Challenges for Enforcing Food Safety Law and Regulations in China: Case Studies of Government Agencies in the Shanghai Region

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I. INTRODUCTION

In recent years, international media reports on food safety crises, particularly involving a number of multinationals, such as Shanghai Husi Food (a unit of U.S.-based OSI Group), McDonald’s, Yum Brands, Starbucks, and Burger King, have increased in China.¹ In the case of Husi Food, the police investigation followed a television report that showed

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staff picking meat off of a factory floor and mixing fresh meat with meat beyond its expiration date.² In a recent court ruling, a Chinese court sentenced ten employees of the OSI Group to prison and fined the company up to RMB 2.4 million, or USD $364,875.³ Continuous negative media reports on food safety crises have damaged the reputation of the relevant state law enforcement agencies and have influenced consumer confidence.⁴

In fact, since the milk powder crisis occurred in China in 2009,⁵ government agencies have increased the frequency and scope of inspections and law enforcement.⁶ Government agencies have adopted both direct and indirect supervision, and inspection, as well as informal institutional influence, is noticeable.⁷ Although incidents have recently reduced, largely due to the effort of all levels of government, the frequency of food safety crises is sufficiently curtailed.⁸ As Ryan Fergus claimed: “[T]he Chinese government’s strategy for food safety reform is all about ‘killing the chicken to scare the monkeys.’”⁹ Such a prevention mechanism may not be sufficiently satisfactory and consumer confidence may not be restored effectively by such measures.

² The company Shanghai Husi has been supplying the “giants” of the fast-food with meat from the floor ...”, THEMENews (July 22 2014), http://en.protothema.gr/the-company-shanghai-husi-has-been-supplying-the-giants-of-the-fast-food-with-meat-from-the-floor/.


⁹ Fergus, supra note 1.
Under the market-oriented economic environment, the withdrawal of state intervention at the firm level is the central task for the government. The introduction of the “rule of law” concept into the market economy has created many positive outcomes for market economic development. During the process of economic reform, however, the state has demonstrated insufficient capabilities when it comes to law enforcement and efficient supervision of policy implementation for market economic development. For instance, the traditional way of implementing the state’s policy and regulations through political campaigns is still a dominant implementation mechanism. The environmental campaign for blue sky by closing factory production during the Olympic period in Beijing is an example of this. As for the handling of food safety problems, when new cases appear, a national or regional campaign is launched. After a short period, these campaigns are terminated and a “business as usual” approach is resumed. When a new crisis appears, another round of campaigns follows, thus perpetuating a negative cycle. A recent article by John Kojiro Yasuda assesses four failed scale management initiatives, namely, food safety coordination bodies, campaigns, model production zones, and regulatory segmentation. This article concludes that China’s pervasive food safety problems reveal the adaptive limits of its unitary regulatory structure to effectively manage scale, as well as to manage politics in a complex multi-level context.

Generally speaking, law enforcement has always been problematic in China. Enforcement of the Food Safety Law and related regulations has been challenging for relevant government agencies. John Balzano argues that “future scholarship should focus on how accountable to public needs, reactive to problems and effective in food safety law enforcement agents can be.” In addition, according to Sandra Hoffman and William

11 Jiang & Zhu, supra note 7, at 600-616.
14 Jiang & Zhu, supra note 7.
18 Id. at 28.
Harder, the international trend is that a consensus has emerged among nations about the basic components of an effective food safety system based on modern science and management practices and this system is built on several decades of experience with risk management in national governments.\(^{19}\)

It is on the basis of such concerns that we planned this research project to focus on food safety law enforcement agencies in the Shanghai region as a complementary study to the studies by Balzano, Hoffman and Harder, and Yasuda. This is also an extension from our first round of investigation, which focused on food production companies at the beginning of 2012.\(^{20}\) In the first round, we targeted twenty companies in Shanghai, asking the key question: What factors influence the production systems in general, and the quality and safety of the products in particular? One of the key outcomes of this round of investigation is the lack of effective enforcement of law and comprehensive regulatory environments.

Therefore, in the second round of investigation in 2014, we focused on key issues related to this particular outcome, posing a number of key questions that have not been widely published.\(^{21}\) We conducted interviews with several law and regulation enforcement agencies in the Shanghai region, including Shanghai Food and Drug Administration, Shanghai Agricultural Committee Food Safety Administration, Shanghai Pudong District Market Administration, Shanghai Fengxian County Food Safety Office, Shanghai Fengxian County Zhuangxing Township Food Safety Office, and Shanghai Pudong District Puxing Community Food Safety Office.\(^{22}\)

In order to illustrate these issues, we arranged this article into the following sections. Following this introduction, Section II provides a background of China’s food safety laws and regulations nationally in general, and local regulations and improvement in the Shanghai region in


\(^{21}\) During the interviews, we asked the following key questions: What laws and regulations have been established and amended or improved in recent years in order to contain the frequent food safety crises nationally and in the Shanghai region? How do the relevant law enforcement agencies implement and enforce laws and regulations in Shanghai? What kind of governance modes have been adopted and are they effective?

\(^{22}\) See *infra* at Table 1: The profiles of interviewees for a profile of these agencies.
particular. This is intended to create a foundation for further investigation of the roles and functions of enforcement agencies. Given that China is a huge country, by illustrating policy initiatives at both national and local levels, we can see how effective implementation might be achieved at the local level. Section III provides a theoretical underpinning based on the institutional theory that illustrates the role of the state regarding law enforcement and the modes of governance. The literature review guides us in investigating the role of government agencies as well as the effectiveness of the current modes of governance. Section IV describes our research design and presents our methods and case studies. Section V describes the detailed results based on the information obtained from our interviews surrounding the key research issues. The issues include: local enforcement systems, implementation structures and procedures, and the routine activities of these enforcement agencies at the grassroots level. Ongoing challenges and problems are also discussed. Section VI concludes the article by highlighting the implications for adopting effective governance modes based on the institutional perspectives, as well as the practical implications for future development of the food safety governance systems in China.

