seriousness of the crisis, news media attention, censorship, limited activism, and long-standing food safety problems. Thirdly, I argue that although post-crisis legal change was substantial in size and substance, and although there is certainly evidence of learning, it was insufficient to prevent food safety crises from happening again.

The chapter consists of three parts. The first part examines the unfolding of the crisis. The second part analyzes the role of the crisis in post-crisis lawmaking processes and assesses the nature of post-crisis legal change. The third and final part discusses the implications of this case study for existing literature about crisis, policy change, and lawmaking in China.

5.2 The Making of a Crisis

5.2.1 News Media: Kidney Stones in Infants

On 28 June 2008, medical journalist Zhang Yun of the newspaper Western Business (西部商报 *Xibu Shangbao*) in Gansu province was contacted by Zhang Wei, head of the urology department of a hospital in the provincial capital Lanzhou, because a “strange thing” had happened. Two babies under one year of age, from two different counties, had been hospitalized with kidney stones. This had never happened to Zhang Wei before. Until then, the youngest child with kidney stones had been seven years old. Journalist Zhang Yun started investigating, but did not publish a story about it right away (Yun Zhang, 2009).

These patients were not isolated cases: on 23 July 2008, a television station in Hunan province reported that in one month, 16 infants had been treated for kidney stones (Hunan Satellite TV, 2008), which is a rare condition in children (Haining He, 2009; Sas, 2011). The doctor argued that the problem was certainly related to food or water. The parents of the infants suspected that infant formula from one specific brand was the culprit, because all of the infants had been fed milk powder from this particular brand. However, the TV report did not mention the name of the suspected brand (Hunan Satellite TV, 2008).

A week later, on July 30, aforementioned journalist Zhang Yun published an article about the two babies with kidney stones that were hospitalized in Lanzhou. In the article, Zhang Wei, the doctor who treated the babies, argued that one of the causes may be improper nutrition, saying that some parents feed their children food or supplements that can lead to kidney stones, such as apple juice or calcium supplements. The doctor was also quoted as saying that the kidney stones “might be related to infant milk powder,” however “the specific cause requires the evaluation of authorized departments before a conclusion can be reached” (Yun Zhang, 2008a).

At that time, the journalist, doctors, and the newspaper all suspected that the kidney stones were caused by milk powder from the domestic brand Sanlu, but the Western Business did not mention the brand (J. Xiu, 2008; Yun Zhang, 2009). According to Zhang Yun, this was because there was no official statement from an authorized department (Yun Zhang, 2009). Moreover, the journalist recalled:

the case was not sufficiently mature, evidence was not sufficiently adequate. I searched online, other places seem to also have this disease, but it was not especially serious. Secondly, the leaders of the unit [newspaper] checked [the story], it [the newspaper] feared that the influence of the report on industry was too big. (Z. Zhang, 2013, pp. 29–30)

Therefore, the editors decided to not reveal the brand name. The story was subsequently presented from a human interest perspective (社会新闻 *shehui xinwen*) and called upon parents to pay extra attention to nutrition (Yun Zhang, 2008a; Z. Zhang, 2013).

In the next several weeks, the number of cases grew. When medical journalist Zhang Yun visited the hospital in Lanzhou again about a month later, he discovered that three more infants had been hospitalized with kidney stones, all of whom were under one year of age and had been fed Sanlu milk powder since birth (Yun Zhang, 2008b, 2009).

Nevertheless, the follow-up article in the Western Business did not mention milk powder and

the brand's name. Instead, the article remained very vague in terms of the cause of the problem, saying that "there are many reasons for the increase in disease rate," including "... children eating a lot of meat, snacks..." The header of the article was "more children with kidney stones appear, babies must drink more water and eat less salt." Zhang Yun later stated that although the newspaper "started to suspect that it is extremely possible that the problem comes from Sanlu milk powder" it decided to continue to report from a human interest angle. The reason for this was that "...the data and information were too simplistic, could not proof that there was a hidden danger in the domestically well-known Sanlu milk powder. In addition, food safety was also a sensitive topic" (Yun Zhang, 2008b, 2008d).

Doctors, too, were frightened to openly blame Sanlu milk powder. To illustrate, the wife of aforementioned doctor Zhang Wei warned her husband, who contacted local media, that "you will certainly provoke big trouble, you will not be able to work as a doctor" (Haining He, 2009). Another doctor, Li Wenhui, recommended a local journalist to not mention the brand name (Haining He, 2009).

5.2.2 Connecting the Dots: More Cases and More Evidence

As more cases of kidney stones in babies appeared in subsequent weeks, evidence was mounting against Sanlu milk powder because babies from different provinces, who had all been fed Sanlu milk powder, showed the same symptoms.

In Hubei province, yet another part of China, medical journalist Hu Meng of the Yangtze Business News (长江商报 *Changjiang Shangbao*) was invited by the Tongji Hospital in the provincial capital Wuhan to cover a story about a new treatment for infants with kidney stones. Here three babies from three different provinces had been hospitalized with life threatening kidney failure. While discussing the cases with the journalist, a medical specialist mentioned that the three infants had all been drinking milk from the brand Sanlu. The parents of the babies showed the journalist the Sanlu milk powder that their children had eaten. Nevertheless, the newspaper did not mention Sanlu, because there "was no conclusive evidence." On August 28, the newspaper published the story with the headline "Three infants with the same disease, is milk powder the main culprit?" (M. Hu, 2008a).

Although the newspaper received reports from other parts of the country where infants who had been fed Sanlu powder milk were hospitalized, it again did not mention the brand name in its follow-up article on August 29, titled "Same milk powder, same disease, also in other provinces." Rather than revealing the brand name, it used vague sentences such as "parents contacted this newspaper, saying that the situation of their own child is the same as the three infants that appeared in the news, [the children had] also eaten this brand milk powder." A doctor was even quoted as saying "again XX (milk powder brand)!" (M. Hu, 2008b).

In response to the reports, representatives of Sanlu travelled to Wuhan on August 29 and provided the newspaper's journalist Hu Meng quality reports which stated that nothing was wrong with their products. Taking into account that the hospitalized children came from different provinces but had been fed the same Sanlu milk powder, Hu Meng was not convinced that the company did not have quality problems. Therefore, she continued her investigation and collected data from other parts of the country where similar cases had appeared (Jiao, 2014).

A major issue was the difficulty of identifying what was wrong with the milk. Medical experts preliminary concluded that there was a problem with the ratio and levels of calcium and phosphorous in the milk powder (M. Hu, 2008b; Jiao, 2014; Y. Niu, 2008).⁴¹ The nutrition and health department of the hospital in Wuhan reportedly could not be of much help because “for testing there needs to be a clear direction. Milk powder consists of many different kinds of ingredients. If we use the elimination method, [to find out] which component in the end is the factor that causes the disease, even a year is maybe not enough” (M. Hu, 2008b). The newspaper turned to various provincial level agencies to request testing, but a major problem was that at that time melamine was not included in testing procedures. Therefore, “no matter how many tests are done, it is impossible to detect melamine” (Jiao, 2014). As a result, while the *Yangtze Business News* article reported that doctors across the country suspected that the kidney problems were related to milk powder, it also argued that “there is no evidence to prove this point” (M. Hu, 2008b).

5.2.3 Newspapers Remain Silent on Brand Name

Meanwhile, additional cases appeared in Gansu province: aforementioned journalist Zhang Yun found out that more hospitals in the provincial capital had cases of babies with kidney stones. The newspaper finally published a story openly suggesting a link with milk powder on September 6, but still did not mention the brand Sanlu, because “at that time [we] still did not have more direct evidence” (Yun Zhang, 2008c, 2008d). More specifically, “there was no news of government confirmation” (Jianbing Li & Tang, 2009).

However, the newspaper, “out of safety consideration” did report the cases to the provincial health, the provincial industry & commerce, and the provincial quality supervision government departments (Jianbing Li & Tang, 2009). Such “internal reporting” (内参 *neican*) is common in China for issues that newspapers deem too sensitive to report (Stockmann, 2013). Other newspapers confirmed the sensitivity of the issue by either not publishing the news at all or not revealing the brand name. The *Wuhan Evening News*, for example, wrote about the children hospitalized in Wuhan that they “... had drunk the same brand milk powder since birth” (Tong & Tian, 2008).

Even the *Southern Weekly* (南方周末 *Nanfang Zhoumo*), which is considered one of China’s boldest and most critical newspapers (Repnikova & Fang, 2015), initially did not publish the issue because the emergence of the kidney stone babies coincided with the Summer Olympics in Beijing, during which censorship was very tight. Such increased censorship is common in China during high profile events. The Central Propaganda Department explicitly instructed media to not report food safety issues during and prior to the Olympic Games (Simpson, 2008; Watts, 2008). A directive issued in July 2008 stated: “All food safety issues, such as cancer-causing mineral water, are off-limits” (The *Sydney Morning Herald*, 2008). Journalists were expected to focus on positive news and only use official reports of negative stories (Brady, 2009). Therefore, the *Southern Weekly* “was unable to a dispatch a reporter to gather news.” Although the newspaper continued to monitor the situation as closely as possible, like other informed newspapers, it “could

41 This claim was not further specified. Tests taken by the State Food and Drug Administration several weeks later showed that the milk powder not only contained the chemical melamine, but also did not meet the standards for the calcium-phosphorus ratio and for the levels of calcium, potassium, fat, and nitrite (Y. Niu, 2008).

only wait, wait, wait” (J. Fu, 2011).

Once the Olympics were over, Southern Weekly reporter He Haining started an investigation into the matter. Based on interviews with parents in Hubei, Hunan, and Guangdong provinces as well as with hospitals across the country, he concluded that Sanlu milk powder was indeed the cause of the sick babies. On September 10, the Southern Daily (南方日报 *Nanfang Ribao*), which is a sister newspaper of the Southern Weekly, republished an article from state media agency Xinhua about the “kidney stones babies.” Although the article did not mention Sanlu, it gave He Haining and his editor Fu Jianfeng hope that their article would be published. However, the newspaper still deemed it too risky and did not publish it (J. Fu, 2011). At that time, propaganda officials tightly monitored the Southern Weekly after it had been reprimanded for revealing that poor construction practices were the reason that many school buildings collapsed in the Wenchuan earthquake earlier that year. Unmasking another sensitive problem “would undoubtedly bring the newspaper even more trouble” (Z. Zhang, 2014).

Generally speaking, food safety was a sensitive issue that could directly affect national and even international politics. Just a few months before the melamine problem appeared, in January 2008, dumplings from China had sickened at least ten people in Japan because it contained an illegal, toxic pesticide, which was injected by an employee of a Chinese food manufacturing plant because he was frustrated over labor conditions. This had led to a political conflict between China and Japan (Rosenberger, 2009; S. A. Smith, 2015). With the incident fresh in mind, journalists at the Southern Weekly “worried that the toxic milk powder issue would also give foreign countries an opportunity to blame China, and might well set off a chain reaction” (Z. Zhang, 2014).

5.2.4 Corporate Capture of Media and Local Government

In addition to state censorship, journalists were intimidated by the dairy industry and by Sanlu in particular. Sanlu was a powerful company that enjoyed plenty of commercial and political capital by 2008. During the second half of the 2000s, the reputation and value of its brand had expanded rapidly. Sanlu was listed amongst China’s most competitive brands in 2007 (Ministry of Commerce, 2007).

Along with the company’s economic growth, Sanlu adopted an aggressive public relations strategy. It was very successful in reputation building after it was initially blacklisted in the Fuyang crisis of 2004, in which a dozen babies died after being fed milk powder that did not contain the nutrients necessary for infants to grow (C. Gao, 2004; Tam & Yang, 2005). In January 2004, several months before the Fuyang crisis was reported in the media, a customer had filed a complaint about Sanlu milk powder with the Fuyang health inspection, which tested the product and concluded that it was indeed substandard. However, it was concluded that the product had not been produced by Sanlu but was produced illegally by others. When Sanlu was blacklisted in April, it argued that this was incorrectly based on those previous test results of fake Sanlu milk powder and therefore, it lobbied newspapers and government to get removed from the list, which happened just several days later (C. Gao, 2004).

Sanlu’s post-Fuyang strategy to improve the image of its products paid off, which was evidenced by the fact that its infant formula was included in the 2005 list of “National Exemption from Inspection Products” (国家免检产品 *guojia mian jian chanpin*), compiled by the General

Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), even though long term stability of product quality is one of the legal requirements for obtaining this status. Consequently, products were exempted from quality inspection by all levels of government (AQSIQ, 2001, 2005).⁴²

The message that Sanlu's products were safe was echoed by a special report on national state television in September 2007 about the company's procedures for quality and safety (CCTV, 2007b). Moreover, in early 2008, Sanlu's general manager Tian Wenhua received the National Science and Technology Progress Award for research and innovation of a new generation infant formula (Ministry of Science and Technology, 2008).

As the crisis was unfolding, Sanlu pursued a very active public relations strategy that included high-profile promotional campaigns such as donation of milk powder and infant formula to victims of the Wenchuan earthquake in May 2008 (Junqing Wang, 2008). A month later, Sanlu became the sole dairy supplier for the Shenzhou 7 space mission, a prestigious project that completed China's first spacewalk (R. Zhang, 2008).

As will be discussed later in this chapter, at that time, Sanlu was already aware of quality issues with its infant formula and actively suppressed news about it. When consumers started to complain and increasingly shared their dissatisfaction online, Tian Wenhua ordered her PR managers to block any negative stories about Sanlu in news media. The two managers in charge of this had been very successful in saving Sanlu's reputation following the aforementioned Fuyang crisis. Manager Zhang Zhenling disclosed: "... by giving media advertisement fees, we let them not report, seal off news, control media. When doing consumer work, we prevented consumers to turn towards media to report the issue and situation..." (T. Ye, 2009b). In fact, one parent reported to have received more than two thousand renminbi (approximately USD 350 at that time) worth of milk powder from Sanlu in exchange for deleting his post on Tianya, one of China's most popular online bulletin boards systems. In the post, the parent questioned the quality of Sanlu milk powder because of irregularities in his daughter's urine which he suspected were a result of consuming Sanlu milk powder (H. Lü, 2008).

Sanlu also manipulated the local government of Shijiazhuang city, where Sanlu was headquartered. It requested that the government "strengthen the control and coordination of the media to allow for favorable conditions for a corporate recall of the products that have problems..." The local government indeed kept the issue secret. Although it was aware of the health risks (which is evidenced by the fact that it provided medical treatment to affected children), the local government waited more than a month before it reported the issue to the provincial government (M. Wang, 2008; T. Ye, 2009b).

5.2.5 Exposure of Sanlu by a Dedicated Journalist

It was the Shanghainese newspaper *Oriental Morning Post* (东方早报 *Dongfang Zaobao*) that eventually scooped the story on September 11. The article reported that 14 infants in Gansu province had been diagnosed with kidney stones after drinking Sanlu milk powder (Jian, 2008a). Jian Guangzhou, the journalist who wrote the story, had read about the kidney stone babies online and decided to investigate the matter. Like journalists at other newspapers, he too was hesitant to

⁴² See Administrative Rules for Products Exempt from Quality Inspection and Supervision, articles 2 and 8.

reveal the brand name, because this could “not only bring about enormous loss for the company, but could also lead to reactions from the company” (Jian, 2008b). Again, the biggest obstacle was the lack of evidence and especially the lack of official confirmation. To verify the matter, Jian interviewed parents, doctors, government officials, journalist Hu Meng of the Yangtze Business News, and Sanlu (CCTV, 2011; Jian, 2008b).

The most convincing argument for the Sanlu accusation was the fact that infants from different provinces experienced the same symptoms. In theory, the problem could also be related to the quality of water that was used to dilute the infant formula, but it would be very unlikely that multiple provinces had similar water quality issues. Because milk powder was the main or only food the children were fed, milk powder was the main suspect. Moreover, government officials confirmed that they had received complaints about Sanlu milk powder.

Despite journalist Jian’s growing confidence that Sanlu milk powder was indeed the culprit, the decision to publish the story was not taken lightly. The newspaper’s office verified the story and only after elaborate consideration, did it approve the story. The journalist and the newspaper expected to be sued by Sanlu. Jian especially worried that the involved Sanlu milk powder may be ‘fake’, meaning that someone other than the Sanlu company adulterated and then sold the original Sanlu milk powder so that technically the problem could not be blamed on Sanlu. Therefore, late at night, already on his way home, Jian returned to the office and added a subtitle saying “unclear whether it is a fake product.” In addition to the risk of getting sued by industry, the newspaper was also concerned about getting into political trouble if the story would cause social instability (CCTV, 2011; Jian, 2008b). In the article, Jian did mention that the Gansu provincial government was investigating the issue, but he did not criticize the government in any way.

Jian has been widely praised for his courage to expose the brand name of the milk powder. Although he was not the first to link the sick infants to milk powder, he was the first journalist to openly mention the brand Sanlu. For this, he received multiple awards and honors including, for example, from the magazine *New Weekly*, which named Jian person of 2008 for being the “conscience of China’s media” (Hai’er Zhang, 2008).

As discussed in chapter 2, the response of journalists in China to sensitive issues is largely shaped by the personal features of the individual journalist, such as experience, education, and professional networks (Stockmann, 2013). In case of Jian, there were several reasons why he explicitly mentioned Sanlu while other journalists and newspapers did not. First of all, Jian was an investigative reporter who strongly believed that news media could contribute to China’s development by exposing problems. In the context of the melamine tainted milk powder, he has been quoted as saying:

If everyone reads more true things, stability will not deteriorate. On the contrary, it will make society more stable. Some things such as this important problem of Sanlu milk powder, if we do not report, and other media also do not report, after two or three years, not just 294,000 people would be harmed, but possibly a million or even more. Wouldn’t that be an even bigger problem in terms of disturbing social stability? (CCTV, 2011)

Secondly, the Sanlu story strongly reminded Jian of the aforementioned Fuyang incident in 2004, in which a dozen babies died after being fed fake milk formula. Jian had witnessed the

incident from close by:

the journalist who wrote that story happened to be my co-worker with whom I rented an apartment together in Shanghai. At that time, after he had been to Fuyang to interview, we chatted in the evening, we felt that there were still many things that must be traced and deepened, so the next day he went to Fuyang again. That incident left a deep impression. When I read this news, I felt that again this is a serious food hygiene incident, it was very similar, the suffering of the children, at that time I felt the journalist's mission, I was very touched. (Yi Tang, 2008)

In addition, as discussed in chapter 2, the Chinese media landscape is extremely competitive and therefore, journalists are eager to scoop a story because of the potential fame and career perspectives. To illustrate, the editor of the aforementioned Southern Weekly, whose Sanlu story was rejected, said: “this draft would have given the Southern Weekly enormous honor and fame. [...] By uncovering this public health incident, Southern Weekly would [have] establish[ed] itself far above mass media” (J. Fu, 2011).

However, although fame and career perspectives may have played a role for Jian, there is no evidence of this in the Sanlu case. In interviews and in his own writings about the Sanlu case, Jian consistently stresses his ideals as a journalist and the importance of media for society (CCTV, 2011; Jian, 2008b; Yi Tang, 2008). In fact, when he retired from journalism in 2012, he said:

I thought that in China, the community of news journalists is extremely abundant of idealistic people, we all embrace and use our pen to record, to witness and even to push forward the progress and development of this society. As far as I am concerned, I am unable to realize my ideals at the newspaper, therefore I choose to leave. (Shifeng Li, 2012)

Jian also emphasized that it was very stressful and risky for him to write the Sanlu story. For example, Jian has written:

That night, after careful consideration, the newspaper management decided to publish the story. But what kept my mind shaking was the scene that Sanlu would give me a threatening phone call the day after to criticize me for being irresponsible and to sue me in court. To tell you the truth, I did not sleep well that evening. (Jian, 2008b)

To increase the chance of publication and to avoid trouble, Jian used professional journalism strategies, including recording all evidence, reporting in a balanced way, rigorous fact checking, and literal quoting. He was also careful in his formulation, for example by questioning the Sanlu milk powder rather than reaching a verdict as well as by adding several subheadings such as “unclear whether it are fake products” (CCTV, 2011; Jian, 2008b).

As to why the Oriental Morning Post published the story whereas other newspaper did not, Jian argues that the newspaper management had underestimated the significance of revealing the brand name. In Jian's words:

Everyone thought this was a pretty good report, but it didn't involve a problem with the entire industry, so they weren't fully aware of the important role that this could have. They weren't aware that this problem might exist throughout the industry. If they had all been aware of the importance of the report, not a single newspaper would have published it. It was really a case of 'ignorance is fearless.' (Z. Zhang, 2013, p. 33, 2014, p. 145)

Jian's news article on September 11 triggered substantial media attention, which is shown in figure 5-1. It shows the number of news articles published between July 23, when the first news media report about kidney stones in babies was aired by Hunan Satellite TV, and September 30, about three weeks after the *Oriental Morning Post* report that revealed the brand name. Data was collected from the China Core Newspaper Database. The black line shows the number of articles that contain the key words 'kidney stones' (肾结石 *shenjiieshi*) and 'infants' (婴儿 *ying'er*), while the dotted line shows the number of news articles that contain the words 'milk powder' (奶粉 *naifen*) and 'kidney stones', and the dashed line shows the number of news articles containing 'milk powder' in the title and 'melamine' (三聚氰胺 *sanjuqing'an*) in the text.

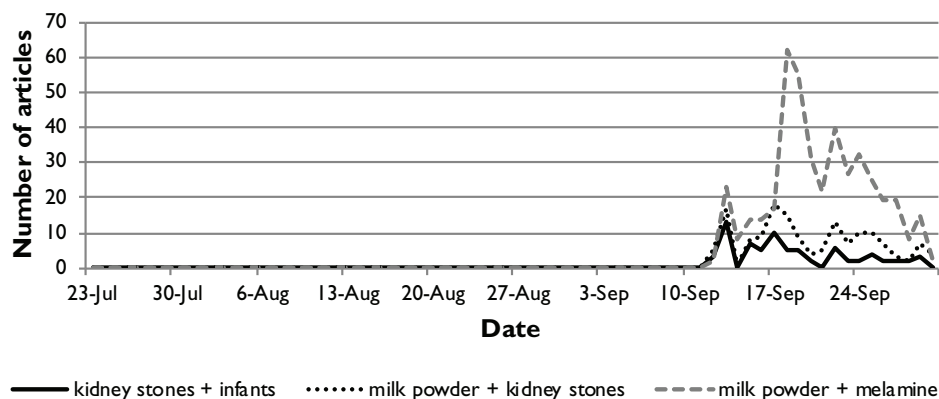


Figure 5-1. Newspaper Articles on Melamine Crisis, 1 Aug.–30 Sept. 2008

Source: China Core Newspaper Database.

However, even after the *Oriental Morning Post* scooped the story, the topic was still very sensitive, which is evidenced by subsequent censorship instructions. Online news websites were told to only repost articles from state media. And generally, media were instructed to not produce any lead stories on the topic and to emphasize government efforts to handle the crisis. Furthermore, the notice called to “firmly block and delete information and posts that criticize the Party, the government, instigate petitioning and spread rumors” as well as to “mobilize online commentators to guide the opinions” (F. Gao, 2008). Unsurprisingly, state news Xinhua indeed framed government response in a positive way, even frequently using words such as ‘open’, ‘transparent’, ‘accurate’, and ‘timely’ (M. Feng, Brewer, & Ley, 2012).

5.2.6 Cover-Up by Dairy Company Sanlu

Soon after the *Oriental Morning Post* revealed that Sanlu milk powder was the cause of the kidney stone babies, it became clear that Sanlu had known about the problematic products for months, but had remained silent towards the general public and government agencies. As early as December 2007, consumers had filed complaints with Sanlu because milk powder caused irregularities in their babies' urine (T. Ye, 2009a). On 17 May, 2008, the Sanlu customer services department informed general manager Tian Wenhua, assistant general manager Wang Yuliang, and other Sanlu leaders of this situation in a written report. On May 20, Wang Yuliang set up a small group to investigate the cause of the problem and concluded that Sanlu milk powder contained 1.5–6 times more non-milk protein nitrogen than was common in such products in China and abroad (T. Ye, 2009a, 2009b).

Around 20 July, the small group started to suspect that Sanlu milk powder contained melamine, because it had read on the internet that in the US, pets had died in 2007 because their food contained melamine. On 24 July, 2008, Sanlu sent 16 batches of its milk powder to the Hebei Provincial Entry-Exit Inspection and Quarantine Bureau Inspection and Quarantine Technology Center to test for melamine. Sanlu lied about the samples. The head of Sanlu's Technology Safeguarding Department, Li Chaoxu, recalled: "We said the milk powder is fake milk that we withdrew from the market and that the samples of the raw material came from Shandong... Manager Wang let me coordinate with the Quarantine Bureau to keep it secret." Assistant manager of the Sanlu technology center, Zhang Zhiguo, stated: "On July 24, me and Li Chaoxu delivered 16 products to the Quarantine Bureau for testing. On the products was no Sanlu sign, because manager Wang had instructed that this matter must be kept secret." The tests showed that 15 out of the 16 samples contained melamine (Supreme People's Court, 2009; T. Ye, 2009b).

When general manager Tian Wenhua received the test results on August 1, she immediately convened a meeting with Sanlu senior managers, who jointly decided to stop distribution, but to continue production. Management temporarily sealed the products in its warehouse to test for melamine. After testing the level of melamine of its stored products, Sanlu management decided to sell products with a melamine level of less than 10 mg/kg. Moreover, between 2 August and 12 September, it produced 72 batches of milk powder containing melamine (Supreme People's Court, 2009). Although the company knew that its raw milk and its milk powder contained melamine, it did not inform relevant government departments. Even on September 11, the company maintained that their product did not have any quality issues (Jian, 2008b; T. Ye, 2009b).

Sanlu's foreign partner also failed to inform consumers and the Chinese government. Sanlu's 43% stakeholder Fonterra from New Zealand knew about the problem at least as early as 2 August, 2008. However, together with the New Zealand (diplomatic) bureaucracy, Fonterra was sluggish in reporting the issue to central level authorities in Beijing. It informed the China's Ministry of Commerce only on September 9, and remained silent to the general public (Macfie, 2008; Ministry of Foreign Affairs, 2008; T. Ye, 2009a).

5.2.7 Government Irresponsiveness

Government agencies at various levels remained unresponsive to consumer complaints that were filed at various levels across the country prior to the exposure of the problem by the *Oriental Morning Post*. To illustrate, the aforementioned parent who was silenced by Sanlu in return for milk powder products, asked the county level industry & commerce department to test the milk powder as early as March 2008. By the time the department finally agreed to test, the products of the suspicious batch number were no longer on sale (H. Lü, 2008). The issue had also been reported to national level government authorities. Several complaints had been filed with the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), at least as early as June 2008 (Zhao Zhou & Ou, 2008).

Health authorities had also been informed. On July 17, a hospital in Gansu province informed the provincial level health authorities about an increase in the number of infants with kidney stones, which the hospital linked to one particular brand of milk powder. The provincial health bureau immediately formed an investigation team to look into the cause of the ill infants (J. Xiu, 2008; Tingyu Zhou, Zhang, Zhu, & Zhu, 2008). The Ministry of Health sent a team to Lanzhou, “but never provided the conclusion of the investigation” (J. Xiu, 2008).

Much like the Fuyang incident four years earlier (Jing Li & Liu, 2014), the local government did not adequately respond to the problems of Sanlu. The government of Shijiazhuang, where Sanlu was headquartered, was informed about the problem on August 2, but did not stop production (T. Ye, 2009b). While local protectionism certainly played a role in this, Shijiazhuang was further incentivized to keep quiet because the Olympic torch relay had just passed through the city and the Olympics were only ten days away.

Even though government authorities had received complaints, none of these responded adequately and, above all, they failed to inform the general public. Consequently, the production and consumption of Sanlu products continued, leading to serious health damage and ever more victims, making a full-fledged crisis unavoidable.

5.2.8 Institutional and Political Response

The adulteration of milk was not a new problem for Chinese leaders, and as described above, government officials at various levels had been informed of urinary problems in children for weeks or even months before it was finally exposed by media. In fact, mixing illegal substances into milk and milk products had been a problem for years. A main cause for this behavior was the price of milk. To address the problem of milk adulteration, in February 2008, the General Administration of Quality Supervision, Inspection and Quarantine instructed its lower level counterparts in a notice to “crack down on diluting and adulterating behavior” at dairy processing plants (AQSIQ, 2008a).

Nevertheless, adulteration continued, and it was not until the *Oriental Morning Post* published the Sanlu story on September 11 that government authorities finally responded to the crisis. This time, government response was immediate: the issue was on the institutional agenda right after publication of the news story. The first formal institutional response at the central level came from the Ministry of Health, which published a statement on the evening of September 11 (J. Zhang, 2008), saying that:

Recently, Gansu and other places have reported many cases of urinary stones in infants. An inquiry discovered that many of the afflicted children have a history of eating Sanlu brand infant formula milk powder. Through investigation by relevant departments, we highly suspect that the Sanlu brand infant formula milk powder produced by Shijiazhuang's Sanlu Group is contaminated with melamine. Melamine is a kind of raw material used in chemical engineering that may lead to the emergence of stones in the urinary system in humans. (Ministry of Health, 2008a)

Although sometimes political leaders downplay crisis situations (Boin et al., 2017), note that the Chinese Ministry of Health openly acknowledged the severity of the situation. Deputy Minister of Health, Gao Qiang, stated during a press conference: “The investigation group considers this to be a major food safety accident” (State Council, 2008a). The ministry urged parents to stop feeding Sanlu infant powder to their children (Ministry of Health, 2008a). It also published a treatment and diagnosis plan for the affected infants (Ministry of Health, 2008b).

As mentioned in the introduction to this chapter, Chinese leaders are acutely aware that food safety issues are not just a public health issue, but can easily lead to social instability (Alcorn & Ouyang, 2012; Xinhua, 2017). This was also a key motivation for the large-scale crisis response by the Ministry of Health: “Food safety concerns the vital interests of the broad masses of the people, concerns economic harmonious development and social harmonious stability” (Ministry of Health & SFDA, 2008).

As shown in table 5-1, the Ministry of Health (MoH) was a very active player in the crisis, issuing more than a third (11 out of 34) of all notices (通知 *tongzhi*) issued by central level government departments in response to the problematic infant formula.⁴³

Table 5-1. Central Level Government Notices (Tongzhi) in Response to the Melamine Crisis⁴⁴

Date	Government unit	Focus area
11 Sept.	MoH	Diagnosis and treatment plan; request for local level data
12 Sept.	SAIC	Supervision and law enforcement on milk powder market
	MoH; SFDA	Infant formula safety, supervise Sanlu recall; more testing
	MoH	Diagnosis and treatment of victims; public awareness
13 Sept.	SAIC	Getting Sanlu infant formula off the market immediately
	MoH	Free of charge screening, diagnosis and treatment
15 Sept.	MoH	Diagnosis, treatment of infants; information to the public

43 Because there is no reliable official database containing all central level government notices, this table is based on data collected from different government websites, pkulaw.cn, and through the Baidu search machine using key words directly related to the melamine milk powder crisis such as *naifen* (milk powder) and Sanlu in combination with *tongzhi* (notice). Collection was aimed at data saturation, i.e. data collection until new data is starting to be redundant of data already collected (Saunders et al., 2017).

44 For the full names, see list of abbreviations in the beginning of this book.

17 Sept.	SAIC	Get 69 infant formula products off the market
	MoH	Medical treatment of infants
	CNCA	Revocation of Sanlu's certificates, hygiene qualification
18 Sept.	SAIC	Get 24 liquid milk products off the market
	State Council	Abolishment of the inspection exemption system for food
20 Sept.	State Council	Range of instructions, including protecting social stability
	AQSIQ	Prioritize milk incident; inspect dairy products, factories
21 Sept.	MoA; MIIT; MPS; SAIC; AQSIQ	Law enforcement campaign focusing on milk stations
22 Sept.	MoH	Screening, diagnosis, treatment, recording and reporting
	MoA	Animal feed quality and safety enforcement campaign
30 Sept.	SAIC	Get an additional 31 infant formula and milk powder products of the market
8 Oct.	MoF; MoA	Temporary financial aid for dairy farmers
15 Oct.	MoE; MoH; SFDA	Enforcement campaign for food safety at schools
16 Oct.	MoA	Law enforcement focused on melamine in animal feed
3 Nov.	MoH; NDRC; MIIT; MPS; CCDI; MoA; MofCOM; SAIC; AQSIQ; SFDA	Implementation of new Dairy Products Quality and Safety Supervision Management Regulations
7 Nov.	NDRC	Plan for the reorganization and revival of dairy industry
12 Nov.	MoA	Animal feed quality and safety supervision
	AQSIQ	Development of product testing for melamine in milk
	AQSIQ	Strengthening production licensing of dairy products
1 Dec.	NDRC; AQSIQ	Fees for testing of melamine in (dairy) products
3 Dec.	MoH	Future health problems in melamine milk powder victims
5 Dec.	AQSIQ	Melamine levels in imported and exported animal feed
8 Jan.	MoHRSS; MoH; CIRC	Medical expenses for melamine infant victims; free treatment up to age 18
6 Feb.	State Council	Food safety rectification work plan
22 Apr.	MoH; CIRC	Reimbursement of medical expenses

As shown in table 5-1, in addition to the Ministry of Health, other major actors were the State Administration for Industry & Commerce (SAIC) and the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), each of which issued approximately one fifth of all notices. The SAIC aimed for permanently removing infant milk powder containing melamine

and other melamine containing (dairy) products from the market. This operation was based on product testing executed by the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ). Both the SAIC and AQSIQ were represented in the leadership group that dealt with the milk crisis (State Council, 2008a).

The Ministry of Agriculture did respond to the crisis, but it is difficult to assess exactly what it did because not all of the original notices that the ministry claims to have issued are publicly available.⁴⁵ In any case, the ministry was part of the small group set up by the State Council, China's highest executive bureaucracy, to investigate the melamine case (State Council, 2008a). In general, the ministry's response focused on three key issues: banning melamine in raw milk, banning melamine in animal feed, and financial support for dairy farmers because demand for dairy products had completely collapsed and farmers were dumping milk and possibly even killing their cows (Barboza, 2008b; W. Yu & Dong, 2008).

A central level organization one would expect to play a much more active role in this crisis is the State Food and Drug Administration (SFDA). However, as shown in table 5-1, the SFDA was almost invisible in crisis response. It (co-)issued only three out of the 34 notices. An explanation for this is that the SFDA was put under the jurisdiction of the Ministry of Health in early 2008 to improve the country's food safety situation (NPC, 2008b).

President Hu Jintao, premier Wen Jiabao, and vice-premier Li Keqiang responded to the incident publicly, including televised visits to hospitalized infants and their parents by the latter two (CCTV, 2008b; Che, 2008). In a speech, Hu Jintao referred to the milk powder incident as an example of failed leadership (Zuoguo Li, 2008). The State Council organized several press conferences, the first one on 13 September. That day, the State Council also launched a "food safety accident level I response" and set up a "leadership small group" (领导小组 *lingdao xiaozu*), which was headed by former health minister Gao Qiang (State Council, 2008a).

As the crisis unfolded, Wen Jiabao claimed several times that the government "must earnestly draw lessons" and announced a "thorough investigation into the cause of the accident, the results of which will be made public in a timely fashion" (State Council, 2008b). While visiting victims in a Beijing hospital, Wen said "...what we are doing now is ensuring that this kind of thing will not happen again. And we are not only talking about dairy products, no such thing should happen again with any food. Let the people be able to eat without worrying" (CCTV, 2008b).

5.2.9 Law Enforcement

Deputy health minister Gao Qiang pledged that those responsible for the crisis would be severely punished (State Council, 2008a). This was followed by swift but selective criminal prosecution. Already on September 12, police in Hebei province and Shijiazhuang city, where Sanlu was headquartered, mobilized 800 police officers to inspect milk stations. By the end of the month, police had arrested 27 individuals who were suspected of producing or selling melamine and adding this substance to milk (G. Zhang, 2008).

45 Evidence of this: minister of agriculture, Sun Zhengcai, was quoted as saying in an interview with the People's Daily that it "has consecutively issued 9 notices" since the emergence of the problematic Sanlu milk powder (H. Feng, 2008). Yet only five are available online. One possible explanation for the lack of openness is that the information in the notices was too sensitive. Another explanation is the absence of a comprehensive, publicly accessible database for government notices.

Sanlu's general manager Tian Wenhua and three senior managers were arrested within two weeks after the crisis became public (Supreme People's Court, 2009). Tian was sentenced to life imprisonment for producing and selling inferior products and was fined almost RMB 25 million,⁴⁶ while the other three Sanlu managers were sentenced to fifteen, eight, and five years in prison respectively and fines. The company Sanlu was fined almost RMB 50 million (Supreme People's Court, 2009).

The most severe punishment, execution, was given to two peasants from Hebei province, named Zhang Yujun and Geng Jinping, for producing and selling melamine. The melamine was subsequently added to milk and sold to Sanlu. According to the judgment, both were fully aware that melamine is a chemical product, that it cannot be used in food, and that it causes serious harm to people's health and life safety if it would be consumed (Z. Dong et al., 2009; Shijiazhuang Intermediate Peoples Court, 2009).

Several government officials at the central and local levels were sanctioned, although this was limited to removal from their posts and did not include criminal prosecution. The head of the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), Li Changjiang resigned in September 2008.⁴⁷ Hebei Party secretary Wu Xianguo was removed from his post for failing to timely report the Sanlu problems to the higher level government (Xinhua, 2008). In March, 2009, another eight high ranking officials at the central level government were punished for their role in the Sanlu crisis (Ministry of Supervision, 2009). In Hebei province, 24 government officials were punished (Z. Dong, 2009).

5.2.10 Crisis Expansion: More Brands and Products Containing Melamine

While the crisis started with melamine in Sanlu infant formula, melamine was subsequently detected in a range of dairy and nondairy products, in China and abroad. Melamine was first detected in 69 infant formula products produced by 22 Chinese companies (CCTV, 2008a). This was followed by melamine in liquid milk products and more milk powder products, involving two dozen companies (AQSIQ, 2008d, 2008e). At the same time, food safety authorities around the world detected melamine in a range of products, including ice cream, dairy products, coffee, soup, candy, cereals, crackers, and eggs (Barboza, 2008a; Branigan, 2008; Centre for Food Safety, 2008; Gossner et al., 2009; G. Wong, 2008).

In February 2009, the Ministry of Health announced the official number of victims (Ministry of Health, 2009a). Of the 22.5 million children that had been screened, a total of 294,000 suffered from abnormalities in the urinary system. More than 52,000 children were hospitalized, of whom 154 were severely ill. Experts assessed 11 reports of fatalities and concluded that 6 of them were linked to the Sanlu milk powder.⁴⁸ Note that, whereas in western democracies crises are often followed by a formal inquiry (Boin et al., 2017), the findings of which are usually announced

46 Approximately USD 4 million at the time of writing.

47 A lawyer named Zhou Ze circulated a letter online calling for Li's resignation on September 16. The letter was removed from Zhou Ze's blog by unknown actors, most likely government instructed censors. Li resigned on September 22. While it is unclear whether and to what extent the letter played a role in the resignation, it is an interesting example of protest in response to the Sanlu crisis (Ze Zhou, 2008a, 2008b).

48 A month earlier, the Ministry of Health reported slightly more victims: 296,000 children with abnormalities in the urinary tract and almost 53,000 hospitalizations (Q. Mao, 2009).

during a press conference and amplified by news media, this generally does not happen in China (L. Xue & Zeng, 2019, pp. 1–14). Even basic information such as the number of fatalities, their names, ages, and place of origin as well as the method used to determine the number of victims is typically not publicly available. In the case of the melamine crisis, the names of the victims are not publicly available. It is even unclear whether all deaths have been accounted for. There are reports that at least two deaths are not included in the official statistics (AP Archive, 2008; Y. Shen, 2009; V. Wu, 2009). Apart from some general comments about the shortcomings of dairy and food safety regulation, there is no official report available that analyzes the causes, consequences, and possible policy solutions.

5.3 Post-Crisis Lawmaking

Now that I have reconstructed the unfolding of the melamine milk powder crisis, the next part of the chapter will focus on post-crisis lawmaking processes.

To isolate laws that may have been the result of the melamine milk crisis, I use the database PKUlaw (北大法宝 *beida fabao*) as the starting point.⁴⁹ The laws in this database are organized into 106 different categories and many more subcategories. Because it is impossible to assess whether each individual item has a causal link with the melamine crisis, the focus here is on the categories that are directly relevant to the melamine milk powder crisis, namely health (卫生 *weisheng*), livestock industry (牧业 *muye*), agriculture (农业 *nongye*), and quality management and supervision (质量管理和监督 *zhiliang guanli be jian**du*). From this, only subcategories that are relevant to the crisis have been selected: food hygiene (食品卫生 *shipin weisheng*), women and children's health (妇幼卫生 *fuyou weisheng*), livestock management (牧业管理 *muye guanli*), livestock products (畜产品 *xuchanpin*), agricultural management (农业管理 *nongye guanli*), quality comprehensive rules (质量综合规定 *zhiliang zonghe guiding*), and product quality supervision (产品质量监督 *chanpin zhiliang jian**du*).

Table 5-2. Volume of Laws, Regulations, Rules in Selected Policy Areas Passed 2008–2016

	Laws	Regulations	Rules	Total
Food hygiene	2	4	25	31
Women and children's health	1	0	3	4
Livestock management	1	3	3	7
Livestock products	1	4	1	6
Agricultural management	2	5	19	26
Quality comprehensive rules	1	0	8	9
Product quality supervision	1	2	23	26
Total	9	18	82	109

Based on this selection, table 5-2 shows the number of laws (法律 *falü*), administrative regulations (行政法规 *xingzheng fagui*), and departmental rules (部门规章 *bumen guizhang*) that were issued in each category between 11 September 2008, when the Oriental Morning Post scooped the crisis, and 31 December 2016, when the last round of data collection for this project

49 <http://pkulaw.cn/>

started. The result was a total of 109 items (including four items that appeared in two categories), the titles of which were collected into one document and, based on the title of the law, screened for a possible connection with the melamine milk powder crisis.

Because it is not feasible to examine all of these 109 laws, a small number was selected. Items that were clearly not relevant to the crisis were immediately excluded. Examples are the Livestock Pollution Prevention Regulations, Pig Slaughtering Regulations, and Rules on Livestock Genetic Material. This resulted in 31 laws in which the melamine crisis may have played a role. Based on a preliminary analysis of the content of the 31 laws to assess the relevance to the crisis, a final selection was made.

Three laws were selected for case studies: the Dairy Quality and Safety Regulations, the Raw Milk Production and Purchasing Rules, and the 2009 Food Safety Law. In addition, there is a case study of the abolition of the inspection exemption measures, which did not appear in the PKUlaw database, but was mentioned in a central government notice listed in table 5-1 in the first part of this chapter (State Council General Office, 2008b).

The implication of this selection process is that the chapter will not be able to give a complete picture of all changes that have happened after or due to the crisis, but instead it produces a thick narrative of lawmaking processes, which subsequently allows for inferences about the interaction between crisis and law. The narrow focus on food and dairy legislation also means that any spillover effects are not taken into account in this chapter. It is possible that the crisis has triggered changes in e.g., health care legislation or criminal law, but that is beyond the scope of the present chapter.

The following sections examine the four legal changes in chronological order. As discussed in chapter 1, the reconstruction and analysis is based on a wide range of documents, mostly in Chinese, including policy documents, legislative documents, news articles, blogs, scientific literature, and social media messages.

5.3.1 Case I: Abolition of the Inspection Exemption Measures

A week after the crisis broke, on the night of 18 September 2008, the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) announced the abolition of the Measures for Exempting Products from Quality Supervision and Inspection (产品免于质量监督检查管理办法 *chanpin mianyu zhiliang jiandu jiancha guanli banfa*) (AQSIQ, 2008c).

Under this set of departmental rules, companies could apply for exemption from quality inspection by all levels of governments for a period of three years (AQSIQ, 2001). The predecessor of the AQSIQ had issued these rules in 2000⁵⁰ as a way to improve product quality by reducing the regulatory burden of well-performing companies. Companies exempted from inspection had the right to use the program's quality mark on its products, which would give them a competitive advantage on the market (AQSIQ, 2000).

Companies could apply for exemption status if they fulfilled five conditions. First of all, the company must be an independent legal entity with long term stability in product quality and have a well-developed quality assurance system in place. Secondly, the company must be a leader in its sector in terms of market share. Thirdly, the company's product standards must reach or exceed the

50 Note that the original measures, issued in 2000 by the Quality and Technology Supervision Bureau, were replaced with a new version in 2001 by the newly established General Administration of Quality Supervision, Inspection and Quarantine.

requirements of national standards and industry standards. Fourthly, the product must have passed inspection by the provincial or higher level government three consecutive times. And fifthly, the products must conform to relevant laws and policies (AQSIQ, 2001).

In the first year, eligibility was limited to only eight types of non-food products (AQSIQ, 2000), but the scope of the program doubled in 2002 when infant formula from various brands, including Sanlu, was awarded exemption status (AQSIQ, 2002; H. Chen, 2001). This expansion strategy is remarkable given that infants are typically considered a vulnerable group that needs extra attention because metabolic pathways are immature and because children's early developmental processes are easily disrupted. Moreover, children are more vulnerable because they consume more calories per unit bodyweight compared to adults (Landrigan & Goldman, 2011). From a risk perspective, it is therefore not the most sensible decision to exempt infant formula from inspection.

As the program expanded over subsequent years, shortcomings and criticism began to appear. When the exemption status of the first batch of companies expired in 2004, the AQSIQ executed quality checks. The administration did not extend the exemption status of 37 out of 202 products because they did not meet the policy's requirements. This meant that an unknown number of unqualified products had been sold on the market in the previous three years (F. Liu, 2004). One of several examples discussed in Chinese news media at that time was dairy sold by Henan-based Taizi, a company that was found falsifying manufacturing dates in 2004 (An, 2004). In response to these issues, Zhang Xianfeng, a lawyer from Beijing, set up a free hotline to collect sufficient complaints to file a lawsuit to challenge the legitimacy of the exemption system. Zhang also sent the AQSIQ a proposal to organize public hearings to investigate companies with quality issues, but did not receive a response (P. Liu, 2004).

During subsequent food safety events that involved inspection-exempted products, Chinese newspapers openly criticized the system. This happened, for example, following the disclosure by the Ministry of Health in 2005 of test results showing that about one tenth of edible vegetable oils did not meet quality standards, including several brands exempted from inspection. Another example from 2005 is Nestlé infant milk powder, which was found to contain more iodine than allowed under Chinese national standards and more than indicated on the product label. In response to these incidents, critics proposed adjustments such as random product sampling of exempted products and strict punishment. Others, including aforementioned lawyer Zhang Xianfeng, called for the abolishment of the exemption system altogether (S. Ge, 2005; Yonggang Guo, 2005; Yongwen Li, 2005; J. Yin, 2005).

A major point of criticism was the lack of serious repercussions if products were found to have quality problems during the three-year exemption period (An, 2004; Hou & Zhou, 2007). The Measures were surprisingly weak: "... depending on the circumstances, order the company to rectify within a limited time period, stop using the inspection-exemption mark, recall the inspection-exemption certificate, make an announcement, and investigate according to law the product quality responsibility of the company" (AQSIQ, 2001).

Despite their shortcomings, it was not until the melamine milk powder crisis that the Measures were finally abolished. It became painfully obvious that the inspection exemption system was a failure. At a press conference on September 17, the director of the AQSIQ, Li Changjiang, said that all the 22 dairy companies in which products melamine was found, enjoyed inspection exemption

status and that all of these would be revoked (State Council, 2008a). The AQSIQ subsequently formally suspended the exemption status of all food producing companies on September 17 (AQSIQ, 2008b) and repealed the Exemption Measures on September 18 (AQSIQ, 2008c).

The AQSIQ explicitly referred to the melamine crisis as reason for the suspension of the Measures, saying that “considering the recent major food safety accident involving infant formula powder produced by Shijiazhuang’s Sanlu Group [...] it has been decided to stop the implementation of national inspection exemption of food producing companies.”

Formal revocation of the Measures was not the end of the story: the abolishment had a ripple effect on the 2009 Food Safety Law, which was already in the making when the melamine crisis broke. In response to the crisis, the Food Safety Law explicitly forbade exemption from inspections in article 60 (X. Liu, 2008). This law will be discussed later in this chapter.

5.3.1.1 Crisis Responsiveness

As summarized in table 5-3, the abolishment of the Measures was initiated and accelerated by the crisis. While the system had been criticized for several years before the crisis, the issue had not been mentioned during the making of the new Food Safety Law (D. Su, 2008; Z. Tang, 2007). This only happened *after* the crisis (X. Liu, 2008), which shows that the AQSIQ and the NPC did not have concrete plans to abolish the system. Thus, without the crisis, the exemption system would not have been banned, at least not at this point in time.

Table 5-3. Role of the Crisis in the Abolishment of the Inspection Exemption Measures

Role of the crisis	Empirical evidence
Timing	
Crisis initiated abolishment	AQSIQ explicitly referred to the melamine crisis as reason for suspension and abolished the Measures immediately after State Council cleared the way. Not mentioned during NPC review of the 2009 Food Safety Law prior to the crisis.
Crisis accelerated abolishment	Announced on September 17, within a week after start of the crisis. Very short process: No evidence of stakeholder discussion and deliberation.
Substance	
Crisis-responsiveness	Yes: Sanlu infant formula exempted from inspection.
Problem-solving potential	Yes: By no longer exempting Sanlu and other dairy companies, dairy products would be subject to testing, thus decreasing the general risk of food fraud.

The process of abolishment was very short with no evidence of stakeholder discussion, AQSIQ internal deliberation, or consultation with experts, which indicates that the State Council and the AQSIQ deemed the issue so important and clear, that there was no need or time to wait. This supports the argument that the abolishment was a direct response to the melamine crisis. Although the AQSIQ claimed that its decision to stop implementing the Measures was based on research (AQSIQ, 2008b), there is no evidence for this. Perhaps research had been done in the years or months prior to the crisis and was subsequently used to justify the abolishment.

