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COMMENTS

FREEDOM OF SPEECH IN CHINA: A POSSIBILITY OR A PROHIBITION?

I. INTRODUCTION

Those born into Western societies are accustomed to speaking their minds freely. Westerners view freedom of speech as a fundamental right. As Christopher Patten, former Governor of Hong Kong, once said, “free speech is an end in itself, not just a means to an end. It is intimately connected to human dignity.”¹ In quoting the late U.S. Supreme Court Justice Thurgood Marshall, Patten said free speech “served not only the needs of the polity ‘but also those of the human spirit—a spirit that demands self-expression.’”²

In the People’s Republic of China (PRC), however, no such right exists in practice. The government maintains a tight grip on the things people say and do to express themselves. Consequently, there exists a pervasive fear among journalists, filmmakers, Internet Web site creators, and anyone else who may convey a message that might be unacceptable to the government of the PRC.³ The repercussions of such perceived “subversion” include harsh prison sentences, expulsion from the country, or loss of jobs or businesses.⁴ The frequency of these extreme penalties consistently increases.⁵

1. CHRISTOPHER PATTEN, EAST AND WEST: CHINA, POWER, AND THE FUTURE OF ASIA 233 (1998).

2. *Id.*

3. See U.S. DEP’T OF STATE, 106TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1999—VOLUME I 1037 (J. Comm. Print 2000) (China) [hereinafter *China Country Report 1999*] (discussing an increased tendency of journalists, writers, and publishers to censor themselves); see also U.S. DEP’T OF STATE, 106TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1998—VOLUME I 837, 839 (J. Comm. Print 1999) (China) [hereinafter *China Country Report 1998*].

4. See Associated Press, *Chinese Dissident Prints Copies of Banned Internet Journal, Is Arrested*, THE FREEDOM FORUM ONLINE (Sept. 7, 1999), at <http://www.freedomforum.org/international/1999/9/7qi.asp> [hereinafter *Dissident Prints*].

Freedom of speech is a complicated concept to incorporate into a socialist system. The PRC's government must maintain an open attitude and be willing to consider new ideas in order to make freedom of speech a reality. The international community, especially Western nations, must try to understand the PRC's perspective in order to encourage the effective integration of free speech into Chinese society. In particular, the international community must examine the role of the media in China, the country's deep-seated belief system, and the looming political pressures.

The Chinese people are not strangers to change. They have witnessed dramatic modifications in their country throughout the twentieth century. From the fall of the dynasties to the takeover by the Communist Party,⁶ the era has teemed with turmoil. Throughout all of the political pandemonium, however, the PRC has maintained a rich culture. In fact, even as governmental oppression stifles creativity, the people of the PRC find new ways to express themselves.⁷ Still, doing so could be a dangerous venture for many artists and journalists who face the Chinese censor.⁸

This Comment analyzes the existence of freedom of speech, or the lack thereof, within all types of media including the press (print and electronic), films, and the Internet.⁹ The government of the PRC has a great deal to consider at the dawn of the new millennium. The government is finding it difficult to regulate the use of new technologies, like the Internet,¹⁰ in such a way that

Copies]; see also *Chinese Dissident Arrested for Printing Internet Newsletter*, NEWSBYTES (Sept. 5, 1999), at <http://www.newsbytes.com> [hereinafter *Chinese Dissident Arrested*]; *China Country Report 1998*, *supra* note 3, at 1037-39; *Chinese President Reminded 48 Journalists Jailed in His Term*, THE FREEDOM FORUM ONLINE (Oct. 22, 1999), at <http://www.freedomforum.org/international/1999/10/22preszemin.asp> [hereinafter *48 Journalists*].

5. See *Dissident Prints Copies*, *supra* note 4; see also *48 Journalists*, *supra* note 4.

6. See JOHN BRYAN STARR, UNDERSTANDING CHINA: A GUIDE TO CHINA'S ECONOMY, HISTORY, AND POLITICAL STRUCTURE 114 (1997); see also SEYMOUR TOPPING, JOURNEY BETWEEN TWO CHINAS 175 (1972).

7. See STARR, *supra* note 6, at 229-31.

8. See *Dissident Prints Copies*, *supra* note 4; see also *Chinese Dissident Arrested*, *supra* note 4.

9. For purposes of this Comment, the term "freedom of speech" is used to connote both freedom of speech and freedom of the press. Additionally, the terms "journalists," "dissidents," "artists," and "other proponents of free speech and press" are used synonymously.

10. See Scott E. Feir, Comment, *Regulations Restricting Internet Access: Attempted*

harmonizes with the historical beliefs, rule of law, and political ideologies of Chinese society. Furthermore, various filmmakers and journalists, both Chinese and foreign, have had difficulty filming in the PRC, as well as getting films or reports past the Chinese censor.¹¹

Nevertheless, there are those who believe that the media and freedom of speech, in general, never have been as uninhibited as they are today, at least as compared to varied historical examples of oppression.¹² These arguments are also considered below.

This Comment explores the possibility of creating a functional freedom of speech right for the Chinese people and the intricacies involved in achieving such a right. Part II examines the role of the media in China, considering historical Communist philosophies, particularly that of Mao Zedong, as well as modern-day media. It also looks at examples of censorship within the country. Next, Part III explains the contradictions between the legal, political, cultural, and philosophical convictions of the Chinese and Western societies. Part IV suggests that the PRC should uphold its constitutional promises and international commitments to permit free speech. Hong Kong provides a good example of a government with socialist ideologies utilizing free speech to its advantage. Moreover, this section considers the level of possible involvement by the international community in the PRC's development of free speech. Finally, Part V summarizes possible solutions to China's freedom of speech dilemma.

II. THE ROLE OF THE MEDIA IN COMMUNIST CHINA

Once a country governed by dynasties, China has endured countless invasions, bloody uprisings, dictatorships, civil wars, and shifts in power and philosophies.¹³ After much confusion and

Repair of Rupture in China's Great Wall Restraining the Free Exchange of Ideas, 6 PAC. RIM L. & POL'Y J. 361, 361, 383-84 (1997).

11. See Joan Chen's *Xiu Xiu*, ASTYLE.COM: YOUR ASIAN ENTERTAINMENT COMMUNITY, at <http://astyle.com/Articles/xiuxiu.asp> (last visited Oct. 12, 2000); see also 48 *Journalists*, *supra* note 4; James Mottram, *Film: Uncrowned King of Hong Kong; Feted in His Own Country, Film-maker Wong Kar-Wai Is Unknown in the West. James Mottram Wonders Why*, INDEP. (LONDON), Apr. 24, 1998, available at LEXIS, News Library, News Group File; Jeff Dawson, *Bai Ling: From the People's Army of China to the Lights of Hollywood*, EMPIRE MAG., July 1998, at 28, available at <http://www.geocities.com/Hollywood/Boulevard/8370/empire.html>.

12. See STARR, *supra* note 6, at 229.

13. See LI UNG BING, *OUTLINES OF CHINESE HISTORY* 578-93 (1967) (providing

strife over the past two centuries, the Communist regime, initially led by Mao Zedong (Mao),¹⁴ took control and grew to become the largest Communist Party in the world.¹⁵ Maintaining control over the PRC has not always been an easy task, however, and the people have had to endure the consequences of grave mistakes committed by the government.¹⁶ One horrifying example was the government's fiercely violent reaction to the demonstrations held in Beijing's Tiananmen Square in June 1989.¹⁷ After this intense and irrational response to calls for democracy in Beijing, nervous commentators anticipated political doom and gloom for future freedoms, including freedom of speech, throughout all of the PRC and Hong Kong.¹⁸

Today, contrary to practice in many Western countries, the government strictly controls the media in communist China.¹⁹ From novels to television shows, the Chinese government influences what the public sees and hears.²⁰ The censor is alive and well, and carefully scrutinizes ideas expressed by artists and writers.²¹

further historical discussion regarding China's tumultuous past); *see also* JOHN KING FAIRBANK, *THE UNITED STATES AND CHINA* 219, 222–23, 226, 235–36 (4th ed. 1979); KENNETH SCOTT LATOURETTE, *CHINA* 80, 116–22 (1964); J.A.G. ROBERTS, *A CONCISE HISTORY OF CHINA 190–207*, 214–16 (1999).

14. FAIRBANK, *supra* note 13, at 276 (explaining that Mao Zedong was a founder and leader of the Communist Party in China).

15. *See id.* at 276–89, 370–75, 408–10, 440, 444, 446 (contributing more comprehensive information about Mao and others who believed in a classless society and the belief in working selflessly for the common good of the Chinese); *see also* LATOURETTE, *supra* note 13, at 18; STARR, *supra* note 6, at 4–5, 14; TOPPING, *supra* note 6, at 195.

16. *See* FAIRBANK, *supra* note 13, at 440; *see also* STARR, *supra* note 6, at 64; TOPPING, *supra* note 6, at 194–95 (discussing additional examples of difficulties under Communist rule in China, including the Cultural Revolution and Mao's "Great Leap Forward" plan).

17. In the days preceding the massacre, Chinese students began to demand more democracy, greater freedom of speech, and increased governmental representation. *See* T.K. Tong, *Democracy V. Autocracy: A Live Record*, in *DEDICATED TO FREEDOM* 5 (Nina Shen et al. eds., 1989); *see also* *May 16 Statement*, in *DEDICATED TO FREEDOM* 10–12 (Nina Shen et al. eds., 1989); Gao Lu-ji, *My Daughter in Tiananmen Square*, in *DEDICATED TO FREEDOM* 12–13 (Nina Shen et al. eds., 1989); Wu'er Kaixi's *Speech*, in *DEDICATED TO FREEDOM* 17 (Nina Shen et al. eds., 1989).

18. Richard Cullen, *Media Freedom in Chinese Hong Kong*, 11 *TRANSNAT'L LAW* 383, 384 (1998).

19. *See* *China Country Report 1999*, *supra* note 3, at 1036–37.

20. *See* *China Country Report 1998*, *supra* note 3, at 850–51.

21. *See id.* at 850–52.

A. Mao's Philosophies at Work

Mao greatly influenced Chinese philosophies regarding various media.²² He believed that because the audience consisted of simple, working-class people, art should be uncomplicated and straightforward.²³ He did not think art could be appreciated on its own, rather it had to convey a message to be effective:

According to Mao, art and literature exist to persuade and to teach—appreciation of art for its own sake is unacceptable—and the central ideological lesson to be conveyed is the superiority of the worker and peasant who serve the revolution through their labor. Art, literature, and the performing arts should depict exemplary figures to serve as either models or counter-models for the rest of society.²⁴

Mao favored works that glorified heroes and heroines, and humiliated villains.²⁵ He disliked “middle characters” that complicated the message.²⁶ For example, Mao disfavored those individuals in stories who “[had] doubts, good characters who [had] flaws, and villains with redeeming features.”²⁷

Because of Mao's instructions with respect to these ideals, writers, artists, and composers depicted honest, hardworking peasants who were downtrodden by tyrannical landlords.²⁸ During a time when the masses desired an alternative to the corrupt Nationalist Party, artists viewed Mao and the Communists as positive forces and often subscribed to Mao's ideals.²⁹ Eventually, though, after years of being limited by the government to creating only works based on “inspirational tales from the revolution,” diverse currents influenced China's culture.³⁰ Western art forms and alternative modes of expression particularly impacted the culture.³¹

22. See STARR, *supra* note 6, at 230.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *See id.*

30. *Id.* at 231.

31. *See id.*

B. Modern Chinese Media

During the twentieth century, new kinds of media developed rapidly. Along with the advent of each new medium came new challenges for the PRC. Currently, the government primarily is concerned with retaining control over the messages received by the Chinese people.³² On the other hand, there is mounting evidence that Chinese people desire the truth and want easier access to information.³³

Historically, the government used newspapers, television, and radio primarily for political propaganda.³⁴ At various times during the 1980s and 1990s, however, increased profits, public interest in seeking the truth about the Chinese Communist Party (CCP), and a confidence in their own abilities to acquire information began to drive the Chinese media toward autonomy.³⁵ Additional factors that contributed to the heightened autonomy of the media included: economic growth; improved literacy among the people; an increased skepticism toward authority; greater contact with the West; waning political ideologies; better trained personnel; weakening party controls; and access to new technologies.³⁶

32. See *id.* at 243–45.

33. See Linda Jakobson, "Lies in Ink, Truth in Blood:" *The Role and Impact of the Chinese Media During the Beijing Spring of '89*, JOAN SHORENSTEIN BARONE CTR. ON THE PRESS, POL., AND PUB. POL'Y, Aug. 1990, at 2.

