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Vincent R. Johnson

St. Mary's University School of Law, vjohnson@stmarytx.edu

Brian T. Bagley

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Book Review

Fighting Epidemics with Information and Laws: The Case of SARS in China

A Review of *Chinese Law on SARS* by Chenglin Liu.* W.S. Hein & Co. 2004

Vincent R. Johnson** and Brian T. Bagley***

* Adjunct Professor of Law and Foreign and International Law Librarian, University of Houston Law Center. LL.M., Dalian University of Technology (China); LL.M. in European Law, Lund University (Sweden); LL.M. in American Law, Washington University in St. Louis; M.S.L.I.S., University of Illinois at Champaign-Urbana. Candidate for J.S.D., Washington University in St. Louis.

** Visiting Professor of Law, University of Notre Dame; Professor of Law, St. Mary's University School of Law, San Antonio, Texas. B.A. and LL.D., St. Vincent College (Pa.); J.D., University of Notre Dame; LL.M., Yale University. Professor Johnson is a member of the American Law Institute and has served as a Fellow at the Supreme Court of the United States. He has taught law in China at Renmin University and Shandong University, and has lectured at fourteen other Chinese law schools. One of his books, translated by Professor Zhao Xiuwen, was published in 2004 under the title *American Tort Law*, in two different Chinese versions, by China Renmin University Press. Preparation of this article was assisted by Claire G. Hargrove, Daniel Austin Ortiz, and Michael Norris at St. Mary's University.

*** Associate, Beirne, Maynard & Parsons, Houston, Texas. B.A., Baylor University; J.D., St. Mary's University. Comment Editor, Volume 36, *St. Mary's Law Journal*.

I. The New Chinese Legal System

During the Cultural Revolution (1966-1976), China's legal system was dismantled.¹ The courts were closed,² law faculties were disbanded,³ and adherence to any semblance of the Rule of Law was abandoned.⁴ By the end of a decade of upheaval, there was essentially no Chinese legal system.⁵

During subsequent years, spanning more than a quarter century, there have been great efforts in China to build a modern legal culture. The university law schools are now open and thriving.⁶ A new generation of well-educated law graduates has begun to fill positions in government, business, and private practice. At the same time, China's substantive law is being modernized, so that in many respects it is similar today to related fields of law in the West.⁷ China's legal enforcement

1. See Feng Chen, *Chinese Bankruptcy Law: Milestones and Challenges*, 31 ST. MARY'S L.J. 49, 51 (1999) (stating that the Cultural Revolution was "[a]rguably, the darkest period in Chinese history," during which the "legal system was completely destroyed," "the Department of Justice disbanded," and "even the Constitution was ignored").

2. Cf. Zhong Jianhua & Yu Guanghua, *Establishing the Truth on Facts: Has the Chinese Civil Process Achieved This Goal?*, 13 J. TRANSNAT'L L. & POL'Y 393, 433 (2004) (describing how "the Cultural Revolution . . . led to the overthrow of all formal legal institutions and everyone associated with them, including judges, lawyers, and procurators").

3. See Jianhua & Guanghua, *supra* note 2, at 438 (noting that "law schools were closed").

4. See CHENGLIN LIU, CHINESE LAW ON SARS 36 n.4 (2004) (stating that the lawmaking process was seriously disrupted and that the convening of the new Congress was delayed for years); *id.* at 40 (describing the Cultural Revolution as the "lawless period"); Eric W. Orts, *The Rule of Law in China*, 34 VAND. J. TRANSNAT'L L. 43, 58 (2001) (stating that the "Great Proletarian Cultural Revolution of 1966 to 1976 . . . disrupted any ordinary concept of law in China").

5. See Jack B. Weinstein, *Some First Impressions of the Legal System in Three Chinese Cities*, 24 BROOK. J. INT'L L. 221, 229 (1998) (stating that "there was really no Chinese legal system" after the Cultural Revolution).

6. An excellent symbol of the progress in Chinese legal education is the new Kenneth Wang School of Law in Suzhou. In November 2003, Soochow University inaugurated a new law school building, constructed with funds donated by a Chinese-American family foundation. The Kenneth Wang School of Law is the most impressive legal education facility in the P.R.C. The building marks in bricks and mortar the re-emergence of legal education at Soochow University, a school where comparative law scholarship had once flourished in pre-Communist China. See generally Alison W. Conner, *Training China's Early Modern Lawyers: Soochow University Law School*, 8 J. CHINESE L. 1, 3 (1994) (relating that previously "Soochow [University] alone specialized in 'comparative law'" and "[i]t was, [therefore], the only law school to offer a formal program in 'Anglo-American law' (Yingmei fa)"). "Soochow held a pre-eminent position: it was the best and most famous law school in south China." *Id.* at 4.

7. See Vincent R. Johnson, *Chinese Law and American Legal Education*, 31 ST. MARY'S L.J. 1, 4 (1999) (stating that China's new contract law "incorporates such 'Western' notions as freedom to contract, suspicion of standard-form exculpatory

mechanisms, however, are still notably weak.⁸ Yet even in China's courts—which operate more like administrative agencies than independent tribunals⁹—aging judges with little or no formal legal training¹⁰ are gradually being replaced by new ones with undergraduate or graduate law degrees. In light of China's recent efforts to build an effective legal system,¹¹ it is not surprising that China sought to respond

language, and choice of remedies"); see also Weiqui Long, *Intellectual Property Law in China*, 31 ST. MARY'S L.J. 63, 72-78 (1999) (discussing fundamental principles of Chinese law relating to patents, trademarks, and copyrights, and describing these tenets as being "in accordance with international treaties"); Xinqiang Sun, *Reform of China's State Owned Enterprises: A Legal Perspective*, 31 ST. MARY'S L.J. 19, 27-28 (1999) (discussing re-organization of Chinese state-owned enterprises "into joint-stock enterprises with ownership rights, property rights, and clearly defined managerial responsibilities"); Liming Wang, *China's Proposed Uniform Contract Code*, 31 ST. MARY'S L.J. 7, 17 (1999) (discussing how common-law and civil-law contract principles, as well as the United Nations Convention on Contracts for the International Sale of Goods, have contributed to the shaping of Chinese contract law).

8. See Pitman B. Potter, Review Essay, *Legal Reform in China: Institutions, Culture, and Selective Adaptation*, 29 LAW & SOC. INQUIRY 465, 466 (2004) (stating that although "the Chinese government . . . [has] accorded significant importance to the role of law in socioeconomic relations[,] . . . fealty to socialism . . . diminishes the capacity for law to serve as an independent source of restraint on government behavior"). "Problems with law enforcement in practice are evident. . . ." *Id.* Numerous examples of the noticeable weaknesses abound, such as: "piracy of intellectual property; indeterminate contract and property rights; [and] inconsistent enforcement of administrative regulations." *Id.* (citations omitted). But see Joseph Kahn, *Deep Flaws, and Little Justice, in China's Court System*, N.Y. TIMES, Sept. 21, 2005, at A1, 2005 W.L. 14853210 (stating that "[h]undreds of thousands of new lawyers, stronger courts and a blizzard of Western-inspired codes protect property, enforce contracts and limit police powers").

9. The Chinese judiciary is subordinate to the legislative branch with respect to difficult questions of legal construction:

If the interpretations [of law] provided by the Supreme People's Court and the Supreme People's Procuratorate are at variance with each other in principle, they shall be submitted to the Standing Committee of the National People's Congress for interpretation and decision.

