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## 15. Freedom of opinion and expression

*Hermann Aubié*

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### 15.1 INTRODUCTION

At first glance, the realm of public expression in today's China looks much more diverse, sophisticated and complex than during Mao's era. Thanks to historically unprecedented levels of literacy and access to new information and communication technologies, most Chinese citizens can now connect and share information with each other and the outside world more easily than ever.

Like the rest of the world, however, Chinese citizens have seen their level of free expression increasingly constrained over the past few years due to the Chinese Party-state's tightening repression of free expression. Such repressive turn against freedom of expression is often represented in the mainstream media outside China as an authoritarian reaction of a government that is not willing to engage with the various political challenges posed by a rising number of its citizens whose voices have grown louder through new media (Anonymous 2016).

To understand why and how freedom of thought and expression<sup>1</sup> are governed in ways that are specific to China and yet comparable to wider global trends, this chapter examines the various institutions and technologies as well as normative and repressive tools used by the Party-state to limit the freedom of expression of Chinese and foreign citizens within and outside China.

### 15.2 BRIEF HISTORICAL OVERVIEW

Today, freedom of expression has arguably become one of 'the most revered and least questioned legacies of the Enlightenment' (O'Neill 2002). Historically, indeed, freedom of expression was first proclaimed as an important principle during the European Enlightenment in order to defend the freedom of individuals to articulate and express thoughts publicly without fear of state censorship or repression (Goldstein 2013). As time went by, these principles acquired a more specific meaning and definition that often drew upon key documents such as the First Amendment of the US Constitution and John Stuart Mill's *On Liberty* ([1859] 1998) that are still often cited as compelling rebuttals against state restriction of free expression. Against this historical backdrop, freedom of expression should be seen—ideally—as an absolute guarantee that prevents governments from resorting to any coercive use of state power to silence people who disagree with them (Sunstein 1995). Ultimately, freedom of expression is about

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<sup>1</sup> For the sake of concision, freedom of expression is used hereafter as encompassing freedom of thought and conscience.

constraining states to accept a plurality of views instead of promoting a particular ideology that divides people or pits them against each other (Saunders 2017).

However, for much of the past two centuries, most governments have remained able to control the expansion of free expression to various extents. In China, where human rights span over a century (Edwards, Henkin and Nathan 1986; Svensson 2002), state repression of freedom of expression and dissent harks much further back into Chinese history as research on ‘literary inquisitions’ (*wenziyu*) under both imperial and republican China shows (Wakeman 1972; Yeh 2004).<sup>2</sup> Historical evidence suggests that the right to freedom of expression as understood by today’s international human rights regime<sup>3</sup> started to emerge in China around the late 1970s, first among independent intellectuals, and then from the 2000s among the wider public who became more aware of the importance of free expression with first-hand experience of censorship<sup>4</sup> on the internet (Zhang and Zheng 2009).

To better understand why and how freedom of expression in China became a growing source of political tension between citizens and the Party-state, as well as between China and other countries, it is important to first situate China in the global history of human rights. Recently, historians of human rights argued that following the first historical landmark of the 1948 *Universal Declaration of Human Rights* (UDHR), the second significant historical ‘breakthrough’<sup>5</sup> took place around the mid-1970s when human rights talk and practice became remarkably present as part of a rapidly growing transnational movement. Despite this international trend, however, it was only after 1989 that China felt the full force of international opprobrium at violations of human rights. Indeed, after news and images of the June Fourth Massacre of 1989 started to spread around the world, China became increasingly seen through the lens of human

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<sup>2</sup> For an overview of how the imperial state variously suppressed dissent and opposition across time and space, and for the reasons why it mainly targeted scholar-officials suspected of holding subversive attitudes towards the state, see Koyama and Xue (2015).

<sup>3</sup> By international human rights regime, I mean a very complex set of different actors and institutions such as Non-Governmental Organizations (NGOs), media, governments, the United Nations, human rights courts, regional and national human rights organizations, private foundations and universities that deal with human rights in one way or another, and usually by referring to key international human rights documents such as the *Universal Declaration of Human Rights* (UDHR), the two Covenants (*International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)) as well as various human rights laws and treaties. For a detailed version of the definition used in this chapter, see Donnelly (1986).

<sup>4</sup> Censorship in China is understood here as a complex set of information and control practices by the Party-state that mainly consists of: selective human censorship, automated keywords and images filtering, daily directives transmitted to officials and media organizations via informal phone calls to restrict what Chinese people can hear, say and read or see. Last but not least: people’s self-censorship caused by fear of state repression.

<sup>5</sup> See Eckel and Moyn (2013). Their argument is based on a series of key historical turning points such as, to name a few, the *Helsinki Accords* and Andrei Sakharov’s Nobel Peace Prize in 1975, Czechoslovakia’s ratification of the ICCPR in 1976 and the release of Charter 77, the emergence of the Tangwai movement in Taiwan in the mid-1970s, Amnesty International’s Nobel Peace Prize in 1977, and the shift to a human rights-oriented foreign policy under Jimmy Carter’s presidency between 1977 and 1981. See also Moyn (2010).

rights (Kent 1999). From that year onward, exiled Chinese activists of the 1989 protests who relocated to strategic locations such as Washington, DC, Paris and London were frequently interviewed by Western media. As a result of an increased media coverage of human rights in China, people became more interested in such issues and human rights Non-governmental Organizations (NGOs)<sup>6</sup> responded to this growing interest with more regular and better-informed reports on China with a focus on civil and political rights.<sup>7</sup> New NGOs focusing on human rights in China<sup>8</sup> were also established and gradually formed an advocacy network with a growing influence on the way influential Western media<sup>9</sup> report about China, as well as on the China policy of Western governments<sup>10</sup> and international organizations such as the United Nations (UN). Over time, these various actors built a normative discourse critical of the Chinese government's violations of human rights. Using key words such as 'censorship' and 'violations of human rights and freedom of expression' as well as 'repression of dissent and political prisoners', they exerted much influence on how the wider public outside China came to perceive the country.

