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### **Evaluating Chinese media policy**

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# Evaluating Chinese media policy

## Objectives and contradictions

*Rogier Creemers*

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### Introduction

In recent years, there have been great changes in the Chinese media environment which have been mainly driven by technological and commercial developments. Social media have flourished, the film sector has expanded and commercial television stations have grown ever more successful. However, in China's particular political–legal environment, these developments pose challenges to government and policy making, as the media administration aims to reconcile political objectives, such as maintaining legitimacy, social objectives, such as youth protection, and economic objectives. Furthermore, the party's supremacy in political and legal matters has created a situation where overarching constitutional notions, which can underpin the structure of governance, are absent. At the same time, it is clear that there is a strong institutional structure to govern the sphere of public communication which has its own underpinnings and dynamics.

How then can we make sense of the content and structure of this Chinese media governance *apparatus*? Simply arguing that policy outcomes are a reflection of the politics of the day would be too simplistic. First, Chinese political actors are constrained by various institutional characteristics. They need to demonstrate loyalty to the Chinese Communist Party (CCP) and manage complex relationships with other institutions and individuals. In other words, they need to be able to refer to a shared normative framework to justify their actions. Second, these structures are highly influenced by past political practice, reaching back to the early days of Chinese civilisation. Certain expectations and concepts have been handed down through the ages, being reinterpreted as political circumstances changed, particularly in the nineteenth century. Media governance is officially considered to be a part of an organic political and social whole with a teleological mission. However, many observers only start their analysis of Chinese media regulation with the beginning of the reform era in 1978 or the Communist takeover in 1949 (Shirk 2011; Zhang 2011; Zhao 2008). Other studies concentrate on specific issues in contemporary China (Donald et al. 2002; Lee 2003). Also, there is a tendency to concentrate on political matters and censorship at the expense of a broader analysis of public communication writ large (Brady 2010). It is important to provide a grounded explanation for the development of the guiding concepts, practices and structures governing public communication in China. Given the fact that these developed largely separately from western concepts of law or society,

it is necessary to understand them on their own terms and against the background of Chinese society and politics. Consequently, a contextual analysis of media governance in the light of the objectives that media are deemed to pursue is more useful than a deductive approach based on western rights-based legal concepts.

This chapter will therefore answer a double question. First, it will analyse the central philosophical underpinnings of the current Chinese communication order as well as their historical origins. Second, it will illustrate how the current governance structure – both in terms of institutional structuring and content of media rules – is set up in order to implement these objectives. Finally, it will briefly analyse the severe problems the government faces implementing media regulation in the rapidly shifting Chinese environment.

## The philosophical background of Chinese media regulation

In order to understand the concrete rules that govern the production and distribution of ideas in the Chinese marketplace, it is necessary to understand the background against which they are made. Certain aspects of the media regulation framework seem puzzling to western observers. First, media regulation consists of hundreds of disparate rules and documents published by different administrative bodies. It also extends into the sphere of criminal law, but few civil statutes directly relate to the media. Certainly, the doctrines of privacy and defamation remain underdeveloped in Chinese practice.<sup>1</sup> Second, some fundamental and substantive principles that a western lawyer would expect are lacking. Although the Chinese constitution provides for freedom of expression (People's Republic of China 1997a), it is not enforceable in court. As such, there is no presumption of free expression or protection against state intervention to limit public expression, which means that the concomitant expectation of robust tolerance and harm (Keller 2011: 40) is not present either. At the same time, there are rules that a western observer would not expect, such as very specific provisions determining, for example, that time travel is not permitted in television programmes (SARFT 2011; also see Guo, Chapter 23 in this volume), the choice of songs in popular talent shows (SARFT 2007) and the specific maladies for which cures cannot be advertised during mealtimes (SARFT 2009). Third, the regulatory framework explicitly claims that the media have a political role in disseminating correct public opinion, ensuring that development is 'healthy' and morality is maintained, while at the same time little substantive content is given to these principles. Lastly, a foreign observer would be astounded by the high number of administrative procedures and licensing obligations that Chinese media enterprises need to negotiate.<sup>2</sup>

From the point of view of liberal democracy, these rules fundamentally conflict with the role that the media should play in society (Freedom House 2012). However, the Chinese leadership explicitly rejects many of the values of liberal democracy, such as pluralism, regulatory impartiality and free expression. Conversely, it espouses a complex and layered view of the role of the media and its governance which developed over time and contains elements that go back to pre-imperial political philosophy, Leninist tools of governance and neoliberal market instruments. To understand this complex framework, it is instructive to analyse the goals and beliefs as officially proclaimed by the CCP, with the Central Committee's most recent resolution (Central Committee 2011) concerning reform of the cultural sector as an example.<sup>3</sup> This document was promulgated in November 2011 after a special plenary meeting of the Politburo had been convened to address the issue of culture and ideology. This has quickly risen to the top of the leadership's agenda in the wake of increasing dissent on the internet, the expanding economic importance of the media sector, a perceived moral vacuum in Chinese society and a perceived onslaught of foreign cultural influences. This document is significant for a number

of reasons. First, it is a confirmation of the Central Committee's increased focus on culture as a source for legitimacy, social control and economic development, as decided upon by the central leadership. Second, it contains a blueprint of measures to be developed in the next few years, as well as a focus area for investment. Third, the media campaign surrounding the publication of this document placed security chief Zhou Yongkang in the spotlight, next to propaganda chief Li Changchun, further underlining the link between culture and social stability.