Liu, *supra* note 4, at 42 (quoting a 1981 resolution of the NPC Standing Committee); cf. Xin Chunying, *What Kind of Judicial Power Does China Need?*, 1 INT'L J. OF CONST. L. 58, 59 (2003) (stating, with regard to judicial reform, that "China is trying to reform a system that was designed to serve a planned economy in a state where executive power was supreme").

10. See Mary C. Szto, *Towards a Global Bar: A Look at China, Germany, England, and the United States*, 14 IND. INT'L & COMP. L. REV. 585, 588 (2004) (stating that "[i]n 2001, China amended its Judges Law, Prosecutors Law, and Lawyers Law to increase the qualifications required for these posts"). "One of China's major concerns is that many of its judges and prosecutors have little or no university or college-level legal training. Many judges actually attended law school after they became judges." *Id.* at 587.

11. See Johnson, *supra* note 7, at 2-4 (discussing the rise of a new legal culture in China). The essay states:

The theme of law reform played a prominent role in the fiftieth anniversary celebration of the founding of the People's Republic of China. Fifty official slogans were released by the Communist Party to mark the occasion, including "Promote political restructuring, develop socialist democracy, and improve the

to the SARS¹² epidemic in 2003 with new legislative enactments intended to address the resulting public health crisis.¹³ That course of action is precisely what a legally oriented culture does: it turns social problems into legal problems, and then addresses these concerns with the enactment and enforcement of new laws designed to resolve or ameliorate these problems. The “preference for statutory solutions to community concerns reflects many things . . . [including] a belief in the rule of law, a trust in legislative processes, a preference for comprehensive solutions, and an eagerness for defined standards. . . .”¹⁴

In the West, law plays a major role in fighting epidemics and other health problems.¹⁵ As three American professors recently wrote, law is an essential part of public health practice.

Law defines the jurisdiction of public health officials and specifies the manner in which they may exercise their authority. The law is . . . used to establish norms for healthy behavior and to help create the social conditions in which people can be healthy. The most important social debates about public health take place in legal fora—legislatures, courts, and administrative agencies—and in the law’s language of rights, duties, and justice. It is no exaggeration to say that “[t]he field of public health . . . could not long exist . . . except for its sound legal basis.”¹⁶

Using laws to protect public health and to fight epidemics is not new. During the plagues in London during the early 16th century, an array of legal provisions evolved “slowly and laboriously”¹⁷ to address

socialist legal system!” and “Rule the country by law, and build a socialist country that is ruled by law!”

Id. at 3 n.4.

12. Severe Acute Respiratory Syndrome.

13. See LIU, *supra* note 4, at 49 (indicating that, in dealing with SARS, the Chinese State Council “stressed an urgent need for establishing a legal framework and drafting relevant laws and regulations to deal with public emergencies”).

14. Vincent R. Johnson, *America’s Preoccupation with Ethics in Government*, 30 ST. MARY’S L.J. 717, 753 (1999) (discussing the United States).

15. Of course, the legal system can do more than seek to identify, treat, and contain disease. It can also, for example, respond to the economic upheaval that follows in the wake of an epidemic. See Lewis C. Vollmar, Jr., *The Effect of Epidemics on the Development of English Law from the Black Death Through the Industrial Revolution*, 15 J. LEGAL MED. 385, 392-94 (1994) (discussing how epidemics influenced the adoption of English labor laws, poor laws, and laws affecting agriculture and commerce).

16. Lawrence O. Gostin, et al., *The Law and the Public’s Health: A Study of Infectious Disease Law in the United States*, 99 COLUM. L. REV. 59, 61 (1999); see also Elizabeth B. Cooper, *Social Risk and the Transformation of Public Health Law: Lessons from the Plague Years*, 86 IOWA L. REV. 869, 920 (2001) (stating that “in the realm of public health, the legislature and related administrative agencies are the primary loci of activity”).

17. F.P. WILSON, *THE PLAGUE IN SHAKESPEARE’S LONDON* 71 (Oxford Univ. Press

threats to public health.¹⁸ While “some [individuals] hoped to avoid the plague through repentance, prayer, or superstition,”¹⁹ or “became fatalistic and fell into a pattern of reveling, looting, and general lawlessness,”²⁰ others sought to use legal regulations and information to combat the crisis. The laws enacted during the London plagues established rules relating to sanitation,²¹ identification and segregation of infected houses²² or persons,²³ investigation of illnesses,²⁴ rendition of medical treatment,²⁵ reporting of deaths,²⁶ disposal of tainted goods,²⁷ burial procedures,²⁸ and the legal mechanisms for enforcing the various plague-orders.²⁹

The laws adopted to fight plagues in England were likely modeled after earlier legal provisions in France and Italy.³⁰ In various ways, those

1927) (stating that the network of regulations was “constructed by the London magistrates”).

18. *See id.* at 14 (stating that “elaborate plague-orders of 1603 and 1625 were the logical outcome of the theories of sixteenth-century England about the cause and the cure” of the epidemic).

19. *See Vollmar, supra* note 15, at 395 (discussing social reactions to the plague and stating that in England “[t]he primary psychological reaction to plague was fear, and a crisis atmosphere frequently enshrouded the affected community”).

20. *Id.*

21. *See WILSON, supra* note 17, at 16 (referring to sanitation); *see also id.* at 34-46 (discussing infected goods and burials).

22. *See id.* at 16 (stating that the General Orders addressed segregation); *id.* at 17 (stating that “the beadle saw that infected houses were marked” and discussing responsibilities for “searching out infected houses, and for seeing that they were properly shut up”); *id.* at 61 (stating that “[i]nfected houses were first marked with a special sign in 1518”); *see also Vollmar, supra* note 15, at 395 (stating that “[o]ne [principal] weapon that local governments used was isolation. All members of infected households, the sick and the well, were confined to their homes.”).

23. *See WILSON, supra* note 17, at 56 (indicating that no inhabitant of an infected house “was allowed to walk abroad without carrying in his hand a white rod four feet in length”); *see also id.* at 16 (stating that the General Orders addressed segregation).

24. *See id.* at 65 (stating that at one point during the plague “two ‘honest and discreet matrons’ were appointed to search and view the body of every person dying in their parish,” and that at another point “two ‘sober ancient women’ were appointed in each parish . . . to be viewers of the sick or those suspected of infection”).

25. *See WILSON, supra* note 17, at 20 (stating that “[s]urgeons from the hospitals were appointed to heal the plague-stricken”); *see also Vollmar, supra* note 15, at 395 (stating that “[p]hysicians and clergy frequently refused to attend the sick and the dying”).

26. *See WILSON, supra* note 17, at 18 (discussing the reporting of “the true number of those who died”).

27. *See id.* at 34 (stating that “no clothes, garments, or bedding which had been near or about any infected person should be sold or given away”).

28. *See id.* at 17 (discussing responsibility for the “proper conduct of burials”); *id.* at 40-46 (discussing burial regulations).

29. *See id.* at 19 (stating that the examiner’s duties were “to ensure that all orders were duly observed” and to make specified appointments related to that purpose).