Concurrently, to avoid a similar fate as the Soviet Union's disintegration in the early 1990s, the Chinese government pushed forward its economic development plan and legal reforms in order to attract foreign investment and technologies, while upscaling its stability maintenance (*weiwen*) apparatus (Zhang and Wu 2017). While Beijing rejected Western governments' criticisms of its civil and political rights record by defending its socio-economic progress, it also periodically released high-profile political prisoners such as Fang Lizhi and Wei Jingsheng to deflect trade-related pressures from the USA with China's MFN trade status and Europe with the EU arms embargo, for example. Strategically, Beijing engaged with the international human rights regime by superficially acknowledging the indivisibility of socio-economic rights and civil-political rights in the Vienna Declaration while defending the right to development as a priority at the same time.<sup>11</sup> Through its combination of economic reforms and

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<sup>6</sup> See for example Amnesty International, Human Rights Watch, PEN International, Index on Censorship, Committee to Protect Journalists, Freedom House, Reporters Without Borders, Article 19, Front Lines Defenders.

<sup>7</sup> The rationale behind this focus is that it is more concrete to document the human rights violations of individual cases based on the norm that states have negative obligations to respect civil and political rights rather than trying to document the extent to which the states fulfil their positive obligations in terms of socio-economic rights.

<sup>8</sup> See for example Human Rights in China, Laogai Foundation, Chinese Human Rights Defenders, Dui Hua Foundation. The latter maintains the largest database of Chinese prisoners of conscience in the world.

<sup>9</sup> See for example the editorial lines of the *New York Times*, *The Guardian*, *The Economist*, and more recently *Al Jazeera*, which consistently portray China as one of the world's worst abusers of freedom of expression.

<sup>10</sup> See in particular the creation by the US government in October 2001 of the Congressional-Executive Commission on China (CECC), which monitors human rights and rule of law developments in China with a particular focus on compliance with the UDHR and the ICCPR and by maintaining a database of religious and political prisoners. See official website: [www.cecc.gov](http://www.cecc.gov).

<sup>11</sup> At the 1993 Vienna Conference on Human Rights, China's head of delegation Liu Huaqiu stressed that 'Nobody shall place his own rights and interests above those of the state and

authoritarian politics, the Chinese government kept its monopoly on state power, notably its capacity to use public opinion to its advantage while suppressing freedom of expression and other human rights at will. Briefly put, this is how China<sup>12</sup> gradually stood out since 1989 as a global outlier in the international human rights regime.

## 15.3 LAW AND PRACTICE OF FREEDOM OF EXPRESSION IN CHINA

Because freedom of expression is key to the effective monitoring of and advocacy of other human rights, it is important to understand the scope and limitations of China's institutions in charge of enforcing media censorship and control, as well as China's domestic regulatory framework and relevant international laws related to freedom of expression before examining how China's Party-state suppresses freedom of expression.

### 15.3.1 Chinese Institutions Regulating the Media and Internet

In China, the Propaganda Department of the Chinese Communist Party (henceforth CCP or the Party) is in charge of 'disseminating' (*xuanchuan*) information and ideology through 'thought work' (*sixiang gongzuo*) and its operations are highly secretive (Brady 2009). While savvy internet users may use circumvention tools to 'jump the Great Firewall' (*fanqiang*) as the censorship system is often metaphorically referred to, recent evidence shows that because the Propaganda Department is relying on increasingly sophisticated technologies, it is able overall to powerfully shape the spread of information (Roberts 2018) within China. At the same time, there is a relative diversity of information due to complex interactions between local, national and global media in China (Chin 2016). However, recent legislation and institutional changes indicate a further centralization of information and media control. In June 2017, for example, a new *Cyber Security Law* was implemented as a direct application of the CCP's 'cyberspace sovereignty' (*wangluo zhuquan*). In essence, it requires Chinese internet service providers as well as foreign companies and businesses in China to 'store their data on Chinese-law regulated local servers, and cooperate with Chinese national security agencies if asked to' (Wagner 2017). As a result, if an internet user in China wants to use the cloud storage of the American multinational technology company Apple, for example, her data may now be surrendered to the Chinese authorities by Apple's Chinese joint-venture partner if required (Anonymous 2018). In March 2018,

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society, nor should he be allowed to impair those of others and the general public' (quoted in Scats and Breslin 2012, p. 9).

<sup>12</sup> When referring to 'China', it is important not to conflate the Party-state with Chinese citizens, among whom many are pushing the limits imposed by the Party-state on their free expression. From this perspective, the story about freedom of expression in China is not just a struggle between China and the West, but also among Chinese people who live both inside and outside China. This is a crucial distinction because the Party-state frequently claims the monopoly to represent the collective interests of the Chinese people while forcibly silencing the voices of Chinese citizens who are critical of the Party-state by framing them as so-called 'enemies of China'.

the CCP also abolished the ministry-level executive agency State Administration of Press, Publication, Radio, Film, and Television and transferred its regulatory powers over film, news, publishing and internet content to the Propaganda Department (Li and Shepherd 2018). Those two recent changes are likely to further dissuade people from freely expressing their thoughts on the internet.

### 15.3.2 Chinese Law and Practice

From the 1989 onward, China experienced a legislation boom that included draconian laws<sup>13</sup> and progressive laws.<sup>14</sup> Concerning freedom of expression, among the most draconian laws are the ‘counterrevolution crimes’ of Mao’s era which were replaced in 1997 with the more modern-looking ‘Endangering State Security’ crimes (hereafter ESS crimes). As the lawyer Teng Biao (2012) explained, the conceptual change to ESS crimes was first seen as a sign of progress away from Mao era ideology and more in line with international trends, but its enforcement did not change the practice of using the criminal justice system for political purposes (McConville 2011). In fact, considering the larger political background in which international law operated in the late 1990s, this strategic rewording might have even helped the Party reduce the reputational damage that comes with higher external scrutiny. Indeed, to reduce the risk of being accused of political persecution of its Chinese citizens on the international scene, the Chinese government has used the law’s semblance of political neutrality to depoliticize political cases.

Among the ESS crimes, the crime of ‘inciting subversion of state power’ that was codified into Article 105(2) of the *Criminal Law of the People’s Republic of China* (*Criminal Law*) has provided the Party an important politico-legal tool to punish freedom of expression and control public opinion (Hsu and Chen 2014), notably by imprisoning Chinese human rights defenders.<sup>15</sup> When Article 105(2) was written into law in 1997, China’s traditional media were almost completely under the Party’s control. Therefore, the Party could draw a clearer boundary between the expression and association of Chinese citizens. From the early 2000s, however, the increasing number of Chinese internet users<sup>16</sup> had blurred that boundary because the Party’s control of the internet’s architecture was not then as systematic as it has become at the time of

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<sup>13</sup> See Chapter I of Chinese Criminal Law setting out the Crimes of Endangering National or State Security (Articles 102–113). These crimes should not be confused with the crimes of Endangering Public Security set out in Chapter II (Articles 114–39).

