
**FU HUALING, MICHAEL PALMER, ZHANG
XIANCHU (EDS)—
TRANSPARENCY CHALLENGES FACING CHINA**

BJÖRN AHL

University of Cologne*

That China faces transparency challenges has never been more obvious than during the first weeks of the Covid-19 pandemic. When the whistleblower doctor Li Wenliang and others spread warnings of an unknown severe respiratory illness online at the end of December 2019, the information was censored, and police reprimanded the whistleblowers. China's online censorship regime has slowed down local and global responses to the pandemic and demonstrated how restricting information in China can have extremely far-reaching global implications. Edited by Fu Hualing, Michael Palmer and Zhang Xianchu, this volume on *Transparency Challenges Facing China* is a very timely and highly relevant contribution to an evolving field that investigates the regulation of transparency in authoritarian systems.

Transparency in liberal rule-of-law systems is a fundamental element of the legal and political order that enables democratic processes and is upheld by the effective judicial protection of freedom of speech and other fundamental rights. In contrast, authoritarian systems are built on non-transparent decision-making processes. Consequently, they embrace transparency in a more instrumentalist and selective manner. This general perception of the state of transparency in authoritarian legal systems has been reinforced by the initial cover-up of information about the spread of Covid-19 in Wuhan. Zhang Xianchu summarizes the general limits of transparency in an authoritarian system in the chapter about 'Transparency Challenge to China's Socialist Market Economy'. He concludes that 'the top priority of totalitarian governance in China has remained the security and stability of the political regime, and this is to be safeguarded even at the cost of the efficiency of the market and social

* Professor and Chair of Chinese Legal Culture, University of Cologne.

justice' (at 42) and, we may add, in the case of the Covid-19 pandemic, at the cost of people's health and life.

However, what the implications of that goal of preserving regime stability are for the regulation of transparency in different areas of Chinese law has been changing rapidly over the past two decades and requires in-depth analysis of those fields. Such valuable analysis is provided by this edited volume. The book distinguishes between three areas of regulation of transparency: market-oriented economic reforms, institutional and processual contexts, as well as themes that potentially challenge China's current political order ('political-legal sensitivities').

In the chapter about 'The WTO's Transparency Obligation and China' Henry Gao investigates the implementation of the international trade law requirement of the transparency of domestic trade-related laws and regulations. He concludes that the problems in the implementation process are mainly caused by the system of decentralized law-making and by conflicts amongst ministries at the central government level. The author argues that the limits of external pressure to improve transparency are determined by a political system that retains the overall claim to control information. Xi Chao and Cao Ning discuss the role of transparency in the Chinese securities market in the chapter 'Greater Transparency, Better Regulation! Evidence from Securities Enforcement Actions'. They find that investors react to information on enforcement actions against firms if the firms themselves release the information or if information disseminated by the regulator is reported in the financial media. Fu Hualing finds in the chapter about 'The Secrets about State Secrets: The Burden of Over-classification' that the Chinese government classifies much information as state secrets even though it does not qualify as such. The author argues that this practice of excessive secrecy has a negative impact on governance. He concludes that the main reasons for this practice lie in the overly vague definition of state secrets, a decentralized classification system, the lack of meaningful judicial review, as well as a secretive mindset within the administration.

With regard to institutional and processual contexts, the post-2013 period has witnessed a concentration of personal power in the hands of the Chinese Communist Party General Secretary. This development is widely regarded as a return to the unchecked authoritarianism that undermined the law and institutions. However, against the backdrop of rule-of-law regression and illiberal policies the current administration has introduced ground-breaking institutional reforms. Many of them have also brought about the somewhat counterintuitive result of increased