34. See TODD HAZELBARTH, *THE CHINESE MEDIA: MORE AUTONOMOUS AND DIVERSE—WITHIN LIMITS* vii (1997); see also *China Country Report 1999*, *supra* note 3, at 1037 (evaluating the status of human rights in the PRC in 1999). The report demonstrates that government involvement and control over the media have once again increased. *Id.* at 1036–40. The report states:

More than in recent years, the press was exploited by the Government as an effective propaganda tool to disseminate an official line. For example, in its press coverage of NATO's action against Serbia, NATO was depicted as bent on using the conflict in Kosovo as an excuse to expand its influence. Casualties caused by NATO attacks on Serb forces received prominent coverage, but there was almost no mention of the plight of ethnic Albanian Kosovars. The Government's manipulation of the press to mold public opinion had violent results when demonstrators targeted foreign diplomatic facilities in Beijing after NATO's mistaken bombing of the Chinese embassy in Belgrade.

Id. at 1037. Additionally, journalists were specifically instructed to focus on positive PRC achievements throughout the year, and to de-emphasize the negative in preparation for the celebration of the fiftieth anniversary of the founding of the PRC on October 1, 1999. *Id.* Thus, the serious "nationwide crackdown against the Falun Gong spiritual movement," and the overall poor political atmosphere greatly increased self-censorship among journalists. *Id.*

35. See HAZELBARTH, *supra* note 34, at vii.

36. See *id.* at 3–13.

Consequently, the media available to the people dramatically expanded during those two decades.³⁷

For example, the number of newspapers alone jumped from forty-two in 1968 (virtually all of which were Communist Party papers) to over 2,200 in the 1990s.³⁸ Moreover, over 7,000 magazines and journals are currently published in the PRC.³⁹ Correspondingly, the greater variety of material available in recent years (including many non-sanctioned publications) has been accompanied by a noticeable *decline* in readership among the top Communist Party newspapers featuring party speeches, propaganda, and policy viewpoints.⁴⁰ To illustrate, readership of the *People's Daily*, the Communist Party's flagship newspaper, has decreased,⁴¹ while circulation of less inhibited magazines and municipal newspapers, such as the *Guangzhou Daily*, has dramatically *increased*.⁴²

Electronic media also has experienced changes. Talk radio in the 1990's, for instance, "shifted the paradigm from authorities addressing the people to people addressing the authorities."⁴³ To illustrate, for many years, only a single radio station existed in Shanghai, which solely aired pro-government propaganda.⁴⁴ In 1992, however, a second station entered the market featuring a format that de-emphasized propaganda.⁴⁵ Gradually, due to competition between the two stations, both formats became livelier and more popular.⁴⁶

Television also has changed over the years. The PRC's only national network, Chinese Central Television (CCTV), controls broadcast television.⁴⁷ CCTV is under the "dual supervision of the Propaganda Department, responsible ultimately for media content, and the Ministry of Radio, Film, and Television, which oversees operations."⁴⁸ The State appoints network directors and

37. *See id.* at 1.

38. *Id.*

39. *See id.* at 2.

40. *See id.* at 8.

41. *Id.* at 8, 10.

42. *See id.* at 10.

43. *Id.* at 2.

44. *Id.* at 3.

45. *Id.*

46. *See id.*

47. *Id.* at 1.

48. *Id.*

officers at CCTV and other local stations.⁴⁹ Over the past few decades, television has grown in popularity as increasing numbers of television sets appear in households.⁵⁰ In fact, the number of sets per household has doubled to nearly 300 million over the last ten years.⁵¹ Television stations also are increasing at a rate of fifteen percent per year.⁵² Although Chinese television once consisted mainly of official news and pedagogical documentaries, the arrival of cable television and satellite dishes has diversified programming.⁵³ As a result, effective governmental regulation of television poses an increasing challenge.⁵⁴ Currently, “[t]he government owns all television stations and monitors the content of their broadcasts, but with the proliferation of stations, most of them locally managed, the diversity of programming has increased significantly.”⁵⁵

To begin, cable television, with access to multiple global news networks and other Chinese-language channels (including some from Hong Kong), is available in many Chinese cities, and is extremely difficult for the government to control.⁵⁶ Both legitimate and illegal cable operators offer service, and “Beijing is unable to effectively monitor, let alone control, the illicit cable operators who have sprung up”⁵⁷ By 1995, “about 1,000 of the 3,000 cable stations in China, linked to perhaps fifty million homes, were unlicensed.”⁵⁸

Satellite television poses another big challenge for the CCP. The government continues its efforts to regulate the sale and use of satellite dishes.⁵⁹ In fact, in 1993, the government expressly banned the dishes.⁶⁰ When the ban proved ineffective, the government tried to require the licensing of dishes in 1994.⁶¹ Eventually, in 1995, the government simply specified permissible

49. *See id.*

50. *See STARR, supra note 6, at 243.*

51. *Id.*

52. *Id.*; *see also HAZELBARTH, supra note 34, at 1.*

53. *See STARR, supra note 6, at 243.*

54. *See id.*

55. *Id.*

56. *See China Country Report 1998, supra note 3, at 852; see also HAZELBARTH, supra note 34, at 11.*

57. *HAZELBARTH, supra note 34, at 11.*

58. *Id.*

59. *See China Country Report 1998, supra note 3, at 852.*

60. *HAZELBARTH, supra note 34, at 11.*

61. *Id.*

programs and viewing hours.⁶² The CCP's trouble with satellite television primarily involves the acquisition of the dishes themselves.⁶³ Although the government effectively regulates programs received via satellite from Hong Kong, Taiwan, and elsewhere, the *illegal sale of dishes* creates a great nuisance for the CCP.⁶⁴ The difficulty with satellite television stems from "government entities such as the Ministry of Machinery Industry and the military services [that produce] dishes outside allowable quotas and guidelines and then sell them illicitly to eager customers."⁶⁵ In 1997, profit margins reached as much as fifty percent per dish, which made it nearly impossible for the government to stop the practice.⁶⁶

The growing fascination with the Internet further hampers governmental control over the flow of information, which poses yet another huge challenge for the CCP. Worldwide, Internet usage is growing exponentially,⁶⁷ and industry experts estimate that actual users in China equal approximately ten million.⁶⁸ The Internet provides the Chinese people with access to uncensored material, like news from the on-line service, *Chinese News Digest*.⁶⁹ Chinese volunteers in the United States and Australia created and currently distribute this unrestricted news service.⁷⁰ Although there are aspects of the Internet that are difficult to block, such as e-mail and e-mail publications,⁷¹ the Chinese government has waged a tremendous effort to control this medium.⁷² The CCP tried to block certain sites, suspend new Internet service provider applications, and placed existing services under the jurisdiction of the Ministry of Posts and Telecommunications, the Ministry of Electronics Industry, and the

62. *Id.*

63. *See id.*

64. *See id.*

65. *Id.*

66. *Id.*

67. *See China Country Report 1998, supra* note 3, at 847.

68. *See id.*

69. HAZELBARTH, *supra* note 34, at 12.

70. *Id.*

71. *See China Country Report 1998, supra* note 3, at 847 (reporting that dissident groups both abroad and on the mainland disseminate information and publications, such as the e-mail magazine called *VIP Reference News*, to Chinese readers via e-mail, which provide news not covered by the official media in the PRC).

72. *See HAZELBARTH, supra* note 34, at 12.

State Education Commission.⁷³ The government worries that "the State will become totally unable to monitor Internet access at residences" as more homes become equipped with telephone lines.⁷⁴ Nonetheless, despite such increased difficulties, the government persistently tries to regulate the messages available to the Chinese people.

With technology making media more difficult to monitor and manage, the CCP has begun to focus on regulations and directives that make control a matter of law.⁷⁵ In the late 1990s, the government expressed its dominance by shutting down publications, as well as by imposing fines and even by imprisoning journalists.⁷⁶ But while the government desires to control all media in the PRC, a significant number of Chinese citizens prefer uninhibited thought, expression, and free speech.⁷⁷ Internationally, more countries are becoming enlightened with regard to such fundamental individual freedoms.⁷⁸ Arguably, the PRC also has shown an interest in providing further individual rights.⁷⁹ In the early and mid-1990s, greater media autonomy seemed to be a distinct possibility,⁸⁰ but starting in late 1998, the CCP made a point of subduing the burgeoning media to maintain the government's superior position over the people.⁸¹

C. *The Infamous Chinese Censor*

Surprisingly, the average Chinese citizen enjoys significantly more personal freedom today than ever before.⁸² A 1998 U.S. State Department report stated that Chinese citizens benefit from "[h]igher disposable income, looser economic controls, greater freedom of movement, increased access to outside sources of

73. *See id.*

74. *Id.*

75. *See id.* The CCP's control of the media using the rule of law is further discussed in Parts II.C. and III.A.

76. *See HAZELBARTH, supra note 34, at 14.*

77. *See China Country Report 1998, supra note 3, at 850-52.*

78. *See Jimmy Carter, Foreword to THE INTERNATIONAL BILL OF HUMAN RIGHTS ix (Paul Williams ed., 1981).*

79. *See XIANFA art. 35 (1982); see also China Country Report 1998, supra note 3, at 839.*

80. *See HAZELBARTH, supra note 34, at 3-13.*

81. *See China Country Report 1998, supra note 3, at 837.*

82. *See id.* at 839.

information, greater room for individual choice, and more diversity in cultural life.”⁸³

On the other hand, the government of the PRC continues to infringe upon many basic human rights, such as freedom of speech.⁸⁴ For example, in 1999, Chinese authorities “did not hesitate to move quickly against those it perceived to be a threat to government power or national stability. Citizens who seek to express openly dissenting political and religious views continue to live in an environment filled with repression.”⁸⁵

Freedom of speech, as a whole, remains elusive in the PRC.⁸⁶ Still, the government tends to be particular with its restrictions.⁸⁷ In fact, although the CCP censor is somewhat lenient with various types of artistic content, it is extremely sensitive to certain subjects.⁸⁸ While a substantial amount of sex, violence, and lack of morality is largely ignored, political dissent is a hot trigger for the censor.⁸⁹ Specifically, the government “does not permit citizens to publish or broadcast criticisms of senior leaders or opinions that directly challenge Communist Party rule.”⁹⁰

The government justifies the repression of speech constitutionally.⁹¹ The Chinese Constitution expressly states that its citizens should enjoy freedom of speech and freedom of the press as fundamental rights.⁹² The government claims that although this may be true, it interprets “the Communist Party’s ‘leading role,’ as mandated in the preamble of the Constitution, as circumscribing these rights.”⁹³ Therefore, the government deems its various methods of censorship appropriate.⁹⁴

The government controls the media through a complex system of self-censorship, policies, guidelines, and direct supervision.⁹⁵ The Propaganda Department of the Party’s Central

83. *Id.*

84. *See id.* at 837–39.

85. *Id.* at 839.

86. *See id.* at 850–52.

87. *See STARR, supra* note 6, at 241–42.

88. *See id.*

89. *See id.*

90. *China Country Report 1998, supra* note 3, at 850.

91. *See id.*

92. *See id.*

93. *Id.*; *see also* XIANFA pmb1. (1982). For a more detailed discussion regarding constitutional interpretation in the PRC, see Part III.A.

94. *See China Country Report 1998, supra* note 3, at 850.

95. Jakobson, *supra* note 33, at 4–5; *see also* Jennifer Rocke, *China’s Violation of*

Committee oversees the daily work of checking the press.⁹⁶ A working group of the Propaganda Department also is responsible for creating specific guidelines for journalists to follow.⁹⁷ This group meets weekly to determine the desired themes and issues on which journalists should focus.⁹⁸ Then, the working group briefs the editors-in-chief of major national newspapers so they can pass along the information to other journalists.⁹⁹

The Propaganda Department also manages the Ministry of Radio, Film, and Television, which, in turn, supervises these media.¹⁰⁰ One journalist who worked for CCTV's English Language News Department during the 1980s said, "Minister Ai Zhisheng would usually personally show up at the CCTV newsroom and preview the 7 p.m. Chinese news broadcast. He was known by the nickname 'Director of News.'"¹⁰¹

Censorship by the government is both direct and indirect.¹⁰² The press is "under explicit, public orders to follow CCP directives, and [to] 'guide public opinion' as directed by political authorities."¹⁰³ Additionally, formal and informal guidelines that require the media to avoid politically sensitive topics or refrain from divulging state secrets create an atmosphere of self-censorship.¹⁰⁴ The government employs

[A] wide range of controls that violate the right to free expression and interfere with independent media. These include severe restrictions on contact between foreign news media and Chinese viewed by the government as critical of the regime. An extensive censorship bureaucracy licenses all media outlets and publishing houses and must approve all books before publication.¹⁰⁵

Such control techniques produce shocking results. Journalists face possible imprisonment, expulsion from the country, and loss

Human Rights and the Olympic Bid, at <http://yn.la.ca.us/olympic/student.china.html> (last visited Oct. 13, 2000).

