

## **Healthy mind, healthy body: SARS, HIV/AIDS and the justifiability of restrictions on media freedom in the People's Republic of China**

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The various forms of media in the People's Republic of China are subject to restrictions achieved both through formal laws and regulation and through informal means. While much has been written in a normative context about the extent of human rights protections in China, this article seeks to engage with the debate via a focus on the intersection between media freedom and public health. In particular, through a close examination of the role of media outlets in dealing with the contemporary SARS and HIV/AIDS epidemics in China, the article will initially analyse how the government's system of media content control hampers strategies to effectively respond to the spread of infectious diseases. It will then assess whether the media restrictions in question can be justified nonetheless, taking into account China's history and traditions, level of economic development and political institutions. Ultimately, the article argues that in the way they exacerbate the damage wrought by public health crises, restrictions on media in China cannot be justified by the government's implicitly utilitarian approach to human rights in this context.

### **Introduction**

On 21 February 2003, Dr Liu Jianlun, a 64-year-old physician and medical professor from Guangdong Province in the People's Republic of China (PRC), checked into the Metropole Hotel in Hong Kong. Dr Liu's stay on the ninth floor unwittingly seeded a global epidemic of a disease entirely new to human populations (Fidler 2004, 1). From the appearance of Severe Acute Respiratory Syndrome (SARS) in November 2002, through 5 July 2003, when the World Health Organization (WHO) declared the outbreak contained (Beveridge 2003), the disease killed 812 people and infected more than 8400 people worldwide (WHO 2003). The first SARS case is thought to have occurred in Foshan, a city southwest of Guangzhou in Guangdong Province. Provincial health authorities and the Ministry of Health in Beijing were aware of, and had investigated, the outbreak by the end of January 2003 (Huang 2003, 65–66). Yet, after months of suppression and denial, it was not until April of that year that PRC government officials

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and newspapers publicly declared SARS to be a serious problem and conceded the authorities' lack of effectiveness in dealing with it (*People's Daily* 2003). On 4 April 2003, the director of China's Center for Disease Control stated abjectly — though in a remark not much reported domestically — that 'we ... apologise to everyone ... for failing to inform the public' (quoted in Lawrence 2003c, 26; Kahn 2003b, 4, 7).

Article 35 of the Constitution of the People's Republic of China (1982) stipulates that freedom of expression and freedom of the press are protected. In substance, however, these protections are little more than symbolic (Lubman 1991, 324–28). Despite a guiding ideology that has continued to evolve from its Marxist-Leninist origins (while retaining a rhetorical commitment to socialism),<sup>1</sup> the Chinese Communist Party (CCP) has always sought to shape the way in which the people of China perceive their political and social world (Keller 2003, 89), predominantly through a tightly controlled media (Schoenhals 1992) — its 'throat and tongue'.<sup>2</sup> In the initial phase of the SARS crisis, this restriction on media freedom, achieved through both formal laws and regulation and through informal means, posed a significant threat to public health in the PRC, exacerbating the spread of what could potentially have been a far more devastating epidemic. Yet tellingly, the SARS outbreak represented the PRC's second major mishandling of information concerning an infectious disease in recent years. A UNAIDS assessment of the HIV/AIDS epidemic in China conducted at the end of 2001 argued that China was 'on the verge of a catastrophe that could result in unimaginable human suffering, economic loss and social devastation' (UNAIDS 2002, 7), observing that '[c]ensorship and restrictions on information concerning HIV/AIDS severely hinders an effective response' (70).

Taken together, closer examination of these two examples reveals the significant impediment China's system of media control and censorship represents to any coherent, broad-based effort to address public health issues — whether sudden or insidious. In arguing that restrictions on media freedom of expression in the PRC are accordingly an unjustifiable threat to public health, this article will initially consider

1 Hu Jintao's 'Scientific Development Concept' is the current official guiding socioeconomic ideology of the Chinese Communist Party, succeeding Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory and the Three Represents. Given the effects of China's rapid economic development instigated during the Deng era, the presence of theoretical coherence across these ideologies has been questioned (see, for example, Wu 2005). Indeed, although China is often portrayed as a country dominated by the rigid ideology of Leninist socialism, Chinese leaders have been resolutely pragmatic, as captured in Deng Xiaoping's homey advice that the colour of the cat matters not as long as it captures mice (Peerenboom 2007, 290).

2 The term 'throat and tongue' is the CCP's official metaphor for the press (Hood 1994, 38).

the role played by such restraints in contributing to the SARS and HIV/AIDS crises, before assessing the subsequent ramifications in light of broader arguments concerning the appropriateness of applying liberal-democratic expectations of civil and political freedoms to a culturally, ideologically and demographically distinct developing nation.

### **Media control and restraint in the PRC**

In the most recent Worldwide Press Freedom Index, compiled annually by Reporters sans Frontières, the PRC ranked 163rd out of 168 countries listed (2006). However, the government's ability to maintain such a tight rein on the nature of media content is difficult to attribute to a specific process of control. In most jurisdictions, the term 'media law' is used to refer to more than laws in the strict sense: it stretches to secondary regulations and administrative practices in the implementation of laws and regulations. The PRC presents a case where formal laws only play a limited role. Media regulation in China relies very heavily on political-managerialism, secondary regulations, ad hoc notices and administrative practice. The nation's media operate subject to what has been described as a 'Byzantine maze' of formal and informal regulations that inform, and in some cases dictate, how and what the media report (Fu and Cullen 1996, 16). This system has traditionally relied on a combination of policy statements and instructions from CCP propaganda authorities, a system of editorial responsibility for content, and post-publication sanctions for those who violate explicit or implicit limits (Liebman 2005, 41). The following represents an overview of key elements salient to any subsequent analysis of media responses in the context of SARS and HIV/AIDS.

### ***Actors within the regulatory framework***

The 'Party Principle' underpins China's media regulatory regime, requiring that all media are subject to the principles and directives of the CCP (Keller 2003, 89). The Central Propaganda Department (CPD) of the CCP is the most important institution for monitoring media personnel and controlling the content of television, radio, newspapers, magazines and film.<sup>3</sup> This body sets media policies for the entire

3 The Central Organization Department selects the leadership of the CPD with guidance from the 'Thought Work Small Group' ('thought work' is the term used in China to describe the task of shaping the views of the public) under the direct leadership of CCP Chairman and PRC President Hu Jintao and the Politburo Standing Committee member responsible for the media, Li Changchun (Esarey 2006, 3-4). In 1998, the CPD decided to change its English name to the Central Publicity Department in order to escape any negative connotations of the word 'propaganda'. The Chinese title did not change and hence this article retains the most accurate translation (Keller 2003, 97).

country and supervises their implementation by national, regional and local Party and state media authorities (Keller 2003, 97). It also oversees the work of key national media organisations such as the *People's Daily* and Central China Television (CCTV). At each level of government, the CPD plays a major role in the monitoring of editors and journalists through a national registration system and mandatory participation in ideological training sessions (Esarey 2006, 4).<sup>4</sup> With assistance from local branches, the CPD determines national standards of acceptable news content, outlined in 'propaganda circulars'<sup>5</sup> containing no expiration date.<sup>6</sup> These indicate news stories that should not appear in reports and provide guidance for treatment of certain stories.<sup>7</sup> It is common practice for local branches to adapt the content of circulars for 'local conditions', resulting in successive layers of bureaucracy creating additional restrictions (Esarey 2006, 4).

Across all state media, oversight is exercised by two key bodies, the State Administration of Radio, Film and Television<sup>8</sup> (SARFT) and the General Administration of Press and Publications<sup>9</sup> (GAPP). While both wield legal authority through the State Council, their broader clout stems from their relationship to the CPD, which acts in a supervisory role (Keller 2003, 102). SARFT balances administration and supervision of China's broadcast media with direct operational control of national-level media entities such as CCTV<sup>10</sup> and China National Radio

4 In 2003, the CPD, along with the General Administration of Press and Publications (GAPP) and the State Administration of Radio, Film and Television (SARFT), required Chinese journalists to attend nearly 50 hours of training on Marxism, the role of CCP leadership in the media, copyright law, libel law, national security law, regulations governing news content and journalistic ethics prior to renewing press passes (the identification journalists display when on assignment). Additional political indoctrination occurs at periodic training retreats to study party political ideology and through attendance at regional or national meetings stressing the important role of the news media in thought work (Esarey 2006, 4).

