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ATYPICAL PNEUMONIA AND AMBIVALENT LAW AND POLITICS: SARS AND THE RESPONSE TO SARS IN CHINA

Jacques deLisle

I. INTRODUCTION: SARS, CHINA, AND INTERNATIONAL AND DOMESTIC LAW AND POLITICS

The “atypical pneumonia” (or *feidian*, as it soon came to be called by the shortened version of its full Chinese name) that erupted in southeastern China in late 2002, and the responses by the People’s Republic of China (“PRC”) to the outbreak, exposed a familiar and worrisome ambivalence in the PRC’s engagement with the outside world and its approach to legal and political change at home. The disease, which quickly became better known globally (and among many Chinese as well) by its English acronym SARS (severe acute respiratory syndrome), showed the extensive interdependence among the public health and economic health of China, its immediate neighbors, and the wider world. The 2002-2003 SARS episode and its aftermath also reflected, and extended, the Chinese regime’s increased (if sometimes reluctant or unintentional) transparency and amenability to pressures to adhere to international norms, including legal ones. On the other hand, important aspects of the PRC’s initially secretive response, its reaction to international criticism and calls for cooperation, and its handling of SARS-related developments in Hong Kong and Taiwan pointed in a very different direction. While some post-crisis developments have tended toward greater engagement with international norms and regimes, the mixed record has continued (not least because of lingering mutual distrust and recrudescing resentments, as the search for lessons from the SARS outbreak has continued in China and abroad).

Domestically, a parallel paradox does much to explain the disease’s course and a similar ambivalence has characterized China’s reactions and responses. On one side, the SARS episode reflected the increased transparency, openness, mobility, and decentralization of authority in contemporary Chinese society, which contributed to the disease’s spread as well as to the exposure of its existence and some aspects of the response. The SARS crisis precipitated sharply increased calls from many quarters (ranging from top elites to reformist intellectuals to worried citizens) for legal and political reforms to increase the free flow of information, government accountability, and government attention, to ordinary citizens’ needs as vital means for protecting public health, the economy, and even political stability. On the other side, the SARS crisis also seemed to teach more authoritarian lessons, particularly to the top elite. These included: the determination to use harsh criminal sanctions to address a wide

range of disapproved SARS-related behavior (including some that had obvious public health rationales and others that did not); the satisfaction that, as the crisis passed, the basic PRC “system” (including some revived seemingly neo-Maoist methods) worked; and conclusions that stronger conventionally Chinese-style laws and institutions would have lessened the danger in 2003 and were a key means for preventing a recurrence.

To be sure, China’s leaders during the SARS crisis are not unique in experiencing tension between handling a potentially transnational public health problem primarily at a national level and addressing it through prompt, extensive international cooperation. China’s experience with SARS is hardly *sui generis* in being a public health crisis that generated seemingly contradictory imperatives to “liberal” policies (encouraging accurate reporting, the free flow of relevant information, etc.) and more authoritarian-seeming emergency control measures (such as quarantines, other restrictions on mobility, intrusive monitoring, and sanctions for violating disease containment measures).¹

But in contemporary China, such ambivalence is particularly acute or, in Mao’s terms, the contradictions are especially likely to be antagonistic. Given China’s position as the epicenter of SARS (as of many past, and likely future, mass infectious diseases, including, for instance, various forms of influenza), such features of Chinese law and politics are matters that the international legal, political, and public health communities must be prepared to address or accommodate.

These “contradictions” in law and politics at home and abroad for China in the SARS crisis are addressed in Parts III through VI of this article.² Part III focuses on the “open” or “cooperative” face of China’s engagement with international pressure and organizations.³ Part IV examines the more “closed” or “resistant” dimension of that engagement.⁴ Parts V and VI offer a parallel analysis of the similarly contradictory “domestic” face of the law and politics of SARS in China.⁵ Before turning to such matters, Part II provides background about the emergence of SARS in China, Hong Kong, and Taiwan and the global reaction to it, and draws parallels to the Asian Financial Crisis of the later 1990s.⁶

II. SARS, CHINA, PERIPHERAL CHINA AND THE WORLD: A NEW ASIAN CONTAGION?

From SARS’s appearance in November 2002 through July 5, 2003, when the

1. For further analyses of these issues, see, for example, Jason W. Sapsin et al., *SARS and International Legal Preparedness*, 77 TEMP. L. REV. 155, 158-165 (2004).

2. See *infra* notes 35-168 and accompanying text for more detailed discussion of these contradictions.

3. See *infra* notes 35-48 and accompanying text for discussion of China’s cooperative engagement.

4. See *infra* notes 49-86 and accompanying text for analysis of China’s resistant engagement.

5. See *infra* notes 87-168 and accompanying text for discussion of domestic engagement.

6. See *infra* notes 8-34 and accompanying text for a background of SARS.

World Health Organization (“WHO”) declared the outbreak contained, the disease killed 812 people and infected more than 8,400 people.⁷ While such human losses are tragic, and defining an appropriate level of concern over a new threat to public health is problematic, SARS prompted alarm and reaction disproportionate to the death and illness it caused, in comparison to other diseases that have stricken more people in the same period, are no less highly communicable, or have higher mortality rates.⁸ To be sure, some of the reaction derived from an inevitable period of uncertainty about whether the new illness might be far more catastrophic than it has, in fact, turned out to be. But the limits of science were only part of the problem.

What made SARS an international crisis—and one that brought great pressure on the PRC to conform to international standards and demands—was that SARS could spread from country to country rapidly and potentially devastatingly along the pathways created by globalization. Greatly expanded and jet-speed international mobility of people—many of them traveling because of the opportunities accorded by global investment and trade—made possible the quick and unpredictable spread of SARS and the economic and human harms it could cause.

SARS quickly showed that it could exact a significant short-term economic toll, and, if unchecked or recurring, a devastating longer term one in the Greater Chinese region and beyond. The impact of the several thousand SARS cases in 2002-2003⁹ made clear that a serious SARS epidemic could produce costs that might rival the Asian Financial Crisis of the mid-1990s.¹⁰ Like the financial system-centered meltdown that spread from Thailand throughout Southeast Asia and into Northeast Asia in the 1990s, the atypical pneumonia that began in southeastern China raised the prospect of a domino effect that could damage

7. Dirk Beveridge, *WHO Drops Final Country from SARS List*, ASSOCIATED PRESS, Jul. 5, 2003, 2003 WL 58611694; *WHO Says SARS Contained but Threat Remains*, REUTERS, Jul. 7, 2003, available at http://www.unwire.org/UNWire/20030707/449_6230.asp (last visited Aug. 24, 2004); World Health Organization, Cumulative Numbers of Reported Probable Cases of SARS, at http://who.int/csr/sars/country/2003_07_09/en/ (last visited Aug. 24, 2004)[hereinafter WHO, Cumulative Numbers].

8. In the PRC alone, for example, over 100,000 people die annually from tuberculosis, and United Nations data projects that HIV/AIDS will infect ten million people by 2010. Press Release, UNAIDS, Asian Development Bank, 10 Million More Asians HIV-Infected by 2010 Unless Urgent Action Taken, Warns New Report (Jul. 8, 2004), available at <http://www.unaids.org/EN/other/functionalities/Search.asp>.

9. One published estimate put the potential damage to Asian economies if SARS continued to September 2003 at nearly \$30 billion. *SARS Could Cost Asia \$28 Billion*, UPI, May 29, 2003, LEXIS, Newsfile Library, UPI File. Hong Kong-based Cathay Pacific reported carrying about one-quarter its normal load of passengers in mid-May while Singapore airlines had half as many passengers in April 2003 as it had a year earlier. Jane Boyle, *Cathay Losing Money Fast*, AUST. L. FIN. REV., May 16, 2003, at 62.

10. For estimates of the economic impact of the Asian Financial Crisis and analyses of its origins, see, for example, Jeffrey A. Winters, *Asia and the “Magic” of the Marketplace*, 97 CURRENT HISTORY 418, 420-24 (Dec. 1998); Jeffrey E. Garten, *Lessons for the Next Financial Crisis*, 78 FOREIGN AFFAIRS 76, 77-81, (Mar./Apr. 1999); Robert Wade, *National Power, Coercive Liberalism, and “Global” Finance*, in INTERNATIONAL POLITICS: ENDURING CONCEPTS AND CONTEMPORARY ISSUES 482-89 (Robert J. Art & Robert Jervis eds., 5th ed. 2000).

advanced industrial economies.

Some of the immediate impact was far-flung indeed. SARS fears and WHO-prompted travel bans led to sharp downturns in airline and travel industries that were still reeling from the aftermath of the September 11th terrorist attacks. In Toronto, the most severely affected area outside East Asia, SARS caused over 30 deaths among over 200 infections.¹¹ It cost Canada tens of millions of dollars per day in lost economic activity and the prospect of a half-point drop in its economic growth rate.¹² Although Toronto's problems were not replicated elsewhere beyond China and the immediately adjacent region, such developments left national and municipal leaders throughout the developed world to monitor the trickle of SARS diagnoses in their jurisdictions and worry that they might find themselves in the shoes of Toronto's mayor, facing dire economic consequences, railing at the WHO, and desperately trying to convince the world not to stay away.¹³

Closer to the epicenter, international buyers, whose orders for clothing, toys, and electronics keep many of China's industries and Hong Kong's offices running, and international investors, who keep China's economy growing, stopped showing up. Multinational corporations had to contemplate what could happen to their intricate global supply networks if SARS were to disrupt the manufacturing of a vast range of consumer goods in the factories of Guangdong or the production of computers in Taiwan-invested facilities farther north along China's gold coast. Here too, the dire scenarios did not occur. Commercial relations muddled through with local agents, the internet, video conferencing, and the like until the disease began to ebb. International investors merely paused or perhaps postponed new ventures. The links in the complicated production chains remained unbroken. But, again, the lesson was clear about what could have been and what might be if SARS re-erupts.

SARS' immediate economic impact was, of course, greatest in the most affected areas of China—which included some of China's most economically dynamic areas such as Beijing, parts of Guangdong, and other industrial and service sector-oriented coastal regions. In addition to the consequences of foreigners' and foreign markets' worries, local residents reacted as well. Although there was soaring demand for surgical masks, rubber gloves, disinfectants, vinegar (the boiling of which, some rumors claimed, would kill the pathogen), and train tickets (to escape SARS-stricken Beijing), economic activity otherwise slowed greatly. In Beijing, and other affected or worried cities, people stayed home from shopping malls, restaurants, and work. Excepting the exodus from Beijing, domestic travel fell as people forewent trips to potentially affected destinations and as local authorities erected roadblocks

11. WHO, Cumulative Numbers, *supra*, note 7.

12. Clifford Krauss, *Toronto Mayor Calls for Understanding from Businesses and Consumers*, N.Y. TIMES, Apr. 25, 2003, at A21.

13. Susan Catto, *Travel Advisory; Toronto Contends with SARS Outbreak*, N.Y. TIMES, Apr. 27, 2003, § 5, at 3; *Toronto Mayor Rails Against WHO Warning*, CBC NEWS, Apr. 24, 2003, at http://www.cbc.ca/stories/2003/04/23/sars_tor030423.

against outsiders who might carry the disease.¹⁴

The impact of all these factors was sufficient to drive down national growth rates appreciably. SARS initially led forecasters to reduce projections for the PRC's growth rate by about one half of a percentage point for 2003,¹⁵ and led some assessments to conclude that the country's economy shrank during the peak of the SARS crisis in the second quarter of 2003.¹⁶

The harm from the 2003-2004 outbreak proved relatively limited, however, with foreign investment still up in 2003 substantially over 2002 levels,¹⁷ economic growth still topping seven percent,¹⁸ and projections for 2004 and beyond foreseeing little to no "SARS effect," barring a recurrence of the illness. Government programs and subsidies helped the recovery of particularly hard-hit sectors, such as restaurants and hotels.¹⁹

Also in the high impact zone was China's near- or semi-abroad, specifically Hong Kong and Taiwan—the two highly developed peripheral regions of greater China. The serious early eruption of the disease and its rise to alarming levels in Hong Kong and Taiwan made clear that SARS' impact and vectors for global propagation were especially dense in these two places. From the first case in March to the time the outbreak wound down in June, Hong Kong reported over 1,700 cases, with nearly three hundred people dying to the illness. In Taiwan, where the first case occurred in February 2003, the number of infections reached nearly seven hundred and the number of deaths passed eighty.²⁰

SARS pushed Hong Kong's shakily recovering economy back to anemic growth and threatened recession.²¹ Unemployment rose²² while trade-dependent companies' profits fell, and the estimated costs of SARS approached four to five billion U.S. dollars.²³ Taiwan, struggling to emerge from the worst

14. See *infra* notes 46-52 and accompanying text (discussing travel bans during SARS).

15. Nils Pratley et al., *The Impact: SARS Effects Underline Fragility of Far East Economies*, THE GUARDIAN (London), Apr. 25, 2003, at 19.

16. Keith Bradsher, *SARS Ebbs in East Asia, but Financial Recovery is Slow*, N.Y. TIMES, May 31, 2003, at A8.

17. Salbiah Said, *China Says Its Rise Conducive for World Stability*, BERNAMA MALAYSIAN NAT'L NEWS AGENCY, Oct. 14, 2003, available at LEXIS, Newsfile Library, Bernama National News Agency — Malaysia File.

18. *Chinese Premier Predicts 7 Percent Growth for China Despite SARS*, DEUTSCHE PRESSE-AGENTUR, June 29, 2003, available at LEXIS, Newsfile Library, Deutsche Presse-Agentur File.

19. See *China Announces Package to Help SARS-Hit Hotels, Restaurants*, AFX-ASIA, Aug. 5, 2003 (offering tax breaks and other assistance to aid hotels and restaurants), available at LEXIS, Newsfile Library, AFX-Asia File.

20. See WHO, Cumulative Numbers, *supra* note 7 (tallying statistics of disease).

21. See David Cohen, *War and Disease Are Weighing on Asia*, BUSINESSWEEK ONLINE, Apr. 2, 2003 (lowering Hong Kong's growth estimates from 3% to 1.9%-2.7%), available at LEXIS, Newsfile Library, Business Week Online File; Pratley et al., *supra* note 15 (lowering Hong Kong's GDP growth estimates from 305% to 0.5%); Geoffrey A. Fowler, *The High Cost of Sick Days*, FAR E. ECON. REV., Apr. 10, 2003, at 20 (estimating 6% annual loss in Hong Kong's GDO for duration of SARS crisis).

22. Richard McGregor, *Impact of SARS and Lingering Deflation Propel Hong Kong Jobless Rate to Highest in 30 Years*, FIN. TIMES (London), June 18, 2003, at 6.

23. Jimmy Cheung, *True Cost of SARS Outbreak Could Add Up to \$46b*, S. CHINA MORNING

period of economic performance in its recent history, faced SARS-related setbacks that analysts predicted would shave anywhere from a few tenths to more than a point and a half from the 2003 growth rate if the outbreak were not brought fully under control in less than six months, with a relapse into negative growth during the year's second quarter.²⁴ Schools closed for weeks in Hong Kong, as they did in Singapore and Beijing. Employees stayed away from their offices in droves. Shopping areas, public transit, and airports emptied in Hong Kong, as in Beijing, with those daring to venture out often wearing surgical masks. All this produced vivid media images that deepened popular fear and panic.

True, the worst passed relatively quickly in peripheral China, as in the core PRC areas and abroad, with infection rates troughing, travel advisories lifting, and life and business returning to normal within several months after the disease's onset. But the short-run economic damage was real and the prospect of a return of SARS—and the serious economic consequences that would ensue—continued to cause jitters more than a year after the initial outbreak. One mistaken report of infection of a traveler returning to Taiwan from the mainland received extensive television coverage until the case was quickly disconfirmed in December 2003.²⁵ A similar pattern ensued in Hong Kong with reports of an infected traveler followed by negative results of tests on the suspected individuals.²⁶ A confirmed case in a worker in a SARS lab in Taiwan, like a handful of similar cases in the PRC, did not trigger great alarm because it did not lead to large numbers of secondary infections.²⁷ The lack of impact of such incidents does not, of course, suggest that a larger number of confirmed infections in the general population would not trigger reactions more akin to those of 2003.

What made peripheral China especially vulnerable to and skittish about SARS is more than a simple tale of geographic proximity. The etiology of the outbreaks and the problems plaguing the response to SARS in Hong Kong and

POST, Aug. 2, 2003, at 3.

24. See *GDP Growth Could Drop Below 2 Percent if SARS Continues*; Official, TAIWAN ECON. NEWS, Apr. 25, 2003 (reporting a 1.56% predicted decrease in Taiwan's economic growth rate), available at <http://www.taiwanheadlines.gov.tw/20030425/20030425b4.html>; Keith Bradsher & Erik Eckholm, *The SARS Epidemic: The Implications: SARS Spreads in Taiwan; WHO Plans Trip There*, N.Y. TIMES, May 3, 2003, at A7 (reporting a predicted 1% decrease in Taiwan's economy between April and June 2003); *SARS to Claim Heavier Toll on Economy: Officials*, TAIWAN ECON. NEWS, Apr. 9, 2003 (reporting a predicted 0.1% decrease in economic growth for 2003), available at <http://www.taiwanheadlines.gov.tw/20030409/20030409b1.html>.

25. See *Infected Man in Taiwan Has Not Spread SARS Virus*, CHINA DAILY, Dec. 19, 2003 (reporting on efforts to determine if Taiwanese man infected others with SARS), available at http://www.chinadaily.com.cn/en/doc/2003-12/19/content_291615.htm.

26. Klaudia Lee, *SARS Test Comes Up Negative, But Patient Remains in Isolation*, S. CHINA MORNING POST, Jan. 21, 2004, at 3.

27. *China Calls for Strict Control of SARS Specimens in Labs After Taiwan Case*, XINHUA FIN. NEWS, Dec. 18, 2003, available at LEXIS, Newsfile Library, News, All File; *China to Ban Below Standard SARS Labs from Research*, ASIA PULSE, Dec. 31, 2003, available at LEXIS, Newsfile Library, News, All File.

Taiwan have an economic dimension that goes beyond mere physical adjacency. The channels for the spread of SARS in these two regions were created by the economic integration that has underpinned Beijing's agenda of transforming these "lost" Chinese territories into PRC Special Administrative Regions, and its broader related aims of economic development through deeper economic integration with the outside world.

The policies of openness to foreign investment that the PRC undertook beginning in the late 1970s had some of their greatest and earliest effects in the Pearl River region and neighboring areas. Investment flowed across the border from Hong Kong, transforming the British colony into a front office for manufacturing operations inside China, and a portal between a reforming China and an outside world that found Hong Kong (with its legal institutions, developed financial sector, and English language skills) to be a more congenial place to do business. The PRC and Hong Kong have for years ranked among each other's top handful of trade and investment partners.²⁸ In the pre-reversion years, these dense economic ties, and the resulting sense of the PRC's interest in preserving a thriving Hong Kong, helped make the prospect of the territory's return to Chinese rule as a Special Administrative Region ("SAR")—and, in turn, still closer integration with the PRC—conceivable to many in Hong Kong and their British guardians.²⁹

A broadly similar trajectory of economic integration has been unfolding between the PRC and Taiwan since the later 1980s. As restrictions on cross-strait investment and trade were relaxed, Taiwanese capital poured into eastern and southeastern China. While the data are clouded by such investments' politically sensitive and sometimes illegal character, the island republic has become a top-ranking source of the PRC's foreign direct investment. Both entities rank among each other's top trading partners.³⁰ The recent accession of Taiwan and the PRC to the World Trade Organization ("WTO") augurs further growth in bilateral economic ties. It is widely recognized that Beijing hopes and expects this burgeoning relationship of asymmetrical economic interdependence

28. See, e.g., Trade and Industry Department, Government of the Hong Kong Special Administrative Region, *The Mainland of China and Hong Kong Special Administrative Region: Some Important Facts* (noting that trade between PRC and Hong Kong constituted 40.3% of Hong Kong's global trade in 2001 and that Hong Kong was PRC's fourth largest trading partner in 2001), available at <http://www.tid.gov.hk/english/aboutus/publications/factsheet/china2003.html> (last updated Sept. 5, 2003); Joseph Y.S. Cheng & Zheng Peiyu, *Hi-Tech Industries in Hong Kong and the Pearl River Delta*, 41 *ASIAN SURVEY* 584, 585-86 (Jul./Aug. 2001) (analyzing economic cooperation between China's Pearl River Delta and Hong Kong over two decades).