The rapid regulatory response by the AQSIQ can be explained by a combination of three factors: problem salience, a favorable political climate, and the availability of a feasible solution. The AQSIQ itself referred to the event as “major food safety accident.” As discussed above, the central level government regarded the crisis as a threat to social stability. Moreover, there was high level endorsement, or possibly even pressure, from the State Council to the AQSIQ to abolish the exemption system. Finally, the exemption system had been heavily criticized for several years. It completely lacked credibility. The AQSIQ had been aware of the problem for years and it is likely that it moved so quickly in order to prevent even more criticism.

As evidenced by figure 5-2, news media did not play a role in the abolishment as there were no news articles about the inspection exemption system between the moment that the crisis became public and the abolishment, which was initiated on September 17 and passed on September 18. The figure shows the number of news articles published between September 11, when the Oriental Morning Post first linked the kidney stone babies to Sanlu milk powder, and October 30. Data has been collected through the China Core Newspaper Database, using four combinations of key words. The dashed line shows the number of articles with ‘Food Safety Law’ (食品安全法 *shipin anquan*) in the title. The dotted line shows the number of articles for ‘milk powder’ (奶粉 *naifen*) in the title and ‘law’ (法律 *falü*) in the text. The thick line shows the number of articles for ‘milk powder’ in the title and ‘legislate’ (立法 *lifa*) in the text. The thin line shows the number of articles on the exemption system (免检 *mianjian*). The initial lack of attention regarding the exemption system is not very surprising because, first of all, as discussed in chapter 2, in the event of a crisis, the immediate media attention is typically on basic features such as number and cause of deaths rather than on technical issues such as the inspection exemption system (Alaszewski & Brown, 2012, pp. 230–231; Birkland, 1997, p. 2). Secondly, news and online media had been instructed to not criticize the government (F. Gao, 2008)

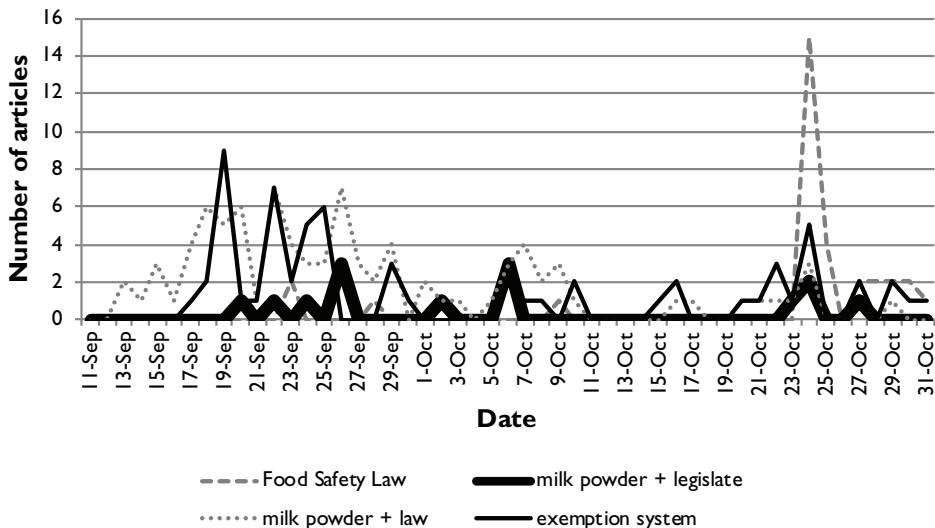


Figure 5-2. Newspaper Articles on Law During Melamine Crisis, 11 Sept.–31 Oct. 2008

Source: China Core Newspaper Database.

However, the exemption system was criticized on online forums. On Tianya, the most influential online forum at that time (Lei & Zhou, 2015), there were at least thirteen discussion threads about the inspection exemption system in the period between the Oriental Morning Post article of September 11 and the abolishment.⁵¹ All of the threads were negative in tone and in three of them forum users complained that the government was corrupt. While it is unclear what the exact impact of this online forum was in the abolishment, Lei and Zhou (2015) found that government leaders take online opinions seriously. The online criticism may thus have contributed to the abolishment.

5.3.1.2 Problem-Solving Potential

Abolishment of the Measures had problem-solving potential in the sense that Sanlu and other food companies were brought back under government inspection. Periodic testing means at least some supervision, thus at least on paper, decreases the risk of food fraud, even though the effect of food inspection greatly depends on the chance and consequences of getting caught (Starbird & Amanor-Boadu, 2006). If we strictly look at dairy products, inspection may not have been able to avoid this particular crisis, because melamine was not included in government testing (C. Chen, Zhang, & Delaurentis, 2014; Jiao, 2014). Nevertheless, periodic inspection is still more promising than no inspection at all. Thus, the abolishment of the inspection exemption system has at least some problem-solving potential.

5.3.2 Case II: Dairy Quality and Safety Regulations

Barely four weeks after the crisis broke, on October 6, the State Council passed the Dairy Products Quality and Safety Supervision and Administration Regulations (乳品质量安全监督管理条例 *rupin zhiliang anquan jiandu guanli tiaoli*).

5.3.2.1 Crisis Responsiveness

The State Council has stated on multiple occasions that the Regulations were a direct result of the melamine crisis (Q. Huang, 2008; State Council General Office, 2008c). According to the State Council, the melamine crisis:

exposed prominent problems of chaos and serious supervision shortcomings in the production and distribution of dairy products in China. We draw lessons from this bitter experience. We must profoundly draw lessons. . . . to counter the problems exposed by the Sanlu brand infant milk powder incident, the draft Regulations go a step further in terms of strictness and details regarding the quality and safety management systems of each link, including dairy farming, purchasing of raw milk, as well as the production, sales, import and export, etcetera. (State Council General Office, 2008c)

The Regulations emerged suddenly and were rapidly produced in response to the melamine crisis. It was impossible to find draft versions of the Regulations. The Regulations were not included in the 2007 and 2008 legislative year plans of the State Council, nor in the 2007 State Council Opinion on the Dairy Industry (State Council, 2007; State Council General Office,

⁵¹ Search conducted on 7 September 2018. Due to censorship policy, some threads may have been deleted.

2007a, 2008a). Moreover, contrary to common practice, the State Council has not published a draft version for public comments. A search on Baidu and in the China National Knowledge Infrastructure (CNKI) database resulted in zero news articles about the Regulations prior to the passing date, October 6. Thus, all evidence points towards the conclusion that the Regulations were drafted rapidly and in response to the melamine crisis.

Still, these Regulations are not a stand-alone document, but were part of an ongoing, stated reform of the dairy industry of which the first signs appeared in 2006–2007. In 2006, during an official visit to a dairy farm, premier Wen Jiabao said: “I have a dream, let every Chinese person, in the first place children, be able to drink one jin [kilogram] milk every day” (C. Zhao & Huang, 2006). In 2007, the State Council published the aforementioned opinion on “promoting the sustainable, healthy development of the dairy industry.” Amongst other things, this policy document called upon local governments to crack down on milk adulteration and for strengthening supervision of milk stations (State Council, 2007).

The Regulations were the first in a series of new dairy policies. The Regulations required a handful of agencies under the State Council to jointly produce a national dairy development plan, which was issued in June 2010 (Ministry of Agriculture, 2010b). Moreover, the Ministry of Agriculture issued the Technical Rules for Raw Milk Production on 20 October 2008 (Ministry of Agriculture, 2008b). These were mentioned in article 17 of the Regulations.

5.3.2.2 The Nature of Post-Crisis Legal Change

Now that it is clear that the melamine milk powder crisis initiated and accelerated the making of the Dairy Quality and Safety Regulations, the next step is to assess the nature of the Regulations and in terms of crisis responsiveness and problem-solving potential. This section does so by comparing the Regulations with preexisting rules for dairy safety, namely the Milk and Dairy Products Hygiene Management Rules (乳与乳制品卫生管理办法 *ru yu ruzhipin weisheng guanli banfa*) that were issued in 1990 by the Ministry of Health. To ensure a systematic and coherent analysis, the section uses Coglianese’s (2010) framework for analyzing regulatory instruments as introduced in chapter 4, which focuses on four aspects: target, regulator, commands, and consequences, each of which will be discussed below. This is preceded by a comparative analysis of the basic features of both regulatory documents.

Basic Features. The passage of the 2008 Dairy Quality and Safety Regulations is a milestone because these were the first *administrative* regulations for the dairy industry. There had been lower level, departmental rules for dairy hygiene, but these dated from 1990 and their scope was very limited.⁵² These Milk and Dairy Products Hygiene Management Rules (乳与乳制品卫生管理办法 *ru yu ruzhipin weisheng guanli banfa*) consisted of only ten articles (1,111 characters) and relied solely on the Ministry of Health for implementation. As will be discussed in more detail below, the 1990 Rules completely lacked sanctions for non-compliance. The 2008 Regulations are more than seven times the length of the 1990 Rules, consisting of 64 articles and 8,661 characters. Moreover, the Regulations contain a dedicated section on non-compliance.

As shown in table 5-4, although the scope of the 1990 Rules and the 2008 Regulations were

52 Note that the 2008 Regulations did not replace the 1990 Rules. Until the abolishment of the 1990 Rules in 2009 (Ministry of Health, 2009b), the Rules and Regulations co-existed.

identical, a noteworthy difference regarding the outcomes is that the 1990 Rules focus exclusively on dairy *quality*, whereas the latter adds safety. This is consistent with a general trend towards food safety rather than just quality or hygiene (Y. Yan, 2015) and is thus not the result of the melamine crisis. As will be discussed below, the same shift occurred during the making of the 2009 Food Safety Law. A second new policy outcome is the development of the dairy industry. This fits well with the aforementioned ongoing, state-led reform of the Chinese dairy industry and is therefore not specifically a response to the crisis.

Table 5-4. Outcomes and Scope of the 1990 Dairy Rules and 2008 Dairy Regulations

1990 Dairy Hygiene Rules		2008 Dairy Quality Regulations
Outcomes	Improve dairy product quality Safeguard people's health	Ensure the quality and safety of dairy products Ensure the physical health and safety of the general public Promote the healthy development of the dairy industry
Scope	Dairy products (including fresh milk)	Fresh milk and dairy products

Commands. The 2008 Regulations are six times longer than the 1990 Rules and therefore it is no surprise that the scope of commands—i.e. what the target is supposed to do or not do—is substantially wider. Table 5-5 lists key topics mentioned in the 1990 Rules and the 2008 Regulations and the number of times each topic appears in the respective document.⁵³

Table 5-5. Command Topics in the 1990 Dairy Rules and 2008 Dairy Regulations

Command topics	1990 Rules	2008 Regulations
Dairy product quality and safety accidents	0	4
National quality and safety standards	4	19
Adding substances to dairy products	3	11
National Dairy Industry Development Plan	0	1
Financial government support	0	1
Record keeping	0	15
Fresh milk purchasing permit	0	3
Cow vaccination	1	2
Cleaning	3	3
Cooling	3	7
Infants and babies	0	16
Product testing	3	13
Packaging	3	3
Labelling	1	5
Hygiene and quality management systems	1	5

Note that the 1990 Rules banned adding any substance to milk except from approved additives, which means that the addition of melamine to milk was unmistakably illegal. The 2008

⁵³ This analysis includes all articles of the 1990 Rules and articles 1–53 of the 2008 Regulations.

Regulations make this ban more explicit. It mentions additives 11 times, including specifically in the context of infant milk powder: “In the production of infant milk powder. . . it is not allowed to add any substance that can harm the physical health and development of infants” (article 32). This is clearly a response to the crisis. However, although this may have a communicative function, it does not add anything new, because it was already illegal to add substances to milk. Such behavior was banned not just by the 1990 Rules but also by the 1995 Food Hygiene Law (article 9) and by the 2006 Criminal Law (article 144).

Contrary to the 1990 Rules, the new Regulations include rules about safety accidents, which are directly relevant to the melamine crisis. Article 5 states that:

The occurrence of a dairy product quality and safety accident should be . . . timely reported and dealt with; if serious consequences or malicious impacts are caused by such an accident, the persons in charge of the relevant governments and relevant departments shall be held liable. (State Council, 2008c, article 5)

Moreover, article 53 requires government departments to timely respond to reports about illegal behavior. Dairy companies must stop production, inform relevant government departments, and issue a recall when they discover substandard products. Government departments can issue a recall too.

These new rules on handling accidents directly respond to the issues at the core of the melamine milk powder crisis: irresponsiveness by both Sanlu and various government departments to complaints about Sanlu milk powder. As discussed above, as early as December 2007, consumers had filed complaints with Sanlu because milk powder caused irregularities in their babies’ urine (T. Ye, 2009a). Moreover, complaints had been filed with the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), at least as early as June 2008 (Zhao Zhou & Ou, 2008). Complaints had also been filed with health departments at local and national levels. Yet all of these government agencies remained irresponsive (J. Xiu, 2008; T. Ye, 2009b; Tingyu Zhou et al., 2008). The Regulations thus respond to this issue of government irresponsiveness.

In addition to safety accidents, a second theme that is new and directly responds to the melamine milk powder crisis is infants. The term ‘infants and babies’ (婴幼儿 *yingyou’er*) is mentioned 16 times in the 2008 Regulations. This is a noticeable difference from the 1990 Rules, which did not mention infants at all. Inclusion of specific rules for infant milk powder manufacturers directly relates to the problems exposed by the crisis, in particular the lack of governmental supervision of infant milk powder products, which had been exempted from government inspection for several years. Together with the abolition of the inspection exemption system, the 2008 Regulations bring the production of infant formula back under government control, at least in theory.

Yet, other new commands do not have a direct link to the crisis, but align well with the ongoing, state-led reforms of the dairy industry. To illustrate, the Regulations stipulate that “raw milk and dairy products should comply with national dairy product quality and safety standards” (article 6). The Regulations specify the content of such standards and assign drafting of the standards to the national level health department. Such standardization was one of the action points in the aforementioned 2007 State Council Opinion on Dairy Industry Development (State Council, 2007). Likewise, article 8 requires that various State Council departments together draft

a National Dairy Industry Development Plan. This same plan was already mentioned in the 2007 State Council opinion. Although the core of the melamine crisis was not a lack of standards or the lack of a dairy industry plan, the crisis provided an opportunity to include these in a legally binding document. A last example of a new topic that is not directly related to the melamine milk powder crisis is the topic of record keeping, which was not mentioned at all in the 1990 Rules, but is mentioned 15 times in the 2008 Regulations. Again, this topic was not new. The new Food Safety Law, which was being finalized at the time that the 2008 Regulations were in the making, required food producers and food businesses to set up a record keeping system (NPC-SC General Office, 2008a, articles 38 and 45). The Animal Husbandry Law also included requirements for record keeping for dairy farms (article 41), which were almost literally copied in article 13 of the Regulations. Although record keeping is an important tool to reduce food quality and safety issues, there is no clear relationship between the inclusion of this topic in the Regulations and the melamine crisis. To conclude, although some new commands are important for dairy safety, they are not directly related to the crisis. The melamine crisis thus served as a vehicle for formalizing the ongoing dairy industry reform.

Targets. A significant difference between the 1990 Rules and the 2008 Regulations is the specification and range of targets. Target refers to “the entity to which the regulation applies and upon whom the consequences of non-compliance are imposed” (Coglianese & Mendelson, 2010, p. 148). As summarized in table 5-6, targets included both industry stakeholders and government organizations.⁵⁴

Whereas the commands in the 1990 Rules are very general and generally do not specify a target, the commands in the 2008 Regulations are addressed at specific actors. For example, article 3 the 1990 Rules require that “virulent” infectious diseases must immediately be reported to the local agriculture and health department, but it does not mention who must report (e.g., veterinarian, farmer, or otherwise), whereas the 2008 Regulations specify that farmers must report diseases.

A notable innovation is the inclusion of raw milk purchasers (生鲜乳收购者 *shengxianru shougouzhè*) as a separate target group, which is a direct response to the melamine crisis. Raw milk purchasers buy milk from farmers, who milk their cows at milk stations, and subsequently sell the raw milk to dairy companies. Such milk stations were a major source of melamine in milk (Gossner et al., 2009; C. Xiu & Klein, 2010). As discussed above, Zhang Yujun and Geng Jinping were executed because they sold protein powder containing melamine to milk stations, which was added to milk, and subsequently sold to Sanlu and other dairy manufacturers (Z. Dong et al., 2009). The Regulations responded to this problem. As the State Council Legislative Affairs Office stated:

Raw milk purchasing is a central link in dairy farming and dairy product manufacturing. To address presently existing problems, the Regulations regulate three aspects: first, establishing a fresh milk purchasing market entry system; secondly, standardizing the business behavior of fresh milk purchasing stations; and thirdly, strengthening the supervision of fresh milk purchasing stations. (Q. Huang, 2008)

54 This analysis is based on articles 54–62 of the 2008 Livestock Pollution Regulations.

Table 5-6. Targets, Commands, Sanctions, and Regulators in the 2008 Regulations

Targets	Commands	Sanctions	Regulators
Fresh milk purchasers; dairy producers	Adding non-edible chemicals or other harmful substances	Revocation of permit	Permit issuing department
		Assets confiscation	Animal husbandry; quality supervision departments
		Fine: 15–30 x value of illegal products	
		Criminal prosecution	
Fresh milk purchasers; dairy producers; dairy sellers	Producing and selling substandard dairy products	Revocation of permit	Permit issuing department
		Assets confiscation	Animal husbandry; quality supervision; commerce departments
		Fine: 10–20 x value of illegal products	
		Criminal prosecution	
Dairy producers	Not halting production, not recalling substandard products	Halt production, recall	Quality supervision department
		Assets confiscation	
		Fine: 15–30 x value illegal products	
		Revocation of permit	Permit issuing department
Dairy sellers	Not halting sales, no recall after discovery of substandard products	Halt sales, recall	Commerce department
		Assets confiscation	
		Fine: 15–30 x value illegal products	
		Revocation of permit	Permit issuing department
	Substandard infant milk	“Severe punishment”	
Dairy farms; fresh milk purchasers; dairy producers; dairy sellers	Not reporting, not handling accidents	Warning	Animal husbandry; quality supervision; commerce; food quality supervision departments
		Order to halt production and trading	
		Fine: RMB 100,000–200,000	
		Revocation of permit	Permit issuing department
		Criminal prosecution	
	Violation of milk purchasing permit, purchasing illegal milk	Assets confiscation	Animal husbandry department
		Fine: 5–10 x value illegal products	
	Revocation of permit	Permit issuing department	
Dairy producers; dairy sellers	No permit or violating permit	Punishment	Quality supervision; commerce departments
Government departments	Failed implementation, power abuse	Disciplinary action	Supervision; appointment and removal offices
		Removal, expel	
		Criminal prosecution	

Regulators. Whereas the 1990 Rules solely relied on the health department (level unspecified) for implementation and enforcement, the 2008 Regulations rely on a range of government units, including departments for animal husbandry and veterinary affairs, quality supervision, industry and commerce, food and drug supervision, and health, at different levels (article 4). Moreover, article 62 specifies sanctions for government departments that do not implement the Regulations, abuse their power, or conduct other wrongdoing.

The inclusion of sanctions for government misbehavior in the 2008 Regulations is directly related to the melamine milk powder crisis. As discussed above, various departments at different levels of government failed to timely and adequately respond to complaints about Sanlu milk powder. According to the State Council Legislative Affairs Office, the crisis showed a lack of market supervision and insufficient coordination by government departments. To address these issues, the State Council Legislative Office argued, the Regulations include sanctions for lack of government implementation (Q. Huang, 2008).

Consequences. In terms of consequences, the 2008 Regulations are in stark contrast with the 1990 Rules, which did not contain any sanctions or inducements. The 2008 Regulations contain a dedicated section on legal liability (法律责任 *falü zeren*), consisting of nine articles, which are summarized in table 5-6.

Four out of the nine legal liability articles directly relate to the melamine milk powder crisis. The administrative sanction for adding non-edible chemicals or other harmful substances is at least the confiscation of illegal income and illegally produced products, an administrative fine of 15 times the value of the illegal dairy products, and revocation of permits (article 54). The other three articles contain sanctions for not stopping production or not recalling in case of substandard products (article 56), adding harmful substances to infant milk powder products (article 58), and not reporting or handling a food safety incident (article 59).

5.3.2.3 Problem-Solving Potential

Although the crisis induced and accelerated the making of the Regulations and influenced their substance, a remaining key question is whether these regulations have the potential to solve problems exposed by the crisis. As discussed above, central level government leaders mentioned that they wanted to learn from the crisis to prevent a similar crisis from happening again. This section therefore examines the problem-solving potential of the Regulations.

On the one hand, the Regulations are promising because the aforementioned four legal liability articles that directly relate to issues at the core of the crisis contain relatively high administrative fines. As shown in table 5-6, most of the fines are based on the value of illegal products. To illustrate, the sanction for adding non-edible chemicals or otherwise harmful substances to dairy products includes a fine of 15–30 times the value of illegal products (article 54). This penalty is much higher than the existing sanction in the 1995 Food Hygiene Law: 1–5 times the value of illegal products (article 42). The fine is also higher than in the 2009 Food Safety Law (article 85), which was being drafted simultaneously with the Regulations. The administrative fines for refusing to stop production and issue a recall (article 56) and for destroying relevant evidence after a food safety incident (article 59) are also much higher in the new Food Safety Law. Although penalties for noncompliance are by themselves not sufficient to improve dairy safety, if enforced, the Regulations do have potential to motivate farmers to comply.

Similarly, the withdrawal of permits is a common sanction in the 2008 Regulations, which is promising because—at least in theory—a business cannot operate without it and because it is stricter than the 2009 Food Safety Law. For example, the 2008 Regulations stipulate that permits will be withdrawn in case inedible or otherwise harmful substances are added to dairy products (article 54). The same sanction applies to the production of substandard dairy products (article 55) and refusal to stop production or to recall substandard products (article 56). In the 2009 Food Safety Law, such non-compliance requires “serious circumstances” before the permit is withdrawn (article 85).

However, in China’s legal hierarchy, some of these sanctions will be overridden by the 2009 Food Safety Law, which contains lower sanctions. The reason for this is that higher level and newer law is prioritized over lower and older level law. Only for issues that the 2009 Food Safety Law does not regulate, do the sanctions of the Regulations apply.

Moreover, considering the scope and impact of the melamine milk powder crisis, some of the penalties are surprisingly weak. To illustrate, a key issue in the crisis was that Sanlu continued its production and failed to recall the adulterated products, even after a laboratory confirmed that its products contained melamine (Supreme People’s Court, 2009). Yet, article 56 stipulates that in such cases, companies will be ordered to stop production and recall their products. Only when a dairy company refuses to do so, will heavier sanctions follow in the form of confiscation of illegal income, products, and equipment as well as an administrative fine and revocation of permits. Likewise, at the heart of the crisis was the failure of Sanlu to report the food crisis to relevant government authorities and properly deal with it. Yet, the sanction for such behavior (article 59) is an order to correct non-compliance and a warning. Heavier penalties, namely an order to stop production, and a fine between RMB 100,000–200,000, only follow when a farm or dairy company destroys relevant evidence. If consequences are severe, permits are revoked and criminal prosecution may follow. Particularly remarkable is the sanction for adding non-edible chemicals or other harmful substances to infant and baby milk powder. Article 58 stipulates that such behavior will be followed by “severe punishment.”

Furthermore, a number of rules included in the 2008 Regulations are duplications of provisions in existing legislation. A highly relevant example of this is article 5 of the 2008 Regulations, which stipulates that accidents involving dairy products must be reported and handled in a timely fashion. This was already required by the 2003 Public Health Emergencies Response Regulations, and in a much more detailed way. Although these Emergencies Response Regulations were in force at the time the melamine milk powder crisis unfolded, they were clearly not followed. The State Council should have been informed in the end of July 2008 when doctors in Gansu province suspected that Sanlu milk powder caused kidney stones in infants and local governments should have taken action to control the spread of the milk and treat the babies, but this did not happen. Thus, there was not a lack of regulation on reporting and handling accidents at the time of the crisis, but rather a lack of compliance. While the articles on reporting and handling dairy safety accidents in the 2008 Regulations may help to communicate these rules to the dairy industry and contribute to a coherent legal system, they are not new, and therefore it is questionable that their inclusion contributes to solving the problem of not reporting and responding to food safety accidents. Other examples of duplication include article 54, which bans harmful substances in

dairy products as well as articles 11–17, about dairy farms, which are very similar to or exactly the same as articles in the 1990 Dairy Hygiene Rules, the 2005 Animal Husbandry Law, and the 2007 Animal Epidemic Prevention Law.

Nevertheless, the Regulations are important from a problem-solving perspective because there was a regulatory vacuum at the time the crisis broke: other than the 1990 Milk and Dairy Products Hygiene Management Rules, there was no specific national level legislation for the dairy industry. The Regulations introduced several new regulatory instruments and requirements that presumably help standardizing the Chinese dairy industry, most notably the raw milk purchasing permit and milk transportation permit as well as requirements for record keeping for milk purchasing, milk sales, milk testing, and transportation. Through these new provisions, the Regulations address some of the underlying problems as identified by the central level government in its Plan for Restructuring the Chinese Dairy Industry that was issued in November 2008 in response to the crisis (National Development and Reform Commission, 2008). Among the identified problems were the lack of supervision of milk stations and a sluggish legal framework.

Although the section on dairy farming and several other articles almost entirely echoed existing provisions in other legislation, the Regulations contain an entire section on raw milk purchasing, which is the production stage where melamine was added. Moreover, the Regulations have a farm-to-table approach, meaning that all major links in the production chain are covered in a single document. Altogether, the Regulations are the formal starting point for reform of the dairy industry and as such have problem-solving potential.

5.3.2.4 Conclusion: Role of the Crisis in the 2008 Dairy Quality Regulations

As summarized in table 5-7, the crisis played a decisive role in the timing and substance of the Regulations. The Regulations were initiated and accelerated by the crisis. The drafting process was remarkably short. There are no traces of the Regulations from before the crisis and they were passed just one month after the crisis broke. Moreover, the State Council claimed that the Regulations were a crisis response. Without the crisis, the State Council may have formulated the Regulations, because they were part of an ongoing, state-led reform of the dairy industry, but it is unlikely that they would have been issued at that particular moment in time because the making of Regulations typically takes much longer than four weeks, not in the least because there usually is a 30-day public comment period.

Evidence of the role of the crisis in the substance of the Regulations is at least threefold. First of all, it includes provisions and sanctions for reporting and handling dairy safety incidents. Secondly, four out of nine articles in the legal liability section directly relate to the crisis. And thirdly, the Regulations mention ‘infants and babies’ 16 times and dedicate one article in the legal liability section to infant milk powder.

There are four factors that explain the rapid legislative process: the severity of the crisis, long-standing problems, and ongoing dairy reforms. As discussed above, once the problem of melamine in milk powder became publicly known, the State Council took it very seriously, stressing the adverse impact of the crisis on public health and the dairy industry. Moreover, the central level government was well aware of persistent problems in the dairy industry, including the adulteration of milk at milk stations (AQSIQ, 2008a; People’s Daily Online, 2008; State Council, 2007). And finally, the Regulations fit well with the plans for dairy industry reform that were developed in the

years prior to the crisis, which included standardization and increased supervision, although these plans were only expressed in very general terms at that time and did not specifically mention these Regulations (Liang, 2006; State Council, 2007).

Table 5-7. Role of the Crisis in Timing and Substance of the Dairy Quality Regulations

Role of the crisis		Empirical evidence
Timing		
Crisis initiated Regulations	Regulations not included in State Council legislative plans No draft regulations available Not mentioned in media, policy documents, literature prior to crisis State Council claims Regulations are response to the crisis Passed one month post-crisis	
Crisis accelerated Regulations	No public comments procedure Very short lawmaking process Regulations part of ongoing dairy reform that started in 2006–2007	
Substance		
Crisis responsiveness	Yes: Articles about reporting and handling dairy safety accidents Commands and sanctions for infant milk powder products Term ‘infants and babies’ mentioned 16 times Four out of nine legal liability articles directly relevant to crisis	
Problem-solving potential	Yes: High level political attention: first administrative regulations Covers all major links of the dairy industry in one formal document Brings milk stations and milk purchasing under regulatory control Formal starting point for dairy industry reforms Most of the penalties for noncompliant behavior are relatively strict	
	No: Some key rules already existed: duplications of existing regulation Some penalties for issues central to the crisis are surprisingly weak Unclear position in legal hierarchy: Relatively high administrative fines may be overridden by 2009 Food Safety Law	

The potential of the Regulations to prevent a similar crisis from happening again is ambiguous for several reasons. First of all, several key provisions such as the ban on adding non-edible substances and a timely response to quality and safety accidents were not new, but were already included in the existing legislation, yet this existing legislation did not prevent the crisis from happening. Secondly, some of the sanctions for issues central to the crisis are surprisingly weak. Especially remarkable is the vague sanction for adding substances to infant milk powder: “severe punishment.” And thirdly, the position of the Regulations in the legal hierarchy is unclear. Because higher level and newer law is prioritized over older and lower level law, the relatively high administrative fines may be overridden by the lower fines of the 2009 Food Safety Law.

Nevertheless, the Regulations are a milestone for China’s dairy industry governance because they are the first *administrative* regulations, which signal that the State Council, China’s highest

administrative authority, is now paying serious attention to this sector. Moreover, it is the first authoritative document that governs all major links of dairy production and as such helps to standardize this industry. It specifically addresses milk stations and milk purchasing, which was the weakest link in the crisis because at this stage melamine was added to milk. Furthermore, most of the penalties are relatively strict. And finally, the Regulations are important because they are the formal starting point for dairy industry reforms.

5.3.3 Case III: Raw Milk Purchasing Rules

On November 4, hardly two months after the crisis broke, the Ministry of Agriculture issued the Rules for the Production and Purchase of Raw Milk (生鲜乳生产收购管理办法 *shengxian ru shengchan shougou guanli banfa*).

5.3.3.1 Crisis Responsiveness

Like the Dairy Regulations, the Raw Milk Purchasing Rules were quickly drafted in response to the melamine milk crisis. There are almost no traces of the rulemaking process. The Rules were not mentioned in the 2006, 2007, and 2008 State Council legislative plans (State Council General Office, 2006a, 2007a, 2008a). The State Council did not publish a draft for public comments. The first time the Rules were mentioned online was on 11 October 2008, when the Ministry of Agriculture solicited opinions from local agriculture and animal husbandry authorities (Ministry of Agriculture, 2008a). A notice of the Jiangxi provincial Agriculture Bureau, dated 14 October 2008, mentions that “the Ministry of Agriculture is speeding up the drafting of the Rules for the Production and Purchase of Raw Milk” (Jiangxi Province Agriculture Bureau, 2008). Lastly, there is a brief report, dated 23 October, about a local level discussion meeting in Guiyang, containing a handful comments on the substance of the Rules (Guiyang Municipal Agricultural Bureau, 2008). Twelve days later, the Ministry of Agriculture passed the Rules. Without the crisis, the Ministry of Agriculture may have formulated these Rules at some point, but it is unlikely that they would have been passed at this particular point in time, because rulemaking is typically a long process that lasts longer than the one month that it took to draft these Rules, not in the least because the period for the public comments procedure for departmental rules usually lasts 30 days.

One explanation for why the Rules came out so quickly is that they were mentioned in a set of implementation rules for the Dairy Quality and Safety Regulations. These implementation rules, titled Technical Rules for the Production of Fresh Milk (生鲜乳生产技术规程 *shengxian ru shengchan jishu guicheng*), were issued on 29 October 2008. Article 7 refers to the Rules for the Production and Purchase of Raw Milk, which were non-existing at that time. Thus, for consistency and to avoid legal holes, the Ministry of Agriculture shortly afterwards passed the Raw Milk Purchasing Rules.

Another reason why the Rules could come out so quickly is that its substance is not entirely new; hence there was less risk of conflicts and gridlocks during the rulemaking process. The Rules have substantial overlap with the newly issued Dairy Quality and Safety Regulations. Using the SinoLawGist software package, introduced in chapter 4, the Rules have a change index of 43, meaning that more than half of its content duplicated parts of the Regulations.

5.3.3.2 The Nature of Post-Crisis Legal Change

Now that it is clear that the crisis initiated and accelerated the making of the Raw Milk Purchasing Rules, the next step is to assess the role of the crisis in the substance of these Rules. Like in the previous section, this is done by applying Coglianese's (2010) framework, as introduced in chapter 4, to the Rules, consisting of four aspects: target, regulator, commands, and consequences. The Rules are compared with the Dairy Quality and Safety Regulations to understand the legal change brought about by these Rules. This is preceded by a comparative analysis of the basic features of both regulatory documents.

Basic Features. As shown in table 5-8, the policy outcomes of the 2008 Raw Milk Purchasing Rules are similar to the 2008 Dairy Quality Regulations, except that the Rules do not include physical health and life safety. This is no surprise, because public health is neither the responsibility nor the jurisdiction of the Ministry of Agriculture, which passed these rules. Whereas the Regulations apply to milk and dairy products in general, the Rules apply only to *raw* milk, which is defined as non-processed milk (article 2).

Table 5-8. Outcomes and Scope of the 2008 Regulations and 2008 Rules

	2008 Dairy Quality Regulations	2008 Raw Milk Purchasing Rules
Outcomes	Ensure the quality and safety of dairy products Ensure the physical health and life safety of the general public Promote the healthy development of the dairy industry	Ensure quality and safety of raw milk Promote the healthy development of the dairy industry
Scope	Fresh milk and dairy products	Production, purchasing, storing, transportation, sales of raw milk

The focus on raw milk purchasing is a direct response to the crisis, because a core issue was that farmers and milk stations routinely adulterated raw milk. This problem had existed for years before the melamine milk powder crisis broke, but the crisis put it on the legislative agenda. Both government and dairy manufacturers were well aware of it, although they did not know exactly which substances farmers used (CCTV, 2007a; Fairclough, 2008; Q. Ge, 2007). In 2007, state television aired a news commentary show about milk adulteration in which whistle blower Jiang Weisuo, a milk station entrepreneur, showed how milk stations added protein powder and other additives to diluted milk before transporting the milk to the dairy manufacturers (CCTV, 2007a). In February 2008, the AQSIQ issued a notice about milk adulteration, stating that "some farmers and milk stations adulterate raw milk and some manufacturers lower raw milk purchasing standards" (AQSIQ, 2008a). In fact, just two weeks before the crisis broke, the central level government issued a notice that, among other things, instructed local governments to strengthen the supervision of the raw milk market and to "strike hard" against the use of illegal additives (NDRC, 2008).

Commands and Targets. Almost all the commands and targets included in the Rules already appeared in the Regulations. The main difference is the topic of raw milk transportation. Whereas the Regulations mention transportation (运输 *yunshu*) only eight times, the Rules contain an entire section on this topic, specifying technical and hygiene requirements for milk trucks and

their drivers. While transportation is surely important from a safety and quality perspective, the topic does not have a direct relationship with the crisis. This is an example of how the crisis serves as a vehicle for other reforms.

Consequences. The Rules do not have a separate legal liability section, but refer in article 39 to the Animal Husbandry Law and the 2008 Dairy Regulations for sanctions. The only sanction in the Rules is article 38, which stipulates that the raw milk transportation certificate will be revoked in case of transportation violations. Again, raw milk transportation is a new topic; hence sanctions were previously non-existent. Therefore, the sanction is specified in the Rules. The inclusion of a sanction signals that the Ministry of Agriculture is serious about regulating raw milk transportation.

Regulators. Contrary to the aforementioned 1990 Dairy Hygiene Rules, which were issued by the Ministry of Health, the Raw Milk Purchasing Rules were issued by the Ministry of Agriculture. Because the Ministry of Agriculture only has jurisdiction over agricultural matters, it can only instruct its own lower level counterparts. As a consequence, the section in the Rules on supervision is exclusively directed at animal husbandry and veterinary departments. As discussed above, key aspects of the ministry's law enforcement response to the melamine milk powder crisis was banning melamine in raw milk and cracking down on illegal milk stations. The Rules are thus an extension of the ministry's crisis response.

5.3.3.3 Problem-Solving Potential

The Raw Milk Purchasing Rules are an important milestone in solving the problem of milk fraud, because they bring raw milk production and purchasing under government control and because the Rules contribute to the standardization of the dairy industry. Such standardization is generally considered a basic requirement of any food safety regime.

Moreover, the Rules reinforced key aspects of the ongoing dairy and legal reforms. A first example is that the Rules encourage expanding farm size (article 7). Upscaling farm size is widely promoted in China on the premise that it is easier to regulate a small number of large farms than a large number of small farms. Another example is that the Rules include a role for non-state actors in law enforcement. Dairy associations "should strengthen industry self-regulation..." (article 8) and "any organizational unit and individual have the rights to report illegal behavior..." (article 37). Both industry self-regulation and citizen reports are relatively new concepts in Chinese law. They only appeared in law since the early 2000's, but are now increasingly common. A third example of how the Rules reinforce ongoing dairy reforms is its farm-to-table approach. The Rules chronologically cover the most important stages of dairy production that are within the jurisdiction of the Ministry of Agriculture: dairy cow farming and milking, milk procurement, and transportation.

The Rules do not innovate regarding the most central issue in the crisis, namely the use of non-edible substances to milk, but they do make such milk fraud more difficult by supporting the implementation of the Dairy Quality and Safety Regulations.

Although the substance of the Rules greatly overlaps with the Dairy Quality and Safety Regulations, the Rules provide slightly more details on some topics, such as the types of state agricultural extension services (article 9), the application procedure for raw milk purchasing permits (articles 18–20), standards for milk storage (article 25), and the destruction of substandard

milk (article 24). This contributes to the implementation of the Dairy Safety Regulations.

5.3.3.4 Conclusion: Role of the Crisis in the 2008 Raw Milk Purchasing Rules

As summarized in table 5-9, the Rules were initiated and accelerated by the melamine milk crisis. They were mentioned in the Technical Rules for Raw Milk Production and therefore, needed to be issued rapidly. The first time that the Rules were mentioned publicly (online) was on 11 October. There are no traces of the Rules prior to the crisis. The rules were not mentioned in State Council legislative plans and no draft was made available for public comments. The rulemaking process was very short: the Rules were passed within two months after the crisis. Without the crisis, the State Council may have formulated the Rules at some point, because they were part of an ongoing, state-led reform of the dairy industry. However, it is unlikely that they would have been issued at this particular moment in time.

Table 5-9. Role of the Crisis in Timing and Substance of the Raw Milk Purchasing Rules

Role of the crisis		Empirical evidence
Timing		
Crisis initiated rules	Rules not mentioned in legislative plans Rules mentioned in Technical Rules for Raw Milk Production No draft rules available Rules first mentioned in media only on Oct. 11	
Crisis accelerated rules	Short rulemaking process: issued two months after start crisis No public comments procedure	
Substance		
Crisis responsiveness	Yes: Raw milk production and procurement key issue in crisis Some specification of the crisis-induced Dairy Quality and Safety Regulations	
Problem-solving potential	Yes: Brings raw milk production and purchasing under regulatory control Contributes to standardization of the dairy industry Reinforces ongoing dairy reforms Provides more details for implementation of Dairy Regulations	

There are two factors that explain the rapid making of the Rules: consistency of the legal system and limited innovation. The Rules were mentioned in a set of implementation rules for the crisis-induced Dairy Quality and Safety Regulations. For consistency and to avoid legal gaps, the Ministry of Agriculture shortly afterwards passed the Raw Milk Purchasing Rules. However, the content of the Rules largely overlap with the Regulations and therefore, there was limited risk for conflict and gridlocks during the rulemaking process.

The Rules score positive on crisis responsiveness and problem-solving potential: a central problem in the crisis was the adulteration of raw milk during milk production and milk purchasing. The rules bring raw milk production and procurement under regulatory control, contribute to the standardization of the dairy industry, and reinforce ongoing dairy reforms. Although the Rules

greatly overlap with the Dairy Quality and Safety Regulations, they do provide somewhat more details on some issues. They specify the tools that were introduced by the Regulations, most notably the raw milk purchase permit. The only section that was entirely new focused on transportation, which did not have a direct link with the crisis but is important for the newly adopted farm-to-table approach to food safety. Thus, the crisis served as a vehicle for dairy transportation reform that benefits the overall regulatory framework for the dairy industry.

5.3.4 Case IV: 2009 Food Safety Law

The National People's Congress passed the Food Safety Law on 28 February 2009, just five months after the melamine milk powder crisis broke, and therefore it is tempting to assume that this was a response to the crisis, but as will be shown in this section, the crisis did not initiate and did not accelerate the making of the 2009 Food Safety Law.

5.3.4.1 Crisis Responsiveness

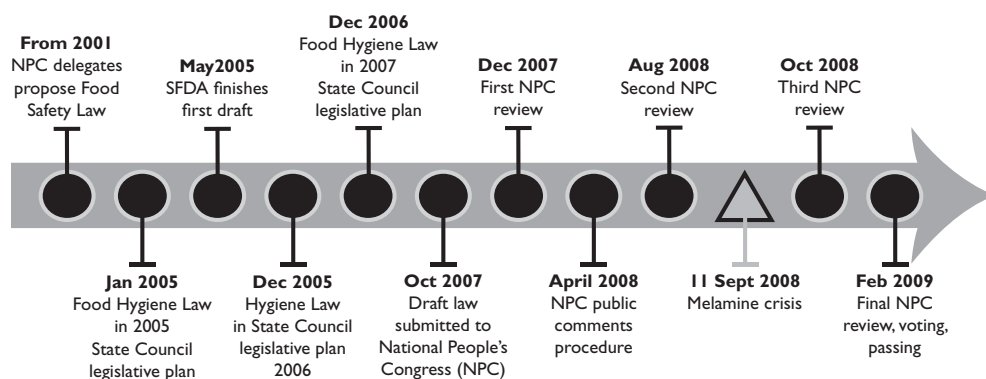


Figure 5-3. Overview of the Making of the 2009 Food Safety Law

Figure 5-3 visualizes the lawmaking process, which started years before the melamine crisis broke in response to constant food safety problems and in particular in response to public concerns about food safety. At least as early as 2001, delegates of the National People's Congress proposed a Food Safety Law (H. Sun, 2002). Seven of the 40 proposals submitted to the NPC Subcommittee on Education, Science, Culture, and Health in 2002 called for amending the Food Hygiene Law (NPC, 2002). One of the reasons for these proposals was that "the masses are extremely concerned about and attach importance to this problem [of food safety]" (H. Sun, 2002). Later that year, the NPC Standing Committee evaluated the enforcement of the 1995 Food Hygiene Law, during which vice chairman of the NPC Standing Committee, Peng Peiyun, said: "To the people, food is heaven.⁵⁵ The food industry and people's lives are closely linked" and that the Food Hygiene Law is "not only directly related to the health and safety of the people, but also affects economic development, social stability, and international trade competitiveness" (Peng, 2002). The NPC-SC concluded that the Food Hygiene Law needed improvement because punishment was too low and

⁵⁵ This is a famous Chinese proverb (民以食为天), meaning that people view food as their primary need.

its scope did not include crop farming and animal husbandry. Moreover, new situations had arisen which the law was unable to address (Peng, 2002). During the evaluation process, many localities and government authorities had suggested revising the law. Therefore, the NPC Subcommittee on Education, Science, Culture, and Health proposed in 2002 that the State Council conduct research and as soon as possible submit a draft amendment to the NPC Standing Committee for review (NPC, 2002). In 2003, 10% of NPC delegates put forward proposals for food safety legislation (Jijun Ma & Xie, 2003).

The lawmaking process formally started in July 2004, when the State Council Legislative Affairs Office formed a drafting group for the amendment of the 1995 Food Hygiene Law (K. Cao, 2007). The drafting group travelled across the country to investigate food safety issues. It also studied foreign food safety systems and organized multiple discussion meetings where experts discussed relevant issues and provided advice (K. Cao, 2007). The amendment of the Food Hygiene Law subsequently appeared in the 2005 State Council legislative plan (State Council General Office, 2005).

In the process, the Food Hygiene Law amendment turned into China's first Food Safety Law, but not without controversy. When the first draft of the Food Safety Law was finished by the summer of 2005, it became apparent that a major obstacle in moving forward had been the debate over amending the existing Food *Hygiene* Law versus drafting a completely new Food *Safety* Law (Hong, 2005; Hongfang Zhang, 2005). In fact, even when the draft Food Safety Law was reviewed by the NPC Standing Committee in December 2007, several delegates opposed changing the name from Food Hygiene Law to Food Safety Law (Z. Tang, 2007). Proponents of amending the Food Hygiene Law argued that there is no difference between food safety and food hygiene and that the key is to include a definition of food hygiene that covers a wide range of issues. Moreover, the Food Hygiene Law amendment could be developed together with the new agricultural produce quality law. They argued also that it is not easy to formulate a new law and that putting one government department (namely the Food and Drugs Administration) in charge of supervision the entire food safety system is problematic (G. Shi & Wu, 2007). Others argument used in support of amending the existing Food Hygiene Law were that lower level implementation regulations and rules would become invalid with the abolition of the Food Hygiene Law, that it would take time to draft an entire new law, and that this would create legal loopholes (Z. Tang, 2007).

Those advocating for an entirely new Food Safety Law argued that food hygiene is only one aspect of food safety and that food safety also covers crop farming, animal husbandry, food processing, packaging, storage, transportation, sales, and consumption. To illustrate, NPC Standing Committee delegate Ni Yuefeng said: "The concept of food safety by far exceeds the category of food hygiene. For example, whether or not genetically modified food is safe, is very hard to judge from the angle of hygiene" (Z. Tang, 2007). Proponents further argued that such a comprehensive approach helps improve supervision. It was also argued that the Ministry of Health was incapable of managing food safety because it was already overburdened (Z. Tang, 2007).

Although a first draft was finished in the summer of 2005, it took until October 2007 before the State Council passed the draft law and subsequently forwarded it to the NPC for deliberation. In the meanwhile, the State Council organized sought comments from a wide range of stakeholders, including foreign experts, work units under the National People's Congress, the Chinese People's

Political Consultative Conference, the State Council, provincial level governments, industry associations, and food producers. In parallel, the Subcommittee on Education, Science, Culture, and Health organized symposiums about the Food Hygiene Law amendment (K. Cao, 2007).

While it is quite common for a law to be drafted by a ministry (see chapter 3), this time the State Council Legislative Affairs Office took up the leading role (K. Cao, 2007). This can be explained by the power struggle between the Ministry of Health, which preferred amending the Food Hygiene Law, and proponents of a Food Safety Law, which would mean moving the supervision of food safety away from the Ministry of Health.

In addition to conducting extensive research domestically, the State Council Legislative Affairs Office looked at practices in other countries, which is reflected in the final version of the law. Lawmakers studied food safety laws of India, United Kingdom, USA, Canada, Europe, Japan, Germany, and Brazil. Lawmakers also turned to guidelines for drafting a national food safety law put together by the Food Agriculture Organization and the World Trade Organization. As a result, the law incorporates concepts similar to those of other jurisdictions, such as the farm-to-fork approach, i.e. regulating not just the hygiene and quality of final products, but the entire food chain. Other examples are collaborative governance and industry self-regulation (see articles 7 and 33) (Y. Ye, 2006).

Initially, the NPC scheduled the first review of the Food Safety Law for December 2006, but because the State Council submitted it only in October 2007, the first review took place in December 2007 (Zou & Yang, 2005). By then, the food safety situation had become a major issue in China. During the first NPC review, delegates emphasized how much Chinese people worried about their food. For example, delegate Fang Xin stated:

Last night I looked at some survey data of the Ministry of Science and Technology research center. In a random survey among several thousand members of the public in Beijing in September [2007], more than 30% of the people put food safety on the first place of unsafe factors ... (Z. Tang, 2007)

Taking this a step further, delegate Wang Meixiang said: "... [it] not only threatens the health and safety of ordinary people, but also generates anxiety in ordinary people. Add to that the inappropriate hypes of the media. This creates instability of society" (Z. Tang, 2007).

Nevertheless, considering that food safety was a major societal issue, one would have expected a larger participation in the public comments procedure in April and May 2008. When the general public was invited to submit views on the draft Food Safety Law, the NPC Standing Committee Legislative Affairs Commission received approximately 11,000 comments. To put this in perspective, the 2009 Food Safety Law ranks nineteenth on the list of laws opened to the public for comments in the period 2005–2016. The first seventeen laws each received between 30,000 and 55,000 comments. The relatively small number of comments for the Food Safety Law cannot be explained by historical trends. The three laws that were reviewed earlier or around the same time received many more comments.

One of the key themes in the public comments was food additives. Other topics in the comments were the food safety supervision system; clarification of supervision by various departments; the relationship between the Food Safety Law, the Food Hygiene Law, and the Agricultural Produce

Quality Law; hierarchical management of food producers; responsibilities of various departments in a food recall; strengthening the supervision of food safety in rural areas; and deletion of the articles about the barcode system (NPC-SC Commission on Legislative Affairs, 2008a; Yu ed., 2008).

Unaware of the melamine milk powder scandal that was unfolding, the NPC Standing Committee reviewed a new version of the draft Food Safety Law in late August 2008. There are no signs that the NPC Standing Committee knew about the problematic infant formula because it was not mentioned at all by the NPC Legal Committee and NPC delegates in August (NPC Legal Committee, 2008; D. Su, 2008).

5.3.4.2 First Round of Post-Crisis Changes in the Draft Law

After the crisis broke, the Food Safety Law was reviewed two more times, namely in October 2008 and February 2009, during which the draft changed. The following sections examine the role of the crisis in these changes.