30. *See id.* at 62 (stating that “many plague-measures” were “borrowed from the

types of regulations for fighting epidemics with better information and mandatory health practices have been replicated and improved for centuries to deal with all manner of diseases,³¹ including smallpox, tuberculosis, and more recently, HIV and AIDS. For example, early in the twentieth century patients infected with polio were legally quarantined in their homes or sent to special treatment facilities.³² And during the 1918 influenza, which killed “more people than any other outbreak of disease in human history,”³³ New York City “required people to obtain passes to travel.”³⁴

The control of communicable diseases is an issue of continuing importance, for natural biology ensures that there will always be epidemics.³⁵ Protecting public health continues to require the deployment of the “traditional tools of surveillance, vaccination, isolation, quarantine, and treatment, often on an international scale.”³⁶

Continent”).

31. See, e.g., Gostin, et al., *supra* note 16, at 62-63 (stating that “[c]ommunicable disease control has occupied American governments from the earliest year of European settlement, and it was in response to epidemics that formal health agencies were first created”).

32. See JEFFREY KLUGER, *A SPLENDID SOLUTION: JONAS SALK AND THE CONQUEST OF POLIO* 8-9 (2004) (discussing special facilities set up to house the newly afflicted and signs that were posted on homes to enforce quarantines). See also JOSEPH J. ELLIS, *HIS EXCELLENCY GEORGE WASHINGTON* 86-87 (2004) (stating that “only recently ... [have historians] recognized that the American Revolution occurred within a virulent smallpox epidemic of continental scope.... Washington ... understood the ravaging implications of a smallpox epidemic within the congested conditions of his encampment, and he quarantined the patients in a hospital at Roxbury.... Washington strongly supported ... [inoculation]. It would take two years before inoculation became mandatory for all troops..., but the policy began to be implemented in the first year of the war.... A compelling case can be made that... [Washington’s] swift response to the smallpox epidemic and to a policy of inoculation was the most important strategic decision of his military career”).

33. JOHN M. BARRY, *THE GREAT INFLUENZA: THE EPIC STORY OF THE DEADLIEST PLAGUE IN HISTORY* 4 (2004). “The lowest estimate of the pandemic’s worldwide death toll is twenty-one million. . . .” *Id.* at 4.

34. *Id.* at 4.

35. See Cooper, *supra* note 16, at 872 (stating that “[h]istory teaches that new plagues will continue to emerge”). The article states:

Acquired Immune Deficiency Syndrome (AIDS) was the wake-up call that disturbed America from its mid-twentieth century slumber concerning the dangers of communicable diseases. Until AIDS was identified in 1981, most Americans felt largely impervious to health threats posed by viruses or bacteria. . . . But, over the last twenty years, the (re)emergence of serious or life threatening microbial-based conditions, such as Ebola, hantavirus, Lyme disease, West Nile virus, and even newly-recognized strains of hepatitis have underscored our vulnerability. . . .

Id. at 871-72; see also Keith Bradsher & Lawrence K. Altman, *Experts Confront Major Obstacles in Containing Virulent Bird Flu*, N.Y. TIMES, Sept. 30, 2004, at A1 (discussing the “probable human-to-human transmission” of a virulent strain of avian influenza).

36. See Gostin, et al., *supra* note 16, at 98.

II. The Chinese Law on SARS

In *Chinese Law on SARS*,³⁷ the first book published in English about the new Chinese legislation,³⁸ Chenglin Liu recounts the tale of China's efforts to cope with the recent SARS epidemic. The story embraces all of the themes one would expect in a drama where an unknown menace threatened the health of hundreds of millions of persons not only in China but across the globe.³⁹ Liu lays out the evidence of the government's initial denials that a crisis existed,⁴⁰ its erroneous assurances that both the public and visitors were safe,⁴¹ and its early inability to appreciate the magnitude of the problem or provide effective guidance.⁴² Coupled with the media's failure to report effectively on SARS,⁴³ those circumstances, predictably, led to unwitting transmission

37. See LIU, *supra* note 4.

38. The Chinese SARS laws include four key legislative enactments. The two new laws are the *Regulations Dealing with the Outbreak of Public Health Emergencies* (effective May 12, 2003) [hereinafter referred to as the "Regulations"] and the *Measures on the Prevention and Treatment of Infectious Atypical Pneumonia (Severe Acute Respiratory Syndrome, or SARS)* (effective May 12, 2003) [hereinafter referred to as "Measures"]. See LIU, *supra* note 4, at 99-102 (summarizing *Regulations*); *id.* at 111-22 (translating *Regulations*); *id.* at 102-04 (summarizing *Measures*); *id.* 123-32 (translating *Measures*).

The third major piece of SARS legislation, *The Law of the People's Republic of China on the Prevention and Treatment of Infectious Diseases* (effective February 21, 1989), was passed more than a decade earlier, but was republished on April 26, 2003. See *id.* at 39 (discussing republication by Xinhua News Agency); *id.* at 133-41 (translating the infectious-disease law). The final key legislative enactment is the *Interpretation of Laws in Criminal Cases Regarding the Obstruction of the Prevention and Control of the Outbreak of Infectious Diseases* (effective May 13, 2003) [hereinafter referred to as the "Interpretation"]. *Id.* at 42 (indicating that the *Interpretation* clarified how existing criminal law applied to SARS); *id.* at 143-47 (translating the *Interpretation*).

39. See LIU, *supra* note 4, at xiii (stating that "[a]fter SARS was first identified in Southern China in November 2002, the disease spread quickly into more than twenty countries"). "By late June 2003, when the Chinese government finally claimed victory over the crisis, there were 5,327 persons infected with the illness with 349 deaths in China." *Id.* The direct economic loss totaled approximately \$18 billion between April and June 2003. *Id.*

40. "The Government of Guangdong did not release the information about the outbreak of . . . [SARS] until three months after the first case . . . [but] denied any wrongdoing." *Id.* at 3.

41. See *id.* at 21-24 (discussing official assurances that Guangzhou and Beijing were safe); *id.* at 24-28 & n.36 (discussing gross under-reporting of the number of SARS cases by the Minister of Health, which may have contributed to his loss of that position).

42. A government spokesman eventually acknowledged that the "Health Ministry was not well prepared for dealing with public health emergencies" and failed "to provide effective guidance" to the medical community regarding SARS. *Id.* at 57.

43. See *id.* at 19-21 (discussing how, ironically, the Chinese media's widely praised and unprecedented attention to the American war in Iraq overshadowed coverage of the SARS crisis in China); *id.* 21-24, 32 (discussing the media).

of the disease.⁴⁴ Then, against a background of an increasing number of SARS cases and general public ignorance of the truth,⁴⁵ rumors⁴⁶ and speculation⁴⁷ led to panic among the citizenry.⁴⁸ Liu recounts the individual acts of bravery that finally led to a proper course of action,⁴⁹ as well as the inevitable vilification of those who failed to respond to the crisis,⁵⁰ and praise for those who ultimately did.⁵¹ The book cites a wealth of authority for its rendition of the facts (generally materials published on the Internet, both in Chinese and English) and the story is well told.⁵²

The outbreak of SARS coincided with the full session of the 10th

44. See *id.* at 12-13 (discussing “patient zero,” who triggered the spread of the epidemic to Hong Kong, Vancouver, Toronto, Singapore, and Hanoi during a trip to his nephew’s wedding); *id.* at 15-18 (discussing the Beijing “super spreader”); *id.* at 68 (indicating that “hospitals themselves started to spread the disease”).

