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SCANDAL, SUKYANDARU, AND CHOUWEN

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SCANDAL, SUKYANDARU, AND CHOUWEN

*Benjamin L. Liebman**

SECRETS, SEX AND SPECTACLE: THE RULES OF SCANDAL IN JAPAN AND THE UNITED STATES. By *Mark D. West*. Chicago and London: The University of Chicago Press. 2006. Pp. v, 404. \$45.

Jose Canseco's use of steroids, the sale of used girls' underwear in Japan, penile mutilation, and the moral failings of both Bill Clinton and former Japanese Prime Minister Sosuke Uno are not topics that often appear side by side, much less in a scholarly work of comparative law. And few law professors have the chance to publish a book whose jacket features a picture of a scantily clad woman. In *Secrets, Sex and Spectacle*, Mark West¹ does both. He also does much more, unraveling the interplay of social and legal rules that influence the formation of scandal and spectacle in Japan and the United States.

West clearly delights in the retelling of scandal. His readers will as well. Yet his aim is not simply to provide an account of scandal in Japanese (and American) society; it is to explore in a comparative context what makes certain conduct scandalous and how societies differ in the formation and management of scandal. In keeping with these aims, West's study is also a call for greater emphasis on the comparative study of scandal and its interaction with law.

This Review takes up West's challenge, discussing West's book with reference to China. *Secrets, Sex, and Spectacle* has little, if anything, to do with China. Nevertheless, examination of scandal in China largely supports West's central arguments: institutions and rules, both formal and informal, matter in determining the types of occurrences that become scandal in a given society; and scandal is not simply the product of culture.

China's recent experience with scandal also shows some of the ways scandal can play a positive role in opening up discussion of taboo topics—perhaps even more so in a nondemocratic state than in a liberal democracy. Analysis of selected recent Chinese scandals, however, also suggests the benefit of further refinement of West's analysis. These refinements would allow us to better understand the complex interactions among norms, institutions, and individuals that contribute to the formation of scandal, and perhaps to better understand what makes scandal important. Examining West's book in the context of China also suggests that some of West's more striking findings, in particular those regarding defamation litigation in

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Japan, are perhaps not as surprising when placed in a broader comparative context.

This Review proceeds in four parts. Part I describes West's account of scandal in Japan and the United States and explores some of the ramifications of his account. Part II examines the formation of scandal in contemporary China. Part III compares scandal in China with West's conclusions about scandal in Japan and the United States. Part IV discusses defamation litigation in China, with a view to adding further comparative insight to West's discussion of Japanese libel suits.

I. SCANDAL IN JAPAN AND THE UNITED STATES

A. *The Book*

West's goal in the book is to offer a "new framework for understanding scandal" (p. 3). He does so by providing a "detailed ethnography" of scandal (most often translated as *sukyandaru*) in Japan, with comparative reference to the United States (p. 9). He defines scandal as "an event in which the public revelation of an alleged private breach of a law or a norm results in significant social disapproval or debate and, usually, reputational damage" (p. 6, emphasis omitted). His aim is to "explore the ways rules bring structure to the who, what, when, where, and why of the sliver of human behavior that 'catches' as scandal in Japan and America" (p. 8). He argues that rules regarding what is considered scandal and how scandals play out in the media help to explain similarities and differences in what becomes scandal in Japan and the United States. Examination of these rules shows a crucial difference between the two countries: "Japan tends to emphasize group-based private rule creation and enforcement" and private ordering, while in the United States there is greater "emphasis on public ordering" (p. 8).

West also challenges three existing trends in scholarship on Japan and on scandal. First, he objects to those who see scandal as irrevocably linked to culture—"inevitable, beyond our control, or perhaps just plain random" (p. 9). Second, he disagrees with those who view scandal as representing moral decay or simply the seeking of "cheap thrills" (p. 9). And finally he critiques those who resort to "glib and broad generalizations about Japanese 'culture'" (p. 10).

West describes the key institutional players involved in scandal in Japan: the media, lawyers, prosecutors, and other scandal professionals. We learn of the bifurcation of the Japanese media, between the often conservative, elite publishers and television news programs that often shy away from and cover up scandal, and the non-elite tabloids and "wideshow" television programs that "go for the jugular" and revel in running stories the elites ignore (p. 19). The Internet also exposes scandals that don't make it into the media—sometimes leading to reports in print or on television. Media misconduct is widespread and, in contrast to the United States, institutional, with made-up news and false accusations the norm (p. 34).

Other players in the formation and management of scandal include prosecutors, although Japanese prosecutors play a smaller role in scandal than do their American counterparts (pp. 35–44). Prosecutors in Japan are “elite bureaucrats” who have little to gain from a high profile prosecution (p. 35). Likewise, lawyers play much smaller roles in Japanese scandals than they do in American scandals, in part because trials are rarely a central feature of Japanese scandals (pp. 52–54).

West also analyzes the roles of privacy and honor in Japan and the United States. His central argument is that honor is of greater importance in Japan than in the United States; this affects both what becomes a scandal and how scandals evolve: “[I]n Japan, it’s honor that matters” (p. 109). The primary manifestation of this difference is in defamation litigation, where both legislation and court decisions make it far easier for plaintiffs to win in Japan than in the United States. If the reported matter is not of public concern, truth is not a defense (p. 77). Other aspects of defamation law likewise are plaintiff-friendly: the defendant has the burden of proof regarding truth, there is no required showing of economic harm to the plaintiff, and defendants are required to show that their reports met a reasonableness standard even when reporting on a matter of public concern (pp. 74–78).

Japan has a far higher rate of defamation litigation than does the United States. West expresses surprise at this finding, noting that compared to the United States Japan has double the number of defamation cases per capita “despite the fact that America has about fifty times as many lawyers” (p. 85, emphasis omitted). This finding is all the more noteworthy given that damages in Japan are generally low when compared to those in the United States. This shows, West argues, that cases in Japan are “not about money”; they are about honor. In contrast to the United States, celebrities and politicians are frequent plaintiffs in Japan, and thus defamation lawsuits are often an important part of celebrity scandal. In Japan, “everyone wins” in such cases: the tabloid press attracts readers, the public gets the scandals it craves, and the pro-plaintiff legal standards mean that celebrities frequently win their cases (p. 106).

Another central theme in Japanese scandals is the importance of groups. Collective norms often encourage secrecy and cover-up, and an emphasis on uniformity over diversity means that certain topics are largely off the table, most notably matters concerning minority groups such as the *Burakumin* (pp. 157–62). Group rules also mean that scandals involving only individuals, such as insider trading, are often not big news—unless they involve sex. Political scandals, meanwhile, are managed to protect the group (the party or faction) rather than the individual. The bottom line, West argues, is that groups play a major role “in determining how scandals in Japan are presented, viewed, and controlled”—regardless of whether the scandal involves group or individual conduct (p. 237).

Individual scandals most often involve money (p. 172). But sex scandals also occur—and, luckily for West—are common in Japan. Unlike in the United States, individual scandal generally involves persons who are already celebrities. West speculates that this reflects pro-plaintiff defamation rules,

and that the media do not want to be sued by “ordinary Joes” (which would make the media look far worse than when they are sued by celebrities) (pp. 226–228). And even in areas such as adultery, scandals are often not about the individual: the scandal often results from the individual’s attachment to a group.

Also in contrast to the United States, sex scandals in Japan are not about honesty; they are about unsettled norms governing sex and gender in Japanese society and in the legal system (p. 284). It is in such areas, West suggests, that scandal perhaps plays its most crucial role: scandal introduces debate over unsettled norms and provides a mechanism to begin a discussion about what type of conduct is and is not acceptable.

Japanese scandals frequently end with a “ritual of remorse, resignations, and occasionally redemption” (p. 285). There are signs, however, of a lessening in the importance of apology in Japanese scandal. West notes that politicians who commit wrongdoing in Japan frequently resign, but they do not always apologize. And many apologies in Japan come on behalf of the group: “The persons who perform the representative apologies are not necessarily the most remorseful; rather, they are the ones who are in the best position . . . to do so” (p. 323).

In conclusion, West returns to the interaction of law and scandal. “[O]ne development that often follows modern scandal is the enactment of rules to combat the evil that is assumed to have caused” the scandal (p. 325). These changes include corporate law reforms in reaction to corporate scandals, or the creation of freedom of information acts in response to government cover-ups. According to West, although these laws often fail to work, they can raise the cost of future transgressions. The rush to legislate in response to scandal means that in some cases scandal encourages the creation of formal legal rules to replace the former informal norms. But the more important role of scandal may be outside the formal legal context, in helping to foster discussion of changing social norms and “issues that might otherwise have gone untouched, especially on taboo topics like sex” (p. 326). Scandal “controls outliers”; it also shapes “informal social control” (p. 326).

Sex, Scandal and Spectacle is important reading for anyone with an interest in Japan, the media, or scandal. It also sets a benchmark for those seeking to understand how scandal works in a comparative context. And it is a great read: West’s knowledge of Japanese and American culture is stunning (and at times a bit overwhelming), and he clearly delights in unraveling many of the intricate and (to Americans without significant prior exposure to Japan) quirky details of Japanese popular and political culture.

B. Comparative Scandology

What does scandal in Japan (and the United States) tell us about how we understand scandal—or the relationships among laws, media structure, and culture—in other parts of the world? West is careful not to draw expansive conclusions; his message is to pay attention to (and celebrate) the nuances in law, politics, and culture that contribute to scandal. West’s goal, as he states

in his final sentence, is to highlight “subtle distinctions in incentives, relationships, egos, taboos, and perversions that make secrets, sex, and spectacle in both [Japan and the United States] a bit less mysterious” (p. 329). Understanding the rules—both informal and legal—helps to explain trends in scandals that “might otherwise seem arbitrary and contradictory” (p. 328). West makes no claim to be broadly comparative; with a few exceptions, he limits his discussion to analysis of scandal in the United States and Japan. This is understandable; his book shows that scandal can only be understood by exploring the players that contribute to scandal and the legal and cultural backdrop in which scandal occurs. Japan is worthy of study not just because it offers salacious scandals; it also offers an opportunity to see how scandal plays out in a liberal democratic system that differs in many crucial cultural and institutional respects from the United States.

Yet this conclusion is also moderately disappointing. One of West’s goals is to expand the literature of scandal beyond the countries most often examined by scandologists—the United States and the United Kingdom. West’s book is thus also a call for other comparativists to take up the challenge of exploring scandal in a comparative context. West has set a high standard for future scandologists, but he has offered little methodological guidance for facilitating the work of future students of scandal. And he has perhaps not quite captured what it is about scandal that makes it not only fun but also important in Japan and elsewhere.

II. SCANDAL IN CHINA

The remainder of this Review accepts West’s challenge by examining scandal in China. In some respects, China is not an ideal candidate for a comparison: it is a nondemocratic system with a controlled press, and it is at an earlier stage of economic development than is Japan (or the United States). Chinese scandal develops in a system in which the media remain unfree; Japanese scandal is the product of media that are at times wildly free. Yet China is also appealing to scandologists: scandal appears to be increasingly common and is widely reported, and provides insights into how both the Chinese political system and Chinese society are evolving. Rules governing scandal in China exist, but they are in flux: China’s propaganda authorities struggle to monitor and control a widening range of media outlets as the media increasingly compete to attract readers and viewers. Despite the obvious differences, examining scandal in China yields insights that are in some ways similar to those West provides regarding Japan. China also offers a useful test for West’s argument in a political and cultural environment that differs radically from that of either the United States or Japan.