In October 2008, the NPC Legal Committee presented eight key changes (X. Liu, 2008), which are summarized in table 5-10. The NPC Legal Committee linked these changes to the crisis, stating:

After the Sanlu infant milk powder incident happened, society pays even more attention to the Food Safety Law. ... [we] earnestly researched the question how to prevent and deal with this kind of major food safety incident, and on the basis of the second draft put forward relevant revisions. (X. Liu, 2008)

Table 5-10 shows that most (6 out of 8) of the post-crisis changes directly responded to the crisis in the sense that the topics correspond with issues exposed by the crisis. For example, the changes regarding food additives in articles 45 and 46 directly relate to a central problem in the crisis namely that melamine, sold as “protein powder”, was illegally added to milk. Only two out of 8 changes did not respond to the crisis. The first exception is the addition that food safety standards must safeguard public safety, be scientific and safe (article 18). The problem in the melamine crisis was not a lack of food safety standards for melamine, because it is an inedible and illegal substance. The second exception is article 29 on small scale food producers, which had been discussed quite extensively during the previous two NPC reviews, but does not relate to the crisis.

However, only 3 out of 8 changes were initiated by the crisis, meaning that more than half had already been discussed or proposed during the previous two NPC reviews in December 2007 and August 2008 (D. Su, 2008; Z. Tang, 2007).

Moreover, most (7 out of 8) of this set of changes are rather symbolic in the sense that they do not address the underlying problems or in the sense that they are duplicates of existing provisions in other laws, regulations, or rules. For example, article 53 authorized local governments to recall a product in case the food producer does not issue a recall for substandard products. However, at the time of the crisis, there were already food product recall rules (食品召回管理规定 *shipin zhaohui guanli guiding*) in place that required the AQSIQ to recall unsafe products (article 25). In fact, these rules even detailed different levels of harm and time limits for recall procedures. Thus, the problem was not a lack of rules, but inaction by the AQSIQ, which had received consumer

complaints at least as early as June 2008 (Zhao Zhou & Ou, 2008). At the local level, the problem was not that the local government in Shijiazhuang, the city where Sanlu was headquartered, was not authorized to recall infant formula, but that it generally did not respond to the crisis. In addition, the post-crisis article 53 only authorizes (可以 *keyi*) local governments to issue a recall, but it does not force them to do so. Other examples are articles 12 and 14, which stipulate that ministries must immediately report a new food safety risk to the ministry of health, which subsequently must adjust its monitoring plan, and that the ministry of health must immediately conduct a risk assessment in case a new problem is reported. However, the problem in the crisis was not lack of monitoring and assessment. Actually, the Ministry of Health had been informed and it subsequently sent a team to Gansu province. Nevertheless, it did not take action based on this investigation. To prevent such a situation from happening again, articles 12 and 14 should also have included follow up steps. A final example is the sentence that was added to article 71: “no unit or individual is allowed to conceal, postpone reporting, lie, and destroy relevant evidence.” However, article 21 of the 2003 Public Health Emergencies Response Regulations already banned concealing, postponing, reporting, and lying about public health emergencies, including food safety incidents. The second part, on destroying relevant evidence is only a tiny step away from article 63 of the April 2008 draft Food Safety Law which forbids destroying relevant evidence, but only for units, not explicitly for individuals. Moreover, the law only holds consequences for *units* that destroy relevant evidence, not for individuals. The problem-solving potential of this first set of post-crisis changes is thus limited.

Table 5-10. Role of the Crisis in the Revised Draft Food Safety Law (Draft October 2008)

Topic	Timing	Substance	
Local government supervision (articles 5, 6)	Not initiated by the crisis. Need for clarification expressed in previous NPC-SC reviews.	Crisis responsiveness	Yes: Local governments did not appropriately respond to complaints partly due to unclear responsibilities.
		Problem-solving potential	No: Responsibilities for each department still unclear, suggested central coordinating group at local level not adopted.
Food recall system: County government has the right to recall (article 53)	Not initiated by the crisis. Already suggested during previous NPC-SC reviews.	Crisis responsiveness	Yes: Sanlu eventually recalled the milk powder, but government should have done so earlier.
		Problem-solving potential	No: Main problem was not that local government did not have right to recall; recall system already in place.
Ban on exempting products from inspection (article 60)	Crisis-initiated. Exemption system previously criticized (not during NPC-SC review).	Crisis responsiveness	Yes: Sanlu infant milk powder was exempted from inspection.
		Problem-solving potential	Yes: Legally impossible to establish such a program again.
Risk monitoring and assessment: report and investigate new risks immediately (articles 12, 14)	Initiated by the crisis. Topic not previously discussed in this way.	Crisis responsiveness	Yes: Reports that there was possibly something wrong with milk powder, new risk.
		Problem-solving potential	No: Problem was not lack of investigation, but lack of follow up after investigation.
Food safety standards: Must be scientific, save, protect public health (article 18)	Not initiated by the crisis. Discussed in December 2007 NPC-SC review.	Crisis responsiveness	No: Food safety standards did not play a role. No standards for melamine existed.
		Problem-solving potential	No: No definition of scientific, safe.
Small food producers and food stalls (article 29)	Not initiated by crisis. Discussed in previous NPC-SC reviews.	Crisis responsiveness	No: Involved companies were not small food producers.
		Problem-solving potential	No: Lack of a definition of small food producers.
Food additives: Revision of standards, ban on harmful substances (articles 45, 46)	Not crisis-initiated. Food additives in previous NPC-SC reviews.	Crisis responsiveness	Yes: Melamine was illegally added as "protein powder."
		Problem-solving potential	No: Similar ban already in 1995 Food Hygiene Law; only slightly different from April 2008 draft.
Accident management (article 71)	Crisis-initiated. Key problem: inadequate crisis response.	Crisis responsiveness	Yes: Responds to failed crisis response.
		Problem-solving potential	No: Similar regulations already existed at time of crisis.

5.3.4.3 Second Round of Post-Crisis Changes in the Draft Law

In February 2009, the NPC Legal Committee presented a fourth draft to the NPC for review, with six key revisions, listed in table 5-11, but this time, the NPC Legal Committee did not refer to the melamine incident. However, as shown in the table, two changes were initiated by the crisis and three of the changes responded to the crisis. These three changes are examined in detail in the next sections.

Table 5-11. Role of the Crisis in Revised Draft Food Safety Law (Draft February 2009)

Topic	Timing	Substance	
Establishment of a Food Safety Commission (art. 4)	Not initiated by the crisis. Proposed in previous NPC-SC reviews.	Crisis responsiveness	Yes: Crisis showed that food safety supervision system was not effective.
			No: Proposed pre-crisis for many years.
Food advertising (articles 54 and 55)	Initiated by the crisis.	Crisis responsiveness	Yes: Celebrities had advertised Sanlu infant formula. This generated public anger.
		Problem-solving potential	Yes: Celebrities now partly liable for harm caused by substandard goods that they advertised.
Civil liability (article 97)	Initiated by the crisis.	Crisis responsiveness	Yes: Responds to Sanlu's bankruptcy and tort claims by parents.
		Problem-solving potential	No: Prioritization of tort claims over government fines does not solve the key issue. Also already in Product Quality Law.
Health food (article 51)	Not initiated by the crisis. Discussed pre-crisis.	Crisis responsiveness	No: No link with the crisis.
		Problem-solving potential	No: health food not part of this crisis; partly duplication of 1996 Administrative Rules for Health Food.
Agricultural products and inputs (art. 35 and 77(5))	Not initiated by the crisis. Discussed pre-crisis.	Crisis responsiveness	No: No link with the crisis.
		Problem-solving potential	No: Already in article 22, 25, and 26 of the 2006 Agricultural Products Quality and Safety Law.
Regulatory burden (art. 33)	Not initiated by crisis.	Crisis responsiveness	No: No link with the crisis.
		Problem-solving potential	No: It does not relate to the crisis; does not lower the regulatory burden of industry.

5.3.4.3.1 Food Safety Commission

All throughout the making of the 2009 Food Safety Law, a major issue was the fragmentation of food safety supervision between different government departments. China is not the only country with such a governance structure for food safety, but a major issue was the lack of one coordinating body overseeing all of this. Already in December 2007, during the first review of the draft law by the NPC Standing Committee, several delegates proposed to tackle this issue. In fact, about 30% of the published speeches made during the review by NPC-SC delegates were about the need to clarify a coordinating food safety organization (Z. Tang, 2007).

Because such a general coordinating department did not appear in the draft that was published for comments in April 2008, it was proposed again during the second NPC-SC review in August 2008. Delegate Hou Yibin, for instance, argued:

One of the reasons for the severe food safety problems of recent years is the many headed supervision of the government. The work of many departments involves food safety management, but these governments are all incapable of being in charge of food safety oversight, forming a lot of holes. In view of this, I suggest to set up a national food safety oversight management commission that is responsible for the coordination and supervision of food safety oversight work. (D. Su, 2008)

When this commission still was not established in the next draft law, delegates persisted that the issue needed to be resolved during the third review by the NPC-Standing Committee in October 2008, six weeks after the melamine milk powder was exposed. Even though this was already the third time the draft law was discussed, much of the debate, almost 30% of the speeches, was still centered around the question who is responsible for what. To illustrate, delegate Hao Yidong stated:

I took a look at the opinions on the second draft. With regard to setting up a comprehensive responsible department, there were more than 20 committee members who proposed to clarify a responsible department or setting up a special committee to manage food safety. I think these two opinions need once again be considered. (Z. Tang, 2008)

Some delegates linked the issue of one overseeing organ to the melamine milk powder crisis. For example, delegate Song Fatang said:

After the exposure of the Sanlu milk powder incident, the food safety supervision system still needs to be researched one step further. The kind of supervision system in the current draft is unable to prevent a Sanlu milk powder incident from happening again. (Z. Tang, 2008)

Finally, before the last review by the NPC Standing Committee in February 2009, the NPC Legal Committee included a Food Safety Commission in the draft law. What exactly the tasks would be of this special commission was left to the State Council to decide.⁵⁶

⁵⁶ The Commission was set up a year later, in February 2010. It consisted of a range of high level officials, including vice-premier Li Keqiang, the minister of health, the minister of agriculture, and the head of the State Food and Drugs Administration.

While it is not clear whether the Food Safety Commission would have been included in the 2009 Food Safety Law if the melamine crisis would not have happened, we can at least be sure about two things, namely that this change was only incremental and that the idea was not new. Not only had such a general overseeing body been proposed during NPC Standing Committee reviews since December 2007, there had already been a similar organization. In fact, in August 2007 the State Council Product Quality and Food Safety Leading Small Group was set up, the food safety tasks of which were exactly the same as those of the Food Safety Commission. Even in terms of membership, the Small Group was similar to the Food Safety Commission, as both were chaired by a vice premier and populated by ministers (State Council General Office, 2007b, 2010b). However, the Small Group disappeared with the reform of the State Council in early 2009 when the oversight of food safety supervision was passed to the Ministry of Health. The Food Safety Commission is thus a recycled concept that was only marginally different from the previous Small Group, which had been unable to prevent the melamine milk powder crisis.

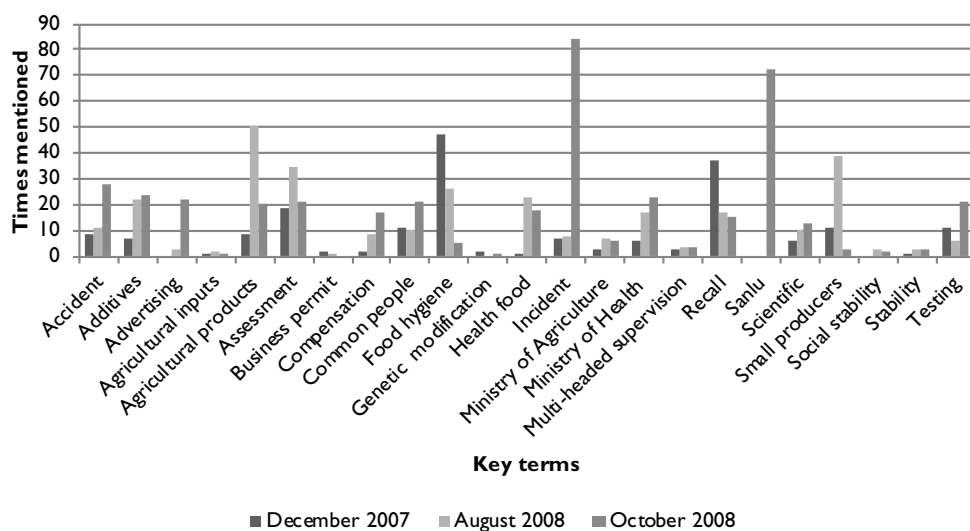


Figure 5-4. Key Terms in Comments Put Forward During NPC deliberation of 2009 FSL

5.3.4.3.2 Advertising

Before the crisis, NPC-SC delegates barely mentioned advertising during NPC-SC reviews, but this changed after the crisis, as shown in figure 5-4. Sanlu was very active in advertising its products, for which it often hired Chinese celebrities. Prior to the incident, famous actress Deng Jie claimed in a television advertisement for Sanlu infant formula: “I am really picky about milk powder. Professionally produced, quality assured, and a famous brand, [this] lets people rest assured. It is also economical, Sanlu Intelligent infant milk powder, I trust it!” (Z. Liu, 2008). After the crisis broke, this advertisement sparked public anger. Reactions online included the following comments: “Although celebrities cannot fully comprehend milk powder quality ... celebrities should do more inspecting when taking the wage” (Z. Liu, 2008); “What is “rest assured”? “Rest

assured” infants eat and get kidney stones? This is your “rest assured” milk powder?” (Wei Wang, 2008); “The one who endorses bears responsibility, don’t just take the advertisement fees” (Wei Wang, 2008). A woman from Chongqing even sued Deng Jie for misleading advertising (B. Luo, 2009).

Celebrity endorsements had been a problem for many years. Previously, there had been several cases of Chinese celebrities making claims about products that later turned out to be false (Xi Zhang, 2009). In 2007, the China Youth Daily conducted a survey on the topic. More than 65% of over 4,000 people opined that celebrities should bear part of the responsibility if an endorsed product turns out to cause problems (Xue Li, 2007).

Lawyers and scholars had previously pointed out the legal loophole that surrounded celebrity endorsement (Song Li, Huang, & Liu, 2007; Yijun Wang, 2005; S. Yu, Ye, & Peng, 2004). At the time of the melamine crisis, celebrities were not liable for false claims. The 1994 Advertisement Law (广告法 *guanggao fa*) did not include any rules on *individuals* endorsing products, but only on organizations and companies (article 38).

At least two NPC-SC delegates reiterated the concerns of scholars and lawyers during the review of the draft Food Safety Law in October 2008. Delegates Ren Maodong and Lu Bing respectively proposed the following:

There should be one specific rule added. Regarding the strict management of food advertising companies and food ambassadors, if a problem emerges with food, [they] should bear civil liability. The Advertisement Law does not have relevant rules regarding this kind of situation, but in many western countries, celebrities are not allowed to endorse food products and medicines. If the Advertisement Law does not have a rule, it is appropriate and reasonable to have such kind of special rule in the Food Safety Law, it is in accordance with the current state of China. (Z. Tang, 2008)

Why are counterfeit products very rare abroad? Why are China’s products everywhere fake? I think that advertisements are the biggest problem. Regarding advertisements [one] certainly must be strict, especially regarding using celebrities to do false advertising, the current situation of entrapping people must change. Therefore [we] must add here “if using celebrities to do false advertising leads to adverse effects, food producers and parties playing the role of false advertisements must be given severe punishment. (Z. Tang, 2008)

The NPC Legal Committee subsequently proposed a provision that made celebrities liable for harm caused by substandard food products that they endorsed (X. Liu, 2009). The 2009 Food Safety Law eventually incorporated this in article 55: “If a social group or other organization or individual recommends consumers a certain product in a false advertisement and it harms the legal rights of consumers, it shall bear the responsibility jointly with the food producer.”

Although this rule is still very vague because it does not specify such shared responsibility, it is significant because for the first time, individual endorsers are liable for damages caused by false food advertising. In 2015, it was also included in the amended Advertisement Law.

The issue of celebrity endorsement had been an issue for many years but it is unlikely that

it would have been included in the 2009 Food Safety Law if the melamine crisis had not taken place a month before the third NPC review. The crisis once again generated public anger about celebrities promoting substandard products and led to increased attention of lawmakers regarding advertising and resulted in a new article. Moreover, the crisis had a domino effect because this provision was also included in the 2015 Advertisement Law.

5.3.4.3.3 Civil Liability

A major issue in the crisis was compensation for harm suffered by the victims. According to the Consumer Protection Law and the Product Quality Law, consumers have the right to claim compensation if a product harms human health or property.⁵⁷

Soon after the scandal broke, parents and lawyers started to discuss how to get compensation. Within a day, lawyers from across China set up a volunteer group to provide legal assistance to parents. The group circulated a compensation guide on the internet, listing the kind of evidence parents should collect and the types of damage that would be eligible for compensation claims (Lu, 2008). The group was clearly aware of the political sensitiveness of compensation claims. It emphasized that the government should take the lead in arranging compensation for the victims, but the lawyers also stated that:

As for lawsuits, this is the right of every citizen. That lawyers receive trust [of the parents] does not at all imply that we must sue, but as lawyers, fighting for reasonable compensation for the victims of the poisoned milk powder by means of preparing a lawsuit is the duty of lawyers. Volunteer lawyers in all parts of the country have the right to represent the household that consumed the poisoned milk powder. (Volunteer Lawyers Group, 2008)

Soon, parents started to sue Sanlu for compensation, but to no avail. The first case was filed on September 22 in Henan province. Parents of a hospitalized one year old boy claimed RMB 150,000 from Sanlu (C. Xie, 2008). More cases were filed in other places, but none of the cases were accepted by courts until March 2009 (B. Wang, 2009).

In the meanwhile, the Shijiazhuang city intermediate court declared Sanlu bankrupt on February 12, 2009 (F. Zhu, 2009). The remaining assets were sold and divided among creditors (F. Zhu, 2009). The Sanlu victims were not recognized as creditors by either the government or the court. But even if they would have gotten creditor status, it is questionable whether there would have been sufficient funds to cover the claims.

The bankruptcy of Sanlu was controversial, mainly because of concerns over compensation for victims (X. Cui, 2009; Shihu Wang, 2009). In the end, a fund was established to cover medical costs and compensation. It was funded by the 22 companies implied in the crisis (Xinhua, 2009). Sanlu provided RMB 902 million. It had borrowed this money in December 2008, just before bankruptcy (S. Huang, 2008). In a way, victims thus did receive priority treatment, and perhaps received more than they would have received in tort claims during the Sanlu bankruptcy process if courts would have accepted their claims.

In response to this issue of compensation for victims, during the review of the Food Safety

⁵⁷ Consumer Protection Law (消费者权益保护法 *xiaofeizhe quanyi baohu fa*), article 11 and section 7; Product Quality Law (产品质量法 *chanpin zhibiliang fa*), section 4.

Law in October 2008, delegate Yan Yixin proposed to establish a fund for food safety incidents compensation. Yan reasoned that it is difficult to get compensation if a company goes bankrupt after a food safety crisis (Z. Tang, 2008).

The NPC Legal Committee chose a different pathway that neither addressed the core of the issue nor was innovative. It added an article that prioritizes civil compensation claims over government-imposed fines (X. Liu, 2009). It is questionable whether this solves the issue, as the key problem was that courts did not accept the victims' tort cases (Katz, 2010), hence victims were not considered creditors in the bankruptcy process. Moreover, the Product Quality Law (产品质量法 *chanpin zhibiliang fa*) already included exactly the same rule (article 64), which could have been applied to the Sanlu case.

In sum, while the NPC Legal Committee did respond to a major problem in the Sanlu melamine crisis, namely tort claims in case of bankruptcy, the response does not address the core of the issue and is also not innovative. So here again, the change appears to be symbolic.

5.3.4.4 The Nature of Post-Crisis Legal Change

Thus far, the analysis focused on two sets of post-crisis changes in the draft law, but it is not clear yet what the overall regulatory contribution of the Food Safety Law is, especially in terms of crisis responsiveness and problem-solving potential. Therefore, this section compares the Food Safety Law with its predecessor, the Food Hygiene Law (食品卫生法 *shipin weisheng fa*), which was passed by the NPC-SC in 1995. As previously, Coglianesi's framework for analyzing regulatory instruments (Coglianesi, 2010) is used, which focuses on four aspects: target, regulator, commands, and consequences, each of which will be discussed below. This is preceded by a comparative analysis of the basic features of both laws.

Table 5-12. Outcomes and Scope of 1995 Food Hygiene Law and 2009 Food Safety Law

	1995 Food Hygiene Law	2009 Food Safety Law
Outcomes	Ensure food hygiene, prevent harm to the human body from food pollution and harmful factors, safeguard the people's health, enhance people's health	Ensure food safety, the health of the public and life safety
Scope	All food producers and food businesses in the PRC; food, food additives, food containers, food packaging; tools, instruments, detergents, and disinfectants used for food; food production and business sites, facilities, and environment.	Food production and processing, food distribution, food and beverages services, food additives producers and businesses; producers and business that use food packaging, containers, detergents, disinfectants, tools, and equipment; food additives and related food products used by food producers and food businesses; safety management of food, food additives, and food related products.

Basic Features. As shown in table 5-12, the main difference in terms of policy outcomes between the 1995 Food Hygiene Law and the 2009 Food Safety Law is that the 1995 law uses the term "food hygiene" instead of "food safety." As discussed above, this shift is not related to the

crisis, because it occurred already before it. The scope of the law, although lengthier, has remained largely the same.

Commands. A major difference is that the 2009 Food Safety Law is almost twice as long as the 1995 Food Hygiene Law and covers food safety accidents, food additives, and food safety standards much more extensively. Moreover, there are a number of entirely new topics: advertising, recalls, risk assessment, small workshops, and record-keeping. As discussed previously, the topics of advertising, recalls, and risk assessment directly relate to the crisis. However, the topic of small workshops had been discussed during previous NPC review and does not relate to the crisis. Likewise, record-keeping is an important tool to trace and minimize food quality and safety issues, but was already included in the pre-crisis draft law and there is no clear relationship between the inclusion of this topic in the law and the crisis. Table 5-13 summarizes the commands in the 1995 Food Hygiene Law and 2009 Food Safety Law. It shows the number of requirements or the prevalence of each topic in both laws.

Table 5-13. Commands in the 1995 Food Hygiene Law and 2009 Food Safety Law

Commands	1995 FHL	2009 FSL
Hygiene/safety requirements (list)	10	11
Forbidden products (list)	12	11
Accidents	7	39
Advertising	0	6
Food additives	18	49
Food containers	21	23
Food safety standards	24	81
Infants	2	4
Recalls	0	12
Record-keeping	0	26
Risk assessment	0	20
Small producers (workshops)	0	2
Supervision	28	88

Targets and Regulator. Unsurprisingly, the main target population is food businesses. New target groups in the Food Safety Law are food safety inspection organizations (食品检验机构 *shipin jianyan jigou*) and food safety inspectors (食品检验人员 *shipin jianyan ren yuan*).⁵⁸ However, these groups were already included in the pre-crisis draft law and their inclusion is thus not a result of the crisis.

As discussed previously, the fragmentation of food safety supervision between different government departments had been a major issue all throughout the making of the Food Safety Law. In the final version of the law, there is still a variety of government departments and levels involved, but the Ministry of Health has a leading, coordinating role. As discussed above, after the crisis, the NPC Legal Committee responded to persistent calls for a central overseeing organ by establishing a Food Safety Commission in article 4.

Consequences. Although both the 1995 Food Hygiene Law and the 2009 Food Safety Law

58 More specific rules were passed in 2010: Administrative Measures for the Qualification Accreditation of Food Inspection Agencies (食品检验机构资质认定管理办法 *shipin jianyan jigou zizhi rending guanli banfa*).

dedicate 15 articles to legal liability, the legal liability section in the latter is much longer (64%). Table 5-14 lists the variety of sanctions in both laws, roughly organized from weakest to strongest. Generally speaking, sanctions are based on escalation logic, meaning that the minimal intervention typically is a warning or an order to correct or stop production. The more serious non-compliance is, the heavier the punishment.

Table 5-14. Sanctions in the 1995 Food Hygiene Law and 2009 Food Safety Law

Targets	1995 Food Hygiene Law	2009 Food Safety Law
Food businesses	Order to correct non-compliance Order to stop production Destruction of food Confiscation of illegal income Food recall Fine: 1–5 x illegal income Fine: RMB 500–50,000 Enforcement by court Withdrawal of hygiene license Closure of business Civil liability Public security penalties Criminal prosecution	Order to correct non-compliance Order to stop production Confiscation of illegal income, illegally produced food, additives, and other products Fine: 2–10 x illegal income Fine: RMB 2,000–100,000 Withdrawal of license 5-year ban from food industry Civil liability Punitive damages of 10 times the purchase price Criminal prosecution
Government officers	Administrative sanction Criminal prosecution	Major demerit, demotion, dismissal, or expulsion Resignation Criminal prosecution
Food inspection organization and food inspector		Confiscation of illegal income Revocation of food inspection qualification Dismissal 10-year food inspection ban Criminal prosecution

In general, the sanctions in the 2009 Food Safety Law are more severe than in its predecessor. The 2009 law gives consumers the right to claim damages of ten times the purchase price. Furthermore, license revocation means that the organization and individuals in charge are not allowed to work in the food industry for five years and ten years for food inspection organizations and food inspectors. The previous law did not contain sanctions for non-compliance of food inspection organizations and food inspectors. Finally, the 2009 includes more specific sanctions for non-compliance by government officials.

Although political leaders called to “strike hard” against food fraud during the crisis (B. Li & Huang, 2008; State Council, 2008a), the fines in the Food Safety Law did not increase post-crisis. In fact, over the course of the drafting process fines decreased: fines in the April 2008 draft (NPC-SC General Office, 2008a) were higher than in the final version. However, there is no evidence that this is related to the crisis. While fines in the 2009 Food Safety Law are substantially higher than in the 1995 Food Hygiene Law, it is still questionable whether they are sufficiently high. This is especially true for the punitive damage: ten times the price paid for a product is often a very small amount of money.

5.3.4.5 Conclusion: Role of the Crisis in the 2009 Food Safety Law

As summarized in table 5-15, the role of the melamine milk crisis in the timing and substance of the 2009 Food Safety Law is more modest than commonly assumed (C. Liu, 2010; Pei et al., 2011; Qiao et al., 2012; C. Xiu & Klein, 2010; Xin Zhang & Ding, 2017).

Table 5-15. Role of the Crisis in Timing and Substance of Post-Crisis Changes in the FSL

Role of the crisis		Empirical evidence	
Timing			
Crisis did not initiate FSL		Drafting group formed in 2004 Included in 2005 State Council legislative plan NPC reviews of draft law in December 2007 and August 2008	
Crisis delayed FSL		New issues appeared NPC appeared in a hurry in February 2009, as if behind schedule Law could have been passed in October or December 2008	
Substance			
Crisis responsiveness	Yes:	9 out of 14 of post-crisis changes in draft law relate to the crisis	
Problem-solving potential	No:	Only 2 out of 14 post-crisis changes in draft law solved issues exposed by the crisis: food advertising and inspection exemption Many factors underlying the crisis remain unsolved	

The crisis did not initiate or accelerate the making of the Food Safety Law. Without the crisis, this law would probably have been passed around the same time, because it was already in an advanced state at the time the crisis broke. If the NPC would have been in a hurry, it could have passed the law during the NPC-SC bi-monthly meeting in October or December 2008.

Instead of accelerating, the crisis appears to have delayed the lawmaking process. Already in December 2007 and August 2008, NPC-SC delegates expressed the need to pass the law as soon as possible (D. Su, 2008; Z. Tang, 2007). However, there were still issues that needed attention, including the handful of issues raised by the melamine crisis. By February 2009, still not everyone was satisfied with the draft law, but the NPC Legal Committee moved forward nonetheless (NPC Legal Committee, 2009). To illustrate, the NPC Legal Committee stated:

Some NPC-SC delegates still put forward some opinions and suggestions for revision regarding the operability of the draft law. [...] these questions can be accepted during the research for the Food Safety Law Implementation Regulations formulated by the State Council. (NPC Legal Committee, 2009)

By February 2009, the NPC Legal Committee was thus clearly in a hurry to pass the Food Safety Law. As mentioned above, already during the December 2007 NPC-SC review, delegates urged to pass the law as soon as possible. By February 2009, the Law had already been reviewed four times, while laws are typically reviewed maximal three times, so it was time for the Legal Committee to move forward.

The main driving force behind the Food Safety Law was not the Sanlu crisis, but long-standing food safety problems and serious concerns of the general public about the safety of their food. These aspects were frequently mentioned by lawmakers during the lawmaking process (K. Cao, 2007; Peng, 2002; D. Su, 2008; H. Sun, 2002; Z. Tang, 2007, 2008). In fact, when introducing the draft law to the NPC in December 2007, the director of the State Council Legislative Affairs Office stated:

Food safety problems are still quite prominent. There are hidden dangers with many food products. Food safety accidents occur. The masses lack a sense of security regarding food products. Food safety problems also affect the international image of Chinese products. The response of the masses to this is intense. (K. Cao, 2007)

The frequent references to general public concerns over food safety are reflective of the concern high level political and government leaders in China had over food safety problems. Food safety accidents in particular are regarded a threat to social stability and therefore, the issue of food safety regulation had been high on the legislative agenda for several years prior to the Sanlu crisis.

In terms of the substance of the Food Safety Law, the analysis has shown that although the majority of changes (nine out of fourteen) were relevant to problems central in the crisis, only some of the changes (five out of fourteen) were initiated by the crisis. All other topics had already been discussed during the previous two NPC reviews. Some of these topics were likely to have appeared during post-crisis NPC reviews, even if the crisis would not have happened, for example small workshops, a central food safety commission, and health food.

Moreover, although the majority of post-crisis changes in the draft Food Safety Law were made in response to the crisis, only two out of the fourteen changes have problem-solving potential, meaning that they are likely to mitigate problems underlying this particular crisis. These two changes are: ban on exempting products from inspection and liability for advertisement of substandard products.

Most of the post-crisis changes are beneficial for the coherence of the legal system or address important legal gaps, but this does not mean that they address the particular problems underlying the Sanlu milk powder crisis. An example is article 53 on the food recall system. While it is important that government can recall substandard food, a key problem in the crisis was the total inaction of the Shijiazhuang government, not the lack of tools to issue a recall. Moreover, the article does not force local governments to issue a recall, but only authorizes them to do so.

Another example is article 12, which requires central level government authorities to report food safety risks to the Ministry of Health immediately after they learn about them, which then adjusts its monitoring activities. Such a mechanism is crucial in food safety regulation and may help to prevent future crises, but in this crisis, the problem was not a lack of reporting to the Ministry of Health, because it had been informed by the Gansu provincial government. Rather the problem was a proper response by the ministry.

Moreover, some of the changes were symbolic in the sense that they duplicated existing rules. An example is the requirement of immediate reporting and action in case of a food safety incident (article 71), which is already stipulated in the Public Health Emergencies Response Regulations. Another example is the ban on adding harmful substances to food (article 45). Others were symbolic in the sense that they did not embody real change. This is the case, for instance, for the establishment of the Food Safety Commission, the task of which remain unclear (article 4) and the ban for certification organizations to charge for follow-up assessments (art. 33), which was meant to reduce the regulatory burden, but such fees are not the main regulatory burden of the industry.

Nevertheless, the fact that only two out of 14 post-crisis changes in the Food Safety Law had problem-solving potential does not mean that the law itself is meaningless. The 2009 Food Safety Law was a milestone in food safety regulation in China. Figure 5-5 shows the significance of change of the 2009 Food Safety Law by comparing it to its development over time. The first Food Hygiene Law was passed in 1982. Thirteen years later, in 1995, the NPC passed an amendment of that law and in 2009 it passed the Food Safety Law. From a quantitative perspective, expressed in the cumulative change on the y-axis, this was the most substantial change in the history of this particular law.

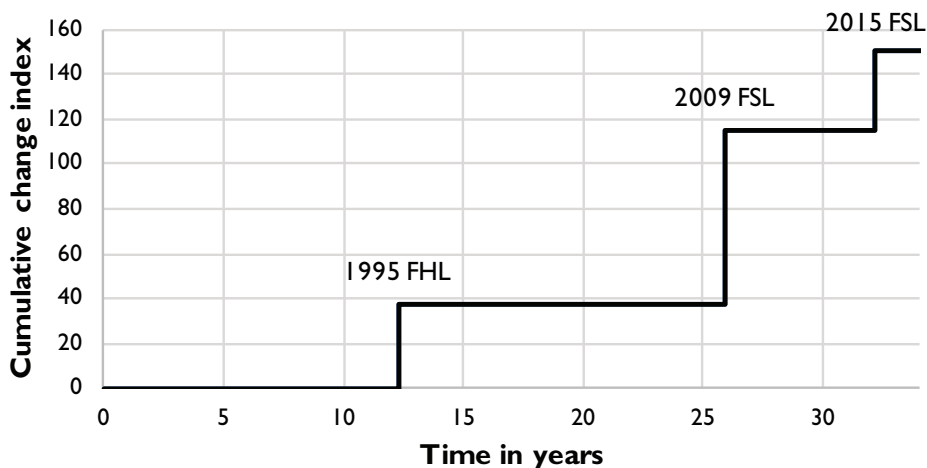


Figure 5-5. Evolution From the 1982 Food Hygiene Law to the 2015 Food Safety Law

The Food Safety Law introduced a number of changes that were not initiated by the crisis but that do improve the general food safety regulatory system, which presumably decreases the overall risk of food safety incidents.

First of all, the law was the starting point for revision and reorganization of food safety standards. The law specified the content of such standards (article 20) and set up a Food Safety Standards Committee (article 23), consisting of experts from government, industry, and academia. Standards must be made available, free of charge, for the general public (article 26). In 2010, the Ministry of Health announced the membership of this Committee (Ministry of Health, 2010a) and it passed the National Food Safety Standards Measures (食品安全国家标准管理办法 *shipin anquan guojia biaoqun guanli banfa*). Numerous standards were revised in 2010, including the dairy standards discussed above. An online food safety standards database was launched in 2014 (CFSA, 2014).

Secondly, the law initiated a reform of food additives supervision. Amongst other things, it introduced a food additive production permit (article 43). The AQSIQ and Ministry of Health subsequently passed two sets of complementary rules for the production of additives (食品添加剂生产监督管理规定 *shipin tianjiaji shengchan jiandu guanli guiding*) and for new additives食品添加剂新品种管理办法 *shipin tianjiaji xin pinzhong guanli banfa*) respectively.

Other legislation that has been passed as a result of the 2009 Food Safety Law include: (1) the Administrative Measures for Food Recalls (食品召回管理办法 *shipin zhaohui guanli banfa*), which implements article 53 of the 2009 Food Safety Law and were passed by the State Food and Drug Administration in 2014; (2) the Provisions on the Administration of Registration of Foreign Enterprises Producing Imported Food (进口食品境外生产企业注册管理规定 *jinkou shipin jingwai shengchan qiye zhuce guanli guiding*), which were passed by the AQSIQ in 2011; (3) and Measures for the Supervision and Administration of Inspection and Quarantine of Imported and Exported Dairy Products (进出口乳品检验检疫监督管理办法 *jinchukou rupin jianyan jianyi jiandu guanli banfa*), which were passed by the AQSIQ in 2013.

Overall, the 2009 Food Safety Law marked the starting point for future food safety reforms. The NPC amended the Food Safety Law in 2015, which has resulted in the “harshest food safety law in China’s history.” Along with the 2015 amendment came the Food Production Licenses Measures (食品生产许可管理办法 *shipin shengchan xuke guanli banfa*), which were passed by the State Food and Drug Administration passed the in 2015, to implement article 35 of the 2015 Food Safety Law. The law also led to a mandatory product registration system for infant formula, for which rules were passed in 2016.

It is not unusual that a law goes through one or more rounds of amendments before it gets stronger. As discussed in chapter 3, lawmaking in China is challenging due to the country’s scale, significant differences across the country, a lack of consistent law enforcement, corruption, and rapidly changing conditions. Food safety is especially difficult to regulate because of China’s many small-scale food producers. For these reasons, it may not always be realistic and desirable to set very specific and strict rules at once.

In conclusion, although most of the post-crisis changes in the draft Food Safety Law touched upon problems exposed by the crisis, only two out of fourteen changes have the potential to solve issues that were revealed by the crisis. Therefore, the post-crisis changes can be best described as change without learning.

5.4 Discussion

The main question this chapter intends to answer is: to what extent and under which conditions did the melamine milk powder crisis lead to legal change in China? To answer this question, the previous sections first examined the unfolding of the crisis and post-crisis lawmaking. Based on these thick narratives, this section summarizes and analyzes the interaction of crisis and post-crisis law using the theories of crisis, policy change, and lawmaking introduced in the previous three chapters. In the process, it answers the main research question.

5.4.1 Government Focus on Social Stability Led to Social Instability

This case study shows how government policies can create blind spots and actively contribute to the making of a crisis. In the years preceding the melamine milk powder crisis, two dominating, interacting themes in Chinese politics and policy were “harmonious society” and the Olympics. The former was coined by president Hu Jintao and aimed at more balanced government policies that no longer exclusively focused on economic growth, but also paid attention to societal issues such as environmental pollution, economic inequality, and unsafe food (A. G. Han, 2008; Zheng & Tok, 2007). The latter, the Beijing Summer Olympics, was used by political leaders to rebrand China as a respectable economic, political, and military power. To do so, China adopted a comprehensive, strict propaganda strategy that included the ‘harmonious society’ narrative. Together, these policies led to very strict media policies that forced news media to focus on positive news and to avoid negative news (Brady, 2009). Food safety problems were explicitly off-limits (Simpson, 2008; The Sydney Morning Herald, 2008; Watts, 2008).

The result of this focus on ‘harmonious society’ and the Beijing Summer Olympics was that food safety became such a sensitive issue that news media, medical doctors, and local governments did not dare to touch it and therefore did not respond to consumer complaints that were filed with local and central level governments at least as early as March 2008.

In hindsight, a timely response to these early consumer complaints could have avoided the crisis altogether, because not only would the number of victims and the seriousness of physical harm have been smaller (J. Xiu, 2008), but—if adequately framed—more importantly, the government could have gotten credits for its response or at least could have avoided some of the criticism for how it handled the issue. The melamine milk powder crisis is thus an example of inappropriate attenuation (Leiss, 2003), meaning that risk signals were weakened, leading to avoidable health, economic, and political damage.

5.4.2 Driving Forces of Media Agenda Setting

The reason why the hospitalization of the “kidney stone babies”, attracted the attention of journalists is threefold: the novelty of the disease (i.e. unexpectedness), its seriousness (i.e. impact), and the geographical scope of the problem (i.e. superlativeness). Journalists first learned about the hospitalized infants because medical doctors had contacted them, saying that they had never seen kidney stones in such young children. The medical situation was life-threatening and most of the affected children were under one year of age. While this sparked journalists’ interest, what turned the issue from private misfortunes into a public disaster was the discovery of identical cases across

the country, which triggered journalists to investigate and, eventually, publish the story.

As discussed in chapter 2, although these factors are together often sufficient to put a risk event on the media agenda, this was not the case here, which was a direct result of China's authoritarian political context and state censorship in particular. The melamine crisis is an apt illustration of "the dictator's dilemma", which is the constant trade-off between censorship and the cost of doing so (Roberts, 2018). While censoring information protects political leaders and the Communist Party from criticism, it simultaneously restricts the information flow from society to the government, which means that problems that could have been addressed early on can easily simmer for long periods of time until they can no longer be concealed, leading to a crisis.

The reason why the story was eventually published—more than two months after journalists learned about the kidney stone babies—is twofold: the finished Beijing Summer Olympics and the availability of a dedicated and skilled journalist. As soon as the Olympics were over, journalists started to investigate the matter. Although Jian, the journalist who scooped the story, feared state censorship and corporate pressure, he was dedicated to publish the story because of his past experience of the deadly Fuyang crisis and in particular his personal belief that news media could contribute to the development of China. In addition, Jian's skills helped him to—as much as possible—desensitize the story. Of course, Jian benefited from support from his editor and newspaper, whereas other journalists could not publish because their newspapers, for various reasons, did not have sufficient leeway to do so.

As discussed in chapter 2, Jian's experience is no exception: journalists in China are acutely aware of political sensitivities and the risks of pushing censorship limits. In fact, the space for media and internet freedom has shrunk in the years following the crisis. The implication of this for crisis management is that it is increasingly difficult for political and government leaders to timely detect risks, which makes China increasingly prone to crises.

5.4.3 Driving Forces of Institutional Response

Administrative response mainly consisted of three aspects: medical care for infants, law enforcement, and censorship. In addition, there was high level political attention: president Hu Jintao, premier Wen Jiabao, and vice-premier Li Keqiang all responded publicly through speeches and a televised visit to hospitalized infants and their parents.

The role of news media as driving force in institutional response to the melamine crisis cannot be overstated considering that local and central governments remained silent until after the Sanlu article was published, despite having been informed about problems with infant milk powder. In fact, a hospital in Gansu had informed the provincial government about the 'kidney stone babies' in mid-July, yet it was only in response to media reports that the Gansu government organized a press conference and even then, the government did not reveal the brand name (Jian, 2008a; Zhuo & Wang, 2008).

If journalists would not have gone after the story, the central government may eventually have informed the public, because pressure to do so was mounting from multiple sides, albeit this process may well have taken several more weeks. The number of hospitalized infants was increasing and local and central governments received more and more reports about the issue, including from the government of New Zealand. The question is how the problem would have

been framed in case the government had broken the story (rather than news media) and whether this would have led to the same kind of institutional response.

A second driving force of institutional response was the seriousness of the crisis, not just in terms of its scope, but especially in terms of its consequences, particularly the threat it posed to social stability. Not only did reports of hospitalized children accumulate, melamine was also detected in a wider range of products in China and abroad. This altogether undermined the credibility of the central level government, which implies weakened societal support for the Communist Party. Crucially, the crisis was seen by government and political leaders as a threat to social stability, which drastically increased crisis salience, because maintaining social stability is amongst the most important goals of the Communist Party (Heurlin, 2016). Here timing also played a role as social stability was already a hot topic in 2007–2008, resulting from an increasing number of citizen petitions and social unrest (Heurlin, 2016).

The seriousness of the crisis was exacerbated by the mobilization of pro-change forces, which included not only medical doctors and journalists, but also lawyers, parents, and internet users. Here, the scope of the crisis played a role too because the large number of affected people, scattered across the country, meant that there were many possible starting points of collective action. In the process of making the crisis public, medical doctors and journalists had exchanged and accumulated information about cases and government's handling of it. This information further threatened government credibility because it included evidence of government irresponsiveness. Moreover, immediately after the crisis broke, lawyers set up a legal aid group to help parents get compensation. One parent launched a website that provided legal advice and tried to organize protests. While these individuals predominantly focused on the specifics of the melamine crisis, internet users framed the crisis as a symptom of wider and deeper institutional problems, including corruption.

While literature (Birkland, 1997) identifies news media framing as a fourth driver of institutional agenda setting, I found that in this case, framing was not a driving force of government response, but a government tool in crisis management. Through applying tight censorship, news media could not consistently link the milk powder issue to previous food safety incidents or broaden it to other government shortcomings. Instead, news media were forced to emphasize government response and to do so using a positive tone (M. Feng et al., 2012; Lei & Zhou, 2015). This meant that the government could contain the crisis and prevent further escalation and mobilization.

5.4.4 Driving Forces of Legal Change

As summarized in table 5-16, the crisis initiated and accelerated a number of legal changes, including the abolition of the Inspection Exemption Measures, the making and passage of the Dairy Quality and Safety Regulations, and the making and issuance of the Raw Milk Purchasing Rules. However, the role of the crisis in the timing and substance of the 2009 Food Safety Law is more modest than often assumed (C. Liu, 2010; Pei et al., 2011; Guixia Qian, Guo, Guo, & Wu, 2011; Qiao et al., 2012; C. Xiu & Klein, 2010; Xin Zhang & Ding, 2017). Although the crisis triggered some changes in the draft law, it was not initiated and not accelerated by the crisis, because drafting was already in an advanced state when the crisis broke.

As shown in table 5-16, all four cases of post-crisis legal change examined in this case study

scored positive on crisis-responsiveness, meaning that the topic of change (e.g., local government supervision and food recall system) corresponded with issues exposed by the crisis. The Inspection Exemption Measures were abolished because infant milk powder made by Sanlu and other dairy companies had been exempted from inspection. The Dairy Quality Regulations were the first administrative regulations for the dairy industry and included, amongst other things, articles about reporting and handling dairy safety accidents and about infant milk powder. The Raw Milk Purchasing Rules responded to the general lack of supervision of milk production and purchasing, which were the production stages during which melamine was added to milk. Likewise, most (9 out of 14) of the post-crisis changes inserted to the draft Food Safety Law did respond to the crisis.

Table 5-16. Interaction of the Melamine Milk Powder Crisis and Post-Crisis Lawmaking

Legal change	Timing		CR	Driving forces
	I	A		
Inspection Exemption Measures abolition	Yes	Yes	Yes	Problem salience High level political support Lack of credibility
Dairy Quality and Safety Regulations	Yes	Yes	Yes	Problem salience High level political support Ongoing dairy reforms
Raw Milk Purchasing Rules	Yes	Yes	Yes	Consistency of the legal system Limited innovation
Post-crisis changes in the 2009 Food Safety Law	No	No	Yes	Problem salience

I = initiated; A = accelerated; CR = crisis responsiveness.

The first driving force of post-crisis legal change was problem salience and in particular the severity of harm (i.e. impact) and the scope of the crisis (i.e. superlativeness), which undermined government credibility and consequently threatened social stability. Crisis salience further increased because it reinforced pre-existing concerns over food safety. As shown in figure 5-6, food safety was a growing concern in the years preceding the melamine crisis. The figure shows the number of newspaper articles and academic journal articles published in the period 2000 to 2018. Media attention peaked in 2007, whereas scholarly attention continued to grow and peaked in 2015. Growing public concern over food safety is also evidenced by a 2007 survey in which 61% of polled people opined that food safety was either a very big (12%) or moderately big (49%) problem (Kohut, Wike, Carriere-Kretschmer, Menasce Horowitz, & Holzgart, 2008). Moreover, the crisis was not an isolated case, but an indicator of a widespread issue. Melamine was detected not just in Sanlu infant formula, but in other brands and products as well, both in China and abroad. And finally, the crisis could easily be linked to similar events. In fact, this is what happened in the very first article about the unsafe Sanlu milk powder (Jian, 2008a), although this type of framing was soon banned (Lei & Zhou, 2015), which signaled that the Chinese state was aware of the risks of linking the crisis to other events.

This kind of accumulation of problems that precedes post-crisis legal change is consistent with crisis-change literature, which argues that a crisis by itself typically does not carry sufficient weight to generate change and that recurrent crises are more likely to lead to change (Deverell, 2015; Kingdon, 2014, pp. 98–100).

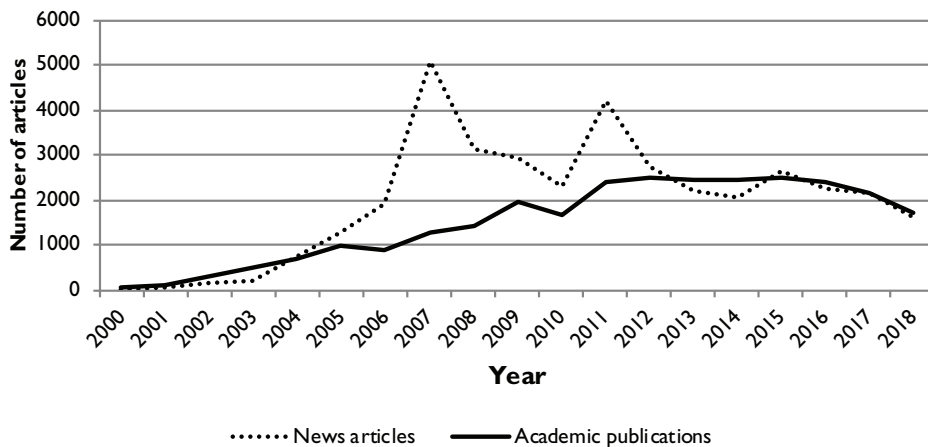


Figure 5-6. News Articles and Academic Publications on 'Food Safety', 2000–2018

Data source: China Core Newspapers Database and CNKI.

Notably, although there was consensus about the seriousness of the crisis, central level government leaders have never publicly acknowledged the role of existing policies in the crisis, but blamed the crisis on criminal behavior (i.e. adding melamine to milk) and on local governments (Lei & Zhou, 2015). After news media scooped the crisis, Chinese officials immediately and publicly acknowledged the problem and the severity of the situation, referring to it as a “major food safety accident.” Moreover, the State Council, China’s highest administrative body, launched a level I response. This attitude is consistent with crisis literature, which argues that major crises leave little space for denial and that blame diffusion is likely if the crisis is perceived as a threat (Boin et al., 2009).

The second driving force of post-crisis legal change was a favorable political climate in the sense that there was a negative national mood regarding food safety, as perceived by lawmakers. The latter were well aware of public concern over food safety, which is evidenced by the many references to ‘the people’ during the making of the Food Safety Law, even prior to the crisis. The fact that the Food Safety Law was in the making at the time the crisis broke, indicates that the topic was already a top priority for lawmakers.

Although literature (Baumgartner & Jones, 2009; Birkland, 2006; Kingdon, 2014, pp. 145–164) shows that other aspects of the political climate are also important in the crisis-change process, including events in government (e.g., change of staff or changes in the administrative structure), organized political forces, and the extent of polarization, I did not find evidence of these in the melamine milk powder crisis. This does not mean that these factors did not play a role, but

rather points towards data collection obstacles. Whereas studies of western democracies can rely on detailed records of the lawmaking process including agendas, list of participants, transcripts of hearings, and committee reports, such data is not available in the Chinese context. As pointed out in chapter 2, this is not a surprise, but a characteristic inherent to China's authoritarian system, which suppresses signs of internal division and lacks transparency. The result of this is that it is very difficult, if not impossible, to get a comprehensive picture of China's political climate, especially in terms of advocacy coalitions, which are deemed key in understanding post-crisis policy change (Birkland, 1998, 2006; Hansén, 2007; Nohrstedt, 2007, 2010). This is also evidenced by the lack of studies that apply the advocacy coalition framework to China (Ingold, Nohrstedt, & Weible, 2014), which is striking considering the flourishing body of literature on the framework.