5 The content of propaganda circulars is drawn from what are informally called 'wind blowing meetings', which are attended by top leaders, including those in the CPD. The CPD synthesises the essence of each meeting and adds instructions for handling sensitive topics or specific news stories (Esarey 2006, 4).

6 Thus, over time, these represent a body of instructions for specific treatment of controversial topics that differs for media in different administrative districts (Esarey 2006, 5).

7 Including potentially requiring media to use reports by national media organisations such as Xinhua News Agency, *People's Daily* or CCTV.

8 Until 1998, the Ministry of Radio, Film and Television (Redl and Simons 2002, 18–19).

9 Until 2001, the State Administration of Press and Publications, which was a lower-level body reporting to the State Council (Keller 2003, 102).

10 This is a dual supervision role shared with the CPD — the Chairman of CCTV is also a Vice Minister of SARFT.

(CNR) (Yan 2000, 512–13). Given television is considered by China's leadership to have the most far-reaching influence and broadest audience base,<sup>11</sup> SARFT's direction of CCTV news broadcasts, which are subject to both previews and post-broadcast reviews and must be simultaneously relayed by stations at all levels (Zhang 2007a, 537; Fu and Cullen 1996, 79), delivers considerable control over nationwide coverage. This dual role also includes issuing detailed departmental rules, delivering CCP and State Council directives, approving major media activities, training personnel and exercising editorial control of important news items and programs (Chen 2006, 204). GAPP is the principal state authority responsible for licensing newspapers, periodicals and books (Keller 2003, 102) and drafting and enforcing detailed press regulations (Chen 2006, 204; Yan 2000, 505–06). While GAPP has no authority over central Party newspapers, its ability to suspend or revoke licences at the provincial and county level is used as a disciplinary instrument in the aid of content control (Esarey 2007). The Ministry of Information Industry is largely responsible for the technical development of the internet and other emerging technologies such as SMS messaging (including surveillance),<sup>12</sup> though cedes content supervision to the CPD (Chen 2006, 204; Redl and Simons 2002, 18–19).

The choice of news sources in journalistic reports directly determines whose voices are heard through the news media (Nip 2005, 28). While not a regulatory body, the Xinhua News Agency (Xinhua) plays a central role in disseminating acceptable news content across all media platforms. Owing to its dual leadership by both the Party and the government, Xinhua is regarded as a link between the government, the CCP and the people. Being a department under the State Council, its daily operations also

11 Emphasised by Premier Wen Jiabao in 2003. According to him, television is the medium that has the most far-reaching influence and the broadest audience base in China. Therefore, government at different levels needs to support the development of television and capitalise on its important role in propagating government policies and shaping public opinions (Chen 2006, 210; see also Zhao and Wusan 2007, 306).

12 Surveillance is not limited to websites; it is also active in chat rooms and Usenet groups, where the government allows access for only computer and science-related groups. On some occasions the government has taken the drastic measure of intentionally stalling internet traffic to hamper trans-border-dissident online information exchange. Strict enforcement is applied when regulations are breached through lax ISP compliance, with websites shutdown, webmasters and internet users put on trial, and some even jailed. Indeed, by 2006 government officials had closed as many as 17,000 cyber cafes, which were operating without suitable filtering software (Kertcher and Margalit 2006).

rely heavily on instructions from various levels of the Party bureaucracy (Chen 2006, 203). The agency's first priority is to handle news produced by the CPD. Various ministries, particularly the foreign affairs ministry, can also provide Xinhua with content (Reporters Without Borders 2005, 5). Government licensing restrictions are designed to ensure that all politically and economically significant news is only provided by trusted media organisations operating directly under the CCP. While, for example, many newspapers and magazines are licensed under this system to publish news, few are permitted to produce and publish their own articles on major news events. Indeed, in 2002 the CPD issued guidelines that reiterated the importance of restrictions on news sourcing and stated that periodicals must obtain any major stories on government policy from Xinhua (Keller 2003, 124–25). The unwillingness of Chinese journalists working at local media organisations, whether due to the cost of doing so or to explicit restrictions, to report on major national news stories further increases central control over important news content (Esarey 2007, 30).

#### *'Legal' regulation of content and expression*

China's media regulatory system is a blend of criminal and administrative law. In general, courts apply criminal law to individual conduct, while state media regulators impose administrative sanctions on broadcast or publishing entities and their sponsoring organisations, and CCP authorities discipline editors and other Party members (Keller 2003, 105). Broadcast news is subject to controls set out in the *Regulations for the Administration of Radio and Television*,<sup>13</sup> promulgated by the State Council in 1997. These regulations, inter alia, mandate the limits of permissible content, prohibiting material that is harmful to the state's national unity, sovereignty and territorial integrity; is detrimental to the state's security, dignity and interests; incites ethnic division and damages ethnic solidarity; divulges state secrets; defames or insults; propagates obscenity and superstition; plays up violence; or otherwise includes content prohibited by laws and administrative rules and regulations (Art 32). Radio and television stations are required to conduct pre-broadcast censorship of programming in line with these prohibitions (Art 33), activating a range of financial, administrative and criminal penalties, depending on the severity of any breach (Art 49).<sup>14</sup> A similar list of prohibited content (Art 26) and penalties

13 Promulgated on 11 August 1997 by the State Council as Decree No 228 and implemented as of 1 September 1997.

14 Including cessation of production or broadcasting, confiscation of program carriers, revocation of broadcast permits, monetary fines, public order administration penalties or criminal liability.

(Art 56) is reflected in the *Regulations on the Administration of Publication*,<sup>15</sup> promulgated by the State Council in 2001, and applying to the news content of all print media. Under the revised *Regulations of the Administration of Internet News Reports*, issued by the State Council in 2005, news websites can only publish articles written by leading national or provincial-level news organisations, rather than their own staff. The definition of 'news' includes 'reports and comments on political, economic, military, foreign policy and other social public affairs' and applies to social and political commentaries posted on personal websites, chat rooms and blogs (Egan 2006, 82).<sup>16</sup> The courts have little power to impose any standard of review on decisions made by administrative bodies.<sup>17</sup>

The criminal law provides an overarching legal framework for the punishment of serious violators of rules on proscribed content.<sup>18</sup> There is a close link between these offences and the related prohibitions imposed by regulation. Key crimes directly or indirectly applying to news content include those concerning the endangerment of national security, publication of obscenity and disclosure of state secrets. While dealt with in broad terms under the *Criminal Law* (a legal code considered a 'basic law'),<sup>19</sup> the National People's Congress — in which the PRC's highest legislative authority resides — has also enacted more specific laws addressing these offences. The current state secrets framework includes the 1988 *Law on the Protection of State Secrets* (the

15 Promulgated on 25 December 2001 by the State Council as Decree No 343 and implemented as of 1 February 2002.

16 The regulations also mandate that bloggers and chat-room participants must use their real names, while university online discussion forums must be restricted to students alone. Similar to the print and broadcast regulations discussed, the internet regulations prohibit the publication online of content that 'harms national security, reveals state secrets, subverts political power, undermines national unity or inflames ethnic hatred' (Egan 2006, 83).

17 Under Chinese administrative law, the courts may only overturn an administrative decision if the officials concerned have violated their department's regulations or rules. In addition, no legal basis exists on which to mount a challenge to a press content decision for an alleged infringement of any fundamental right to freedom of expression (see Lubman 1999, 204–16).

18 At the same time, due to linkages between criminal, administrative and internal disciplinary processes, established administrative precedents and practices directly inform the application of criminal sanctions (Keller 2003, 105).