I make no claim to offering a more defined theoretical framework for understanding scandal than does West. But scandal in China demonstrates the usefulness of a broader comparative framework for examining both how scandal differs in varied social and political contexts, and also the importance of scandal as a tool for understanding changing political and social norms. Comparing China with Japan also highlights both the institutional

factors that contribute to scandal creation and the positive and negative effects that scandal may have in a society undergoing rapid change. This Part first describes who makes scandal in China; it then proceeds to discuss Chinese definitions of scandal; and finally, it examines three categories of contemporary Chinese scandal.

A. *Who Makes Scandal in China?*

For much of the past fifty years, scandal in China has been a political tool: scandals existed and were covered in the official media, but most often were preselected by Communist Party propaganda authorities. The role of scandal was limited in a society in which the state controlled most aspects of individuals' lives and exercised near complete control over the media. Scandal served as a tool to discredit, and in some cases literally destroy, those who had fallen out of political favor. Yet scandal is not a modern invention: China has a long tradition of news spreading by rumor, what is known in Chinese as *xiaodao xiaoxi*, or "back alley news."

Two factors have created a new framework for scandal in China. First, state control over individuals' lives and the economy has loosened dramatically since the reform era began in 1978. Second, the commercialization of the Chinese media over the past fifteen years has resulted in still state-owned media now competing fiercely to attract readers.² As a result, for the first time since 1949, China now has scandal that is not explicitly political and is not pre-selected or pre-cleared by propaganda officials. Nevertheless, the role of Party propaganda authorities remains crucial. In some cases scandals continue to be carefully managed by Party officials. In others, censors take control of scandal after it emerges. The important new development is that scandal can also emerge independently, forcing officials to react to and manage it—rather than predetermine how a scandal will play out. Scandals on less sensitive topics, such as celebrity misconduct, are permitted to run, sometimes for extended periods, without official intervention.

B. *Defining Chinese Scandal*

What is scandalous in China? The answer depends in part of how scandal is defined in Chinese. The most common term for scandal in Chinese is *chouwen* (丑闻), literally "ugly news" or "shameful news." Yet the main-

2. In most Chinese cities, a number of commercialized newspapers, often tabloids, now compete for readers. I discuss the structure and commercialization of the Chinese media, and the growth of sensational reporting, in more detail elsewhere. See generally Benjamin L. Liebman, *Watchdog or Demagogue? The Media in the Chinese Legal System*, 105 COLUM. L. REV. 1 *passim* (2005). The Communist Party's Central Propaganda Department monitors the Chinese media, issuing instructions regarding taboo topics and punishing individuals and media outlets that violate such norms. *Id.* at 43–44. Propaganda departments at the provincial and municipal level likewise oversee media within their jurisdictions. *Id.*

stream official media in China generally avoid mentioning the term,³ or use the term primarily in reports about scandal outside of China.⁴ This does not mean there are no reports on scandal in the Chinese media. Mainstream media often use the term *shijian* (事件), or “incident,” to refer to domestic scandals, in particular those with political overtones.⁵ The Chinese blogosphere, however, includes extensive discussion of scandal, including at least one site, Chouwen.com.cn, devoted to the collection of scandal stories from throughout China. Most stories on the site are sexual: of the ten stories viewed during one visit, eight concerned sex.⁶ Yet the site also includes reports on topics that may be understood to be political—with the terms *shijian* and *heimu* (“black curtain”) being used in addition to *chouwen*.⁷ Nevertheless, as a general rule the Chinese media use “*shijian*” to discuss domestic scandal, reserving the more pejorative “*chouwen*” for foreign scandals. In the discussion that follows, however, I adhere to West’s definition of scandal.

C. A Typology of Chinese Scandals

Most Chinese scandals appear to concern either money or sex—topics that would be common fodder for scandal in both Japan and the United

3. Bloggers make this point explicitly. *See, e.g.*, Posting of Zhongguo Meiyou Chouwen [China Has No Scandal] by Ying Fu Ji Jin to http://bmw977.blog.hexun.com/4125584_d.html (June 12, 2006, 13:19:04) (arguing that the print and television media in China avoid the term *chouwen*).

4. *See, e.g.*, Posting of Meiguo Can Zhong Yiyuan Baochu Jingtian Da Chouwen [Huge Scandals Were Exposed Concerning Both the House of Representatives and the Senate of the United States] to Meiguo Chouwen Wang [American Scandal Website], http://meiguochouwen.blogspot.com/2007/03/blog-post_2575.html (Mar. 4, 2007, 05:39); Posting of Meiguo Jun Yiyuan Dui Shangbin Jiuzhi Buli, Lujun Buzhang Cizhi [Troops Wounded Were Receiving Substandard Medical Treatment At the Army’s Hospital, The Secretary of the Army Resigned] to Meiguo Chouwen Wang [American Scandal Website], http://meiguochouwen.blogspot.com/2007/03/blog-post_05.html (Mar. 5, 2007, 01:35); Posting of Qiwen Gongshang—2006 Nian Meiguo De Renquan Jilu (2006 Chouwen Jizhong) [Sharing of Interesting Articles—The 2006 Human Rights Record of the United States (Collection of 2006 Scandals)] to Meiguo Chouwen Wang [American Scandal Website], <http://meiguochouwen.blogspot.com/2007/03/3480.html> (Mar. 8, 2007, 04:31); Posting of [Zhuan Tie] Qingwen Xiao Bushi, Shui Dou Yongdao Nali Qule? [[Reprinted] Question To Little Bush: Where Have All the Taxes Gone?] to Meiguo Chouwen Wang [American Scandal Website], http://meiguochouwen.blogspot.com/2007/03/blog-post_19.html (Mar. 19, 2007, 02:55); Sina.com, Ximenzi Xinghui Chouwen Manyan [Siemens Bribery Scandal Grows], <http://finance.sina.com.cn/focus/xmzh/> (last visited Jan. 7, 2008); Sohu.com, Yisielie Zongtong Xianru Xing Chouwen Xuanwo [Israel President Is Trapped in Sexual Scandals], <http://news.sohu.com/s2006/2006yisieliezongtong/> (last visited Jan. 7, 2008); *Chouwen Baoguang Dachen Cizhi, Anbei Neige Youzao Zhongchuan* [Minister Resigns After the Exposure of Scandals, Abe Shinzo’s Cabinet Is Seriously Injured Again], XINHUA WANG [XINHUA NET], Dec. 28, 2006, http://news.xinhuanet.com/world/2006-12/28/content_5540871.htm (last visited Jan. 7, 2008).

5. *See, e.g.*, [Zhujing Zhuandian] Shanghai Shi Fu Shizhang: Chen Liangyu Weifa Weigui Shijian Bing Wu Sheji Shanghai Shibohui [[Special Report from Beijing] Shanghai Vice-Mayor: The Incident Concerning Chen Liangyu Violating Laws and Regulations Did Not Involve the Shanghai World Expo], WANG YI [NET EASE], July 31, 2007, <http://money.163.com/07/07/31/18/3KOIM30R002529IP.html> (last visited Jan. 7, 2008).

6. Chouwen.com.cn, <http://www.chouwen.com.cn/> (last visited Jan. 7, 2008).

7. It is difficult to assess the impact of the site, but the widespread discussion of scandal on blogs suggests that blogs are playing an important role in furthering discussion of scandal in China.

States. Yet scandals in China evolve and develop in ways that reflect the political context in which the Chinese media operate. Examining recent Chinese scandals suggests that Chinese scandals can be roughly divided into three types: explicitly political scandals, scandals involving individual rights violations or misconduct by minor officials, and scandals involving celebrities. This typology is not rigid; as the discussion that follows shows, scandals in the second category often are or become politicized. The three categories of scandal, however, operate according to very different rules: political scandals are most carefully managed, and rarely develop on their own; scandals concerning rights violations and minor misconduct frequently develop from the media, and then are subsequently subject to official management and oversight; celebrity scandal is generally permitted to develop and run without interference from China's censors.

1. *Political Scandal: Chen Liangu and the Shanghai Pension Fund*

Explicitly political scandals continue to be generated and managed by Central Party-state authorities. Chinese political scandals most often involve allegations of corruption⁸ and rarely touch prominent officials; scandals emerge only after an official determination has been made that an individual should be punished. Scandal involving even midlevel officials continues to be carefully controlled by propaganda officials. When prominent officials become the focus of scandal, it generally means that the target has fallen out of political favor.

The most significant political scandal in China in the past decade was the 2006 fall from power of Chen Liangyu, formerly the Communist Party Secretary in Shanghai, over allegations of corruption concerning Shanghai's pension fund. Chen had been a member of the Communist Party's Politburo, making him one of the twenty-four most powerful people in China.⁹ The scandal, which involved widespread misuse of the pension fund, followed a pattern that is the norm for scandal involving high-ranking officials: coverage was carefully stage-managed, with most reports following what appeared to be a pre-approved script.¹⁰ Once the wrongdoing had been exposed, reports

8. Allegations of sexual misconduct are sometimes tacked on for good measure.

9. *Zhonggong Zhongyang Jueding Dui Chen Liangyu Yanzhong Weiji Wenti Li'an Diaocha* [The Central Committee of The Communist Party of China Decides to Investigate Chen Liangyu's Serious Violations of Discipline], SINA.COM, Sept. 25, 2006, <http://news.sina.com.cn/c/2006-09-25/125810104268s.shtml> (last visited Jan. 7, 2008).

10. The language used in reports in major news outlets was extremely similar. *See, e.g.*, CCTV, Shanghai Shebao Jijin'an Neimu [Inside Information on the Shanghai Social Security Fund Case], <http://law.cctv.com/special/C16662/01/index.shtml> (last visited Jan. 7, 2008); Dongfang Wang [Eastday Website], Zhongyang Jueding Kaichu Chen Liangyu Dangji, Gongzhi [The Central Committee of Communist Party of China Decided to Expel Chen Liangyu From the Communist Party and Discharge Chen Liangyu From His Public Post], <http://sh.eastday.com/dta/node17183/index.html> (last visited Jan. 7, 2008); Renmin Wang [People's Daily Online], Zhongyang Jueding Dui Chen Liangyu Li'an Jiancha [The Central Committee of the Communist Party of China Decided to Investigate Chen Liangyu], <http://politics.people.com.cn/GB/8198/71631/index.html> (last visited Jan. 7, 2008); *Zhonggong Zhongyang Jueding Dui Chen Liangyu Yanzhong Weiji Wenti Li'an Diaocha*, *supra* note 9.

quickly turned from describing Chen's wrongdoing to emphasizing the role of central authorities in fighting corruption.