45. See *id.* at 18-19 (discussing the widespread ignorance of the epidemic in Beijing).

46. Cf. *id.* at 21 (stating that news reports “focused mainly on the rumors and panic caused by SARS”).

47. See *id.* at 18-19 (discussing “uninformed speculation” in Guangzhou).

48. See *id.* at 8-12 (discussing panic shopping and the predatory marketing and pricing of supposed remedies, including white vinegar and iodized salt); *id.* at 65-68 (recounting “chaos” at two universities); *id.* at 72 (indicating that lack of confidence in the medical system and fear of being infected in a hospital caused the number of hospital visits to decline sharply and the death rate among patients with chronic illnesses to rise); *id.* at 80 (discussing students who “fled” from Beijing universities); *id.* at 82 (detailing escapes of migrant workers from mandatory quarantine); *id.* at 93 (describing riots in rural areas); *id.* at 94 (indicating that a dog suspected of having SARS was buried alive). Animal abuse is a common incident of ill-informed efforts to fight contagions. In the United States, around the time of the First World War, many persons concluded the cats were responsible for spreading polio, “so cats were bludgeoned and drowned by the tens of thousands.” KLUGER, *supra* note 32, at 16.

49. See LIU, *supra* note 4, at 28-30 (discussing Dr. Jiang Yanyong, who criticized the Minister of Health for publicly understating the number of SARS cases, even though “[w]histle-blowers in China are rare and usually face various sanctions”).

50. See *id.* at 14 (recounting criticism of the government for its slow response to the outbreak); *id.* at 30-32 (discussing the dismissal of the Minister of Health and the Mayor of Beijing).

51. See *id.* at 31-32 (noting the praise and recognition accorded to the doctor who insisted on revealing accurate information about the number of persons affected by SARS); *id.* at 41 (describing the “great contributions” of the military to containing the virus); *id.* at 52 (describing “high approval . . . especially among students” of the new government’s open approach to the SARS problem).

52. There is also the occasional *bon mot*, as where Liu notes in an aside that because official control of the media barred television footage of the 9-11 attacks on the World Trade Center, media school students reportedly checked into luxury hotel rooms, normally occupied by foreigners, so that they could watch full coverage on a Hong Kong-based cable station. See *id.* at 20 n.12. Similarly, Liu tells how the text of a letter critical of the government, which eventually led to the removal of the Minister of Health and the Mayor of Beijing, has been quietly removed from many websites and is now difficult to locate. *Id.* at 29 n.40.

National People's Congress, which elected a new Central Government.⁵³ Faced with mounting international concern about the SARS crisis,⁵⁴ the new government responded quickly. The government's "proactive"⁵⁵ approach was to enact new legislation, republish an important law, and issue authoritative interpretations of existing criminal law provisions.⁵⁶ The new laws addressed the epidemic by creating an expedited reporting system for tracking SARS cases,⁵⁷ establishing stations for "receiving and quarantining SARS patients found among passengers on trains,"⁵⁸ isolating and treating SARS patients and suspected cases of infection,⁵⁹ creating specialized SARS treatment facilities,⁶⁰ prohibiting hospitals from refusing to minister to SARS patients,⁶¹ promulgating contagion-related procedures for common carriers,⁶² and imposing sanctions for violations of the SARS laws.⁶³ The government required better reporting of SARS-related information—even from military hospitals—to civil health authorities.⁶⁴ Further, the government "launched a coordinated plan to cover the costs for treating the poor who contracted SARS,"⁶⁵ established sanctions for concealing, delaying, or falsely reporting information,⁶⁶ and constructed new facilities to relieve pressures on metropolitan hospitals.⁶⁷

Clearly explaining the structure and hierarchies of the Chinese

53. *Id.* at 35 (discussing Congress).

54. *See id.* at 48 (indicating that the first SARS death of a foreigner fueled international concern).

55. *Id.* at 35.

56. *See* note 38, *supra*.

57. *See* LIU, *supra* note 4, at 55 (stating that the system "closely detailed the responsibilities of governments at various levels"); *id.* at 58-62 (discussing the epidemic reporting system); *id.* at 101 (same).

58. *Id.* at 55.

59. *See id.* at 55 (discussing policies requiring SARS treatment to be separate from regular cases); *id.* at 73 (discussing the establishment of fever clinics at all hospitals); *id.* at 97 (discussing treatment and quarantine measures).

60. *See id.* at 71 (discussing construction).

61. *See id.* at 74-76 (prohibiting refusal of service and unnecessary transfers).

62. *See id.* at 85-88 (discussing buses, subways, airlines, and railroads).

63. *See, e.g., id.* at 72 (relating to improper disposal of waste from infectious diseases); *id.* at 102 (relating to violation of the *Regulations* related to health emergencies); *id.* at 104 (relating to violation of the *Measures* for SARS prevention and treatment); *see also id.* at 107-08 (relating to the re-published 1989 infectious disease law).

64. *See id.* at 41 (requiring all hospitals in Beijing, regardless of affiliation, to report to the Beijing Health Department).

65. *Id.* at 57.

66. *See id.* at 64-65 (discussing career-related penalties, such as demotion or dismissal, and possible criminal prosecution).

67. "Amazingly," a brand new hospital, with 1000 beds, was built in only seven days by 4000 workers (7,000 at peak time) and 500 machines. *Id.* at 69.

government,⁶⁸ Liu offers a savvy analysis of why China's centralized framework initially impeded the fight against SARS by causing key local officials (who had been appointed by the Central Government) to focus on "protection of local image and economic growth,"⁶⁹ rather than on public health, and by impeding "horizontal cooperation between provinces."⁷⁰ The legislative enactments used to deal with SARS were rooted not only in good health practices that are widely followed in other countries,⁷¹ but, as Liu explains, in prior Chinese law. Some of the important legal provisions for fighting SARS had been enacted long before the SARS crisis arose.⁷² If it took the passage of two new laws, the republication of a third existing law on infectious disease, and the issuance of key interpretations of criminal law to ensure that those in the public health sector acted responsibly in the SARS crisis,⁷³ that was the right course of action. As Liu argues, the SARS laws played a "crucial role in containing the epidemic."⁷⁴ But the episode highlights the fact that there is more to building a legal culture than passing laws. Laws must be kept current, which was not done in the case of the earlier infectious disease law. Laws must also be implemented through appropriately targeted public education, institutionalization, and enforcement.⁷⁵ On each of those grounds, the Chinese medico-legal

68. See *id.* at 35-45 (discussing state institutions and hierarchies).

69. *Id.* at 45.

70. *Id.* at 45 (stating that "[u]nder the unitary [centralized] system, emphasis is more on the vertical subordination of the local government to the Central Government," rather than on cooperation between local governments at the same level).

71. For example, the idea of using special facilities to treat those with communicable diseases is ancient in origin. "In Venice[,] a lazaretto was established for the treatment and isolation of plague-patients as early as 1403." See WILSON, *supra* note 17, at 74 (discussing proposals in England in the 17th century to erect "pesthouses where the sick might be properly isolated, housed, and fed"). A "pesthouse" was an isolation hospital located outside the town. Vollmar, *supra* note 15, at 396. In the 16th century, the English had realized that "the usual method of shutting up the sound and the infected in one house increased rather than decreased the infection." WILSON, *supra* note 17, at 75. Isolation of those with communicable illnesses had many historical precedents.

[L]epers were historically banished to leper colonies and the insane were locked away in asylums. Isolation techniques were utilized, especially when fear of the disease was greatest and an identifiable group was involved. . . .

Vollmar, *supra* note 15, at 396.