In its first paragraph the Central Committee's resolution states that the objective of cultural construction is to 'construct a relatively well-off society, initiate a new dimension for the socialist undertaking and realise the great rejuvenation of the Chinese nation'. The latter objective has been at the core of Chinese politics since the second half of the nineteenth century. China's millennia-old imperial system collapsed after conflicts with emerging industrial powers such as Britain and Japan, as well as a series of internal conflicts and uprisings in which millions were killed. As a result, saving the nation (*jiuguo*) and building it into a strong power which would be able to resist foreign invasion became the core objective of successive Republican and Communist rulers. Modernisation had internal goals as well. Echoing the Confucian notion of the idealised past, self-strengthening has combined with a utopian, eschatological vision in which at the end of history complete harmony would be achieved. The intermediary step to this is the 'relatively well-off society' (*xiaokang shehui*) which has become the current objective of modernisation and self-strengthening (for example Central Committee 2012). This harks back to notions developed by the philosopher Mencius in the third century BC and describes a society in which there is relative material comfort for the absolute majority.<sup>4</sup> This indicates that Chinese political philosophy prioritises socio-economic issues over political participation and individual liberty (Perry 2008: 37–50). Although we may accept that strengthening the nation and ensuring material well-being are the main political objectives and bases of legitimacy, the question remains how these goals are to be achieved. The answer to this at present remains socialism under the leadership of the CCP, although the definition of what socialism means has varied greatly during different phases of the party's rule.

The present consensus about politics and the role that media play in this is embodied in a number of policy formulations outlining the guiding ideology of cultural work. Most important media documents, including the Central Committee Resolution, but also the eleventh and twelfth five-year plans for media and culture development, include a section called 'guiding ideology' which lists the different slogans that are supposed to provide a clear direction for the document's implementation. These slogans, in turn, reflect a political consensus that has been forged through the decades of CCP leadership. There are four important building blocks in this consensus: (1) integrating a spiritual civilisation with a material civilisation, (2) liberating thoughts, letting a hundred flowers bloom and a hundred schools of thought contend, (3) seeking truth from facts and (4) guiding the people with correct public opinion and moulding them with a noble spirit. All of these crystallised during the late 1970s and early 1980s, as the post-Cultural Revolution party leadership hammered out a new model for development and growth. They point towards a complex background of political imperatives and choices which strongly influences media policy.

### *Integrating a spiritual civilisation with a material civilisation*

The modernising reforms of the late 1970s were aimed at technological development and economic expansion, reflected in the Four Modernisations of agriculture, industry, defence and science. Hence, Deng Xiaoping tried to shift the political emphasis away from the ideological focus and towards pragmatism (Vogel 2011). However, he was faced with the difficulty that

the conservative side of the party centre was concerned with the deleterious impact of material welfare on social morality. These ideologues, headed by official party historian Hu Qiaomu and Propaganda Department director Deng Liqun, pushed for a campaign against spiritual pollution which started at the end of 1983 (Gold 1984: 947–74). The campaign fizzled out after a few weeks, as it aroused fears of a return to the frenzy of the Cultural Revolution and threatened to nip the resurgence of science in the bud. Nonetheless, Hu and Deng were not removed from their positions and the notion of a socialist spiritual civilisation, which complemented material development, remains present in the most important policy documents on media and culture issues. While it lacked a detailed substantive meaning, it signalled the party's continuing claim to a leading moral position. Morality gained new traction in the mid-2000s, as continuing corruption and increasing inequality were deemed to erode social coherence. As a new exhortation, the Hu–Wen administration launched a new moral concept, the eight honours and eight disgraces (*barong bachu*) in 2006.<sup>5</sup> These, in turn, serve as the central notion for the 'socialist core value system' (*shehuizhuyi hexin jiazhi guan tixi*), a term that is equally empty but with an equally important signalling function (Von Senger 2012: 399–414). The function of the media is to provide, among other things, an environment conducive to the realisation of this morality. This is realised through big-budget government-sponsored main melody (*zhu xuanli*) films, online campaigns with themes such as 'surfing the web in a civilised manner' (*wenming shangwang*), and television programmes extolling the glory of Chinese culture and history. Nonetheless, an intractable tension remains between idealised notions of moral behaviour and a perceived crisis of social conduct, particularly in relation to official corruption and privilege. Also, the concept is opposed to tendencies that are defined as 'excessive entertainmentisation'. This pushed the State Administration of Radio, Film and Television (SARFT) to come down strongly against popular television programmes including dating shows or talent competitions, as these are deemed to exert a negative influence on public morality.

### *Liberating thoughts, letting a hundred flowers bloom and a hundred schools of thought contend*

This term directly harks back to the pre-Qin era when the Chinese territory was taken up by small feudal states that were locked in continuous warfare. Philosophers were often retained in courts to advise on matters related to internal ordering, diplomacy and warfare. The resulting flourishing of political philosophy became known as the 'Hundred Schools', and counted Confucius, Mencius, Mozi, Laozi and Hanfeizi among its luminaries. However, this period came to an abrupt end as the First Emperor ruthlessly suppressed dissenting opinions. Philosophers were buried alive and all books, with the exception of those relating to legalism, agriculture, medicine and divination, were burned (Lai 2008).

