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Essay

## What Global Censorship Studies Tell us About Hong Kong's Media Future

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**Abstract:** China imposed a new National Security Law on its Special Administrative Region (SAR) of Hong Kong in mid-2020. The deployment of this legal weapon, combined with other actions of local authorities that have grown noticeably more irritable and vindictive, means that Hong Kong media no longer enjoy the freedom from government restrictions that they had been accustomed to. Hong Kong has thus joined the ranks of the many societies with media environments that are semi-free and semi-closed. These societies' experiences indicate that arrests and bans, while attracting the most attention, are not what inflict the most damage in the long run. As alarming as the on-going legal actions are, citizens' access to information and ideas is more likely to be restricted by less spectacular and coercive means, including economic carrots and sticks that encourage a culture of self-censorship. Such an environment requires new mindsets and skillsets among journalists.

**Keywords:** media systems, authoritarian, censorship, press freedom

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In late 2019, when Hong Kong's protest movement started turning violent, some commentators wondered if Beijing would lose patience and despatch the People's Liberation Army to stop the social unrest once and for all. The central government did lose patience with its unruly Special Administrative Region (SAR) in the south, but bided its time. It did not need its boots on the ground. It instead wrote a new National Security Law (NSL) for the territory. Taking effect on 30 June 2020, the NSL's most frightening provision allows dissidents in Hong Kong to be dealt with across the border in mainland China. Hongkongers undeterred by the strong arm of Hong Kong law would now have to decide if they wanted to take their chances with the strong arm of Chinese law.

Although primarily targeting political dissidents, the NSL has sent shockwaves through Hong Kong, including its vibrant media sector. It is the first piece of legislation that the Chinese central government has grafted directly onto Hong Kong's legal framework since Britain returned the territory to China in 1997; and the first to allow Beijing to bypass Hong Kong courts and extradite a suspect to the Mainland (Powner, 2020). The authorities have stated repeatedly that the NSL is designed only for a small number of individuals committing the very serious offences of secession, subversion, collusion with foreign forces, or terrorism. They say that criticism of the government would not constitute an offence, and that Hong Kong's press freedoms would remain intact. Article 4 of the NSL states explicitly that the "rights and freedoms, including the freedoms of speech, of the press, of publication" that residents enjoy under the territory's Basic Law and the International Covenant on Civil and Political Rights (ICCPR) "shall be protected".

But the authorities' stated ends, to counter rare and extreme offences, are not matched by their chosen means: a broadly-worded piece of legislation that gives them wide-enough discretion to punish speech that Hong Kong's liberal tradition and the ICCPR would consider legitimate and indeed essential for democracy. Six months into the NSL regime, those of us who are engaged in Hong Kong journalism — as media professionals, educators, or researchers — know we are in a new world, but have yet to discern its contours. You will hear markedly different assessments. "Press freedom is dead as far as I'm concerned," said the American director of Hong Kong University's journalism centre (Lee, 2020). On the other hand, editors at major news outlets, including the feisty *Apple Daily*, declared that it would be "business as usual" (Torode and Pomfret, 2020).

I won't try to predict who will be proven right. Besides, much of what we hear and read about Hong Kong's press freedom are speech acts performed for effect, and not necessarily intended to be taken literally. Many who sound fatalistic are probably trying to sound the alarm in a world where attention is in short supply and despotism is so commonplace that it has lost shock value. Those who strike a brave note, meanwhile, may be trying to enthuse their staff and supporters to soldier on, while knowing full well that they will have to adapt to less favourable circumstances.

To help clarify Hong Kong's situation, it may help to look elsewhere, at comparative media studies. Although Hong Kong journalists find themselves in a radically unfamiliar situation, the authoritarian condition is obviously nothing new to the world's media. We can learn from the abundant research on other unfree settings, including mainland China. If Hong Kong's future conforms with these global precedents, we can expect indirect and stealthy methods of media control — including the inculcation of self-censorship — to be as impactful as direct coercion through the NSL. Comparative studies also tell us that the spectre of absolute, totalitarian control belongs in history and fiction. Today's resilient authoritarian regimes leave some space for free speech. Despite the tightening vice, there will still be room for agency. Indeed, journalists committed to Hong Kong know they have to make conscious efforts to use and expand this available space, including grey areas in the law. To believe that such space does not exist would be self-fulfilling.