A final driving force that is considered key in post-crisis policy change is the availability of a feasible solution, but surprisingly, I found that this was not a necessary condition for legal change after the melamine milk powder crisis. While the abolishment of the Inspection Exemption Measures and the post-crisis changes in the Food Safety Law largely relied on previously proposed solutions, this was not the case for the Dairy Quality and Safety Regulations and the Raw Milk Purchasing Rules. The central government had previously and repeatedly expressed a desire for regulatory reform of the dairy industry, but no specific legislative projects had been mentioned publicly prior to the crisis (Ministry of Agriculture, 2006; People's Daily Online, 2008; State Council, 2007). Yet, the State Council and Ministry of Agriculture passed the Dairy Quality Regulations and Raw Milk Purchasing Rules shortly after the crisis. New solutions were thus developed rapidly after the crisis, which is different from Birkland's (2006) finding that post-crisis policy change is often based on the reuse of existing ideas, rather than the development of new ideas. One explanation for the rapid development of the new dairy regulations and rules is that, at that time, it was not mandatory for the State Council and departments to solicit public comments, meaning that the drafting process could be very short.⁵⁹ Moreover, there was a general consensus amongst bureaucrats and industry that there was a need for dairy legislation. And finally, there was (and is) a general lack of transparency in the process of making regulation and rules in China, especially prior to the revision of the Legislation Law in 2015. This means that the State Council and ministries could easily move forward without being slowed down by a general discussion about its substance.

This finding raises questions about the role of the policy stream in the multiple streams framework, in particular regarding the maturity of policy solutions. In other words, how mature does a solution need to be when a policy window opens? Does a general consensus about the need for change suffice or is there a necessity for a certain level of maturity? These are vital questions that need to be answered in order to draw conclusions about the relevance of the multiple streams framework for post-crisis legal change in China. Chapter 3 argued that lawmaking in China is typically a long process characterized by bargaining among a range of state actors, but perhaps crises are an exception to this general trend and allow this process to get overruled by a small group of elites. Additional research that examines other post-crisis lawmaking processes in China is needed to answer the questions raised here.

59 Article 18 of the 2001 Regulations for Administrative Rules (行政法规制定程序条例 *xingzheng fagui zhiding chengxu tiaoli*) stipulates that the State Council Legislative Affairs Office (LAO) solicits public comments for "important" regulations.

A final aspect of the crisis-change literature that was not visible in the melamine crisis is the role of policy entrepreneurs, i.e. individuals who invest time and other resources to push their preferred policy solutions and who couple solutions to problems and politics (Kingdon, 2014). Rather than pushed forward by a specific individual, evidence presented in this chapter suggests a central role of the State Council, which approved—or perhaps even requested—the abolishment of the Inspection Exemption Measures and passed the Dairy Quality Regulations that in turn forced the Ministry of Agriculture to formulate and issue the Raw Milk Purchasing Rules. Likewise, there is no evidence of a policy entrepreneur in the making of the Food Safety Law, which is not surprising considering that by the time the crisis broke, the most controversial issues, including the change from Food Hygiene Law to Food Safety Law, had already been resolved. Of course, it is possible that there was a policy entrepreneur in each of these four legislative processes, but, as discussed above, data about internal processes is extremely limited and so is accessibility to top bureaucrats for interviews.

5.4.5 The Nature of Post-Crisis Legal Change

The melamine milk crisis was followed by substantial legal change. First of all, change was substantial in the sense that the abolishment of the Inspection Exemption Measures brought all food companies back under government control and the Dairy Regulations and Raw Milk Purchasing Rules brought the dairy industry under regulatory control. In addition to the handful of post-crisis laws that I have examined in this chapter, China has also passed new rules for (imported) infant formula, which is very likely to be a direct response to the crisis.

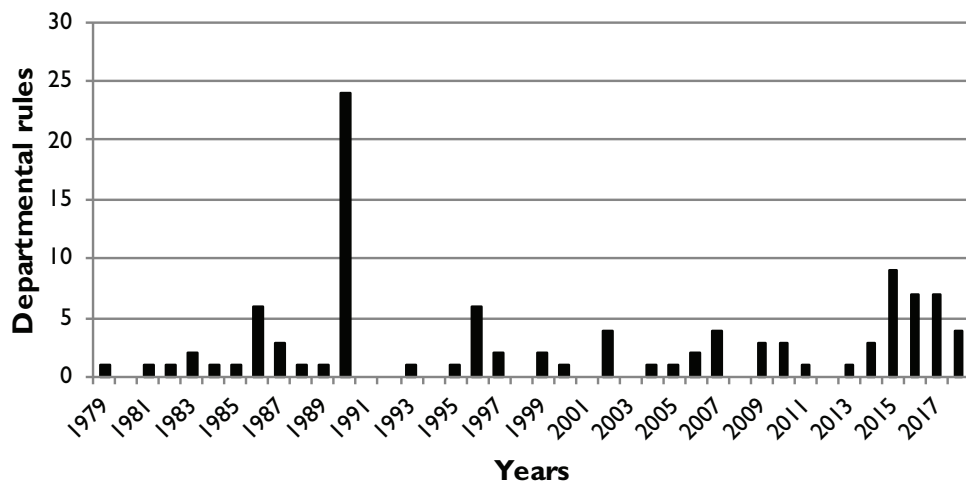


Figure 5-7. Departmental Rules on Food Hygiene Passed During 1979–2018

Data source: Beida Fabao (www.pkulaw.cn).

The crisis was followed by an increase in food safety rules, but it is difficult to pinpoint the exact role of the crisis in this overall development of food safety legislation, because the crisis coincided with the new Food Safety Law, which in itself could also have been responsible for the

new rules. As shown in figure 5-7, 15 departmental rules in the database category ‘food hygiene’ (食品卫生) were passed in the decade preceding the crisis compared to 38 in the decade following the crisis. However, given that the issue of food safety was already on the legislative agenda at the time the crisis hit, it is possible that the bulk of these rules are a direct result of the Food Safety Law (which was not crisis-induced). More research is needed to better understand this regulatory development and its driving forces.

Secondly, post-crisis legal change was substantial in the sense that it resulted in three new developments that were directly initiated and accelerated by the crisis: the abolishment of the Inspection Exemption Measures, the Dairy Quality Regulations, and the Raw Milk Purchasing Rules. If we translate this into the change index introduced in chapter 4, this means three times a score of 100 compared to a change index of 77 for the Food Safety Law, the substance of which was only partially influenced by the crisis. Based on these numbers, it is reasonable to argue that this goes beyond incremental change.

Thirdly, although the significance of legal change is not easily captured in a number, my qualitative analysis of the substance of post-crisis law also points towards meaningful change. The Dairy Quality Regulations and Raw Milk Purchasing Rules introduce new regulatory tools such as the National Dairy Industry Development Plan, mandatory record keeping, a permit system for purchasing raw milk, and include specific articles on products for infants. Moreover, it was no longer possible to exempt food products from inspection. In addition, crisis-induced change to the draft Food Safety Law included liability for advertising substandard products, a ban on exempting products from inspection, and stricter rules for risk monitoring and assessment.

5.4.6 Crisis-Learning

All four cases of post-crisis legal change examined in this chapter score positive on problem-solving potential, i.e. the potential of post-crisis law to mitigate the problems exposed by a crisis, albeit to varying degrees. The abolishment of the Inspection Exemption Measures meant that Sanlu and other food companies were brought back under government inspection. As mentioned before, although inspection by itself is not sufficient to ensure food safety, periodical inspection is more likely to prevent food safety problems than a complete absence of inspection. The Dairy Quality and Safety Regulations cover all major links of the dairy industry and bring milk stations and milk purchasing—the weak links in the crisis—under regulatory control. These Regulations also signal that there is high level political support for dairy industry reforms. The Raw Milk Purchasing Stations support the implementation of the Regulations and contribute to the standardization and reform of the dairy industry. Although only 2 out of the 14 post-crisis changes in the draft Food Safety Law score positive on problem-solving potential, as a whole, the law has potential to decrease the overall risk of food safety incidents because it initiated the revision of food safety standards (including for dairy products) and initiated a reform of food additives supervision, amongst other things.

Table 5-17. Types of Learning from the Melamine Crisis as Reflected in Post-Crisis Law

Legal change	CR	Problem-solving potential	Type of learning
Inspection Exemption Measures abolition	Yes	Yes: By no longer exempting Sanlu and other dairy companies, dairy products subject to testing, thus decreasing the risk of adulteration.	Learning
Dairy Quality and Safety Regulations	Yes	Yes: High level political attention Covers all major links of the dairy industry Milk stations and purchasing under regulatory control Formal starting point for dairy industry reforms Most penalties for noncompliant behavior are relatively strict	Learning
		No: Some key rules already existed Some penalties for issues central to the crisis surprisingly weak Unclear position in legal hierarchy	Rhetoric learning
Raw Milk Purchasing Rules	Yes	Yes: Brings raw milk production and purchasing under regulatory control Contributes to standardization of the dairy industry Reinforces ongoing dairy reforms More details for implementation Regulations	Learning
Post-crisis changes in the 2009 Food Safety Law	Yes	No: Only 2 out of 14 post-crisis changes in draft law solved issues exposed by the crisis: food advertising and inspection exemption Many factors underlying the crisis remained unsolved	Rhetoric learning

CR = crisis responsiveness.

Although non-incremental change does not automatically mean that lessons have been learned, as summarized in table 5-17, the overall trend is one of learning. As discussed in chapter 4, I distinguish four types of learning: learning, rhetoric learning, coincidental learning, and opportunistic change. A total of 5 out of 14 post-crisis changes to the draft Food Safety Law respond to the crisis, but only 2 out 14 of the changes have problem-solving potential, meaning that most of the changes do not solve the actual problems exposed by the crisis. The Dairy Quality Regulations show signs of both rhetoric and real learning, because their position in the legal

hierarchy is unclear, because some sanctions for issues central to the crisis are weak, and because some key rules are duplications of existing provisions in other laws. At the same time, these Regulations also show signs of real learning because they bring the dairy industry under regulatory control and because most penalties for noncompliance are relatively strict. Likewise, I argue that the Raw Milk Purchasing Rules and the abolishment of the Inspection Exemption Measures are instances of learning, because they score positive on both crisis responsiveness and problem-solving potential.

However, the extent and depth of learning is insufficient to prevent similar crises from happening again, because not all issues underlying the crisis have been addressed and because sanctions remain relatively weak. Unaddressed issues include unclear division of tasks for government agencies, tort claims in case of bankruptcy, amongst other things. An illustration of a weak sanction is article 59 of the Dairy Quality Regulations, which stipulates that failure to report a food safety accident to the government is punished with an order to correct and a warning or, if the consequences are severe, revocation of the company's permits. Another example is article 58 in the Dairy Quality Regulations, which stipulates "severe punishment" for adding substances to infant formula, without specifying what this means.

5.5 Conclusion

This chapter examined legal change after the melamine milk powder crisis by asking the question: to what extent and under which conditions did the melamine milk powder crisis lead to legal change in China?

Especially striking is the role of the Chinese government in the emergence of this crisis. Its focus on maintaining social stability created a crisis that led to the opposite effect of social *instability*. In preparation for the Beijing Olympics of August 2008, media censorship was tightened and food safety, an already politically sensitive topic, was explicitly off limits. The situation was exacerbated by the powerful position of the dairy industry. Dairy company Sanlu had an aggressive PR strategy that silenced any consumer complaints.

Because of this strict state and corporate censorship, news media were not able to report that infant milk powder was sickening children until after the Beijing Olympics, about nine months after parents had first filed complaints.

The reason that the issue eventually reached the media agenda was the irresponsiveness of local and central governments combined with the accumulation of cases across the country. Initially, journalists started to report cases of kidney stones in infants because it is an unusual medical condition and because it affected 'innocent babies'. Once they discovered similar cases across the country, there was an urgency to bring the issue to the attention of parents in order to prevent even more cases. The journalist who eventually scooped the story was furthermore motivated by his previous experience of the Fuyang crisis, in which a dozen babies died due to substandard milk powder. In order to desensitize the story, the journalist did not criticize the government and relied on extensive fact checking and literal quotations.

The case study showed that media attention sparked high level political attention, which was further motivated by concerns over social instability. In addition, parents and lawyers started to jointly explore ways to claim compensation. At the same time, the nature of the crisis aggravated

as melamine was detected in more and more products, both domestically and abroad.

The crisis induced at least three legal changes: the abolishment of the Inspection Exemption Measures, the 2008 Dairy Quality and Safety Regulations, and the 2008 Raw Milk Purchasing Rules. The Inspection Exemption Measures had been heavily criticized for years prior to the crisis, but it is unlikely that they would have been abolished at this time if it was not for the Sanlu crisis. Similarly, while dairy industry reforms were already under way, it is unlikely that the Dairy Regulations and Raw Milk Purchasing Rules would have been passed at this time in the absence of the crisis. However, contrary to popular belief, the role of the crisis in the 2009 Food Safety Law was limited, because the draft law was already in a mature state when the crisis broke.

The main driving forces of post-crisis legal change were crisis salience, long-standing quality and safety problems in the dairy industry, high level political support, and ongoing dairy industry reforms. Especially striking is the speed with which legal change came about. Although there was a pre-existing consensus about the need of dairy industry reform, there were no concrete drafts when the crisis broke. The State Council, AQSIQ, and Ministry of Agriculture move unusually fast.

Despite the fact that post-crisis learning is considered difficult, this case study shows that lessons have been learned. Evidence of this is, first of all, the ban on inspection exemption which was directly related to the crisis as infant milk powder from a range of companies, including Sanlu, enjoyed exemption status. Secondly, post-crisis legal change was a turning point for the dairy industry, which was mostly unregulated until the crisis.

Nevertheless, the depth and extent of learning was insufficient to prevent similar problems from happening again. In fact, melamine was again detected in milk powder in 2009 and 2010, in places across the country. Moreover, in 2011, three infants died and 39 people were hospitalized in Gansu province after drinking milk that contained nitrite. That same year, 251 pupils fell ill in Shaanxi province after drinking milk.

Because food safety incidents kept occurring, the Food Safety Law was amended in 2013, which resulted in the “harshest Food Safety Law in China’s history.” In parallel, additional food and dairy safety regulation has been developed, including a new registration system for infant formula, which aims to greatly reduce the number of brands, presumably making law enforcement easier. The melamine crisis thus had a long shadow on legislation and led to several episodes of change and learning.

6 Huangpu River Pork Soup: Legal Change After Dead Pigs Crisis

6.1 Introduction

In March 2013, decomposing and smelling dead pigs appeared floating in China's Huangpu River, which is an important drinking water source of Shanghai city. In subsequent weeks, government authorities dredged more than ten thousand pig carcasses from the river. The carcasses not only raised questions about water quality, epidemic outbreaks, and food safety, but also gave rise to heavy criticism of various levels of government.

The incident was only the tip of an iceberg: the illegal improper disposal of dead animals is widespread in China. Experts have estimated that the majority of dead livestock ends up in the human food chain, rather than being buried or otherwise properly disposed of (CCTV, 2004; G. Jiang, 2007; P. Li, 2009; H. Xie & He, 2013). Using dead animals in food products is problematic because it may lead to microbial contamination, i.e. food carrying disease-causing bacteria, viruses, yeasts, molds, and parasites, which is the main source of foodborne illnesses (Alcorn & Ouyang, 2012; Calvin et al., 2006; J. Xue & Zhang, 2013).

In addition to exposing a widespread problem with potentially serious health repercussions, this case is especially interesting because it shows how well-intended government policy can actually create a crisis. Although this has not been officially confirmed, news media, including state television CCTV, reported that a crack-down on illegal trade in animal carcasses for food production was the reason that farmers discarded their dead livestock in waterways and elsewhere, rather than selling it to food producers (CCTV, 2013c). Existing government standards for processing carcasses were not followed due to lack of treatment facilities and high costs, amongst other things (L. Wu, Xu, & Wang, 2016).

This chapter examines the Huangpu River dead pigs crisis with the aim of identifying, explaining, and assessing post-event legal change. It shows that the crisis accelerated the making of new administrative regulations on livestock farming pollution, which includes rules about the management of dead animals. The scope, impact, and availability of a non-sensitive frame put the issue on the media agenda. Because the crisis coincided with the annual meeting of the National People's Congress in Beijing, it quickly reached the national level institutional agenda. The most important driving force for post-event legal change was the availability of a mature draft of the Livestock Pollution Regulations, which were passed by the State Council in October 2013.

The chapter is structured as following. The first part examines the unfolding of the crisis, which is based on the analytical framework introduced in chapter 2. The second part analyzes post-crisis law. The third part discusses the implications of this case study for existing literature about crisis, policy change, and law in China.

6.2 Unfolding of the Crisis

6.2.1 Citizens Report Dead Pigs in Local Rivers

On 4 March 2013, an internet user in Pinghu in Jiaxing shared a message on Weibo—the Chinese equivalent of Twitter—saying that there are approximately 50 dead pigs floating in a particular stretch of a local river and asked the local government to look into it (Da Zu Hu Yong, 2013). The person tagged a dozen local media accounts as well as the local environmental protection government office. Both responded within just a few hours, with the latter saying that “we have already notified staff members to go to the site to check and we have already reported the situation to the relevant department” (Pinghu EPB, 2013). The next day, the local newspaper Jiaxing Daily published a story about it (Jiaying Hu, 2013).

From 5 March, the government of downstream Songjiang district in Shanghai started to receive complaints from citizens about dead pigs in a local creek. In fact, the situation was simultaneously reported by a local company that was in charge of keeping water ways clean. The government responded by intensifying clean up efforts (W. Shen & Hu, 2013a).

On March 7, an internet user in downstream Songjiang district in Shanghai shared pictures of dead pigs on Weibo saying:

This is the water we drink! The Henglaojing creek—a section of the Huangpu River—is a level 1 water source protection area. Everywhere in the river you can see animal carcasses. It smells in the vicinity. Not sure what the relevant government departments are doing. This is not the first or second time. The relevant departments are always indifferent.
(Shaolinsi de Zhu, 2013)

This Weibo user had also tagged local news media, including the Shanghai newspaper Xinmin Evening News (新民晚报 *Xinmin Wanbao*), which subsequently published a story about the dead pigs online on March 8 (CCTV, 2013b; W. Shen & Hu, 2013b, 2013a; Zuo & Ren, 2013).

Although the Songjiang district government did acknowledge the problem by organizing a team of sanitation workers to clean up the river, it stated that the quality of the water—this part of the river is a drinking water source of Shanghai city—was not affected (W. Shen & Hu, 2013b, 2013a; Songjiang People’s Government, 2013). This was received with suspicion because some of the animals had started to decompose, which led to a “disgusting stench” (Bu, Hu, & Li, 2013).

Because the number of dead pigs grew rapidly, the issue escalated from the district government to the Shanghai city government. By March 9, nearly one thousand pigs had been dredged in Songjiang district. The Shanghai government informed residents through its website about the ongoing dredging of dead pigs. It identified Jiaxing city in neighboring Zhejiang province as the source of the animals (Bu et al., 2013; Shanghai government, 2013b; L. Ying & Xue, 2013).

On March 9, state press agency Xinhua picked up the story and the story was subsequently covered by national news media (Y. Yao & Li, 2013). It also published the story in English (Xinhua, 2013b), making it accessible to the rest of the world. Figure 6-1 shows the volume of online news articles on dead pigs (死猪 *sizhu*). Online news media attention peaked on March 13, which coincided with state censorship instructions, discussed in detail below.

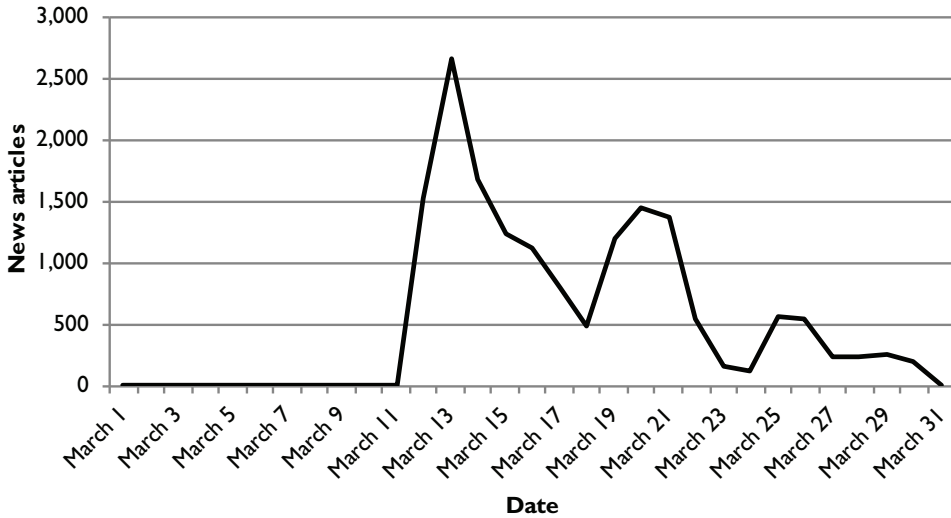


Figure 6-1. Volume of Online News on Dead Pigs, March 2013

Data source: Baidu Index.

6.2.2 Local Institutional Response: Downplaying and Blaming

Although the number of dredged pigs continued to increase, the Shanghai government repeatedly stated that drinking water was safe (Shanghai government, 2013a, 2013c, Shanghai Government Information Office, 2013b, 2013a, 2013c). The affected area supplied 22% of Shanghai's drinking water (Shanghai government, 2013a). The Shanghai Agricultural Commission announced that it had detected the porcine circovirus in samples taken from the pig carcasses, but that this virus poses no threat to human beings (Shanghai Municipal Agricultural Commission, 2013). Although the Songjiang Water Bureau had launched an emergency response, it stated that water was safe. It argued that the water was taken from the middle of the river, not from the sides, where most pigs were floating; that most pig carcasses are still intact, not ruptured; and that water was drawn from a large volume of water (Shanghai government, 2013d). This soundness of this line of reasoning was later confirmed by an anonymous agriculture expert who compared the situation to dead houseflies floating in a swimming pool (CCTV, 2013b).

However, the government's claim that drinking water was unaffected was met with substantial skepticism. A Xinhua reporter asked the Shanghai Water Bureau for clarification and wondered how reliable the water quality test results were considering the speed with which they had been conducted. In a Weibo message, the journalist requested publication of the test results (Yang Liu, 2013). Citizens expressed similar concerns over water safety. To illustrate, one internet user sampled and tested the water, the results of which were widely spread on social media and even discussed by news media. Although this experiment was in turn criticized for low reliability (Y. Zhou, 2013), there was a general feeling of distrust with regard to the statements about water quality by the Shanghai government.

Early on, the Shanghai government stated that the pigs originated from Jiaxing in neighboring Zhejiang province (Shanghai Government Information Office, 2013a; L. Ying & Xue, 2013). This conclusion was based on an analysis of fourteen ear tags that had been taken from some of the carcasses (Jiaxing Agriculture and Economy Bureau, 2013; L. Ying & Xue, 2013). Most of the pigs were either not tagged or too rotten to be identified (F. Li, 2013).

However, Jiaxing officials stated on multiple occasions that not all of the dead pigs originated from Jiaxing and attempted to normalize the situation. Officials argued that, given a mortality rate of 3–10% (CCTV, 2013a; F. Li, 2013) and considering that Jiaxing raises more than 7 million pigs per year, Jiaxing has 210,000–700,000 dead animals per year (Jiaxing Agriculture and Economy Bureau, 2013; F. Li, 2013). If conditions are bad, the mortality rate can get as high as 20%, meaning 1.4 million dead animals per year (F. Li, 2013). Therefore, it was argued that the *number* of dead pigs was nothing out of the ordinary. Although the vice-chief of the Jiaxing Animal Husbandry and Veterinarian Bureau argued that the dead pigs did not necessarily come from Jiaxing, because pigs are tagged at an early age but can subsequently be raised elsewhere, the official did acknowledge that local people sometimes did not properly dispose of dead pigs (CCTV, 2013a; Qingsheng Liu; Jiali Ma, 2013).

Based on a joint inspection by the provincial Animal Husbandry and Veterinarian Bureau and the Jiaxing Agricultural Bureau, Jiaxing officials furthermore denied the outbreak of an epidemic (Jiaxing Agriculture and Economy Bureau, 2013; F. Li, 2013; Jiali Ma, 2013). Xinhua, too, reported that there was “no major epidemic” (R. Li, 2013).

Still, not everyone was convinced of the absence of an epidemic. This feeling was reinforced by two news articles in the Jiaxing Daily, dated March 4 and March 6, that were widely referred to (Jian Wang, 2013; Jian Wang & Shen, 2013). The articles said that in Jiaxing’s Zhulin village, more than 18,000 pigs had died in the first two months of the year and “during the past few days, an average of 300 pigs have died per day.” According to a local waste management worker, the reason for such a large number of dead pigs is the high density of animals. In such an environment, bacteria can reproduce very fast (Jian Wang & Shen, 2013). Similarly, the Jiaxing Agriculture and Economy Bureau stated that since the beginning of the year, an estimated 70,000 pigs had died prematurely in Jiaxing due to a combination of farming conditions, farming technique, and unfavorable weather (Jiaxing Agriculture and Economy Bureau, 2013). An official from the provincial Animal Husbandry and Veterinarian Bureau argued that pigs can easily die from rainy and moist weather (F. Li, 2013). In an investigative television show later that month, a farmer from Jiaxing who had been traced down based on the ear tags collected from the pig carcasses, confirmed that the pigs had indeed died of cold (CCTV, 2013c).

6.2.3 National Level Response: Downplaying, Censorship, and Investigation

The crisis quickly escalated from the local level of Songjiang and Jiaxing to the regional level of Shanghai and Zhejiang province to the national ministerial level, which was in part facilitated by the fact that the crisis coincided with the annual plenary session of the National People’s Congress (NPC), China’s legislature, in Beijing. The press conferences organized within the context of this meeting provided opportunities for journalists to ask questions about the dead pigs in Shanghai.

During a press conference organized by the NPC press center on March 11 to answer questions about rural development, food production, and agriculture, vice-minister of agriculture Chen Xiaohua denied a large-scale epidemic, stating that:

it is normal to have some dead animals in pig farming, but you must keep the ratio as low as possible. This period of the year, spring, is a key period in the prevention of disease. Based on monitoring in the first half of the year, the situation with regard to animal disease prevention is steady, there is no major spread of disease. (D. Zhang, 2013)

The vice-minister also pointed out that the Ministry paid attention to media reports and had ordered the animal epidemic prevention authorities of Shanghai and Zhejiang province to investigate and deal with the issue. Chen further said that all dredged pig carcasses had been disposed of. With regard to measures to prevent animal epidemic outbreaks, Chen said:

This incident reflects aspects that require strengthening and change. At present that would, first of all, mean strengthening the education of farm households with regard to health in animal farming and environmental awareness. Secondly, we need a set of measures to encourage decontamination treatment. Thirdly, we need to strengthen animal disease prevention work so as to have few dead animals. Because our production and cultivation modes are relatively scattered and backwards, we cannot be sloppy in the issue of animal disease prevention. At the moment, this issue is one of the focus points of our ministry. The work is in full swing. (D. Zhang, 2013)

At the same time, the central government started to censor news about the event. As of March 12, the search term “pestilence” (瘟疫 *wenyi*) was blocked on Weibo (Henochoicz, 2013d). In addition, the search term “pig-throw Shanghai” (猪投上海 *zhu tou Shanghai*) was blocked on as of March 14 (Henochoicz, 2013f). Moreover, the Central Propaganda Department of the Communist Party instructed media to “cover the story concisely according to authoritative information. Do not sensationalize it. There are voices online seeking to draw this incident into the issue of genetically modified food. Do not report or comment on these voices” (Henochoicz, 2013c).

Censorship was also imposed after a question asked by Time Weekly reporter Song Yangbiao about the incineration of dead pigs. The minister of Civil Affairs was asked about the costs of the incineration of dead pigs at a NPC press conference on March 13. Both minister Li Ligu and vice-minister Dou Yupei gave completely irrelevant answers, discussing funeral services for human beings (State Council Information Office, 2013). In response to extensive online criticism, the next day, minister Li Ligu argued in an exclusive interview that “cremation does not apply to pigs. Dead pigs are decontaminated and buried.” The minister said that the public follows funeral fees and funeral management service closely. “To increase the public’s understanding,” Li argued, “I gave that kind of response” (Z. Lin, 2013). Song, the journalist who had asked the question, subsequently wrote on his weblog:

It's simple. I asked a question, Minister Li Liguo immediately understood the question, and I am satisfied with the answer. However, many official Weibo accounts of news media started to decode my question. Even more internet users started to again deconstruct my question, using a wide and strong perspective ... there are too many observers that misunderstand, including many of my colleagues, who hastily released news or microblogs while they do not have an accurate understanding of the Q&A situation. This creates disturbance and makes the leaders of the Ministry of Civil Affairs suffer pressure. (Y. Song, 2013)

It turned out that the Central Propaganda Department of the Communist Party had interfered in this controversy. It stated:

... a reporter for Time Weekly mentioned that people are saying the issue of a large number of dead pigs in Zhejiang province was caused by [farmers] being unable to pay cremation fees. The media are not to report or comment on the contents of this reporter's question; with regards to the answers provided by the Minister of Civil Affairs [during the press conference], do not touch upon the question asked by this reporter. (Henochowicz, 2013e)

Other parts of the central government also became involved, including the Ministry of Agriculture and the Ministry of Environmental Protection. The former issued a notice on “strengthening the supervision of the decontamination treatment of diseased animals.” It instructed local Animal Husbandry and Veterinary Bureaus to implement the following measures: (1) strengthen the control of and protection from animal epidemics; (2) supervise decontamination treatment of dead animals; (3) implement decontamination subsidy; and (4) strengthen organization and leadership, including disseminating information about the proper disposal of dead animals amongst farming households (Ministry of Agriculture, 2013a). The minister of environmental protection, Zhou Shengxian, stated during a NPC press conference that tap water in Shanghai met national standards. He furthermore said that the ministry of agriculture was leading an investigation into the event (Zhuang & Ma, 2013).

6.2.4 Societal Discontent

There was widespread discontent over government response to the crisis (Hongbing Li & Li, 2013; Yuan & Gascó, 2018). In addition to being concerned over drinking water safety, citizens were not satisfied with the explanation of why there were so many dead pigs. Some wondered whether an epidemic was being covered up (Hongbing Li & Li, 2013).

Discontent was expressed through critical comments and parodies on the internet. To illustrate, political satirist Liu Dongdong rewrote the text of the famous Chinese song “Shanghai beach” with phrases such as “meat soup rolling downstream,” “why can’t the black hand behind the scene not be found,” and “the truth is as an answer to a riddle” (D. Liu, 2013). In general, jokes involving “meat soup” abounded. For example, the highly popular former head of Google China shared the following fictional conversation between a Beijing and a Shanghai resident on Weibo. “We Beijingers are the most fortunate, we can open the window and have free cigarettes” to which the Shanghainese responded: “That’s nothing, we can enjoy pork soup simply by turning

on our taps!!” (A. Liu, 2013a). Various cartoons circulated on the internet, one of which shows a family sharing a huge bowl of soup, with the father commenting: “today’s soup is really delicious.” In response, the mother says: “of course, it has been cooked with more than one thousand dead pigs” (Henochowicz, 2013b). The parody that appeared to be most popular was a story called “Life of Pig”, which was based on the North-American novel and film “Life of Pi.” The story and film poster of “Life of Pig” describe how a Shanghai government spokesman provides reporters an explanation for the dead pigs in the Huangpu river. In the story, ten thousand pigs float down the Huangpu on banana leaves after a big storm. But just before the pigs reach Shanghai, “sitting on the bananas and floating down the river, battered by wind and frost, the pigs freeze to death.” The spokesman added “because they died of cold and not disease, they won’t impact the quality of the water in Shanghai. Everyone, please drink without worry” (Henochowicz, 2013g).

While most of the criticism took place on the internet, there were also several instances of offline protest, the most well-known of which is the silent walk called for by Shanghai-based poet Pan Ting. She announced the walk after her previous Weibo messages about the dead pig incident had been deleted by censors (RFA, 2013). She asked people to join “without any stage props, placards, slogans, etcetera” (RFA, 2013). However, soon after, not only was her Weibo message deleted, Pan Ting was also detained for several hours and her telephone was disconnected from the outside world. Afterwards, many Weibo users expressed support for the poet and condemned the censorship and harassment (A. Liu, 2013b; Xiong, 2013).

Another form of offline protest was expressed in the various government information requests filed in response to the crisis. A lawyer named Li Jun filed a request with the Environmental Protection Bureau of Songjiang district to make water monitoring data public. The application was rejected. The authorities argued that the application was not in accordance with local government information openness rules. Around the same time, a university student, a Weibo user named Xiao Lanzhou, and a Shanghai resident named Yin Li each filed similar requests with the Water Affairs Bureau of Shanghai city. In response to the university student, the Bureau shared some of the requested information, namely the names of the six water intakes and nine water treatment plants that were located in the affected area and selected water quality monitoring results. For the remaining water quality monitoring results, the student was referred to the Shanghai Environmental Protection Bureau. Xiao Lanzhou was simply advised to browse the internet to obtain water testing results. It is unclear what the outcome of the request by Yin Li was. Pictures and posts about the applications circulated on Weibo (Chinese Voices for Justice, 2013; Hongqiu Liu, 2013; H. Wei, 2013; Weiwei Xu, 2013; K. Zhou & Zhuang, 2013).

6.2.5 Official Investigation and Explanation

From March 13, the Shanghai government started to report a decline in the daily number of dead pigs dredged from the Huangpu River. It maintained that there were no abnormalities in terms of water quality (Jinshan Water Office, 2013; Shanghai government, 2013e).

At a March 15 press conference, Jiaxing’s deputy mayor provided several explanations for the dead pigs. First of all, a high density of small-scale pig farmers combined with poor farming management made that the mortality rate was generally high. In the first two and a half months of 2013 alone, an estimated 70,000 pigs had died in Jiaxing. Secondly, health and disease resistance

in piglets was insufficient to withstand the relatively low temperatures that persisted through the previous winter and recent spring, contributing to an even higher mortality rate. Thirdly, a small proportion of the pig farmers lacked legal awareness and consequently randomly discarded dead animals. Fourthly, judging from the dead pigs that were dredged from the river, many of the animals died more than two weeks ago, meaning that the time span in which the pigs were thrown into the river is large and that this was not a momentary outbreak (Hongbing Li & Li, 2013; Junxiong Yang, Liu, Li, & Li, 2013).

To handle the situation, the Ministry of Agriculture sent an investigation team to Zhejiang province and another one to Shanghai. The former arrived in Zhejiang on March 14 and was led by State Chief Veterinary Officer Yu Kangzhen. In a March 16 interview (Ministry of Agriculture, 2013b), Yu reported that the dead pigs had been timely dredged from the water and that the dead animals had gone through required decontamination processes. Yu said that the number of dredged dead pigs was declining and that the illegal disposal of dead pigs was under control. Furthermore, dead pigs had not entered the market and local water quality indices were normal.

Addressing concerns over an epidemic, the Chief Veterinary Officer explained that porcine circovirus and porcine epidemic diarrhea virus had been detected in samples taken from the dead pigs. However, both diseases are common in farmed pigs and therefore, it was not considered to be an epidemic. Yu stated that “at the moment we can be sure that there has not been a significant animal epidemic outbreak and that there is no zoonosis here.” Two reasons were provided for a high mortality rate in pigs, namely the high density of pigs and pig farming methods as well as unfavorable weather conditions. Yu further argued that while most dead pigs—the majority of them being piglets—were properly handled, some dead animals ended up in waterways “due to a lack of legal awareness amongst some farming households, bad habits, insufficient supervision, and insufficient decontamination capacity” (Ministry of Agriculture, 2013b).

6.2.6 Unofficial Explanation: Crackdown on Illegal Trade in Dead Pigs

The official explanation of the crisis left several issues unaddressed, including the speculation that the crisis was the result of a crackdown on illegal trade in dead pigs for meat production. As mentioned in the introduction, experts have estimated that the majority of dead livestock in China ends up in the human food chain, rather than being buried or otherwise properly disposed of (CCTV, 2004; G. Jiang, 2007; P. Li, 2009; H. Xie & He, 2013). This is undesirable because it can lead to microbial contamination and diseases.

When not illegally sold to meat traders, animal carcasses were often dumped in fields, forests, and waterways. In fact, not even two weeks after the pig carcasses appeared floating in the Huangpu River, about one thousand dead ducks were dredged from a river in Sichuan province (Y. Sun, 2013). Around the same time, more than 70 pig carcasses were dredged from a river in Hunan province (L. Fu, 2013) and hundreds of dead, rotten chicken were dredged from a river in Zhejiang province (X. Xu & Fang, 2013).

To address the problem of trade in dead animals, there had indeed been a major crackdown on such illegal behavior: in 2012 there were at least nine court cases in Jiaying involving the

purchasing, processing, and selling of dead pigs.⁶⁰ Although all of the 2012 court cases led to imprisonment, by far the biggest and most serious case was the one of De Guoquan and 16 others, who were found guilty of buying, butchering, and selling more than 77,000 dead pigs over a three year period, which had been sold for RMB 8.65 million. In November 2012, the court sentenced three persons to life imprisonment, ten persons to 5–12 years imprisonment, and the remaining four persons to 1.5–3.5 years imprisonment (Q. Tang, 2012). As a result of these court cases, and the last one in particular, “no one dared to openly collect dead pigs” (M. Lü, 2013).

Remarkably, this 2012 crackdown was the result of a media event. In March 2012, a CCTV television report revealed how police in Fujian province had arrested six gangs that together had sold 6,000 kilogram of such illegal ‘dead pig products’ per day (CCTV, 2012). In response to the subsequent public and media attention, the Ministry of Agriculture issued a notice in April 2012 urging Animal Husbandry and Veterinarian Bureaus across the country to strengthen supervision of dead animal disposal and to crack down on illegal processing of pigs that have died of illness (Ministry of Agriculture, 2012). In addition, in August 2012, the Supreme People’s Court published a so-called ‘model case’ (典型案例 *dianxing anli*) which stated that “processing and selling pork from pigs that have died of illness constitute a crime and it is appropriate to use rather serious criminal charges” (Supreme People’s Court, 2012). In this model case, two persons were sentenced to 11 years imprisonment and a fine of one million RMB for selling dead pig meat worth RMB 540,000 (Supreme People’s Court, 2012). Although model cases are not binding on judges, they indicate political priorities and provide substantive guidance for similar cases. This may be the reason why aforementioned De Guoquan was sentenced to life imprisonment.

While the crackdown on illegal trade in dead pigs is one part of the explanation, another issue was the sheer size of Jiaxing’s pig industry. Jiaxing officials were criticized for their explanation of the crisis. They argued that the *number* of dead pigs was nothing out of the ordinary. While this was met with skepticism, it is actually quite conceivable considering Jiaxing’s enormous pig population and the average mortality rates in the pig industry. Even in the Netherlands and Denmark, both of which are well-known for highly industrialized pig farming, with optimized breeding, feeding, and housing, the mortality rate from birth to slaughterhouse is between 13–20% (Jansen, 2016; Varkens in Nood, 2016). The 3–10% mortality rate mentioned by Jiaxing officials may thus even be an understatement.

At the same time, local capacity to handle the dead pigs was insufficient. Jiaxing’s almost 600 decontamination pits could not cope with the constant flow of large numbers of dead pigs (M. Lü, 2013; L. Wang & Weng, 2015). In general, treatment methods and facilities were inadequate, posing health and safety risks, which was known already before the Huangpu River dead pigs incident (Jiaxing City People’s Government, 2012; K. Wang, 2013).

Moreover, there were shortcomings in the decontamination treatment subsidy, which was launched by the Ministry of Agriculture in 2011 to encourage the proper disposal of dead animals. The subsidy consisted of RMB 80 for each dead pig (Ministry of Agriculture & Ministry of Finance, 2011). A key limitation was that only farms with at least 50 pigs were eligible to apply (Ministry of Agriculture & Ministry of Finance, 2011). Considering that 89% of Jiaxing farmers

60 See China Judgements Online: <http://wenshu.court.gov.cn>. The search term 死猪 (*sizhu*), in combination with the filters Zhejiang province and 2012, led to 13 results. Out of these, 9 were from Jiaxing. Search conducted on 16 October 2018.

had less than 50 animals (Junxiong Yang et al., 2013), only some of them could apply for the subsidy. Another key limitation was the level of the subsidy. In Jiaxing, dead pigs were sold for RMB 3–6 per kilogram (Y. Xue, 2012; J. Yan, 2012), which meant that it was more profitable to sell a dead pig than to apply for the RMB 80 subsidy. Hence, the subsidy was an insufficient incentive to change behavior.

Because of the enormous number of dead pigs and a lack of appropriate facilities, the carcasses were thrown into the river. This in itself was not a new phenomenon: Fishermen—retired because pollution from pig farming had killed all the fish—were regularly hired to collect dead pigs from waterways (M. Lü, 2013; Tan, 2013). However, this time the scale of discarded pigs in the rivers was much larger, which can be explained by a decreased trade in dead pigs as a result of the government crackdown.

To better estimate the impact of government crackdown on illegal trade in dead pigs, it is helpful to review the available, albeit limited, data. Experts estimate that, the majority of dead livestock in China ends up in the human food chain, rather than being buried or otherwise properly disposed of (CCTV, 2004, 2014; G. Jiang, 2007; P. Li, 2009; H. Xie & He, 2013). Moreover, the Jiaxing government has stated that 325,600 dead pigs were collected in the decontamination pits in 2012 (Junxiong Yang et al., 2013). Even if we assume a relatively low mortality rate of 10%, i.e. 700,000 dead pigs per year, this means that about half of the dead animals are not accounted for and end up elsewhere. It is likely that many of these unaccounted dead pigs previously ended up on dinner plates, but because of the deterrence of the recent court judgements, these pigs were now discarded in rivers. Although this line of argumentation has not been publicly confirmed, the Shanghai Municipal Agricultural Commission used this explanation during a hearing about environmental protection in the Shanghai People's Congress in December 2013 (Xin Li & Xiao, 2013).

While public inquiries and public investigation reports are commonplace in the aftermath of crises in western democracies (Alaszewski & Brown, 2012, pp. 120–126; Boin et al., 2017), this virtually never happens in China, and the Huangpu River dead pig incident is no exception. This means that many questions remain regarding drinking water safety, the cause of death, the number of death pigs, and handling of the situation by different governments (Xin Li & Xiao, 2013).

6.3 Post-Crisis Lawmaking

Several policy measures have been taken in response to the 2013 Huangpu River dead pigs crisis, but my main focus is on national level legal change, namely the passage of the Regulations on the Prevention of Pollution from Large-Scale Livestock Farming.

6.3.1 Regulations on Pollution Prevention from Large-Scale Livestock Farming

On 8 October 2013, the State Council passed the Regulations on Pollution Prevention from Large-Scale Livestock Farming (畜牧规模养殖污染防治条例 *xumu guimo yangzhi wuran fangzhi tiaoli*), which came into effect on 1 January 2014. Two articles of these regulations specifically address the treatment of dead farming animals. First of all, article 21 reads:

carcasses of livestock that died due to illness or due to unclear reasons. . . should be rendered harmless by burying, chemical treatment or burning according to relevant regulations . . . They must not be disposed of as one pleases. (State Council, 2013, article 21)

Moreover, article 33 states:

The state encourages and supports the treatment of infected livestock and carcasses of livestock that died due to illness or due to unclear reasons, rendering these harmless. Furthermore, the state provides appropriate subsidies for treatment fees and cultivation losses according to relevant rules. (State Council, 2013, article 33)

This section explores the relationship between these Regulations and the Huangpu River dead pigs crisis. As discussed in chapter 1, crises can shape law in two ways. First of all, crisis can prompt new legislation or accelerate dormant legislative processes. Secondly, crises can have a bearing on the substance of a particular law. This section analyzes the legislative process and the nature of the regulations in order to draw conclusions about the interaction between the crisis and the Regulations.

6.3.2 Regulations Initiated by H5N1 Influenza in 2004

The legislative history of the Regulations starts at least as early as February 2004, when the State Council expressed the need for these Regulations (Y. Kong, 2014) in response to a different crisis: H5N1 avian influenza. The H5N1 virus was first detected in a farmed goose in southern China's Guangdong province in 1996. It was subsequently discovered on farms and markets in Hong Kong. In 1997, the first human infection in the world was detected in Hong Kong. A total of 18 people were infected, of whom 6 died.

In January 2004, the World Health Organization emphasized the great threat the H5N1 virus posed to livestock and humans:

The simultaneous occurrence in several countries of large epidemics of highly pathogenic H5N1 influenza in domestic poultry is historically unprecedented. The present situation may grow worse. In bird populations, the disease is highly contagious and rapidly fatal, and spreads easily from farm to farm... infected birds can shed large amounts of the virus in their feces. The virus can survive for long periods in the tissues and feces of diseased birds and in water, especially when temperatures are low. (WHO, 2004)

The threat of a very deadly pandemic (WHO, 2004) prompted China to take the matter very seriously. In February 2004, the virus was detected in 16 Chinese provinces, which led to the culling of nine million poultry birds (WHO, 2011).

In response to these developments, the State Council expressed the desire to issue regulations on livestock farming pollution prevention as soon as possible (Zhen, 2004). At that time, China did not have laws (法律 *falü*) or national level administrative rules (行政法规 *xingzheng fagui*) that covered both agriculture and environmental protection. Pollution prevention from livestock farming had thus far relied on a set of departmental rules (部门规章 *bumen guizhang*) issued by the State Environmental Protection Administration (SEPA) in 2001, titled 'Rules for Livestock

Farming Pollution Prevention and Control' and two sets of related standards, namely one for discharge of pollutants in livestock and poultry farming and one for pollution prevention in livestock and poultry farming (SEPA, 2001c, 2001b, 2001a; X. Wang, 2013).⁶¹ However, a major limitation of these rules was that they only applied to farms with more than 500 pigs (article 19), whereas the majority of pigs was raised on much smaller farms. Moreover, as one commentator said, "the effectiveness of the departmental rules is limited. They are unable to further strengthen environmental supervision. They are also unable to negotiate more strength and to launch more governmental measures that raise the level of livestock farming waste management" (X. Wang, 2013). Moreover, China's society and economy required a higher level of environmental protection. In fact, "environmental quality has already become a focal point for the entire society" (Zhen, 2004).

A first draft (初稿 *chugao*) of the Regulations was produced by the Ministry of Agriculture (MoA) and the SEPA sometime around 2004 (Y. Kong, 2014; Zhen, 2004). Unfortunately, this first draft is not publicly available. Therefore it is not clear when exactly the first draft was finished.

However, the legislative process would take many more years. The Regulations were included in SEPA's 11th five-year legislative plan (2006–2010) (SEPA, 2005). They also appeared in the annual legislative work plan of the State Council in 2007, 2008, 2009, and 2010 (State Council General Office, 2007a, 2008a, 2009, 2010a). Between early 2004 and January 2010, SEPA requested input from local agriculture and environmental protection bureaus as well as from industry several times and multiple conferences about the new regulations were organized (Y. Kong, 2014). In January 2010, the ministries finally submitted a draft to the State Council Legislative Affairs Office (Liping Chen, 2011; Y. Kong, 2014).

The urgency to pass livestock farming pollution regulations again became clear when MEP, MoA, and the State Statistics Bureau jointly released the results of the first national pollution survey in February 2010, which showed that pollution from agriculture was even larger than that from industry (Ministry of Environmental Protection, State Statistics Bureau, & Ministry of Agriculture, 2010). During a press conference about the survey, the Ministry of Agriculture said it would adopt measures to get agricultural pollution under control. The ministry's focal points included expanding biogas generation and promoting other methods that take advantage of livestock manure (State Council Information Office, 2010).

In March 2010, several dozen National People's Congress delegates subsequently proposed the acceleration of livestock pollution legislation because pollution from livestock farming increasingly threatened the healthy development of the industry and the environment. Specifically, the delegates proposed to draft a livestock farming pollution prevention *law* (C. Shen & Dou, 2011). The NPC Environment and Resource Protection Committee subsequently urged the Legislative Affairs Office to examine and amend the draft Regulations and as soon as possible submit it to the State Council for deliberation (C. Shen & Dou, 2011). Between 2010 and early 2013, the Legislative Affairs Office convened ten legislative work meetings about the Regulations and solicited the opinions of ministries and committees, research institutions, and livestock farms (Y. Kong, 2014).

Based on the results of the national pollution survey, the Ministry of Environmental Protection

61 Note that the State Environmental Protection Administration (SEPA) was upgraded in 2008 to become the Ministry of Environmental Protection (MEP).

continued to advocate for reduction of livestock farming pollution through various activities and policy documents (Ministry of Environmental Protection, 2010; Yue Zhang, 2010). At a press conference on China's state of the environment in June 2011, the vice-minister of environmental protection mentioned that the department was striving to have the Regulations enacted before the end of the 12th five-year plan in 2015 (State Council Information Office, 2011).

Notably, although the Ministry of Environmental Protection initially was the main advocate for farming pollution regulation, the Ministry of Agriculture increasingly came on board too. The Ministry of Agriculture included drafting the Regulations in its 2010 and 2011 animal husbandry work plans (Ministry of Agriculture, 2010a, 2011). Moreover, MEP and MoA jointly issued a formal plan for livestock pollution prevention in 2012, which called for passing the Regulations as soon as possible (Ministry of Environmental Protection & Ministry of Agriculture, 2012).

Likewise, at the State Council level, attention for the problem of livestock farming pollution continued to increase, which is evidenced by it being mentioned in China's 12th five-year plan (Lagos & Zhang, 2011). Finally, in July 2012, the State Council Legislative Affairs Office invited the public to submit comments on a draft version (State Council Legislative Affairs Office, 2012).