In the mid-1950s, the confident new CCP regime relaunched this notion as it started to encourage differing views on, and criticism of, the regime. The party had gained control over the Chinese mainland, implemented land reform, succeeded in drawing western forces to a stalemate in Korea and completed campaigns aimed at eliminating anti-Communism and capitalism. It seems that the leadership believed that criticism would either relate to specific problems in bureaucracy that could be resolved, or come from misunderstanding the superiority of party rule, which could be countered through argument and persuasion (Cheek 1997). However, the ensuing torrent of criticism took the party by surprise. Millions of letters were posted to government institutions, newspapers published critical articles and street rallies were organised. Hundreds of public postings criticised the privileged position of party members, the party's intervention into private life and the relationship with the Soviet Union, among other

matters. Retaliation was swift. In July 1957, Mao ordered the end of the campaign and cracked down heavily on those who had expressed criticism (Hua 1990: 234–56). By the end of the year, 300,000 had been purged or punished in this Anti-Rightist Movement. Mao himself openly referred to the First Emperor: ‘He buried 460 scholars alive; we have buried 46,000 scholars alive . . . You call us Qin Shihuangs. Wrong. We have surpassed Qin Shihuangs a hundredfold’ (Sun 2012). This crackdown heralded the hardening of ideological positions, and the disasters of the Great Leap Forward and the Cultural Revolution.

After Deng Xiaoping gained control over the party at the end of 1978, his ally Hu Yaobang reinstated the ‘Two Hundreds’ and called upon the party to liberate its thoughts (Hu 1979). This was a reaction against the ideological purism of the Cultural Revolution and aimed to support scientific and technological expertise, as well as limit ideological ossification through enhancing debate. Again, this open space invited critical voices, with the public posters on a wall in Beijing that become known as Democracy Wall (*minzhu qiang*) arguably the best-known example. At first, criticism was aimed at the excesses of the past decade, which Deng tolerated because it supported his reform efforts. Very rapidly, however, the posters started criticising the leadership of the party and Deng Xiaoping himself. On 5 December 1978, a young electrician working in the Beijing Zoo, Wei Jingsheng, posted a call for a fifth modernisation, democracy. This was beyond the limits of what Deng could tolerate (Hua 1990: 234–56). Democracy Wall was torn down, Wei and other activists were imprisoned, and Deng instituted four cardinal principles which would be beyond argument: persisting in the socialist path, the dictatorship of the proletariat, the leadership of the party and Marxism–Leninism–Maoism. Nonetheless, the ‘Two Hundreds’ principle still appears in most media policy documents. It does not aim to foster political pluralism, ideological liberalisation or a loyal opposition. Deng Xiaoping himself indicated that the party’s mistakes were always corrected by the party itself, and that no one should use party mistakes as an excuse to resist party leadership (Lin 1990: 272). Rather, it serves to provide a space for debate on technical issues in support of overall political objectives, differentiate the correct political messages for different target groups, and generate feedback on policy implementation and local issues. As such, it is perhaps the clearest boundary for the different discourse registers that are permitted within the Chinese media: it permits the publication of different opinions on certain aspects of policy within a clear and carefully defined space where no criticism of fundamental principles is countenanced.

### *Seeking truth from facts*

This phrase originated in the Han Dynasty when it referred to a scholarly attitude of not passing judgement before grasping facts to the fullest extent. It was at the core of a reform movement which started in the Qing Dynasty which aimed to return to the core texts of classical learning, rather than late commentaries. In turn, it became the motto of the Yuelu Academy in Nanchang, where Mao Zedong studied (Chen 2005). Mao later adopted it into CCP doctrine (Mao 1940), referring to the need to pragmatically learn from reality. After Mao’s death in 1976, the term reappeared in the power struggle that erupted between Hua Guofeng, Mao’s appointed successor, and Deng Xiaoping. The rally for public opinion was primarily fought through newspapers. Hua had sponsored a *People’s Daily* editorial outlining the ‘Two Whatevers’ policy, upholding all Mao’s policy decisions and following all his instructions. Countering this, Deng sponsored an editorial in the *Guangming Daily* entitled ‘Practice is the sole criterion of truth’, which was followed up by a speech for the military. Both texts exhorted the need to seek truth from facts (Vogel 2011: 211–13). It has been a key part of Chinese policy since.

In brief, this phrase requires the integration of practice and theory, and the integration of universal Marxist principles with the concrete experience of the Chinese revolution. The new policy also aimed to reinvigorate science, echoing nineteenth-century reformers who already identified science as the key necessity for saving the nation. This policy has been very successful in rapidly transforming China's industrial structure. More relevant to understanding media policy is that this tenet is applied in philosophy and social science as well (Central Committee 2004). Again, pluralism is not the objective of scholarly activity. Rather, its role is to explore how fundamental theories of socialism materialise on the assumption that society, like the natural world, operates according to objective laws that can be deduced through scientific study. This impacts on the media in two ways. First, in terms of context, the role of the media is to spread the excellent results of philosophy and social science in order to educate the population and illuminate the 'historical development laws of humankind and society' (Central Committee 2004: para. II(5)), while debate is limited to the specific technical method that is used, rather than fundamental assumptions or observations. Second, in terms of governance the assumption seems to be that media operations can be improved by specific scientific means. In other words, as part of society, public communications also works on the basis of objective laws, and discovering these is deemed to enable the 'perfection' (*wanshan*) of regulatory frameworks. This in turn results in popular, high-quality and commercially successful media products.

