
The Diffusion of the Concept of Public Figure in China

Yi Zhao

Mark Richards 

This article considers how and why the legal concept of public figure, which holds public figures to a higher standard that makes it more difficult for them to recover damages when suing for libel, has been diffused in China. The public figure concept developed in the U.S. context as an extension of *New York Times v. Sullivan* from public officials to public figures, reflecting the deeply embedded value of freedom of expression. Despite authoritarianism in China, the concept was adapted in the rulings of some local courts to define the limits of the right to reputation. The diffusion was a response to a stream of litigation against media organizations. In the process of diffusion and adaptation, courts have acted strategically to reshape the public figure concept and refashion its justifications. Given the political constraints on courts in authoritarian China, they have been careful to avoid applying the concept to public officials, and instead have applied the concept to public figures such as celebrities. The diffusion of the concept in China sheds light on theories of legal diffusion more broadly, by illustrating how the process of diffusion can be bottom-up and open-ended, and how it can occur even in a counter-intuitive case in which there are significant political and ideational differences between the two countries.

1. How and Why Did the Concept of Public Figure Diffuse in China?

1.1 Research Question

In the United States, the Supreme Court casts the balance strongly in favor of freedom of expression in libel cases involving public figures, individuals who command substantial, independent public interest either because of their position in society or because they have injected themselves into a public controversy, by requiring them to prove that a challenged statement was made with knowledge of falsity or with reckless disregard for the truth (*Curtis v. Butts* and *AP v. Walker* 1967: 154–155). In China, by contrast, the right to reputation is given a prominent place while freedom of expression is pushed aside. However, the concept of public figure in the U.S. law has been introduced into China and

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Please direct all correspondence to Mark Richards, Department of Political Science, Grand Valley State University, Allendale, MI 49401; e-mail: richardm@gvsu.edu.

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applied in a number of cases, albeit in an altered form that avoids applying the concept to public officials. Our research attempts to explain how and why the concept has diffused in China.

It seems quite unexpected that the legal concept of public figure could travel from the United States to China, because freedom of expression is a deeply embedded value in the United States, a constitutional representative democracy with a common law system where courts have the power of judicial review and a fair amount of judicial independence. China, by contrast, is an authoritarian regime where freedom of expression lacks a supportive legal foundation. It is not the case that China has adopted a global norm or best practice in a top-down manner. Thus, we are left with an intriguing research puzzle: How and why did the concept of public figure diffuse in China? More precisely, how did a legal concept that was originally designed to protect media from lawsuits by public officials in the United States become transformed in China into a concept that Chinese judges applied only to public figures such as celebrities but not public officials?

2. Our Argument: The How and Why of Diffusion in China

Diffusion of law is a process (Elkins and Simmons 2005) of the movement of a legal concept from the originating jurisdiction to the domestic jurisdiction. In our case, this process is diffuse in the sense that it is not a one-to-one transfer. We draw attention to a process of diffusion in the domestic jurisdiction that is characterized by experimentation, adaptation to domestic institutions and the domestic ideational context, a bottom-up rather than top-down pathway, and an open-ended process that will not necessarily result in adoption. In doing so, we address deficiencies in the literature on the diffusion of law, which has not tended to emphasize experimentation, bottom-up pathways, or open-ended processes.

In order to fully understand why the process took place in an authoritarian system, we also have to examine the institutional (Peerenboom 2012) and ideational (Finnemore and Sikkink 1998; Twining 2004) contexts. These contexts also deepen our understanding of how the process of diffusion took place. Looking at the institutional context in China, we find that the authoritarian state, via either the Supreme People's Court or the National People's Congress, has not imposed a top-down legal policy that requires lower courts to follow the public figure concept. Instead, the Supreme People's Court has promoted "judicial innovation," which gives lower courts latitude to experiment with different

legal concepts and methods (Huang and Hao 2015). Judicial innovation has allowed lower courts to experiment with the public figure concept. Judicial innovation is a bottom-up type of inventiveness, as opposed to a top-down policy experiment in a particular jurisdiction mandated by the central government. This process of diffusion was bottom-up also in that it was driven by the practical need of the media to defend against litigation, and it was promoted by lawyers and legal scholars.

As the lower courts have experimented with the concept of public figure, they have been careful to adapt it to the Chinese institutional context by not imposing it on public officials, but instead applying it to cases involving public figures such as celebrities and sports stars. In a system of one-party rule where the courts are subservient to Party committees and legislators at the corresponding levels, the courts have chosen not to adopt a legal concept that would cast the balance of libel law in favor of the media challenging public officials directly.

The process of diffusion of the concept of public figure in China is open-ended. The concept of public figure has not been fully adopted. The Standing Committee of the National People's Congress and the Supreme People's Court have had opportunities to adopt the concept, but both institutions have declined to do so. However, neither institution has scotched the process of diffusion. The Supreme People's Court has facilitated the diffusion of the concept by including it in a published series of select cases and commentaries. Thus, we frequently refer to the "process of diffusion" and "adaptation" rather than "transfer" or "adoption" because that experimental process is still playing out.

Why did the courts take up the concept? First, the practical need of the media to defend against litigation drove the adaptation of the concept of public figure. After the passage in 1986 of the *General Principles of Civil Law* that established the right to reputation, the media became subject to libel litigation brought by citizens, celebrities, businesses, and government officials. This litigation led media lawyers to experiment with the concept of public figure to provide some counterbalance to the right to reputation. Legal scholars promoted the concept through scholarship and conferences. The institutional context of judicial innovation has given lower courts some latitude to experiment with the concept of public figure, but the lower courts have avoided confrontation with public officials by choosing not to apply the concept to them.

Turning to the ideational context, judges in China have not justified the concept of public figure based on a global norm of freedom of expression, but have instead framed it according to the Chinese principle of equality before the law and the collectivist

principle that public figures may need to sacrifice a small amount of reputation in order to serve the greater good of society.

This case is important; not only does it solve the research puzzle of how the concept of public figure has been diffused from a representative democracy to an authoritarian system, but it also makes other unique contributions, addressing aspects of the literature that need to be refined and developed. The case also explains how courts mindful of the authoritarian institutional structure need to adapt foreign concepts to avoid political confrontation with public officials. Furthermore, the case shows that a pathway of diffusion can be bottom-up and open-ended.

The organization of this article follows the organization of the argument. We begin by building on theories about the authoritarian institutional structure in China in order to understand how diffusion took place. We continue to build our theory of diffusion of law, emphasizing adaptation to the domestic ideological and institutional contexts. Then, we set out our methodology, and explain the legal concept of public figure in the United States.