96. Jakobson, *supra* note 33, at 4.

97. *Id.* at 5.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *See China Country Report 1998*, *supra* note 3, at 850-52.

103. *Id.* at 850.

104. *See id.*

105. Rocke, *supra* note 95.

of their jobs.¹⁰⁶ Additionally, the threat persists that the government will close media outlets, and may only reopen them once the CCP has had a chance to work with the editors to “correct their thinking.”¹⁰⁷ Moreover, the government jams broadcasts of foreign radio and television shows it believes interfere with internal affairs.¹⁰⁸ It also bans foreign journalists from entering the country.¹⁰⁹

Self-censorship is another significant instrument of control that the CCP wields over the media.¹¹⁰ The CCP Propaganda Department has established guidelines for Chinese journalists, editors, and publishers in order to avoid sanctions like imprisonment, employment termination, or demotion.¹¹¹ For example, for journalists to avoid such penalties, “news coverage is required to be 80% positive and 20% negative.”¹¹² Also, dissidents who speak out against the government, especially to foreign media, “are often subject to threats, detention, harassment, intensive surveillance or imprisonment,” and therefore are hesitant to voice their opinions.¹¹³

Nevertheless, the government has shown moments of tolerance.¹¹⁴ For a brief period during the 1990s, it seemed as if the CCP finally was beginning to realize that free speech was not necessarily synonymous with the destruction of the PRC’s government.¹¹⁵ During much of 1998, for instance, the government allowed greater openness of the press and free speech.¹¹⁶ In an unprecedented move,¹¹⁷ the government allowed live television and radio broadcasts of a joint press conference held by President Bill Clinton of the United States and President Jiang of the PRC.¹¹⁸ The press also broadcast a speech by President Clinton at Beijing University.¹¹⁹ People even published various

106. *See China Country Report 1998, supra* note 3, at 850–52.

107. *Id.* at 851.

108. *Id.* at 852.

109. *Id.*

110. *See* Rocke, *supra* note 95.

111. *Id.*

112. *Id.*

113. *See id.*

114. *See China Country Report 1998, supra* note 3, at 850.

115. *See id.*

116. *See id.*

117. *Id.*

118. *See id.*

119. *See id.*

books containing full, unedited transcripts of the press conference, the Beijing University speech, and other remarks by Presidents Clinton and Jiang Zemin.¹²⁰ These events “allowed citizens to witness on television for the first time uncensored comments, exchange, and debate on previously taboo issues such as human rights abuses, the Tiananmen massacre, and Tibet.”¹²¹ During parts of that year, the press continued to expand its coverage to discuss such topics as corruption by Communist Party officials, legal reforms, and citizens’ rights.¹²² Popular investigative television news shows “aggressively pursued official malfeasance.”¹²³ Moreover, the state-run press printed straightforward articles and conducted interviews with senior officials who called for judicial system reform and an end to court corruption.¹²⁴ Supposedly, this reporting often was achieved “with the tacit consent or even open support of the Government.”¹²⁵ Eventually, however, the brush with free speech ended.¹²⁶

The government reverted to its oppressive ways and it ultimately interpreted Chinese legislation as restrictive toward speech.¹²⁷ During the final months of 1998, the government began to clamp down on the less constrained press activity.¹²⁸ On December 23, 1998, the Supreme People’s Court interpreted a provision of the PRC’s Publications Law, holding that the law “criminalizes under the State Security Law the ‘publication, distribution, or broadcast’ of material containing content intended to ‘incite national division, damage national unity, incite subversion of national authority, or incite the overthrow of the

120. *See id.*

121. *Id.*

122. *See id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *See id.* at 851.

127. *See id.*

128. *See id.*; *see also China Country Report 1999, supra* note 3, at 1039. The oppression of dissidents in the PRC continues. *See China Country Report 1999, supra* note 3, at 1036–40. Beginning in 1998, the PRC government feared that an increase in dissension would occur due to politically sensitive events and anniversaries such as the “May 8 embassy bombing in Belgrade, the June 4 10th anniversary of the Tiananmen massacre, and the July crackdown against the Falun Gong.” *Id.* at 1039. The government adopted “a policy of near-zero tolerance of dissent” in which scores of activists were arrested, some of whom were sentenced to very long prison terms, and “almost all dissident activity effectively was halted.” *Id.*

socialist system.”¹²⁹ Following this decision, the government proceeded to suppress political dissenters.¹³⁰ The authorities quickly subdued those it perceived to threaten governmental power or national stability.¹³¹

D. *The Chinese Censor at Work: Specific Examples of Speech Suppressed*

The Chinese censor is a force to be reckoned with for those in the arts and media.¹³² Despite a great deal of evidence to the contrary, however, the government actually has loosened its grip on media controls in the past and usually remains forbearing with regard to particular aesthetic qualities.¹³³ As stated previously, the government has been fairly lenient concerning certain creative content.¹³⁴ Furthermore, intermittently during the 1980s and 1990s,¹³⁵ the government *did* allow the press to publish stories critical of Communist Party officials and of Chinese society in general, as well as to depict unfair treatment of the people by the government.¹³⁶ Commentators have argued that compared to other Communist countries of that time, the population seemed well informed, and “the Chinese press seemed remarkably vigorous and daring. Deng Xiaoping’s decision to drastically

129. *China Country Report 1998*, *supra* note 3, at 851.

130. *See id.*; *see also China Country Report 1999*, *supra* note 3, at 1039.

131. *China Country Report 1998*, *supra* note 3, at 839; *see also 48 Journalists*, *supra* note 4 (stating that “the Paris-based *Reporters sans Frontieres* (RSF) issued a report noting that during his [Chinese President Jiang Zemin’s] presidency 48 Chinese journalists have been jailed and 10 are still in prison[,]” and that “[p]olice repression against dissident journalists has been stepped up over the past year”).

132. *See China Country Report 1999*, *supra* note 3, at 1036–41.

133. *See STARR*, *supra* note 6, at 229; *see also China Country Report 1999*, *supra* note 3, at 1039–40; discussion *supra* Part II.C.

134. *See STARR*, *supra* note 6, at 241–42; *see also* discussion *supra* Part II.C.

135. *See Jakobson*, *supra* note 33, at 3. Jakobson discusses her move to the PRC in 1987 and the way in which she was struck by the “extraordinary degree of openness and diversity which [she] encountered.” *Id.* She wrote:

Newspapers published reports of party officials indicted for embezzlement and profiteering. Letters to the editor described the unfair treatment by party members of ordinary people. In general, many commentaries and editorials, both in the newspapers and on television, touched upon the failings of society, and were frank and to the point.

Id. Also, in the 1990s, the media made progress toward greater openness, and the range of issues the press could cover expanded until late 1998. *China Country Report 1998*, *supra* note 3, at 850.

136. *See Jakobson*, *supra* note 33, at 3.

reform the economy and open up the country to foreign trade led to a general easing of control in all sectors of society.”¹³⁷ Nevertheless, events such as the Tiananmen Square massacre in 1989,¹³⁸ and the new interpretation of the Publications Law, as mentioned above, caused the government to quickly dampen any burgeoning media activity.¹³⁹

In spite of this ebb and flow of liberal attitude toward the press during the past two decades, journalists never were given complete freedom.¹⁴⁰ Chinese journalism students were taught about the restraints of their trade in the PRC despite any perceived governmental tolerance toward the press, and they were instructed that “revealing information which might have a negative effect on society is useless, maybe even harmful.”¹⁴¹ Also, the government reminded journalists in the PRC that in a socialist country, the interests of the government and the people are the same, and therefore, “the party’s newspapers are the people’s newspapers.”¹⁴² At times, journalists have grown weary with this governmental rhetoric, as evidenced by the substantial press participation in the call for democracy and free speech during the Tiananmen Square incident.¹⁴³ Regardless of any such underlying disquiet among journalists, however, the government remains persistent in its suppression of free speech.¹⁴⁴

137. *Id.* Deng Xiaoping was the leader of the CCP from 1976, after the death of Mao, until his own death in 1997. See STARR, *supra* note 6, at 5, 306–07. Deng had a unique approach to leadership. *Id.* at 306. He attempted to avoid assuming the most senior positions by appointing others to these duties while guiding these potential successors from the sidelines. *Id.* at 307. Deng’s goal was to gradually train a successor to take his place and continue implementing his reform program so he could quietly retire without causing problems for the country. *Id.* He never found anyone he truly trusted, however, so he ultimately remained in power until his death. *Id.* At that point, Jiang Zemin took control of the CCP. *Id.*

138. See Jakobson, *supra* note 33, at 11, 16, 19.

139. See *China Country Report 1998*, *supra* note 3, at 851; see also *China Country Report 1999*, *supra* note 3, at 1039.

140. See Jakobson, *supra* note 33, at 3.

141. *Id.* Jakobson discusses an example in which the China School of Journalism allowed “foreign experts” to lecture students about professional techniques. *Id.* The Dean of the school, however, proceeded to give a lengthy speech about the restraints of Chinese journalism and “the social responsibility that Chinese journalists must shoulder despite the development of society and reform policy.” *Id.*

142. *Id.* at 4.

143. See *id.* at 13. The press wanted to do away with censorship in order to report factually on events. See *id.* at 13–14. They marched along with the students and reported on the tragic occurrence. See *id.*

144. See *China Country Report 1999*, *supra* note 3, at 1036–40.

Today, the government of the PRC freely utilizes the press for its own propaganda, and journalists often are required to have their stories checked by the Propaganda Department of the Party's Central Committee.¹⁴⁵ Moreover, the PRC has gained international recognition for repressing speech by expelling reporters from the country, arbitrarily detaining people, and imprisoning people based on laws limiting the exercise of basic rights.¹⁴⁶ Such actions have caused the U.S. State Department to question the PRC's willingness to respect freedom of speech for PRC citizens and non-citizens alike.¹⁴⁷

Both Chinese and foreign journalists are at risk.¹⁴⁸ As a consequence of the CCP's crackdown on dissident journalists, foreign journalists were not allowed to cover ceremonies to commemorate the tenth anniversary of the 1989 Tiananmen Square massacre.¹⁴⁹ Also, a German reporter for *Der Spiegel* was expelled from the PRC in 1998 and ordered not to return for five years.¹⁵⁰ Similarly, a Japanese reporter was summarily forced to leave the country.¹⁵¹

Furthermore, the PRC still requires reporters from Hong Kong, as well as foreign reporters, to apply for permission before they can make reporting trips to the mainland,¹⁵² and "[t]hose who bypass official channels—which many feel they must do to get the stories they want—risk violating Chinese regulations."¹⁵³ For example, nine Hong Kong journalists covering a story in the PRC were "kept in custody until they had written confessions saying they were aware they had violated Chinese law by reporting, without official permission, near Tiananmen Square."¹⁵⁴ In

145. *See id.* at 1036–37; *see also* Jakobson, *supra* note 33, at 4.

146. *UN: Special Rapporteurs on Religious Intolerance and Judicial Independence*, M2 PRESSWIRE, Apr. 14, 1999, at LEXIS, News Library, News Group File.

147. *See China Country Report 1999*, *supra* note 3, at 1019–21, 1036–40.

148. *See 48 Journalists*, *supra* note 4.

149. *See id.*

150. *See U.S. Protests China's Expulsion of German Journalist*, DEUTSCHE PRESSE-AGENTUR, Nov. 19, 1998, available at LEXIS, News Library, News Group File.

151. *See id.*

152. SENATE COMM. ON FOREIGN RELATIONS AND HOUSE COMM. ON INT'L RELATIONS, 106TH CONG, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1998, VOL. I 875, 879 (J. Comm. Print 1999) (Hong Kong) [hereinafter *Hong Kong Country Report*].