29. See generally Jacques deLisle & Kevin P. Lane, *Cooking the Rice without Cooking the Goose: The Rule of Law, the Battle over Business and the Quest for Prosperity in Hong Kong after 1997*, in *HONG KONG UNDER CHINESE RULE* 31 (Warren I. Cohen & Li Zhao eds., 1997) (analyzing link between potential "rule of law" in Hong Kong and maintaining economic prosperity).

30. See *US \$140 Billion Invested in China*, *TAIPEI TIMES*, May 31, 2002, at 18 (reporting amount invested in China by Taiwanese businesses in 2001); Statistics on National Trade with the Mainland Area, at http://www.trade.gov.tw/prc&hk/mo_9203.htm (on file with author); Cal Clark, *Growing Cross-Strait Economic Integration*, 46 *ORBIS* 753, 757 (Fall 2002) (analyzing increased economic integration between China and Taiwan).

to strengthen Taiwanese support for—or acquiescence in—a broad SAR-style arrangement, and to give the PRC additional leverage with recalcitrant Taiwanese to accept Beijing's preferred resolution to the "reunification question."

With these economic relationships have come vast and frequent flows of people. These human connections provide pathways for diseases to spread rapidly from southeastern China to Hong Kong and Taiwan. The PRC-SAR border is one of the world's busiest controlled frontiers, with hundreds of thousands of crossings per day. Non-SAR PRC residents cross the border into Hong Kong as tourists, business people, or laborers, and some stay for extended periods. Hong Kong-resident managers tend to their factories, and SAR-based capitalists, to their investments on the mainland side. Hong Kong people head to Guangdong for recreation or to visit relatives or to work in office jobs. Affluent SAR residents have second homes and, sometimes, second families on the PRC side of the border. Having sought bigger or cheaper housing, some Hong Kongers commute daily from abodes in Guangdong.³¹

Hundreds of thousands of Taiwanese (over a million by many estimates) now live relatively permanently in the PRC, primarily as Taiwan-invested companies' owners, employees, and their dependents. Many return regularly to Taiwan for business or to see friends and family. Huge numbers of Taiwan-based Taiwanese travel to the mainland as tourists, business people, or visitors to their families' old home villages, with the total number of trips counted in the millions per year. Because bans on direct air links between Taiwan and the mainland persist, almost all of the cross-strait human traffic flows through the Hong Kong SAR.³²

With these dense connections, it is hardly surprising that SARS extended its reach from southeastern China to Hong Kong and Taiwan. When the ailment quickly reached Hong Kong, apparently by means of a PRC-based "super-spreader" who infected fellow guests at Kowloon's Metropole Hotel, the virus had followed one of countless available routes. There has been less precise tracing of, or speculation about, the precise pathway by which SARS reached Taiwan, but it did so with equal dispatch along one or more of the many routes across the Strait.

For the wider world, Taiwan and Hong Kong provided examples of what SARS might wreak in more distant places that were, nonetheless, linked (albeit less intensively) to an increasingly globalized China. Through their own exceptionally dense international connections, Hong Kong and Taiwan also

31. See *The Home Front*, S. CHINA MORNING POST, Dec. 28, 2002, at 10 (estimating over 200,000 mainland homes owned by Hong Kong people).

32. See Erik Eckholm, *Chinese are Tempting Taiwan by Dangling Economic Fruit*, N.Y. TIMES, Jan. 28, 2003, at A4 (discussing Taiwan's restrictions on direct flights to China); *Taiwan Authorities Reject Direct Charter Flights*, PEOPLE'S DAILY, Nov. 14, 2002 (noting unsuccessful efforts to establish direct flights between China and Taiwan), available at http://english.peopledaily.com.cn/200211/14/eng20021114_106783.shtml; Zhongguo Wang, *Direct Flights Narrow Straits*, CHINA DAILY, Jan. 7, 2003, at <http://www.china.org.cn/english/taiwan/52962.htm> (concerning first direct charter flights between China and Taiwan during Chinese New Year).

provided additional and especially potent pathways for the pathogen's spread. Indeed, many of the infections outside the immediate Chinese region and perhaps some of the infections in the core PRC areas were thought likely to have come through or from Taiwan or Hong Kong.

III. WHO'S THAT KNOCKING ON THE (OPEN) DOOR

Not surprisingly, a threatened-feeling world responded sharply in 2002-2003, and grew jittery with each report—ultimately confirmed or not—of a new case in late 2003-2004, and did so in ways familiar from other recent dangers emanating from Asia. As with the financial crisis that spawned the phrase “Asian Contagion,” the first several months of SARS prompted powerful, developed states and international organizations to press governments in the most affected areas to undertake prompt remedial measures to address perceived institutional failures. As in the earlier economic crisis, these outside advocates of change considered themselves justified in pressing their agendas because they saw their own vital national interests and welfare at risk.

SARS generated calls for China to cooperate more fully with foreign and international health authorities, to remove political barriers to Taiwan's engagement with the WHO, and to make the PRC's public health and other relevant institutions and processes more transparent and effective.³³ In significant part, the Chinese response heeded, or at least paralleled, such prescriptions from abroad. After an initial rough patch, much of the PRC's response could be described as cooperative, transparent, and proactive. At a pivotal meeting on April 17, 2003, the Politburo Standing Committee proclaimed a commitment to gathering and sharing accurate information, ordering “accurate, timely and honest reporting” of SARS cases.³⁴ A few weeks earlier, WHO teams were granted access, albeit belatedly, to SARS-stricken Beijing. WHO teams also gained access to SARS-epicenter Guangdong and other sites in China. Reports from PRC public health circles indicated that PRC scientists were directed to address the WHO's questions and concerns.

The general (though not unmixed) tone of outsiders dealing with China shifted from one of imposing pressure to one of praising and further encouraging cooperation.³⁵ The WHO and foreign governments generally welcomed China's

33. See Lawrence K. Altman & Keith Bradsher, *China Bars WHO Experts from Origin Site of Illness*, N.Y. TIMES, Mar. 26, 2003, at A7 (discussing PRC's denial of WHO experts' access to Guangdong province); *SARS—An Opportunity: China Reshuffles Public Health, Disease Prevention System*, PEOPLE'S DAILY (China), May 19, 2003 (discussing WHO criticism of PRC's public health system and changes implemented by PRC), available at http://english.people.com.cn/200305/03/print20330503_116188.html; Donald G. McNeil Jr., *SARS Furor Heightens Taiwan-China Rift*, N.Y. TIMES, May 19, 2003, at A8 (discussing the intensified tensions between the PRC and Taiwan following the PRC's attempt to hide its SARS epidemic from the international community).

34. Matthew Forney, *Silent for Too Long*, TIME, Apr. 28, 2003, at 15.

35. See *SARS Lessons Still Not Learned in Fight Against Bird Flu*, S. CHINA MORNING POST, Jan. 25, 2004, at 10 (suggesting that the international community pressure the Chinese government regarding SARS); *China Claims Milestone Victory in Battle Against SARS*, XINHUA, June 25, 2003 (quoting WHO official on China's performance from April through the lifting of the WHO travel

increased efforts at collaboration, with many of the remaining complaints asserting incompetence rather than recalcitrance.³⁶

Chinese officials, including the then-newly-designated SARS czar, Vice Premier Wu Yi, stressed the importance of cooperation with Asian states, the WHO, and others to address the problem.³⁷ China accepted advice and assistance from Italy in training local government officials and disease control and prevention-center workers in epidemiology, law, surveillance, reporting, and safe handling of samples.³⁸ Hong Kong and PRC public health officials moved on to WHO posts, providing a stronger personal and personnel basis for cooperation.³⁹

More concretely, Chinese authorities took visible and domestically controversial (though, it later turned out, quite limited) steps to answer international calls to stem the likely vectors of contagion, including inadequately screened travelers and the consumption of civet cats and other wild animals that international experts identified as the likely pathways of the disease. After some delay, temperature screeners were dispatched to transportation points and quarantines were imposed or at least attempted. Despite the economic hardship to game farmers and the discontent of restaurant patrons, local authorities issued regulations banning the eating of such dishes and threatening fines for selling or allowing the release of such animals. In Guangdong, Shanghai and elsewhere, local health officials monitored and enforced quarantines of legally held stocks, while law enforcement authorities cracked down on the illegal trade in wild animals and confiscated tens of thousands of animals. China quietly acquiesced in other countries' banning the import of the suspected animals from PRC sources.⁴⁰

advisory for Beijing, the last listed locale), available at LEXIS, Newsfile Library, Xinhua General News Service File.

36. See Leu Siew Ying et al., *Mandate to Co-operate on SARS After Signaling a Shift in Policy*, S. CHINA MORNING POST, Apr. 3, 2002, at 1 (reporting reaction of WHO to China's increased cooperation).

37. See Wu Yi Shares PRC's Experience on SARS Fight with APEC Health Ministers, WORLD NEWS CONNECTION, June 28, 2003 (discussing Health Minister's statement about importance of international cooperation in containing SARS), available at LEXIS, Newsfile Library, News, All File; *China Calls for Global Cooperation against SARS*, XINHUA, June 4, 2003 (reporting on PRC's call for international cooperation to eradicate SARS), available at LEXIS, Newsfile Library, Xinhua General News Service File; Qian Tong et al., *PRC Vice Health Minister Gao Qiang Addresses ASEAN+3 Meeting on SARS*, WORLD NEWS CONNECTION, June 3, 2003 (reporting that PRC Health Minister's recommendation for increased international cooperation to fight SARS), available at LEXIS, Newsfile Library, Xinhua General News Service File.

38. *Italy Helps China Train Local Officials Against SARS*, XINHUA, Dec. 15, 2003, available at LEXIS, Newsfile Library, Xinhua General News Service File.

39. See, e.g., Mary Ann Benitez & Patsy Moy, *Truck Driver's Advice Made Health Chief Take WHO Job*, S. CHINA MORNING POST, Aug. 19, 2003, at 1 (reporting Hong Kong Director of Health's acceptance of position at WHO).

40. See Sam Howe Verhovek, *Civet Cat Farmers Fighting to Save Their Own Hides*, L.A. TIMES, June 16, 2003, at 3 (discussing China's ban on consumption of particular animals); *China's Guangdong Province Confiscates Thousands of Wild Animals*, AGENCE FRANCE PRESSE, June 5, 2003 (discussing ban on consumption, trade, and use of wild animals), available at 2003 WL 69200094; Yi Hu, *Trade*

What do these internationally transparent, cooperative, and conforming elements in China's response to foreign demands and international regimes during the SARS crisis of 2002-2003 tell us about the foundations and, therefore, the durability and significance of this face of the PRC's behavior?

First, to some extent, it shows China responding to an international regime that had the power to coerce. True, the WHO is no International Monetary Fund ("IMF") or WTO. It does not have the IMF's clear and demanding agenda for fundamental reform in targeted countries, long-term and high-level support from key states, and leverage as a provider or gatekeeper of resources desperately needed by an afflicted state. Nor does the WHO have the global trading body's extensive and legitimate authority to make definitive determinations of internationally legally permissible and impermissible behavior in the relevant field, and to mobilize or impede the imposition of painful sanctions by other states against targeted states.

As a narrow legal matter, the WHO lacked the authority to require member countries to take steps to contain SARS. Member states' obligations to report outbreaks extended only to a small number of listed diseases that, not surprisingly, did not include the hitherto unknown ailment SARS. The guiding principles for the WHO rules were to ensure the maximum security against the international spread of diseases with a minimum interference with world traffic. Specific rules governing the restrictions that states might place on international travel focused primarily on seeking to limit states' latitude to impede commerce and mobility. And the general view of WHO practice had been that it had leaned toward the "minimum interference" side of its mandate.⁴¹ The leader of the WHO team that investigated the outbreak in Guangdong complained that the organization needed the right to go into any country that faced an outbreak, despite the international legal and political obstacles to giving the WHO such power.⁴²

But that is only part of the story. The WHO did wield crucial "soft power" to place a country or part of a country on, or off, a "no go" list and to do so in a way that carried weight with the international community, both governmental and nongovernmental. The absence of clear WHO formal authority to do so, and the lack of precedent, mattered little. The howls from Toronto, the scramble throughout China, Taiwan, and Hong Kong to get off the WHO travel

Ban Is Lifted But Wildlife Still Off Mainland Menus, S. CHINA MORNING POST, July 12, 2003, at 5 (reporting lift of trade ban but continued prohibition on consumption of wild animals).

41. See WORLD HEALTH ORGANIZATION, WORLD HEALTH REGULATIONS 5 (3d ed. 1995) (establishing regulations to ensure the maximum security against the international spread of disease with a minimum interference with world trade); Andy Ho, *Why Epidemics Still Surprise Us*, N.Y. TIMES, Apr. 1, 2003, at A19 (discussing the ineffectiveness in creating and enforcing a public health policy appropriate for outbreaks like SARS). See generally DAVID P. FIDLER, INTERNATIONAL LAW AND INFECTIOUS DISEASES 65-71 (1999) (examining the effectiveness of international health regulations).

42. Mary Ann Benitez, *Investigator Seeks Unhindered Entry to SARS Countries*, S. CHINA MORNING POST, July 31, 2003, at 3.

ban list, and so on, amply illustrated the significance of this power.⁴³

Moreover, and despite criticism that the WHO's de facto travel bans were draconian or inconsistent, support grew markedly for making the WHO more institutionally robust and for addressing worries that the WHO is anomalously weak given the now much more widely recognized magnitude of the dangers it is charged with addressing. The WHO's assumption of unprecedented power in the midst of the SARS break has gone largely unchallenged. Mid-crisis, the World Health Assembly expanded WHO autonomy, granting powers to act without specific approval from national governments. A long-term project to revise and strengthen WHO rules gained momentum, with reforms pledging new or clearer powers to report promptly on disease outbreaks based on unofficial information—the method deployed in some desperation and with substantial, if belated, efficacy to mobilize international pressure on the PRC to cooperate with the WHO on SARS. In addition, reforms promise that, going forward, the WHO will have clearer formal authority to issue global health alerts (as it did in the case of SARS) and to send teams to inspect the adequacy of member states' measures to contain international health threats (although these teams still would need host-country cooperation, which China pointedly had withheld in the early days of SARS).⁴⁴

Second, much of China's relatively open and cooperative response may simply—without significant intermediation or amplification by a relatively weak WHO regime—reflect the transformed self-interest of an internationally integrated reform-era China. The PRC's increased economic dependence on the outside world (including Hong Kong and Taiwan), and the transparency that has accompanied it, have made China more vulnerable to foreign scrutiny and pressure to cooperate with other states and the international community. It was far less plausible than in an earlier era to imagine that SARS or information about SARS could be kept within China, as the whistle-blowing e-mails to Hong Kong by Beijing-based People's Liberation Army ("PLA") doctor Jiang Yanyong and the intense international press coverage of SARS in China illustrated. It was equally unlikely that China would be able to ignore pressure to address the problem in ways that the international community demanded, as the grudging but real cooperation with the WHO suggests. In an era of extensive foreign trade and investment dependence, the economic and diplomatic costs to China of non-cooperation were too high to bear. International investment houses' downgrading of China's growth prospects, foreign companies' bans on China travel, and other governments' sharp rebukes taught the PRC leadership

43. See Charles Piller, *In SARS Aftermath, WHO's in Charge*, L.A. TIMES, July 13, 2003, at 1 (discussing the WHO's "previously unthinkable autonomy" during the SARS epidemic and the weight of its travel warnings on various countries).

44. Lawrence K. Altman, *WHO Expected to Gain Broader Powers*, N.Y. TIMES, May 28, 2003, at A10; Global Solidarity Needed to Fight Diseases, WHO Chief Tells Annual Meeting (May 19, 2003), at <http://www.un.org/apps/news/storyAr.asp?NewsID=7128&CR=world&Cr1=health&Kw1=Global+Solidarity+Needed+to+Fight+Diseases&Kw2=&Kw3>. See also Piller, *supra* note 43, at 1 (discussing the likely continuance of the aggressive stance taken by the WHO during the SARS epidemic).

that dismissing outsiders' concerns was no longer wise or feasible.⁴⁵

As these latter factors suggest, the PRC leadership's calculation of the national economic interest—the advancement of which has been the cornerstone of their legitimacy for nearly a quarter century—strongly dictated a significant degree of international cooperation, even absent any persuasive or pressuring effect of specific foreign demands. As early as July 2003, China's top SARS official's comments were strikingly transparent about such motives for cooperation, asserting that “the Chinese government [had shown it] is capable of ensuring the health and security of foreign investors, and China is still one of the most attractive regions of the world for foreign investors.”⁴⁶

Finally, China's relatively (if belatedly) open and cooperative response in the SARS cycle of 2002-2003 may not project simply to similarly accommodating responses in other future contexts. While the criticism and costs China endured for its failure to embrace cooperation and transparency more quickly do offer relatively strong assurances that there will be no repeat of the pattern of the last months of 2002 and first months of 2003, this does not mean that the openness and cooperation displayed in later months of the first SARS outbreak will characterize China's engagement with the outside world on other issues generally, or even other public health issues (perhaps even including a return of SARS) if the factual circumstances or foreign demands differ in relevant ways.

SARS in 2002-2003 provided an unusual occasion in which foreign pressure on China was exceptionally likely to be effective. Other states' governments had an indisputably legitimate stake in how China handled the crisis, for their own economies and public health appeared to be at risk. Clearly as a matter of causation and (especially in light of Beijing's early stonewalling and foot-dragging) quite probably as a matter of culpability, China was responsible for the problem that the world was calling on the PRC to help fix. Also, the panic that arose in Hong Kong and Taiwan and, to a lesser degree elsewhere, had political dimensions as well as economic ones: the relevant constituencies (especially in Hong Kong and Taiwan where confidence in Beijing was already at a low ebb for a variety of reasons) had to be reassured that the PRC was sufficiently competent and reliable.

Moreover, what outsiders demanded of China was less offensive to the regime's notion of domestic sovereignty than were many other international calls on China for action or reform. Sharing public health or epidemiological data, allowing WHO teams access, and accepting foreign advice and assistance on disease prevention, monitoring, and containment were a good deal less problematic than such other foreigner-pressed reforms such as those that addressed China's lack of democracy, weak legal system, human rights record, or vestigial non-market elements of its economy.

Few issues are likely to equal the SARS outbreak of 2002-2003 in providing

45. See *supra* notes 21-24, 32-35 and accompanying text for discussion of SARS effect on China's economy and international relations.

46. *China to Create Better Environment for Foreign Investor Says Vice Premier*, XINHUA NEWS AGENCY, July 15, 2003.

so compelling an occasion for an urgent exertion of pressure from abroad that appears legitimate and compatible with self-interest on both sides.

In the PRC today, the forms of bowing to foreign pressure and criticism and giving an international institution free reign that characterized part of the Chinese response to SARS still are not small matters. The compliant and cooperative face of the PRC's handling of the international dimension of SARS entailed acquiescing in outside "interference" in what Beijing traditionally would call a domestic matter, and public international concessions that China's rulers had not dealt successfully with the problem on their own and with their usual methods. Such moves chafe against the regime's exceptionally strong, even paranoid, commitment to state sovereignty and, in turn, opacity to the international community. This view of sovereignty is a carefully cultivated legacy of China's nineteenth and twentieth century humiliation by foreign powers, and an important element in the reform-era regime's increased dependence on nationalism as a basis of legitimacy. Aspects of it have been amply on display in other international or external aspects of the SARS crisis and China's response.