The remainder of the article focuses on the Chinese case study, beginning with a look at how the process of diffusion is bottom-up and open-ended. We then look at the practical need of the media to defend against litigation by counterbalancing the right to reputation regime; we see how that need helps to explain why media organizations, lawyers, and judges diffused the concept in China. Then we turn to the domestic ideational context to see how Chinese judges have avoided a free expression justification for the concept of public figure and have instead turned to reasons that resonate with legal principles in China. We then examine the domestic institutional context, starting with the judicial innovation that allowed lower courts to experiment, and continuing with a look at the political strategy used by lower courts and the Supreme People's Court.

3. Theory

3.1 Institutional Context: Authoritarianism, Judicial Innovation, and the Limits of Diffusion

What makes it possible for bottom-up diffusion to occur in authoritarian China? What are the limits of such diffusion? To tackle these questions, our study engages with and contributes to the scholarship on law and courts in authoritarian regimes, especially on law and courts in China. Recent studies found that the Chinese state cannot always impose its own interpretations of law on society, but sometimes has to compete with, negotiate with,

engage, or otherwise accommodate societal demands in reaching an interpretation or resolution (Lei and Zhou 2015; Su and He 2010). While our study supports these findings, it highlights occasions in which legal changes have been initiated by nonstate actors and carried on by state actors. We find that state and nonstate actors do not always take oppositional stands; with certain issues, such as the issue of public figure, some state and nonstate actors can have similar preferences. Although the concept of public figure was introduced into China by media and legal experts, some judges in the Supreme People's Court have revealed similar preferences supporting the concept in their official publications. The fact that the concept of public figure was brought into the courtroom by lawyers and then adopted by judges suggests that, in addition to becoming a potential "focal point of state-society contention" (Ginsburg and Moustafa 2008: 2), courts in authoritarian regimes can become a point in which society-initiated diffusion enters into the domain of the state. Hence, state and nonstate actors sharing preferences was necessary for the bottom-up diffusion of the public figure concept.

An examination of the diffusion of the public figure concept in China also offers an opportunity to observe the limits of bottom-up diffusion under authoritarian conditions. Institutionally, courts in China are answerable to the People's Congresses, but they are also subject to the control of the Communist Party. There are four levels of courts: basic level, intermediate, higher (provincial), and the Supreme People's Court. Under the authoritarian structure of one-party rule, each level of court is under the corresponding level of Communist Party rule. A court is also in a weak position relative to the government at the same level because the government has much sway in the decisions concerning the court's personnel, finance, and material benefits (Zhao 2011). Given the weakness of the courts relative to the Communist party, legislatures, and governments, the courts have been careful not to extend the concept of public figure to public officials. At the highest level, the Supreme People's Court and the Legislative Affairs Commission, a group of legal experts working under the Standing Committee of the National People's Congress, have chosen a stance of nonadoption, in which they have not formally adopted the concept of public figure but have not scuttled the process of diffusion either. The institutional weakness under authoritarian rule helps to explain why courts have applied the public figure concept only to celebrities but have not extended it to public officials. "Authoritarian regimes seldom, if ever, allow courts to handle politically sensitive cases that threaten the authority of the ruling party" (Peerenboom 2012: 199). Su and He (2010) found that the courts helped accommodate labor

protests in China but would not accommodate protests that were too politically sensitive in the eyes of the party.

Although hierarchy and one-party rule are primary features of the Chinese authoritarian system, there is a somewhat flexible institutional structure that both allows and encourages experimentation and innovation, especially at the local level. The experimentation and innovation promoted in the Chinese judicial system have made it possible for lower courts to begin to diffuse the public figure concept. China's formal institutions in the reform era have been moderated by a "guerrilla policy style" that emphasizes adaptation, innovation, and experimentation (Heilmann and Perry 2011); China's general institutional context provides a space for local policy innovation or tinkering that can lead to the generation of new policy knowledge. Experiments can be tried at the local level and then broadened to the regional or national level. Although it exists alongside more structured, administrative styles of policymaking, this guerrilla policy style promotes adaptation and flexibility.

"Judicial innovation" is consistent with such a style, as reflected in the *Judicial Openness and Judicial Innovation Guide of the Supreme People's Court* (Huang and Hao 2015). Judicial innovation allows lower courts the latitude to experiment with different legal approaches, rules, and mechanisms. Such innovations may eventually be adopted at the national level, but even when they are not adopted, the Supreme People's Court is willing to tolerate continued experimentation. Especially since the late 1990s, the term "judicial innovation" has increasingly grown in popularity (Xu 2004). This bottom-up innovation is distinct from pilot programs designed at the national level and tested in select localities, commonly found in reform efforts in China.

Judicial innovation allows for bottom-up pathways of diffusion. At the lower levels of the court system, we observe experimentation with the concept of public figure, driven by the needs of media organizations to defend their own interests against litigation based on the right to reputation. Once lower-level courts accept local cases, the controversies have moved from a social to a legal dispute; the case now enters the realm of the state. At this point, social actors, citizens, and experts may begin to discuss these cases, and legal concepts can even move to the national level. Our discussion of the case will elaborate on the interaction among the factors of the needs of parties such as the media, and the ideational and institutional contexts.

Our study of the bottom-up diffusion process differs from studies that focus on top-down pathways of policy transfer and diffusion. Studies of adoptions of global best practices and global legal scripts by high-level government institutions look at different

pathways of diffusion than those tracked in our case study. For instance, Carruthers and Halliday (2006) demonstrated that China experimentally, incrementally, and selectively implemented global bankruptcy norms. Reforms were adopted in part by the State Economic and Trade Commission with the influence of elite Chinese legal experts. Although the implementation of bankruptcy norms case shares elements of experimentation with our case, the pathway of diffusion was primarily top-down rather than bottom-up.

4. Diffusion of a Legal Concept

Diffusion of law is the process of movement of a legal concept from one jurisdiction to another. In our study, the process is voluntary and there is uncoordinated interdependence between the two jurisdictions. This process is diffuse as it is not a one-to-one transfer imposed from the top; the process is bottom-up and also open-ended in that it might not result in adoption. The process of diffusion in the domestic jurisdiction is characterized by experimentation: actors adapt the concept to domestic institutions and the domestic ideational context.

Starting at the most fundamental level, diffusion is a process, or, more precisely, a set of processes, of which there is a wide range (Elkins and Simmons 2005). “Processes of diffusion can vary in respect of originating sources, scale, levels, pathways, objects of diffusion, changes in the objects, agents, degrees of formality, timing, relation to pre-existing law, degree of penetration, and consequences” (Twining 2005: 240). Although diffusion can be coercive, it can also be voluntary (Dolowitz and Marsh 2000). In the voluntary category, Elkins and Simmons (2005) posit that diffusion is characterized by “uncoordinated interdependence” between the two jurisdictions. This definition captures a wide range of types of diffusion. In our case, China and the United States are interdependent only insofar as lawyers, legal scholars, and judges in China are aware of the concept of public figure. Moreover, the interdependence is quite uncoordinated, as we will show by the actors’ adaptation of the concept to domestic ideational and institutional contexts, as well as the bottom-up and open-ended patterns of diffusion.