72. See, e.g., LIU, *supra* note 4, at 62 (discussing an article in the new SARS law which reiterated provisions on releasing information to the public that were passed in 1989, but "largely ignored" by the government and related departments during the early days of the SARS crisis).

73. See *supra* note 38.

74. LIU, *supra* note 4, at xiv.

75. See *id.* at 26 (indicating that the earlier Chinese Law on Treatment and Prevention of Infectious Disease, passed in 1989, had not been updated for 14 years, and as a result "the ill-drafted law became a legal ground that was cited both by Guangdong officials and the Minister of Health as an excuse for the late reporting" of SARS cases).

culture failed at the beginning of the SARS crisis.⁷⁶ Had that not happened, a more timely medical response to SARS might have been possible.⁷⁷

If Chinese officials did not act soon enough to address the SARS crisis, their inaction is as much an indication of human nature as a sign of incompetence. Hoping that a problem will go away is nothing new. During the London plagues in the sixteenth century, the magistrates “often deferred action in the earliest stages of the infection in the hope that it would die out.”⁷⁸ However, Liu contends, with ample support, that Chinese government officials did not simply fail to act. Rather, “the initial information on the [SARS epidemic] was concealed and misstated”⁷⁹ and as a result “the deadly virus gained momentum and erupted into a national epidemic.”⁸⁰ In addition, initially there were serious failures to communicate information.⁸¹ “[I]t was almost impossible for the health officials in Beijing to collect accurate information on SARS from the military hospitals.”⁸² Moreover, as Liu notes, “well trained doctors at a highly regarded hospital did not even know what the symptoms of SARS were” months after the initial outbreak of the disease.⁸³

76. See, e.g., *id.* at 37 (stating that infectious-disease law was essentially ignored in the early stages of the SARS crisis).

Some persons argue that similar efforts in the U.S. also fall short.

Legislative efforts to answer . . . [legal and political questions relating to public health] largely have been inadequate. Public health law has developed in piecemeal fashion, responding to each crisis as it arises, resulting in an amalgam of legislative provisions generally unprepared to deal with existing-or future-threats to the public health. Indeed, the law frequently has revealed itself to be ill-equipped to deal with the social and political issues that inevitably attach to any wide-spread medical crisis.

Cooper, *supra* note 16, at 873; see also Gostin, et al., *supra* note 16, at 102 (stating that “[t]he most striking characteristic of state disease control law, and one that underlies most of its defects, is its overall antiquity”).

77. If the 1989 infectious-disease law, which was still on the books but had fallen into disuse, had “been closely followed from the onset of the outbreak, SARS could have been effectively confined to the local regions.” LIU, *supra* note 4, at 106.

78. See WILSON, *supra* note 17, at 72 (stating, apart from desertion of duties, inaction is the most serious charge that can be levied against the London magistrates).

79. LIU, *supra* note 4, at xiii.

80. *Id.* at xiii; see also *id.* at 27 (arguing that if the government of Beijing and the Ministry of Health had promptly released information about the spread of SARS, the number of cases would have been “drastically reduced”); *id.* at 32 (stating that because “the outbreak coincided with the congressional meeting . . . the Health Ministry required hospitals not to release the information about SARS,” in order to “create a stable environment”).

81. See *id.* at 58 (indicating that initially “there was little information exchange among various departments and medical institutions”).

82. *Id.* at 41.

83. *Id.* at 27.

III. Transparency in China

In the end, the Chinese Government ultimately adopted an “open and transparent approach in dealing with SARS.”⁸⁴ This was a major departure from the traditional Chinese “black-box” method of strictly controlling information about emergencies and accidents until the problems ended or were resolved.⁸⁵ As Liu tellingly writes, “[w]hen SARS first broke out, the primary concern of the local leaders was not how to control the disease, but how to control the information.”⁸⁶ That mindset changed once a new Central Government was installed. The new government’s decisions to deal with SARS openly and to adopt an approach that placed a higher priority on public health and safety than on economic gains are to be lauded. Those were difficult decisions⁸⁷ representing a “drastic change”⁸⁸ from prior practices. Moreover, the government’s choice to utilize access to better information and appropriate legal standards as the means for addressing and controlling a major public health crisis is commendable.

IV. Paths Not Taken

It is interesting to consider some of the paths not taken by the Chinese legislation on SARS. The key SARS laws,⁸⁹ which Liu has translated in full,⁹⁰ are published along with other related legislative enactments⁹¹ in the appendices to the book. The SARS laws contain few or no provisions relating to civil liberties, victim compensation, or economic incentives for the development of new drugs to prevent or cure SARS. In many countries, one would not be surprised to find provisions addressing any or all of these subjects.⁹²

84. See *id.* at 47; see also *id.* at 50 (noting that the “major legacy” of one high-profile meeting was that “the Politiburo emphasized that no one was allowed to conceal information on SARS”).

85. *Id.* at 51.

86. *Id.* at 52.

87. See *id.* at 51 (stating that “choosing an open approach to combat SARS meant that the government had to forgo economic gains and even suffer losses”).

88. *Id.* at 52.

89. See note 38, *supra*.

90. See LIU, *supra* note 4, at 56 (attributing translation).

91. These other enactments include: the *Notice Regarding Authorization on Announcement of an Epidemic Situation*, see *id.* at 149; the *Notice Regarding the Related Problems on the Strict Prevention of the Spread of SARS through Use of Public Transportation*, *id.* at 151-53; the *Law of the People’s Republic of China on National Border Quarantine and Inspection*, *id.* at 155-59; and *The Implementing Rules of the Law of People’s Republic of China on the Prevention and Treatment of Infectious Diseases*, *id.* at 161-75.

92. See Julie Edwards, Statutory Note, *Controlling the Epidemic: The Texas AIDS Reporting Statute*, 41 BAYLOR L. REV. 399, 399 n.6 (1989) (indicating that American

A. Civil Liberties

Serious communicable diseases, such as SARS, raise a host of civil-liberties issues because those who have, or are accused of having, the disease may suffer stigma and social hostility.⁹³ The legal issues for affected individuals range from defamation and invasion of privacy to employment and housing discrimination.

In the United States, the liberty interests of individuals relating to communicable diseases are afforded basic protection by various statutory provisions, such as the Americans with Disabilities Act (ADA)⁹⁴ and the Health Insurance Portability and Accountability Act (HIPAA),⁹⁵ which guarantee a threshold of confidentiality for personal information relating to one's health. Individual interests are also protected by common-law tort principles, including the rules defining the fiduciary obligations of professionals,⁹⁶ the liability to third parties of doctors treating patients

legislatures responded to AIDS by passing laws prohibiting discrimination).

93. See Cooper, *supra* note 16, at 901 (discussing the role that stigma, social hostility, and social risk play in the lives of persons with serious illnesses); cf. Efrén A. Acosta, Comment, *The Texas Communicable Disease Prevention and Control Act: Are We Offering Enough Protection to Those Who Need it Most?*, 36 HOUS. L. REV. 1819, 1822-23 (1999) (noting that “[d]ue to the potential for unfair treatment and stigma faced by HIV-positive individuals, there is a perception that HIV/AIDS status, and test results in particular, must be kept under a veil of secrecy”). In Europe, during the Black Death in the mid-fourteenth century, “[p]ogroms of Jews were a common expression of a search for scapegoats or those thought guilty of spreading the plague; the burning of witches and heretics was another.” JOHN M. ROBERTS, *A HISTORY OF EUROPE* 140 (1996) (characterizing these events as “signs of collective madness”).