153. *Id.*

154. Arnold Zeitlin, *In China, Press Freedom Ends at Hong Kong Border*, THE FREEDOM FORUM ONLINE, June 23, 1999, at

addition, a residual restriction from the days of British rule in Hong Kong, which is still enforced, provides that "no Chinese-language Hong Kong newspaper or broadcast station is permitted to post a resident correspondent in Beijing or elsewhere in China."¹⁵⁵ Such restrictions, incidents, and distrust merely add fuel to the fire of self-censorship and reinforce the impression that reporters must monitor their stories carefully.¹⁵⁶

Likewise, local journalists and dissidents face frightening repercussions for their actions.¹⁵⁷ The recent crackdown on dissent is considered the "harshest since the one that followed the military's crushing of 1989 pro-democracy protests."¹⁵⁸ Chinese authorities have put numerous dissidents and journalists in prison for printing pro-democracy reports, and sentenced some of them to extensive jail terms on subversion charges, sometimes for as long as thirteen years.¹⁵⁹ In 1993, one journalist, Wu Shishen of the *Hong Kong Express*, received *life imprisonment* for giving a foreign correspondent a copy of a speech the PRC's president was to present to the People's Assembly a few days later.¹⁶⁰ The Paris-based organization, Reporters sans Frontières (RSF), reported that the government of the PRC had ordered the "state-run media to 'pay particular attention to social order and political stability' while legislation was introduced to punish 'anyone who deliberately publishes, prints, copies or distributes material inciting people to overthrow the government and the socialist system or to divide the country.'"¹⁶¹ Additionally, RSF claims prison authorities dictate an especially harsh regime against the imprisoned dissidents, which includes beatings by guards and no visitation with family.¹⁶²

<http://www.freedomforum.org/international/1999/6/23hongkong.asp>.

155. *Id.*

156. See *Hong Kong Country Report*, *supra* note 152, at 879.

157. See *Chinese Dissident Arrested*, *supra* note 4; see also *Dissident Prints Copies*, *supra* note 4.

158. *Dissident Prints Copies*, *supra* note 4.

159. *Id.*; see also *Chinese Dissident Arrested*, *supra* note 4.

160. See *48 Journalists*, *supra* note 4.

161. *Id.*

162. See *id.*

1. Examples of Governmental Control: Censorship of Specific Media

The CCP keeps a close watch over all types of media, with the Internet posing the greatest challenge.¹⁶³ Currently, Internet service providers must register all users with the government.¹⁶⁴ The government also installs barriers to block access to certain sites that it perceives to be subversive or pornographic.¹⁶⁵ Organizations such as RSF and the Committee to Protect Journalists have ranked the PRC among the twenty leading enemies of the Internet.¹⁶⁶ Again, imprisonment is a likely punishment for posting information the government deems inappropriate.¹⁶⁷ In one instance in 1999, a Shanghai software engineer, Lin Hai, was sentenced to two years in prison for releasing the e-mail addresses of 30,000 Chinese computer users to a banned Internet journal published by Chinese dissidents in the United States.¹⁶⁸

The censor also carefully monitors film, broadcast television, and radio. Filmmaking is a risky business in China, as some artists have discovered.¹⁶⁹ The government owns the major film studios.¹⁷⁰ Consequently, films are screened and censored before public release.¹⁷¹ For example, while filming a movie in the PRC, Wong Kar-Wai, director of *Happy Together*, faced lengthy permit delays and censorship problems.¹⁷² The film features a gay couple in Buenos Aires.¹⁷³ The government objected to much of the subject matter, including the title, and thus the film can never be released in the PRC.¹⁷⁴ Another director, Joan Chen, faced similar difficulties while filming her movie, the award-winning *Xiu*

163. See *Dissident Prints Copies*, *supra* note 4; see also HAZELBARTH, *supra* note 34, at 11–12; STARR, *supra* note 6, at 245.

164. *Dissident Prints Copies*, *supra* note 4.

165. *Id.*

166. *Id.*

167. See *Africa-at-Large: The Twenty Enemies of the Internet*, AFRICA NEWS, Aug. 9, 1999, available at LEXIS, News Library, News Group File.

168. *Dissident Prints Copies*, *supra* note 4; see also *Chinese Dissident Arrested*, *supra* note 4.

169. See STARR, *supra* note 6, at 239–41.

170. See *id.* at 241–42.

171. See *id.*

172. See Mottram, *supra* note 11.

173. See *id.*

174. See *id.*

Xiu.¹⁷⁵ After waiting two months for her screenplay to be approved, the Chinese Film Bureau proposed detrimental changes to her script.¹⁷⁶ Chen decided to film without an official permit and consequently faced the possibility of authorities expelling her and her crew from the country.¹⁷⁷ Furthermore, U.S. films and talent have been prohibited from entering the PRC.¹⁷⁸ Richard Gere, Brad Pitt, and Martin Scorsese all have been banned from China because of roles they have played or films they have directed that have portrayed the Chinese government negatively.¹⁷⁹ Chinese-born Bai Ling, who co-starred alongside Richard Gere in the movie *Red Corner*, faces the "infinitely more serious consequence of never seeing [her] family again."¹⁸⁰

Similarly, censorship affects broadcasting industries. The government in the PRC owns and monitors the content of all the television and radio stations.¹⁸¹ As previously addressed, regulating television has become quite difficult in recent years with the advent of satellite dishes and cable television.¹⁸² Chinese viewers now have access to a plethora of foreign programming.¹⁸³ In fact, coverage by foreign news crews facilitated the international attention given to the Tiananmen Square massacre.¹⁸⁴ Foreign reporters were covering the visit of Mikhail Gorbachev to Beijing, but the demonstrations and the subsequent massacre captured the limelight.¹⁸⁵ Chinese television stations also covered the initial demonstrations,¹⁸⁶ which created an interesting and devastating twist. Prior to the massacre, and even as late as May 29, 1989, the Beijing Radio Service broadcast a statement by the Ministry of Radio, Film, and Television stressing that Chinese radio and television stations were the mouthpieces of the party, the government, and the people.¹⁸⁷ Eventually, "[w]hen the

175. See Joan Chen's *Xiu Xiu*, *supra* note 11 (stating that the movie swept the 1998 Golden Horse Awards, which are Taiwan's Oscar equivalents).

176. *See id.*

177. *See id.*

178. *See* Dawson, *supra* note 11, at 28.

179. *See id.*

180. *Id.*

181. *See* STARR, *supra* note 6, at 243.

182. *See id.*

183. *See id.*

184. *See id.* at 243-44.

185. *See id.*

186. *See id.*

187. *See* Jakobson, *supra* note 33, at 12. On June 3, 1989, martial law troops began to

newspapers and television started to report on the protests by the students, without branding them troublemakers, it was interpreted as something officially sanctioned.”¹⁸⁸ This led the Chinese people to believe it was permissible, even safe, to support the protesting students.¹⁸⁹ The news reports evoked sympathy and mobilized citizens to become involved in order to topple the hard-line leadership.¹⁹⁰

The misunderstanding of the government’s intentions and the misplaced trust in the CCP resulted in many deaths and injuries.¹⁹¹ Immediately after the violence of Tiananmen Square subsided, the censor regained control and increased its patrol of the media, despite the legal and political implications.¹⁹² Nevertheless, the close encounters with free speech continue to persist in the minds of the Chinese, and create a sense of hope, that ultimately such freedom might be achieved. As previously discussed, once the uproar following Tiananmen Square diminished, the government did seem to loosen the reins on the media for a few years during the 1990s, even if it was just for a short time.¹⁹³ Thus, the question remains: is freedom of speech a possibility in the PRC?

III. FREEDOM OF SPEECH IN THE PEOPLE’S REPUBLIC OF CHINA? CHINESE VERSUS WESTERN VIEWS

The PRC is frequently criticized for failing to provide freedom of speech, among other fundamental freedoms, to its citizens.¹⁹⁴ Those who speak out against the government often pay a heavy price.¹⁹⁵ Ideally, the government of the PRC will come to realize that freedom of speech is important to a successful and fruitful society¹⁹⁶ and will subsequently enforce this right. Hong Kong, for example, flourished under British democratic influences

“force their way through the streets of Beijing towards Tiananmen Square, firing indiscriminately at civilians.” *Id.* at 18.

188. *Id.* at 14.

189. *Id.*

190. *Id.*

191. *See id.*

192. *See id.* at 11, 16, 19.

193. *See China Country Report 1998, supra* note 3, at 839, 850–52.

194. *See id.* at 850.

195. *See 48 Journalists, supra* note 4.

196. *See A. Lin Neumann, Press Freedom Under the Dragon: Can Hong Kong’s Media Still Breathe Fire?*, COMM. TO PROTECT JOURNALISTS, Sept. 1997, at 2–3, available at http://www.cpj.org/pubs/regionalreports/hong_kong/.

that included such individual rights.¹⁹⁷ Convincing the PRC to create similar freedoms on the Chinese mainland, though, may be a complicated goal.¹⁹⁸ Nonetheless, incorporating freedom of speech into a socialist society is not impossible.

It is sometimes difficult for Western cultures to comprehend the PRC's lack of interest in civil and political rights.¹⁹⁹ It may further understanding, however, if the societal differences that play a crucial role in determining the existence of freedom of speech are considered. It often seems that Westerners, "believe not only that [their] position on these issues is correct, but that it is the *only* correct position and thus should be universally accepted."²⁰⁰ For example, Westerners scorn the PRC for limiting an individual's access to the political process or for failing to protect people from "illegitimate interference by other individuals or by the state."²⁰¹ On the other hand, the Chinese government scoffs at the negligence of Western nations in focusing on economic and social rights such as providing citizens with employment, food, education, and health care.²⁰² These differences are examined in this section.

Many factors exist that could influence the potential for the PRC to achieve some degree of free speech. Westerners must remember that although a Chinese version of free speech may not parallel Western ideologies exactly, some amount of free speech is better than none.²⁰³ With practical changes in governmental policy and attitude, freedom of speech may be a possibility not subject to prohibition.

A. *Political Ideologies and Legal Considerations Influence Freedom of Speech in the PRC*

The Constitution of the PRC is the ultimate ruling body of law in all of China, including Hong Kong.²⁰⁴ It was instituted in

197. *See id.*

198. *See* R.P. Peerenboom, *What's Wrong with Chinese Rights?: Toward a Theory of Rights with Chinese Characteristics*, 6 HARV. HUM. RTS. J. 29, 57 (1993).

199. *See* STARR, *supra* note 6, at 204.

200. *Id.* at 197.

201. *Id.* at 204.

202. *See id.* at 204-06.

203. *See* Peerenboom, *supra* note 198, at 57.

204. *See* Cullen, *supra* note 18, at 387-88.

1982.²⁰⁵ The Constitution provides certain fundamental freedoms for the people,²⁰⁶ including freedom of speech.²⁰⁷ Article 35 of the Constitution provides, “citizens of the People’s Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.”²⁰⁸ The dilemma then arises: although the PRC has constitutional provisions in place regarding certain freedoms, these freedoms often are not recognized in practice.²⁰⁹

1. Socialist Ideologies Clash with Western Notions of Freedom of Speech

Socialist dogma dictates a non-individualistic society.²¹⁰ Because the PRC is a socialist state, the rights of the individual are generally secondary to those of the state.²¹¹ In fact, the preamble

205. XIANFA (1982).

206. See *id.* art. 35. Other articles provide for other fundamental rights. *Id.* ch. 2. For example, Article 34 provides for the right to vote, Article 36 provides for freedom of religion, and Article 45 provides citizens “the right to material assistance from the state and society when they are old, ill or disabled.” *Id.* arts. 34, 36, 45.

207. *Id.* art. 35.

208. *Id.*

209. See Peerenboom, *supra* note 198, at 29, 34, 56; see also STARR, *supra* note 6, at 60 (stating that the Constitution is “best understood as a mission statement or policy platform It was not intended, nor does it function, as a set of fixed principles against which specific laws and practices are measured and overturned if found to be at odds.”).

210. See Peter Meyer, *The International Bill: A Brief History, in THE INTERNATIONAL BILL OF HUMAN RIGHTS*, at XXXI n.* (Paul Williams ed., 1981). Deng Xiaoping created a system of “socialism with Chinese characteristics.” STARR, *supra* note 6, at 79. Communism is a subset of socialism. See WEBSTER’S THIRD NEW INT’L DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 460 (Philip Babcock Gove ed., 1986) [hereinafter WEBSTER’S DICTIONARY]. This Comment considers socialist ideologies in general. Socialism is defined as “a stage of society that in Marxist theory is transitional between capitalism and communism” and is “any of various theories or social and political movements advocating or aiming at collective or governmental ownership and administration of the means of production and control of the distribution of goods.” *Id.* at 2162. Compare communism, which holds a narrower meaning. *Id.* at 460. Communism is defined as:

[A] social and political doctrine or movement based upon revolutionary Marxian socialism that interprets history as a relentless class war eventually to result everywhere in the victory of the proletariat and the social ownership of the means of production with relative social and economic equality for all and ultimately to lead to a classless society.

Id.