### *Guiding the people with correct public opinion*

One of the core notions of traditional Chinese philosophy is the role of self-cultivation and education. A human being is born as a blank canvas and should attain morality through diligent study and the emulation of models from the past. Again, this paternalist requirement to follow predetermined moral imperatives differs from the liberal notion that proposes individuals should primarily pursue moral notions as they see fit. Furthermore, the substantive rules of ethics are determined externally. In imperial times, morality was determined by the Confucian classics. In the 1930s the Nationalist (i.e. Kuomintang or KMT) government aimed to mould the population through the purist, austere New Life Movement (Dirlik 1975). Throughout the Communist era, there have been ample model citizens and normative behavioural codes, including Lei Feng<sup>6</sup> and the above-mentioned core socialist value system.

Politically speaking, however, there was also a strong moral obligation on rulers. Philosophically, their legitimacy was derived from the notion of the Heavenly Mandate, an entrustment from Heaven to govern. In contrast with the divine right of kings, the mandate was dependent on the behaviour of rulers. If they would not be able to ensure the livelihood of the people, which they would do by acting morally, Heaven would withdraw its mandate and the dynasty would be overthrown. This doctrine justified popular scrutiny of the action of rulers, although not the content of the moral rules themselves. This is echoed by the notion of the masses monitoring acts of individual officials and government departments, which was a core function of CCP press from the very early beginnings of the People's Republic (Central Committee 1950).

In current Chinese politics, this is embodied in the notion of 'public opinion supervision' (*yulun jiandu*), introduced at the thirteenth party congress in 1987. Former Premier Zhao Ziyang stated that in order to establish social dialogue and consultation, the masses must know major issues, and these must be discussed with the people (Zhao 1987: para. V(5)). This mood changed very rapidly after the 1989 riots when the leadership – from which Zhao had been ousted because of his conciliatory efforts to reach a compromise with the student demonstrators – asserted strict control over public communications because maintaining stability became the CCP's overarching

imperative. A number of media outlets had supported protesters' demands, and this was deemed to have exacerbated the problems for the leadership which nearly caused the overthrow of the party regime. Consequently, public opinion supervision was counterbalanced with public opinion guidance (*yulun daoxiang*). In a speech at the end of the year, new propaganda chief Li Ruihuan laid down the components of this policy (Li 1989). Newspaper reports should mainly report and propagate positive matters, criticism should be concentrated on problems that can be resolved and critical reporting should include information on the resolution of the problem. At the same time, Li called for structural reform: propaganda art should be improved, and news and propaganda personnel should be better trained in how to perform their duties in accordance with the guidelines of the centre. Since then, the party has established a considerable public opinion monitoring and guidance structure, including traditional media outlets, presence on the internet, education, culture and tourism, aimed at ensuring that reality is presented correctly to, and perceived correctly by, the population.

One last important notion is the militaristic language often used in these documents. While after 1989, the party ratcheted down the classical Communist notions of class struggle and collective ownership, party documents are still written in a strident tone echoing military campaigns. The 2011 Central Committee Resolution states that 'consolidating the common ideology and morality for united struggle of the entire party, country and all ethnicities' is necessary, and that the party and people must be armed with socialist and scientific theory to develop along the correct path. It seems to be part of the political culture of the CCP that some form of antagonism is indispensable as a justification for mobilising the masses in pursuit of common objectives. Throughout its history, the party has done so by opposing external enemies, such as the Japanese, imperialist nations, the Soviet Union or Vietnam, but also the KMT. After 1949, the CCP externalised certain classes of persons to struggle against, most recently with the anti-bourgeois liberalisation campaign of 1987. While the CCP's stability-oriented method of leadership realised after the Tiananmen uprising largely refrained from such ideological campaigns – apart from the occasional anti-Japanese or anti-US riot – the culture bureaucracy seems to be reluctant to shift its tone of regulation away from mobilisation. Another important consequence of this is the perception of the role of public communication in the public sphere. In policy documents, this is described as the 'ideological battlefield' (*sixiang zhendi*) which must be occupied and dominated by the voice of the party.

In short, in contrast to the liberal notion which holds that governments are not entitled to limit the liberty of expression unless compelled to do so to prevent harm to other individuals, the Chinese view is teleological. In this conception, public communications are purposive means to an end, the rejuvenation of China, and individual liberty is subordinate to that end. Morality and social truth are determined by the leadership, not through pluralist debate, but are pre-established by the CCP. Not everyone should be able to access the sphere of public opinion, but only those representing sufficiently advanced levels of insight and education, and vigilance against threats from inside and outside must be maintained. The next question then is how institutions and rules are structured in such a way as to realise these objectives.