19 Adopted by the National Peoples' Congress in 1979 and substantially revised in 1997.

*State Secrets Law*),<sup>20</sup> as well as the State Council's subsequent implementing regulations — the *Measures for Implementing the Law on the Protection of State Secrets* (1990) (the *Implementation Measures*).<sup>21</sup> A catch-all clause in the *State Secrets Law* and an expansive interpretation of the *Implementation Measures* mean that any information has the potential to be listed as an official secret, with an inherent

20 The *State Secrets Law* lays out the scope of matters that are designated as state secrets, as well as the responsibilities of each level of state secrets organ in classifying and handling information. Article 2, the wording of which is repeated in numerous other documents related to state secrets, sets forth the broad definition of what constitutes a state secret: all matters that are 'related to state security and national interests and, as specified by legal procedure, are entrusted to a limited number of people for a given period of time'. Article 8 lists seven categories of matters that are classified as state secrets: policies on national affairs, national defense, diplomatic affairs, matters involving national economic and social development, national scientific and technology matters, and investigations of criminal offenses. The seventh item is a catch-all phrase encompassing 'all other matters classified as state secrets by the national State Secrets Bureau', giving that body (the National Administration for the Protection of State Secrets) unlimited and unlegislated power to classify as a state secret virtually any information that it deems could harm the 'security and interests of the state'. In addition, related provisions in the *State Security Law* (1993) and the *Criminal Law* further stipulate specific administrative and criminal sanctions for violations of state secrets or state security provisions. The *Criminal Procedure Law* (1997) sets forth relevant procedures for investigation, prosecution and defense of state secrets and state security cases. The *State Secrets Protection Regulations for Computer Information Systems on the Internet* (2000) extend the operation of state secrets protections to information transmission via the internet. ISPs, BBS, chat rooms and network news group organisers are required to set up their own management mechanisms to assist in ensuring that no state secrets are transmitted on the internet by their users (Art 10). Given the uncertainty of the ambit of the term 'state secrets' in China, to avoid any violation, it is suspected that many of these information organisers prefer to remove information once they have any doubt as to the nature of the information (Cullen and Choy 2005, 333). The state secrets framework is further complemented by numerous laws and regulations that are not primarily a part of the state secrets framework, but include references to state secrets and to obligations not to divulge them — governing, for example, the work of lawyers, accountants and the use of the telecommunications network (Human Rights in China 2007, 9).

21 These provide for retroactive classification of information not already enumerated or classified as a state secret, if disclosure of information *could* result in any one of the 'eight consequences' deemed to cause harm to the security and interests of the state, including: 'affecting national unity, ethnic unity or social stability', 'hindering defense work', and 'endangering the ability of the state to defend its power'. These measures also specify which security classification (top secret, highly secret and secret) is determined by which level of state secrets bureau throughout the country, with top-secret matters classified at the national level and so forth downward through the administrative levels (Art 10).



presumption operating to the extent that any information remains secret unless the opposite is clearly stated by the government.<sup>22</sup> This includes information about diseases not yet listed by the Ministry of Health as a contagion (Horsley 2007, 73). Guidelines relating to the specific scope and categories of state secrets are stipulated by the National Administration for the Protection of State Secrets (NAPSS), in conjunction with certain other central organs.<sup>23</sup> The complex system of classification and de-classification and the participation of multiple actors at multiple levels of government impact transparency, as there is little clarity regarding the status of specific information (Zhou 2007, 109–10). The prohibition on obscene content is generally stated in several national laws and regulations,<sup>24</sup> including the *Regulations Concerning the Strict Prohibition of Obscene Materials*, issued by the State Council in 1985 (and still influential) and the GAPP's *Provisional Regulations Concerning the Identification of Obscene and Indecent Publications* (1988). Nonetheless, these guidelines only set out general concepts and leave government officials considerable discretion to determine what is obscene and indecent and what sanctions are merited in each case (Keller 2003, 123).

#### *Extra-legal forms of coercion and self-censorship*

As noted, underpinning the restrictive intent of the formal legislative regime are a number of operational, editorial and administrative factors facilitating informal control and influence. These exist in the form of both incentives for self-censorship and disincentives to testing regulatory limits. Since the early 1990s, journalists' pay has been tied to the number and length of stories that are broadcast or published. If a report is considered too sensational to print or air, most journalists do not receive payment and risk losing performance bonuses, which amount to more than half their

22 This is not to deny the existence of an initial legislative intent to restrict the scope of state secrets. Significantly, there was a catch-all clause in the draft *State Secrets Law* which stated that state secrets included all information that must be guarded. Some NPC deputies, not impressed by this clause, changed it to the present version, imposing the procedural requirement of prior classification. However, legislative intent is often defeated in practice when new Chinese laws become operational (Fu and Cullen 1996, 115; see also Zhou 2007, 109–10).

23 Including the Ministry of Foreign Affairs, the Ministry of Public Security (which monitors the leaking of sensitive information) and the Ministry of National Security (Yan 2000, 506).

24 Including the *Regulations for the Administration of Radio and Television* and the *Regulations on the Administration of Publication*. In addition, the 1997 amendments to the *Criminal Law* extended the offence of harming social order (Pt VI) to cover the production, sale or transmission of obscene materials.

salary (Esarey 2007, 22–23; Karlekar 2006, 75).<sup>25</sup> The desire to win bonuses tends to result in journalism that steers clear of dangerous political controversy. It is not unusual for journalists to be subjected to blackmail and death threats, with violent attacks on the rise.<sup>26</sup> There has also been an increasing number of cases in which local law-and-order agencies detained journalists or punished them for reporting critical stories, together with other forms of deterrent bureaucratic retaliation.<sup>27</sup> While marketisation of the Chinese media has increased competition for audiences (Wu 2005), Lin notes a young journalist's appreciation that enduring political limits require him to 'dance beautifully yet have his hands cuffed' (Lin 2006, 79). In conjunction with CPD guidance at all levels, news is censored within editorial departments on a daily basis, encapsulated by the wry remark of commentators at the *People's Daily* that by publication, nothing is theirs 'except the punctuation' (Wu 2005, 129). In the face of unpredictable rules and persistent censorship, journalists in the PRC have cultivated the ability to play 'edge balls',<sup>28</sup> which, while reflecting a

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- 25 Indeed, they can even be made to pay out of their pocket the production costs of censored material.
- 26 Often in the face of police indifference — although the official journalists' association, the All-China Federation of Journalists, established the Committee to Protect the Rights and Welfare of Journalists in August 1998, the organisation has little power and autonomy and is not likely to have much impact in protecting investigative journalists (Zhao and Wusan 2007, 317–18).
- 27 The Guangzhou city authorities' embezzlement charges against three *Nanfang dushi bao* journalists for the paper's exposure of Sun Zhigang's death as well as the SARS epidemic is a notable case of bureaucratic retaliation against the news media through legal means. Although intense domestic and international media pressure, together with the reported intervention of central-level officials, secured the release from prison of the paper's editor-in-chief, Cheng Yizhong, by the end of 2005 central authorities had fired top editors at the *Beijing News* for its critical reporting on various occasions, including its exposure of the 11 June 2005 bloody crackdown on farmers protesting against land seizures in Dingzhou city, Hebei province (see Fowler and Qin 2005, A3). In late January 2006, the central authorities ordered the closure of *Freezing Point*, a weekly supplement to the *China Youth Daily* and arguably the only central-level print media outlet known for its in-depth investigative stories and its persistent role in public opinion supervision (Kahn 2006, A13). Journalists have also been subjected to an increasing number of libel cases brought by government officials and businesses, with the absence of legally enforceable rights to report significantly hampering defence strategies (Zhao and Wusan 2007, 319).
- 28 The phrase refers to the risky and difficult table tennis strategy of 'aiming for the very edge of the ping-pong table where a ball is almost out of bounds but remains a fair hit' (Cheung 2007, 383; Keane 2001). Zhao and Wusan similarly emphasise how the new generation of journalists, while aware of the liberal notion of watchdog journalism, pick their targets carefully and work within the constraints of an evolving regime of propaganda discipline that clearly defines certain topics and individuals as off-limits to critical reporting (2007, 306–07).

conscious positioning at the margins of the permissible, also belie an instinct for self-censorship and the internalisation of CCP discipline.<sup>29</sup> To do otherwise is to risk their positions and their 'rice bowls' (Fu and Cullen 1996, 37) — an aversion ultimately leading to the chilling of public debate.