211. See Meyer, *supra* note 210, at XXIX–XXXI n.* During the drafting and adoption process of the International Bill of Human Rights, several countries, including countries whose governments and cultures were based upon socialist and communist ideologies like the USSR, “wanted to subordinate the individual to the state.” *Id.* at XXXI n.*; see also

of the Chinese Constitution²¹² evidences the conflict of Chinese versus Western ideologies. The government of the PRC firmly believes in the socialist goal of uniting workers, peasants, and intellectuals to build a classless society.²¹³ The preamble states:

The socialist transformation of the private ownership of the means of production has been completed, the system of exploitation of man by man abolished and the socialist system established. The people's democratic dictatorship led by the working class and based on the alliance of workers and peasants, which is in essence the dictatorship of the proletariat, has been consolidated and developed The exploiting classes as such have been abolished in our country The Chinese people must fight against those forces and elements, both at home and abroad, that are hostile to China's socialist system and try to undermine it.²¹⁴

Given this belief in an aggregated society, it is not surprising that individualistic freedoms, such as speech, are frequently suppressed.²¹⁵

Socialist tenets directly clash with the convictions of the United Nations and truly democratic societies.²¹⁶ In clear contrast to the PRC's beliefs, the United Nations and Western cultures strongly believe in the rights of the individual.²¹⁷ In light of the lessons learned from two world wars and countless acts of terrorism, many countries banded together to create the United Nations.²¹⁸ The United Nations' goal is to implement international law that protects the rights of the citizens of U.N. member countries.²¹⁹ Reconciling belief systems in order to achieve the United Nations' goal, however, can be challenging. For Western countries, it is a *fundamental* belief that "human beings have rights, solely by virtue of being human."²²⁰ Western

STARR, *supra* note 6, at 197-98.

212. See XIANFA pmb. (1982).

213. See *id.*

214. *Id.*

215. See High Commissioner M. Robinson Briefs Commission on Human Rights on Situation of Kosovar Refugees, M2 PRESSWIRE, Apr. 12, 1999, available at LEXIS, News Library, News Group File.

216. See STARR, *supra* note 6, at 197-98, 204; see also Meyer, *supra* note 210, at XXXI.

217. See Carter, *supra* note 78, at ix.

218. See Tom J. Farer, *Introduction* to THE INTERNATIONAL BILL OF HUMAN RIGHTS, at XV (Paul Williams ed., 1981)

219. See *id.*

220. Peerenboom, *supra* note 198, at 37.

societies derive their ideas of individual rights from philosophical traditions extending from classical Greek thought through the European Enlightenment.²²¹ Entire political systems and economies are based upon these beliefs.²²²

In 1966, the U.N. General Assembly adopted the International Bill of Human Rights (IBHR).²²³ The IBHR includes the Universal Declaration of Human Rights,²²⁴ the International Covenant on Economic, Social and Cultural Rights (ICESCR),²²⁵ and the International Covenant on Civil and Political Rights (ICCPR).²²⁶ These covenants have become the basis for the laws of many countries worldwide.²²⁷ For example, the ICCPR serves as the foundation of the Basic Law of Hong Kong and the Bill of Rights Ordinance (BORO) in Hong Kong.²²⁸

In 1977, U.S. President Jimmy Carter signed the covenants of the IBHR.²²⁹ In the foreword to the IBHR he said:

[t]he covenants that I signed in 1977 are unusual in the world of international politics and diplomacy. They say absolutely nothing about powerful governments or military alliances or the privileges and immunities of statesmen and high officials. Instead, they are concerned about the rights of individual human beings and the duties of governments to the people they are created to serve.²³⁰

221. STARR, *supra* note 6, at 198.

222. *See id.*

223. *International Bill of Human Rights*, G.A. Res. 217A(III) of 10, U.N. GAOR, at 1; *see also* Carter, *supra* note 78, at ix. "In 1976 the General Assembly adopted the two detailed Covenants which complete The International Bill of Human Rights; and in 1976, after the Covenants had been ratified by a sufficient number of individual nations, the Bill took on the force of international law." *Preface to THE INTERNATIONAL BILL OF HUMAN RIGHTS* (Paul Williams ed., 1981).

224. *Universal Declaration of Human Rights*, G.A. Res. 217 III(A), U.N. GAOR, 3d Sess., at 4, U.N. Doc. A/810 (1948).

225. *International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 10, U.N. Doc. A/6316 (1966).

226. *International Covenant on Civil and Political Rights*, G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 21, U.N. Doc. A/6316 (1966).

227. *See* Farer, *supra* note 218, at XVIII (noting that non-communist countries in Europe, and the Western Hemisphere, generally "took the essential norms" of the documents and "embodied them in regional conventions."). Additionally, they "established systems of surveillance and enforcement," including human rights courts and commissions that exceed the monitoring procedures of the United Nations. *Id.*

228. *See* Cullen, *supra* note 18, at 389.

229. Carter, *supra* note 78, at ix; *see also* Meyer, *supra* note 210, at XLIV.

230. Carter, *supra* note 78, at ix.

Communist nations were hesitant to adopt the IBHR without major revisions.²³¹ The Soviet Union “found the Declaration defective” claiming that “a number of articles completely ignore the sovereign rights of democratic governments.”²³² During the drafting of the IBHR, a Russian delegate explained, “[i]n a society where there are no rival classes . . . there can not [sic] be any contradiction between the government and the individual since the government is in fact the collective individual Therefore the problem of the State and the individual, in its historical sense, does not exist.”²³³

Thus, according to socialist philosophy, the state and the individual are already equal.²³⁴ Consequently, specifically designated individual rights would be unnecessary because granting rights to the state automatically creates rights for individuals by way of the state.²³⁵

Furthermore, abiding by such international rules transgresses Chinese notions of sovereignty.²³⁶ The PRC “interprets the history of their [sic] interaction with the outside world during the nineteenth century as a long series of painful episodes of national humiliation in which foreign powers constantly trampled on China’s sovereignty.”²³⁷ When the PRC was officially founded in 1949, Mao marked the occasion by saying, “[o]urs will no longer be a nation subject to insult and humiliation. We have stood up.”²³⁸ The government of the PRC is very sensitive to encroachments on its sovereignty.²³⁹ The government

regards foreign comment on its handling of the civil and political rights of its citizens as a serious infringement. The position is not irrational: imagine the reactions of the American government were the Chinese to make continued American investment in joint ventures contingent on Congress’s strengthening affirmative action programs, for example.²⁴⁰

231. See Meyer, *supra* note 210, at XXX–XXXI.

232. *Id.* (quoting the delegate from the Soviet Union).

233. *Id.* at XXXI n.*.

234. See *id.*

235. See *id.*

236. See STARR, *supra* note 6, at 210.

237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.*

As a member of the international community, however, the PRC may have to find an acceptable compromise to maintain positive foreign relations and for continued involvement in organizations like the World Trade Organization.²⁴¹

Eventually, communist countries, including the PRC, which joined the United Nations in 1945,²⁴² did sign the ICCPR.²⁴³ The PRC, however, has not *ratified* the covenant.²⁴⁴ The concern persists that although the PRC includes provisions for freedom of speech in its constitution, the Chinese government will not abide by its promise to provide such freedoms because of its unwavering ideologies.²⁴⁵ In addition, several other legal factors affect freedom of speech in the PRC.

2. Legal Considerations Affecting Chinese Freedom of Speech: The Rule of Law, the Judiciary, and the Hesitation to Litigate

Another barrier to achieving freedom of speech in the PRC, according to a Western definition of this right, involves the Chinese view of the rule of law.²⁴⁶ The government of the PRC controls the rule of law, and thus “prevents the development of a genuinely independent judiciary, and renders meaningless the concept of constitutional review.”²⁴⁷ For instance, Article 5 of the Constitution states that the government is supposed to follow the law,²⁴⁸ but due to socialist ideologies, the government *is* the law.²⁴⁹

241. *Id.* at 300; *see also* Madeleine K. Albright (Secretary of State) & Harold Hongju Koh (Assistant Secretary for Democracy, Human Rights and Labor), *Press Briefing on the Release of Country Reports on Human Rights Practices, 1999* (Feb. 25, 2000), available at <http://secretary.state.gov/www/statements/2000/000225.html> (last visited Aug. 18, 2000) [hereinafter Albright Press Briefing].

242. UNITED NATIONS, *List of Member States*, at <http://www.un.org/Overview/unmember.html> (last modified Dec. 18, 2000) [hereinafter *List of Member States*].

243. *China Country Report 1998*, *supra* note 3, at 838. The PRC signed the ICCPR in October 1998. *Id.*

244. *Id.*; *see also* UNITED NATIONS, *The International Covenant on Civil and Political Rights: Status of Ratifications*, at http://www.unhchr.ch/html/meju3/b/a_ccpr.htm (last modified Jan. 19, 2001) [hereinafter *Status of Ratifications*].

245. *See* Frances H. Foster, *The Illusory Promise: Freedom of the Press in Hong Kong, China*, 73 *IND. L.J.* 765, 767–68 (1998).

246. *See* Peerenboom, *supra* note 198, at 32–33.

247. *Id.*

248. XIANFA art. 5 (1982).

249. *See* Peerenboom, *supra* note 198, at 33. The author quotes Mao’s observation that the law and courts are “instruments with which one class oppresses another. As far as the hostile classes are concerned these are instruments of oppression. They are violent

In order for individual freedom of speech to become a practical reality, an independent rule of law is necessary.²⁵⁰ As it currently stands, however, the law is “a tool of socialism” and “must serve the Party rather than individuals.”²⁵¹

Presently, the Supreme People’s Court does not possess the power to influence freedom of speech in one way or another,²⁵² which further degrades this right for the people. The judiciary of the PRC is merely:

considered an organ of government subordinate to the legislature Its decisions do not carry the weight of *stare decisis*. The authority to interpret the Constitution and statutes, and to annul unconstitutional administrative regulations, are vested in the Standing Committee of the NPC [National People’s Congress], not in the Supreme People’s Court.²⁵³

In order to justify the outcome of cases challenging the constitutionality of laws, the court generally defers to legislative or administrative authority.²⁵⁴ Additionally, any published opinions do not include concurring or dissenting opinions, philosophical discussions, or considerations of policy that could provide significant sources of dialogue for scholars as well as the public.²⁵⁵ Also, trials “have essentially been closed to public scrutiny, with only outcomes revealed, if any information at all.”²⁵⁶

The lack of judicial strength to question legislative decisions facilitates the abuse of power by the government.²⁵⁷ The judiciary serves as a simple rubber stamp and fails to provide a valid check on legislative or governmental behavior pertaining to free speech or any other civil right.²⁵⁸ Public unawareness regarding the details of individual cases²⁵⁹ eliminates another check on the

and certainly not ‘benevolent things.’” *Id.*

250. *See id.*

251. *Id.*

252. *See* Hilary K. Josephs, *The Chinese Democracy Movement in U.S. Perspective*, 10 UCLA PAC. BASIN L.J. 285, 322 (1992).

253. *Id.*

254. *Id.* at 322–23.

255. *See id.* at 323.

256. *Id.*

257. *See* Peerenboom, *supra* note 198, at 35; *see also* *China Country Report 1999*, *supra* note 3, at 1018, 1028; *China Country Report 1998*, *supra* note 3, at 843–44 (reporting that “[c]orruption and conflicts of interest . . . affect judicial decisionmaking.”).

258. *See* Josephs, *supra* note 252, at 323.

259. *See id.*

government by preventing the people from analyzing constitutional challenges or cases concerning freedom of speech.²⁶⁰ This undoubtedly inspires apathy among the people by creating the illusion that there are no problems with the current system.²⁶¹ The Chinese people are provided only with the outcomes of cases.²⁶² Thus, details surrounding the cases, or information regarding the ways in which the parties violated particular rules, are unavailable to the public.²⁶³ The average Chinese citizen cannot actively analyze the government's adjudicative actions because the current judicial system does not provide citizens with access to enough information to effectively evaluate the validity of constitutional challenges or their resolutions.²⁶⁴

Furthermore, the PRC employs Article 51 of the Constitution to justify abuse of individual rights by the state.²⁶⁵ Unlike a democratic government, within a socialist state, such as the PRC, the interests of the state equal or even trump the interests of the individual.²⁶⁶ Because an individual's rights are equal to those of the state, an exercise of those rights necessarily infringes upon the interests of the state.²⁶⁷

260. *See id.*

261. *See Peerenboom, supra* note 198, at 35.

262. *See Josephs, supra* note 252, at 323.

263. *See id.* The author elaborates further on this point, stating:

How words or actions of defendants violated the prohibition against counterrevolutionary offenses is not publicized. The Chinese government will not allow the outer limits of regulation to be tested and explored at public trials. If it did, the courts would be compelled to examine whether the law on counterrevolutionary incitement was fair and not unacceptably vague. Unfortunately, the courts in China have acquiesced in this erosion of due process guarantees.