IV. CHINESE WALLS AND "SPECIAL ADMINISTRATIVE REGION SYNDROME"

The transparent, cooperative dimension of China's engagement with the outside world on the SARS issue came grudgingly and coexisted throughout with a diametrically different approach. Initially unable to move Beijing to grant WHO teams access to affected areas, the WHO had to go public with information it had gleaned and await mounting international pressure, losing precious weeks in the urgent mission to understand SARS's origin and spread.

WHO first learned of the illness when the son of a former WHO employee e-mailed the WHO's communicable diseases section director about a fatal illness in southern China that authorities were refusing to allow to be reported.⁴⁷ Hong Kong's inquiry into the SARS crisis in early 2004 revealed that Guangdong officials had refused to inform Hong Kong counterparts of the emergence of SARS because they regarded such withholding as a "legal requirement" because "infectious diseases were classified as state secrets."⁴⁸ As late as early April, the still-to-be-sacked Health Minister Zhang Wenkang dismissed WHO travel advisories with a glib statement that it was "perfectly safe to come to China,"⁴⁹ and scolded foreign media for "irresponsible" reporting on SARS.⁵⁰ WHO teams were allowed to begin serious work only shortly before Zhang's valedictory expressions of disdain, and only after they confronted Chinese

47. Piller, *supra* note 43, at 1.

48. Mary Ann Benitez, *Health Chief Was Told Outbreak a State Secret*, S. CHINA MORNING POST, Jan. 13, 2004, at 4.

49. Forney, *supra* note 34, at 15.

50. See Susan V. Lawrence, *For the Top, Sorry is the Hardest Word to Say on SARS*, FAR EASTERN ECON. REV., Apr. 17, 2003, at 31 (describing how despite Chinese government's promise for more openness in reporting on SARS, many Chinese and foreign residents still suspect the government has been absolutely forthright).

officials with—and attracted international media coverage of—evidence that the SARS situation in the PRC was far more serious than official accounts admitted, and issued the organization's first-ever international travel advisory (covering Guangdong and Hong Kong). Even then, the WHO team had to wait longer still (until the beginning of April) for access to the disease's suspected site of origin in Guangdong, and had to contend with the preposterously rosy picture that official Chinese sources continued to paint for another few weeks.⁵¹

International observers discerned significant ongoing impediments to WHO operations in the PRC, including continually recalcitrant or incompetent PRC gathering or providing of information.⁵² Amid what some saw as implausible reported patterns of infection in China (including, for example, near-zero levels in Shanghai and wildly fluctuating numbers from Beijing), worries arose that the WHO was being ineffectively or fatally restricted by PRC authorities.⁵³ This reinforced doubts about the credibility of disease reports that included, for example, infection patterns (such as only two reported cases in Shanghai) that seemed implausible.⁵⁴ While the PLA's Dr. Jiang Yangyong escaped serious retribution, Chinese authorities made it clear to him and foreign reporters that they would no longer be speaking to one another⁵⁵—a clear signal to other Chinese who might be inclined to expose the outside world to the ongoing official dissembling in China.

As the SARS crisis came under control, measures to stem the consumption of civets and other wild animals showed signs of eroding once the intense international scrutiny that proponents credited for their adoption began to abate. A hotly debated Guangdong provincial draft law omitted a ban on consumption of wild animals (beyond mere exhortations not to eat them), and a proposed provision prescribing a ban included no penalties. Angry Chinese conservationists complained that local officials were succumbing to the demands

51. See Allen T. Cheng et al., *WHO Seeks Full Probe on Virus*, S. CHINA MORNING POST, Apr. 10, 2003, at 1; Altman & Bradsher, *supra* note 33, at A7 (discussing Hong Kong officials' criticism that the WHO was "too quick to sound an international alarm"); David Lague et al., *The China Virus*, FAR EASTERN ECON. REV., Apr. 10, 2003, at 12-15 (discussing how the Chinese government's rigid control of information about SARS hindered efforts to control the disease).

52. See, e.g., Joseph Kahn, *Chinese Official Says Disease is Controlled in City of Origin*, N.Y. TIMES, Apr. 8, 2003, at A8 (reporting that, on one occasion, WHO team waited more than a week for PRC's permission to access Guangdong); Lawrence K. Altman, *Virus Called Mostly Under Control*, N.Y. TIMES, Apr. 12, 2003, at A6 (noting WHO's concerns that PRC was not releasing SARS information about regions of China outside Guangdong).

53. See Altman & Bradsher, *supra* note 33, at A7 (noting suspicions that PRC was under-reporting SARS cases); Melody Chen, *Mystery Illness Highlights Taiwan's Health Isolation*, TAIPEI TIMES, Mar. 18, 2003, at 1 (suggesting Taiwan's isolation has decreased the WHO's effectiveness in combating SARS).

54. See, e.g., Erik Eckholm, *The SARS Epidemic: Beijing*, N.Y. TIMES, Apr. 24, 2003, at A13 (citing PRC's repeated suspicious under-reporting of SARS cases).

55. Mure Dickie & Frances Williams, *Chinese Doctor Who Blew Whistle on Cover-Up Wins Media Praise—and Gag*, FIN. TIMES, May 23, 2003, at 7; *Beijing Doctor Pressured Not to Discuss SARS with Foreign Media*, Voice of America, (Apr. 10, 2003), at <http://www.voa.gov/printerfr.cfm?tablename=tblHomePage&articleID=308> (describing the discrepancies between the number of SARS cases in Beijing reported by PRC authorities and by Dr. Jiang).

of hunters and traders whose livelihoods were threatened by the ban. In Guangdong and elsewhere in southern China, lax enforcement of legal prohibitions was commonly reported, the enforcement difficulties posed by distinguishing between banned "wild" and increasingly tolerated "farm-raised" animals drew increasing attention, and reports of the reopening of exotic animal markets,⁵⁶ the return of wild animals to menus,⁵⁷ and amendments to relax regulatory restrictions became commonplace.⁵⁸

With the SARS outbreak only a few months in the past, concerns began to surface that PRC cooperation with outside authorities and conformity to international standards and protocols were fading. In addition to the reports concerning the fast-eroding restrictions on animal consumption, foreign observers openly worried about whether the "short-term, heavy-handed" response that included massive, tight health screenings at airports, hastily drawn plans for an emergency response in major cities to any sign of a new outbreak, and scrutiny of data from, and monitoring of, the myriad local health provider entities around China could be sustained. Reports of a handful of late 2003 and early 2004 cases from Guangdong, and an initial denial by local authorities, triggered anew worries of under-reporting and attempts to conceal problems from the international community, as did what some saw as suspiciously absent reports of human cases of bird flu from the mainland when it had begun erupting elsewhere in the region by early 2004. Confidence in China's post-SARS commitment to international transparency on the issue hardly benefited from comments by a vice governor of the Guangdong province that appeared to threaten legal consequences against Hong Kong media that might report on new 2003-2004 cases of SARS on the mainland without first receiving official confirmation.⁵⁹

As this last point underscores, some of the most severe and complex effects of China's recalcitrance toward international pressure emerged in geographic areas where the PRC views questions of sovereignty as particularly sensitive and brooking no compromise—the recently recovered or still unrecovered territories of peripheral China that the PRC has sought to reintegrate under a "one

56. Yi Hu, *Trade Ban is Lifted but Wildlife Still off Mainland Menus*, S. CHINA MORNING POST, July 12, 2003, at 5.

57. Chow Chung-yan, *Wild Animals to Return to Shenzhen Menus*, S. CHINA MORNING POST, Aug. 25, 2003, at 4.

58. See *Chinese Agency Examines Debate on Proposed Law to Ban Eating Wild Animals*, XINHUA NEWS AGENCY, July 9, 2003 (detailing the competing concerns of animal breeders and environmental groups in the debate on the proposal to ban the consumption of wild animals); *Guangdong Passes Regulations on Wildlife Consumption*, XINHUA NEWS AGENCY, July 25, 2003 (describing how legislation that compels people to give up wildlife cuisine passed in Guangdong's provincial legislature after two months of discussion and revision).

59. See Peter Harmsen, *China Probably Has Human Bird Flu Cases*, AGENCE FRANCE PRESSE, Feb. 4, 2004 (asserting that given the number of people, chickens, and outbreaks of bird flu in China the proportional number of outbreaks is low); *H.K. Slams Guangdong Prov. For Late Report of SARS Case*, JAPAN ECON. NEWSWIRE, Feb. 9, 2004 (describing a Hong Kong official's dissatisfaction with Chinese authorities's release of information on new SARS cases and his corresponding demand to be notified about any suspected SARS cases).

country, two systems" model and its juridical instantiation, the Special Administrative Region. Indeed, the crisis that attended and followed the illness's arrival in Hong Kong and Taiwan has legal-political dimensions that might be called "Special Administrative Region Syndrome."

The symptoms here have differed somewhat between the two cases. To some in Hong Kong, SARS was the latest and potentially the most serious episode of inept or weak governance by a SAR leadership that Beijing had foisted on the territory and that failed to assert Hong Kong's interests with its PRC masters. The Tung Chee-hwa administration faced criticism for a belated and insufficiently effective response to the SARS outbreak. Critics from across the SAR's political spectrum denounced the government for being shamefully slow or timid. The indictments grew especially sharp when an outbreak swept through one large apartment building and into another in the Amoy Gardens, a block of middle-class housing in densely populated Kowloon. That development came embarrassingly hard upon the heels of government statements that the SARS situation was improving. Although authorities then moved to isolate the complex and relocate its residents, some had already left and the incident intensified calls on the regime to make more aggressive use of powers granted under Hong Kong's long standing quarantine law and the SAR's police powers more broadly. Staff at an affected hospital complained bitterly to the Hospital Authority Chief that the Department of Health had not done enough to track people who might have had contact with SARS victims. Ridicule greeted Chief Executive Tung's appearance at a cabinet meeting in a surgical mask, and his wife's donning mask, gloves, gown, and goggles when she distributed "hygiene kits" on the streets of heavily SARS-hit neighborhoods.⁶⁰

As already low public confidence in Tung's administration sank, calls for his resignation or ouster rose, and an opposition members' motion calling on Tung to step down came to a vote (although falling short of a majority) in the legislature. To some of the many critics of the SAR government, mishandling of SARS was the latest in a series of botched efforts at crisis management that included the bird flu of 1997 and the Asian financial crisis-related economic downturn.

After the 2002-2003 crisis ended, a series of official inquiries followed, including one by a special joint PRC-Hong Kong commission of experts, and another by the SAR's legislature. Those investigations and other reporting laid much of the blame at the feet of the SAR administration, citing significant shortcomings in the health system, a pattern of higher-level health officials ignoring warnings, and evidence from front line medical personnel. While PRC authorities too faced criticism for not being more forthcoming, the assessments hinted (though they did little more than that, perhaps because of litigation concerns) that Hong Kong authorities might have pushed harder or been more suspicious.⁶¹

60. Bryan Walsh, *System Failure*, TIME INTERNATIONAL, May 5, 2003, at 18.

61. See Mary Kwang, *Panel on SARS in HK Steers Clear of Blame Game*, STRAITS TIMES (Singapore), Oct. 3, 2003 (describing international panel of medical experts' conclusion that no one

Worse still, SARS in the SAR seemed to show the potentially deadly consequences of what some see as the Hong Kong leadership's subservient posture toward Beijing.⁶² To its harshest critics, the Tung government showed its true, and familiar, colors in failing to extract or perhaps even elicit prompt disclosure and cooperation from PRC authorities concerning a problem that originated in nearby parts of China and that would predictably spread to Hong Kong.⁶³ Once the SARS crisis accelerated in Hong Kong, SAR officials making sanguine comments began to sound to skeptical ears as if they were reading from the same script as PRC former trade minister Long Yongtu, who notoriously opined in late March that three hundred cases were not particularly noteworthy in a place with six million people.⁶⁴

On this view, it was too little too late when the Hong Kong government declared in mid-April that Hu Jintao's talks with Tung during the Chinese president's tour to Shenzhen had included Hu's pledge to provide the SAR with "the full support of the central government."⁶⁵ For its opponents and critics, the Tung government's behavior was all too predictable and typical from an administration that had failed to defend Hong Kong's judicial autonomy when the Court of Final Appeal issued a controversial decision not to Beijing's liking, and that was poised to compromise Hong Kongers' liberties by preparing unduly restrictive legislation to implement the anti-sedition article in the Basic Law for the Hong Kong SAR.⁶⁶ The distrust of the Tung administration was such that the most visible post-crisis SARS investigation committee came under suspicion over concerns that it was insufficiently independent of an excessively PRC-subservient administration.⁶⁷

person or government mishandled the SARS outbreak but blaming inadequate information from Guangdong where SARS first appeared).

62. See Wu Guoguang, *HK HSIN PAO: Article on China's Response to SARS*, WORLD NEWS CONNECTION, June 3, 2003 (arguing that the Tiananmen Incident of June 4, 1989, in which the student-led pro-democracy movement was crushed brutally by units of the Chinese Army, and SARS reflected similar or related flaws in the PRC political and legal system), available at LEXIS, Newsfile Library, Global News Wire File.

63. As one commentator put it, "[C]ynics say, Hong Kong was doomed when Tung Chee-hwa was anointed as the chief executive." Chris Yeung, *Infected with a Crisis of Confidence in HK*, S. CHINA MORNING POST, Apr. 5, 2003, at 4. See also *H.K. Slams*, *supra* note 59, (quoting Hong Kong Democratic Party legislator's urging Hong Kong government to be tough with Guangdong to prevent recurrence of 2002-2003 pattern of failure to challenge cover-up or mistakes on the mainland in handling infectious disease outbreaks).

64. *From Bottom to Top, Procuring Information on the SARS Epidemic*, KAIFANG ZAZHI, June 2003.

65. Keith Bradsher, *A Respiratory Illness; Treatment*, N.Y. TIMES, Apr. 14, 2003, at A12.

66. See Martin C.M. Lee, *China's Censors Extend Their Reach*, N.Y. TIMES, June 3, 2003, at A31 (discussing Hong Kong national security bill "that would criminalize 'treason, sedition, subversion, and theft of state secrets'"); Tyler Marshall, *Beijing Has a Problem: Its Man in Hong Kong*, L.A. TIMES, Feb. 3, 2004, at A5 (discussing the increasing unpopularity of Hong Kong's chief executive Tung in the early days of the SARS crisis).

67. See Ien Cheng, *Rats Theory Adds Fuel to Debate Over Cause of SARS Outbreak*, FIN. TIMES, Aug. 25, 2004, at 5 (identifying that the committee sought to rebuff claims that it lacked independence); *Accountability Goes Begging at the Top*, S. CHINA MORNING POST, Mar. 13, 2004, at 3

In Taiwan, conflict over the PRC's long-standing agenda to integrate Taiwan as some variation of a Special Administrative Region drove the international law and politics of SARS. As the disease invaded the island, Beijing stuck to its long-standing policy of opposing Taiwan's quest for participation in the WHO, even under the unusual and limited status of an "observer" (rather than member) and a "health entity" (rather than a state).⁶⁸ This was part of the PRC's intractable opposition to Taiwan's participation in any states-member-only organizations—a category that includes the United Nations ("U.N.") and U.N.-affiliate organs such as the WHO.⁶⁹ For Beijing, Taiwan's participation in such bodies is unacceptable because it threatens to enhance international recognition of Taiwan's state-like status and, thus, Taiwan's ability to resist the PRC's calls to reunify on SAR or SAR-like terms. The PRC was willing to sacrifice on this front much of the international gain it sought through cooperation (even if belated and grudging) with the WHO over the outbreaks on the mainland. Blocked by PRC opposition from working fully with Taiwan, the WHO was left to deal with Taipei indirectly through the United States' Centers for Disease Control ("CDC") until Beijing finally acquiesced in the WHO's sending a mission to the island. As the SARS count climbed alarmingly in Taiwan, WHO spokesmen lamely offered that such efforts showed that the organization put health above politics.

As the SARS toll spiraled upward in Taiwan, the PRC's intransigent position began to play especially badly. Calls for WHO participation and access for Taiwan became more compelling as a global public health problem loomed and the WHO took a lead role in the international response. The PRC sought to blunt criticism, finally consenting—for "humanitarian reasons"—to the WHO's sending a team to Taiwan in May 2003, and asserting that Taiwan could reap the benefits that the WHO had to offer without a change in Taiwan's status at the organization.⁷⁰ The PRC pointed to cooperation and opportunities for exchange across the strait on SARS and related health issues, and the PRC's permission to Taiwan medical experts to participate in a WHO conference on SARS.⁷¹

(noting that Tung removed the Chairman of the inquiry panel).

68. Speech by Chinese Delegation Leader, State Council Vice Premier and Acting Health Minister Wu Yi, Address at the 56th Session of the World Health Association Deliberations on the Resolution Regarding Taiwan (May 19, 2003), at <http://www.fmprc.gov.cn/eng/wjbj/zjjg/gjs/gjzzyhy/2594/2602/t22807.htm>.

69. See, e.g., *Chinese Envoy to U.N. Condemns Taiwan's Latest Membership Bid*, XINHUA NEWS AGENCY, Aug. 8, 2003 (summarizing the PRC's longstanding opposition to Taiwanese membership in the UN or any UN organization).

70. See *Another Failure for Taiwanese Separatists*, CHINA DAILY, May 21, 2003 (arguing that Taiwan does not need membership in the WHO in order to combat SARS since Taiwan already has unblocked access to the technical and material resources of the mainland and the WHO), available at LEXIS, Newsfile Library, Global News Wire File; *RMRB 'Commentary': Taiwan Using SARS Issue to Join WHO as Observer*, WORLD NEWS CONNECTION, May 17, 2003 (criticizing Taiwan's efforts to gain 'observer' status at the WHO in order to combat SARS), available at LEXIS, Nexis Library, Global News Wire File.

71. See *RMRB 'Commentary,' supra* note 70 (criticizing Taiwan's efforts to gain 'observer' status at the WHO in order to combat SARS); *Chinese Envoy to UN, supra* note 69 (discussing Chinese

Beijing's move to include a Taiwanese representative and opposition party legislator in its delegation to a WHO-sponsored SARS conference sought to illustrate the point (although it unsurprisingly angered Taiwanese ruling party representatives).⁷²

Nonetheless, such gestures of inclusion and accommodation were limited and, at best, part of a mixed message. In the SARS crisis and its wake, Taiwanese officials and commentators could argue forcefully that Taiwan's exclusion from fuller engagement with the WHO cost lives in Taiwan, and that indirect cooperation through bilateral relations with the United States' CDC, or ad hoc interaction with the WHO on occasions when China deigned to approve, were inadequate substitutes.⁷³ In turn, any resulting impediment to the SARS fight in 2002-2003 and in any future recurrence or similar international public health threat from Taiwan could be portrayed credibly as a risk to the world, with residents and visitors traveling to and from the island despite (or before) WHO travel advisories and Taiwan's tightening (but significantly evaded) travel restrictions and quarantine requirements.⁷⁴

Beijing's position looked highly irresponsible and insensitive, in part because the disease that was exacting a mounting human cost in Taiwan, and beyond, had originated in the PRC. PRC sources seemed to confirm critics' harshest charges and observers' darkest suspicions when they defended China's intransigence by denouncing Taiwanese authorities (without a trace of irony) for "politicizing" SARS and for using SARS as a pretext for pushing for Taiwan independence and dividing China's sovereignty—an evil certainly more grave than SARS, in the eyes of official China.⁷⁵ It was similarly unhelpful to the PRC's agenda when its WHO representative was quoted as saying that "nobody

opposition to Taiwanese membership in UN).