<sup>14</sup> For example, the 1989 *Administrative Litigation Law* enabling Chinese citizens to sue government agencies.

<sup>15</sup> In 1999 for example, Jiang Qisheng tried to organize a candle light vigil for the tenth anniversary of June Fourth by writing an open call and was sentenced to 4 years in prison for ‘inciting subversion of state power’.

<sup>16</sup> As a reminder, the construction of the internet was first initiated by the government in 1992. In 1994, China became the 71st country in the world to join the internet. In 1995, individual use of the internet became possible. In June 2017, China had 738 million internet users or 53 percent of its total population, available at: [www.internetworldstats.com/top20.htm](http://www.internetworldstats.com/top20.htm).

writing. As a result, prosecution under Article 105(2) increasingly involved a combination of expression and association that was often judged in deliberately ambiguous ways by the Party-state.

While transparency on ESS cases in China is low in many respects (Dui Hua Foundation 2018), available evidence suggests that Chinese citizens facing ESS criminal charges typically see their Constitutional and legal rights denied by the Party. Likewise, defense lawyers usually see their arguments<sup>17</sup> disregarded by the courts because the fate of their clients is already decided by the Party, which ensures that the court adjudicates political cases in a correct way, for example by giving orders to ‘adjudication committees’ that the China law researcher Xin He (2012) described as a ‘black hole of responsibility’. While prosecutions of ESS crimes were more frequent in the early 2000s than in later years, this trend does not mean much if we consider the fact that prison sentences were on average much shorter in the early 2000s.<sup>18</sup> Indeed, after the 2009 trial of Liu Xiaobo,<sup>19</sup> about 300 ESS trials took place each year in 2013–14 and then fell by 50 percent in 2015, when several cases involved long-term sentences (Dui Hua Foundation 2016). Further evidence indicates that almost one-third of human rights defenders convicted in crackdowns since Xi Jinping came to power in 2013 were charged with ESS crimes such as ‘subversion of state power’ or ‘inciting subversion’, with 16 human rights defenders convicted of such crimes in 2016 alone (CHRD 2017).

When the court adjudicates political cases involving ESS crimes or ‘disturbing public order’ crimes, it does not seek to provide any evidence of harm or violence that affects ‘state security’ or ‘public order’ in order to justify the suspension of the rights of Chinese citizens recognized by the Chinese Constitution, let alone public international law (Longanecker 2009). When Chinese citizens seek to exercise their Constitutional

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<sup>17</sup> The few Chinese lawyers who have been willing to defend Chinese citizens often used Articles 33, 35, 41 and 47 of the Chinese Constitution which stipulate, respectively, that the State should respect and protect human rights, that citizens have the right to freedom of expression, to free publication, and to criticize the government. To support the legality of their defense, they sometimes resort to international laws such as the ICCPR and the Johannesburg Principles. For the latter, which apply to ESS criminal charges used by the Party’s prosecution, lawyers may cite Principle 6 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information (updated and renamed as Tshwane Principles in June 2013) stating that ‘expression may be punished as a threat to national security only if a government can demonstrate that: (a) the expression is intended to incite imminent violence; (b) it is likely to incite such violence; and (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence’.

<sup>18</sup> For specific figures and graphic representations of the trends, see Rosenzweig (2012). For a general overview of how various individuals were sentenced under Article 105(2), see the account of the lawyer Guo Guoting cited in Teng (2012, pp. 282–3).

<sup>19</sup> In Liu Xiaobo’s case, it is noteworthy that Chinese official media have quoted legal scholars who compare Article 105(2) to ‘hate speech’ crimes in Western countries. While statements entailing clear verbal violence directly targeting a minority group or individual having limited power *vis-à-vis* the state or mainstream ideology can be condemned as ‘hate speech’ to protect those minorities against the majority or the state, authoritarian governments like China’s do exactly the opposite. Laws like Article 105(2) are used to protect the already powerful state instead of protecting vulnerable individuals.



and international legal rights to freedom of expression, the Party-state may use the ‘Crimes of Disturbing Public Order’ in the *Criminal Law* to silence Chinese citizens who express views that are deemed politically unacceptable. Among those crimes, Article 291, for example, sets out the crime of ‘gathering a crowd to disrupt public order’ (*juzhong raoluan shehui zhixu zui*). Because this crime is vaguely defined, it can be used by the court and the CCP to undermine various legal provisions that are supposed to guarantee freedom of expression in China. As a result, this law and other laws against disturbing public order are used to suppress nonviolent political speech (Longanecker 2009).

Retrospectively, even though the overall level of the Party’s suppression of free expression under the post-Maoist ‘rule by law’ became more targeted than during the political campaigns under the ‘rule of men’ of Mao’s era, the Party’s *gongjianfa*<sup>20</sup> are still free to act outside of any clear legal standard to repress public expression of political views that are deemed intolerable. In response to this unpredictable situation, human rights lawyers and scholars (Jia 2016) have repeatedly called on the authorities to respect the Constitutional rights of Chinese citizens with the hope that a Constitutional rule of law could become a reality in China one day. In the meantime, for some Chinese human rights lawyers who used a legal path to redress injustice caused by the authorities, small legal steps towards justice can be meaningful and even educational if publicized via social media, even though they may not win their case in court (Pils 2015). This is because human rights lawyers came to see their legal efforts as part of a long-term struggle to raise awareness of fellow citizens and the hope that political change is possible by challenging specific cases of injustice.