By contrast to our case, there are examples of diffusion that show a greater degree of interdependence and clusters of diffusion of political and economic liberalization (Simmons et al. 2008) or international norms (Finnemore and Sikkink 1998). In explaining the diffusion in Asia of global legal norms pertaining to bankruptcy, Carruthers and Halliday (2006) emphasized the

role of global legal scripts, which are legal standards that specify how groups of actors interact. These scripts can be promoted by international organizations and advanced by networks of experts as policy solutions to problems like bankruptcy. Unlike Indonesia or South Korea, China asserted greater independence from international financial institutions and international networks of experts, relying more on its own institutions and experts, while taking advice or treating international financial institutions more selectively, experimentally, and incrementally.

The diffusion of the concept of public figure is not part of a diffusion of political liberalization, international norms, or constitutional rights (Goderis and Versteeg 2014). It may be tempting to read the spread of the concept of public figure as an example of the advancement of the international norm or constitutional right of freedom of expression. Under international law and in western democracies such as the United States, the United Kingdom, and Germany, in libel cases personal reputation is balanced against freedom of expression (Krotoszynski 2006). Article 19 of the International Covenant on Civil and Political Rights protects the right to freedom of expression, but expressly allows that right to be restricted if necessary to respect an individual's reputation (Boyle 2010). In the United States, freedom of expression is deeply embedded, and the balance is cast strongly in favor of freedom of expression, especially in cases involving public figures and matters of public concern.

However, a closer look will reveal that Chinese judges have avoided using that norm as a justification and have instead grounded the concept of public figure in Chinese legal principles such as the collective good of society and equality before the law. Unlike global bankruptcy scripts or the rule of law norm (Peerenboom 2012), the Chinese adaptation of the concept of public figure has not been done as a global norm or best practice, nor has it been promoted by international organizations or donors (Gillespie and Nicholson 2012). In addition, unlike the realm of international finance and bankruptcy law, in which there is a greater degree of interdependence among nations, China's treatment of the media is based on domestic ideational and institutional contexts. As Chinese judges have applied the concept of public figure, it has been adapted to these domestic contexts.

We focus on the diffusion of a "legal concept" to emphasize the ideational context of diffusion. The term "legal concept" is broader than a simple case citation or legal doctrine; an object of diffusion could include a wide range of concepts from ideologies to rules to practices (Twining 2004). We use "ideational" to focus on the process of the formation of ideas. The ideational context reveals the persuasive power of the legal concept and how it may be defined

and justified in the recipient jurisdiction. Understanding this context can help us explain why and how a concept would be adapted in another jurisdiction. “Ideational causation” means that norms and ideas can be used as explanations for actions (Finnemore and Sikkink 1998). Thus, we take from the international-norm-diffusion literature the importance of the ideational context, even though we do not argue that Chinese judges used the concept of public figure based on the international norm of freedom of expression.

Instead, we recognize that a domestic jurisdiction is more likely to use a legal concept from another country if it fits with the domestic ideational context or can be adapted to that context. As Morin and Gold (2014) noted in their study of the diffusion of intellectual property law, a foreign legal rule is more likely to be adopted when it resonates with domestic norms.

In order to make a legal concept fit with the domestic ideational context, it may have to be adapted, rather than transplanted intact in a one-to-one manner. A wide range of scholars have stressed the importance of domestic adaptation. Twining (2004: 24) argued that “no serious student of diffusion can assume that what is borrowed, imposed or transported *remains the same*.” Choudhry (2006) and Tushnet (2006) contended that “migration” is an improvement upon the metaphors of “borrowing” or “transplanting” legal ideas. In their model of policy transfer, Dolowitz and Marsh (2000) recognized that domestic contexts affect how policy is transferred. Advocates of legal transfer theory have also recognized that the domestic context is important; Gillespie and Nicholson (2012) emphasized the importance of domestic factors in the law and development context. Peerenboom (2012) explained that domestic factors in China such as the political system or the socialist origins of the legal system can cause the promotion of global norms and best practices regarding the rule of law and legal reform to fall short.

In the process of adaptation to the domestic context, a legal concept may be learned. In their theory of uncoordinated, interdependent processes of policy diffusion, Elkins and Simmons (2005) theorized that learning about another actor’s policy adoption provides information about the advantages and disadvantages of policy adoption, but does not change the conditions of adoption. Learning can be facilitated by networks of experts, such as the network of global bankruptcy experts that provided knowledge and facilitated the adoption of global legal norms and scripts (Carruthers and Halliday 2006). Waldron (2012) argued that the global community of legal experts and judges is analogous to a community of scientific inquiry.

Learning encompasses a judge or scholar looking at foreign law to gain knowledge when domestic law is taking a new

direction. Loveland (1998) contended that with the growing influence of Article 10 of the European Convention on Human Rights on English law due to the adoption of the Human Rights Act of 1998, judges in the United Kingdom would need to shift libel law in the direction of *New York Times v. Sullivan* (1964), and the U.S. jurisprudence would offer decades of experience.

Learning about a foreign approach can entail adaptation. The high courts in Australia and Canada embraced *Sullivan's* value of political participation, but rejected the way in which *Sullivan* balances freedom of expression and right to reputation (Leigh 1998). A judge, scholar, or other legal actor could also consider foreign law and reject it. Sedley (1998: 24–25) made a case for placing “import controls” on the use of the U.S. libel law in the United Kingdom because the media can pose a danger to individual rights.

How does the theory of adaptation to the domestic ideational context relate to our case study? In China, the right to reputation is strongly protected as a component of personal dignity. Our understanding of the ideational context in China must be informed by the historical development of the constitutional protection of dignity and the corresponding constitutional prohibition of libel, both of which have been made justiciable through the development of civil law. Despite the strong Chinese orientation toward right to reputation rather than freedom of expression, the concept of the public figure has resonated in China because it serves the concrete need of the media to counterbalance the right to reputation. However, the legal concept of public figure has become relevant in China not as the specific U.S. legal doctrine, but as a concept that scholars, lawyers, and judges have adapted to the Chinese ideational context by justifying it in terms of the Chinese norm of equality before the law and a collectivist norm which reasons that public figures may need to tolerate a small loss of reputation to serve the greater good of society. Chinese lawyers, legal scholars, and judges have only been able to make the concept of the public figure viable in the Chinese context by avoiding the freedom of expression justification. This is not surprising, as there is no national media law and thus no justiciable right to freedom of expression in China.

In addition to adaptations made on the basis of a domestic ideational context, institutional factors can also play a role (Dolowitz and Marsh 2000; Peerenboom 2012; Twining 2005). In the United States, the concept of public figure developed from the earlier concept of public official, while in China, the public figure concept has been used without application to public officials. The public figure concept has not been applied to public officials, because the courts are under the leadership of the Communist

Party, answerable to the legislators at the corresponding levels, and they do not want to provoke legislators or other public officials. Despite the authoritarian Chinese institutional context, the judicial innovation that has been encouraged in the judicial system has enabled judges to adapt the concept of public figure, illustrating a bottom-up and open-ended pathway of diffusion.