II. BACKGROUND

A. Food Safety Law and Regulation in China

In recent years, serious food safety scares have been a widespread phenomenon in China. To curtail the frequency of food safety incidents, both central and local governments aimed to develop food safety governance and administration systems through laws, regulations, and law enforcement. Several new policy initiatives include:

1. Developing a national law and administrative regulation on food safety, the Food Safety Law (FSL), on June 1, 2009.

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23 See infra at Section II.
24 See infra at Section III.
25 See infra at Section IV.
26 See infra at Section V.
27 See infra at Section VI.
2. Defining the role of the state and its agencies as providers of information on food safety, inspectors of food production systems, promoters of food safety education, and regulators who reward compliant producers and punish the non-compliant ones.\(^{31}\)

3. Establishing a food safety, early warning, and risk prevention system by collecting relevant information, conducting laboratory testing, and implementing hotline complaint systems.\(^{32}\)

4. Carrying out regular firm-level inspections by the relevant government agencies that have the power to shut down companies supplying unsafe or poor quality products.\(^{33}\)

The implementation of the FSL can be seen as part of a political and legal system comprising general laws, which govern civil liability and the fairness of administrative processes, as well as laws related to product quality, consumer protection, and truth and fairness in advertising.\(^{34}\) In this regard, the FSL is a law that covers daily necessities and provides an essential infrastructure for protecting the basic needs, namely safe food. The public, however, has criticized the FSL for several issues. The first issue is related to the role of enforcement agencies. According to the FSL, the Ministry of Health (currently called the Health and Family Planning Committee) is responsible for food safety management, risk assessment, formulation of standards, information dissemination, establishment of codes of practice for food testing organizations, and the investigation of major food safety incidents.\(^{35}\) The duty to monitor food production and circulation, and the provision of services, however, belongs to the Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), the Industry and Commerce Bureau (ICB), and the Food and Drug Administration (FDA).\(^{36}\) The problem is that there is no clear

\(^{31}\) Dai, supra note 5, at 103-106.

\(^{32}\) Jing Liu, China’s Food Safety and the Government’s Supervision (Zhongguo Shipin Anquan Yu Zhengfu Jiandu, 中国食品安全与政府监督), 30 MOD. INDUSTRY ECON. & INFORMATIONIZATION 43, 43-44 (2012).


\(^{34}\) Balzano, supra note 17, at 23-80.

\(^{35}\) Petry and Bugang, supra note 30, at 3.

\(^{36}\) Chun & Wong, supra note 28, at 476.
indication of how this monitoring duty should be divided among the three government agencies.\footnote{37}{Id. at 476-77.}

The second issue is that the FSL mainly focuses on the industrial production of food, but it does not mention the production of raw materials of food, namely farm products. Raw agricultural production is primarily supervised by the Ministry of Agriculture and governed by the Agriculture Law.\footnote{38}{Balzano, supra note 17, at 30.} Hence, as for the safety of raw food products, the enforcement would rely on the agricultural administration system at the local level, namely the Agricultural Committee.

The third issue is related to consumer compensation. The FSL stipulates that the producers or distributors of unsafe food products are responsible for the consequent financial loss incurred and are obliged to compensate a sum up to ten times the price of the product.\footnote{39}{Petry & Bugang, supra note 30, at 20.} The FSL, however, is silent on whether local governments are responsible for compensating victims if the incident is caused by perfunctory government action.\footnote{40}{Jiang & Zhu, supra note 7, at 600-616.} In a recent amendment of the Criminal Law (2015),\footnote{41}{China Focus: China adopts amendments to Criminal Law, XINHUANET (AUG. 29, 2015), \url{http://news.xinhuanet.com/english/2015-08/29/c_134568394.htm}.} a new section of Article 408 stipulates that misconduct or negligence by food safety monitoring officials, causing serious or very serious damage, is punishable with a maximum of five to ten years imprisonment respectively.\footnote{42}{Chun & Wong, supra note 28, at 477.}

Other obstacles for effective implementation of food safety laws and regulations include: 1) the high cost of monitoring given a large number of small-scale family businesses with irregular operation;\footnote{43}{Jiang & Zhu, supra note 7, at 600-16.} 2) the impecunious financial capacity of public agencies, especially at local county level in rural areas;\footnote{44}{Id. at 476-77.} and 3) the lack of technical expertise for laboratory testing and lack of well-trained inspectors.\footnote{45}{Id.} Given these obstacles, it is important to build local capabilities to enforce food safety laws and regulations effectively. This is the central theme of the following sections.\footnote{46}{See infra at Section B.}
B. Enforcement of Food Safety Regulations in Shanghai Region

In the Shanghai region, a number of government agencies work together on the enforcement of food safety laws and regulations. At the municipal level, the leading committee is the Shanghai City Government Food Safety Committee (FSC). This committee is in charge of the overall development of local policies and regulations, and the enforcement of relevant laws and regulations. Under this committee’s leadership, a number of enforcement agencies are deployed with particular focus on different types of products, locations, and law enforcement functions. For example, Shanghai Food and Drug Administration (FDA) is in charge of reforming the food and drug administrative systems, improving the relevant inspection and management regulations and standards, carrying out particular sector or product clean-up campaigns, punishing wrongdoing, and preventing potential food safety risks.