### **Who's covering the cover-up? Media censorship during the SARS outbreak**

#### *Anatomy of a crisis*

China's response to SARS divides into three stages (SARS Expert Committee 2003, 195). The first stage witnessed an attempt to suppress information about a severe outbreak of a mysterious respiratory disease in Guangdong Province. The provincial health authority issued a report on cases of atypical pneumonia, but it was not circulated widely (SARS Expert Committee 2003, 195). Despite these efforts by local and central government officials, word of the disease gradually emerged in an ever-widening arc,<sup>30</sup> propelled by the internet. Some of the information getting out indicated that, by January 2003, the outbreak was causing panic in the population (Fidler 2004, 73). In the second stage, the PRC acknowledged an outbreak but attempted to deny and cover up the extent of the epidemic.<sup>31</sup> On 9 April 2003, news broke that a prominent People's Liberation Army doctor and CCP member, Dr Jian Yanyong, had publicly accused the government of concealing the size of the outbreak

29 For example, Zeng Pengyu, reporter with the *Beijing Youth Daily*, states that he would never run a big controversial story without first having a sense of the political climate, no matter how newsworthy it was (Cheung 2007, 383).

30 The WHO first learned of the illness when the son of a former WHO employee emailed the director of WHO's communicable diseases section about a fatal illness in southern China that authorities were refusing to allow to be reported (Piller 2003, 1).

31 Which began in mid-February 2003 and lasted until 17 April 2003 (Xinhua News Agency 2003d; 2003c; Lague et al 2003, 12–15). It has been claimed that the traditional ban on bad or controversial news during key CCP or state meetings quashed the possibility of addressing the matter publicly until after the conclusion of the March meeting in Beijing of the National People's Congress (which was the first such session presided over by Hu Jintao and which appointed Wen Jiabao as premier) (deLisle 2004, 234; Esarey 2007, 32–33). As late as early April, the still-to-be-sacked Health Minister Zhang Wenkang dismissed WHO travel advisories with a glib statement that it was 'perfectly safe to come to China', and scolded foreign media for 'irresponsible' reporting on SARS (Lawrence 2003c, 31; Forney 2003, 15; Cheng et al 2003, 1; Altman and Bradsher 2003, A7; Lague et al 2003, 12–15).

in Beijing,<sup>32</sup> changing the 'whole course of the battle against SARS' (Liu 2004, 28–29). Although Dr Jian originally sent his accusations by email to China Central Broadcasting and Phoenix Television (based in Hong Kong), they only made an impact after *Time Magazine* posted his email on its website, upon which *Time's* report and a large number of other articles from the Western press were translated and dispersed by email across China (Fidler 2004, 94). The third stage of the government's response began on 18 April 2003, when the CCP finally called a halt to the systematic deception it had been orchestrating on SARS (Fidler 2004, 107–08). The newly installed acting Mayor of Beijing, Wang Qishan, told a television audience that SARS 'has hit us head-on' (Eckholm 2003b, A10), while Premier Wen Jiabao was quoted in the official media describing SARS as a grave threat (Lawrence 2003c, 26; Kahn 2003b, 4, 7).

#### ***The media blackout: methods and outcomes***

The Chinese government was able to perpetuate this domestic media silence on SARS for varying reasons, including Xinhua's mandated position as the CCP-approved national news source, close CPD supervision of relevant news coverage and the implied threat of state secrets sanctions. During the SARS outbreak, the media were initially barred from reporting on it. After the government acknowledged the severity of the outbreak in mid-April, media were permitted more discretion but still relied on officially sanctioned Xinhua dispatches for much of their news and were directed to focus on positive aspects of governmental action (Nip 2005, 35; Liebman 2005, 45; Reporters Without Borders 2005, 7).<sup>33</sup> All articles had to be approved by the CPD and its delegates (Nip 2005, 35). The inadvertent publication of secret, though innocuous, information about SARS by a Xinhua correspondent in April 2003 led to severe reprimands at the highest levels of the agency and the forced resignation of the head of news and the responsible editor (Reporters Without

32 When the PRC's official line held that there were only a dozen SARS cases and three fatalities in the Chinese capital, Dr Jian told foreign news media that there were 60 infections and 17 deaths at one Beijing military hospital, and that he and his colleagues were incredulous to hear the Chinese Health Minister providing assurances on television that the outbreak was under control (Rosenthal 2003, A8).

33 One reporter for a local Beijing newspaper stated that the paper ran approximately 50 per cent of its own stories on SARS and 50 per cent of stories prepared by Xinhua (Liebman 2005, 45).

Borders 2005, 6–7).<sup>34</sup> By mandating that newspapers use Xinhua news stories, the CCP could standardise and control news content. Hong Kong’s inquiry into the SARS crisis in early 2004 revealed that Guangdong officials had refused to inform Hong Kong counterparts of the emergence of SARS because they regarded such withholding as a ‘legal requirement’ as ‘infectious diseases were classified as state secrets’ (quoted in Benitez 2004, 4). Even after the initial SARS crisis had passed, a senior Guangdong official warned media in his province and neighbouring Hong Kong that it was illegal to report disease information without prior official confirmation (Congressional-Executive Commission on China 2003). The state secrets framework had the effect in this instance of prohibiting local health officials from discussing an emerging disease outbreak until the Ministry of Health in Beijing had announced the existence of an epidemic (Gill and Thompson 2003, 6).<sup>35</sup>

The effect of this censorship was significant. Efforts to combat epidemics are often hampered by a lack of information about the disease in question — information is often mixed with misinformation, and sometimes the facts fail to reach the right parties (Johnson and Bagley 2005, 175–76). There is a continuing challenge to furnish medical service providers and the public with the best information and the greatest opportunity to effectively treat contagious diseases. In the case of SARS in the PRC, the media’s failure to report effectively led to unwitting transmission of the disease — in particular, through the internal movements of infected citizens between different regions of the PRC, which facilitated its spread (Liu 2004, 12–13, 15–18, 68; Reader 2006, 565). Then, against a background of an increasing number of SARS

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34 Yang Zidi, editor-in-chief of the national section for foreign departments, made use in April 2003 of a paper about SARS produced by the CCP Central Committee. It was a simple summary of steps taken against the epidemic, but the editor did not realise where the paper had come from or notice a heading banning all publication. He sent the information to a correspondent in the ‘Hong Kong, Macau, Taiwan’ section (which deals with news throughout Chinese territory), who put it into an article. Xinhua’s president and editor-in-chief were both severely reprimanded by the CCP and the head of news was forced to resign. Yang was sacked, after writing a self-criticism. One month later, the Xinhua management announced it was stopping housing allowances for a large number of agency journalists, payments that often amounted to more than 50 per cent of a journalist’s basic salary. As many as 500 of the agency’s journalists were affected by this step, for which the management refused to give any explanation — it has been claimed that many believed it was a collective punishment for Yang’s mistake (Reporters Without Borders 2005, 6–7).

35 The state secrets framework was more likely to impede the spreading of accurate information by government functionaries, for they were, of course, more likely than ordinary citizens to possess information that fell within the scope of state secrets (deLisle 2004, 237).

cases and general public ignorance of the truth,<sup>36</sup> rumours and speculation led to panic among the citizenry.<sup>37</sup> Though word about the initial SARS outbreak in Guangdong reached many interested Chinese via unofficial means of communication — most notably, SMS messages to mobile phones and countless emails and web postings (deLisle 2004, 220–21) — detail was scant, and if anything exacerbated the building sense of hysteria, rather than instructing the public as to the nature of the disease, its mode of transmission and preventative measures.<sup>38</sup> Moreover, access to the internet is largely restricted to the emerging middle class in major urban centres. Indeed, this medium was not immune from censorship in any case, with chat room and online discussion group monitors using keyword filters or manually deleting postings containing the Chinese characters for atypical pneumonia (Nip 2005, 38).

#### *Lessons from SARS: explaining governmental (in)action and its aftermath*

It has been claimed that once its pattern of denial ceased, the Chinese government ultimately tolerated a shift towards openness and critical content in public discussion of SARS<sup>39</sup> — a major departure from the traditional 'black-box' method of strictly controlling information about emergencies and accidents until the problems ended or were resolved (Liu 2004, 51). However, both the accuracy and underlying intent of this liberal reading of events must be questioned. A period of implicitly and

36 There was a widespread ignorance of the epidemic in Beijing, for example (Liu 2004, 18–19).

37 Examples of this include panic shopping and predatory marketing of supposed remedies; lack of confidence in the medical system, leading to a decline in hospital visits and a rise in the death rate among patients with chronic illnesses; and riots in rural areas (Liu 2004, 28–29).

38 According to the *Washington Post*, for example, awareness of the outbreak in Guangdong Province rose to new levels in the days following a mobile phone text message, sent on 8 February 2004, that read: 'There is a fatal flu in Guangzhou' (cited in Fidler 2004, 74). Mobile phone users re-sent this message 40 million times on 8 February, 41 million times on 9 February and 45 million times on 10 February. The same news spread rapidly through email and internet chat rooms in China and beyond.