### **Why we worry**

For readers unfamiliar with Hong Kong and its new National Security Law, I should provide some background. The former British colony has been part of the People's Republic of China since 1997. Under the terms of the handover, Hong Kong was allowed to continue with its political, legal and economic systems for 50 years, based on the principle of “one country two systems” — a Deng Xiaoping brainchild that was never articulated in fine detail but inspired enough confidence to keep the city thriving. This was in keeping with Deng's broad approach to his epic economic reforms: making progress in uncharted waters would require trial and error, or “crossing the river by feeling the stones”. While Hong Kong's freedoms are enshrined in its mini-constitution, the Basic Law, it was always clear to students of realpolitik that its special status also depended on Beijing's goodwill, especially as China grew in geopolitical and economic stature. The NSL is the clearest statement so far that, “special” or not, Hong Kong is sovereign Chinese territory.

The law has several features that alarm the media. For example, the prohibition of secessionist activity is drafted broadly. Article 20 criminalises “organising, planning, committing or participating” in either separating Hong Kong or any other part of the country from China, or “altering by unlawful means” their “legal status”. Inciting or assisting in such actions is also punishable, under Article 21. Merely reporting such activity is not an offence, journalists hope, but they cannot be sure. In addition to prohibiting espionage, the NSL criminalises the act of seeking hostile foreign actions against Hong Kong or China. It is also illegal to provoke by unlawful means hatred among Hong Kong residents towards China. This is reminiscent of the anti-sedition provisions in British-era Hong Kong law, but like other aspects of the NSL the question is how broadly the offence will be interpreted, and how cases will be adjudicated.

The new police branch established under the NSL can intercept communications. Other government agencies already have comparable powers, except that the NSL

does not provide for judicial oversight. The powers would be supervised by the Chief Executive. Another worry is Article 9, which requires the Hong Kong government to take “necessary measures” — yet to be defined — to “strengthen” public communication, guidance, supervision and regulation over matters concerning national security, including those relating to the media and the internet. Article 10 requires the government to promote national security education through the media, which could mean something as innocuous as public service advertising or as insidious as Mainland-style propaganda directives.

In addition to the offences it creates, the NSL also represents a radical departure from the norm in the way it bypasses the SAR’s checks and balances. Although Britain never gave Hongkongers the right to vote for their executive branch of government, the former colonial masters did eventually install a highly regarded system of rule of law, and judicial and legislative oversight for their successors’ executive and administrative actions. But the new Committee for Safeguarding National Security comes under the supervision of the central government and is therefore not accountable to Hong Kong’s elected Legislative Council. The trump card is the central government’s own National Security Office for the SAR, which will step in when cases are deemed too complex or serious. Such cases would be prosecuted under Chinese law and heard before Chinese courts. This is a dramatic break from the pre-existing judicial system, which did not allow for extradition to the Mainland.

The main media victim of the NSL thus far has been Jimmy Lai, the charismatic founder and owner of Apple Daily, Hong Kong’s most popular newspaper. Launched two years before Hong Kong’s handover, Apple Daily cast itself as the voice of the city’s pro-democrats and its watchdog against Beijing. It was a strong supporter of the 2014 Occupy movement and the 2019 anti-government protests (Lau, 2020c). Prosecutors said Lai used Twitter to urge international sanctions against the Chinese authorities. Under Article 29, the crime of foreign collusion covers requesting any foreign individual or group to impose sanctions. If convicted, the 73-year-old Lai would be liable to a prison term of at least three years. Lai and two of his executives were also charged with fraud, in connection with the company’s office space. On the day of his arrest, some 200 police officers raided the newsroom and seized several boxes of evidence (Lau, 2020b; Siu, 2020). The newspaper has continued to operate.