### 15.3.3 Freedom of Expression on the Internet is Increasingly Limited

Because free access to information is the precursor to freedom of expression and its cognate rights of freedom of thought and conscience, the Party-state’s control of ICTs and particularly the internet represents a fundamental limit to the conditions necessary to allow free expression in China. With about half of the world’s population having access to ‘the first technology allowing anyone to express themselves on a global stage, without first asking permission from a company or government’ (Access Now 2018), the way people exercise their free expression is changing rapidly. While this is also true for Chinese citizens, they spend much of their online time partly cut off from the outside world, mainly because the Party-state has made internet control one of its top priorities (Lagerkvist 2010). A common illustration of this is the Party-state’s blocking of the world’s most widely used internet platforms like Google, Facebook and Twitter. As a result, Chinese citizens who want to share information and express their views with each other have almost no other choice but to use China’s equivalent platforms

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<sup>20</sup> They include three official agencies (police, procuratorate and court). According to the Constitution, they are supposed to mutually ‘restrain’ and ‘supervise’ one another, but in practice they more often ‘coordinate’ with one another to enforce orders from Party leaders. McConville (2011) noted the endurance of a Mao-era view of the criminal process in which the courts, police and prosecutors work together like ‘three workshops in the same factory’. The most powerful of the three being the police, who ‘hold the hilt’ (*dao bazi*), to use a Mao-era metaphor.

like Baidu and Tencent that are strictly under the Party-state's control (Boyden 2013). Practically, even if the ideals of free expression and communication 'regardless of frontiers' have become technically possible with the internet, the Chinese government can act in the name of 'cyber sovereignty'<sup>21</sup> to deny and diminish them by limiting the flow of information and ideas through intensified media control and censorship by using a combination of laws and regulations that are part of a 'dynamic and diversified media censorship regime' (Tai 2014) that enables the relevant authorities to block websites and censor key words which form an ever-growing 'lexicon of fear' (Paltemaa and Vuori 2015).

Under the surface, though, there has also been an ongoing cat and mouse game between the Party-state and Chinese citizens which constantly redefines the conditions of what is permissible to say and do. This fight mirrors a more global fight between US tech giants such as Apple, Google, Amazon and Facebook and their users around the world who increasingly worry about their rights to freedom of expression and privacy, with a growing number of internet users calling for internet access and net neutrality to be recognized as human rights (Joyce 2015).

Freedom of expression watchdogs<sup>22</sup> have reported in recent years that speaking out in China and around the world is becoming more dangerous. In the age of Wikileaks, Assange and Snowden, securitization of cyberspace is taking place in the name of 'anti-terrorism' in the West. And it is alongside this ongoing trend that China's Party-state continues to increase restrictions over cyberspace, either in the name of 'sovereignty, security and public order' or as part of a crackdown on so-called 'rumour-mongering and illegal information'.<sup>23</sup> Moreover, as Xi Jinping's rule turns increasingly repressive, the space for free expression of Chinese people on the internet is fast eroding.

### 15.3.4 Freedom of Expression as a Universal Human Right and its Limits in China

The right to freedom of expression is one of two areas of international human rights law—together with the right to association and assembly—where the Party-state control has significantly stiffened in recent years (CHRD 2017). Like all UN member states, China has a moral obligation to protect human rights under both the UN Charter and the UDHR. Through the adoption of the UDHR, freedom of expression first became internationally recognized as a universal human right through Article 19, which stipulates that: 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart

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<sup>21</sup> In 2015, the Party-state passed a *National Security Law* that includes 'maintaining cyberspace sovereignty' as a fifth dimension of the nation's sovereignty in addition to land, sea, air and space. In June 2017, a *Cyber Security Law* also came into force.

<sup>22</sup> For example, the Committee to Protect Journalists (CPJ), Article 19, Reporters Without Borders, Freedom House, and Index on Censorship. Since the CPJ began conducting its annual census of imprisoned journalists in 1990, China has topped its list 18 times, meaning that China is among the world's worst jailers of journalists. Likewise, China was ranked 176 out of 180 in the 2016 press freedom index of Reporters Without Borders.

<sup>23</sup> See CHRD (2018).



information and ideas through any media and regardless of frontiers'.<sup>24</sup> Today, most of the UN member states have also recognized freedom of expression as a legally binding human right by ratifying the *International Covenant on Civil and Political Rights*<sup>25</sup> (hereafter ICCPR). While China signed the ICCPR in 1998, it has not ratified it yet; however, China is still obliged not to defeat its purpose (under Article 18 of the Vienna Convention).

It is important to be clear about the scope of free expression under public international law. Although freedom of expression is now recognized as a universal human right in Articles 19 of both the 1948 UDHR and the 1966 ICCPR, which both define freedom of expression as the 'freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers', Article 19(3) of the latter also includes justifications that allow state parties to restrict free expression for the 'protection of national security or of public order, or of public health or morals'. Because state parties could interpret those justifications in ways that can jeopardize the right itself, in September 2011 the UN Human Rights Committee issued a clarification, by way of General Comment No. 34, stating explicitly that 'when a State Party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself'.<sup>26</sup>

At first sight, freedom of expression appears to be guaranteed in China's Constitution in compatible ways with international human right standards. Article 33, Article 35, Article 41 and Article 47 stipulate, respectively, that the state respects and protects human rights<sup>27</sup> and that citizens have the right to freedom of expression, to free publication and to criticize the government. At the same time, Article 53 imposes a duty to safeguard vaguely defined state secrets<sup>28</sup> and the Constitution's preamble lists 'four cardinal principles'<sup>29</sup> which essentially assert the legitimacy of the lack of

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<sup>24</sup> See [www.un.org/en/universal-declaration-human-rights](http://www.un.org/en/universal-declaration-human-rights).

<sup>25</sup> While 169 states have ratified the Covenant, which entered into force on 23 March 1976, China is among six states that have only signed it so far.

<sup>26</sup> General Comment No. 34 also states that freedom of expression includes 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse'.

<sup>27</sup> Without defining what it means by human rights.

<sup>28</sup> For more details on how it was defined seven years after the 1982 Constitution, see the *Law on Guarding State Secrets* (1988).

<sup>29</sup> Namely: 1. Upholding the socialist path; 2. upholding the people's democratic dictatorship; 3. upholding the leadership of the Party, and 4. upholding Mao Zedong Thought and Marxism-Leninism. Introduced in 1979 in response to the Democracy Wall Movement, they ensured that the Party-state had measures to fall back on in case unintended consequences would emerge out of the reforms, as illustrated by the 1983 campaign against 'Spiritual Pollution' which made it clear that individual rights could be ignored at will by party leaders afraid of the spread of 'bourgeois liberal' ideas. In Shanghai, for example, Zhang Xianliang and He Yongquan were sentenced to five years' imprisonment for 'counterrevolutionary propaganda and incitement'. For a detailed analysis of that period from the perspective of recursive '*fang/shou* cycle' oscillating between relaxation and repression, see Baum (1997).

separation of powers ‘under the Party’s leadership’ (*lingdao xia*).<sup>30</sup> Under this principle, the government does not allow, for example, for the Chinese Constitution to be directly recognized in Chinese Courts, especially in criminal cases involving the unacceptable public expression of political views.<sup>31</sup> And since Xi Jinping came to power, the government has attempted to silence Chinese scholars and citizens who have sought to use China’s Constitution as a basis to build a consensus for peaceful politico-legal reforms.<sup>32</sup>