Another important agency is the Shanghai Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), which plays a key role in supervising and inspecting food quality, as well as quarantining products in the process of production through to consumption. This process includes production, packaging, loading and transportation, storage, sales, and consumption.

The third important agency is the Shanghai Agricultural Committee, which manages the safety and quality control of raw agricultural products in the suburban and rural areas around Shanghai City, with a particular focus on managing and inspecting the quality of vegetables and meat production and processes (including animal slaughter processes). A number of subordinate agencies work below the city government agencies, at the district, county, township and community levels.

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47 See infra at Figure 1.
49 Id.
50 Id.
51 Id.
53 Id.
levels. These agencies include the Pudong District Market Administration, Fengxian County Food Safety Office, Fengxian County Zhuangxing Township Food Safety Office, and Pudong District Puxing Community Food Safety Office.\(^{56}\)

Two other important agencies associated with law enforcement are Shanghai Industrial and Commercial Bureau (ICB) and Shanghai Public Security Bureau (PSB).\(^{57}\) The former is in charge of issuing and renewing business licenses and the latter polices public order by enforcing Criminal Laws.\(^{58}\) Companies or individuals found to be involved in producing or selling unsafe food risk losing their business licenses and may face criminal charges.\(^{59}\)

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\(^{55}\) Id.

\(^{56}\) Id.

\(^{57}\) SHANGAI FOOD & DRUG ADMIN, supra note 48.

\(^{58}\) Id.

\(^{59}\) Id.
In addition, each administrative body mentioned above has a sub-unit at a lower level of administration, such as district and county levels. There is, therefore, a collective administrative effort in implementing food safety laws and regulation enforcement at multiple levels of government administration. A more detailed analysis on the roles and functions of different agencies will be illustrated in the case studies described below.

III. THEORETICAL UNDERPINNING

In this literature review, we adopt an institutional approach in order to identify the roles and functions of government agencies in relation to the enforcement of food safety laws and regulations, and the implications for their responsibilities within society. In addition, we also explore a critical view on the modes of governance, in order to generate some suggestions for future improvements in this area.

A. Institutional Approach

Since the second half of the twentieth century, significant theoretical developments in the area of institutions have occurred. The massive flow of interests from different schools of thought (such as institutional theory, neo-institutional theory, and de-institutionalisation theory) shows us how institutions universally matter. Institutions are defined as “rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction.” Formal rules include set rules, laws, and constitutions, whereas informal rules are norms of behaviour, conventions, and self-imposed codes of conduct.

Institutional theory suggests that the three components of institutions, namely, formal rules, informal rules, and the characteristics of

60 Id.
61 Id.
62 See infra at Section III.
63 See, Howard Aldrich, Beam me up, Scott(ie)! Institutional theorists’ struggles with the emergent nature of entrepreneurship, 21 RESEARCH IN SOC. OF WORK: INSTITUTIONS AND ENTREPRENEURSHIP 329–364 (2010).
64 Id.
their enforcement, are of equal importance.\textsuperscript{67} The theory also highlights
the importance of embedded relationships and the power of informal
rules.\textsuperscript{68} It claims that social actors are not entirely independent and
certainly not always rational.\textsuperscript{69} In relation to institutional change, the roles
of the informal rules should not be taken as given.\textsuperscript{70} Informal rules can
constrain institutional change, but they are also capable of instigating
changes.\textsuperscript{71} Indeed, as shown by more recent research, institutional changes
may stem from changes of the path-dependent in the environment; in other
words, the past history still influences the current activities and situation.
This provides certain guidance for this research on China as it is
transforming from planned economy to a market-oriented one.\textsuperscript{72}

The early stages of institutional theory, however, did little to
elucidate institutional change and left the role of strategic actors relatively
unattended. In the early 1990s, a study on de-institutionalisation paved the
way for examining institutional change and theoretical advancement,
which came to light in response to these drawbacks.\textsuperscript{73} Institutional change
is defined as “fundamental and comprehensive changes introduced to the
formal and informal rules of the game that affect organisations as
players.”\textsuperscript{74} Furthermore, Royston Greenwood and Bob Hinings highlight
the role of the different strategic actors, such as government agencies and
company managers, to act and interact with a particular interest.\textsuperscript{75} Thus,
the relative permeability of organisations is believed to drive institutional
change.\textsuperscript{76}

\textsuperscript{67} North, supra note 65, at 96-101.
\textsuperscript{68} Aldrich, supra note 63.
\textsuperscript{69} Id.
\textsuperscript{70} Id.
\textsuperscript{71} Id.
\textsuperscript{72} See generally, The Economic Sociology of Capitalism (Victor Nee &
\textsuperscript{73} Christine Oliver, Antecedents of Deinstitutionalization, 13 Org. Stud. 563,
\textsuperscript{74} Mike W. Peng, Institutional Transitions and Strategic Choices, 28 Acad.
\textsuperscript{75} Royston Greenwood & C. R. Hinings, 1996. Understanding Radical
Organizational Change: Bringing together the Old and the New Institutionalism 21
Acad. Mgmt. Rev. 1022, 1022-1054 (1996),
resourceId/16896074/content/Greenwood%20&%20Hinings.pdf.
\textsuperscript{76} Id.
In addition to governments and management, other social groups such as NGOs or voluntary citizens’ associations could also be regarded as strategic actors. Strategic actors do not only respond well to institutional change, but can also initiate such change. Hence, the theoretical focus has shifted to the phenomenon of institutional change and how the formal and informal rules of institutions interact. According to Victor Nee and Richard Swedberg, the relationships between the formal and informal rules can be grouped as “close coupling,” “decoupling,” and “informal - become opposition norms.” In other words, both formal and informal rules could work together closely, but later could be separated and even become opposition forces. If an economy or organization is to perform, it seems imperative to reach the state of “coupling” within institutions. Nevertheless, “decoupling” or “oppositional informal rules” could be natural, depending upon the stage of institutional change. Yet, arriving at this idealistic point is extremely challenging. Given that behaviors are also path-dependent, there is always a temptation to sustain the status quo. In other words, the emergence of decoupling has always been the reality.