The NSL is not the only legal and administrative weapon being used against media. One journalist was arrested over a Radio Television Hong Kong (RTHK) programme that was critical of police conduct during a controversial protest incident in 2019 (Yau, 2020). The journalist was charged with making a false declaration in order to access car ownership details. Her prosecution is widely regarded as unreasonable. The information she obtained was a public document, so it is hard to think of any reason why she should have been charged, other than to warn journalists against investigating the police (Ng, 2020).

## What limits on state repression?

After the year it has had, there is little doubt that Hong Kong will suffer a double-digit fall in the closely watched Reporters Without Borders press freedom rankings. But it would be premature to conclude that the NSL and other measures are extinguishing the space for critical, independent journalism. Even if Beijing does not feel bound by the standards enshrined in the ICCPR (and there is ample reason to doubt that human rights would figure greatly in its calculations) it is plausible that the authorities will exercise some strategic self-restraint in its use of law. Contrary to Hongkongers' worst fears, the Chinese Communist Party may not be trying to turn the SAR into just another Chinese city. Its strategic objective could be more limited: to stop, by any means necessary, a repeat of the kind of disorder that hit Hong Kong in 2019; and, perhaps even more importantly, to never again allow Hongkongers to let the United States compete with Beijing for influence on Chinese soil (Wang, 2020).

Furthermore, China, like other resilient authoritarian regimes, knows that maximal coercion is not optimal. Instead of routinely relying on jail, torture and bans, such states try to keep these threats in the background, preferring to use their economic power to incentivise self-censorship, for example. This distinguishes modern despots from earlier totalitarian regimes led by Adolf Hitler, Josef Stalin, Mao Zedong and the like. By the 1980s in the Soviet bloc, Miklós Haraszti could see the difference between the “primitive totalitarianism” of the Stalinist period and the mature state socialism of his times. “Partnership displaces dictatorship,” he wrote (1988: 74). “Sticks are exchanged for carrots.” The ruling party in my own country Singapore — perhaps the most resilient of all authoritarian regimes — refined the techniques of what I’ve called “calibrated coercion” around the same time, using just enough coercion to get the job done without generating blowback (George, 2020a). In the 2010s, media freedom monitors such as the Committee to Protect Journalists and Freedom House were reporting that China, Russia, Turkey and other modern authoritarian states were substituting violent and visible tactics with more indirect and selective methods of manipulating their media (Bennett and Naim, 2015; Simon, 2015; Puddington, 2017). Over the last decade, China scholars have come to similar conclusions (see, for example, Lorentzen, 2014; Roberts, 2018).

Such restraint is not due to any liberal aspirations. It is self-interested and strategic, based on states' realisation that spectacular and forceful repression, though sometimes required, can backfire if overused. It can cause public outrage around which opponents can mobilise, for a start (Jansen and Martin, 2003). Experimental research has found strong evidence that coercion, intended to inhibit the target, can instead be provocative, triggering considerations of honour, vengeance, and reputation. Thus, “although acts of coercion increase the actual and expected material costs of fighting, they can also provoke an increase in target resolve” (Dafoe et al., 2021). An excessively punitive system also results in such widespread cover-ups that even rulers end up in the dark about what is happening on the ground

(Sheen, Tung and Wu, 2018). Furthermore, even citizens of nominally communist countries such as China and Vietnam are consumers who demand abundant media choice. Recognising this, governments content themselves with selective censorship within a general policy of growing consumer choice. Research even suggests that when organisation leaders suspect widespread rule-breaking that does not directly threaten their power, it is rational for them to look the other way rather than expend scarce management capacity on requiring total conformity and compliance (Aghion and Tirole, 1997).

For a mix of reasons, therefore, today's successful authoritarian states usually try to temper their instinct to restrict news and information (George, 2020b). They permit media pluralisation and engage in targeted censorship, using a diversified repertoire of tools. Instead of banning everything the state frowns on, they can use "reverse censorship" (Graham, 2018), flooding social media with their own propaganda or politically irrelevant content to distract most citizens' limited attention away from problematic material (Roberts, 2018). Instead of neutralising every independent publisher through the extreme solution of preventive detention, authoritarian states have been using economic carrots (their advertising and publicity budgets) and sticks (selective enforcement of tax regulations), which are less violent but can be devastatingly effective in the long run (Podesta, 2009).