In order to appreciate how free expression under public international law clashes with China’s selective interpretation of its Constitution and international law, the case of the 2010 Nobel Peace Prize winner, Liu Xiaobo, provides a good illustration. When his international lawyer, Jared Genser, asked for the ‘opinion’ of the UN Working Group on Arbitrary Detention<sup>33</sup> (hereafter UNWGAD) about the legality of Liu Xiaobo’s detention, the UNWGAD found that he was indeed arbitrarily detained in violation of China’s obligations under international law. In turn, Beijing replied that freedom of expression in China is limited by Articles 51 and 54 of the PRC Constitution<sup>34</sup> that are in line with Article 19(3) of the ICCPR. In response, the UNWGAD rejected this interpretation of Article 19(3) by citing General Comment No. 34 as a basis to argue that the principle of proportionality was not satisfied in this case (UNWGAD 2011). At this point, Beijing simply ignored the ‘opinion’ of the UNWGAD, thereby refusing to engage with the legal argument about determining the limits of free expression in China.

While the Chinese Party-state is not the first nor the last government to renege on its legal commitments, it is increasingly understood both within and outside China that when its government deliberately ignores its own legal commitments, including the international treaties to which it has committed in the exercise of its sovereignty, this can only further damage its credibility when it comes to being seen as a ‘responsible government’ commensurate with its growing global economic and political power. For now, the Party-state continues to routinely condemn external criticisms of its human

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<sup>30</sup> This is rooted in the self-appointed revolutionary mandate of the Party-state which took power in 1949 by claiming to deliver a people’s democratic dictatorship on the condition to be the ultimate source of political power.

<sup>31</sup> For more details about the official reasons why the Party-state refuses to let the Courts recognize the Constitution, Aubié and Wang (2016).

<sup>32</sup> For in-depth reviews and analyses of China’s 2013 Constitutional debate, see Creemers (2015). See also Kellogg (2016).

<sup>33</sup> It is noteworthy that the mandate of this special procedure was weakened in 1996 when the Chinese government allowed the UNWGAD to visit China for the first time upon the agreement that the UNWGAD would only express its ‘opinion’ instead of a ‘decision’ on whether a case of detention was arbitrary or not. See Foot (2000). Still, an opinion from the UNWGAD is important because it assists to counter the incorrect picture on the human rights situation that the Chinese state presents at the UN and to expose the lack of cooperation of China with UN human rights mechanisms despite its voluntary pledge to join them.

<sup>34</sup> Articles 51 and 54 respectively state that Chinese citizens ‘may not infringe upon the interests of the state, of society or of the collective, or upon the lawful freedoms and rights of other citizens’ and that it is their ‘duty to safeguard the security, honor and interests of the motherland; they must not commit acts detrimental to the security, honor and interests of the motherland’. See [www.hkhrm.org.hk/english/law/const03.html](http://www.hkhrm.org.hk/english/law/const03.html).

rights violations as ‘interferences in its internal affairs’ or ‘violations of its sovereignty’ without acknowledging the contradiction of such position. Essentially, the Party-state cloaks its bad faith in an absolutist interpretation of state sovereignty that overrides freedom of expression and other fundamental human rights. As the China law scholar Jerome A. Cohen eloquently pointed out (2012), paraphrasing Shakespeare, Beijing is ‘keeping the word of promise to the ear, but breaking it to the hope’ when it comes to the implementation of its human rights obligations.

In addition, even if the Party-state has signed and ratified most of the existing international human rights treaties, the latter are not known to be effective because the Party-state does not allow Chinese courts to recognize those treaties as having any superior validity over China’s laws and Constitution, nor does it always consistently legislate laws in accordance with the human rights treaties it ratified. While this is not unique to China, there are other inconsistencies that illustrate the limitations of international human rights law in China. For example, the Party-state has not signed or ratified any optional protocols to human rights treaties that would enable Chinese citizens to individually complain to the UN if they feel that Chinese courts cannot deliver justice.<sup>35</sup> This state of affairs may partly explain why some Chinese citizens in search of justice and a higher law than Chinese national law seek to travel all the way to the United Nations offices in Geneva to seek redress about the Chinese government’s human rights violations including freedom of expression and other relevant human rights.<sup>36</sup> In other words, international human rights laws will not become ‘law’ in China until Chinese citizens can use them in Chinese courts to challenge national laws that go against their human rights.

Considering the domestic laws and institutions regulating expression and publications in China, the extent to which freedom of expression appears restricted by China’s Party-state varies according to ‘the extent and vagueness of the limits it invokes as legitimate, and the range of means used to enforce them’ (Garton Ash 2016, p. 39).

## 15.4 FREEDOM OF EXPRESSION IN CHINA: HISTORICAL BACKGROUND

During the 1989 protests movement, as the Shanghai weekly *World Economic Herald* was actively promoting the need to implement press freedom laws, the then-mayor of Shanghai Jiang Zemin fired its editor Qin Benli<sup>37</sup> for ignoring his censorship orders,

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<sup>35</sup> However, when all legal remedies through domestic courts have been exhausted by Chinese citizens, a growing number of them seek out external institutions such as the nonbinding and symbolic UN treaty bodies, the UPR, and the UNWGAD. It is because these platforms provide an international forum where governments can ‘name and shame’ each other through resolutions for failing to uphold international human rights standards.

<sup>36</sup> See for example the case of Cao Shunli which became emblematic of how the Chinese government seeks to silence independent voices of Chinese civil society to speak to the UN (CHRD 2014).

<sup>37</sup> Qin Benli (1917–91) was one of the early reformists inside the system who supported the gradual transformation of the *World Economic Herald* from a mouthpiece into a watchdog around the mid-1980s.

which in turn triggered a protest march in the name of ‘press freedom’ and the ‘right to speak the truth’. While a media law was supposed to be drafted in the late 1980s, the conservative Party leader Chen Yun<sup>38</sup> (quoted in Sun Xupei 2012) later explained why it never materialized:

During the period of the Kuomintang regime, a media law was enacted. We, as CCP members, carefully studied its words to find its flaws and took advantage of its loopholes. Now that we have taken over the power, I do think we are better off without the media law. This way, we can avoid people taking advantage of our law’s loopholes. If there is no law, we can be active. We can exercise our power over people the way we like.