Yet the scandal also suggested some of the ways in which coverage of scandal is changing in China. Although it did not break news of Chen's involvement in the scandal, a leading financial publication, *Caijing Magazine* (albeit one widely believed to have strong links to some central Party officials—suggesting that the report might have been pre-authorized), broke news of the detention by Party anticorruption investigators of the director of the Shanghai Labor and Social Security Bureau.¹¹ The report placed the corruption probe in the public eye, and appeared to result in pressure on authorities to resolve the case. A string of higher-ranking officials were subsequently detained, including Chen two months later.¹² Thus although central authorities controlled news of the scandal, they did so under increased media scrutiny. Nevertheless, the scandal was largely controlled and managed by Central Propaganda officials and likely by the Politburo itself. The scandal became a scandal due to decisions by senior Party officials: international media and even some commentators on domestic chatrooms viewed the decision to sack Chen as reflecting a power struggle at the highest reaches of Party power.¹³

2. Autonomous Scandal: Brick Kilns, Fake Dumplings, and a Naked Party Secretary

A second group of scandals involves reports that focus either on rights violations or on misconduct by minor officials. The most significant aspect of such scandals is that they emerge from the media, often from commercial tabloids or internet sites. In contrast to more overtly political scandals, coverage is not initially managed or controlled by propaganda authorities. Such cases often result from aggressive media reporting, and sometimes lead not only to punishment for the wrongdoers, but also to legal or policy changes designed to address underlying social problems. Yet once such scandals become major news, they often also generate a backlash from Party officials,

11. Fu Tao, *Shanghai Laodong He Shehui Baozhangju Juzhang Zhu Junyi Bei "Shuangkai"* [*The Director of Shanghai Labor and Social Security Bureau, Zhu Junyi, was Subject to "Double Specified"*], CAIJING [CAIJING MAGAZINE], July 24, 2006, available at <http://www.caijing.com.cn/newcn/fortnight/2006-07-24/9928.shtml> (last visited Feb. 18, 2008).

12. Yang Jinzhi, *Shanghai Shebao Zijin An Jiuming She'an Dangyuan Ganbu Bei Shuangkai* [*Nine Party Member Officials Involved In the Shanghai Pension Fund Case Were "Double Expelled"*], XINHUA WANG [XINHUA NEWS AGENCY ONLINE], March 2, 2007, available at <http://finance.sina.com.cn/g/20070302/01153369083.shtml> (last visited Feb. 18, 2008); *Zhonggong Zhongyang Jueding Dui Chen Liangyu Tongzhi Yanzhong Weiji Wenti Li'an Jiancha* [*The Central Committee of the Communist Party of China Decided to Investigate Comrade Chen Liangyu's Serious Violation of Discipline*], XINHUA WANG [XINHUA NEWS AGENCY ONLINE], Sept. 25, 2006, http://news.xinhuanet.com/politics/2006-09/25/content_5134888.htm (last visited Feb. 18, 2008).

13. See, e.g., *Top China leader fired for graft*, BBC NEWS, Sept. 25, 2006, <http://news.bbc.co.uk/2/hi/asia-pacific/5376858.stm> (last visited Jan. 4, 2008); Ynet.com Chatroom, <http://bbs.ynet.com/viewthread.php?tid=452227&extra=&page=2> (last visited Jan. 7, 2008) (a domestic chatroom where people viewed the scandal as reflecting an intraparty power struggle).

leading to a cessation of reporting on the topic. Three recent cases highlight this trend.

In June 2007 domestic and international media in China extensively covered the existence in Shanxi province of numerous illegal brick kilns, in which migrant workers were essentially forced to work as slaves. Although an earlier television report in Henan Province (home of many of the migrant workers) had discussed the case,¹⁴ the slave labor scandal exploded to national prominence in China with the publication of an online report, *The Evil Road to the “Illegal People!!” The Bleeding Pleas from 400 Parents Whose Children Were Sold to the Illegal Brick Kilns in Shanxi*, on the website of the *Dahe News*, a leading mass-market (and Party-owned) newspaper in Henan.¹⁵ After the *Dahe News* report, the *Shanxi Evening News* quickly carried a follow-up report on the case.¹⁶ A public opinion tsunami ensued. Numerous other websites subsequently reprinted the *Dahe News* report;¹⁷ news also spread quickly to the international media.¹⁸

Numerous reports in the online and print media detailed the plight of the enslaved workers, and raised questions of how widespread the practice was. They described how children were sold into slave labor and recorded that

14. Video clip, Zui’e De “Heiren” Zhilu (Xu Ba) [The Evil Road to the “Illegal People”—the 8th in a series] (Renmin Wang Henan Shichuang [Henan Related Videos at People’s Daily Online] 2007), available at <http://www.hnsc.com.cn/news/2007/06/14/182461.htm> (last visited Jan. 7, 2008).

15. Wang Wei, *400 Ge Henan Haizi Beimai Shanxi Zhuanyao, 400 Wei Fuqin Qixue Hujiu* [400 Henan Children Were Sold to Shanxi Brick Kilns, 400 Fathers Bleedingly Cry for Help for Rescue], SOHU XINWEN [SOHU NEWS], June 8, 2007, <http://news.sohu.com/20070608/n250464334.shtml> (last visited Jan. 7, 2008).

16. Li Tingzhen, *Hei Zhuanchang Li, Tamen Guozhe “Nuli” Shenghuo* [They Are Having “Slaves” Live in Black Brick Kilns], SHANXI XINWEN WANG [SHANXI NEWS ONLINE], June 7, 2007, <http://www.daynews.com.cn/news/dsxw/224665.html> (last visited Jan. 7, 2008).

17. See, e.g., *400 Fuqin Qixue Hujiu, Shangqian Haizi Shanxi Zuo “Nuli”* [400 Fathers Bleedingly Cry for Help for Rescue, Thousands of Children Became “Slaves” In Shanxi], TIANFU ZAOBAO [TIANFU MORNING POST], June 14, 2007, <http://cn.news.yahoo.com/070614/1014/2iax1.html> (last visited Jan. 7, 2008); *400 Ge Henan Haizi Beimai Shanxi Zhuanyao, 400 Wei Fuqin Qixue Hujiu* [400 Henan Children Were Sold to Shanxi Brick Kilns, 400 Fathers Bleedingly Cry for Help for Rescue], HUASHANG WANG [HUASH.COM], June 8, 2007, http://news.huash.com/2007-06/08/content_6332706.htm (last visited Jan. 7, 2008); *400 Haizi Beimai Shanxi Zhuanyao, 400 Wei Fuqin Qixue Hujiu* [400 Henan Children Were Sold to Shanxi Brick Kilns, 400 Fathers Bleedingly Cry for Help for Rescue], SHENZHEN XINWEN WANG [SHENZHEN NEWS ONLINE], June 8, 2007, http://www.sznews.com/news/content/2007-06/08/content_1222895.htm (last visited Jan. 7, 2008); Wang Wei, *supra* note 15; *400 Wei Fuqin Fachu Qixue Hujiu: Jiujiu Women De Haizi! [400 Fathers Bleedingly Cry for Help: Rescue Our Children!]*, WANG YI [NET EASE], June 7, 2007, <http://news.163.com/07/0607/06/3GC6O3OG0001124J.html> (last visited Jan. 7, 2008); Posting of linxy06 to <http://www.tianya.cn/new/publicforum/Content.asp?idWriter=0&Key=0&strItem=free&idArticle=926643&flag=1> (June 7, 2007, 11:20:00).

18. See Bai Maikē [Michael Bristow], *Shanxi Gong’an Jiuchu Zhuanchang “Nuligong”* [Shanxi Public Security Agency Rescued Brick Kiln “Slave Labor”], BBC ZHONGWEN WANG [BBC CHINESE ONLINE], June 8, 2007, http://news.bbc.co.uk/chinese/simp/hi/newsid_6730000/newsid_6733400/6733471.stm (last visited Jan. 7, 2008); *Jingxin Dongpo: Zhongguo Hei Zhuanyao Nuyi Laogong Tonggong Heimu Zhengzai Jiekai* [Heartquake: The Black Curtain Is Being Lifted Concerning The Enslaving of Labor And Child Labor By Chinese Black Brick Kilns], DEUTSCHE WELLE, June 14, 2007, <http://www.dw-world.de/dw/article/0,2144,2609412,00.html> (last visited Jan. 7, 2008).

some workers were beaten to death.¹⁹ Media reports exposed allegations that only two of the of ninety-three brick kilns operating in Hongdong County, the center of the scandal, were operating legally, and that the reporter who broke the story had received numerous threats.²⁰ Many noted that hundreds of children were missing, presumed to have been sold into forced labor. Local authorities had originally tipped off the media about the scandal with the apparent hope of generating positive coverage of their efforts to solve the problem.²¹ But the attempt failed: media accounts were scathing in their portrayal of the local authorities.²² Reports stated that “the labor supervision department was suspected of selling child labor,”²³ questioned “why the local government had not apologized until the central government intervened,”²⁴ and criticized the police for failing to help to find missing children.²⁵ The initial reports came in a commercialized paper that is known for its hard-hitting reports. But Party mouthpiece newspapers also joined in the coverage, with the Party’s flagship, *People’s Daily*, issuing an article “Black Brick Kilns Incident” that questioned the actions of the local government.”²⁶

19. Zhu Hongjun, *Shaonian Xuelei Pujiu Heigong Zhilu, Yujin Jingfang Yunniang Lianshou Jiejiu* [Youth’s Blood and Tears Build a Road of Illegal Labor, Police in Henan and Shanxi Plan to Cooperate to Rescue], NANFANG ZHOUMO [S. WEEKEND], June 14, 2007, <http://www.nanfangdaily.com.cn/zm/20070614/xw/tb/200706140002.asp> (last visited Jan. 7, 2008).

20. Li Ningyuan, *Pilu Hei Zhuanyao Diyiren Fu Zhenzhong: Wo Keneng Zhishao Re Le Jiwan Ren* [Fu Zhenzhong, The First Man Who Disclosed the Illegal Brick Kilns: I May Have Irritated at Least Several Tens of Thousands of People], ZHONGGUO XINWEN WANG [CHINA NEWS AGENCY ONLINE], June 21, 2007, <http://www.chinanews.com.cn/sh/news/2007/06-21/962360.shtml> (last visited Jan. 7, 2008).

21. Ma Changbo, *Fengbao Yanzhong De Shanxi Guanyuan* [Shanxi Officials In The Eye of the Storm], NANFANG ZHOUMO [S. WEEKEND], July 5, 2007, <http://www.nanfangdaily.com.cn/zm/20070705/xw/tb/200707050002.asp> (last visited Jan. 7, 2008).

22. Xiong Peiyun, *Heiyao Shijian Zen Bujian Youren Cizhi* [Why Didn’t Anyone Resign for the Black Brick Kiln Incident], SINA.COM, June 18, 2007, <http://news.sina.com.cn/c/pl/2007-06-18/081213252577.shtml> (last visited Jan. 7, 2008); Zhang Liwei, *Chengfa Duzhi Guanyuan Yi Quxin Yumin* [Officials Must Be Punished For Their Dereliction of Duty So That People’s Trust Can Be Obtained], SINA.COM, June 16, 2007, <http://news.sina.com.cn/c/pl/2007-06-16/102013243394.shtml> (last visited Jan. 7, 2008).