5. Data and Methods

Our methodology, as guided by our theoretical understanding, is focused on understanding the process of diffusion in China, including the pathways and levels of diffusion and the ideational and institutional contexts. Elkins and Simmons (2005) note that it is important to trace out the paths of diffusion even if the systematic analysis of data is not possible. Our case study is not simply a recounting of a sequence of events; understanding ideational and institutional contexts allows us to draw informed inferences (see Bennett and Checkel 2014 on process tracing). Our data sources include scholarly publications and commentaries, formally published cases, draft and adopted legislation, and draft and published judicial interpretations.

In China's civil law system, the most authoritative data come from national-level institutions, so changes to legislation made by the National People's Congress have the most authoritative effect on the development of law, followed by changes to formal judicial interpretations issued by the Supreme People's Court, along with other publications and case commentaries that come from the Court and its judges.

In China, judicial opinions have until recently been infrequently published, are usually brief in length, and are not easily available to the public, thus hindering systematic data analysis. However, the Supreme People's Court offers several types of publications that provide guidance to lower courts. These publications are significant because they allow us to see whether and how the Supreme People's Court is allowing the process of diffusion to play out, and how the thinking of the Supreme People's Court changes over time. Judicial interpretations, which are published by the Court, are one such source, and include formal interpretations of the right to reputation published in 1993 and 1998.

Related are two official collections of cases, commentaries, laws, and judicial interpretations edited by members of the Supreme People's Court. Liang was head of the Civil Division of the Supreme People's Court (Liang et al. 2001). Zhu (2003) was a member of the National People's Congress Standing Committee and former Vice President of the Supreme People's Court. We

examined these collections to see whether freedom of expression was a consideration at any point in deciding right to reputation cases or whether the boundary of right to reputation is in any way defined by freedom of expression.

We searched each volume of *Case Comment of the People's Court* from 1992 to 2017 for right to reputation cases; this publication was issued quarterly by the Supreme People's Court Chinese Institute of Applied Jurisprudence from 1992 until 2015, and has been issued monthly since 2016. Because the Supreme People's Court deemed them important enough to highlight, cases included in this publication are considered to be significant and the commentaries are treated as guides. We identified 60 cases involving the right to reputation in this publication, and 5 of these involved celebrities, officials, or people in the public eye. Of these, two cases, published in 1993 and 1997, did not adopt the public figure concept, but three others, published in 2013, 2016, and 2017 did use the concept.

Between 1987 and 2017, the monthly publication *The Gazette of the Supreme People's Court* published 15 right to reputation cases. Among these, the only case involving a well-known person was published in 1990, which was before the public figure concept was introduced into China.

In addition, we examined various drafts of legislation and judicial interpretations pertaining to right to reputation, media tort reform, and the concept of public figure. Examining draft legislation and judicial interpretations provides insight into the strategic calculations made by experts, legislators, and high-level courts, and helps us see the limits of diffusion of the concept of public figure; if the concept of public figure is introduced in a draft but then left out of the final version, it could show that leaders were contemplating a reform but ultimately chose not to adopt it.

Cases and documents from national level institutions must be supplemented with lower-level sources because, as our theoretical discussion notes, the process of diffusion has been bottom-up, with academics, lawyers, and lower courts helping to diffuse the concept. To help capture these aspects of diffusion, we discuss early academic writings and conferences that introduced the concept of public figure, and then move to illustrative examples of cases. We use cases highlighted not only in official publications (*Case Comment of the People's Court* 1992–2017), but also academic writings (e.g., Wang 2006; Wei and Zhang 2008; Xu 2009; Zhan and Wu 2013). We use these cases to illustrate a range of possible outcomes, such as a lawyer introducing the concept of public figure but a court not discussing it, and a court using the concept of public figure but ruling for or against the public figure.

We also analyzed a book containing a collection of cases involving celebrities that arose in a Shanghai district court. It was edited by Wang (2009), the president of that court. This publication was useful because that court is a popular jurisdiction for right to reputation cases brought by celebrities. Although the commentary in the book favored the concept of public figure and gave some weight to the value of free expression, the concept of public figure was not formally adopted in any of the cases discussed in the book.

Finally, in a few instances, we supplemented academic writings that pointed us to particular cases with news media accounts of those cases or news media interviews with academics about those cases (*China Daily* 2007, 2010; *Southern Weekend* 2002).

In sum, while the data from national-level institutions provide the most authoritative understanding of the status of the law, academic writing and individual case reports help to illustrate the process of diffusion and the range of possible outcomes. However, we cannot make systematic observations on the incidence or likelihood of certain case outcomes.

6. The Public Figure Concept in the United States

New York Times v. Sullivan (1964) set the foundation for modern libel law in the United States. Although states make libel law, state legislation must comply with constitutional requirements. Justice William Brennan made it clear that when it comes to libel cases involving public officials, the Court casts the balance strongly in favor of freedom of expression.

Thus we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. (- *New York Times v. Sullivan* 1964: 270)

The Court established that the plaintiff must meet the actual malice standard. In order to recover damages for libel, the plaintiff must prove that the challenged statement was made with either “knowledge that it was false or with a reckless disregard for whether it was false or not” (*New York Times v. Sullivan* 1964: 280). Three years later, the Court extended the actual malice standard to public figures, as well as public officials, in the consolidated cases *Curtis v. Butts* and *AP v. Walker* (1967); the Court also noted that public figures could prevail upon a showing of highly unreasonable conduct that was an extreme departure from responsible journalistic standards.

The Court grappled with the question of how to treat private figures in *Gertz v. Robert Welch, Inc.* (1974). Justice Lewis Powell clarified that the actual malice standard did not apply to private figures. Private persons do not have ready access media to defend themselves, they are more vulnerable, and they have not voluntarily exposed themselves to increased risk of injury due to defamation. The state has a greater interest in protecting private individuals from injury to reputation. Although *Gertz* dealt with a matter of public concern, the Court discounted the first amendment interests in favor of protecting the reputation of the private individual. The right to reputation or protection of private personality is based on the essential dignity of every human being.

Individuals may also pursue nondefamation torts. In *Hustler Magazine v. Falwell* (1988), the Court held unanimously that a public figure suing for intentional infliction of emotional distress must meet the actual malice standard.

First amendment protection is strongest when lawsuits are brought by public figures. The case law cited in *Sullivan* and progeny, and *Sullivan's* continuing legacy in the area of freedom of expression helps to demonstrate that protection of freedom of expression in the libel context is a deeply embedded value in the United States (Richards 2013). However, it is not the only value. First amendment protection is lower when a private figure brings a lawsuit on a matter of public concern. The scale is tilted heavily in favor of protecting reputation when a private figure sues based on a private matter (*Dun and Bradstreet v. Greenmoss Builders* 1985).