## Design and reform of the media regulatory framework

### *Structures*

The regulatory structure established to implement the above philosophy took its definitive form after 1989, as the CCP reasserted control over media and aimed to regain control over the ideological battlefield. Unsurprisingly, both institutions and rules are designed in such a way as



to maintain control over the content of publicly available expression, as well as the actors who can produce or distribute them. Hence, the aim is not to create a framework of rules and principles that clarify the rights and obligations of all concerned parties, within which individual actors can pursue their own objectives, but to manage the sphere of public communications in support of a specific set of political objectives and to do so in a flexible way and with a high degree of discretion (Keller 2000: 151–80).

The institutional aspects of China's media governance include party organs, state departments, state-owned enterprises and industrial associations.<sup>7</sup> Confirming its Leninist identity, this structure is divided along functional lines, and the different organisations within it do not have a mutually balancing or safeguarding function. At the top level of this structure are informal discussion groups within the Standing Committee. These feed general objectives to the Central Propaganda Department (CPD), a party organ that is in charge of all matters related to thought and culture in China, including newspapers, radio, television and the internet, but also the education system. In turn, the CPD formulates general policies and guidelines to the ministry-level state institutions: the Ministry of Culture, State Administration of Press, Publications, Radio, Film and Television (SAPPRFT),<sup>8</sup> the Ministry of Industry and Information Technology, and the State Council Information Office (SCIO). These formulate concrete rules for media enterprises, with particular stress on procedural aspects, such as registration and licensing procedures, as well as administrative punishment for violations. Where necessary, other ministries cooperate in rule making in cross-jurisdictional cases. For example, the General Administration of Customs assists in drafting and implementing rules on the import and export of cultural products.

Less conspicuous in terms of rule making, but therefore not less important in implementing policy, are the media enterprises. In principle, the party has maintained complete state ownership or majority state control in all significant parts of media distribution. All television stations, newspapers and distributors of foreign films must be state owned. Furthermore, in activities where private companies are permitted, state-owned enterprises remain in the dominant position. The Xinhua press agency, for instance, is the most important source of online news, as government instructions often oblige news outlets to only use Xinhua copy. Similarly, while there are a number of private film distributors, China Film Group remains the most powerful in this field, partly due to its shared monopoly on the lucrative distribution of foreign films. Only in the field of social media is state ownership absent. However, this may make them more susceptible to strict state control as they are less well connected through party channels than state-owned enterprises.

Lastly, there are a number of sector and professional organisations. Some of these, such as the All-China Federation of Literary and Artistic Circles, the Chinese Writer's Association and the All-China Journalists Association, have been part of China's media structure for decades. The function of these associations is to provide a space for interaction between the party and these professional groups, as well as providing feedback for policy making and a targeted platform for new policy. Following the expansion of the internet, the leadership has actively supported the establishment of new sector associations and self-regulatory initiatives in the online world. These organisations officially fall under the supervision of the relevant ministry, but are also controlled through party means.

In fact, true to its Leninist origins the CCP maintains considerable direct power over this entire structure through direct intervention as well, creating effectively a double command structure. There are mandatory party organisations inside all state regulators and media enterprises. Furthermore, many private internet enterprises, such as Sina<sup>9</sup> and Tencent (SZNS News 2011), have established party groups as well. The role of these groups is to ensure policy implementation and provide ideological education and professional training. They also ensure that all levels of

media governance and commerce are linked to the party. For example, the head of a ministry will often be the secretary of the party committee as well, as in the case of Minister of Culture Cai Wu (Xinhua undated) and SAPPRFT director Cai Fuchao (Xinhua 2011). Also, party members may hold different party committee positions, such as Hu Zhanfan, who is the director and party committee chair of China Central Television (CCTV) and a member of the SARFT Party Committee. This control through individual staff is further enhanced through the *nomenklatura* appointments system, through which the party controls all significant leading positions in the media structure (Burns 1994). This power was used to appoint the conservative Yang Jian as party secretary of the Southern (*Nanfang*) Media Group, which is well known for its relatively independent political stance (Bandurski 2012). At the same time, the requirement for media entities to have a sponsoring government unit creates a strong incentive against straying too far from the line, as few officials would welcome closer scrutiny from higher levels. Also, news outlets, particularly *People's Daily* and Xinhua, are not only responsible for openly reporting news, but also for composing 'internal reference' (*neican*) reports for the leadership. These are regularly published briefing documents containing news that might create disturbances if posted publicly, such as reports on policy implementation or corruption (He 2008: 73).

### Rules

The structure of regulatory documents echoes the institutional structure, and the power of rules varies in scope and application, depending on who formulates them and for what purpose. The Central Committee and the ministries regularly publish policy documents, outlining shifts in priorities for the media following economic development and technological evolution, but these contain few binding provisions. Rather, they are the prism through which the state institutions and media enterprises are supposed to lay down, interpret and apply the rules. The State Council, which groups all ministries, drafts the top-level rules for different media sectors, such as the Radio and Television Management Regulations, the Film Management Regulations and the Internet Information Service Management Rules. In turn these are substantiated through subsidiary ministry-level rules.