39 In particular, that the SARS coverage stood out for how far it went in acknowledging or implying that there were indeed serious errors in the regime's response, and even that these might reflect systemic flaws (see, for example, Liu 2004, 47, 50; Forney 2003, 15).

overtly critical debate was allowed.<sup>40</sup> Indeed, a number of proposals sought to use the 'SARS effect' to build on Wen Jiabao's crisis statement urging the State Council to show greater openness towards the news media (deLisle 2004, 226). These included pressing for a 'right to know', expanding and securing freedom to write about public health threats and gaining greater access to information over which the government and CCP had maintained a monopoly,<sup>41</sup> in addition to more radical reforms of the *State Secrets Law*, removing the prospect of criminal sanctions (at least for those who disclosed accurate public health information without authorisation) (deLisle 2004, 228). Yet, legal reforms on this front remain in, at most, an incipient stage.<sup>42</sup> Moreover, the SARS laws that were subsequently passed contain few or no provisions relating to civil liberties.<sup>43</sup> Indeed, by mid-May 2003, more than one hundred people had been arrested in 17 provinces, charged with 'disturbing social order' by 'spreading SARS rumours' — an action punishable by imprisonment for up to five years (Salvadore 2003, 4; Xinhua News Agency 2003b). Meanwhile,

40 For example, the concession of significant shortcomings at high and low levels implicit in coverage of the Politburo's April dismissal of the Minister of Health and the mayor of Beijing, and stern directives to local officials to provide accurate and timely reports of SARS outbreaks. More explicitly, the *People's Daily* conceded that the PRC's disease prevention system had been shown to be inadequate and ill-prepared, while articles in other prominent papers criticised as 'habitual' behaviour under the existing system of officials' hiding, delaying and impeding reports of the SARS problem, and endorsed assessments that SARS made clear the government's failures in 'crisis management' and the dangerous imbalances created by many years of one-sidedly emphasising economic development and the market over social development and government responsibilities (*People's Daily* 2003; Kahn 2003a, A8). Other official media asked why the public health authorities in Beijing and other northern cities had been so ill-prepared, slow to respond and ill-informed when the disease had been spreading in Guangdong for at least three months (Hailong 2003). Meanwhile, television talk shows and news programs were saturated with comments and stories that disclosed serious SARS problems and poor government handling. Media of all sorts kept up a constant drumbeat of SARS coverage, including daily SARS counts (deLisle 2004, 224; Eckholm 2003a, A1).

41 Discussions of the right to know included commentaries printed in Shanghai's *Wenhui Bao* and Beijing's *Xing Bao*, and nascent policy prescriptions by highly placed intellectuals (Lawrence 2003a, 26; Lawrence 2003b, 26; Morgan 2003).

42 Official and quasi-official research institutes had been tasked with studying the issue and a proposal for a regulation on 'government information openness' reportedly had been circulated to relevant government entities and advisers (deLisle 2004, 226).

43 The Chinese SARS laws include four key legislative enactments. The two new laws are the *Regulations Dealing with the Outbreak of Public Health Emergencies* (effective 12 May 2003) and the *Measures on the Prevention and Treatment of Infectious Atypical Pneumonia (Severe Acute Respiratory Syndrome)* (effective 12 May 2003). The third major piece of SARS legislation, the *Law of the People's Republic of China on the*

Beijing's cyber-police were reportedly maintaining a ban on the use of the term 'SARS' in web postings and messages (deLisle 2004, 236). In June 2004, the Ministry of Public Security licensed China's first SMS filtering system, in the wake of the development of breakthrough technology that could be applied to Chinese keywords (Nip 2005, 39). Though Dr Jian was ultimately protected from conservative elements that resented his regime-embarrassing audacity and feared its emulation (Cheng 2003, 3; Leow 2003), media reports notably failed to laud other whistleblowers (Dickie and Williams 2003, 7). They also eschewed prominent coverage of potentially unsettling SARS-related events.<sup>44</sup>

Rather than a response broadly cognisant of the folly of frustrating information channels in the midst of a fast-developing public health crisis, the PRC's short-lived concession to pressures for a freer domestic media environment can best be described as self-interested. In an era of extensive foreign trade and investment dependence, the economic and diplomatic costs to China of non-cooperation with external scrutiny were too high to bear. The global community, moreover, took disproportionate notice of the disease because, in part, it spread to areas with broad international commercial links and received intense media attention as a mysterious new illness that seemed able to go anywhere and hit anyone (Reader 2006, 520). The downgrading by international investment houses of China's growth prospects, bans by foreign companies on travel to the PRC, and sharp rebukes from other governments taught the PRC leadership that dismissing the concerns of outsiders

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*Prevention and Treatment of Infectious Diseases* (effective 21 February 1989) was passed more than a decade earlier, but was republished on 26 April 2003. The final key legislative enactment is the *Interpretation of Laws in Criminal Cases Regarding the Obstruction of the Prevention and Control of the Outbreak of Infectious Diseases* (effective 13 May 2003). The SARS laws provide that there is a 'right to inform the People's government ... of any hidden dangers of an emergency, and ... to make a report of the local government's failure to perform its duties in accordance with the relevant provisions in dealing with the emergency to the higher People's government or related department'. However, there is no protected right to contact the media ('no unit or individual is allowed to release and announce epidemic information to foreign media or publish unannounced epidemic information without the authorisation of the Health Department'), and indeed the contrary 1989 rule is still in effect. Read strictly, the SARS laws simply say that there is a right to tell those higher up on the governmental chain of command, reinforcing traditional Chinese centralising principles (Johnson and Bagley 2005, 172).

- 44 Including violent opposition to plans to put SARS patients out of their neighbourhoods; the flight of hundreds of thousands from Beijing; and the resort to quasi-feudal measures by localities to prevent travellers from suspect areas from entering their jurisdictions (deLisle 2004, 234; Dolven and Murphy 2003, 24–26).



was no longer wise or feasible. Indeed, such pressures arguably also strengthened the PRC's initial commitment to a cover-up.<sup>45</sup> Tellingly, in an early acknowledgment of the SARS crisis, Premier Wen focused on the potentially damaging effects the disease could have on China's economy, international image and social stability (Fidler 2004, 96), while senior officials were strikingly transparent about such motives in asserting that 'the Chinese government [has shown it] is capable of ensuring the health and security of foreign investors, and China is still one of the most attractive regions of the world for foreign investors' (Xinhua News Agency 2003a).<sup>46</sup> Perhaps ironically then, it was the obstructive nature of restricted media freedoms in the PRC that ultimately amplified the associated economic costs of SARS,<sup>47</sup> beyond evident public health concerns.

### **Speaking the unspeakable: media, morality and the HIV/AIDS epidemic in China**

#### *A slow-burning menace*

Unlike the fast-onset shock of SARS, HIV/AIDS can take months or years to reach pandemic status (Milne 2004, 3), ultimately destroying families and social networks, diminishing economic growth and creating a sense of pessimism about the future

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45 Along with the traditional ban on bad or controversial news during key CCP or state meetings, and Party factional posturing (deLisle 2004, 229–30, 234). Perceived threats to economic or public health can push regimes towards illiberal and defensive responses. Contemporary China was particularly susceptible to such a response: a serious economic downturn due to the spread of SARS, or the fear of SARS, would threaten the pillar on which the CCP has largely staked its claim to power for a generation, while the prospect of significant SARS-spawned impediments to the movement of goods and people — ranging from fear of travel to transportation-slowness screening measures to quarantines to the notorious spontaneous local roadblocks — portended additional economic losses (deLisle 2004, 244).

46 In addition, from a domestic perspective, Guangdong authorities later admitted that prior to their initial tempered acknowledgment of SARS in February 2003, they had prevented local news media from reporting on the disease, as they did not want public concerns to cut into people's spending during the Chinese New Year holiday at the end of January (Nip 2005, 31).

47 SARS initially led forecasters to reduce projections for the PRC's growth rate by about one-half of a percentage point for 2003, and led some assessments to conclude that the country's economy shrank during the peak of the SARS crisis in the second quarter of 2003 (Bradsher 2003, A8; Pratley et al 2003, 19). News of the disease dramatically curtailed tourist activities, domestic and international travel, and domestic retail sales (Zhengshi et al 2004, 84).