Fast forward about two decades: when asked what it is like to be a dissident, Liu Xiaobo explained that it is treacherous like ‘hitting edge balls’ (*da cabianqiu*) because in China:

The law concerning what you can write and what you can’t write is very muddy. Therefore no one ever knows precisely when the line is crossed. This way, the authorities can act any time.<sup>39</sup>

In today’s China, Chinese citizens like Liu Xiaobo who want to publicly express their political opinions face an even wider range of vaguely worded draconian criminal laws that could fall upon them in unexpected ways, like a sword of Damocles hanging over their heads. As a result, many Chinese citizens are still afraid of the potential consequences of their public expression, all too aware of the Party-state’s panopticon-like surveillance (Zhen 2015). Thus, by retaining the exorbitant power of punishing people arbitrarily, the Party-state prevents them from knowing in advance when and how the Party-state will react to their actions, notably their critical speech acts (Zhen 2015). In other words, because the party’s leaders are afraid of the political implications of freedom of expression, they resort to a politics of fear that incites people and companies to self-censor. In turn, this fear of people’s freedom of expression undermines public trust. While the Party-state has sought to foster wider public deliberation and consultation procedures—especially at the local level—in recognition that these are essential for the successful implementation of public laws and policies (Leib and He 2010), the Party-state’s use of draconian laws has also excluded a growing number of citizens from participating in and debating public affairs on politically sensitive issues.

In this situation, it would be unfair to evaluate the speech acts of Chinese citizens from a morally consequentialist point of view as if they were free of fear, or as if they were able to anticipate the Party-state’s reactions within an environment where rights protection is institutionalized. While citizens may try to calculate the possible repercussions of their actions based on the past degree of tolerance of the Party-state which

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<sup>38</sup> Chen Yun (1905–95) was one of the most influential Party leaders during the 1980s and early 1990s.

<sup>39</sup> See caption to 25 April 2008 photograph by Stanley Joseph, accessed 14 March 2019 at [www.gettyimages.com/detail/news-photo/liu-xiaobo-sits-in-a-restaurant-in-an-undisclosed-location-news-photo/106973684](http://www.gettyimages.com/detail/news-photo/liu-xiaobo-sits-in-a-restaurant-in-an-undisclosed-location-news-photo/106973684). The uncertainty Liu Xiaobo refers to was variously captured by other metaphors such as Perry Link’s ‘anaconda in the chandelier’ (2002) and Murong Xuecun’s (2011) description of Chinese censorship as a ‘minefield’.

is arguably determined ‘by the average level of those already imprisoned’ (Pils 2015, p. 278), their chances of minimizing the risk of a negative reaction from the Party-state is still uncertain. At the same time, while the Party-state can raise the level of uncertainty and intensity of its repression by mobilizing its politico-legal apparatus, ‘existing conditions of political and economic fragmentation created unintended opportunities for political critique’ (Lei 2017). Bearing in mind the fear and distrust expressed by Chen Yun’s quote about granting freedom of expression to Chinese people, and the uncertainty people feel towards the Chinese authorities as expressed in Liu Xiaobo’s quote, the next section describes some of the key episodes in China’s recent history that challenged the Party-state’s control of free expression.

#### 15.4.1 Key Controversies and Bottom-Up Defense of Free Expression

As discussed in Section 15.2, many of the human rights international norms that emerged around the world in the 1970s were codified and institutionalized in the 1980s and 1990s. Since then, the key challenge in the early twenty-first century has been to narrow the gap between international rights on paper and the domestic environment or enforcement of China’s own rules by advocating and acting for their implementation. Because the international human rights regime has no serious enforcement power to protect the right of freedom of expression in China, Chinese citizens and human rights defenders play a crucial role in raising public awareness of human rights, either by naming and shaming the powerful or by recommending political reforms to improve the human rights situation.

To illustrate the role of China’s bottom-up struggle for free expression, this section retraces some of the most prominent controversies and calls to respect freedom of expression in post-Maoist China. Apart from an awareness that free expression became increasingly recognized as an international human right around the world, what unites the key participants<sup>40</sup> of this struggle is a shared moral conscience and responsibility to defend free expression after experiencing first-hand the negative consequences of being unable to express their political views under the Party’s rule.

In the book *Literary Inquisition (wenziyu)*, the Sweden-based activist Zhang Yu (2013) documented yearly cases of ‘literary inquisitions’ by the Party-state from 1947 to 2010 in which writers were sentenced to death or indefinitely imprisoned for being critical of the Party. Hu Feng’s case<sup>41</sup> illustrates the repressive length to which the Party was willing to go under Mao to silence independently-minded Chinese writers who

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<sup>40</sup> Although this section refers only to a few prominent defenders of free expression, it does not imply that less-known Chinese citizens are less aware or have fewer reasons to value freedom of expression, notably because a growing number of Chinese internet users has experienced censorship first-hand.

<sup>41</sup> Hu Feng (1902–85) was a Chinese writer and literary theorist who called Chinese writers to adopt a subjective viewpoint after criticizing Mao Zedong’s ‘Talks at the Yan’an Forum on Literature and Art’ and for politicizing literature. He was arrested in 1955 as a ‘counter-revolutionary’ and a campaign was launched against a supposed ‘Hu Feng clique’ that affected more than 2000 intellectuals. Following a ten-year detention, Hu Feng was sentenced in 1965 to 14 years in prison until 1979 and was rehabilitated posthumously in 1988. For more details, see Mei (2013).

dared to publicly criticize the Party. After Mao's death in 1976, the overall situation of Chinese writers gradually improved as independent writers could re-emerge thanks to reforms that opened more editing and publishing space. In 1978, about one year before the suppression of the Beijing Democracy Wall Movement and the trial of Wei Jingsheng who had called for 'The Fifth Modernization' (democratization), a student in philosophy at Peking University named Hu Ping ([1980] 2014) published an article titled 'On Freedom of Expression' (*lun yanlun ziyou*). His main argument was:

Whether a country enjoys freedom of expression is not a matter of its rulers being willing to hear and permit critical opinion, but of its rulers lacking the power to punish those who hold those opinions.<sup>42</sup>

Hu Ping<sup>43</sup> also argued that true freedom of expression exists only when it no longer depends on the protection of an enlightened ruler, and only when the people learn to resist state power interference and to call for institutions and laws to protect people's freedom of expression. This was later echoed by the widely known motto of the famous scientist Fang Lizhi saying: 'Democracy is not a favour bestowed from above; it should be won through people's own efforts'. While Hu Ping's core argument may echo the Western Enlightenment's defense of free expression under European monarchies, he explained that his concept of freedom of expression first 'gradually emerged' from his personal experience of political persecution under Mao's one-party state, and that it was not just a transplanted concept from the West that came from his limited contact with foreign books or later with the emerging international human rights system (Hu Ping 2013). Interestingly, people like Liu Xiaobo<sup>44</sup> and Pu Zhiqiang<sup>45</sup> as well as Cao

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<sup>42</sup> First written in 1975 and published in *Fertile Soil* in 1978, a revised version entitled 'Freedom of Expression is the foremost human right' (*yanlun ziyou shi diyi renquan*) was published in 1998.