7. Case Study: The Diffusion of the Concept of Public Figure in China

Our case study of the diffusion of the public figure concept begins with an examination of the bottom-up and open-ended pathway of diffusion. We then examine the conditions for the diffusion, including the need of media organizations to defend themselves against litigation resulting from the strong right to reputation regime. We further explore the ideational context and how judges worked to adapt the concept of public figure to justify it in terms of legal principles and norms fitting that context. We then examine how the institutional context shaped the adaptation of the public figure concept.

8. Diffusing the Public Figure Concept: Bottom-Up and Open-Ended

Multiple actors in China, including journalists, experts in media and tort law, lawyers, and judges, have diffused the concept

of public figure through multiple channels. In two senses, the diffusion has been a bottom-up process. First, the process was started by nonstate actors such as legal scholars and then was carried on by state actors such as judges. Second, the effort to diffuse the concept began at the local level and then moved onto the national level. The process of diffusion has been open-ended as it has not resulted in adoption at the national level.

8.1 From Nonstate Actors to State Actors

In 1991, Chen Taizhi, a senior journalist proficient in media law, introduced *Sullivan* in his paper at the first of a series of conferences organized by the China Media Law Research Center in 1991, 1993, and 1996. The paper stressed the importance of the “actual malice” standard in *Sullivan* employed by the U.S. Supreme Court concerning media criticism against public officials (Chen 1991). The conferences were devoted to the legal issues surrounding disputes arising from news reports (Wei and Zhang 2008). In the early 1990s, media law experts Wei (1994) and Sun (1994) discussed the concept of public figure in their books. From the beginning, therefore, the public figure concept was brought in not for purely academic interest but in response to practical issues faced by journalists. For this reason, journalists and experts on media law were among the early disseminators of the term. Legal experts on torts, especially on personality rights, also discussed public figure in the early 1990s. Renmin University law professor Wang Liming (Wang 1994) edited a book titled *New Ideas on Personality Rights* in which he discussed public figure. Torts experts also discussed the concept because of the need of the news media to define the boundary of right to reputation.

Lawyers then brought the concept from academic publications into courtrooms. In 1999, lawyers used public figure to defend *Modern Family* magazine that was sued by Du Chunfang, a former manager of a state-owned enterprise. The lawyers argued that Du was a public figure whose personal interests should yield to the public interests of readers in general. Although in this case the court did not accept this argument, the term public figure was introduced into the courtroom (Chen 2009). Wei and Zhang (2008) collected 20 cases whose judgments mention “public figure” and they found that among the 20 cases, lawyers first employed the concept in 17 of them.

Unlike legal scholars and lawyers, judges are state actors. Judges in the Supreme People’s Court started to discuss the public figure concept in 2001. A book was published in that year, titled *Understanding and Applying the Judicial Interpretations on*

Adjudicating Right to Reputation Cases (Liang et al. 2001). It is one of the books in the series “Supreme People’s Court: Understanding and Applying Judicial Interpretations,” and its editors were judges in the Supreme People’s Court. The authors brought up the public figure concept when discussing defenses but claimed they did not intend to evaluate the concept. However, they did in fact indicate their preferences in the following comment:

We do not evaluate this opinion. On the other hand, the moral character and behaviors of government officials at various levels and candidates for public offices have a great deal to do with public interests, and therefore should be supervised by the public. It is people’s natural tendency to be concerned with the behaviors of other kinds of well-known personages. The media’s reports and comments about these celebrities satisfy people’s desire to know about them and therefore serve the interests of the society. Hence a relatively tolerant attitude should be adopted toward media’s comments on public figures. (Liang et al. 2001: 229)

In the following year, two courts adopted the public figure concept in their rulings. One ruling was issued in August 2002 by a basic-level (lowest level) court in Beijing. Zang Tianshuo, a pop singer, sued two entertainment web sites that had set up a voting scheme for the nation’s “Top Ten Ugly Stars in the Song World.” The web sites used Zang’s photo accompanied with insulting language. Zang was voted in third place among the “ugly stars.” The court recognized that Zang was a public figure but found that the suffering caused by the web sites’ commercial activity exceeded the normal degree that a public figure should endure (Zhan and Wu 2013: 273–274).

In December 2002, a basic-level court in Shanghai also employed the concept of the public figure. This time the ruling favored the media. The plaintiff was Fan Zhiyi, a well-known soccer player in China. The defendant was *Oriental Sports Daily*, a newspaper that had published a series of reports about the suspected involvement of Fan Zhiyi in gambling on a soccer game. The newspaper also published two other items: an interview with Fan Zhiyi’s father, who denied the suspected involvement of his son, and a statement made by Fan Zhiyi himself. Later, the newspaper published an editorial titled “The Facts are Clear Now: Fan Zhiyi Was Not Involved in Ballgame Gambling.” Based on the original report about his possible involvement in gambling, Fan Zhiyi demanded that the defendant apologize and that he be awarded damages in the amount of RMB 50,000 (US\$6250). The Shanghai court ruled in favor of the newspaper:

Even though the plaintiff believes that his reputation is damaged because the report mentioned his name explicitly as a suspect involved in ballgame gambling, he as a public figure should show tolerance and understanding for the media that may have caused minor damages during the process of legitimately exercising media supervision. (Shanghai Jing'an District People's Court 2002)

Later, in 2009, Guangzhou Intermediate People's Court broadened the public figure concept to include voluntary public figure. The case was brought by Yang Lijuan, an obsessive fan of a Hong Kong singer. In order to pay the expenses incurred by Yang's travel following the singer, Yang's father sold his apartment and one of his kidneys. When the father eventually killed himself in March 2007 during one such trip, the incident became a representation of a social issue of public concern. Among the media reports, one that *Southern Weekend* carried in April contained more details about the private life of the Yang family. Yang Lijuan sued *Southern Weekend* in 2008. After she lost the suit, she appealed. As Yang made herself available to multiple media outlets and voluntarily exposed her private life, the court, in the appellate decision, considered her a voluntary public figure. When such a public figure's privacy is associated with an incident of public concern, the court reasoned, it becomes a matter of public interest, and so Yang, as a public figure, should tolerate the minor harm that such a report incurs (*Southern Weekend* 2009; Zhan and Wu 2013: 281–282).

The use of public figure in court rulings is significant, because courts in China are generally expected to follow the national law or the judicial interpretations issued by the Supreme People's Court rather than follow the lead of nonstate actors. The courts that have employed the public figure concept are all local ones, but efforts have also been made to introduce the concept at higher levels, although those efforts have been met with resistance at the national level.