23. *Shanxi Heiyao Shijian Xu: Laojian Bumen She Daomai Tonggong* [Shanxi Black Brick Kiln Incident Continued: Labor Supervision Department Was Involved in the Sale of Child Workers], TENG XUN WANG [QQ.COM], June 13, 2007, <http://news.qq.com/a/20070613/001184.htm> (last visited Jan. 7, 2008).

24. Sun Ruizhuo, *Weihe Jingdong Le Zhongyang, Difang Zhengfu Cai Xiangqi Daoqian* [Why Local Government Did Not Make Any Apologies Until the Central Government Was Alerted], TENG XUN WANG [QQ.COM], June 15, 2007, <http://news.qq.com/a/20070615/000230.htm> (last visited Jan. 7, 2008).

25. *Shanxi Hei Zhuanyao Shijian Xu: Jingyuan Cheng Bubang Jiazhang Cha Shizong Haizi* [Shanxi Black Brick Kiln Incident Continued: Police Refused To Help Parents Find Their Missing Children], WANG YI [NET EASE], June 14, 2007, <http://news.163.com/07/0614/03/3GTUTJ1C0001124J.html> (last visited Jan. 7, 2008).

26. Wu Yan, “*Hei Zhuanyao Shijian*” *Zhuiwen Jiceng Zhengfu* [“Black Brick Kiln Incident” Questions Local Government], TENG XUN WANG [QQ.COM], June 15, 2007, <http://news.qq.com/a/20070615/000702.htm> (last visited Jan. 7, 2008).

Widespread media coverage resulted in nearly immediate Central Party-state intervention in the case. Brick kiln operators who had used forced labor were quickly arrested, with dozens of kiln operators and their employees being tried and sentenced, in some cases to death or life imprisonment. More than ninety-five local officials were punished in the first two months after the scandal became public.²⁷ Following central government intervention in the case, however, the tone of coverage shifted; the media issued (mostly positive) reports about central authorities' efforts to resolve the problems.²⁸ And the scandal disappeared from the official media nearly as quickly as it emerged. After the conclusion of an official investigation into the incident was announced on August 13, 2007—just over two months after the scandal broke—the official media largely stopped discussing the case.²⁹

The brick kiln scandal represents a relatively new phenomenon in China: scandal concerning major social issues that emerges from the commercialized (but still Party-led) media. Central authorities subsequently took control of management of the scandal, shifting the tone of reports from exposing wrongdoing to noting how, under the leadership of central authorities, the scandal was resolved and those responsible punished.³⁰

27. Bao Dan, *Shanxi Di Er Pi "Hei Zhuanyao An" Xuanpan, Yipi Guanyuan Huoxing [The Second Batch of Sentencing Regarding the Shanxi "Black Brick Kiln Case" Was Announced, A Bunch Of Officials Were Sentenced]*, WANG YI [NET EASE], Aug. 2, 2007, <http://news.163.com/07/0802/05/3KS8BOBE0001124J.html> (last visited Jan. 7, 2008). One of the most detailed accounts of the scandal ran in *Southern Weekend* on July 5, a month into the scandal. A full translation is available online at the EastSouthWestNorth Blog. Ma Changbo, *The Shanxi Officials In The Eye Of The Storm*, S. WEEKEND, July 5, 2007, http://www.zonaeuropa.com/20070706_1.htm (last visited Jan. 7, 2008).

28. See Hu Jintao Wen Jiabao Deng Dui Shanxi Hei Zhuanyao An Zuo Pishi [*Hu Jintao, Wen Jiabao and Others Made Instructions Regarding the Shanxi Black Brick Kiln Case*], SINA.COM, June 15, 2007, <http://news.sina.com.cn/c/2007-06-15/133213237961.shtml> (last visited Jan. 7, 2008); Li Tingzhen, *Shanxi Hongdong Hei Zhuanyao Shichang Shijian Jingdong Zhongyang Gaoceng [Shanxi Hongdong Black Brick Kiln Incident Alerted Central Leaders]*, TENG XUN WANG [QQ.COM], June 14, 2007, <http://view.news.qq.com/a/20070615/000007.htm> (last visited Jan. 7, 2008).

29. Major Chinese web portals that had previously covered the case in detail contain few reports about the case after August 14. See, e.g., Sina.com, *Shanxi Hei Zhuanchang Nüedai Gongren [Shanxi Black Brick Kilns Abuse Laborers]*, <http://news.sina.com.cn/z/shanximaltreat/index.shtml> (last visited Jan. 7, 2008); Sohu.com, *Shanxi Hongdong Hei Zhuanyao An [Shanxi Hongdong Black Brick Kiln Case]*, <http://news.sohu.com/s2007/heizhuanyao/> (last visited Jan. 7, 2008); Teng Xun Wang [QQ.com], *Shanxi De Hei Zhuanyao You Duo Hei [How Black Were the Shanxi Black Brick Kilns?]*, <http://view.news.qq.com/zt/2007/zhuanyao/index.htm> (last visited Jan. 7, 2008).

30. See, e.g., Liu Zheng & Gao Feng, *Shanxi Hei Zhuanyao Shijian Jizhong Diaocha Chuli Gongzuo Jiben Jieshu [The Concentrated Investigation and Handling Work Has Generally Been Completed Concerning the Shanxi "Black Brick Kiln" Incident]*, XINHUA WANG [XINHUA NEWS AGENCY ONLINE], Aug. 13, 2007, http://news.xinhuanet.com/lianzheng/2007-08/13/content_6526740.htm (last visited Jan. 7, 2008); *Shanxi Hei Yao An 69 Ming Sheji Fanzuizhe Bei Sifa Jiguan Qisu [69 Suspects Involved in the Shanxi Black Brick Kiln Case Were Prosecuted by Judicial Agencies]*, ZHONGGUO XINWEN WANG [CHINA NEWS AGENCY ONLINE], Aug. 13, 2007, <http://news.sina.com.cn/c/l/2007-08-13/153613653359.shtml> (last visited Jan. 7, 2008). However, no officials above the county level were sanctioned. Thus, responsibility for the scandal was placed on the shoulders of local officials. Yu Youjun: *Hei Zhuanyao Shijian Dui Shizhi Duzhi Ganbu Chuli Yanli [Yu Youjun: Officials Involved in the Black Brick Kiln Incident Were Seriously Punished for*

Nevertheless, the scandal itself did not originate with the government; it was the product of risk-taking journalists and editors operating at the boundaries of what is permissible in the Chinese media.

Yet scandals in this category do not always result in greater media autonomy: they can also lead to new restrictions on the media, as evidenced by a second recent scandal, the “fake dumpling case.” On July 8, 2007, following a wave of international reports questioning food safety in China, Beijing Television carried an investigative report showing a street vendor stuffing dumplings with cardboard softened by caustic soda and flavored by pig fat.³¹ The allegations resonated with widespread concerns about food safety in China and caused a sensation on the Internet. Reports quickly spread to both the domestic and international press.³² Eight days later, however, Beijing municipal health department officials announced that the story was fake: the reporter had paid the vendor and provided the raw materials in order to create a sensational story.³³ The reporter was arrested, fined, and sentenced to a year in prison—according to some sources the first time a reporter had been sent to prison for fabricating news.³⁴

In the official media, this was the end of the story, although it provided a basis for extensive discussion of the problem of fake news and low journalistic standards.³⁵ In the official media, the scandal was the misdeeds of the rogue journalist. But the story likely resonated with the public because, even if untrue, it touched on an issue of popular concern—food safety. Despite official statements that the story was false, it continued to thrive on the Internet: bloggers debated whether the health department account

Their Dereliction of Duty and Malfeasance], ZHONGGUO WANG [CHINA ONLINE], Oct. 20, 2007, <http://news.sina.com.cn/c/2007-10-20/225414130954.shtml> (last visited Jan. 7, 2008).

31. See “*Zhixian Baozi*” *Shijian Huifang* [*The Recalling of the Cardboard Stuffing Dumpling Incident*], XINHUA WANG [XINHUA NEWS AGENCY ONLINE], July 19, 2007, http://news.xinhuanet.com/zgjx/2007-07/19/content_6400870.htm (last visited Jan. 8, 2008).

32. See *American Morning* (CNN television broadcast July 13, 2007), transcript available at <http://transcripts.cnn.com/TRANSCRIPTS/070713/1tm.01.html> (last visited Jan. 8, 2008); *Arrests After the Bun Scandal* (BBC News online broadcast July 12, 2007), http://news.bbc.co.uk/player/nol/newsid_6890000/newsid_6896500/6896514.stm?bw=nb&mp=wm (last visited Jan. 8, 2008); *BTV: “Zhixian Baozi” Wei Xujia Baodao* [*“The Cardboard Stuffing Dumpling News” Was a Fake News Report*], XIN JING BAO [THE BEIJING NEWS], July 19, 2007, <http://news.thebeijingnews.com/0558/2007/07-19/015@277353.htm> (last visited Jan. 8, 2008).

33. Liu Puquan, *Jingcheng “Zhixian Baozi” Jia Xinwen Chulong Qianhou* [*The Before-and-After of the Production of the Fake News Concerning the “Cardboard Stuffing Dumpling” in the Capital City*], XINHUA WANG [XINHUA NEWS AGENCY ONLINE], July 19, 2007, <http://news.qq.com/a/20070719/003486.htm> (last visited Jan. 7, 2008).

34. Zan Aizong, “*Zhibaozi*” *Beihou Zhenxiang Diaocha* [*Investigation of the Truth Behind the “Cardboard Stuffing Dumplings”*], 21CN XINWEN WANG [21CN NEWS ONLINE], Aug. 14, 2007, <http://news.21cn.com/today/zhuanlan/2007/08/14/3413208.shtml> (last visited Jan. 7, 2008).

35. See *Chuanmei Shaloug: Xinwen Zhenshixing Yu Meiti Zilü* [*Media Salon: Truthfulness of News and Self-Discipline of Media*], XINHUA WANG [XINHUA NEWS AGENCY ONLINE], Apr. 19, 2007, <http://www.xinhuanet.com/zgjx/zhibo/20070419/index.htm> (last visited Jan. 7, 2008); *Guangming Shiping: Xinwen Meiti, Zhenshi Shi Shengming* [*Commentary from Guangming Daily: Truth Is the Life of News Media*], GUANGMING RIBAO [GUANGMING DAILY], July 20, 2007, http://news.xinhuanet.com/zgjx/2007-07/20/content_6404117.htm (last visited Jan. 7, 2008).

was correct, with some alleging a cover-up.³⁶ Comments online also suggested widespread public distrust of health department claims regarding the safety of China's food supply.³⁷

The fake dumpling story, like the brick kiln story, reveals the important role of the Internet in scandal in China: it is increasingly difficult for propaganda authorities to make scandals disappear. Yet they still try. Less than one month after the official conclusion of the fake dumpling case, propaganda officials launched a campaign against "fake news"—an effort that was widely interpreted in the West as an attempt to rein in the media in advance of the 2008 Olympics.³⁸ The official media did not explicitly tie the crackdown on fake reports to the dumpling scandal, but the link was obvious. Thus what began as a scandal concerning a (perhaps fake) story about dumplings contributed to an official crackdown on wayward journalists and potentially on media freedom more generally. The case suggests the limits to the influence of scandal in China: in some cases scandal may force authorities to redress problems; in others, however, excessive reporting may lead to an official backlash and hasty declarations that the alleged misdeeds were fabricated or have been addressed.