Recent targets have included Philippine Daily Inquirer, the country's largest newspaper, which succumbed to tax probes by the government of Rodrigo Duterte. Under unremitting pressure, the owners sold the newspaper group in 2017 to a tycoon friendlier to the president. In Turkey, the government of Recep Tayyip Erdoğan applied a similar tactic to tame the newspapers Milliyet and Hürriyet in 2018. The authorities pursued the newspapers' owner with criminal charges for evading taxes associated with his non-media holdings. The publisher finally gave in, selling his media properties to a pro-Erdoğan corporation. So-called "media capture" has also been part of Viktor Orbán's playbook in Hungary (Dragomir, 2019).

Economic blackmail has become more effective over the decades as a result of journalism's chronic financial crisis. In better times, publishers could afford to fend off the financial pressures with which governments and businesses tried to influence news coverage. Today, commercial news media are in a financially precarious state, making their editorial departments much more vulnerable. State-funded media, on the other hand, continue to be well-resourced. In China, the post-2012 decline of investigative journalism, usually attributed solely to Xi Jinping's crackdown on dissent, is partly due to the waning financial fortunes of commercially oriented news media, even as the state continues to invest substantially in its mouthpieces such as People's Daily and CCTV (Wang and Sparks, 2019).

International scholarship also tells us that journalists' professional instincts and capacities to serve the public are not easily extinguished. While it is clear that constitutionally protected freedom of expression provides the best environment for journalism, this is not an all-or-nothing requirement: outstanding journalism occurs in illiberal societies (Joseph, 2013). Even in mainland China, some media organisations continue to practice investigative and critical journalism, adapting creatively to the red lines (Repnikova, 2017). Modern authoritarian censorship creates many grey areas. While some treat these as an impassable no-man's land, there also journalists and publishers who see them as minefields that, while certainly dangerous, can be navigated with enough experience, skill and political judgment.

### **A struggle on multiple fronts**

Hong Kong's news media are already adapting to the NSL's sweeping provisions. Most media are banking on the authorities honouring their commitment to distinguish between journalism and advocacy. Even those that have editorialised about the end of press freedom are in practice taking the calculated risk that they can, for the most part, continue to report and comment critically. Editors have to take care that their news reports and opinion columns about dissidents and protesters are not misinterpreted as abetment or advocacy of illegal activities. But this can be a subtle distinction, and a matter of perception.

Early indications are not reassuring. In January 2021, police arrested 53 opposition politicians and activists, citing a primary election that authorities said were part of a conspiracy to obstruct the government. As part of this investigation, police demanded documents from Apple Daily, Stand News and InMedia. The first two news outlets had co-organised election forums for the candidates, while the third ran advertisements — activities that would be considered well within the range of normal news media practice in a democracy. Journalists interpreted the police warrant as a warning to stay clear of Hong Kong's opposition camp. "This is in no doubt creating a chilling effect and creating actual and psychological threats on media workers, and causing the industry to self-censor," the Hong Kong Journalists Association said (Zhen and Shum, 2021).

The adjustment will be hardest for media that see themselves as change agents. More detached reporting is likely to carry on unimpeded. Radio Television Hong Kong (RTHK), for example, continues to report exiled political activist Nathan Law's newsworthy statements, despite police naming him to its NSL wanted list. But exercising more enterprise and initiative may be riskier. RTHK took down a current affairs programme that included an interview with Law after a day on its website. "The national security law is new legislation. Adopting a careful approach is appropriate," an RTHK spokesman said (Lau, 2020a).

In the coming months, there is little doubt that Beijing and its SAR government proxies will use the NSL and other coercive means to drive home a strong signal to Hong Kong, cracking down on organisers and enablers of 2019-style protest activity as well as advocates of independence or foreign involvement. Like *lèse-majesté* in Thailand and blasphemy law in Pakistan, the NSL will probably have a significant indirect, symbolic effect. It will embolden both the police as well as pro-regime elements such as hyper-nationalist citizen groups to be more brazen in their attacks on media (such as the stabbing of Ming Pao Daily's former editor in 2014). The law also has a strong chilling effect: reporters (as well as academics) have been finding it much harder to get sources to talk to them on sensitive topics.