Interestingly, politicians from Jiaxing—the alleged source of the dead pigs floating in the Huangpu River—supported the Regulations. In October 2012, delegates from Haining in Jiaxing put forward a proposal to strengthen agricultural pollution legislation. The proposal expressed dissatisfaction with the draft Regulations and instead suggested that the NPC-SC formulates a 'livestock farming pollution prevention law' (养殖污染防治法 *yangzhi wuran fangzhi fa*) as soon as possible. Moreover, it proposed that provincial level legislative organs promulgate local regulations (地方性法规 *difangxing fagui*) in line with local circumstances. With more than 100,000 farmers and 620,000 pigs, Haining had amongst the highest density of pigs in China, resulting in widespread environmental pollution. The delegates argued that existing regulation had failed to curb rampant environmental degradation caused by pig farming (L. Kong, 2013).

On 12 April 2013, a month after thousands of dead pigs were dredged from the Huangpu River, the State Council Legislative Affairs Office finally reviewed the draft Regulations (Y. Kong, 2014). On 8 October 2013, almost ten years after the Regulations were first discussed following the 2004 H5N1 avian influenza outbreak, the State Council Standing Committee passed the Regulations, which came into effect on 1 January 2014 (State Council General Office, 2013c).

Thus, although the Regulations were not initiated by the Huangpu River dead pigs crisis, it did accelerate the legislative process. In fact, vice-minister of agriculture Yu Kangzhen later stated that:

... the Huangpu River floating dead pigs incident sparked widespread societal attention. State Council leaders attached great importance to it, demanding to firmly take measures and improve related work. The Regulations on Pollution Prevention from Large-Scale Livestock Farming that come into force on 1 January 2014 clearly demand large-scale farms to carry out decontamination treatment for dead animals. (K. Yu, 2013)

6.3.3 Regulations Accelerated by Huangpu River Dead Pigs Crisis

The above reconstruction of the legislative process shows that the Regulations are the product of a rather extensive legislative process, which has been pushed forward by three major events: the H5N1 avian influenza in 2004, the publication of the national pollution survey in 2010, and the pig carcasses in Shanghai's Huangpu River in March 2013. This process is summarized in figure 6-2.

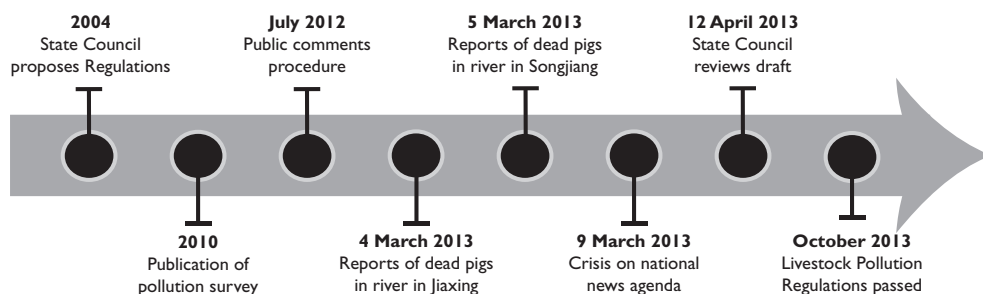


Figure 6-2. Timeline of the Making of the Livestock Pollution Regulations

Legislators did not explicitly refer to the Huangpu dead pig crisis in records of the legislative history, yet the crisis does appear to have shaped both the timing and the substance of the Regulations. It reinvigorated high level political attention to the problem of livestock pollution, which added to the trend of increased environmental awareness (Yuankai Tang, 2014; Xumu daji wang, 2014; Jie Yang, 2013). In November 2012, the National Congress of the Communist Party coined the concept ‘constructing a beautiful China’ (美丽中国 *meili Zhongguo*), referring to a more environmentally friendly road of development for the country (Jintao Hu, 2012). Likewise, premier Li Keqiang said during his 2013 World Economic Forum Summer Davos speech that China “must firmly walk the green development road and with iron fist will attack and bring under control pollution” (Xinhua, 2013e). Thus, at the time of the crisis, politicians were well aware of the need to reduce pollution and high-level Party leaders were committed to reduce pollution.

Considering the very serious public health threats from the widely acknowledged and widely spread problem of improper disposal of livestock waste, a key question is why it took a decade for the Regulations to be passed. Given multiple epidemic outbreaks emerged in the 2000s and the fact that China is a hotspot for the evolution of new diseases (Osterholm, 2005; Shortridge, 1982) one would have expected the Regulations to have moved faster through the legislative arena.

The answer lays in conflicting agendas of key stakeholders. The reconstruction of the legislative process above shows that the key players in developing the Regulations were the Ministry of Environmental Protection, the Ministry of Agriculture, and the State Council’s Legislative Affairs Office (LAO). MEP and MoA each have their own agenda’s. MoA promoted the development livestock farming, whereas MEP promoted restrictions on the largely unregulated, rapidly developing livestock sector. Unsurprisingly, MoA was not eager to work on legislation that puts pressure on farmers.

During the legislative process, the three events provided the MEP leverage to push the Regulations forward. For MoA, the national pollution survey was a turning point, as it was no

longer possible to deny the scale and severity of livestock pollution. It was also a tool for MoA to justify stricter regulation of livestock farming.

However, more research is required to understand the exact role of the LAO in this process, especially since MEP and MoA submitted a draft to the LAO as early as January 2010, but the Regulations were only passed in late 2013. Possibly the LAO was not satisfied with the draft and needed time to redraft and doing so together with both ministries could be a time consuming endeavor given conflicting agendas. Another explanation could be that LAO delayed the draft because it felt it would not be passed or not well-received or perhaps because there was resistance within the LAO or the State Council with regard to the Regulations.

6.3.4 The Nature of Post-Crisis Legal Change

To better understand the relationship between the Huangpu River dead pigs crisis and the Regulations, this section analyses the pre- and post- crisis version of the Regulations. This analysis is based on the draft for public comments dated 5 July 2012 (State Council Legislative Affairs Office, 2012) and the regulations as they were released on 11 November 2013 (State Council, 2013). To ensure a systematic and coherent analysis, Coglianese's (2010) framework for analyzing regulatory instruments as introduced in chapter 4 is used, which focuses on four aspects: target, regulator, commands, and consequences. This is preceded by a comparative analysis of the basic features of the pre- and post-crisis drafts.

Basic Features. The Regulations were jointly prepared by the Ministry of Agriculture (MoA) and the Ministry of Environmental Protection (MEP)—two ministries with conflicting agendas—and are therefore regarded a milestone in China's regulation of agricultural pollution (Y. Kong, 2014).

As shown in table 6-1, a key difference between the pre-crisis draft and the post-crisis Regulations is that the length of the liability section (containing consequences for non-compliance) has almost doubled. In general, the post-crisis Regulations were about 20% longer than the pre-crisis draft. A total of eight articles were added, of which one in the general principles and three in the legal liability section.

Table 6-1. Macro-Level Analysis of Pre- and Post-Crisis Regulations

Indicators	2012 draft Regulations	2013 Regulations
Total articles	36	44
Total characters	3,816	4,668
Characters per article	106	106
Chapters	6	6
General principle articles	7	8
Legal liability articles	4	7
Legal liability characters	532	1,008

Outcomes, Outputs, and Scope. The outcomes of the Regulations (article 1) cover both environmental protection and the development of the livestock sector. This is summarized in table 6-2. After the crisis, one more policy outcome was added, namely the promotion of decontamination treatment of livestock and poultry farming waste.

Table 6-2. Outcomes and Scope of Livestock Pollution Regulations Pre- and Post-Crisis

	2012 Draft Livestock Pollution Regulations	2013 Livestock Pollution Regulations
Outcomes	Prevent livestock and poultry farming pollution Promote comprehensive utilization of livestock and poultry farming waste Protect and improve the environment Safeguard public health Healthy and sustainable development of the animal husbandry industry	Prevent livestock and poultry farming pollution Promote comprehensive utilization of livestock and poultry farming waste Protect and improve the environment Safeguard public health Healthy and sustainable development of the animal husbandry industry Promote decontamination treatment of livestock and poultry farming waste
Scope	Livestock and poultry farms	Livestock and poultry farms Definition of livestock farm size determined by each province Pastoral farming excluded

The outputs (i.e. how the outcomes will be achieved) of the pre- and post-crisis Regulations are largely identical. The main difference is that the pre-crisis draft included “restricted areas” (article 11), which were not included in the post-crisis Regulations. Another difference is that the post-crisis Regulations provided more ways of policy support through financial incentives.

A major difference between the pre- and post-crisis draft of the Regulations is their scope: the 2012 draft applied to all livestock and poultry farms, whereas the post-crisis Regulations leave it up to the provinces to decide the size of farms subject to these Regulations (article 43). The application of the Regulations thus varies across the country.

To illustrate, Jiangsu and Zhejiang provinces define livestock farms or livestock areas as those having at least 200 pigs (Jiangsu Province People’s Government, 2018; Zhejiang People’s Government, 2015), Yunnan province uses a threshold of 200–300 pigs for livestock areas (Yunnan Agricultural Office, 2008), while Henan, Hunan, Shandong, and Sichuan—all top pork producing provinces—have a threshold of 250–300 pigs (Henan Province People’s Government, 2009; Hunan Province People’s Government, 2017; Shandong Animal Husbandry Office, 2017; Sichuan Province Agriculture Department, 2017).⁶²

This variation is important, because most pig farms in China are small-scale (Schneider, 2011; Hongjie Yu et al., 2014; Xiaohua Yu & Abler, 2014). Even the lowest threshold of 200 pigs still excludes most pig farms.

Commands, Regulators, and Targets. The Regulations focus on pollution prevention (articles 9–14) and the management and utilization of waste material (articles 15–25). The main targets are farms, agricultural government departments, and environmental protection government departments. The latter is the main regulator. All of this was largely the same before and after the

62 Note that Jiangsu, Zhejiang, and Yunnan province set the threshold for the number of animals on the farm (存栏 *cunlan*), while in Henan, Hunan, Shandong, and Sichuan provinces, the threshold is a production of 500 heads per year (出栏 *chulan*), which converts to approximately 250–300 pigs on farm.

crisis.

Both the pre- and post-crisis Regulations contain several new commands that were not yet covered by preexisting law. This includes the animal husbandry development plan⁶³ (article 9) and the animal husbandry pollution prevention plan (article 10). It also stipulates that farms should periodically report production and waste statistics to the environmental protection department (article 22) and reduce their volume of waste (article 14). The environmental protection department is required to report these statistics to the local farming and animal husbandry department (article 22).

However, other commands are not new, but are already featured in other pieces of legislation. To illustrate, the ban of farms from certain areas such as drinking water protected areas (article 11) is identical to article 40 of the Animal Husbandry Law (畜牧法 *xumufa*). Moreover, farms were already required to conduct an environmental impact assessment (MEP, 2008).⁶⁴ All of these commands were largely the same before and after the crisis.

Consequences. The Regulations include legal consequences for both government departments and for farms (articles 36–42). As is common in Chinese law, article 36 stipulates disciplinary action for officials that fail to implement the Regulations. If it involves a crime, the official is to be criminally prosecuted.

The remaining six articles focus on non-compliance by farmers and rely solely on administrative sanctions, and fines in particular. Fines range from maximal RMB 3,000 for failure to decontaminate infected livestock and waste to maximal RMB 500,000 for farm construction in a drinking water protected area. The Regulations also contain a section on policy support (articles 26–35).

It is important to note that local sanctions may be lower. The case of Zhejiang province is illustrative. Zhejiang was allegedly the source of the Huangpu River dead pigs incident. However, administrative fines in the provincial rules are lower than in the Regulations. The fine for farming in banned areas is RMB 1,000–5,000, which is just a fraction of the original RMB 30,000–500,000 fine. Similarly, the fine for improper discharge of animal waste is RMB 300–3,000, while the Regulations have a maximum fine of RMB 50,000 (Zhejiang People's Government, 2015). Thus, local governments do not necessarily stick to the discretionary boundaries set by the State Council.⁶⁵ In the case of Zhejiang, substantially lowering fines is a counterintuitive local adaptation considering the severe problems of livestock pollution and the relative high income levels in the province, but perhaps this was deemed necessary to reduce societal unrest and opposition.

6.3.5 Crisis Responsiveness

While the general structure is generally the same, there are a number of differences between the 2012 draft and 2013 final version of the Regulations that are directly relevant to the Huangpu crisis.

First of all, after the crisis, there was more emphasis on decontamination treatment of waste material, which is required for carcasses (article 21). Whereas decontamination treatment (无害

63 The animal husbandry development plan is mentioned in the 2005 Animal Husbandry Law (article 35), but it does not specify the target nor does it specify the content of such a plan.

64 In fact, an environmental impact assessment (EIA) is still only required for pig farms with a production of 5,000 heads per year, which equals about 2,500–3,000 pigs on farm (MEP, 2015).

65 See Van Rooij, 2006 on the translation of central level legislation to the local level.

化处理 *wuhaihua chuli*) was only mentioned 7 times in the pre-crisis draft, it is mentioned 17 times in the post-crisis draft. In fact, the advancement of such decontamination treatment is now included in the Regulations' objectives (article 1). It is also included in the scope of government support (article 7). Furthermore, environmental impact assessments must cover decontamination treatment (article 12).

Secondly, with regard to the treatment of carcasses in particular, article 13 now requires livestock farms to construct facilities for the treatment of animal carcasses. Also, article 19 adds livestock carcasses to the waste that must be timely collected, stored, and transported in order to avoid stench and leakages. Article 21 that requires decontamination treatment of carcasses now specifies types of such treatment, namely burying, chemical treatment, or burning.

Thirdly, the Regulations incorporated sanctions for non-compliance with the mandatory decontamination treatment of article 21. Article 42 stipulates that in case of non-compliance, "the farm will be ordered to decontaminate the waste. All costs of this must be borne by the violator, and a fine of maximal RMB 3,000 can be imposed by the animal hygiene supervision organization."

Fourthly and finally, in line with article 7, which outlines the scope of state support, two new articles about incentives and state support were added, namely articles 33 and 35. While the former stipulates state support for the collective decontamination treatment of infected livestock and carcasses, including subsidies for treatment costs and for loss of livestock, the latter stipulates incentives and support for livestock farmers who voluntarily construct decontamination waste facilities.

6.3.6 Problem-Solving Potential

The Regulations are ambitious compared with existing practices. Generally speaking, pollution from livestock farming has been rampant (Ministry of Environmental Protection & Ministry of Agriculture, 2012; State Council Information Office, 2010; Watts, 2010). An estimated 90% of scaled livestock farms have not done an environmental impact assessment and 80% has not invested in essential pollution control. In addition, many scaled farms were sited inappropriately. In 2010, an estimated 30–40% of scaled farms were located within 150 meter from residential water sources and 8–10% within just 50 meter. This not only led to severe environmental pollution, but also to disputes amongst local farms and residents (Y. Jiang, 2010).

While the Regulations thus respond to a long-time call for livestock pollution legislation, the question remains whether they have potential to solve the issues exposed by the Huangpu River dead pigs crisis. With regard to dead animals, the Regulations stipulate that: (1) livestock that have died from disease or from unclear reasons should be rendered harmless by burying, digestion, or burning (article 21); (2) carcasses must be timely handled in order to prevent smell and seepage (article 19); (3) farms must have functioning decontamination facilities for carcasses (article 13); (4) the state encourages and supports centralized decontamination treatment of livestock carcasses (article 33); and (5) the state provides appropriate subsidies for decontamination and livestock loss (article 33).

However, the main rules pertaining to dead animals are not new, but were already covered by preexisting, higher level legislation, but apparently to no or little avail. First of all, the 2007 Animal

Epidemic Prevention Law already forbade farmers to randomly discard dead animals and required them to handle carcasses according to ministerial rules (article 21). This law also included a RMB 3,000 fine for non-compliance (article 75). The Provisionary Dead Animals Management Rules, issued by the Ministry of Agriculture in 2005, require burying, digestion, and burning (Ministry of Agriculture, 2005). Secondly, the Regulations stipulate decontamination and livestock loss subsidies, but these subsidies already existed at the time of the crisis. The Regulations thus do not change anything in this respect, especially because there are no sanctions for failure to provide subsidies. Thirdly, the Animal Husbandry Law (articles 39.4 and 46) and Animal Epidemic Prevention Law (article 19.3) already required farms to have facilities for decontamination and comprehensive waste management.

Moreover, some of the rules pertaining to the handling of dead animals are toothless. To illustrate, the Regulations require timely management of dead livestock, but the word ‘timely’ is not defined, which means that compliance and enforcement is difficult. Also, there is no sanction for lack of timeliness. Likewise, the Regulations require the encouragement of centralized decontamination processes, which would make the local government directly responsible for collecting and processing carcasses. Most likely, China has been inspired by European countries, where such centralized collection systems are common (Gwyther, Williams, Golyshin, Edwards-Jones, & Jones, 2011; Oudejans, 2012). However, this is merely an expression of a desired direction rather than enforceable law given the lack of specified policy tools and sanctions. Also, although article 13 requires farms to have functioning decontamination facilities, including for handling of dead animals, the sanctions are more general and do not mention dead animal treatment facilities in particular.

The Regulations also contain a section on policy support (articles 26–35), but this lacks specification. For example, article 33 stipulates a state subsidy for decontamination treatment and for loss of livestock, yet does not specify the level of the subsidy and eligibility criteria, which is remarkable because several subsidies already existed, which could have been mentioned here. This included two different decontamination treatment subsidies of RMB 80 per dead animal (Ministry of Agriculture & Ministry of Finance, 2011; Ministry of Finance, 2007) and a diseased animals subsidy of RMB 500 per pig (Ministry of Finance, 2007). Moreover, some articles use the word ‘can’ (e.g., article 32). While this leaves local government discretion to adjust the Regulations to local circumstances, it also weakens the rights of farmers and diminishes central level control over the outcome.

That being said, the Regulations do offer some relevant innovations. Most significantly, the Regulations have become stricter regarding mandatory decontamination facilities or arrangements by stipulating that the local environmental protection government office orders the farm to stop production and mandates a fine of up to RMB 100,000 in case of non-compliance (article 39). This requirement is not new, but the sanction for non-compliance is.

Altogether, the problem-solving potential of the Regulations is limited with regard to the management of dead livestock. Some key articles are too weak while other key articles are not new, but were already included in existing, higher level law, but have failed to prevent the Huangpu River dead pigs incident from happening.

6.4 Discussion

This chapter examined the post-crisis legal change after the Huangpu River dead pigs crisis. Specifically, it aimed to identify, explain, and assess such change. Taking the reconstruction of the crisis and post-crisis lawmaking processes above as the starting point, this section first unpacks the conditions that led to post-crisis change. Secondly, it assesses the nature of post-crisis change and in particular it examines whether lessons have been learned.

6.4.1 Driving Forces of Media Agenda Setting

The risk event that started the crisis were social media messages on Weibo saying that dead pigs were floating in a local river, which was quickly picked up by the Shanghainese newspaper *Xinmin Evening News* and subsequently reached the local, national, and international media agendas.

Although social media was an important outlet for societal discontent during the crisis, it was not a necessary condition for the *onset* of the crisis. Considering the large number of improperly disposed pigs and their decomposing state, it is conceivable that news media would sooner or later have discovered and reported the problem, even in the absence of citizen reports. Evidenced by the short time between the social media messages and the relatively sensitive frame—the potential threat to drinking water—adopted by the newspaper, the topic of dead pigs did not appear a sensitive topic before the crisis. Moreover, local news media had reported about inappropriately discarded pigs in the past (L. Jiang, 2013). This altogether makes it likely that the newspaper would have reported about the problem even in the absence of social media messages. That being said, the first news article used exactly the same frame as the first social media messages—namely the dead animals as a threat to drinking water—which may mean that social media shaped news media framing.

It was the threat to drinking water safety that put the issue on the media agenda, which is evidenced by the fact that the first social media messages and newspaper articles emphasized the location of the dead pigs, namely a drinking water source. There were no reports of human injuries or death, yet the risk event was perceived as a health threat. This is consistent with the crisis literature, which argues that crises are often socially constructed and do not always involve measurable physical or material damage (Boin et al., 2017). Moreover, the event was highly visible, which resulted in powerful images of dead, decomposing pigs that triggered a sense of disgust. As discussed in chapter 2, such vivid images visualize the threat and are therefore a powerful amplifying factor (Birkland, 1997; Coleman, 2009).

At least as important in media agenda setting was the scope of the event. When national news media started to report the issue, they emphasized the large number of dead animals. To illustrate, CCTV, which was amongst the first national outlets to report about the dead pigs in Shanghai, opened with: “this kind of situation happens here every year, but this is the first time that it happens on this scale.” The emphasis on the scope of the problem is typical for news framing. As discussed in chapter 2, the more people affected by an event, the more likely it is to get amplified (Birkland, 1997). In this case, the affected areas supplied 22% of the drinking water of Shanghai (Shanghai government, 2013a), a city of major economic and political importance with 24 million inhabitants. Moreover, the emphasis of news media on the number of pigs is consistent with

literature on news values, which shows that journalists often compare an event to similar events in the past in order to construct superlativeness, which makes the story more interesting, because it shows that there is a real problem (Bednarek & Caple, 2017).

At least initially, the story of the pig carcasses appears not politically sensitive, even though the dead pigs were framed from a delicate perspective, namely as a potential threat to drinking water (W. Shen & Hu, 2013b). One reason that made it possible to use this somewhat sensitive frame was that the problem was blamed on Zhejiang, a different province. While negative news about environmental pollution is often suppressed locally (Shirk, 2011), there was no necessity for the Songjiang government to do so considering that the problem came from elsewhere. Moreover, the *Xinmin Evening News*, the Shanghai newspaper that first published the story, did not criticize local governments, despite Songjiang residents complaining on Weibo about the slow response by the local government. Because of this kind of framing and because of the inability of Zhejiang province to suppress the news because it was published outside its jurisdiction, news media managed to somewhat desensitize the issue and were able to publish the story.

6.4.2 Driving Forces of Institutional Response

As the number of dead pigs accumulated, the crisis escalated from the local level of Songjiang district and Jiaxing to Shanghai city and Zhejiang province and finally to national level ministries. The institutional response mainly consisted of four aspects: dredging the dead animals from the river; monitoring water quality; law enforcement; and censorship.

Initial action taken by the Jiaxing government was to dredge the dead animals from the water, which was a response to complaints shared on Weibo about dozens of dead pigs in the local river (Da Zu Hu Yong, 2013; Jiaying Hu, 2013; Jiaxing EPB, 2013). Later that week, as the number of dead pigs in Shanghai accumulated, the Jiaxing government was increasingly pressured by the Shanghai government to halt the stream of carcasses and to strictly enforce relevant laws. Even though the Jiaxing government argued that not all of the pigs came from Jiaxing, eight farming households eventually received fines of up to RMB 3,000 for the inappropriate disposal of pig carcasses (Wan, Zhang, Yu, & Gao, 2013).

The driving forces of the institutional response by the Jiaxing government were thus news coverage, the nature of the event, and framing. In this case, news originated from a citizen on social media, which subsequently led to local news attention. The citizen report was triggered by the nature of the problem, especially the number of dead pigs, i.e. the scope of the event.

Initial action taken by the Songjiang district government consisted of dredging the dead animals from the water and monitoring water quality, which was a response to offline citizen complaints and preceded news coverage. The main driving forces of institutional response were thus the mobilization of pro-change forces and the nature of the problem, especially its visibility and the unusual large number of dead pigs.

The Shanghai government response focused on water quality. Here, the main driving forces were news coverage, framing, mobilization, and the nature of the event. The first public responses of the Shanghai government appeared on social media and were triggered by social media and news media. The issue was framed as a threat to Shanghai's drinking water. Given that the affected areas supplied 22% of the city's drinking water, it is no surprise that the Shanghai water department

was amongst the most active government authorities in the crisis response (Yuan & Gascó, 2018). Moreover, the scope and location of the dead animals were unusual for suburban Shanghai.

A key reason why the Huangpu River dead pigs crisis escalated to national level ministries was timing: the crisis coincided with the annual plenary meeting of the National People's Congress in Beijing. This meeting typically comes with a series of press conferences, which created opportunities for journalists to ask high-level officials questions about the crisis. Only after critical questions by a journalist during a NPC press conference, did the Ministry of Agriculture publicly respond to the crisis (Ministry of Agriculture, 2013a; D. Zhang, 2013).

Another reason why national level leaders became involved in the crisis is that the crisis started to become a threat to social and political stability. There was a general dissatisfaction with government information, especially regarding the pigs' cause of death and water quality. In fact, although the government repeatedly stated that drinking water quality was unaffected, research suggests that the Huangpu River crisis increased the level of *Cryptosporidium* and *Enterocytozoon bieneusi*, ingestion of which leads to diarrhea and other diseases (Yue Hu, Feng, Huang, & Xiao, 2014).

As discussed in chapter 2, in China's authoritarian political system, there is a delicate balance between tolerating and controlling public opinion (Stockmann, 2013, pp. 254–260), which is exactly the pattern we see during the Huangpu River dead pig crisis. During the first several days (March 4–10), comments about dead pigs were not censored. However, from March 11, government started to censor news about the event, both in news media and on Weibo (Henochowicz, 2013d, 2013c, 2013e, 2013f).⁶⁶ Specifically, of the Weibo messages that were deleted at the height of censorship, many linked the crisis to the government cover-up during the SARS outbreak a decade earlier.

6.4.3 Driving Forces of Legal Change

As discussed above, the legislative outcomes of the Huangpu River dead pigs crisis were the Regulations on Pollution Prevention from Large-Scale Livestock Farming, which were passed by the State Council in October 2013. These Regulations were initially proposed in response to the H5N1 avian influenza outbreak of 2004 and were thus not initiated by the Huangpu River dead pigs crisis. However, the crisis did put the issue of livestock pollution back on the agenda and accelerated the legislative process.

A major driving force behind this legal change was that the draft Regulations was already in a very advanced state by the time the Huangpu River dead pigs crisis happened. The draft had already been discussed with local agriculture and environmental protection bureaus, ministries, committees, research institutions, and industry. Moreover, there had already been a public comment procedure. Thus, the draft Regulations were merely waiting to be passed. This is consistent with Kingdon's argument, discussed in chapter 2, that a feasible solution must be available for a problem to trigger policy change and that solutions are often already floating around, waiting for a problem and a favorable political context (Kingdon, 2014). The process of what Kingdon calls "softening up" started in 2004, was amplified by the national pollution survey results of 2010, and supported by a number of draft regulations, speeches, and symposia.

Moreover, at the time of the Huangpu River dead pigs crisis, the political climate was conducive

⁶⁶ See also the website freeweibo.com, which provides an overview of all censored Weibo messages.

to change, which was a result of a general sense of urgency regarding environmental pollution. The Communist Party had recently coined the concept of 'beautiful China' (美丽中国 *meili Zhongguo*) and premier Li Keqiang had vowed to bring environmental pollution under control (Jintao Hu, 2012; Xinhua, 2013e). At this point, Chinese citizens were deeply and increasingly concerned about the state of the environment: 40% of people polled in 2013 opined that water pollution was a very big problem (Kohut & Wike, 2013).

In addition to this national mood towards environmental protection, there was an important event in government that may have affected the passage of the Regulations at this particular point in time. One of the vice-ministers of agriculture, Gao Hongbin, was replaced by Yu Kangzhen in July 2013. In his previous position as State Chief Veterinary Officer, Yu had led the investigation into the Huangpu River dead pigs crisis in Zhejiang. Contrary to Gao, who had a background in poverty alleviation, Yu had a solid background in veterinary medicine. Add to this his previous role as State Chief Veterinary Officer, which meant that he had been a key government spokesperson during many public health crises including the Huangpu River dead pigs crisis, this change within the ministry may have played a key role in getting the Regulations finally passed. Moreover, as a newly appointed vice-minister, the Regulations were an opportunity to gain political credits.

Furthermore, although the Ministry of Agriculture and Ministry of Environmental Protection traditionally had conflicting agendas, the polarization between both organizations with regard to livestock farming pollution had declined over the previous decade. One explanation for this is the top-down pressure by the State Council to regulate livestock pollution (Y. Kong, 2014; State Council General Office, 2007a, 2008a, 2009, 2010a). Another reason is the publication of first national pollution survey in 2010, which made the severity of livestock farming pollution crystal clear and impossible to ignore, even for the Ministry of Agriculture. This is consistent with Sabatier's argument, discussed in chapter 2, that the existence of more than one advocacy coalition can be an obstacle to legal change if there is strong polarization between the beliefs of the groups (Sabatier, 1988). Even in the event of a crisis, strongly polarized coalitions are unlikely to adjust their core ideas. Conversely, if polarization is limited, legal change is more likely (Birkland, 1997, pp. 36–41).

In addition to top-down political pressure and the leverage provided by the national pollution survey, there is some evidence of a policy entrepreneur, Kong Yuan, who may have played an important role in overcoming conflicting agendas and pushing the drafting project forward. Kong was researcher at the Ministry of Environmental Protection. Considering that his name often appears in conjunction with the Regulations, Kong seems to have been heavily involved in drafting the Regulations. With a PhD in agricultural engineering, specialized in biomass resources utilization, it is not unlikely that Yu was able to build bridges between the Ministry of Agriculture and the Ministry of Environmental Protection. Evidence in support of this argument is that Yu consistently promoted the Regulations as a win-win situation for both the environment and for agricultural development. However, more research is needed (interviews in particular) to map and understand Kong's role in the making of the Regulations.

Finally, the nature of the crisis influenced the level of attention it drew from news media, the general public, government, and lawmakers. As vice-minister Yu Kangzhen stated in relation to the Regulations: "All parts of the country must acknowledge the importance of this work

for developing modern agriculture, ensuring food safety, building an ecological civilization, and enhancing government credibility” (K. Yu, 2013). It was not just an environmental accident, but as the crisis developed, it once again became clear that it was common practice to sell carcasses for meat production, meaning that animals that die from disease end up in the human food chain. Like environmental pollution, Chinese citizens were deeply concerned about food safety (Kohut & Wike, 2013). Moreover, the way in which the government handled the crisis led to widespread criticism, which further undermined its credibility. Rather than offering a timely, convincing explanation of the crisis (Boin et al., 2017), government officials used simplified statements and downplayed the situation. This was exacerbated by the fact that the crisis coincided with the National People’s Congress annual meeting, which meant that central level government became involved early on.

6.4.4 The Nature of Post-Crisis Legal Change

The crisis-induced Livestock Farming Pollution Prevention Regulations passed by the State Council in October 2013 were a milestone because it was the highest level piece of legislation that is specifically dedicated to pollution from livestock farming. It was a collaborative project of the Ministry of Agriculture and the Ministry of Environmental Protection, which traditionally have conflicting agendas.

However, the substance of the Regulations is not new. The main rules regarding the handling of dead animals were already covered by existing, higher level laws. This includes a ban on trade in animals that have died from disease or from unknown causes and requirements for the disposal of dead animals. Moreover, subsidies for decontamination and loss of livestock were already in place prior to the crisis.

6.4.5 Crisis-Learning

An important remaining question is to what extent and in what way this change reflects learning from the crisis. Such learning is here defined as “evidence that policy changes are reasonably linked to the causal factors that connected the event under consideration to its harms, and if addressing these factors would be likely to mitigate the problem” (Birkland, 2009, p. 147). Thus, change does not equal learning (Deverell, 2015). As discussed in chapter 4, two components of learning are considered in this study: crisis responsiveness and problem-solving. Crisis-responsiveness here refers to whether a law responds to the core issues exposed by a crisis. The aim is not to assess whether a law actually solves a certain problem, but only to see how it aligns with issues that were exposed by the crisis.

The passage of the Livestock Pollution Regulations is an example of rhetoric learning, which in this study refers to change adopted in response to a crisis, but without addressing the problem at hand, thus lacking problem-solving potential. As shown in this chapter, the Regulations contain specific stipulates about handling dead animals, yet their problem-solving potential is limited for two reasons. First of all, the rules pertaining to this topic were already covered by existing, higher level legislation. Secondly, rather than applying to all livestock farms, the Regulations leave it up to the provinces to decide the scope of application, which means that a substantial share of farms is not regulated under the Regulations.

This outcome is consistent with existing literature, which argues that post-crisis learning is not at all self-evident (Alaszewski & Brown, 2012, pp. 119–120; Boin et al., 2017) and if it does happen, single-loop learning is most likely. Single-loop learning refers to learning at the operative level rather than changes in goals, premises, and norms (Argyris & Schön, 1978; Boin et al., 2008, pp. 241–242; Deverell, 2009, 2015). Although it can be argued that the change in policy aims—a combination of both environmental protection and development of the livestock sector—constitute double-loop learning, at the same time the legal contribution of the Regulations regarding dead animals is limited. Thus, overall it gravitates more towards single-loop learning than double-loop learning.

One explanation for this rhetoric learning is that it was already very difficult to formulate the Regulations, which is evidenced by the near decade it took to produce them. Regulating small-scale farmers is a sensitive and challenging issue in China given that there are tens of millions of them. The Ministry of Agriculture estimated in 2010 that, out of nearly 62 million pig farms, more than 60 million raised less than 100 heads (Xiaohua Yu & Abler, 2014). Their sheer number not only makes law enforcement challenging, but may also create social unrest. Therefore, it was politically not possible to include small-scale farming under the scope of the Regulations.

6.5 Conclusion

The question asked in this chapter was: to what extent and under which conditions did the Huangpu River dead pigs crisis lead to legal change? Through casual-process tracing, the chapter identified, explained, and assessed post-crisis legal change. It showed that the crisis accelerated the passage of the Livestock Farming Pollution Prevention Regulations by the State Council. Table 6-3 summarizes the driving forces behind the crisis-change process.

Table 6-3. Causal Conditions for Legal Change After the Huangpu River Dead Pigs Crisis

Elements of crisis-change process	Conditions
Media agenda setting	Superlativeness; impact; availability of a non-sensitive frame (blame on neighboring government)
Institutional agenda setting	
Jiaxing	Citizen mobilization (social media); crisis nature
Shanghai	Citizen mobilization (social media); news coverage; crisis nature; framing (threat to drinking water quality)
National government	News coverage; mobilization (journalists); crisis nature (timing); threat to social and political stability
Legal change	
Livestock Pollution Regulations	Availability of a feasible policy solution (mature draft); favorable political climate (increased environmental awareness); appointment of new MoA vice-minister; declining polarization between MoA and MEP; (limited evidence of a) policy entrepreneur at MoA

The Regulations reflect rhetoric learning. Overall, the legal contribution of the Regulations with regard to the disposal of dead animals is limited. That being said, the main focus of the

Regulations is on pollution other than dead animals. Although the analysis here has focused on dead animals, the contribution of the Regulations to other types of pollution prevention from livestock farming may be more significant.

Despite the observed post-crisis policy change and despite some degree of learning, this does not mean that a similar crisis will not happen again. A number of incidents involving dead animals have appeared since the Huangpu crisis, two of which were especially remarkable. In December 2014, CCTV (2014) reported that a network of farmers, insurance companies, slaughterhouses illegal sold and processed 70,000 dead pigs per year during a decade of time in seven provinces. More recently, in September 2017, more than 200 tons of illegally buried dead pigs were discovered in Zhejiang province (Tailai Zhou, Li, Wu, & Gao, 2017).

The persistent improper disposal of dead animals is not surprising considering that learning is difficult (Boin et al., 2017). It has taken other countries several decades to solve this particular problem. To illustrate, in the Netherlands—which has a relatively large pig farming industry—pig carcasses were randomly discarded or processed into meat products until stricter legislation started to appear in the early twentieth century. Since then, it still took several decades to develop the current standardized, highly regulated system of centralized collection and destruction of animal carcasses (Oudejans, 2012).

7 Legal Change After Avian Influenza A(H7N9)

7.1 Introduction

In early March 2013, two patients died in a Shanghai hospital as a result of infection with a novel avian influenza virus. The virus, H7N9, had never been detected in humans before and therefore there was no effective treatment available, let alone a vaccine. In subsequent years, the virus infected 1,567 people. Approximately 40% of those infected died (WHO, 2019), which is an unusually high mortality rate.

Upon the emergence of the virus, epidemiologists warned that this could be the next pandemic (R. Gao et al., 2013; Kageyama et al., 2013). It is not uncommon for pandemics to start in China. An estimated one to two million people worldwide died in 1956–1958 from H2N2 avian influenza, which was first detected in China (Saunders-Hastings & Krewski, 2016). Similarly, the H3N2 avian influenza virus was first reported in Hong Kong and led to an estimated 500,000–2,000,000 deaths worldwide in 1968–1970 (Saunders-Hastings & Krewski, 2016). More recently, the SARS (severe acute respiratory syndrome) virus, which emerged in China in 2003, infected more than 8,000 people in 17 countries and killed almost 800 (WHO, 2003). Several years later, the very lethal H5N1 avian influenza virus emerged in southern China, infecting 860 people from 16 countries, of whom more than 50% died (WHO, 2018b).

Although human cases of H7N9 have been limited to China, public health experts widely regard the outbreak as a warning for a coming influenza pandemic and emphasize the need for preparation (Osterholm & Olshaker, 2017; Pu et al., 2018; Subbarao, 2018; W. D. Tanner et al., 2015). Due to the high density of humans, pigs, poultry, and wild birds living in close proximity to each other, China is a hotbed for epidemic diseases (Osterholm, 2005; Shortridge, 1982; Webster et al., 1992). Add to this the serious consequences of an epidemic in terms of public health, social stability, and the economy, one would expect lawmakers to exert themselves to ensure that regulation is sufficiently up to date to be able to deal with future outbreaks.

This chapter identifies, assesses, and explains legal change after the avian influenza A (H7N9) outbreak. It shows that despite calls for change, especially regarding the sales of live poultry on markets, the legislative response has been limited to a small number of minor changes in the Epidemic Diseases Law.

While many studies have been published about H7N9, the focus is almost exclusively on the virus itself, with none examining post-outbreak policy change, let alone *legal* change. There are also very few studies on China's handling of this outbreak. This in-depth case study thus contributes to our understanding of China's response to H7N9. At the same time, it sheds light on current legal issues, which is highly relevant for crisis preparedness.

The chapter consists of three parts. The first part examines the H7N9 outbreak and China's immediate response. The second part focuses on legal change in response to H7N9. The third and final part zooms in on the interaction of the crisis and lawmaking and explains the lack of post-crisis legal change.

7.2 Unfolding of the Crisis

7.2.1 Emergence of a Novel Virus: First Risk Signals on Social Media

Around 18 February 2013, an 87-year-old man and his son fell ill and were subsequently admitted with influenza symptoms to the Fifth People's Hospital in Shanghai's Minhang district on February 25. They were diagnosed with pneumonia and put into isolation the next day. Because a second son had been hospitalized with pneumonia a week earlier, doctors sent throat swab specimen of the three family members to the Shanghai Public Health Clinical Center as early as February 26. The father passed away on March 4 (R. Gao et al., 2013; Q. Li et al., 2014).

A few days later, on March 7, the case was mentioned on one of China's most popular social media platforms, Weibo: "There have been a few unexplained deaths in the Fifth People's Hospital of Shanghai. The preliminary diagnosis was flu. Their symptoms included respiratory failure. Will the hospital please tell us the truth?" However, the original message was soon deleted (ActivistsInChina, 2013; A. Li, 2013).

In response to this online message, the hospital published the "true facts" on its Weibo account, saying that an 87-year-old man had died as a result of multiple organ failure combined with a high age. It explicitly denied that avian influenza was involved. It also said that "the recent increase in patients with respiratory tract infection is related to seasonal changes" (Fifth People's Hospital, 2013). Similarly, the Shanghai Municipal Health Bureau said that the patient had died from multiple underlying diseases plus a serious lung infection and that "based on epidemiologic research and laboratory tests, infectious diseases such as SARS, avian influenza, a new type of coronavirus, and H1N1 are ruled out" (Shanghai Municipal Health & Family Planning Commission, 2013). These messages were echoed in the Jiefang Daily, an official newspaper of the Communist Party, on March 8 (T. He, 2013).

On March 10, a second patient in the same hospital died from the same virus. The patient, 27-year-old Wu Liangliang, had been admitted to the hospital on March 4. Doctors told his family members that the cause of death was acute pneumonia and respiratory failure (Yi Wang, 2013). The family only found out that Wu Liangliang had died from infection with the new virus after his last name, age, and date of death were mentioned in a statement by the National Health and Family Planning Commission (NHFPC, the successor of the Ministry of Health and the predecessor of the National Health Commission) and subsequently also by news media (NHFPC, 2013b; Yi Wang, 2013). Eventually, on April 6, medical staff at the hospital confirmed that Wu Liangliang had indeed died because of the H7N9 virus, but that they had not informed the family "because H7N9 is a new virus and can only be announced by the national health department" (Yi Wang, 2013).

7.2.2 Official Announcement of H7N9 Virus: China Praised for Rapid Response

On March 31, the National Health and Family Planning Commission announced on its Weibo account and on its website "three cases of human infected H7N9 avian influenza in Shanghai and Anhui" (NHFPC, 2013b, 2013c). This included the two fatal cases from Shanghai

mentioned above as well as one female from nearby Anhui province who was still being treated. In a press release and Frequently Asked Questions (FAQ), the NHFPC (2013a, 2013b) explained that the virus originated from birds, but that the exact infection source remained unclear. It also reiterated that there was no evidence of human-to-human transmission. Moreover, it advised to avoid contact with sick poultry and livestock, and to timely consult a doctor in case of fever, coughing, and other acute respiratory tract infection symptoms.

The NHFPC clearly anticipated accusations of a government cover-up, because the FAQ included the following question: “The two diagnosed patients in Shanghai died in the beginning of March, why does the NHFPC announce the epidemic situation only now?” In response, the NHFPC argued that

this is the first time in the entire world that this new avian flu virus is discovered. It was not yet integrated in China's infectious diseases monitoring reporting system for statutory notifiable diseases. When Shanghai's health care system discovered the abovementioned cases, it timely launched laboratory screening. (NHFPC, 2013a)

The NHFPC described the steps and timeline from hospitalization to identification of the virus (NHFPC, 2013a, 2013b). When the Shanghai Public Health Clinical Centre suspected that the patients may have been infected with a H7 flu virus on March 22, samples were sent to the Chinese Center For Disease Control and Prevention (China CDC). By March 29, China CDC tests had identified the H7N9 virus. On March 30, NHFPC experts confirmed that the three patients had contracted the H7N9 virus. Finally, on March 31, the NHFPC made the H7N9 infections public.

This proactive communication approach is remarkable considering China's slow and ineffective response to previous epidemic outbreaks caused by new viruses, as evidenced in the cases of SARS in 2002–2003 and avian influenza A(H5N1) in 2005. When SARS emerged in November 2002, government authorities at various levels hid the outbreak and downplayed the risks. As SARS had a fatality rate of about 10%, it was a major threat to public health. Yet, there was a great lack of transparent, accurate, and timely information, both domestically towards the general public and health professionals and towards the international (research) community (Y. Huang, 2004). Because of this, the disease spread to other parts of China and even to other parts of the world, infecting more than 8,000 people in 17 countries, of whom almost 800 died. When the country was subsequently hit by the highly lethal H5N1 virus, government response was more adequate, but there were still shortcomings. Specifically, news media were the first to report a suspected case, which was not confirmed by the government until two weeks later (Shuli Hu, 2011). The international community, too, was dissatisfied. The World Health Organization (WHO) complained that China was slow in sharing reliable information (Wishnick, 2010).

Altogether, China's initial response to H7N9 was largely consistent with best practices for crisis communication, in the sense of offering a timely, persuasive narrative that explains what happened, provides advice, shows empathy, instills hope, and suggests that leaders are in control (Boin et al., 2017). The NHFPC did indeed explain what happened (emergence of a new virus, number of patients and deaths, details about the patients), provided advice (avoid sick poultry, seek medical help in case of listed symptoms), instilled hope (limited or no human-to-human

transmission), and suggested that leaders are in control (medical treatment, monitoring of patients' family members, ongoing research) (NHFPC, 2013b, 2013a).

With regards to the international community, too, China responded quickly. It informed the WHO on March 31 (WHO, 2013b). Moreover, the Chinese National Influenza Center immediately shared genomic sequences of viruses from the three human cases through the publicly available database GISAID (Butler & Cyranoski, 2013; WHO, 2013a). This allowed researchers around the world to examine the new virus, particularly its source, ability to cause disease, potential to spread from human to human, and vaccination options (Butler, 2013; Butler & Cyranoski, 2013).

Nevertheless, questions were raised about an initial cover-up of H7N9 by the Chinese government because of the four week lapse between the death of the first patient and the official NHFPC announcement (Y. Huang, 2013; A. Wang, 2013). Such suspicion was understandable considering China's previous response to epidemic outbreaks. Moreover, H7N9 emerged during a sensitive period: it coincided not only with the annual meeting of the National People's Congress (held in Beijing from 5 till 16 March), but also with the transition of power from Hu Jintao to president Xi Jinping. As discussed in chapter 2, during such politically sensitive times there is a strong emphasis on maintaining social stability, which means that negative news tends to get suppressed. The H7N9 outbreak also happened simultaneously with the Huangpu River dead pig incident, discussed in the previous chapter. This meant that the Shanghai government was dealing with two crises at the same time.

However, the accusation of an initial cover-up or delay has been denied by both domestic and foreign public health officials and experts (Bai, 2013; M. Wei, 2013). On the contrary, some argued that, given the novelty of the virus, China's response was very fast (Shanghai Municipal News Office, 2013). For example, a Nature editorial stated:

With just a handful of severe pneumonia cases caused by the virus by mid-March, it is impressive that China realized as quickly as it did that something was amiss. It took the United States, which has one of the world's most advanced disease-surveillance systems, an almost identical amount of time to identify a novel H3N2 swine virus that caused serious illness in a child in 2011. ("The fight against bird flu," 2013)

At the local level, the Shanghai government organized a special work meeting about the novel virus on April 1, during which medical and health organizations in the city were urged to closely monitor and timely report new cases and to educate the public about disease prevention (Shanghai People's Government, 2013a). In the afternoon of April 2, the Shanghai government held a press conference during which the city's CDC and the Shanghai Agricultural Commission explained the H7N9 situation (Wei Xu, 2013).

7.2.3 News Media Link H7N9 to Past Experiences of Epidemic Outbreaks

As shown in figure 7-1, online news media immediately started to report about the H7N9 virus, with an attention peak on 9 April, which may be related to the NHFPC news conference the previous day. The first online news articles mostly (literally) repeated the NHFPC information:

they informed the readers of the specifics of the three cases, the virus, and provided health advice.

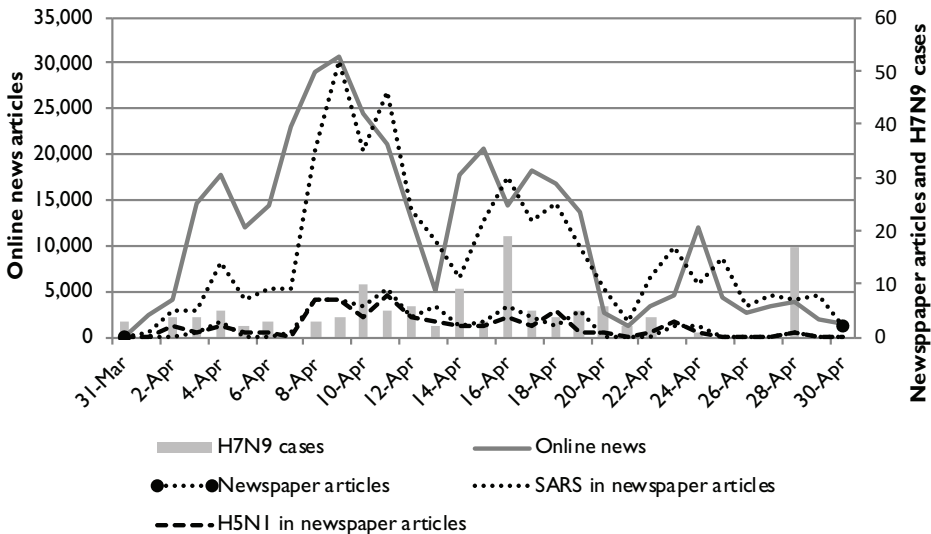


Figure 7-1. Number of H7N9 Cases and News Articles on H7N9, April 2013

Data sources: WHO Disease Outbreak News,⁶⁷ China Core Newspapers Full-text database, and Baidu Index.

Based on the analytical framework presented in chapter 2, I identify three amplifying factors that put the risk event (i.e. the detection of the H7N9 virus) on the media agenda. First of all, this was the first time that the H7N9 virus was detected in humans. Secondly, the virus was life-threatening. Thirdly, there was information available. In the terminology of chapter 2: unexpectedness, impact, and the availability of a non-sensitive frame were the driving forces behind media agenda setting.

In addition, the risk event reminded people of past experiences of epidemic outbreaks. In particular, news about H7N9 was linked to SARS and H5N1 avian influenza, which is shown in figure 7-1. Approximately 18% of newspaper articles about H7N9 mentioned SARS.⁶⁸ This was 13% for H5N1. SARS in particular was vividly remembered by many people in China. As discussed above, the SARS pandemic was initially covered up by government authorities, which generated extreme anxiety amongst the general public. Everyone was obsessed with the disease. Schools in Beijing were closed for weeks and people wore masks, kept children indoors, switched off air-conditioning systems, and generally avoided contact with other people (Sunny Hu, 2005; Lai, 2004). While there was no vaccine against SARS, rumors had it that vinegar would kill the virus, leading to panic-buying of the substance (Huifeng He, 2013; Lai, 2004).

The SARS experience provided a media template, i.e. a key event that has “an ongoing shelf life which extends beyond the conclusion of news happenings” (Kitzinger, 2000, p. 76). In response to official news about the novel H7N9 virus, news media instantly compared it with the SARS

67 See website World Health Organization: <https://www.who.int/csr/don/en/>

68 The results for 非典 (*feidian*), the Chinese word for SARS, were fewer than for SARS, indicating that the term SARS was more commonly used than *feidian*. Therefore the data for *feidian* is not included in figure 7-1.

pandemic. Specifically, news reports focused on two overlapping themes: H7N9 as a repetition of SARS and lessons learned from SARS.