transparency and institutional autonomy. A case in point is the increase of judicial transparency that was achieved in 2014 by the introduction of the Supreme People's Court open access database archiving the decisions of every court in China. Currently, the database contains over 90 million court decisions and has overtaken almost all Western liberal democracies with regard to the accessibility of full-text court decisions. The database has changed the structure of communication among legal professionals and promoted the centralization of the judiciary and the professionalization of judges. Susan Finder, in her chapter on 'China's Translucent Judicial Transparency', goes beyond the open access database for court decisions. She discusses the Judicial Work Secrets Regulations that require, *inter alia*, keeping secret how various actors of the party-state affect the operation of the judiciary. Transparency requirements also include the publication of basic information about judges and courts and judicial statistics. Another focal point is the instruments for guiding the adjudication of lower courts, such as judicial normative documents, opinions, responses and local court guidance. The author concludes that the development of a 'comprehensive legal framework institutionalising the right to access to judicial information' (at 173) is rather unlikely. Instead, the Supreme People's Court is seeking an incremental increase in transparency, which is currently implemented unevenly and limited by political sensitivities. Further, Sun Ying and Zhang Xiang review transparency initiatives in legislative processes in their chapter on 'Strategic Openness: An Overview of Open-Door Legislation in the PRC'. They conclude that managed participation in law-making contributes to the resilience of the Chinese authoritarian regime as it serves as an instrument to absorb expressions of social discontent. Consequently, the current transparency practices in law-making processes are unlikely to lead to a democratization that imposes effective limits on state authority. In his chapter on 'Public Hearing in China: A Failed Revolution or a Successful Distraction?' Huang Yue analyses public hearings in Chinese administrative procedure law. With regard to hearings in environmental impact assessments, the author found a lack of responsiveness, as there is only a 'rather vague linkage between the hearing and policy-making outcomes' (at 196). Overall, given the tightening authoritarian framework, he questions the sustainability of participatory elements in administrative policymaking. In the chapter 'Transparency, Propaganda and Disinformation: "Managing" Anticorruption Information in China', Li Ling assesses the quality of transparency of anticorruption activities. She finds that publicly available information on corruption has increased significantly during the post-

2013 period. She argues that control over such information has been tightened in order to produce convincing propagandistic anticorruption narratives that isolate corrupt conduct from overall affairs of the Party.

The third part of the book relating to political-legal sensitivities discusses the application of legislation on open government information, the social credit system, citizen participation and online public supervision. In the chapter on ‘Transparency as an Offence: Rights Lawyering for Open Government Information in China’ Zhu Han and Fu Hualing discuss how transparency legislation has been used as a tool for legal activism. They found that the formal open government information institution ‘has largely failed to address the transparency concerns of rights lawyers and other sectors of civil society’ (at 250). This caused an increase in extra-institutional mobilization for transparency, which in turn triggered more repressive action of the party-state. Chen Yongxi discusses the judicial practice of open government information litigation in the chapter entitled ‘Taming the Right to Information: Motive Screening and the Public Interest Test under China’s FOI-like Law’. He concludes that the ‘Chinese courts haven’t identified or recognized any public interest that pertains directly to holding the government accountable to the public’ (at 288). Instead, courts tend to require that those requesting information do so by asserting specific rights, such as property rights. Peng Chun analyses the practice of abusive open government information requests in the chapter ‘The Shadow of Transparency: Defining, Debating and Deterring Vexatious OGI Requests in China’. Chen Yongxi and Anne Sy Cheung study the protection of personal data within the framework of the social credit system in the chapter about ‘The Transparent Self under Big Data Profiling: Privacy and Chinese Legislation on the Social Credit System’. While there exists an impressive body of literature on the evolving Chinese scoring system that evaluates the trustworthiness of government bodies, corporations and individuals, scholars have paid less attention to the legislation protecting personal information. The chapter fills this gap in the literature. The authors conclude that current legislation does not sufficiently limit the party-state’s collection, aggregation and exploitation of personal data on the citizens’ social behaviour. Finally, Han Rongbin discusses various public online participation mechanisms in the chapter entitled ‘Supervising Authoritarian Rule Online: Citizen Participation and State Responses in China’.

Overall, this is a timely and thought-provoking book that contains excellent up-to-date research. It covers broad terrain and focuses on most

crucial areas of authoritarian regulation of transparency. The book is highly recommended reading for students and researchers of China who are interested in legal and social science approaches to transparency.



Transparency Challenges Facing China (2020) FU Hualing, Michael Palmer, ZHANG Xianchu is published in hardback by Wildy Simmonds & Hill in the Law in East Asia Series, priced £65.00/£24.04 ISBN 9780854902606.