Once the state has used the NSL to deliver the message that disorder and collusion with the West is intolerable, the signs from near and far indicate that Beijing may revert to less direct and more porous means of media control. Given the breadth and sophistication of China's strategies for media manipulation, it would be a mistake for media freedom defenders to focus only on NSL arrests and other such extreme events.

RTHK, which runs three television and seven radio channels, may be one of the biggest victims of the broader menu of media manipulation. It is a quintessentially Hong Kong institution, in that its freedom is rooted more in culture than in legal guarantees. It is on paper a government department, but by convention it has been able to serve as an independent public service broadcaster. Indeed, its pro-establishment critics feel it behaves like radical alternative media. The government is likely to restructure RTHK and pull funding from hard-hitting political coverage. Such moves to reorient media managements will be less sensational than arresting journalists or banning outlets, but may have a greater impact on Hongkongers' media diversity in the long run.

Turkey provides an instructive parallel. The mass arrests and news media shutdowns that followed the failed coup attempt in 2016 made global headlines. The crackdown placed Turkey as the world's number one jailer of media workers. (China has since reclaimed its ignominious top position, in absolute terms; counting media workers in prison per capita, it ranks much lower than many other despotic regimes.) Much less salient was the gradual co-optation of media organisations into a political economy that serves the interests of the Erdoğan regime. The resulting culture of self-censorship has probably had a bigger impact than direct coercion on the news and information that citizens receive (Weise, 2018). In India, similarly, most media owners have chosen to support, or at least not to antagonise, Prime Minister Narendra Modi (Katju and Gulzar, 2020). The ensuing decline in media independence, in the world's largest democracy, would probably amount to the 21st century's biggest single censorship event if it had occurred in a single day, but because it has taken place gradually and as a result of seemingly voluntary market decisions, this development has not merited news flashes or alerts from media freedom organisations.



There is thus a systemic, cognitive bias in our perceptions of threats to freedom of expression. In theory, it is well understood that media independence has multiple dimensions. Conversely, censorship works through multiple modalities. Press freedom indices rightly comprise dozens of indicators, including economic factors such as the degree of industry concentration and independence from media owners. In practice, however, advocacy is skewed toward threats to freedom of expression that simultaneously involve infringements of other rights, such as the right to a fair trial, freedom from torture, and property rights. When powerful interests avoid encroaching on these other rights even if they restrict the public's right to receive information and ideas, such censorship tends to fly below the radar. This is the effect of various kinds of market censorship and proxy censorship: media and platform companies may be willing or unwitting accomplices in decisions that serve the interests of power. Since the audience may be unaware of what has been withheld from them, such censorship can feel victimless. This — rather than coercive censorship — is the Holy Grail of smart authoritarian regimes that want to consolidate their power (Bunn, 2015).

Before the 2019 protests provoked a shock-and-awe response, Beijing too had been banking on long-term, low-key methods to modulate Hong Kong's media. Contrary to some of the reactions you will hear to the events of 2020, it is not true that Hong Kong had a free press prior to the crackdown. Freedom House had downgraded Hong Kong's press freedom status to "partly free" as far back as 2008, when it noted that 10 of the city's media owners had been appointed to a Mainland political advisory body; and there were allegations of media platforms shutting out critics of the Party (Freedom House, 2009). Hong Kong Journalists Association surveys in the early 2010s also spotlighted concerns about self-censorship. Academics in Hong Kong have been researching media capture (Frisch, Belair-Gagnon and Agur, 2018) and creeping self-censorship for at least a decade (Lee, 2015; Lee and Chan, 2009; Lee, 1998).

