

Reforms to China's secrecy law do little to soften its draconian powers, write Jerome A. Cohen and Jeremy Daum

Secret agenda

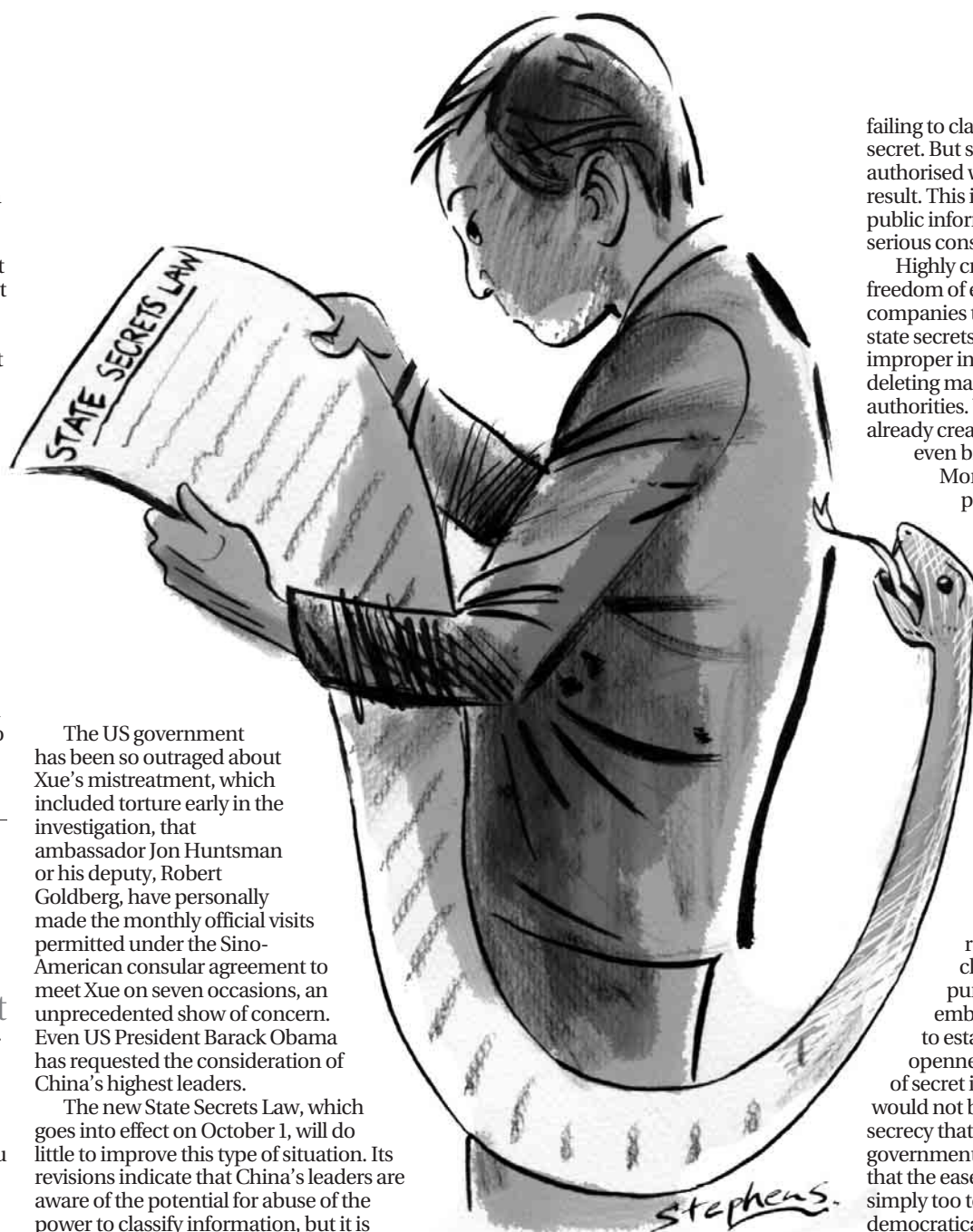
Most countries, including the United States, struggle to strike a balance between the need to keep some government information secret in the interest of national security and the need to provide free access to most information in the interest of popular participation and economic development.