72. See Sandy Huang, *Beijing's Moves 'Fanning Independence Sentiment'*, WORLD NEWS CONNECTION, June 22, 2003 (arguing that the PRC's inclusion of a Taiwanese representative at a WHO-sponsored SARS conference was an attempt to belittle Taiwan), available at LEXIS, Newsfile Library, Global News Wire File; Sun Shengliang, *Taiwan Affairs Scholar Says Chen Shuibian Tries to Avert Situation with Plebiscite*, WORLD NEWS CONNECTION, Aug. 17, 2003 (describing how Chen Shuibian has used the SARS epidemic to incite populist sentiments in Taiwan and intensify cross-strait confrontation in order to improve his election prospects), available at LEXIS, Newsfile Library, Global News Wire File.

73. See Government Information Office, Republic of China (Taiwan), *The Global Health Imperatives for Granting Taiwan WHO Membership* (arguing that Taiwan's exclusion from WHO is contrary to stated goals of WHO because it excludes Taiwan's 23 million citizens and limits Taiwan's ability to share its considerable health resources), available at http://www.gio.gov.tw/taiwan-website/5-gp/join_who/who1.htm (last visited Aug. 24, 2004); Chen, *supra* note 53 (providing additional insight); "One China" Roof Has a Leak at WHA, LIBERTY TIMES, June 8, 2003, at 8 (describing China's blockade of Taiwan's admission into WHO).

74. This line of argument continued after the travel ban for Taiwan was lifted, with the Taiwanese Premier declaring, "Yielding to China's political pressure and excluding Taiwan from the global disease control network will create an irreparable loophole in the network [which] is unfair to Taiwan and a loss to the whole world." Premier Yu Shyi-kun Holds News Conference After Taiwan Declared SARS-Free, AGENCE FR. PRESSE, July 5, 2003.

75. See *Another Failure*, *supra* note 70 (discussing Taiwan's efforts for acknowledgement by WHO); *Chinese Envoy*, *supra* note 69 (describing China's opposition to Taiwan admission to WHO).

cared about the island.”⁷⁶ Such positions surely helped secure support for the resolution, passed over Beijing’s objection, directing the WHO’s director general to “respond appropriately to all requests for WHO assistance for SARS surveillance, prevention, and control.”⁷⁷

Beijing’s basic stance remained unchanged to the end of the 2002-2003 SARS episode and beyond. Taiwanese commentators complained about China’s representatives arguing that a concededly disease-free Taiwan should not be taken off the WHO travel ban list until a still-not-cleared PRC was.⁷⁸ In the months since the end of the crisis, the PRC has continued to resist, successfully but over notably sharpened opposition, Taiwan’s quest for greater participation in the WHO.

As much of this suggests, SARS-related developments for Taiwan, like those for Hong Kong, revealed and exacerbated distrust of the PRC and deepened distaste for Beijing’s model for recovery or reunification of the affected area. Here, the symptoms of “Special Administrative Region Syndrome” are multiple and complex. Most simply, what many in Taiwan viewed as China’s callous and bullying approach to SARS, Taiwan, and the WHO question—and the China-sourced disease itself—are generally credited with strengthening “anti-China” or “pro-independence” sentiment on the island. Relatively neutral observers described the advent of SARS as reducing the pressure on Taiwanese President Chen Shui-bian (whose Democratic Progressive Party (“DPP”) is toward the pro-independence end of Taiwan’s political spectrum) to forge closer cross-strait relations. The harm wrought, and the threat posed, by SARS instilled among ordinary Taiwanese new sources of wariness of closer ties to the PRC.⁷⁹ The Chen administration and pro-DPP media were able to use Beijing’s behavior toward Taiwan in the SARS crisis as a basis for advancing agendas of distance and, indeed, independence from the mainland.⁸⁰ More concretely, WHO representation was among the possible subjects for referenda that Chen proposed (but ultimately was not able to get on

76. Tyler Marshall & Mark Magnier, *Taiwan’s Chen Defends Move on Referendum*, L.A. TIMES, Feb. 8, 2004, at A1.

77. Monique Chu, *WHO Builds SARS Bridge with Taiwan*, TAIPEI TIMES, May 30, 2003, at 1; McNeil, *supra* note 33, at A8.

78. *A Separate Roof for a Separate State*, TAIPEI TIMES, July 2, 2003, at 8.

79. Marshall & Magnier, *supra* note 76, at A1; Tyler Marshall, *Taiwan Keeps Its Distance from China*, L.A. TIMES, Sep. 8, 2003, at A3; Philip P. Pan, *New National Identity Emerges in Taiwan*, WASH. POST, Jan. 2, 2004, at A13; McNeil, *supra* note 33, at A8.

80. See, e.g., *A Separate Roof for a Separate State*, *supra* note 78, at 8 (arguing that the PRC’s attempts to block Taiwan’s participation in international conferences is destroying the PRC’s credibility and increasing Taiwan’s support in the international community); “*One China*” *Roof Has a Leak at WHA*, *supra* note 73, at 8 (describing China’s efforts to block Taiwan’s admission into WHO); cf. Flor Wang, *Good Quarantine Preparations Needed to Reopen “Mini Links,”* CENTRAL NEWS AGENCY (Taiwan), July 4, 2003 (discussing Director of Legal Affairs for Taiwan government’s Mainland Affairs Council—the principal government body for cross-strait relations—declaring that a cautious approach was needed to reopening the “mini-links” between the mainland and the Taiwan-controlled islands just off the PRC coast; the mini-links are generally regarded as a possible precursor to the “three links” which would entail direct transportation links between Taiwan and the mainland).

the ballot under the narrow referendum law passed by the legislature in late 2003). And, despite Chen's public claims to the contrary, holding any referendum in Taiwan—and especially a referendum on Taiwan's representation in a U.N.-affiliated organization—inevitably resonated with questions of Taiwan's state or state-like status and thus its possible independence and its clear rejection of any SAR-like formula for a condominium with the PRC.⁸¹

Beijing's spokesmen were reduced to railing against Chen for pushing the WHO referendum and other measures that were politicizing the SARS issue—a charge that was only likely to alienate Taiwanese public opinion further, given Beijing's own highly political approach to Taiwan, SARS, and the WHO.⁸² The DPP's and Chen's political opponents in Taiwan, the Kuomintang (“KMT”) / People First Party (“PFP”) alliance that is generally seen as toward the more pro-reunification end of Taiwan's political spectrum, were left ducking the issue or playing defense. Notably, the opposition bloc's healthy lead in public opinion polls concerning the March 2004 presidential election began to erode at the same time that SARS began to hit Taiwan.

That SARS and SARS-related issues seem to have had partisan benefits for President Chen and the DPP suggests the severity of the Special Administrative Region Syndrome that the SARS crisis revealed and exacerbated. The adverse economic impact of SARS in 2002-2003 (and the scares over the return of SARS with the confirmation of a new case in 2003-2004) might well have hurt the incumbent president and the relatively pro-independence bloc that backed him. After all, Taiwan's economic malaise during the first Chen term (2000-2004) was generally thought to be a good campaign issue for his opponents, who favored closer economic ties with the PRC and a lessening of the security threat posed by tense cross-strait relations as part of a package of economic solutions. In the end, however, it seems that any such effect was overwhelmed by SARS-exacerbated fears of closer economic and related social ties with the mainland, Beijing's politically alienating approach to the WHO and related issues, the lack of competence and transparency shown in the central Chinese government's handling of SARS, and Chen's ability more generally to shift the focus of the election from economics to identity politics that stressed the unacceptability to “the Taiwanese” of integration with the mainland under any legal or constitutional framework that would make Taiwan a SAR-like entity within a greater China.

In addition, the SARS outbreak in Taiwan might have prompted or deepened a crisis of confidence in the government, as it did in Hong Kong. There were some signs of this problem in Taiwan, including reported widespread noncompliance with quarantine orders, numerous rumors about unreported outbreaks, and public alarm about the perceived bungling and resulting spreading

81. See, e.g., *Hearing on Military Modernization and Cross-Strait Balance Before the U.S.-China Economic and Security Review Commission*, 108th Cong. 56-71 (2004) (statement of Jacques DeLisle, Professor of Law, University of Pennsylvania).

82. See Shengliang, *supra* note 72 (discussing socio-political implications of SARS).

of the disease at one major hospital.⁸³ But, in the end, the governing authorities in Taiwan did not face the wrath and disdain of their Hong Kong counterparts. The reasons likely included some rationales that may reflect differences in the way that Special Administrative Region Syndrome afflicts present and potential SARs, including: greater competence or perceived competence of the government in handling SARS, and the political legitimacy of a locally elected government (rather than one imposed by and perceived as answerable to Beijing).⁸⁴

Special Administrative Region Syndrome's two principal cases may prove to be linked in the SARS context in another, related way as well. Some of the initial infections of Taiwanese likely occurred as travelers passed through Hong Kong between the mainland and Taiwan along the circuitous route mandated by a policy rooted in the Taiwanese government's worries that more direct and efficient links would deepen economic integration with the PRC and strengthen Beijing's ability to press for reunification on its SAR-like terms. The implications of SARS here are somewhat complicated but hardly make an SAR-like arrangement more appealing on Taiwan. This probable pathway of infection suggests the PRC's Taiwan agenda might be seen as contributing to Taiwan's SARS problem (albeit indirectly through the policies against direct cross-strait travel that Taiwan's leaders defend as merely defensive, or through a SARS peril in Hong Kong that many Taiwanese, and many Hong Kong residents, saw as worsened by the problems with the territory's SAR status and related problems). Some of the people who spread SARS to Taiwan, even if they passed through Hong Kong, likely were infected in the PRC. "Direct links" and SAR-like status and integration with the PRC for Taiwan plausibly would seem only to make the risk of SARS worse, as many Taiwanese commentators and political leaders claimed or hinted.

The merits of some of the charges directed at the PRC from Taiwan and Hong Kong can be debated. There is room for disagreement about how inept or weak the Tung administration has been, or how much of a difference fuller access to the WHO would have made for Taiwan, or whether Taiwan and Hong Kong received significantly less cooperation from Beijing than did other at-risk countries during the crucial period. But that is not the principal point here. Whatever one's position on those issues, the SARS crisis of 2002-2003 and the threat of the return of SARS or the advent of some similar public health threat (including, for example, avian influenza) have added credibility to claims that the SAR legal and constitutional structure for Hong Kong and the PRC's attempt to push a SAR structure for Taiwan are dangerous to the people of those territories and the wider world. At the least, they suggest in particularly vivid fashion the

83. Jason W. Sapsin et al., *SARS and International Legal Preparedness*, 77 TEMP. L. REV. 155, 164 (2004).

84. Other more specifically Taiwanese political factors may have been relevant as well, including the complicated partisan political environment in Taiwan. For example, the mayor of the most afflicted city (Taipei's Ma Ying-jeou) is widely regarded as one of the opposition camp's best hopes for taking back the presidency from the party that held it at the time of the SARS outbreak and will hold it through 2008.

need to recognize the possibility of serious limits to the openness, transparency, and engagement with the international legal and institutional order for public health that characterized some aspects of the PRC's response to SARS.

Indeed, one of the central and most salient aspects of Special Administrative Region Syndrome is that Beijing remains strongly committed to the legal and political principle that issues involving Taiwan and Hong Kong are internal matters, not international ones. Thus, while the formal SAR framework and the practical politics of an international order in which the world regards Hong Kong and, especially, Taiwan as having a significant degree of international legal personality and functional autonomy, the official Chinese view remains that Beijing's consent ultimately lies behind Hong Kong's and Taiwan's freedom (if any) to deal separately with SARS and to deal separately (and transparently and cooperatively) with the international community in addressing SARS. And the domestic face (in the core PRC areas) of China's handling of SARS has been no less complex and contradictory than Beijing's engagement with the outside world in addressing SARS.

V. SCHIZOPHRENIC AUTHORITARIAN REGIME SYNDROME (I): GLOCALIZATION, TRANSPARENCY AND ACCOUNTABILITY

The pattern and relatively rapid pace of SARS's spread reflects the relative "openness" of China a quarter-century into the post-Mao reform era. The SARS story in Hong Kong and Taiwan are among the most dramatic examples of this side of contemporary China's Janus-faced reality that SARS has brought starkly to light: China has become "glocalized." SARS spread from Guangdong to Beijing, a few other major PRC cities, Hong Kong, Taipei, Hanoi, Singapore, Toronto, and other urban centers in more than two dozen countries.⁸⁵ SARS did so at a time when few cases appeared to have arisen in rural China outside the disease's original epicenter.⁸⁶ This epidemiological pattern illustrates that "globalization" for the PRC has meant that China's coastal cities and their immediate environs are in some respects more closely linked to urban localities in East Asia and in the advanced industrial economies (and within China) than they are to the Chinese hinterland. On one account, SARS reached Beijing from southeastern China by means of a passenger on a flight from Hong Kong. The outbreak of the disease in North America, Europe, and Southeast Asia appear traceable to business travelers coming or returning from China.⁸⁷

This pattern reflects travel behavior and transportation links that are the products of the laws, policies, and practices of reform-era China that have

85. WHO, Cumulative Numbers, *supra* note 7.

86. For distribution of cases within China, see WHO data, at http://www.who.int/csr/sars/china2003_06_04.pdf (last visited July 10, 2004).

87. See Indira A.R. Lakshmanan, *Air China Flight 112: Tracking the Genesis of a Plague*, BOSTON GLOBE, May 18, 2003, at A1 (recounting the stories of sundry Air China passengers, some of whom were diagnosed with SARS following their flights); Keith Bradsher, *Carrier of New Virus Made 7 Flights Before Treatment*, N.Y. TIMES, Apr. 11, 2003, at A10 (reporting that SARS carrier traveled through several European countries before seeking treatment).

adopted market principles and opened the economy to foreign investment and trade. Reflecting economic and legal incentives and legal permissions granted by the PRC, foreign capital has predictably flowed to China's developed coastal cities and adjacent regions, and much of that capital has focused on export industries which required easy access to international transportation links. Special favorable laws and infrastructure investment by the PRC state reinforced the pattern by focusing on coastal cities generally and, especially in the crucial early years, on the areas nearest to Hong Kong and Taiwan. These, of course, created the pathways for SARS.

Yet, as the past pattern and feared trajectory of SARS in China underscore, the rapidly developing areas of China's increasingly urbanized east and southeast are by no means insulated—in politics, economics, or public health—from the problems of the PRC's troubled rural and inland areas. SARS appears to have traveled to PRC cities and the wider world from origins in areas of the Chinese countryside where the factories that have built the PRC's economic boom stand amid densely populated agrarian areas with bad sanitation, near-tropical climates, myriad farm animals, and hunting and ranching sectors that supply poorly-regulated urban markets—essentially take-out zoos—with live ingredients for dishes made from exotic beasts.⁸⁸ As earlier epidemic diseases that threatened to become epidemics have made dreadfully clear, this slice of rural China provides a fertile environment for the mutation and transmission of diseases from animals to humans, and the generation of serious dangers to international public health. This occurred even before the advent of today's dense connections that outward-oriented and market-based economic development has forged between such areas and urban centers in China and beyond. The point was not lost on PRC officials. Beijing officials moved, albeit belatedly in May, 2003, to monitor more carefully and quarantine new arrivals and returnees from the countryside, and joined Guangdong, Shanghai, and other provincial and municipal governments in issuing bans or restrictions on the consumption or sale of animals brought in from the countryside and suspected of being transmitters of SARS.⁸⁹

These dense links between urban and rural China and the poor hygiene and

88. See Ezekiel Emmanuel, *Preventing the Next SARS*, N.Y. TIMES, May 12, 2003, at A25 (noting that new viruses and new strains of old ones thrive where animals and people live in close proximity); John Pomfret, *In Chinese Village, Few Clues to Illness*, WASH. POST, Apr. 9, 2003, at A17 (reporting that SARS "could have infected humans by 'jumping' from another animal species"); *SARS Epidemic Increases Personal Hygiene Awareness*, PEOPLE'S DAILY, Apr. 28, 2003 (asserting that good personal hygiene, such as frequent hand-washing, is the most effective way to prevent SARS), available at http://english.people.com.cn/200304/28/eng20030428_115959.shtml; Keith Bradsher & Lawrence K. Altman, *Strain of SARS Found in 3 Animal Species in Asia*, N.Y. TIMES, May 24, 2003, at A1 (discussing containment concerns given the recent discovery of the SARS virus in three animal species); Elizabeth Rosenthal, *From China's Provinces, a Crafty Germ Breaks Out*, N.Y. TIMES, Apr. 27, 2003, at 1 (stating that SARS easily could have moved from "animals to humans in the kitchens and food stalls of Guangdong").

89. *Beijing Has "No Necessity" to Undercover Beijing SARS Cases*, BUSINESS DAILY UPDATE, May 20, 2003, available at 2003 WL 18925753. See also *supra* note 56 and accompanying text (discussing ban of wild animal consumption).

crowded conditions of China's cities also raised the prospect of a reverse spread of SARS to lesser cities and villages—a vision sure to haunt authorities in the PRC, WHO, and elsewhere. Several pathways are all too available. More than one hundred million PRC citizens, almost all of them recent migrants from the countryside, live without official permission in and near major Chinese cities, with the SARS-hit metropolises of Beijing and Guangzhou among the top destinations. Sometimes by choice and sometimes upon forcible “repatriation” by city authorities, a small fraction of this “floating population” returns to its home areas every day. Because economic opportunity and high status employment are highly concentrated in the PRC's metropolises, many lawful residents of China's largest cities come from the country's smaller cities and townships. Whatever their legal residence status, a large number of urbanites maintain ties and often travel to their old abodes throughout the country, often on cramped and unclean trains.

Unfortunate timing exacerbated these threats during the SARS crisis of 2002-2003 and would do so again with future outbreaks of SARS or any other similarly seasonal infectious diseases. In 2003, SARS was spiking in Guangdong around the lunar new year in February, a peak season for travel within China. Before the disease had been brought under control in Beijing and elsewhere, the May Day holiday—which in recent years had been extended to a full week to stimulate the economy by encouraging consumers' leisure spending—loomed as another occasion for much higher than normal domestic travel, until the government officially curtailed the customary vacation for 2003.

As word of SARS spread in Beijing, so too did fears among officials that the risks posed by the baseline rate of human traffic would surge as hundreds of thousands of city residents, including potential transmitters of the disease, dispersed to cities, towns, and villages throughout China, whether to escape the perceived perils of the capital or simply because the closure of schools and businesses left them with little reason to stay. Rumors that martial law would be imposed or that the city would be quarantined accelerated the rate of flight before Beijing authorities imposed more effective checks at the transportation nodes in and around the capital at the beginning of May. In addition, the possible flight of medical personnel (coupled with predictable reluctance to serve—and risk illness and quarantine—among some health staffers who remained in place) raised the risk that Beijing and other affected or potentially affected urban centers would face declining capacity to treat or contain local cases, thereby strengthening still further the vectors for the illness's spread.