94. Pub. L. No. 101-336, 104 Stat. 327 (codified as amended at 42 U.S.C. §§ 12101-12213 (2005)). Among other things, the Americans with Disabilities Act requires educational institutions to protect the confidentiality of certain information relating to students. See generally Donald H. Stone, *What Law Schools Are Doing to Accommodate Students with Learning Disabilities*, 42 S. TEX. L. REV. 19, 28 (2000) (stating that “documentation about a student’s disability is extremely sensitive and should be treated with the utmost confidentiality by school officials”).

95. The Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936. HIPAA is well known for its provisions requiring privacy of health information. See John M. Stephens, *Integrating the Privacy Rule with Other Privacy Obligations*, 676 PLI/PAT. 167, 171 (2002) (stating that “[b]etween the language of HIPAA, passed in 1996, and its final rule released in December 2000, which provides implementation specifications, health information privacy requirements are much more clearly spelled out” than under prior law). The regulations adopted pursuant to HIPAA limit the use or disclosure of patient information. 45 C.F.R. § 164.502 (2005).

96. Under American law, the physician-patient relationship is typically regarded as fiduciary as a matter of law. See, e.g., *Lownsbury v. VanBuren*, 762 N.E.2d 354, 358 (Ohio 2002) (stating that “[t]he physician-patient relationship is a fiduciary one based on trust and confidence”). A non-privileged revelation of confidential patient information is a breach of fiduciary duty which may give rise to tort liability. See RESTATEMENT (SECOND) OF TORTS § 874 (1979) (stating that “[o]ne standing in a fiduciary relation with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation”). “The unauthorized disclosure of nonpublic medical

with communicable diseases,⁹⁷ and the availability of redress to victims for slander,⁹⁸ libel,⁹⁹ and public disclosure of private facts.¹⁰⁰ Various laws also accommodate civil-liberties interests. For example, for better or worse, virtually all states now allow parents to opt out their children from compulsory vaccination programs for religious reasons, and more than a dozen states provide “philosophical” opt-outs as well.¹⁰¹

In the United States, one might expect civil liberties concerns to be raised as part of the debate over how to respond appropriately to a new epidemic.¹⁰² It is not surprising, therefore, that special provisions on

information relating to a patient may be actionable under a variety of [other] theories, including invasion of privacy, breach of contract, or violation of statute. Some states simply recognize an independent common-law tort action for breach of confidence in the physician-patient setting.” See VINCENT R. JOHNSON & ALAN GUNN, *STUDIES IN AMERICAN TORT LAW* 298 (3d ed. 2005) (citing *Biddle v. Warren Gen. Hosp.*, 715 N.E.2d 518 (Ohio 1999)).

97. In some American states, duties to third parties may be imposed on physicians treating patients with communicable diseases. See *DiMarco v. Lynch Homes-Chester County, Inc.*, 583 A.2d 422 (Pa. 1990) (claim stated by third person against doctor who negligently advised a patient with a communicable disease); see also *Tenuto v. Lederle Labs.*, 687 N.E.2d 1300 (N.Y. 1997) (recognizing a duty to warn parents of risks to their health resulting from vaccination of their child); *Osborne v. United States*, 567 S.E.2d 677 (W. Va. 2002) (holding that the state’s medical professional liability act permits a third party to bring suit against a health care provider for foreseeable injuries proximately caused by negligent treatment of a patient). But see *Santa Rose Health Care Corp. v. Garcia*, 964 S.W.2d 940 (Tex. 1998) (finding no duty to inform wife of husband’s possible exposure to HIV).

98. Accusing someone of having a “loathsome disease” is slander *per se*. See RESTATEMENT (SECOND) OF TORTS § 572 (1977) (stating that “[o]ne who publishes a slander that imputes to another an existing venereal disease or other loathsome and communicable disease is subject to liability without proof of special harm”).

99. See *Doe v. Merck & Co.*, 2001 WL 34133510, *3 (N.Y. Sup. Ct.) (granting summary judgment on liability in favor of a woman who alleged that she was libeled by a product brochure which falsely indicated that she was infected with herpes).

100. See RESTATEMENT (SECOND) OF TORTS § 652D (1977) (stating that “[o]ne who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy, if the matter publicized is of a kind that (a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public”). But see *Doe v. Methodist Hosp.*, 690 N.E.2d 681, 693 (Ind. 1997) (refusing to recognize, in a suit based upon alleged revelation of HIV status, an action for invasion of privacy based on public disclosure of private facts). See generally Keith J. Hilzendeger, Comment, *Unreasonable Publicity: How Well Does Tort Law Protect the Unwarranted Disclosure of a Person’s HIV-Positive Status?*, 35 ARIZ. ST. L.J. 187 (2003) (stating that “the Restatement approach is a good starting point,” but arguing that in some respects the “Restatement definition does not go far enough to protect the interest of HIV-positive individuals in controlling who is and is not aware of their HIV status so that they can avoid being stigmatized by others”).

101. Steve P. Calandrillo, *Vanishing Vaccinations: Why are So Many Americans Opting Out of Vaccinating Their Children*, 37 U. MICH. J. L. REFORM 353, 389 (2004).

102. Cf. Edwards, *supra* note 92, at 403 (stating that “[a]n inherent friction in public health issues is the necessity that individual liberties must suffer for the benefit of the general public”); Edward A. Fallone, *Preserving the Public Health: A Proposal to*

confidentiality are found in many AIDS-related statutes.¹⁰³ In Texas, for example, the results of an AIDS test are generally confidential,¹⁰⁴ and a person who willfully or negligently discloses those results is subject to a tort action for damages.¹⁰⁵

The Chinese SARS laws do not expressly address issues of confidentiality. Moreover, there is no indication in Liu's book that civil liberties issues played a significant role in the Chinese government's decisions about how to deal with SARS. Indeed, Beijing Telecom's suspension of service to Internet bars at the government's suggestion during the height of the SARS crisis seems at least as much calculated to interfere with civil liberties as to contain the spread of SARS. Liu writes that entertainment venues in Beijing "are often overcrowded and without good air circulation systems,"¹⁰⁶ and therefore "[l]arge-scale gatherings at night clubs, Internet cafes, cinemas and theaters were of big concern for health officials."¹⁰⁷ While some Internet cafes may be large, many are small. One of the authors of this review has spent many hours in Internet cafes in Beijing, Jinan, and Shanghai, and without exception they were all less crowded than the typical Chinese restaurant. While some Chinese Internet cafes have bad ventilation systems, others open directly onto the street, so that computer keyboards and seats are coated with dust. Whether the Beijing Internet cafes were closed to stop the spread of SARS—as opposed to slow the spread of SARS information—is at least open to question.

There is one civil liberties related provision in the SARS laws that deserves special attention. That provision concerns whistle-blower protection. The SARS laws provide that there is a "right to inform the People's government . . . of any hidden dangers of an emergency, and . . . to make a report of the local government's failure to perform its duties in

Quarantine Recalcitrant AIDS Carriers, 68 B.U. L. REV. 441, 448 (1988) (discussing how public safety and civil rights issues must be weighed in formulating an effective response to an epidemic); Wendy E. Parent, *From Slaughter-House to Lochner: The Rise and Fall of the Constitutionalization of Public Health*, 40 AM. J. LEGAL HIST. 476, 477 (1996) (stating that in the post-Civil War Reconstruction period, "an era when epidemics were common, individual right was unquestionably held to give way to *salus populi*").