With regard to the first theme, news media openly wondered whether this was SARS all over again. In response, the Chinese Center For Disease Control and Prevention emphasized the differences between both viruses (N. Lü & Hu, 2013). In doing so, it was aided by various experts, including medical doctor Zhong Nanshan, who is well-known for his role in combating SARS. Zhong pointed out that, in the first SARS cases, people who had been in contact with the SARS patients soon were infected too. However, there was no evidence of H7N9 human-to-human infection (S. Yang, Jing, Yang, Zhang, & Pan, 2013). At the same time, the director of the Health Emergency Centre of the China CDC acknowledged that more H7N9 cases were to be expected (N. Lü & Hu, 2013).

With regard to the second theme, news reports repeatedly mentioned the lessons learned from SARS. A WHO representative was quoted as saying that “SARS was a turning point” (T. Y. Jones, 2013; Yi, 2013). During the SARS outbreak, China actively covered-up the situation to the point that SARS patients were reportedly hidden in ambulances and hotels during a WHO inspection visit (Lai, 2004; Pomfret, 2003a). China has been heavily criticized for concealing crucial information and slowing down emergency response during SARS. However, compared to the SARS outbreak in 2003, this time the government was quick to share information with the general public as well as with the international community. China was widely applauded for this major change by domestic and international news media as well as by the WHO and scientists (Hvistendahl, 2013; WHO, 2013c; Yi, 2013).

7.2.4 Huangpu River Dead Pigs Incident in Shanghai: Coincidence?

Another issue that was raised immediately in news and social media was the potential link between the H7N9 virus and the thousands of dead pigs that were dredged from the Huangpu River in Shanghai in the preceding weeks (see chapter 6) (Shanghai Municipal News Office, 2013). A major reason for this suspicion was that the local and national government had failed to provide a satisfactory explanation regarding the cause of the dead pigs and unconvincingly maintained that water quality was unaffected. Moreover, the NHFPC reported that one of the H7N9 victims—a young man from Shanghai—was a pork retailer.

However, government officials were quick to point out that there “was no evidence indicating that the [virus’] source is pigs” (Shanghai Municipal News Office, 2013). Moreover, the Shanghai Animal Epidemic Disease Prevention and Control Center tested samples taken from the dead pigs for avian influenza, but did not detect the virus (Shanghai Municipal News Office, 2013).

In subsequent weeks, news media not just linked H7N9 to the dead pigs in Shanghai, but reported various instances of improperly discarded dead animals across the country. For example, a newspaper in Sichuan province reported that 38 discarded dead pigs had been found (M. Zhong & Wang, 2013). In Zhejiang province, an internet user posted a picture of several hundred dead chickens in a river (X. Xu & Fang, 2013). In Guangzhou, residents raised alarm over 50 discarded dead chickens (Lipu Zhang & Liu, 2013). Three dead pigs and more than 50 dead chickens were dredged from a river in Jiangxi province (L. Su, 2013). And in Shandong province, ten bags filled

with dead chickens were found on the shore of a river (Weiping Wang, 2013). In all of these cases, a link to the H7N9 virus was explicitly denied.

7.2.5 More H7N9 Cases, Institutional Response, and Social Media Backlash

On April 2, an internet user from Nanjing city in Jiangsu province shared a picture on Weibo of a patient's diagnosis with the question "has a case of H7N9 been discovered in Jiangning district?" The document said that a 45-year old woman was diagnosed with H7N9 on March 30 by the provincial CDC (Nanjing zhengzai fasheng, 2013). Soon after, a hospital staff member preliminarily confirmed the case on Weibo saying that there was no need to worry, that the patient was being treated, but that there had not yet been an official diagnosis. Likewise, the local district government commented that it "will pay attention to this event, but currently we do not have an official notice to send out" (W. Li, 2013).

Later that same day, the NHFPC announced four new cases of H7N9 in Jiangsu province, including the 45-year old woman from Nanjing's Jiangning district (N. Lü, 2013). Although this has not been confirmed, it appears that the leak on Weibo accelerated the official announcement (Salathé, Freifeld, Mekar, Tomasulo, & Brownstein, 2013).

The NHFPC also published a H7N9 diagnosis and treatment plan as well as a technical guidebook to prevent and control infection, both of which were sent to the provincial Bureaus of Health (NHFPC, 2013e, 2013d).

Based on these official, ministerial level documents, the Jiangsu provincial Bureau of Health published its own guidelines, which were widely ridiculed because of the recommendation to drink indigowoad root herbal tea (板蓝根 *banlangen*), a traditional Chinese medicine, to prevent H7N9 avian influenza (Jiangsu province Traditional Chinese Medicine Office, 2013). This was controversial because there was no evidence of its efficacy in preventing H7N9 infection. In an online poll by QQ, one of China's largest web portals, almost 90% of respondents answered that they did not believe *banlangen* can prevent H7N9 avian influenza (Yanwei Liu, 2013).

In fact, *banlangen* was one of the hottest H7N9 subtopics raised on Weibo (Sina Weibo Data Center, 2013). News media and social media users sarcastically referred to *banlangen* as the "almighty, divine medicine" (万能神药 *wanneng shen yao*), because officials had also recommended it during the SARS pandemic and during outbreaks of hand-foot-and-mouth disease (Yanwei Liu, 2013). Discontent even sparked a new literary genre called "*banlangen* style" (板蓝根体 *banlangenti*) whereby the word *banlangen* replaced words in traditional Chinese poems. For example, "ten years now since death did us part, but *banlangen* will never be forgotten" and "in the sky, two love birds; on earth, *banlangen*" (Baik, 2015; Xin Li, 2013). Such political satire is a common response to government communication during crises in China (Xiaoping Wu, 2018), as has also been shown in the case study of the Huangpu River dead pig crisis in chapter 6.

Nevertheless, sales of the medicine went up substantially (G. Ren, 2013). In response, the State Administration of Traditional Chinese Medicine warned that *banlangen* is not suitable for people with certain medical conditions and emphasized that it is only one of several preventive measures (Q. Wang, 2013). Zhong Nanshan, who had recommended *banlangen* during the SARS pandemic, now did "not recommend to blindly take *banlangen*" (M. Wei, 2013).

In the meanwhile, scientists had detected the virus in chickens, pigeons, and the environment at three Shanghai live poultry markets (J. Shi et al., 2013). In response, the Shanghai Agricultural Commission closed the live poultry sections of these three markets and culled all present birds (Y. Qiu & Wang, 2013). A day later, on April 5, the Commission temporarily closed all live poultry markets and retailers, banned all trade in live poultry, and prohibited the import of live poultry from other provinces (Shanghai People's Government, 2013b).

Overall, as shown by the dotted line in figure 7-2, the H7N9 virus received substantial institutional attention, which is measured here based on the number of articles on H7N9 posted in the “special topic” (专题专栏 *zhuanti zhuankan*) section of the NHFPC website. These articles included policy notices, speeches, and news articles from other sources.

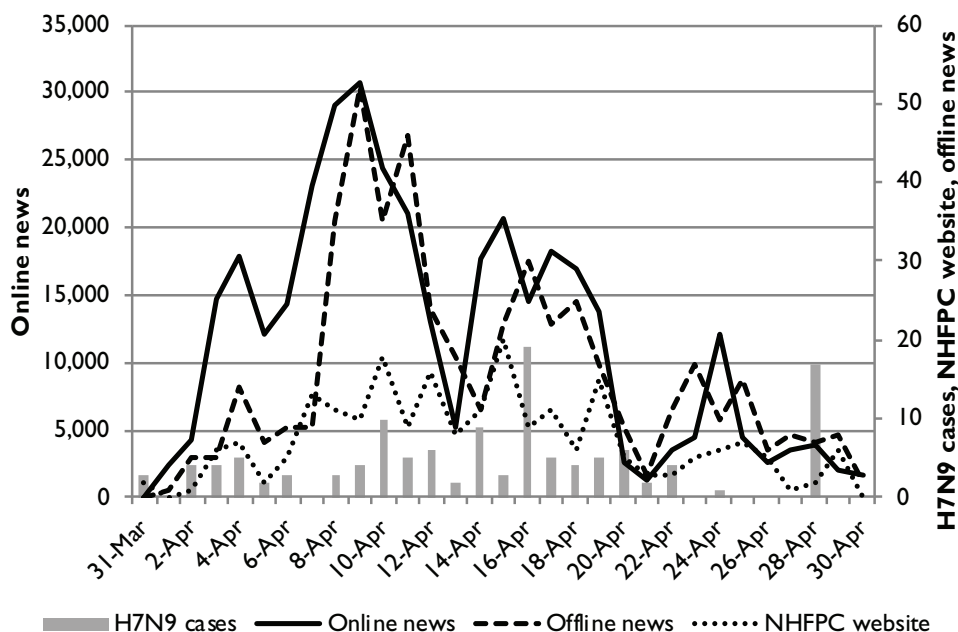


Figure 7-2. H7N9 Cases, Media Attention, NHFPC Website Articles on H7N9, April 2013

Data sources: WHO Disease Outbreak News, China Core Newspapers Full-text database, and NHFPC website.

In addition to the NHFPC, other departments responded to H7N9 too. The Ministry of Agriculture issued a plan for monitoring H7N9 in chickens and other animals and guidelines for handling infected animals (Ministry of Agriculture, 2013c). The State Forestry Administration urged local governments to closely monitor wild birds and to immediately report any abnormalities (State Forestry Administration, 2013). The H7N9 outbreak received high level political attention too. Most notably, president Xi Jinping urged government authorities to provide medical treatment and to bring the epidemic under control. The president furthermore explicitly instructed government authorities to “accurately release information about the epidemic situation” (Xinhua, 2013d).

7.2.6 Censorship on Social Media

As shown in figure 7-3, the H7N9 virus attracted enormous attention on Chinese social media, with a peak on April 5, when Shanghai closed all live poultry markets. In general, H7N9 was even amongst the hottest topics of 2013 on Weibo (Fung et al., 2013; Sina Weibo Data Center, 2013; Vong, O’Leary, & Feng, 2013). Governments at national, provincial, municipal levels as well as hospitals disseminated information about the outbreak not just through newspapers and notices on official websites, but also through Weibo. Such information included updates of new cases, announcement of policy measures such as market closures, and advice about preventing infection. In fact, some experts even preferred to stay up-to-date by monitoring Weibo rather than visiting the websites of various government authorities (Fung & Wong, 2013).

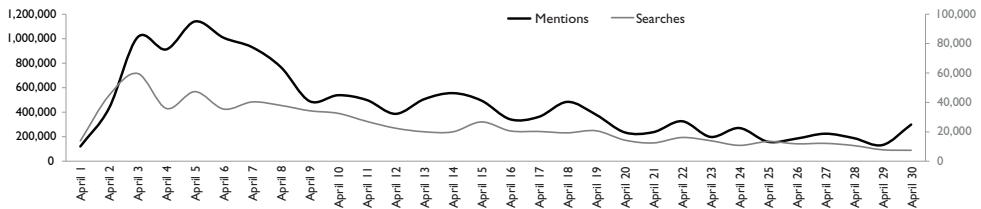


Figure 7-3. Number of Times H7N9 is Mentioned and Searched on Weibo, April 2013

Data source: Sina Weibo Data Center (2013).

At the same time, the government closely monitored and censored social media. As discussed above, news media immediately compared H7N9 to SARS, which was also the case on Weibo (Fung et al., 2013). In response, the search term “SARS ten years ago+bird flu ten years later” was soon blocked on Weibo and messages containing this phrase were deleted (Le Chen et al., 2013; Henochowicz, 2013a). This phrase was the beginning of a text that compared H7N9 to the SARS outbreak, concluding that: “We saw all of this ten years ago. Nothing has changed, nothing at all has changed. We have come full circle and ended where we began. We donkeys are so stupid it’s tragic. Only the virus has made a change” (Henochowicz, 2013a).

Censorship did not only have repercussions online by way of removal of messages, but also included administrative and criminal detainment for ‘spreading rumors.’ By April 10, news media reported more than ten such cases across China (K. Li, 2013). For example, a man in Fujian province had sent the message “H7N9 for the first time discovered in Ningde city” on its QQ account (an instant messaging service similar to MSN). The message was forwarded almost 1,500 times. The message was removed and the man was detained for eight days by the local police for “disseminating rumors and deliberately disturbing public order by lying about an epidemic situation” (Y. Chen & Zhong, 2013).

7.3 Post-Crisis Lawmaking

7.3.1 Limited Legal Change: Infectious Diseases Law Amendment

Although crises may create windows of opportunity for policy change (see chapter 2), there has been very little legal change in response to H7N9.

After the emergence of the virus, the National People's Congress Standing Committee amended two articles in the Law on the Prevention and Treatment of Infectious Diseases (传染病防治法 *chuanranbing fangzhi fa*). Both articles concerned the classification of diseases (NPC-SC, 2013). The law distinguishes three categories of infectious diseases, namely A, B, and C (article 3). Each category is subject to different prevention and control measures. While category A diseases (plague and cholera) and some category B diseases must be reported within two hours, other category B and all C diseases must be reported within 24 hours (Ministry of Health, 2006).

The first change in the law was that article 3 authorized health departments under the State Council to not only add new diseases to categories B and C, but to also remove them (NPC-SC, 2013).⁶⁹ The NHFPC subsequently classified H7N9 avian influenza as a category B disease (NHFPC, 2013h). This was a necessary step to ensure the legitimacy of continued prevention and treatment measures, because there was actually no legal ground for some of the measures announced by the NHFPC such as the mandatory isolation of (suspected) patients and the requirement to report new cases within two hours (H. Song, 2013).

The second change in the law concerned the application of category A measures to certain category B diseases (article 4). Such measures included mandatory isolation of (suspected) patients, refusal of which would lead to forced isolation by the local public security bureau. The 2013 amendment stipulated that the health department could cancel the application of category A measures to category B diseases. An explanation for this is that limitation of personal freedom through mandatory quarantine is a rather drastic measure that is, according to the Chinese constitution, only allowed if there is a legal basis for it (H. Song, 2013). Despite not being a statutory infectious disease, H7N9 avian influenza had been treated as a B category disease with category A measures. The 2013 amendment authorized the NHFPC to cancel this situation, which is what it did after the NPC-SC passed the amendment (NHFPC, 2013h).

Although the NPC Standing Committee does not make this explicit (D. Song, 2013), the amended law is likely a response to H7N9 for several reasons. It was passed in June 2013 (NPC-SC, 2013), just three months after the NHFPC announced the first H7N9 cases. Although the amendment was mentioned in the 2012 State Council legislative plan, it was included as a category 3 law (see chapter 3), which meant that it was only in the preparatory phase (State Council General Office, 2012). The amendment first appeared on the NPC legislative plan *after* the start of the epidemic (Xiaoguang Huo & Chen, 2013). An online search on Baidu resulted in zero news articles about the Infectious Diseases Law in 2012 and 2013 before June 29, its passing date. In the China National Knowledge Infrastructure database, there were no relevant articles about this

69 Note that the original 1989 Infectious Diseases Law authorized health departments under the State Council to both add and remove diseases to categories B and C. The 2004 Law only authorized health departments to adding diseases to categories B and C, it did not mention the removal of diseases.

law in 2012 and 2013 before the emergence of the H7N9 virus. Thus, all evidence suggests that the amendment was drafted rapidly and in response to the H7N9 virus. Remarkably, there are no traces of deliberation or consultation.

The NPC-SC clearly was in a hurry to pass the amendment. The NHFPC was—unrelated to H7N9—preparing a report to evaluate the implementation of the Infectious Diseases Law which it presented in August 2013. This report could have served as a starting point for the amendment of the law (B. Li, 2013). However, the NPC-SC did not wait for this report, but amended the law before the report was finished. The amendment was thus prepared and passed rapidly after the onset of the epidemic.

Moreover, the substance of the amendment related directly to an important issue in H7N9 control, namely its classification as a statutory notifiable disease, which ensured the legal basis for measures imposed on patients and their environments. This amendment had already been proposed in response to the H1N1 influenza pandemic of 2009 (L. Xue & Zeng, 2014, pp. 255–256). H7N9 again brought up the NHFPC’s need for more flexibility regarding the classification of emerging infectious diseases.

7.3.2 Unaddressed Issues

Although various issues were raised in the news media in response to H7N9, these did not reach the legislative agenda and hence have not been translated into laws or rules. The following sections discuss five such issues, which are listed in table 7-1.

Table 7-1. Issues Raised in Response to Avian Influenza A(H7N9)

Issues raised	Legislative change
Cost of medical treatment	
Special fund	No
Clarification of liability H7N9 medical bills	No
Comprehensive scheme for medical costs	No
Management and closure of live poultry markets	No
Online spread of misinformation	Yes
Local-central relations	
Local cover-ups	No
NHFPC information monopoly	No
Financial support for poultry industry	
Access to financial services	Yes—but not triggered by H7N9
Higher level of compensation	Yes—but policy notice, not law
Increased insurance coverage	No

7.3.2.1 Medical Costs: Work in Progress

News reports about very high medical bills for H7N9 treatment sparked a debate over who should bear the medical costs: the government or patients themselves (Yuandan Guo, 2013; Jie Pan & Li, 2013; N. Shen & Wen, 2013; X. Yao, Li, & He, 2013). News media reported that the family members of the 45-year old female H7N9 patient in Nanjing had already spent RMB 100,000 (equaling about USD 16,000 at that time) on treatment and planned to sell the family’s

house to pay the bills (Yuandan Guo, 2013; N. Shen & Wen, 2013). The estimated costs for severe H7N9 cases without death were approximately RMB 140,000 and for severe cases with death more than RMB 200,000 (Xiang Huo et al., 2016; X. Qi et al., 2014).

Again, the situation was compared with the SARS pandemic, during which the Chinese government established a national fund that, amongst other things, provided financial support for patients (Z. Qi, 2003). The aforementioned famous medical doctor Zhong Nanshan advocated for a similar H7N9 fund to cover costs for treatment, tests, vaccine development, and laboratories (X. Luo & Chen, 2013). In an online poll, internet users agreed: 97% of almost 57,000 persons polled opined that treatment of H7N9 should be free of charge (Yuandan Guo, 2013). However, opponents argued that using public money would only be justified if the virus would spread from human to human, which was not the case (Lin Zhang, 2013).

Early on, the NHFPC explicitly forbade hospitals to delay or decline treatment if patients had trouble paying the bills (NHFPC, 2013f), but commentators pointed out that there was a lack of clear regulation over the issue. The Infectious Diseases Law (article 62) stipulated that “the government implements aid for medical treatment and reduces medical expenses for people in straitened circumstances who contract specific infectious diseases.” However, it was unclear whether H7N9 fell within the scope of “specific infectious diseases” and how much funding should be provided. Similarly, article 43 of the 2011 Regulations on the Urgent Handling of Public Health Emergencies (突发公共卫生事件应急条例 *tufa gonggong weisheng shijian yingji tiaoli*) stipulated that local governments should provide funding for medical treatment. However, even though governments of affected cities treated H7N9 as an emergency, it was unclear whether the outbreak fell within the Regulations’ definition of public health emergency (Yuandan Guo, 2013). At the local level, too, it remained unclear who would pay the medical bills. According to the local government of Nanjing’s Jiangning district, where the abovementioned 45-year old H7N9 patient was from, part of the medical costs could be reimbursed through the local insurance scheme. However, because H7N9 was a new virus, it was not included in the reimbursement scheme and some of the medicines used were also not included (X. Yao et al., 2013).

Because of these unclear reimbursement arrangements, Renmin University professor Wang Hufeng recommended the development of a more comprehensive mechanism for covering medical costs so that ad hoc solutions such as special funds or special insurances are no longer necessary (X. Yao et al., 2013). Huo et al. (2016) recommended more financial support for low-income H7N9 patients.

In April 2013, the NHFPC and the Ministry of Finance jointly announced more than RMB 300 million for the management of influenza and unexplained pneumonia, but this was, however, primarily earmarked for disease monitoring (J. Han & Xu, 2013), not for the medical costs of H7N9 patients. Some provinces set up special H7N9 funds, but again, most focused on disease monitoring (Ministry of Finance, 2013b). Exceptions included Guangdong province, which established a fund that explicitly (but not exclusively) supported H7N9 patients, and Jiangxi province, which set up a H7N9 fund that covered medical treatment, including for those that had already been hospitalized as well as for the relatives of H7N9 patients who died (Guangdong Province People’s Government, 2013; D. Li, 2013). Jiangsu province also provided financial support, albeit only temporarily (Xiang Huo et al., 2016).

The NHFPC and Ministry of Finance (2013a) maintained that health insurance companies must pay for medical expenses, but this did not fully solve the issue. The reason for this was that, first of all, not everyone had health insurance and, secondly, considering the high cost of H7N9 treatment, chances were that the patient was unable to fulfill the required co-payment. For such cases, the NHFPC and Ministry of Finance referred to the so-called Disease Emergencies Aid Fund (疾病应急救助基金 *jibing yingji jiuzhu jijin*) at the provincial and city level (Ministry of Finance, 2013a). However, such funds were still in the process of being set up. Central level instructions had only been issued in February, just before the emergence of H7N9 (State Council General Office, 2013a). The first H7N9 cases appeared just one month after its official launch, so these emergency funds were not yet in place. In fact, departmental rules for these funds were only announced in August 2013 (Ministry of Finance & NHFPC, 2013). By 2015, Nanjing—where the 45-year old H7N9 patient’s family reportedly considered selling the house to pay medical bills—was still working on establishing the funds (Yi Wu, 2015).

Altogether, the H7N9 outbreak did not generate change in national level laws, regulations, or rules regarding medical insurance, which may be explained the health care reforms that were ongoing at that time. Within this process, there were a number of widely acknowledged challenges that directly pertained to the issue of H7N9 medical costs, including overcoming the fragmentation of and inequality between insurance schemes (Meng, Fang, Liu, Yuan, & Xu, 2015) and the heavy burden of co-payments (Hao Yu, 2015). In December 2017, the NPC started to deliberate the Basic Healthcare and Health Promotion Law. There is no evidence of a relationship between this and H7N9. In fact, this law has already been in the pipeline for more than a decade (NPC-SC General Office, 2008b; Tian, 2018). If passed, this law may resolve some of the health insurance issues that were exposed by H7N9.

7.3.2.2 Closure of Live Poultry Markets: Reliance on Local Level Policies

A second issue raised was the management of live poultry markets and in particular the question whether or not to permanently close these (CCTV, 2013d; J. Song et al., 2013; Jin Wang, 2016; Xiaoying Zhu, 2013; Xinfa Zhu, 2014). The reason for this was that the markets were identified as a key source of infection. As a consequence, one of the first measures taken by the Shanghai government in response to H7N9 was a temporary ban on trade in live poultry (Shanghai People’s Government, 2013b). This turned out to be a highly effective measure to stop the spread of H7N9 avian influenza. Infections in Shanghai, Nanjing, Hangzhou, and Huzhou dropped by 97–99% after live poultry markets were closed (Hongjie Yu et al., 2014).

The management of live poultry markets was not a new issue: the State Council issued an opinion in November 2006 that expressed the view to “step by step cancel the sales and slaughtering of live poultry in markets” and to, instead, develop a system of central slaughtering locations and sales of fresh packaged poultry (State Council General Office, 2006b).

However, it was not until 2014 that the first legislative steps into this direction were taken, but, recently, progress has stagnated. In May 2014, the Ministry of Agriculture released a draft of the Livestock and Poultry Slaughtering Management Regulations, which would implement a “livestock and poultry fixed location for slaughtering system” (article 3). Under this system, it would be forbidden to engage in livestock and poultry slaughtering in places other than designated slaughtering locations (some exceptions in rural areas apply) (Ministry of Agriculture, 2014c). If

passed, these Regulations would thus outlaw the sales of live poultry on markets. However, the legislative process has stagnated. While the Regulations were still mentioned in the 2016 legislative plan of the State Council, they were not included in 2017 and 2018. The Ministry of Agriculture has downgraded the project to departmental rules (rather than administrative regulations) in its 2018 plan for oversight of the slaughtering industry (Ministry of Agriculture, 2018).

Although these Livestock and Poultry Slaughtering Management Regulations are directly relevant to an issue central to H7N9 avian influenza—namely infection due to contact with live poultry—there is no evidence that the draft Regulations were induced by H7N9. The official explanation (说明 *shuoming*) that accompanied the 2014 draft did not mention avian influenza or H7N9. Instead, it stated that the draft was the result of a major restructuring of the State Council, which was initiated by president Xi Jinping and premier Li Keqiang who came to power in 2013 (Ministry of Agriculture, 2014b). A key focus was the strengthening of food safety supervision, including that of agricultural products (K. Ma, 2013). Strengthening supervision of livestock and poultry slaughtering subsequently became a focal point (State Council General Office, 2013d). Reasons for this were, inter alia, the growth of meat consumption and persistent food safety issues, including the use of lean meat powder (瘦肉精 *shouroujing*), the injection of water into meat, the addition of fake material, and the risk of infectious diseases resulting from slaughtering live poultry (Ministry of Agriculture, 2014b).

Nevertheless, H7N9 has led to legislative response at the local level. Zhejiang province, which ranked second regarding the number of H7N9 human cases (WHO, 2018a), passed the Live Poultry Trade Management Rules which prohibited live poultry trade in “restricted areas,” which were to be designated by city governments (Zhejiang Province People’s Government, 2014, article 5). Various major cities in Zhejiang province have subsequently permanently closed live poultry markets (Shaoxing City People’s Government, 2014; Wenzhou Municipality People’s Government, 2014; Y. Zhu, 2014).

Guangdong, the province with the third most H7N9 patients (WHO, 2018a) and a region with a very large chicken industry, passed similar restrictions on live poultry trade (Guangdong Province People’s Government, 2014). The province explicitly referred to the H7N9 virus as justification for the new rules:

epidemiological investigation and laboratory monitoring proves that poultry is the animal host for the H7N9 avian influenza virus. Although poultry infected with the H7N9 bird flu virus may not fall ill, if people come into contact with poultry that carries the H7N9 avian influenza virus, it is extremely possible that this leads to serious disease and even death. (S. Niu & Si, 2014)

To replace live poultry sales, cities in Guangdong and Zhejiang provinces have started to implement a mandatory system of centralized slaughtering (Guangdong Province People’s Government, 2014, article 5; Zhejiang Province People’s Government, 2014, article 6). This means that instead of buying a live chicken on the market that is slaughtered right on the spot, consumers can only buy poultry that is already slaughtered.

Along with this transformation of poultry sales, many cities now require mandatory market rest days, i.e. periods during which markets are emptied and disinfected. This measure was proposed

by scholars as an alternative to permanently banning live poultry trade. Not only does research show that this is an effective control measure, it is also much more palatable to the general public.

Thus, the H7N9 has not led to a national level ban on live poultry trade, which has at least five reasons. First of all, there is a lack of societal support for a live poultry trade ban. There is a strong dietary preference for poultry that is slaughtered on the spot, because it is believed to be safer, fresher, and tastier (X. Lin et al., 2017). In fact, various cities have reported the emergence of a black market in live poultry after the implementation of market closures (Lau, 2017; Hui Liu, 2016; Yimin Wang, 2014). Secondly, market closure has negative economic consequences for poultry traders, which are often small businesses that do not possess modern slaughtering and refrigeration facilities. Moreover, low education levels makes it challenging to find alternative employment (X. Ma et al., 2014). In fact, to reduce losses resulting from market closure, reduced prices, and negative media attention, farmers and businesses tried to sell their animals in other localities, which exacerbated the spread of the H7N9 virus (Yin Li et al., 2018). Thirdly, although some areas have started to modernize poultry trade by way of centralized slaughtering and improved cold chain management, this process has not yet been completed, which means that there is not yet an alternative to live poultry. Fourthly, legislators at the provincial level and below have already taken effective measures to control live poultry markets, which reduced the urgency for a national level ban. And fifthly, it is challenging to reach central level consensus because banning live poultry trade conflicts with the agenda of the main regulator in this area, the Ministry of Agriculture.

7.3.2.3 Online Rumors: Criminal Law Amendment

A third issue that emerged during the H7N9 epidemic was misinformation on the internet. As discussed above, a number of individuals were detained for spreading rumors about H7N9. Examples of misinformation are false reports about new H7N9 patients, fatalities, detection of the virus on poultry farms and markets, and even about prevention and treatment. False information during crises is problematic because it can lead to panic, obstruct prevention and control work, which can subsequently lead to more harm. It can also undermine government credibility and lead to a political crisis.

One response to H7N9 false rumors was advocacy for increased government openness (Hongbing Li, 2013; Long, 2013). Proponents of this response argued that the lack of an authoritative voice creates an information vacuum, which provides space for misinformation. In fact, even premier Li Keqiang endorsed this view. During the State Council's review of China's H7N9 response, he was quoted as saying:

Our experience of responding to public health incidents in the past years clearly shows that public transparency is the natural enemy of rumor. Every region and relevant department must view publicly and transparent announcement of the epidemic situation as a system: timely respond to social concerns, guide persons employed in the poultry industry and the public to carry out protection work. Only information release can accomplish public transparency, only then are the masses at ease and confident, which prevents panic. (Zhinan Li, 2017)

However, although government transparency during public health crises has been mentioned in a series of State Council policy documents, no new national level law has been passed in this area.⁷⁰ Since 2014, the State Council has published annual action plans for open government information, which focuses on the implementation of the Government Information Openness Regulations that were passed in 2007. Specifically, the plans instruct governments to be the “first news spokesperson” and require them to release “authoritative information” within five hours after the onset of an emergency and a news conference within 24 hours (State Council General Office, 2016, 2017).

A more reactive approach to false rumors during epidemic outbreaks is to criminalize it, which happened in the 2015 amendment of the Criminal Law. The law now stipulates that fabricating and disseminating false information about epidemic outbreaks is punishable by up to three years imprisonment, detention, or surveillance or up to seven years if it “brought about severe consequences” (article 291.1).

Given that there was no other major epidemic outbreak at that time, this new addition to the Criminal Law was likely induced by H7N9, but this is not the whole story, because it is part of a wider crackdown on online misinformation. Shortly after Xi Jinping came to power in 2013, he issued the Seven Bottom Lines (Bandurski, 2013). The Supreme People’s Court subsequently issued a judicial interpretation that, amongst other things, brought spreading rumors about epidemic situations under the realm of criminal law, with a sentence of up to five years imprisonment (Supreme People’s Court, 2013). Considering that the H7N9 was ongoing at that time, the emergence of this new virus likely played a role in the interpretation. The interpretation was formalized with the aforementioned 2015 Criminal Law amendment. Thus, while likely induced by H7N9, the criminalization of disseminating false rumors about epidemic situations was part of a wider political trend of tightening control over the internet that intensified when Xi Jinping became president in 2013 (Economy, 2014; G. Yang, 2014).

7.3.2.4 Local-Central Relations: Not Addressed

Several prominent Chinese public health experts expressed concern over the concealing of information about H7N9 cases by local governments. Zeng Guang, chief epidemiologist at the China CDC argued that

the current regulatory system does not favor reporting epidemics. Certain local governments have formulated control targets, requiring that infectious diseases stay under a certain percentage. If [the government is] unable to decrease [the number], the best method is precisely to report fewer. (D. Yan, 2013)

Moreover, Zeng argued that local interests such as income from tourism and poultry farming can easily take priority over public health. Likewise, in an interview just weeks before the first H7N9 cases emerged, the well-known SARS doctor Zhong Nanshan pointed out that

⁷⁰ A draft amendment of the Government Information Openness Regulations was published for public consultation in June 2017, but as of December 2018 has not yet been passed. The Sudden Public Health Incidents Regulations are currently being reviewed for amendment by the State Council. In both cases there is no evidence of a causal relationship with H7N9.

the most prominent problem [in public health emergency response] is covering up and reporting disease information. The number of medical cases and death toll are not sufficiently accurate reported by individual regions, this has to do with certain local officials worrying that these numbers will affect one's own political achievements. (Heng Li, 2013)

Local cover-ups of infectious diseases are not uncommon in China. This is evidenced not only by the SARS outbreak, but also by the AIDS epidemic that was concealed in Henan province in the late 1990s (Hille, 2012) and by the 2009 outbreak of outbreak of hand, foot and mouth disease that led to the death of at least three children and sickened 3,000 others (Lei Zhang, 2009).

Being aware of the possibility of local governments covering up new H7N9 cases, the central government in Beijing warned against such practices. In a press conference, the director of the NHFPC H7N9 working group emphasized that timely reporting "...is the legal responsibility of doctors, doctors who do not report will be found responsible..." (NHFPC, 2013g). The director referred to the Infectious Diseases Law, the Emergency Response Law, and the Regulations on the Urgent Handling of Public Health Emergencies, all of which forbid concealing information about infectious diseases and public health emergencies.

Despite the serious consequences of hiding information about infectious diseases, the H7N9 outbreak has not induced further steps to address this issue through law. One explanation for this is that there appeared to be no large-scale hiding of information regarding H7N9. In fact, China has been widely praised for its transparency and reporting to the public regarding H7N9 (Hvistendahl, 2013; Vong et al., 2013; WHO, 2013a, 2013c). Moreover, despite general concerns over local cover-ups based on previous experiences, there was no actual evidence of local cover-ups of H7N9 avian influenza. Therefore, there was no urgent incentive to address these concerns.

A parallel issue straining local-central level relationships was the monopoly of the NHFPC (formerly the Ministry of Health) to announce information about epidemic outbreaks, which is stipulated in the Infectious Diseases Law (article 38). As illustrated by the first H7N9 case in Jiangsu as discussed above, this can cause a lapse between detection and announcement, which not only slows down control work but also creates an information vacuum that may be filled with false rumors. Perhaps this also played a role in the very beginning of the H7N9 outbreak. Even though China has been praised for its transparency regarding the new virus, others have stated that information was only released after approval by the NHFPC, despite the fact that the virus had been identified by two different laboratories (W. Qiu, Chu, Mao, & Wu, 2018). If true, this may mean that the announcement of the first H7N9 case was delayed by three weeks.

While history has shown the importance of having multiple organizations verify information prior to release—during SARS the China CDC first announced that chlamydia was the cause of the mysterious disease, which turned out to be untrue (C. Cao, 2004)—in order to avoid rumors it is pivotal that government authorities provide timely information, even about uncertainties (WHO, 2017). Moreover, during the SARS pandemic, identification of the pathogen was slowed down, because the announcement of any research findings had to first be approved by the China CDC and the Ministry of Health (C. Cao, 2004).

To address the NHFPC information monopoly, aforementioned Zeng Guang argued that the NHFPC (formerly the Ministry of Health) is not necessarily the best choice for announcing

a new epidemic situation (D. Yan, 2013). Instead, Xue & Zeng (2019) recommend authorizing prefectural and municipal level governments to release information about (suspected) epidemics, which was not possible under the existing Infectious Diseases Law (article 38).

However, H7N9 did not generate legal change with regard to the announcement of epidemic diseases. One possible explanation for this is the trend towards recentralization of decision-making and strengthened central control, which intensified since Xi Jinping became president (Donaldson, 2017; Kostka & Nahm, 2017).

7.3.2.5 Financial Support for the Poultry Industry

The Chinese poultry industry experienced severe financial losses due to H7N9. This was partly a result of plummeted demand and declining prices due to concerns over the safety of poultry products, but it is also the consequence of government measures to control the outbreak, including poultry culling, market closures, and transportation bans. These measures did not only affect poultry traders, but the entire egg and poultry meat production chain, including breeders, feed suppliers, farmers, slaughterhouses, and processing plants. China's Ministry of Agriculture estimated a RMB 60 billion loss during the first half of 2013 alone (Ministry of Agriculture, 2014a).

In order to address this issue, there have been calls to improve access to financial services, to increase the financial compensation for culling, and to expand government insurance subsidies (L. Cui, 2013; W. Gao, 2013; Godfrey, 2014; Y. Lin & Cui, 2013; Hongbin Zhang, 2013).

Access to loans and credit is generally limited for poultry farmers in China (Z. Wang, 2018), which means that in the event of a crisis such as H7N9 avian influenza, farmers face severe financial difficulties as prices drop and businesses are unable to honor downstream contracts for e.g., feed and chickens (W. Gao, 2013; Godfrey, 2014). To help the poultry industry cope with losses due to H7N9 avian influenza, the central government instructed lower level financial institutions and governments to increase financial support to the poultry industry (Bank of China, 2014; CBRC & Ministry of Agriculture, 2013). Moreover, special financial support was arranged for selected large-scale, 'dragon head' enterprises (龙头企业 *longtou qiye*) (Ministry of Agriculture & Ministry of Finance, 2013).

Although H7N9 has not led to new central level laws to address poultry farmers' limited access to financial services, a rural finance law has been proposed, which is supposed to solve this issue (Shang, 2013; Xuan Wu, Jiang, & Zhang, 2018; B. Zhang, 2015). Already in 2013, the China Banking Regulatory Commission (CBRC) argued that "some of the [rural finance] problems cannot be solved through the market or administrative methods, but require the timely launch of a relevant rural finance law" (Shang, 2013). The law has high level political support (CPC Central Committee & State Council, 2016). However, it has not been included in the 2018–2023 five-year plan and even after four years of work, no draft has been released (CBRC, 2017). One explanation for this is that the law is jointly drafted by the CBRC and the Ministry of Agriculture (CBRC, 2017). Given the tendency of Chinese government bodies to focus on their own interests rather than on the bigger picture (M. S. Tanner, 1994, p. 65), it is conceivable that disagreements have arisen, which slows down the process. In addition, the law touches upon politically sensitive ideological issues including land use and property rights. Because farmers do not privately own their homes and land, it is currently illegal for them to use land and houses as collateral (State Council, 2015). To change this, the Property Law, the Guarantee Law, and the Law on Contracting

Rural Land would have to be amended, but so far, only the latter has been passed.

A second financial issue that emerged during the H7N9 epidemic was compensation for culled poultry, which was considered to be too low. The 2004 Provisional Rules for the Funds Management to Control and Cure Highly Pathogenic Avian Influenza (高致病性禽流感防治经费管理暂行办法 *gaozhibingxing qinliugan fangzhi jingfei guanli zanxing banfa*) stipulate a RMB 10 compensation per culled bird. However, by 2013, this was insufficient to cover the production costs, which were estimated to be between RMB 13–60 depending on location, bird variety, and size of the animal (Du, 2016; Z. Huang & Wang, 2015; Mei, 2011). Inadequate compensation is not just a financial issue, but also a public health issue because without proper compensation, farmers are less likely to report sick animals and instead are more likely to sell them to underground processing plants, which exacerbates the spread of the virus (Du, 2016; Y. Lin & Cui, 2013; C. Wang, 2013). Although in some cities the culling compensation exceeded the RMB 10 standard, the poultry industry still bears a substantial share of the loss (Du, 2016; C. Wang, 2013).

To address this issue, the Ministry of Agriculture increased the compensation to RMB 15 per bird in 2017 (Ministry of Agriculture & Ministry of Finance, 2016). However, as discussed above, this still barely covers the production costs. In fact, research conducted in Ningxia province showed that small-scale farmers were willing to report avian influenza at a compensation level of RMB 22 and large-scale farmers at RMB 31 (M. Liu, 2017). Considering that Ningxia is a relatively poor province, adequate compensation levels may be even higher in other parts of the country. Thus, the increase from RMB 10 to RMB 15 is still too low, which not only means continued economic losses for H7N9 affected farms, but also a serious risk of underreporting.

An alternative or complementary proposal was for the central government to include the poultry industry in the existing rural insurance subsidy program. Rural insurance is common in a number of agricultural sectors in China, including pig farming, but only few poultry farmers are insured (L. Cui, 2013; Z. Huang & Wang, 2015). This reason for this is that few companies offer poultry insurances and if they do, coverage is limited and the premium high (Yuanyuan Hu, 2013; Y. Lin & Cui, 2013; N. Yin, 2013). Therefore, when the H7N9 virus emerged, it was proposed that the government provides subsidy to cover the insurance fees (Yuanyuan Hu, 2013; Z. Huang & Wang, 2015; Y. Lin & Cui, 2013).

However, the new Insurance Fee Subsidy Rules issued by the Ministry of Finance in 2016 do not cover the poultry industry (Ministry of Finance, 2016), even though new cases of H7N9 were still appearing and a new avian influenza virus (H5N6) had appeared in China, which led to the first human fatality in the world and the culling of poultry. Because the Insurance Fee Subsidy Rules did not cover poultry, the industry relied on local government insurance subsidy programs, but generally the relatively low subsidy offered by local governments did not encourage poultry farmers to buy insurance (Tuo & Zhu, 2014). It is unclear why poultry was not included in the existing national level insurance subsidy scheme. One possible explanation were the costs and the financial risks. Moreover, there may have been practical obstacles, such as record keeping of animals.

7.4 Discussion

Taking the crisis-change and lawmaking storylines as a the starting point, this section, first of all, disentangles the causal configuration that led to the amendment of the Infectious Diseases Law and the conditions that prevented broader post-crisis legal change. Secondly, this section assesses the nature of post-crisis legal change and reflects on the extent to which post-crisis legal change reflects learning.

7.4.1 Driving Forces of News Media Agenda Setting

The risk event that started the H7N9 crisis was the hospitalization of three family members in Shanghai's Fifth People's Hospital, one of whom subsequently died from what later turned out to be the avian influenza A(H7N9) virus.

A first causal condition for news media agenda setting of H7N9 was unexpectedness. Although the virus had previously been detected in poultry, these were the first *human* cases in the world. This is consistent with the crisis-change literature discussed in chapter 2, which argues that new events are more likely to attract media attention (Birkland, 1997; Moeller, 1999; Singer & Endreny, 1993).

A second causal condition for news media agenda setting was the impact of the H7N9 virus, i.e. the consequences of the risk event. Two of the three human cases announced by the NHFPC were fatal. The virus was thus life-threatening. The general public was clearly concerned about this: the number one word mentioned on Weibo with regard to H7N9 was "death" (死亡 *siwang*) (Sina Weibo Data Center, 2013). This finding is consistent with the crisis-change literature discussed in chapter 2. Singer and Endreny (1993) found that hazards involving death or injuries are featured more prominently than other hazards. Likewise, Moeller (1999) argues that news media tend to cover severe and visible diseases such as Ebola, whereas diseases such as measles or diarrhea typically receive little attention.

A related third causal condition was issue resonance, albeit in a broader sense than described in chapter 2, which defined issue resonance as the extent to which an event is relevant to the everyday lives of the audience. The present chapter shows that the relevance of H7N9 did not only derive from potential health threats, but also from past experience with epidemic outbreaks, particularly with SARS and avian influenza A(H5N1). This is consistent with Smith et al. (2013) who found a significant relationship between past experience with infectious diseases outbreaks and the volume of news about H1N1 influenza. The availability of the SARS and H5N1 templates made the H7N9 story more interesting and comprehensible. Moreover, it is possible that journalists could rely on contacts and expertise developed during SARS and H5N1 (K. C. Smith et al., 2013).

A fourth causal condition was the event's scope. As discussed in chapter 2, the more people affected by the event, the larger the drama, the more newsworthy a risk event is (Birkland, 1997, pp. 31–32). Singer and Endreny (1993) even argue that news media tend to cover events in which at least five people die simultaneously. This aligns well with the finding of this case study. At first, the NHFPC announced three cases. The initial volume of newspaper articles was limited: the China Core Newspapers Full-text database contains just one, five, and five articles respectively for the first three days following the NHFPC announcement. As shown in figure 7-1, only when more cases were announced in subsequent days, the number of news articles increased.

The argument that the scope of the event played a critical role is supported by another case of a novel virus, namely the world's first human case of H5N6 avian influenza in April 2014 in China's Sichuan province. Like H7N9, the H5N6 virus had been detected in poultry before, but never in humans. Moreover, the impact was severe: a 49-year old male without underlying medical conditions died just ten days after the onset of the disease. But contrary to H7N9, this was a single case. Media response was very limited: the China Core Newspapers Full-text database contains only one article about this first H5N6 case. In contrast, when two new human cases of H5N6 were announced in January 2016 there was slightly more media attention: the China Core Newspapers Full-text database contains seven articles regarding these two cases. However, with no additional cases emerging, news attention quickly vanished.

A fifth and critical causal condition was the availability of non-sensitive frames. As discussed in chapter 2, within China's authoritarian political context, the political sensitivity of an issue—which can vary from day to day—determines the tone and volume of news coverage. During the SARS epidemic, information was so politically sensitive that it was either unavailable or censored. In contrast, the Chinese central government adopted a proactive approach to H7N9 that included frequent updates and a persuasive narrative that explained what happened, provided advice, and acknowledged unknowns. In fact, roughly a quarter of the newspaper articles on H7N9 in the China Core Newspapers database focused on government action e.g., the publication of emergency response plans, policy notices, and announcement of new cases. This meant that information was available and that the issue was not a secret, as it was during SARS.

A final factor that may have played a role, but that needs further research is social media. As discussed above, three weeks prior to the official NHFPC announcement, a whistleblower shared a message on Weibo about unexplained deaths in the Fifth People's Hospital. Although the message was quickly deleted and its content denied, it may have accelerated and sharpened the NHFPC announcement. Given that it specifically addressed this issue in its initial statements of March 31, the NHFPC was certainly aware of the Weibo leak and the risk of losing public trust. A second event that points towards a action-reaction pattern during this crisis is the Weibo leak about a H7N9 case in Nanjing. It was only *after* this leak that the NHFPC announced four additional cases.

It is not uncommon for crises in China to start on social media. Research suggests that 15–20% of all “online public opinion incidents” (e.g., food safety scandals, industrial accidents, and corruption) start on Weibo (Shanghai Jiaotong Daxue Public Opinion Research Laboratory, 2015), so it is conceivable that the two leaks played a role in the timing of the NHFPC announcements. However, more research is needed to understand how Chinese government officials use and interpret social media during crises.

7.4.2 Driving Forces of Institutional Response

H7N9 reached the institutional agenda (i.e. was seriously being considered by a government institution) before it reached the media agenda: the news media learned about the new virus through the NHFPC announcement. As shown above, the NHFPC was the most active government organization in H7N9 response. H7N9 also received high level political response. It was a key topic during the weekly State Council meeting of April 10 and on April 28, premier

Li Keqiang visited the China CDC. However, State Council attention quickly died down: it mentioned the virus briefly in its May 8 meeting on agriculture, but this was the last time H7N9 was mentioned in State Council meeting reports in 2013, which is not surprising given that only few new cases appeared after May 2013. Leaving H7N9 crisis response to the NHFPC is also consistent with China's emerging strategy of using technical experts and agencies as "lightning rods" in order to avoid blame (Baekkeskov & Rubin, 2017).

A first critical driving force for H7N9 institutional agenda setting was the nature of the crisis. H7N9 was a novel virus without effective medical treatment. Moreover, early on, experts—including at the China CDC—warned of its pandemic potential (R. Gao et al., 2013; Kageyama et al., 2013). Consequently, as the number of cases increased, the NHFPC's institutional response intensified. In fact, figure 7-4 shows that roughly a quarter of content about H7N9 on the NHFPC website focused on new cases. This suggests that the seriousness of the crisis was a major driving force for institutional response.

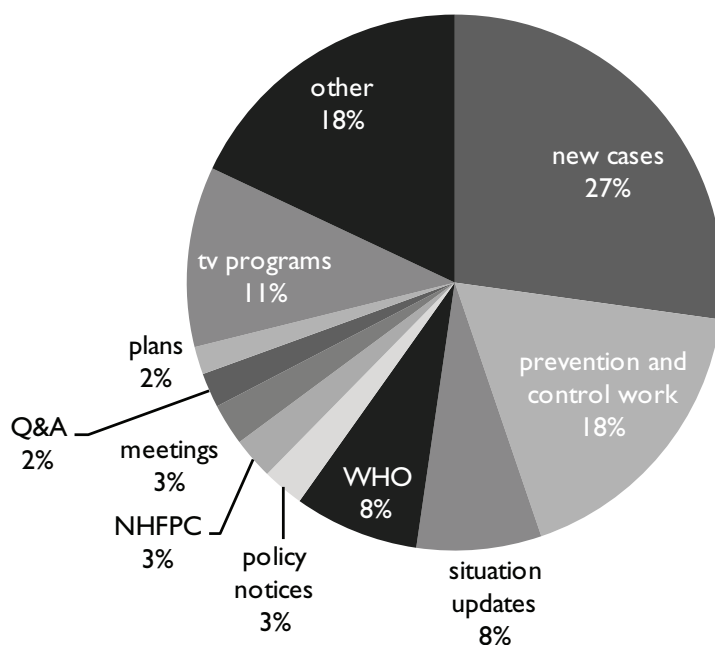


Figure 7-4. H7N9 Section on NHFPC Website: Distribution of Topics. Total number of documents is 222. Some documents fall into multiple categories. Coding based on title of the article.

Data source: NHFPC website.

Again, we can contrast H7N9 with the first human case of H5N6 in 2014, which was a single case. Experts were less outspoken about its pandemic potential. Consequently, the H5N6 virus barely reached the institutional agenda.

A second driving force was that H7N9 posed a threat to social and political stability, which the government mentioned in some of its communication about the virus. SARS had shown what happens if an epidemic is ignored. Inaction would undoubtedly have led to more H7N9 cases,

because the main source of infection was contact with live poultry. Once these were closed, the number of cases dropped. In Kingdon's (2014, p. 96) words, the emergence of H7N9 was thus a risk event that "demand some sort of action so clearly, that even inaction is a decision."

A third driving force for H7N9 institutional agenda setting was political sensitivity: it was exactly ten year since SARS. This anniversary had been widely discussed in news media and scholarly journals in the months preceding the emergence of the H7N9 virus. Once the NHFPC announced the first H7N9 cases, the way in which government responded was immediately compared to the handling of SARS, with people wondering whether lessons had been learned. This environment generated pressure for the Chinese government to respond adequately. In addition, Xi Jinping and Li Keqiang had just become president and premier, which meant an opportunity for them to show that China had learned from SARS.