One prominently reported case illustrates some of these dangers: A SARS-infected Beijing-based doctor, Li Song, returned to his home town in Inner Mongolia in March 2003, where he reportedly infected dozens of local residents, including three close relatives who died. According to the authorities, the case was still more disturbing. They jailed him, asserting that he was aware of his illness and recklessly put others at risk when he left the local hospital, in which he had become a patient.⁹⁰ Other less famous cases suggests how widespread

90. Joseph Kahn, *Man's Virus Infects Town, Killing His Family*, N.Y. TIMES, May 15, 2003, at A1;

such potentially SARS-spreading behavior was. The pseudonymous Xu Li, like many of her peers, faced no restrictions or monitoring when she left already SARS-afflicted Guangzhou for her home city of Taiyuan in the northern province of Shanxi in February 2003. There she infected her parents, who died, and others and exhibited serious symptoms herself, but she nonetheless was allowed to travel unquestioned to Beijing, thereby perhaps becoming the first SARS case in Shanxi and in Beijing.⁹¹ Similarly, Yue Shoubing, a Party cadre from a village near Taiyuan, traveled to a Party meeting in Guangdong in mid-March, then to Beijing for hospital treatment when he became ill, then back to Taiyuan to another hospital, and later still back to his village, producing over one hundred infections along the way.⁹²

If such avenues were to disseminate SARS broadly in China's secondary cities and hinterland, the public health consequences would be catastrophic. Those areas badly lack even the relatively limited public health infrastructure—and the public institutional infrastructure more generally—that Beijing, Guangzhou, and other major municipalities can deploy in fighting such illnesses. Hospitals, trained medical personnel, medicines, sewage, sanitation, and the capacity to monitor potential cases and impose quarantine or isolation are all in much scarcer supply in China's more remote and less developed areas.⁹³ Indeed, medical services—especially the clinics that might identify the illness, instruct at-risk residents and help to contain SARS—have deteriorated in poorer areas during two decades of uneven economic development and falling state allocations for healthcare and public health. The resources and capacities of local governments to provide public goods and public order more generally have followed a similar, sharply downward trajectory. Any reports of small outbreaks of SARS in such places were understandably causes for great alarm and worries about the regime's ability to respond.

Since the SARS episode of 2003, the means for coping with or reducing significantly the risks that were evident last time have been, at best, minimally enhanced and, in some respects, eroded. Some measures, such as upgrading the infrastructure of clinics, hospitals, and trained staff could not be accomplished in short order. Plans to revise public health-related laws, including quarantine provisions, and to enhance the bureaucratic clout of the Chinese Centers for Disease Control have stalled amid political and policy disagreement.⁹⁴ Informed

Laurie Garrett, *Spreader of Sickness*, NEWSDAY, June 15, 2003, at A7.

91. Lai Hailong, *Who Knocked Over the SARS Domino?*, ZHONGGUO XINWEN SHE (China News Agency), June 3, 2003 (tracing the spread of SARS throughout China), available at LEXIS, Newsfile Library, Asia/Pacific News File.

92. Garrett, *supra* note 90, at A7.

93. See Erik Eckholm, *Cases of Lethal New Illnesses Rise Sharply in Interior Region*, N.Y. TIMES, Apr. 15, 2003, at A6 (discussing spread of SARS); *China's Countryside on Alert for SARS*, PEOPLE'S DAILY, Apr. 25, 2003 (emphasizing preventative measures in rural China), available at <http://us.tom.com/english/3824.htm>; Joshua Muldavin, *China's Poor Left Behind*, INT'L HERALD TRIBUNE, May 8, 2003, at 6 (commenting on healthcare in rural China).

94. See *infra* note 121 and accompanying text (discussing relatively "liberal" institutional reforms).

international observers worried about whether Chinese authorities had the will and skill to take swift significant steps forward or to sustain the heightened vigilance attained in 2002-2003.⁹⁵ The quick compromise or erosion of even the modest bans or restrictions on the consumption of suspected animals was, in this respect, a bad sign.⁹⁶ When the 2004 lunar new year arrived, few restrictions were in place and travel resumed at the normal peak-season level.⁹⁷ In the period since SARS's initial outbreak (and largely for unrelated reasons), restrictions on migrant laborers had been eased somewhat, creating even greater mobility.⁹⁸ China, and the world, have been left to watch and hope that luck and somewhat enhanced monitoring measures would be sufficient to avert the occurrence of what was feared in 2003.

The story of the spread and threatened spread of SARS in 2002-2003 and the prospect for its return—and the relatively rapid spread of information about SARS within China in 2002-2003—reflect the very changed internal order of reform-era China. Just as SARS spread internationally from China as a result of legal and policy measures and related economic changes that integrated China with the outside world, so too SARS could spread and threaten to spread devastatingly within China precisely because liberalizing changes in law and policy that have made it far easier for Chinese to move about their own country. Examples include: removing state rationing of basic necessities, allowing the erosion of an almost serf-like residency permit system, tolerating and fostering inter-provincial or national markets for employment, and generating the wealth and leisure—highly unequally distributed—that have permitted a boom in domestic travel and tourism within the more developed regions and between those regions and backward areas. Chinese had become greatly freer of legal and practical restrictions on their ability to move about the country. And exercises of such freedom to travel spiraled dangerously upward amid the SARS crisis because of aspects of the greater openness and relative political relaxation also made the spread of information about SARS much less containable than it once would have been.

Changes in law, policy, and practice that have taken hold inside China during the era of Deng Xiaoping and Jiang Zemin rendered untenable once-common strategies of information control, popular repression, and Maoist-style campaign. Competition for readers among state-controlled PRC print media, norms of freer expression in Chinese society, the advent of the internet, wireless communication, and access to foreign news sources have decimated the Party-

95. See *Liu Qi Urges Control of Sars Spread*, Xinhua News Agency, May 1, 2003 (discussing response of the Chinese government), available at LEXIS, Newsfile Library, Xinhua General News Service File.

96. See *supra* note 58 and accompanying text.

97. See, e.g., *China's Lunar New Year Travel Period Takes Off Amid SARS Fears*, AGENCE FR. PRESSE, Jan. 7, 2004 (describing general but mixed exhortations to authorities to guard against SARS but reporting no apparent effect on travel patterns and volume), available at 2004 WL 55607411.

98. See, e.g., *China to Remove Obstacles for Migrant Workers*, BUSINESS DAILY UPDATE, Aug. 25, 2003 (discussing eased restrictions on mobility for migrant workers), available at 2003 WL 60121872.

state's former near-monopoly over widely disseminated information. In this environment, it was little wonder that word about the initial SARS outbreak in Guangdong reached many interested Chinese, despite an attempted official news blackout and despite the possible risk of official, even criminal sanctions. Millions of effectively untraceable text messages to cellphones and countless e-mails and web-postings spread the word. Once the official denials began to crack, relatively open and critical reports appeared in unofficial PRC media that have attracted wide audiences because of their willingness to push the boundaries of officially acceptable content.

Along with the PRC leadership's decision to undertake a degree of international cooperation with the WHO and others came the regime's acknowledgement at home that China did indeed face a SARS crisis similar to that depicted in international accounts and critiques. Many foreign assessments of causation and assignments of blame for the SARS crisis quickly focused on legal and governmental failings in the contagion's place of origin. Just as critics and reformers attributed the Asian economic ills of the later 1990s to such factors,⁹⁹ their counterparts in the SARS crisis have found fault with Beijing's characteristic reaction of secrecy and denial, the weakness of legal and bureaucratic mechanisms for reporting, screening, quarantining, or otherwise stemming the disease's spread, and the PRC's creaky public health infrastructure.¹⁰⁰

After months of silence and denial, PRC government officials and official PRC newspapers began to join this chorus in April and May of 2003. They declared SARS to be a serious problem and conceded the authorities' lack of effectiveness in dealing with it. The newly-installed acting Mayor of Beijing, Wang Qishan, told a television audience, "SARS is an epidemic that has hit us head-on."¹⁰¹ Premier Wen Jiabao, himself in his first weeks in office, was quoted in the official media describing SARS as a grave threat. The director of China's Center for Disease Control said abjectly, though in a remark not much reported domestically, that "we . . . apologize to everyone."¹⁰²

Having admitted a SARS problem in Beijing and Guangdong, a SARS threat nationally, and a mishandling of the crisis's initial phases, the leadership on April 20 sacked the Minister of Health Zhang Wenkang and the Mayor of Beijing Meng Xuenong—two officials with jurisdiction over areas whence the

99. See generally *supra* note 10; NICHOLAS KRISTOF & SHERYL WUDUNN, THUNDER FROM THE EAST (Alfred A. Knopf ed. 2000) (discussing factors leading to the economic crisis of 1997).

100. See Joseph Kahn, *The World: Communist Accommodation; When Crises Strike, China's Leaders Adapt to Survive*, N.Y. TIMES, May 4, 2003, § 4, at 5 (discussing governmental response); Erik Eckholm, *As Cases Mount, Chinese Officials Try to Calm a Panicky Public*, N.Y. TIMES, May 1, 2003, at A10 (reporting on the government's responsiveness); Christopher Horton, *SARS and AIDS: What the People Don't Know*, ASIA TIMES ONLINE, Apr. 24, 2003, at <http://www.atimes.com/atimes/China/ED24Ad03.html> (noting parallels between governmental response to AIDS & SARS).

101. Eckholm, *As Cases Mount*, *supra* note 100, at A10.

102. Susan V. Lawrence, *For the Top, Sorry is the Hardest Word to Say on SARS*, FAR E. ECON. REV., Apr. 17, 2003, at 26.; Joseph Kahn, *China Discovers Secrecy is Expensive*, N.Y. TIMES, Apr. 13, 2003, § 4, at 7.

problems arose. While this much might have been standard procedure in an earlier era, what followed was a little less so and pointed to possibly increased levels of openness and accountability in Chinese Party-state behavior. China's rulers appear to have been careful to place the ousted officials' authority and additional powers to address the SARS issue in the hands of those whose comparative advantage lay in their competence and reputation (although they were of course already powerful and politically well-connected as well). Vice Premier and former Foreign Trade Minister Wu Yi was appointed to serve concurrently as Minister of Health as well as head of a special SARS task force, and Wang Qishan was brought in as the capital's acting mayor. Both were widely regarded as highly skilled, smart and part of the group of exceptionally skilled officials associated with recently retired Premier Zhu Rongji—a group that had fared especially badly in the recent round of appointments to top leadership posts.

As a Deputy Mayor of Beijing, Wu had proven her crisis management skills by keeping key power plants running in the capital amid the unrest that followed the suppression of the Tiananmen Movement in 1989. Wu also was particularly well-known to foreign government leaders—and generally respected by them—from her central, forceful and, on many accounts, forthright role in China's negotiations to enter the WTO. Her association with the WTO accession process had meant considerable prestige, and a high profile at home as well, because official media and others had greatly stressed the importance of WTO membership and the political and economic significance to the nation of China's securing entry into the global trading body that was perhaps second only to the U.N. in importance and perhaps ahead of it in actual power. Wang too was well-known at home and abroad for tackling competently some particularly difficult missions to deal with economic and governmental failings in key potential trouble-spots around China. Notably, one of his assignments had been to clean up the mess created by “wild east” financial dealings in Guangdong province in the 1990s which, among other things, had led to the notorious and costly bankruptcy of the state-owned, provincial flagship international investment vehicle, the Guangdong International Trade and Investment Company.¹⁰³ On optimistic or expansive readings, the personnel changes could be seen as going beyond the scapegoating that had characterized similar moves in the past, and as perhaps promising to impose higher standards of government service in the public interest (ones that might not be so easily evaded by relying on personal or

103. See *China Creates SARS Task Force, Special Fund*, XINHUA NEWS AGENCY, Apr. 24, 2003 (reporting China's decision to name Wu Yi as head of SARS task force), available at 2003 WL 18800494; John Pomfret, *In a Crisis, China Turns to a Familiar Face; Woman who Calmed Panic After Tiananmen Square Crackdown to Lead SARS Efforts*, WASH. POST, May 6, 2003, at A17 (discussing appointment of Wu Yi as leader of SARS efforts); Eckholm, *As Cases Mount*, *supra* note 100, at A10 (describing efforts by newly appointed mayor Wang Qishan); David Lague, *The SARS Outbreak: An Ill Wind That Blows Through Politics*, FAR E. ECON. REV., May 8, 2003, at 30 (noting political fallout for Communist Party's failure to effectively handle SARS outbreak); Allen T. Cheng, *Crisis Cruncher who Leads the Pack*, S. CHINA MORNING POST, July 9, 2003, at 14 (commenting on Wu Yi's leadership during the SARS crisis).

factional ties).¹⁰⁴

Expectation or hope that SARS reflected and encouraged a serious and potentially enduring turn to openness, transparency, or accountability also drew from the apparent prospect of support from China's top leadership, which remains indispensable to significant change on politically sensitive issues. The recently installed occupants of China's highest formal offices and the nation's newly anointed next-generation leaders, President Hu Jintao and Premier Wen Jiabao, took highly visible public roles in acknowledging and managing the crisis and personifying the new open style. Wen darted about Beijing, dining with students at SARS-affected universities, visiting hospitals and urging on medical staffers and public health personnel, and touring construction sites, shopping malls, and residential neighborhoods. Hu personally inspected the SARS-affected city of Tianjin, some of the most crowded areas of Guangzhou (Guangdong's largest city) and Shenzhen, the boomtown abutting Hong Kong. Press accounts recorded the two leaders expressing great concern about the SARS problem and mortal determination to rise to the challenge and overcome the initial inadequacies of the government's response.¹⁰⁵ Television coverage followed suit and, in a rather unusual move, broadcast extensive clips of the leaders' comments (rather than newscaster-read summaries). Especially in the early days after their appointments, acting Mayor Wang and Minister Wu played second-tier versions of Hu and Wen's roles.

While this leadership behavior too (and saturating media coverage of it) broadly fit a familiar template in Chinese politics (including leaders' visits to the "frontlines" of the battle or "model units" for a new policy), it suggested something a bit different in the current context. Rumors circulated that the nominally retired President and Party chief Jiang Zemin (and perhaps some of his closest followers among the newly installed leadership) had decamped from Beijing to the perceived safety of Shanghai. Aside from Jiang's playing down the seriousness of SARS in his principal public comment addressing the issue (in a meeting with a visiting Indian cabinet minister), there was a striking near-silence on the SARS issue from Jiang, his most highly placed close protégé Vice President Zeng Qinghong, and (to a lesser degree) Jiang's other key acolytes on the new Standing Committee. In this context, and at what may have been a sharply divided mid-April Politburo meeting on SARS policy, Hu and Wen may have taken significant political risks in embracing and pushing a line of relative openness and candor at home and transparency and cooperation abroad.¹⁰⁶

104. See, e.g., *Open Apology by CPC Provincial Leader on Accident Captures Public Attention*, XINHUA NEWS AGENCY, Feb. 20, 2004 (describing official taking public responsibility for disaster as reflecting the continuing effect on government accountability and norms of officials' sense of duty of Health Minister's and Beijing mayor's dismissal during the SARS crisis), available at LEXIS, Newsfile Library, Asia/Pacific News.

105. See *Chinese New Government Acts Responsibly in Combat Against SARS*, XINHUA NEWS AGENCY, Apr. 29, 2003 (discussing response of newly installed government), available at 2003 WL 20000072.

106. Erik Eckholm, *Possible Next Patient: The Chinese Leadership*, N.Y. TIMES, Apr. 25, 2003, at A20 (exploring response of different party members); Mark O'Neill, *Home Truths*, S. CHINA

The personal moves of top leaders, the personnel moves just below the top level, the admission of a SARS problem generally, and moves to cooperate with the WHO were presented to audiences inside the PRC as part of a shift toward openness and critical content in what ordinary Chinese saw and heard from their government and the communications organs it controlled. Even against the background of Chinese media that have become a good deal livelier and freer in recent years, the SARS coverage stood out for how far it went in acknowledging or implying that there were indeed serious errors in the regime's response, and even that these might reflect systemic flaws. China's many savvy readers surely saw the concession of significant shortcomings at high and low levels when they learned of the Politburo's April canning of the Minister of Health and the mayor of Beijing and when they heard of stern directives to local officials to provide accurate and timely reports of SARS outbreaks (which, this implied, they had not been doing).

No such relatively subtle inferences were necessary, however. The principal Party organ, *People's Daily*, conceded that China's disease prevention system had been shown to be inadequate and ill-prepared.¹⁰⁷ Articles in other prominent papers criticized as "habitual" behavior under the existing system officials' hiding, delaying, and impeding reports of the SARS problem, and endorsed assessments that SARS made clear the government's failures in "crisis management" and the dangerous imbalances created by many years of one-sidedly emphasizing economic development and the market over social development and government responsibilities.¹⁰⁸ Other official media asked why the public health authorities in Beijing and other northern cities had been so ill-prepared, slow to respond, and ill-informed when the disease had been spreading in Guangdong for at least three months. The answers offered included local officials' reflexive reaction to try to keep crises quiet, in part to avoid adverse effects on the local economy.¹⁰⁹ Television talk shows and news programs were saturated with comments and stories that disclosed serious SARS problems and poor government handling. Media of all sorts kept up a constant drumbeat of SARS coverage, including daily SARS counts that indicated considerable openness about bad news but that hardly inspired confidence that the regime was effective in bringing the problem under control.

To be sure, officially mandated or tolerated exposés of corruption and other failures *in* the system and repudiations of policies and positions held by those who have fallen from power *within* the system have been relatively common

MORNING POST, May 20, 2003, at 11 (concerning Jiang rumors).

107. See SARS—An Opportunity Reshuffles Public Health, Disease Prevention System, PEOPLE'S DAILY, May 3, 2003 (describing China's disease prevention system as ill-prepared to handle sudden SARS outbreak), available at http://english.people.com.cn/200305/03/eng20030503_116188.shtml.

108. See Joseph Kahn, *Some Chinese Say Government Response to Epidemic Has Been Too Heavy-Handed*, N.Y. TIMES, May 23, 2003, at A8 (criticizing governmental response); *Three Big Faults Lead to SARS Creating a Crisis*, ZHONGGUO JINGJI BAO, May 26, 2003; *Ten Political Scientists and Economists Discuss: China Will Change from This*, XINWEN ZHOUKAN, May 9, 2003.

109. See Hailong, *supra* note 91, (citing economic concern as the reason for initial government concealment of SARS crisis).

place, but, as the foregoing suggests, the SARS coverage went further in suggesting shortcomings of the system. These are a good deal more novel and, on optimistic readings, possible harbingers of significant shift toward openness, public accountability, and tolerance of criticism, especially given that they came in the context of commenting on a specific policy crisis and not in the safer setting of abstract discussions of reform.

The “liberal” or “optimistic” reading also drew some support from the fact that a key trigger for the regime’s abandoning attempts at cover-up and denial was the action of a whistleblower who went unpunished despite his temerity. When the PRC’s official line held that there were only a dozen SARS cases and three fatalities in the Chinese capital, Dr. Jiang Yanyong, a retired PLA physician, told foreign news media that there were sixty infections and seventeen deaths at one Beijing military hospital.¹¹⁰ Six weeks later, PRC media acknowledged the doctor’s role in prompting a change in the government’s line and apparent calls within the Party to sanction him encountered sharp resistance.¹¹¹

Discussion of the need for transparency- and accountability-enhancing political reforms (some having what might be called a quasi-constitutional quality) and legal reforms followed. Extensive discussion in the Chinese press and among influential policy intellectuals of the public’s “right to know” also emerged in the reaction to the SARS cover up and provided a foundation for pushing and extending the “transparency” agenda that the new Hu-Wen leadership had sketched before SARS.¹¹² Openly and widely published commentaries saw in the Party-state’s all-too-evident failings in coping with SARS the basis for a significant shift in the relationship between ruler and ruled, with the regime having to tolerate more systematic public criticism from a public that had become less willing to rely upon (much less trust in) the Party and state to solve major problems.¹¹³ Other media commentaries and comments from the

110. Elisabeth Rosenthal, *A Beijing Doctor Questions Data on Illness*, N.Y. TIMES, Apr. 10, 2003, at A8.

111. Allen T. Cheng, *Doctor Who Exposed Cover-Up Wins Official Recognition*, S. CHINA MORNING POST, May 17, 2003, at 3; Jason Leow, *Encouragement for China’s SARS Whistle-Blower*, STRAITS TIMES (Singapore), June 9, 2003.