Generally, these rules cover three major areas (Creemers 2012). The first area, content control, is usually worded in vague terms with a standard list of prohibited categories that returns in most documents. These categories include content violating the constitution, endangering national security, insulting others, propagating obscenity, gambling or violence, or endangering public morals. It also contains an open-ended category of other content prohibited by law or regulation. This vagueness is intentional, as it allows the administrative body significant discretion in applying these standards during the mandatory licensing processes of products and businesses. The second area covers licensing procedures, which are often the most elaborated parts. Licensing requirements are imposed for most activities relating to public communications and provide a convenient method for managing the number of businesses active in this area, as well as their products and services. The third area comprises the punitive provisions that apply when the rules are broken. With a few exceptions, these are either administrative punishments imposed by the regulatory authority or criminal punishments.

Below these general rules there is a continuing stream of notices, circulars and orders that impose new rules, clarify or reiterate older provisions, and inform about specific campaigns related to law enforcement, celebrating politically significant activities or supporting special events, such as the Beijing Olympics. Furthermore, where news media are concerned, the CPD and the SCIO send daily instructions to editorial departments on whether and how to report certain developments (Brady 2010). As the spread of news has speeded up through the internet, they

may even directly contact news outlets with orders that must be implemented at extremely short notice, often minutes (China Copyright and Media 2010). Generally, the strictness and acuity of media regulations vary with the perceived impact and speed of the platform at issue. Books are regulated more lightly than newspapers which are read more broadly. Television and the internet, being mass media able to spread news at high speed, are under even closer watch. In order to control better the mercurial internet operators and social networks, some rule-making work has been outsourced to sector organisations or, under the name of self-regulation, to the enterprises themselves. One of these is the Weibo Community Pact through which Weibo users are contractually liable for any objectionable content they post.<sup>10</sup> Nonetheless, it does not seem unreasonable to assume that if this is not implemented sufficiently well, Weibo will itself come under fire.

There are few civil laws that directly influence the content of public communication. One important exception to this is the Advertising Law (People's Republic of China 1994), which regulates the content of advertising, which is limited further by the Anti-Unfair Competition Law (Supreme People's Court 2003). Furthermore, some headway has been made in certain private aspects of media content. For example, Article 101 of the General Principles of Civil Law provides for a right of reputation and prohibits insult and slander. Article 120 provides that in cases where this right is harmed, citizens may demand redress before the courts. Two Judicial Interpretations of the Supreme Court added details on how to implement these provisions (Supreme People's Court 1986, 1993 and 1998). Further provisions regarding the right to reputation were present in drafts of the 2009 Tort Law, but were removed (Liebman 2006: 43). The Tort Law does include the protection of civil rights on the internet, and defines user and internet service provider (ISP) liability for internet-related infringement of rights. Furthermore, at the time of writing, a research project into a potential Human Dignity Law (*renge quan fa*) is under way, and a draft implementation manual for dealing with media-related torts is being tested in a pilot court in the Haidian People's Court.<sup>11</sup>

Defamation is also included in the Criminal Law (People's Republic of China 1997b: Article 246). Conversely, the Criminal Law also contains very broad provisions for dealing with offensive content. Some of these provisions are shared with western restrictions on the freedom of expression, such as the prohibition of ethnic discrimination present in Articles 149 and 150. However, some provisions provide a legal basis to restrict messages that offend the powers that be, especially in cases of political dissent. While the crime of counter-revolutionary activism was removed from Criminal Law in 1997, it was replaced with the crime of endangering state security in Part Two, Chapter I, and little substantive change resulted (Clarke 1998). For example, Article 105 of Criminal Law prohibits subversion of state power. This was the legal basis for the conviction of the activist and Nobel Peace Prize winner Liu Xiaobo. In other words, criminal suits are an effective way for the party-state to silence dissent through legal procedure.

Economic transactions of cultural and media products are protected by the Copyright Law. However, other legal frameworks, such as competition, have relatively little impact on traditional media outlets. This is largely the case because they are differentiated regionally and functionally, but also because, as party institutions, they are part of the administrative structure outlined above. Hence, they are not free operators in a competitive marketplace. This is different for private enterprises which are mostly found on the internet. In February 2012, there was a high-profile spat between video websites Youku and Tudou (Xinhua 2012). This case was never brought to a conclusion as a few months later the two websites announced their merger, which created some issues of competition and market dominance in itself (China IP Lawyer 2012). Consequently, it remains to be seen how media competition and other economic issues would develop, especially as private enterprises increasingly compete with the state media entities.

## Structural reform: reconciling ideals and realities

The guiding philosophy of media governance has changed little since 1989. However, there have been significant shifts in the context in which this philosophy is implemented. China has become the second economy in the world in terms of gross domestic product (GDP), it became a member of the World Trade Organization (WTO) and raised its international profile, among others through the 2008 Beijing Olympics and the 2010 Shanghai Expo. Its economic policies are under readjustment, as continued development requires that China moves higher up the value chain. At the same time, there are a number of destabilising factors. Social unrest is increasing due to corruption, abuse of power and privilege and a perceived moral vacuum in society. Moreover, technological development has enabled new modes of public communication and interaction. Due to internet and mobile technology individual Chinese citizens now have access to low-threshold means of communication that extend beyond the immediate scope of the workplace, the family or local community.

These shifts have driven an evolution of media policy and regulation starting in the mid-1950s aiming at commercialising the media sector and turning it into a location of economic growth, but also for media to become a more effective tool for propaganda, ‘public opinion guidance’ and social control. The most important reforms have taken place in the economic environment of media operators. Recognising that financial input is needed to develop media services and products, investment channels into the cultural industries were widened to certain party or state institutions at first, and subsequently to private and foreign investors. Furthermore, corporate structures were reshaped as most media outlets transformed from politically oriented public service entities (*shiyè*) to commercial enterprises (*chányè*) (Guo 2004).