Exposed to institutional change, strategic actors are not necessarily silent. They can play their role as assets as well as liabilities to the initiators of change. Inconsistency between their preferences for, or interests in, the newly introduced formal rules, could increase the possibility of liabilities. In order to secure their position, strategic actors

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79 North, supra note 65, at 101.

80 Nee & Swedberg, supra note 72, at 53-72.

81 Id.

82 Id.

83 Id.

84 Id.


86 Id. at 32.

87 Id. at 32-33.
could shift to pragmatic legitimacy-seeking, although this may not necessarily coincide with efficiency-seeking motives.\(^{88}\) This situation could not only block new initiatives, but also jeopardize an organization’s performance and transformation process.\(^{89}\) Given that actors have the ability to respond to and initiate institutional change, there is a possibility that power could frequently vacillate between institutions and strategic actors.\(^{90}\) This approach provides further guidance for this research to investigate the role of government agencies and their interactions with other actors in society.

These institutional approaches are relevant to the current changes in China. Compared with its former central planning economy, China’s economy is now oriented and moving toward a more open market with a new concept of “getting rich is glorious”\(^{91}\) and business decision-making being driven by profit.\(^{92}\) In this transition, the business rationale is to maximize profits by a variety of means, including cheating and dishonest behavior. Consumers become powerless and vulnerable given the reality of a lack of government protection, inadequate law enforcement and punishment for wrongdoing. The institutional approach, therefore, will guide us to investigate the role of government agencies at different levels and their interaction with other key stakeholders, as well as to analyze whether the current regulations and law enforcement are adequate for protecting vulnerable consumers in the society. This approach will also identify the most effective modes of governance.

Under market-oriented economic reforms, prioritizing an endless pursuit of profit maximization has become the dominant theme for business operations.\(^{93}\) By contrast, government has indicated a substantive rationality (i.e., using the nature of political system and political economic environments in China) for prioritizing effective pursuit of successive policies through top-down implementation.\(^{94}\) Market forces and hierarchical governance are prey to the problems of bounded rationality, opportunism, and asset specificity.\(^{95}\) So far, extensive literature on market

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\(^{88}\) Id. at 35-36.

\(^{89}\) Id. at 36-37.

\(^{90}\) Id. at 32-38.


\(^{92}\) Id.

\(^{93}\) Id.


\(^{95}\) Id.
and state failure already exists.\(^9^6\) It is important to examine the problems and risks of governance that could negatively influence the effectiveness of law enforcement.\(^9^7\) As an alternative governance mode, Jessop suggests heterarchic\(^9^8\) governance, which is based on a third type of rationality: reflexive rationality.\(^9^9\) The key to the success of heterarchic governance is continued commitment to dialogue to generate and exchange more information, thereby reducing opportunism by locking governance partners into a range of interdependent decisions over a mixture of short-, medium-, and long-term timeframes. Hence, it could build on the interdependencies and risks associated with “asset specificity” by encouraging solidarity among those involved. Heterarchic governance thereby supplements market exchange and government hierarchy with institutionalized negotiations to mobilize consensus and build mutual understanding.\(^1^0^0\)

An important condition for this heterarchic mode to function well relies on the constitution of the objects of governance, and the coordination among relevant actors to achieve their objectives.\(^1^0^1\) In order to achieve positive outcomes, three types of heterarchic governance are required: interpersonal networking (i.e. between individuals), inter-organizational (i.e. between organizations) negotiation, and inter-systemic steering (i.e. mutual understanding and co-evolution of different institutional orders).\(^1^0^2\) Regarding the environment in which heterarchy operates, coordination is most likely to succeed where conditions are sufficiently stable and the options sufficiently restricted so that reflexive monitoring, interactive learning and incremental change can occur.\(^1^0^3\)


\(^9^9\) *Id.* at 29-45.

\(^1^0^0\) *Id.*

\(^1^0^1\) *Id.*

\(^1^0^2\) *Id.*

\(^1^0^3\) *Id.*
This alternative approach to different governance modes leads us to consider the role and function of government agencies in Shanghai, and the questions of whether the current governance mode is effective and what can be suggested for improvement.