112. Discussions of the right to know included commentaries printed in Shanghai’s *Wenhui Bao*, Beijing’s *Xing Bao* and nascent policy prescriptions by highly placed intellectuals. See generally Susan Lawrence, *The Plague Reaches Much Deeper*, FAR E. ECON. REV., May 1, 2003, at 26 (stating that political accountability and the public’s right to be informed are key concepts for new leadership); Susan Lawrence, *Leadership: How to Fail the People: The New Leaders Promised Better, But Did Worse than Their Elders in Their First Big Crisis*, FAR E. ECON. REV., Apr. 24, 2003, at 26 (reporting that concerns about China’s economy and reputation inhibited timely and open communication about SARS); Benjamin Morgan, *After SARS, China’s Media on Longer Leash But Still Under State Control*, AGENCE FR. PRESSE, June 17, 2003 (discussing China’s changing media policies in light of SARS crisis). See also Mei Zu, *Legislate to Safeguard the Public’s Right to Know*, TA KUNG PAO, June 26, 2003 (discussing media reform efforts from a pro-PRC Hong Kong perspective); Hailong, *supra* note 91 (suggesting openness and transparency as an effective means of combating the spread of SARS).

113. As one prominent newspaper (the *Twenty-First Century Economic Herald*) put it, the old “model” of an “all-powerful government” could no longer be relied upon in China’s rapidly changing society. As one reformist scholar put it, the SARS “disaster” should make Chinese leaders “more

premier and other officials emphasized the need for laws and policies to attend to the needs of "social development" or "human development." On these views, the needed reforms meant moving away from the one-sided emphasis on economic development that had left China ill-prepared for coping with SARS and seduced local officials into costly attempts to cover up the disease.¹¹⁴ SARS czar Wu Yi identified reliance on law, transparent policymaking, democratic decision-making, and an improved public health infrastructure as keys to success in addressing SARS.¹¹⁵

Since the end of the 2002-2003 SARS episode, the PRC has undertaken and, more often, contemplated numerous legal and other related changes that could embody Wu Yi's dictum or extend the turn toward greater transparency, openness, and accountability that emerged during the crisis.

Unofficial sources seized on the recognition that poor public access to information had worsened SARS and pressed for furthering the newly much-discussed "right to know" through reforms in media law and policy. Leading academics pressed openly for measures to expand and secure reporters' freedom to write about SARS, other public health threats, and other issues of similar public concern, and to gain greater access to information over which the government and Party have maintained a monopoly. Such proposals sought to use the SARS effect to build on Premier Wen Jiabao's mid-SARS crisis statement urging the State Council (the PRC's council of ministers and chief collective executive organ) to show greater openness toward the news media. Yet, legal reforms on this front remained in, at most, an incipient stage many months after the SARS crisis had passed in China. Official and quasi-official research institutes had been tasked with studying the issue and a proposal for a regulation on "government information openness" reportedly had been circulated to relevant government entities and advisors.¹¹⁶

Reinforcement of SARS-prompted government reporting and containment

modest" and "sharpen the people's critical sense." The Party Central Committee's private polling data reportedly show considerable sharpening of that critical sense, with the Party's stock dropping to levels not seen since the Tiananmen Incident of 1989. *See generally* Kahn, *Heavy-Handed*, *supra* note 108 (describing the effect of SARS on China's political and international relations); Erik Eckholm, *Rude Awakening*, N.Y. TIMES, May 13, 2003, at A1 (describing the effect of SARS on China's political and international relations).

114. *See China's Premier Elaborates on Post-SARS Tasks*, XINHUA NEWS AGENCY, June 29, 2003 (reporting Jiabao's address), available at LEXIS, Newsfile Library, Asia/Pacific News; *Chinese President Outlines Priorities for Studying Party Ideology*, BBC MONITORING ASIA PACIFIC, Jan. 30, 2004 (outlining presidential thoughts), available at 2004 WL 64204569; *Three Big Faults Lead to SARS Creating a Crisis*, *supra* note 108; *Ten Political Scientists and Economists Discuss: China Will Change from This*, *supra* note 108; Hailong, *supra* note 91 (stating that economic concerns influenced government's lack of communication about SARS).

115. *See Chinese Health Minister Urges Continuing "Anti-SARS Spirit"*, NEW CHINA NEWS AGENCY, July 29, 2003, (reporting minister's address to national working group on public health).

116. *See* Mei, *supra* note 112 (interviewing noted scholars on the need to reform dealings with the media); Morgan, *supra* note 112 (evaluating changing government policies toward the media); *China Mulls Giving More Information to Media, Public*, AGENCE FR. PRESSE, July 29, 2003 (describing government initiative to increase open communication with the media), available at 2003 WL 69297587.

measures was on the agenda as well, with SARS being added to the list of communicable diseases warranting notice and action under the law on communicable diseases, the Ministry of Health resuming (amid new rumored cases) its practice (begun during the SARS crisis) of regular public reports of the number of SARS cases, and Wang Qishan more broadly pledging “procedures to make government affairs transparent” and “encourag[ing] officials to speak more to the public and the media.”¹¹⁷ Directives to local government entities mandated continuing monitoring, reporting, and control of SARS and other communicable diseases at the enhanced level that SARS had prompted.¹¹⁸

SARS-inspired changes to the principal relevant statute, the 1989 Law on the Prevention and Treatment of Communicable Diseases, were slated for enactment at the first post-SARS crisis session of the National People’s Congress in March 2004. But the proposed amendments (prepared primarily by the Ministry of Health) reportedly became bogged down in debates among positions that mostly were favorable or, at least neutral, toward the agenda of greater transparency, openness, and de-politicization in the handling of public health issues. These reportedly included primarily tactical or relatively technical questions such as: whether the CDC should be raised to cabinet-level status (which would enhance its individual clout but which might reduce its support from other, more established and powerful bureaucratic actors, such as the Ministry of Health, now headed by the formidable Wu Yi and promised a significant post-SARS increase in resources); whether to rely primarily on general provisions (which might be too vague or difficult to apply to specific diseases presenting very different public health and administrative challenges) or to adopt a more detailed and fragmented law addressing individual diseases or types of diseases (which could risk administrative confusion or omissions similar to that which some critics saw as slowing the response to SARS); whether the decision to release information about an outbreak of a covered disease should remain centralized (which could permit more effective control over the quality and comparability of data and help to coordinate responses, but at some risk of delay and possible underreporting if local mayors or governors resisted disclosure of potentially embarrassing and economically harmful information to a specialized and traditionally not very powerful central health ministry) or should become more decentralized (which could encourage more rapid dissemination of time-sensitive information but which created greater risks of inaccurate and unstandardized information, might make attempts to cover up

117. See Hailong, *supra* note 91 (calling for openness and transparency of information); *Ministry to Publicized Epidemic Reports from 2004*, *Financial Times Information*, GLOBAL NEWS WIRE, Dec. 31, 2003 (explaining the type of public health information to be publicized by the Ministry of Health); Tan Guoqi, *Equal Efforts Urged for the Prevention of Both Flu and SARS*, XINHUA NEWS AGENCY, Sep. 10, 2003 (discussing governmental reporting efforts), available at 2003 WL 56899086; *Beijing New Mayor Strives for Administrative Transparency*, GLOBAL NEWS WIRE, Feb. 23, 2004 (reporting newly elected mayor’s goal to make government affairs more transparent), available at LEXIS, Newsfile Library, Asia/Pacific News.

118. See *China in Battle Against Bird Flu*, XINHUA NEWS AGENCY, Jan. 30, 2004 (noting response to bird flu), available at 2004 WL 65923523.

disease outbreaks even more widespread, and could leave local officials without adequate guidance as they tried to navigate between provisions that prohibited inaccurate disclosures and mandated timely disclosures of information). To address this last problem, some more radical reform proposals argued (unsuccessfully so far) that the Law on State Secrets needed to be amended to remove the prospect of criminal sanctions, at least for those who disclosed accurate public health information without authorization.¹¹⁹

The new Regulations on Responding to Public Health Emergencies adopted in the midst of the SARS outbreak were depicted as an example and a key component in the regime's adopting of policies of reliance on scientific methods, and transparent, responsible, and rational governance to address the SARS threat.¹²⁰

The SARS crisis also sharpened efforts to address shortcomings in China's patchwork of laws and regulations governing "emergency situations" more generally. Here too, the general thrust of SARS-related proposed reforms was broadly liberal and pro-transparency. The existing framework faced criticism for being too skewed toward martial law responses (rather than merely administrative or preventative measures), and for being ill-suited to handling a public health emergency (rather than political upheaval), as the SARS episode amply had demonstrated. These issues were among the concerns that motivated a 2004 constitutional amendment to define a "state of emergency" generally and to provide the foundation for a planned emergency law. Such still-pending legislation, its drafters and proponents pledged, would be more suited to the problems posed by outbreaks of serious diseases, natural disasters, catastrophic accidents, severe economic crises and the like, and would help avoid the poor flow of information and lack of transparency that had hindered the initial response to SARS.¹²¹ Others argued that even an improved law still likely would fall short on these scores and would be a less appropriate and effective way to address public health crises than would a proper set of public health and communicable disease laws.

Still other post-SARS crisis regulatory and related policy reforms sought to enhance the public health and health care systems' capacity to prevent and contain disease outbreaks without resorting to illiberal or authoritarian

119. Some of the specific information in this paragraph is derived from personal and not-for-attribution discussions with PRC nationals involved in the law and public health sectors. It is fully consistent with recognized patterns of Chinese political and legislative behavior and with materials about the response to SARS available in the public record and cited throughout this article, including in *Law Amendment on Free Medical Treatment Planned*, XINHUA NEWS AGENCY, Dec. 16, 2003, and *China Amends Anti-Epidemic Law After SARS Outbreak*, BUSINESS DAILY UPDATE, June 16, 2003.

120. See Huang Guozhu & Jia Yong, *From 1998 Flood Fight to the Fight Against SARS*, XINHUA NEWS AGENCY, June 1, 2003 (comparing China's response to 1998 flood to that of SARS crisis), available at LEXIS, Newsfile Library, Asia/Pacific News.

121. See, e.g., *China's First Emergency Law in Pipeline*, XINHUA NEWS AGENCY, Jan. 6, 2004 (discussing proposed amendment to China's Constitution to include Emergency Law); *China to Improve Emergency Response System*, UNITED PRESS INT'L, Mar. 10, 2004 (reporting pending legislation).

measures. Examples include: more demanding regulations from the PRC's Environmental Protection Administration governing the handling of hospital waste water, internal directives from the Ministry of Health to local administrators on how to improve the diagnosis and handling of SARS and febrile patients, and enhanced measures by the Ministry and others to improve the training and the quantity of relevant staff.¹²² Among the changes at issue in revising the Law on the Prevention and Treatment of Communicable Diseases were measures to provide free treatment and compensation for victims of SARS and other communicable diseases, as had been done with SARS during the crisis. (Reportedly, such reforms faced an impasse over issues related to scope and cost of compensation, including the range of covered diseases, the extent of reimbursable local health agencies' costs, and the inclusion of quarantine-related costs and losses). Over the longer term, PRC officials formulated a multi-year plan to devote more resources and to establish a more effective administrative system for dealing with public health emergencies, disease prevention and monitoring, the public health needs of rural areas, primary care needs in urban areas, public hygiene, public health education and research, and public health law enforcement.¹²³

Other measures suggesting a broadly liberal and transparency-favoring shift in official approaches to public health issues included top leaders' public appearance with members of China's under-acknowledged group of HIV positive and AIDS-stricken individuals and proposals for legal and other measures addressing forms of discrimination against infectious disease victims—principally HIV/AIDS sufferers but potentially also those who have been infected with SARS and faced discrimination.¹²⁴

What do the seemingly liberal or transparency- and accountability-

122. See *China Tightens Law of Hospital Sewage Disposal to Stop Spread of Diseases*, XINHUA NEWS AGENCY, Jan. 29, 2004 (discussing new laws on hospital waste disposal); *Chinese Health Ministry Issues Circular on SARS Prevention*, XINHUA NEWS AGENCY, Dec. 23, 2003 (discussing governmental initiatives regarding fever clinics), available at 2003 WL 69242015; *China is Better Prepared Against SARS*, XINHUA NEWS AGENCY, Dec. 16, 2003 (discussing reforms), available at 2003 WL 69804473.

123. See, e.g., *Public Health System in Urgent Need of Overhaul*, Financial Times Information Service, GLOBAL NEWS WIRE, Mar. 10, 2004 (describing the history of China's public health service system), available at LEXIS, Newsfile Library, Asia/Pacific News; *Law Amendment on Free Medical Treatment Planned*, supra note 119 (describing proposed amendment which would provide free medical treatment for specified infectious diseases); *China's First University Department of Health Economics, Management Opens*, XINHUA NEWS AGENCY, Dec. 8, 2003 (announcing establishment of Department of Health Economics and Management at Beijing University); *Chinese Premier Urges Strengthening Public Health System*, XINHUA NEWS AGENCY, June 17, 2003, (reporting Chinese premier's plans to improve public health system). See also *Chinese Parliament Discusses Vice-Premier Wu Yi's SARS Report*, XINHUA NEWS AGENCY, June 20, 2003 (describing April 25 National People's Congress meeting favorable discussion of State Council's decision to establish a special Anti-SARS administrative unit and a RMB 2 billion special fund for preventing and treating SARS).

124. See, e.g., *Experts Give Legal Suggestions on China's AIDS Problem*, XINHUA NEWS AGENCY, Nov. 11, 2003 (discussing need for improvement of Chinese laws on AIDS prevention and control); Keith Bradsher, *Now, the SARS Emotional Toll*, N.Y. TIMES, June 4, 2003, at A16 (describing the emotional impact on SARS victims).

promoting elements in the Chinese reaction and the Chinese regime's responses on the domestic front to the SARS crisis of 2002-2003 tell us about their foundations and, therefore, their likely persistence and importance?

On one view, they represent a response to a crisis, driven by the exigencies of a transient moment and the peculiarities of the period's elite politics, which mean that it may, or may not, be of lasting effect. Leadership transitions, of the sort that was underway in China at the time SARS struck, can be occasions of policy innovation in the PRC as insecure heirs apparent and challengers struggle for stature and influence. Some in China-watching circles perceived a split among the top elite between leaders closely associated with nominally retired President and Party leader Jiang Zemin, on one side, and Hu Jintao, Wen Jiabo, and a cadre of people associated with the previous reformist Premier Zhu Rongji, on the other. On this view, the mid-April Politburo meeting marked a victory for members of the latter alliance who pushed for a more open and cooperative approach at home and abroad, both because they thought it was good policy and because crafting a distinctive policy line was an established medium of elite conflict. In addition to presenting a genuine crisis which the Hu-Wen leadership appears to have believed required the policy line they pressed, the SARS mess created, on this view, opportunities for Hu and Wen to wield decisively and visibly the power that they formally held and thereby move beyond Jiang's shadow on a Politburo that had been packed with Jiang's protégés and members of his so-called Shanghai faction. From this perspective, substantive disagreements and struggles for power reinforced one another to oust a Health Minister who had been Jiang's personal physician, to extract a self-criticism from Jiang associate and Beijing Vice Mayor and Party secretary Liu Qi, to expose a dangerous cover-up in hospitals run by the one institution that Jiang still formally headed (the PLA), to raise the profile of Wu Yi, Wang Qishan, and other members of the cohort of Zhu mentorees that included Premier Wen, and so on.¹²⁵

It remains uncertain whether the post-SARS developments will bring lasting change in an era of a still-ongoing leadership transition and bounded conflict over the seemingly divisive SARS issue. However sharp intra-elite divisions may have been over how to handle SARS, they were ultimately

125. See John Pomfret, *Outbreak Gave China's Hu an Opening; President Responded to Pressure Inside and Outside Country on SARS*, WASH. POST, May 13, 2003, at A1 (juxtaposing response of Hu and Zemin); Paul Lin, *China's Leaders Playing Politics with Health*, TAIPEI TIMES, May 1, 2003, at 8 (questioning forthrightness of Chinese leadership during SARS); Lawrence Brahm, *SARS and the Coming-of-Age of China's New Leaders*, S. CHINA MORNING POST, May 5, 2003, at 13 (suggesting China's leaders capitalize on SARS crisis to shift government focus from economics to humanity); Roderick MacFarquhar, *Unhealthy Politics*, NEWSWEEK INT'L, May 12, 2003, at 26 (criticizing Chinese leadership for focusing on politics instead of people); Willy Wo-Lap Lam, *Lessons from China's SARS Debacle*, CNN.com, Apr. 24, 2003, at <http://edition.cnn.com/2003/WORLD/asiapcf/east/04/21/willy.column/> (last visited Aug. 25, 2004) (expressing skepticism about new leadership's ability to deliver on promise for open communication without more thorough reforms); Pery Link, *Will SARS Transform China's Chiefs?*, TIME ASIA, Apr. 28, 2003 (describing the way Chinese leadership handles distribution of information), available at <http://www.time.com/time/asia/covers/501030505/viewpoint.html>.

disagreements over tactics and not strategy, and thus were not obviously freighted with the potential to produce radical policy reorientations. There surely was unanimity over the goals of containing the outbreak (especially once it began to strike uncomfortably close to the leadership), minimizing economic damage, and avoiding drastic losses of confidence in the Chinese regime at home or abroad. Moreover, while moments of elite leadership transition in China can create space and incentives for staking out new approaches, moments of significant discontinuity have been few and may not include the recent smooth and managed transition. And they can have a more conservative or even reactionary impact when a nascent leadership group may be unsure of its agenda and wary of offending only-nominally-retired senior colleagues. This suggests a likely retreat from any significantly reformist SARS-inspired agenda as the moment of crisis—and the opportunity to capitalize on it politically—passes, and arguments against reforms that might upset or injure long-standing systems resurface.

On other analytical perspectives, there was clearly something more substantive and potentially significant going on.¹²⁶ At the elite level, whatever behind-the-scenes machinations transpired, the politics of transition contributed to the entrenchment of Hu's and Wen's commitment to relative openness about the SARS problem, criticism of regime failings, and cooperation with the international community. This approach dovetailed with the broader images the two had already begun to cultivate as—compared to PRC baselines—populist, responsive, and accessible leaders. Moreover, Hu and Wen quickly became publicly identified with their line on SARS, and thus could not easily turn back, given the likely costs to newly in-place leaders of reversing a major policy that addressed a crucial issue and that may have come at the expense of still-powerful rivals.

At a more institutional and structural level, it was possible that the SARS crisis lastingly boosted already-percolating elite and reformist intellectual agendas for moderate, moderating changes within the system. Relatively narrowly, the obvious shortcomings in the handling of SARS had produced some significant (if not yet implemented or entrenched) measures to expand the material resources and enhance the political and legal clout of public health institutions and of public health “experts” or “professionals.” Those bureaucratic and personnel constituencies typically have favored a more liberal and transparent approach to public health problems. Not surprisingly, then tend to stress disclosure, education, and treatment. They have been very critical of economic growth-focused or habitually secretive officials' tendencies to conceal vital information. And they have been skeptical about the efficacy and defensibility of containment or quarantine-based strategies.

More broadly, long-circulating policy or law reform ideas—including so-

126. See, e.g., Laurence Brahm, *China Heads into a New Cycle of Reform*, S. CHINA MORNING POST, June 8, 2003, at 11 (proposing SARS as a turning point in Chinese politics); Allen T. Cheng, *Infected by Openness*, S. CHINA MORNING POST, Jul. 3, 2003, at 14 (arguing that lessons from SARS will lead to greater government transparency).

called "intra-Party democracy," gradual extension of competition in local elections, and enhanced private property rights benefiting the new entrepreneurial and middle classes (who are fast becoming an articulate and assertive social group with, as yet, a non-radical agenda)—sound like plausible, relatively safe medicine for treating the SARS-revealed ailments of a bureaucracy that instinctively withheld whatever information it was not clearly required to report, and that could be so secretive because it was so unaccountable.