Scandals in this category also sometimes included direct (and often sensational) reports on misconduct by low-ranking officials. Scandals regarding minor officials may develop without prior approval of propaganda officials; such scandals may also permit indirect discussion of problems of official misconduct more generally. As with the prior examples, however, journalists who create such reports risk retaliation. The case of the "Naked Party Secretary" emerged from non-official media, rather than from an official decision of Party officials. But in the end it also revealed just how careful the media must be when reporting on even low level official misconduct.

The Naked Party Secretary scandal began with a report on a minor (and apparently privately run) website in Hangzhou that was subsequently reprinted in *Southern Metropolitan News*, a major mass-market newspaper in

36. See Posting of Zhixian Xinwen [Cardboard Stuffing News] to http://chenxiaoshou.tianyablog.com/blogger/post_show.asp?idWriter=0&Key=0&PostID=10380167&BlogID=1037511 (July 21, 2007); Posting of Nali Haiyou Yifang Jingtu? [Where Lies a Pure Land?] to <http://www.cnadtop.com/blog/blogdetail.asp?id=1311&uid=26761> (July 25, 2007); Posting of Dui Dajia De Dajia—Guanyu Zhibaozi De Shi [The Crackdown on the Crackdown on Fake Things—Regarding the Cardboard Stuffing Dumplings] to <http://cache.tianya.cn/publicforum/Content/develop/1/123304.shtml> (July 21, 2007).

37. Han Yonghong, *Minjian Huaiyi: Daodi Baozi Jia Haishi Xinwen Jia? Zhongguo Zhengfu Miandui Gongxin Weiji* [Public Doubt: Whether It Is the Dumpling or the News that Is Fake? The Chinese Government Is Facing a Credibility Crisis], UNITED MORNING POST, July 22, 2007, at 14, available at <http://www.zaobao.com/special/china/cnpol/pages/cnpol070722a.html> (last visited Jan. 7, 2008); Posting of Zhixiang Baozi Shi Jia Xinwen? Shui Haigan Xiangxin Meiti? [The Cardboard Stuffing Dumpling News Is Fake News? Who Dares Trust the News Media Anymore?] to http://blog.people.com.cn/blog/log/showlog.jspe?log_id=1184804042253227&site_id=27019 (July 19, 2007 8:14:02) (last visited Jan. 7, 2008).

38. Sui Xiaofei, *Woguo Kaizhan Zhengzhi Jiabao Jia Jizhezhan Jia Jizhe Jia Xinwen Zhuanyang Huodong* [Our Nation Launches a Campaign Against Fake Newspapers, Fake Correspondent Stations, Fake Journalists and Fake News], XINHUA WANG [XINHUA NEWS AGENCY ONLINE], Aug. 15, 2007, available at http://www.chinapeace.org.cn/zybs/2007-08/15/content_26421.htm (last visited February 18, 2008).

Guangdong Province. As translated by the EastSouthWestNorth blog,³⁹ the original report recounted in satirical fashion the exploits of a local Party official who had apparently died of asphyxiation while having an affair in his car:

Linan city Qingliangfeng town party secretary Xu Xinxian had been busy with performing public service and passed away due to physical exhaustion in his car. Another excellent female cadre also laid down her life at the same time. According to information, the party secretary and the female cadre were discussing public business in a car. At the time, the car was out of gas and therefore the air conditioner was not working. Therefore, it was very hot inside in the car which was parked inside a garage. To relieve themselves from the heat, the two took off their clothes to continue discussing public business until they laid down their lives. The people of Qingliangfeng town are lucky to have such a responsible and good party secretary. This party secretary had worked hard for the people, and was performing work related to women right before he laid down his life. The people will remember his accomplishments in their hearts.⁴⁰

Word quickly spread to numerous other news websites in China, eventually being voted one of the “most humorous” reports of the year.⁴¹ Although some questioned the accuracy of the report, its veracity may have been beside the point: the scandal clearly touched a nerve with popular complaints regarding official wrongdoing. What followed for the website owner, however, reflected continued sensitivity to scandal that involves officials. Local Party officials ordered the report removed; police raided the offices of the website; and the website was shut down.⁴²

The Hangzhou Information Net did not go quietly. Before being shut-down, the website ran a series of satirical corrections that had the effect of repeating the original allegations by denying them: one line of the initial correction stated that the deceased “was just an ordinary worker at the town, and not a Party cadre leader” and that he “was the only person present [at

39. The Chinese language reports on the case have been removed from their original websites, but the EastSouthWestNorth blog has reposted a number of them. EastSouthWestNorth: “The Nude Town Party Secretary Dropped Dead While on Duty”, http://zoniaeuropa.com/20070810_1.htm (Aug. 123, 2007 11:15:00) (last visited Jan. 7, 2008). They also continue to be available on some websites in China, see, for example, posting of Zhenshi Baodao Women Dang De Youxiu Ganbu De Xu Xinxian De Hangzhou Xinxu Wang Naqule? [Where Has The Hangzhou Information Website that Truthfully Reported Xu Xinxian, the Excellent Cadre of Our Party, Gone?] to <http://cache.tianya.cn/publicforum/Content/free/1/980179.shtml> (Aug. 12, 2007), and *Wangzhan Cheng Zhenwei Shuji Luosi Xiyin Gong Xisheng Zao Piping* [Website Was Criticized for Stating that the Town Party Secretary Died Naked While on Duty], NANFANG WANG [S. NEWS ONLINE], Aug. 10, 2007, <http://news.163.com/07/0810/11/3LHGGQ1R0001124J.html> (last visited Jan. 7, 2008).

40. EastSouthWestNorth: “The Nude Town Party Secretary Dropped Dead While on Duty”, *supra* note 39.

41. Posting of Zhenshi Baodao Women Dang De Youxiu Ganbu De Xu Xinxian De Hangzhou Xinxu Wang Naqule?, *supra* note 39; *Wangzhan Cheng Zhenwei Shuji Luosi Xiyin Gong Xisheng Zao Piping*, *supra* note 39.

42. Edward Cody, *For China’s Censors, Electronic Offenders Are the New Frontier*, WASH. POST, Sept. 10, 2007, at A01.

his death]. He was fully clothed and not naked.”⁴³ A later correction removed this language, but noted that the “incident is just a one-time-only rare phenomenon. The majority of our party members and cadres are still good people. So we say the same thing: You must trust the organization and you must trust the Party.”⁴⁴ And in a final parting shot before the website was taken offline, a notice implored readers to stop discussing the incident: “Please do not make a fuss over unique and rare cases of some grassroots party cadres, especially since this is only a lifestyle issue. It is a private matter which does not affect work and it is not criminal either. Why is this worthy of any discussion?”⁴⁵ Although not as carefully managed as cases involving more senior officials, the case suggests both the appeal and the sensitivity of scandals involving minor officials.

3. Celebrities—and Sex

The third category of Chinese scandals involves celebrities, and usually sex.⁴⁶ Here scandal serves primarily commercial purposes—of the media that report on the scandals and of the celebrities who are at the center of scandal (some of whom are already famous and some of whom become famous through the scandal). Although celebrity scandals also develop autonomously, unlike those in the second category of scandals they generally run without interference from propaganda authorities.

One of the most prominent sex scandals in China in recent years involves actress Zhang Yu’s allegations of “sex for roles,” also referred to as the “unspoken rules of show business.”⁴⁷ In 2003, Zhang accused a number of famous directors of demanding sex with actresses in exchange for roles on television shows.⁴⁸ In 2004, she provided audio of an actress having sex with a director.⁴⁹ One of the directors she named as being involved in the

43. EastSouthWestNorth: “The Nude Town Party Secretary Dropped Dead While on Duty”, *supra* note 39.

44. *Id.*

45. *Id.*

46. Political scandal, however, also frequently involves sex: in many cases reports on corrupt officials include details of their sexual transgressions, most often their taking of mistresses. In one notable recent case, online reports recounted how two officials had not only engaged in widespread corruption; they had also shared a mistress while doing so. Likewise, official reports have stated that ninety percent of officials found to be corrupt have had mistresses.

47. Liu Lin, Zhang Yu Jiang Gongbu “Qian Guize” Zhengju: *You Taiduo Nihai Shangdang Shoupian* [Zhang Yu will Publicize the Evidence of “Unspoken Rules”: Too Many Girls were Cheated], BEIJING YULE XINBAO [BEIJING ENTERTAINMENT INFORMATION NEWSPAPER], Nov. 16, 2006, available at <http://ent.tom.com/1306/1362/20061116-230872.html> (last visited February 18, 2008).

48. Zhang Yu Jiang Chongxin Qisu Huang Jianzhong, Ni Jiang Xing’ ai Nan Zhujue Quanbu Gaodao [Zhang Yu Will Sue Huang Jianzhong Again and Intends to Sue All the Other Men Involved in the Sex Tapes], XINMIN WAN BAO [XINMIN EVENING POST], Dec. 5, 2006, available at <http://ent.tom.com/2006-12-05/000E/04921520.html> (last visited Jan. 7, 2008).

49. Nü Yanyuan Chushi Zhengju, Zhuming Daoyan Huang Jianzhong Juanru Luyindai Chouwen? [Actress Furnished Evidence, Was Famous Director Huang Jianzhong Involved in Tape

scandal, Huang Jianzhong, then wrote an article detailing Zhang Yu's own behavior. Zhang sued Huang for defamation—and lost.⁵⁰ She then posted a videotape online that allegedly showed a director having sex with an actress. Zhang remains in the spotlight because she claims to have a collection of similar sex tapes that she releases intermittently on the internet.⁵¹

Actress Hu Xiaoqiong subsequently joined the fray with her own story of trading sex for a role, which she posted to her blog.⁵² The director she named, Yang Yichao, subsequently sued her for defamation and won⁵³—although that did not silence Hu, who promptly posted the court decision on her blog.⁵⁴ The Hu-Yang case resulted in extensive discussion of what constitutes sexual harassment in chatrooms and blogs.⁵⁵ It also appears to have made both actresses more famous—leading some to argue that they had achieved their primary goal. The scandals have continued to run without apparent interference from propaganda officials; scandals regarding celebrities and leading sports figures may largely be reported by the media with autonomy. Indeed, even some prominent official media, including *China Daily* (the official English language paper) and both of China's official news agencies, *Xinhua* and the *China News Agency*, have carried detailed reports on the sex-for-roles scandal.⁵⁶ The case shows the increased willingness of Chinese commercial media to report on and market scandal, and how

Scandal?], XIN JING BAO [THE BEIJING NEWS], Dec. 29, 2003, available at <http://ent.sina.com.cn/s/m/2003-12-29/0838265108.html> (last visited Jan. 7, 2008).