<sup>43</sup> In 1980, Hu Ping was elected as an independent candidate to the District People's Congress by Peking University students, but the authorities rejected his seat, fearing that having a freedom of expression advocate inside the system could inspire more people to do like him. Having to wait for two years to be allocated a job as a punishment for his outspokenness, he left China in 1986 to study in the USA, where he has lived in exile ever since as the editor-in-chief of the monthly magazine, *Beijing Spring*, providing a free expression platform for overseas Chinese.

<sup>44</sup> See Liu Xiaobo (2010) for the April 1993 letter sent to Hu Ping from Australia in which he wrote: 'It is through this passionate and well deliberated long article that I was able to more clearly understand the great significance of freedom of expression ... . This was also the first time when the idea came to me of fighting for freedom of expression in China by translating this very belief into words and deeds in public'.

<sup>45</sup> Echoing Liu Xiaobo's experience in the late 1970s, Pu Zhiqiang was so impressed by Hu Ping's essay on freedom of expression that he typed its 60,000 characters on his first computer in 1996 and decided to focus on free speech cases as a lawyer. See Chinese Voices for Justice (2014).



Yaxue<sup>46</sup> credited Hu Ping's essay as a key influence in their struggle for a freer China and the defense of fellow citizens who fall prey to the country's 'antiquated speech laws'.<sup>47</sup>

By the mid-1980s, a 'New Enlightenment' (*xin qimeng*) movement had emerged among students and intellectuals amidst a time of 'cultural fever' (*wenhua re*). Commenting on the post-Mao intellectual landscape, the independent scholar Xu Youyu explained how intellectuals were not ready yet to heed Hu Ping's call:

It should be noted that people talked a lot about culture in the 1980s, but politics constituted the starting point and purpose. Everybody knew that the most important and pressing task was political, not cultural, but they had to advance by the roundabout cultural route because politics was a forbidden zone (Xu Youyu 2012).

In 1986, however, as student protests emerged in various Chinese cities, senior intellectuals like Wang Ruoshui and Yu Haocheng—who later became the first signatory of Charter 08—heeded Hu Ping's call by publicly asking the Party to Constitutionalize civil and political rights.<sup>48</sup> In response, Deng Xiaoping<sup>49</sup> launched the Anti-Bourgeois Liberalization Campaign of 1986–87. Hu Yaobang was forced to resign and Fang Lizhi was publicly expelled from the Party. In September 1987, a little noticed yet momentous event took place in a Beijing laboratory where China's first email to the world was sent to a German university saying: 'Across the Great Wall we can reach every corner of the world' (Hauben 2010). Ironically, while the development of internet infrastructure in the following decades will enable an increasing number of Chinese people to communicate with the world, they will also have to continue crossing the increasingly sophisticated 'Great (Fire) Wall'<sup>50</sup> set up by the authorities to block information that they deem threatening.

In January 1989, a 'New Enlightenment Salon' was organized in Beijing. Many foreign journalists came to report about the event because of the participation of Fang

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<sup>46</sup> During the 1980 elections held at Peking University, the *China Change* website editor Yaxue Cao remembers reading Hu's posters referring to John Stuart Mill's 'On Liberty'. See her introduction to Hu Ping (2012).

<sup>47</sup> Cited from an emergency appeal circulated in November 2003 by Liu Xiaobo who was inspired by the Hong Kong protest on 1 July 2003 against the Party's attempt to pass the notorious Article 23 into the *Hong Kong Basic Law*. English translation of the appeal available at [www.weijingsheng.org/report/nl36.html](http://www.weijingsheng.org/report/nl36.html).

<sup>48</sup> After the literary critic Liu Zaifu was attacked by the orthodox literary critic Chen Yong, several liberal-reformist intellectuals came to his defense by using the thirtieth anniversary of Mao's 'double hundred' directive ('let a hundred flowers bloom and a hundred schools of thought contend') as an opportunity to call for Constitutional protection of civil rights.

<sup>49</sup> In 1987, the power relations between the Party's reformists and conservatives shifted in favor of the latter. Deng Xiaoping replaced Hu Yaobang with Zhao Ziyang as general secretary of the Party, and in March 1988, Li Peng replaced Zhao Ziyang as premier. In a country where 'political power grows out of the barrel of a gun', Deng Xiaoping remained the most powerful Party leader as chairman of the Central Military Commission.

<sup>50</sup> For a brief description of the evolution of the GFW in four stages, see Wu and Lam (2017).

Lizhi aka 'China's Andrei Sakharov' and other key figures.<sup>51</sup> It was significant to see a public gathering of people who fell out of favor with the Party's top leaders together with some still 'inside the system' (Aubié 2015, p. 90). Under the media spotlight, Fang Lizhi used his limited freedom to express for the first time since Mao's death in 1976 the idea of publishing an open letter to Deng Xiaoping to appeal for the release of Wei Jingsheng and other political prisoners. In the history of free expression in China, this was a significant episode because it applied concretely a general concern about free expression to specific individual cases. Shortly after, more open letters by prominent intellectuals who had previously shied away from any expression of solidarity appeared both within and outside China. Foreign observers saw these events as promising signs of change. However, the violent enforcement of martial law in the Tibet Autonomous Region on 8 March 1989 did not augur well for China's freedom of expression, or for human rights more broadly. The Chinese government was clearly still willing to re-assert political control over one of its provinces by sending the police to suppress a demonstration with an estimated 50 Tibetans who were killed that day (*Tibetwatch.org* 2017).

After Hu Yaobang died on 15 April 1989, more and more students, workers and residents gathered during the following seven weeks in Tiananmen Square and in the streets of various cities across the country. Symbolically, when three students knelt for about half an hour on the steps of the Great Hall to present a petition demanding a dialogue with Premier Li Peng and no officials came out to take it, a large crowd of supporters angrily shouted 'Dialogue! Dialogue!' behind the kneeling students (Schell 1995). Eventually, Chinese leaders ordered the military to violently suppress the movement, leading to what became known as the 'June Fourth Massacre'. People called for democracy and an end to the Party's corruption.