Id.

264. *See id.*; *see also China Country Report 1999, supra* note 3, at 1020–21 (explaining that the Chinese government is making efforts to “reform the legal system and to disseminate information about new legislation.”). The PRC has created initiatives to “improve the transparency and accountability of the judicial and legal systems” and is attempting to better “educate lawyers, judges, prosecutors and the public” regarding new laws, particularly those that could enhance citizens’ rights, including due process rights. *Id.* The enforcement of the new laws is poor, however, especially regarding the Criminal Procedure Law, “and the law routinely is violated in the cases of political dissidents.” *Id.*

265. Peerenboom, *supra* note 198, at 33; *see also* XIANFA art. 51 (1982) (stating that “[c]itizens of the People’s Republic of China, in exercising their freedoms and rights, may not infringe upon the interests of the state, of society or of the collective, or upon the lawful freedoms and rights of other citizens.”).

266. *See Meyer, supra* note 210, at XXXI n.*.

267. *See Peerenboom, supra* note 198, at 33.

If an individual challenges the PRC's suppression of his or her right to free speech, there is little, if any, true recourse available.²⁶⁸ The PRC has no independent agency, akin to the U.S. judiciary, to review its laws.²⁶⁹ Essentially, genuine constitutional review does not exist.²⁷⁰ In fact, according to the PRC's Constitution, the "power to interpret and enforce the constitution" does not belong to the PRC's judiciary or another independent agency, but rather belongs to the National People's Congress (NPC).²⁷¹ Because the NPC drafts and adopts the laws, however, "[i]t seems unlikely that the standing committee would interpret any statute or amendment as inconsistent with the constitution or the basic principles of the statutes."²⁷² The bottom line is that a genuine right to freedom of speech requires an independent body with the power to review laws that may abuse this right.²⁷³

The government of the PRC takes the primacy of the party idea to an extreme, yet party control should be limited. While it is true that freedoms in any country, including the United States, are not completely boundless, at least individual rights exist.²⁷⁴ For example, in the United States, legislation can override individual rights in certain circumstances, but significant rights endure.²⁷⁵ Additionally, in Article 29 of the Universal Declaration of Human Rights, the United Nations provides a boundary on the limitations imposed against an individual's rights and freedoms when it is in the public's best interest.²⁷⁶ Conversely, the CCP's control over

268. *See id.* at 34.

269. *Id.*

270. *Id.*

271. *Id.*

272. *Id.*

273. *See id.*

274. *See id.* at 31 n.9.

275. *See id.*; *see also* *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (holding that incitement to violence is unprotected speech as long as there is a danger of imminent unlawful action); *United States v. O'Brien*, 391 U.S. 367, 376 (1968) (explaining that the act of burning a draft card in a public place is unprotected speech); *Cox v. New Hampshire*, 312 U.S. 569, 576 (1941) (finding constitutional a state statute prohibiting unlicensed parades or processions).

276. *See Universal Declaration of Human Rights*, *supra* note 224, at 9. Article 29(2) states:

[I]n the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

free speech is oppressive. Rather than endeavor to provide rights with practicable limitations, it merely forbids certain speech altogether.²⁷⁷

The apathetic attitude of the citizenry in the PRC toward the rule of law further promotes the government's ability to dictate their actions.²⁷⁸ In addition to the aforementioned hindrances to freedom of speech, the Chinese are generally hesitant to litigate.²⁷⁹ Instead, arbitration is the preferred method because according to Chinese tradition, litigation is shameful, risky, and a waste of time and money.²⁸⁰ Also, arbitration enables the parties to "save face,"²⁸¹ which is very important in Chinese culture,²⁸² as well as enjoy full participation in the proceedings.²⁸³ Without legal challenges made by the people regarding the abuse of their rights, the overall development of an essential rights attitude and sentiment wanes.²⁸⁴ In addition to differing political and legal ideologies, the PRC will find it difficult to implement freedom of speech, as Western cultures understand it, because of cultural and philosophical differences.²⁸⁵

Id.; see also *International Covenant on Civil and Political Rights*, art. 19, *supra* note 226, at 28 (stating that freedom of expression carries special duties and responsibilities, and therefore may be subject to certain restrictions to protect the rights or reputations of others as well as to protect national security, public order, public health, or morals).

277. See *China Country Report 1999*, *supra* note 3, at 1036–40.

278. See Peerenboom, *supra* note 198, at 35.

279. See *id.* at 36.

280. See *id.* at 36, 54–55 (stating that "[c]onflicts were to be resolved through informal, extrajudicial means such as mediation spearheaded by a local elder.").

281. The phrase "save face" will be used hereinafter to reference the desire of the Chinese people, government, or society to avoid humiliation accompanying the public display inherent in litigating disputes. To "save face" means to maintain dignity, prestige, or standing in the eyes of others. THE AMERICAN HERITAGE DESK DICTIONARY 354 (Fernando de Mello Vianna ed., 1981). Saving face is frequently a "major consideration in diplomatic negotiations." WEBSTER'S DICTIONARY, *supra* note 210, at 811. John Bryan Starr comments, "it is unquestionably true that finding oneself shamed in public—losing face—is for a Chinese person an experience to be avoided if at all possible." STARR, *supra* note 6, at 76.

282. See STARR, *supra* note 6, at 76.

283. See Peerenboom, *supra* note 198, at 54–55.

284. *Id.* at 35, 36 n.30.

285. See *id.* at 36–38.

B. Cultural and Philosophical Distinctions Influence the PRC's Definition of Freedom of Speech

One encumbrance to achieving a Western-type of freedom of speech in the PRC is the government's firm belief in Confucianism, which "rejects the assumption that individuals are entitled to certain inalienable rights from birth,"²⁸⁶ as Western societies presume.²⁸⁷ Rather than believing that the state should protect such fundamental human rights as freedom of speech, the PRC's leaders "hold that rights flow from the state in the form of a gratuitous grant that can be subjected to conditions or abrogation by the unilateral decision of the state."²⁸⁸ Confucianism teaches that an individual "must earn rights by achieving some minimal level of personhood,"²⁸⁹ and "requires demonstration of credentials as a participating member of society."²⁹⁰ This hierarchical philosophy leads to a belief that unless an individual has attained a certain status in society, he or she is powerless to insist upon or even possess the right to particular freedoms.²⁹¹ Such feelings of ineffectiveness promote indifference among the people.²⁹²

An additional cultural impediment to freedom of speech is a lack of rights consciousness.²⁹³ Although in recent years there have been increasing incidents of protests, uprisings, and dissension, the PRC government continues to vigorously crack down on dissidents.²⁹⁴ The government warned the news media to halt public discussions about political reform because it was afraid such dialogue would promote instability in the PRC.²⁹⁵ Regardless

286. *Id.* at 40. "Chinese leaders and intellectuals never developed a strong theory of rights to protect the individual against the dominant interests of the majority and state." *Id.*

287. *See id.* at 41 n.58.

288. R. Randle Edwards, *Civil and Social Rights: Theory and Practice in Chinese Law Today*, in HUMAN RIGHTS IN CONTEMPORARY CHINA 44-45 (R. Randle Edwards et al. eds., 1986).

289. Peerenboom, *supra* note 198, at 40-41.

290. *Id.* at 41.

291. *See* STARR, *supra* note 6, at 127; *see also* Peerenboom, *supra* note 198, at 40-41.

292. *See* Peerenboom, *supra* note 198, at 35.

293. *See id.*

294. *See id.* at 35 n.30; *see also* Arnold Zeitlin, *China Crackdown on Dissidents Tests Hong Kong Press Rights*, THE FREEDOM FORUM ONLINE, Dec. 28, 1998, at <http://www.freedomforum.org/international/1998/12/28crackdown.asp>. Tiananmen Square and the speaking out of dissidents are examples of recent incidents of insurrection. *Id.*

295. *See* Peerenboom, *supra* note 198, at 35 n.30.

of any clandestine desires of the Chinese people to demand greater rights, fears of repercussions by the government, feelings of powerlessness, and the aforementioned hesitation to litigate have created an overall atmosphere of apathy.²⁹⁶ Generally, the Chinese people are not sufficiently standing up for their right to freedom of speech to make a difference in governmental policy.²⁹⁷ They are not adequately demanding constitutional review or a more powerful judiciary.²⁹⁸

In sum, the cultural and philosophical differences, combined with the vastly different political ideologies and legal approaches, create a great gulf in understanding between Chinese and Western societies, and make individual freedoms difficult to achieve.²⁹⁹ Furthermore, until the people actively fight for their rights, the government will disregard its constitutional promise to protect freedom of speech.³⁰⁰ If these changes are made, however, freedom of speech can become a reality.

IV. FREEDOMS WORTH ACQUIRING REQUIRE INCENTIVE AND A WILLINGNESS TO CHANGE

As discussed above, signs of censorship remain prevalent throughout the PRC.³⁰¹ Ironically, the PRC has only to look to the internal mechanisms already conveniently in place in order to implement sweeping changes that would easily eliminate censorship and incorporate freedom of speech.³⁰² For example, the PRC's newly re-acquired region of Hong Kong provides a model of the benefits of free speech, as well as a potentially workable system of government, that incorporates both socialist philosophies and western ideas of an independent judiciary and free speech. Although these notions are difficult to reconcile (and such reconciliation would be better addressed in a separate writing), the situation in Hong Kong proves that allowing certain freedoms is extremely advantageous. Additionally, the

296. *See id.* at 35–36.

297. *See id.* at 35.

298. *See id.*

299. *See STARR, supra* note 6, at 197–98.

300. *See Peerenboom, supra* note 198, at 35–36.

301. *See supra* Part II.B–D.; *see also China Country Report 1999, supra* note 3, at 1036–40.

302. *See Peerenboom, supra* note 198, at 55–56; *see also supra* Part III.A–B.; *infra* Part IV.A.2.

determination of whether the international community should take on a greater role in urging the PRC to use its internal mechanisms to achieve free speech must be addressed. Also, if international involvement is a reasonable option, then the international community must determine the appropriate type of pressure to apply.

A. Options to Resolve a Persistent Problem

Although a Chinese version of free speech may never live up to Western standards, some degree of free speech is necessary to prevent punishment of the media for its actions. The PRC has all the necessary provisions in place. As stated above, Article 35 of the Constitution of the PRC expressly provides for freedom of speech.³⁰³ Moreover, the PRC has already signed the ICCPR that calls for free speech.³⁰⁴ Now, all the government has to do is abide by its own rules. The Hong Kong Special Administrative Region of the PRC (HKSAR) may provide a glimpse of a system that embodies Chinese ideals, but that utilizes its rule of law in such a way that makes freedom of speech feasible.

1. Freedom of Speech Under the Basic Law of Hong Kong as a Model for the PRC

Hong Kong is a quintessential Chinese society with a unique hybrid mix of socialist and democratic ideals.³⁰⁵ Until the Treaty of Nanjing was signed in 1842, and a ninety-nine year lease was signed in 1898 granting the British control over the area, Hong

303. See XIANFA art. 35 (1982).

304. See *China Country Report 1998*, *supra* note 3, at 838; see also *The International Bill of Human Rights*, *supra* note 223, at 28. Article 19 of the ICCPR states:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Id.

305. See Cullen, *supra* note 18, at 404; see also *infra* Part IV.A.1.

Kong consisted of barren land and fishing villages under Chinese rule and influence.³⁰⁶ Although it never became a democracy,³⁰⁷ Hong Kong blossomed into a flourishing metropolis due to the freedoms granted by the British.³⁰⁸ Hong Kong “does not now enjoy, nor has it ever enjoyed, full democratic-representative government.”³⁰⁹ Nevertheless, it is clear that “[d]espite this shortcoming, Hong Kong has enjoyed, and continues to enjoy, social, economic and political freedom the equal of or better than that enjoyed in many near neighbors which have had democratic-representative government sometimes for decades.”³¹⁰

Today, the area is a thriving center of international trade and finance.³¹¹ From a business standpoint, Hong Kong has relied on a “continual supply of accurate, uncensored economic information” to become a major financial player in the global marketplace.³¹² There is an inextricable relationship between the economic market and the free flow of information that Hong Kong possessed, at least prior to its recent handover to the PRC.³¹³

Hong Kong has enjoyed a vibrant media with the world’s highest per capita concentration of newspapers; two broadcast television stations; satellite, interactive, and cable TV; the Internet; and multiple radio broadcasters.³¹⁴ Historically, freedom of speech was not as regulated as it is in the PRC, and reporters are still not required to have licenses.³¹⁵ Hong Kong attracts filmmakers, electronic media, and regional media because it is a

306. See STEVE SHIPP, *HONG KONG, CHINA: A POLITICAL HISTORY OF THE BRITISH CROWN COLONY’S TRANSFER TO CHINESE RULE* 7, 9 (1995); see also STARR, *supra* note 6, at 246–47.