China's government is still reluctant to acknowledge that citizens have a "right to know", and while it has in recent years developed "open government" information regulations, they are replete with loopholes and exceptions. So when China revised its State Secrets Law earlier this month, many commentators pored through the document sceptically. China has long maintained an expansive definition of state secrets subject to few limitations and with almost no meaningful review mechanism. This has not only led to overzealous guarding of sensitive or embarrassing information, but has also

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sustained the aggressive prosecution of people suspected of illegally obtaining, possessing or revealing such data.

The case of Australian national Stern Hu recently attracted worldwide attention, which is thought to be the reason why the charges against him were downgraded from stealing state secrets to illegally obtaining commercial secrets. Yet most Chinese state secrets prosecutions remain shrouded in mystery and receive little attention. American geologist Xue Feng (薛峰), for example, has been detained in police custody since November 2007 on charges of unlawfully procuring state secrets – an oil industry database – and "intelligence". For two years the case, never publicly revealed by China, was unknown to the media at the insistence of Xue's wife. Xue was finally given a closed trial last July, but there is still no verdict, and Beijing's No 1 Intermediate Court appears to have exhausted the legal excuses for its procrastination.



The US government has been so outraged about Xue's mistreatment, which included torture early in the investigation, that ambassador Jon Huntsman or his deputy, Robert Goldberg, have personally made the monthly official visits permitted under the Sino-American consular agreement to meet Xue on seven occasions, an unprecedented show of concern. Even US President Barack Obama has requested the consideration of China's highest leaders.

The new State Secrets Law, which goes into effect on October 1, will do little to improve this type of situation. Its revisions indicate that China's leaders are aware of the potential for abuse of the power to classify information, but it is equally apparent that they are not ready to unequivocally deter abuse at the expense of government discretion. The law is thus full of provisions that appear to limit arbitrary or extended classifications and increase transparency, but which ultimately preserve secrecy as a powerful tool for media control and persecution of those who fall foul of the government.

The purported narrowing of the vast scope of information that can be designated secret, for example, is more apparent than real. The new language merely requires that such information, if leaked, might harm state interests in broad areas such as politics, economics and diplomacy. Similar requirements are

failing to classify materials that should be secret. But such punishment is only authorised when "serious consequences" result. This implies that the concealment of public information is not itself a sufficiently serious consequence.

Highly criticised provisions restricting freedom of expression do require internet companies to co-operate in investigating state secrets cases, reporting suspected improper information disclosures and deleting material if requested by authorities. Yet, existing regulations already created similar obligations for an even broader range of information.

More positively, there is a provision that denies original classification authority to state organs below the prefecture level. This is likely to reduce gross overclassification by local governments eager to conceal corruption. However, this limitation may not even apply to public and state security departments, and local governments may still be authorised by higher levels to declare information secret. Of course, they may also violate authorised limits without great risk of successful challenge in the courts.

Even if the law had been revised to expressly prohibit classifying information for the purpose of concealing embarrassing or illegal behaviour, to establish a presumption of openness and to truly limit the scope of secret information, such reforms would not be enough to reverse the secrecy that permeates China's government. US experience has confirmed that the ease of acting in the shadows is simply too tempting for even a democratically elected government seeking to safeguard the nation's security. Yet citizens – supported by free media and empowered to challenge government actions in independent courts – are gradually exposing clandestine US programmes.

Since Chinese lack a democratically elected government, free media and independent courts, their struggle for information is much more difficult.

already present in other sections retained from the previous law. Yet how likely such harm must be has never been clarified, nor is there any reduction of the categories of information that may be shielded.

New specific maximum durations for the classification of all levels of secrets are encouraging. But the law stipulates that additional provisions may allow for longer periods, and that state personnel are required to extend the period before expiration so long as the information should still be considered secret. Similarly, disciplinary measures will now be required against those responsible for improperly classifying information as secret – not just

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