103. See Acosta, *supra* note 93, at 1822 (stating that "recent legislation has increased the protection of HIV- and AIDS-related information because of its sensitive nature"); *id.* at 1823 (indicating that the "Texas Communicable Disease Prevention and Control Act . . . provides that HIV test results are confidential and limits the persons to whom those results may be disclosed").

104. TEX. HEALTH & SAFETY CODE ANN. § 81.103 (Vernon 2005) (defining when otherwise confidential test results may be released).

105. TEX. HEALTH & SAFETY CODE ANN. § 81.104 (Vernon 2005) (discussing civil liability).

106. LIU, *supra* note 4, at 90.

107. *Id.* at 90.

accordance with the relevant provisions in dealing with the emergency to the higher People's government or related department. . . ."¹⁰⁸ More surprising is that the SARS laws state that the "People's governments at or above the county levels shall reward the unit or individual who has made contributions to alerting the government of the emergency."¹⁰⁹

The arguable importance of these provisions is amplified by the fact that, as the SARS epidemic developed in China, the conduct of one whistle-blower, Dr. Jiang Yanyong, who contacted *Time* magazine after being rebuffed by the Chinese media, "changed the whole course of the battle against SARS."¹¹⁰ However, in thinking about the new SARS laws, the first thing to note is that the *Regulations* do not say that there is a right to contact the media, and indeed a contrary 1989 rule is still in effect.¹¹¹ Read strictly, the SARS laws simply say that there is a right to tell those higher up on the governmental chain of command. In that sense, the "right to inform" is not a startling development in civil liberties, but a reinforcement of traditional Chinese centralizing principles. Moreover, as Liu notes:

While the law provides that the informers should be rewarded, it does not specify or refer to any punishment for retaliation by the local government. The major concern for most people is how to go about life after tipping off the government's failure. As long as the informers live under the same authority, they would find themselves under constant pressure from the local government.¹¹²

Viewed skeptically, the whistle-blower provisions in the SARS laws are not as good as they first appear.

B. Compensation for Victims

As noted above, under United States law, victims of infectious disease may be entitled to tort compensation from those responsible for communicating the disease or breaching obligations of confidentiality. While Chinese law provides criminal sanctions for intentionally or negligently spreading an infectious disease¹¹³ and other forms of irresponsible SARS-related conduct,¹¹⁴ neither that law nor other SARS-

108. *Id.* at 63.

109. *Id.*

110. *Id.* at 28-29.

111. *See id.* at 63-64 (according to the provision, "no unit or individual is allowed to release and announce epidemic information to foreign media or publish unannounced epidemic information without the authorization of the Health Department").

112. *Id.* at 63.

113. *See id.* at 84 (quoting relevant provisions).

114. For example, a person is subject to criminal sanction for "marketing fake or

related provisions speak of tort liability for spreading SARS or disclosing information related to SARS. This is not surprising. Under traditional communism, the *dan wei* (work unit) provided cradle-to-grave care to each Chinese citizen.¹¹⁵ It supplied housing, medical services, education, employment, and retirement income—the types of economic benefits that are often at issue in tort litigation in western countries. Consequently, there was traditionally little need for a tort system and little tort litigation.¹¹⁶ Moreover, a western-style tort system would have made little sense in a country where few persons had the wealth from which a judgment could be collected.

China's recent move toward capitalism (in everything but name) has undermined the assumptions that previously led to a lack of interest in tort liability. Today in China, the mass marketing of consumer products (including automobiles),¹¹⁷ the growth of an economically privileged middle class,¹¹⁸ and the demise of the care-giving role of the work unit¹¹⁹

shoddy medicine,” “[s]preading horrific rumors,” or “improperly disposing of objects contaminated with infectious disease.” *Id.* at 105 (quoting criminal provisions).

115. *Cf.* Chunying, *supra* note 9, at 60 n.3 (stating that “[t]he ‘unit,’ or dan wei, is the institution in which a citizen is employed. Under the planned economy, almost everybody who lives in a city belongs to a unit and the unit plays an important role in people’s lives. Unit leaders are charged with taking care of all aspects of life, including settling of disputes.”).

116. *See* William P. Alford & Yuanyuan Shen, *The Limits of Law in Addressing China’s Environmental Dilemma*, 16 STAN. ENVTL. L.J. 125, 147 (1997) (stating that “the Chinese system defines very narrowly the range of activities actionable under tort law”); Robert Force & Xia Chen, *An Introduction to Personal Injury and Death Claims in the People’s Republic of China*, 15 TUL. MAR. L.J. 245, 246 (1991) (stating that, unlike in the U.S., personal injury litigation is not “big business” in China); Walter Gelhorn, *China’s Quest for Legal Modernity*, 1 J. CHINESE L. 1, 16 n.40 (1987) (stating that “‘tort law’ cases that fill the dockets of American civil courts are rare in China; a victim of an accident is likely to recoup out of pocket expenses for medicine and the like, but not much else”); Charles Zhen Qu, *An Outsider’s View on China’s Insider Trading Law*, 10 PAC. RIM L. & POL’Y J. 327, 345 (2001) (stating that deceit is not a cause of action under Chinese tort law); Lingling Zou, *Legal Issues of Doing Reinsurance Business in China*, 7 J. INT’L L. & PRAC. 15, 32 (1998) (stating that “China does not have an American style tort system”).

117. *See From “Bicycle Kingdom” to World’s Fastest-Growing Auto Market*, XINHUA NEWS AGENCY, Oct. 4, 2004, available at 2004 WL 95405097 (stating that “owning a family car has come within, or nearer, the reach of the country’s growing middle class”).

118. *See Chinese Banks to Expand Bank Card Business in Hong Kong*, CHINA NEWS DIG., Jan. 19, 2004, available at 2004 WL 65926286 (indicating that “China’s middle class is predicted to grow to 160 million by 2010 from an estimated 60 million people in 2002”); *cf.* LIU, *supra* note 4, at 96 (stating that “[w]ith increasing discretionary spending in China, more and more people can now afford to travel overseas”).

119. *Cf.* David Murphy, *The Lost Generation: Homelessness Is on the Rise Among Children in China*, FAR E. ECON. REV., Feb. 19, 2004, at 48, available at 2004 WL 55767447 (quoting a Beijing-based lawyer as stating that “[t]en years ago . . . [homelessness] was not such a serious problem, the work units used to take care of these

are all creating pressures for a legal regime to govern compensation for accidents. Work is currently underway to draft a new code¹²⁰ which, when enacted, is likely to go a long way in China toward ensuring that persons who carelessly injure others will be held liable for the damages they cause.

C. *Economic Incentives*

While the SARS laws do not provide compensation to persons who contract SARS or suffer other related harm, they do create policies “rewarding and compensating medical staff” who become infected with SARS.¹²¹ These are sensible provisions that encourage the rendition of needed professional medical services. However, given the priority that China places on economic development, one might have expected the new SARS laws to go further in terms of creating economic incentives for combating the disease. Legislatively crafted incentives can sometimes be used effectively to spur the development and marketing of drugs that are needed to fight epidemics and other communicable diseases.

In the United States, a variety of economic incentives have been employed to address various public health concerns.¹²² The development of new treatments for AIDS has been spurred by “fast tracking” the regulatory process or making “early-access” to drugs feasible in special cases.¹²³ The Orphan Drug Act¹²⁴ has stimulated development of

problems, but not now”).