Using Hong Kong as a base to attack the Chinese establishment was already a risky proposition prior to 2019. In 2016, a senior Ming Pao Daily News editor was dismissed after the paper took part in the International Consortium of Investigative Journalists' publication of the Panama Papers leaks, which exposed the offshore wealth of China's elites. Management claimed it was for cost-cutting reasons, but that was not how the move was interpreted by most journalists (Cheung, Fung and Lam, 2016). At the same time, the Falun Gong movement — which the Party regards an intolerable evil cult — continues to operate stalls in busy Causeway Bay and Wan Chai, openly distributing copies of their newspaper, Epoch Times, and other anti-Party material. Needless to say, this would not be tolerated on the Mainland. But in Hong Kong, pro-Beijing activists attack Falun Gong in the marketplace of ideas: they have set up shop a few metres away, with their own propaganda banners and publications. This ritual continues to play out, NSL notwithstanding, perhaps because the movement was not a player in Hong Kong's social unrest.

Most media, though, are unlikely to push their luck. They would not want to test post-NSL Hong Kong's viability as a safe harbour from which to launch sharp allegations against the Chinese leadership. In many other respects, though, things may indeed be business as usual. Reporters will continue to probe the finances and private lives of Hong Kong politicians. Columnists will still express open contempt for the Chief Executive and other officials. Independent journalism in Hong Kong enjoys a deep wellspring of support from a large segment of its public, which in turn stiffens the spine of practitioners. While the media are certainly not respected by all — many inside and outside the profession bemoan their ethical lapses and low standards — Hongkongers instinctively and deeply value a free press as essential for popular sovereignty, all the more given that they cannot elect their leaders. When Jimmy Lai was arrested, Hongkongers put their money where their hearts were: newsstand sales of Apple Daily skyrocketed (Liu, 2020). If mainstream media such as Apple Daily, Ming Pao and RTHK prove a dead end, journalists and their publics will divert their loyalties to alternative sites such as Citizen News. The demand for independent media, and willingness to pay for it, will not be easy for China to suppress.

While we should not romanticise Hongkongers' resilience and resolve, neither should we assume that the NSL guarantees their long-term compliance. One of the consensus findings in the literature on the relationship between repression and dissent is that "short- and long-term effects of repression often vary considerably": excessive repression can demobilise in the short-term but generate remobilisation in the long-term (Chenoweth, Perkoski and Kang, 2017: 1958). Even extreme and indiscriminate repression, while instantly suppressing protest, can provoke dissident activity over time. It can both provoke anger and stimulate the development of robust skillsets that help in the resurgence of resistance and protest when opportunities arise. Such findings cast doubt on the intuitive assumption that states find repression less costly than accommodation.

China, like other resilient authoritarian regimes, knows this. This is why, as indicated earlier, Beijing probably prefers to revert to softer and stealthier methods of media management as soon as possible. But we also know from comparative studies that states' resort to violence is influenced by many internal and exogenous variables (Hill and Jones, 2014). The ups and downs in the repression that Hong Kong (and the rest of China) faces may depend on imponderables that have nothing to do with the city, especially the mysterious state of play between Xi Jinping and his enemies within China's ruling elite.

For all these reasons, I expect Hong Kong to become neither an oasis of press freedom nor a totalitarian desert, but a messy landscape of repression mixed with semi-freedom — in other words, the kind of environment where the vast majority of the world's journalists operate. In such societies, media deal with multiple challenges. A few journalists get arrested every year. Much larger numbers find their employers compromised by their ties to political and economic power. Foreign

correspondents are denied visas if their organisations have irritated the authorities. Media also have to protect themselves from vigilante attacks and harassment by non-state actors. Most of these threats are not new to Hong Kong journalists, but they are likely to intensify.

Most local journalists as well as the large corps of correspondents from liberal democracies have little experience with state repression. Perhaps they need to learn from counterparts in less privileged contexts. Many of the world's best media — across Asia, Africa and Latin America — have never enjoyed the kind of press freedom that is guaranteed by laws and constitutions. They still manage to produce impactful journalism. Along with their craft skills, they have developed the instincts to assess the political climate and take calculated risks. They know the path ahead is never totally visible. Most red lines are only detected after they are crossed. When that happens, journalists rely on professional solidarity, and civil society and establishment allies to put pressure on the authorities and mitigate the damage. Hong Kong needs its journalists to develop such capacities quickly. They won't do it if they convince themselves that press freedom is already dead. But if they believe in their own agency, they should be able to navigate the new terrain. They can cross the river by feeling the stones.

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