50. Wu Qingcai & Guo Jinxia, *Zhang Yu Gao Zhuming Daoyan Huang Jianzhong "Xing Chouwen" An Zhongshen Baisu [Zhang Yu Lost in the Final Judgment of the "Sexual Scandal" Case Against Famous Director Huang Jianzhong]*, XINHUA WANG [XINHUA NEWS AGENCY ONLINE], Sept. 12, 2006, http://www.hb.xinhuanet.com/newscenter/2006-09/12/content_8015716.htm (last visited Feb. 18, 2008).

51. See Articles and News Reports Concerning the Zhang Yu "Sex for Roles" Scandal, <http://ent.qq.com/zt/2006/zhangyusex/> (last visited Jan. 7, 2008); "Sex for roles" scandal in Chinese show business, XINHUA NEWS AGENCY, Sept. 25, 2006, http://news.xinhuanet.com/english/2006-09/25/content_5134218.htm (last visited Jan. 7, 2008); *Sex, Lies And Videotape: Actress' Disclosure*, CHINA.ORG.CN, Nov. 23, 2006, <http://www.china.org.cn/english/entertainment/190666.htm> (last visited Jan. 7, 2008).

52. The original blog posting is no longer available online. See Articles and News Reports Concerning the Hu Xiaoqiong "Sex for Roles" Scandal, <http://datalib.ent.qq.com/star/3879/index.shtml> (last visited Jan. 7, 2008).

53. See Huang Xiaoyu, *Shouli Boke Qinquan An Zhongshen Panjue, Nü Yanyuan Xiaoqiong Baisu [The Final Judgment Was Issued in the First Blog Tort Lawsuit, Actress Xiaoqiong Lost the Case]*, XINWEN WU BAO [MIDDAY NEWS], June 21, 2007, available at <http://ent.sina.com.cn/s/m/2007-06-21/15581607398.shtml> (last visited Jan. 7, 2008).

54. See Posting to Xiaoqiong de BLOG [Xiaoqiong's Blog], http://blog.sina.com.cn/s/blog_4a96709b010009rc.html (June 29, 2007, 11:59 CCT). She did, however, apparently comply with a court order instructing her to remove the defamatory article from her website.

55. See Discussions Concerning Sexual Harassment in Show Business, <http://space.phoenixtv.com/argue/PKManage.do?operate=viewpk&founderid=1&id=543> (last visited Jan. 7, 2008); Posting of "Xing Anshi" Yu Yanyiquan "Qianguize" ["Sexual Hints" and The "Unspoken Rules" In the Show Business] to Tianya Shequ [Tianya Blog Website], <http://cache.tianya.cn/publicforum/Content/free/1/940658.shtml> (June 24, 2007).

56. See Articles and News Reports Concerning the Zhang Yu "Sex for Roles" Scandal, *supra* note 51; "Sex for roles" scandal in chinese show business, *supra* note 51; *Sex, Lies And Videotape: Actress' Disclosure*, *supra* note 51.

Chinese stars may be adept at creating and managing scandal to serve their own interests. As is the case elsewhere, scandal may provide a quick route to fame.

III. CHINA IN CONTEXT

What do Chinese scandals contribute to West's call for more comparative scandology, and what do they tell us about West's thesis? Four conclusions follow from this brief survey of recent Chinese scandals.

A. *The State and the Media Market*

Chinese scandal is increasingly the product of both the state and the market—with much scandal developing without prior state approval. Such an observation would be unremarkable in Japan or the United States, but is striking in China, where the official media remain both the mouthpiece and the eyes and ears of the Communist Party. Recent scandals in China show that scandal now develops on two tracks. The first track, represented by the Shanghai Pension Fund scandal, continues to be largely state-managed: propaganda officials closely oversee news reports on emerging scandals, predetermining who is targeted in the media and in some cases pre-approving standardized media scripts.⁵⁷ Also on this track are scandals that never see the light of day—incidents never publicly reported by the media because of the sensitive nature of the matter.

On the second track, however, scandal now develops independently of the state, or at least below censors' radar screens. In the brick kiln case, commercialized media played a crucial role both in uncovering the scandal and in applying pressure on the authorities to address the scandal. In the fake dumpling case, the news media were aggressive in spreading word of the initial report. In some instances, including the brick kiln case, propaganda authorities subsequently stepped in to manage the scandal and perhaps to cut off non-official discussion. Nevertheless, the growth of scandal in China demonstrates the widening autonomy of China's controlled media. China, like Japan and the United States, has always had conduct that transgressed formal or informal rules. The recent shift is that the media (including bloggers or website operators, as in the Naked Party Secretary case) now may expose such transgressions, and thus influence what becomes scandal, without prior approval from the state.

The development of this second track suggests that the type of conduct that results in scandal in China may also be changing. Scandal no longer

57. Liebman, *supra* note 2, at 43-44. For one recent example, see Guangzhou Shi Xinwen Chuban He Guangbo Dianshi Ju Wangzhan [Website of the Guangzhou Municipal News Publication and Television and Broadcast Bureau], *Guangdian Zongju Yinfa Guanyu Qieshi Jiaqiang He Gaijin Guangbo Dianshi Yulun Jiandu Gongzuo De Yaoqiu de Tongzhi* [Notice from the State Administration of Radio Film and Television on Further Strengthening and Improving the Public Opinion Supervision Work of Radio and Television], http://www.xwgd.gov.cn/xggd/jsp/comm/comm_detail.jsp?infol=19837 (last visited Feb. 18, 2008).

serves solely political purposes; it is increasingly determined by what readers demand and what the media can get away with publishing. And the media is now willing and able to discuss a widening range of topics—from food safety to the sexual exploits of stars and (minor) officials. Increased media autonomy is the product of marketization and of new technologies. Yet the rise of scandal also reflects changing social norms, and increased willingness to discuss such changing norms.

There may also be more ambivalence in China than in Japan about what conduct is deemed scandalous. This reflects the fact that both formal and informal norms regarding acceptable behavior appear to be more in flux in China: many traditional social norms have weakened, and wrongdoing is widespread. China's shift to a market economy has resulted in decreased state control over individuals' lives, but many in China argue that society now lacks clear conceptions of right and wrong. Some commentators argue that there can be no scandal in rapidly changing China, because nothing is surprising and because notions of right and wrong have become unsettled.⁵⁸ As one blogger contends, if wrongdoing is common and performed openly, there can be no scandal.⁵⁹ In some cases, however, the fact that norms and rules are unclear also permits the media space to report—and thus to create scandal.

A few other differences in the type of conduct that becomes scandal appear from this brief survey. As noted above, the state's continued role in the management of the media means that there is a heavier state imprint on scandal in China than in Japan, regardless of whether the scandal originates from the commercialized media or from Party officials. Even scandals that initially appear to be fairly minor—such as the report about the alleged fake dumpling seller—are often carefully managed by the state. State reactions to scandals shape how scandals develop in China; such responses also send signals about permissible media conduct that sets boundaries on reporting on future scandals.

Public ordering continues to predominate in China, in significant part due to the Communist Party's long dominance. In addition, and as a consequence, private groups appear to play a much smaller role in China than in Japan. Group self-regulation of the type West discusses is rare in China—reflecting the Party-state's distrust of organizations not directly under its control—and groups in China rarely appear to act to protect members. In most cases wrongdoing is placed entirely on the back of the individual, as reflected by the rapid arrests in the brick kiln and fake dumpling cases and in the punishment of Chen Liangyu. This emphasis on individual transgression, rather than the individual's link to the larger group, reflects one of the important storylines of the current leadership: official wrongdoing reflects individual

58. Cai Fanghua, *Chouwen Buchou: Xing Jiaoyi Beihou De Daode Shifan*, [Scandals Are Not Shameful: Loss of Moral Standards Behind Sex for Roles], BEIJING QINGNIAN BAO [BEIJING YOUTH NEWS], January 18, 2004, available at <http://ent.qianlong.com/4543/2004/01/18/999@1834790.htm> (last visited Feb. 18, 2008).

59. Posting of Zhongguo Meiyou Chouwen by Ying Fu Ji Jin, *supra* note 3.

transgressions, not systemic problems. The media may expose individual wrongs, but systemic critiques are off-limits.

B. Law Matters

China's recent experiences also tell us, as West suggests in his discussion of Japan, that law matters. To be sure, law in China sometimes must defer to politics (and almost certainly does so more often than in the United States or Japan). In explicitly political cases, the law often appears irrelevant, or is at most an afterthought: such cases reflect official decisions to target particular individuals. Chen Liangyu may have been guilty of financial crimes, but more than a year after the scandal came to light no criminal charges have been brought: the case is being handled by the Communist Party Discipline Committee. But in the second category of cases—those touching on rights violations and misconduct—law often plays a crucial role in framing arguments concerning the scandal.

The evolution of legal standards and of legal awareness in China has provided a baseline that allows for the evaluation of wrongful conduct and for the politically safe exposure of transgressions. Legal rules affect what becomes scandal in China, in a way that they did not prior to China's media and legal reforms.⁶⁰ In the brick kiln case, for example, the revision of China's labor laws—and increased government attention both to workplace safety and to social inequality—allowed space for China's increasingly autonomous but still restricted media to expose scandalous conduct. Journalists could point not only to the horrific conditions of the brick kilns, but also to the fact that such conditions violate Chinese laws. The media framed their reports in terms of ensuring compliance with Chinese law. As a result, journalists could largely, albeit not entirely, critique the use of slave labor without fear of getting in trouble.⁶¹ The brick kiln scandal also led to calls to further strengthen China's labor laws, thus showing how media exposure of scandal can also contribute to calls for legal change.⁶²

Law is not the only factor: appeals to popular morality remain important, and when legal norms conflict with popular concepts of right and wrong, courts are often pressured to follow morality, not law. Nevertheless, law is now a mechanism for measuring wrongful conduct in a way not pos-

60. See Chen Jieren: *Yao Nu An Tuxian Laodongfa Zhongda Loudong* [Brick Kiln Slave Case Highlights the Significant Loopholes in the Labor Law], FAZHI ZHOUBAO E FAWANG [E LAW NET ONLINE], June 22, 2007, <http://news.sina.com.cn/pl/2007-06-22/115713288822.shtml> (last visited Jan. 7, 2008); Yang Tao, *Yong Sifa Gongzheng Huiying Gongzhong Dui Hei Zhuanyao An Zhiyi* [Use Judicial Justice to Respond to the Public's Questioning Concerning the Black Brick Kiln Case], SINA.COM, July 5, 2007, <http://news.sina.com.cn/pl/2007-07-05/092713380660.shtml> (last visited Jan. 7, 2008).

61. The caveat is that it often remains difficult, and in some cases physically dangerous, for local journalists to expose local wrongdoing. Numerous media accounts in China have highlighted violence against journalists.