Commercialisation, however, does not mean liberalisation. As indicated before, the objective of structural reform was to make the media system a more effective political tool. Consequently, the opening of economic and investment channels, especially where foreign activity is concerned, is structured in such a way as to maintain final political control. Private capital, for example, may only hold minority participation positions in publishing, distribution of lifestyle television programmes and cable operators. It is prohibited from entering any news-related area, radio or television stations and certain infrastructure activities (China Copyright and Media 2005a). Foreign capital may participate in production and sales of media products, as well as media-related venues such as cinemas and theatres. It may not invest in radio and television stations, news companies, film production, internet culture enterprises, media distribution, and audiovisual publishing (China Copyright and Media 2005b). In early 2012, a Sino-US agreement raised the quantitative film import quota, but it did not expand business operation channels. Furthermore, party influence over the media has been strengthened in some areas as well. For example, party-run study programmes for media officials and professionals have been expanded. The highly supported professional and technical training programmes for young media talents invariably contain courses related to the political role of media and public communication. The emerging copyright collection societies<sup>12</sup> and media sector associations are also closely related with the party media departments, and many private media enterprises have now established party committees.

## Evaluating media governance in practice

In terms of achieving its primary goal, monopolising the public debate within the Chinese territory, the party-state has so far been successful. There are a number of opposing voices, particularly in online social media, but this may indicate the sophistication of the control regime in allowing a safety valve for discontent rather than a failure to control these messages. Certainly,

these spheres are managed in such a way that dissent remains individualised and unorganised. However, the price of this external achievement is internal weakness and fragmentation.

The structuring of media governance through administrative regulation has created an environment in which the rules can change rapidly and unpredictably. The prioritisation of political objectives over other interests, combined with a lack of checks, balances and accountability, resulted in a number of intractable tensions and what Keller (2003) calls a crisis of governance which has, if anything, deepened after the expansion of social media.

This crisis manifests itself in the corpus of media rules which is mostly present in administrative regulations and orders, not in law. Since 1979, hundreds of documents with regulatory effect have been released<sup>13</sup> by all the regulatory authorities involved, which are often contradictory. Also, it is often not clear which rules are still in force, or through which process they are enforced. As a result, it is very difficult for media operators and investors to gauge the present state of the rules. However, even if this was clear, the administration enjoys a wide discretionary space for intervention and discretion which is not limited by general provisions concerning basic rights of media outlets or consumers, robust tolerance or strong institutional checks. This has a number of consequences inhibiting development in the media sphere. First, official media outlets, being party institutions, have close relationships with the institutions supposed to manage them, leading to local protectionism and departmentalism. Second, promotion of management-level staff in both media outlets and regulatory bodies depends on party evaluation criteria which are often related to quantitative achievements. Consequently, media regulators are under pressure to pass regulatory documents as proof of their activity, even where they only reiterate existing rules or duplicate them in a more narrowly defined sphere. As a result, there are many documents related to the delivery of audiovisual services through television or the internet which all contain the same basic provisions on market access, content and punishment. Third, the media sphere is constantly in flux. When new rules are introduced, media operators often find creative ways to bypass their spirit, be they related to matters of content or commercial activity. One very visible example of this are film co-productions. Films that are officially classed as co-productions between foreign and Chinese enterprises are not subject to a number of limitations that foreign films are subjected to, and neither do they count towards the foreign film quota. The policy objective for co-productions is to provide opportunities for Chinese film companies to learn more about advanced filmmaking techniques, to support their export drive. However, from the Hollywood side, much more interest is aimed towards the booming Chinese cinema market. As a result of this, many 'co-productions' only feature token Chinese participation or content, while at the same time being very lucrative for the Chinese film studio (Burkitt 2013). Technological evolution also challenges the implementation of earlier rules. The party is constantly moving to deal with emerging political and social trends. In the absence of a framework of legal principles, this means that the administration continually needs to issue new documents to paper over the cracks left in earlier documents, confront strategic behaviour or to deal with new challenges that arise.

The party also seems to display a naive trust in the content of its message. While it professes to support the creation of media products 'that the people love to see and hear', it has also prohibited the use of audience research and viewing rates to inform programme decision by television channels. The party seems to assume that audiences automatically embrace the content it wants to send as long as it is packaged well. However, many official productions with high production values and strong government support have not met with success in the marketplace. Conversely, many popular media products, including television programmes and online services, have been banned or strongly curtailed. For instance, although foreign films

generally tend to bring in vastly larger box-office incomes than domestic films, the state-owned duopoly distributors China Film and Huaxia are required to support the screening of main melody productions, removing commercially more profitable works from circulation. This imposes a high cost on cinema owners. In addition, the poor product variety offered through official channels has provided strong incentive for piracy, exacerbating China's poor reputation in the field of intellectual property protection.