Although it has not yet generated much, it remains possible that SARS' exposure of the wretched state of the disease control and public health infrastructure may have a modestly liberalizing impact on substantive policy agendas by offering particularly compelling evidence of the costs (including the potential economic costs) of emphasizing growth at the expense of a variety of public goods upon which the well-being—including the wealth—of China depends. The emphasis of "social" and "human" development needs and the imperatives to balance those with, or incorporate them in, the agenda of economic development pointed to an inchoate agenda to address SARS-related challenges and problems rooted in part in broad social features that Chinese leaders and many commentators appeared to recognize.¹²⁷

As this suggests, the liberalization-transparency-accountability dimension of the analysis of, and response to, SARS might operate at the level of state-society relations as well. The regime's capacity to resort to draconian and mass-mobilizational methods to deal with a crises had been lastingly undercut by contemporary China's peculiar combination of mass skepticism concerning the regime's intentions and capacity, and mass acceptance of a social contract that trades citizens' acquiescence in authoritarianism for their rulers' abandonment of Stalinist and Maoist excesses and delivery of rising standards of living. As numerous reported statements of ordinary PRC citizens and the massive SARS-fear-induced exodus from Beijing indicated, many Chinese were dismissive of official denials of a serious SARS problem, unlikely to rally behind the regime's calls to stay put and trust in its methods of quarantine and monitoring, and confident that most would be able to avoid sanctions for flouting or shirking their rulers' commands and exhortations.

Moreover, the festering problems of the many millions whom China's long reform-era economic boom has so far left behind have created pressures for innovative and potentially risky policies. It is widely acknowledged that the PRC leadership must come to grips with the needs and demands of this group, composed primarily of residents of inland provinces, agrarian regions, and employees of rust-belt state-owned industries in some of China's less prosperous

127. See, e.g., Ren Zhongping, *Sublimation of the Practice of Building a Well-off Society in All-Around Way on Concept of Development, Concept of Political Achievements, Concept of Qualified Personnel and Concept of Masses*, PEOPLE'S DAILY, Jan. 12, 2004 (describing balance of socio-political needs in SARS policies), available at LEXIS, Newsfile Library, Global News Wire File (Under *China: People's Daily Outlines "Four Concepts" of Party Policy*). See also *supra* notes 112-15 and accompanying text (describing "social" or "human" development needs).

and modern cities. China's top leaders have realized this and face partly self-imposed rising expectations. Jiang Zemin propounded a "Go West" policy that sought to reduce the escalating concentration of investment and growth in China's prosperous east coast. Jiang's anointed successors face greater demands and hopes that they will take care of reform's losers in China's hinterland. Hu's experience in the poor inland areas of Tibet, Guizhou, and Gansu were thought to make him particularly expert in and sensitive to the problems of the hinterland. Wen's relatively extensive experience in and with poor and rural areas raised broadly similar expectations for him, at least compared to the baseline established by the "Shanghai gang" that had dominated top positions during the preceding decade or more. Pre-SARS remarks by both leaders pledged more attention to such concerns, and observers generally foresee that the problems and risks of instability arising from China's less developed or declining industrial areas only will become more pressing in the years ahead when Hu and Wen will have to build and consolidate their power and rule China.

Because SARS' gravest threat was that it would spread among this vulnerable and potentially volatile population in China's rural areas, smaller or less well-prepared cities, and urban migrant underclass, there was an especially strong imperative for the leadership in general, and Hu and Wen in particular, to be aggressive in taking on SARS, including by adopting measures at odds with the demonstrably unsuccessful traditional approaches of information control followed by attempted quarantine or mobility control. There was also an impetus to lean toward transparency and cooperation because little else might do in these parts of China where other SARS-fighting resources are spread so thin that dissemination of information and acceptance of international assistance may be among the few available weapons.

VI. SCHIZOPHRENIC AUTHORITARIAN REGIME SYNDROME (II): AUTHORITY ALWAYS WINS?

Whether or not it proves to be deep or durable, the "liberal" or "transparent" or "pro-accountability" or "reformist" face of the domestic approach to the SARS crisis and its aftermath in China came grudgingly and incompletely. It did not eclipse a very different mode of response strongly reminiscent of old-style PRC practices. The regime's initial impulse in dealing with SARS at home was clearly not just to rebuff foreign pressure that might be deemed to intrude upon China's sovereign discretion in addressing its internal affairs. The initial response was also to treat relevant information as presumptively secret and a regime monopoly, and to deny the existence of a significant SARS problem that officials had known about at least since November or December of 2003. A week and a half into February, authorities in Guangzhou were still trying—apparently with the center's tolerance and clearly with diminishing effect—to restrict the dissemination of news about the outbreak and to declare it under control. Well into March, Beijing officials were pursuing

the same strategy.¹²⁸ The traditional ban on bad or controversial news during key Party or state meetings quashed the possibility of addressing the matter publicly until after the conclusion of the March meeting in Beijing of the National People's Congress (which was the first such session presided over by Hu Jintao and which appointed Wen Jiabao as premier).

Although he ultimately escaped direct retribution, Beijing SARS whistleblower Jiang Yanyong was in peril, targeted by conservative elements that resented his regime-embarrassing audacity and feared its emulation. Media reports notably failed to laud other whistleblowers. They also eschewed prominent coverage of potentially unsettling SARS-related events, including violent opposition by some city and town to plans to put SARS patients out of their neighborhoods, or the flight of hundreds of thousands from Beijing, or the resort to quasi-feudal measures by localities to prevent travelers from suspect areas entering their jurisdictions.¹²⁹

By March 2004, revisionist history seemed to be setting in, expunging—or at least playing down severely—the early missteps. Premier Wen asserted that the authorities had “reported the facts of the SARS situation exactly as they were” and promptly enforced the Law on the Prevention and Treatment of Communicable Diseases, formulating the Regulations on Responding to Public Health Emergencies, and classifying SARS as a covered disease.¹³⁰ Even earlier, official commentaries had asserted that, by June 2003, the Chinese Government had managed to “salvage its international image, ease the people’s minds, set up a public health mechanism, and maintain economic development and weather the SARS threat.”¹³¹

Dr. Jiang’s protective halo as an officially praised hero eroded rapidly on the eve of the National People’s Congress’ March 2004 consideration of constitutional reforms. In a move that predictably did not endear him to the leadership that had so recently endorsed or at least tolerated praise of his role in exposing the SARS crisis in Beijing and triggering the new transparency, Jiang called for a reexamination of the June 4, 1989, Tiananmen Incident (the horrors

128. See Pomfret, *supra* note 125 (discussing official response); *Pneumonia Outbreak Under Control in Guangzhou*, XINHUA NEWS SERVICE, Feb. 11, 2003 (reporting SARS under control); *Atypical Pneumonia Contained in Beijing: Health Authority*, XINHUA NEWS SERVICE, Mar. 26, 2003 (reporting containment in Beijing); David Lague, Susan V. Lawrence & David Murphy, *The China Virus*, FAR E. ECON. REV., Apr. 10, 2003, at 12-15 (discussing attempts by officials to limit disclosure of information).

129. See Eckholm, *supra* note 113 (describing the effects of SARS on China’s political and international relations); Ben Dolven & David Murphy, *Building New Chinese Walls*, FAR E. ECON. REV., May 22, 2003, at 24-26 (suggesting increased urgency in Chinese cities to contain disease).

130. See *Premier Hails Victory in Fight Against SARS*, XINHUA NEWS AGENCY, Mar. 8, 2004 (quoting Wen).

131. See Yang Fan, *Never Before has a New Chinese Leadership had to Face Such Enormous Hardships During the First Six Months in Office, but Hu Jintao and Company Have Overcome Them All, Says Beijing Political Commentator*, reprinted in FIN. TIMES INFO., June 23, 2003 (discussing difficulties and triumphs of Chinese leaders), available at LEXIS, Newsfile Library, Global News Wire File.

of which he had witnessed as a doctor).¹³² As that event's fifteenth anniversary approached, Jiang found himself in the temporary custody that has long befallen well-known dissidents and "troublemakers" on the eve of politically significant moments. (The detaining authorities rarely offer—and, under criminal procedure and other related legal reforms in recent years—rarely could offer a legal basis for such detentions. The detention of Jiang thus chafes especially uncomfortably against top leaders' proclamation that reliance on the law and legal methods have been a vital component in their successful battle against SARS and its fallout.)

PRC officials and official PRC media included Maoist style exhortation alongside pallid stabs at exposé. The widely read *China Youth Daily* described the fight against SARS as a "smokeless war" that has "forged a national spirit."¹³³ *People's Daily* opined that, under the "staunch leadership" of the Party Central Committee and "Comrade Hu Jintao, the whole nation, united as one man . . . has struck up a heroic song featuring the Chinese people's strong will" and that victory in the "battle" was assured.¹³⁴ The media informed the people that the "strong and correct leadership" of the Party was the key to success. President Hu called for a "people's war"—a classic Mao-era phrase—against SARS.¹³⁵ Some officially sanctioned commentaries analogized the fight against SARS to the battle against severe floods in 1998 and praised Chinese Communist Party members who fought the battle as "true examples of the 'three represents'" (the phrase that represents Jiang Zemin's singular contribution to the canon of Chinese Communist ideology).¹³⁶ Likewise, Hu Jintao, Wen Jiabao, and Wu Yi joined the chorus of old-style party-praising and citing the correct and staunch leadership of the Party Central Committee and the State Council, despite the evident tension with their roles as point persons for the new transparency and international cooperation.¹³⁷

Official sources and the official media offered up tales of martyrs in the fight against SARS that were reminiscent of Mao-era propaganda and that seemed designed to serve as doppelgangers to the "transparency" hero Dr. Jiang. The Ministry of Health awarded the honor "Guardian of the People's

132. See, e.g., Jonathan Mirsky, *A Letter from a Doctor Who Cannot Forget Tiananmen*, INT'L HERALD TRIBUNE, March 12, 2004, at 6 (reporting letter sent from Jiang to Senior Chinese leaders).

133. See Kahn, *Heavy-Handed*, *supra* note 108, at A8 (quoting *China Youth Daily*).

134. See *Promoting and Fostering National Spirit in Fight Against SARS*, PEOPLE'S DAILY, Apr. 30, 2003 (reporting president's comments urging unity in fight against SARS), available at http://english.people.com.cn/200304/29/eng20030429_116024.shtml.

135. See *President Hu Calls for 'People's War' Against SARS*, PEOPLE'S DAILY, May 2, 2003 (describing president's efforts to use all efforts to eliminate and contain SARS), available at <http://english.peopledaily.com.cn/other/archive.html>.

136. Guozhu & Yong, *supra* note 120 (comparing China's response to 1998 flood to that of SARS crisis).

137. See *Chinese Health Minister Urges Continuing 'Anti-SARS Spirit'*, *supra* note 115 (reporting comments made by vice premier to encourage fight to end SARS); *Premier Hails Victory in Fight Against SARS*, *supra* note 130 (quoting premier towing party line); *Chinese President Hu Jintao Hails Success of Anti-SARS Drive*, XINHUA NEWS AGENCY, July 28, 2003 (quoting Hu Jintao towing party line).

Health” to three medical workers who died from serving among the much-praised legions of “angels in white coats.”¹³⁸ Official media panegyrics recounted the tales of Liang Shikui, vice-director of a Shanxi hospital emergency ward who breathed his last while “still wearing his stethoscope,” and Chen Hongguang, the director of a Guangzhou hospital’s intensive care unit who died at his post and willed his corpse for medical research on the illness that killed him and his patients.¹³⁹

In addition to such rhetoric, draconian legal and policy measures often sounded to critical ears like a throwback to an earlier era with elements of Leninist and quasi-Stalinist characteristics. Even where they did not strikingly evoke the PRC of the 1950s or 1970s, they represented an approach that differed fundamentally from the elements in the regime’s response to SARS that could be colorably characterized as “liberal” or promoting transparency and popular accountability or focusing on public health and healthcare service needs.

By mid-May 2003, more than one hundred people had been arrested in seventeen provinces, charged with “disturbing social order” (a long-standing offense under the PRC’s criminal law) by “spreading SARS rumors,” an action punishable by imprisonment for up to five years.¹⁴⁰ Some prosecutions focused on those who spread rumors over the internet, and Beijing’s cyber-police reportedly sharpened their monitoring for SARS related messages and, on the eve of the April 2003 Politburo meeting, were maintaining a ban on the use of the term SARS in web-postings and messages. Violators risked harassment and intimidation that surely chilled on-line dissemination of SARS-related information, both accurate and inaccurate. Over one hundred Falun Gong followers—the targets of the PRC’s suppression campaign against the “heretical cult” since 1999—and a handful of others as well were arrested for spreading rumors that “hindered” (in ways the official media report did not specify but that are assumed to involve rumor-spreading) state efforts to control SARS.¹⁴¹

The potentially broad reach of the notoriously vague State Secrets Law further undermined any “transparency” agenda by providing a potent factor—the threat of criminal sanctions for telling some truths—to chill the dissemination

138. See Susan V. Lawrence, *Catching an Invisible Foe*, FAR E. ECON. REV., May 8, 2002, at 28 (reporting new public health measures).

139. See Guozhu & Yong, *supra* note 120 (comparing China’s responses to other disasters).

140. See Bill Savadore, *State May Impose Death Penalty for Spreading Disease*, S. CHINA MORNING POST, May 16, 2003, at 4 (reporting rules against spread of SARS); *Public Security Organs in Various Localities Uncover Some 150 Cases of Using Atypical Pneumonia to Disrupt Public Order*, Apr. 29, 2003 (reporting number of SARS-related crimes), available at 2003 WL 20178587; *Beijing Goes High Tech to Block SARS Messages*, NEW ZEALAND HERALD, June 16, 2003 (discussing censorship efforts). See also *China Reports Beijing Resident Imprisoned for Spreading SARS*, XINHUA NEWS AGENCY, June 11, 2003 (reporting sentencing of man to three years for spreading false information, via Internet postings, about the SARS situation in Shanghai and the economic effects of SARS and urging people to hoard food and other items).

141. See *Beijing Goes High Tech to Block SARS Messages*, *supra* note 140 (recounting governmental surveillance); *Public Security Organs in Various Localities Uncover Some 150 Cases of Using Atypical Pneumonia to Disrupt Public Order*, *supra* note 140 (reporting number of arrests).

of accurate information among the public about SARS.¹⁴² The point was reinforced after the initial SARS crisis had passed when a senior Guangdong official warned media in his province and neighboring Hong Kong that it was illegal to report disease information without prior official confirmation.¹⁴³

Such threats of possibly severe sanctions did seem to impede greatly the flow of relevant, true information about SARS, especially—but not only—before the regime's turn toward a policy of greater transparency in the late spring of 2003. For example, a senior Guangdong official reportedly told Hong Kong's Health Chief that his government had withheld information about the illness that was beginning to strike the SAR because information relating to disease classifications was considered a state secret. Months later, the top public health official in the home county of the infamous SARS spreader Yue insisted that the government's new openness policies did not extend to his office.¹⁴⁴

More than the public dissemination of information (false or true) was at stake. Official media and top officials stressed a broad range of "responsibilities" that relevant laws, including the Law on the Prevention and Treatment of Communicable Diseases and the new Regulations on Responding to Public Health Emergencies, imposed on citizens and stressed the importance of strict enforcement and firm implementation of those laws.¹⁴⁵

In moves that were presented as merely glosses of existing statutes and regulations, the Health Ministry issued a sweeping set of "Management Measures" in May 2003. These imposed strict rules for reporting, quarantine, isolation, and other matters. The Supreme People's Court and the Supreme People's Procuracy (as the prosecutor's office is known in the PRC) announced severe penalties for violating SARS-related regulations. Anyone who knowingly spread the pathogen could face capital punishment. Those who broke quarantine or evaded a mandated medical exam or treatment and accidentally passed on the illness faced up to seven years in jail. Lesser infractions too could lead to prolonged incarceration.¹⁴⁶

142. The State secrets law was more likely to impede the spreading of accurate information by government functionaries, for they were, of course, more likely than ordinary citizens to possess information that fell within the scope of state secrets.

143. See CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA, 2003 ANNUAL REPORT: FREE FLOW OF INFORMATION (2003) (discussing prior restraints on Chinese press), available at <http://www.cecc.gov/pages/virtualAcad/exp/expandrept03.php>.

144. See Benitez, *supra* note 39, at 1 (reporting comments of former Hong Kong health official); Garrett, *supra* note 90 (describing health official's refusal to comply with laws and public health practices). See also Bates Gill, *China and SARS: Lessons, Implications and Future Steps*, Presentation to the Roundtable of the Congressional-Executive Commission on China (CECC) (May 2, 2003), available at http://www.csis.org/china/030512gill_testimony.pdf.

145. See *Premier Hails Victory in Fight Against SARS*, *supra* note 130 (reporting government efforts); *Chinese Health Minister Urges Continuing 'Anti-SARS Spirit'*, *supra* note 115 (reporting health minister's comments to carry forward the anti-SARS spirit); *Chinese Parliament Discusses Vice-Premier Wu Yi's SARS Report*, *supra* note 123 (reporting group discussions urging further implementation of measures to check the spread of SARS).

146. See PRC Ministry of Health, *Atypical Pneumonia Control Management Measures*, May 12, 2003 (describing PRC measures for allowing dissemination of information about SARS), available at

The bringing of charges against the unfortunate Dr. Li of Inner Mongolia for knowingly spreading the virus illustrated—to no one's surprise—that the new powers were not going to lie idle. Worse yet, from a rule-of-law perspective, the hammer appeared to fall unevenly, with a Dr. Li-like case involving a powerful village Party functionary (the fugitive Mr. Yue) resulting in so desultory an approach to investigation and prosecution that the offender was able to escape long after the facts were known.¹⁴⁷ (More unremarkably, criminal prosecutions also targeted those who exploited the SARS crisis to commit a variety of ordinary crimes, primarily varieties of fraud including selling fake drugs or substandard medical and prevention equipment, claiming to be a SARS victim in order to avoid paying for goods, or impersonating SARS-control personnel in order to impose bogus fines.¹⁴⁸)

In the midst of the SARS crisis, official directives warned local and departmental officials that they would be held strictly responsible for timely and accurate reporting on SARS and could face up to three-year sentences if they exhibited insufficient vigilance in combating SARS. More than a hundred state functionaries, and state health care workers as well, reportedly were fired, disciplined, or detained for their inefficiency and lassitude amid the shake-up that ousted the Health Minister and Beijing's mayor.¹⁴⁹ In the weeks that followed, additional directives warned that any deception or concealment of relevant statistics would be dealt with severely under applicable laws. Top anti-SARS official Wu Yi criticized "lax supervision" of implementation of public health laws.¹⁵⁰ Word circulated that leaders of enterprises and other institutions faced sanctions for SARS outbreaks in their units (which could be expected to be taken as a sign of the irresponsible handling of SARS leading to heavy economic losses that carried a possible three year sentence), as well as the clearly prescribed penalties for failing to report SARS cases. Later, the prosecutions for

http://www.usc.cuhk.edu.hk/wk_wzdetails.asp?id=2231; *China Threatens SARS Death Penalty*, BBC NEWS, May 15, 2003 (describing penalties for violating quarantine orders or intentionally spreading SARS), available at <http://news.bbc.co.uk/1/hi/world/asia-pacific/3030069.st6m>; Savadore, *supra* note 140 (reporting rules against spread of SARS).

147. See Savadore, *supra* note 140 (reporting Li's arrest); Kahn, *Man's Virus Infects Town*, *supra* note 90 (reporting the spread of SARS by Dr. Li and his subsequent arrest); Garrett, *supra* note 90 (noting no charges against Yu).

148. See, e.g., *Public Security Organs in Various Localities Uncover Some 150 Cases of Using Atypical Pneumonia to Disrupt Public Order*, *supra* note 140 (reporting arrests for SARS-related crimes).