(Gostin 2003, 3; Quinn 1996; UNAIDS, UNICEF and USAID 2002, 3; Naik 2003, B4). The first AIDS death in China was reported in 1985 (Hao 2003, 265). In 1988, the PRC implemented a series of regulations aimed at identifying and confining HIV-infected individuals: *Certain Rules on the Supervision, Testing and Management of AIDS* (1988) and *Certain Regulations on the Monitoring and Control of AIDS* (1988). The first called for the monitoring and control of persons ill with AIDS, HIV-carriers and even persons 'in close contact' with those affected (Art 2). The severity of measures reflected the times, as AIDS and drug addiction were still seen as consequences of contact with the West (<[www.avert.org/aidschina.htm](http://www.avert.org/aidschina.htm)>). Indeed, for 15 years or more after China announced its first AIDS-related death, the country's leaders were in denial about HIV.<sup>48</sup> Few cases were reported, and homosexuality and promiscuity, the two agents by which this affliction was presumed to spread, were said to be limited. The UNAIDS report issued in 2001 brought the growing scope of the problem into stark relief, however, warning of an epidemic that could result in 10 to 20 million deaths by 2010 (UNAIDS 2002, 7). Approximately 650,000 people in China were (officially) living with HIV in 2005 (UNAIDS 2006, 9). Injecting drug users accounted for almost half of those. Though the government is now willing to acknowledge that larger numbers of its population are infected, there are still many ways in which the problem is treated 'like a dirty secret' (McGirk and Jakes 2002, 54), hampering preventative public education.<sup>49</sup>

### *Stigma and secrets: the role of the media*

Those dealing with governance relating to HIV/AIDS have stressed the importance of societal openness and the ability to share and access information to any successful prevention program (UNAIDS 2002, 70; Human Rights Watch 2003, 28). Conversely, ignorance, pretence, silence and denial are considered the greatest dangers in the spread of the disease. The media is identified as key, with the capacity to monitor, analyse and mobilise public opinion for action, drawing the attention of policy makers, raising the awareness of the public and dispelling myths (Nyirongo 2004). On account of governmental content control, however, media in the PRC are

48 As one author noted, authorities in the PRC 'juggled statistics to show the world's most populous nation had only 1159 confirmed cases of the human immunodeficiency virus that causes AIDS' (Schmetzer 1993, 8). Schmetzer notes a case in which the authorities claimed that a doctor who had diagnosed a patient with HIV had made 'a mistake', in an effort to keep secret the disease's presence in China.

49 As Gostin notes, 'the politics of AIDS are complex and dependent on resources, culture, experience and perception' (2003, 22). Fear and social stigma in relation to the disease are a crucial problem throughout the developing world (Milne 2004, 11).

significantly constrained in performing this function. First, as noted in the preceding discussion of SARS, certain information about infectious disease epidemics can be considered state secrets. Governmental attitudes to HIV/AIDS are no different.<sup>50</sup> This was made clear in the arrest and detention of China's most prominent AIDS activist, Wan Yanhai,<sup>51</sup> and the repression of other reporters who have published stories on the extent of the epidemic in the PRC (Human Rights Watch 2003, 28).

Perhaps more damaging though are the effect of legal controls on obscene and indecent content. As noted earlier, these laws and regulations largely do not define obscenity and, in practice, local authorities have wide discretion regarding implementation, and broad authority to determine what may or may not be obscene (Human Rights Watch 2005, 38–39). The *Provisional Regulations Concerning the Identification of Obscene and Indecent Publications*, one of the few sets of national regulations to define the term 'obscene', implicate any publication whose content 'arouses people's sexual feelings sufficiently to result in the corruption and degeneracy of ordinary people, and that also lacks artistic or scientific value' (Art 2). Under these regulations, same-sex activity is by definition obscene (Art 6). The *Regulations on the Severe Statement of Prohibition of Obscene Publications* (1988) go even further, excluding materials used for scientific purposes from the category of 'obscenity' or pornography, but nevertheless allowing censorship of much information necessary for protection against AIDS.<sup>52</sup>

The government's failure to define 'obscenity' in a way that makes clear that sexually explicit information on HIV/AIDS is permissible is a critical problem — equally, the coercive nature of the state secrets framework, where journalists seek to disseminate non-official information on the scope and nature of the epidemic in the PRC. According to a recent national survey, 87 per cent of Chinese consider television

50 The government blocks, for example, 20–25 per cent of the top 100 URLs for a search of 'AIDS China' (Peerenboom 2005, 109).

51 In the early 1990s Wan spoke out against the orthodox position that said AIDS was a foreign disease and China was at low risk, and was the first person to speak openly of the existence of large numbers of gay people in China. It was also Wan who exposed, via the internet, the problem of unsanitary blood collection in China that has resulted in the rapid spread of the disease. Because of this, Wan was taken into custody for several weeks, and released only after an international campaign was launched on his behalf (Schmetzer 1993, 8; Lev 2002, 3; Chang 2002, A1; Pan 2002, A14).

52 These regulations note that: 'even those publications that are not obscene, but that have prominent sexual content, and that seriously harm the physical and mental health of young people, without exception may not be published, copied, sold, rented, or hidden'.

news programs a reliable source of HIV/AIDS information, and up to half trust newspapers (Settle and Valentino 2005). Similarly, though talking about sex has traditionally been taboo,<sup>53</sup> the internet has to some extent made open discussion of it possible by offering anonymity (Kutcher 2003, 285).<sup>54</sup> The media clearly have a role to play. However, the pervasive threat of government censorship and the jailing of webmasters, reporters and activists has created a chilling effect on efforts to share HIV/AIDS information, which often naturally includes material of a sexually explicit or sensitive nature (Human Rights Watch 2005, 10, 39–40), or that diverges from the Party line. Understanding the risks and realities of HIV/AIDS is a necessary precursor to behavioural change (Gostin 2003, 17). That understanding, however, is largely absent in the PRC (Nyirongo 2004; Longde 2005). For example, a survey in January 2003 found that 17 per cent of Chinese citizens had never heard of HIV/AIDS, and 77 per cent did not know that using condoms could prevent HIV transmission (Stenson 2003).<sup>55</sup> An earlier study revealed that only 4 per cent of adults know how HIV is contracted and spread (Rosenthal 2001, A1). In certain cities, there is so much fear, misunderstanding and discrimination that some medical professionals are afraid to treat patients with the disease (Hao 2003, 271). Societal stigma has heavily influenced attitudes towards AIDS, which is popularly associated with drug addiction, prostitution and homosexuality (Kutcher 2003, 281–82). Restricting public discourse and awareness only exacerbates such harmful prejudices.

### *A more constructive dialogue?*

Despite these entrenched constraints, there are some indications in recent Chinese governmental initiatives that the imperative of HIV/AIDS education, raising awareness through visibility, has begun to outweigh traditional disinclinations to countenance media coverage of the disease. World AIDS Day 2003, for example, saw Wen become the first Chinese Premier to shake hands with an HIV-positive person

53 Even in the relative openness of Hong Kong, researchers have pointed to a 'cultural barrier' where the discussion of sex is concerned (Benitez 2000). Moreover, even where people do discuss sex, they do so using euphemism, allusion, innuendo and gesture, none of which are conducive to promoting real understanding of how AIDS is transmitted (Kutcher 2003, 282–83).

54 Though while China has the second-largest number of active internet users in the world (behind the US), it should be emphasised that just a fraction of all Chinese go online, and most who do play games, download music or gossip with friends (Kertcher and Margalit 2006; Pan 2006, A1).

55 This is particularly worrying given that many of the AIDS carriers in China are youth, 15–29 years of age, and the number of individuals who contract the virus through sexual intercourse continues to rise (Hao 2003, 270–71).