8.2 From the Local Level to the National Level

The earliest effort to introduce the public figure concept at the national level was made in 2002 when the Standing Committee of the National People's Congress decided to draft China's Civil Code. In January 2002, the Legislative Affairs Commission, a group of legal experts working for the Standing Committee, called upon six scholars to take charge of drafting the six parts of the Civil Code. At the same time, the Legislative Affairs Commission started to work on their in-house draft of the Civil Code. In April, the scholars finished their drafts in which the concept of

public figure was employed to balance the right of privacy; that is, the disclosure of a public figure's private information by news media was not considered an infringement so far as the purpose was for the public interest or for supervision. The Legislative Affairs Commission then worked on the Civil Code "draft for deliberation" through a comparative analysis of the in-house and the scholars' drafts. In December 2002, the Commission submitted this draft to the Standing Committee (Xinhuanet 2002). However, the submitted draft did not mention the concept of public figure (Xiao 2004). It should be noted that the Standing Committee only deliberated without voting on this draft. Nonetheless, we observe a reluctance to formally adopt the public figure concept through national-level legislation.

Three years later, another effort was made to employ public figure at the national level. In 2005, the All-China Journalists' Association entrusted Xu Xun, a media law expert, with the task of drafting a new judicial interpretation on media liabilities and exceptions related to right to reputation and privacy. The Journalists' Association, a quasi-nongovernmental organization, hoped that the draft would be considered by the Supreme People's Court. In 2006, Xu completed the "Proposed Draft of a New Judicial Interpretation on News Media Tort Related to Right to Reputation and Right of Privacy." On the public figure concept, the draft stated: "When a people's court adjudicates a right to reputation case brought by a public figure, it does not support a tort claim made by a public figure so far as the case concerns public interests and the defendant does not have actual malice" (Xu 2009). The Court replied that it had no plan to issue a new interpretation at that time (Xu 2009). This result was not surprising, as the issue of a judicial interpretation does require a plan and a complex process. In addition, given the Legislative Affairs Commission's stance of non-adoption, it was unlikely that the Supreme People's Court would take the lead in incorporating public figure into an official interpretation that all courts in the country have to apply.

Nevertheless, the Supreme People's Court did not discourage the diffusion of the public figure concept. On the contrary, it cautiously facilitated the diffusion. Since 2013, the Supreme People's Court endorsed the public figure concept implicitly by including three lower-court cases that include the public figure concept in its *Case Comment of the People's Court*. Edited by the Supreme People's Court Chinese Institute of Applied Jurisprudence, *Case Comment of the People's Court* publishes selected cases and supplements these cases with commentaries. The cases and the commentaries are intended to provide guidance to all the courts in China. In none of the three cases, however, was the concept used to protect a speaker, nor did any of the cases involve a public official.

The first case involved Zhou Hongyi, who headed a software company and had crowds of followers on the internet. Zhou posted on social media platforms several dozen messages about the antivirus software company Kingsoft. Kingsoft sued Zhou for fabricating information which cost Kingsoft considerably. The court in 2011 found in favor of Kingsoft, and demanded that Zhou delete the highly misleading information that he had posted. Although the public figure concept is applied in the United States to protect speakers from suits brought by public figures, in this case the court considered the speaker himself to be a public figure, and it defined a higher level of responsibility for him, as a public figure, to not fabricate information or make misleading statements. Thus, the concept was strangely used to limit the speaker. However, even in the United States, when fabricated information is used to harm reputation, the speaker is more likely to lose the case. Despite the court ruling against the speaker, the case commentary shows that the Supreme People's Court is working to promote the concept, as the commentary traces the origin of the public figure concept to *Sullivan*, mentions that quite a few court cases in China have used the concept to limit the protection of public figures' reputations, and discussed the relationship between public figures and public interests (Supreme People's Court Chinese Institute of Applied Jurisprudence 2013: 143–155).

The second case concerns the question of when the right to reputation of public figures should be limited. Zhang Mi, a well-known singer, sued three defendants for falsely portraying her as a swindler and making up numerous stories about her “criminal” activities, causing her great losses both financially and psychologically. The court ruling stated that a public figure's level of tolerance of rumors and opinions “should be associated with the identity as a public figure and the concrete activities related to that identity.” The court ruled in favor of Zhang Mi, but this was because the dispute was not related to Zhang's identity as a public figure and the loss caused by the fabricated stories was beyond Zhang's own ability to recover (Supreme People's Court Chinese Institute of Applied Jurisprudence 2016: 97). Although the court did not apply the public figure concept to protect the media, it still worked to promote the concept by emphasizing that public figures should have greater tolerance; the problem for the media in this particular case was that the stories were fabricated and unrelated to Zhang's public identity.

In the third case, published in 2017, both the plaintiff and the defendant were public figures. Fang Shimin, a popular writer, sued Cui Yongyuan, a former TV anchor, at a Beijing basic-level court for personal attacks and character assassination during their

debates about genetically modified food. Cui Yongyuan counterclaimed that it was Fang Shimin who maliciously provoked the disturbance with defamation and insults. The court found each party infringed on the other's right to reputation. When both parties appealed, the intermediate court affirmed the first-instance judgment. However, the second-instance ruling employed the public figure concept; the case commentary treated it as a principle to "reduce the protection of public figures' personality interests" and remarked that "although it has not been written explicitly into the law of the country, in the area of judicial practice this principle has been commonly accepted and widely applied" (Supreme People's Court Chinese Institute of Applied Jurisprudence 2017: 141). In this instance, the case was complicated by the fact that two speakers were attacking each other, and also by the court's ruling that the speakers were also public figures. Nonetheless, we again observe that the commentary promotes the public figure concept even though the ruling does not protect the speakers. The Supreme People's Court appears to be attempting to promote the concept while proceeding very cautiously so as to not give an impression that speakers have free reign.

9. Conditions for Diffusion

Why did various actors in China, from nonstate to state actors, employ the public figure concept or attempt to incorporate it into law? Since there is no media law in China, these actors did so to explore the ways in which media could be defended against legal action. As noted previously, the public figure concept was introduced in 1991 at a conference organized in response to litigation against the media. The rise of litigation was mainly a result of the right to reputation established in 1986. A 2009 study analyzed a sample of 800 cases in which media were sued from 1985 through 2009 and found that 95 percent of them were right to reputation cases. The data show a trend of increased litigation against media. There was an average of 1.5 lawsuits in 1985 and 1986, while during the next decade, from 1987 to 1996, the yearly average increased to 13.8. From 1997 to 2008, the last complete year of data collection, the yearly average was 53.6 (Zhu, Huizhen, and Research Group 2009). The purpose of introducing the public figure concept was mainly to define the limit of China's right to reputation. Why, then, does China have a strong right to reputation regime in the first place?

During the Cultural Revolution (1966–1976), many Chinese citizens suffered from humiliation and the loss of personal dignity. After the Cultural Revolution, the concept of citizens' personal

dignity was recognized in the constitution of 1982 (still in force). Article 38 of the constitution states, “the personal dignity of citizens of the People’s Republic of China is inviolable” and “insult, libel, false charge or frame-up directed against citizens by any means is prohibited.” None of the previous three versions of the constitution (1954, 1975, or 1978) had an article similar to this. The constitutional recognition of personal dignity was a response to the widespread, brutal attacks on the personal dignity of countless Chinese citizens, including public officials, during the Cultural Revolution (Cai 2004).