Since Tiananmen, Chinese citizens do continue to challenge the Party's suppression of free expression and human rights. In 2001, for example, a group of Chinese citizens within and outside China established the 'Independent China Pen Centre' (ICPC)<sup>52</sup> to urgently defend imprisoned Chinese writers whose right to free expression is constantly violated. The following year, when the authorities released the 'Temporary Regulations on the Administration of Internet Publications'<sup>53</sup> to restrict freedom of expression on the internet, Liu Xiaobo and seventeen Chinese intellectuals issued a 'Declaration of Citizens' Rights for the Internet' (Goldman 2005) asking the NPC to review the Constitutionality and legality of these regulations based on China's 1982 Constitution, the UDHR and the ICCPR. The declaration was endorsed by over 600 Chinese citizens before being censored (Goldman 2005). In 2004, Liu Xiaobo also issued an open letter calling on the Supreme People's Court and the National People's Congress for a judicial interpretation of 'Inciting Subversion of State Power' in order to redefine with

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<sup>51</sup> Other well-known participants included Li Rui, Hu Jiwei, Bao Zunxin, Yu Haocheng, Su Shaozhi, Yu Guangyuan and Yan Jiaqi.

<sup>52</sup> More recently, they started to express solidarity with writers persecuted in neighboring countries, such as Burma and Vietnam.

<sup>53</sup> They were jointly released by the GAPP and the formerly named Ministry of Information Industry, renamed in 2008 as the 'Ministry of Industry and Information Technology'.

greater precision the ambiguously phrased crimes of ‘inciting subversion’ and ‘subversion’ (Article 105) of the *Criminal Law*. On 27 April 2005, the police in Shanghai arrested Tang Ye, a 25-year old white-collar worker for distributing protest flyers during the April 16 anti-Japanese protest. He was sentenced to five years in jail for ‘disrupting public order’ (Liu Xiaobo 2005). Citing the famous quote of Evelyn Beatrice Hall, ‘I disapprove of what you say, but I will defend to the death your right to say it’ (Boller and George 1989), Liu Xiaobo defended Tang Ye’s right to freedom of expression because he had remained nonviolent (Aubié 2015). In 2008, 303 citizens of mainland China released Charter 08 which put forward nineteen demands including freedom of expression (Link 2009). In response, the CCP singled out Liu Xiaobo as one of the signatories and prosecuted him for exercising his limited freedom of expression to defend among other rights the right of free expression of his fellow citizens, which is supposed to be guaranteed by both the Chinese Constitution and the ICCPR. Despite these and other examples of the Party’s continuing repression, some Chinese citizens have continued to publicly defend its practical value in China. In 2013 for example, the law professor Zhang Qianfan of Peking University drafted an open letter signed by 73 Chinese legal scholars and lawyers who specifically asked the government to respect the right to freedom of expression (Jacobs 2013).

There are too many examples of bottom-up defense of free expression to document in this chapter. That said, it is noteworthy that concern about freedom of expression has become less élitist, notably because many Chinese internet users have experienced the Party’s censorship and oppression by the security apparatus. One illustration of free expression gaining a wider resonance among less-known Chinese citizens was the solidarity they expressed during the 2013 *Southern Weekly* incident (Bandurski 2013).

Overall, however, considering the political conditions under which Chinese citizens currently live, the degree to which the public expression of their political thought is independent from the party’s political line is still very limited compared to that of other countries where the importance of free expression is more widely recognized and Constitutionally protected. And the fact that the limits imposed by the Chinese government on public expression are less likely to be publicly challenged under Xi Jinping, make it even more difficult for Chinese citizens to redefine the boundaries of what it is permissible for them to say.

In a country where litigation or petition channels cannot protect Constitutional rights such as freedom of expression, each bottom-up call to protect free expression essentially hits back at the Party by exposing its violation of Constitutional and human rights principles. While a response from the Party cannot be elicited, the circulation of bottom-up calls among other citizens through new media may at least potentially encourage a wider public to hold the government more accountable.

## 15.5 CONCLUDING REMARKS: TOWARDS A MORE PROTECTED FREEDOM OF EXPRESSION?

This chapter has described how the Chinese Party-state has successfully prevented Chinese citizens from using the courts and international law to ensure a Constitutional protection of their right to freedom of expression. Historically, Constitutional rights

gradually become justiciable, not only through a patient process of vernacularization across society, but also a receptive judiciary and the mobilization of an increasingly strong and organized civil society. International support can help too in this process, but its role is arguably limited.

As this chapter indicates, it is by engaging in such a long-term process that many Chinese human rights defenders seek to peacefully move Constitutionalism and human rights closer to reality. However, as the Party keeps suppressing their right to freely express their political thought, and as fewer and fewer Chinese human rights defenders and citizens can defend their right to freedom of expression, it is currently difficult to imagine any expansion of free expression. At the same time, it is also unclear for how long Party leaders will remain safe in the knowledge that they will not be held accountable for their human rights violations. It is therefore crucial to systematically document every human rights violation in case justice may prevail one day.

For now, the continuing power inequality between the Party and Chinese citizens is perhaps best illustrated by contrasting the Party's successful use of its wealth and power to escape accountability with the tragic fate of innocent Chinese citizens who are continuously criminalized for the peaceful exercise of their free expression. Although the struggle of Chinese citizens for free expression is fraught with various difficulties, its recent history shows that despite the hard soil of repression, the seedlings of freedom may grow again in the spring wind.

Ultimately, the core problem with freedom expression in China is best captured by Liu Xiaobo's powerful affirmation of its value (2012, p. 319), which constitutes the final word of this chapter:

Today, in the twenty-first century, awareness of freedom of expression is already well established among the people of our country, and the idea of treating words as crimes is widely condemned. Whether power holders like it or not, 'blocking people's mouths is harder than blocking a river', as the proverb says, and no prison walls are high enough to cut off free expression. Suppressing dissident opinion cannot buy legitimacy for a regime, and political prisons will not bring lasting peace or harmony. Problems of the pen can be solved only by the pen; to answer pens with guns only leads to human rights disasters. Only when the practice of treating expression as crime is fundamentally uprooted from our system can citizens across our great land finally be assured that the freedom of expression guaranteed by our constitution will be a living reality for them. This guarantee will require institutional change.

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