62. *Shanxi Hei Zhuanyao Beiju Ruhe Buzai Chongyan* [How to Avoid the Reoccurrence of the Shanxi Black Brick Kiln Tragedy], GUANGMING RIBAO [GUANGMING DAILY], June 30, 2007, http://www.gmw.cn/01gmr/2007-06/30/content_631714.htm (last visited Jan. 7, 2008).

sible during an era in which legal awareness was low and the media were more tightly controlled.

And, counterintuitively, law may matter much more in China than it does in Japan. Although law “often stars in the show” in Japan (p. 5), West notes that scandals in Japan are generally not court centered (p. 140). Litigation and court proceedings are crucial in China. Media reports frequently sensationalize coverage of legal cases, and coverage of court proceedings is an important aspect of scandal coverage. The fact that a case is brought often provides a basis for the media to safely report on a scandal that might otherwise be off-limits and allows for the repetition of many of the most sensational allegations. Defamation litigation provides a forum in which sensational claims are contested—and repeated. And even in sensitive cases, the announcement of a court verdict often signals closure to the scandal, allowing the media to report on how wrongdoers have been punished.

C. Institutions and Media Regulation Matter

Extralegal regulation also matters. Although a web of laws and regulations operate to control the Chinese media, the most important regulations are not legal: they are propaganda department instructions and informal norms that dictate what the Chinese media can and cannot report. The importance of such norms highlights the need to differentiate between rules regarding conduct (what type of behavior is considered a transgression) and rules on how scandal is publicized (what the media may print). It also shows the importance of the institutional backdrop against which the Chinese media operates to the formation of scandal in China.

West discusses both types of rules and notes how the elite media in Japan often cover up scandal (pp. 13–20). There is, however, relatively little discussion of which rules predominate. China’s experience shows how important dissemination rules are to determining what becomes scandal. In China, with an apparently ever-widening range of wrongdoing, scandal may inform more what the media are allowed to report than what type of conduct is socially acceptable. The importance of dissemination rules in China suggests that different rules on dissemination, rather than different conceptions of socially acceptable conduct, may explain differences in what becomes scandal in different countries. This is particularly the case in a system like China, where the media are still subject to extensive state oversight. But, as West’s discussion of the reluctance of elite Japanese media to break scandals shows, similar issues arise even in systems with free media.

D. Scandal in an International Context

Third, internationalization of Chinese scandals may radically alter how scandals are covered. West notes a number of cases in which the Japanese media withheld reports on known scandals, only to have the Western media (in most cases, the *Washington Post*) report on the matter (pp. 16, 193, 275–76). The fact that news of the scandal had broken overseas freed the

domestic Japanese media from the norms dictating that they remain silent, and they followed up with detailed reports of their own (p. 276). In some cases, international coverage permitted the media to pile on criticism, as in the case of former Prime Minister Uno. The prime minister was exposed not just for having a mistress but also for being stingy in his payments to her, causing, according to the domestic media, national embarrassment (p. 276).

In China, the effect of international coverage of scandal appears to be the opposite. International coverage of Chinese scandals frequently results in orders from propaganda authorities that the media fall into line and use only officially sanctioned reports.⁶³ International attention thus can cause a scandal to disappear from the domestic media. It can also result in a flurry of nationalistic domestic reports arguing that the scandal is just an attempt by others to harm China's image, or that scandals reflect jealousy about China's economic miracle. This reaction reflects both political sensitivities of China's current rulers, and also a strong tradition of "not airing family problems in public."

This phenomenon is best seen in the domestic media's recent reaction to reports in the Western media concerning product and food safety in China. The Chinese media have long played an important role in exposing poor quality products and in highlighting unsafe food.⁶⁴ But faced with the internationalization of the issue, many prominent Chinese media have retreated, with major outlets such as CCTV, the official national television broadcaster, running programs that defend the quality of China's products—by pointing out, for example, that the *only* place lead paint was actually used in a Barbie Doll was in the doll's eyelashes.⁶⁵

Japan has its share of issues where nationalist concerns may influence reporting on controversial topics.⁶⁶ In Japan, however, these issues do not appear to fit the definition of scandal, as they are not hidden. China is not alone in treating scandals that risk harm to national image differently from other scandals. But recent experience suggests that whereas international coverage may free the Japanese media to cover sensitive issues, the opposite is sometimes the case in China.

63. See, e.g., Zheng & Feng, *supra* note 30; *Zhongguo Zhengfu Tongbao "Zhibaozi" Shijian, Cheng Zhenshi Shi Xinwen De Shengming* [The Chinese Government Reported the "Cardboard Stuffing Dumpling" Incident and Indicated that Truthfulness Is the Life of News], ZHONGGUO XINWEN WANG [CHINA NEWS AGENCY ONLINE], July 23, 2007, <http://www.chinanews.com.cn/gn/news/2007/07-23/985684.shtml> (last visited Jan. 7, 2008); see also Liebman, *supra* note 2, at 44.

64. See, e.g., Weekly Quality Reports Concerning Food, <http://www.cctv.com/program/mzzlbg/01/index.shtml> (last visited Jan. 7, 2008); Questionnaire on Food, <http://business.sohu.com/20050119/n224012991.shtml> (last visited Jan. 7, 2008) (posting a questionnaire regarding the hot issues of food safety of year 2005); Food Safety Webpage, <http://www.cctv.com/health/special/C12286/01/index.shtml> (last visited Jan. 7, 2008) (a food safety webpage subordinated to the official website of China Central Television).

65. See *Furore over Chinese goods biased, says top official*, STRAITS TIMES, Aug. 20, 2007, http://www.straitstimes.com/Free/Story/STIStory_149987.html (last visited Jan. 7, 2008).

66. These issues include accounts of Japan's wartime record in school textbooks, the treatment of comfort women, and shrines to Japan's war dead.

E. Refining Scandology

Evidence from China largely supports West's thesis. But it also suggests some areas in which further refinement might assist future scandologists. West is explicit that his goal is not to break new theoretical ground, but rather to offer a rich ethnographic account (p. 9). He certainly succeeds in this role. Yet West also, to a modest degree, leaves us wanting more: not more accounts of sex between teachers and students or of boy bands gone bad, but of further guidance that might help future scandologists down the track on which he has so impressively taken us.

West is right to note the importance of rules, as opposed to culture, in shaping scandal. He is also correct about the importance of this distinction between culture and rules, and he recognizes that culture is an important variable in shaping rules (p. 10). Nevertheless, further exploration of the interaction between culture and the formation of both informal and formal rules would have helped to elucidate his argument and perhaps to make the job of future scandologists easier. Culture, of course, can mean many things; in the context of China, for example, much about scandal reflects current political culture, not traditional cultural norms.

Likewise, West has provided a rich example of how the study of scandal can add to our understanding of how a society functions. But he has provided little in the way of a typology of scandal or a framework for placing scandal in comparative context. Although the types of scandals that develop will, as West shows, differ significantly across cultures, developing a typology would facilitate comparative scandology and might help to highlight how scandals differ in their impact and importance in different settings.

In China, the importance of scandal is obvious. It reveals details about the evolution of the political system, social norms, and the media. In Japan, the answer to the question "why should we care about scandal?" is perhaps a bit less obvious. West has captured the nuances of scandal in Japan and the United States, but has perhaps not done as much as he could have to convince the reader of the importance of his topic. Indeed, one is left with the sense that by reveling in the details of scandal at the expense of examination of the broader institutional questions, West has perhaps undersold the importance of his topic.

Similarly, although West distinguishes between informal rules and formal, or legal, rules, the extensive data he has collected might have offered him the opportunity to explore more deeply distinctions among different types of rules, and how such distinctions affect the formation of scandal. For example, although West analyzes both rules of conduct (what types of conduct is socially impermissible and thus begets scandal) and rules of dissemination (what violations of rules are exposed), he does not build on this distinction. Recent experiences in China show just how important this distinction is.

IV. DEFAMATION LITIGATION: HONOR AND CENSORSHIP

Scandal, as West notes, frequently results in reputational harm and, in Japan and China, litigation. West is clearly right that emphasis on honor means that there is something different at stake in such cases in Japan compared to the United States.⁶⁷ Defamation litigation in China contributes additional comparative perspective that makes West's finding somewhat less surprising.

Like Japanese law, Chinese law provides strong protections for defamation plaintiffs.⁶⁸ Legal standards are vague, but such vagueness generally favors plaintiffs. Truth is not a defense to defamation claims. One result is a significant volume of cases: more than five thousand in 2003.⁶⁹ And plaintiffs win most of these cases.⁷⁰ As in Japan, the volume of defamation litigation in China is striking given both popular conceptions that China is not a litigious society and data showing relatively low litigation rates in China.

Yet the results in China may be even more notable than in Japan, because in China the defendants in most defamation cases are state-controlled media—the mouthpieces of the Communist Party. It is easier to sue commercialized tabloids than official mouthpiece Party papers, and some key Party outlets appear off limits (as are most television stations); but official Party publications are sued and often lose.

Strong defamation protections in China might at first appear to be, as in Japan, all about honor. Yet, strong protections for reputation rights in China are due as much to political and institutional dynamics as to cultural tradition. China and Japan share some aspects of cultural tradition; Chinese scholars have noted the importance of “face” as one factor that led to the inclusion of strong reputation protections in Chinese law.⁷¹ But four other factors also explain China's legal protections for reputation rights.

First, Chinese defamation law reflects China's tortuous experience in the Cultural Revolution when personal attacks were common and the legal system ceased to function. Reputation protections that were written into Chinese law in the 1980s were an attempt to send a strong signal that individuals would not again fall victim to the unrestrained use of personal attacks as a political tool.

Second, defamation litigation also reflects a response to media that engage in sensational reporting and at times exaggerate or fabricate news.

67. This observation is also supported by another of West's somewhat striking findings: the continued use of criminal defamation provisions in Japan. West reports more than one hundred criminal indictments for criminal defamation in Japan in 2004—most likely much higher even than China. In Japan, however, punishment for criminal defamation is both light and rare. Pp. 82–86.

68. The discussion of Chinese defamation litigation in this section is based on my prior work on this topic. See generally Benjamin L. Liebman, *Innovation Through Intimidation: An Empirical Account of Defamation Litigation in China*, 47 HARV. INT'L L.J. 33 (2006).

69. *Id.* at 44.

70. *Id.* at 50.

71. *Id.* at 87 & n.332.

Much of the focus on defamation litigation in China has drawn attention to the ways in which cases have been used to intimidate or silence the media. But a sizable volume of defamation litigation in China is brought by ordinary persons who assert reputational harm due to exaggerated or false media reports. Defamation litigation thus can be understood to be in part a response to one downside of commercialization—media that pay too little attention to the truth of their reports.

Third, although many cases are brought against the official state media, strong reputation rights also dovetail with state interests in maintaining control of the media. Defamation law is not the primary means of restricting the media. The Central Party-state has numerous other mechanisms to control the media, ranging from shutting down publications to bans on individual journalists to jail sentences for those who transgress norms governing media conduct.⁷² Nevertheless, the fact that defamation lawsuits also restrain the media, especially the tabloids and other commercialized media that from time to time push boundaries of permissible content, helps to explain the appeal of the legal framework. The Party-state does not mind if defamation litigation helps to keep the media in check.