IV. RESEARCH DESIGN, METHODS AND CASE PROFILES

After the first round of investigation of twenty production companies in the Shanghai region in 2012, we carried out a second round of investigation in April 2014, in which we focused on the enforcement of law and regulations. Shanghai Ocean University has a large network among law enforcement agencies in this region.104 We selected a number of interviewees covering different functions, levels of administration, and locations, to comprehensively represent the enforcement agencies in Shanghai. Table 1 presents the details of the interviewees’ profiles with codes to identify each interviewee.105

Table 1: The profiles of interviewees

<table>
<thead>
<tr>
<th>ID.</th>
<th>Position/Agency</th>
<th>Responsibilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>I1</td>
<td>Deputy Director, Shanghai FDA</td>
<td>Drafting the relevant local policies and regulations; supervising other FDA offices at District and County level; reporting to the Shanghai City Government Food Safety Committee.</td>
</tr>
<tr>
<td>I2</td>
<td>Chief Inspector, Shanghai Pudong District Market Administration</td>
<td>Managing five special Food and Drug Safety Inspection Teams at the District level; carrying out regular inspection activities and annual business audits of all the food and drug producers, wholesale and retail businesses in the Pudong District; reporting to the Shanghai City Government Food and Safety Committee.</td>
</tr>
<tr>
<td>I3 (and 3 other colleagues)</td>
<td>Director, Office of Shanghai Agricultural Committee Food Safety Administration</td>
<td>Drafting the relevant local policies and regulations on agri-production; supervising other Agricultural Committee Food Safety Administration Offices at the District and County level; reporting to the Shanghai City Government Food Safety Committee.</td>
</tr>
<tr>
<td>I4 (and 3 other colleagues)</td>
<td>Director, Shanghai</td>
<td>Enforcing the relevant law and regulations</td>
</tr>
</tbody>
</table>

104 Authors’ interviews in Shanghai, May 2014. Unless otherwise noted, this entire section (Section IV) is based on this fieldwork and interviews with officials and food inspection teams in Shanghai in May 2014.

105 Due to research ethical requirements, we are unable to publish the interviewees’ names. Positions and responsibility of those interviewed are detailed in Table 1.
This study adopts an exploratory qualitative case study analysis methodology, which is considered appropriate for this type of research within a relatively unexplored area.\textsuperscript{106} The exploratory case study is an inductive study for refining existing theories and making complementary contributions. It is also suitable for uncovering meanings related to propositions that have not been investigated before.\textsuperscript{107} In collecting our data, we analyzed published documents containing historical information pertaining to food safety, and took guidance from our Chinese research partners’ connections in the Shanghai region. We conducted semi-structured interviews with key informants from a number of government law enforcement agencies listed in Table 1. We understand that this is pilot research; interview results based on the informants’ self-reporting only refer to law and regulation enforcement in the Shanghai region, not to the entire country.

During interviews with these informants, we asked questions related to the following areas: the historical background of the enforcement of food safety law and regulation; the current situation of law enforcement; the challenges and problems currently being faced; and the considerations for future development. Interviews were conducted on-site

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at each government agency and were approximately one and a half hours in duration. During the site visit, we also collected some relevant government documents and the interview record was transcribed, translated, and analyzed following our fieldwork. A detailed case analysis is presented in the following section.108

V. RESULTS AND ANALYSIS

The results of the case studies are presented in the following manner: based on our research design, we are interested in the transformational roles and functions of different government agencies with a historical perspective. The key challenges and problems of enforcing food safety laws and regulations are also discussed. Due to different priorities and functions of the agencies, it is better to present the agencies individually, rather than as a group, so that individual characteristics of the agencies can be illustrated.

A. Reforming the Law Enforcement Systems

According to the informants’ comments, there have been a number of changes among different agencies in recent years.109 For example, interviewee II comments on the overall changes since 2003:

Before 2003, there were two major government ministries, namely Health and Agriculture Ministries, managing and implementing both food security (i.e. supply) and safety (i.e. quality) regulations. In 2004, the State Council passed Policy No. 24 on ‘National Rectifying Food Safety Problems’ with the focus on consolidating the management of the food safety issues with product quality control and market management. Since then, more relevant government agencies got involved in the supervising and monitoring along the food production lines, including raw material supplies, the processes of production and transportation, and the storage and market sale procedures. Based on the practices and experiences of handling the food safety issues between 2004 and 2008, the first comprehensive ‘Food Safety Law’ was passed and implemented in 2009. Since then, the food safety issues were managed by different government agencies with different priorities and functions.110

108 See infra at Section V.

109 Authors’ fieldwork in Shanghai, May 2014.

110 Interview with II, at the Shanghai FDA Office, (Nov. 5, 2014).
In January 2014, Shanghai Pudong New District adopted a new supervision system, namely “combining three functions into one body,”111 these functions being: industrial and commercial registration, quality supervision and management, and food and drug administration under the Pudong District Market Administration.112 The detailed changes of the supervision system include:

1. The food safety supervision system was dramatically changed. The former system was based on the separate supervision of Industrial and Commercial Registration Bureau, Quality Supervision Bureau, and Food and Drug Administration. The new system combined all three agencies into one body under the Pudong District Market Administration.

2. The former system with three separate supervision agencies was under the leadership of the Shanghai City Government. The new system, however, allowed the district government to manage daily supervision activities and the newly established administration was under the leadership of the district government in the areas of human resources and administrative management, with budget support from the city government.

3. The newly established Pudong District Administration would take full responsibility for any problems occurring at the district level and report to the relevant city government bureaus. This is consistent with the Food Safety Law in reference to taking full responsibility of local government regarding food safety issues.

4. After this reform, the new system overcame the former problems of separating supervision and enforcement among different government agencies at the local government level. More coordinated and integrated supervision and law enforcement could be achieved among different functional departments under one administration without excessive “ping-pong playing” between different agencies.

5. The components and functions of the newly established District Administration include a Party Committee, 19 functional departments (combining three previously separate agencies), five law enforcement teams, and 36 community-based offices. With regard to the five law enforcement teams, Teams One and Two focus on comprehensive law enforcement and inspection of business registration, quality control and FDA. The teams carry out investigations based on hotline reports by consumers. Teams Three and Four carry out supervising and inspecting

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111 Interview with I2, at the Shanghai Pudong Market Administration Office, (June 5, 2014).