The political sensitivity is evidence by news media and internet censorship. When social media users framed government response to H7N9 as similarly inadequate as during SARS, messages were censored and the search term "SARS ten years ago+bird flu ten years later" was blocked. While censorship is common during crises, more research is needed to understand the underlying mechanism. In a widely quoted study, King, Pan, and Roberts (2013) argue that "censorship is primarily aimed at restricting the spread of information that may lead to collective action, regardless of whether or not the expression is in direct opposition to the state and whether or not it is related to government policies." However, censorship during H7N9 appears to be targeted at government criticism as well as at rumors, not just at mobilization. More research is needed to better understand the indicators of online censorship during crises.

7.4.3 Explaining Limited Legal Change

As shown above, legal change in response to H7N9 was limited to the amendment of two articles in the Infectious Diseases Law. Apart from this, H7N9 did not reach the legislative agenda. Evidence of this is fourfold. First of all, the Infectious Diseases Law has not appeared in the two post-crisis five-year legislative plans. Secondly, no proposals to amend the Infectious Diseases Law have been submitted by NPC delegates after H7N9 (2014–2018). Thirdly, the official NPC magazine (中国人大杂志 *Zhongguo Renda Zazhi*) only mentions H7N9 in the context of the tenth anniversary of the Infectious Diseases Law and only in a positive way. Fourthly, the NHFPC report to evaluate the implementation of the Infectious Diseases Law, presented in August 2013 only mentioned the H7N9 epidemic once and only in a positive way.

Lawmakers' lack of attention to H7N9 is consistent with the crisis-change literature, which—as introduced in chapter 2—identifies three main driving forces of post-crisis legal change, two of which were not present in the case of H7N9, namely problem salience and a favorable political climate.

First of all, there was no evidence of sustained human-to-human transmission. Instead, the main source of infection was contact with poultry, especially on markets. Therefore, as discussed above, many local governments implemented restrictions on live poultry trade, which has been credited for a decline in the number of infections. Although the virus reemerged in consecutive winters, the number of infections has remained limited. At the height of the fifth wave (January 2017), there were 220 new cases in just one month, but the number declined as a result of poultry

vaccinations. No new human cases were reported in the seventh wave (October 2018–January 2019). Even though experts are still very concerned about the potential of H7N9 to reemerge or to evolve into a new virus, the fact that there are no new human cases and no findings in birds or the environment, disincentives legal change.

Secondly, the political climate was not conducive to change. Not only did lawmakers not pay attention to H7N9, the general public quickly lost interest in the issue too, a trend that was actually being monitored by the China CDC (Vong et al., 2013). The decline is evidenced by figure 7-5, which shows the popularity of the term “H7N9” on China’s top search engine Baidu, with a peak on 11 April 2013. H7N9 thus quickly disappeared from the public agenda, again disincentivizing lawmakers to pay attention to it. With regard to H7N9, the national mood was one of victory and pride of post-SARS progress. China was widely praised for its response to H7N9, including in terms of transparency, science, and epidemic control. Consequently, as the country was commemorating the SARS 10-year anniversary, the official narrative was that China had indeed learned and implemented lessons. To illustrate, the NHFPC stated that “all localities and departments have acted swiftly, worked together, responded in a scientific way, transparently, effectively controlling the epidemic. It has won recognition from all walks of life and has received positive comments from the World Health Organization” (B. Li, 2013). In addition, with Xi Jinping as the new general secretary since 2012, the focus of the Communist Party was on fighting corruption and improving social welfare, including “better education, more stable jobs, more income, greater social security, better medical and health care, improved housing conditions and a better environment” (Xi, 2012). In contrast to epidemic preparedness, reducing corruption and improving quality of life gives leaders political credits and therefore the lack of lawmakers’ attention to H7N9 is not surprising.

Moreover, there was a lack of organized political forces advocating for change. Although scientists agreed that H7N9 was a serious public health threat, there is no evidence of organized advocacy for legal change nor is there evidence of a policy entrepreneur.

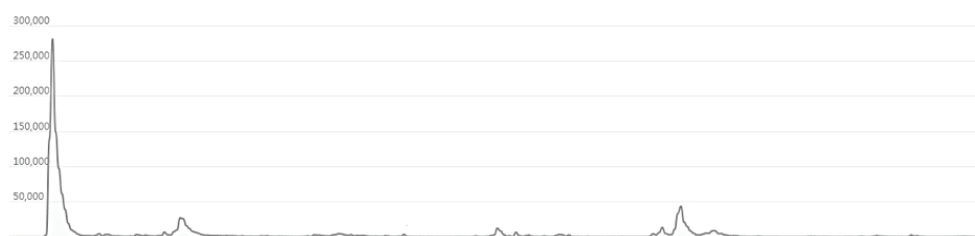


Figure 7-5. Search Index for ‘H7N9’ on Baidu, 1 January 2013–31 December 2018

Source: Baidu Index.

In addition, with the exception of the categorization of statutory notifiable diseases, there were no feasible legal solutions available for other issues exposed by H7N9. Most notably, a major issue was live poultry markets. There is consensus amongst experts that live poultry markets are the main infection source of H7N9 avian influenza and that such markets contribute to the spread and evolution of avian influenza viruses. However, given the important role of fresh poultry meat

in the Chinese food culture, the risk of black markets, and the lack of an alternative supply chain, it is difficult to pass a national level ban on live poultry markets. Likewise, the cost of medical treatment has not been addressed, because this topic is part of a larger, ongoing legislative project, namely the making of the Basic Healthcare and Health Promotion Law.

7.4.4 The Nature of Post-Crisis Legal Change

Legal change in response to H7N9 was limited to the amendment of two articles in the Infectious Diseases Law, which authorized the NHFPC to add and remove statutory notifiable diseases and to cancel the application of category A measures to category B diseases. This was important because it gave the NHFPC more flexibility in the control of emerging infectious diseases and ensured a legal basis for epidemic control measures.

As visualized in figure 7-6, this amendment was small compared to the overall evolution of the Infectious Diseases Law. The original law was passed in February 1989. It was amended for the first time in August 2004, in response to SARS (Q. Gao, 2004a). Using SinoLawGist and CLOG—the software introduced in chapter 4—the change index between the 1989 and 2004 law was 69. Compared to how Chinese laws change in general (see chapter 4.4.3), it is fair to say that the 2004 amendment was substantial and non-incremental. In contrast, the 2013 amendment has a change index of just 5. This is a relatively small change.

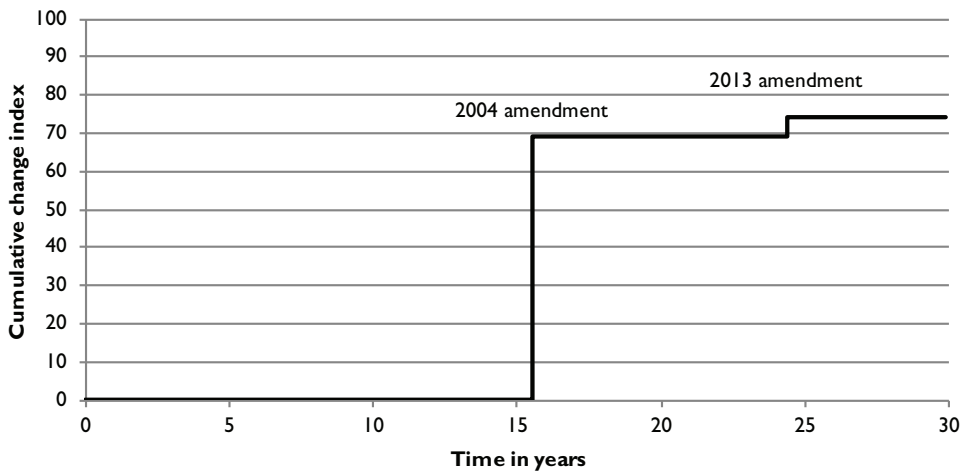


Figure 7-6. Evolution of the Infectious Diseases Law, 1989–2018

An important remaining question is whether and what kind of learning has taken place as a result of H7N9. As discussed in chapter 4, it is difficult to learn from crisis due to a variety of individual and organizational constraints. Therefore, single-loop learning is more common than double-loop learning. Moreover, if a similar crisis happens more than one time, the likelihood of change and learning increases. This is consistent with the findings in this chapter. Authorizing the NHFPC to adjust statutory notifiable diseases is an operational, single-loop change rather than a fundamental change in goals, premises, and norms. Moreover, this legal change had already been proposed in the official assessment of China's response to the H1N1 influenza pandemic of 2009

(L. Xue & Zeng, 2014). Again, this is consistent with existing policy change literature, which has shown that very few problems and solutions are entirely new (Birkland, 2006; Kingdon, 2014).

Based on the definition of learning adopted in this thesis, post-crisis legal change reflected only limited evidence of learning. This is summarized in table 7-2.

Table 7-2. Evidence of Learning From H7N9 as Reflected in Post-Crisis Legal Change

Issue exposed by H7N9	Proposed solution	Change	CR	PS	Type of learning
Flexibility for NHFPC to adjust statutory notifiable diseases	Amendment of Infectious Diseases Law	Yes	Yes	Yes	Learning
Cost of medical treatment	Special fund	No			
	Clarification of liability H7N9 medical bills	No			
	Comprehensive scheme for medical costs	No			
Biosecurity	Permanent closure of live poultry markets	No			
Misinformation	Control of online rumors	Yes	Yes	No	Rhetorical learning
Local-central relations	Prevent local cover-ups	No			
	Allow local governments to announce epidemic information	No			
Limited financial support poultry industry	Improved access to financial services	Yes	No	Yes	Coincidental learning
	Higher level compensation	Yes	Yes	No	Rhetorical learning
	Increased insurance coverage	No			

Notes: CR = crisis responsiveness; PS = problem-solving potential.

First of all, the Infectious Diseases Law amendment constitutes real learning. The reason for this is that it scores positive on crisis-responsiveness, because its substance aligned with an issue exposed by H7N9, namely the NHFPC's lack of flexibility regarding the categorization of emerging infectious diseases. The amendment ensured a legal ground for some of the announced H7N9 measures and therefore, the amendment also had problem-solving potential.

Secondly, the 2015 Criminal Law amendment included a new sub-article that specifically focused on misinformation about epidemic outbreaks. Considering that there was no other major epidemic at the time that the Supreme People's Court issued the precursor of this amendment—a 2013 judicial interpretation that made spreading false information punishable by up to five years imprisonment—this particular change was likely a response to H7N9. However, it is questionable whether this criminalization has the potential to actually reduce the amount of misinformation

about epidemic outbreaks (Repnikova, 2018). Therefore, I categorize this legal change as rhetorical learning.

Thirdly, the amendment of the Law on Contracting Rural Land (农村土地承包法 *nongcun tudi chengbao fa*), passed in December 2018, allows farmers to use their land as collateral for bank loans, which has the potential to improve farmers' accessibility to financial services. However, there is no causal relationship with H7N9. Therefore, I categorize this amendment as coincidental learning, i.e. change that does not respond to the crisis, yet has potential to solve issues exposed by the crisis, in this case, farmers' limited access to loans.

Finally, the 50% increase in culled poultry compensation by the Ministry of Agriculture was a response to H7N9. However, the compensation level is still too low to cover production losses and to incentivize farmers to report sick animals. Moreover, the increase came in the form of a policy document. The rules underlying this policy have not been amended. Therefore, this is a case of rhetorical learning.

7.5 Conclusion

This chapter showed that legal change directly induced by H7N9 was limited to the 2013 amendment of the Infectious Diseases Law. This amendment concerned the classification of statutory notifiable diseases.

Table 7-3 summarizes the causal conditions that contributed to this outcome by looking at three interacting policy processes: news media agenda setting, institutional response, and legal change. The driving forces behind news media agenda setting were fivefold: unexpectedness, impact, issue resonance (i.e. past experiences), scope, and the availability of a non-sensitive frame. The main driving forces of institutional response (primarily by the NHFPC) were the nature of the crisis and the threat to social and political stability. Moreover, H7N9 was politically sensitive in the sense that the emergence of the virus coincided with the ten year anniversary of SARS, which created pressure to show that the country had learned from the past. Consequently, the institutional response was not just focused on medical treatment and monitoring, but also included censorship.

There are three main driving forces behind the amendment of the Infectious Diseases Law. First of all, there was a feasible policy solution available. The amendment was a technical issue that had previously been proposed in response to H1N1 (L. Xue & Zeng, 2014, pp. 255–256). Secondly, there was a problem in the sense that some of the H7N9 prevention and control measures lacked legal ground. Thirdly, related to the previous driving force, Xi Jinping's "rule of law" narrative was an incentive to ensure legal ground for prevention and control measures.

Although, intuitively, one would expect that a virus like H7N9—having pandemic potential with potentially disastrous global consequences—would lead to more legal change, based on literature, the limited legal change observed here is not surprising. According to the multiple streams framework (Kingdon, 2014), policy change requires a problem, solution, and a favorable political climate. However, none of these were sufficiently available in the case of H7N9. The adequate institutional response—especially in terms of communication, vaccination, and restrictions on live poultry trade—led to a decline in problem salience. Moreover, except from the statutory diseases classification system, there were no feasible legal solutions available for other issues exposed by H7N9. In addition, the coincidence with the ten-year SARS anniversary created pressure to show

that lessons had been learned, which restricted the possibilities for extensive change, because this would give the impression that there were flaws in existing laws.

Table 7-3. Summary of the H7N9 crisis-change process

Elements of crisis-change process	Conditions
Media agenda setting	Unexpectedness, impact (i.e. life-threatening), issue resonance (i.e. past experiences), scope, and the availability of a non-sensitive frame
Institutional agenda setting	Crisis nature (pandemic threat); threat to social and political stability (based on past experience); political sensitivity (ten-year anniversary of SARS)
Legal change	
Infectious Diseases Law amendment	Availability of a feasible policy solution (previously proposed); nature of the problem (lack of legal basis for H7N9 response); political context conducive to change (“rule of law” narrative).
Criminal Law amendment (rumors about epidemic outbreaks)	Favorable political climate; availability of a solution (i.e. Supreme People’s Court judicial interpretation); problem (i.e. “rumors” about H7N9)
Law on Contracting Rural Land	(Conditions not identified because unrelated to H7N9)
No legal change	Conditions
Limited legal change	Nature of the problem (no sustained human-to-human transmissions, decline in cases due to restrictions on live poultry trade and mandatory poultry vaccination); lack of feasible solutions; political climate not conducive to change (not on public agenda; other, more tangible policy priorities; positive framing of H7N9 response)
Cost of medical treatment	No clear-cut solutions (ongoing health care reforms, no consensus)
Permanent closure of live poultry markets	No solution available (alternative system of centralized slaughtering is still being developed; risk of black markets; economic impact on poultry farmers)
Local-central relations	Political climate not conducive to change (recentralization of power under Xi Jinping)
Higher level compensation for culled poultry	Possibly due to budgetary obstacles, focus on large-scale farming
Increased insurance coverage for poultry farmers	Risks for insurance companies; practical obstacles

H7N9 exposed a number of shortcomings regarding the prevention and control of emerging infectious diseases, yet only some issues discussed in this chapter have been addressed in post-H7N9 legal change. Moreover, the problem-solving potential of this legal changes is limited. First of all, as we have seen with the criminalization of other types of fake news in China (Repnikova, 2018), the criminalization of fabricating and disseminating false information about epidemic outbreaks will not necessarily solve the problem of misinformation. Secondly, although the Law on Contracting Rural Land allows farmers to use rural land as collateral for bank loans, this is only

a first step in improving access to financial services for the poultry industry.

If we define learning as the extent to which post-crisis legal change addresses the issues exposed by the crisis, the only evidence of real learning from H7N9 is the Infectious Diseases Law amendment.

Despite the lack of legislative change and learning from H7N9, the case study shows that China's epidemic preparedness has greatly improved since SARS. H7N9 put China to the test regarding lessons learned from SARS. Based on the positive reviews of China's response and the fact that no new human and animal cases have appeared since October 2018, the country has passed this test.

However, at the same time, the success narrative of H7N9 may undermine preparedness for future epidemics. H7N9 showed shortcomings in the legal framework, which—if left unaddressed—may contribute to the spread of diseases and the risk of crises. Especially worrisome are local-central relations. There is a continued concern over local cover-ups—which was again expressed during the recent African Swine Fever epidemic. In addition, although China has been praised for its transparent and proactive crisis communication, the criminalization of false information about epidemic outbreaks runs counter to this development, because it makes whistleblowing riskier. Finally, live poultry trade continues to be a major concern because it provides an ideal environment for the evolution and spread of viruses and diseases.

Conclusion

8 Legal Change After Public Health Crises in China

In July 2018, a Chinese pharmaceutical company was found to have sold substandard vaccines (Yuewei Wu & Liu, 2018; Haoyuan Zhang, Yuan, & Liu, 2018). The vaccines had been administered to almost 200,000 children (Xinhua, 2018). Although no serious illness or deaths related to the substandard vaccines have been reported, the event led to widespread online criticism and offline activism in the form of protests in Beijing, both of which were suppressed by the government (S. Beach, 2018; Koetse, 2018; Shou, 2018; B. Ye, 2018). This crisis added to already serious concerns over vaccination safety, because similar events had happened in 2010, 2016, and 2017, despite the promise of premier Li Keqiang in 2016 to crack down on illegal behavior in this sector (FSDA, 2017; Ministry of Health, 2010b; State Council, 2016b).

The recent vaccine crises once again show the need to understand what happens during public health crises and especially afterwards. Such crises not only lead to substantial economic and health damage, but also undermine government credibility and are therefore regarded as a threat to social and political stability by China's leaders (Q. Gao, 2004b; Z. Tang, 2007; Xinhua, 2017). These crises are not just a domestic issue, but are also relevant to the rest of the world, because in our globalized world, crises easily travel across borders (Goldin & Mariathasan, 2018). This has been evidenced by the SARS (severe acute respiratory syndrome) pandemic and the melamine milk powder crisis.

The present thesis aimed to contribute to our understanding of such phenomena in China by examining the *process* behind and the *nature* of post-crisis legal change. I have done so through three case studies: the 2008 melamine infant formula crisis, the 2013 Huangpu River dead pigs crisis, and avian influenza A(H7N9). I have used causal-process tracing, which is a small-N case study approach characterized by a dense description of successive, critical events, that facilitates the identification of the causal conditions that together lead to a certain outcome, in this case post-crisis legal change. In addition, I have used qualitative text analysis, which I complemented with quantitative automated text analysis, to assess the nature of such change, especially in terms of substance, degree of change, and learning.

This concluding chapter, first of all, briefly summarizes the empirical findings and the role of public health crises in lawmaking in China. This is followed by a discussion of the contributions of the case studies to existing literature about crisis and lawmaking in China. The chapter also reflects on the extent to which post-crisis legal change is different in China compared to western democracies. The final sections highlight some important lessons from the case studies for responding to public health crises in China, discuss future research avenues, and look ahead in terms of future crises and legal change in China.

8.1 Summary of Empirical Findings

The overarching research question of this thesis is “To what extent and under which conditions do public health crises lead to legal change in China?” This section summarizes the main findings in relation to this question. The second part of the chapter explains these findings in more depth

by linking them to existing literature.

The first finding is that all three crises examined in this thesis have led to some degree of legal change, which is summarized in table 8-1. The melamine milk powder crisis initiated and accelerated the making of the Dairy Quality and Safety Regulations, the Raw Milk Purchasing Rules, and the abolishment of the Inspection Exemption Measures. However, the role of the melamine milk crisis in the making and substance of the 2009 Food Safety Law is more modest than commonly assumed (C. Liu, 2010; Pei et al., 2011; Qiao et al., 2012; C. Xiu & Klein, 2010; Xin Zhang & Ding, 2017). The crisis did not initiate the making of this law, but rather delayed the passage of this law by two to four months. The Huangpu River dead pigs crisis accelerated the making of the Livestock Farming Pollution Regulations, which had been in the pipeline for almost a decade. Avian influenza A(H7N9) accelerated the amendment of the Infectious Diseases Law. It also led to the criminalization of spreading rumors about epidemic outbreaks. However, H7N9 did not initiate, accelerate, or delay change in four other relevant legal texts that have been examined in the case study.

Table 8-1. Legal Change After Selected Public Health Crises in China

Post-crisis legal change	Crisis-initiated	Accelerated/ delayed
Melamine milk powder crisis		
Abolishment of Inspection Exemption Measures	Yes	Accelerated
Dairy Quality and Safety Regulations	Yes	Accelerated
Raw Milk Purchasing Rules	Yes	Accelerated
Food Safety Law (2009)	No	Delayed
Huangpu River dead pigs crisis		
Livestock Pollution Regulations	No	Accelerated
Avian influenza A(H7N9)		
Infectious Diseases Law amendment	No	Accelerated
Animal Epidemic Prevention Subsidy Funds Rules amendment	No	No
Animal Epidemic Regulations amendment	No	No
Animal Epidemic Diseases Law	No	No
Criminal Law amendment	No	No
Law on Contracting Rural Land amendment	No	No

The second finding is that the *nature* of post-crisis legal change varied in terms of substance, degree of change, and learning. Legal change after the melamine milk powder crisis was relatively large and a strong departure from the existing situation in which the dairy industry was largely unregulated. In this case, post-crisis legal change showed evidence of learning as the statutes not only responded to issues that were exposed during the crisis, but some of the changes also had potential to solve problems exposed by the crisis. However, learning was incomplete in the sense that only some issues were addressed and solved, while others were not. In contrast, legal change after the dead pigs crisis was limited in the sense that the Livestock Pollution Regulations offered little regulatory innovation regarding the disposal and management of dead animals. Moreover, the scope of the new regulations is limited to large scale farms, which means that a large share of

livestock farms is excluded. Of the three crises examined here, avian influenza A(H7N9) led to very limited change and learning.

Notably, despite a “strike hard” rhetoric, the crises examined in this thesis did not lead to tougher sanctions as stipulated by law. The melamine milk powder crisis led to changes in the draft Food Safety Law, but not regarding the level of sanctions. The crisis-induced 2008 Dairy Quality Regulations contained relatively high administrative fines, but because of their lower status in Chinese legal hierarchy, these were overridden by the lower fines in the Food Safety Law, which was passed in February 2009. The Livestock Pollution Regulations contained a RMB 3,000 fine for the inappropriate disposal of dead animals, which was already stipulated in the preexisting Animal Epidemic Prevention Law. It is remarkable that these crises did not lead to higher sanctions given that political and government leaders stated that they would “strike hard” against illegal behavior. An exception to this finding is the Criminal Law amendment that was passed in response to H7N9. The amendment made fabricating and disseminating false information about epidemic outbreaks punishable by up to seven year imprisonment.

The third finding is that there is diversity in the pathways behind these crisis-change processes, i.e. *how* a risk event develops into a crisis and leads to legal change. In terms of the media agenda, three different pathways have been observed. The melamine milk crisis reached the media agenda by virtue of a dedicated and skilled journalist who, despite the sensitivity of the issue, scooped the story. The Huangpu River dead pigs crisis reached the media agenda as a result of citizen complaints about dead pigs floating in local waterways. The H7N9 virus, in contrast, reached the media agenda only after an official public announcement by the National Health and Family Planning Commission. Similarly, there is diversity in terms of institutional agenda setting. The institutional response to the melamine milk powder crisis was triggered by media coverage, while the initial institutional response to the dead pigs crisis was the result of citizen complaints, and the institutional response to H7N9 was triggered by a hospital (and state laboratory) detecting a new virus. In terms of legal change it has not been possible to identify single triggers, because these processes are more opaque, involve more stakeholders, and develop over longer periods of time.

The fourth finding is that there is also diversity in the causal configurations behind crisis-change processes, i.e. *why* a risk event leads to legal change. This is summarized in table 8-2. The table shows the factors that amplified (i.e. intensified) and attenuated (i.e. weakened) the risk events. Attenuation is indicated with an asterisk (*). Although the small number of cases examined in this thesis does not allow for extrapolation to other crises in China, there are some shared patterns that are worth examining in more depth in future studies. In particular, impact and superlativeness (i.e. the intensity or scope of a risk event relative to events in the past) were driving forces behind news media agenda setting in all three cases. Issue resonance, on the other hand, was not as important as theorized in chapter 2. An especially important factor in all three cases was political sensitivity, which shaped whether, when, and how an event reached the media agenda as well as how it is framed. Political sensitivity also led to censorship and suppression of mobilization, which was observed in all three cases. In terms of legal change, the political climate and problem salience were both important in all three cases. In fact, I argue that the declining problem salience of H7N9—as expressed by a lack of evidence of human-to-human transmission and a drop in infections after poultry vaccination—was a key reason why post-crisis legal change

was very limited. However, the political climate and problem salience cannot fully explain legal change because the lack or absence of a feasible policy solution also played a role in two of the three cases. Contrary to the literature introduced in chapter 2, there was no or only limited evidence of a policy entrepreneur. This does not mean that policy entrepreneurs were absent, but that more research is needed, especially in the form of qualitative interviewing.

Due to this diversity and the small number of cases, it is not possible to draw definite conclusions about the relationship between the process (i.e. pathways and causal configurations) and the nature of post-crisis legal change. Based on the case studies, two factors that deserve more in-depth examination are the role of top level leaders and the availability of feasible solutions. In the case of the melamine milk powder crisis, despite the absence of ready-made solutions in the form of draft laws, there was substantial legal change. One explanation for this is intervention by the State Council. As discussed in chapter 2, contrary to popular belief, intervention by top-level leaders is uncommon in China. Perhaps the combination of a serious crisis with a lack of ready-made solutions triggers top-level intervention. Additional research is needed to examine whether this is indeed a lawmaking pattern or whether the melamine crisis is an isolated case.

Table 8-2. Identified Amplifying and Attenuating Factors in the Case Studies

Process	Factors	Melamine crisis	Dead pigs crisis	H7N9
News agenda	Impact	17 hospitalized infants, serious kidney problems	Threat to drinking water safety; highly visible	Health threat: no treatment, high mortality
	Unexpectedness	Kidney stones in infants unusual		Novel virus, first time in humans
	Superlativeness	Scope: similar cases across China	Dead pigs common, but not on this scale	Scope: More news along with more cases
	Issue resonance			Reminder of SARS pandemic
	Journalists' features	Past experience; journalists' skills, dedication		
	Non-sensitive frames		Blame on different jurisdiction	State provided information
	* Political sensitivity	Food safety highly sensitive; Beijing Olympics		
	* Censorship capability	Industry suppressed news		Whistleblowing suppressed
Institutional response	Media coverage	Sept. 11 scoop	National news	
	Framing		Threat; blame on local government	
	Mobilization	Parents, lawyers, journalists; online criticism	Citizen complaints; silent walk; online criticism	
	Crisis nature	Scope, impact	Scope, timing	Pandemic potential
	Stability threat	Undermined credibility		SARS memories
	* Political sensitivity	Censorship; mobilization suppressed		Ten years since SARS; censorship
Legal change	Problem salience	Scope, impact, social instability, recurrent problems	Preexisting environment, food safety concerns	* Declining salience
	Feasible solution	No solutions, except FSL	Mature legislative draft	* Lack of solutions for most issues
	Political climate	Credibility undermined	Environment as political priority	* H7N9 showed lessons learned
	Policy entrepreneur	No evidence	Limited evidence	* No evidence

Note: * indicates attenuating factors.

8.2 Conclusions about the Role of Public Health Crises in Lawmaking in China

The case studies show that the role of crisis in lawmaking was limited in the case of the dead pigs crisis and H7N9, but relatively large in the case of the melamine crisis.

In the case of the melamine milk powder crisis, most of the identified post-crisis legal change would not have taken place at that specific point in time in the absence of the crisis. Despite long-standing criticism of the inspection exemption system, there is no evidence that the AQSIQ had plans to abolish it prior to the crisis. It was not even mentioned during the NPC deliberation of the Food Safety Law prior to the crisis. Thus, without the crisis, the exemption system would not have been banned. The same applies to the Dairy Quality Regulations and Raw Milk Purchasing Rules. There are no traces of the Regulations and Rules from before the crisis and they were passed just one and two months after the onset of the crisis. Without the crisis, these may have been passed at some point because they were part of an ongoing, state-led reform of the dairy industry, but it is unlikely that they would have been issued at that particular moment in time because the making of Regulations and Rules typically takes much longer than four weeks, not in the least because there usually is a 30-days public comment period. The exception, however, is the Food Safety Law, which was already in an advanced state at the time the crisis broke and would have been passed around the same time or several months earlier had the crisis not happened.

Likewise, evidence presented in the thesis indicates that the amendment of the Infectious Diseases Law after the emergence of avian influenza A(H7N9) would not have taken place at that specific point in time in the absence of the outbreak. Although the amendment was mentioned in the 2012 State Council legislative plan, it was included in category 3, which means that it was only in the preparatory phase. The amendment first appeared on the NPC legislative plan *after* the detection of the novel virus and was passed rapidly without public consultation. It is likely that the Infectious Diseases Law would have been amended at some point, but the crisis accelerated that process.

In contrast to the ad hoc lawmaking that followed the melamine milk powder crisis and avian influenza H7N9, the Livestock Pollution Regulations that were passed after the Huangpu River dead pig crisis were the result of an almost decade-long process. These Regulations had been pushed forward by three events: the H5N1 avian influenza outbreak in 2004, the publication of the national pollution survey in 2010, and the pig carcasses in Shanghai's Huangpu River in March 2013. At the time that the dead pigs crisis occurred, the draft Regulations were already in an advanced state. The crisis put the issue of improper management of livestock waste back on the legislative agenda and provided the Ministry of Environment leverage to push the Regulations forward. Given that the Regulations had been in the pipeline for almost a decade and given the maturity of the draft, it is likely that they would have been passed at some point, but it was only after the crisis that it was prioritized in the legislative plan of the State Council. Hence, without the crisis, the passage of these Regulations may have taken even longer.

It can thus be argued that the crises examined here did matter in terms of lawmaking. However, as pointed out above, there is variation in the nature of post-crisis legal change and thus in the potential of post-crisis law to prevent similar crises from happening again.

8.3 Conclusions about Crisis and Lawmaking in China

Although the three crises examined in this thesis have not been selected based on their representativeness for crises in China and are therefore limited in their generalizability, their findings are relevant for existing literature about crisis and lawmaking in China. This section highlights the most important trends and issues.

8.3.1 Government Policy and the Crisis-Change Process

The case studies show that government policy can both amplify and attenuate a risk event, which subsequently shapes the nature of the crisis and eventually has a bearing on the pressure for legal change. The melamine milk powder crisis and the dead pigs crisis show how government policy can create blind spots and actively contribute to the making of a crisis. In the years preceding the former, two dominating, interacting themes in Chinese politics were “harmonious society” and the Olympic Games. Consequently, food safety became such a sensitive issue that news media, medical doctors, and local governments did not dare to touch it and therefore did not adequately respond to consumer complaints that were filed with local and central level governments in the six months preceding the scoop of the crisis by a newspaper. As a result, the problem remained under the radar while the number of victims increased. Similarly, the dead pigs crisis was preceded by a crackdown on illegal trade in dead pigs for meat production. Consequently, farmers were more likely to abstain from illegally selling dead pigs, but—in the absence of other means—discarded the dead animals in local rivers. Conversely, the H7N9 case study showed that a timely and proactive government response can attenuate a risk event and contain a crisis. In this case, after the detection of the virus, the National Health and Family Planning Commission presented a persuasive narrative that explained what happened, provided advice, and acknowledged unknowns (NHFPC, 2013b, 2013a). Government policy contributed to a decline in problem salience, which—as explained in the case study—was one of the reasons why post-crisis legal change was limited.

8.3.2 Sophistication of Responsive Authoritarianism

There appears to be an emerging trend towards more proactive, transparent government response in China regarding emerging infectious diseases in humans. Government response to H7N9 was in stark contrast to the 2002–2003 SARS pandemic, which spread further than necessary due to state censorship and lack of official government information (Y. Huang, 2004). When the country was subsequently hit by the highly lethal H5N1 virus in 2005, state response was more adequate, but there were still shortcomings in terms of timely government information (Shuli Hu, 2005, 2011). The H1N1 virus that was detected in China in 2009 seems to be a turning point as government response was much more transparent (L. Xue & Zeng, 2014). When the H7N9 virus emerged, there was a timely and convincing government response. In fact, in the wake of H7N9 outbreak, even premier Li Keqiang called for increased transparency (Zhinan Li, 2017). This trend is also mirrored in politics and policy documents. Since 2014, the State Council published annual action plans for open government information. Specifically, the plans instruct government agencies to be the “first news spokesperson” and require them to release “authoritative information” within five hours after the onset of an emergency and hold a news conference within

24 hours (State Council General Office, 2016, 2017). The most recent report adds that in case of failure to provide timely information, the relevant government unit and officials will be held responsible (State Council General Office, 2018).

At the same time, we see developments in the opposite direction as media freedom and opportunities for mobilization have deteriorated since Xi Jinping became general secretary of the Communist Party in 2012. Not only have many bloggers and journalists been detained, tighter media control has also been formalized in law (Bandurski, 2017; Economy, 2014). Specifically, the 2015 amendment of the Criminal Law (article 291) made fabricating and disseminating false information about epidemic outbreaks punishable by up to seven years imprisonment, which disincentivizes citizens to share information about local cover-ups. Moreover, the Internet Security Law (article 58), passed in 2016, authorizes the State Council to adopt restrictive measures in case of major emergencies. In addition, suppression of mobilization has widened and has become more proactive. In July 2015, 250 lawyers were detained, some of whom had provided legal assistance to parents of children affected by the melamine milk powder crisis. The situation for non-governmental organizations has become more restricted with the passage of the new Overseas NGO Law in 2016, which restricts flows of information and funds between Chinese and foreign NGOs.

In contrast to the formalization of media and mobilization restrictions in law, we do not see the same development regarding government transparency. Legal development has halted in this area. A draft amendment of the Government Information Openness Regulations was published for public consultation in June 2017. This amendment stated, *inter alia*, that “openness should be the norm, not making public should be the exception” in the general principles. However, as of March 2019, this amendment has not yet been passed. Likewise, the National Health and Family Planning Commission has held at least two seminars on the amendment of the Sudden Public Health Incidents Regulations since late 2017, but other than that, no legislative progress seems to have been made, despite calls for more transparency.

These seemingly contradictory, but parallel developments are consistent with China’s responsive authoritarian political system (Heurlin, 2016; Reilly, 2012; Stockmann, 2013; Weller, 2008, 2012). In this delicate balance of transparency and control, the professionalization of crisis management and increased—but selective—transparency are used as tools to maintain government credibility and social stability rather than as watchdog tools for citizens. This signals a sophistication of responsive authoritarianism: crisis management is professionalizing while information flows and space for mobilization becomes more restricted.

Because information is vital to identify risks (Boin et al., 2017, pp. 23–48), the implication of this development for crisis-change processes is that it is increasingly difficult for political and government leaders to timely detect and understand emerging threats, which makes China increasingly prone to crises. This, in turn, may increase pressure for legal change.

8.3.3 Costs of Crisis versus Costs of Lawmaking

The case studies show that crises can lead to *ad hoc* legislative processes, but not necessarily so. Within the case studies, there are four instances of very quick change, namely the new Dairy Quality Regulations, the new Raw Milk Purchasing Rules, and the abolishment of the Inspection

Exemption Measures in the aftermath of the melamine milk powder crisis as well as the Infectious Diseases Law amendment after H7N9. Conversely, the Livestock Farming Pollution Regulations that were passed after the dead pigs crisis and the Food Safety Law that was passed after the melamine crisis were both products of lengthy legislative processes that involved extensive bargaining.

One possible explanation for this difference between ad hoc and slower post-crisis legal change is that the former target very specific and relatively narrow issues, i.e. the categorization of infectious diseases, the dairy sector, and the inspection exemption system. Because of this relatively narrow topical focus, it affected and involved relatively few people and therefore the lawmaking processes could more easily accelerate. Other examples of such ad hoc change that supports this hypothesis are the Post-Wenchuan Earthquake Regulations and the Vaccine Circulation and Vaccination Management Regulations amendment. The former were drafted and passed just 15 days after the earthquake (L. Li, 2008). The latter were directly initiated by a vaccine scandal that involved large-scale and long-term trade in illegal substandard vaccines, which had been distributed across the country (State Council, 2016a). They were passed within a month after the onset of the crisis (Xingwang Chen & Diao, 2016; State Council, 2016a). Both regulations target very specific issues.

Conversely, the slower post-crisis change observed in the case studies concerned very broad issues, namely livestock farming pollution and food safety in general. Hence, the number of affected and involved people was much larger as it included the entire population (for food safety) and the entire rural population because livestock farming is major source of rural pollution in China (Ministry of Environmental Protection et al., 2010). Other examples of relatively slow post-crisis legal change that support this argument are the Earthquake Disasters Law amendment and the Vaccine Management Law. The former was scheduled to be deliberated by the NPC Standing Committee (NPC-SC) in June 2008 (NPC-SC, 2008b). The NPC Standing Committee (NPC-SC) could have quickly passed the amendment after the Wenchuan earthquake, which happened on May 12. But instead, deliberation was postponed to October 2008 and the amendment was passed in December 2008 (Yihong Liu, 2019). Likewise, the making of the Vaccine Management Law was initiated by the July 2018 vaccine crisis that was mentioned in the introduction of this chapter (State Administration for Market Regulation, 2018). The draft was deliberated by the NPC-SC in December 2018 and published by the NPC for public comments in January 2019 (NPC-SC, 2018; Xin Zhang, 2019). In theory, the NPC-SC could have rapidly formulated a law and passed it in December 2018, in January 2019, or during the NPC meeting in March 2019. These cases suggest that if the transaction costs of lawmaking are high in the sense that there are many stakeholders involved, slow change is more likely. On the other hand, low transaction costs in the sense of involving a smaller range of stakeholders, are more likely to result to ad hoc change.

In fact, the argument of transaction costs is worthwhile exploring further because it may help explain post-crisis lawmaking if we would also incorporate the costs of the crisis. The latter includes physical and economic damage as well as political damage. In this line of reasoning, post-crisis legal change would be a trade-off between the costs of the crisis and the costs of lawmaking. If crisis costs exceed lawmaking costs, legal change is more likely. Conversely, if lawmaking costs exceed crisis costs, legal change is less likely. This trade-off framework can also accommodate

other factors discussed in the case studies such as polarization, acknowledging policy failure, and political sensitivity, which would increase lawmaking costs. On the other hand, a favorable political climate, the availability of a feasible solution, and the presence of a policy entrepreneur would decrease the cost of lawmaking. This framework may even be able to explain the nature of post-crisis law, with high lawmaking costs corresponding to incremental change whereas low lawmaking costs would correspond to non-incremental change. This framework resembles Cai (2010), which convincingly argues that the outcome of collective action in China is shaped by the costs and benefits of repression and concession. This work was, however, based on a much larger set of cases, which is also what is needed in order to fully develop the trade-off framework for post-crisis legal change.

8.4 Post-Crisis Legal Change: Chinese Characteristics?

Existing literature on policy change and crisis is predominantly based on studies conducted in high-income liberal democracies. Because of China's different political system, it is not clear how well existing theories capture China's reality. Major macro-level differences between China's authoritarianism and western democracies are limited political pluralism and state control of news media and the internet (Shirk, 2011; Stockmann, 2013; Van Rooij, 2014; G. Yang, 2009). Moreover, contrary to popular belief, China has a fragmented bureaucracy, which means that power is not centralized in Beijing, but shared between many different government units at different levels (Lieberthal, 1992, 2003). The following sections discuss how these differences played out in the case studies.

Even though the case studies are not representative for all instances of crises and post-crisis legal change in China, they do suggest that the political differences affect major aspects of the crisis-change process. This includes whether, when, and how a risk event reaches the media agenda, the type of institutional response, and crisis-learning.

8.4.1 Media and Social Media Agenda Setting

The case studies suggest that the amplifying factors behind news media agenda setting in the case of risk events in China largely overlap with this process in western democracies. As discussed in chapter 2, whether a risk event reaches the news and social media agenda is a product of its impact, novelty, and superlativeness (Bednarek & Caple, 2017; Birkland, 1997, pp. 31–32). The case studies indicate that these factors play a role in China too. This is not surprising because literature shows that there is overlap between news values in western countries and China (Huan, 2018; Luther & Zhou, 2005). Moreover, although theorized otherwise in chapter 2 (Huan, 2018; G. Yang, 2009, pp. 55–57), there is no evidence that human interest frames (i.e. stories written in an emotional way with a focus on specific individuals or groups affected by a risk event) played a decisive role in agenda setting in these particular case studies.

However, a crucial difference with regard to the news and social media agenda is that the extent to which a risk event can be amplified (i.e. shared beyond those directly involved) in China depends on its *political sensitivity*. This is a dynamic concept that can change rapidly. Political sensitivity influences the level of censorship and thus shapes whether, when, and how a risk event reaches the media agenda. Censorship thus impedes the detection of emerging crises. This was

especially clear in the case of the melamine milk powder crisis. News about the substandard milk powder was suppressed until the problem had grown so big that it could no longer be ignored. By then, an estimated 300,000 children had been affected. Political sensitivity also played a role in the avian influenza A(H7N9) case. Information leaked on social media about unexplained deaths in a Shanghai hospital was swiftly suppressed. The novel virus could therefore only reach the media agenda *after* the government released official information. The attenuating force of political sensitivity and censorship has also been observed in other crises in China. The most well-known example is the SARS pandemic, news about which was censored by government authorities at various levels, which allowed the virus to spread more widely than necessary.

8.4.2 Institutional Response

The case studies indicate that, like in western democracies, media coverage is an important driving force of institutional response to crisis in China. This was especially clear in the melamine milk powder crisis. Although various government authorities had received complaints about milk powder and reports about unusual kidney problems in infants, they did not respond until after a newspaper scooped the story. News coverage also triggered central level government response to the Huangpu River dead pigs crisis. Despite limitations on media freedom, it is not uncommon for news media to expose silent crises. Other examples are the severe pollution of a major drinking water source after explosions in a petrochemical plant in Jilin in 2005, which was kept secret for more than a week until CCTV exposed the crisis; and the Bohai Gulf oil spill in 2011 which was kept secret for over a month until it was exposed by a journalist. The case of Sun Zhigang, the migrant worker who was beaten to death during detainment in 2003, is another example of how a risk event triggered institutional response after news coverage.

Likewise, similar to western democracies, the case studies indicate that the nature of a crisis also is an important driving force for institutional response in China. In the case of the melamine milk powder crisis, a crucial aspect was the scope of the issue and the impact: infants across the country were hospitalized with life-threatening kidney conditions. In the Huangpu River dead pigs crisis, a crucial aspect was the unusual large number of dead pigs and the timing of the event. In the case of H7N9 avian influenza, a crucial aspect was the pandemic potential of the virus. Consistent with literature, it is not just the scope of the event that plays a role, but also the damage or seriousness of the event.

However, a crucial difference regarding institutional crisis response in China compared to western democracies is that there is *limited space for mobilization*, i.e. action—lobbying, protest, or any other form of expression—taken by activists, local residents, non-governmental organizations, bureaucrats, and others in response to an issue (Birkland, 2011). Such mobilization is considered a major driving force of institutional crisis response in western democracies. But in China, venues for mobilization are severely restricted. News media, social media, and the internet are strictly controlled. Criticism is often censored, especially if focused on specific leaders or if it comes in large bursts. Likewise, offline mobilization in the form of organized protests is discouraged and suppressed by police visits and detainment.

Evidence of this limited space for mobilization was observed in all three case studies. In the case of the melamine milk powder crisis, a letter calling for the resignation of the head of the

General Administration of Quality Supervision, Inspection, and Quarantine disappeared from the weblog of the lawyer who published it. Moreover, almost immediately after the crisis broke, lawyers set up a volunteer group to provide legal assistance to parents, but local governments asked lawyers to stay away from such cases. In fact, in subsequent months, at least two parents who tried to get compensation from dairy companies were jailed for four years. In the case of the dead pigs crisis, in addition to censorship of online critique of government response, a citizen who announced a silent protest walk was detained. Citizens' request for government information about water quality were rejected or only partially met. In the case of H7N9, a message with leaked information about unexplained deaths in Weibo was censored. Moreover, at least a dozen people were detained for spreading rumors about the virus.

Relatedly, the case studies also show *limited space for framing*, i.e. the promotion of a particular problem definition, causal interpretation, moral evaluation, or treatment recommendation (Entman, 1993). Framing has been identified as a major determinant of how a crisis develops as well as its aftermath. But due to strict control of news media, it is not possible for journalists in China to adopt just any frame. This is especially true after the initial scoop of a new issue. Journalists and internet providers are routinely instructed on how to report crises. This is exactly what I observed in the case studies. News media were instructed to not produce any lead stories on the topic, to emphasize government efforts to handle the crisis, and to "firmly block and delete information and posts that criticize the Party, the government, instigate petitioning and spread rumors" as well as to "mobilize online commentators to guide the opinions" (F. Gao, 2008). In the dead pigs crisis, news media were instructed to "cover the story concisely according to authoritative information" and to "not sensationalize it." Censorship also occurred during the H7N9 outbreak. The search term "SARS ten years ago+bird flu ten years later" was soon blocked on Weibo and messages containing this phrase were deleted (Le Chen et al., 2013; Henochowicz, 2013a). These observations are consistent with other cases of crises.

These differences in mobilization and framing are important because it shapes the substance and timing of institutional response. Whereas in western democracies, governments can be forced to respond to an issue at any given time, in China, the onset and closure of crises is shaped by the extent to which the issue is politically sensitive at that particular point in time. If these crises would have occurred in a liberal democracy, with unrestrained space of mobilization and framing, the variety of possible institutional responses would have been larger. Possible alternative scenarios include fair compensation for all affected families, an inquiry into the causes of the crisis with subsequent consequences, and resignation of top officials. Although the latter happened to some extent in China too, the consequences can reach further in liberal democracies because framing (and blaming in particular) can even lead to the resignation of the entire government and influence election results. In fact, the latter is exactly what happened in the dioxin crisis in Belgium in 1999, when PCBs were detected in eggs and chicken. This could be a plausible explanation for limited space for mobilization and framing in China, because without such constraints, there is a risk that crises would seriously undermine the monopoly position of the Communist Party.

8.4.3 Legal Change

Like in liberal democracies, the case studies indicate that problem salience and the political climate shape whether and to what extent crises lead to legal change. In fact, the way in which problem salience is operationalized in existing literature (Kingdon, 2014) is also helpful in the Chinese context. Chapter 2 theorized that a crisis in China gains salience if it threatens social stability (社会稳定 *shehui wending*). This concept is frequently mentioned in the China literature, but lacks a clear set of indicators in the context of crises. Instead, the analysis in the case studies has relied on Cai (2010), which showed that the level of threat emanating from collective action was shaped by the number of people involved, media exposure, and casualties. However, due to restrictions discussed above, collective action is often contained before it can actually take place. Therefore, to better understand the threat that crises pose to social stability, the case studies show that it is helpful to adopt the concept of problem accompaniment, which consists of three aspects: linkage of the crisis to preexisting concerns or issues; crisis as an indication of a widespread problem; and linkage with similar crises (Kingdon, 2014, pp. 98–100). Such issue expansion severely undermines government credibility and is therefore a threat to social stability.

However, a potential difference between post-crisis legal change in western democracies and authoritarian China is the availability of a feasible policy solution. As discussed above, the Dairy Quality Regulations and the Raw Milk Purchasing Rules were rapidly developed *after* the onset of the melamine milk powder crisis. Whereas other legal change identified in the case studies relied on previously proposed solutions, this did not apply here. This finding raises questions about the role of the policy stream (Kingdon, 2014) in legal change, in particular regarding the maturity of policy solutions. In other words, how mature does a solution need to be when a policy window opens? Does a general consensus about the need for change suffice or is there a necessity for a certain level of maturity? One way of pursuing answers to these questions is a meta-level study of lawmaking processes in China that compares dates of public comments procedures, legislative plans, and passing dates to identify any “rushed” lawmaking processes, which can then serve as a starting point for additional in-depth case studies.

A final aspect in the existing crisis-change literature that raises questions is the role of policy entrepreneurs i.e. individuals who invest time and other resources to push their preferred policy solutions (Kingdon, 2014). However, with the exception of some signs in the case of the Livestock Farming Pollution Regulations that were passed after the dead pigs crisis, there is no evidence of policy entrepreneurs in the case studies. This does not mean that policy entrepreneurs do not play a role in post-crisis legal change in China, but the lack of evidence is rather a result of the lack of transparency regarding lawmaking processes in China. In fact, because of this there are only a few studies published about policy entrepreneurship in the Chinese context (Hammond, 2013; Mertha, 2008, 2009; Xufeng Zhu, 2008). Of course, it is possible that there were policy entrepreneurs in each of the legislative processes examined in this thesis, but interviews are needed to verify this.

8.4.4 The Nature of Post-Crisis Legal Change

Existing crisis-change literature, on the one hand, argues that we should not expect much more than small, incremental, superficial policy change after crises. The reason for this is that the requisites for reform are at odds with the requisites for policy change (Boin & 't Hart, 2003; Boin et al., 2017). In order to manage a crisis, leaders will try to minimize damage, alleviate pain, and restore order, which means that leaders will have to convince their audience of the effectiveness of pre-existing policies and institutions. This is the opposite of what is needed for reform, namely blaming the crisis on existing policies, institutions, and individuals working in those institutions.

On the other hand, literature also shows that periods of policy stability alternate with punctuations, i.e. non-incremental change (Baumgartner & Jones, 1993). Punctuations are especially likely to occur if institutional structures for policymaking resist change. This leads to friction, which eventually results in a correction in the form of major change (Baumgartner et al., 2009, pp. 29–45; Baumgartner & Jones, 2009; B. D. Jones & Baumgartner, 2005, 2012; B. D. Jones et al., 2003).