— an act extensively covered across all media (Dickie 2003; Longde 2005). That same year, an existing obscenity-based ban on condom advertising (and, more broadly, products related to sexual activity) was lifted in a bid to promote safer sex (*BBC News* 1999; Agence France Presse 2002; Chihua 2002). Public service announcements produced by the China AIDS Media Project, meanwhile, featuring basketball stars Yao Ming and the HIV-positive Magic Johnson, were broadcast in 2004 to hundreds of millions of television viewers, followed in late 2005 by the Project's first documentary work, which marked a watershed moment in providing one of the most candid explorations of pre-marital sex seen on Chinese television in its portrait of a university student who had contracted AIDS through sexual contact and decided to go public about her disease (<[www.chinaaidsmedia.com/en.html](http://www.chinaaidsmedia.com/en.html)>). Yet though these are positive signs, with the exception of the latter examples, leaders have favoured strategies formulated at the national level, giving no indication of relaxing restrictions on media freedom to allow potentially more effective educational campaigns originating outside their careful control. This is exacerbated by uneven implementation of national policies, particularly by local officials in inland provinces, who may have a limited understanding of AIDS and how it is transmitted, see HIV/AIDS as a sign of moral corruption, and regard any public discussion of AIDS as a source of embarrassment that threatens external investment in their impoverished regions (Human Rights Watch 2005, 8–9).

### **The tortoise and the hare: comparing the cases of HIV/AIDS and SARS**

Stepping back to look more broadly at the effects of Chinese restrictions on media freedom in the context of public health threats, both similarities and differences can be discerned in the differing contexts of SARS and HIV/AIDS. Milne posits that infectious diseases with the potential to be global killers come in two basic forms: the 'slow epidemic', taking months or years to reach pandemic status, with an insidious onset and long latency — the archetypical example being AIDS;<sup>56</sup> and the 'fast epidemic', rapidly spreading from country to country, with fairly quick onset and high mortality and morbidity — most recently manifested in SARS (Milne 2004, 3).<sup>57</sup> In light of this distinction, what remains telling is the consistently negative impact formal and informal media laws and regulations have on the capacity of relevant authorities and the public at large to address both types of public health crises in the PRC.

56 Other examples of slow epidemics include tuberculosis, malaria and hepatitis B.

57 Other examples of fast-moving epidemics include avian flu, smallpox and measles.

Certain important points of difference should be noted. The swift nature of SARS arguably made information about the disease — including any prospective media reports — more susceptible to state secret restrictions, given its initial mystery, its unexplained spread, the international implications of cross-border transmission, and an overall sense of mounting urgency. In contrast, existing knowledge of HIV/AIDS, its slow onset in China, the reality of global infection struggles and the typical victim profile and associated stigmas render state secrets prohibitions less applicable in a general sense. Instead, constraints on media coverage that delves into the reality of disease spread and treatment are grounded more in notions of obscenity, preceded by moral judgments concerning the nature of transmission, and societal sensitivities regarding the often-unadorned sexual content of public educative discussion. While the restrictions relating to state secrets have a greater ability to prompt a media blackout in the short term, it is arguably entrenched notions of socially acceptable media coverage reflected in obscenity regulations that are more damaging in the long run (where applicable), once the initial threshold of state-acknowledgment of a disease's epidemic status has been met.

Indeed, the broader global impact of the SARS pandemic has prompted changes to international health governance that could go some way to addressing the exacerbating effect of limited media freedom in the 'fast epidemic' context. As Aginam notes, the transnational spread of SARS challenged the 'normative orthodoxy of the Westphalian governance structures' — the instruments of national and international law — as they interact with microbial forces in a dynamic and exceedingly complex globalising world of states and non-state actors (Aginam 2004, 60). The new *International Health Regulations (IHR)*, adopted by the World Health Assembly on 23 May 2005, departed from the approach informing their antecedents by transforming the international legal context in which states exercise their public health sovereignty (Fidler and Gostin 2006, 86). In particular, for health-related events that occur in their territory, state parties must notify the WHO of all that 'may constitute a public health emergency of international concern' (Art 6.1). This includes any unexpected or unusual public health event, regardless of its origin or source (Art 7). More pertinently, the WHO has been empowered both to collect, analyse and use information gathered from governments, other intergovernmental organisations, nongovernmental organisations and actors (Art 9.1), and to seek rapid verification of this information from the relevant state party (Art 10). By permitting the WHO to cast its surveillance network beyond information it receives from governments, the IHR create opportunities for the WHO to improve the sensitivity of the surveillance system and avoid being blocked by governmental failure to comply with reporting requirements (Baker and Fidler 2006, 1062). Though the level of political commitment countries will demonstrate in implementing the IHR — and their

subsequent compliance — remains to be seen,<sup>58</sup> the WHO's access to nongovernmental sources of surveillance information reduces the incentives that state parties once had to hide disease events.<sup>59</sup>

### **Free(r) press in a Communist system: can censorship be justified (despite public health risks)?**

Yet despite the damaging nature of restrictions on media freedom in the PRC where operating in the context of significant public health challenges, it is not axiomatic that prompt liberalisation is necessarily due. According to Western tradition, freedom of expression in a broad sense is both intrinsically and instrumentally valuable because it promotes the discovery of truth and political participation; helps maintain social stability; provides a 'safety valve'; enhances self-fulfilment; and ensures a crucial check on government (*Whitney v California*; Zelezny 1993; Emerson 1963; Micklejohn 1961; Powe 1976; Fiss 1995). Protecting freedom of the press in particular is seen as important for maintaining the marketplace in which ideas are exchanged, enhancing the accountability and responsiveness of governance (Habermas 1989).<sup>60</sup> A media operating largely free of governmental constraint is seen to provide a forum in which ideas for improving society generally can be argued, and serve as a principal mechanism for providing commentary and criticism of government performance (Cheung 2003, 20; Fu and Cullen 1996, 22). On the basis of arguments presented here, an improved capacity to combat public health threats could be added (though is perhaps inherent) to this list.

58 The WHO notes on its website that the only compliance mechanisms for the reporting and surveillance obligations referred to are 'peer pressure' and public knowledge (WHO 2007).

59 The question has been asked, however, as to whether a corresponding general requirement on the WHO under Art 9.1 to disclose the source of non-governmental information might deter non-state actors from supplying the organisation with information, particularly individuals living under authoritarian regimes (Fidler and Gostin 2006, 90).

60 Freedom of the press implies both negative and positive freedom: freedom *from* censorship, political control and unreasonable economic influence; freedom *to* receive information from both the media and citizens, and freedom *to* advocate political views (Cheung 2003, 19). McQuail contends that this requires consideration of five core elements: freedom from censorship, licensing or other controls by the government; the right and possibility of free access for all to news, views, education and culture; freedom for news media to obtain information from relevant sources; freedom from concealed influence from media owners or advertisers on news selection or opinions expressed; and an active, independent and critical editorial policy (McQuail 1994).



As Peerenboom notes, however, concerns about the extent and strength of civil and political rights in the PRC often subject the country and its government to an underlying double standard — one that is potentially counterproductive, given China's history and traditions, level of economic development and current legal and political institutions (Peerenboom 2005, 75). The universality of human rights is a contested, though central, theme in diplomatic, popular and academic discussions alike (Donnelly 2007, 37). In post-Tiananmen debates over human rights in the PRC,<sup>61</sup> widespread criticism of the government's rights record has been balanced with a challenge to the legitimacy of holding the leadership to the legal standards and values of developed liberal democracies — raising questions of individual versus collective rights, and universalism versus cultural relativism (Buenhoff 1999, 101). Though the PRC has now come to embrace, or rather appropriate, the language of human rights<sup>62</sup> — as opposed to criticising the concept as a bourgeois slogan — it has pushed its own shifting definition of 'human rights with Chinese characteristics' (Svensson 2002, 1). A variation on the 'Asian Values' debate of the 1990s, which saw a number of Southeast Asian states articulate a cultural challenge to human rights norms and their prioritisation, citing regional philosophical, historical and religious particularity<sup>63</sup> (Engle 2000, 311; Sen 1997; Li 1996), 'developmentalist' discourses have increasingly influenced CCP policy on human rights (Sullivan 1999). The promotion of economic growth at the expense of potentially 'destabilising' political-liberalisation policies represents, as Sullivan notes, an attempt to 'systematise a relativist perspective on human rights within a political logic that universalises the CCP's development experiences and national situation' (1999, 123). China has generally defended its position by pointing to empirical trends, noting that the East Asian countries that have succeeded in maintaining stability and social order — achieving economic growth, reducing poverty and improving people's living standards — have adopted a restrictive approach to civil and political rights.<sup>64</sup>

61 Since the crushing of the democracy movement in 1989, human rights has been a problematic topic for the PRC in its relations with the international community, which is in stark contrast to the situation before 1989, when human rights did not feature very highly in bilateral and multilateral relations and the PRC was treated as something of a 'human rights exception' (Svensson 2002, 1). Svensson notes that in the resulting 'human rights fever', more than 1000 articles and 100 books were published on the topic between 1989 and 2002 (2002, 1–2).