307. See Cullen, *supra* note 18, at 385.

308. See Neumann, *supra* note 196, at 2–3.

309. Cullen, *supra* note 18, at 385, 399, 404. The author points out that Hong Kong is “an overwhelmingly Chinese society. Chinese values, not surprisingly, dominate. Indeed, in many ways, Hong Kong retains more tradition . . . than the PRC Mainland.” *Id.* at 404. Also, as is typical within a socialist ideology, when courts must balance societal interests versus individual interests, there is greater concern for the societal interests. *Id.* at 399–401.

310. *Id.* at 385.

311. See Neumann, *supra* note 196, at 3.

312. *Id.*

313. *Id.* There are persistent fears that as time progresses after the handover, the HKSAR will lose access to this valuable information and its premier financial position. *Id.* at 2.

314. Cullen, *supra* note 18, at 391.

315. See *id.*

perfect location for "China watching."³¹⁶ Additionally, the area has high quality communication links to support a strong infrastructure.³¹⁷ Overall, the Hong Kong press is represented as "the only Chinese language press . . . that could justifiably be described as free."³¹⁸

The citizens of the area realize freedom of speech is critical because Hong Kong's

robust economy flourished in a climate of free expression that allowed for the rapid exchange of information necessary for the smooth functioning of the regional economy. Investors will still need Hong Kong's free press if they are to understand the dynamics of the changes that are underway in China and the rest of Asia.³¹⁹

The mainland also understands the great importance of Hong Kong to its economy as a gateway to foreign exchange.³²⁰ Nevertheless, with regard to the repercussions of the infamous July 1997 handover of power from Great Britain to the PRC, concerns exist on the economy, on the now familiar freedoms in the region, and on the PRC generally.³²¹

316. *Id.* at 392. Hong Kong's location creates an ideal situation for journalists from all over the world to freely congregate and to easily access all of East Asia and beyond. *Id.* "Within six hours flying time from Hong Kong lives fifty-percent of the world's population." *Id.*

317. *Id.*

318. *Id.*

319. Neumann, *supra* note 196, at 3.

320. See STARR, *supra* note 6, at 249.

321. See STARR, *supra* note 6, at 246, 253, 261. "Two factors have made Hong Kong the successful financial center it is: the free flow of information and a careful adherence to the rule of law. Because neither of these is a characteristic of the People's Republic of China, both are in jeopardy." *Id.* at 261. The attitude of the government of the PRC about Hong Kong and its fairly democratic disposition historically has wavered. *Id.* at 252-53. For example, preceding the handover, the government's viewpoint was influenced by such factors as the Tiananmen Square massacre. *Id.* Starr said pro-democracy political groups evolved into formal political parties after the massacre, and Chinese authorities saw Hong Kong as "a hotbed of pro-democratic dissent and a potential threat to their own stability." *Id.* Furthermore, the author comments not only on the impact of the handover on the PRC and Hong Kong, but also on Taiwan:

How the Chinese government handles the aftermath of the transfer of sovereignty in Hong Kong is a matter of great moment. This vibrant financial center, which supplies nearly two-thirds of China's foreign direct investment, could become a stagnant urban backwater. Also, effectively administering Hong Kong would demonstrate to the people of Taiwan the viability of the "one country, two systems" formula under which China proposes eventually to reunify with its renegade province, while a failure to maintain Hong Kong's

The PRC and Great Britain created the Basic Law of Hong Kong Special Administrative Region of the People's Republic of China (Basic Law)³²² to function within a "One Country-Two Systems" approach to the handover.³²³ This system allows Hong Kong to continue its own economic, political, and social systems,³²⁴ as well as guarantees civil liberties, for at least another fifty years.³²⁵ The transition has not always been smooth and the Basic Law has been subject to some controversy.³²⁶ Nonetheless, it provides at least some fundamental protection to individual rights, including the freedom of speech.³²⁷

The Basic Law, which is the HKSAR's quasi-Constitution,³²⁸ directly incorporates provisions of the ICCPR.³²⁹ It is considered a quasi-Constitution because "[a]s a part of the PRC, the HKSAR, ultimately, is subject to the PRC Constitution of 1982, but the Basic Law is meant to be the dominant constitutional instrument in the HKSAR."³³⁰ Even under Chinese sovereignty, various sections of the Basic Law provide the framework for freedom of speech for the residents of the region.³³¹ These Basic Law sections are as follows: Article 27 guarantees that "residents shall have freedom of speech, of the press and of publication[;]"³³² Article 85 provides that the courts of the HKSAR "shall exercise judicial

political, economic, and social systems intact will confirm the expectations of many skeptics on Taiwan.

Id. at 246; *see also* SHIPP, *supra* note 306, at 81–83; Neumann, *supra* note 196, at 2–3.

322. The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, adopted Apr. 4, 1990, 29 I.L.M. 1511 (1990) [hereinafter Basic Law].

323. Cullen, *supra* note 18, at 387–88.

324. *See* STARR, *supra* note 6, at 246.

325. *See* Cullen, *supra* note 18, at 387–89.

326. *See* SHIPP, *supra* note 306, at 81–83 (discussing the somewhat rocky transition); *see also* Cullen, *supra* note 18, at 389. The author states that the Bill of Rights Ordinance (BORO), which was adopted on June 8, 1991 in response to the Tianamen Square tragedy, also was subject to much controversy. *See id.* Similar to the Basic Law, the BORO uses the ICCPR as a base source of provisions, and many of the same clauses are precisely incorporated from the ICCPR into both the BORO and the Basic Law. *Id.*

327. *See* Basic Law, art. 27, *supra* note 322, at 1525.

328. *See* Cullen, *supra* note 18, at 388.

329. *Id.* at 387, 389; *see also* Hong Kong Bill of Rights Ordinance, art. 16, 30 I.L.M. 1310, 1317 (1991) (stating that article 16 of the BORO guarantees freedom of opinion and expression, and utilizes the exact language as article 19 of the ICCPR, as does the Basic Law).

330. Cullen, *supra* note 18, at 387–88.

331. *See id.* at 398.

332. Basic Law, art. 27, *supra* note 322, at 1525.

power independently, free from any interference[;]"³³³ Article 2 "provides . . . that the HKSAR is to enjoy a 'high degree of autonomy[;]'"³³⁴ Article 8 secures the continuation of Hong Kong's legal system;³³⁵ and Article 39 states that the provisions of the ICCPR "shall remain in force."³³⁶ Currently, the PRC widely recognizes and accepts the Basic Law.³³⁷ Still, however, it is subject to great scrutiny and criticism.³³⁸

Most of the vitriol regarding the Basic Law stems from its failure to guarantee a full representative democracy.³³⁹ After extensive negotiations prior to the 1997 handover, the PRC and the leaders of Hong Kong fell short of adopting a fully representative system that was acceptable to both sides.³⁴⁰ In 1991, the people of Hong Kong did select the first popularly elected members of the Legislative Council (LEGCO).³⁴¹ Unlike a completely representative democracy, however, two-thirds of the LEGCO, which is a similar legislative body to the U.S. Congress, were appointed by the Governor of Hong Kong, or were elected from a pool of "mostly professional 'functional constituencies.'"³⁴²

333. *Id.* art. 85, at 1534.

334. *Id.* art. 2, at 1521. Article 2 states that "[t]he National People's Congress authorizes the Hong Kong Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law." *Id.*

335. *See id.* art. 8, at 1521. Article 8 states that "[t]he laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinance, subordinate legislation and customary law shall be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region." *Id.*; *see also* Cullen, *supra* note 18, at 388 (stating that to maintain autonomy as a region, it is important for Hong Kong to continue their legal system as guaranteed in Article 8 of the Basic Law).

336. Basic Law, art. 39, *supra* note 322, at 1526; *see also* Neumann, *supra* note 196, at 8. The author states that as a practical matter, however, it remains to be seen how the government of the PRC will adhere to these laws. *Id.* at 7-8. Furthermore, the relationship of three of these articles has not yet been clarified. *Id.* at 8. For example, Article 23 of the Basic Law may possibly provide an escape for the PRC. *Id.* It appears to contradict Articles 27 and 39 by "[i]nstructing] Hong Kong to pass laws prohibiting 'treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets.'" *Id.*; *see also* Cullen, *supra* note 18, at 398 (stating that "there is also a serious question as to the compatibility of Article 23 with Articles 27 and 39 of the Basic Law . . .").

337. *See* SHIPP, *supra* note 306, at 83.

338. *See* Cullen, *supra* note 18, at 388-89.

339. *Id.* at 388.

340. *See id.* at 389-91.

341. *Id.* at 389.

342. *Id.*

Additionally, the Head of Government in Hong Kong, who is similar to the U.S. President, is appointed.³⁴³ Subsequent attempts to increase voting rights and enable greater democracy created tension and animosity between the Hong Kong and PRC governments.³⁴⁴ Although it is argued that Chapter 3 of the Basic Law grants “wide-ranging guarantees of individual rights,” this fundamental weakness exists regarding total democratization and its direct link to implementing these rights.³⁴⁵

Conversely, “[t]wo of the key safeguards” of the HKSAR’s “remarkable mix of commercial and political freedom are the independent judiciary and freedom of the press” as granted by Articles 27, 8, and 85.³⁴⁶ The judiciary in the HKSAR steadfastly continues to maintain its independence even after the handover.³⁴⁷ This permits the judiciary to counteract its tendency toward deference to the legislative and executive branches (similar to the deference found on the PRC’s mainland) “to ensure that these safeguards are not undermined.”³⁴⁸ Despite a comparative lack of activism by the judiciary, especially compared to some Western court systems, litigation advocating certain rights, and regarding the Bill of Rights Ordinance, vigorously persists.³⁴⁹

In essence, the HKSAR judiciary “has a Common Law system with local characteristics.”³⁵⁰ It is widely influenced by Chinese cultural customs and values, but maintains its independence to review legal conflicts.³⁵¹ The PRC could adopt a similar approach to its own system. It could preserve basic cultural and political attitudes, but revise its legal system to allow for an independent judiciary (or at least a system of arbitration) to review individual rights conflicts, including those concerning freedom of speech. The PRC could ratify the ICCPR provisions similar to those articles adopted into the Basic Law and include

343. *Id.*

344. *See id.* at 390–91.

345. *Id.* at 388.

346. *Id.* at 416; *see also* Basic Law, arts. 8, 27, 85, *supra* note 322, at 1521, 1525, 1534.

347. *See* Cullen, *supra* note 18, at 416.

348. *Id.* at 401, 416. The author expresses concern that although the judiciary is independent, it does have the tendency to be deferential to these branches and to be hesitant toward judicial activism due to societal influences and cultural attitudes. *Id.* at 416.

349. *Id.* at 400.

350. *Id.* at 401.

351. *Id.* at 402.

them into its own system of laws. Although this would require that the PRC embrace some democratic ideals regarding certain individual freedoms and separation of powers, it would likely result in great benefits to the economy and the overall morale of the people, just as in the HKSAR. Convincing the PRC to take such action may not be such an easy task, however.

2. International Involvement to Force the PRC to Abide by Its Own Provisions

Achieving freedom of speech in the PRC may necessitate active participation by the international community. The PRC has made a commitment to the international community—first, when it joined the United Nations in 1945,³⁵² and then again when it signed the ICCPR in 1998³⁵³—regardless of the PRC's lack of recognition of *inherent* fundamental rights.³⁵⁴ Although it has not yet ratified the ICCPR,³⁵⁵ by signing it, the government has taken the first step toward adopting a freer system. Now it needs to take the next steps and ratify the ICCPR, incorporate the ICCPR's principles into the PRC's own set of laws, recognize an independent judiciary to review those laws, and acknowledge the articles in its own constitution. Nevertheless, the government still hesitates to make these essential strides.

Involvement by the international community is important to encourage the PRC to enable free speech by utilizing the tools so readily available. Because all nations are integral parts of an increasingly global society, it is imperative that nations try to overcome differences as well as understand and appreciate diverse cultures to effectively work together.

352. *List of Member States*, *supra* note 242.

353. *Status of Ratifications*, *supra* note 244.

354. *See The International Bill of Human Rights*, *supra* note 223, at 21. The Preamble to the ICCPR states:

In accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, . . . that these rights derive from the inherent dignity of the human person, . . . that . . . the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights"

Id.