112 Id.
activities among production enterprises, with Team Three focusing on food production enterprises and Team Four on drug and cosmetic production enterprises. When serious problems are found in any enterprise, the business license can be cancelled and criminal charges may apply. Team Five concentrates on handling emerging events and crisis prevention, such as food poisoning crises, major food festivals, and other related commercial events.\textsuperscript{113}

These changes and reforms aim to improve the overall performance of food safety protection and enforcement of relevant laws and regulations in the Shanghai region. Since the areas of commercial registration and industrial food and drug production are still separated from agri-business supervision and inspection, however, it is also important to know about the changes and reforms to the relevant government agencies, particularly the local county-level Agricultural Committee.\textsuperscript{114} We will illustrate these changes in further detail in the following section.\textsuperscript{115}

B. Reforms to the Agricultural Committee at different levels of government

We interviewed a number of officials working at the Agricultural Committee at different levels of government, including Shanghai City Government, Fengxian District Government, and Fengxian District Zhuangxing Township Government. In following the administrative hierarchy, we discuss the findings at the city government level first.

The Shanghai City Government Agricultural Committee oversees and manages the entire city’s agricultural productions, including agri-food production, animal feeding, slaughter, storage, and transportation.\textsuperscript{116} Following the production and transportation processes, any agri-products circulated in the market are managed by the FDA authority.\textsuperscript{117} At the time of our study, 50% of vegetables in the entire Shanghai region were produced and supplied locally, but over 70% of meat and egg products, and over 80% of grain products were supplied from other regions.\textsuperscript{118} This

\textsuperscript{113} Interview with I2 at Pudong District Market Administration, (Nov. 2, 2014).
\textsuperscript{114} Interview with I3 at Shanghai Agricultural Committee Food Safety Administration (June 5, 2014).
\textsuperscript{115} See infra at Section V.B.
\textsuperscript{116} Interview with I3, supra note 114.
\textsuperscript{117} Id.
\textsuperscript{118} Id.
situation certainly adds to the difficulties in monitoring and inspecting by the local authorities.\textsuperscript{119}

In recent years, the Shanghai Agricultural Committee (“the Committee”) has concentrated its efforts on the following four key areas: 1) a special clean-up investigation into what is being used in vegetable cultivation and animal feed; 2) promotion of a standardized production system for fruit and vegetable farms, rice fields, fish, and livestock farms; 3) certification labels of qualified brands, including labels indicating non-chemical, green, and organic elements, as well as geographical location of the production; 4) establishment of model townships with supervision and management support, such as training inspectors at village level and informants at the firm level.\textsuperscript{120}

At the city government level, the Committee focuses more on policy issues and designing new systems for effective implementation, including establishing legal systems and credibility systems.\textsuperscript{121} By the end of 2014, the Committee had implemented a new policy called Shanghai Agricultural Products Quality and Safety Supervision and Management, with a focus on solving the current problems of:

1. Livestock and meat products: adding barcodes to livestock and meat products, containing comprehensive information about the products, including testing, vaccination and quarantine certificates. By doing so, both wholesalers and retailers in the meat markets know the source of the meat products. In addition, the city government has provided more financial support to employ an extra 200 officially registered veterinarians to manage and supervise the production and certification processes.

2. Vegetable products: identifying product sources by issuing production certificates. With the Shanghai government certification, certain externally grown vegetables can be sold on Shanghai markets.

3. Seafood products: Over 70\% of seafood products are supplied from other regions and local seafood products only made up 30\% of the total market sales in the Shanghai region. As for products from other regions, the FDA authority conducts tests to identify whether these products meet the required quality standards. The local district and county level Agricultural Committees focuses on inspecting the local production process.

\textsuperscript{119} Id.

\textsuperscript{120} Id.

\textsuperscript{121} Id.
and transportation between the local production sites and markets. All the seafood products must have production site certificates in order to access Shanghai markets.\textsuperscript{122}

The next level of operation of the Agricultural Committee is at the district level.\textsuperscript{123} At the district level, the major tasks include supervision and inspection of agri-product production and transportation, under the full responsibility of the district and township leaders. The system requires the district leader to sign a contract of responsibility with the township leader, who in turn signs a similar contract with the village leader, who then signs a contract with individual farmers. At the same time, each farmer receives a production responsibility handbook, food safety menu and a list of forbidden drugs and chemical materials. Every township must set up an inspection station with inspection officers and other forms of support from the village coordinators and firm-level informants. In other words, three grassroots level inspection teams (i.e. inspection officer, village coordinator and informant).\textsuperscript{124}

The District Agricultural Committee has four law enforcement inspection teams: Team One focuses on seed and agricultural capital management. Team Two works on livestock feed, animal butchery, and vaccination and quarantine. Team Three inspects animal drug use and forage. Team Four monitors the production of seafood and fish products.\textsuperscript{125}

The process of inspection is divided into a number of procedures. The most important work is the annual audit and inspection where superior government agencies examine and inspect lower levels of government agencies and local producers. If unsafe products are discovered, the chief leader of each agent and the manager or owner of the firm are held fully responsible and removed from the post and/or liable to pay heavy fines. The second most important work is occasional, random inspection, or responding to reports from the village coordinator, informants, or complaints from consumers via the hotline. The relevant inspection teams carry out regular visits to the production sites to observe and inspect the production process. The third important function is to establish credible recognition systems by issuing certificates for credible

\textsuperscript{122} Id.