In China, however, whether a right listed in the constitution can be meaningfully exercised and enforced depends, to a large extent, on whether there are specific laws that make the right justiciable. For example, personal dignity and freedom of expression are both written into the Chinese constitution, but only personal dignity became justiciable. Personal dignity became a justiciable right with the establishment of personality rights by the *General Principles of Civil Law* in 1986. The right to reputation is one of the personality rights and has secured an important place in China’s judicial practice as well as legal theory. Freedom of expression, however, lacks the support of specific statutes that directly define and address it.

After the *General Principles of Civil Law* established the right to reputation, the courts at various levels accepted an increasing number of reputation cases. In 1993, the Supreme People’s Court issued a document titled *Answers to Certain Questions regarding the Adjudication of Right to Reputation Cases* (Supreme People’s Court 1993), which offered a comprehensive judicial interpretation of the right to reputation. As a supplement, the Supreme People’s Court (1998) issued another comprehensive interpretation: *Explanations about Certain Questions regarding the Adjudication of Right to Reputation Cases*. The publicized cases as well as the judicial interpretations have given strong support to the protection of the right to reputation.

Although personality rights in general and the right to reputation in particular have received considerable emphasis, the boundary of the right to reputation is defined mostly by whether the content of a statement is sufficiently true, sufficiently accurate, and whether insulting expressions have been included in a statement. Freedom of expression has not specifically been cited as a factor to define the boundary of the right to reputation. As a result, the right to reputation has developed into a strong regime which, in turn, has further limited the space for expression.

It is also the case, however, that even as the right to reputation has facilitated litigation against the media, it has also shaped the ways in which legal experts and lawyers for the media have

constructed their arguments in order to create some space for expression and to justify certain limitations of the right to reputation. This has created the condition for the diffusion of the public figure concept.

In building their argument for limiting the right to reputation, media law experts have highlighted several instances in which public officials attempted to use the law to silence criticism. In 2002, Zhu Hengkuan, the head of Lankao County, filed a criminal defamation action that aroused nationwide concerns about the role that power plays in the justice system. In May 1998 a violent conflict flared up in the county, which resulted in two deaths. Although Zhu sent over a hundred law enforcement officers to the scene in a timely manner, the family of one of the dead villagers believed that the tragedy was caused by Zhu's failure to order the police to put a stop to the fighting. From 1998 to 2002, the family appealed many times to higher-level authorities, who consequently investigated Zhu several times. Zhu sued the family for defamation and claimed that the investigations delayed his promotion. Zhu argued that this was a case of a citizen suing a fellow citizen rather than an official suing a citizen, and he backed up his argument by citing the principle that "every citizen is equal before the law" (*Southern Weekend* 2002). Zhu later withdrew his complaint. Later, there were several other widely published incidents involving local officials who used their power to silence criticism (*China Daily* 2007, 2010).

Although these incidents were resolved under social pressure outside the courts, media experts saw them as reaffirming the need to define the limit of the right to reputation, and they sparked the attempts of scholars to incorporate public figure into law. Renowned law professor Jiang Ping particularly mentioned the possible inclusion of the public figure concept in the Civil Code draft when he was interviewed about the Zhu Hengkuan case (*Southern Weekend* 2002). A group of legal scholars even organized a special conference on citizens' right to criticize. A news story about the conference carried by *China Youth Daily* included an explanation of the public figure concept and the *Sullivan* case (*China Youth Daily* 2009), and this news story was reposted on the news web site of the National People's Congress (npc.people.com.cn 2009).

10. Contexts for Diffusion

10.1 Ideational Context: Searching for Justifications for Diffusion

Incorporating a foreign concept into domestic law calls for sufficient justification that fits the ideational context of the

recipient country. When Chinese judges use the public figure concept, they need to fashion reasons that can be accepted by the regime and that resonate with norms that are part of the Chinese legal system. There are three possible justifications available to these Chinese judges: freedom of expression itself has intrinsic value; public figures should tolerate the slight loss of reputation for the greater good of society; and the asymmetry of power must be addressed to achieve equality before the law.

The intrinsic value of freedom of expression was discussed in the Zhou Hongyi ruling: “Individual blogs provide a platform for the realization of freedom of expression guaranteed by the constitution. ... Especially when the content involves criticism, the blogs usually have the positive effect of supervision by media” (Supreme People’s Court Chinese Institute of Applied Jurisprudence 2013: 148). However, a statement like this has not been used as justification for adopting the public figure concept. Given the regime’s interest in limiting expression, using freedom of expression as a justification for adopting a borrowed concept may incur the regime’s negative reaction, resulting in the rejection of the concept. Therefore, although freedom of expression appeared in this ruling and also has found acceptance among judges who publish commentaries on right to reputation cases (Wang 2009), no judge has used this line of argument in a ruling as the justification for limiting the right to reputation of public figures.

The second justification—that a public figure should tolerate the small loss of reputation for the greater good of society—is the one that Chinese judges most commonly offer. This justification is consistent with the traditional collectivist value endorsed by the Chinese state, which advocates the priority of collective and social interest over individual interest. When the courts indicated an expectation that public figures should be tolerant, the implication was not that they were treating public figures unequally, but only that they expected public figures to make small sacrifices to serve the communal and public interest. In this way, public figures are treated with honor and are expected to bear themselves in a noble way.

The third justification is that the concept of public figure can be used to promote equality before the law. From 1978 to 1980 there was in China a nationwide debate on the meaning of “equality before the law” (Information and Material Department, Institute of Law, Chinese Academy of Social Sciences 1981) and in later years this idea has been cited by different people to support a variety of legal arguments. Some public figures have argued that public and private figures should be treated in the same way because they should be equal before the law. However, equality

before the law can also be used by courts to justify the public figure concept, because the application of the concept can remedy an unequal power relationship between public and private figures. As public figures have greater access to media than ordinary people, it could be argued, the law should reestablish balance to achieve equality before the law. This line of argument has not been commonly used, but the ruling in the Zhou Hongyi case recognized the inequality between public and private figures in terms of their influence and ability to protect their reputation. Although Zhou's lawyer argued that treating public and private figures differently violates the principle of equality before the law, the case commentary published in the *Case Comment of the People's Court* countered that civil law in modern times has shifted its emphasis from formal equality to substantive equality and that treating different people differently actually conforms to reality and the spirit of law (Supreme People's Court Chinese Institute of Applied Jurisprudence 2013: 151). By redefining the meaning of equality before the law, the argument used this principle as a justification for adopting the public figure concept. Although the commentary on this case is not part of the formal ruling, it may encourage other judges to adopt the same line of argument in future rulings.