Fourth, there is evidence that defamation litigation in China is being used to advance goals not fully contemplated when China adopted its General Principles of the Civil Law in 1986. Defamation litigation is used politically by low-ranking officials to quiet critics. But it is also used as a means of challenging the state, as ordinary citizens bring suit against Communist Party mouthpiece newspapers. It may be easier for ordinary persons to sue the media than to sue government departments or officials. Contesting media accounts of their actions permits litigants to challenge state actions and determinations indirectly. Challenging state authority through defamation litigation appears at times much easier than doing so through more direct mechanisms, including administrative litigation or direct petitions to the state. Given the absence of strong protections for individual rights in the Chinese legal system, individual litigants have used pro-plaintiff defamation standards as a means of asserting their rights. And although some in the Chinese media operate without concern for being sued simply by factoring in the risk of a defamation judgment into the cost of doing business (or ignoring it altogether), there is evidence from China that the risk of defamation liability is resulting in increased attention to professional standards in the media.⁷³

There are some additional similarities between China and Japan. West notes that courts have played an important role in Japan in tightening some

72. Thus high-ranking officials rarely rely on defamation litigation to restrain the media. When defamation litigation is used politically to silence the media, it is often by low-ranking officials and corporate or business plaintiffs. Even mid-ranking officials are not criticized and therefore do not have any reason to sue.

73. One notable difference between Japan and China is that, according to West, few ordinary people bring defamation suits in Japan. Pp. 89–98. In China, suits by ordinary people appear common, reflecting attempts by individuals to clear their names and resist the official media.

of the plaintiff-friendly legal standards (p. 75). In doing so, Japanese courts have acted largely consistently with the trend in other liberal democracies.

Chinese courts have taken some modest steps in the same direction. In a series of defamation cases, low-level Chinese courts have issued media-friendly decisions, holding, in effect, that famous persons must be able to withstand a higher level of media scrutiny than those not in the public eye. Given the absence of support for such heightened standards in Chinese law, these “public person” decisions are striking for their implicit reliance on Western (and, in particular, American) precedent.⁷⁴ Yet these recent Chinese decisions can also be explained by another factor: defendants in all of the Chinese “public person” cases have been powerful state media.

What does China’s experience with defamation litigation contribute to West’s argument? The significant volume of defamation litigation in China suggests that we should not be so surprised that there is a lot of defamation litigation in Japan. Even with low possible recoveries (also true in China), litigants will use plaintiff-friendly legal standards both to seek damages and as a vehicle for publicly contesting media accounts. In both countries (and indeed in the United States, where there is arguably even less incentive for plaintiffs to sue, since plaintiff victories at trial are rare), defamation suits serve as a public statement against the truth of the media’s reports. The discussion of China highlights the need for a broad comparative framework: examining Japanese defamation law against not only that of China, but also of continental Europe, would likely lead to the conclusion that the United States is an outlier when it comes balancing free speech and reputation rights. West recognizes the limits of his use of the United States as a comparative reference point for his analysis of Japan. Nevertheless, the need for a broader comparative reference point may be strongest in an area such as defamation law, where the United States is not representative of most other liberal democracies.

China’s experience with defamation litigation supports the argument that institutions and rules are crucial factors in shaping how and when privacy and reputation are protected. Defamation litigation is not just a manifestation of the importance of cultural concerns about “face” or “honor.” Defamation protections initially were adopted in China in significant part because of concerns resulting from the Cultural Revolution, but they have developed, and defamation litigation in China has spread, because other institutional factors either encourage or at the very least have not blocked their development. Recent court decisions adopting a public person standard in China support the argument that institutional explanations are crucial⁷⁵: although on first impression Chinese courts may appear to be following global trends in defamation law, closer examination suggests that institutional factors also help to explain these cases. One wonders if similar factors might be at work in Japan, given that much of Japan’s elite media is often timid when

74. A lawyer in one of the cases cited *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

75. Liebman, *supra* note 68, at 104–06.

it comes to reporting on official misconduct, and where, as West notes, defamation litigation often succeeds in silencing the media.

Examination of China also provides support for another of West's key arguments: law on the books is an important determinant of how scandals develop and evolve. Indeed, West is perhaps a bit too surprised to find that Japan has twice as many defamation cases per capita than the United States. Given the very different standards that exist in the two countries, perhaps we should not be surprised at all. In light of the low odds of prevailing, we might wonder why even the small number of plaintiffs who do sue in the United States bother. The importance and prevalence of lawyers as gatekeepers in the United States may contribute to the low level of defamation cases: lawyers are expensive and unlikely to undertake cases on a contingent fee basis when existing law makes it so hard to prevail. In China, many defamation cases are brought without lawyers, perhaps contributing to the frequency of such cases. It is unclear whether the same is also the case in Japan. Nevertheless, the total number of lawyers may be less important than the incentives that legal standards create for lawyers and litigants to undertake such cases.

CONCLUSION

What lessons follow for those interested in scandal (and law) more generally? First, law matters, as West argues, in two respects. Law provides a framework for evaluating conduct. In China, this role may be particularly important, as it permits the media freedom to report on topics that might otherwise have been off limits. But formal rules also affect how scandals develop. In the case of defamation litigation, strong protections for reputation in China have provided incentives not only for the use of defamation litigation by those most likely to be plaintiffs in such cases—celebrities and government officials—but also by individuals seeking to win redress against an often unresponsive state. In addition, defamation litigation may also allow the media to discuss (and repeat) the underlying allegations or reports. Thus, the mere existence of a case may permit greater discussion in the media of sensitive or formerly taboo topics.

Most of West's account is dedicated to showing us how rules affect and determine scandal in Japan. As he points out, causation can run the other way: "one development that often follows modern scandal is the enactment of rules to combat the evil that is assumed to have caused . . . it" (p. 325). In Japan and the United States scandals result in rules that formalize through law what had previously been only informal norms. The same is true in China, where scandals often lead to the announcement of new legislation and of new enforcement campaigns. Given China's reactive governance model and the Party-state's fear of instability, scandal may play an even greater role in dictating policy agendas than it does in the West. The Chinese Party-state often reacts immediately to scandal, seeking to address the underlying problem giving rise to the scandal and at the same time silencing discussion of the scandal by emphasizing the state's responsiveness. This

may also be due in part to the fact that so many scandals in China seem to explode suddenly, the result of a media oversight system that incentivizes journalists, bloggers, and others to move as quickly as possible to ensure news gets out before propaganda authorities can intervene. Scandal in China, however, also serves to highlight broader problems in the Chinese system: major changes in policy or institutional relationships may be difficult absent scandal. There is a downside to using scandal as a basis for decision making. Pressure in China frequently produces a rush to judgment, with summary trials of offending parties and quick declarations that the issue has been resolved, as in the brick kiln and fake dumpling cases. Reliance on scandal may be particularly troubling in a system in which norms of procedural justice remain weak. China demonstrates the positive role that scandal can play in a society undergoing profound change, but also some of the downsides of scandal's influence on public policy.

Second, as West also points out, nonlegal social norms matter. Here China may differ somewhat from Japan, in that many of the strong social norms that help determine how scandal plays out in Japan appear weaker in China. Uncertain social norms, combined with shifting state controls on the media, may make scandal less predictable in China. But these factors also may make it more important.

This appears particularly to be the case in the context of professional norms. As West discusses, the Japanese media often appear to break professional and social norms (pp. 30–35). Media transgressions, including the creation of false news, are widespread. The same is true in China, with numerous accounts of journalists creating fake news or accepting bribes to report or not to report on certain topics.⁷⁶ One unresolved question in China—and perhaps in Japan as well—is whether scandal may breed professionalism. In China, strong Party oversight of the media has left little room for media self-regulation or for the development of autonomous professional identity. There are some signs that this is changing: some journalists and media outlets have begun to work together to fight defamation litigation, and the threat of defamation litigation is also resulting in greater emphasis on accurate reporting.⁷⁷ Yet China continues to be a system in which journalists are either extremely restricted in their coverage of sensitive topics (in the case of bans or restrictions on reporting) or else operate with nearly complete autonomy, unlimited either by propaganda

76. See Dong Jianzhong, *Jia Xinwen Xianxiang Ying Yinqi Zhongshi* [*The Phenomenon of Fake News Should Arouse Attention*], XINHUA WANG [XINHUA NEWS AGENCY ONLINE], Apr. 30, 2007, http://news.xinhuanet.com/comments/2007-04/30/content_6044904.htm (last visited Jan. 7, 2008); *Shendu Tantaoyao Zhongguo Jia Xinwen Genyuan* [*In-Depth Discussions Concerning the Root of Fake News in China*], RENMIN WANG [PEOPLE'S DAILY ONLINE], July 25, 2007, <http://www.people.com.cn/GB/32306/33232/6031117.html> (last visited Jan. 7, 2008); *Zhuanjia: Jia Xinwen Shanghai Meiti Gongxinli* [*Expert: Fake News Impairs the Creditability of the Media*], ZHONGGUO QINGNIAN BAO [CHINA YOUTH DAILY], Apr. 20, 2007, http://news.xinhuanet.com/zgjx/2007-04/20/content_6002577.htm (last visited Jan. 7, 2008).

77. See Articles and News Reports on Lawsuits About Inaccurate Reporting, <http://finance.dayoo.com/zhuanti/spjza/index.htm> (last visited Jan. 7, 2008) (posting news reports and articles concerning two lawsuits brought against journalists regarding inaccurate reporting).

department supervision or professional norms. It remains to be seen whether the rise of scandal as an important aspect of Chinese media coverage will lead to greater professional identity, or whether it will fuel a race to the bottom in ethical standards.

Third, scandal matters, in part because it may reflect expanding freedom. West notes that scandal may provide society with a way of discussing otherwise socially taboo topics, and in so doing may help to shape social norms. In China the effect is even greater, as scandal permits discussion of what would otherwise be socially or politically taboo topics—from the sex lives of corrupt officials to slave labor. To the degree that Chinese scandals foster new norms, it could be argued that such norms arise from the state's close supervision of scandal and not from scandal itself. Nevertheless, Chinese scandals appear noteworthy for their ability to have norm-producing effects despite strong state control of the media.

It would be a mistake to equate the rise of scandal in China entirely with greater media freedom: the Chinese media continue to operate subject to extensive oversight. But the spread of scandal coverage is a sign of the media's ability to report on a widening range of topics. Even officially managed scandal may provide protection to journalists who seek to report on similar issues.

China's recent experiences support West's broad argument: scandal is about rules as much as culture, and scandal is not simply about "cheap thrills" or "a sign of growing moral or social decline" (p. 9). Comparative scandology helps us to understand not just what becomes scandal, but also how scandal reflects and contributes to changing norms and institutions. Both West's book and recent developments in China suggest that there may be an aspect of scandal that contributes to the formation of an open (and perhaps even democratic) society. West shows us scandal is important, but he never quite tells us what it is about scandal that makes it so important. Scandal in China points the way to a better understanding of the importance of scandal. That said, the main message of West's book is that we should delight in the details of scandal and seediness. It would be hard for readers of his book to do anything else.