149. See Lawrence, *The Plague Reaches Much Deeper*, *supra* note 112, at 26-28 (discussing governmental accountability); *Slack Officials Face Crackdown in SARS Crisis*, XINHUA NEWS AGENCY, May 7, 2003 (discussing punishment of negligent officials); Garrett, *supra* note 90 (describing arrests for dereliction of duty); *Chinese Health Ministry Issues Circular on SARS Prevention*, XINHUA NEWS AGENCY, Dec. 23, 2003 (reporting Ministry of Health notification that violations of regulations would be punished).

150. See *Chinese Health Minister Urges Continuing 'Anti-SARS Spirit'*, *supra* note 115 (reporting health minister's comments to continue anti-SARS spirit). See also *Chinese Parliament Discusses Vice-Premier Wu Yi's SARS Report*, *supra* note 123 (reporting National People's Congress group discussions urging implementation of control measures).

official diversion and misuse of SARS-fighting funds came as well.¹⁵¹

The “authoritarian” or “policing” approach to SARS imposed legal obligations on citizens and enforcement tasks on Party and state cadres that went beyond those described above, and beyond what was to prove feasible. Thousands of Beijing residents were ordered confined at home under orders enforced by police contingents outside their buildings. Authorities sought to track down others who had slipped through advancing quarantine nets in some of Beijing’s most heavily affected areas, including the university district of Haidian. One university website reportedly posted a list of “missing” students whose whereabouts and prompt return were sought. Officials in the capital contemplated a blanket quarantine system for members of the huge migrant population that began to return to the city. Anyone who knowingly left Beijing infected with SARS was considered in violation of SARS-related legal prohibitions.

Additional efforts in Beijing focused on expanding rapidly the regime’s capacity to track and monitor potential SARS spreaders through methods that included: new computer databases; reinvigoration of the hoary neighborhood residents’ committees staffed veteran grassroots Party activists; beefed-up systems of inspection and registration for immigrants from the countryside and more affluent travelers arriving and departing by air.¹⁵² Local authorities elsewhere adopted similar methods and others as well. Nanjing, for example offered cash rewards for turning in people suspected of having returned from SARS-affected areas.¹⁵³

As the incipient revisionist history noted above implies, the publicly expressed official self-perception was one of success in dealing with SARS. China, after all, relied heavily on established or familiar organs and processes to cope with SARS, and escaped with relatively little human or direct economic damage, at least so far. While success might have been attributed largely to luck (including that SARS has turned out not to be an extremely easily communicable disease) or to the contributions of the new approaches of transparency, cooperation, and not-heavily-authoritarian public health mechanisms, the leadership—or at least an influential segment of it—reached the conclusion that their long-standing system, including its relatively authoritarian elements, basically worked. A further inferred lesson appears to have been that, where the system required changes, much of the necessary tweaking was in an authoritarian—or at least potentially authoritarian capacity building—direction.

151. See *China Adding Up Medical Costs of SARS Prevention and Treatment*, AGENCE FR. PRESSE, June 18, 2003 (summarizing article in PRC paper, Twenty-first Century Economic Daily).

152. See *China Steps Up Efforts to Curb SARS*, PEOPLE’S DAILY, Apr. 23, 2003 (describing efforts to contain disease), available at http://english.people.com.cn/200304/23/eng20030423_115622.shtml; Joseph Kahn, *Quarantine Set in Beijing Areas to Fight SARS*, N.Y. TIMES, Apr. 25, 2003, at A1 (discussing measures to quarantine infections in Beijing); *Beijing Adopts Computer System to Track Virus Carriers*, PEOPLE’S DAILY, May 6, 2003 (reporting adoption of computer system to track SARS); Kahn, *Heavy-Handed*, *supra* note 108 (discussing use of neighborhood committees in Beijing).

153. See Dolven & Murphy, *supra* note 129, at 24-26 (describing SARS prevention measures at the local level).

Latter-day variants of old-style Maoist and pre-reform-era methods received a striking share of credit for the success in fighting SARS. The classic Mao-era elements of ideology, a “correct” Party leadership and dedicated Party cadres, mass mobilization, and a mobilized, people-serving People’s Liberation Army, were singled out for praise. Hu Jintao identified the “correct guidance of Deng Xiaoping theory” and Jiang Zemin’s “important theory” of the three represents as among the key reasons for the “major victory” in the “anti-SARS campaign.”¹⁵⁴ Wen Jiabao credited the nation’s having withstood the “severe test” of SARS to the dedication of “leading cadres at all levels,” as well as medical workers and the people.¹⁵⁵ Statements by leaders and in the press routinely stressed the importance of the leadership and guidance of the Chinese Communist Party, its Central Committee, Politburo, and Standing Committee, and the State Council in winning the war against SARS.¹⁵⁶

An official media account of the fight against SARS offered encomia to the “combat”-like work that erected a first-class thousand-bed SARS hospital in a single week, the thousand volunteers who joined in SARS prevention and control, the more than one thousand PLA doctors who answered the emergency call to the nation’s capital, and the broader “uniting as one” of the Party, the PLA, and the people.¹⁵⁷ The official assessment that other “retro” and authoritarian methods had worked and helped was evident from coverage on, and demonstrated extensive reliance upon, such means as polemical patriotic exhortations to the masses, activist-led neighborhood-level residents’ committees, selective stern discipline of wayward or ineffective officials and functionaries, and reliance on harsh sanctions and vast contingents of police, military, and other public safety and security personnel to monitor and secure transportation hubs, urban perimeters, and quarantined blocks—deserve much of the credit for containing SARS.¹⁵⁸

Skeptical outside observers could discern a lack of appetite for significant reform in the appointments of Wu Yi to manage the SARS portfolio and, to a lesser degree, Wang Qishan as the Mayor of SARS-stricken Beijing. While their selection could suggest an emphasis on competence and openness, it could also sound like echoes of three venerable practices: deploying skilled “barbarian handlers” to soothe foreigners’ outrage and blunt their demands; blaming

154. See *Chinese President Hu Jintao Hails Success of Anti-SARS Drive*, *supra* note 138 (quoting Hui Jintao).

155. *Premier Hails Victory in Fight Against SARS*, *supra* note 130 (quoting president’s speech outlining China’s efforts in containing SARS).

156. See *Chinese Premier Wen Jiabao Attends Conference Summarizing Fight Against SARS*, *Financial Times Information*, Jul. 18, 2003 (reporting comments from an interim summary conference), available at LEXIS, Newsfile Library, Global News Wire File; Guozhu & Yong, *supra* note 120 (comparing China’s response to other disasters). See also *supra* note 131 and accompanying text (discussing revisionist history version of China’s response to SARS as completely successful).

157. Guozhu & Yong, *supra* note 120 (comparing China’s responses to various disasters in history).

158. See *supra* note 153 and accompanying text (discussing other crisis containment responses used by China).

institutional or systemic flaws on the individual shortcomings and poor performance of second-tier officials who did not enjoy sufficient top-level patronage to protect them; and turning in a crisis to tough and trusted officials who have demonstrated ability to root out bureaucratic weakness or corruption, maintain social order in challenging circumstances, and thereby save a basically authoritarian system from its own weaknesses.

SARS-related and SARS crisis-inspired proposals for legal reforms often coupled their relatively “liberal” features with an at least equal admixture of provisions of a very different cast. The planned Emergency Law reportedly would incorporate authoritarian and potentially repressive strands in the old Martial Law and National Defense Law, spawning concerns that an Emergency Law with those characteristics would remain badly ill-suited to deal with public health emergencies and their special need for an emphasis on transparency and treatment. The SARS-prompted Regulations on Responding to Public Health Emergencies and proposed amendments to the 1989 Law on the Prevention and Control of Contagious Diseases similarly contemplated significant sanctions and reporting obligations not only for government entities but also for “social organizations” such as the media and universities. Expansive quarantine powers were to be retained as well, despite criticisms (including from the perspective of public health professionals whose influence supposedly had risen amid the SARS crisis) that such methods were archaic, and despite ample evidence that they had not worked very well during the 2002-2003 outbreak.

Ideas of amending the State Secrets Law to eliminate the risk of prosecution for the disclosure of true information about SARS, other infectious diseases, or public health problems made little headway. Legal authority to control such information apparently will remain vested for the foreseeable future in the “responsible” government department (primarily the Ministry of Health). There has been no significant public discussion of amending the criminal law to alter the provision (apparently not used during the 2002-2003 SARS episode) that permits criminal punishment of government functionaries who are negligent in handling public health matters.¹⁵⁹ Rather, the gist of many of the legal changes adopted in response to SARS would seem to provide new reasons and basis for authorities’ making use of the relevant criminal law provisions.

The agenda of SARS-related institutional reforms—some of which were at stake in the discussion of reforms to public health laws and related laws—has focused on measures that could strengthen the tools of authoritarian responses to public health crises and a range of other social and political developments. Some of the changes proposed and partially undertaken include increasing the professional capacity, institutional resources, internal discipline, and administrative powers of established bureaucratic institutions such as the Ministry of Health, the Ministry of Statistics, and the public security organs. In practice or by design, such institutions tend to be more toward the authoritarian end of the spectrum, compared to other possible and, in some cases, actual

159. See CRIMINAL LAW OF THE PRC, art. 409 (allowing imprisonment for public health officials whose negligence results in the spread of infectious disease).

beneficiaries of SARS-related bureaucratic reshufflings. The Chinese Center for Disease Control, seen within China and abroad as relatively inclined toward a more transparent and treatment/prevention-focused approach, has not yet experienced the rise in status and bureaucratic clout (including, for example, promotion to “cabinet” status) that some proponents of reform had hoped or anticipated.

Much of the SARS-inspired agenda of institutional change has focused on the institution-building tasks of strengthening the center’s authority at the local level (and over local authorities), and on building the institutional capacity of relevant local government institutions. The SARS problem provided ample evidence for the position that local governments needed to be made stronger and more accountable to the center. From this point of view, more capable, disciplined, and vertically integrated institutions are an answer for the dangers posed by grassroots institutions that were obviously ill-equipped to cope with a SARS plague that thankfully has not yet come.

The latitude that local officials felt they had, and clearly used, to cover up initial outbreaks was recognized as a serious deficiency that needed to be addressed through new requirements of reporting to higher level authorities, sharpened sanctions against local officials guilty of concealment, and so on. The principal impediment to a more unequivocally centralized approach to public health administration (including monitoring and reporting of disease outbreaks) appears to have been a concern that the relevant central authorities, even if empowered by formal legal changes and clear policy imperatives, still might lack the requisite clout or connections with local authorities to extract the information or uncover the facts any better than the old, failed system had in 2002-2003. Whatever its effects might have been on containing the spread of SARS, there was much that alarmed the central leadership in many local government authorities’ undertaking or collaborating in SARS-inspired do-it-yourself-Balkanization by roadblock-building. Such actions lacked central authorization, undercut the center’s policies, and suggested a crisis in governance that the leadership did not want to concede or occur. Much the same can be said about the implications of, and the public security forces’ response to, violent local resistance to the construction of SARS quarantine or treatment facilities.¹⁶⁰

The other, related element of the agenda for reforming local government institutions focused on strengthening those entities’ ability to cope with public health needs, future public health emergencies, and other tasks. On this front, SARS was a wake-up call about the frayed structure of basic-level health care, the need for SARS or other serious communicable disease hospital facilities, and the lack of adequate organizational capacity to institute monitoring, quarantine, and other procedures to contain a SARS or SARS-like outbreak. Pledges or political and real capital to address these problems were legion in the aftermath of SARS. And the package of prescribed measures, if fully implemented, would provide, *de facto* or by design, tools that could or would serve nicely for an

160. See, e.g., *Police and Chinese Villagers Come to Blows in Violent Clash*, AGENCE FR. PRESSE, Aug. 9, 2003 (reporting violence and arrests in southern Chinese village).

authoritarian approach to a new health emergency.

Some of the more authoritarian-seeming or authoritarian-compatible moves by the PRC during and after the SARS crisis resemble, at least on the surface, those adopted in heavily SARS-hit cities beyond the mainland Chinese area. Taiwan instituted tight screening and mandatory quarantine measures and adopted laws permitting strict penalties for quarantine violators and others who hindered the battle against SARS by concealing medical histories or hoarding needed supplies. Hong Kong legislators called for, and the legislature passed, more expansive quarantine powers.¹⁶¹ But seemingly similar measures adopted by the PRC were uniquely alarming to potential targets and observers, for several reasons. They were coupled with the more obviously harsh and campaign-like SARS-era measures described above. They also unfolded against the background of a long history of severe and arbitrary uses of seemingly ordinary governmental powers in the PRC.

Critics warned that the PRC's legal and policy initiatives created potentially perverse incentives that could undermine the fight against SARS.¹⁶² Fearing bad outcomes either way, citizens and officials might well take the "double or nothing" bet and avoid seeking treatment, fulfilling their reporting obligations, or submitting to quarantine or other travel restrictions. From this perspective, there loomed a risk of a spiral of distrust, incapacity, and coercion that could overwhelm the more open and cooperative strategy embraced by Hu, Wen, and the April Politburo meeting. Much of the available account of the cycle of public and regime responses to SARS is compatible with such a pattern: popular distrust in the authorities' honesty and competence made evasion of the obligations it imposed and the orders it issued seem rational and feasible. Faced with expected evasion, authorities predictably may be tempted—as the PRC regime so often seems to have been—to resort to harsh sanctions imposed in a well-publicized way against the relatively few who are caught, even for minor transgressions, to deter others and prevent the unraveling effect that a low probability of detection invites. With officials functionaries demonstrably unable to make their far-reaching orders (for quarantine, reporting, or even foregoing the construction of roadblocks stick), the perception of the limits to

161. See *Taiwan Civet Cats Tested by COA Free from SARS Virus*, ASIA PULSE, Jan. 7, 2004 (describing procedures); *Taiwan Legislature Adopts Proposal to Tighten SARS Rules*, June 6, 2003 (reporting adoption of stricter revisions to SARS laws), available at LEXIS, Newsfile Library, BBC World Monitoring File; *Premier Says Taiwan Government Committed to Containing SARS*, Apr. 27, 2003 (reporting comments by president), available at LEXIS, Newsfile Library, BBC Worldwide Monitoring File; *Taiwan President Calls for Unity in Fight Against SARS*, May 5, 2003 (reporting president's comments to punish quarantine-breakers), available at LEXIS, Newsfile Library, BBC Worldwide Monitoring File; *Taiwan Minister Warns of Tough Action Against Violators of Anti-SARS Measures*, May 4, 2003 (reporting minister's warning that violations of quarantine regulations will be punished), available at LEXIS, Newsfile Library, BBC Worldwide Monitoring File; *Bird Flu – Hong Kong Puts Virus on Danger List*, Jan. 30, 2004 (describing post-SARS amendment to quarantine law), available at LEXIS, Newsfile Library, AFX (Asia) File. See generally Sapsin et al., *supra* note 83 (discussing global legal preparedness in response to public health emergencies); *H.K. Slams Guangdong*, *supra* note 59 (calling for tougher laws to prevent recurrence of disease).

162. See Savadore, *supra* note 140 (discussing rules for reporting SARS).

state capacity to see its will followed, and more broadly to handle a crisis and its origins, is reinforced.

Moreover, the foundations of the more “liberal” or “pro-accountability” or “pro-transparency” or “less authoritarian” approach showed signs of significant weakness in China, compared to the foundations of such elements elsewhere, and compared to the signs of strength in China of the foundations for the more authoritarian line.

Chinese elite factional politics is an unstable and murky business and any political victory that may have lain behind the relatively liberal but mixed approach to SARS that emerged in April 2003—or policies of openness and responsiveness more generally—was neither complete nor irreversible. Watchers of elite politics who saw bold and successful moves by Hu and Wen also noted that there was another dimension to this part of the story that offered much less support for an argument that some significant reorientation might be occurring. The real power-holder in the Beijing city hierarchy, Party Secretary and Jiang Zemin associate Liu Qi, escaped with minor scrapes while Hu’s ally Mayor Meng Xuenong was ousted. Another close Jiang supporter, Politburo Standing Committee member Li Changchun, was spared serious criticism despite his position as then-recently appointed overseer of the cover-up-prone media and his immediate prior post as Party Secretary of Guangdong during the period when SARS was erupting in that province of its apparent origin. Few expert observers of Chinese elite politics doubted that Jiang’s acquiescence, if not his prior blessing, was required for Hu and Wen’s moves, while some speculated that Jiang may have been testing his nominal successor or even setting him up to fail.¹⁶³

The more revanchist aspects of the Chinese regime’s handling of the SARS issue cannot be dismissed as fading legacies. Perceived threats to economic or public health can push any regime toward illiberal and defensive responses, whether in the form of cover-ups or heavy-handed legal and administrative measures to ameliorate the danger. Contemporary China was particularly susceptible to such a response when confronted with the threat that SARS appeared to pose. A serious economic downturn due to the spread of SARS, or the fear of SARS, would threaten the pillar on which the CCP has largely staked its claim to power for a generation. The prospect of significant SARS-spawned impediments to the movement of goods and people—ranging from fear of travel to transportation-slowing screening measures to quarantines to the notorious spontaneous local roadblocks—portended additional economic losses.

Any such creeping balkanization also evoked the chronic problem of “excessive” decentralization that has worried the Chinese leadership throughout the reform era, in part because it conjures up the political fragmentation of the warlord era that the Chinese Communist regime prides itself on overcoming. The equally alarming specter of social unrest—always haunting to a Party that took the restoration of internal order as a founding accomplishment and that had

163. *Id.*

been badly damaged by the turmoil of the Cultural Revolution—did not loom all that large in the SARS crisis. But it did lurk. A SARS-induced setback to prosperity or a SARS epidemic sickening millions could well look like the regime's failure to fulfill its basic missions of providing an economy that generates rising affluence and a government that secures its subjects' physical safety. The riots in areas where rumors (or true stories) told of government plans to establish SARS wards, and the moves by local governments to establish unauthorized roadblocks and checkpoints, gave a taste of what might come if the efforts failed to bring the illness under control and repair the regime's credibility.¹⁶⁴ In such a setting, aggressive, repressive, and quasi-military methods can hold considerable appeal for besieged ruling elites.

The impetus to a more closed and repressive approach to SARS and kindred threats to order and stability also could be especially persuasive with respect to China's hinterland, its less cosmopolitan cities, and perhaps its rural-based urban migrant and transient population. The constituencies for—and expectations and experiences of—liberal reform are thinnest there. There also, the lack of medical and public health facilities and government institutional capacities may leave few alternatives to a more martial law-like approach, especially when unrest or resistance to centrally mandated measures erupts. More broadly, modest rhetoric about attending to reform's losers has yet to generate a significant shift of ideological emphasis, much less action and resources. Despite the flirtation with "going west," the Jiang Zemin-era leadership ultimately remained closely associated with the "coastal strategy" that emerged during the Deng Xiaoping years and solidified his commitment to that approach with his valedictory doctrine of the "three represents," by which the Party has unprecedentedly opened its doors and offered its embrace to China's largely urban and coastal entrepreneurial stratum. Hu's nominal succession to Jiang's post brought no backpedaling on this key element of Jiang Zemin theory.¹⁶⁵ SARS has not been sufficient to transform these features of the political landscape and, indeed, some of the harder and harsher aspects of the regime's response are fully in keeping with them.

164. See Erik Eckholm, *SARS is the Spark for a Riot in China*, NY. TIMES, Apr. 29, 2003, at 1 (reporting riots at quarantine facilities); Dolven & Murphy, *supra* note 129, at 24-26 (discussing quarantine, roadblocks, and blockades).

165. See *CPC to Launch New Round of Study of 'Three Represents' Theory*, PEOPLE'S DAILY, Apr. 28, 2003 (discussing impact of party-building theory), available at http://english.people.com.cn/200304/28/eng20030428_115958.shtml.