10.2 Institutional Context: Authoritarianism, Political Strategy, and Judicial Innovation

Authoritarian regimes have a defining characteristic: They place significant limits on political freedoms including the freedom of expression. Authoritarian rule presents a formidable difficulty for the diffusion of a doctrine that allows criticism of public figures in a regime that gives considerable advantages to political officials; judicial adaptation of the concept may challenge the limits placed on freedom of expression, so judges may find it difficult to diffuse the concept into the national law or beyond celebrities.

Precisely because the public figure concept has the potential to challenge the political regime, we must ask why the Supreme People's Court has not put an end to its spread. Indeed, even though the concept has not been adopted at a national level, the Supreme People's Court has encouraged a belief that it is part of the Chinese legal system in the only way they could: by discussing the concept in its publication (Liang, Yang, and Yang 2001) and by commenting on three model cases in its *Case Comment of the People's Court* (Supreme People's Court Chinese Institute of Applied Jurisprudence 2013, 2016, 2017). Although the Supreme People's Court has not vigorously promoted the public figure concept, neither has it scotched the diffusion of the concept, and in fact it has

actually taken part in the diffusion. When courts in authoritarian regimes want to move toward rights protection, a sufficient sense of political strategy is necessary. “A sense of when and where and how more or less incrementally a particular court can move to restrain a regime without triggering damaging or devastating reprisal is essential even in liberal democracies and all the more so in authoritarian states” (Shapiro 2008: 332). As the decisions of the Supreme People’s Court incur stronger repercussions than those made by lower courts, the Court has moved slowly to avoid political repercussions.

Under authoritarian constraints, we should also investigate why some lower courts were able to use the public figure concept at all. What makes it possible for such a concept—which has not been adopted in statutes or regulations—to continue to show up in court rulings?

First, when local courts adopted the concept, they acted strategically to minimize potential negative consequences. When the concept was employed for the first time in the case of Fan Zhiyi, the court applied the concept to a star athlete instead of a public official, but did not define the concept as including only celebrities. Therefore, the case did not bring retaliation on the judges. The case of Fan Zhiyi was hailed by Wang Liming, the President of China Civil Law Society, as a “landmark case” (Wang 2006: 1–2), but the court ruling introduced the concept as if it was a natural thing without any uniqueness or significance. The ruling stated that “the plaintiff is a star player well known in China, and so he is naturally a public figure” (Shanghai Jing’an District People’s Court 2002). The courts acted strategically in another way in the cases of Zhou Hongyi, Zhang Mi, and Fang Shimin and Cui Yongyuan. These cases did not involve public officials, and each of the rulings employed the public figure concept but avoided political controversy by defending the right to reputation instead of limiting it.

Second, in recent decades lower courts in China have been encouraged by higher-level ones to engage in “judicial innovation,” to explore new ways, new rules, and new mechanisms to deal with the difficulties in their adjudication (Huang and Hao 2015). Employing public figure in rulings was one such innovation. Equally important is the ability of the judicial institutions in China to accommodate new elements, especially elements that are inconsistent or incompatible with other elements of the system. It was thus not considered an issue when some courts adopted public figure while others did not. In short, the political strategy of the courts in China and the emphasis on judicial innovation has kept the diffusion of public figure alive under authoritarian constraints.

11. Conclusions

This study explains that under authoritarian rule, which places significant restriction on freedom of expression, a legal concept associated with freedom of expression can be adapted by lawyers and judges. The lack of freedom of expression to balance the right to reputation created the demand for the diffusion of the public figure concept. The efforts of various nonstate actors to spread the concept reflect such demands. The political strategy exercised by the courts has been essential to bringing the public figure into court rulings and to keeping it alive. Indeed, judges have acted cautiously. They introduced public figure as if it was a natural and insignificant concept; they applied the concept to celebrities rather than public officials but did not define the concept as including only celebrities; they recognized the value of freedom of expression but avoided using it to justify the adoption of the public figure concept; they sometimes let the public figure plaintiff win the case but insisted that public figures should be treated differently from private figures.

This study also reveals how lawyers and judges in the Chinese authoritarian system have been able to adapt the concept of public figure from a constitutional representative western democracy with judicial review and judicial independence. The case illustrates that diffusion can be bottom-up and open-ended, and it shows the importance of scholars, lawyers, and judges adapting the concept to the institutional and ideational contexts in the process of diffusion. The public figure concept was introduced in China in the early 1990s as a response to the rise of litigation against newspapers and magazines. In the twenty-first century, different actors have attempted to have the concept incorporated into court rulings, judicial interpretations, and national legislation. Although some of these efforts did not prevail, the concept continues to show up in court rulings and even with an exploration of a new argument for its adoption.

Our findings highlight the importance of contextual factors for the diffusion of a legal concept. Historically, China developed a strong right to reputation regime, which in turn created the need and conditions for the effort to incorporate the public figure concept into Chinese law. Furthermore, the necessity to search for justifications that are acceptable and persuasive brings the ideational context again to the fore. Thus, context, as well as the conditions and situations created by context, are not just the background against which diffusion occurs but are the very grounds on which a particular concept is diffused.

Furthermore, our case shows that the institutional context of Chinese judicial innovation is important in the diffusion of the public figure concept. It encourages innovations that address

problems that show up in individual cases and promotes bottom-up experimentation. Indeed, the bottom-up process of diffusion of public figure is different from those pilot programs that are designed at the top and implemented at chosen experimental sites. The adoption of public figure in court rulings started in local courts without instructions from the top. Judicial innovation, moreover, allows inconsistent and even incompatible components to coexist; some courts have adopted the public figure concept while others have not. Although the Supreme People's Court has not adopted the public figure concept in its formal interpretation, it has allowed the open-ended process of diffusion to evolve and has even encouraged the diffusion by publishing cases that have employed that concept.

In short, the case of China helps us understand situations in which diffusion is a bottom-up and open-ended process, thereby refining our understanding of diffusion theory. The case is counter intuitive, given the numerous political and ideational differences in the United States and China, but it shows that a legal concept can be learned and adapted in an authoritarian system, although the meaning of that concept and the justifications for it may be significantly redefined.

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Yi Zhao is an Associate Professor in the Department of Political Science at Grand Valley State University. His research is on Chinese politics. His interests include the relations between political institutions and behavior, the role of ideas and rhetoric in political action, as well as China's administrative litigation that involves legal action taken by citizens against the government. His work has been published in academic journals such as *American Review of China Studies* and *ETC: A Review of General Semantics*.

Mark Richards is a Professor in the Department of Political Science at Grand Valley State University. He is the author of *The Politics of Freedom of Expression: The Decisions of the Supreme Court of the United States* (Palgrave Macmillan). His research encompasses freedom of expression in an international human rights context, Supreme Court decision making, and environmental policy. His work has appeared in *American Political Science Review*, *Environmental Policy and Governance*, and *Journal of Politics*, among other journals.