\textsuperscript{123} Interview with with I4, (Oct. 5, 2014). I4 and other three colleagues worked together at Fengxian District Agricultural Committee, enforcing food safety laws and regulations.

\textsuperscript{124} Id.

\textsuperscript{125} Id.
producers and products which have a good track record for meeting the required quality and safety standards. These certificates are renewed after three years through another round of examination and testing by the relevant government agency.  

The next level of government law enforcement agency is the Township Food Safety Office.  At the township level, the Food Safety Office oversees nearly 700 sites, including restaurants, food production facilities, agricultural products, and food markets, with the support of village and community leaders. This Food Safety Office has three teams: Team One is in charge of supervising and inspecting food and agri-product production, processes and transportation; Team Two manages the processes of food and drug circulation, retailing, and consumption in the markets; Team Three focuses on coordination with government agencies above all these teams, and with inspectors and informants at the village and community levels below them.

In recent years, the emphasis has been on online management through the establishment of information stations at the village and community levels. Each village and community has one information collection officer who is responsible for regularly providing information to the township office regarding food safety issues. The township office then collects the information and submits monthly reports to the superior government agencies in Shanghai. Many questionable activities, including unregistered food production and processing factories, were found by these grassroots-level informants. The relevant information was used by government inspection teams to take action against these illegal production sites.

C. Community Level Support

At the community level, a Food Safety Office has, in recent years, monitored restaurants and mini-markets located in the community. The so-called “food safety informants” comprise of local community leaders and citizen volunteers. Informants make regular visits to restaurants and mini-markets, providing relevant information on food safety to business operators and customers. Informants also report to food safety inspection teams at the township or district levels, on any suspicious cases or

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126 Id.
127 Interview with I5, (Nov. 5, 2014). I5 and three colleagues worked together to enforce food safety laws and regulations in the Fengxian District Zhuangxing Township.
128 Id.
129 Id.
130 Id.
complaints from the community’s citizens. The food safety informants, however, do not have the power to enforce the law. The law enforcement and inspection teams at the higher level of the administration carry out enforcement and investigation. Given the increased awareness among citizens and the reports of food safety problems through social media, community-based monitoring and reporting activities have become very active in recent years. Authorities also see these initiatives as one of the effective ways to minimize risks at the grassroots level.\textsuperscript{131}

D. On Going Challenges and Problems

This section focuses on the interviewees’ comments about existing challenges and problems which negatively influence the effectiveness of law enforcement. The following are a number of issues raised as common challenges and problems by different interviewees:

1. Most food production firms (over 70\%) are small operators and many of them are family-owned workshops with fewer than ten employees, having a greater potential tendency of conducting irregular activities without adequate monitoring and supervision.
2. Many employees working in this sector are migrants who do not have adequate training and experience. Many employees are not familiar with the relevant laws and regulations. Their employers also do not consider the relevant training and education to be necessary.
3. Most agri-products are supplied from other regions. Controlling the quality of products made in other regions may be a daunting task for the relevant agencies in Shanghai.
4. The administrative structure, namely horizontal and vertical coordination among different law enforcement agencies, may be difficult given that the agencies are operating under different administrative systems with different reporting channels.
5. There is a lack of clear key performance indicators (KPIs) and rewards for high achievers.
6. There is a phenomenon of passive action by taking routine activities (i.e. ticking boxes) among the public servants working at these enforcement agencies as norm.
7. A lack of qualified law enforcement employees working at these agencies, in particular a lack of experienced laboratory testing technicians, jeopardizes the effectiveness of identifying and preventing risks.

\textsuperscript{131} Id.
8. There is a lack of training and skills upgrading for employees of these agencies. Most employees rely on individual effort through self-learning initiatives.

9. There are gaps in the laws and regulations, particularly related to the punishment of wrongdoing. Under the current stipulation of the FSL, the cost of conducting illegal activities is relatively lower in comparison to the profit made by such activities.¹³²

VI. DISCUSSION

The above case analyses suggest that Shanghai is still struggling to effectively enforce food safety laws. All our interviewees discussed the many obstacles in overcoming an inefficient regulatory environment and the related production and market conditions. In this section, we summarize these issues, respond to our initial research questions, and address relevant literatures.

In response to our key questions raised earlier, and based on the evidence presented in our case studies, we can identify the characteristics of institutional changes under the market-oriented economic reform policies. In fact, these policies are marked by a withdrawal of state intervention at firm level and the introduction of the ‘rule of law’ concept into the market economy. The relevant government agencies, therefore, play a crucial role in the areas of food safety law and regulation enforcement, and inspection. Changing institutional environments are a result of consumer attitudes and reactions to food quality and the safety crisis that has occurred in recent years in China.¹³³ Public pressure has increased and both government agencies and consumer groups are more active in this regard. Examples include amendment and improvement of laws and regulations at national and local government levels, reforming law enforcement agencies in the areas of organizational structure and function (i.e. Pudong New District), and more involvement at the grassroots level through community-based coordination and citizens’ participation (i.e. township and community-based initiatives). The governance structure and mode of operation, however, still have strong hierarchical orientations, and overlapping functions are still dominating the key administrative operations.¹³⁴ Some functional sections at the subsidiary level of government agencies still behave passively by “ticking boxes” as their routine administrative engagement.¹³⁵ These overall

¹³² Interviews with all the interviewees, May 2014.
¹³³ Jiang & Zhu, supra note 7.
¹³⁴ Id.
¹³⁵ Interview with I1, supra note 110.
outcomes lead us to consider the relevant implications for the underpinning literature on institutional perspectives.