Both scenarios have been observed in the case studies. The melamine milk powder crisis led to major legal change, whereas the dead pigs crisis and H7N9 led to incremental legal change. This is consistent with the general development of the Chinese legal system. As shown in chapter 4, the majority of Chinese laws evolve incrementally, i.e. with relatively small textual changes between two successive versions of the same law. However, about a quarter of amended laws show non-incremental change. The findings in the case studies are thus nothing out of the ordinary.

Whereas the case studies show overlaps between liberal democracies and China in terms of the degree of post-crisis legal change, there are important differences regarding *learning* from crises. First of all, it is more challenging to observe crisis learning in China due to the lack of transparent accountability processes. In western democracies, citizens expect that leaders explain the cause of and response to the crisis in a public forum such as news media, parliament, and official inquiry commissions (Boin et al., 2017). However, such accountability processes were absent in the case studies. In fact, the Chinese central government generally does not systematically evaluate public health emergency response. The only exception is a comprehensive evaluation of China's response to H1N1 influenza by Tsinghua University, which was commissioned by the State Council (L. Xue & Zeng, 2014). Secondly, effective learning requires a forum in which stakeholders such as experts, citizens, victims, politicians, and government officials can discuss causes and solutions, but due to state control of news media and the internet, there is limited space for such an open, public inquiry. In the case studies, news media were invariably instructed to focus on specific aspects of the crisis and to abstain from criticism of the government. As discussed above, this is common practice in China. Both of these structural obstacles result in a suboptimal environment for learning from crisis.

Despite these formidable obstacles, like in liberal democracies, the case studies did observe crisis learning, albeit to varying degrees. Crisis learning has been operationalized in the thesis using two indicators, namely crisis responsiveness and problem-solving potential. Almost all of the post-crisis legal changes identified in the case studies score positive on crisis responsiveness, meaning that there is overlap between the topic of post-crisis legislation and problems exposed by the particular crisis. However, only some of the identified post-crisis legal changes score positive

on problem-solving potential.

Moreover, like in liberal democracies, many issues exposed by the crises in the case studies remained unaddressed. Such selective learning is common after crisis. Existing literature shows that single loop learning (i.e. learning at the operational level) is more common than double-loop learning (i.e. change in goals, premises, and norms) (Argyris & Schön, 1978; Boin, 2008; Deverell, 2009, 2015). It can be argued that the melamine milk powder crisis led to double-loop learning, while post-crisis legal change after the dead pigs crisis and H7N9 avian influenza are examples of single-loop learning. Although the small number of cases studied in the thesis does not allow for drawing definite conclusions regarding single and double loop learning in China, given the country's structural constraints on crisis-change processes mentioned above, it is likely that—like in western democracies—single-loop learning is more common than double-loop learning.

8.5 Future Research on Crisis and Law in China

The case studies have shed light on the *process* behind post-crisis legal change in China, but due to the small number of cases it is not possible to draw definite conclusions. To increase external validity, the most obvious next step is to increase the number of cases (Blatter & Haverland, 2012, pp. 205–238). The thesis consists of three case studies but if the number of cases is expanded, it would be possible to apply Qualitative Comparative Analysis (QCA) (Ragin, 2008). Instead of within case explanation used in causal-process tracing (as in this thesis), QCA relies on cross-case analysis. This method will help to determine the conditions that lead to post-crisis legal change. Specifically, it allows for distinguishing between sufficient and necessary causal conditions (Blatter & Haverland, 2012, pp. 92–93). A causal factor is sufficient if the outcome (i.e. post-crisis legal change) always occurs if factor X exists. A causal factor is deemed necessary if the outcome only occurs if factor X exists. This thesis provides a useful starting point for such a medium-N study, because the case studies have identified factors that may play a role in crisis-change processes and post-crisis legal change.

Increasing the number of cases will also increase the generalizability regarding the *nature* of post-crisis legal change. One way to do so is to further develop the software package and database that has been used in this thesis to identify, visualize, and measure textual change in consecutive Chinese laws. The database is limited to central level law, but could be expanded to include administrative regulations and departmental rules. The software can also be used as a tool for identifying instances of major textual change, the causes of which can then be investigated in additional causal-process tracing case studies.

The same software can also be used to investigate other aspects of lawmaking processes in China. One interesting project would be to measure and assess textual change as draft laws travel through the National People's Congress. This would, amongst other things, shed light on the extent to which draft laws are watered down or become stronger during the lawmaking process. With some adjustments, the computational tools can also be used to study contradictions between central and local level laws, change in other types of law, and the evolution of lower level laws.

A second promising avenue for future research is to conduct interviews to get a deeper understanding of aspects of the crisis-change process that remained underexposed in this thesis. While the digital online research approach resulted in rich case studies, interviews are necessary

to get a better understanding of certain aspects of internal affairs. Here research priorities include the role of policy entrepreneurs, the learning process, legislative agenda setting, and advocacy coalitions. Such studies are difficult to conduct in China because it is difficult to gain access to high level officials. One strategy for overcoming difficulties would be to develop an extensive, long-term professional network and to start interviewing at the lowest level possible, (e.g., interviews with ministerial level junior officials about policymaking processes), and from there gain access to individuals higher up in the hierarchy to then ask more specific questions. Again, the case studies provided in this thesis are a useful starting point because they show research gaps and provide plenty of context to develop interview questions.

Finally, a third avenue worthwhile exploring is to apply a theoretical complementary approach to the case studies (Cairney, 2013; Hansén, 2007; Van der Heijden, 2012). This means that multiple relevant, existing theories of the policy process are applied in parallel with the aim of getting a better understanding of the cases. Moreover, because existing theories are predominantly based on studies of liberal democracies, such an approach also contributes to sharpening these theories. These include the social amplification of risk framework (J. X. Kasperson et al., 2003; R. E. Kasperson et al., 1988), focusing event theory (Birkland, 1997, 2006, 2016), the multiple streams framework (M. D. Jones et al., 2016; Kingdon, 1984), the punctuated equilibrium theory (Baumgartner & Jones, 1993; B. D. Jones & Baumgartner, 2012; Kuhlmann & van der Heijden, 2018), and the advocacy coalition framework (Pierce et al., 2017; Sabatier, 1988). The reason that this thesis did not adopt a theoretical complementary approach was a lack of data and lack of relevant literature. The resulting case studies provide a useful starting point for a complementary approach because a substantial part of the needed data is already provided. Additional interviewing is needed to understand the role of policy entrepreneurs, advocacy coalitions, and the development of policy solutions.

Future research will benefit from increased availability of data pertaining to crisis and law, which is the result of digitization and improved (albeit selective) government transparency (Horsley, 2007; J. Liu & Guo, 2017; Van Rooij & Van den Dool, 2016; Xiaomeng Zhang, 2014). The causal-process tracing method used in this thesis helped to unearth data pertaining to law and lawmaking processes in China that have, so far, hardly been examined in a comprehensive and systematic way. This includes, *inter alia*, legislative plans of the NPC and State Council, NPC delegate proposals, the volume of public comments, summaries of submitted public comments, draft laws, and records of NPC-SC deliberation. Although most of this data is scattered amongst different government websites, once collected, through qualitative and quantitative analysis, these documents can provide valuable insights into the politics of lawmaking processes in China. If combined with social media and news data, this could even provide insight into the interaction between law and society, for example in terms of participation in lawmaking and the role of the media in lawmaking. Moreover, the fact that national and subnational laws are now easily accessible online allows for analysis of the nature and evolution of Chinese law.

8.6 Never Again?

Public health crises continue to emerge in China. In fact, although the melamine milk powder crisis led to substantial legal change, similar crises have happened afterwards. Melamine was again detected in milk powder produced by two different companies in Shaanxi province and Shanghai in 2009 (X. Yang, Cheng, Wang, Chen, & Zhang, 2009; L. Yu, 2009). Moreover, in 2011, three infants died and 39 people were hospitalized in Gansu province after drinking milk that contained nitrite. That same year, 251 pupils fell ill in Shaanxi province after drinking milk. Because of this, the Food Safety Law was amended again in 2015. In parallel, additional food and dairy safety regulation has been developed, including a new registration system for infant formula. Likewise, a number of incidents involving dead animals have appeared since the Huangpu crisis, two of which were especially remarkable. First of all, in December 2014, CCTV (2014) reported that a network of farmers, insurance companies, and slaughterhouses illegally sold and processed 70,000 dead pigs per year during a decade of time in seven provinces. Secondly, in September 2017, more than 200 tons of illegally buried dead pigs were discovered in Zhejiang province (Tailai Zhou et al., 2017).

In addition to these recurrent crises, new types of crises are gaining prominence. As discussed in the introduction, there are recurrent crises involving vaccines. Another pressing crisis is African Swine Fever that emerged in August 2018. Despite joint efforts of a number of ministries and agencies under the State Council, the disease continues to spread and has so far led to the culling of almost one million pigs and is forecast to lead to a reduction in pork production in China. Given that China is the largest pork producer in the world and given its large population, this is likely to affect global protein demand and supply.

Given China's socio-economic features, it is impossible to prevent all public health crises from happening, but measures could and should be taken to minimize their number and their adverse impacts. The case studies indicate that there is room for improvement. Priority areas are information flows, risk detection, and learning.

First of all, the free flow of information is increasingly restricted, which makes China vulnerable to crises and to crisis mismanagement. Information is vital for all aspects of crisis management, including understanding what is going on, decision-making, coordination, crisis communication, learning and change (Boin et al., 2017). Lack of information impedes the timely detection and anticipation of risk signals. Likewise, it is difficult to make effective decisions if the situation (especially the scope of the problem) is unclear. Citizens, on the other hand, need information to protect themselves from risks and to maintain trust in the government. In addition, information, especially about causes and responses, is needed to learn from crises, which increases the possibility of change and ultimately helps preventing similar crises from happening again. However, the case studies show that information flows are routinely compromised through state censorship and that stakeholders are severely limited in their attempts to collect information. The most extreme institutionalized example of this in the case studies is the 2015 amendment of the Criminal Law which made fabricating and disseminating false information about epidemic outbreaks punishable by up to seven years imprisonment. This certainly does not encourage people to share any observations of covered up epidemic outbreaks. An additional challenge to grassroots whistleblowing is the recent development of monitoring not just public messages on social media but also private messages. Recent new reports indicate that messages of millions of internet users

are centrally recorded and then distributed to local police stations, which subsequently monitor the messages and can thus easily intercept any local level whistleblowing (Ilascu, 2019). Effective crisis management requires measures in the opposite direction.

Secondly and relatedly is the need for improved sense making, i.e. detecting and understanding of unfolding crises. This is important because the case studies indicate that early response is decisive for the course and impact of the crisis. Complaints about milk powder were not timely addressed, which made that the adulterated products remained on the market and subsequently led to even more sick children. Given that symptoms appeared after approximately three months of consumption, a timely response could have prevented many hospitalizations. SARS was a similar situation, which was not taken seriously until the virus had spread substantially. Timely sense making requires a reliable mechanism where citizens or any other stakeholder not only can file complaints, but where these complaints are also timely assessed and addressed appropriately.

Thirdly, there is substantial space for improving learning processes. Effective legal change requires information about the *causes* of a crisis. However, the case studies show that although legal change is often related to the issues exposed by the crisis, it does not necessarily solve the problems exposed by the crisis. Moreover, it often addresses only some of the underlying issues. This is problematic because such selective post-crisis legal change can create a false feeling of safety, which may result in even worse crises because they were not anticipated. Evidence also shows that even when a crisis is followed by an investigation, the results are seldom made public. This means that stakeholders such as citizens, researchers, and (local) officials cannot learn from the crisis. Moreover, in the few instances that findings are published or that there is an investigation, the subsequent conclusions are not necessarily translated into law. The most obvious example of this is the official H1N1 report that proposed a number of changes, including legal changes. However, even though the report was finished in 2011, the Infectious Disease Law was only amended after the avian influenza H7N9 virus appeared two years later and only incrementally. The fact that the report was made publicly available signals that there is at least some space for post-crisis assessments. This is also evidenced by the fact that some local governments publish investigation reports following industrial accidents. This may provide a starting point for improving learning processes in the realm of public health crises.

It will take substantial effort and political will to make improvements in these three priority areas. It is hoped that the case studies provide a starting point for discussing ways to improve crisis management and legislative drafting in China so as to prevent and reduce the adverse impact of public health crises as much as possible.

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Appendix I: The legislative process from idea to law (法律 *falü*) in China

Stage	Actors	Strategies	Evidence
Agenda setting	Top leadership	Unclear how top leadership makes decisions.	Media attention; speeches; formal notice by central leadership.
	Advisors: think-tanks, academics, and bureaucrats working at the central and provincial levels	Feasibility studies; results from local experiments; views voiced at opinion solicitation meetings; academic publications; media attention; proposals; expert draft law; symposiums.	Media attention; academic publications; reports; blogs; expert draft law; announcements for symposiums.
	Citizens	Blogs, social media, media attention.	Blogs, social media, media attention.
	Industry and industry intermediaries	Providing policy information in written form to officials and politicians; hosting policy meetings; media attention; research funding; hiring former government officials; philanthropy; banquets.	Media attention; research; reports.
	Journalists and media	Setting the media agenda by selecting what to report and how to report.	Media products.
	NGOs	Close relationship with the media; research reports; draft laws; news conferences; seminars; direct contact with lawmakers; open letters; “first-time-ever” lawsuits.	Media attention; research reports; draft laws; seminar proceedings; open letters.
	International community	Pressure to enact or amend laws after entering international organizations/ agreements and after big events.	Speeches; reports; media attention.
Legislative planning	Commission on Legislative Affairs of the NPC-SC	Consideration of proposals.	Five-year and annual legislative plans.
	Legislative Affairs Office of the State Council	Proposals primarily from ministries through legislation department (法规司 <i>fagui si</i> or central leader.	Legislative plans; yearbooks (for statistics on proposals, if any).

Appointment of drafting group and first draft	Approval by State Council or the NPC-SC	Drafting by ministries, commissions, and/or scholars.	Media; websites of State Council and NPC-SC.
	Appointed drafting group	Solicitation of views from officialdom at various administrative levels.	Official draft (初稿 <i>chugao</i>).
Inter-agency consultation before publication of the first draft (first phase)	Legislative Affairs Office of the State Council; Commission on Legislative Affairs of the NPC-SC; affected ministries and commissions; standing committees of the people's congresses of provinces and centrally administered municipalities	Solicitation of views from officialdom; bargaining.	Various different versions of the draft law.
Inter-agency consultation before publication of the first draft (second phase)	Grassroots level bureaucracies, work units, industry, NGOs, and citizens; international community	Highly publicized meetings; opinion polls; dissemination of evidence for a certain point of view; opinion-solicitation meetings; reports about local experiments; foreign pressure.	Various different versions of the draft law.
Top leadership approval	Politburo or its Standing Committee; Central Committee of the CPC	Unclear how decisions are made.	Draft for submission to the NPC or NPC-SC.
NPC or NPC-SC deliberation			
Review by special committees	NPC-SC Chairman group refers draft to one or more of the NPC Special Committees for review	Decision-making based on expertise and connections of former Party and state bureaucrats.	Official recommendations for revising draft legislation is published in the NPC bulletin.
Draft listed for debate in NPC or NPC-SC	NPC Presidium or NPC-SC Chairman group	Unclear how NPC Presidium or NPC-SC Chairman group decides on agenda.	Agenda of the NPC or NPC-SC. See NPC website and NPC bulletin.

Draft law to NPC or NPC-SC deputies	NPC-SC	The first draft (一次审议稿).	The first draft (一次审议稿).
First review (<i>chuci shenyi</i> 初次审议): Proposer introduces law to NPC or NPC-SC	Proposer of the draft	Draft law (法律草案, 一审稿) and its explanation (说明) as drafted by proposer.	Explanation of draft law published in NPC-SC bulletin; media reports; views of subgroups published on NPC website.
Public consultation	NPC-SC Commission on Legislative Affairs; citizens	Opinions of the general public on the first draft (一次审议稿).	The first draft (一次审议稿), published on the NPC website.
Second review: Legal Committee reports to NPC or NPC-SC	NPC Legal Committee (法律委员会)	Revised draft (法律草案修改稿) and report (修改情况的汇报) by NPC Legal Committee.	Report by Legal Committee (汇报); views of the subgroups and others in news, online media, NPC reports on its website.
Public consultation (not always)	NPC-SC Commission on Legislative Affairs (法制工作委员会); citizens	Opinions of the general public on the second draft (二次审议稿).	The second draft (二次审议稿), published on the NPC website.
Third review: Legal Committee reports to NPC or NPC-SC	NPC Legal Committee (法律委员会)	Revised draft (法律草案修改稿) and report (审议结果报告) by Legal Committee.	Report by Legal Committee; views of the subgroups and others in news, online media, NPC reports on its website.
Voting and passage	NPC or NPC-SC	Voting is based on the draft (法律草案表决稿) by the NPC Legal Committee.	The new law.
Publication	State Council Legislative Affairs Office	The approved law (法律)	New laws are published on the LAO website.
Implementation	State Council; ministries and commissions; provinces	Formulation of executive and local regulations based on laws passed by NPC or NPC-SC.	Administrative rules and regulations (行政法规); departmental rules (部门规章).

Appendix 2: Lawmaking documents

Below is a list of documents and publications typically produced by state-actors during the process of making national level laws (法律 *falü*).

Actor(s)	English title	Chinese title
Documents		
Legislative Affairs Office of the State Council (LAO)	Legislative plan	立法规划 <i>lifa guihua</i>
NPC-SC Commission on Legislative Affairs (CLA) or (prior to 2007) NPC-SC General Office	Five-year legislative plan	立法规划 <i>lifa guihua</i>
	Annual legislative plan	年度立法工作计划 <i>niandu lifa gongzuo jibua</i>
Drafting group	Official first draft	初稿 <i>chugao</i>
	Revised draft	修订草案 <i>xiuding cao'an</i>
NPC-SC General Office, Legislative Affairs Office of the State Council (LAO)	Notice on publicly seeking comments on the published ... Law (revised draft as submitted to the State Council)	关于公布《...法》公开征求意见的通知 <i>Guanyu ... fa gongkai zhengqiu yijian de tongzhi</i>
NPC Presidium	Meeting agenda of the NPC	全国人民代表大会第次...会议议程 <i>Quanguo renda daibiao dahui di ... ci huiyi yicheng</i>
NPC-SC Chairman group	Meeting agenda of the NPC-SC	人民代表大会常务委员会第...会议议程 <i>Renmin daibiao dahui changwu weiyuanhui di ... huiyi yicheng</i>
The proposer of the law	First draft for review	一次审议稿 <i>Yici shenyi gao</i>
		一审稿 <i>Yi shen gao</i>
	Explanation of the proposed law	关于《...法修正案（草案）》的说明 <i>Guanyu ... fa xiuzheng an (cao'an) de shuoming</i>
NPC Legal Committee	Second draft for review	修正案草案二次审议稿 <i>Xiuzheng'an cao'an er ci shenyi gao</i>
	Report from the Legal Committee about the state of affairs of the revision of ... Law	法律委员会关于《...法修正案（草案）》修改情况的汇报 <i>Falü weiyuanhui guanyu ... fa xiuzheng qingkuang de huibao</i>

NPC Legal Committee	Revision of second draft (i.e. third draft)	修订草案二次审议稿 <i>Xiuding cao'an er ci shen yi gao</i>
	Report on the results of the review of the draft of ... Law	全国人民代表大会法律委员会关于《…法(草案)》审议结果的报告 <i>Quanguo renmin daibiao dahui falü weiyuanhui guanyu ... fa (cao'an) shen yi jieguo de baogao</i>
	Report on the opinions on amending the ... Law	法律委员会关于《…法(修订草案二次审议稿)》修改意见的报告 <i>Falü weiyuanhui guanyu ... fa (xiuding cao'an er ci shen yi gao) xiugai yijian de baogao</i>
	Opinions from relevant ministries, mass organizations, provinces, autonomous regions, and provincial level cities	中央有关部门、群众团体, 各省、自治区、直辖市对…法修订草案的意见 <i>Zhongyang youguan bumen, qunzhong tuanti, ge sheng, zizhi qu, zhixiashi dui ... fa xiuding cao'an de yijian</i>
NPC Legal Committee	Voting draft	法律草案表决稿 <i>Falü cao'an biao jue gao</i>
NPC-SC Chairman	Speech by the chairman of the NPC-SC at the NPC-SC meeting	…在第十二届全国人民代表大会常务委员会第…次会议上的讲话 <i>... zai changwu weiyuanhui di ... ci huiyishang de jianghua</i>
State Council Legislative Affairs Office	Law as approved by NPC or NPC-SC	…法 ... <i>fa</i>
Publications		
General Office of the NPC-SC	NPC gazette	常务会公报 <i>Changwuhui gongbao</i>
NPC-SC Commission on Legislative Affairs (CLA)	Explanation of Law x	中华人民共和国…法释 <i>Zhongguo Renmin Gongheguo ... fa shi yi</i>

Summary

Never again: Legal Change After Public Health Crises in China

Annemieke van den Dool

This thesis examines the *processes* behind and *nature* of post-crisis legal change in China. While there are flourishing bodies of research on policy change and crisis politics, these predominantly consist of studies conducted in high income liberal democracies. This focus on democracies is a growing problem because it is not clear how well existing theories can explain these post-crisis legal change in different socio-political systems—including authoritarian China. This is a significant problem given the growing role of non-democratic countries in international trade and politics. In addition, most of the existing crisis-change literature examines the broader topic of policy and institutional change, and is not specifically focused on legislation. Existing literature furthermore pays relatively little attention to the nature of post-crisis legal change, which is important because the mere passage of laws tells very little about the potential to mitigate problems exposed by the crisis and the prevention of similar crisis from happening again.

Taking the research problems identified above as a starting point, this thesis examines legal change after public health crises in China. The research aim is threefold. First of all, it aims to contribute to our understanding of how crises can lead to legal change in China. Secondly, the thesis aims to contribute to our understanding of post-crisis lawmaking. Thirdly, the thesis aims to develop tools for measuring and assessing the nature of legal change and of post-crisis legal change in particular. These three aims have been captured in one overarching research question:

To what extent and under which conditions do public health crises lead to legal change in China?

To answer the research question, the thesis adopts the case study approach, which is a non-experimental research method consisting of a small number of cases with a large number of diverse observations per case. I furthermore adopted the causal-process tracing method, which is a small-N approach to examine the factors that together lead to a certain outcome. Data has primarily been collected through the internet, from a wide variety of sources, and includes e.g., newspaper articles, social media messages, secondary literature, legislation, legislative records, policy documents, and weblogs.

The thesis consists of two parts: theory and empirical research. The first part introduces existing theories on crisis-change processes (chapter 2), lawmaking in China (chapter 3), and the nature of post-crisis legal change (chapter 4). The second part presents the empirical case studies, which

include the 2008 melamine milk powder crisis (chapter 5), the 2013 Huangpu River dead pigs crisis (chapter 6), and avian influenza A(H7N9) (chapter 7).

Chapter 2 develops a framework for understanding crisis-change processes. It does by drawing upon existing literature about crisis and policymaking. Loosely based on the policy cycle model, the framework distinguishes three policy processes: news and social media agenda setting, institutional response, and legal change. Within these processes, there are factors that amplify (i.e. intensify) the risk event and factors that attenuate (i.e. weaken) it. Examples of the former is the scope of the crisis and news coverage. Examples of the latter are the lack of a feasible policy solution and a political climate that is not conducive to change. Because of the different political context, I adjusted the framework to China, taking into account the country's key political features including authoritarianism, state control of news media and the internet, and restricted space for mobilization.

Chapter 3 provides an in-depth, up-to-date analysis of lawmaking processes in China. It examines the role of state actors and non-state actors involved in each stage of lawmaking. The chapter shows that—contrary to popular belief—lawmaking in authoritarian China is, generally speaking, not controlled by a small group of top leaders, but is a process that consists of bargaining between many different state actors at national and subnational levels. The chapter furthermore argues that, although non-state actors increasingly try to influence the timing and content of laws, evidence of the actual impact of these lobbying activities remains very limited.

Chapter 4 develops a method to measure and assess post-crisis legal change in a systematic and meaningful way, taking into account the characteristics of the Chinese legal system. Primarily drawing upon the policy literature, the chapter first shows that there is no consensus on how to measure and assess legal change. Recognizing the limitations of purely quantitative or qualitative methods, the chapter introduces an integrated approach, consisting of quantitative automated text analysis and qualitative textual composition analysis. Using these tools, the nature of post-crisis legal change is assessed based on the degree of change, the substance of change, and the type of learning. I distinguish between four types of learning, which differ in terms of crisis-responsiveness and problem-solving potential.

Chapter 5 examines the 2008 melamine milk powder crisis. With at least six deaths and 300,000 ill children, this is undoubtedly China's largest food safety crisis. The chapter shows, first of all, that the melamine milk powder crisis has led to legal change, including the making of the Dairy Quality Regulations, the Raw Milk Purchasing Rules, and the abolishment of a system that exempted certain food products—including infant formula—from safety inspections. The main driving forces of these post-crisis legal changes were problem salience and a favorable political climate. Especially striking is the speed with which legal change came about. Although there was a preexisting consensus about the need for dairy industry reform, there were no concrete proposals available when the crisis broke. Yet, the State Council, AQSIQ, and Ministry of Agriculture passed these three changes within two months after news media reported the story. However, the

role of the crisis in the 2009 Food Safety Law is smaller than often assumed. Although the crisis triggered some changes in the draft law, it was not initiated and not accelerated by it, because the lawmaking process had started years earlier. The draft was already in an advanced state when the crisis broke. The chapter showed that lessons have been learned, although the depth and extent of learning was insufficient to prevent similar problems from happening again.

Chapter 6 examines the Huangpu River dead pigs crisis. In March 2013, decomposing and smelling dead pigs appeared floating in China's Huangpu River, which is an important drinking water source of Shanghai city. In subsequent weeks, government authorities dredged more than ten thousand pig carcasses from the river. The carcasses not only raised questions about water quality, epidemic outbreaks, and food safety, but also gave rise to heavy criticism of various levels of government. The chapter shows that the crisis accelerated the making of the Livestock Farming Pollution Regulations, which included rules about the management of dead animals. The superlativeness (large number of dead pigs), impact (threat to drinking water), and the availability of a non-sensitive frame (blame on upstream city) put the issue on the media agenda. Because the crisis coincided with the annual meeting of the National People's Congress in Beijing, it quickly reached the national level institutional agenda. The most important driving force for post-crisis legal change was the availability of a policy solution, namely a mature draft of the Livestock Pollution Regulations, which were passed by the State Council in October 2013. The passage of the Livestock Pollution Regulations is, however, an example of rhetoric learning, which in this study refers to change adopted in response to a crisis, but without addressing the problem at hand, thus lacking problem-solving potential. Overall, the legal contribution of the regulations with regard to the disposal of dead animals was limited.

Chapter 7 focuses on legal change after avian influenza A (H7N9). This virus was detected in a Shanghai hospital in March 2013. The virus had never been detected in humans before and therefore there was no effective treatment available, let alone a vaccine. In subsequent years, the virus infected 1,567 people. Approximately 40% of those infected died. The chapter shows that, despite calls for change, especially regarding the sales of live poultry on wet markets, legislative response has been limited to two changes in the Epidemic Diseases Law. The chapter argues that this limited change is the result of the nature of the outbreak. Although the mortality rate of the virus was unusually high, the virus did not transmit between humans. Moreover, there was no feasible solution available for permanently banning the sales of live poultry—the main source of infection. The timing of the H7N9 outbreak also played a role: the legal system had recently been reformed after the 2002–2003 SARS pandemic. Crucially, the emergence of H7N9 coincided with the ten-year anniversary of SARS, which created pressure to show that lessons had been learned. This, together with the praise China received for its response to H7N9 restricted the possibilities for extensive legal change, because that would imply criticism of existing policies.

Chapter 8 concludes by discussing the role of public health crises in lawmaking in China. In the case of the melamine milk powder crisis, most of the identified post-crisis legal change would not have taken place at that specific point in time in the absence of the crisis. Likewise, evidence

presented in the thesis indicates that the amendment of the Infectious Diseases Law after the emergence of avian influenza A(H7N9) would also not have taken place at that specific point in time without this novel virus. In contrast, given that the Livestock Pollution Regulations had been in the pipeline for almost a decade and given the maturity of the draft, it is likely that they would have been passed at some point, but it was only after the crisis that it was prioritized in the legislative plan of the State Council. Hence, without the crisis, the passage of these regulations may have taken even longer.

Secondly, chapter 8 argues that China's authoritarian responsiveness is becoming more sophisticated. On the one hand, there appears to be an emerging trend towards more proactive, transparent government response regarding emerging infectious diseases. On the other hand, there are developments in the opposite direction as media freedom and opportunities for mobilization have deteriorated since Xi Jinping became general secretary of the Communist Party in 2012. In this delicate balance between transparency and control, the professionalization of crisis management and increased—but selective—transparency are used as tools to maintain government credibility and social stability rather than as watchdog tools for citizens. Because information is vital to identify risks, the implication of this development for crisis-change processes is that it is increasingly difficult for political and government leaders to timely detect and understand emerging threats, which makes China increasingly prone to crises. This, in turn, may increase pressure for legal change.

Thirdly, although the case studies are not representative for all instances of crises and post-crisis legal change in China, they suggest that there are crucial differences between China and western democracies. This includes whether, when, and how a risk event reaches the media agenda, the type of institutional response, and crisis-learning. Crucially, the extent to which a risk event can be amplified depends on its political sensitivity. Moreover, there is *limited space for mobilization*, i.e. action—lobbying, protest, or any other form of expression—taken by activists, local residents, non-governmental organizations, bureaucrats, and others in response to an issue. Relatedly, the case studies also show *limited space for framing*, i.e. the promotion of a particular problem definition, causal interpretation, moral evaluation, or treatment recommendation. These differences in mobilization and framing are important because they shape the substance and timing of institutional response.

Fourthly, while the case studies suggest overlap with liberal democracies in terms of the degree of post-crisis legal change, there are important differences regarding *learning* from crises. First of all, it is more challenging to observe crisis learning in China due to the lack of transparent accountability processes. Secondly, effective learning requires a forum in which stakeholders such as experts, citizens, victims, politicians, and government officials can discuss causes and solutions, but due to state control of news media and the internet, there is limited space for such an open, public inquiry.

Nevertheless, the case studies did observe crisis learning, albeit to varying degrees. In almost all of the post-crisis legal changes identified there is overlap between the topic of post-crisis

legislation and problems exposed by the particular crisis. However, only some of the identified post-crisis legal changes score positive on problem-solving potential. Moreover, like in liberal democracies, many issues exposed by the crises in the case studies remained unaddressed. Given the country's structural constraints on crisis-change processes mentioned above, it is likely that—like in western democracies—single-loop learning is more common than double-loop learning.

The thesis ends with three ideas for future research on crisis and law in China. To increase external validity, the most obvious next step is to increase the number of cases using Qualitative Comparative Analysis (QCA). This method will help to determine the conditions that lead to post-crisis legal change. Increasing the number of cases will also increase the generalizability regarding the *nature* of post-crisis legal change. A second promising avenue for future research is to conduct interviews to get a deeper understanding of aspects of the crisis-change process that remained underexposed in this thesis. Here, research priorities include the role of policy entrepreneurs, the learning process, legislative agenda setting, and advocacy coalitions. A third avenue worthwhile exploring is to apply a theoretical complementary approach to the case studies. This means that multiple relevant, existing theories of the policy process are applied in parallel with the aim of getting a better understanding of the cases. Because existing theories are predominantly based on studies of liberal democracies, such an approach also contributes to sharpening these theories.

Samenvatting

Dit Nooit Weer! Verandering in Wet- en Regelgeving na Volksgezondheids crisissen in China

Annemieke van den Dool

Dit proefschrift bestudeert de processen achter en de aard van verandering in wet- en regelgeving na crisissen in China. Hoewel er veel literatuur is over beleidsverandering en politiek rondom crisissen, bestaat deze voornamelijk uit onderzoek dat gedaan is in economisch ontwikkelde, liberale democratieën. Deze focus op democratieën is een groeiend probleem, omdat niet duidelijk is in hoeverre bestaande theorieën de wet- en regelgevingsveranderingen na crisis kunnen verklaren in andere sociaal-politieke systemen, waaronder in het autoritaire China. Dit is een groot probleem gezien de groeiende rol van niet-democratische landen in de internationale handel en politiek. Bovendien bestudeert het merendeel van de bestaande literatuur over verandering na crisis het bredere onderwerp van beleid en institutionele verandering en is niet specifiek gericht op wetgeving. De bestaande literatuur besteedt bovendien relatief weinig aandacht aan de aard van de juridische verandering na crisis, wat belangrijk is omdat het maken van wetten op zichzelf weinig zegt over het potentieel om de door de crisis blootgelegde problemen te verminderen en te voorkomen dat een soortgelijke crisis zich opnieuw voordoet.

Met inachtneming van deze onderzoeksproblemen, onderzoekt dit proefschrift verandering in wet- en regelgeving na volksgezondheids crisissen in China. Het onderzoeksdoel is drieledig. Allereerst is het doel bij te dragen aan een beter begrip van hoe crisissen kunnen leiden tot juridische verandering in China. Ten tweede is het doel bij te dragen aan een beter begrip van wetgevingsprocessen na crisissen. Ten derde is het proefschrift gericht op het ontwikkelen van methodes voor het meten en beoordelen van de aard van juridische verandering, met name na crisissen. Deze drie doelen zijn samengebracht in één overkoepelende onderzoeksvraag:

In hoeverre en onder welke omstandigheden leiden volksgezondheids crises tot verandering in wet- en regelgeving in China?

Om de onderzoeksvraag te beantwoorden, hanteert het proefschrift de casestudy-benadering. Dit is een niet-experimentele onderzoeksmethode die bestaat uit een klein aantal casussen met

een groot aantal verschillende observaties per casus. Verder is er voor de causal-process tracing methode gekozen. Dit is een methode voor onderzoek dat bestaat uit een beperkt aantal casussen, waarmee de factoren die samen tot een bepaald resultaat leiden, opgespoord kunnen worden. Data voor dit onderzoek is voornamelijk verzameld via het internet, uit een breed scala van bronnen, en bestaat uit o.a. krantenartikelen, sociale media, secundaire literatuur, wetgevingsdocumenten, beleidsdocumenten en weblogs.

Na de introductie bestaat het proefschrift bestaat uit twee delen: theorie en empirisch onderzoek. Het eerste deel introduceert bestaande theorieën over veranderingsprocessen na crisis (hoofdstuk 2), wetgevingsprocessen in China (hoofdstuk 3) en de aard van juridische veranderingen na crisis (hoofdstuk 4). Het tweede deel presenteert de empirische casussen, waaronder de melamine melkpoeder crisis van 2008 (hoofdstuk 5), de dode varkens crisis in de Huangpu Rivier van 2013 (hoofdstuk 6) en aviaire influenza A(H7N9) (hoofdstuk 7).

Hoofdstuk 2 ontwikkelt een raamwerk voor het bestuderen van veranderingsprocessen na crisis. Het doet dit door gebruik te maken van de bestaande literatuur over crisis en beleidsprocessen. Losjes gebaseerd op het beleidscyclusmodel onderscheidt het raamwerk drie beleidsprocessen: agendavorming in nieuws media en sociale media, overheidsreactie en juridische verandering. Binnen deze processen zijn er factoren die de risicogebeurtenissen verzwakken en factoren die deze versterken. Voorbeelden van het eerste zijn de omvang van de crisis en berichtgeving. Voorbeelden van het tweede zijn het ontbreken van een haalbare beleidsoplossing en een politiek klimaat dat niet openstaat voor verandering. Vanwege het verschil in politieke context is dit raamwerk vervolgens aangepast aan China, rekening houdend met de belangrijkste politieke kenmerken van het land, waaronder de autoritaire overheid, staatscensuur van nieuwsmidia en het internet en beperkte ruimte voor mobilisatie.

Hoofdstuk 3 biedt een diepgaande, actuele analyse van wetgevingsprocessen in China. Het onderzoekt de rol van statelijke en niet-statale actoren die bij de afzonderlijke fases van wetgevingsprocessen betrokken zijn. Het hoofdstuk laat zien dat—in tegenstelling tot wat vaak wordt gedacht—wetgevingsprocessen in het autoritaire China over het algemeen niet worden beheerst door een kleine groep topleiders, maar bestaat uit onderhandelingen tussen veel verschillende overheidsactoren op nationaal en subnationaal niveau. Het hoofdstuk stelt verder dat, hoewel niet-statale actoren steeds meer proberen de timing en inhoud van wetten te beïnvloeden, het bewijs van de daadwerkelijke impact van deze lobbyactiviteiten zeer beperkt blijft.

Hoofdstuk 4 ontwikkelt een methode voor het meten en beoordelen van juridische veranderingen op een systematische en zinvolle manier, rekening houdend met de kenmerken van het Chinese rechtssysteem. Op basis van bestaande beleidsliteratuur laat het hoofdstuk eerst zien dat er geen consensus is over hoe wettelijke verandering te meten en te beoordelen. Na het bespreken van de beperkingen van puur kwantitatieve dan wel kwalitatieve methoden, introduceert het hoofdstuk een geïntegreerde aanpak, bestaande uit kwantitatieve geautomatiseerde tekstanalyse en kwalitatieve tekstcompositieanalyse. Met behulp van deze instrumenten wordt de aard van

juridische verandering na crisis beoordeeld op basis van de mate van verandering, de inhoud van verandering en het type leren. Het hoofdstuk maakt onderscheid tussen vier soorten van leren die verschillen in de mate waarin de verandering reageert op de desbetreffende crisis (*crisis responsiveness*) en het probleemoplossend vermogen (*problem solving potential*).

Hoofdstuk 5 onderzoekt de melamine melkpoeder crisis van 2008. Met minstens zes doden en 300.000 zieke kinderen is dit ongetwijfeld China's grootste voedselveiligheids crisis. Het hoofdstuk laat in de eerste plaats zien dat de melkpoeder crisis heeft geleid tot verandering in wet- en regelgeving, namelijk het opstellen van de Dairy Quality Regulations, de Raw Milk Purchasing Rules en de afschaffing van een systeem dat bepaalde voedingsmiddelen—inclusief zuigelingenvoeding—vrijstelde van veiligheidsinspecties. De belangrijkste drijfveren achter deze juridische veranderingen na de crisis was de opvallendheid (*salience*) van het probleem en een gunstig politiek klimaat. Opmerkelijk is de snelheid waarmee juridische veranderingen tot stand kwamen. Hoewel er al consensus bestond over de noodzaak van hervorming van de zuivelindustrie, waren er geen concrete voorstellen beschikbaar toen de crisis uitbrak. Toch hebben de State Council, de General Administration of Quality Supervision, Inspection and Quarantine en het Ministerie van Landbouw deze drie veranderingen binnen twee maanden na het begin van de crisis goedgekeurd. De rol van de crisis in de Voedselveiligheidswet van 2009 is echter kleiner dan vaak wordt aangenomen. Hoewel de crisis enkele wijzigingen in het wetsvoorstel veroorzaakte, werd de wet niet geïnitieerd en niet versneld door de crisis. De reden hiervoor was dat het wetgevingsproces al jaren eerder was begonnen. Het wetsontwerp was al in een vergevorderde staat toen de crisis uitbrak. Het hoofdstuk laat zien dat er lessen zijn geleerd. Deze lessen waren echter onvoldoende diep en breed om herhaling van soortgelijke problemen te voorkomen.

Hoofdstuk 6 onderzoekt de dode varkens crisis in de Huangpu Rivier. In maart 2013 verschenen dode varkens in de Huangpu Rivier in China, een belangrijke drinkwaterbron van de stad Shanghai. In de daaropvolgende weken haalden overheden meer dan tienduizend varkenskarkassen uit de rivier. Dit leidde niet alleen tot kritische vragen over de waterkwaliteit, mogelijke epidemische uitbraken en voedselveiligheid, maar gaf ook aanleiding tot zware kritiek op verschillende overheden. Het hoofdstuk laat zien dat de crisis het maken van de Livestock Farming Pollution Regulations versnelde. Deze bevatten o.a. regels over het management van dode dieren. De schaal van de crisis (groot aantal dode varkens), de impact (bedreiging van het drinkwater) en de beschikbaarheid van een politiek relatief ongevoelig kader (schuld kon op een stroomopwaartse stad geschoven worden) plaatsten het onderwerp op de nieuwsagenda. Omdat de crisis samenviel met de jaarlijkse bijeenkomst van het Nationale Volkscongres in Peking, bereikte het ook snel de nationale overheidsagenda. De belangrijkste drijfveer achter deze juridische verandering na de crisis was de beschikbaarheid van een beleidsoplossing, namelijk een vergevorderd ontwerp van de Livestock Farming Pollution Regulations, die in oktober 2013 door de State Council werden aangenomen. Dit is echter een voorbeeld van retorisch leren, een begrip dat in dit onderzoek verwijst naar verandering die weliswaar is aangenomen als reactie op een crisis, maar zonder het probleem aan te pakken, waardoor het probleemoplossend vermogen ontbreekt. In zijn geheel bekeken, was de bijdrage van deze nieuwe regelgeving aan het reguleren van het beheer van dode

dieren beperkt.

Hoofdstuk 7 richt zich op verandering in wet- en regelgeving na aviaire influenza A(H7N9). Dit virus werd ontdekt in een ziekenhuis in Shanghai in maart 2013. Het virus was nog nooit eerder bij mensen ontdekt en daarom was er geen effectieve behandeling beschikbaar, laat staan een vaccin. In de daaropvolgende jaren infecteerde het virus 1.567 mensen. Ongeveer 40% van de geïnfecteerden stierf. Het hoofdstuk laat zien dat, ondanks oproepen tot verandering, met name met betrekking tot de verkoop van levend pluimvee op markten, de reactie van nationale wetgevers beperkt was tot twee wijzigingen in de Epidemic Diseases Law. Het hoofdstuk stelt dat deze beperkte verandering het gevolg is van de aard van de uitbraak. Hoewel de mortaliteit van het virus ongewoon hoog was, werd het virus niet overgedragen tussen mensen. Bovendien was er geen haalbare oplossing beschikbaar om de verkoop van levend pluimvee—de belangrijkste infectiebron—permanent te verbieden. De timing van de H7N9 uitbraak speelde ook een rol: het rechtssysteem was recentelijk nog hervormd na de SARS-pandemie van 2002-2003. Cruciaal was dat de opkomst van H7N9 samenviel met tien jaar sinds SARS, wat druk creëerde om te laten zien dat er lessen waren geleerd. Dit, samen met de lof die China ontving voor de snelle reactie op H7N9, beperkte de mogelijkheden voor uitgebreide juridische verandering, omdat dit kritiek op bestaand beleid zou impliceren.

De conclusie rondt het proefschrift af met het bespreken van de rol van volksgezondheids crisissen in wetgeving en wetgevingsprocessen in China. In het geval van de melamine melkpoeder crisis zou het grootste deel van de hier geïdentificeerde juridische veranderingen niet hebben plaatsgevonden zonder de crisis. Evenzo wijst het in het proefschrift gepresenteerde bewijs erop dat de wijziging van de Infectious Diseases Law na de opkomst van aviaire influenza A(H7N9) zonder de crisis niet zou hebben plaatsgevonden op dit specifieke tijdstip. Daarentegen is het waarschijnlijk dat de Livestock Pollution Prevention Regulations op een bepaald moment toch wel zouden zijn aangenomen omdat wetgevers hier al bijna een decennium aan gewerkt hadden. Echter werd er pas na de dode varkens crisis prioriteit aan gegeven door de State Council. Zonder deze crisis had het goedkeuren van deze regelgeving mogelijk dus langer geduurd.

Daarnaast stelt de conclusie dat China's *authoritarian responsiveness* steeds geavanceerder wordt. Aan de ene kant lijkt er een opkomende trend naar meer proactieve, transparante overheidsreacties met betrekking tot nieuwe infectieziekten. Anderzijds zijn er ontwikkelingen in tegenovergestelde richting, aangezien mediavrijheid en mogelijkheden voor mobilisatie zijn verslechterd sinds Xi Jinping in 2012 secretaris-generaal van de Communistische Partij werd. In het delicate evenwicht tussen transparantie en controle, worden professionalisering van crisisbeheersing en toegenomen—doch selectieve—transparantie gebruikt als hulpmiddelen om de geloofwaardigheid en sociale stabiliteit van de overheid te behouden in plaats van dat deze worden ingezet als waakhonden voor burgers. Omdat informatie van vitaal belang is bij het identificeren van risico's, is de implicatie van deze ontwikkeling voor beleidsverandering na crisis dat het steeds moeilijker wordt voor politieke en regeringsleiders om opkomende dreigingen tijdig te detecteren en te begrijpen, waardoor China steeds vatbaarder wordt voor crises. Dit kan op zijn beurt de druk voor verandering in wet- en

regelgeving vergroten.

Ten derde beargumenteert de conclusie dat, hoewel de casussen niet representatief zijn voor alle crises en alle juridische veranderingen na crisis in China, er cruciale verschillen zijn tussen China en westerse democratieën. Dit heeft betrekking op vragen zoals wanneer en hoe een risicogebeurtenis de media-agenda bereikt, het type overheidsreactie en het trekken van lering uit crisis. Cruciaal is dat de mate waarin een risicogebeurtenis versterkt kan worden, afhankelijk is van de politieke gevoeligheid. Bovendien is er beperkte ruimte voor mobilisatie, dat wil zeggen voor acties zoals lobbyen, protesteren, of andere uitingsvormen in reactie op een probleem door activisten, omwonenden, niet-gouvernementele organisaties, bureaucraten en anderen. In verband hiermee tonen de casussen ook slechts beperkte ruimte voor *framing*, dat wil zeggen een bepaalde probleemdefinitie, causale interpretatie, morele evaluatie of aanbevelingen. Deze verschillen in mobilisatie en *framing* zijn belangrijk omdat ze de inhoud en timing van overheidsreacties beïnvloeden.

Ten vierde zijn er—hoewel de casussen gelijkenissen tonen met liberale democratieën wat betreft de mate van juridische verandering na crisissen—belangrijke verschillen met betrekking tot het trekken van lering uit crisissen. Allereerst is het zeer moeilijk het concept van leren naar aanleiding van crisis te observeren in China. Dit is het gevolg van gebrek aan transparantie in overheids- en wetgevingsprocessen. Ten tweede vereist effectief leren platformen waarin belanghebbenden zoals deskundigen, burgers, slachtoffers, politici en ambtenaren oorzaken en oplossingen kunnen bespreken, maar vanwege de staatscensuur op nieuwsmedia en internet is er beperkte ruimte voor open discussie en openbaar onderzoek.

Desalniettemin laten de casussen zien dat er wel degelijk lessen geleerd zijn, zij het in verschillende mate. In bijna alle hier geïdentificeerde juridische veranderingen na crisis is er sprake van overeenkomsten tussen het onderwerp van de wetgeving en de problemen die door de specifieke crisis zijn blootgelegd. Echter scoren slechts enkele van de geïdentificeerde wettelijke veranderingen positief wat betreft probleemoplossend vermogen. Bovendien werden—net als in liberale democratieën—veel kwesties die door de crises werden blootgelegd, niet aangepakt. Gezien de hierboven genoemde structurele beperkingen in China ten aanzien van crisisveranderingsprocessen, is het waarschijnlijk dat, zoals in westerse democratieën, zogenaamd *single-loop* leren gebruikelijker is dan *double-loop* leren.

Het proefschrift eindigt met drie ideeën voor toekomstig onderzoek naar crisis en wetgeving in China. Om de externe validiteit te vergroten, is de meest voor de hand liggende volgende stap het vergroten van het aantal casussen met behulp van Qualitative Comparative Analysis (QCA). Met deze methode kunnen de omstandigheden die leiden tot juridische verandering na een crisis bepaald worden. Een groter aantal casussen zal ook de generaliseerbaarheid van de aard van de juridische verandering na de crisis vergroten. Een tweede veelbelovend pad voor toekomstig onderzoek is het afnemen van interviews om een beter begrip te krijgen van aspecten van het crisisveranderingsproces die in dit proefschrift onderbelicht bleven. Prioriteiten hier zijn de rol

van zogenaamde *policy entrepreneurs*, het leerproces, de totstandkoming van de wetgevingsagenda en *advocacy coalition frameworks*. Een derde idee dat de moeite waard is om te verkennen, is het toepassen van de zogenaamde *theoretical complementary* benadering op de hier gepresenteerde casussen. Dit betekent dat meerdere relevante, bestaande theorieën omtrent beleidsprocessen naast elkaar worden toegepast om zo om een beter begrip van de casussen te krijgen. Omdat bestaande theorieën overwegend gebaseerd zijn op studies van liberale democratieën, draagt een dergelijke benadering ook bij aan het verscherpen van deze theorieën.

Curriculum Vitae

Annemieke van den Dool earned a BA in Chinese Languages and Cultures from Leiden University in the Netherlands and a MSc in Environmental Science, Policy, and Management from Lund University in Sweden, Central European University in Hungary, and Manchester University in the United Kingdom (joint degree). Before starting her PhD research at the University of Amsterdam (Amsterdam Law School), she taught environmental law, environmental politics, and elementary Chinese at a high school in northern Sweden.

Annemieke has spent extended periods of time in China. She was a Chinese language student at Peking University (2004–2005) and a research fellow at the Natural Resources Defense Council, an American environmental NGO, in Beijing (2007–2008). She conducted rural fieldwork for her MSc thesis in Yunnan province, which was hosted by the World Agroforestry Center (2010). During her PhD program, she spent 14 months in China as visiting PhD researcher at Shandong University and the Central University of Finance and Economics (in 2014 and 2016).

During her PhD research, Annemieke was a visiting scholar at Harvard Law School (2017). She has also been a lecturer at Mid Sweden University in the Swedish city Östersund, where she taught courses on public administration, policy processes, and crisis politics (2018).

As of July 2019, Annemieke is assistant professor of environmental policy at Duke Kunshan University in China, where she continues her research on crises and public policy in China, in addition to teaching undergraduate courses on the politics of environmental crises, policy analysis, and policy processes.