Lawlessness is not limited to the infringement of, often foreign, intellectual property rights. Corruption and other improper practices are rife at all levels of the media structure. There are repeated instances of journalists manufacturing news for payment or accepting bribes to keep certain stories from becoming public knowledge (Liu 2004). While there have been a number of high-profile convictions, such as that of Guangzhou media baron Li Yuanjiang in 2004 (Zhao 2008: 114), the problem remains serious enough for the party centre to dedicate a specific campaign against journalistic corruption in the run-up to the eighteenth party congress. Moreover, the administration's licensing monopolies create further opportunities for rent-seeking behaviour.

Apart from the above-mentioned internal cracks in the system, China's media governance creates problems on the international stage as well. Apart from the well-known and high-profile concern about the state of human rights in China, the limitations on foreign participation in the Chinese media sector and the import of foreign media products have led to trade disputes, for example in the WTO. In one case, China–Audiovisuals, it was found that a number of Chinese restrictions on foreign products and businesses infringed WTO rules. Another case, China–Financial Information Services, was settled after it became clear that the restrictions on the information trading services of foreign operators were a clear violation of China's WTO provisions. However, the impact of both cases on the domestic communication order is negligible. In the audiovisuals case, China updated a few legal provisions related to the import of media products, but the core matter – the right of foreign enterprises to distribute their own products on the Chinese market – is not a part of China's WTO commitments and therefore out of the scope of this case. Further pressure was avoided through an agreement that provided for an increase in the number of foreign films permitted on the Chinese market, and an increase in the profit share of the foreign rights holders. As for financial information services, new regulations were passed which again do not significantly change the business environment for foreign service providers.

## Conclusion

China's governance of its public communication sphere is closely related to philosophical concepts that have helped to shape structures, processes and expectations. There is no objective to create a pluralist forum with democratic representation, but an incentive to monopolise the sphere of public discourse. The party proclaims to be the evident and irreplaceable ruling group, led by scientific and infallible principles, and legitimised by its ability to deliver economic growth and national strengthening. As a result, the media are mainly governed through administrative fiat and kept on close watch by party organs. The role of civil law is limited, while criminal law is mainly used as a tool to combat dissent. Similarly, private media are heavily circumscribed but play an increasingly important role on the internet. Nonetheless, this structure is coming under increasing strain through corruption, fragmentation and the inevitable complexity of a modernising, industrialising society, as well as the loss of trust that the CCP faces. While the party's grasp on power is still absolute and organised dissent has been mostly silenced, a deep

malaise has taken hold in Chinese society and media. It will therefore fall to the successors of the Hu–Wen administration to tackle political and media reform head-on, or face an increasing delegitimation of their positions.

## Notes

- 1 This is not to argue that these doctrines do not exist at all (Fu and Cullen 1998: 9; Liebman 2006: 33–177). However, they seem to have taken secondary importance to content control and market access. This is understandable given the fact that most mainstream media outlets are either party or state controlled, but it has created significant issues in the internet era.
- 2 A full list of licensing procedures can be found in Creemers (2012).
- 3 While this chapter centres on the 2011 Central Committee Resolution, it draws upon an extensive study of the corpus of media policy documents. A comprehensive selection of these is available in the English language on the author's website: <http://chinacopyrightandmedia.wordpress.com>.
- 4 While this resembles Benthamite ideas of utilitarianism, the Chinese definition is strongly aimed at collective or communitarian values, rather than the subsequent debates on justice and the individual in Enlightenment Europe.
- 5 As translated by David Bandurski, they are: 'Loving the Mother Country is honorable, harming the Mother Country is disgraceful; Serving the People is honorable, neglecting the People is disgraceful; Upholding science is honorable, blindness and ignorance are disgraceful; Hard work is honorable, idleness disgraceful; Unity and cooperation are honorable, using others for profit is disgraceful; Honesty and keeping one's word are honorable, seeing personal gain and forgetting justice is disgraceful; Respecting laws and regulations is honorable, disobeying laws and regulations is disgraceful; Suffering for the struggle is honorable, conceit and lasciviousness are disgraceful' (China Media Project 2007).
- 6 Lei Feng is a model soldier, who allegedly came from a poor peasant background, and did many good deeds: sending money to the parents of a fellow soldier after they became victims of flooding, darning socks of comrades and, most of all, diligently studying Chairman Mao. He is reputed to have been killed in an ordinary accident in 1962. Afterwards, his diaries were published as he was venerated as an example of the selfless revolutionary. There are questions whether or not Lei Feng and/or his diaries are fictional. See also Landsberger (2010).
- 7 For a more in-depth overview of these structures, see Creemers (2012).
- 8 SARFT and the General Administration of Press and Publications were merged in early 2013.
- 9 Sina's organisation includes seven party branches and more than 190 party members (Changjun 2012).
- 10 In May 2012, Sina published three interrelated self-regulatory documents. The Community Management Regulations provide the substantive base, the Community Pact is the contract with users and the Community Committee System outlines the internal enforcement structure. Translations of these documents are available on the author's website: <http://chinacopyrightandmedia.wordpress.com/?s=sina+weibo#>. Also see China Copyright and Media (2012).
- 11 The author has participated in projects supporting these two initiatives.
- 12 Copyright collection societies are organisations that receive payments for the use of, among others, film, television and music works on behalf of their copyright holders.
- 13 The author's website, <http://chinacopyrightandmedia.wordpress.com>, contains translations of nearly 400 regulatory documents.

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