355. *See China Country Report 1998*, *supra* note 3, at 838.

Inspiring major reforms in a nation requires serious incentives.³⁵⁶ The United States has taken the position that increased relations with the PRC, as opposed to isolating the country via trade sanctions, would better facilitate opportunities to engage the nation.³⁵⁷ For example, former U.S. President Bill Clinton maintained that renewal of China's "Most Favored Nation" trading status (now known as "Normal Trade Relations" (NTR))³⁵⁸ would allow the United States "the best opportunity to lay the basis for long-term sustainable progress in human rights and for the advancement of our other interests with China."³⁵⁹ Additionally, former U.S. Secretary of State Madeleine K. Albright said in a press briefing:

[T]he administration has negotiated an agreement with Beijing on China's accession to the WTO [(World Trade Organization)]. That agreement will benefit both countries economically, but it will also require China to follow international trading rules, open its regulations to public scrutiny, and reduce the role of state-owned enterprises. This should expand the rule of law and hasten the development of a more open society. The human rights situation in China will not be transformed overnight, but joining the WTO will add to the pressures welling up from within China for greater personal and political freedom.³⁶⁰

356. See President Clinton, U.S. Renews Most-Favored-Nation Trade Status for China: Summary of Secretary's Report, Opening Statement at a News Conference, Washington, D.C., (May 26, 1994), in 5 U.S. DEPT OF STATE DISPATCH 345, 345 (1994) [hereinafter President Clinton Summary].

357. See *id.*

358. MSNBC, *Between Two Giants: Disputes in the U.S.-China Relationship*, at http://www.msnbc.com/modules/china_disputes/data/data_toc.htm (last visited Oct. 13, 2000) [hereinafter *Between Two Giants*].

359. President Clinton Summary, *supra* note 356, at 345. Believing that engagement is the best alternative, President Clinton promoted, among other things, increased broadcasts for Radio Free Asia and the Voice of America, greater support for non-governmental human rights organizations in China, and "a voluntary set of principles for business activity in China." *Id.* He stated:

I believe the course I have chosen gives us the best chance of success on all fronts. We will have more contacts. We will have more trade. We will have more international cooperation. We will have more intense and constant dialogue on human rights issues. We will have that in an atmosphere which gives us the chance to see China evolve as a responsible power, ever-growing not only economically but growing in political maturity so that human rights can be observed.

Id.

360. Albright Press Briefing, *supra* note 241. While addressing the press, Harold

The continuous problems with the PRC, however, may render the avoidance of sanctions less palatable for the international community. Especially in light of the PRC's continually poor human rights record,³⁶¹ recent dissident crackdown,³⁶² "allegations of nuclear spying by Chinese scientists, campaign contribution scandals and massive trade surplus," avoiding sanctions is somewhat controversial.³⁶³ The current NTR status with the United States remains elusive.³⁶⁴ Critics of the present NTR policy suggest that the United States deny normal trade relations in response to the PRC's poor human rights record.³⁶⁵ The United States is no stranger to imposing trade sanctions against the PRC—it has limited trade with the PRC in the past.³⁶⁶ In fact, the sanctions against the PRC in protest of Beijing's 1989 violent reaction against protesters in Tiananmen Square still remain in force today.³⁶⁷

If implemented, sanctions must be used wisely, however, in order to motivate the PRC to utilize its laws and judicial system to develop free speech and greater human rights (or depending on one's perspective, to punish the PRC for making little progress in

Hongju Koh (Assistant Secretary for Democracy, Human Rights and Labor) made the following remarks about China and Cuba:

[W]e adopt what we call an inside-outside approach. Which is: On the one hand, we try to use tools of engagement to push them toward principle and, on the other hand, we try to use instruments of external examination to try to bring their conduct under closer scrutiny The critical point, it seems to me, is that we try to bring these countries into the international system, try to get them to play by international rules and try to engage with them on matters of principle. In both private and public conversations, we tell the truth, and we try to use those mechanisms that are available to focus the spotlight and to bring pressure in a variety of areas.

Id.

361. *China Country Report 1999*, *supra* note 3, at 1019.

362. *Id.* at 1039.

363. *Between Two Giants*, *supra* note 358. The report states that "permanent extension of the NTR status, which would mute the annual crisis in relations," continues to be a debatable issue for the U.S. government. *Id.*

364. *Id.*

365. See Albright Press Briefing, *supra* note 241.

366. See *Between Two Giants*, *supra* note 358.

367. *Id.* The U.S. Tiananmen Square sanctions prohibit "sales of military equipment and weapons; export of U.S. satellites (subject to presidential waiver); loans from the Overseas Private Investment Corporation; assistance from U.S. Trade Development Agency; export licenses for crime control and detection equipment to China; and liberalization of export controls on technology." *Id.*

these areas).³⁶⁸ Historically, unilateral sanctions have been unsuccessful and:

[I]n the majority of cases they fail to change the conduct of the targeted country or, at best, are a contributory but probably not a decisive factor in securing the changes of behavior or policy that we seek. Sanctions take time to work. They may exact significant costs on other U.S. interests. So sanctions are not a panacea, they are not a “quick fix,” and they are not cost-free.³⁶⁹

If used incorrectly, sanctions can impede the attainment of the desired goal and undermine policy objectives.³⁷⁰ The sanctioning country (in this case, the United States) must ensure that limiting trade will be effective and bring about the desired results, as opposed to inflicting hardships upon its own businesses and farms.³⁷¹ If limitations are ineffective, the imposing country merely looks powerless and foolish, and any value to sanctions as a foreign policy tool is diminished.³⁷²

Generally, it is preferable “to aggressively pursue all available diplomatic options” first.³⁷³ If those prove inadequate or fail, then broad, *multilateral* sanctions are most effective.³⁷⁴ These “maximize international pressure on the offending state” by showing a unified purpose while minimizing the overall burden upon a single nation.³⁷⁵ Multilateral sanctions are also more difficult to evade or undermine than unilateral sanctions.³⁷⁶ Additionally, “the power of positive inducement is often more productive in achieving our goals.”³⁷⁷ Although it might be a time-consuming task, assisting countries in the transition to an increasingly democratic system enables constant monitoring and scrutiny of progress.³⁷⁸ Nevertheless, convincing the PRC to allow

368. See *Proceedings of the Senate Task Force on Econ. Sanctions*, 105th Cong. 14 (Sept. 8, 1998) (statement of Stuart E. Eizenstat, Under Sec’y of State for Econ., Bus. and Agric. Affairs, Dept. of State).

369. *Id.* at 20.

370. *Id.*

371. See *id.*

372. See *id.*

373. *Id.* at 21.

374. *Id.* at 22.

375. *Id.*

376. *Id.*

377. *Id.*

378. See President Clinton Summary, *supra* note 356, at 345.

free speech has been and may continue to be a frustrating process because its belief system is strong and the government is notorious for reacting abrasively to dissent.

As demonstrated throughout this Comment, in some respects it seems like the tides are finally turning and the PRC is beginning to understand the feasibility of having some form of freedom of speech alongside a socialist ideology. Yet, in direct contradiction, recurring examples illustrate that the government still reverts to its archaic belief that ruling the country requires suppressing the people.³⁷⁹ The government of the PRC must realize that oppression breeds resentment and distrust that eventually causes upheaval, while freedom generates a sense of self and purpose among individuals and brings about contentment.

The government of the PRC justifiably boasts about the country's economic and social achievements (although problems exist on these fronts as well).³⁸⁰ Such achievements constitute a good beginning. Until the PRC fulfills its constitutional promise of providing freedom of speech, however, demands for democracy by both the Chinese people (albeit quiet people at times) and foreign nations will persist. In the meantime, the tenacity of the Chinese censor is convincing evidence that the PRC is merely giving lip service to its constitutional guarantees of free speech.³⁸¹

V. CONCLUSION: SOLUTIONS TO THE PROBLEM SUMMARIZED

The people and the government of the PRC have already experienced a taste of free speech. At times during the 1980s and 1990s, the Chinese people were allowed to express their opinions without the fear of imprisonment, expulsion from the country, or possibly harsher punishments, and still the Communist Party and socialist ideologies remained intact.³⁸² As shown, the recently reacquired region of Hong Kong flourished economically and culturally within an atmosphere of free speech.³⁸³ This example proves that it is possible for a socialist society to thrive while recognizing fundamental rights.³⁸⁴ Freedom of speech could be a reality in the PRC, even if it is a somewhat limited type of freedom

379. See Peerenboom, *supra* note 198, at 33.

380. See STARR, *supra* note 6, at 204-05.

381. See Jakobson, *supra* note 33, at 4-5.

382. See discussion *supra* Part II.C-D.; see also 48 *Journalists*, *supra* note 4.

383. Neumann, *supra* note 196, at 3.

384. See *id.*

according to Western standards. The government of the PRC must be willing to make the necessary changes, however.

The PRC must abide by its constitutional and international promises to provide freedom of speech. It must be willing to either incorporate certain democratic ideals into its laws as was done in Hong Kong, or find a way to reconcile socialist and democratic beliefs. Either way, the international community is willing to work alongside the PRC on many fronts, as evidenced by the recent acceptance of the PRC into the WTO, as long as it conforms to certain international norms and recognizes some basic human rights.³⁸⁵ Allowing the people of the PRC access to increased international information and exposing them to a greater international environment would better educate them as to the world in which they live. It would expand the PRC's exposure within the business realm and, similarly to Hong Kong,³⁸⁶ encourage a "rapid exchange of information"³⁸⁷ that would further benefit the Chinese economy. The government of the PRC has the components in place to provide freedom of speech for the people. Now it merely must adhere to its own, as well as international, rules.

Likewise, the government must strengthen its judiciary by providing it with the power of constitutional review. This power must be removed from the control of the National People's Congress and must be given to the judiciary to independently and objectively review the country's laws. This will only work, however, if the citizens of the PRC accept litigation as a viable option to resolving their problems, and do not perceive it as a shameful waste of time and money. The people prefer arbitration,³⁸⁸ thus, it may be reasonable to allow Chinese judges to mediate disputes in a less formal setting than a trial. This would enable adequate review of the laws, while still making it possible for the people to save face, which is a very important consideration.

385. See Albright Press Briefing, *supra* note 241. As Secretary Albright and Assistant Secretary Koh discuss, perhaps a system of U.N. incentives instead of sanctions could be utilized in order to award the PRC for positive changes as opposed to punishing the government for failing to change. *Id.*

386. See Neumann, *supra* note 196, at 3.

387. *Id.*

388. Peerenboom, *supra* note 198, at 54-55.

The attitude of the people also plays an integral role in whether freedom of speech could become a reality. Rights consciousness in China is necessary to create an atmosphere of rights advocacy. Apathy among the people permits the government to continue with its abuses of power. The government's constitutional violations and extreme responses to dissonance lead to the fear of major consequences. This anxiety creates a ripe environment for self-censorship. The people must stand up for their right to free speech.

Finally, freedom of speech is an extremely important fundamental right, but Western societies must remember that the Chinese may not perceive such rights in the same way as do Western cultures. Different values are placed upon different rights. For example, the PRC focuses on economic and social rights, while the West emphasizes civil and political rights. Westerners must keep in mind the different legal, ideological, and philosophical differences.

The PRC may never have a Westernized concept of freedom of speech, but that does not mean such a freedom cannot exist in some form. A Chinese version of free speech utilizing Chinese beliefs may be an attainable option. For example, the government could forego imprisoning dissidents, licensing and expelling reporters, closing down media outlets, or harshly reacting to criticism. Instead, it could create a system of increased arbitration or mediation within the judicial system to settle disputes between the media and the government. Compromises can be reached by understanding the needs of each side. Although this may still create tension with Western standards, such a system would at least be a step towards free speech. The CCP trifled with the idea of allowing freer speech in the 1990s, and the government suffered no detrimental effects. If the government permanently incorporated a practical approach to adhering to its constitutional promise of free speech while applying principles satisfactory to Chinese traditions and political structure, an adequate version of free speech could be formulated.

Regardless of its form or how it is achieved, freedom of speech is an important right. Suppressing it restrains people from speaking their minds. Without a free flow of ideas, important information could be lost, having never even been voiced or considered. The government of the PRC could freely commit atrocities, but these outrageous deeds would never be discussed,

and therefore never stopped. Freedom of speech “augments stability by providing a safety valve for tensions and social pressures. It provides some of the means by which citizens participate in decision making. It helps check abuse and corruption.”³⁸⁹ The expression of dissonance as well as support is necessary to foster a strong and cohesive country—neither should be quelled.

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389. PATTEN, *supra* note 1, at 233–34.

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