A. Implications for Theory

Our research outcomes have some meaningful implications for theory. We observed that in an inefficient emerging market economy such as China’s, there are two important elements that strongly influence the effectiveness of law enforcement: the path-dependence of the hierarchical governance mode and the phenomenon of formal institutional factors being more dominant than the informal ones.  

Regarding the first element, the government still relies on a substantive top-down implementation structure and mechanism for law enforcement. This governance mode could influence the effectiveness of law enforcement negatively. As suggested by Bob Jessop, an alternative heterarchic governance mode through interpersonal networking, inter-organizational negotiation, and inter-systemic steering, has not been seen as the mainstream law enforcement system. Rather, the approach has depended on the grassroots level through communities and citizens’ participation with some reporting capabilities. It is important, therefore, to make a range of interdependent decisions over short-, medium-, and long-term timeframes. These decisions should build on the interdependencies and risks associated with “asset specificity” by encouraging solidarity among different stakeholders involved, as Jessop suggested, not only at the grassroots level, but also at higher authority levels, namely city, district, and county levels. Adequate coordination, information sharing, continued negotiation on key issues, and effective implementation among the major stakeholders, can be seen as more effective than the current top-down hierarchical mode.

The second element concerns formal institutional factors which are more dominant than the informal ones in the current transformation towards market economy in China. The case analysis shows that the emphasis is on formal rule implementation by government agencies, and less attention is given to the informal rules through the engagement of different strategic actors. Greenwood and Hinings highlighted that different strategic actors act and interact with each other with a particular

136 Nee & Swedberg, supra note 7272, at 53-72.
137 Coulson, supra note 94, at 107-113.
138 Capello, supra note 97, at 485-498.
139 Jessop, supra note 98, at 35-36.
140 Id. at 35-36.
interest, which could drive institutional change towards a more balanced outcome.\textsuperscript{141} In other words, through people engage and interact each other (i.e. bargaining) with different interests, the eventual outcome could be a balanced one. Besides the role of government agencies, other civil society groups in China, such as non-governmental organizations (NGOs) or voluntary citizens’ associations, could also be regarded as strategic actors, but their direct positive influence on law enforcement is still limited, and that might be an obstacle for engaging in better institutional change.\textsuperscript{142} The past negative informal rule may still be influential through old networks formed to protect against irregular activities. For instance, old political and economic connections might still influence the current economic transaction nowadays through nepotism. Hence, the phenomenon of institutional change, and how the formal and informal rules of institutions interact, cannot be seen as very effective in the current development in China. The results of our study have implications for newly emerging market economies since formal rule through top-down implementation still dominates the mode of governance, while positive informal rule might not be fully developed. This situation could add more challenges for effectively enforcing laws and regulations.

B. Implications for Practice

Comprehensive laws and effective enforcement of laws are crucial to the development of a healthy and long-term market economy.\textsuperscript{143} Along the argument made by Hoffman and Harder earlier, our case studies demonstrate that some new initiatives and mechanisms have been developed with more coordinative and cohesive orientation, but challenges and problems are still daunting.\textsuperscript{144} The evidence shows that authorities need to work with multi-stakeholders at the different levels of government for formal and informal engagements on food safety issues.\textsuperscript{145} It is proven that if governments focus solely on inspecting legitimate businesses in city areas, problems will still remain on the outskirts of city areas.\textsuperscript{146} Training inspection teams and upgrading employee knowledge and skills are also important, given the new technologies being developed and adopted for production and testing.\textsuperscript{147} Fundamental problems related to the modes of

\textsuperscript{141} Greenwood & Hinings, supra note 75, at 1022-1054.
\textsuperscript{142} Reay & Hinings, supra note 77, at 351–384.
\textsuperscript{143} Jiang & Zhu, supra note 7.
\textsuperscript{144} Hoffman & Harder, supra note 19, at 7.
\textsuperscript{145} Id.
\textsuperscript{146} Jiang & Zhu, supra note 7.
\textsuperscript{147} Id.
governance, as we discussed earlier in the literature section (i.e. heterarchic governance modes), also need to be addressed by the relevant government agencies at the different levels.

C. Limitations

Our research has several limitations and our future research will address these issues. One limitation is the location of Shanghai. Shanghai represents the most advanced economic region in China and many local regulations and company practices are more efficient in the Shanghai area than in other inland regions. Shanghai, therefore, cannot represent the entire situation in China. Our future research should include some comparative studies between different regions. Another limitation is the method of conducting this research by interviewing the leaders at different government agencies. This approach may create self-reporting problems, as well as offer outcomes which are not always sufficiently critical of practices. In our future research, we intend to include other interview targets such as customers, employees, and other relevant stakeholders, in order to achieve a more comprehensive outcome.

VII. Concluding Remarks

China has experienced many crises related to food safety in recent years and this challenges the legitimacy of government agencies and damages consumer confidence. This research directs our attention to the difficulty faced in an emerging-market economy, where developing effective law enforcement systems is a daunting task and path-dependence influences the current mode of governance and implementation mechanisms. Our research shows a progression in the improvement of law and regulation, and the relevant enforcement mechanisms in recent years. In addition, more community and citizen participation has emerged at the grassroots level. Regardless of what new policies and regulations are implemented, however, this article has raised a number of fundamental issues, representing problems that need to be tackled. Addressing these issues effectively could be part of the national effort to realize the “China Dream,” based on the ideals of the improvement of citizens’ livelihoods and well-being in the future.

148 Id.
149 Id.