62 See, for example, the 14 March 2004 amendment to Art 33 of the Constitution of the People's Republic of China, inserting a line that the state 'respects and preserves human rights'. See also Information Office of the State Council of China (2003).

63 Most prominently at the 1993 World Conference on Human Rights in Vienna, and in the pre-conference Bangkok Declaration.

64 An approach divergent from that of rights activists, who rely heavily on particular cases, often involving egregious violations or especially vulnerable or sympathetic defendants (Peerenboom 2005, 113–14).



An analytical approach that engages then with the party's broader human rights position requires some consideration of the Chinese rationale for maintaining strict media controls. According to Leninist thought, the private ownership of the press in bourgeois societies determines that the very concept of a free press is a deception.<sup>65</sup> Under Maoist rule, the theory of the media as an instrument of the revolution was applied with vigour (Schoenhals 1992). Though Chinese media have undergone significant structural and operational change with the deepening of economic reform, they retain a propaganda role in the party-state system. There remains behind all Chinese political thinking, regardless of epoch, a deep intuitive fear of societal chaos. Chinese political history demonstrates both great hunger for change and a profound dread of disorder. The capacity of the media to influence casts it as a power both for good and for bad (Fu and Cullen 1996, 277). Broadly speaking (and according with developmentalist discourse), the CCP's basic goals are to maintain its monopoly on power and to achieve its objective of rapid economic growth in a stable social and political environment. Restrictions on obscenity and indecency, the protection of consumers, the development of national culture, and the stimulation of employment and technological innovation in the media all figure in these goals. Nonetheless, the pursuit of public order and state security remain at the forefront of the Party's media policy (Keller 2003, 91). For the CCP, the news issues most threatening to order and security include the reporting of labour unrest, violent crime, health system failures, unemployment and poverty (Keller 2003, 92).

Implicit in the Chinese argument is a both communitarian<sup>66</sup> and neo-authoritarian<sup>67</sup> process of prioritisation that views human rights in utilitarian and pragmatic terms — favouring order over freedom, an emphasis on collective rights in the pursuit of economic growth, and the development of moral character and virtues (Peerenboom 2005, 143–45). In contrast, Peerenboom asserts that the case-by-case assessment usually undertaken by rights activists fits more easily with a 'moral absolutist or deontological approach' which skews results towards greater civil and political rights without properly considering the aggregate social benefits of a broader

65 In bourgeois societies, according to Lenin, 'the capitalists ... define as "freedom of the press" a state of affairs under which censorship is abolished and all parties freely publish all kinds of newspapers. In reality, this is not freedom of the press, but freedom to deceive the oppressed and exploited masses ... by the rich, by the bourgeoisie' (quoted in Martin and Chaudhary 1983).

66 In the context of universal human rights, valuing the interests of society and a 'common national good' over those of individuals (see Bell 2000).

67 In the context of contemporary Chinese political thought, the view that modernisation is only possible through enlightened authoritarian rule during the transition away from Leninist politics and an efficient state-run economy (see Sullivan 1994).

restraint (2007, 121). In order to better assess restrictions on civil and political rights, he suggests applying a three-pronged balancing test — normally employed on a case-by-case basis by the Human Rights Committee monitoring compliance with the International Covenant on Civil and Political Rights, the European Court of Human Rights and other bodies — to consider specific restrictions, but also their broader social and political context. To determine its validity, the test asks respectively whether a restriction is prescribed by law, serves a legitimate purpose on its face, and most crucially (though at the same time most subject to divergent judgment stemming from ideological difference) is necessary (2005, 114–17).

In terms of media censorship, the first two elements are satisfied for reasons outlined in the preceding paragraph.<sup>68</sup> The third requirement is more problematic, however. The circulation of information concerning SARS or HIV/AIDS hardly poses a threat to social stability, economic growth or morality — indeed, in the latter case, the increasing prevalence of HIV/AIDS exposes the unreality of ‘traditional’ moral assumptions. Perhaps most significantly, though, by exacerbating the damage wrought by public health crises, Chinese media restrictions ultimately further hinder — and often in a more enduring fashion — the government’s prized pursuit of economic growth and development. This is borne out by both empirical data, and comparative experience (Gill and Thompson 2003, 6; UNAIDS, UNICEF and USAID 2002, 3; Gostin 2003, 3; Nyirongo 2004; Pratley et al 2003, 19; Bradsher 2003, A8; Cohen 2003; Fowler 2003, 20; McGregor 2003, 6; Cheung 2003, 3; Zhengshi et al 2004, 84; Reader 2006, 565). Ultimately, it is difficult to see how any analysis could justify the tight limitations on discussion of issues of legitimate public concern bound up in major public health crises, particularly where media silence creates a vacuum for uninformed (and often detrimental) rumour to fill, rather than rendering such crises invisible to the public at large. Adapting Peerenboom’s broad conclusion to the rights of the news media, a more considered analysis of the nexus between specific news content and disruptions of the public order or harm to the state or public morals would expand greatly the degree of journalistic freedom enjoyed in the PRC without harming collective or individual interests.

## Conclusion

The CCP has never controlled all sources of information in the PRC. Nonetheless, the official and unofficial elements of the regulatory system governing media content are intended to create a national news and information environment in which the CCP’s

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68 Though whether the laws are clear enough to prevent citizens from unexpectedly running afoul of them is an issue in some cases.

perspective on events constitutes reality for most residents of China (Lynch 1999, 75). As has been shown via a close examination of the role — or lack of it — of media outlets in dealing with the SARS and HIV/AIDS epidemics in the PRC, the government's system of media content control largely works, though to the detriment of the Chinese population in the public health context. In particular, through official laws and administrative regulations prohibiting the publication of content considered damaging to state security or public order, and the formal and informal regulatory apparatus mustered to underpin such ambiguous standards and provide incentives and disincentives to individuals and organisations to tow the line, the resultant climate of censorship stifles valuable public information flows. Moreover, as noted, the case studies dealt with here cover both of the two dissimilar forms of contemporary infectious disease threats in our globalised world. In hampering effective disease control, restrictions on media freedom in the PRC also activate broader debates concerning the legitimacy of judging the extent and resilience of China's human rights protections through a prism of liberal-democratic values and experience. As demonstrated, even where attempting a more nuanced and balanced evaluation of relevant media regulation, the Chinese system cannot be justified in line with the overarching developmental prioritisation expressed by its leadership.

Fu and Cullen claim that the principal message of the open-door era with respect to the media in China has three aspects: a constant testing of the limits of the regulatory systems, principally from within the PRC; the authorities' repeated attempts to control these movements towards greater freedom of expression; and, though these restrictions have been effective to a degree, an ultimate long-term trend towards a less restricted media (Fu and Cullen 1996, 18). Undoubtedly, commercialisation has placed the news control system under greater strain as publications have begun to compete for readers and advertising revenue, and greater openness in Chinese society in general has fed the public appetite for more interesting news stories — thereby increasing the incentive to disregard prohibitions (Keller 2003, 125–26). Yet, while the PRC has progressed from the Maoist period, where negative reporting was non-existent,<sup>69</sup> ongoing media change is resulting in expanded media freedom at the local (rather than national) level and in the social (rather than political) realm (Zhang 2007b, 57; Wu 2005, 141). Similarly, while CCP control of content is often being exercised in less visible ways — adapting to the management-based structures brought about by marketisation — it remains strong. A top GAPP official has been

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<sup>69</sup> Li Xiguang, Professor and Executive Dean of the Tsinghua School of Journalism and Communication, remarked that in those days, 'good news' was 'good news', 'bad news' was 'not news' (quoted in Cheung 2007, 363).

quoted declaring that 'no matter how much the managerial mechanisms of the media change, the Party's control over the media, the cadres who manage the media, the ideological direction of the media, and the properties of the media organizations will not change' (Pan 2005, 99). In the health interests of the Chinese public at the least, it would appear imperative that this control, if enduring, ultimately coexists with a relaxing of unjustifiable content prohibitions. ●

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