120. See Paul Gewirtz, *The U.S.-China Rule of Law Initiative*, 11 WM. & MARY BILL RTS. J. 603, 617 (2003) (mentioning on-going efforts to draft China’s first tort law); see also Yao Hui, *Recent Development of Chinese Civil Law: Focus on Drafting the Civil Code and Jus Rerem (Law of Real Rights)*, 5 J. CHINESE & COMP. L. 289, 295 (2002) (questioning whether, in China, the law of torts should be separated from the law of obligations).

121. LIU, *supra* note 4, at 55.

122. See generally Patricia C. Kuszler, *Balancing the Barriers: Exploiting and Creating Incentives to Promote Development of New Tuberculosis Treatments*, 71 WASH. L. REV. 919 (1996).

123. See *id.* at 958-61 (discussing expedited FDA approval processes (originally provided to stimulate development of AIDS therapies, pursuant to which “disease severity and urgency of market need” became relevant factors), and “early-access” provisions); see also Mandy Wilson, Note, *Pharmaceutical Patent Protection: More Generic Favored Legislation May Cause Pioneer Drug Companies to Pull the Plug on Innovation*, 90 KY. L.J. 495, 503 (2001-02) (listing the different incentives provided by the Act and stating that “[t]hese rewards include federal funding for research and clinical trials, beneficial tax credits, and the exclusive right to market a qualified drug for a limited period”).

124. 21 U.S.C. §§ 360aa-ee (1998). See generally David Duffield Rohde, *The Orphan Drug Act: An Engine of Innovation? At What Cost?*, 55 FOOD & DRUG L.J. 125 (2000) (offering a descriptive overview of the Act and analyzing the incentives provided

treatments for rare diseases, or for diseases primarily affecting the poor, by creating financial incentives to encourage research and production.¹²⁵ An amendment to the Federal Tort Claims Act prompted the development of a swine flu vaccine by eliminating the liability fears of potential manufacturers by allowing victims of a new vaccine to seek recovery from the government.¹²⁶ And the National Childhood Vaccine Injury Act¹²⁷ has promoted the distribution of important vaccines by immunizing manufacturers from liability in cases where victims who suffer adverse reactions accept non-fault compensation from a special fund.¹²⁸

The present lack of an effective tort regime in China means that provisions immunizing manufacturers from liability for SARS-related drugs would do little to spur the development of such products. However, other forms of economic incentives might have been used to promote research and marketing of pharmaceuticals and other forms of treatment. The SARS laws do provide that “[s]cientific research on SARS prevention and treatment shall be greatly promoted”¹²⁹ and that “[i]nternational exchange and cooperation . . . shall be . . . supported.”¹³⁰ But specific economic incentives are absent from the laws.

IV. Conclusion

In earlier times, efforts to combat epidemics were often hampered by the lack of information about the diseases and by ineffective legal regimes. Those obstacles frequently still exist, albeit in different forms.

and determining whether they are effective in promoting pharmaceutical developments for the treatment of rare diseases).

125. See 42 U.S.C.A. § 283h note (stating that “[b]efore 1983, some 38 orphan drugs had been developed . . . [but that since] the enactment of the Orphan Drug Act, more than 220 new orphan drugs have been approved and marketed in the United States and more than 800 additional drugs are in the research pipeline”); Kuszler, *supra* note 122, at 955 (stating that “Congress provided for tax credit . . . of fifty percent of the cost of the clinical trial during the time the designated orphan drug is seeking approval”).

126. See Kuszler, *supra* note 122, at 962-63 (discussing amendment).

127. 42 U.S.C. §§ 300aa-1 to 33 (2005).

128. See JOHNSON & GUNN, *supra* note 96, at 26 (stating that “[u]nder the Act, a fatal injury results in an automatic payment of \$250,000, and persons who are injured receive compensation for virtually all past and future economic losses, plus no more than \$250,000 for actual and projected pain and suffering and emotional distress. Theoretically, victims may reject an award under the Act and sue in tort, but the doctrinal limitations imposed by the Act on tort actions make that an undesirable course. . . . The Act applies only to seven compulsory childhood vaccines and does not include vaccines used primarily by adults or noncompulsory vaccines administered to children.”); Kuszler, *supra* note 122, at 963-64 (discussing the no-fault compensation scheme created by the federal statute).

129. LIU, *supra* note 4, at 78.

130. *Id.*

Information is often mixed with misinformation, and sometimes the facts fail to reach the right parties. Legal regulations may fail to anticipate new medical developments, and out of date laws can impede, rather than promote, the treatment of disease. In an increasingly inter-connected world where diseases travel ever faster to far parts of the globe, there is a continuing challenge to furnish medical service providers with the best information and the greatest opportunity to effectively treat contagious diseases.¹³¹

Chinese Law on SARS, the seventh volume in William S. Hein & Company's Chinese Law Series,¹³² is a valuable addition to the emerging English-language literature about the new legal system in China.¹³³ In the book, Chenglin Liu offers both a detailed account of how the Chinese government responded to a major health crisis and an effective critique of the legal measures that were adopted. He perceptively identifies serious shortcomings in the SARS laws,¹³⁴ but also acknowledges their strengths and the progress they represent in building a Chinese legal culture. Liu is right to hope that by "utilizing the primary materials and analysis in this book, legal scholars and public health experts . . . [will be better able] to prevent epidemic diseases, both in China and throughout the world."¹³⁵

131. See Leonard J. Nelson, *International Travel Restrictions and the AIDS Epidemic*, 81 AM. J. INT'L LAW 230, 233 (1987) (indicating that international cooperation in the field of public health can be traced back to the expansion of international travel in the early nineteenth century, which spread epidemic diseases, such as cholera, plague, and yellow fever).

132. The earlier books include: volume 1, THE 1997 CRIMINAL CODE OF THE PEOPLE'S REPUBLIC OF CHINA WITH ENGLISH TRANSLATION AND INTRODUCTION (1998); volume 2, THE CONTRACT LAW OF THE PEOPLE'S REPUBLIC OF CHINA WITH ENGLISH TRANSLATION AND INTRODUCTION (1999); volume 3, THE AMENDED CRIMINAL PROCEDURE LAW AND THE CRIMINAL COURT RULES OF THE PEOPLE'S REPUBLIC OF CHINA (2000); volume 4, GUIDE OF CHINESE COPYRIGHT LAW STUDIES (2000); volume 5, RESEARCH GUIDE TO CHINESE PATENT LAW AND PRACTICE (2002); and volume 6, COMPETITION LAW IN CHINA (2002). See LIU, *supra* note 4, at ii.

133. As a resource tool, the book might have benefited from a detailed index offering more information than the table of contents.

134. For example, Liu points out that, under the SARS laws, concealing, delaying, or falsifying information relating to a public health emergency is sanctionable only if the wrongful conduct takes place "after the State" has taken measures to prevent or control an infectious disease. LIU, *supra* note 4, at 65. Concealment, delay, or falsification *prior* to State action cannot be penalized. See *id.* at 87 (indicating that the SARS laws fail to address problems associated with human waste disposal on trains and the risk that trains can become "super-spreaders" of serious diseases); *id.* at 95 (stating that despite evidence that, in misguided efforts to prevent the spread of SARS, many owners killed their pets, the new laws contain no punishment for abusing domestic animals).

135. Liu, *supra* note 4, at xiv.